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Dears Arunaji, Nikhil, Venkatesh and members of the **NCPRI**,

Thank you for your letter dated 21st May on the processes adopted for the drafting of the Lokpal bill.

We are very grateful to you for sparing so much time on the issue of Jan Lokpal Bill. I am very confident that we will certainly get a very good Bill when organisations like the NCPRI are taking so much interest.

I fully agree with all the points raised by you in your letter. They are extremely important.

Let me share with you what we, the civil society members are doing with regards to the issues raised by you:

1. After each meeting, we prepare our own details of discussions (from our notes) and put them up on the website for general information of the public. Government is also making very good minutes. However, government processes take time. Formal minutes (from government side) of the first meeting are already out and up on indiaagainstcorruption.org as well as lokpallbillconsultation.org. Draft minutes of the second meeting were put up for approval in the third meeting. However, some corrections were suggested in the same and they should be ready soon. In the meeting of 30th April, we had given the government a document titled "Basic Features of the Jan Lokpal Bill". This document is available in the IAC website. In the short meeting of the 7th May, they had responded to the first 7 basic features of the bill. IAC has put up their response on its website, though official minutes of that meeting have not been finalised yet.
2. For public consultations, the civil society members have started a website called lokpallbillconsultation.org. Kindly take a look at it. I am happy to tell you that we have already received more than 1500 comments/suggestions so far. I will personally await useful comments and suggestions from you and your colleagues either written directly to me or through the website. We have already incorporated all the suggestions made by you and your colleagues in the NCPRI and NAC meetings held on 3rd and 4th April barring two suggestions relating to public grievances and transparency. We would request you to put the minutes of those meetings in the public domain. We have been asking the Government repeatedly in the meetings to set up an official website of the joint drafting committee for receiving public comments and suggestions on the bill. However, they have been saying that that occasion would arise after we have agreed upon the basic principles of the bill.
3. We have also been asking the government representatives on the Committee to organise at least 5 regional public consultations in the country on the bill. However they

have been putting it off saying that that could also be decided after we have agreed on the basic principles of the bill. I have recently written to the Chairman Mr. Pranab Mukherjee that they must tell us by the next meeting on the 23rd which of the basic principles of the bill they agree upon and which they do not. We must have much more frequent meetings after the 30th of May so that we could adhere to the deadline of 30th June. From civil society side, we are already arranging several public consultations. There was a very useful consultation in Guwahati, where some very useful suggestions were received from the lawyers of Guwahati. On 26th, Mallika Sarabhai is organizing a public consultation in Ahmedabad. On 27th, there is a public consultation at IIM Bangalore at 6 pm. Several volunteers are doing small group public consultations with the general public in Delhi and Mumbai. In Mumbai alone, 14 such discussions have already taken place.

I will place your letter before the next joint committee meeting. I will inform you of the government's reaction on your letter.

With Regards,



SHANTI BHUSHAN
Co-Chairperson, Lokpal Bill Joint Drafting Committee

Annexures:

1. Basic Features of the Jan Lokpal Bill.
2. Statement of objects and reasons.
3. Details of discussions held on 7th may of the JDC.

Basic Principles of Jan Lokpal Bill

There should be an institution called Jan lokpal at the centre and Jan Lokayukta in each state.

The following points are being written for Jan Lokpal. However, exactly similar model would be applicable for states.

Independence of these institutions:

1. These institutions shall be financially, functionally and administratively independent of the government:
 - a. Financial independence: Their expenses shall be charged to the Consolidated Fund of India/state. They shall not need administrative or financial sanctions from any government agency for making expenditure. The quantum of expenses should be decided in an annual meeting between the Prime Minister and the Chairperson of Lokpal.
 - b. Control over their employees: They shall have the freedom to decide the number of employees required. They will have the power to select and recruit people either from outside or on deputation or on contract basis or through any arrangement as they deem fit.
2. The Chairperson and members shall not be eligible for appointment to any position in any organization, which is directly or indirectly funded by any government. It shall also not be eligible to contest any elections. The total tenure of any member or Chairperson or together as member and Chairperson shall not exceed five years.

Selection of members and Chairperson of Lokpal and Lokayukta:

3. The process should be completely transparent and participatory. There could be a very broad based selection committee, which may consist of constitutional authorities, including representatives from judiciary, bureaucracy and judiciary. This committee may be assisted by a search committee.
4. The new members should be selected at least three months before the retirement of any member.

