Inter-Commission Dialogue on Child Rights in India

Organized by

Centre for Child and the Law,
National Law School of India University, Bangalore

with the support of

UNICEF India Country Office,
New Delhi

Venue: India Habitat Centre, New Delhi
Date: Wednesday, 22 February, 2012

A Report
**Background**

The Centre for Child and the Law (CCL) of the National Law School of India University is a specialized research centre working in the area of child rights law for the past fifteen years (since 1996). The main thrust of CCL NLSIU is on Juvenile Justice, Universalisation of Quality Equitable School Education and Child Labour. The Centre engages in direct field intervention, research as well as teaching in order to impact policy, law and practice on issues concerning children. The mission of CCL is to institutionalize a culture of respect for child rights in India. The Centre has been working towards an effective implementation of The Commissions for Protection of Child Rights Act, 2005 through its project, **Justice to Children through Independent Human Rights Institutions** in partnership with the UNICEF India Country Office. The Centre has been working closely with the National Commission for Protection of Child Rights and the State Commissions on Protection of Children’s Rights, various other Human Rights Institutions, the Central Government and State Governments, judicial and quasi-judicial bodies and non-governmental organizations.

Human rights institutions are meant to function as independent human rights watchdogs at the domestic level. Their key functions include evaluation of existing safeguards for human rights protection and making recommendations for strengthening them, inquiring into complaints of human rights violations, undertaking visits to custodial institutions, creating awareness about rights, promoting harmonization of domestic laws with international conventions, and undertaking research and analysis on human rights issues. Commissions may be vested with quasi-judicial powers such as issuing summons, enforcing attendance, taking evidence, issuing commissions, etc., to enable them to look into complaints. They are usually empowered to make recommendations to the government to redress a violation.

The Principles relating to the status of National Institutions, 1993 commonly referred to as the Paris Principles are a set of internationally accepted minimum standards that States should seek to comply with while establishing national human rights institution. According to the Paris Principles and other standards, human rights institutions should function as independent entities and no external agency should interfere with their working. They should have the operational autonomy to appoint staff, allocate resources, and devise work plans. They should also have the financial autonomy to utilize their funds according to their requirements. The government should not influence or interfere with its operations.

India has seven human rights institutions whose mandate relates to human rights, women’s rights, rights of minorities, rights of persons belonging to Scheduled Castes, rights of persons belonging to Scheduled Tribes, rights of Safai Karmacharis, and rights of children, respectively. The Protection of Human Rights Act, 1993 (PHR Act), is the only legislation which provides a platform for coordination between some of these institutions. Section 3(3) of the PHR Act states that the Chairperson of the National Commission for Women (NCW), the National Commission
for Minorities (NCM), the National Commission for Scheduled Castes (NCSC), and the National Commission for Scheduled Tribes (NCST) are deemed to be members of the National Human Rights Commission (NHRC) for the purpose of discharge of all functions other than inquiry into complaints. The Chairperson or Member of the National Commission for Protection of Child Rights (NCPCR) attends the full meetings of the NHRC as a special invitee.

The composition, mandate, functions, and powers of these institutions also vary. For instance, the mandate of the NHRC is limited to inquiring into complaints of violation of human rights or abetment or negligence in the prevention of such violation by public servants. The NCW and NCPCR, on the other hand, can look into complaints relating to deprivation of women’s rights and child rights, respectively irrespective of whether the complaints relate to public servants or private entities. While all Commissions have been empowered to exercise the powers available to a civil court trying a suit, the NHRC enjoys certain additional powers. It has the power to require any person to furnish information on points relevant to the subject-matter of the inquiry, power of search and seizure, and the power to call for information or report from the government. If the report is not received in time, the NHRC has the power to proceed with the inquiry. The NHRC can also utilize the services of any officer of the investigating agency of the Central or State Government for the purpose of investigation. Finally, although, a prohibition on accepting complaints that are being inquired into by other Commissions exists, instances of multiple inquiries are not uncommon. Given the multiplicity of institutions, there is a definite need for greater cooperation and coordination between them at the national and state level so that considered and effective responses are framed to address issues of overlapping concern.

