



ANNI REPORT 2023

On the Performance of National

Human Rights

Institutions in Asia

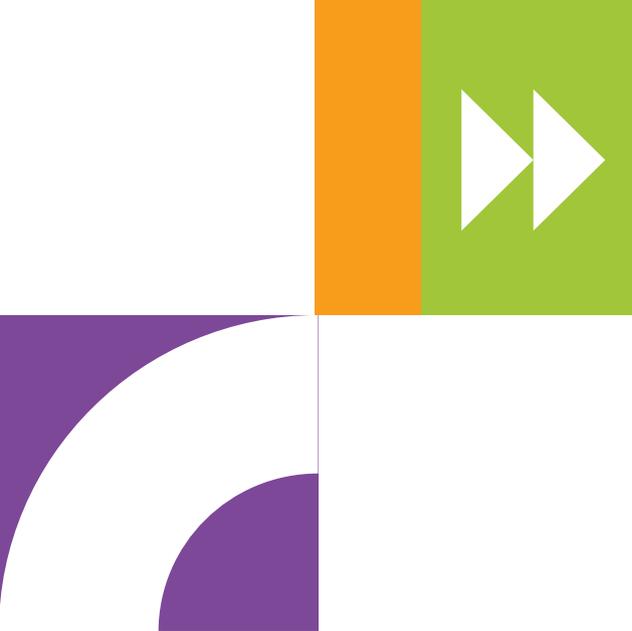
Cover Rationale



Source: Universal Declaration of Human Rights (UDHR) by the United Nations.



The publication has been made possible with the generous support of the Swedish International Development Cooperation Agency (SIDA).
The contents of this publication are the sole responsibility of FORUM-ASIA and can in no way be taken to reflect the views of SIDA.



-  www.forum-asia.org
-  info@forum-asia.org
-  www.facebook.com/FORUMASIA
-  www.twitter.com/forum_asia
-  www.youtube.com/@ForumAsiaVideo
-  www.instagram.com/forumasia.humanrights

Editorial Team

Shomira Sanyal
Mudasir Amin (ANNI Report Consultant)

Copy Editor

Remya Sasindran

Cover Design and Layout

Ellipsis Asia

The Asian Forum for Human Rights and Development (FORUM-ASIA) is a network of 85 member organisations across 23 countries, mainly in Asia. Founded in 1991, FORUM-ASIA works to strengthen movements for human rights and sustainable development through research, advocacy, capacity development and solidarity actions in Asia and beyond. It has consultative status with the United Nations Economic and Social Council, and consultative relationship with the ASEAN Intergovernmental Commission on Human Rights. The FORUM-ASIA Secretariat is based in Bangkok, with offices in Jakarta, Geneva and Kathmandu.

COPYLEFT © 2023

Asian Forum for Human Rights and Development
(FORUM-ASIA)

The publication is written for the benefit of human rights defenders and civil society organisations and may be quoted from or copied, so long as the source and authors are acknowledged.

BANGKOK OFFICE

S. P. D. Building 3rd Floor,
79/2 Krungthongburi Road
Khlong San Bangkok
10600 Thailand
Tel: +66 (0) 2 1082643-45
Fax: +66 (0) 2108 2646

GENEVA OFFICE

Rue de Varembe 1,
2nd Floor 1202
Geneva, Switzerland
Tel: +41 (0)22 7402947

JAKARTA OFFICE

C/O KontraS Jalan Kramat 2
No. 7, Senen, Jakarta Pusat
10420 Indonesia
Tel: +62 (0)21 3919 006

KATHMANDU OFFICE

Bhanimandal (Shantimarga),
Lalitpur Municipality Ward No. 4, Lalitpur, Nepal
Tel: +977 (0)1 5218770 Fax: +977 (0)1 5218251
E-mail: sasia@forum-asia.org



foreword

The Asian Forum for Human Rights and Development (FORUM-ASIA), as the Secretariat of the Asian NGO Network on National Human Rights Institutions (ANNI), is proud to present the ANNI Report 2023 on the Performance of National Human Rights Institutions in Asia.

The ANNI Report 2023 assesses the performance of NHRIs in addressing and mitigating challenges, in 13 countries, for the reporting period of 2021-2022 - a time of post-pandemic response and recovery. The report, authored by ANNI member organisations across various countries in Asia, is a strong testament to their commitment to upholding human rights, and to advocate for credible, independent, legitimate, and effective national human rights institutions (NHRIs) in their countries. We take this moment to express our sincere, heartfelt appreciation and gratitude to our valued ANNI members, who have patiently supported us through their consistent efforts over this year to provide nuanced chapters during the drafting of this report. We also thank the NHRIs who have provided their inputs and feedback on the information in this publication.

The challenges before NHRIs still remain: increasingly shrinking civic spaces; the targeting of human rights defenders by state and non-state actors; authoritarian regimes/governments that are clamping down on fundamental freedoms of the people, through repressive laws and judicial harassment, among other measures; and a restricted space for the functioning of democratic institutions and processes.

Nonetheless, NHRIs continue to exist and persist, and their role remains critical for upholding human rights of the people in the national and regional contexts. It is important for NHRIs to respond to the concerns of civil society, to collaborate with them and strengthen their engagement with issues on the ground, and to work with a range of stakeholders - nationally, regionally, and internationally - to ensure their effectiveness, independence, and full compliance with the Paris Principles.

2023 is a special year for two reasons: it is the 30th anniversary of the adoption of the Paris Principles and an opportune moment for us all to reflect on how NHRIs have fared over the last three decades; whereas for the ANNI Report, it is the first time a quantitative assessment of the NHRIs' performance has been developed and conducted for the countries/territories included in the report, alongside a qualitative one. A scoring index, developed and fine-tuned by the network through an iterative process since 2019, has been used to assess NHRIs' compliance with various facets of the Paris Principles. The process of quantifying NHRIs' performance through a thorough, factual, civil society assessment by ANNI's members, is a novel way of understanding the NHRIs' strengths and weaknesses in addressing different issues during the reporting period, and paves the way for a comparative analysis of NHRIs' performance across Asia. It is a pleasure to introduce this tool in this year's edition of the report, and we look forward to strengthening it over the coming years.





FORUM-ASIA, as the ANNI Secretariat, takes this opportunity to acknowledge the authorship and contributions of all colleagues to this report. They are: Savey Phin (Cambodian Human Rights and Development Association/ADHOC, Cambodia); Md. Sazzad Hussain (Odhikar, Bangladesh); Henri Tiphagne, Rini Elizabeth Babu, and Ashish Reddy (People's Watch and AiNNI, India); Nadine Sherani Salsabila and Rozy Brilian Sodik (The Commission of Disappeared and Victims of Violence/KontraS, Indonesia); Jernell Tan Chia Ee (Suara Rakyat Malaysia/SUARAM, Malaysia); Zulzaya Nyamkhuu and Urantsooj Gombosuren (Globe International Center/GIC and Center for Human Rights Development/CHRD, Mongolia); Progressive Voice and the CSO Working Group on Independent National Human Rights Institution (Burma/Myanmar) (Myanmar); Bijay Raj Gautam (Informal Sector Service Centre/INSEC, Nepal); Haroon Baloch and Fatima Khalid (Bytes for All, Pakistan); Egay Cabalitan Jr. (The Philippine Alliance of Human Rights Advocates/PAHRA, the Philippines); Hyun-Phil Na (KHIS, South Korea); Megara Tegal and Sakuntala Kadirgamar (Law and Society Trust/LST, Sri Lanka); and Song-Lih Huang (Covenants Watch, Taiwan).

The ANNI Report 2023 has been made possible through the concerted and dedicated efforts of all authors and contributors, and the NHRI Programme at FORUM-ASIA. My sincere thanks to all who have provided their inputs, efforts, support, and expertise in the development of this report. Finally, we would also like to acknowledge the financial support of the Swedish International Development Cooperation Agency (SIDA) in the publication of this report.



Mary Aileen Diez-Bacalso

Executive Director

Asian Forum for Human Rights and Development
(FORUM-ASIA)

The Secretariat of the Asian NGOs Network on
National Human Rights Institutions (ANNI)



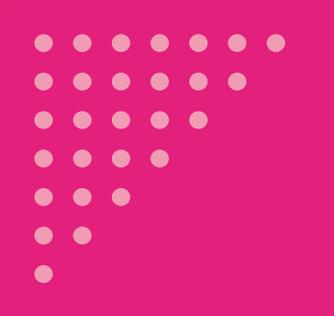
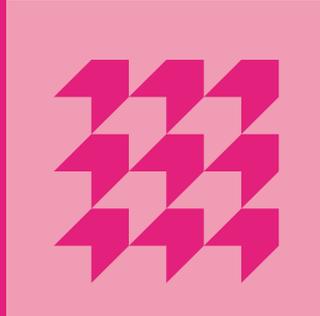
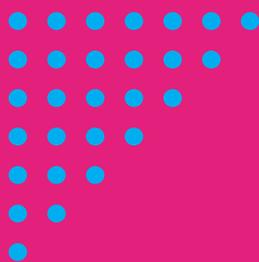
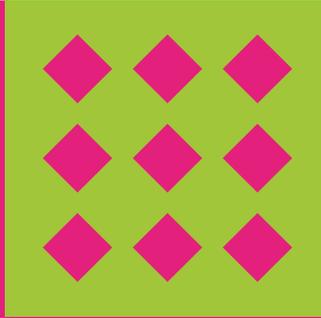
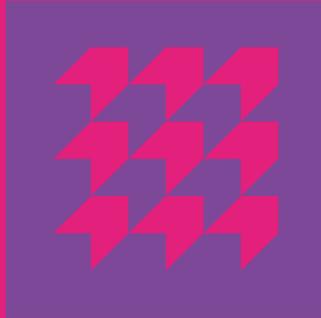
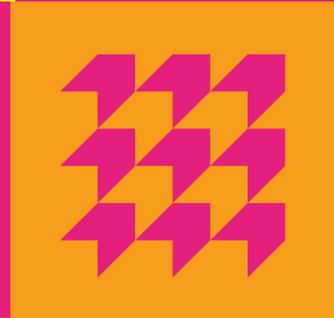
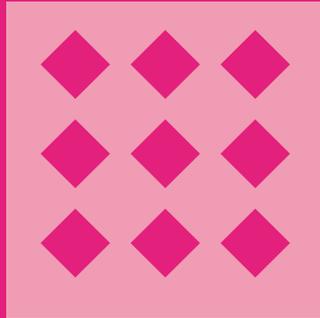
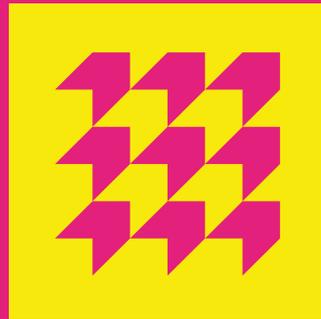
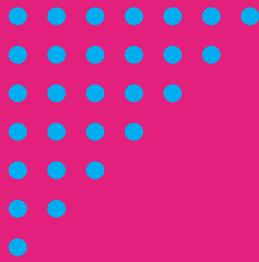
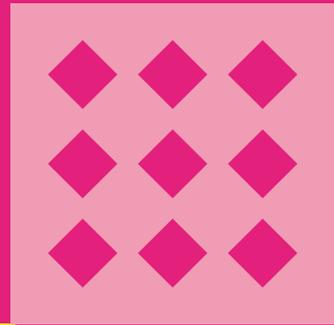
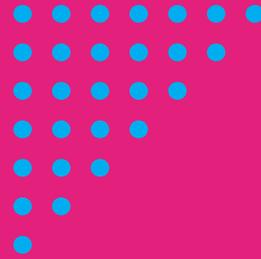


table of contents

Methodology	08
Regional Overview	16
 CHAPTER ONE Bangladesh	26
 CHAPTER TWO Cambodia	36
 CHAPTER THREE India	44
 CHAPTER FOUR Indonesia	54
 CHAPTER FIVE Malaysia	64
 CHAPTER SIX Mongolia	73
 CHAPTER SEVEN Myanmar	82
 CHAPTER EIGHT Nepal	90
 CHAPTER NINE Pakistan	98
 CHAPTER TEN The Philippines	108
 CHAPTER ELEVEN South Korea	119
 CHAPTER TWELVE Sri Lanka	129
 CHAPTER THIRTEEN Taiwan	137
List of Acronyms	145
Annexure • The NHRI Scoring Index Codebook	147



methodology

The ANNI Report 2023 is a biennial report on the performance and establishment of national human rights institutions (NHRIs) in Asia. ANNI published its first report in 2007 and it continued to be published as an annual report till 2019, barring a few years in between. Since 2021, the report has been following a biennial format.

The current report covers the performance assessment of thirteen NHRIs in Asia – established, or to-be established – from 1 January 2021 to 31 December 2022. The ANNI members in the specific countries covered primarily determined the selection of NHRIs for this report. This year's report consists of country chapters from Bangladesh, Cambodia, India, Indonesia, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, South Korea, Sri Lanka, and Taiwan.¹ The civil society organisations (CSOs) who authored the chapters have been engaged with NHRI advocacy in their respective countries for several years and bring a reliable perspective of their respective NHRI's performance and its contribution to protecting and promoting human rights. The report also brings forth some pressing human rights issues and challenges in Asia, as the performance of the NHRIs is assessed against – or/and in response to – the prevailing human rights issues.

¹ The ANNI members in all the countries who contributed a country chapter to this Report carried out the scoring exercise, except for Myanmar and Cambodia. Progressive Voice, ANNI's member from Myanmar, and the CSO Working Group on Independent National Human Rights Institution (Burma/Myanmar) ("Working Group") do not recognise the current Myanmar National Human Rights Commission (MNHRC), as it was appointed by the junta and has since acted as a smokescreen for it. Thus, the MNHRC is complicit in the junta's mass atrocity crimes by its failure to address the magnifying human rights crisis in Myanmar after the military's attempted coup on 1 February 2021, and its non-compliance with the Paris Principles. Subsequently, the Working Group decided not to carry out the assessment of the NHRI, given the inapplicability of the NHRI Scoring Index for an NHRI that is not effective, independent, or credible, and which cannot be recognised as the legitimate NHRI of the people. For more details, refer to the Myanmar Chapter of this report. Cambodia has not established an NHRI yet, though processes have been initiated in this direction over the past few years. For more information, see the Cambodia chapter of this report.



The Paris Principles ('Principles Relating to the Status of National Human Rights Institutions'), which the UN General Assembly adopted through resolution 48/134 of 1993,² have predominantly shaped the ANNI Report's methodology over the years. These principles encapsulate certain 'minimum standards' for the NHRIs to be effective in fulfilling their role of ensuring state accountability vis-à-vis protection and promotion of human rights. Evaluating the NHRIs' compliance with these principles continues to guide the assessment carried out by the ANNI members. The report is also evolving, including focusing on the performance aspects of an NHRI's performance, vis-à-vis human rights protection and promotion.

The basic research methodology for this biennial report mostly follows the same template as previous annual reports, where ANNI members contribute country chapters. For the report, members rely on both primary research methods as well as secondary desk research. The primary research involves interactions with human rights defenders, journalists, NHRI staff and leadership, lawyers, and in some cases victims and survivors of human rights violations. Members also carry out media monitoring, NHRI website and archive review, and document review including, but not limited to, NHRI annual reports, newsletters, and other reports released in the course of their work. In some cases, members' research also includes reviewing official government documents like the national budget, the enabling law of the NHRI, and records of proceedings in the Parliament or Congress.³

To strengthen the ANNI Report to be more impactful publication, the ANNI Secretariat at FORUM-ASIA has dedicated more focus towards formulating a quantitative assessment of the NHRIs' performance, supplemented by qualitative information. Along with the ANNI membership, the ANNI Secretariat thought through the use of indicators to represent the NHRIs' performance and eventually developed an NHRI Scoring Index tool in consultation with the members. The development and usage of this tool in the ANNI Report 2023 provide a more detailed and nuanced view of the research methodology employed.

² "Principles relating to the Status of National Institutions (The Paris Principles). GA 48/134," United Nations Human Rights Office of the High Commissioner, December 20, 1993, <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

³ The type and uniformity of research conducted by ANNI members may vary, based on their national contexts and availability of information. In some cases, depending on the national context, some members have easy access to the NHRIs, whereas others find it difficult. Likewise, resource limitations of an organisation may also determine what kind of research methods are used (primary vs. secondary sources).

The NHRI Scoring Index

The tool used in this report is referred to as the NHRI Scoring Index (“Index”) as it intends to rank and numerically situate NHRIs in Asia on indicators that assess their compliance with the Paris Principles. The indicators, in the form of questions in this tool, are majorly drawn from the Paris Principles and the General Observations of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI-SCA).⁴

ANNI developed the Index after an exhaustive review of academic studies on NHRI effectiveness and reports by international agencies like the UN Human Rights Council, GANHRI, and the Asia Pacific Forum of National Human Rights Institutions (APF), among others. However, the Index has mostly benefitted, adapted, and developed insights from studies like Carver 2014;⁵ Murray 2007;⁶ Linos and Pegram 2017;⁷ General Observations of the GANHRI-SCA; an International Council of Human Rights report;⁸ and APF manuals. Furthermore, it was supplemented with conversations with NHRIs, CSOs engaged in NHRI advocacy, and individual practitioners and experts.

The ANNI Secretariat first developed the tool in 2019-2020 with the help of an external researcher,⁹ advisors, and representatives from ANNI’s member organisations, following several consultations and workshops. ANNI’s member organisations first used the Index for the ANNI Report 2020 to gauge its applicability and relevance, not only for the purpose of the report but also for overall NHRI-related advocacy in their countries. The version of the Index that year consisted of 90 questions/indicators. While the Index data could not be incorporated in the report that year, it provided grounds for revising the methodology to be better suited for data collection.

Developing from the inputs and feedback from the contributing members based on their first experience, the ANNI Secretariat revised and refined the Index to the current version with 44 questions/indicators.¹⁰ It is an iterative process and may witness more changes as the Index is implemented year after year. The initial purpose of this tool was to rank the NHRIs across Asia on their performance and compliance with the Paris Principles. The data from this Index is also meant to supplement the narrative country chapters in more ways than one. Given the content and range of questions in the Index, it provides a platform for the researchers of the country chapters to collect both qualitative insights and quantitative data on the NHRIs’ functioning.

Broadly, the Index touches upon the structural and institutional aspects and actual performance and practice of the NHRIs. The questions in this Index were grouped into five major categories: **Independence, Mandate, Pluralism, Promotion, and Protection**. These were then further grouped into subcategories, with each subcategory including a specific number of questions (see the table below for the category overview, along with the number of indicators). This categorisation is significant for further analysis, as will be evident through the visualisations and graphs in the Regional Overview and in country chapters as well.

4 “General Observations of GANHRI-SCA, 2018,” GANHRI, 2018, <https://ganhri.org/accreditation/general-observations/>.

5 Richard Carver, “Measuring the impact and development effectiveness of national human rights institutions: A proposed framework for evaluation,” Bratislava: United Nations Development Programme, 2014, https://www.academia.edu/27945167/Measuring_the_impact_and_development_effectiveness_of_national_human_rights_institutions_a_proposed_framework_for_evaluation.

6 Rachel Murray, “National Human Rights Institutions: Criteria and Factors for assessing their effectiveness,” *Netherlands Quarterly of Human Rights*, June 2007, <https://journals.sagepub.com/doi/abs/10.1177/016934410702500203>.

7 Katerina Linos and Tom Pegram. “What works in human rights institutions?” *American Journal of International Law*, November 7, 2017, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/what-works-in-human-rights-institutions/C24517FEA634993D5AB4488B19E42746>.

8 “Assessing the Effectiveness of National Human Rights Institutions,” Office of the High Commissioner for Human Rights, 2005, <https://www.ohchr.org/sites/default/files/Documents/Publications/NHRIlen.pdf>.

9 Aaron Myers was the external researcher who carried out initial research and developed the first iteration of the Index with support from the Fulbright program.

10 The ANNI Secretariat collected feedback and inputs from 15 ANNI members to carry out revisions to the index and overall methodology, by holding one-on-one interactions with them as well as two joint consultation workshops (one online in 2022 and one in-person in 2023). The group discussed, approved, and finalised the changes during the 16th ANNI Regional Consultation in February 2023.

The ANNI Secretariat developed a codebook of the index during the research process to provide a description and justification for each question/indicator based on the material that informed the question (refer to the Annexure). In fact, in some cases, the questions/indicators were adapted directly from the corresponding text cited in some of the studies mentioned above.

Table: Category Overview of the NHRI Scoring Index

Parent Category	Sub-Category	No. of Questions/Indicators
Independence	Legal Basis	3
	Appointment and Dismissal	3
	Budget Autonomy	1
	Operational Autonomy	3
Mandate	Breadth of Mandate	4
	Broad Powers	6
Pluralism	Accessibility	3
	Civil Society	2
	Diversity	3
Promotion	Advice on Legislation and Policy	2
	Annual Report	1
	Education and Training	1
	International Engagement	2
Protection	Complaints	5
	Investigation and Monitoring	3
	Stakeholder Protection	2
Total Indicators		44

The Scoring Process

The Index contains two types of questions and scales, on the basis of which the NHRIs were assigned scores on each indicator. The table below explains the format:

Type of Question	Kind of Scale	Format of Scores	What Scores Represent
Easily defined objective criteria	Three-point scale	(0, 1, 2)	0 = Least or no compliance 2 = Maximum/Full compliance
More subjective indicators	Five-point scale	(0, 1, 2, 3, 4)	0 = Least or no compliance 4 = Maximum/Full compliance

To overcome the issue of having two types of scales, the Index introduced an adjusted score for uniformity of the scale. The adjusted score ensured that all questions have an equal value contribution to the overall score (with the highest possible score being 44). It was adjusted between 0 and 1 and holds significance primarily from an analysis point of view.

From an implementation point of view, and for the purpose of developing a proper dataset, the Index was transposed into an Excel spreadsheet for the members to fill in the data against every question about their countries' NHRIs. In practice, members had to assess the NHRI on each indicator/question of the Index and provide a particular score based on their own assessment. The following process was to be followed while completing the questionnaire:

- The score was to be inserted in the "Score Assigned" column of the spreadsheet.
- To validate the scores and for plausible explanations for the scores, a column with the heading "Justifications/Explanations" was added for members to provide an explanation for the scores provided, supplemented with factual information.

For all NHRIs evaluated using this Index, in this report, the scoring process followed at least two cycles involving validating all the scores, justifications, and fact-checking of resources and data collected. This was followed by calculating the adjusted scores and compiling a cross-country-level clean database. Additionally, given the assumed equal weightage for all questions/indicators for the purpose of this report, a lowest common multiple approach was employed to compare inter-category scores for each country and to determine the highest and lowest scores for the NHRI's performance on certain criteria. After determining the highest possible scores per category (i.e., 6, 8, and 10), these were multiplied to reach the lowest common multiple (i.e., 120), and the scores for each of the subcategories within each category were then added and multiplied accordingly as well.

This data primarily provides a glimpse into the performance of the NHRIs in these countries on these 44 indicators of the Index. When read in triangulation with the assessment provided in the country chapters, the data becomes more coherent.

The long-term idea for the Index and the scoring process is to eventually create a time-series database, with the possibility of representing the data in various forms. This will help in measuring the outcome and impact of the NHRIs in their respective countries over a period of time. In its initial attempt at this endeavour, the main findings and highlights of this year's data are provided in the Regional Overview section of this report, as well as within each country chapter in the form of category and sub-category-related visualisations.

Limitations of the Index and the Methodology

- **Inapplicability of a singular approach to diverse country contexts perfectly:**

Despite developing a methodology with substantial reflections and revisions, contextual differences make it challenging to apply this approach uniformly, across contexts. For instance, the response to a question about NHRIs facilitating complaints to regional human rights bodies or UN Special Rapporteurs counted as 'not applicable' by the concerned ANNI member in Taiwan, given its 'disputed sovereignty' and exclusion from the United Nations system. Though this situation is covered in the said chapter, it is not possible for the Index scoring to perfectly reflect these nuances.

- **Absence of first-hand narratives:**

Country chapters represent the voices of credible and reputed human rights organisations in Asia that work with victims and survivors; yet the report acknowledges the challenges in including the latter's voices, especially their experiences and engagement with their respective NHRIs, for a variety of reasons including access, security concerns, members' organisational limitations in conducting large-scale/country-wide research, and so forth.

- **The subjectivity of the scoring process:**

While the research process has attempted to ensure objectivity, validity, and reliability of the data collection process throughout, the narrative in the chapters and scoring process will no doubt include some subjectivity, influenced by the advocacy methods and working styles of the contributing ANNI member organisations and their respective contextual positioning. The ANNI Secretariat remains committed to objectivity, accuracy of facts and validating claims as best as possible, evidenced by the Guidelines developed for authors contributing to the report.

- **The limits of language:**

Formulating the ANNI Report only in English has been one of the major limitations that extended to the Index as well. While a few ANNI members did translate the Index into their local languages, not everyone could afford to undertake this exercise, given the lack of resources, financial or otherwise. At times, members had valid justifications for their scores, but the nuance was sometimes lost in translation, due to challenges with articulation in English.

- **Absence of certain country chapters:**

Despite the presence of an NHRI, or a movement for the establishment of one in certain countries, some countries could not be included in this report, owing to certain political changes or because of risks to the safety of ANNI members.



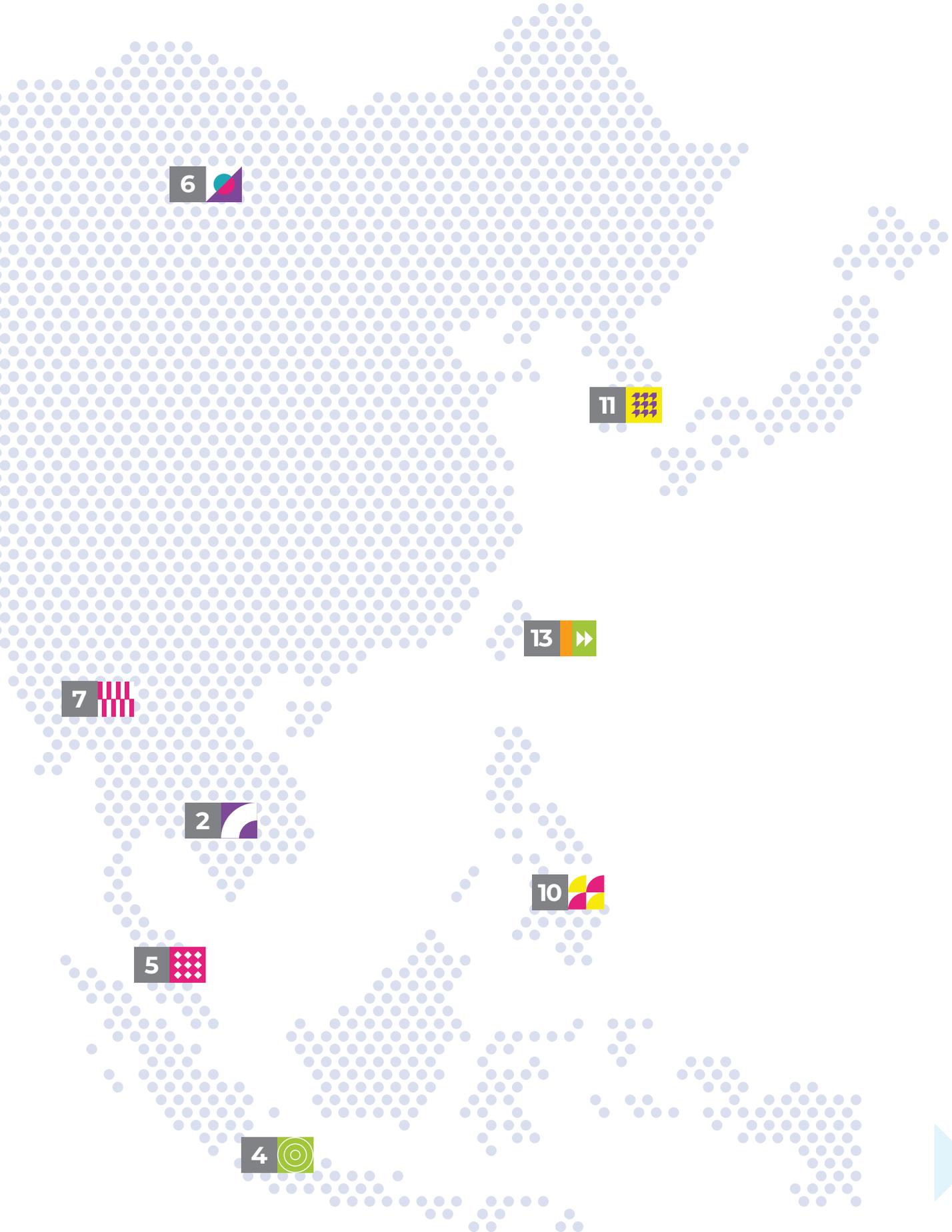
LEGEND

NHRIs featured in this report

- 1  Bangladesh
- 2  Cambodia
- 3  India
- 4  Indonesia
- 5  Malaysia
- 6  Mongolia
- 7  Myanmar
- 8  Nepal
- 9  Pakistan
- 10  Philippines
- 11  South Korea
- 12  Sri Lanka
- 13  Taiwan



Shapes/colours have been only used for visual differentiation purposes, and do not bear any specific significance to the country/territory they are used for representing in the report.



regional overview

Introduction

The *raison d'être* of National Human Rights Institutions (NHRIs) is to foster the accountability of nation-states in protecting and promoting human rights. These institutions have witnessed a massive proliferation¹ over the last three decades, and their relevance, interventions, and effectiveness have also been scrutinised by different stakeholders including civil society, academics as well as the Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation (GANHRI-SCA), which is responsible for reviewing and accrediting NHRIs' compliance with the Paris Principles.² Some critics see them as "pretenders and placebos in democratic disguise".³

The Asian NGOs Network on National Human Rights Institutions (ANNI), with the FORUM-ASIA as its Secretariat, has engaged with NHRI-related advocacy through its members, consisting of civil society organisations (CSOs) and human rights defenders (HRDs) across various countries in Asia. ANNI has undertaken collaborative research on NHRIs since 2007, through the development of its flagship publication on the performance and establishment of NHRIs in Asia. In continuation of this endeavour, the ANNI Report 2023 offers an independent assessment of the work and functioning of NHRIs with respect to the protection and promotion of human rights in Asia. This is the first edition of the report that will be focusing on a quantitative assessment of NHRIs' performance, alongside a qualitative one, from a civil society perspective, for a reporting period of two years, i.e. January 2021 to December 2022.

¹ As of April 2023, there were 120 GANHRI accredited NHRIs. See: "Members," GANHRI, <https://ganhri.org/membership/>.

² "Accreditation," GANHRI. <https://ganhri.org/accreditation/>.

³ Sonia Cardenas, "Chains of justice: The global rise of state institutions for human rights," University of Pennsylvania Press, 2014, <https://www.jstor.org/stable/j.ctt5vkdcv>.



During this period, the NHRIs in the region had to navigate an increasingly repressive landscape, which created both operational and practical obstacles in them effectively fulfilling their mandate and their role. In some countries, NHRIs struggled with securing basic safeguards to function independently and in others, despite having those mandates, NHRIs failed to carry them out independently. While in some countries, governments' attempts to limit NHRIs' work and functioning continued by way of reduced budgets or interference, there was also a recurring trend of a lack of a transparent, merit-based process in the selection and appointment of NHRIs' commissioners. In some other countries, political turmoil rendered some NHRIs either dissolved or subsumed under authoritarian regimes, even using them as a way to advance their agenda and validate their legitimacy. At the same time, there has also been some movement on establishing a new NHRI in some countries since 2020, extending into the period covered in this report.

From the NHRIs covered in this report, and as of April this year, seven retain their 'A' status accreditation by the GANHRI-SCA, implying full compliance with the Paris Principles (though one from these is likely to be downgraded by October 2023 and the accreditation for another has been deferred to March 2024); three retain a 'B' status or partial compliance with the Paris Principles (with one from these to undergo a special review by the GANHRI-SCA, in its October 2023 session);⁴ two are yet to be accredited though they are functional NHRIs; and one is yet to be established. While the reasons for receiving a 'B' status, or a potential downgrade to one, remain context-specific (in some cases, constitutional amendments impacting the NHRI's independence, while in others, the NHRI not adequately fulfilling its mandate) the question of the NHRIs' ability to effectively and independently fulfil their mandates remains central to their status as credible institutions capable of upholding human rights.

Till such a time when there is more autonomy and independence for the NHRIs to operate, governments may continue to regulate and control their appointments and funding, and to disregard NHRIs' recommendations for bettering their human rights record. In this context, some fundamental challenges remain before the NHRIs in the Asian region, and there is a strong need for credible, effective, independent, and Paris Principles-compliant institutions to uphold human rights for all in Asia. At a time when authoritarian regimes or governments are further repressing fundamental freedoms, the NHRIs' roles in safeguarding human rights become critical. The leadership of the NHRIs can become a central factor in holding governments accountable for their human rights records; preventing further shrinking of civic space; protecting HRDs, and ensuring an enabling and safe environment for them to operate in, without further reprisals for their work.



⁴ "Chart of the Status of National Human Rights Institutions - Accreditation status as of 26 April 2023," GANHRI, <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>.

Defining Moments of Human Rights in Asia (2021-2022)

Like other regions in the world, Asia witnessed the declining trend of fundamental freedoms, a backsliding of democracy with the rise of authoritarian and majoritarian rule, religious intolerance, militarisation, and a culture of impunity. In the period under review, the region saw some major political events that profoundly deteriorated the human rights and humanitarian situation. In early 2021, the military in Myanmar launched a coup deposing the country's elected government and proclaimed a year-long state of emergency.⁵ Following the coup, the military has committed massive human rights violations with killings, torture, illegal detentions, and enforced disappearances.⁶ The United Nations Human Rights Office of the High Commissioner (OHCHR) has documented at least 2,940 killings and 17,552 arrests by the military and its 'affiliated armed actors' between 1 February 2021 to 31 January 2023.⁷

Another major political event was the Taliban capturing power in Afghanistan in August 2021. This not only exacerbated the already existing humanitarian crisis but has also severely impacted the human rights in the country, particularly women's and girls' rights, barring them from attending schools and other public spaces.⁸ In Sri Lanka, following the devastating economic crisis that the country plunged into, there were popular protests against the government for months starting in March 2022.⁹ In the crackdown against the protestors, the government declared a state of emergency and resorted to the use of force injuring many and even arresting some protesters under counterterrorism laws.¹⁰

For the most part of 2021 and the initial months of 2022, several governments in Asian countries continued to respond to the COVID-19 pandemic in ways that impacted civic freedoms and increased harassment of marginalised and vulnerable groups.^{[11][12]} The pandemic response was mostly highly securitised, exacerbating surveillance and privacy concerns, limiting public participation, and threatening press freedom as well as the work of HRDs.¹³

In the post-pandemic recovery context, especially with the lasting effects of the pandemic on the human rights situation in Asia, it becomes increasingly important to reflect on the work of NHRIs in the region, and on their role in mitigating the human rights challenges that have increased and evolved since the start of the global pandemic.

5 "Myanmar: Military Coup Kills Fragile Democracy," Human Rights Watch, February 1, 2021, <https://www.hrw.org/news/2021/02/01/myanmar-military-coup-kills-fragile-democracy>.

6 "'Dramatic increase' in Myanmar war crimes, UN probe finds," Al Jazeera, August 8, 2023, <https://www.aljazeera.com/news/2023/8/8/dramatic-increase-in-myanmar-war-crimes-un-probe-finds>.

7 "Situation of Human Rights In Myanmar," OHCHR, March 2023, <https://www.ohchr.org/en/press-releases/2023/03/militarys-four-cuts-doctrine-drives-perpetual-human-rights-crisis-myanmar>.

8 "Afghanistan: Taliban Deprive Women of Livelihoods, Identity," Human Rights Watch, January 18, 2022, <https://www.hrw.org/news/2022/01/18/afghanistan-taliban-deprive-women-livelihoods-identity>.

9 "The Timeline of the Sri Lankan Protests as They Unfolded," The Wire, July 22, 2022, <https://thewire.in/south-asia/sri-lanka-protests-timeline>.

10 "Sri Lanka: Protect Rights During Political Turmoil," Human Rights Watch, July 13, 2022, <https://www.hrw.org/news/2022/07/13/sri-lanka-protect-rights-during-political-turmoil>.

11 "South Asia: COVID-19 hits marginalised hardest, as pandemic used to escalate repression," Amnesty International, April 7, 2021, <https://www.amnesty.org/en/latest/news/2021/04/south-asia-covid-19-hits-marginalized-hardest-as-pandemic-used-to-escalate-repression/>.

12 It was only in May 2023 that the World Health Organization (WHO) announced COVID-19 no longer constitutes a 'public health emergency of international concern (PHEIC)'. For more, see: "Statement on the fifteenth meeting of the IHR (2005) Emergency Committee on the COVID-19 pandemic," WHO, May 5, 2023, [https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic).

13 In their COVID-19 Civic Freedom Tracker, International Centre for Not-for Profit Law (ICNL) identified and documented government responses in Asia and the Pacific that impacted civic freedoms and the work of civil society. See here: "Government Responses to COVID-19 in Asia and the Pacific," ICNL, <https://icnl.org/post/analysis/government-responses-to-covid-19-in-asia-and-the-pacific>.

The ANNI Report 2023

The ANNI Report 2023 consists of thirteen chapters contributed by ANNI members from Bangladesh, Cambodia, India, Indonesia, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, South Korea, Sri Lanka, and Taiwan. As the methodology section of this report details, the chapters assess the performance of eleven of these NHRIs¹⁴ and how they have delivered on their purpose of protecting and promoting human rights in their countries. Like in previous ANNI Reports, the broader premise of the assessment of their NHRIs' performance has been their compliance with the Paris Principles. However, the report attempts to go beyond this and focuses on the actual work being undertaken by the NHRIs. The report acknowledges that compliance with the minimum standards and legal guarantees that the Paris Principles have listed are essential for the successful institutionalisation of NHRIs and to provide a framework for their operation. However, they are not always able to reflect the NHRIs' agential role in terms of what they do and how effective they are. To delve deeper into this question, the ANNI Report 2023 has focused on the performance and on-ground practices of the NHRIs to explore and understand how they responded to human rights concerns in their countries, as well as how proactive they were in promoting a rights-based discourse for long-term change. This report may be read in a continuum with previous ANNI reports, where the focus had been on the mandate and structural aspects of NHRIs.

In addition to the chapters, the members undertook the scoring process based on the Index, as explained in detail in the methodology section. The country chapters have focused more on the quantitative and qualitative assessment of NHRIs' performance and have not included extensive details on how the index supplemented and helped frame the narrative, for the sake of easier readability of the report. However, the indicators, responses, and justifications that are given in the Index Codebook (in the Annexure) provide an insightful reflection into this fact when read along with the country chapters. Visualisations, based on Index data collated, supplement each chapter narrative to present a picture of category-wise and subcategory-wise performance of the respective NHRIs and to help understand the scores and performance. The preliminary findings of the scoring process are used in this Regional Overview to offer a visual representation of how the NHRIs in these eleven countries have performed in different categories and to also see their overall performance in comparison with each other. The Report acknowledges the fact that these findings are not exhaustive, but offer an initial idea of the NHRIs' performances based solely on the ANNI Scoring Index indicators and on the authoring ANNI members' engagement with the NHRI in their country.

There are two country chapters in which the authors did not carry out the scoring process. One is Myanmar, where the civil society does not recognise the Myanmar National Human Rights Commission (MNHRC) as it was appointed by the junta after the military's attempted coup on 1 February 2021. The second is Cambodia, featuring as the only country chapter where an NHRI is not yet established. The country chapter from Myanmar demonstrates how the existing MNHRC has acted as a smokescreen for the illegal military junta. It has in fact been complicit in the junta's mass atrocity crimes by its failure to address the magnifying human rights crisis in Myanmar and by turning a blind eye to the violence that has been unleashed on the people pushing for a return to democracy in the country. The chapter further underscores the need to establish a new, legitimate NHRI that is Paris Principles-compliant and can truly represent the will of the people and delineates the steps the civil society and other stakeholders have taken in this regard. The Cambodia chapter focuses on the movement and the progress on the establishment of an NHRI in the country and also maps the key stakeholders in this process.