Removal of members and Chairperson of Lokpal and Lokayukta:

5. If prima facie case is made out in a complaint made to the Supreme Court by a citizen against any member or Chairperson, Supreme Court shall institute a time bound enquiry and advise the President on the basis of such enquiry. A member or Chairperson of Lokpal may be removed by the President on the basis of such advice.

Jurisdiction:

6. Lokpal should have jurisdiction the following jurisdiction:

- a. To receive complaints of corruption under Prevention of Corruption Act against Prime Minister, all ministers, all members of both houses of Parliament, all bureaucrats and judges of Supreme Court and High Court; to investigate these complaints and to file prosecution in appropriate trial courts for prosecution and award of punishment.
 - b. To receive complaints of misconduct against bureaucrats and recommend appropriate penalties under conduct rules. However, the recommendation shall be binding on the government.
 - c. For complaints against any politician for his/her conduct inside Parliament, Lokpal shall only investigate the matter on receipt of a reference from Chairperson of either House. After investigation, the Lokpal shall submit its report to Chairperson, who shall present it in the House for decision on the same.
7. Lokpal shall not need to seek permission from any other agency for initiating investigation, enquiry or prosecution. Appropriate amendments would need to be made in Prevention of Corruption Act and Delhi Police Establishment Act for this purpose.

Powers of Lokpal and Lokayuktas:

8. Lokpal and Lokayukta shall have powers of search and seizure as provided in _____
9. It shall have powers of a civil court to summon and seek production of documents under _____
10. It shall have powers of contempt and imposition of financial penalties to seek compliance of its orders.
11. It shall have powers to tap telephones under Indian telegraph Act.
12. It shall be deemed to be a police officer.
13. It shall have the powers to recommend, on an annual basis, the number of special courts required under section 4 of Prevention of Corruption Act, to ensure that the trial in any case is completed in less than a year. The recommendations shall be binding on the government.
14. It shall have the powers to issue letter rogatory, wherever required, in connection with investigations of cases under this Act.
15. Notify list of moveable and immovable assets of accused, if during or at the time of conclusion of investigations, Lokpal believes that prosecution is likely to be initiated. These assets cannot be transferred after such notification. Loss to exchequer quantified at the time of conviction, could be recovered from sale of these assets.
16. Recommend stay of any activity, if during investigations, Lokpal is satisfied that the allegations against such activity are likely to be sustained.
17. Recommend transfer of any official, if his continuance is likely to adversely affect investigations.
18. Powers to issue appropriate directions to prevent destruction of records during investigations, prevent further further acts of misconduct by a public servant or to prevent the public servant from secreting the assets allegedly acquired by him through corrupt means.
19. If the allegations are substantiated after any enquiry or investigations, recommend removal of any minister (barring Prime Minister).
20. Lokpal shall have powers to delegate any of its powers and functions barring those which are specifically to be performed by the benches of Lokpal.

Internal transparency and accountability of Lokpal:

21. Every complaint shall have to be compulsorily disposed by Lokpal. No complaint could be disposed without giving an opportunity of being heard to the complainant. If any case is closed, all records related thereto shall be made public.
22. There shall be complete transparency during investigations also. However, such records, which could impede the process of investigations, would not be disclosed. But after the completion of any investigation or enquiry, all records related to a case, shall be made public.
23. Lokpal shall publish, every month on its website, the status of cases, received, disposed, closed, reasons for closure and list of cases pending.
24. Any complaint against a staff of Lokpal shall be enquired into within a month of its receipt and if found correct, the staff shall be summarily dismissed from the job. If any criminal case is made out, the same shall be pursued.

Punishments and recovery of loss to the government:

25. At the time of conviction, the court shall make an assessment of the loss caused by the accused, which shall be recovered from them.
26. The minimum punishment shall be raised to one year of rigorous imprisonment and maximum should be raised to life imprisonment.
27. Punishment shall be higher if the status or rank of accused is higher.
28. If the beneficiary is a business entity, five times the loss caused to the government shall be recovered. The recovery may be done from the assets of that entity or the personal assets of its directors.
29. If any person obtains any benefit from the government in violation of any rules or laws, that person along with concerned public servants shall be deemed to have indulged in corrupt means.

Whistleblower protection:

30. Lokpal shall be responsible for providing protection against professional or physical threat or victimization to whistleblowers, whether within or outside the government.