The Centre for Child and the Law, National Law School of India University therefore identified the Inter-Commission Dialogue as a platform for independent human rights institutions to share experiences, good practices and challenges they may have faced while engaging with the Government at national or state level with specific reference to child rights. It was hoped that this opportunity could be used to facilitate deliberations that could contribute to a protocol for use by human rights institutions that would enable them to respond effectively to matters pertaining to child rights and other issues of common concern. The Commissions could also identify practical aspects that hinder their working and factors that will contribute towards an able Commission. Further, the Commissions could also deliberate on the potential areas of conflict and how they may be avoided. For instance, nearly all the Commissions deal with huge volumes of complaints. Research done by the Centre for Child and the Law, NLSIU during this project indicated that in the absence of an integrated complaints mechanism, there were instances where parallel inquiries were held by two Commissions on the same matter. This leads to loss of considerable time and resources, and also causes secondary victimization of child complainants or victim. Research also indicated that Commissions receive complaints that fell outside their mandate which, in the absence of clear statutory instruction and an understanding between the Commissions, were actually admitted instead of being rejected. It is therefore felt as imperative
that a system be developed to enable smooth transfer or referral of complaints between the Commissions so that a child victim of an alleged human rights violation is not denied timely relief.

In order to be effective, national and state human rights institutions should have functional and financial autonomy. Ideally, the parent statute should insulate the Commissions from executive control. It was felt that this dialogue could also enable participants to collectively deliberate on their experiences in the light of international standards relating to national human rights institutions and consider areas where law reform needs to be initiated.

The consultation was therefore aimed at enabling Commissions gain from each other’s experience, deepen awareness of applicable international standards, and share ways in which functions have been discharged and powers exercised, all of which could trigger a process of evolving and adopting standard procedures relating to registration and transfer of complaints in the interest of children and their families.

**Objectives**

The objectives of the Inter-Commission Dialogue were as follows:

- To better understand the role of the NHRC, NCW, NCM, NCSC, NCST and the NCPCR in protection and promotion of human rights in India, and their specific role with regard to the protection and promotion of the human rights of children.
- To share challenges and experiences about handling complaints, identify potential areas of conflict and devise a mechanism for registration and transfer of complaints concerning child rights violations.
- To collectively develop a protocol and guidelines for Commissions that would enable them to build convergence while also helping to address issues concerning violation of child rights that are of common interest.
- To collectively deliberate on the current experiences and consider areas where law reform needs to be initiated to further empower human rights institutions to effectively fulfill their respective role and function in the interest of children.
### Agenda: The agenda of the Inter-Commission Dialogue was as follows:

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>9.30 am</td>
<td>Registration</td>
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<tr>
<td>10.00-0.15 am</td>
<td>Welcome and Introduction</td>
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<td>Arlene Manoharan, Fellow and Programme Head – ‘Justice to Children through Independent Human Rights Institutions’, Centre for Child and the Law, NLSIU</td>
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<tr>
<td>10.15 -1 pm</td>
<td><strong>Sharing of Experience, Best Practices and Challenges with reference to Child Rights in India</strong></td>
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<td><em>Moderator: Mr. Justice (Retd) Santosh Hegde</em></td>
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<td>10.30-10.45 am</td>
<td>Mr. Rajiv Sharma, Secretary-General, National Human Rights Commission</td>
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<td>10.45-11.00 am</td>
<td>Dr. Shantha Sinha, Chairperson, National Commission for Protection of Child Rights</td>
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<td>11.00-11.15 am</td>
<td>Dr. Charu Wali Khanna, Member, National Commission for Women</td>
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<td>11.15-11.30 am</td>
<td><strong>Tea Break</strong></td>
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<tr>
<td>11.30-11.45 am</td>
<td>Ms. Syeda Bilgrami Imam, Member, National Commission for Minorities</td>
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<td>11.45-12 noon</td>
<td>Mr. M. Shivanna, Member, National Commission for Scheduled Castes</td>
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<td>12.00-12.15 pm</td>
<td>Ms. K. Kamala Kumara, Member, National Commission for Scheduled Tribes</td>
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<td>12.15-1 pm</td>
<td>Open Discussion</td>
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<td>1 pm-2 pm</td>
<td><strong>LUNCH</strong></td>
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<td>2 pm - 4.45 pm</td>
<td><strong>Identifying Common Areas of Concern and Discussing a Plan of Action for Coordinated Response to Child Rights</strong></td>
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<td><em>Moderator: Prof. (Dr.) N.R. Madhava Menon, Chair, International Bar Association Chair on Continuing Legal Education, NLSI, Bangalore</em></td>
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<td>2.15-3.30 pm</td>
<td>Discussion on Plan of Action for the Way Forward</td>
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<tr>
<td>3.30 -3.45 pm</td>
<td><strong>Tea Break</strong></td>
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<td>3.45-4.15 pm</td>
<td>Summary of discussion on Plan of Action by Dr. Archana Mehendale, CCL-NLSIU</td>
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<td>4.15-4.45 pm</td>
<td>Discussion on a possible Joint Declaration on Protection and Promotion of Child Rights by human rights institutions in India</td>
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<td>4.45 pm</td>
<td>Vote of Thanks by Arlene Manoharan, CCL NLSIU</td>
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Report of the Proceedings