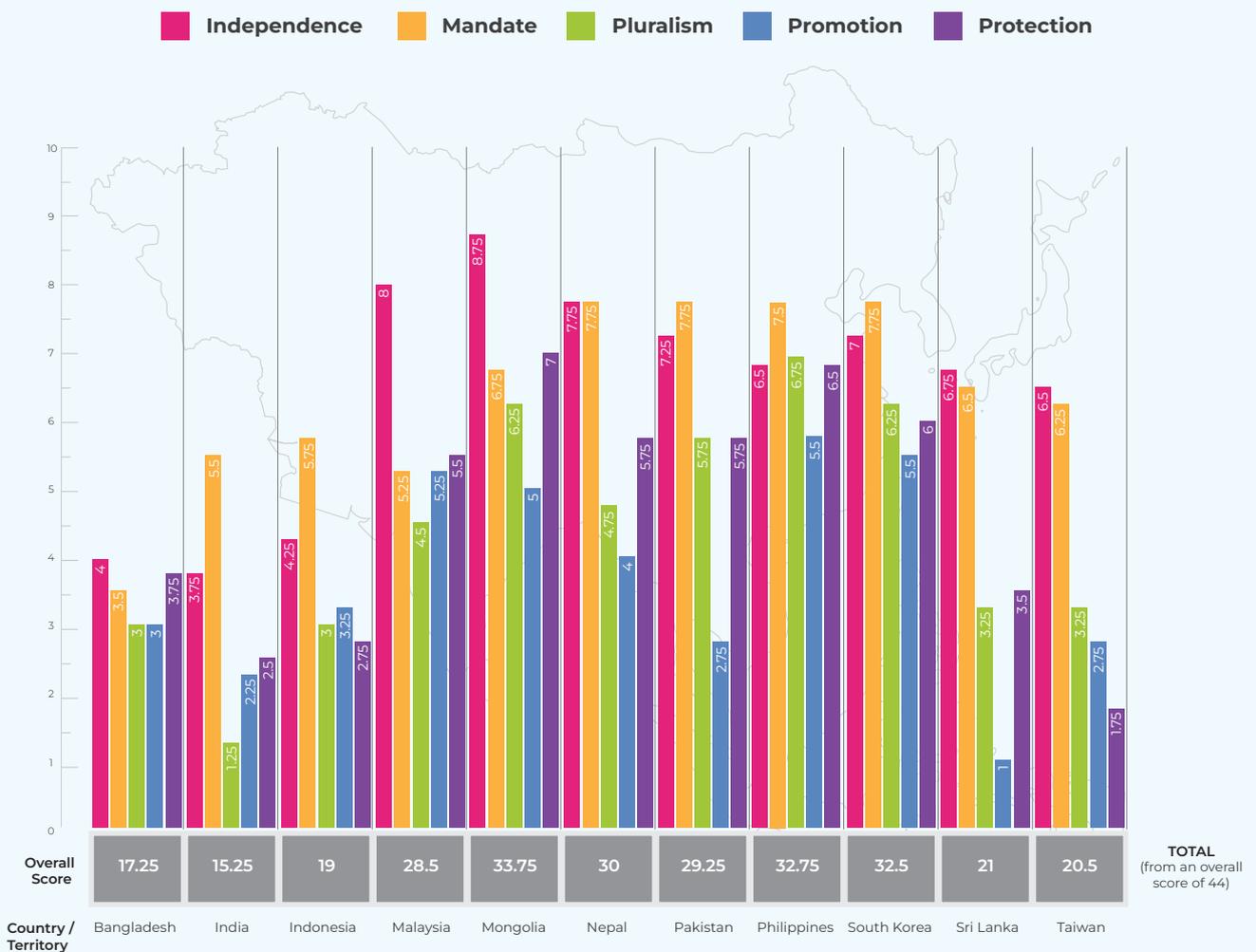
¹⁴ See Methodology section for a note on Myanmar and Cambodia not being a part of this process.



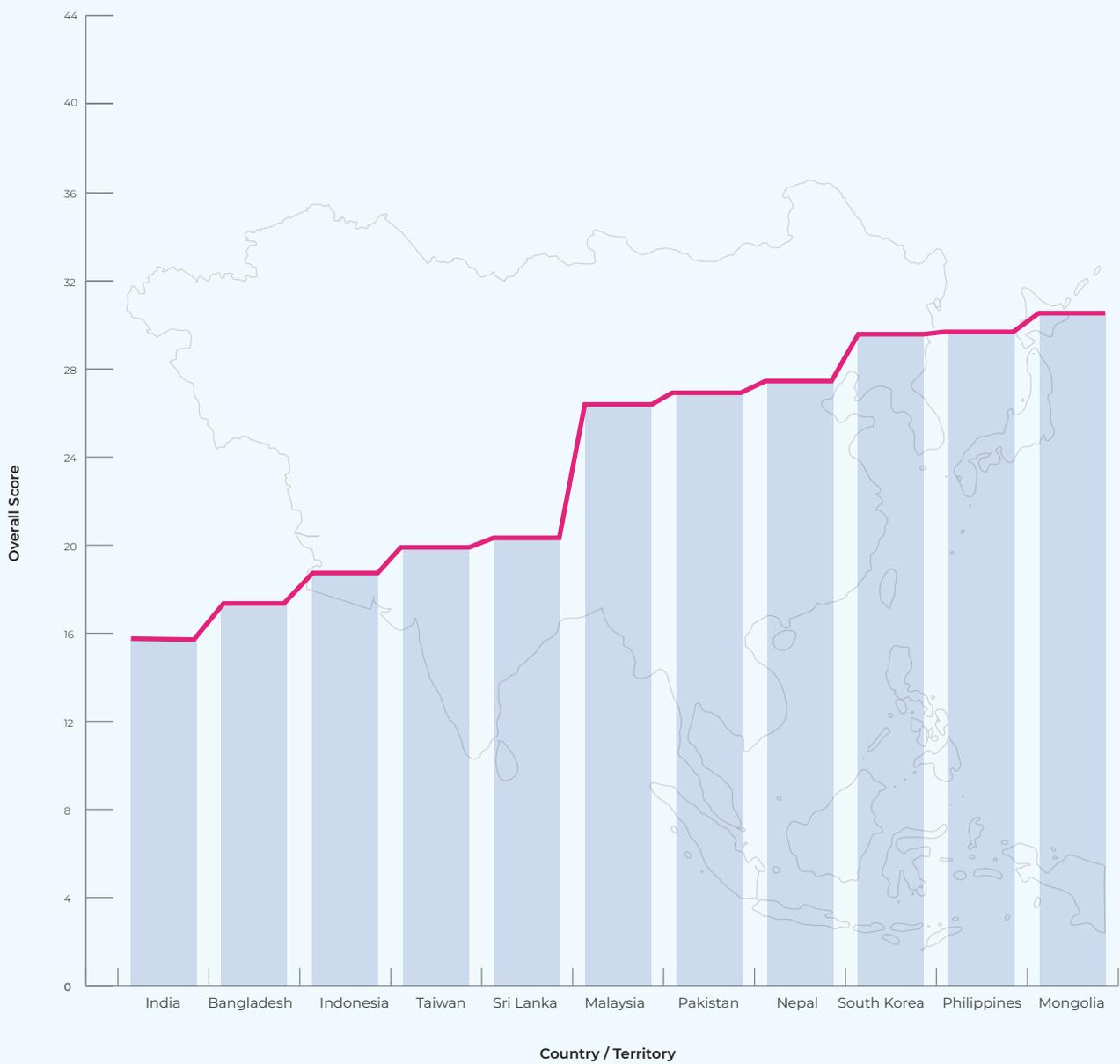
Major Trends of NHRIs' Performance in Asia

As mentioned in the Methodology section previously, the maximum overall score an NHRI can achieve on the ANNI Scoring Index is 44.

Performance of Asian NHRIs on the basis of the ANNI Scoring Index



Overall scores for all countries' NHRIs)



As depicted in the two visualisations above, 5 out of the 11 NHRIs where the assessment was carried out, scored less than 50% on the Index – Sri Lanka with an overall score of 21 (47.72%), Taiwan 20.5 (46.59%), Indonesia 19 (43.2%), Bangladesh 17.25 (39.2%), and India with an overall score of 15.25 (34.65%). These NHRIs are what can be termed as “NHRIs of particular concern”. This is not as a theoretical category but a simpler classification to make it easier for readers and stakeholders concerned with this report, including civil society actors, NHRI networks, and the NHRIs themselves. This may be helpful to reflect about the gaps in these NHRIs’ performance in various categories and to think of ways to address them.

An insight from these scores is that NHRIs in Bangladesh and India are struggling to fulfil their mandate of holding their respective governments accountable when it comes to the protection of human rights. The low scores resonate with the concerning picture of the NHRIs’ performance that the two country chapters elaborate on later in the Report. The India chapter not only reveals the flawed selection process, lack of de-facto independence and the lack of pluralism in the NHRC but also highlights specific examples of its silence amid the ongoing deterioration of the human rights situation in the country. It discusses the Commission’s inaction vis-à-vis the misuse of the Foreign Contribution Regulation (Amendment) Act (FCRA) that has been excessively used by the government in the last two years to restrict international funding to CSOs in India. Further, the NHRC India has been silent on the attacks against and imprisonment of HRDs in the country, particularly those from religious minorities, student activists, lawyers, academics, journalists, Dalit and indigenous rights defenders, and those based in militarised regions, such as Kashmir, Chhattisgarh, and states in Northeast India.

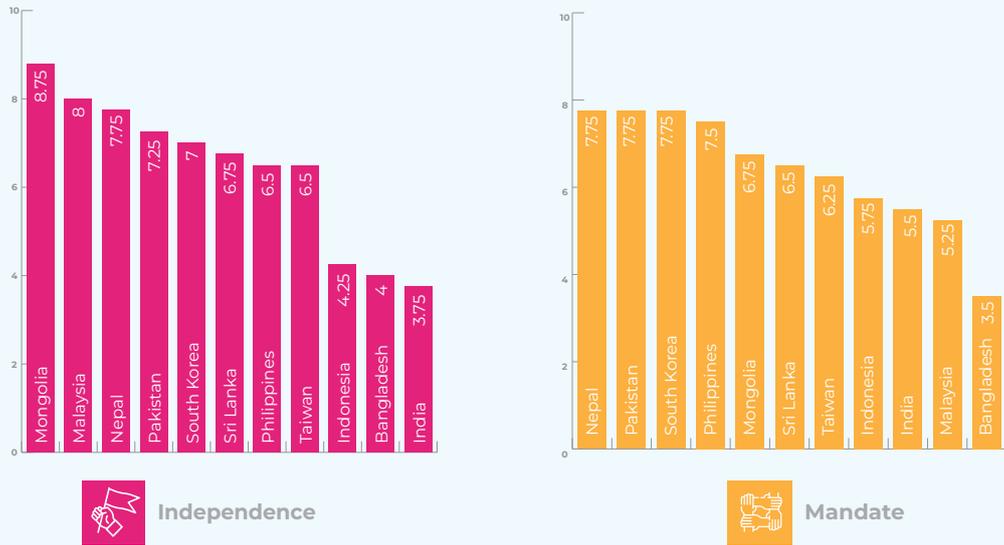
The Bangladesh chapter highlights that the NHRC in the country does some work on complaints and on the promotion front by organising meetings with civil societies. However, it has been selective in its engagements and lacks the courage to hold the government to account for how it has cracked down on dissent and curbed freedom of expression by imposing repressive measures, such as the Digital Security Act (DSA). The Commission also did little about the Rapid Action Battalion (RAB) for their involvement in gross human rights violations. In cases where the National Human Rights Commission of Bangladesh (NHRCB) did investigate certain violations, the government was reluctant to respond to its recommendations and there were no follow-ups either. Such instances of inaction are reflected in the low scores that the NHRCB received in the assessment carried out for the country.

In Indonesia, another country of particular concern as per the low overall score in the Index, an interesting development has been the appointment of Atnike Nova Sigiro in 2022 as the Chair of the country’s NHRI (Komnas HAM). It is significant because of her long-term association and experience with human rights work nationally, as well as at the international level, including her previous stint at a human rights organisation like FORUM-ASIA. ANNI and its members hope that such appointments would set the human rights agenda in action and help foster partnerships with international and regional stakeholders. After the appointment of a new set of commissioners in 2022, the Commission announced nine priority issues to strategise and work on during their term. This, as the chapter shows, is a good beginning, as they reflect national human rights issues of concern. The chapter highlights the issues plaguing the effective functioning of Komnas HAM, including its complete reliance on the state budget, slow responses to complaints due to a strict bureaucratic structure, and the Commission’s alignment with the government’s position on the non-resolution of past serious human violations.

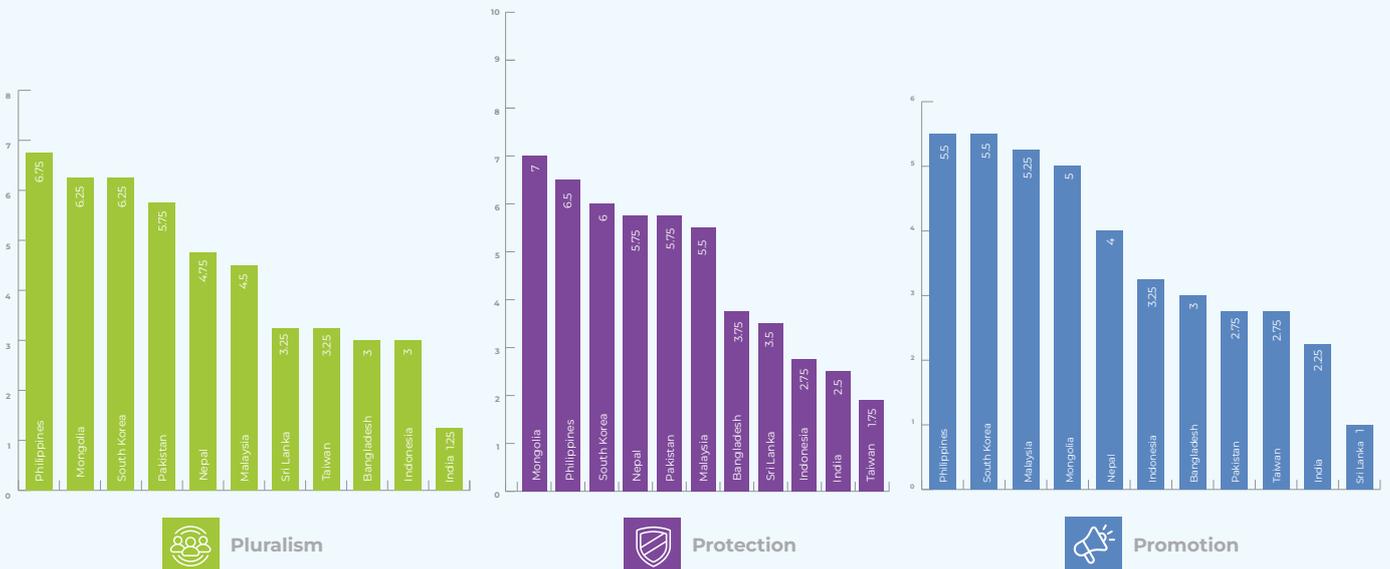
In the case of NHRC Taiwan, the score of 20.5 is not entirely a reflection of its poor performance. The Commission is in its infancy after being established in 2020. Due to Taiwan’s disputed sovereignty and its non-recognition as a UN member, there are a few indicators related to the Universal Periodic Review (UPR) and engagements with other international rights mechanisms, in the Index, that are not yet applicable to the NHRI. During the assessment, the NHRI received a score of ‘0’ for ‘Not Applicable’ indicators, which as mentioned previously, is one of the context-specific limitations of the Index. The chapter notes how the Commission made some progress in addressing human rights issues since 2020, but major concerns about its independence and particularly interference by the Control Yuan in handling complaints, remain.

The fifth in this cluster is the Human Rights Commission of Sri Lanka (HRCSL) where the low score is attributed to its lack of initiative in investigating rights violations and lack of adequate staff. Despite the Commission faring well in the ‘Independence’ and ‘Mandate’ categories, this did not translate into actions to promote and protect human rights. Further, the chapter notes that despite having a good mandate, the Commission is not independent in practice because the power to appoint members lies with the President. In the backdrop of the economic crisis in the country, the treasury did not release any funds to the HRCSL’s human rights education and promotional activities, thereby curtailing its functioning further.

As the visualisations below show, 'Independence' and 'Mandate' are two categories where most of the countries have scored more than 50%:



This, however, does not translate directly into action and does not necessarily guarantee effective human rights protection by the NHRI. This can be seen in how NHRIs have not scored consistently on other categories, particularly 'Protection' and 'Promotion', where most NHRIs were assessed on most of the practice-based indicators in the Index.





The visualised data shows a comparison of the NHRIs' performance across these five categories, calculated from the score that each NHRI obtained from the maximum within a category. The maximum scores possible for the categories were: 10 (Independence), 10 (Mandate), 8 (Pluralism), 6 (Promotion), and 10 (Protection) respectively.

In terms of the highest overall score in the Index, it was the NHRC of Mongolia, with an overall score of 33.75 from 44, which can be attributed to its responsive and efficient complaint resolution mechanism, as shown in the table in the Mongolia chapter. The NHRC has been proactive in reviewing laws, including the 'Draft law on Legal Status of Whistleblowers'. The fact that there are more women in the Commission and that the NHRC has local offices in all provinces also afforded the Commission better scores.

Along similar lines, the Commission on Human Rights of the Philippines (CHRP) was the next-best performing NHRI in terms of the overall score received. This resonates with the range and type of activities undertaken by the CHRP, as well as its strong engagement with HRDs and civil society, as enlisted in the Philippines chapter. One example of putting 'Mandate' and 'Independence' into practice could be seen with the CHRP conducting inquiries into extrajudicial killings in the country, despite attempts by the former President to stall it. The chapter notes that the Commission even provided support to affected families and victims.

In Pakistan, the NCHR actively advocated and contributed to amending or reviewing laws such as the new legislation on criminalising enforced disappearances, in May 2021. It also reviewed some existing laws like the Prevention of Electronic Crimes Act (PECA) 2016, PECA Ordinance 2022, Protection of Journalists and Media Professional Act 2021, Punjab Free and Compulsory Act 2014, Home Based Workers Bill, Domestic Workers Act 2019, Federal Mental Health Bill, Torture and Custodial Death (Prevention & Punishment) Bill 2022, to name a few. Further, the Commission also responded to some individual cases of rights violations and helped bring the perpetrators to justice, like in the case of a mob lynching of a transgender person in Khyber Pakhtunkhwa province, as mentioned in the chapter. Further, the NCHR is equipped with a Rapid Response Cell to address urgent human rights violations and to aid victims promptly. However, the chapter notes certain issues with the NCHR's independence when it comes to the country's military establishment.

The Nepal chapter brings forth the inaction of the government to work on the GANHRI-SCA's recommendations, eventually leading to the Commission's likely downgrading to a 'B' status institution. The main issues raised by the SCA on the National Human Rights Commission of Nepal's (NHRCN) performance were the lack of independence, merit-based selection, and concerns regarding the protection of minority rights. Among the positives that the chapter notes are the NHRCN's Gender Equality and Social Inclusion (GESI) audit in 2021; the promotional activities to strengthen the networking, awareness, and coordination among HRDs; and its drafting of the Human Rights Defenders legislation.

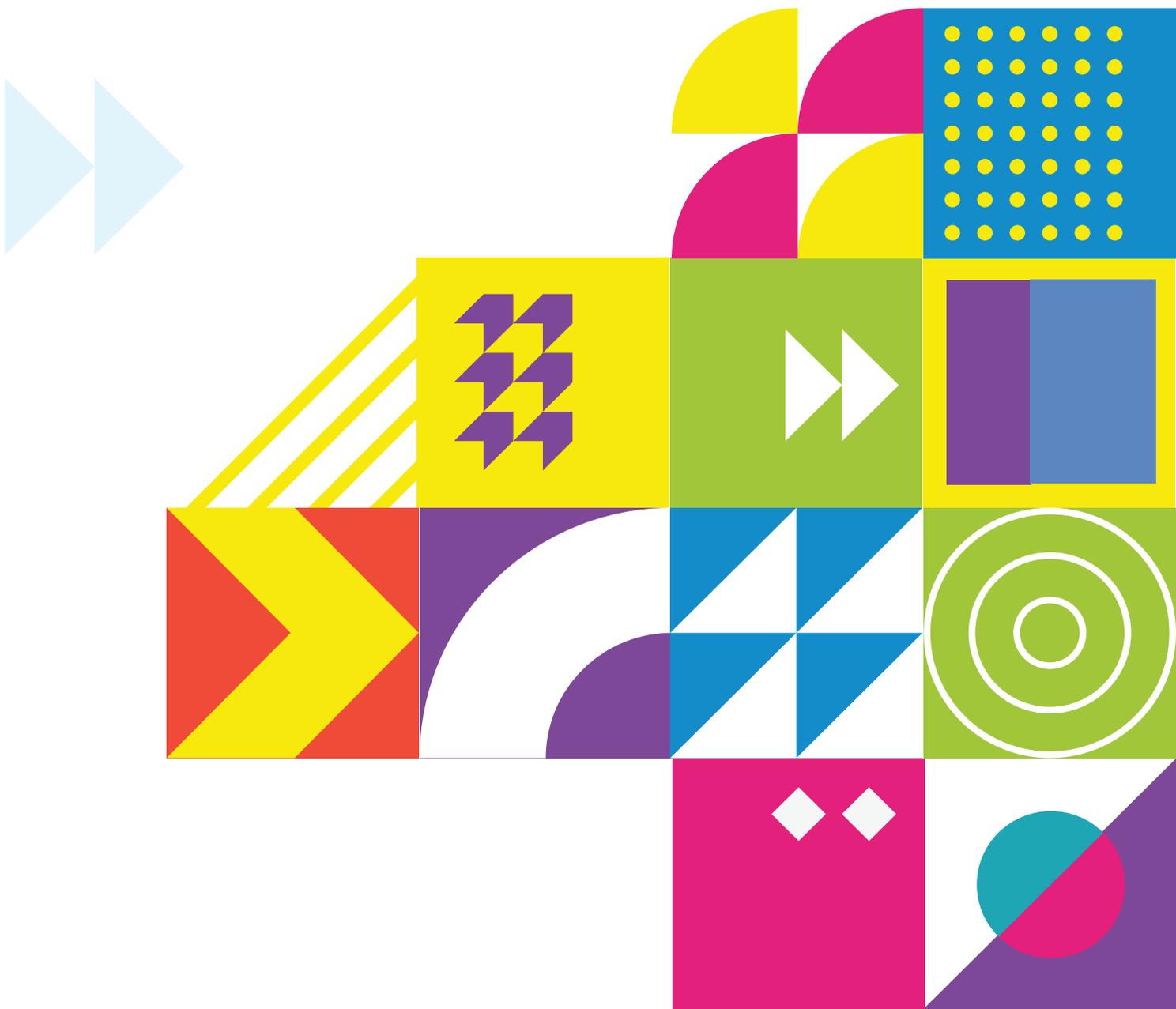
The Malaysia chapter talks about the Complaints and Monitoring Division (CMD) in SUHAKAM, which has an efficient communication system and regularly communicates and follows up with the complainants on the findings and actions taken. As the chapter demonstrates, SUHAKAM performs well in the promotional aspects, be it human rights training, awareness, or educational programs. The chapter also notes concerns around the Chairperson's views on the need for human rights to be compatible with local customs and culture, and not be "too Euro-centric". This could potentially compound existing discrimination against marginalised sections of society, like the LGBTQIA+ community and minority religious groups, and justify non-compliance with international human rights standards.

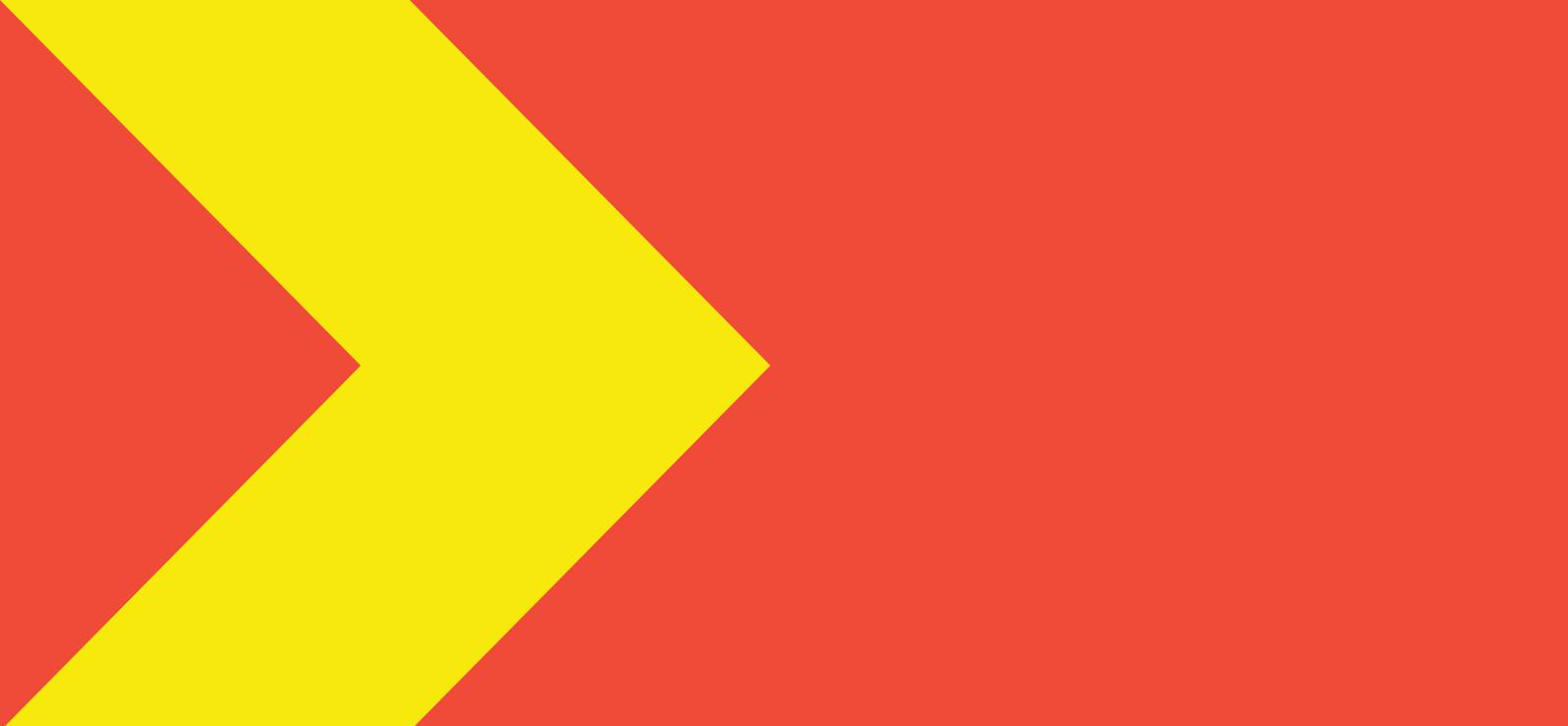
Lastly, in South Korea, the NHRCK was reaccredited with an 'A' status in 2021 and performed well in the categories of 'Mandate', 'Pluralism', and 'Promotion'. The NHRCK Chairperson's position on serving independently and on the need to pursue the anti-discrimination law came through as examples of the role an NHRI's leadership can play in bringing attention to and support for human rights issues. While the country still grappled with two main issues – challenges to human rights in the military and the situation of human rights for transgender persons – there have been some steps taken to address these. An amendment to the enabling law of the NHRCK Act in 2021 provided for the position of a Human Rights Protector for the Military under the NHRCK. The NHRCK has also undertaken initiatives to ensure better awareness of the rights of transgender persons. While more still remains to be done in terms of awareness-building and the commissioners' selection process, the NHRCK has performed relatively consistently across the various categories of the Index.

Conclusion

What is evident from ANNI members' extensive assessment with respect to the performance of the NHRIs as part of the ANNI Report 2023 is that largely, in the face of deteriorating civic and political freedoms, NHRIs have been ineffective in demanding accountability and staying true to their mandate. While some positive developments in certain NHRIs' work are certainly visible, it is important to address the multiple issues that impede their full functioning.

With this report, ANNI deems it an urgent intervention to encourage NHRIs to reflect on their record and actions, and on their commitment to amplify the calls to uphold justice and freedom for all. The network envisions NHRIs as key allies in the long struggle to achieve human rights for all, especially in the face of challenging forces and circumstances. They are also allies who can uphold the rights of HRDs, marginalised communities including the LGBTQIA+ and minority communities, and other vulnerable groups. With this, the report hopes to initiate critical conversations and actions for NHRIs; CSOs; regional and international NHRI networks; and other national and international stakeholders to come together for a strong and effective NHRI movement globally, and in Asia in particular.





BANGLADESH

National Human Rights Commission of Bangladesh:
Protecting People's Rights or Serving the Government?

Sazzad Hussain¹

Odhikar, Bangladesh²



Overview of the Human Rights Situation in Bangladesh

Human rights in Bangladesh remain suppressed as the authoritarian government has systematically politicised important state institutions, including the Election Commission, the Anti-Corruption Commission, and the National Human Rights Commission of Bangladesh (NHRCB). The Judiciary's independence has eroded and legal experts have alleged that the Awami League government has heavily interfered in the Judiciary as the Law Ministry still controls the promotions, postings, and transfers of the subordinate court judges and takes disciplinary actions against them.³

The government is using laws like the Information and Communication Technology Act, 2006, the Digital Security Act 2018, and the Special Powers Act 1974 to suppress political opponents, government critics, and dissidents.⁴ Citizens are being subjected to gross human rights violations, including enforced disappearances, extrajudicial killings, and torture. Human Rights Defenders (HRDs), and journalists are being subjected to systematic persecution, harassment, and intimidation.

The United States imposed sanctions on the Rapid Action Battalion (RAB) in December 2021 for their alleged involvement in gross human rights violations.⁵ In less than a year after the sanctions, cases of enforced disappearances and extrajudicial killings decreased and there was a slight improvement in the overall human rights situation in the country.⁶

1 Sazzad Hussain is the Programme Coordinator at Odhikar.

2 Odhikar is a human rights organisation based in Dhaka, Bangladesh. It came into being in 1994 with the aim of creating a wider monitoring and awareness raising system on the abuse of civil, political, economic, social, and cultural rights. The principal objectives of the organisation are to raise awareness about human rights and its various abuses and to create a vibrant democratic system through election monitoring. The organisation also takes up campaigns and advocacy efforts at various levels to address the current human rights situation in the country.

3 M Moneruzzaman, "Independent judiciary still a far cry," *New Age*, October 31, 2021, <https://www.newagebd.net/article/153331/>.

4 "Bangladesh opposition says 4,000 charged in govt crackdown," *Al Jazeera*, October 10, 2022, <https://www.aljazeera.com/news/2022/10/11/bangladesh-opposition-says-over-4000-charged-in-govt-crackdown>.

5 "Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day," *US Department of the Treasury*, December 10 2021, <https://home.treasury.gov/news/press-releases/jy0526>.

6 Muntakim Saad, "Sanctions on Rab 'worked like a tonic,' *The Daily Star*, December 10, 2022, <https://www.thedailystar.net/news/bangladesh/news/sanctions-rab-worked-tonic-3191951>.

“ According to Odhikar's documentation, members of law enforcement agencies and security forces extrajudicially killed at least 138 persons between January 2021 and December 2022, while forty-four persons were victims of enforced disappearances and 140 persons died in prison custody due to torture, alleged illness, and prison authorities' negligence in the same period.⁷

At the same time, Bangladeshi authorities are imposing the repressive Digital Security Act (DSA), 2018 on citizens to curb freedom of expression. The government also continues to suppress opposition parties and dissidents by curtailing their right to freedom of peaceful assembly, violating Article 37 of the Constitution and Article 21 of the International Covenant on Civil and Political Rights (ICCPR). According to the data that Odhikar gathered between January 2021 and December 2022, the DSA was used to arrest a total of 206 persons.

Restrictions on media freedom and attacks on journalists have also been widespread during this reporting period. A total of 343 journalists have been victims of attack, persecution, harassment, assault, and threats. Among them, three journalists were killed, 146 were injured, sixty-three were assaulted, thirty-five were threatened, forty-five were attacked, twelve were arrested, and nineteen journalists were sued due to their professional work.

Amid such a scenario in the country, the NHRCB sees the government as being successful in improving the human rights situation. The NHRCB has been ignoring gross human rights violations, such as extrajudicial killings, enforced disappearances, and torture and the Commission has remained silent on the widespread violations of citizens' freedom of expression.⁸

7 "Annual Human Rights Report 2022," *Odhikar*, 2022, <https://odhikar.org/bangladesh-annual-human-rights-report-2022-2/> and "Annual Human Rights Report 2021," *Odhikar*, 2021, <https://odhikar.org/bangladesh-annual-human-rights-report-2021/>.

8 Sheikh Sabiha Alam, "10 years of rights commission: NHRC avoids talking about 'gunfights', enforced disappearance," *Prothom Alo*, September 7, 2021, <https://en.prothomalo.com/bangladesh/NHRCB-avoids-talking-about-gunfights-enforced-disappearance>.

Assessing the Performance of the NHRCB in Protecting and Promoting Human Rights

Independence:

The NHRCB is governed by the National Human Rights Commission Act (NHRC Act), 2009, which comes with serious limitations. A committee made up of government representatives selects the Commission members. Furthermore, the definition of human rights is inadequate. There is a lack of transparency in the members' selection process, a lack of complete freedom in financial matters, and a limited mandate in matters of investigating allegations against law enforcement agencies and security officials. The majority of the selection committee members belong to the ruling party and only one member is from the opposition party.

According to the NHRC Act, 2009, the Chairperson and members should be selected from among persons who have made significant contributions to law or justice, human rights, education, social service or human welfare.⁹

“ However, the government has always set up a Commission with loyal ex-bureaucrats who do not have any experience in law or human rights activities.¹⁰

This is also reflected in their actions.¹¹ There has never been representation from a human rights organisation or an HRD.¹²

As per the law, the NHRCB is a statutory, independent body. The NHRCB, for several purposes including those of finances, is directly dependent on the government and other agencies. Funds come from government grants and grants that the local authority provides.¹³ The term 'local authority' has not been defined in the Act. There is no separate budget line for the NHRCB, which is a serious flaw and in direct defiance of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions' (GANHRI-SCA) General Observation 1.10, which specifies that funding should be set out in a separate line item in the national budget.¹⁴

After 13 years, the Commission sent a draft proposal to the Law Ministry in February 2021 seeking an amendment to the NHRC Act, 2009, which proposes excluding the police from the definition of 'disciplinary force'.¹⁵ The Law Ministry scheduled a meeting to discuss the NHRC Act amendment but is yet to make a decision.¹⁶

9 Section 6 (2) of the National Human Rights Commission Act, 2009, <http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/npfblock/NHRC%20Act%20English.pdf>.

10 "Ex-secretary Kamal made new NHRC chairman," Dhaka Tribune, December 10, 2022, <https://www.dhakatribune.com/bangladesh/2022/12/10/ex-secretary-kamal-made-new-nhrc-chairman>.

11 "US sanctions on RAB might be politically motivated: NHRC," The Business Standard, December 12, 2021, <https://www.tbsnews.net/bangladesh/us-sanctions-rab-its-officials-might-be-politically-motivated-nhrc-345748>.

12 Muktadir Rashid, "Transparent NHRC selection sought as tenure expires," New Age, October 1, 2022, <https://www.newagebd.net/article/182502/transparent-nhrc-selection-sought-as-tenure-expires>.

13 Section 25 of the National Human Rights Commission Act, 2009, <http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/npfblock/NHRC%20Act%20English.pdf>.

14 "General Observations of GANHRI-SCA, 2018, Section 1.10," GANHRI, 2018, <https://ganhri.org/accreditation/general-observations/>.

15 Zia Chowdhury, "12 years on, NHRC now wants to probe rights violation complaints against police," The Business Standard, March 13, 2021, <https://www.tbsnews.net/bangladesh/12-years-NHRCB-now-wants-probe-rights-violation-complaints-against-police-21556>.

16 Ibid.



Mandate:

During this reporting period, the Commission has taken up 152 suo moto complaints (seventy-five in 2021 and seventy-seven in 2022) after seeing media reports on human rights violations.¹⁷ The complaints were mainly on domestic violence, violence against women and children, murder, rape, land grabbing, rights of ethnic minority people and Dalits, and corporal punishment. According to the law, the Commission can seek reports from the government on its own or on the basis of petitions alleging human rights violations against the government or law enforcement agencies. If the Commission makes any recommendation in this regard, it should be implemented and reported to the Commission within six months. However, in the last 14 years, there has been no such precedent except for two incidents.¹⁸ If the Commission finds that the complaint is true, it may recommend that the government initiate proceedings for prosecution or take other legal action against the concerned person and shall recommend legal proceedings.¹⁹ The Commission can also submit a petition before the High Court Division of the Supreme Court on behalf of the aggrieved person if the High Court Division is competent to pass an order or give an instruction under Article 102 of the Constitution of the People's Republic of Bangladesh.

“ The NHRCB lacks any authority to take action on human rights violations by disciplinary forces. This is a serious shortcoming in the NHRC Act.

This kind of indemnity is a threat to the violations of human rights.²⁰ The law gives the Commission the power to seek reports only with regard to abuses perpetrated by law enforcement.²¹ HRDs and lawyers have presented a wider and progressive explanation of this law. According to them, this does not limit the jurisdiction of the Commission in cases of investigation or other roles, as Section 17 of the Act articulates that the Commission can begin investigations on its own initiative if it does not get reports or information about an incident in time.²²

The NHRCB has the authority to proceed to the court to get redress for the infringements of human rights on behalf of victims. According to Section 12(1)(R), the NHRCB has the power to provide legal assistance to the aggrieved person or any other person on behalf of the aggrieved person, to lodge a complaint before the Commission. However, there is no record of lodging any case or petition filed by the NHRCB during this reporting period.

The NHRCB is unable to employ the full range of its powers granted by the law. According to Section 17(2) of the NHRC Act, the Commission has the right to investigate any matter at any time when the government fails to respond to its request for a report. However, the Commission continues to disregard exercising its existing mandate to the fullest extent.²³

17 "NHRCB Annual Report 2021, pg. 38-39," NHRCB, 2021, https://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/cb8edec9_5aee_4b04_bf2a_229d9cd226a0/2022-08-16-15-40-3a43b0df1aee26865a45f802b0eafb16.pdf and "NHRCB Annual Report 2022, pg. 38-39," NHRCB, 2022, https://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/cb8edec9_5aee_4b04_bf2a_229d9cd226a0/2023-05-11-08-58-b3ff7dc4f67e66a33d5892485af77661.pdf.

18 Rezaul Karim, "Human Rights Commission a drain on state coffers," *The Business Standard*, December 10, 2022, <https://www.tbsnews.net/bangladesh/human-rights-commission-drain-state-coffers-548766>.

19 "Section 19 of the National Human Rights Commission Act," NHRCB, https://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/law/de62d323_fe91_45f0_9513_a0d36ab77fdf/NHRC%20Act%202009_1_.pdf.

20 "Section 29 of the National Human Rights Commission Act," NHRCB, https://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/law/de62d323_fe91_45f0_9513_a0d36ab77fdf/NHRC%20Act%202009_1_.pdf.

21 "Section 18 of the National Human Rights Commission Act," NHRCB, https://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/law/de62d323_fe91_45f0_9513_a0d36ab77fdf/NHRC%20Act%202009_1_.pdf.

22 Sheikh Sabiha Alam, "10 years of rights commission: NHRC avoids talking about 'gunfights', enforced disappearance," *Prothom Alo*, September 7, 2021, <https://en.prothomalo.com/bangladesh/NHRCB-avoids-talking-about-gunfights-enforced-disappearance>.