Public grievances with vigilance angle:

31. Every department shall prepare a citizens charter mentioning which work will be done by which officer in how much time. Each department shall also designate the Head of the Department or a sufficiently senior officer as Public Grievance Officer (PGO). Violation of citizen's charter will be dealt by PGO, who will be required to get the work done in 30 days. If PGO also fails, the grievance will go to Vigilance Officer (who will be part of the Lokpal) and the grievance will be deemed to have a vigilance officer. The vigilance officer shall get the work done in next 30 days, impose penalties on the guilty officers which will be paid as compensation to the citizen and proceed with enquiries of misconduct against guilty officers.

CBI, CVC and departmental vigilance:

32. The anti-corruption wing of CBI, the CVC and departmental vigilance wings of all departments will be merged in Lokpal.

Declaration of annual property statements:

33. Each bureaucrat, politician and judge would be required to submit his/her statement of moveable and immoveable assets on an annual basis, which will be put on a website.
34. If any asset is subsequently found to be owned by a public servant, which was not declared, it would be deemed to have been obtained through corrupt means.
35. If any asset is subsequently found to be in possession of any public servant, it shall be deemed to be owned by him/her unless he proves otherwise.
36. After each elections, the Lokpal shall verify the assets declared by each candidate with his declared sources of income in his tax returns. Those undeclared shall be investigated against.

CAG to forward cases of corruption:

37. CAG, after its report has been laid in the Parliament, shall forward such cases to Lokpal, where it feels that an offence under Prevention of Corruption Act is made out. Such cases shall be investigated by Lokpal.

Power to make Rules:

38. No rules shall be made without the approval of Lokpal. Lokpal shall have power to make rules and regulations with respect to its own functioning.

Transparency and applicability of Right to Information Act to Lokpal:

39. All records of Lokpal shall be open barring the following:
 - a. Such portions of any records which if released during any ongoing investigations, could impede the process of investigations. However, after completion of investigations, they would be disclosed.
 - b. Such records which could affect national security or
 - c. Such records which would disclose the identity of a whistleblower and could compromise his/her security.

Fines for frivolous complaints:

40. If anyone makes a complaint which lacks any evidence or basis and is held by Lokpal to be meant only to harass someone, the complainant shall be fined. However, merely closure of a case due to lack of evidence shall not be held against a complainant.

LOKPAL BILL

STATEMENT OF OBJECTS AND REASONS

In his foreword to the UN Convention Against Corruption, the then Secretary General of the United Nations, Mr. Kofi Annan wrote, "Corruption is an insidious plague that has a wide range of corrosive effects on society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and it allows organized crime, terrorism and other threats to human security to flourish.

This evil phenomenon is found in all countries, big and small, rich and poor – but it is in the developing world that its effects are more destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining the government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and the major obstacle to poverty alleviation and development".

The preamble of this Convention which has been signed by India and is about to be ratified by it, states, that this Convention was being adopted (on 31st October 2003) because the parties adopting it are "concerned about the seriousness of the problems and the threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law".

Some of the serious effects of corruption in India were set out in 1993 itself in the N.N. Vohra Committee report, which stated that, "The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard economic offences are weak....The various crime Syndicates/Mafia organisations have developed significant muscle and money power and established linkages with governmental functionaries, political leaders and others to be able to operate with impunity".

Corruption has indeed assumed alarming proportions and it is clear that the existing anti-corruption institutions have failed to tackle the menace and it has therefore become imperative to address the problems which plague the effectiveness of existing anti-corruption institutions and laws.

Article 6 (2) of UNCAC provides that "each state party shall grant the body (anti corruption institution) or bodies referred to in paragraph 1 of this article, the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions

effectively and free from any undue influence. The necessary material resources and specialized tasks, as well as the training that such staff may require to carry out their functions should be provided”.

This bill provides for the constitution of a Lokpal Authority which will be independent of the public officials and public authorities that it will be empowered to investigate and prosecute. Such independence is sought to be provided both by way of a broad based and transparent selection process as well as by functional autonomy. The bill, therefore, provides that the Lokpal shall have the authority to select its own staff and also ensure that such staff is adequate to handle complaints of corruption, misconduct as well as grievances. Corruption always involves misconduct and gives rise to grievances. These are inter-related. The existing vigilance machinery and the existing grievance redressal machinery also suffer from the problem of conflict of interests where vigilance officers and grievance redressal officers are unrealistically expected to exercise vigilance over their own bosses or those who exercise administrative control over them. The bill, therefore, provides that the vigilance machinery and the grievance redressal machinery also be brought under the administrative and supervisory control of an independent Lokpal.