The day began with Ms. Arlene Manoharan, Fellow, Centre for Child and the Law, National Law School of India University welcoming the representatives of the six national human rights institutions (NCPCR, NHRC, NCW, NCM, NCSC and NCST) and several state human rights institutions, as well as delegates hailing from academia and civil society organizations working on child rights. A list of participants is contained in Annexure A. She then gave a brief introduction to the Centre and the objectives of the Inter-Commission Dialogue. She stated that this Inter-Commission Dialogue was an activity envisaged by CCL NLSIU as a humble attempt to facilitate discussion and collective action that could help strengthen the complementarities of human rights institutions, in order to effectively promote and protect the rights of children in India. She explained that this was part of work that has been underway for the past two years, in partnership with UNICEF – India Country office, aimed at concretely impacting the lives of children, by strengthening the hands of the Commissions for Children, the State Government and Civil Society towards a common cause. She concluded by saying that CCL NLSIU was honored to have representatives from the various National and State Commissions attend this programme, and specifically thanked Justice Santosh Hegde and Prof. (Dr.) N.R. Madhava Menon for demonstrating keen interest in supporting this initiative.

Session I
Sharing of Experience by Commissions on Best Practices and Challenges with reference to Child Rights

Justice (retd) Mr. Santosh Hegde, (former Judge, Supreme Court of India, former Solicitor General of India, and former Karnataka Lokayukta) chaired the first session. He invited the representatives from the six Commissions to share their experience of engaging with child rights violations, highlighting best practices that could be considered for adoption and challenges that may need to be addressed through the Inter-Commission Dialogue.

Dr Shantha Sinha, Chairperson, National Commission for Protection of Child Rights

Dr. Sinha started by appreciating the efforts of the Centre for Child and the Law in facilitating such an Inter-Commission dialogue on child rights, terming it “timely and necessary” as children constitute 42% of the country’s population. She said that the Commissions could deliberate in order to arrive at a common understanding of child rights and what protection entails, and arrive at consensus on what could be done collectively. She highlighted the fact that deprivation, marginalization, and lack of realization of entitlements come under the realm of all the Commissions. This she said helps in providing more platforms that can be accessed in case of violation of rights. She emphasized that since problems are big and often solutions depend on institutional responses, it is important that children have as many forums available to access whatever is available.
Dr. Sinha drew attention to violations of rights of children between 0-18 years. She emphasized upon the interdependence of rights and said that all rights are of equal importance for children of all ages. For example, the right to life and the right to education go together and we cannot read one without the other. She also referred to child labour, migrant labour, trafficking, and access to justice for dalit and tribal children who are discriminated against or punished because they belong to a particular community. She also highlighted the fact that children and their rights find no mention in the integrated action plan for civil unrest.

Dr. Sinha felt that the issue of who takes care of what complaint is the least of the problems and is an issue that can easily be resolved. She strongly voiced the more important need for the Commissions to come together on macro policy level issues and suggested issuing of joint statements of policy on child trafficking and child labour, right to education, and other issues. Social audit of anganwadis, schools, and ashramshalas and public hearings can also be taken up jointly. She suggested that Commissions should identify certain non-negotiables and work on some issues for at least two years. She ended by saying that child rights should be prioritized in all Commissions and that they should leverage their positions at national and state levels in order to address issues at a macro level and not get into micro issues.

**Dr. Charu Wali Khanna, Member, National Commission for Women**

Dr Charu Wali Khanna stated that the NCW is fully independent even though finances are provided by the Ministry of Women and Child Development. She shared that on receiving complaints they try and ensure that duplication does not happen and that the matter is referred to the appropriate Commission. Such referral often takes place informally through phone-calls. She however felt that some mechanism for consolidation of complaints could be developed and this could help in reducing duplication of proceedings. She emphasized that co-ordination is necessary at the national as well as the state level and pointed to road blocks in the form of other institutions such as the Child Welfare Committees that sometimes wish to take credit for interventions. She mentioned that while there is awareness about the Juvenile Justice (Care and Protection of Children) Act, 2000 it was found that children were being exploited and used for illegal activities. She drew attention to the issue of child sexual abuse and right to education and highlighted the need for addressing these issues collectively. She expressed the need for developing guidelines and Standard Operating Procedures pertaining to co-ordination between Commissions and other government bodies.