23 Rezaul Karim, "Human Rights Commission a drain on state coffers," *The Business Standard*, December 10, 2022, <https://www.tbsnews.net/bangladesh/human-rights-commission-drain-state-coffers-548766>.

As per Section 18(2) of the NHRC Act, government authorities are required to respond to the queries and recommendations that the NHRCB makes.²⁴ However, in reality, the government and the authorities do not abide by this and often ignore the NHRCB's requests. For example, for months, the Cox's Bazar district administration has been delaying sending in a report to the NHRCB on the killing of the Teknaf Municipality Councillor, Ekramul Haque, in an alleged 'gunfight' with the RAB in April 2018. Weeks after the US Department of the Treasury slapped sanctions on the RAB on 10 December 2021 on charges of serious human rights abuses, the NHRCB's Secretary, Narayan Chandra Sarkar, wrote to the Cox's Bazar district administration asking it to send a complete report following an inquiry into the allegation.²⁵

Pluralism:

The NHRCB only engages with civil society organisations (CSOs) that support the current government and other public and private stakeholders. Due to such a practice, HRDs have been criticising the NHRCB for failing to perform its responsibilities.²⁶ Although the NHRCB has opened offices in Khulna, Gopalganj, Cox's Bazar, and Rangamati so far and 153 panel lawyers have been appointed in sixty-three districts since May 2017²⁷ to provide legal assistance, the aggrieved persons are deprived of these benefits. The Commission has confirmed that none of its panel lawyers are giving assistance to victims of extrajudicial killings and enforced disappearances.²⁸

The NHRCB's human resources and budget have been increased. The Commission lacks sufficient communications infrastructure and premises are accessible with some limitations. Its website is not updated with information and there are still some sections under construction and/or lack information. The NHRCB is extremely slow in providing public information. It usually takes months to respond or does not respond to some questions relating to its mandate and performance.

The NHRCB occasionally organises formal consultations with civil society on a case-by-case basis. Unfortunately, it only consults with some selective CSOs and partners who have good relations with the government.²⁹

“ The Commission has one member from an ethnic minority group and one member from a religious minority group, and two officers hired from a religious minority community. There is only one woman member out of the seven members, and four women staff out of nineteen in leadership or managerial positions.³⁰

Although the NHRCB has a Thematic Committee on the rights of Dalit, Hijra, and other marginalised communities and engages with some selected marginalised groups, it lacks systematic engagement efforts. Between 2012 and 2015, it conducted some studies on different themes, particularly on international laws and treaty bodies and Bangladesh compliance. However, in recent years, the Commission has not carried out any studies or research on any specific thematic issues.

24 Section 18 (2) of the National Human Rights Commission Act.

25 Muktedir Rashid, "No report on Ekramul killing yet," *New Age*, March 12, 2022, <https://www.newagebd.net/article/165145/ho-report-on-ekramul-killing-yet>.

26 Md. Abdul Halim, "A Decade of NHRC: Too Late Too Little," *The Business Standard*, December 10, 2021, <https://www.tbsnews.net/thoughts/decade-nhrc-too-late-too-little-341572>.

27 Zyma Islam, "Rights custodian not doing it right," *The Daily Star*, June 21, 2021, <https://www.thedailystar.net/frontpage/news/rights-custodian-not-doing-it-right-2114797>.

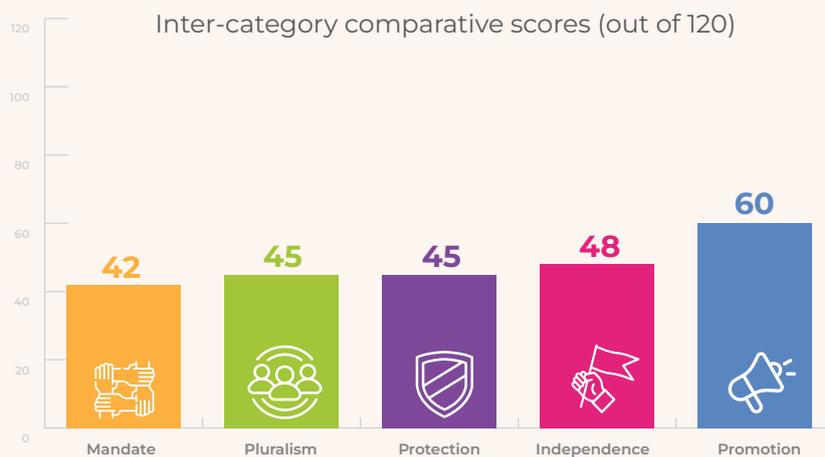
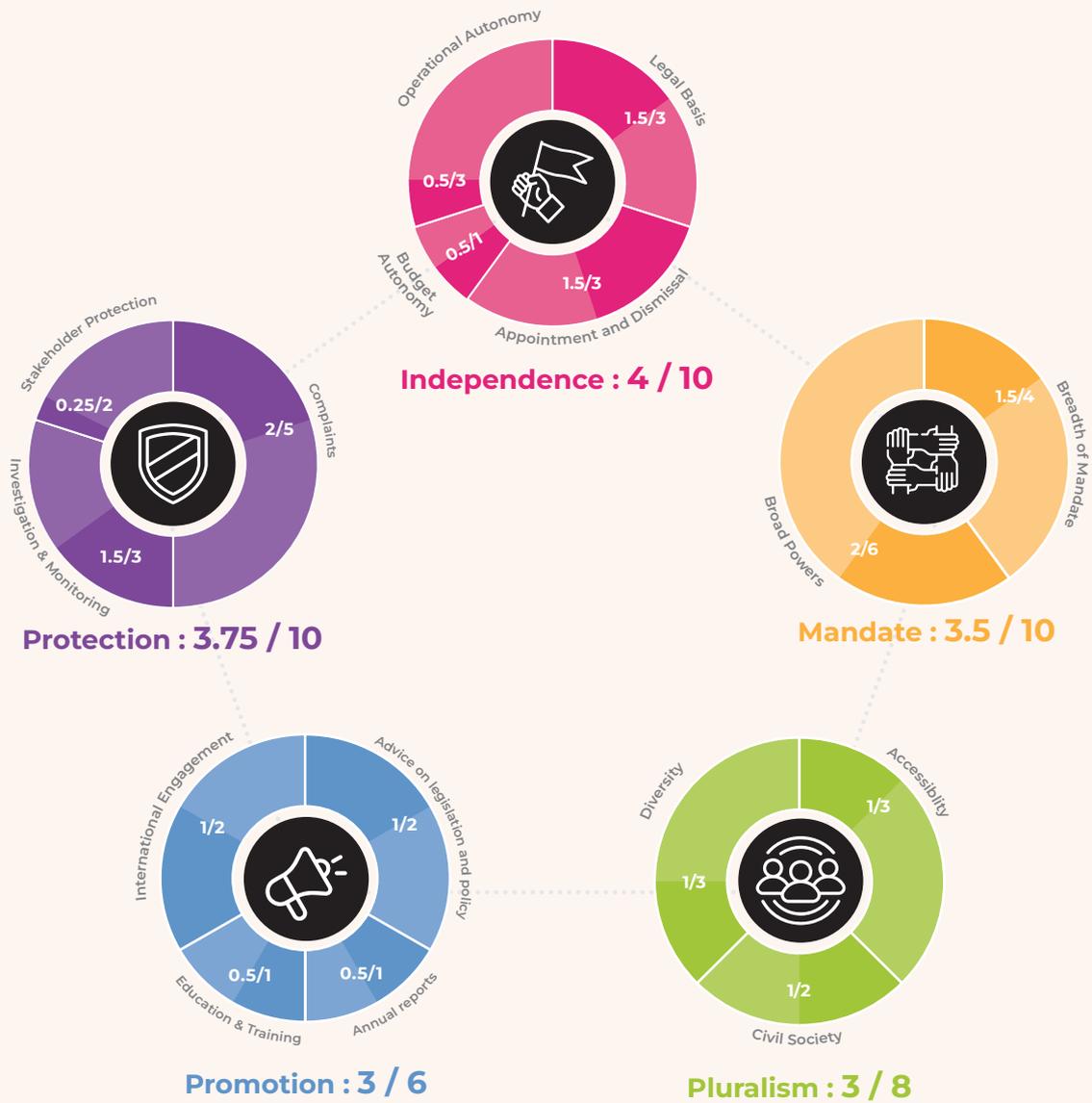
28 Sheikh Sabiha Alam, "10 years of rights commission: NHRC avoids talking about 'gunfights', enforced disappearance," *Prothom Alo*, September 7, 2021, <https://en.prothomalo.com/bangladesh/NHRCB-avoids-talking-about-gunfights-enforced-disappearance>.

29 "UPR Info Activity Report – Bangladesh 2021," UPR, 2021, https://www.upr-info.org/sites/default/files/country-document/2022-07/Activityreport_UPR%20Info_Bangladesh2021.pdf.

30 "Chairman and Members of Present Commission," NHRCB, <http://NHRCB.portal.gov.bd/site/page/bc88bebb-d716-490c-aebb-8c4b645c34d8>; and http://www.NHRCB.org.bd/site/view/officer_list/.



Category and sub-category-wise scores for NHRC Bangladesh



Promotion:

The NHRCB produces an annual report, but it does not cover issues such as its activities with outcomes carried out during the reporting period or recommendations/proposals to address human rights concerns. The said annual reports contain praises for the government's activities and achievements,³¹ which do not bear the identity of a neutral and independent NHRI. Its 2021 annual report says, "Under the charismatic leadership of Honourable Prime Minister of Bangladesh, the country is progressing on many fronts including astounding economic advancement. Government is committed to establishing Rule of law curbing loopholes of systems, corruption and malpractices and augmenting transparency and accountability of the duty-bearers".³² It needs to be mentioned that the Annual Report of 2022 is not available in the public domain.

With regard to engagement with international organisations, the NHRCB submits shadow reports to the relevant UN bodies. Such reports do not critically examine the state or government's role in terms of fulfilment of international obligations.

“ Most of the reports were found to be praiseworthy of the state initiatives, which is tantamount to a supplementary report of the state.³³

The NHRCB submitted a stakeholder's report to the UN Human Rights Council on the Universal Periodic Review (UPR) of Bangladesh that did not contain information about the gross human rights violations.³⁴ When international human rights experts request to visit Bangladesh, in most cases the government refuses. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) annual report submitted at the 51st Session of the United Nations Human Rights Council confirms that the government has not responded to repeated requests by the WGEID to visit Bangladesh.³⁵ A request was first sent on 12 March 2013 and most recently re-issued on 23 April 2020.³⁶ The Office of the UN Resident Coordinator in Bangladesh testified to 15 other pending requests for the UN Special Rapporteurs to visit the country. The NHRCB did not highlight or take these issues up seriously, nor did it ask the government to respond to the special procedures mandate holders by effectively cooperating with the UN human rights mechanisms.

31 "NHRCB Annual Report 2021, pg. 95," NHRCB, 2021, https://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/cb8edec9_5aee_4b04_bf2a_229d9cd226a0/2022-08-16-15-40-3a43b0df1aee26865a45f802b0eafb16.pdf.

32 Ibid.

33 "Reporting status for Bangladesh - NHRCB report to the UN Human Rights Committee," UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=BGD&Lang=EN.

34 "Stakeholder Report to UN Human Rights Council on Universal Periodic Review - 3rd Cycle," NHRCB, <https://www.ohchr.org/en/hr-bodies/upr/upr-bangladesh-stakeholders-info-s30>.

35 "Human Rights Council, A/HRC/51/31 "Report of the Working Group on Enforced or Involuntary Disappearances", Fifty-first session," Human Rights Council, August 12, 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/448/25/PDF/G2244825.pdf?OpenElement>.

36 OHCHR, <https://spinternet.ohchr.org/Search.aspx?Lang=en&MandateRefID=46>.



Protection:

HRDs alleged that the NHRCB is not doing its core work in terms of protecting the rights of the citizens; rather the Commission is busy with meetings and seminars. When the NHRCB receives complaints from victims and/or from victim families, the Commission notifies relevant authorities. However, the Commission hardly carries out any follow-ups, nor does it make any further communication. When interviewed, the families of the disappeared and torture victims alleged that the NHRCB did not respond to their queries despite their repeated letters and calls. The Commission merely responds that it has sent a letter to the concerned authority.

Between January 2021 and December 2022, the NHRCB did not carry out any investigations into the systemic pattern of human rights violations other than conducting a national inquiry into violence against women and girls, with a focus on rape. The Commission has formed a National Inquiry Committee to carry out investigations into cases of violence against women, particularly incidents of rape.

The NHRCB irregularly visits prisons around the country. Usually, the Commission informs the authorities before every visit. Thus, such visits are considered courtesy visits and not inspections. In 2021, a delegation led by the NHRCB Chairperson visited the central jails of Sylhet, Sunamganj, and Mymensingh and sent recommendations to the government.

The law requires that steps be taken to ensure that victims and witnesses are protected against any kind of harassment, intimidation, or reprisals because of their complaints or because they gave any evidence to the NHRCB.

“ The NHRCB has never engaged with the victims’ families, particularly the families of the disappeared and the victims of extrajudicial killings.

The families describe how the police allegedly tried to compel them to sign written statements that contradicted facts.³⁷ The families were scared as police officials visited their houses and persistently asked them to visit police stations in the dead of night in the name of holding an inquiry. As a result of the police repeatedly calling and visiting the families of the disappeared people, Maayer Daak (a group that works to support these families) organised a protest rally in Dhaka on 15 January 2022. The protesters highlighted that the police were attempting to show that the victims of enforced disappearances were just ‘missing’ and were responsible for their own disappearance.³⁸

HRDs face various challenges, including persecution, threats, harassment, surveillance, judicial harassment, and fatal attacks from both state and non-state actors. However, the NHRCB has no policies or practices that specifically recognise and protect the rights of HRDs. The Commission is yet to set up a focal point to ensure the safety of HRDs. Although it is within the NHRCB’s mandate to formulate laws for the protection of HRDs and send them to the concerned authority for approval, no steps have been taken. The Commission has merely formulated a Guideline for the Promotion and Protection of the Rights of the Human Rights Defenders as recommended in a Capacity Assessment Review of the NHRCB that the Asia Pacific Forum of NHRIs (APF) and the United Nations Development Programme conducted in 2019.³⁹ However, it is yet to seek approval for and implement the guidelines on HRDs.⁴⁰ The NHRCB remained largely inactive throughout the government crackdowns on HRDs who have spoken out against human rights abuses.⁴¹

37 Muktadir Rashid, “Police force victim families to write new versions,” *New Age*, January 13, 2022, <https://www.newagebd.net/article/159902/police-force-victim-families-to-write-new-versions>.

38 Muktadir Rashid, “Victim families in fear, allege police coercion,” *New Age*, January 16, 2022, <https://www.newagebd.net/article/160035/victim-families-in-fear-allege-police-coercion>.

39 “NHRCB’s report to the UN Working Group on Business and Human Rights”, OHCHR, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Remedy/NHRC_Bangladesh.pdf.

40 Chris Sidoti, “Capacity Assessment (Mid-Term) of the National Human Rights Commission, Bangladesh,” NHRCB, May 29, 2019. [http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/bf638136_9155_44d0_b73f_d1e9ae3e6cd3/Sidoti%20REPORT%20May%202019%20\(1\).pdf](http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/bf638136_9155_44d0_b73f_d1e9ae3e6cd3/Sidoti%20REPORT%20May%202019%20(1).pdf).

41 Sheikh Sabiha Alam, “10 years of rights commission: NHRC avoids talking about ‘gunfights’, enforced disappearance,” *Prothom Alo*, September 7, 2021, <https://en.prothomalo.com/bangladesh/NHRCB-avoids-talking-about-gunfights-enforced-disappearance>.

Conclusion:

The NHRCB has completed more than 13 years of its journey towards the protection and promotion of human rights in the country. However, the realities on the ground have been far below expectations. Most human rights organisations questioned the independence and effectiveness of the NHRCB, alleging that the government used state institutions, including the NHRCB, to implement its political agenda.⁴² Rights activists and CSOs said that the NHRCB will be effective in fulfilling its duty only when it will no longer be used as a shield by the government to hide its weaknesses and the lack of good governance in the country.⁴³

The GANHRI-SCA in its 2011 and 2015 reviews accorded a 'B' status to the NHRCB. The GANHRI-SCA noted a range of concerns, including the lack of transparency in the selection process of members. Despite the flaws in the appointment of the selection committee, a transparent and inclusive process could have still been achieved through public engagement in the selection and screening of the candidates. The appointment could have been done in consultation with key stakeholders on the ground, specifically non-governmental organisations and CSOs. Due to the lack of willingness and courage of the NHRCB, as well as the government's reluctance, the Commission continues to be unable to function independently, which is a barrier to improving the NHRCB's status that still remains 'B'.

42 "2022 Country Reports on Human Rights Practices: Bangladesh", US Department of State, 2022, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/bangladesh/>.

43 Muktadir Rashid, "Transparent NHRC selection sought as tenure expires," New Age, October 1, 2022, <https://www.newagebd.net/article/182502/transparent-NHRCB-selection-sought-as-tenure-expires>.



Recommendations

In light of the current situation, Odhikar recommends to the following stakeholders:

To the Government of Bangladesh:

- Take immediate measures to amend the National Human Rights Commission Act of 2009, in consultation with CSOs and relevant stakeholders in order to broaden its mandate;
- Reduce the number of government representatives in the NHRCB selection committee and include members of independent, credible civil society;
- Set up an independent secretariat by ending the practice of secondment to ensure the independent and effective functioning of the Commission;
- Ensure an adequate independent budget for the NHRCB and improve its financial autonomy by including a separate budget line in the national budget.

To the NHRCB:

- Exercise full power and mandates as specified in the National Human Rights Commission Act, 2009 until it is amended;
- Amend the NHRC (Officers and Staff) Recruitment Rules 2012 to incorporate provisions for the recruitment of potential officials based on merit and experience in the human rights field;
- Develop mechanisms to support persecuted human rights organisations and HRDs at risk, by providing immediate support, safe houses, relocation, and legal aid, and also by taking initiatives to create a secure atmosphere for them to work in;
- Ensure effective communication with victims of human rights abuses and their family members and/or complainants; and also ensure follow-ups; and
- Follow-up on the implementation of the UPR and other recommendations.

To the Parliament:

- Review and make necessary amendments to the NHRC Act 2009 and abolish current ambiguities, and include in it a clear, transparent, participatory and merit-based selection and appointment process, in compliance with the Paris Principles.

To International Human Rights Mechanisms/Bodies:

- The APF and the GANHRI-SCA should regularly monitor NHRCB's activities and performance and recommend that the Commission act in compliance with the Paris Principles; and
- The UN Human Rights Council should strongly urge the Government of Bangladesh and the NHRCB to follow their international obligations to uphold human rights and effectively implement the recommendations made in the UPR in compliance with the Paris Principles, as well as the recommendations made by treaty bodies and other UN human rights mechanisms.



CAMBODIA

Establishing a National Human Rights Institution (NHRI) in Cambodia
- A Good Practice, But Wrong Timing?

Savey Phin¹
Cambodian Human Rights and Development Association (ADHOC), Cambodia²

Overview of the Human Rights Situation in Cambodia

Cambodia is a liberal, multi-party democracy as enshrined in its constitutional law, which was established in 1993 following the Paris Peace Accords (PPA) in Paris, France, on 23 October 1991. Since 1991, Cambodia has been a party to the International Covenant on Civil and Political Rights (ICCPR).

However, as far as its human rights record is concerned, the picture is looking increasingly bleak.

“ Specifically, the country is facing an unprecedented crisis of democratic identity, reflective in almost all sectors of society.

The constant repression of civil liberties is a strong reason why that is the case. Hun Sen, who is the former president and belongs to the Cambodian People's Party (CPP) has ruled Cambodia since 1985, in what is the longest presidential reign in the world, is now passing the baton to his son, Hun Manet. Over the following years, he has consolidated and retained his power by implementing measures that have eroded human rights standards and democratic values and processes. Running virtually unopposed, the CPP won all 125 seats in the National Assembly in the 2018 National Election.

The 2023 National Election was no different, with the Candlelight Party, the government's main opposition, being banned due to a 'bureaucratic glitch'.³ These were practices of intimidation employed to sway an already unfree election into the hands of the CPP. The control over the National Assembly paved the way for Hun Sen's autocratic agenda. Since the Kingdom of Cambodia's judicial system lacks independence and is plagued by corruption,⁴ it poses little - if any - resistance to the fast pace of democratic backsliding in Cambodia. Freedom House's "Freedom in the World" annual reports have continuously rated Cambodia as a 'Not Free' country since 2013.⁵

“ A combination of factors, such as intense civil repression, lack of fundamental political education, and a limitation on the sources of accurate information have alienated Cambodia's people, further contributing to the exacerbation of the political and human rights situation in the country.

Alarming, the treatment of protesters, activists, and human rights defenders (HRDs) in general is not one fitting for a country that has initiated the process of establishing a national human rights institution (NHRI). In the backdrop of COVID-19, as well as two defining election campaigns, the authorities have continued to combat protesters with excessive force, harassment, intimidation, and arbitrary arrests and detentions.⁶

1 Savy Phin is the Resource Mobilization and Monitoring and Evaluation Coordinator at the Cambodian Human Rights and Development Association (ADHOC).

2 ADHOC is an independent, non-partisan, and non-profit NGO, and also Cambodia's oldest human rights organisation. It monitors and investigates human rights violations; provides free legal assistance and support to victims, survivors, and their families; empowers individuals and communities to enable themselves to defend their rights; and engages in advocacy work through its central office in Phnom Penh, Cambodia, and 17 provincial offices.

3 Frances Mao, "Cambodia: Opposition Candlelight Party Barred from July Vote," BBC News, May 15, 2023, <https://www.bbc.com/news/world-asia-65478798>.

4 Khuon Narim, "Cambodia perceived as highly corrupt, despite incremental improvement," Cambodia News, January 31, 2023, <https://cambodianews.com/cambodia-perceived-as-highly-corrupt-despite-incremental-improvement/>.

5 "Cambodia: Country Profile," Freedom House, 2023, <https://freedomhouse.org/country/cambodia>.

6 "Cambodia: Covid-19 Pandemic Used for Union Busting," Human Rights Watch, November 21, 2022, <https://www.hrw.org/news/2022/11/21/cambodia-covid-19-pandemic-used-union-busting>.

Rong Chunn's arrest and eventual conviction is a key event that showcases the backsliding the country has witnessed with regard to the freedom of peaceful assembly. The trade union leader was arrested in July 2020 under charges of "incitement",⁷ following public comments highlighting the loss of his community's land. He was eventually convicted a year later and sentenced to prison time with a hefty fine totalling \$100,000. In addition, as cited in the Universal Periodic Review (UPR) mid-term report by Article19 and PEN America for Cambodia,⁸ a total of seventeen individuals were charged for their participation in protests demanding Rong Chunn's release.⁹

Additionally, there were heavy restrictions on the freedom of peaceful assembly during the NagaWorld saga. The first protest happened on 31 December 2021 and it lasted for fourteen days. More than 1,000 workers attended the protests, leading to the apprehension of nine strikers, who were then subsequently charged with "incitement of social disorder".¹⁰

Moreover, protesters who gathered to mark the Paris Peace Agreements Day in October 2020 and 2021 were heavily intimidated and restricted. As figures in the UPR mid-term report on Cambodia indicate, over twenty seven people were detained in the two protests. The 2021 assembly garnered waves of negative attention after footage was released showing police interrupting a peaceful protest of around twenty women and then proceeding to use physical force to bring the demonstration to a halt.¹¹

Furthermore, independent media has been continuously eroded in the country. This was most recently reflected by the closure of the popular media outlet Voice of Democracy.¹²

“ With fundamental freedoms being trampled on and violated on a daily basis, the establishment of a Paris Principles-compliant NHRI in Cambodia is imperative to provide a robust mechanism dedicated to promoting and protecting basic human rights and fundamental freedoms in the country.

The aforementioned examples are just a tiny fraction of the violations occurring on an everyday basis. The 921 cases of human rights violations that ADHOC¹³ recorded in 2022 alone showcase the extent to which basic freedoms are being curtailed. This most importantly exposes the culpabilities of the state in safeguarding those freedoms, further underlining Cambodia's current unsuitability to establish a credible and Paris Principles-compliant NHRI under the current climate.

Surveillance by local authorities is a given in all projects of ADHOC and other non-governmental organisations (NGOs). The Law on Associations Non-Governmental Organisations (LANGO) continues to strictly impose onerous and arbitrary requirements for NGOs to be allowed to exercise their rights freely and without interference. Moreover, since the sub-decree on the establishment of the National Internet Gateway (NIG) was passed on 16 February 2021, the government is yet to address the serious human rights concerns that the Cambodian civil society groups and tech companies have raised. At worst, the government has been wholly non-transparent regarding the infrastructures, implementation, financing, and cooperating companies, agencies, and organisations involved in supporting the NIG.¹⁴

7 "Cambodia: Free Prominent Trade Union Leader," Human Rights Watch, May 26, 2023, <https://www.hrw.org/news/2020/08/04/cambodia-free-prominent-trade-union-leader>.

8 "Mid-Term Universal Periodic Review Report: Cambodia: Regression of UN freedom of expression commitments," pp. 23-24, OHCHR, December 14, 2021, <https://www.ohchr.org/sites/default/files/2022-01/Cambodia-UPR-Mid-term-report.pdf>.

9 "Report on Human Rights Situation 2022," ADHOC, May 17, 2023, <https://www.adhoccambodia.org/summary-report-human-rights-situation-2022/>.

10 Ibid.

11 "Mid-Term Universal Periodic Review Report: Cambodia: Regression of UN freedom of expression commitments," pp. 23-24, OHCHR, December 14, 2021, <https://www.ohchr.org/sites/default/files/2022-01/Cambodia-UPR-Mid-term-report.pdf>.

12 Heather Chen, "Voice of Democracy, One of Cambodia's Last Independent Media Outlets, Has Been Shut Down," CNN, February 14, 2023, <https://edition.cnn.com/2023/02/14/media/cambodia-press-freedom-death-voice-of-democracy-closure-intl-hnk/index.html>.

13 "Report on Human Rights Situation 2022," ADHOC, May 17, 2023, <https://www.adhoccambodia.org/summary-report-human-rights-situation-2022/>.

14 "Cambodia Should Scrap Rights-Abusing National Internet Gateway," Human Rights Watch, May 16, 2022, <https://www.hrw.org/news/2022/05/16/cambodia-should-scrap-rights-abusing-national-internet-gateway>.

NHRI Establishment in Cambodia: Key Stakeholders and Their Role

The groundwork for the establishment of an NHRI in Cambodia has already started.

“ By May 2021, the Royal Government of Cambodia (RGC), through the work of the Cambodian Human Rights Committee (CHRC), had completed its first draft of the legislation required to establish an NHRI in the country.¹⁵

There have been several developments on this draft ever since its release, but there are still widespread concerns being raised about its effective implementation at this stage, especially by Cambodia's NGO sector, given the dire state of human rights in the country.¹⁶



15 “Cambodia: Concerns Rise over Governments Establishment of National Human Rights Institution,” *International Federation of Journalists*, August 27, 2021, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/cambodia-concerns-rise-over-governments-establishment-of-national-human-rights-institution>.

16 “Joint Statement: Redress Cambodia's human rights situation before establishing an NHRI,” LICADHO, August 24, 2021, https://www.licadho-cambodia.org/press/files/48220210824_Joint_Statement_on_Establishment_of_NHRI.En.pdf.

However, before analysing such concerns, it is important to mention the key developments with regard to the NHRI establishment that have happened since that first draft. An important stakeholder since then, vis-à-vis providing expert advice on the matter, has been the Asia Pacific Forum of NHRIs (APF). The APF has been working alongside the United Nations Office of the High Commission for Human Rights (OHCHR) to boost the NHRI establishment process. More specifically, the APF has been guiding the RGC since 2020 by “providing advice to the CHRC on draft versions of the legislation, including on amendments to support compliance with the Paris Principles, the minimum standards required by NHRIs to be independent, credible and effective institutions.”¹⁷ Furthermore, the CHRC convened two workshops as part of the public consultation process of the NHRI draft, with the APF and the OHCHR having an active role in both. In the one held in October 2021, the main theme was experience and good practices sharing on the Paris Principles and the need of the new institution to comply with them being at the core of the requirements.¹⁸ Foreign counterparts were also present, with representatives from the Embassy of Australia and the Human Rights Commissions of the Philippines and Malaysia also sharing their lessons from their own experiences of NHRI establishment. Continuing that dialogue and perspective sharing, early July 2022 saw important round-table discussions take place regarding the establishment of an NHRI in Cambodia, with the CHRC, the OHCHR, and the APF deliberating on compliance with international standards and finalising the legal draft.¹⁹ The open consultation process is complete, yet there have been no fresh updates since then on the current status of the establishment of the NHRI.

17 “APF advises on draft law to establish Cambodian NHRI,” *Asia Pacific Forum*, July 30, 2021, <https://www.asiapacificforum.net/news/apf-advises-draft-law-establish-cambodian-nhri/>.

18 “Supporting the establishment of a Cambodian NHRI,” *Asia Pacific Forum*, November 28, 2021, <https://www.asiapacificforum.net/news/supporting-establishment-cambodian-nhri/>.

19 “Cambodia Moves Closer to Establishing NHRI,” *Asia Pacific Forum*, July 28, 2022, <https://www.asiapacificforum.net/news/supporting-nhri-establishment-cambodia/>.

While some efforts to establish an institution have been made, there is insufficient work on the ground for such a move to be effective at this stage. As reported by the International Federation of Journalists and its affiliate, CamboJA, the government must first restore human rights in the country and foster a conducive environment for the institution to function effectively and with a sufficient degree of independence.²⁰ Civil society appears to be moving in the same direction, with a coalition of local NGOs producing a statement at the end of August 2021.²¹

“ The statement argued, among other things, that the extent to which the NHRI will be credible, effective, and independent in the current context, is by no means a certainty and is simply a public relations exercise by the government to avoid international criticism and condemnation.

It is noteworthy that discussions on establishing an NHRI in Cambodia were initiated in 2005. The socio-political conditions at the time made its establishment much more favourable than in the current context. However, the government's lack of willingness to make the necessary reforms at the time, including the release of all political prisoners, made the negotiations unsuccessful. As far as the legislative process for establishing an NHRI in Cambodia is concerned, it will be created after the law on the establishment of the National Human Rights Institution is completed, and the discussion with relevant parties in the country comes to a fruitful conclusion. While an NHRI will be established by the government via a statute, it is intended to be an independent body that can assess the human rights situation in Cambodia and offer recommendations and expert advice. Under the technical support of the OHCHR, the NHRI to be established must be an independent body and strictly comply with the Paris Principles.²²

The central stakeholder in establishing an NHRI in the country is the CHRC, formed by a Royal Decree in 2000. It is comprised of twelve members and is responsible for monitoring the human rights situation in the country, writing reports for the UN, performing human rights-related duties for the Association of Southeast Asian Nations (ASEAN), imparting human rights education, and managing mechanisms to receive and resolve complaints in relation to human rights infringements and certain humanitarian activities.

“ With regard to its activities vis-à-vis human rights protection and the NHRI, it has not been involved a great deal in joint activities with independent civil society organisations (CSOs).

The CHRC works in direct consultation with the OHCHR, where the latter has a significantly more independent role, given its international composition and strict adherence to the values and universal principles of the UN Charter. In Cambodia, the OHCHR implements the High Commissioner's global mandate to protect and promote human rights. It works with the government, the judicial and legislative bodies, civil society, and other national and international actors, to support the consolidation of peace and inclusive development of Cambodia. It does so through the promotion of the rule of law and compliance with the human rights standards ratified by Cambodia.²³ The OHCHR has also been an active voice in the NHRI establishment process, serving as the most influential institution providing consultations and inputs to the CHRC. It has also held an internal forum as well as round-table discussions with the other NHRI stakeholders (members of the government, the CHRC, and the APF) to ensure that the credibility of the institution is created and to draw on the experiences of other ASEAN states.

20 “Cambodia: Concerns Rise over Governments Establishment of National Human Rights Institution,” *International Federation of Journalists*, August 27, 2021, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/cambodia-concerns-rise-over-governments-establishment-of-national-human-rights-institution>.

21 “Joint Statement: Redress Cambodia's human rights situation before establishing an NHRI,” LICADHO, August 24, 2021, https://www.licadho-cambodia.org/press/files/48220210824_Joint_Statement_on_Establishment_of_NHRI.En.pdf.

22 “Paris Principles,” GANHRI, <https://ganhri.org/paris-principles/>

23 See below some of OHCHR recent reports about the human rights situation in Cambodia:

“Annual Report 2021,” OHCHR, September 16, 2021, https://cambodia.ohchr.org/sites/default/files/Ohchr-report/A_HRC_48_49.pdf.

“State of Press Freedom 2022,” OHCHR, August 2022, https://cambodia.ohchr.org/sites/default/files/report/other-report/Press%20Freedom%20ENG_FINAL.pdf.

By June 2021, the CHRC had finalised the “Draft Law on the Organisation and Functioning of the National Human Rights Commission of Cambodia”. It had initiated an extensive public consultation process with the OHCHR as the main stakeholder by 8 July 2021.²⁴ Following this, the CHRC launched a consultation process, seeking inputs to the draft legislation from ministries, institutions, CSOs, and other relevant stakeholders, including an invitation for comments through social media.²⁵ As mentioned in the APF’s press release on the draft law, “...the National Human Rights Commission (NHRC) is proposed to be a seven-member human rights commission comprised of a president, vice-president and five members, all of whom will be appointed through an open selection process. The Commission’s proposed functions will include human rights education, complaints handling, national inquiries, and engagement with the UN human rights system, among others.”²⁶

Following up on that development, an internal forum between representatives of the CHRC, the OHCHR, and the APF took place on 11 October 2022. Members of the National Assembly, Senate and relevant ministries, and officials from the NHRIs of Malaysia, the Philippines, and Indonesia attended the event, in addition to members of the APF.²⁷ Talking about the purpose and goals of this workshop, the CHRC spokesperson Kata Orn stated: “.the process to establish an NHRI in Cambodia is being done within the framework of the UN, which oversees reports relating to the Kingdom’s human rights situation, and the progress made in this area shows the country’s willingness to accomplish this goal.”²⁸ Moreover, the CHRC representative mentioned that the principles of independence and neutrality are the pillars and driving forces behind the NHRI that will be created. He further emphasised that the mechanism would not only serve to promote human rights, but will also provide recommendations as to how they can be improved. Interestingly, members of the civil society and NGO communities were not invited to voice their opinions at this forum.

“ Despite the government and the CHRC’s mobilisation on the NHRI front, CSOs have been staunchly critical of the ongoing efforts.

The Cambodian League for the Promotion and Defense of Human Rights issued a joint statement on 24 August 2021 regarding the importance of redressing Cambodia’s human rights situation before establishing an NHRI.²⁹ The statement, signed by 60 CSOs and trade unions, underscored their concerns about the ever-worsening human rights situation in the country, and the prospects of the NHRI that the RGC is establishing in such a climate. The CSOs urged the prioritising of the human rights situation in Cambodia first, before establishing an NHRI, to ensure the creation of a legitimate and credible institution. This, they argued, should stem from the government’s interest to safeguard and promote the fundamental human rights of all, rather than merely creating a human rights mechanism to add legitimacy and divert attention away from the RGC’s lack of meaningful action towards improving the human rights situation.³⁰ One of the key considerations of the NGOs’ passionate non-engagement on this issue is the requirement of an NHRI to be Paris Principles-compliant, a feat increasingly challenging under an authoritarian and repressive government continuously cracking down on activists, CSO members, and HRDs. In the statement, the CSOs argued that it was important to give due consideration to the Paris Principles while establishing an NHRI. According to them, “all institutions intended to be independent of the RGC, have eventually become fully inactive or have been subsumed under the RGC’s control, leaving them fearful that an NHRI would fare no differently”.³¹

24 “APF advises on draft law to establish Cambodian NHRI,” *Asia Pacific Forum*, July 30, 2021, <https://www.asiapacificforum.net/news/apf-advises-draft-law-establish-cambodian-nhri/>.

25 “Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights: Report of the Secretary-General,” *UN Human Rights Council, UN Doc. A/HRC/51/63, Advanced Edited Version*, August 17, 2022, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/463/02/PDF/G2246302.pdf?OpenElement>.

26 *Ibid.*

27 Cheah Sokny, “Int’l forum on Cambodia’s rights institutions held by CHRC, UN,” *The Phnom Penh Post*, October 12, 2022, <https://www.phnompenhpost.com/national/intl-forum-cambodias-rights-institutions-held-chrc-un>.

28 *Ibid.*

29 “Joint Statement: Redress Cambodia’s human rights situation before establishing an NHRI,” *LICADHO*, August 24, 2021, https://www.licadho-cambodia.org/press/files/48220210824_Joint_Statement_on_Establishment_of_NHRI.En.pdf.

30 *Ibid.*

31 “Joint Statement: Redress Cambodia’s human rights situation before establishing an NHRI,” *LICADHO*, August 24, 2021, https://www.licadho-cambodia.org/press/files/48220210824_Joint_Statement_on_Establishment_of_NHRI.En.pdf.

The Paris Principles are indeed a central requirement of any independent human rights mechanism. Officially adopted in 1993, they are the guiding principle on the criteria that need to be adhered to prior to the creation of an NHRI. While some of those, such as the establishment under “primary law or the constitution”³² and a mandate focused on the promotion and safeguarding of fundamental human rights, would have been incorporated into the mechanism’s draft law, the majority of them are highly unlikely to be realised under the current situation. Namely, achieving pluralism, functional independence, credible human rights reporting, and cooperation with civil society are doubtful, to say the least under the current climate. This begs the question of whether the NHRI draft law makes any mention of them.

The implementation of repressive decrees and laws by local authorities, as well as the excessive surveillance of NGOs and the RGC’s lack of transparency on controversial measures like the NIG has created a restricted environment for NGOs to operate in. This constitutes a major problem with regard to the establishment of a credible NHRI in the country.

“ Being the principal decision-maker and lawmaker in the country, the RGC has a critical role to play in the extent to which the NHRI project will successfully come to fruition.

However, a lack of advocacy on the subject, combined with a major disregard for fundamental rights, freedoms and principles, has created an environment that is not conducive to the establishment of an NHRI. While the RGC has actively cooperated with the CHRC to initiate discussions on the NHRI draft, it is increasingly likely that rather than being based on the situation on the ground, this draft will be on the government’s own terms. With accusations of the ruling party stifling dissent through judicial harassment, threats, and intimidation, it is difficult to envision a scenario where the NHRI is successful and implements lasting change, if the current human rights situation does not change for the better.

Conclusion

All in all, it becomes easily discernible that the process of establishing an NHRI in the Cambodian context is a complicated matter. On the one hand, the process appears to be moving forward, with a draft law on the creation of an NHRI already available for public consultations and for internal discussions between different stakeholders. However, the extent to which an NHRI will enjoy the support of the wider public, CSOs, HRDs, and NGO members in the near future is questionable, to say the least. While such an institution looks set to be established in Cambodia in due course, questions over its fairness, independence, and transparency will persist, especially as long as the current human rights situation is not improved. In the face of such a challenging human rights environment, we believe that the NHRI will not be able to function independently, and will not be truly Paris Principles-compliant, without the introduction of necessary reforms. Thus, we make the following recommendations, to the RGC, the CHRC, and all relevant stakeholders involved in the drafting of the NHRI:

³² “UN Paris Principles & Accreditation,” ENNHRI, <https://ennhri.org/about-nhris/un-paris-principles-and-accreditation/>.