Article 7 (4) of UNCAC provides that “each state party shall, in accordance with the fundamental principles of their local law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interests”. These are the principles on the basis of which powers of investigation and prosecution for corruption, enquiry and punishment for misconduct are required to be entrusted to an independent authority which would have no conflict of interests.

Article 8 (2) of UNCAC provides that “in particular, each state party shall endeavour to apply within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions”. In accordance with these principles, the bill provides that each public authority shall prescribe a citizen’s charter for the performance of its public functions for which it would be held accountable to the independent Lokpal authority.

Article 8 (5) of the UNCAC provides that “each state party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic laws, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter-alia, their outside activities, employment, investment, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials”.

Article 8 (6) provides that “each state party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other

measures against public officials who violate the codes or standards established in accordance with this Article”.

Article 12 dealing with the private sector obliges each state party to take measures for “promoting transparency amongst private entities, including where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities; preventing the misuse of procedures regulating private entities including procedures regarding subsidies and licenses granted by public authorities for commercial activities; preventing conflicts of interests by imposing restrictions as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure”.

Article 13 of the UNCAC dealing with participation of society provides “each state party shall take appropriate measures within its means and in accordance with the fundamental principles of its domestic law to promote the active participation of individuals and groups outside the public sector, such as civil society, non-government organizations and community based organizations in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation shall be strengthened by such measures as: enhancing the transparency of and promoting the contribution of the public to decision making processes; ensuring that the public has effective access to information”.

Article 34 of UNCAC provides that “with due regard to the rights of third parties, acquired in good faith, each state party shall take measures, in accordance with the fundamental principles of its domestic laws, to address consequences of corruption. In this context, state parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action”.

In accordance with all the above principles enunciated in the UNCAC, the powers of investigation and prosecution for corruption, investigation and disciplinary action for misconduct against all public officials are sought to be brought under an independent Lokpal authority. In addition, violation of the citizen’s charter which is akin to a code of conduct, would also be enquired into by the vigilance machinery under the Lokpal. Other ancillary powers such as confiscation of assets acquired by public servants by corrupt means, recommending the cancellation of contracts which have been awarded for corrupt considerations, etc., are also sought to be conferred on this authority. The integrity of the authority and the anti-corruption/vigilance machinery under its control is sought to be achieved by mandating transparency in its functioning and public participation, wherever possible. The accountability of the Lokpal itself would be to the Supreme Court, which would have the authority to enquire into and order the

removal of members of the Lokpal. Judicial review over the actions of the Lokpal by the High Courts under Article 226 and the Supreme Court under Article 32 and 136 would further ensure the accountability of the Lokpal.

Lokpal Bills have been successively introduced in Parliament for the last 42 years but aborted each time for various reasons. An effective, independent and empowered Lokpal institution is a need for which the country cannot wait any longer. This Bill seeks to achieve this objective.

The third meeting of Joint Drafting Committee (JDC) held on Sat May 7, 2011 was a cordial meeting.

At the second meeting held on 2nd May, a document containing basic principles of Jan Lokpal Bill were presented to the government. The first few of these were discussed in Saturday's meeting.

Mr. Chidambaram took the lead to express the government's views. Listed below are some of the points discussed at the meeting:

Proposal	Discussion/ Decision
<u>Independence of Lokpal:</u>	
The institution of Lokpal should be financially, functionally and administratively independent of the government	Agreed in principal
Their expenses shall be charged to the Consolidated Fund of India/state. They shall not need administrative or financial sanctions from any government agency for making expenditure.	Agreed
The quantum of expenses should be decided in an annual meeting between the Prime Minister and the Chairperson of Lokpal.	The government representatives pointed out that in a coalition government it is possible that the PM and the Finance Minister might be from different parties. So what might be acceptable to the PM may not be acceptable to the Finance Minister. The JC agreed to study the CAG, the Supreme Court and other models for financial autonomy.
Control over their employees: Lokpal should have the freedom to decide the number of employees required. They will have the power to select and recruit people either from outside or on deputation or on contract basis or through any arrangement as they deem fit.	Agreed in principle. Government agreed to give SC kind of autonomy to Lokpal. It was agreed to study all available models to find best model suited for Lokpal.
The Chairperson and members shall not be eligible for appointment to any position in any organization, which is directly or indirectly funded by any government.	Agreed
It shall also not be eligible to contest any elections.	Would it be possible through statute or a constitutional amendment would be required – this needs to be examined
The total tenure of any member or Chairperson or together as member and Chairperson shall not exceed five years.	Agreed
<u>Selection of members and Chairperson of Lokpal:</u>	