**Ms. Syeda Bilgrami Imam, Member, National Commission for Minorities**

Ms Imam said that she salutes the idea of co-ordination, and appreciated the fact that the Centre for Child and the Law took the initiative to organise the consultation, saying that this was the need of the hour. She laid emphasis on the criticality of responding to the issues concerning children below the age of 18 years. She shared that the NCM is strict about non duplication and does not accept any complaint pertaining to violation of child rights. If the issue concerns a child belonging to a minority community, then there is a need to address the matter along with other Commissions. She underlined the need to work collectively on the right to education, especially in the context of child labour and also stated that equal opportunity will not work unless
education is accessible. She said that creating a meeting ground would be wonderful, emphasizing that she believed in deflected solutions – which she clarified as something that entails providing the child a reality and a way to create the reality. She cited a good practice in West Bengal where an NGO and police have together started a project on education of children from a minority community from within the police premises. She said that the relationship between minorities and the police is not always a good one, and most of them are terrified. But through this innovative project, the organization distributes books which help the child to know what he and his parents are entitled to, such as the ration card and how to get it, how to maintain health and hygiene etc. As the parents are often uneducated, the child becomes the father of the man and helps the family with his education. She gave another example of Rainbow Readers provided by Infosys Foundation to madrasas that cater to children between 3 and 10 years. She said that children can easily read these, through which their confidence is strengthened and when they get confidence, the child feels empowered. She observed that if a great pilot project of getting together for benign reasons can be created, it can be replicated and then taken forward. She stressed that discrimination, victimization and marginalization required deflected solutions. She highlighted the plight of Buddhist children who are seen as dalits and bullied. She said that the demographic dividend of the country can be harnessed if children’s aptitude is assessed through psychometric tests and the child is guided about what s/he could do. She stressed that every child in India should be put into a situation where s/he can do what s/he enjoys most while simultaneously building a work ethic in the country.

**Mr. T. Theethan, Joint Secretary, National Commission for Scheduled Castes**

Mr. Theethan spoke on behalf of both the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST). He shared the plight of children belonging to Scheduled Castes (SC) and Scheduled Tribes (ST) and highlighted issues such as the poor quality of government schools, migrant child labour, female infanticide, and manual scavenging, circulating press clippings and other reports that had been compiled. He also shared instances of discrimination in schools on grounds of caste and noted that while laws and monitoring agencies exist, the implementation of rights contained in the law remain a challenge. He said that in many cases, the matter is that of state *versus* state because one section of the government is litigating against another on matters of violation of rights of Scheduled Castes and Scheduled Tribes. The constitutional rights of the SCs and STs are therefore being curbed using the state’s own resources.

Mr. Theethan felt that there is no conflict between Commissions and that they should constructively engage with each other to address these important concerns. He also stated that the NCSC and NCST should be given powers equivalent to that of the Election Commission. He said that all human rights institutions should report and publicize their work through their website. E-governance he said was an excellent way to deal with the problem of corruption. He shared that the NCSC has engaged the National Informatics Centre to create an online complaints status system that will enable complainants to check the status of their complaints anywhere. He voiced the need for human resources and software to come together to address some of these issues and that it should not be sole responsibility of only those from SC and ST
background. He concluded by expressing his gratitude towards CCL NLSIU for organizing this dialogue.

Dr. Savita Bhakry, Deputy Secretary (Research), National Human Rights Commission

Dr. Bhakry, explained in detail through a power point presentation, the functions of the NHRC such as those pertaining to review of laws, visits to custodial homes, examination of international treaties, research, and inquiry into complaints, etc. She also mentioned that the Chairpersons of all other Commissions are deemed members of the NHRC by virtue of Section 3(3) of the Protection of Human Rights Act, 1993. However, since the NCPCR was constituted much later it does not find mention in the Act, but the Chairperson of the NCPCR is called as a special invitee for full meetings of the Commission.

She explained that “Human rights” has been defined under the Protection of Human Rights Act to mean the “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.” The Act defined “International Covenants” to mean the ICCPR and the ICESCR and other Conventions adopted by the UN General Assembly and specified by the Central Government through notification. Dr Bhakry shared that in 2009, the Convention on the Rights of the Child and the Convention against Elimination of all forms of Discrimination against Women had been added, through a gazette notification.

Dr. Bhakry stated that the mandate of the NHRC is wide. For instance, pursuant to Section 12, the NHRC can also inspect homes under the JJ Act. She shared that the Commission has worked on issues of free and compulsory education, juvenile justice, health, child marriage and sexual violence. In the case of human trafficking, the NHRC has worked effectively with the National Commission for Women, Ministry of Home Affairs, Ministry of Women and Child Development and UN agencies to come up with an Integrated Action Plan to Prevent and Combat Human Trafficking with special focus on women and children. It has also conducted human rights education programmes that focus on rights held by various groups. It has also co-ordinated with the NCPCR and NCW to monitor the implementation of some of the flagship programmes in 28 of the most backward districts identified by the Planning Commission.