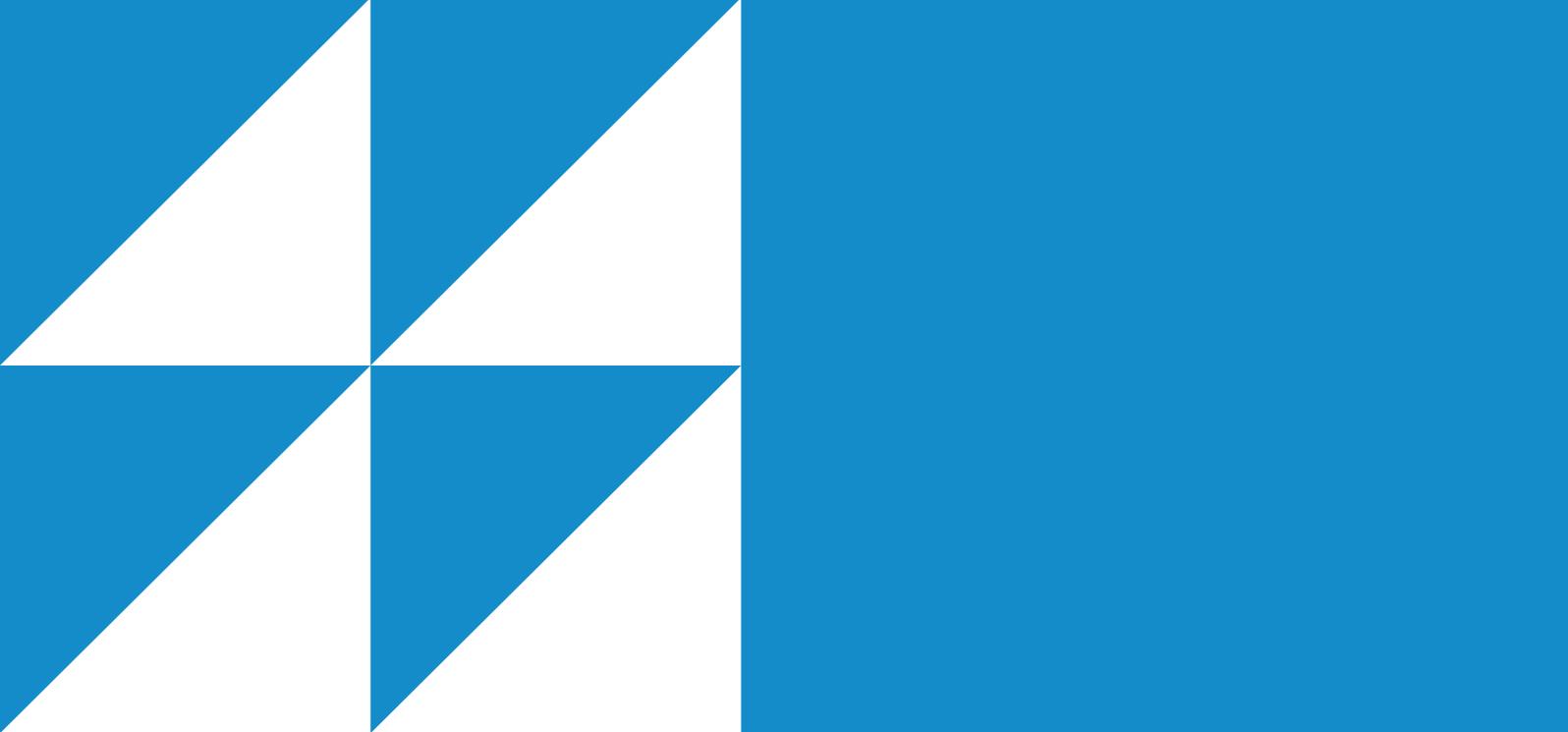
Recommendations:

To the RGC:

- Introduce reforms easing civil society restrictions for a conducive climate for the NHRI to operate in;
- Take all necessary steps to maintain a clear separation of powers, ensuring the provision of the rule of law in the country, while also providing assurances of the credibility of the NHRI, when created;
- Strengthen efforts to include NGOs, civil society, and HRDs in the NHRI establishment process by actively listening to their inputs, suggestions, and concerns;
- Take all necessary steps to protect journalists and media workers, ensure media freedom, and review any laws that might be considered restrictive or hindering to the work of media workers; and
- Take all appropriate measures to establish a multi-party system, increasing fairness and transparency in the electoral processes and decision-making.

To the CHRC:

- Strongly consider implementing human rights education to all relevant stakeholders, as part of the establishment of the NHRI.



INDIA

Who Has Silenced the 30-year-old National Human Rights Commission of India (NHRCI)?

Henri Tiphagne and Ashish Reddy¹

The All India Network of NGOs and Individuals Working with National and State Human Rights Institutions (AiNNI)²



Overview of the Human Rights Situation in India

The Indian Constitution grants vast political rights and civil liberties to its citizenry. However, during the assessment period of this report, a range of human rights concerns and discriminatory policies came to the fore. The 2021 and 2022 Freedom House Reports gave India an overall 'partly free' status.³ There were attacks on religious minorities, Adivasis, and other marginalised communities.

“ The period also witnessed the shrinking of civic space with media, human rights defenders (HRDs), and non-governmental organisations (NGOs) being booked under stringent laws.

The situation in places like Kashmir continued to be grim with the continuation of pervasive militarisation and a culture of impunity. Amid all this, the National Human Rights Commission of India (NHRCI) did not play a strong role, mostly remaining silent amid glaring rights violations. This overview section expands on a few overarching issues during this period to provide a brief background into the overall human rights situation in the country.

One of the most concerning issues has been the government's easy misuse of provisions under the Foreign Contributions (Regulation) Act (FCRA), 2010 against civil society organisations (CSOs). In the domains of civil liberties and social justice, several prominent organisations that intervened in instances of state excesses, caste atrocities, discrimination against marginalised communities, communalism, and environmental deterioration have been subjected to arbitrary actions under the FCRA.⁴⁵ Analysis of government data provides a grim picture: since 2011, nearly 29,000 CSOs have had their FCRA license not renewed or cancelled. As of February 2022, 22,489 CSOs continue to have valid FCRA licenses, with many of them awaiting the status of their renewal application. By September 2021, at least ninety international NGOs supporting Indian CSOs have been placed on the government's Prior Reference Category (PRC).⁶

“ The government has, in addition to the use of the FCRA, also taken recourse to initiate criminal proceedings being investigated by the Central Bureau of Investigation against certain selected organisations and individuals.⁷

These organisations and several others have been compelled to suspend or shut down temporarily. In the case of the Centre for Promotion of Social Concerns (CPSC, also known as 'People's Watch'), the Indian government, on record in court, has objected to the organisation's engagement with international human rights mechanisms and stated this as a reason for the non-renewal of the FCRA. The NHRCI has unfortunately been a mute spectator and refrained from providing any relief in any of these cases.

1 Henri Tiphagne is the National Working Secretary at AiNNI and Advocate Ashish Reddy assisted in the research of this chapter.

2 The All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) is a forum initiated by People's Watch, Madurai, along with many activists and organisations from across the country. The objective of the forum is to monitor human rights institutions like the National Human Rights Commission of India [NHRCI], the National Commission for Women [NCW], National Commission for Minorities [NCM], National Commission for Protection of Child Rights [NCPCR], National Commission for Scheduled Castes [NCSC], National Commission for Scheduled Tribes [NCST], Central Information Commission [CIC], Chief Commissioner for Persons with Disabilities [CC-PWDs], National Commission for Safai Karamcharis [NCSK], and their state counterparts to ensure they comply with the Paris Principles and their founding law and to activate them.

3 "Freedom in the World 2022/India," Freedom House, 2022, <https://freedomhouse.org/country/india/freedom-world/2022> and "Freedom in the World 2023/India," Freedom House, 2023, <https://freedomhouse.org/country/india/freedom-world/2023>.

4 To name a few, Lawyers Collective, Anhad, Sabrang Trust, Centre for Promotion of Social Concerns (CPSC, also known through its program unit People's Watch), Navsarjan Trust, Commonwealth Human Rights Initiative, Oxfam India, Greenpeace India, and Amnesty International India.

5 "CSOs That Dare Speak Truth to Power Are Attacked with Politically Motivated Charges," Civicus, February 23, 2021, <https://www.civicus.org/index.php/media-resources/news/interviews/4906-india-civil-society-organisations-that-dare-speak-truth-to-power-are-attacked-with-politically-motivated-charges>.

6 "Centre Restricts Funding for 10 NGOs Working on Environment, Child's Rights," The Wire, September 14, 2021, <https://thewire.in/government/union-govt-restricts-funding-for-10-ngos-working-on-environment-childs-rights-report>.

7 "India: Government Should Stop Harassing Human Rights Groups," OMCT, January 18, 2022, <https://www.omct.org/en/resources/statements/india-should-stop-using-abusive-foreign-funding-law-end-harassment-against-peoples-watch-other-rights-groups>.



Some of the cases that the NHRCI failed to investigate were: the arrest and detention of HRD Khurram Parvez; the detention of Kashmiri politician, Waheed Para; and the restrictions on freedom of movement and a total communications blackout for two days to prevent a mass gathering at the separatist leader Syed Ali Shah Geelani's funeral (who died in detention under preventive detention law).⁸ Khurram Parvez, the Srinagar-based Programme Coordinator of the Jammu and Kashmir Coalition of Civil Society (JKCCS),⁹ and other members of the coalition were reportedly subject to travel bans, ill-treatment, and arbitrary detention on counter-terrorism charges in relation to their cooperation with the United Nations (UN).¹²

In November 2022 and March 2023, the UN Special Procedures mandate holders called for Parvez's release, noting that his arrest and detention had a chilling effect on others and urged authorities to end the crackdown on civil society in the region.¹³ On 20 March 2023, the National Investigation Agency (NIA) arrested a former associate of the JKCCS, HRD, journalist, and a Minorities Fellow of the UN Office of the High Commissioner for Human Rights (OHCHR), Irfan Mehraj, and transferred him to New Delhi under the same case.¹⁴

In the case of Henri Tiphagne, the Executive Director of the CPSC, Special Procedures mandate holders have raised concern over the use of the FCRA to restrict the work of NGOs seeking to cooperate with the United Nations and have noted that the postponement and further non-renewal of CPSC's license was a case of reprisal against Tiphagne in this context.¹⁵

NHRC's Mandate to Protect Human Rights

The NHRCI (or NHRC) is an independent body established by the Protection of Human Rights Act (PHRA), 1993, which came into force on 8 January 1994 and presently governs the National Human Rights Commission. The PHRA was amended in 2006 and 2019. The NHRCI was initially due for its accreditation before the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) in March 2023. However, after considering the NHRCI's status, performance, and compliance, the SCA decided to defer the accreditation process to March 2024.

8 "UN Experts Express 'grave Concern' over Sehrai's Death in Custody," *The Kashmir Walla* (blog), September 11, 2021, <https://thekashmirwalla.com/un-experts-express-grave-concern-over-sehrais-death-in-custody/>.

9 "A/HRC/42/30," para. 59, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F42%2F30&Language=E&DeviceType=Desktop&LangRequested=False>.

10 "A/HRC/48/28," paras. 62–64, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.

11 "A/HRC/51/47," paras. 81–82, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F47&Language=E&DeviceType=Desktop&LangRequested=False>.

12 "One Year in Detention: UN Experts Demand Immediate Release of Kashmiri Activist Khurram Parvez," OHCHR, November 22, 2022, <https://www.ohchr.org/en/press-releases/2022/11/one-year-detention-un-experts-demand-immediate-release-kashmiri-activist>.

13 "India: UN Body Petitioned over Ongoing Detention of Prominent Kashmiri Human Rights Defender," International Federation for Human Rights, November 22, 2022, <https://www.fidh.org/en/region/asia/india/india-un-body-petitioned-over-ongoing-detention-of-prominent-kashmiri>.

14 "Human Rights Defender and Kashmiri Journalist Irfan Mehraj Arrested by the National Investigation Agency under India's Anti-Terror Legislation," *Front Line Defenders*, March 23, 2023, <https://www.frontlinedefenders.org/en/case/human-rights-defender-and-kashmiri-journalist-irfan-mehraj-arrested-national-investigation>.

15 "A_HRC_51_47_AdvanceEditedVersion.Docx," paras. 84–85, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsite%2Fdefault%2Ffiles%2Fdocuments%2Fhrbodies%2FhrCouncil%2Fregularsession%2Fsession51%2F2022-10-14%2FA_HRC_51_47_AdvanceEditedVersion.docx&wdOrigin=BROWSELINK.



Independence:

In March 2023, the SCA recommended that the NHRCI advocate for the completion of the appointment process to fill remaining vacancies in its leadership body and for further amendments to the PHRA to ensure a pluralistic balance in its composition and staff, in particular by ensuring that diversity of the Indian society is represented including, but not limited to, religious or ethnic minorities.¹⁶ As of December 2022,¹⁷ there was no woman in the leadership body of the NHRC and two member positions continued to remain vacant.¹⁸

“ The SCA further stated that “of the 393 staff positions listed by the NHRC as its staff component, only 95 are held by women” and that “the selection process currently enshrined in the PHRA is not sufficiently broad and transparent.”¹⁹

In particular, it does not require the advertisement of vacancies, nor specify the process to achieve broad consultation and/or participation in the application, screening, selection, and appointment processes.²⁰

16 “Report and recommendations of the session of the Sub-Committee on Accreditation (SCA),” GANHRI-SCA, February and March 2023, <https://ganhri.org/wp-content/uploads/2023/04/SCA-Report-First-Session-2023-EN.pdf>

17 Smt. Jyotika Kalra, former Member of NHRCI demerited the office on 4 April 2022, “Former Chairpersons and Members,” National Human Rights Commission India,, https://nhrc.nic.in/about-us/composition_prev.

18 “Composition of Commission | National Human Rights Commission India,” <https://nhrc.nic.in/about-us/composition-of-commission>.

19 *Ibid.*

20 *Ibid.*

Manipur Violence and NHRCI's Silence

In May 2023, state-sponsored ethnic violence in Manipur led to 140 deaths and the displacement of 60,000 people.²¹ As the clashes spread, villages were burned down,²² and more than 250 churches belonging to the Kuki community were destroyed.²³ Kuki women began to be systematically targeted in the attacks, which included rape,²⁴ torture, and assault, followed by beheadings in the majority of the cases.²⁵

HRDs and journalists condemning the violence were targeted. A First Information Report (FIR) under the UAPA was lodged against three women HRD members of a fact-finding committee that was constituted to investigate the situation. They were charged for condemning the violence as “state-sponsored.”²⁶ An FIR was also registered against the Editors Guild for undertaking and publishing a fact-finding report despite being asked by the Indian Army to do so.²⁷

“ The NHRCI failed to take cognisance of, investigate, and intervene in the gross human rights violations taking place, till the comments from the Prime Minister of India and the Chief Justice of India on the matter.”²⁸

21 Hannah Ellis-Petersen, “Manipur: Why Is There Conflict and How Is the Government Responding?,” *The Guardian*, July 21, 2023, <https://www.theguardian.com/world/2023/jul/21/manipur-india-why-is-there-conflict-and-how-is-the-government-responding>.

22 Angshuman Choudhury, “Targeting of Kukis the Main Reason behind Manipur Violence,” June 27, 2023, <https://frontline.thehindu.com/the-nation/marginalisation-of-kukis-the-main-reason-behind-manipur-violence/article67000979.ece>.

23 Umanand Jaiswal, “Manipur | 253 Churches Burnt down during Continuing Unrest in Manipur: Indigenous Tribal Leaders’ Forum,” *The Telegraph Online*, June 13, 2023, <https://www.telegraphindia.com/north-east/253-churches-burnt-down-during-continuing-unrest-in-manipur-indigenous-tribal-leaders-forum/cid/1944597>.

24 Cherylann Mollan, “Manipur: India Outrage after Women Paraded Naked in Violence-Hit State,” *BBC News*, July 20, 2023, <https://www.bbc.com/news/world-asia-india-66253389>.

25 “Manipur: More Horrific Cases Of Beheading And Assault Of Women Surface,” *Outlook India*, July 22, 2023, <https://www.outlookindia.com/national/manipur-churachandpur-kangpokpi-violence-beheading-rape-murder-women-news-304791>.

26 Sukrita Baruah, “For Calling Manipur Violence State-Sponsored, CPI’s Annie Raja, 2 Others Face FIR,” *The Indian Express (blog)*, July 10, 2023, <https://indianexpress.com/article/india/manipur-violence-state-sponsored-cpi-annie-raja-fir-8824551/>.

27 Vijaita Singh, “Manipur Police File Case against Editors Guild for ‘Promoting Enmity between Different Groups,’” *The Hindu*, September 4, 2023, <https://www.thehindu.com/news/national/fir-filed-against-editors-guild-members-theyre-trying-to-provoke-clashes-in-manipur-cm-biren-singh/article67269414.ece>.

28 “NHRC Asks Manipur Government to Stop Violence and Human Rights Violations Inform on the Relief and Rehabilitation of the Victims of Violence Expedite ATRs Awaited in Specific Complaints,” *NHRCI*, July 25, 2023, <https://nhrc.nic.in/media/press-release/nhrc-asks-manipur-government-stop-violence-and-human-rights-violations-inform>.

Pluralism:

The SCA stated that the NHRCI's current composition is incomplete with three of the six positions vacant.²⁹ In its report, the SCA also noted its concern about the NHRCI's appointment process as being neither consultative nor transparent. Additionally, it stated that the selection committee does not provide for the formal involvement of CSOs in the process.³⁰

It is concerning that no changes or progress have been made either by the NHRCI or the Government of India in this regard.

“ At a time when there have been continuous and targeted attacks on religious minorities in India, the lack of diverse representation in the NHRCI is of serious concern.

Investigation:

The NHRCI's investigations are usually undertaken by its Investigation Division, which comprises a very small team.³¹ However, when the cases are entrusted to the team, investigations are completed swiftly, but after that, the passing of final recommendations could take years. In some cases, the details of the investigation were never shared with the complainant.³² Another source of investigation is through its Special Rapporteurs or Special Monitors, which is also weak. The NHRCI Investigation Division is mandated to visit places of alleged human rights violations, but they rarely exercise this power. For example, when prison officials installed a CCTV camera in front of Professor Sai Baba's jail cell (covering the entire cell, including the toilet and bathing area), Human Rights Defenders Alert India (HRDA) filed an urgent appeal before the NHRCI to look into the harassment of the renowned academic and HRD. The Indian courts convicted Professor Sai Baba for life imprisonment in March 2017 under the UAPA and sedition charges, despite there being no direct evidence for alleged links to banned groups. He is 90% disabled and lives under extremely harsh prison conditions, with little or no access to the medical facilities he requires.³³ However, the NHRCI failed to exercise its power to visit the detention centres and investigate these human rights violations.³⁴

“ The NHRCI's investigation team lacks multiple specialities and is composed only of members of the police force.

It currently does not have the expertise of individuals with a background in forensics and medicine and experienced HRDs who have engaged in human rights fact-finding missions for decades.

29 "Report and recommendations of the session of the Sub-Committee on Accreditation (SCA)," GANHRI-SCA, February and March 2023, <https://ganhri.org/wp-content/uploads/2023/04/SCA-Report-First-Session-2023-EN.pdf>

30 Ibid.

31 The Investigation Division is headed by an officer of the rank of Director General of Police, assisted by one Deputy Inspector General and three Senior Superintendents of Police. Each Senior Superintendent of Police heads a group of investigative officers (comprising of Deputy Superintendents of Police and Inspectors), "Specialized Divisions and Staff | National Human Rights Commission India," NHRCI, https://nhrc.nic.in/about-us/organization-structures/specialized_divisions_and_staff.

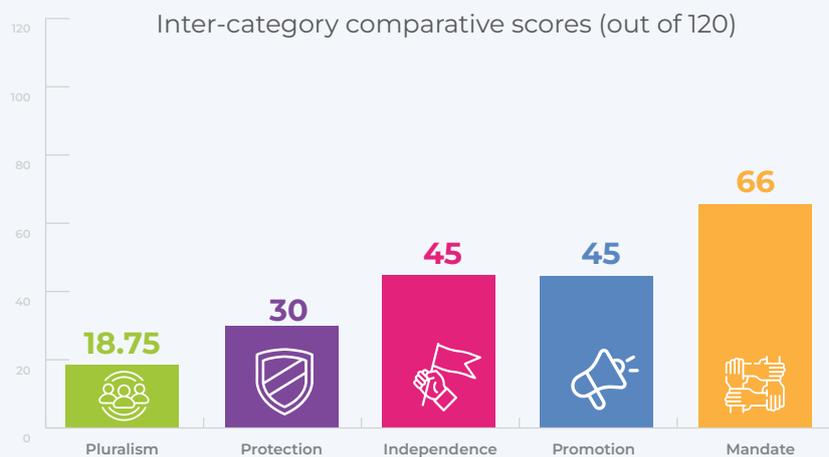
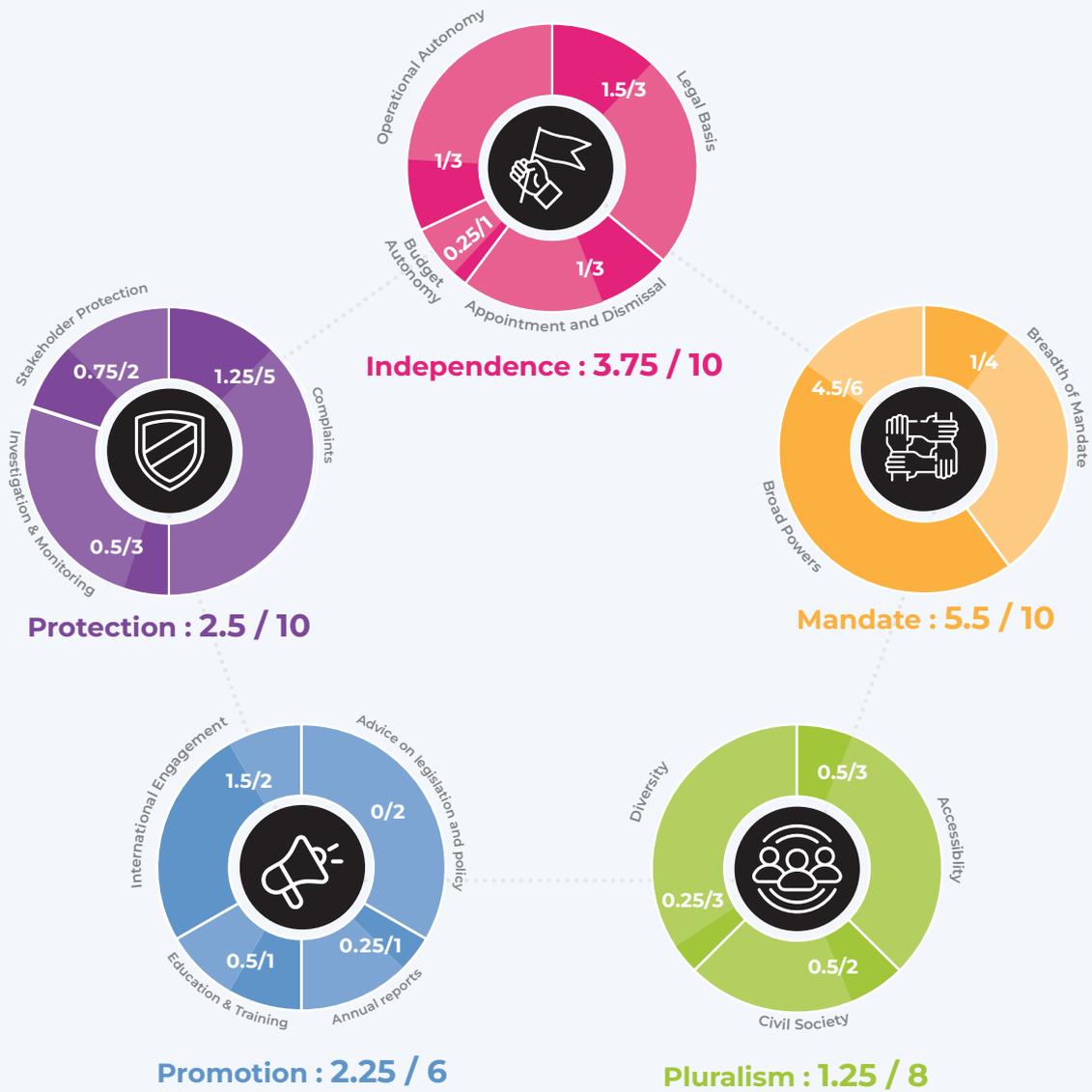
32 NHRC Diary no 87890/CR/2018, Case file No. 907/22/41/2018, Complaint date 23 May 2018.

33 Refer to NHRC case no. 1497/13/17/2022.

34 Ibid.



Category and sub-category-wise scores for NHRC India





NHRCI's Power to Review of Laws:

The NHRCI has never used its powers to make recommendations for human rights safeguards in national legislation despite repeated calls to amend the FCRA. The Government also enacted the Foreign Contribution (Regulation) Amendment Act,³⁵ which provided justification for the government to cancel and suspend the licenses of certain CSOs/NGOs for receiving foreign funding as prohibited by the law. Through the Amendment Act, the government restricted funding of ten international organisations that work on climate change, environment, or child labour using the FCRA.³⁶

Complaint Disposal:

The NHRCI has the largest staffing in its complaint-handling programme, with five divisions, namely Law; Investigation; Administration; Training and Policy Research; and Projects and Programmes Divisions.³⁷ The Law Division and Investigation Division deal with only one of the ten functions of the Commission.³⁸

“ The NHRCI registered 1,06,022 complaints and disposed of 96,257 complaints in 2021. In 2022, the NHRCI registered 1,12,339 complaints and disposed of 1,22,147 complaints. ”³⁹

The exact details of the breakdown of the disposed complaints are not available, as the annual reports of 2020-2021 and 2021-2022 are still not published.⁴⁰ This is despite repeated GANHRI-SCA recommendations in the past that they should be made available.⁴¹

However, the trend has been that the majority of the complaints that the NHRCI receives are disposed of in limine, speaking volumes about the state of the complaints-handling programme. For example, in 2021, the HRDA filed 100 complaints on violations related to HRDs, of which seventy three cases were closed. In 2022, the HRDA filed eighty one complaints and forty seven cases were closed. The NHRCI closed most of these cases claiming that they were sub judice before Courts/Tribunals or have transferred them to the respective State Human Rights Commissions, and that they find no requirement for further action, after having issued directions to the concerned authorities.

“ The most shocking example of an NHRCI investigation is with reference to sixteen persons killed in a peoples' protest in the city of Thoothukudi in Tamil Nadu due to and subsequent to police action on 22 May 2018. ”⁴²

Though the NHRCI took suo moto notice of this case on 23 May 2018,⁴³ other complainants linked to this case (that were undertaken by civil society) were tagged to the suo moto complaint. The NHRCI was quick to bring a final disposal to this complaint on 25 October 2018, solely based on the then Government of Tamil Nadu's response dated 26 September 2018.⁴⁴

Despite several efforts to reopen this case undertaken by the complainant and since the NHRCI did not make any of its investigation reports publicly available, the complainant was forced to move to the Madras High Court. ^{[45][46]} Only then was the NHRCI's investigation report made public and that too in a sealed cover to the High Court. The High Court directed that a copy of the same be handed over to the complainant.⁴⁷

35 Foreign Contribution (regulation) (Amendment) Act, 2020, https://fcraonline.nic.in/home/PDF_Doc/fc_amend_07102020_1.pdf.

36 Suhasini Haider, "Govt. Curbs Funding for 10 Climate Change, Child Labour NGOs," *The Hindu*, September 13, 2021, <https://www.thehindu.com/news/national/govt-curbs-funding-for-10-climate-change-child-labour-ngos/article36437596.ece>.

37 "Organization Chart | National Human Rights Commission India," NHRCI, <https://nhrc.nic.in/document/organization-chart>.

38 "Specialized Divisions and Staff | National Human Rights Commission India," NHRCI, https://nhrc.nic.in/about-us/organization-structures/specialized_divisions_and_staff

39 "Dashboard," NHRCI, <https://nhrc.dashboard.nic.in/DashboardF.aspx>.

40 "Annual Reports | National Human Rights Commission India," NHRCI, <https://nhrc.nic.in/publications/annual-reports>.

41 "GANHRI Sub-Committee on Accreditation Report" Page 21, GANHRI, November 2017, <https://ganhri.org/wp-content/uploads/2019/11/SCA-Report-November-2017-ENG.pdf>.

42 "Death Toll Rises to 13 in Tuticorin Police Firing," *The Times of India*, May 24, 2018, <https://timesofindia.indiatimes.com/city/madurai/death-toll-rises-to-13-in-tuticorin-police-firing/articleshow/64301103.cms>.

43 NHRC Diary no 87890/CR/2018, Case file No. 907/22/41/2018, Complaint date 23 May 2018.

44 "Compilation of All Case Documents in the Sterlite Case," 2023, <https://ainni.in/wp-content/uploads/2023/09/Part-1-Legal-NHRC-Sterlite-Compilation-of-all-case-documents-WP-MD-10526-of-2021.pdf>.

45 Henri Tiphagne, Petitioner and Party in Person, Before Madras High Court W.P(MD) No. 24661/2021.

46 Writ Petition Case No. 10526/2021.

47 W.P Case No. 10526/2021, order of Madras High Court dated 25 June 2021, 9 August 2021, and 13 September 2021.



Despite this order, the NHRCI's only effort was on 23 September 2021 to ask its Investigation and Research Divisions to look into the complainant's applications to reopen the complaint. After receiving their respective reports on 24 September 2021, once again without issuing a notice to the complainant and despite the High Court petition being pending, on 4 October 2021, the NHRCI, under the Chairmanship of Justice Arun Mishra, decided not to open the closed petition relating to the "Vedanta killings". Today, the NHRCI remains a mute spectator before a court of law even after a judicial commission of enquiry has specifically indicted seventeen named police and revenue officials.⁴⁸

The Situation of HRDs in India

The 2021 Front Line Defenders Global Analysis documents that India, among all countries, has the fourth-highest number of HRDs killed in 2021.⁴⁹

“ HRDs from religious minorities, student activists, lawyers, academics, journalists, Dalit and indigenous rights defenders, and those based in militarised regions, such as Kashmir, Chhattisgarh, and states in Northeast India, have been especially vulnerable to attack and imprisonment.

A range of laws, particularly anti-terror and preventive detention laws, foreign funding regulations, cyber security laws, and 'offences against the state' in the Indian Penal Code, such as sedition, are being used routinely to persecute defenders.⁵⁰ Section 43D-2 of the anti-terror law, the UAPA allows for the period for investigation (i.e., the time allowed by law to the police to file a chargesheet or final report) to extend up to a maximum of 180 days for offences punishable with death, imprisonment for life, or imprisonment for a term not less than ten years. Under ordinary criminal law, the maximum period is ninety days for this threshold of offences. Preventive detention laws, such as the National Security Act (NSA) and Kashmir's Public Safety Act (PSA) enable the political executive to pass detention orders, allowing for detention up to twelve months and more. The lack of judicial oversight in this system results in recurring detention often over years. It is extremely difficult to obtain bail for those held under the UAPA, even where there are health risks and/or delays in starting the trial. Courts are inconsistent in exerting strong judicial oversight. There is a visible pattern in several cases of HRDs being implicated in multiple criminal cases, with an ultimate UAPA charge that ensures prolonged custody. Or, even in cases where bail is granted through court, new cases can be filed to prevent release.

48 Pon Vasanth B.A, "The Thoothukudi Firing Inquiry Report," *The Hindu*, October 27, 2022, <https://www.thehindu.com/news/national/tamil-nadu/explained-the-thoothukudi-firing-inquiry-report/article66062303.ece>.

49 "Global Analysis 2021," *Front Line Defenders*, February 23, 2022, <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0>.

50 "Human Rights in India," *Amnesty International*, 2022, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/india/report-india/>.

In many cases, the HRDs remain in custody. One example is of Hidme Markam⁵¹ and sixteen other HRDs who were jailed under the UAPA in the Elgar Parishad case (popularly known as the “Bhima Koregaon case”),⁵² in which eighty-four-year-old Jesuit priest Stan Swamy was one of the accused. He was incarcerated for nine months and died in custody after contacting COVID-19 due to the lack of effective and timely medical treatment in jail and the routine denial of bail.⁵³ The NHRCI closed the case without taking any action.⁵⁴

In the same case, the NHRCI had no role whatsoever in intervening on behalf of many globally acclaimed HRDs such as Sudha Bharadwaj,⁵⁵ Anand Teltumbde,⁵⁶ Gautam Navlakha,⁵⁷ Vernon Gonsalves, Shoma Sen and others.⁵⁸

51 In March 2021, Hidme Markam, a WHRD, was arrested while participating in an event to mark International Working Women's Day in Dantewada, Chhattisgarh, by Chhattisgarh police on a slew of charges, including under the UAPA. “Hidme Markam | USCIRF,” 0407:18:03 2023, <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/hidme-markam>.

52 In this case, the state police arrested HRDs and conducted investigations, when the Bharatiya Janata Party was in power in Maharashtra. The state police were conducting the arrests and investigation. In 2020, a coalition government led by the Shiv Sena won the state elections. After taking the reins, the new government announced it will thoroughly review this case. Following this, the central government abruptly transferred the investigation to the National Investigation Agency without the state government's consent. “Bhima Koregaon Case Handed over to NIA, Centre Didn't Take Our Consent, Alleges Maharashtra Minister,” Scroll, January 24, 2020, <https://scroll.in/latest/951029/bhima-koregaon-case-handed-over-to-nia-centre-didnt-take-our-consent-alleges-maharashtra-minister>.

53 “India: Death in Custody of Priest Stan Swamy Is Devastating – UN Expert,” OHCHR, 15 July 2021, <https://www.ohchr.org/en/press-releases/2021/07/india-death-custody-priest-stan-swamy-devastating-un-expert>.

54 NHRC Case No 1036/34/16/2020, closed on 25 January 2021. “The alleged accused of NIA namely, Fr Stan Swamy was medically examined soon after the arrest and before sending him to the Jail. He was declared oriented to time, place & person. He was declared physically and mentally fit by the doctor. The Commission has considered all the material placed on record. In view of the above, since the accused is under judicial custody, he may approach the trial court for seeking any further relief on grounds of his frail health. The matter is sub-judice before the court therefore Commission finds no further reason to interfere in the matter. The case is closed.”

55 “Sudha Bharadwaj Marks Her Fourth Birthday In Prison Today,” Countercurrents, November 1, 2021, <https://countercurrents.org/2021/11/sudha-bharadwaj-marks-her-fourth-birthday-in-prison-today/>.

56 “Anand Teltumbde Turns 71 in Jail,” Pen News India (blog), July 15, 2021, <https://pennewsindia.com/anand-teltumbde-turns-71-in-jail/>.

57 “Bhima Koregaon Case: SC Allows Plea by Navlakha, Grants House Arrest for Month,” The Indian Express (blog), November 10, 2022, <https://indianexpress.com/article/cities/mumbai/gautam-navlakha-house-arrest-supreme-court-nia-8260324/>.

58 “The Bhima Koregaon 16: Which Activists Were Imprisoned For ‘Waging War Against Government Of India?’” Outlook India, July 28, 2023, <https://www.outlookindia.com/national/bhima-koregaon-16-which-activists-were-imprisoned-for-waging-war-against-government-of-india--news-306461>.

The NHRCI failed to take any actions by utilising their power of intervention under Section 12 (b) of the PHRA. They also continuously remained a silent spectator when Teesta Setalvad, a recipient of the Nuremberg International Human Rights award, was arrested pursuant to a judgement of the Supreme Court, where she was accused of fabricating evidence and tutoring the witness in a 2002 riots case.⁵⁹

“ The NHRCI's powers under Section 12(b), were once again not used to protect well-recognised, internationally acclaimed HRDs.

Conclusion

The NHRCI's independence from any external influence and interference, supported by structural changes, is necessary to give meaning to the fundamental rights enshrined in the Indian Constitution and the human rights that India is obligated to uphold under international law. The flawed appointment and selection process, lack of composition pluralism, lack of independence in the investigation team and appointment of the secretary-general are a few recommendations made by the GANHRI-SCA. Remaining a mute spectator to the gross human rights violations in the state of Manipur and its failure to protect the vulnerable HRDs and journalists who are fighting for the environment, and Dalit, women, and minority rights, raises the question: “Who has silenced the 30-year-old NHRCI?”

The gross inadequacy of the NHRCI's responses to the serious deterioration of the human rights situation in India cannot be effectively addressed without a strong Commission that is ready to defend human rights victims and civil society from government abuse.

59 “Supreme Court Protects Activist Teesta Setalvad from Arrest for a Week, Stays Gujarat HC Order,” Hindustan Times, July 1, 2023, <https://www.hindustantimes.com/india-news/supreme-court-refuses-to-grant-interim-relief-to-teesta-setalvad-after-gujarat-hc-denied-her-bail-101688218355343.html>.



Recommendations

To the Government of India:

- Amend the Protection of Human Rights Act, 2019, to include a stronger diversity requirement for the composition of the NHRC following all GANHRI – SCA recommendations from 2011, 2016, 2017 and 2023;
- Ensure that the three vacancies of the NHRCI members are filled immediately, especially the single vacancy for a woman; and
- Encourage and support other thematic NHRIs in India to also apply for membership in GANHRI, so that the glory of India's composition through such NHRIs will not only be visible to the global community but also each of these institutions will become Paris Principles-compliant. India's voting rights, however, can always remain with the NHRCI within GANHRI.

To the NHRCI:

- Ensure that the three vacancies for NHRCI members are filled immediately;
- Publicly appeal to the Government of India to implement GANHRI-SCA's recommendations from 2011, 2016, 2017 and 2023;
- Ensure that in all cases of complaints-handling, where the NHRC chooses to take suo moto cognisance and where there are complaints relating to the same violation preferred by a third party, an NGO, or an HRD platform, the complainants are continually kept informed and engaged in the progress made in all suo moto cases;
- Include non-police personnel with professional capabilities in the area of forensic science, medicine, prosecution experience, and knowledge of criminology and psychology within the NHRCI's investigation wing. This alone will lead to a human rights investigation team rather than a crime investigation team as it currently functions; and
- Ensure that for all international training programmes and meetings that the Asia Pacific Forum of NHRIs (APF) or GANHRI conducts, the deemed members of the NHRCI⁶⁰ are provided opportunities, which has not been done in the past 30 years.

To the APF and GANHRI:

- Carefully review the 2023 SCA report on the NHRCI and initiate appropriate actions towards ensuring that the NHRCI complies with the Paris Principles and recommendations made in the SCA reports of 2011, 2016, 2017 and 2023.
- Ensure that in all future training and meetings, the NHRCI is encouraged to also ensure the participation, on and/or offline, of the deemed members who comprise the Full Commission of the NHRCI.

⁶⁰ The National Commission of Women; the National Commission of Minorities; the National Commission for Protection of Child Rights; the National Commission for Scheduled Castes; the National Commission for Scheduled Tribes; the National Commission for Safai Karamcharis; the National Commission for Backward Classes; the Central Information Commission; and Chief Commissioner of Persons with Disabilities.



INDONESIA

Limited Authority of the National Human Rights Commission Amid the Worsening Condition of Human Rights in Indonesia

Nadine Sherani Salsabila and Rozy Brilian Sodik¹

The Commission for the Disappeared and Victims of Violence (KontraS)²



Overview of the Human Rights Situation in Indonesia

Despite a transition towards democracy over the years, from Suharto's authoritarian New Order Regime to President Joko Widodo's term, the human rights situation in Indonesia remains grim and a cause for concern. The Freedom House Index placed Indonesia as 'partly free' in 2022 for its internet freedom as well as for its political rights and civil liberty.³ As KontraS' Human Rights Report 2022 demonstrates,⁴ respect for, and protection and fulfilment of, human rights come across as a lesser priority in comparison to the development of National Strategic Projects and organising international events such as the G20 Summit. Indonesia was the host of the Summit in 2022 and was one of the forum leaders mitigating the short-term and long-term impact of COVID-19 on multiple aspects.⁵

“ In 2022, human rights defenders (HRDs) faced a pattern of silencing of their civil liberties, mainly from state actors.