The process should be completely transparent and participatory. Selection committee should consist of Prime Minister, Leader of opposition, two youngest judges of SC, two youngest Chief Justices of High Courts, CAG and CEC	Agreed but may suggest some more inclusions for selection committee after further examination
Since selection committee members would be very busy, they should be assisted by a search committee.	Agreed
Search committee should consist of retired constitutional authorities like CAG and CEC (CJI may not agree to work under a selection committee). However, those who have had substantive allegations of corruption, or have had affiliations to any political party or are still in any government employment after retirement should not be eligible for being members of search committee.	Government wants complete freedom to be given to selection committee to appoint anyone to search committee. However, civil society reps felt that this could compromise the independence of search committee. This matter would be discussed further.
Selection committee should restrict its choices to the names suggested by search committee	This needs further discussions
<u>Removal of Lokpal:</u>	
If prima facie case is made out in a complaint made to the Supreme Court by a citizen against any member or Chairperson, Supreme Court shall institute a time bound enquiry and advise the President on the basis of such enquiry. A member or Chairperson of Lokpal may be removed by the President on the basis of such advice.	Government suggested that Supreme Court should be allowed to dismiss complaints in liminae. Government further suggested that Article 317 which provides for removal of members of UPSC may be borrowed here with the exception that in the case of UPSC members, SC can act only on the basis of reference from the government whereas in the case of Lokpal, SC should be required to act on citizen's complaints also. What should be grounds of removal? All these issues would need further examination.
<u>Jurisdiction of Lokpal:</u>	
Lokpal should have jurisdiction the following jurisdiction: 1. To receive complaints of corruption under Prevention of Corruption Act against Prime Minister, all ministers, all members of both houses of Parliament, all bureaucrats and judges of Supreme Court and High Court; to investigate these complaints and to file prosecution in appropriate trial courts for	Broadly government agreed to jurisdiction over elected representatives including ministers. However, the issue of Prime Minister needs further discussion. On the issue of bureaucracy, it needs to be

<p>prosecution and award of punishment.</p> <p>2. To receive complaints of misconduct against bureaucrats and recommend appropriate penalties under conduct rules. However, the recommendation shall be binding on the government.</p> <p>3. For complaints against any politician for his/her conduct inside Parliament, Lokpal shall only investigate the matter on receipt of a reference from Chairperson of either House. After investigation, the Lokpal shall submit its report to Chairperson, who shall present it in the House for decision on the same.</p>	<p>discussed whether Lokpal should have jurisdiction over all categories of employees. On the issue of judiciary, government said that there were strong opinions on this issue, especially two former Chief Justices had opposed jurisdiction over judiciary. There was a lot of discussion on this issue. Please see below for the same. All these issues need further examination.</p>
<p>Lokpal shall not need to seek permission from any other agency for initiating investigation, enquiry or prosecution. Appropriate amendments would need to be made in Prevention of Corruption Act and Delhi Police Establishment Act for this purpose.</p>	<p>Agreed</p>
<p>The Lokpal Bill should provide for both – Lokpal at centre and Lokayuktas in states</p>	<p>Agreed</p>

Presently, if there is an allegation of corruption against a High Court or Supreme Court Judge, permission has to be taken from the Chief Justice of India to register an FIR. Experience shows that despite strong evidence against some judges, permission was denied by the Chief Justices. During the meeting, Prashant Bhushan reminded Mr Chidambaram, how Mr Chidambaram had sought permission to register an FIR against a judge of Kolkatta High Court but the permission was denied by the then Chief Justice of India. Subsequently when the said judge of Kolkatta High Court retired, he was raided and arrested the very next day, which means that the evidence against that judge was very strong. This shows that the present system of seeking permission from the Chief Justice of India has not worked and has ended up protecting the corrupt judges.

In Jan Lokpal Bill, it has been suggested that the permission should be granted by a seven member bench of Lokpal rather than the Chief Justice of India.

The next meeting is scheduled to be held on....