She shared the workshops, studies, and interventions undertaken by the NHRC on complaints management and thematic issues such as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, missing children etc. She also mentioned that the Commission is examining the implementation of the Optional Protocols to the UNCRC that have been ratified by the Indian government and that it had also held regional workshops in connection with the Universal Periodic Review before the Human Rights Council. She felt that some best practices that have emerged should be replicated to enhance the quality of response to violations. For instance, in order to combat trafficking of women and children, the NHRC created a network of nodal officers and it has prepared formats and monitoring tools, but because of other issues it needs to work further in this area. The NHRC has issued several recommendations on various issues concerning child rights. She agreed to share these with the NCPCR and CCL-NLSIU and also said that there is a need to follow up on those
recommendations. She also voiced the need to strengthen the coordination mechanism within the Act by holding full Commission meetings on a quarterly basis and also having such meetings for middle level officers in all Commissions. She suggested that CCL-NLSIU take a lead in order to train staff about child rights. She also said that the Commissions can work together on RTE and human rights education in schools. Other macro issues that could be looked at collectively are the implementation of the Prohibition of Child Marriage Act, 2006, recasting of the Child Labour (Prohibition and Regulation) Act, 1986, compliance with the Millennium Development Goals, anti-trafficking, incentives and disincentives in populations polices, and rights of children in the North-East. She also said that there is a need to sign and ratify the third Optional Protocol to the UNCRC and that the Commissions can collectively work on this. She also voiced that the Commissions could collectively submit an alternate report to the UN Committee on the Rights of the Child and also follow-up on the compliance with the Concluding Observations made by the UN Committee. Joint social audits and Public Hearings can also be considered by the Commissions.

Later during the afternoon proceedings, she also made a few more interventions. She recommended that the Commissions send in jointly authored Alternate reports to the UN Committee on the Rights of the Child that was truly independent and not photocopies of the government reports. She also highlighted the need for work to be done to ensure that children do not get used by adults in criminal activities. She recommended that priority be given to building the capacities of individuals and personnel, including the Commissions and officers deputed to work with them, given that they may need orientation and training to international treaties, optional protocols etc. She also asked as to why the role of the Legal Services Authorities was not being emphasized enough, stating that they are key institutions to enable access to justice, bemoaning the fact that many of them are surrendering the funding allocated to them.

**Remarks by participants**

**Prof (Dr.) N.R. Madhava Menon** observed that while a number of Commissions exist at the national and state level to promote justice to the child, the constitutional rights are available to all children, a separate Ministry has been created, and a fair amount of funds have been allocated for children, yet we have failed in implementing these guarantees as the number and intensity of violations have only increased. He commented that while media has been reporting violations and judiciary has given guidelines, except for child trafficking, no effective contribution from the Commissions is discernible. Public perception is that these are bureaucratic in their functioning. In such a situation children continue to suffer and SC/ST children are doubly victimized. He pointed that there is a need for a concerted strategy to represent children and to pool resources to work together. He urged the Commissions to use their independence to co-operate with each other, though not necessarily work under the NCPCR on child rights. If implementation is a problem, then each Commission must have an officer at the level of Director who will look exclusively at child rights and develop a specific action plan for children within that Commission.

Hard questions such as whether the 1/3\textsuperscript{rd} of the budget of these Commissions are being allocated for child rights, given that children constitute 1/3\textsuperscript{rd} of our population will have to be addressed.
This he said will demonstrate the resolve of the Commission to work on child rights in a concerted manner. He asked if the Commissions were prepared to appoint a Child Rights Officer and all of them could work under the NCPCR or the NHRC whichever is willing. He highlighted this as an important initiative and recommended that CCL-NLSIU could also become the Secretariat for this purpose to promote coordination between these Child Rights Cells within all the Commissions working on child rights. This could be an institutional collaboration with support from UNICEF. He also suggested that other available resources such as Universities, teachers, students of law, medicine, and social work, and senior citizens should be tapped into. It was better if existing institutional resources such as this are used as the Centre has already demonstrated its dedication and expertise on child rights issues. This would help enable quality and timely assistance to Commissions through outputs such as research on best practices, recommendations on whether or not to ratify the Optional Protocols etc.

Justice (Retd.) Mr. Aftab Hussain Saikia, Chairperson, Assam State Human Rights Commission (and former Chief Justice of Jammu and Kashmir), lamented on the lack of awareness about these human rights institutions and their powers and functions with regard to the government and even the judiciary within the State. The fact that Assam was the only North Eastern State that had constituted an SHRC was also highlighted. He also remarked that though the SHRC was supposedly ‘independent’ it was dependent on the government for funds and had no powers to enforce its orders. As a result the Commission is reduced to a toothless body. He also said that coordination between the State Human Rights Institutions in Assam was lacking. He commended the proposal made by Prof. Menon to set up a Child Rights Cell in all Commissions at National and State Levels, but lamented that funding was required for the same.