This included acts of criminalising HRDs, which repressive legislations like the Electronic Information and Transactions (ITE) Law legitimised further. A report from the Southeast Asia Freedom of Expression Network (SAFENet) shows that 393 people have been victims of the ITE Law from 2013 to 2021.⁶ One striking example of the criminalisation of HRDs under this law was the case of Fatia Maulidiyanti and Haris Azhar, whom the Minister of Maritime and Investment Affairs, Luhut Binsar Pandjaitan, reported in September 2021, when they voiced their concerns and shared their research on an online talk show.⁷ On 17 March 2022, the two HRDs were charged under Article 27 of the ITE law and have since been subjected to relentless judicial harassment.⁸

Amid shrinking civic space, the state's commitment to resolving serious human rights violations is questionable. After the Kanjuruhan tragedy (where the police shot tear gas at football fans) resulted in 135 deaths, the Coordinating Ministry for Political, Legal, and Security Affairs stated that it was not a gross human rights violation.⁹ The excessive use of force by security officers towards citizens using tools, batons, and tear gas to 'secure' the crowd, followed by lenient responses from the government, is concerning.

1 Nadine Sherani Salsabila is the Head of International Advocacy and Rozy Brilian Sodik is the Head of Research and Documentation at the Commission for the Disappeared and Victims of Violence (KontraS).

2 KontraS is a human rights-based organisation in Indonesia which was established on March 20, 1998. Formed by a number of civil society organisations and community leaders, KontraS' primary objective is to monitor and advocate human rights violations of enforced disappearances, violence by state apparatus, death penalty, freedom of expression and opinion, protection of human rights defenders, business and human rights, transitional justice, and the Papua gross human rights violation issues. KontraS has also been working hand-in-hand with families of victims and grassroots civil society organisations to seek and achieve justice in Indonesia.

3 "Freedom in the World 2022 – Indonesia," Freedom House, 2022, <https://freedomhouse.org/country/indonesia/freedom-world/2022>.

4 "Catatan Hari Hak Asasi Manusia 2022: HAM dalam Jeratan Kesewenang-wenangan Kekuasaan," KontraS, December 9, 2022, <https://kontras.org/2022/12/09/catatan-hari-hak-asasi-manusia-2022-ham-dalam-jeratan-kesewenang-wenangan-kekuasaan/>.

5 Dr. Temjenmeren Ao, "Indonesia's G20 Presidency: Factors and Priorities that set its Agenda," Indian Council of World Affairs, February 6, 2023, https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=9051&lid=5884.

6 Cindy Mutia Annur, "Hampir 400 Orang Dituntut dengan UU ITE dalam 9 Tahun Terakhir," Databoks, July 7, 2022, <https://databoks.katadata.co.id/datapublish/2022/07/18/hampir-400-orang-dituntut-dengan-uu-ite-dalam-9-tahun-terakhir>.

7 "Indonesia: Government should end the judicial harassment and immediately withdraw arbitrary charges against defenders Fatia Maulidiyanti and Haris Azhar," FORUM-ASIA, September 23, 2021, <https://forum-asia.org/?p=35833>.

8 "Indonesia: Activists on Trial for Criminal Defamation," Human Rights Watch, April 14, 2023, <https://www.hrw.org/news/2023/04/14/indonesia-activists-trial-criminal-defamation>.

9 Salman Muhiddin, "Tragedi Kanjuruhan Bukan Pelanggaran HAM Berat, Mahfud MD: Betul Saya Katakan Itu," Harian Disway, December 28, 2022, <https://harian.disway.id/read/675635/tragedi-kanjuruhan-bukan-pelanggaran-ham-berat-mahfud-md-betul-saya-katakan-itu>.

Torture still prevails and security officers seem to enjoy impunity with no or few repercussions from the government. KontraS noted at least fifty cases of torture between June 2021 and May 2022¹⁰ and fifty-four from June 2022 to May 2023.¹¹ Although Indonesia ratified the Convention Against Torture (CAT) in 1998 from Law No.5 of 1998, the state has not taken any serious steps to eliminate all forms of torture practices. This becomes clear from the fact that Indonesia still lacks adequate legal standards to eliminate all forms of torture practices; rigid mechanisms regarding justice for torture cases; as well as recovery mechanisms for torture victims.

Past gross human rights violations have meant a long wait for justice. The state shows little accountability towards families of those who disappeared and were killed before the 1998 regimes, as well as in other cases such as the Wamena Incident and Jambo Keupok in 2003. Although President Joko Widodo acknowledged twelve past gross human rights violations in Indonesia,¹² there have been no concrete steps to ensure the accountability and settlement that the families of victims have requested.

In such a climate, the role of the National Human Rights Commission of Indonesia (Komisi Nasional Hak Asasi Manusia or 'Komnas HAM') becomes vital to protect, fulfil, and promote human rights in the country. In the following section, the chapter makes an attempt to assess Komnas HAM's performance vis-à-vis its mandate to protect and promote human rights in the country.

10 "Laporan Situasi Praktik Penyiksaan dan Perlakuan atau Penghukuman lain yang Kejam, Tidak manusiawi, atau Merendahkan Martabat Manusia di Indonesia Periode Juni 2021 – Mei 2022," KontraS, June 24, 2022, <https://kontras.org/2022/06/24/laporan-situasi-praktik-penyiksaan-dan-perlakuan-atau-penghukuman-lain-yang-kejam-tidak-manusiawi-atau-merendahkan-martabat-manusia-di-indonesia-periode-juni-2021-mei-2022/>.

11 "Peluncuran Laporan Situasi Praktik Penyiksaan Periode Juni 2022 – Mei 2023 Minim Komitmen dan Normalisasi Kekerasan: Penghapusan Penyiksaan Hanya Angan?" KontraS, June 27, 2023, <https://kontras.org/2023/06/27/peluncuran-laporan-situasi-praktik-penyiksaan-periode-juni-2022-mei-2023-minim-komitmen-dan-normalisasi-kekerasan-penghapusan-penyiksaan-hanya-angan/>.

12 Max Lane, "Widodo Government Acknowledges Gross Human Rights Violations Happened: The Unstoppable Erosion of a Fundamental Taboo," Fulcrum, February 13, 2023, <https://fulcrum.sg/widodo-government-acknowledges-gross-human-rights-happened-the-unstoppable-erosion-of-a-fundamental-taboo/>.

Komnas HAM's Mandate to Protect and Promote Human Rights

Komnas HAM has a mandate determined by Law no. 39 of 1999 Concerning Human Rights. The law states that Komnas HAM should aim to develop conditions conducive to upholding human rights in accordance with Pancasila, the 1945 Constitution, the Charter of the United Nations, as well as the Universal Declaration of Human Rights. It should also increase the protection and enforcement of human rights for the full development of the Indonesian people and their ability to participate in various areas of life.¹³ The mandate of this law has led to a focused vision,¹⁴ mission,¹⁵ and strategic issues that the Commission undertakes.

“With the change of leadership for the 2022-2027 cycle,¹⁶ there is a visible change and shift in the priorities vis-à-vis the strategic issues that the Commission plans to focus on in its tenure.

13 Peraturan.go.id, "Law No.39 of 1999 on Human Rights," n.d, https://www.peraturan.go.id/files2/uu-no-39-tahun-1999_terjemah.pdf.

14 "Terwujudnya Komnas HAM yang Kredibel untuk Kemanusiaan yang Adil dan Beradab," Komnas HAM, June 5, 2023, [https://www.komnasham.go.id/files/20230605-laporan-tahunan-komnas-ham-ri--\\$WMOQ2Q.pdf](https://www.komnasham.go.id/files/20230605-laporan-tahunan-komnas-ham-ri--$WMOQ2Q.pdf).

15 "Mengarusutamakan norma HAM dalam penyelenggaraan negara, Membangun keadaban HAM masyarakat, Memperkuat peran strategis Komnas HAM di tingkat nasional dan internasional, Mewujudkan Komnas HAM sebagai lembaga yang mandiri dan profesional dalam memastikan pemenuhan, perlindungan dan penegakan HAM," Komnas HAM, n.d, <https://www.komnasham.go.id/index.php/about/2/visi-amp-misi.html#:~:text=VISI%20%3A,Pancasila%20diperlukan%20kelembagaan%20yang%20terpercaya.>

16 Suharto Muhammad Zulfikar, "Atnike Nova Sigiro Appointed Rights Body Chief for 2022 - 2027," Antara News, November 14, 2022, <https://en.antaranews.com/news/260205/atnike-nova-sigiro-appointed-rights-body-chief-for-2022-2027-term>.



Previously, there were seven priorities and strategic issues that ended with the previous Commission's term in 2022. After being elected, the new commissioners announced nine priority issues that will be implemented for at least the first 6 months of their tenure. These include:¹⁷

1. Gross Human Rights Violations;
2. Human Rights Issues in Papua;
3. Agrarian Conflict;
4. Marginalised Groups [Persons with Disabilities, Migrant Workers, Indigenous Peoples, and Domestic Workers (PRT)];
5. Human Rights Defenders Protection;
6. Freedom of Religion and Belief;
7. Business and Human Rights;
8. Anticipation of the 2024 Election;
9. Monitoring of the National Human Rights Action Plan 2022-2024.

The choice of these issues deserves to be appreciated since several themes truly reflect national human rights problems that must be resolved and addressed quickly. However, it must be emphasised that, at the time when this report was being drafted, Komnas HAM had not done much to accelerate the resolution of these cases/issues within the framework of the mandate to protect and promote human rights.

In order to further assess Komnas HAM, it is essential to put a spotlight on the commissioners themselves as well as their backgrounds. In October 2022, following a selection and appointment process,¹⁸ a new set of commissioners was elected, with Atnike Nova Sigiro as the Chair. Her appointment is a very significant and positive development. She comes with a substantial track record of human rights work at national and international levels and has a strong civil society background.¹⁹ Given the years of grassroots experience and the relevant human rights-related organisational affiliations, Atnike comes across as the appropriate candidate for the position who can contribute to and become a bridge between civil society and the government to meaningfully promote and protect human rights in Indonesia.

In October 2022, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI-SCA) reaccredited Komnas HAM as an 'A' status NHRI for being fully compliant with the Paris Principles.²⁰ The Commission did not receive any substantial notes or recommendations in the SCA's report in October 2022. The SCA observed that Komnas HAM should maintain more of its independence by advocating for the formalisation and application of a consistent and permanent process for the selection and appointment of its members.²¹ As per the mandate enshrined in law (Law no. 26 of 2000) concerning Human Rights Courts, Komnas HAM can carry out investigations²² on state and private actors, but this has not been executed to an optimal level. This authority is specifically intended for gross violations of human rights. However, the authority for this pro justitia investigation is limited to only two criminal acts, namely genocide and crimes against humanity.

¹⁷ "Laporan Tahunan Komnas HAM RI 2022: Capaian, Tantangan & Optimisme Melanjutkan Langkah dalam Pemajuan & Penegakan HAM," Komnas HAM, July 17, 2022, [https://www.komnasham.go.id/files/20230605-laporan-tahunan-komnas-ham-ri--\\$WMOQ2Q.pdf](https://www.komnasham.go.id/files/20230605-laporan-tahunan-komnas-ham-ri--$WMOQ2Q.pdf).

¹⁸ "Pendaftaran Calon Anggota Komnas HAM RI Diperpanjang," Komnas HAM, April 3, 2022, <https://www.komnasham.go.id/index.php/news/2022/3/4/2092/pendaftaran-calon-anggota-komnas-ham-ri-diperpanjang.html>.

¹⁹ Atnike Nova Sigiro was one of the founders of Lokataru, an organisation which works for the realisation of a collaborative and meaningful positive engagement among state, communities, and private sectors. She also worked as the ASEAN and East Asia Human Rights Advocacy Program Manager with FORUM-ASIA between 2013 and 2017. Between 2000 and 2010, she was the Program Coordinator for the Institute for Community Studies and Advocacy (ELSAM).

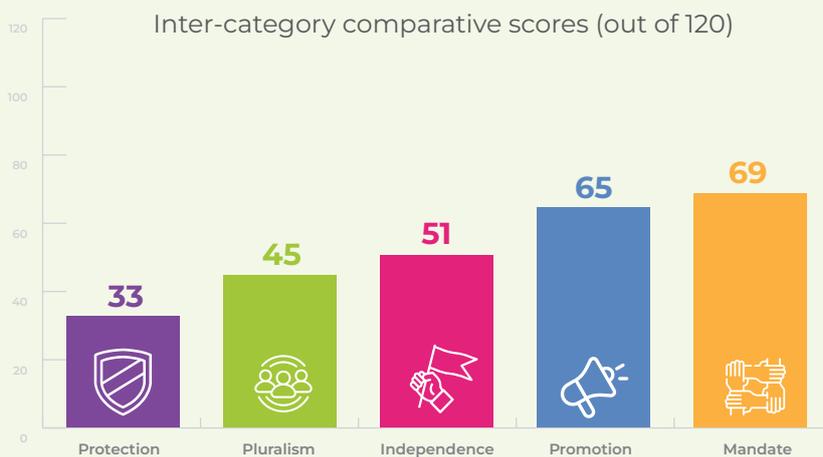
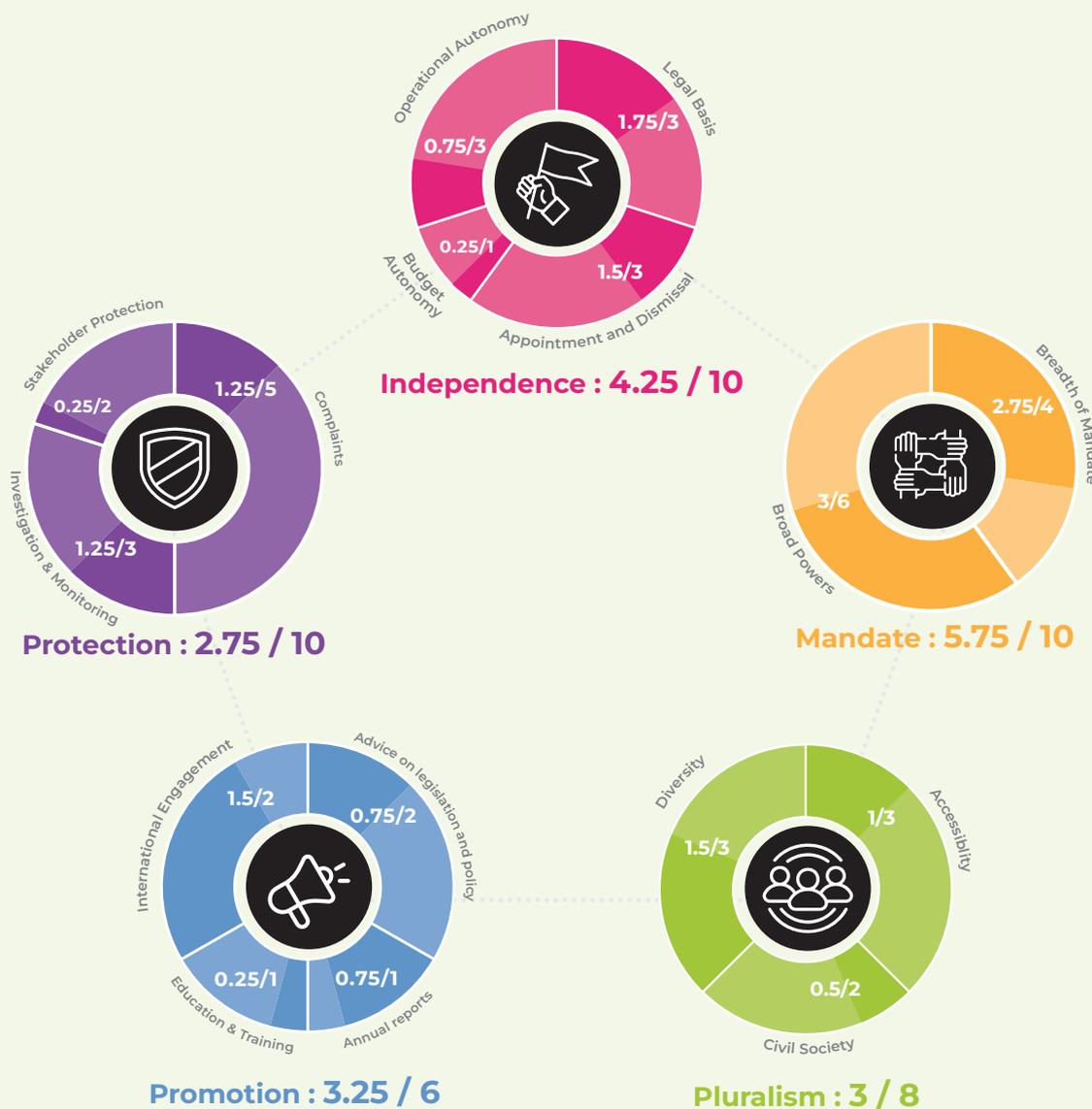
²⁰ "Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)", OHCHR, October 3, 2022, <https://www.ohchr.org/sites/default/files/documents/countries/nhri/ganhri/2022-11-08/SCA-Adopted-Report-October-2022-EN.pdf>.

²¹ *Ibid.*

²² "Law No. 26 Year 2000 - Establishing the Ad Hoc Human Rights Court," Police Human Rights Resources, September 22, 2005, <https://policehumanrightsresources.org/content/uploads/2019/07/Law-26-2000-Act-on-the-Human-Rights-Courts-2000-Eng.pdf?x39143#:~:text=Article%2034-.1,apparatus%20provided%20free%20of%20charge>.



Category and sub-category-wise scores for KOMNAS HAM, Indonesia





In January 2023, President Widodo formally acknowledged twelve past major cases in the context of gross human rights violations, namely:²³

1. Peristiwa (Indonesian mass killings) (1965-1966)
2. Mysterious Shootings (1982-1985)
3. Talangsari Lampung incident (1989)
4. Rumoh Geudong and Pos Sattis Incidents in Aceh (1998)
5. Incidents of Enforced Disappearances (1997-1998)
6. May 1998 Riots
7. Trisakti Semanggi Events 1 & 2 (1998-1999)
8. Incident of the Murder of a Witch Doctor (1998-1999)
9. KAA Intersection Incident in Aceh (1999)
10. Wasior Incident in Papua (2001-2002)
11. Wamena Papua Incident (2003)
12. Jambo Keupok Aceh Incident (2003)

The incidents of the Mysterious Shootings involved unlawful killings, instances of torture, and individuals being forcibly removed from public view. Yosep Adi Prasetyo, who presided over the ad hoc team responsible for probing violations of human rights, asserted that the tally of those affected extended to a staggering 10,000 individuals. Among the casualties were individuals who had been officially branded as wrongdoers by the government of that era, as well as innocent farmers and civil servants who shared names with those erroneously labelled as criminals.²⁴

Nevertheless, among the numerous instances of severe human rights transgressions, Komnas HAM has yet to successfully bring any of these cases to resolution through the Human Rights Court as per its designated responsibilities. The investigative files seem to be shuttling back and forth between Komnas HAM and the Attorney General's Office.

“ Furthermore, Komnas HAM's actions appear to align with the government's efforts to address historical cases of serious human rights violations through non-judicial means.

This was exemplified when they signed a memorandum of agreement on 14 December 2022 on the utilisation of data and information that stem from investigations into past severe human rights violations.²⁵

Indeed, the government's approach to addressing human rights violation cases through non-judicial channels is likely to introduce complexities into the ways in which such serious matters are handled. Firstly, the current framework suggests that cases of severe human rights violations, which Komnas HAM has already determined through investigations, can be resolved through non-legal means outside the scope of the judicial process. Secondly, from a conceptual standpoint, the regulations or standard norms that the President and his team selected when formulating this policy still appear to lack clarity and definition.

²³ “Jokowi Akui Pelanggaran HAM Berat di 12 Peristiwa,” *DW*, January 11, 2023, <https://www.dw.com/id/jokowi-akui-pelanggaran-ham-berat-di-12-peristiwa/a-64347455>.

²⁴ “Apa itu Pelanggaran HAM Berat?” *Amnesty International Indonesia*, October 6, 2021, <https://www.amnesty.id/apa-itu-pelanggaran-ham-berat/>.

²⁵ “Komnas HAM-Tim PPHAM Bersinergi dalam Pemenuhan dan Pemulihan Hak Korban,” *Komnas HAM*, December 14, 2022, <https://www.komnasham.go.id/index.php/news/2022/12/14/2286/komnas-ham-tim-ppham-bersinergi-dalam-pemenuhan-dan-pemulihan-hak-korban.html>.



The team responsible for the Non-Judicial Resolution of Past Gross Human Rights Violations (Tim Penyelesaian Non-Yudisial Pelanggaran HAM yang Berat Masa Lalu - PPHAM) has been assigned the task of addressing historical cases of severe human rights violations through non-legal means. However, the primary regulations governing the handling of such violations (namely Law 39/1999 Concerning Human Rights and Law 26/2000 Concerning Human Rights Courts) lack specific provisions to differentiate between judicial and non-judicial approaches. Furthermore, on a practical level, there are concerns that the Presidential Decree No. 17 of 2022 might be susceptible to misuse, potentially conferring authority that overlaps with the Human Rights Court Law's mandate. This perspective is rooted in historical instances of privileges granted to the President's inner circle through Presidential Decrees during the authoritarian era of the Suharto regime.²⁶

Komnas HAM is vulnerable to state intervention because its entire budget comes from the State Revenue and Expenditure Budget (Anggaran Pendapatan dan Belanja Negara - APBN). Furthermore, Komnas HAM's positions also often face opposition from members of the House of Representatives. This is, for example, reflected in Komnas HAM's position, where the Commission opposed the death penalty for a rapist of thirteen female students in West Java. At the Public Hearing (Rapat Dengar Pendapat - RDP) in the Parliament, some parliament members questioned and criticised Komnas HAM for its attitude.²⁷ In fact, Komnas HAM is consistently fighting for the right to life.

“ Apart from still being dependent on the state budget and not being able to finance themselves through fundraising or donors, another weakness regarding Komnas HAM's independence is that it is still completely staffed by the State Civil Apparatus (Aparatur Sipil Negara - ASN).

Apart from the commissioners, Komnas HAM is incapable of doing much since the State Civil Service Agency (Badan Kepegawaian Nasional - BKN) determines all employee placements. This indicates that this institution is vulnerable to intervention from the State.

On the aspect of pluralism, Komnas HAM has a fairly good record. As far as the representation of women in Komnas HAM is concerned, three of the nine current commissioners are women,²⁸ including the current Chairperson. Unfortunately, the percentage of women employees has not been fully disclosed in Komnas HAM's Annual Reports.

The Commission has convened meetings with civil society groups and conducted focus group discussions to create the standards norms and settings (Standar Norma dan Prosedur - SNP).²⁹ Likewise, the Commission has facilitated meetings with the government, though not routinely. One of them was during a discussion which was held on 28 July 2023 regarding the follow-up to the Universal Periodic Review (UPR) 4th Cycle in November 2022. Unfortunately, the meeting seemed formalistic because civil society was provided limited time to put forward their concerns.

26 “Catatan Kritis Keputusan Presiden Nomor 17 Tahun 2022 Tentang Pembentukan Tim Penyelesaian Non-Yudisial Pelanggaran Hak Asasi Manusia Yang Berat Masa Lalu (Tim PPHAM),” *KontraS*, October 18, 2022, https://kontras.org/wp-content/uploads/2022/10/Catatan-Kritis-KontraS-terkait-Keppres-17_2022.pdf.

27 “Komnas HAM Tolak Hukuman Mati Herry Wirawan, Anggota DPR Bereaksi,” *Detiknews*, January 14, 2022, <https://news.detik.com/berita/d-5897668/komnas-ham-tolak-hukuman-mati-herry-wirawan-anggota-dpr-bereaksi>.

28 “Profil Pimpinan dan Anggota,” Komnas HAM, 2022, <https://www.komnasham.go.id/index.php/commisioner/>.

29 “Komnas HAM Inisiasi SNP Pembela HAM,” Komnas HAM, March 19, 2021, <https://www.komnasham.go.id/index.php/news/2021/3/19/1717/komnas-ham-inisiasi-snp-pembela-ham.html>.



In the UPR for Indonesia, the UN member states made several similar recommendations back in November 2022. In total, KontraS noted that Indonesia received 269 recommendations, which covered most of the things mentioned in Komnas HAM's priority issues. The Commission was also present at the side event to present recent cases of human rights violations in Indonesia, as they were present in the main event of the UPR session. Before the adoption session, Komnas HAM released a statement on their website that they are willing to monitor the Indonesian Government's fulfilment of the UPR recommendations.³⁰ They mentioned Papua as one of the major issues on which several UN member states gave recommendations. They also talked about marginalised issues and the International Convention for the Protection of All Persons from Enforced Disappearance ratification process. It is worth mentioning that the Indonesian Government has used the same pattern over the last three UPR cycles, where no significant progress has been made on any of the recommendations that were accepted or noted.

On the issues that HRDs face, Komnas HAM possesses the Standard Norms and Procedure No. 6 of 2021 regarding human rights defenders³¹ as well as the Internal Regulations of Komnas HAM (NHRI) No.5 of 2015 concerning procedures of the protection of human rights defenders. Although several inputs have been put in place to highlight the urgency of the criminalisation against those who have been voicing their concerns through multiple forums, it has not been effective in terms of its implementation. Komnas HAM has not been proactive in providing the protection mentioned in the two procedures when criminalisation cases have emerged on the field, especially by public officials. An example is the Ernawati case, where a police officer's wife is fighting for justice for the death of her brother who was tortured by the police.³²

In terms of reviewing and amending problematic legislations and laws, the Commission published an Assessment of the Draft Law on Amendments to the Law on Information and Electronic Transactions (ITE) in 2022.³³

“ This ITE Law is concerning, given its interference with freedom of expression in Indonesia.³⁴

The results of Komnas HAM's study and research noted that the Bill on Amendments to the ITE Law is still oriented towards curbing the right to freedom of expression (interference-oriented) and is not yet oriented towards protecting the right to freedom of expression (protection-oriented). The Bill on Amendments to the ITE Law does not fully fix the fundamental problems of the ITE Law because material and formal weaknesses are still found. One of them is the article related to defamation as regulated in Article 27 paragraph (3) of the ITE Law. Unfortunately, when responding to ITE Law cases, Komnas HAM's stance has not been firm enough. An example is the case of judicial harassment which befell two HRDs, Fatia Maulidiyanti and Haris Azhar, as mentioned above. From the start, Komnas HAM has not seemed serious about handling this case. Komnas HAM, through its commissioners, only encourages mediation, although it is willing to send an *amicus curiae*, if requested.³⁵

30 "Komnas HAM Republik Indonesia, Komnas HAM Kawal Pemenuhan Rekomendasi UPR oleh Pemerintah Indonesia," Komnas HAM, April 5, 2023, <https://www.komnasham.go.id/index.php/news/2023/4/5/2337/komnas-ham-kawal-pemenuhan-rekomendasi-upr-oleh-pemerintah-indonesia.html>.

31 "Standar Norma dan Pengaturan Nomor 6 Tentang Pembela Hak Asasi Manusia," Komnas HAM, November 4, 2021, <https://komnasham.go.id/files/1635987255-standar-norma-dan-pengaturan-nomor-6.pdf>.

32 Ihksan Bayu Aji Saputra, "Kisah Ernawati, Ibu Bhayangkari Jadi Tersangka Usai Sebut Kakak Dibunuh Polisi," Detik News, March 7, 2023, <https://news.detik.com/berita/d-6605740/kisah-ernawati-ibu-bhayangkari-jadi-tersangka-usai-sebut-kakak-dibunuh-polisi>.

33 "Pengkajian Atas Rancangan Undang-Undang Perubahan Undang-Undang Tentang Informasi dan Transaksi Elektronik", Komnas HAM, August 19, 2022, <https://www.komnasham.go.id/files/20220819-pengkajian-atas-rancangan-undang-undang-HY4T.pdf>.

34 Cekli Setya Pratiwi and Okta Rina Fitri, "Pengkajian atas Rancangan Undang-Undang Perubahan Undang-Undang tentang Informasi dan Transaksi Elektronik", Komisi Nasional Hak Asasi Manusia Republik Indonesia, August 19, 2022, <https://www.komnasham.go.id/index.php/publikasi/2022/08/19/146/pengkajian-atas-rancangan-undang-undang-perubahan-undang-undang-tentang-informasi-dan-transaksi-elektronik.html>.

35 Kabar Latuharhary, "Kasus Haris Azhar dan Fatia, Komnas HAM Dorong Upaya Mediasi," Komnas HAM, January 18, 2022, <https://www.komnasham.go.id/index.php/news/2022/1/18/2068/kasus-haris-azhar-dan-fatia-komnas-ham-dorong-upaya-mediasi.html>.



Apart from that, Komnas HAM also does not seem serious about handling cases which attract the public's attention, as reflected in the Kanjuruhan tragedy, where 135 people died. Komnas HAM hastily stated that the humanitarian tragedy at the Kanjuruhan Stadium, Malang, East Java, on 1 October 2022 was not categorised as a serious human rights violation.³⁶ This is based on the monitoring and investigation report on the tragedy, which Komnas HAM issued on 2 November 2022.³⁷ The Kanjuruhan tragedy ultimately only resulted in light sentences for six of the perpetrators.

“ Meanwhile, as per its Annual Report in 2022,³⁸ Komnas HAM received 3190 complaints, with details of 2891 at the head office and 299 at regional representative offices.

This amounts to an average of 265 cases per month. The three parties who received the most complaints for alleged human rights violations are the National Police (with 861 incidents), followed by corporations (with 373 incidents), and individuals (with 334 incidents).

However, it is very unfortunate that out of the 3190 cases submitted to Komnas HAM in 2022, only around 17% were forwarded to the monitoring level (i.e. 555 cases). Komnas HAM followed up on these various cases by asking for letters of request for information, letters of progress on case handling and responses, summons, direct monitoring of cases, providing legal opinions in court and resolutions in the form of final recommendations.³⁹ The low levels of follow-up show that Komnas HAM's work is still far from optimal.

Conclusion

Despite the challenges and limitations, Komnas HAM has carried out some important work related to the protection of human rights in the country. However, the Commission has become increasingly bureaucratic, and the handling of cases – both complaints-based and otherwise – has become very slow. In the midst of the large number of human rights violations that Komnas HAM has received, they need to provide quick responses in order to aid the victims and alleviate their suffering.

36 Ratna Puspita, "Komnas HAM: Tragedi Kanjuruhan Bukan Pelanggaran HAM Berat," *Republika*, December 29, 2022, <https://news.republika.co.id/berita/rnn4r1428/komnas-ham-tragedi-kanjuruhan-bukan-pelanggaran-ham-berat>.

37 "Keterangan Pers Nomor 039/HM/00," Komnas HAM, November 2, 2022, [https://www.komnasham.go.id/files/20221102-keterangan-pers-nomor-039-hm-00-\\$OY.pdf](https://www.komnasham.go.id/files/20221102-keterangan-pers-nomor-039-hm-00-$OY.pdf).

38 "Laporan Tahunan Komnas HAM RI 2022: Capaian, Tantangan & Optimisme Melanjutkan Langkah dalam Pemajuan & Penegakan HAM," Komnas HAM, July 17, 2023, <https://www.komnasham.go.id/index.php/laporan/2023/07/17/112/laporan-tahunan-komnas-ham-ri-tahun-2022.html>.

39 *Ibid.*



Recommendations

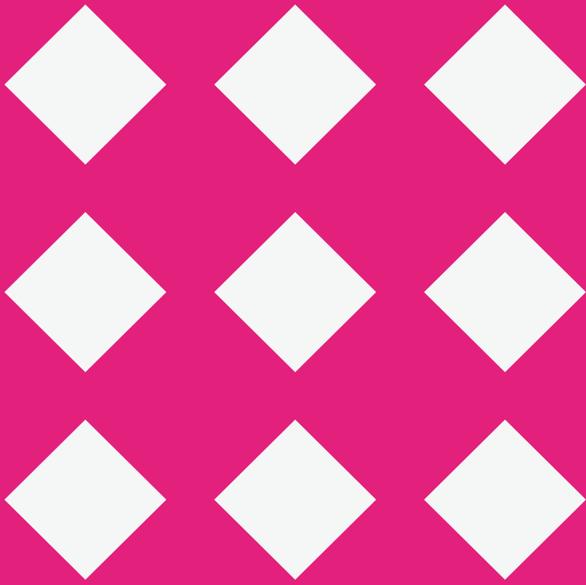
Based on the discussions on the role and performance of Komnas HAM in 2021-2022, the following recommendations are made:

To Komnas HAM:

- Be consistent and focused on the 2022-2027 priority/strategic agenda;
- Immediately create a quick and responsive mechanism for cases that require special attention, such as cases of criminalisation of HRDs or persecution of religious/marginal groups;
- Build stronger communications with various institutions, especially institutions that are responsible for many human rights violations, such as the National Police and the Indonesian National Army;
- Ensure that the relevant institutions can implement the Standard Norms and Procedures;
- In accordance with the mandate of Law 26 of 2000, look for ways to address cases of serious human rights violations so that such cases from the past can be resolved either through judicial or non-judicial mechanisms that are dignified and pay attention to the victims' best interests;
- Ensure that there are follow-ups on Komnas HAM's recommendations to related institutions;
- Improve complaint and monitoring mechanisms so that they are more effective and their benefits are felt by the public, especially victims.

To the Indonesian Government:

- Open the possibility of revising Law no. 39 of 1999 concerning Human Rights to strengthen Komnas HAM's institutional authority;
- Make Komnas HAM a strategic party that builds cooperation to formulate human rights-friendly policies and regulations;
- Make Komnas HAM's recommendations binding so that they must be followed;
- Raise the issue of increasing Komnas HAM's budget in Parliament to enable Komnas HAM to add branch offices in the regions, ideally in every province.



MALAYSIA

Long-Overdue Institutional Reforms Hinder Malaysia's Human Rights Commission's Progress

Jernell Tan Chia Ee¹

Suara Rakyat Malaysia (SUARAM)²

¹ jernelltan@suaram.org



Overview of the Human Rights Situation in Malaysia

In 2021 and 2022, Malaysia was riddled with various socioeconomic and political uncertainties. Parliament was suspended in the first half of 2021, due to a declared state of emergency amidst haphazard COVID-19 lockdowns. During and post the pandemic, food and financial insecurity and flood-induced risk of displacement remained among the most pervasive issues affecting the people.

The country had three Prime Ministers (PM): the first two unelected, and the third appointed after hard-won negotiations with other political party coalitions to form a unity government after the November 2022 general elections.

“ While many laws were passed by the Perikatan Nasional administration,³ there were setbacks to fundamental freedoms.

Freedom of expression was an area of struggle, when the government manipulated its emergency powers to enact a fake news ordinance and doubled down on its enforcement of repressive laws such as Section 233 of the Communications and Multimedia Act 1998. These laws were used to investigate activists who were creating ‘political dissent’ against the government.

Authorities also did not spare journalists who reported on the government’s shortcomings, such as the tardy response to the December 2021 floods⁴ and deaths in detention allegedly caused by police brutality.⁵ These government actions thus also compromised media freedom.

The government heavily curtailed the freedom of peaceful assembly vis-à-vis socially sensitive issues. One prominent example is the action taken during the 2021 #Lawan protest, which was organised in response to the government’s failures to address the pandemic. During this time, the police arrested organisers before the protest, conducted extensive surveillance, and disrupted the protest when it was happening.⁶ The police also carried out post-protest investigations with public call-outs for assistance in identifying those present at the protest.

Other examples include the #Turun assembly and the Tangkap Azam Baki protest, both held in 2022 respectively, in response to rising living costs and corrupt top leadership in the Malaysian Anti-Corruption Commission. Aside from summoning organisers and participants to the police station for investigations, the police employed tactics to curb the assembly, such as obtaining a court order to prohibit the gathering, closing roads, and forming human barricades to deter participants from marching towards the final gathering point.

“ The government’s hard-line stance on certain marginalised groups continued or intensified during this reporting period.

Refugees and asylum seekers continued to be deported,⁷ with one deportation being carried out in February 2021, which contravened a court order that temporarily halted repatriation.⁸

1 Jernell Tan Chia Ee is the Documentation & Monitoring Coordinator at Suara Rakyat Malaysia (SUARAM).

2 SUARAM is a Malaysian human rights NGO that was formed in 1989 following the mass detention of human rights activists under the Internal Security Act 1960 in 1987. Since its founding, via advocacy, case management and public education efforts, SUARAM has been working on a range of human rights issues, namely detention without trial, deaths in custody, and torture by authorities in detention facilities, as well as upholding of fundamental freedoms, specifically freedom of expression and freedom of assembly.

3 The Perikatan Nasional coalition is composed of the Malaysian United Indigenous Party (BERSATU), Malaysian Islamic Party (PAS), Malaysian People’s Movement Party (Gerakan) and Sabah Progressive Party (SAPP).

4 ‘Groups condemn police questioning over reporter’s flood report,’ *Malaysiakini*, January 4, 2022, <https://www.malaysiakini.com/news/605612>.

5 ‘Ganapathy’s death: Cops summon two Mkini journalists for statements,’ *Malaysiakini*, May 18, 2021, <https://www.malaysiakini.com/news/575071>.

6 Examples include closure of roads leading to the gathering point (i.e., Dataran Merdeka), facilitation of heavy traffic by leaving one road open to disrupt the protest and provision of conflicting information and directions to the organisers that frustrated initial plans to walk to Dataran Merdeka.

7 ‘Malaysia: Surge in summary deportations to Myanmar,’ *Human Rights Watch*, October 24, 2022, <https://www.hrw.org/news/2022/10/24/malaysia-surge-summary-deportations-myanmar>.

8 ‘Malaysia departs 1,086 Myanmar nationals despite court order,’ *Al Jazeera*, February 23, 2021, <https://www.aljazeera.com/news/2021/2/23/malaysia-deports-1200-people-to-myanmar>.

Discrimination against women, girls and sexual minorities continued when in 2022,⁹ the Court of Appeal overturned a 2021 High Court ruling concerning Malaysian women's right to confer citizenship to their overseas-born children.¹⁰ Similarly, the government passed Terengganu's Syariah amendments in December 2022,¹¹ which criminalised out-of-wedlock pregnancies and the LGBTQIA+ community. At the same time, the Perlis' ban, implemented in September 2021, restricted those in gender-nonconforming clothing from entering mosques.¹²

Shortly upon formation in late November 2022, the current unity government promised reform, including zero tolerance against corruption and the safeguarding of rights and welfare of all Malaysians, especially the marginalised.¹³

The Human Rights Commission of Malaysia's Mandate to Protect and Promote Human Rights

Institutional Processes:

Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) is the National Human Rights Commission of Malaysia. In June 2021, the Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation (GANHRI-SCA) reaccredited SUHAKAM with an 'A' status, which it has retained since 2009. Nevertheless, improvements to certain institutional processes are long overdue, without which the Commission's independence can be compromised.

It is important to note that there have been no changes in the process of selecting and appointing commissioners, since amendments to the Human Rights Commission of Malaysia Act 1999 (HRCMA) in 2009.

The Yang di-Pertuan Agong¹⁴ appointed the 2022-2025 commissioners after consulting with the selection committee and based on the PM's advice. Three out of five of the committee's members are civil society individuals appointed by the PM. The government still has not made the details of these members public.

“ On a longstanding basis, SUHAKAM's commissioner selection and appointment process is not sufficiently broad and transparent.

Among the key gaps are the continued lack of legal requirements for vacancy advertisement, the lack of clear and uniform criteria for the selection committee to assess applicants, and the lack of broad consultation and/or participation in all phases of the process.

9 'Citizenship ruling for kids born overseas to Malaysian women overturned by Court of Appeal,' *The Star*, August 5, 2022, <https://www.thestar.com.my/news/nation/2022/08/05/citizenship-ruling-for-kids-born-overseas-to-malaysian-women-overturned-by-court-of-appeal>.

10 *Ibid.*

11 'Terengganu Syariah amendments have harmful impact, say groups,' *Free Malaysia Today*, December 3, 2022, <https://www.freemalaysiatoday.com/category/nation/2022/12/03/terengganu-shariah-amendments-have-harmful-impact-say-groups/>.

12 'Crossdressers, transgenders forbidden from Perlis mosques,' *Malaysiakini*, September 22, 2021, <https://www.malaysiakini.com/news/592350>.