Prof Lad Kumari Jain, Chairperson, Rajasthan State Commission for Women highlighted culture-based crimes against the girl child such as child marriage and forced marriage in Rajasthan that are a cause of concern. Sexual abuse of children who are forced to go for coaching classes and suicides of young girls was also a serious problem. She stressed on the need for coordination in connection with the PCPNDT Act, the Medical Termination of Pregnancy Act, and the population policy.

Mohd Aftab from Save the Children, stressed on the need for collaboration especially on the issue of child labour which falls under the mandate of the NCSC, NCST, and the NCPCR. He observed that at present the Commissions work in a fragmented manner. He said that the Commissions should come together and urge for the ratification of the 3rd Optional Protocol to the UNCRC and also develop SOPs for handling of complaints, given that complainants often submit complaints to numerous bodies at the same time. He also remarked that pursuant to the Paris Principles, the Commissions should not implement programmes of the government or else they will end up becoming an agency of the government. Their focus should be on monitoring of human rights instead. He recommended that an annual conclave of all HRIs should be held to enable them to come together and that a child rights desk should be set up in each Commission irrespective of their core mandate. He later added that there is a need to do advocacy on the Universal Periodic Review as it comes up before the Human Rights Council, and also on the bill on sexual offences against children pending in the Rajya Sabha. He also stressed the need to provide education in schools about this within the framework of Right to Education. Later during
the proceedings, he also highlighted the need for greater functional autonomy of the Commissions. He also advocated for stringent Selection Committee Guidelines compliant with the Paris Principles to be adopted so to ensure the right people are appointed by the State to these human rights institutions.

Mr. Yashwant Jain, Chairperson, Chhattisgarh State Commission for Protection of Child Rights, shared that children living in Bastar were being involved in naxal activities as messengers and informants. He drew attention to the gross violations of the right to life and the right to education in the State.

Dr. Suchitra Kakoty, Chairperson, Assam State Commission for Protection of Child Rights, shared the problems faced by the Commission in discharging its mandate. The absence of Rules, lack of functional autonomy, the Secretary performing dual charges and insufficient grants were cited. She stressed on the need for orientation to the officials and Minister on the purpose of the Commissions.

Ms. Nisha Jha, Chairperson, Bihar State Commission for Protection of Child Rights, shared that over 5000 children had been admitted in schools and that while the government has provided them with a budget, funds are not sufficient to address child rights issues pertaining to life, health, and education.

Ms. Nina Nayak, Chairperson, Karnataka State Commission for Protection of Child Rights shared that the Karnataka SCPCR Rules were restrictive and that it made it impossible for the Commission to function on a full time basis. She felt that the Commissions should effectively utilize and complement the work of the judiciary, who in turn should enable the Commissions and thus take them forward. She also said that when the complaint involved violation by a public servant, the SCPCR had forwarded the matter to the SHRC but was asked about the provision on the basis of which it was referred. She conveyed the lack of investigation powers as the reason for forwarding the matters to SHRC. She also shared that the SCPCR had passed recommendations on cases involving children from a minority community in an institution, which was chanced upon by the State Minorities Commission during their work, after which the two Commissions are also working jointly on such issues. She cited the experience of working together with different stakeholders under the aegis of the Committee on prohibition of child marriage appointed under Justice Shivraj Patil.

Justice (Retd.) Mr. Santosh Hegde concluded the session by remarking that the government’s strategy and approach towards Commissions, drawing from his own experience reveals its clear intention that these institutions remain toothless and ineffective bodies. He quoted Winston Churchill who had once said that if you want to kill an idea, you set up a Commission. He noted an element of confession in the remarks of the various representatives of the Commission who attributed a lack of performance due to infrastructure and other support, but also because of a lack of adequate will. He encouraged the Commissions to introspect upon and audit their own performance and carry on with their duties, challenging them to be pro-active and do what they feel is just. He said that the media would surely pick up on issues and garner public support, after which the government will then have to respond positively. He added that after this, once
election time comes, funds too would also be allocated to these Commissions, and this will help in achieving the objectives for which these institutions have been established. He finally congratulated CCL NLSIU and UNICEF for having conceptualized and created this opportunity for dialogue including sharing of positive experiences and challenges faced.