13 Kate Mayberry, 'Malaysia's Anwar gets to work, promising inclusive government,' *Al Jazeera*, November 25, 2022, <https://www.aljazeera.com/news/2022/11/25/malaysias-anwar-starts-work-promising-inclusive-government>.

14 The Yang di-Pertuan Agong (unofficially known as the King of Malaysia) is the constitutional monarch and head of state in Malaysia. The 16th and current Yang di-Pertuan Agong is Abdullah of Pahang.



Even though Section 5(3)¹⁵ of the HRCMA is in place, the human rights competence and pluralism of any batch of commissioners will remain precarious for as long as the selection and appointment process remains opaque. This is evident in the 2022-2025 commissioners line-up. Of the nine selected commissioners, one had co-authored a paper that objected to Malaysia's ratification of the Rome Statute and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); another is a former head of the Islamic Development Department that does not recognise LGBTQIA+ rights; and two others are active politicians.¹⁶ Civil society criticised these appointments,¹⁷ as it does not reflect SUHAKAM's core values of independence and human rights for all. This could potentially hamper the Commission's ability to discharge its key function of promoting and protecting human rights.

In terms of diversity, the 2019-2022 commissioners' batch was more inclusive than the 2022-2025 batch in terms of gender, religion and ethnicity. The earlier batch had more women (44.4% vs. 33.3%), non-Muslims (55.6% vs. 22.2%), and members from minority and Indigenous communities (55.6% vs. 44.4%).

Other longstanding structural gaps highlighted by GANHRI-SCA in its 2015 and 2021¹⁸ reaccreditation reviews included the part-time tenure for commissioners, the lack of independence in the commissioner dismissal process, and insufficient funding.

The government has been allocating a consistent budget of 10 million Malaysian Ringgit (RM) to SUHAKAM after a drastic budget cut by almost half in 2016. SUHAKAM received RM12.45 million annually within the reporting period. However, this amount left little allocation for the Commission's human rights programmes, as the bulk of it covered office rent, allowances for commissioners, and staff salaries. Sections 19(2) and (3) of the HRCMA further narrowed potential avenues available for SUHAKAM to increase its financial resources. The best way forward to ensure adequate funding for SUHAKAM would be to have it directly sourced from Parliament after lawmakers review the Commission's annual budget proposal.

15 Section 5(3) of HRCMA states that: "The members of the Commission shall be appointed from amongst men and women of various religious, political and racial backgrounds who have knowledge of, or practical experience in, human rights matters."

16 'Suaram concerned over new Suhakam chair, Umno-linked commissioners,' *Malaysiakini*, July 3, 2022, <https://www.malaysiakini.com/news/626970>.

17 'Human rights competency missing in Suhakam's new line-up,' *Malaysiakini*, July 4, 2023, <https://www.malaysiakini.com/columns/627033>.

18 'Report and recommendations of the virtual session of the Sub-Committee on Accreditation (SCA),' *Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation*, 14-24 June, 2021, <https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>.

It is noteworthy that SUHAKAM had proposed amendments to the HRCMA that addressed all the aforementioned aspects and submitted these to the Attorney General in 2019.¹⁹ As of December 2022, the Law and Institutional Reform Minister announced plans to propose the HRCMA amendments to the Cabinet, but she has yet not provided a concrete timeline.²⁰

Human Rights Mandate and Priorities:

The Universal Declaration of Human Rights (UDHR) underpins SUHAKAM's human rights mandate, to the extent that there is no inconsistency with the Federal Constitution.²¹ Out of the ten UDHR rights incorporated into Part II of the Federal Constitution, SUHAKAM's press statements released within this reporting period addressed all except for the right to property, with examples including comments on Malaysia's 2021 Trafficking in Persons ranking²² (right to personal liberty) and the Registrar of Societies' rejection of association registration applications by two political parties in 2021 (freedom of association)²³ and callouts in 2022 on setbacks faced by children in Sabah in accessing schools (right to education).²⁴

“ However, a prominent UDHR right that is not enshrined in the Federal Constitution yet is among SUHAKAM's longstanding focus areas: freedom from torture and all forms of cruel, inhuman, or degrading treatment.

19 This information is obtained from an interview with the Head of the Laws & International Treaties division.

20 Keertan Ayamany, 'Azalina seeks to amend Suhakam Act to give commission 'teeth to bite,' *Malay Mail*, December 12, 2022, <https://www.malaymail.com/news/malaysia/2022/12/12/azalina-seeks-to-amend-suhakam-act-to-give-commission-teeth-to-bite/44803>.

21 Section 4(4) of the HRMCA states that "For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution."

22 'The U.S. Department of State's 2021 Trafficking in Persons (TIP) report,' SUHAKAM, July 5, 2021, <https://suhakam.org.my/2021/07/press-statement-no-24-2021-the-u-s-department-of-states-2021-trafficking-in-persons-tip-report/>.

23 'Freedom of association,' SUHAKAM, January 9, 2021, <https://suhakam.org.my/2021/01/press-statement-no-1-2021-freedom-of-association/>.

24 'CC saddened by setbacks faced by children in accessing schools,' SUHAKAM, January 13, 2022, <https://suhakam.org.my/2022/01/press-statement-no-1-2022-occ-cc-saddened-by-setbacks-faced-by-children-in-accessing-school/>.

This is reflected in SUHAKAM's extended investigations into the death-in-custody complaints that it receives²⁵ and in its press statements calling for the abolition of the death penalty.²⁶ Other efforts in this area include the Commission organising an online anti-torture cartoon exhibition²⁷ as part of its joint advocacy efforts with civil society to advocate for Malaysia's accession to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment.

In terms of the rights of marginalised groups, SUHAKAM paid commendable focus to children (especially stateless children) via its press statements²⁸ and activities.²⁹

“ However, it did not significantly or adequately address issues faced by other marginalised groups, namely the LGBTQIA+ and Orang Asli communities.

Except for two press statements respectively covering the LGBTQIA+ and Orang Asli communities,³⁰ it appears that the Commission did not conduct any other stakeholder engagements or human rights promotion activities with these communities within this reporting period.

25 'SUHAKAM has initiated an investigation and obtained information regarding to the death of Kim Shih Keat,' SUHAKAM, August 4, 2022, https://suhakam.org.my/2022/08/press-statement-no-6-2022_suhakam-has-initiated-an-investigation-and-obtained-information-regarding-to-the-death-of-kim-shih-keat/.

26 'World Day Against the Death Penalty,' SUHAKAM, October 10, 2021, https://suhakam.org.my/2021/10/press-statement-no-36-2021_world-day-against-the-death-penalty-and_suhakam-is-concerned-with-the-case-of-nagaenthran-k-dharmalingam/.

27 'Online Exhibition Gallery,' SUHAKAM, <https://suhakam.org.my/publications/art-gallery/online-exhibition/>.

28 Examples of press statements on statelessness include 'SUHAKAM calls for the government to immediately review and reform all laws and policies on citizenship,' January 20, 2022, https://suhakam.org.my/2022/01/press-statement-no-1-2022_suhakam-calls-for-the-government-to-immediately-review-and-reform-all-laws-and-policies-on-citizenship/; 'Temporary documentation to stateless children,' April 13, 2022, <https://suhakam.org.my/2022/04/press-statement-no-5-2022-occ-temporary-documentation-to-stateless-children/>.

29 Examples of SUHAKAM's activities related to stateless children include the site visit to Sekolah Alternatif Cahaya Society and Sibuga Immigration Depot's Sekolah 3M in 2022.

30 SUHAKAM expressed concern over heavier punishments (including whipping on female offenders) towards the LGBTQIA+ community via amendments to the Syariah Court (Criminal Jurisdiction) Act 1965 introduced in 2021, in line with stance of zero tolerance against all forms of torture and other cruel, inhuman or degrading treatment, January 28, 2021, https://suhakam.org.my/2021/01/press-statement-no-3-2021_amendments-to-the-syariah-courts-criminal-jurisdiction-act-1965-act-355-1/. As for the Orang Asli, SUHAKAM released a general press statement in conjunction with International Day of the World's Indigenous Peoples, August 9, 2021, https://suhakam.org.my/2021/08/press-statement-no-29-2021_international-day-of-the-worlds-indigenous-peoples/.

In 2022, a Parliamentarian raised concerns about SUHAKAM's ability to defend universal human rights³¹ when the newly appointed SUHAKAM Chairperson and commissioner publicly stated in July 2022 that human rights should be compatible with local customs and culture and not be "too Euro-centric".³² Such a narrative can compound existing discrimination against marginalised groups such as the LGBTQIA+ community and minority religious groups, and can potentially be used to justify non-compliance with international human rights standards, thus jeopardising SUHAKAM's standing as a moral compass for human rights.

Performance in Human Rights Promotion:

Human Rights Awareness: SUHAKAM conducted forums, webinars, lectures, and workshops with a wide range of stakeholders, such as teacher training institutes, grassroots communities, government agencies, and law enforcement. It organised some of these awareness events collaboratively with other entities, such as the "Islamic Perspectives on the Protection of Refugees: Their Rights and Access to Education" seminar with the Organisation of Islamic Cooperation.³³ Based on SUHAKAM's bulletins, the Commission conducted three human rights awareness events with teacher training institutes. It conducted a webinar on human rights, Islam, and education with staff from Teacher Education Institute Malaysia in July 2021. Similarly, the Commission also organised one in-person lecture on human rights and child rights for 400 trainers and trainees at the Teacher Education Institute in Keningau in September 2022. They conducted another in-person human rights lecture at the Teacher Education Institute in Rajang in October 2022.

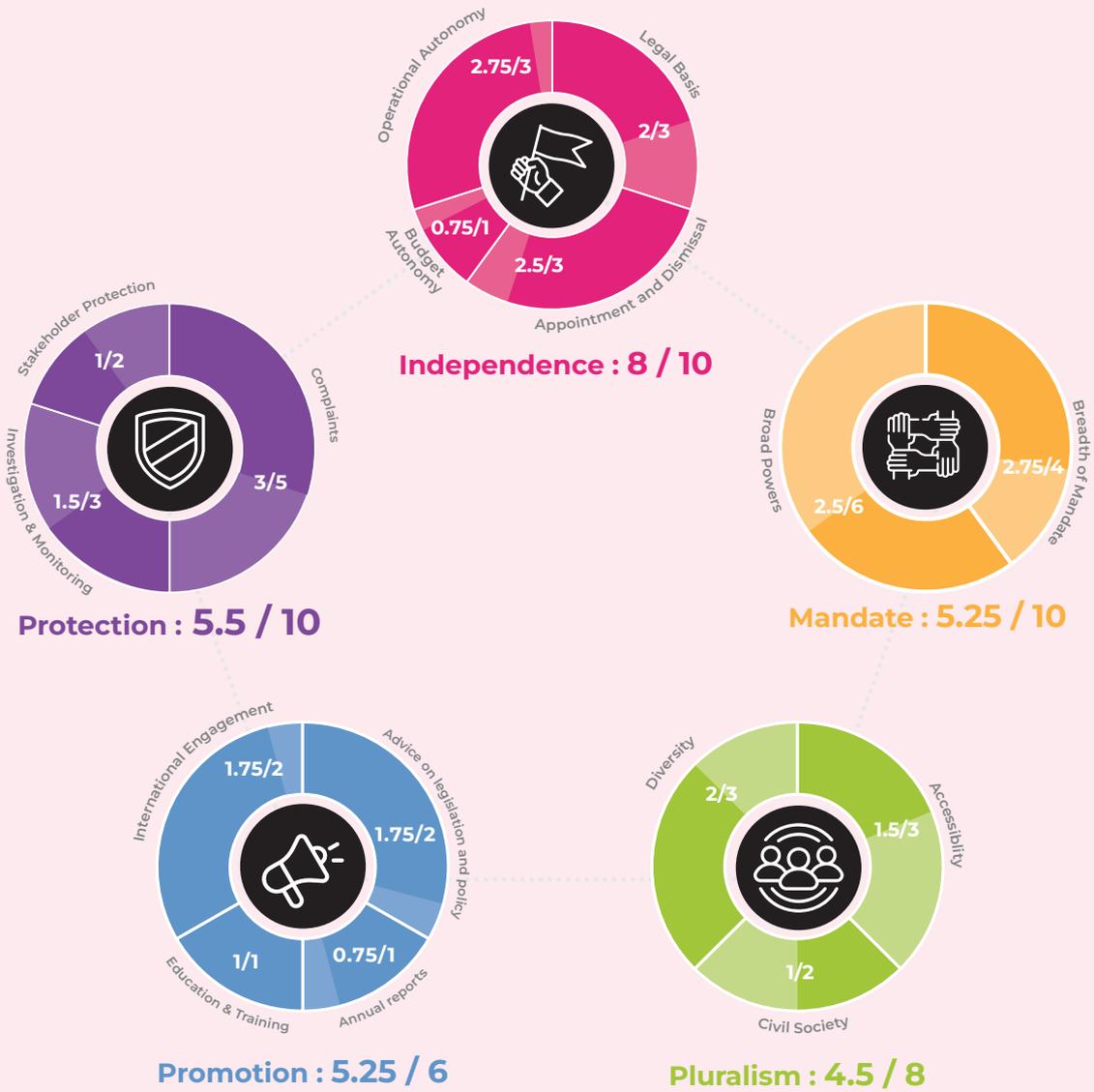
31 FMT Reporters, 'Suhakam chief's 'local mould' human rights concept wrong, says MP', Free Malaysia Today, July 10, 2022, <https://www.freemalaysiatoday.com/category/nation/2022/07/10/suhakam-chiefs-local-mould-human-rights-concept-wrong-says-mp/>.

32 'Hak asasi manusia di Malaysia akan dibuat ikut acuan tempatan: Pengerusi SUHAKAM', Isma Web, July 6, 2022, <https://ismaweb.net/2022/07/06/hak-asasi-manusia-di-malaysia-akan-dibuat-ikut-acuan-tempatan-pengerusi-suhakam/>.

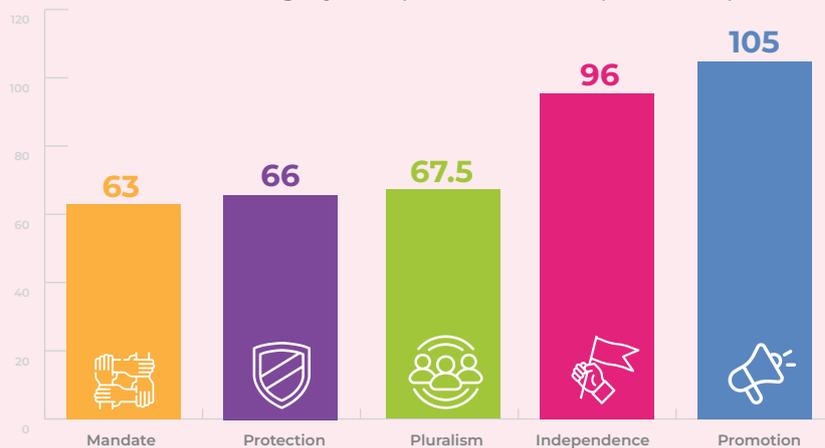
33 'Buletin SUHAKAM Edisi Oktober 2022', pg. 14, SUHAKAM, October 2022, https://suhakam.org.my/wp-content/uploads/2023/09/22_10.pdf.



Category and sub-category-wise scores for SUHAKAM, Malaysia



Inter-category comparative scores (out of 120)



Human Rights Education: The Education and Training Division has been commendably engaged in systematic human rights education programmes with schools, the police, and teacher training institutes. The Commission has been implementing the Human Rights Best Practices in Schools (ATHAM) programme in collaboration with the Ministry of Education since 2006. By 2021, there were 468 ATHAM primary and secondary schools.

“ The Commission conducted a 10-year impact study³⁴ on the programme's effectiveness from 2009 to 2018 and made improvements to the curriculum based on its findings.

In April 2022, SUHAKAM launched the human rights module for police training institutes. The training of trainers on module delivery is expected to take place in 2023. Human rights training module development is still underway for teacher training institutes, with the Commission conducting a workshop to gather feedback from selected lecturers and officers in June 2022.³⁵

Engagement in Legislative/Policy Reform Processes: The government consulted SUHAKAM on the National Action Plan on Business and Human Rights and the National Action Plan on Forced Labour 2021-2025. SUHAKAM submitted requests to the government to be a part of the two Technical Working Committees that will draft amendments to the Persons with Disabilities Act 2009 and the National Action Plan for Persons with Disabilities, though the outcome of these requests is unknown. Mandating the government to consult SUHAKAM on formulation and/or amendments of legislation before tabling them in Parliament is instrumental to concretise SUHAKAM's role in human rights-centric policy-making.

Annual Reports: SUHAKAM neither tabled nor published its 2020 and 2021 Annual Reports. Moreover, SUHAKAM did not provide explanations or announcements about the timeline by which both reports would be tabled. Although SUHAKAM's past Annual Reports were comprehensive in reporting activities and recommendations, dissemination was not widespread.

“ Local and regional civil society organisations raised concerns about the lack of mandatory debate on SUHAKAM's Annual Report in Parliament³⁶, which further limits the report's potential to promote human rights-centric policymaking among lawmakers.

Performance in Human Rights Protection:

Powers of Inquiry: Shortcomings in the HRCMA limited SUHAKAM's effectiveness in discharging powers related to inquiry. While the Commission can procure evidence and examine witnesses,³⁷ compliance with notices that SUHAKAM issues is not mandatory. There is also no provision to protect the Commission's witnesses against any harassment, intimidation, or reprisal by any institution, group, or individual.

While SUHAKAM can undertake investigations suo moto, it primarily acts on complaints it receives and does not usually conduct national inquiries into widespread human rights violations due to limited capacity. In April 2022, SUHAKAM published its final report on the disappearance of the Malaysian-Indonesian couple Joshua Hilmy and Ruth Sitepu, after having conducted an inquiry for close to two years involving the examination of 26 witnesses and 129 exhibits.³⁸ The government neither responded to the report nor its recommendations, which included strengthening the police's investigation capabilities and improving authorities' respect towards freedom of religion.

34 'Kajian keberkesanan pelaksanaan "Program Amalan Terbaik Hak Asasi Manusia (ATHAM) di sekolah-sekolah terpilih seluruh Malaysia dalam meningkatkan kefahaman hak asasi manusia dalam kalangan warga sekolah,' SUHAKAM, https://suhakam.org.my/wp-content/uploads/2023/09/Laporan-Akhir-Kajian-Keberkesanan-ATHAM_final.pdf.

35 'Buletin SUHAKAM Edisi Jun 2022,' pg. 8-9, SUHAKAM, June 2022, https://suhakam.org.my/wp-content/uploads/2023/09/22_06.pdf.

36 '[Joint Statement] Malaysia: The government and SUHAKAM must explain the delay of the release of SUHAKAM's Annual Reports,' Asian Forum for Human Rights and Development, June 20, 2022, <https://forum-asia.org/?p=37054>.

37 Section 14(1)(a) of the HRCMA related to inquiry powers states that "to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the Commission thinks necessary or desirable to procure or examine."

38 'Public inquiry into the disappearance of Joshua Hilmy & Ruth Sitepu: Final decision,' SUHAKAM, April 15, 2022, https://suhakam.org.my/wp-content/uploads/2023/09/Final-Report-Public-Inquiry-into-the-Disappearances-of-Joshua-Hilmy-and-Ruth-Sitepu_compressed.pdf.



Addressing Complaints on Human Rights Violations: Aside from the online complaints system and in-person visits at the Peninsular, Sabah, and Sarawak offices, SUHAKAM has made alternate channels available for the public/community/target beneficiaries to submit complaints. These platforms include human rights awareness events and community visits.³⁹

“ The Complaints and Monitoring Division (CMD) of the Commission communicates with the complainants from time to time to provide updates on SUHAKAM’s actions and findings, within one to two weeks after investigations⁴⁰ for cases that are less complex.

Though infrequently, SUHAKAM commissioners and staff conducted three work visits to villages in East Malaysia to resolve the complaints received in 2022.⁴¹

While the CMD acknowledges the need to improve investigation timelines and responsiveness of communications, it is crucial to note that the Commission is significantly understaffed for the caseload that it has. At this time, eight officers, including the head of the division, deal with an average of 350 to 500 cases annually.⁴²

Publicly listed companies with alleged forced labour violations are receptive to implementing SUHAKAM’s recommendations, as inaction can jeopardise their business reputation.⁴³ On the other hand, a similar recommendation to a government detention facility to improve detainees’ conditions can be more challenging to implement, due to limited government budget allocation.⁴⁴

Due to limited division capacity, the CMD conducts visits to detention facilities periodically, usually every six to twelve months.⁴⁵ These are monitoring visits, where the CMD inspects the conditions of the detention facilities or conducts case-based investigations when it receives a complaint. The CMD conducted at least seven monitoring visits involving prisons, police lockups, and immigration depots in 2022.⁴⁶ Nevertheless, the CMD is not granted immediate access to detention facilities and must write in advance to request access.⁴⁷ The Prison Department has been more open than other authorities to receiving SUHAKAM’s visits over the last six to seven years.⁴⁸

SUHAKAM also undertakes initiatives with relevant authorities to facilitate better management of detainees and facility conditions. In collaboration with the police and the Ministry of Health, SUHAKAM helped set up custodial health units in five centralised police lockups to minimise the risk of deaths in custody.⁴⁹ SUHAKAM is also one of the key stakeholders whom the Criminal Investigation Unit on Deaths in Custody meets thrice annually to report on case investigation findings and obtain feedback to improve detainee management.⁵⁰

Human Rights Defender (HRD) Protection: Beyond existing institutional structures (i.e., complaint mechanism), SUHAKAM has no specific HRD policies or procedures. Informal forms of support consist of monitoring public assemblies upon request by HRDs and publicly commenting on human rights violations that HRDs experienced. In July 2021, three commissioners and four staff not only monitored the #Lawan assembly and published their findings, but also called out the police for summoning HRDs and the commissioners for questioning. This was the first time that SUHAKAM commissioners were summoned for police questioning when they were merely discharging their duties.

39 Interview with the Head of Media & Promotion division SUHAKAM (June 8 2023).

40 Ibid.

41 SUHAKAM visited three villages in Sabah in December 2022 – Kampung Andab Bangau in Kudat, Kampung Minusoh in Tongod and Kampung Lumikog in Pitas – to help resolve human rights violation complaints received. As SUHAKAM’s Annual Reports for years 2021 and 2022 are not yet released, the author sourced this information from SUHAKAM’s monthly/quarterly bulletins, which provided key (and not necessarily a complete list of) activity highlights.

42 Interview with Head of the Complaints & Monitoring Division SUHAKAM, July 24, 2023.

43 Ibid.

44 Ibid.

45 Ibid.

46 Based on (monthly/quarterly) bulletins released by SUHAKAM, the Commission conducted monitoring visits in 2022 at Bukit Jalil Immigration Depot, Sementara Beranang Immigration Depot, Seberang Perai prison (July); centralised police lock-up at Kepayan (September); Papar Immigration Depot, Kota Kinabalu Immigration Depot and Kota Kinabalu centralised prison (December).

47 Section 4(3) of the HRCMA stipulates compliance with procedures in laws that regulate detention facilities.

48 Interview with Head of the Complaints & Monitoring Division, SUHAKAM, July 24, 2023.

49 ‘Five police lockups to get on-site medical facilities,’ The Star, May 21, 2021, <https://www.thestar.com.my/news/nation/2021/05/21/five-police-lockups-to-get-on-site-medical-facilities>.

50 This information is obtained from the hansard from the parliamentary special session on 12 June 2023, in which the Deputy Home Minister replies to questions by Bakri member of Parliament on death-in-custody case management by the Criminal Investigation Unit on Deaths in Custody, <http://parlimen.gov.my/hansard-dewan-khas.html?uweb=dr&arkib=yes>.

Conclusion

With promises of reform on the horizon, there is also hope that SUHAKAM will be able to play a more significant role in mainstreaming human rights-centric policymaking. Nevertheless, an allegedly human rights-incompetent commissioner line-up with worrying views about human rights brings into question SUHAKAM's ability to defend universal human rights for all peoples in Malaysia and hold the government accountable for its human rights obligations. Existing gaps in institutional process and limits to powers continue to compromise SUHAKAM's independence and effectiveness as an NHRI.

Recommendations

To SUHAKAM:

- Engage civil society to develop a framework for the appointment of SUHAKAM's commissioners in line with the Paris Principles;
- Collaborate with national civil society organisations and networks to formalise and standardise a review process for SUHAKAM's annual functions and performance;
- Conduct periodic monitoring and evaluation of human rights modules developed for the police and teacher training institutes;
- Develop and utilise a monitoring mechanism for all human rights that also incorporates indicators from national policies (e.g., the 12th Malaysia Plan) and international commitments [e.g., Sustainable Development Goals, Universal Periodic Review (UPR), acceded international treaties⁵¹];
- Develop and implement timely plans for engagement and advocacy with the government on the yet-to-be-acceded six international human rights treaties and one declaration,⁵² with findings from the legal compatibility analyses⁵³ as a basis;
- Strengthen outreach efforts to other marginalised communities with whom SUHAKAM has limited or no interactions, such as the LGBTQIA+, Orang Asli, migrant workers etc.

To the Government of Malaysia:

- Adopt and implement SUHAKAM's recommendations on the HRCMA, which include but are not limited to commissioner appointment and dismissal processes, tabling and debating of the Commission's annual report in Parliament, enhanced powers of inquiry, adequate funding etc;
- Institutionalise consultations with SUHAKAM on formulation and/or amendments of legislations prior to tabling them in Parliament;
- Table the 2021 and 2022 Annual Reports in Parliament as soon as possible and ensure the timely tabling of the 2023 Annual Report;
- Ensure SUHAKAM has adequate and necessary funding to fulfil its mandate to promote and protect human rights.

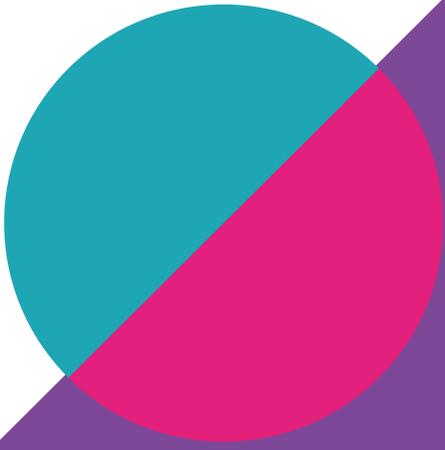
To the Southeast Asia National Human Rights Institutions Forum (SEANF) :

- Deepen engagement with ASEAN bodies such as the ASEAN Intergovernmental Commission on Human Rights to address emerging issues in the ASEAN region (i.e., the Myanmar humanitarian crisis) and advance human rights, including the two issue-based priority areas set out in the 2022-2026 SEANF Strategic Plan (i.e., business and human rights, and prevention of torture and cruel, inhuman, degrading treatment or punishment).

⁵¹ *The Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD).*

⁵² *International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).*

⁵³ "International Human Rights Treaties," SUHAKAM, <https://suhakam.org.my/publications/international-human-rights-treaties/>.



MONGOLIA

National Human Rights Commission Mongolia: Making Progress, But Concerns Remain

Zulzaya Nyamkhuu and Urantsooj Gombosuren¹

Globe International Center (GIC) and Center for Human Rights Development (CHRD)²

Overview of the Human Rights Situation in Mongolia

In Mongolia, legal safeguards that protect human rights and freedom have improved; so has the government's policy-level focus. However, there are some gap areas, including weak on-ground implementation. The National Human Rights Commission of Mongolia's ("NHRC/NHRCM") role is crucial to effectively protect human rights and freedoms and improve public knowledge and awareness about these subjects.

“ In 2021-2022, there were events that risked the shrinking of civic spaces and freedom of expression.

For instance, the draft law on the Legal Status of Associations and Foundations and the draft law on the Criminalization of Insulting Acts have been initiated and submitted to the Parliament. The Standing Committee on Justice is currently discussing these. Civil society organisations (CSOs) have worked actively on this front and have initiated campaigns to drop these bills. They have also conducted consultations to raise awareness about the dangers that these bills pose to freedom, assembly and other fundamental rights. A key concern about these draft laws is regarding the creation of the Civil Society Development Support Council “that would have vast powers to oversee civil society operations, allocate their funding and summarily dissolve NGOs”.³ Therefore, CSOs are demanding that the government clarify its policy regarding civil society instead of hastily approving the bill.

Demonstrations and public gatherings are becoming more common in Mongolia with new methods and forms emerging as well. As per the NHRC's documentation,⁴ there were 214 public gatherings and demonstrations in 2021 and 241 in 2022. Out of these, the biggest movement was organised in April 2022 under the slogan “Do your job!”, which continued for around 18 days in Ulaanbaatar. In early April, young Mongolians gathered in Sukhbaatar Square for two days of peaceful demonstrations. They claimed to have no political affiliation, but gathered to voice their concerns about the state of the economy, dissatisfaction with taxation, lack of job opportunities, and poor allocation of resources. The demonstrations called for an independent judiciary that can provide checks and balances for parliamentarians' financial reports. The demonstrators made fifteen demands to the government including measures to prevent inflation and support industrialisation. In response, Prime Minister Oyun-Erdene Luvsannamsrai convened an extraordinary session of Parliament to discuss the protesters' grievances.⁵

NHRC Mongolia: Mandate and Performance

The NHRC Mongolia was established on 7 December 2000 after the Parliament approved the Law on the National Human Rights Commission of Mongolia. The Global Alliance of National Human Rights Institutions (GANHRI) accredited the NHRC with an "A" status in 2003, 2008, 2014, and 2021, as fully compliant with the Paris Principles.

The revision of the Law on Human Rights Commission of Mongolia was adopted on 23 January 2020, increasing the number of commissioners from three to five. The nomination, selection, and appointment of commissioners were conducted in an open manner with public participation. This legally allowed improvements to the Commission's independence.

1 Urantsooj Gombosuren is the Chairperson of Center for Human Rights and Development (CHRD) and Zulzaya Nyamkhuu is the Communications Officer at Globe International Center (GIC), Mongolia.

2 Globe International Center (GIC) is a nonprofit, non-membership, tax-exempted NGO. It was founded in March 1999 and is based in Ulaanbaatar, Mongolia. GIC's mission is to “sustain Mongolian democracy and civil society through spreading the power of information and knowledge” (www.gic.mn). The Centre for Human Rights and Development (CHRD) is a non-government, non-partisan organization established in 1998. It operates as a not-for-profit, public-benefit organization that promotes and protects human rights and social justice in Mongolia (www.chrd.org.mn).

3 Misheel Lkhasuren, “Civil societies demand withdrawal of ‘anti-association’ bill as it negates past progress,” UB Post, November 16, 2022, <https://theubposts.com/civil-societies-demand-withdrawal-of-anti-association-bill-as-it-negates-past-progress/>.

4 “22nd Report on Human Rights and Freedom in Mongolia, 2023,” NHRCM, 2023, <https://nhrcm.gov.mn/assets/img/58c1302622c8c88d036544f656fdff5d.pdf>.

5 Zhar Zardykhan, Anand Tumurtogoo, and Khulan Jugder, “What has the “do your job” movement in Mongolia achieved?” Al Jazeera, May 3, 2022, <https://www.aljazeera.com/program/the-stream/2022/5/1/what-has-the-do-your-job-movement-in-mongolia-achieved>.



According to the Law on the Legal Status of the Human Rights Defenders, which was newly adopted on 2 April 2021, a member in charge of human rights defenders (HRDs) was to be appointed to the Commission, making a total of six commissioners.⁶ In June 2022, the Mongolian Parliament elected lawyer and former Mongolian Bar Association President, J. Khunan, as the Chairperson. He has also been serving as the Asia Pacific Forum of NHRIs' (APF) Deputy Chairperson since 2022.⁷

Within the framework of the revision of the Law on the NHRC, the selection of commissioners is now open and transparent. As a result, a legal system has been formed to hold government officials and enterprises accountable if they do not fulfil recommendations and requirements, expanding the powers of the commissioners.

“ However, there is still a need for the commissioners to fully exercise their authority and focus on producing real results in order to ensure and protect human rights and freedoms.

According to the updated law in 2020, the NHRC is financed by state budgets.⁸ The head of the Commission plans the annual budget draft and submits it to the Parliament. The draft is then discussed and approved at the meeting of the Standing Committee on Justice and included into the State budget. The budget expenditure is also transparently displayed on the NHRC website.

The NHRC appointed seven commissioners through open selection and public hearing as outlined in the 2 April 2021 amendments to the Law on the NHRC, which was a significant step forward. The NHRC selected S.Dondov, a CSO representative with extensive experience in human rights, as a commissioner, which was a positive step to strengthen the Commission's diversity.⁹ However, the requirement for commissioners to “have high legal qualification” restricts having commissioners without professional legal education and work experience, thereby not meeting international requirements.¹⁰

6 “Law of Mongolia, Law on the National Human Rights Commission of Mongolia 12.1,” LegallInfo, January 23, 2023, <https://legalinfo.mn/mn/detail/15152>.

7 “Танилцуулга/ Introduction,” NHRCM, December 26, 2022, <https://nhrcm.gov.mn/page/17>.

8 “The law of Mongolia, Law on the National Human Rights Commission of Mongolia, 6.1,” LegallInfo, January 23, 2023, <https://legalinfo.mn/mn/detail/15152>.

9 “Ya.Tselmen appointed commissioner in charge of torture prevention,” UBPost, June 6, 2022, <https://www.pressreader.com/mongolia/the-ub-post/20220606/281539409598607>.

10 “Universal Periodic Review – Mongolia, third cycle,” United Nations Human Rights Council, November 4, 2020, <https://www.ohchr.org/en/hr-bodies/upr/mn-index>.

The NHRC is mandated to issue proposals and recommendations related to complaints and violations of human rights and freedoms and take them to competent organisations and officials. The 2022 amendment revision to the Law on the NHRC, which widened the mandate of the Commission, states: “If there is no action following the demands of the Commissioners, then this shall be a legal ground to submit a proposal to competent organisations and officials to dismiss the relevant official, cancel a permit of legal entity and stop their operation.”¹¹

On the one hand, this amendment re-confirms the NHRC's activities and expands its mandate. On the other, it does not guarantee full implementation of the mechanism to hold the NHRC accountable for violations of human rights and freedom. Further, some entities, which received the NHRC's requirements and recommendations, did not fulfil their obligations as the NHRC documented in the 22nd Report of Human Rights and Freedoms in Mongolia.

“ The NHRC commissioners sent a total of 104 requirements and recommendations in 2021, and a total of 74 requirements and recommendations in 2022, to officials and entities. Out of these, 146 officials submitted their responses and implementation within the time specified by the law; 16 officials submitted their responses after the deadline; and 16 officials did not submit their responses, nor did they work to ensure implementation.¹²

11 The Law of Mongolia, Law on the National Human Rights Commission of Mongolia 28.3,” LegallInfo, <https://legalinfo.mn/mn/detail/15152>.

12 “22nd Report on Human Rights and Freedom in Mongolia, 2023, 589,” NHRCM, 2023, <https://nhrcm.gov.mn/assets/img/58c1302622c8c88d036544f656fdff5d.pdf>.

The NHRC has local representatives across the country and in 21 provinces of Mongolia. The Commission jointly organises trainings, meetings, and inspections. It also provides updates to local stakeholders.¹³ However, there are still challenges for which the NHRC has to take further steps to ensure regular, open, and transparent engagement with the public. It also needs to accelerate and support cooperation with local representatives to actively involve various stakeholders in its activities, share local action plans, and publish details of their activities on its website to improve information flow. There is some information about the trainings, lectures and activities related to local/rural areas on the NHRC's website,¹⁴ but action plans for 2021-2022 are not available. Public disclosure of action plans on the website would allow stakeholders of the capital city and remote regions to learn about the NHRC's activities as well as to actively cooperate and partner in the future.

The NHRC does not have reasonable infrastructure to meet various public needs. The institution does not own a building and on 14 April 2023, it moved into a government building. The entrance to the building requires valid signage in accordance with the Law on State Special Protection, which delineates the disclosure of personal information to access the NHRC, file complaints and attain recommendations.

Moreover, the NHRC does not submit an independent report on international human rights' implementation to treaty bodies, the Universal Periodic Review (UPR) and the Special Procedures mechanisms. For example, the NHRC does not independently prepare the UPR report. In fact, it is part of Mongolia's National Report preparation discussion and all relevant stakeholders provide proposals and recommendations. NHRC prepares joint recommendations for the UPR shadow report and stakeholders' report.¹⁵

In June 2022, the Commission for the Prevention of Torture was established for the first time in Mongolia with Y. Tselmen appointed as the Commissioner. Following this, the Commission established the Torture Prevention Unit in August of the same year. The Unit organised trainings, discussions, meetings, and educational activities in the city and rural areas in accordance with its duties.¹⁶ Subsequently, the NHRC prepared the first report of the National Action for the Prevention of Torture and submitted it to the Standing Committee on Legal Affairs of the Parliament.¹⁷ Moreover, the analyses and a total of six recommendations on the report were published on the Parliament website.¹⁸

In its 22nd Human Rights and Freedom Report (2023), the NHRC included some proposals as a package, including:

- A proposal for the decision on the State Great Khural of Mongolia;
- A proposal to revise the Law on Media Freedom and consider the law template developed by NHRC within the scope of legal regulations of civil participation;¹⁹
- A proposed draft law in the report annexe in full version;²⁰ and
- A proposal to consider the legal regulation of non-governmental organisations.

According to clause 9.2 of the Law on the NHRC, the report of the Commission shall be discussed at the plenary of the regular spring session of the State Great Khural, with the aim of issuing a resolution on the implementation of proposals and recommendations. The report on human rights and freedom in Mongolia was discussed in June 2022.

¹³ "Rural areas in NHRCM", NHRCM, <https://nhrcm.gov.mn/news/4>.

¹⁴ "Working group of NHRC is working at Selenge province," NHRCM, April 25, 2022, <https://nhrcm.gov.mn/newsdetail/411>.

¹⁵ "Universal Periodic Review – Mongolia, third cycle," November 4, 2020, <https://www.ohchr.org/en/hr-bodies/upr/mn-index>.

¹⁶ "National operation for the prevention of torture," NHRCM, <https://nhrcm.gov.mn/news/57>.

¹⁷ "The first report of the National operation for the prevention of torture submitted," NHRCM, April 5, 2023, <https://nhrcm.gov.mn/newsdetail/1527>.