Session II
Identifying Common Areas of Concern and Discussing a Plan of Action for Coordinated Response to Child Rights

The afternoon session was chaired by Prof N.R. Madhava Menon, who initiated the discussion by making some opening remarks. He noted the commonality of aspirations and intentions that had been expressed in the morning session as regards work in the human rights arena, saying it was a welcome development and good beginning. He emphasized the need to identify concrete and constructive action plans despite the problems related to the constraints in infrastructure etc. Proposals for an action plan and a method by which co-ordination among the Commissions could be forged were then discussed. He acknowledged the fact that individually, each Commission was indeed doing work to protect the rights of children, but emphasized that collectively the Commissions could achieve much greater results. Some of the measures he suggested that could be taken up include quarterly meetings with all Commissions at the national and state level to discuss child rights concerns, desk offices on child rights to be established in every Commission, joint recommendations or reports to be sent to international treaty bodies, and partnership with NGOs, civil societies and Universities that could not only help meet resource constraints, but also help utilize the resources from the community. It was also pointed out that it was necessary to take into account the fact that most subjects are largely within the jurisdiction of the local government or state government. He recommended that local bodies could be encouraged or pressurized to take care of children in their jurisdiction as they have the legal mandate and resources, then some of the problems can be arrested. Prof. Menon remarked on the irony of the situation that the State establishes Human Rights Institutions to monitor its own functioning, while in reality they are being controlled by the concerned Ministries, highlighting this as a structural deficiency. The need to insulate Commissions from the interference by Ministries and to secure their independence was therefore emphasized. He then opened out the discussion, urging participants to think of innovative ways in which the State, the Commissions and civil society could work together for the way forward.

Mr. Lov Verma, Member Secretary, NCPCR spoke about the failure of several States in setting up SCPCRs, one of the reasons being the use of the word ‘may’ and the lack of clear deadlines in the law. The case of Rajasthan was pointed out where a bureaucrat was given additional charge as Chairperson of the Commission for over a year. The lack of accountability within the government was also raised, highlighting the need for structural as well as legal reform. It was suggested that law reform may be required to address such issues and that Model Rules (rather than Central Rules) could be framed by the Centre which can then be adopted by the States.

Dr. Vinod Raina said that this was a very good opportunity to discuss a common agenda that all present share on the issue of child rights. He stressed that the Commissions should not indulge in
turf wars but should work to protect as well as prevent the violation of rights. He strongly advocated for structural changes to be made, so as to ensure independence of the Commissions from their hosting Ministries, and this needs to be done at the level of Parliament for all human rights institutions under respective legislation. He shared his experience of working with Prof. Menon in advocating with the UGC to ensure independence for autonomous Universities to insulate them from external pressures. This would require some intermediary to lobby for a separate omnibus set up with staffing etc that will enable and empower Commissions to fulfill their obligations effectively. He said that some Commissions were being really brave and pro-active in doing what they are doing, despite these external pressures, but unless this structural change is made, their functioning will continue to be undermined. He remarked that India has a fairly weak governance system, and this is actually getting weaker, a development that warrants much more concerted action to ensure accountability from government Departments vested with responsibility for implementing various laws and schemes. This itself will help in prevention and thereby reduce the number of cases of violation that would need to be addressed by the Commissions. He seconded the idea of setting up a Child Rights Desk in every Commission at National and State level and the need to form linkages with existing agencies. He strongly advocated the need for use of technology in creating databases and encouraging flow of information not just horizontally between Commissions, but vertically to and from the Panchayats as crucial ingredients for timely, transparent and effective justice. Later, he also highlighted the need to list out the specific types of training that may need to be undertaken. He said that in the context of prevention, it might be a good idea to plan for training of teachers on child rights laws through collaboration between the Ministry of Human Resource Development, the NCPCR and identified Universities.

Prof. Sitaramam stated that while looking at solutions, a combination of processes would help. On the one hand there was a need for governance reforms for effective implementation, while on the other hand there is also a need to organize and create ecosystems at local level which provide methodological illustrations of deflective solutions that had been earlier referred to by Ms. Syeda Imam. He observed that the solutions will have to be long term, not only direct solutions but indirect ones also that do not lie within the confines of available spaces. He supported the idea of CCL NLSIU playing a role in helping to take these agendas forward.

Ms. Sameera Kazi, Chairperson, Goa SCPCR re-iterated the need for functional autonomy, greater allocation of funds, and the need to focus more on prevention. She appreciated the efforts made by the CCL team to come to Goa to facilitate a Round Table between the Goa SCPCR, the state government and civil society, and expressed the need for ongoing support.

Ms. Karuna Bishnoi, Child Rights Specialist, UNICEF – India Country office said that Commissions should not accompany the Government to UN meetings, but remain as independent monitoring authorities, by attending separately and making independent submissions commenting on the reports of the former. She also said that though priorities may need to be identified, rights themselves cannot be prioritized as they are indivisible.
Dr. Kakoty, Chairperson, Assam SCPCR re-iterated the need for capacity building, both for Commissions and State Government including the Secretary, who she said should be deputed full time for effective functioning of the Commission.