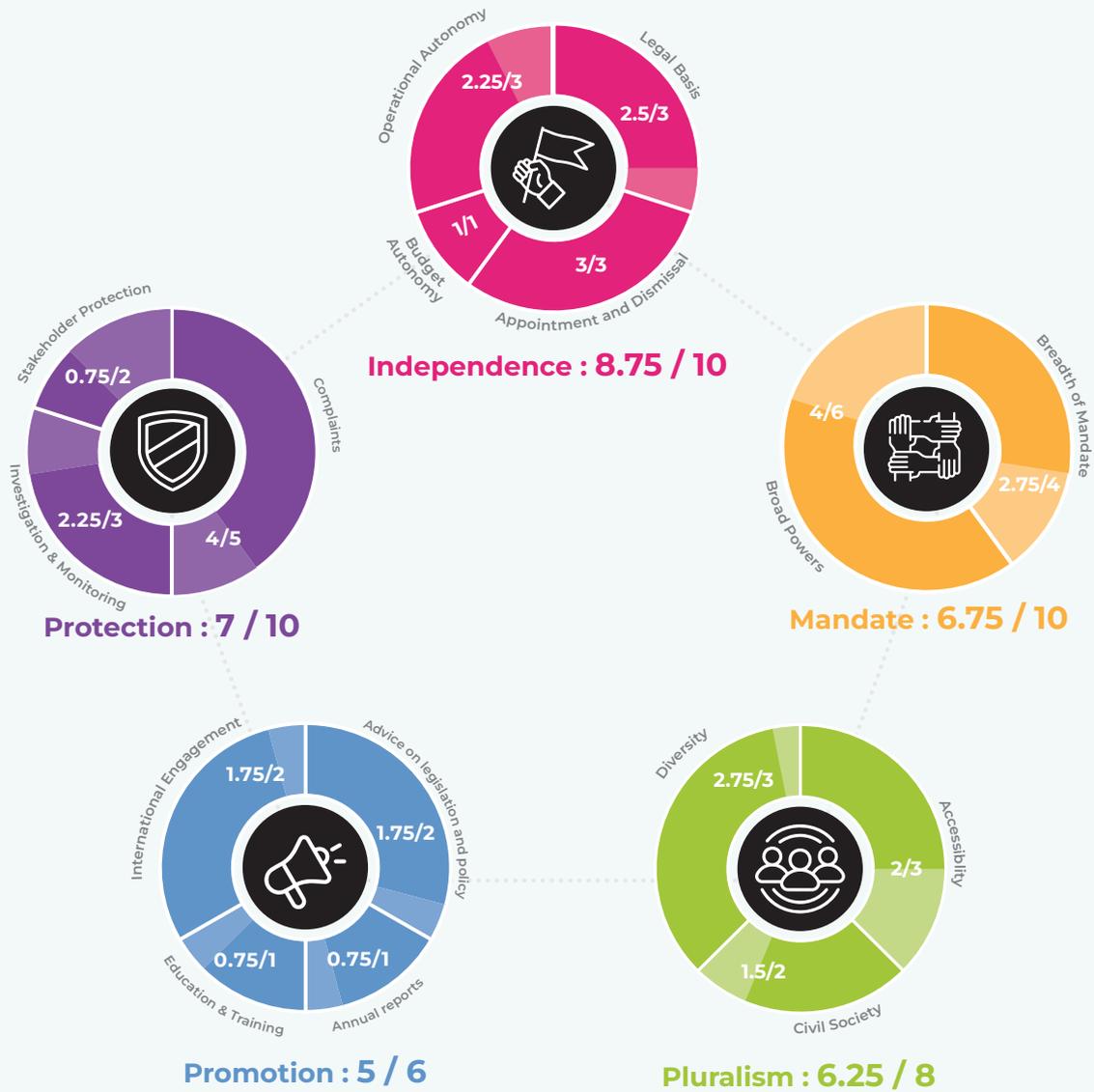
¹⁸ "The analyses on the National operation for the prevention of torture in 2022," The Parliament of Mongolia, April 21, 2023, <https://www.parliament.mn/nn/30303>.

¹⁹ "22nd Report on Human Rights and Freedom in Mongolia, 2023, 576," NHRCM, 2023, <https://nhrcm.gov.mn/assets/img/d840600d288fcb74618e539b7331a142.pdf>.

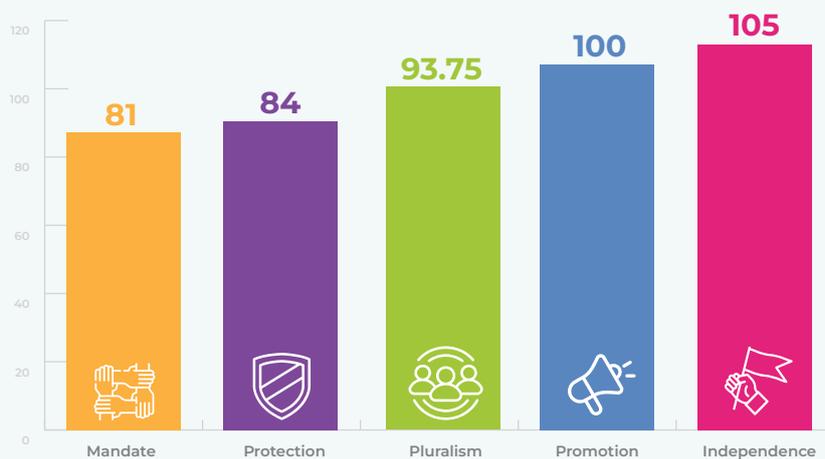
²⁰ *Ibid.*



Category and sub-category-wise scores for NHRC Mongolia



Inter-category comparative scores (out of 120)



“ While presenting the report, the NHRC Chairperson emphasised paying attention to the human rights and freedom violations and certain laws and draft laws, in addition to ensuring compliance with international contracts and conventions to which Mongolia is a party.²¹

In April 2021, Mongolia adopted the Law on Legal Status of the Human Rights Defenders, becoming the first Asian country to introduce a mechanism to provide legal protection to HRDs, citizens, CSOs and other individuals working in the area of human rights. In accordance with this law, the Human Rights Defenders Committee has been established under the NHRC. Four members of the Committee were selected from representatives of non-profit legal entities through open hearings, and two representatives - one from the Mongolian Bar Lawyers' Association, and another from the Association of Mongolian Advocates - were appointed as Committee members for a period of 3 years.²² In the future, it is necessary to ensure the active functioning of this Committee in order to protect HRDs whose rights have been violated. Even though now there is a law to protect HRDs, there is still a need to raise public awareness of who an HRD is and what kind of work they do. The law also needs to be disseminated further.

A case in point is when, on 2 August 2022, the General Intelligence Agency of Mongolia informed Sukhgerel Dugersuren, an HRD and the Executive Director of the Mongolian organisations, Oyu Tolgoi Watch and Rivers without Boundaries Mongolia, that she was under investigation for committing crimes under the Mongolian Criminal Code Article 19.4, which prohibits “illegal cooperation with a foreign intelligence agency agent.” Sukhgerel was subject to clear criminalisation, and it was apparent that the law was being misused to limit civic freedom and punish HRDs. The full alert, which the Globe International Center submitted, can be accessed on the International Freedom of Expression Exchange’s official website.²³

In September 2021, the Draft Law on the Legal Status of Whistle-Blowers was developed to support, protect, and encourage whistle-blowers to act in the public’s interest and to prevent any action from deteriorating their legal status.²⁴ Since then, the draft law has been discussed numerous times in the Parliament with a working group that includes members from the NHRC.²⁵

“ Additionally, Mongolia ratified the UN General Assembly’s Convention Against Corruption in December 2005. However, 15 years have passed since, and Mongolia has failed to fulfil its obligation to establish a legal environment to protect whistle-blowers as outlined in Article 33 of this convention, despite having the relevant policy documents on the protection of whistle-blowers.²⁶

Hence, the NHRC has to make efforts to improve the draft law, and encourage the working group members to secure legal status for whistle-blowers raising concerns on public interests for preventing and eliminating conflict of interest, protecting public health, environment, and whistleblowing consumer rights and supporting fair competition.

As per the law, the NHRC has a Civil Society Council consisting of representatives from CSOs who are active in the area of human rights. Their main function is to support the NHRC’s operations.²⁷ The Civil Society Council has 18 members from non-profit legal entities that are engaged in human rights, research institutes, lecturers and researchers of universities and institutes, and representatives of CSOs working with children, women, men, and national and language minority groups.²⁸

21 Ch.Ariunbold, “Speech on human rights and freedom in Mongolia is discussed,” Montsame, June 17, 2022, <https://www.montsame.mn/mn/read/299170>.

22 “Хүний эрх хамгаалагчийн хороо,” NHRCM, January 1, 2023, <https://nhrcm.gov.mn/page/29>.

23 “Mongolia urged to stop harassing human rights defender Sukhgerel Dugersuren,” Ifex, September 2, 2022, <https://ifex.org/mongolia-urged-to-stop-harassing-human-rights-defender-sukhgerel-dugersuren/>.

24 “Draft law on the legal status of whistle-blowers,” Parliament of Mongolia, November 10, 2021, <https://d.parliament.mn/tusul/5a205e08-e865-4854-99ef-0a7cd7f2b853>.

25 E.Ayanzaya, “Bill on Legal Status of Whistleblowers submitted to Parliament Speaker,” Montsame, November 12, 2021 <https://www.montsame.mn/en/read/280919>.

26 “Critics to Draft Law on Legal Status of Whistleblowers,” Open Society Forum Mongolia Legal Review №34, October 10, 2021, https://cdn.greensoft.mn/uploads/users/3092/files/LR34_Whistleblower.pdf.

27 “Civil Society Council,” NHRCM, May 23, 2022, <https://nhrcm.gov.mn/page/13>.

28 “The Civil Society Council under the NHRC organized its first session of 2023,” NHRCM, January 23, 2023,

<https://nhrcm.gov.mn/newsdetail/614>.



NHRC's Resolution of Human Rights Violations and Complaints

The Commission's members investigate complaints on their own initiative and also at the request of relevant organisations and officials. The Law on the NHRC stipulates inspecting and resolving complaints and information within 30 days. However, depending on the nature and scope of the complaint, some get extended for another 30 days and are resolved within 60 days at the maximum.

“ The Commission received and inspected 1188 complaints and information in 2021 and 925 in 2022.²⁹ The following table gives a more detailed break-up of the complaints in 2021-2022:

Table: NHRC Mongolia's Complaint Resolution (2021-2022)

Resolution of Complaints	2021	2022
Complaints and information were transferred to other organisations under their jurisdiction	336	308
Provided legal advice	79	72
Complaints and information were delivered requirements to competent officials addressing by Commissioners	57	35
Recommendations of Commissioners were provided for Complaints and information	52	37
Responses to citizens according to their complaints and information	595	204
Reconciliation of complaints and information	19	20
Complaints and information failed to meet requirements were returned	44	17
The complaint cannot be accepted because it is in the court stage ³⁰	-	94
Complaints and information were resolved to file a petition on behalf	-	41
Citizens rejected their complaints in the course of processing	-	3
Plaintiff passed away	-	26
Complaints and information of crime and violation nature were transferred to law organizations	-	1
Complaints and information were resolved to file a petition on behalf	-	6

²⁹ Personal communication with the representative of NHRC, June 15, 2023.

³⁰ "The law of Mongolia, Law on the National Human Rights Commission of Mongolia, 22.2," LegalInfo, January 23, 2023, <https://legalinfo.mn/mn/detail/15152>.

As part of the complaint investigation process, if needed the NHRC personally meets the complainant for an explanation and collects additional documents and materials, when they receive any complaints or information. Plaintiffs, high-level officials, and third parties also provide explanations, and sometimes this process is received in written form. A response is provided to every complainant who files a complaint.

Involvement of the NHRC in Gender Issues and Specific Initiatives

The Law on the NHRC³¹ considers gender equality in the appointment of commissioners, wherein not less than 40 per cent are required to be representatives of one gender. The State Great Khural ensures gender equality in accordance with the special arrangement of commissioners specified in the Law on the NHRC. Under Clause 3.4 of the Civil Society Council Charter (approved by resolution A/04 on 10 January 2022), the NHRC Chairperson should make gender equality an essential requirement in the appointment of council members. The council's members include 9 women and 9 men representing the national minority, gender minority, elderly, and people with disabilities. The Chancellery of the NHRC has 74 officers, of which 28 are men and 46 are women, including 8 men and 6 women in leadership roles. The Chancellery has also employed representatives from the gender minority and people with disabilities, and it plans to employ representatives from the national minority.³² Further, the Human Rights Defenders Committee comprises 4 women, 3 men, and 1 representative with a disability.

Women make up 51 per cent of all voters in Mongolia and have been actively participating in elections. But their representation in Parliament is 17.3 per cent, which is 7.6 per cent less than the world average.³³ There is a law ensuring gender equality in the political sphere, but there is no accountability system for non-implementation of the law. During the presentation of the 22nd Report to the State Great Khural, the NHRC Chairperson reiterated that legally, political parties are obliged to deliver their gender-related policies and activities report every two years to the National Gender Committee. However, only the Mongolia People's Party and the National Labor Party submitted this information for the first time in 2022. Other parties did not fulfil this obligation. The Chairperson mentioned that women politicians, women serving in high-level positions, and women running for elections are exposed to defamation, verbal abuse, and face more attacks and harassment in the digital environment than men. He further highlighted that women mostly cannot meet the financial criteria to be nominated for elections and cannot receive assistance and support, which restricts their political participation.³⁴

31 "The Law of Mongolia, Law on the National Human Rights Commission of Mongolia, 12.9," *LegalInfo*, January 23, 2023, <https://legalinfo.mn/mn/detail/15152>.

32 Personal communication with the representative of NHRC, June 15, 2023.

33 "22nd Report on Human Rights and Freedom in Mongolia, 2023," *NHRCM*, 2023, <https://nhrcm.gov.mn/assets/img/d840600d288fcb74618e539b7331a142.pdf>.

34 S.Enkhbat, "Human Rights and Freedom Report Submitted," *Montsame*, March 30, 2023, <https://www.montsame.mn/en/read/315774>.



Conclusion

As demonstrated in this chapter, the NHRC has expanded and gained more authority in terms of operations and mandate as compared to previous years. However, to improve the situation of human rights and freedoms in the future, it is important that the NHRC takes more concrete actions. This translates to anticipating any violations before they occur. It is also necessary to regularly and effectively cooperate with CSOs working in the field of human rights and listen to their voices. There is a need for more advocacy and awareness initiatives, such as organising monthly events virtually and in person. Organising training sessions for journalists and media organisations to disseminate human rights-sensitive knowledge and information could also contribute to this. Furthermore, the NHRC needs to pay attention to the implementation and follow-up of its recommendations at all levels.

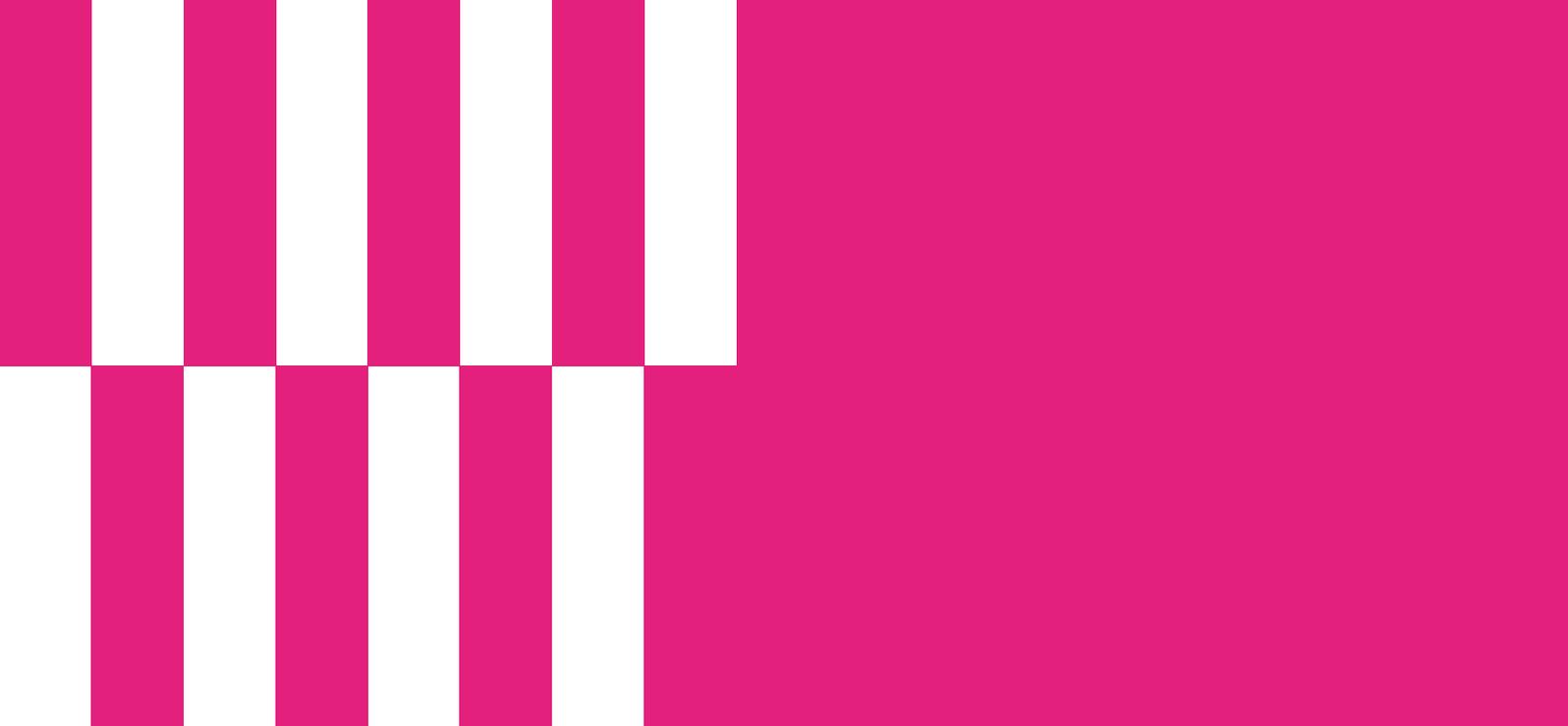
Recommendations

To the NHRC:

- Actively take follow-up action on authorised enterprises, officials, and citizens who do not respond to cases of non-fulfilment of requirements and recommendations;
- Focus on having a dedicated building for the NHRC and provide access to everyone who needs advice and assistance;
- Make efforts in accordance with the NHRC mandate to promote and disseminate human rights education; and
- Support the active operation of the Human Rights Committee, established under the NHRC.

To the Government:

- Keep track of the implementation of the recommendations in the NHRC report;
- Disseminate information about the process of their implementation in an open and accessible way;
- Provide special support to the NHRC to raise public awareness on human rights mechanisms and education; and
- Pay special attention to the recommendations and implementation of international human rights organisations and mechanisms, such as Treaty Bodies, the UPR, and Special Procedures mechanisms.



MYANMAR

The Myanmar National Human Rights Commission – A Lesson in Failure

Compiled by Progressive Voice on behalf of the CSO Working Group on Independent National Human Rights Institution (Burma/Myanmar)¹



Introduction

The Myanmar National Human Rights Commission (MNHRC) was formed in 2011 and mandated by its enabling law, the Myanmar National Human Rights Commission Law, in 2014. It was graded as a status 'B' national human rights institution (NHRI) in November 2015 by the Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation (GANHRI-SCA). This status indicates the MNHRC's failure to fully comply with the Paris Principles. The GANHRI-SCA listed seven problematic aspects of the Commission because of which it got this grading: a) selection and appointment; b) performance in situations of civil unrest or armed conflict; c) pluralism; d) adequate funding and financial independence; e) monitoring places of deprivation of liberty; f) interaction with the international human rights system; and g) annual report.²

“ Since the 2015 accreditation process there have been several emblematic cases that demonstrate the MNHRC's lack of independence, effectiveness, and pluralism.

One example is the 2016 Ava Tailoring case, in which a prominent tailoring family business in downtown Yangon was found to have abused and tortured two teenage maids and forced them to work with little or no pay.³ After the case came to light and was reported to the MNHRC, rather than pursuing legal action or setting accountability, the MNHRC pressured the families of the two victims to accept money from the tailoring family.

Moreover, in conflict-affected parts of Myanmar, the MNHRC has proven to be particularly ineffective. This can be seen in its consistent adherence to the military's narrative during the investigations into civilian deaths in Kachin State in 2018 and Rakhine State in 2019, as well as its complete silence over the Rohingya genocide in 2017.⁴ It is also important to note that, between 2016 and 2018, there were no women commissioners in the MNHRC.

The MNHRC has utterly failed to address the magnifying human rights crisis in Myanmar after the military's attempted coup on 1 February 2021. The military junta has torn up the previous tenuous agreement between the civilian government of the National League for Democracy and the Myanmar military by attempting to subvert the democratic will of the people of Myanmar, as expressed in the 2020 national elections.

“ The junta has been waging an all-out assault against the people of Myanmar, and the country is now in a state of full-blown nationwide war. The illegal junta has also enacted or amended several laws that further suppress and violate the fundamental human rights of the people of Myanmar.

This includes legalising military interception of electronic communications, expanding Section 505(A) of the Penal Code to criminalise the expression of dissent such as protesting, and amending the Electronic Transactions Law to criminalise online criticism of the military junta.⁵

1 The CSO Working Group on Independent National Human Rights Institution (Burma/Myanmar) advocates for the establishment of a new National Human Rights Institution (tentatively named the Union Human Rights Commission) to replace the illegitimate Myanmar National Human Rights Commission (MNHRC), which has aligned itself with the illegal military junta. The Working Group was previously known as 'CSO Working Group on MNHRC Reform'. Currently, it consists of 20 Myanmar civil society organisations. From its founding in 2019 until the attempted coup in February 2021, the Working Group has consistently advocated for an effective MNHRC that demonstrates a commitment to the international standards set forth in the Paris Principles.

2 "Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)", GANHRI, 16-20 November, 2015, <https://ganhri.org/wp-content/uploads/2019/11/SCA-FINAL-REPORT-NOVEMBER-2015-English.pdf>.

3 San Yamin Aung, "Four MNHRC Members Resign Over Tailor Shop Abuse Case," *The Irrawaddy*, October 6, 2016, <https://www.irrawaddy.com/news/burma/four-mnhrc-members-resign-tailor-shop-abuse-case.html>.

4 "Myanmar: A Little Less Conversation, A Little More Action Please," Myanmar Civil Society Organisations and ANNI, Myanmar Chapter of the 2019 ANNI Report, November 2019, <https://progressivevoicemyanmar.org/wp-content/uploads/2019/12/20191119-Myanmar-A-little-Less-Conversation-A-Little-More-Action-Please-FINAL-Web-ready.pdf>.

5 "Myanmar: Post-Coup Legal Changes Erode Human Rights," Human Rights Watch, March 2, 2021, <https://www.hrw.org/news/2021/03/02/myanmar-post-coup-legal-changes-erode-human-rights> and "Myanmar: Military Coup d'état violates principles of rule of law, international law and Myanmar's Constitution," International Commission of Jurists, February 8, 2021,

<https://www.icj.org/myanmar-military-coup-detat-violates-principles-of-rule-of-law-international-law-and-myanmars-constitution/>.

The military junta faces fierce resistance, both civil and armed, from the nationwide Civil Disobedience Movement, the emergence of People's Defence Forces, and the long-standing Ethnic Resistance Organisations. Long-established ethnic governance entities and structures, service providers, and newly established people's administration bodies govern significant parts of the country.⁶ The National Unity Government (NUG) is the government formed of elected Members of Parliament from the 2020 elections and ethnic and civil society leaders. The NUG is the overarching government that the people of Myanmar view as their legitimate governing institution.

The military junta has responded to the resistance with disproportionate levels of violence, including targeted killings of civilians, massacres, airstrikes, arbitrary arrests, extra-judicial killings, sexual and gender-based violence, and relentless persecution of political figures and human rights defenders.⁷ As of 22 September 2023, the junta has killed over 4,100 people (including 457 children); arbitrarily arrested nearly 25,000 civilians (about 20,000 of whom remain in detention), and sentenced around 150 dissenters to death.⁸ The junta continues to commit war crimes against civilians (including children) and crimes against humanity at will, often targeting places of worship, schools, and hospitals.

One of the worst massacres occurred in April 2023, where an aerial bombing, followed by helicopter attacks, killed at least 170 people in Pa Zi Gyi Village in Sagaing Region as they gathered to celebrate the opening of a new administration department. The Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, repeated his determination to the UN Human Rights Council in June 2022 that the junta's daily attacks amount to war crimes and crimes against humanity.⁹

6 "Briefing Paper: Effective Control in Myanmar. Special Advisory Council for Myanmar", September 5, 2022, <https://specialadvisorycouncil.org/2022/09/briefing-effective-control-myanmar/> and "Situation Maps: The Burma Army's Authority Deteriorates as it Struggles to Maintain Control Within the Country," Free Burma Rangers, April 24, 2023, <https://www.freeburmarangers.org/2023/04/24/situation-maps-the-burma-armys-authority-deteriorates-as-it-struggles-to-maintain-control-within-the-country/>.

7 "Launch of a Briefing Paper Humanitarian Crisis in Myanmar's Dry Zone," Progressive Voice, August 31, 2022, <https://progressivevoicemyanmar.org/2022/08/23/media-advisory-launch-of-a-briefing-paper-on-the-humanitarian-crisis-in-myanmars-dry-zone/> and "Anatomy of Impunity – UN Must Finally Establish a Jurisdiction for Grave Crimes in Myanmar," Progressive Voice, March 10, 2022, <https://progressivevoicemyanmar.org/2022/03/10/anatomy-of-impunity-un-must-finally-establish-a-jurisdiction-for-grave-crimes-in-myanmar/>.

8 "Daily Briefing in Relation to the Military Coup," Assistance Association for Political Prisoners, September 22, 2023, <https://aappb.org/?p=26296>.

9 "UN Expert Releases New Report Documenting Military Junta's Impact on Myanmar's Children, Urges Immediate Coordinated Action to Prevent 'A Lost Generation,'" OHCHR, June 14, 2022, <https://www.ohchr.org/en/press-releases/2022/06/un-expert-releases-new-report-documenting-military-juntas-impact-myanmars>.

MNHRC's Failure to Exercise Its Mandate to Promote and Protect Human Rights

The CSO Working Group on Independent National Human Rights Commission (Burma/Myanmar) (Working Group), previously known as the CSO Working Group on MNHRC Reform, published an analysis paper on the MNHRC's complicity in the junta's grave human rights violations and atrocity crimes between the attempted coup of February 2021 and the end of 2022.¹⁰ Most of the information in this chapter draws from the analysis paper. It demonstrates how, amid the ongoing violations of human rights since the illegal coup attempt, the MNHRC has aligned and cooperated with the military junta, even joining part of its propaganda offensive. It must be noted here that according to the General Observations of the GANHRI-SCA, the MNHRC is required to conduct itself with "a heightened level of vigilance and independence."¹¹

10 "Accessory to the Junta's Crimes," ANNI and the Working Group, February 27, 2023, <https://progressivevoicemyanmar.org/2023/02/27/accessory-to-the-juntas-crimes-analysis-of-the-myanmar-national-human-rights-commissions-complicity-with-the-military-junta-since-the-failed-coup-detat-of-1-february-2021/>.

11 "General Observations of the Sub-Committee on Accreditation," GANHRI, 2018. G.O. 2.5, https://ganhri.org/wp-content/uploads/2019/11/EN_GeneralObservations_Revisions_adapted_21.02.2018_vf.pdf.



Lack of Independence in Practice:

As per the Paris Principles,¹² NHRIs must “promote and protect human rights”. GANHRI notes that “the accreditation process assesses an NHRI’s compliance with the Paris Principles in law and practice”.¹³ Since the coup attempt, the MNHRC has taken no steps to address or prevent the litany of human rights violations committed by the military junta. On the contrary, it has either stayed completely silent on some of the most pressing human rights issues or has actively praised the military junta by describing it as “humanitarian”¹⁴ or “forward-looking”.¹⁵ In a statement of support in April 2022 for the military’s so-called “Year of Peace”, the MNHRC praised the junta leader, Min Aung Hlaing, and his superficial offering of peace talks. In this statement, the MNHRC expressed that:

The initiative of the Chairman of the State Administration Council Prime Minister Commander-in-Chief of Defence Services to engage in peace talks with ethnic armed organizations in person, therefore, is a gigantic and forward-looking step in the right direction and the rarest chance of its kind to be seized by all peace-loving people.¹⁶

Yet there has not been an MNHRC statement condemning the almost daily airstrikes launched by the military junta and the blocking and weaponisation of humanitarian aid, nor on the repeated massacres of civilians as a form of collective punishment to demoralise the resistance movement.

The MNHRC has also consistently praised prisoner releases. For example, in its November 2022 statement, it described the “humanitarian actions” of Min Aung Hlaing, even though he is the leader of the Myanmar military that stands accused of genocide against the Rohingya in 2017 and crimes against humanity against other ethnic minorities. He has been presiding over the atrocities that are being committed by the junta since the coup attempt.¹⁷ In another instance in July 2021, on the release of human rights and democracy activists charged under Section 505(A) of the Penal Code, the MNHRC stated that it was “heartened” and believed that their release will also “hearten international and regional human rights organizations”.¹⁸ The statement also expressed that it is a “a very significant measure from the humanitarian and human rights perspective” and “welcomes the fact that the released journalists are urged in the Myanmar Press Council Announcement 6/2021 to uphold the media ethics and standards required for the development of the Fourth Pillar”. The statement did not address the fact that the military junta arbitrarily arrested these people in violation of their fundamental freedom. The statement also ignored the fact that prisoners face routine torture, sexual and gender-based violence, executions, extrajudicial killings, deprivation of food and water, and are forced to live in cramped and unsanitary conditions.¹⁹

¹² “Principles Relating to the Status of National Human Rights Institutions (The Paris Principles)”, adopted by the United Nations General Assembly (A/RES/48/134), 20 December, 1993, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/116/24/PDF/N9411624.pdf?OpenElement>.

¹³ “Information for NHRIs,” GANHRI, <https://ganhri.org/information-for-nhris/>.

¹⁴ “Myanmar National Human Rights Commission. Statement No. (4/2022),” November 18, 2022, <https://mnhrc.org.mm/statements/en/print/80>.

¹⁵ “Statement of the Myanmar National Human Rights Commission on the Peace Initiative,” Statement No. (2/2022), April 28, 2022, <https://mnhrc.org.mm/statements/en/print/17>.

¹⁶ “Statement of the Myanmar National Human Rights Commission on the Peace Initiative, Statement No (2/2022),” April 28, 2022, <https://mnhrc.org.mm/statements/en/print/17>.

¹⁷ “Myanmar National Human Rights Commission. Statement No. (4/2022),” November 18, 2022, and July 5, 2021, <https://mnhrc.org.mm/statements/en/print/80>.

¹⁸ “The Statement of the Myanmar National Human Rights Commission (MNHRC) on the Dismissal and Release of Prisoners Prosecuted Under Section 505-A of the Penal Code Statement No. (10/2021),” July 5, 2021, <https://mnhrc.org.mm/statements/en/print/27>.

¹⁹ “Myanmar: High Commissioner Details Severe Violations Amid Shocking Violence” Volker Türk, UN High Commissioner for Human Rights, delivered at the 52nd Session of the Human Rights Council, March 6, 2023, <https://www.ohchr.org/en/statements-and-speeches/2023/03/myanmar-high-commissioner-details-severe-violations-amid-shocking>.

Monitoring Places of Deprivation of Liberty:

Following the attempted coup, the MNHRC conducted prison inspections after which it made unfounded claims about prisons complying with human rights obligations. This is despite overwhelming evidence of torture, ill-treatment, and murder of prisoners, which has widely been reported by news media and civil society.²⁰ Consequently, the military used these statements for their propaganda in their media mouthpiece, highlighting the “successful” prison inspections by the MNHRC.²¹

However, testimony from a former prisoner who was released on 3 May 2023 to one of this chapter’s authoring organisations sheds light on the actual prison inspections. Before the MNHRC visits, prison authorities warned prisoners not to speak badly of their treatment and conditions and were threatened with transfer if they did speak out. Then, during visits, MNHRC commissioners simply urged prisoners to pray, rather than the commissioners conducting more comprehensive inspections, or reflecting on the reality of the often violent and inadequate conditions, as well as the discrimination faced by Christian and Muslim prisoners.

The MNHRC has, in effect, endorsed the military junta’s (and in some cases, military troops’) prison administration and condoned its human rights violations through its ineffectual prison monitoring. Through the MNHRC, the junta attempts to conceal its crimes by having a so-called human rights institution inspect and report on prisons, so as to fend off probes and criticism from the international community.²²

20 “Statement on the Severe Violences against the Female Political Prisoners in Mandalay Central Prison (Oo Bo),” Anti Junta Forces Coordination Committee – Mandalay, March 2023, <https://twitter.com/PVamplify/status/1633721923892043777/photo/1>.

21 “MNHRC Member Inspects Prisons, Court Detention Centres in Kengtung, Tachilek,” *Global New Light of Myanmar*, January 13, 2022, <https://www.gnlm.com.mm/mnhrc-member-inspects-prisons-court-detention-centres-in-kengtung-tachilek/>.

22 “Myanmar National Human Rights Commission Press Release on Complaints Submitted to the Commission and Inspection of Prisons and Detention Centres,” Press Release No. (1/2022), February 8, 2022, <https://mnhrc.org.mm/statements/en/print/16> and Statement No. 10/2021, <https://mnhrc.org.mm/statements/en/print/27>.

Composition and Pluralism:

Another aspect of the MNHRC that is clearly in breach of the Paris Principles is related to the identity of commissioners. Two of the present commissioners are former military personnel. Commissioner Tin Aung is a former Brigadier General, who served in the Myanmar military until 2019, before his appointment to the Commission in January 2020. He was a high ranking military officer when the UN-mandated Independent International Fact-Finding Mission on Myanmar’s investigation recommended that the Myanmar military be investigated for genocide for atrocities committed during its “clearance operation” against the Rohingya in 2017.²³ Paw Lwin Sein, who is the current Chair, is also a former military personnel and served as a junior officer to the Military of Defence, albeit between 1978 and 1980.²⁴ It is telling that the profiles of the commissioners have been taken down from the MNHRC’s website and accessing their information necessitates an online tool.²⁵ None of the other commissioners have strong ties or experience within Myanmar civil society, nor were they selected as a result of transparency, inclusive dialogue, or consultation with civil society and the Myanmar public. This was pointed out by civil society in the previous selection process, as well as by the GANHRI-SCA in its previous accreditation process of Myanmar in 2015.²⁶ The commissioners’ background and opaque selection process have become even more problematic in light of the coup attempt.

“Even though the MNHRC’s selection and appointment process is enshrined in its enabling law, the Commission was once described as a “club for former civil servants”.”²⁷

23 “Report of the International Investigative Mechanism for Myanmar,” *United Nations Human Rights Council*, July 12, 2022, <https://iimm.un.org/wp-content/uploads/2022/08/A-HRC-51-4-E.pdf>.

24 In August 2023 former Chairperson Hla Myint was forced to resign and was replaced by Paw Lwin Sein, who had been serving as a commissioner.

25 ‘Wayback Machine’ was used for the purpose of the submission to extract information regarding the MNHRC commissioners.

26 “Selection Process of New Commissioners for the MNHRC Must be Transparent and Inclusive,” *CSO Working Group on MNHRC Reform*, July 25, 2019, <https://forum-asia.org/?p=29344> and Nyein Nyein, “Reform of Myanmar Human Rights Commission Lacks Transparency, Critics Say,” *The Irrawaddy*, January 15, 2020, <https://www.irrawaddy.com/news/burma/reform-myanmar-human-rights-commission-lacks-transparency-critics-say.html> and “Report and Recommendations of the Session of the Sub-Committee on Accreditation,” *International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights*, November 2015, Page. 11, https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf.

27 Nyein Nyein, “Reform of Myanmar Human Rights Commission Lacks Transparency, Critics Say,” *The Irrawaddy*, January 15, 2020, <https://www.irrawaddy.com/news/burma/reform-myanmar-human-rights-commission-lacks-transparency-critics-say.html>.



The current iteration of commissioners was selected before the coup attempt and the lack of pluralism makes the MNHRC unsuited to the promotion and protection of human rights in today's emergency situation. The Commission's activities are no longer publicised as much; something that used to be prominently done on social media. This information has now become less transparent and publicly accessible. Since the coup attempt, the MNHRC has not been very active on social media and only updates its activities through its website or the military-controlled newspaper, the Global New Light of Myanmar.

Furthermore, at the time of this report, the MNHRC listed the Myanmar National Portal (the junta's propaganda website, which frequently depicts the NUG and peaceful protesters as terrorists²⁸) as a partner, alongside the UN Office of the High Commissioner for Human Rights (OHCHR), GANHRI, Asia Pacific Forum (APF), and Southeast Asia National Human Rights Institutions Forum (SEANF).²⁹

Way Forward: A New National Human Rights Institution for Myanmar

As the GANHRI-SCA noted in 2015, the enabling law around selection, appointment, and independence should empower the MNHRC to effectively promote and protect human rights. However, in reality, it has enabled the MNHRC to become a tool of the junta to obfuscate its serious atrocities and grave human rights violations. This was iterated in the UN High Commissioner for Human Rights' March 2023 report, which stated: "The judiciary of Myanmar and the National Human Rights Commission have effectively been subsumed under military control, thus eliminating any element of independence and credibility".³⁰

“ Despite the fact that the MNHRC has never been independent nor impartial, and continues to be complicit in the junta's atrocities, it has managed to secure platforms at regional and international forums to peddle the military junta's propaganda and falsely claimed legitimacy.

The Working Group has been urging international and regional NHRI bodies to stop their engagement with the MNHRC and to suspend, remove, or expel it from GANHRI, APF, and SEANF.³¹ Allowing the junta-controlled MNHRC to attend regional and international human rights forums (or even extending invitations to such a body) is antithetical to the promotion and protection of human rights.

28 "In Thanbyuzayet and Ayardaw Townships, Armed Terrorists Wantonly Kill Administrative Officials Government Employees and Civilians Who Live Peacefully," Ministry of Home Affairs, May 27, 2023, https://myanmar.gov.mm/news-media/news/latest-news/-/asset_publisher/idasset354/content/in-thanbyuzayet-and-ayardaw-townships-armed-terrorists-wantonly-kill-administrative-officials-government-employees-and-civilians-who-live-peacefully.

29 Myanmar National Human Rights Commission, "Partners," <https://mnhrc.org.mm/>.

30 "Situation of Human Rights in Myanmar Since 1 February, 2022 – Report of the United Nations High Commissioner for Human Rights (A/HRC/52/21)," 3 March 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5221-situation-human-rights-myanmar-1-february-2022-report-united>.

31 "International Partners Must End All Cooperation with the Myanmar National Human Rights Commission", The Working Group, March 1, 2021, <https://progressivevoicemyanmar.org/2021/03/11/international-partners-must-end-all-cooperation-with-the-myanmar-national-human-rights-commission/>.

After two years of repeated calls by the Working Group and the Asian NGO Network on National Human Rights Institutions (ANNI),³² the GANHRI-SCA made the decision in its March 2023 session to initiate a special review of the MNHRC in its following accreditation session in October 2023.³³ The Working Group and ANNI welcomed this delayed but important step. The Working Group and ANNI further conveyed civil society concerns regarding MNHRC's continuing membership to APF, GANHRI, and to various UN Offices and Missions in Geneva.³⁴ On 31 May 2023, the Working Group and ANNI made a joint civil society submission to the GANHRI-SCA, ahead of its special review of the MNHRC, with the recommendation to remove the Commission from the world's leading human rights networks.³⁵

Moreover, Myanmar's civil society and human rights defenders have been proactively working to establish a new NHRI. Soon after the attempted coup, the Working Group called for the MNHRC to denounce the military junta's coup attempt and stand with the people of Myanmar.³⁶ In its current state of complete subsumption under the illegal military junta, the MNHRC should not be recognised as legitimate. The Working Group expressed this through a joint statement on 7 August 2022, calling for the MNHRC to be dissolved and for the NUG to establish a new Union Human Rights Commission.³⁷ On 6 December 2021, the Working Group had already proposed a Union Human Rights Commission Bill to the National Unity Consultative Council (NUCC), the Committee Representing Pyidaungsu Hluttaw (CRPH), and the NUG.³⁸ It is imperative that these bodies adopt the bill and form a new independent human rights commission to replace the junta-controlled, ineffective MNHRC. Together with ANNI, the Working Group will continue to engage with the NUCC, the CRPH, and the NUG to achieve this goal.

International, regional, and sub-regional networks of NHRIs (including APF, GANHRI, and SEANF) must therefore take a principled stand and implement concrete steps to support and recognise the efforts of civil society organisations to establish a new independent NHRI that respects and upholds the principles of protecting human rights in line with the Paris Principles and will serve to protect the rights of the people of Myanmar.