Prof Menon said that Commissions should be taking the initiative to build their own capacities, and to look beyond government support for the same. He recommended that Commissions consider enlisting the support of civil society bodies, Universities and colleges in discharging their functions, given that there is a wider recognition of the need for social responsibility. He also stated that the rule of law rested on the legal norms, institutions, and personnel. While the legal framework is impressive, the implementation by executive, police, courts, and bureaucracy remains a problem. He highlighted that law too places a responsibility on civil society including students, teachers, parents etc to share the onus of implementing these laws and schemes, and pointed to examples of the same in the JJ Act and the RTE Act.

Dr. Archana Mehendale, Senior Researcher (Consultant), Centre for Child and the Law, National Law School of India University recapitulated some of the day’s deliberations and explained how the plan had been to enable an Inter-Commission Dialogue, not only at the National Level, but to some extent also at State Level during the day’s proceedings, given that representatives from various State Commissions had also been invited. She then presented the plan of action that emerged from the deliberations by the participants, which is attached in Annexure B to this report. It was agreed that this presentation will serve as an Outcome Document on the Inter-Commission Dialogue and will be circulated for co-ordinated action.

Prof. Menon then responded by commending the vast amount of research, effort and funding that had gone into organizing this Inter-Commission Dialogue, and posed a challenge that this should result in a Plan of Action that does not remain only on paper, despite the challenges that may continue to surface. He said that this was a very good beginning, especially because of the discovery of the commonality in agendas, mandates and possibilities for collaboration. He then explained that the Commissions would first of course have to decide what their priorities are. After this it would be necessary to recognize that there are three crucial elements that help to operationalize a Plan of Action. Firstly, there is the legal regime, consisting of the Constitution, International Law and Domestic Law (especially in a rule of law society as ours). Secondly, there are the institutions vested with implementation such as the Executive, the Police, and of course in this context the Independent Human Rights Institutions who are mandated to monitor this implementation. He then identified the third element – which is the most crucial in ensuring implementation – and this is the personnel, through which one may actually overcome any deficiency in the former two elements – law and institutions. He expressed his belief that in our society there are people in all walks of life who are committed to the cause of justice to children, and the Commissions had a unique role of motivating and monitoring these individuals, especially those in government to ensure they fulfill their obligations. He said that Government would have its own priorities, but the Commissions would have to identify their own, and the strategies through which they can be effectively implemented, despite any structural deficiencies. The idea of having standard operating procedures for complaints mechanisms will of course help in routing complaints to the Commission that may be better resourced to address the same. However, remedies for child rights violations are by and large the responsibility of systems that
are already in place, and the role of the Commissions should be more to ensure these are working and complement these, while also providing certain temporary interim relief where required. He highlighted that there was immense scope to work on prevention, as prevention in itself implies protection, and therefore this could be prioritized.

He then said that such Inter–Commission Dialogues could be organized on a regular basis by the NCPCR with support from CCL NLSIU or any other agency to ensure frequent action on the agendas that have been identified, perhaps on the model created by CCL NLSIU. He also offered to play a role in bringing together Law Universities and to host such dialogues either annually or quarterly, especially given that many of these institutions have been created by statute which clearly outlines their vision of using law as an instrument of social transformation. The idea of having pointed One Day Consultations on identified issues such as Training of Teachers was also mooted. He then invited the NCPCR to respond to the various proposals made and fine tune a Plan of Action suggested by the representatives of the various Commissions as well as those made by the participants gathered.

A proposed Declaration to be adopted by Commissions contained in Annexure C was agreed to be placed for the consideration of all members of the respective Commissions by the representatives present at the meeting.

Dr. Vinod Tikoo, Member, NCPCR suggested that the NCPCR in collaboration with the NHRC could jointly host a Conclave on Child Rights with all the Commissions twice a year to consider and take forward the agenda and action plan outlined during the day’s proceedings.

A vote of thanks was then given by Ms. Arlene Manoharan, CCL NLSIU. She concluded by again highlighting the need to claim and utilize all available spaces that would help promote and protect the human rights of children, to strengthen and support the SCPCRs as they are institutions that are only recently established by law, to institutionalize mechanisms for coordination at various levels in order to effectively protect and promote human rights and most importantly to help make the government accountable to children.

Annexures

Annexure A: List of participants

Annexure B: Plan of Action that emerged during the deliberations

Annexure C: Draft of Declaration, proposed to be adopted by the Commissions during their business meeting