32 "Myanmar National Human Rights Commission Denounce the Coup, Stand with the People of Myanmar," *The Working Group*, February 11, 2021, <https://progressivevoicemyanmar.org/2021/02/11/myanmar-national-human-rights-commission-denounce-the-coup-stand-with-the-people-of-myanmar/>, and "Myanmar National Human Rights Commission (MNHRC) Must Denounce the Military Coup and Uphold Fundamental Rights of Peoples," ANNI, February 16, 2021, <https://forum-asia.org/?p=33900&nhri=1>, and "International Partners Must End All Cooperation with the Myanmar National Human Rights Commission," *The Working Group*, March 11, 2021, <https://progressivevoicemyanmar.org/2021/03/11/international-partners-must-end-all-cooperation-with-the-myanmar-national-human-rights-commission/>, and "SEANF Must Suspend MNHRC Until NUG Reconstitutes a New Human Rights Commission," *The Working Group*, ANNI and 13 local and regional partners, May 5, 2021, <https://progressivevoicemyanmar.org/2021/05/05/seanf-must-suspend-mnhrc-until-nug-reconstitutes-a-new-human-rights-commission/> and "Open Letter from Myanmar CSOs and Asian NGO Network on NHRIs Regarding APF's Statement on the Situation in Myanmar," *The Working Group*, May 20, 2021, <https://progressivevoicemyanmar.org/2021/05/20/open-letter-from-myanmar-csos-and-asian-ngo-network-on-nhris-regarding-apfs-statement-on-the-situation-in-myanmar/>, and "Myanmar Junta Participation in the Environmental Rights and Climate Change Workshop," *The Working Group*, June 30, 2022, <https://progressivevoicemyanmar.org/2022/06/30/open-letter-myanmar-junta-participation-in-the-environmental-rights-and-climate-change-workshop/>.

33 "Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)," GANHRI, February and March 2023, <https://ganhri.org/wp-content/uploads/2023/04/SCA-Report-First-Session-2023-EN.pdf>.

34 "Civil Society Welcomes the Special Review of Junta's Myanmar National Human Rights Commission's Status in Global Body," ANNI and the Working Group, May 1, 2023, <https://progressivevoicemyanmar.org/2023/05/01/civil-society-welcomes-the-special-review-of-juntas-myanmar-national-human-rights-commissions-status-in-global-body/>.

35 "Civil Society Makes a Joint Submission to the GANHRI-SCA Ahead of the Special Review of the MNHRC in October 2023," ANNI and the Working Group, June 1, 2023, <https://progressivevoicemyanmar.org/2023/06/01/civil-society-makes-a-joint-submission-to-the-ganhri-sca-ahead-of-the-special-review-of-the-mnhrc-in-october-2023/>.

36 "Myanmar National Human Rights Commission Denounce the Coup, Stand with the People of Myanmar," *CSO Working Group on MNHRC Reform*, February 11, 2021, <https://progressivevoicemyanmar.org/2021/02/11/myanmar-national-human-rights-commission-denounce-the-coup-stand-with-the-people-of-myanmar/>.

37 "Time for the Emergence of a New National Human Rights Commission Representing the People of Myanmar," *The Working Group*, August 7, 2022, <https://progressivevoicemyanmar.org/2022/08/07/time-for-the-emergence-of-a-new-national-human-rights-commission-representing-the-people-of-myanmar/>.

38 "Myanmar Civil Society Proposes New Union Human Rights Commission Law Amid Ongoing Campaign of Terror by the Myanmar Military Junta, Urges its Swift Adoption," *The Working Group*, December 14, 2021, <https://progressivevoicemyanmar.org/2021/12/14/myanmar-civil-society-proposes-new-union-human-rights-commission-law-amid-ongoing-campaign-of-terror-by-the-myanmar-military-junta-urges-its-swift-adoption/>.



Recommendations

To International and Regional NHRI Bodies (GANHRI, APF, and SEANF):

- Support the people of Myanmar as they work towards a genuine federal democracy;
- Take the principled stance of disengaging with the MNHRC to avoid legitimising the military junta and its grave violations of human rights and international crimes;
- Suspend or expel the MNHRC from their membership;
- Support Myanmar civil society organisations in their efforts to establish a new independent national human rights commission; and
- Start dialogues with and support the NUG to establish a new human rights commission.

To International Donors:

- Cease funding directly to the MNHRC and its projects and activities, and direct and indirect funding through the MNHRC's partners;
- Urge GANHRI, SEANF, and APF to suspend or expel the MNHRC from their membership; and
- Support the NUG and civil society to establish a new national human rights commission.

To the UN and Other International Actors:

- Cease engagement or continue to disengage with the MNHRC and urge other actors to follow suit;
- Cease funding to the MNHRC and its projects or activities;
- Support the NUG and civil society to establish a new independent human rights commission; and
- Support the Myanmar people's struggle for a genuine federal democracy by not lending legitimacy to the military junta, its proxies, or those that tacitly endorse the junta, including the MNHRC.

To the NUG, CRPH and NUCC:

- Abolish the 2014 MNHRC Law and adopt the new UHRC Law that the Myanmar civil society organisations have drafted to establish a new, independent national human rights commission; and
- Seek support from the UN and other international and regional bodies, including GANHRI and donor governments, to establish the new commission in collaboration with civil society.



NEPAL

An Institution in Dilemma:

A Performance Review of the National Human Rights Commission of Nepal

Bijay Raj Gautam¹

Informal Sector Service Centre (INSEC), Nepal²

Overview of the Human Rights Situation in Nepal

“ The Nepal Human Rights Year Books of 2021-22 list a total of 13,621 victims of human rights violations and abuse. Among these eleven persons were killed; five were tortured; 116 were arrested; 768 were deprived of their rights to association and assembly; 7645 (56.12%) were cases of violence against women; and fifty were cases of caste-based discrimination.³

It further highlights nine deaths and torture against eight detainees in custody, indicating the state's negligence⁴ and lack of accountability towards serious human rights violation cases.

The COVID-19 pandemic evolved as one of the defining factors for human life since 2020. More than 12,012 people in Nepal died by September 2022 as a result.⁵ People faced inequality and discrimination when accessing the COVID-19 vaccine. The government of Nepal and the United Nations' initiatives did not perform as per stated mandates to ensure people's equitable access to the vaccine. Moreover, education and workplaces shifting to the virtual mode exacerbated Nepal's digital divide since underprivileged groups and low-income residents in rural areas had no or little access to information, communication, and technology.⁶

The culture of impunity is deeply entrenched in Nepal and has extended to ongoing human rights violations as well. This can be gauged from the fact that Human Rights Watch noted that “more than 60,000 complaints of abuses during the 1996-2006 conflict that have been registered with two transitional justice commissions” remain unaddressed.⁷

Human rights concerns related to Maoist insurgency have been the status quo for a long time. The International Center for Transitional Justice highlights that the insurgency resulted in torture and sexual violence, and the killing of more than 13,000 people.⁸ The Conflict Victims Profile also lists 931 people's enforced disappearances during the conflict.⁹ In February 2021, the government of Nepal extended the tenure of the two transitional justice commissions (Commission of Investigation on Enforced Disappeared Persons, Nepal, and Truth and Reconciliation Commission, Nepal) even though there has not been any substantive progress. This was done to standardise the Investigation of The Enforced Disappearances Enquiry, Truth, and Reconciliation Commission Act, 2071 (2014) law as per the Supreme Court of Nepal's orders. The order asked the government to apply sanctions on violators of human rights during the conflict and not seek other means of forceful reconciliation.

1 Bijay Raj Gautam is the Executive Director of Informal Sector Service Centre (INSEC).

2 INSEC has been an integral member of Nepal's civil society movement since 1989. It advocates for improving the status of protection, promotion, and fulfilment of human rights. It has been documenting and disseminating human rights violations and the situation of human rights in Nepal since its inception. INSEC collaborates with the people, national institutions, human rights-friendly agencies, international communities, resource organisations and victims of human rights violations for social justice, human rights-friendly governance, rule of law and democratic freedom. Furthermore, it monitors the state's accountability towards its human rights commitment and performance.

3 INSEC, *Nepal Human Rights Year Book 2021 and 2022*, Nepal: Informal Sector Service Centre, February 19, 2021 and February 19, 2022, <https://www.insec.org.np/hr-yearbook/?lang=english>.

4 Ibid.

5 “Daily Updates on the Spread of COVID-19”, INSEC, September 9, 2022. <https://inseconline.org.np/news/%e0%a4%95%e0%a5%8b%e0%a4%ad%e0%a4%bf%e0%a4%a1-%e0%a5%a7%e0%a5%af-%e0%a4%95%e0%a5%8b-%e0%a4%b8%e0%a4%99%e0%a5%8d%e0%a4%95%e0%a5%8d%e0%a4%b0%e0%a4%ae%e0%a4%a3%e0%a4%b8%e0%a4%ae%e0%a5%8d%e0%a4%ac-715/>

6 Lina Gurung and Prakash Kumar Paudel, “Digital Divide in the COVID-19 Context: A Case of Nepal,” *Journal of Education and Research* 11, no. 2 (2021): 1, 2021, <https://kusoed.edu.np/journal/index.php/je/article/download/554/231>.

7 “The Authorities are Failing to Protect Citizens,” *Human Rights Watch Nepal*, January 13, 2022, <https://www.hrw.org/news/2022/01/13/nepal-authorities-are-failing-protect-citizens#:~:text=%E2%80%9C>.

8 “Nepal,” *International Centre for Transitional Justice*, <https://www.ictj.org/location/nepal>.

9 “Conflict Victim's Profile,” INSEC, <https://www.insec.org.np/victim/>.

“ Organisations such as Amnesty International, Human Rights Watch, and the International Commission of Jurists criticised the government’s decision to extend the two Commissions’ tenure without there being any evidence of them delivering justice to the victims.

They stated that the government’s proposal to amend the existing legislature for the two transitional justice commissions did not adhere to domestic or international laws. They further stated that the ongoing proceeding cannot adequately prosecute perpetrators of crimes committed by the Maoist and state security forces during the decade-long armed conflict.¹⁰ Such decisions bluntly neglected the Supreme Court’s orders for justice and the Comprehensive Peace Accord that aims to ensure the consolidated assessment of the loss of lives and the overall cost of the conflict in economic terms. This includes informing the families (within 60 days) of the whereabouts of those who are enforced disappeared and were killed in the conflict, along with their names and addresses.

During this period, elections for federal, provincial, and local legislature were completed. However, serious human rights concerns came to the fore. In the Nepal Human Rights Year Book, INSEC documented the cases of 73 victims of human rights violations in eighteen election-related incidents and 303 victims of human rights abuses in 124 incidents during the election.¹¹ Among these, INSEC noted: “... two were killed, 27 were arrested, 10 were beaten, seven were injured and 27 were deprived of freedom of expression, assembly and association by the State. Likewise, 189 were beaten, 83 were injured, one was killed and six were threatened by other parties”.¹²

National Human Rights Commission of Nepal (NHRCN): Mandate and Performance

The National Human Rights Commission of Nepal (NHRCN) was established on 5 June 2000 as an independent and autonomous institution under the Human Rights Commission Act 1997.¹³ Nepali civil society and human rights activists continuously struggled, advocated and campaigned with the government and legislature to achieve this. They also engaged with the international community to establish the NHRCN. The NHRCN was elevated to a constitutional body by Article 131 of the Interim Constitution of Nepal, 2007 and by Article 248 of the Constitution of Nepal.¹⁴

On 15 December 2020, the President of Nepal issued an ordinance amending the Constitutional Council Act 2010. This authorised the presence of a reduced quorum in the Constitution Council sufficient for the nomination of candidates for NHRCN membership appointments.¹⁵ Following this, on 3 February 2021, the government of Nepal appointed new members, including the Chairperson. The appointment has been challenged as unconstitutional by some civil society organisations (CSOs), human rights defenders (HRDs) and lawyers. Right after the appointment, lawyers registered writ petitions asking to quash the appointment. Despite half a dozen writ petitions challenging the Council’s ordinance and recommendations, the matter has been sub judice before the Supreme Court of Nepal for the last two years. The Constitutional Bench of the apex court has neither decided the case nor prioritised the hearing, thereby impacting the NHRCN’s reputation and accreditation status.

¹⁰ “Nepal TJ Bill protects perpetrators, shortchanges survivors,” *Nepali Times*, March 27, 2023, <https://www.nepalitimes.com/news/nepal-tj-bill-protects-perpetrators-shortchanges-survivors>.

¹¹ “Nepal Human Rights Year Book 2023”, INSEC, 2023, https://www.insec.org.np/wp-content/uploads/2023/02/YB2023_English_Fullbook_F.pdf

¹² *Ibid.*

¹³ “Asia Forum: Nepal,” <https://www.asiapacificforum.net/members/nepal/>.

¹⁴ “National Human Rights Commission Nepal,” <https://www.nhrcnepal.org/>.

¹⁵ “GANHRI Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA)”, GANHRI-SCA, 18-29 October 2021, https://www.ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf.

Based on its 2021 decision and following the lack of action by the NHRCN on this matter, the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI-SCA) conducted its special review in October 2022 and decided the NHRCN be downgraded to status “B”.¹⁶

“ The GANHRI-SCA’s notice became a worrying matter for Nepal’s civil society because the government mechanism would not be affected by this decision; rather, the people and HRDs would have to suffer the consequences of this decision in the future.

The NHRCN’s downgrading without the conclusion of the domestic legal proceeding was concerning for CSOs and other organisations, such as the NGO Federation, that have come together to hold the NHRCN accountable. There may be a possibility of correction from the domestic legal proceeding which is ongoing in the Supreme Court of Nepal, but so far, the status of the NHRCN continues to hang in the balance.

The government of Nepal has not addressed the GANHRI-SCA recommendations on appointment, mandate, and independence-related legal reforms to fully comply with the Paris Principles. Although the Constitution of Nepal and international standards require law reform, the government and Parliament made no efforts to amend the existing NHRCN legislation during the reporting period. The NHRCN’s leadership has also demonstrated inefficiency in performing and providing any evidence and public information regarding their proposal for the amendment of the existing law, which is one of their duties to strengthen the NHRCN.

Raising concerns on the aspects of independence, public confidence, merit-based selection and pluralism, the GANHRI-SCA suggested the senior leadership of the NHRCN should advocate for amendments in its enabling law, in order to ensure full compliance with the Paris Principles.¹⁷ Yet, the civil society in Nepal has not witnessed any substantial actions being taken by the NHRCN in 2021 and 2022 in this regard. At the same time, NHRCN officials claim that the Commission has initiated interaction with parliamentarians to amend its Act as per GANHRI-SCA’s recommendations and that they have repeatedly asked the government to table its amendment bill.¹⁸ However, the visibly limited initiatives of the NHRCN officials towards the reform have hindered the status and public confidence of the NHRCN.

Additionally, the NHRCN received serious observations on its functioning vis-à-vis their protection of minority rights during the GANHRI-SCA review in October 2022.

“ The lack of evidence symbolically requires the NHRCN to accelerate its monitoring of LGBTQIA+ and minorities’ rights in the days to come. It should recommend to the government of Nepal appropriate accountability measures, including policy changes, and should speak out in a manner that promotes and protects all human rights in line with global principles and international standards.

¹⁶ “GANHRI Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA),” GANHRI-SCA, 3-7 October 2022, <https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf>.

¹⁷ *Ibid*

¹⁸ Based on conversations with the NHRCN officials.

An example of when the NHRCN failed to protect the rights of minorities was when journalist Rupa Sunar reported that she was discriminated against by a house owner after identifying herself as Dalit. Sunar filed a case with the Nepal Police as per the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011. But the alleged perpetrator was released reportedly due to political pressure from the sitting Education Minister.¹⁹ In this case, the minister escorted the accused to her home in his vehicle after she was released by the police.²⁰ The NHRCN missed the opportunity to promptly recommend that the government take adequate measures to protect the HRDs who faced extreme forms of discrimination. The press statement issued after the dialogue with the minister shows that the NHRCN did not fulfil its role in carrying out an investigation to issue necessary recommendations.²¹

Among the NHRCN's good initiatives was the Gender Equality and Social Inclusion (GESI) audit within the Commission in 2021. The GESI audit should also be done for government institutions and the findings should be used to recommend improvements. The NHRCN also worked closely with federal and provincial governments and victim groups to prepare comments on the draft amendment of the Transitional Justice Law. However, the NHRCN failed to act proactively on the amendment of its legislation, thereby directly affecting the Commission's credibility, functions, mandate, and effectiveness.



The NHRCN also conducted human rights monitoring of the periodic election in 2022. This contributed to an enabling environment for CSOs and HRDs to participate in such initiatives.

Additionally, the Election Commission of Nepal provisioned a flexible approach, which the NHRCN also applied, to collaborate with the CSOs to conduct election monitoring. During the preparation and planning of the election monitoring work, the NHRCN consulted with CSOs and HRDs. After the periodic elections at the local, provincial and federal levels were over, the NHRCN published a monitoring report in which it recommended improved election legislation to the government. These improvements will ensure better people's participation with the help of feasible and necessary measures.²²

However, CSOs pointed out that the NHRCN's monitoring of electoral procedures that are debatable or questionable was not effective enough. For instance, during its monitoring on 25 November 2022 in Syangja's Constituency no. 2, Chapakot Municipality wards no. 3, 4 and 5, the NHRCN team faced misbehaviour from a group of unidentified people. As a result, the team left the district without completing the monitoring procedure. Later, INSEC issued a press statement²³ pointing out that political parties like the Communist Party of Nepal (Unified Marxist-Leninist), Rastriya Swatantra Party, Rastriya Prajatantra Party, and others, including independent candidates, had demanded re-polling, even though the vote count had not begun. In such cases in the future, the NHRCN's monitoring should retrieve appropriate information so that it does not miss opportunities to make policy recommendations and incident-based recommendations due to the lack of engagement. The NHRCN will need to strengthen its agency on such issues for better recommendations to the government on free and clean elections.

¹⁹ Udayan Regmi, "Rupa Sunar-Saraswati Pradhan controversy: What does the law in Nepal say?" *Onlinekhabar*, June 25, 2021, <https://english.onlinekhabar.com/rupa-sunar-saraswati-pradhan-controversy-what-does-the-law-say.html>.

²⁰ "Rupa Sunar moves court demanding sacking of Education Minister Shrestha," *The Kathmandu Post*, July 5, 2021, <https://kathmandupost.com/national/2021/07/04/rupa-sunar-moves-court-demanding-sacking-of-education-minister-shrestha>.

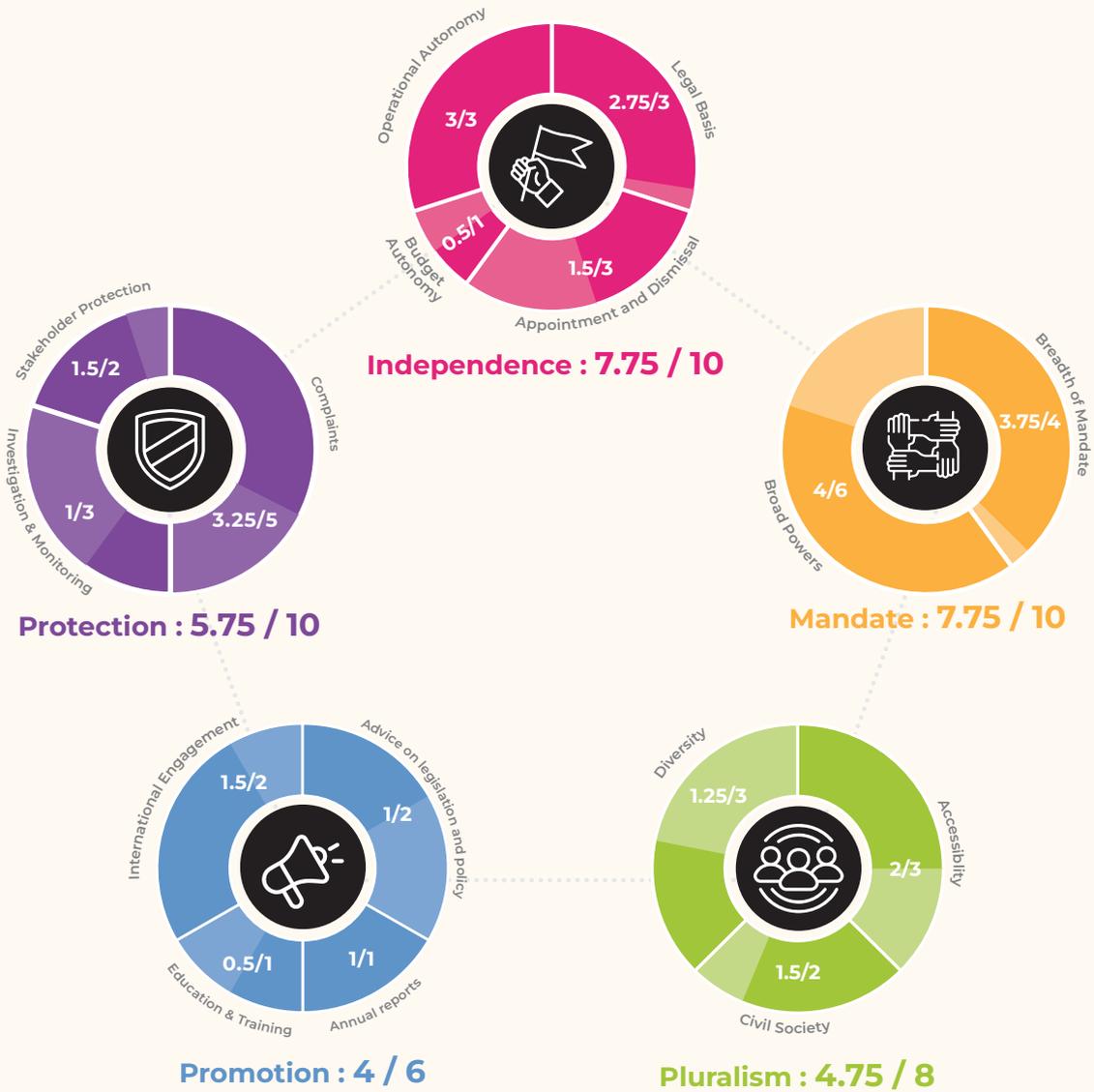
²¹ "Press Release: Request to ensure the rights of the victims of incidents related to caste discrimination," NHRCN, June 30, 2021, https://www.nhrcnepal.org/uploads/press_release/NHRC_Nepal_Press_Release-2078-3-16.pdf.

²² "Monitoring Report on the Situation of Human Rights in Representative and Provincial Assembly Member elections" NHRCN, 2022, [https://www.nhrcnepal.org/uploads/publication/Election_Report_2080_with_cover_compressed_\(1\).pdf](https://www.nhrcnepal.org/uploads/publication/Election_Report_2080_with_cover_compressed_(1).pdf).

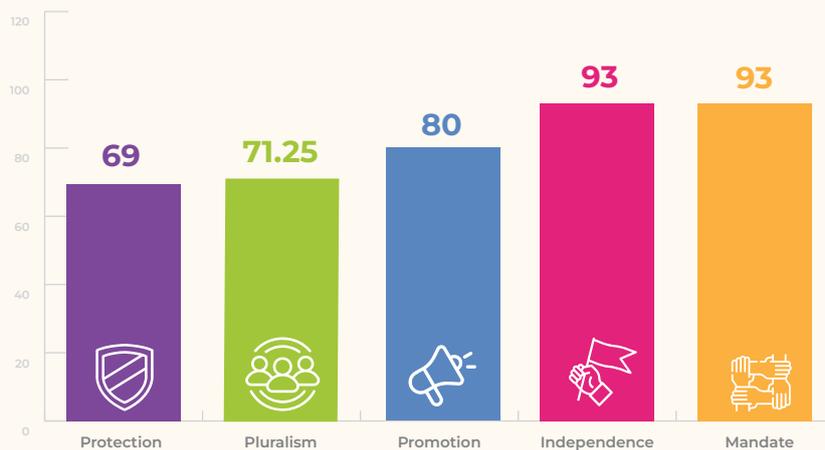
²³ Indira Shrestha, "Press Release: Protect the Right to Monitor Human Rights!" INSEC, November 27, 2022, <https://inseconline.org/en/press/protect-the-right-to-monitor-human-rights/>.



Category and sub-category-wise scores for NHRC Nepal



Inter-category comparative scores (out of 120)



“ It must also be noted that during this reporting period, the NHRCN failed to publicise and disseminate its activities and performances on public and digital platforms.

The NHRCN's website and publications demonstrate that there is irregularity in the documentation of programs or event reports, newsletters, and human rights situation reports. Also, details on complete decisions made on the cases are not disseminated. The Commission's recommendations are also absent in the information sheet. It is in this context that GANHRI-SCA asked the NHRCN to ensure its positions on issues are made publicly available, as it contributes to strengthening the credibility and accessibility of the institution for all people in Nepal.²⁴

Status of Engagement on Concerns of HRDs and Safeguarding Areas

The NHRCN has rolled out promotional activities to strengthen networks, awareness, and coordination among HRDs. It drafted the Human Rights Defenders legislation and promoted debate around the law. It also organised conferences in all seven provinces on 4 and 5 March 2022 to identify HRDs' concerns and to build a common understanding about the protection of HRDs and the promotion of their work.²⁵

Additionally, the NHRCN organised a national conference of HRDs on 23 and 24 June 2022, with CSOs, media, and government representatives to discuss HRDs' concerns on barriers to ensuring an enabling environment for them.

“ Similarly, the NHRCN conducted a study and published a report on analysing the situation of HRDs. The report suggests that there is a lack of effective protective actions from the state to address the legal and practical difficulties that HRDs face when they work towards the protection and promotion of overall human rights in Nepal.²⁶

The NHRCN also suggested that the province-level laws should guarantee HRDs' protection and promotion. The NHRCN also recommended that records should be prepared and updated on the HRDs who are active within their territory of governance.²⁷

Conclusion

The status, functionality, public confidence in, and credibility of the NHRCN are at stake due to the government and legislature's inadequate response. The accreditation process has signalled the NHRCN's ineffective response vis-à-vis GESI and the protection of minorities. This raises serious questions about the quality and impartiality of the NHRCN's performance on human rights concerns. The situation needs to be addressed urgently to ensure the NHRCN's impartial identity. Additionally, the NHRCN needs to improve the dissemination of its activities in order to increase the visibility of its work and engagement with people on human rights concerns in the country.

²⁴ "GANHRI Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)," GANHRI, 3-7 October 2022 <https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf>.

²⁵ "Final Annual Report 2021/2022", NHRCN, https://www.nhrcnepal.org/uploads/publication/final_Annual_Report_2079_compressed.pdf

²⁶ "Situation of Human Rights Defenders Study Report-2022: Synopsis Report," NHRN, 2022, https://www.nhrcnepal.org/uploads/publication/HRD_englsih_synopsis_final.pdf.

²⁷ "Ibid.



Recommendations

Based on the assessments above and the prevailing context in Nepal, the following are recommendations to different stakeholders which, if acted upon, will ensure an enabling environment for the NHRCN:

For Civil Society:

- Plan clear advocacy actions and issues to engage with the NHRCN, to ensure its improved and effective response to address the cases of human rights concerns (policy and incidents of human rights violations) of GESI and protection;
- Strengthen campaigns to advocate for the responsible initiation of the government and legislature regarding the concerns raised by GANHRI-SCA; and
- They should also advocate with the judiciary for timely adjudication in the sub-judice case of writ petition registered regarding the appointment of the NHRCN's Chairperson and members.

Recommendations for the Government and Legislature:

- The government of Nepal and the federal parliament should immediately ensure legislative reform to guarantee the following in the appointment process of the Chairperson and members of the Commission:
 - Publicise vacancies broadly;
 - Maximise the number of potential candidates from a wide range of societal groups;
 - Promote broad consultation and/or participation in the application, screening, selection and appointment process; and
 - Assess applicants on the basis of pre-determined, objective and publicly available criteria.
- The government and legislature should ensure proper response and engagement when responding to the recommendations made by the NHRCN in cases of human rights violations and human rights-related policy concerns.

Recommendations for the Judiciary:

- The Supreme Court should ensure timely justice in the writ petition registered against President Bidya Devi Bhandari's decision to appoint 32 individuals to 11 constitutional bodies as per the recommendations of the Constitutional Council made on 15 December 2020.

Recommendations for the NHRCN:

- Prepare a clear roadmap for retaining an 'A' status and advocate with the government, legislature, and judiciary for their proper actions, including the amendment of the existing legislation to ensure the NHRCN's full compliance according to the Paris Principles;
- Initiate urgent action strategies to boost performance to protect the rights of all and facilitate special initiatives for the protection of the rights of minorities including the LGBTQIA+ community; and
- Prepare a strategy to engage with CSOs, media, government, and legislature for their cooperation and to maintain and upgrade an enabling environment with transparent information flow.

PAKISTAN

Social Justice and Resilience:

Analysing the National Commission for Human Rights (NCHR) Pakistan's Role in Safeguarding Rights

Haroon Baloch and Fatima Khalid¹
Bytes for All, Pakistan²

Overview of the Human Rights Situation in Pakistan

This chapter of the ANNI report attempts to provide an empirical and critical assessment of the National Commission of Human Rights (NCHR) in Pakistan. This report primarily focuses on the role the NCHR plays in protecting and promoting human rights in the country. The chapter starts with an overview of the human rights situation in Pakistan during 2021-22.

The NCHR has been functional since 2015, even though it was suspended due to political and legal impediments related to appointing new commissioners after the tenure expired in May 2019. The successive Commission was appointed in November 2021.

Despite establishing human rights protection mechanisms, Pakistan faces serious challenges. Instances of extrajudicial killings, enforced disappearances, torture attributed to state institutions, and forced conversions of young Hindu and Christian girls are among the issues that need immediate attention. At the same time, vulnerable groups, including women, children, and religious minorities, such as the Ahmadiyya, Hindus, Sikhs, and Christians, lack adequate protection.

“ The complex state of media in Pakistan, where journalists and bloggers often experience harassment and violence for reporting on critical issues, has been a major concern.

Economic and structural crises within media institutions have led to self-censorship, compromising the integrity of journalism. Civil society and media organisations criticised³ the legal and administrative measures, such as the Prevention of Electronic Crimes Act (PECA) 2016 and Social Media Rules 2021 (enacted under Section 37 of PECA⁴), for clipping freedom of expression.⁵ Instances of violence against media personnel, such as the shooting of journalist Absar Alam, raised serious concerns about media freedom.⁶ Similarly, in 2020, the Pakistan Electronic Media Regulatory Authority issued a notice to news channels on airing reports that are critical of the government.

“ Violence against women is a pervasive problem in Pakistan, with many cases going unreported or unpunished. Laws, such as the Domestic Violence (Prevention and Protection) Act and the Acid Control and Acid Crime Prevention Act, are meant to protect women’s rights, but their implementation remains weak.

The brutal killings of Noor Mukadam⁸ and Sarah Inam⁹ during this reporting period underscore the challenges in protecting women’s rights. Forced marriages persist and women continue to be discriminated against in various aspects of their lives.¹⁰

1 Haroon Baloch is a researcher and Senior Program Manager and Fatima Khalid is a Research Associate and Communication Officer at Bytes for All, Pakistan.

2 Bytes for All is a human rights organisation and research think tank focusing on Information and Communication Technologies.

3 “Global Tech Giants Threaten to Leave Pakistan over New Rules,” Radio Free Europe/Radio Liberty, November 20, 2020, <https://www.rferl.org/a/global-tech-giants-threaten-to-leave-pakistan-over-new-rules-/30960880.html>.

4 “Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguard) Rules, 2021,” Ministry of Information Technology and Telecommunication, October 12, 2021, <https://moitt.gov.pk/SiteImage/Misc/files/Removal%20Blocking%20of%20Unlawful%20Online%20Content%20Rules%202021.PDF>.

5 Saeed Shah and Newley Purnell, “Pakistan Approves Broad New Restrictions Over Social Media,” *The Wall Street Journal*, February 13, 2020. <https://www.wsj.com/articles/pakistan-approves-broad-new-restrictions-over-social-media-11581613190>.

6 “Senior Journalist Absar Alam Shot, Injured in Islamabad,” *Dawn*, April 20, 2021, <https://www.dawn.com/news/1619325>.

7 Asad Hashim, “Prominent Pakistani Journalist Shot and Wounded,” *Al Jazeera*, April 20, 2021, <https://www.aljazeera.com/news/2021/4/20/prominent-pakistani-journalist-shot-currently-out-of-danger>.

8 Shumaila Jaffery, “Noor Muqaddam: The high society beheading that stunned a nation,” *BBC News*, February 25, 2022, <https://www.bbc.com/news/world-asia-59995097>.

9 Usman Muzaffar, “Another Case Lodged Against Ayaz Amir’s Son Following Sarah Inam Murder,” *Aaj News*, September 27, 2022, <https://www.aajenglish.tv/news/30299337/another-case-lodged-against-ayaz-amirs-son-following-sarah-inam-murder>.

10 “World Report 2021: Pakistan,” *Human Rights Watch*. (2021), <https://www.hrw.org/world-report/2021/country-chapters/pakistan>.

Children in Pakistan face a range of human rights violations, including child labour, trafficking, and sexual abuse. While the government has taken legislative steps to address these issues, enforcement remains inadequate. The National Commission on the Rights of the Child Act and the Prevention of Trafficking in Persons Act represent pushbacks to protect children's rights.

At the same time, religious minorities in Pakistan face discrimination and persecution.¹¹ Legal restrictions on religious practices and instances of violence against religious minority communities are well documented. In 2021, a Hindu temple was vandalised and destroyed by a mob in Rahim Yar Khan, a city in Punjab province.¹² The government has taken some steps to address these issues, one being setting up the National Commission for Minorities. However, civil society has strong reservations over it being established as an arm of the Ministry of Religious Affairs, as the body does not fulfil the criteria of the Paris Principles in its structure, working, and independence.

Pakistan has a history of security forces engaging in extrajudicial killings and enforced disappearances,¹³ especially in counterterrorism operations. Media, civil society, political parties, and the judiciary¹⁴ have raised concerns about civilians being detained without charge or trial, as well as torture being used and military courts trying civilians. Human rights activist Karima Baloch's case is cited later in this chapter as an example.

International human rights mechanisms, including the UN Human Rights Committee¹⁵ and Universal Periodic Review (UPR)¹⁶, have recommended strengthening the legal framework in Pakistan to enhance access to justice and address the root causes of discrimination and violence. Despite the range of human rights violations meted out in the backdrop of difficult political, economic, and security challenges, the NCHR has exhibited some resilience with regard to the realisation of its mandate.

¹¹ *Ibid.*

¹² "Mob Vandalizes Hindu Temple in Rahim Yar Khan," *Geo TV*, October 5, 2021, <https://www.geo.tv/latest/363586-pm-imran-khan-takes-notice-of-attack-on-hindu-temple-in-rahim-yar-khan>.

¹³ "World Report 2022: Pakistan," *Human Rights Watch 2022*, <https://www.hrw.org/world-report/2021/country-chapters/pakistan>.

¹⁴ Patricia Gossman, "Pakistan Court Holds State Responsible for Enforced Disappearances," *Human Rights Watch*, June 28, 2022, <https://www.hrw.org/news/2022/06/28/pakistan-court-holds-state-responsible-enforced-disappearances>.

¹⁵ "Human Rights Committee: Concluding observations on the initial report of Pakistan," *OHCHR 2017, CCPR/C/PAK/CO/1*, <https://www.ohchr.org/en/documents/concluding-observations/ccprpakco1-human-rights-committee-concluding-observations>.

¹⁶ "Report of the Working Group on the Universal Periodic Review. Pakistan," *UN Human Rights Council, 2023*, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/37/13&Lang=E>.

NCHR's Mandate to Protect and Promote Human Rights

The NCHR's mandate covers all UN human rights conventions defined in international law. It has the power to investigate human rights violations committed by any public servant or authority, including police, security, and intelligence agencies (with few restrictions). It also has the power to look into the acts and omissions of the private sector and non-state actors.

The NCHR has been active in investigating and monitoring human rights violations in Pakistan. In addition to its regular annual reports, the NCHR has issued reports on topics such as allegations of torture and sexual abuse,¹⁷ treatment of Afghan refugees,¹⁸ violence against women, and ending systemic discrimination against minorities.¹⁹

“ However, there have been concerns about the NCHR's effectiveness and independence. Some human rights groups have criticised it for not being more proactive in addressing human rights issues and for not being sufficiently independent of the government.²⁰

Independent human rights groups have also expressed their concerns about the NCHR's limited resources and capacity.²¹

¹⁷ "Torture in Adiala Jail: NCHR inquiry Report on Torture Allegations by Prisoners Incarcerated in Central Jail Rawalpindi," *NCHR, 2022*, <https://www.nchr.gov.pk/wp-content/uploads/2022/11/Report-on-Torture-at-Adiala-Jail.pdf>.

¹⁸ "Plight of Afghan Refugees: Incarcerated in Central Prison Karachi," *NCHR, 2022*, <https://www.nchr.gov.pk/wp-content/uploads/2022/12/GSP-Human-Rights-in-Pakistan.pdf>.

¹⁹ "Unequal Citizens: Ending Systemic Discrimination Against Minorities," *NCHR, 2021*, <https://www.nchr.gov.pk/wp-content/uploads/2022/05/Minority-Report-compressed.pdf>.

²⁰ "Pakistan: Human rights defenders under attack," *Amnesty International, 2021*, <https://www.amnesty.org/en/documents/asa33/4223/2021/en/>.

²¹ "Federal Budget Allocations to the National Commission for Human Rights," *Legislation Watch Cell, Human Rights Commission of Pakistan, Human Rights Commission of Pakistan. Report, HRCP, 2022*, <https://hrp-web.org/hrpweb/wp-content/uploads/2020/09/2022-LWC01-Federal-budget-allocations-to-the-NCHR.pdf>.

Soon after assuming charge, the current Commission began developing the NCHR's four-year Strategic Plan (2021-2024) with the intent to have a clear direction and act strategically to provide relief to the victims of human rights violations. In December 2021, the NCHR initiated a consultative process to finalise its strategic plan. The Plan prioritised three core functions and concentrated on utilising its resources for institutional impact. These include 1) complaints redressal, 2) acting as a legal watchdog, and 3) policy advisory functions.²²

“ From 1 January 2021 to 31 December 2022, there were notable efforts to amend or repeal oppressive laws in Pakistan, resulting in positive human rights outcomes.

For instance, in May 2021, Pakistan's Parliament passed legislation criminalising enforced disappearances, a development supported and welcomed by the NCHR due to its advocacy role.²³

The NCHR recently participated in the 4th cycle of the UPR and primarily emphasised its alternative reports²⁴ on the National Action Plan, Business and Human Rights, Minority Rights, Women's Rights, Prisons, Torture, and Access to Justice. However, not prioritising the awareness and advocacy function may hinder the NCHR when it submits independent reports to UN treaty bodies and human rights mechanisms. The Strategic Plan clearly deprioritises the NCHR's function of human rights research on critical issues, instead only opting for collaboration with other institutions and organisations (pp 3-4).²⁵ This is another area of concern.

Bytes for All underscores the need for the NCHR to collaborate with other institutions on critical human rights issues. It is important to question if this collaboration should include independent human rights organisations and local NGOs or merely government-organised non-governmental organisations (GONGOs). The NCHR's future conduct will better answer this concern.

22 Though the plan has not been made available on the website for transparency, Bytes for All was able to access it following a query to the NCHR.

23 "State of Human Rights in Pakistan: Annual Report 2021," NCHR, 2022, <https://nchr.org.pk/wp-content/uploads/2022/02/NCHR-Annual-Report-2021.pdf>.

24 "Submission to the Universal Periodic Review. National Commission for Human Rights Pakistan," NCHR, 2022, <https://www.nchr.gov.pk/wp-content/uploads/2023/09/NCHR-UPR-Report.pdf>.

25 Dr. Osama Siddique, "Review of Strategic Plan 2021-2024 Pakistan: National Commission for Human Rights."

Is the NCHR Compliant with Its Mandate and the Paris Principles?

i. Independence

In 2022 the NCHR hosted a consultative meeting with a range of stakeholders to discuss its strategic plan. One of the main concerns that human rights organisations and independent media expressed during this meeting was the unique position of the NCHR's independence and autonomy. These groups consistently stressed that preserving the NCHR's freedom is crucial.

“ While the NCHR maintains a clear connection with the government regarding reporting and funding, it is essential that it is not a government representative but an entirely independent entity.

Its role includes critiquing government and state institutions when they fail to uphold human rights obligations. Many stakeholders emphasised the need to enhance the NCHR's financial and human resource capabilities. While the government bears primary responsibility for this, human rights actors in the country discussed various strategies to strengthen the NCHR, which faces ongoing budget and personnel shortages. They also emphasised on developing NCHR core staff's expertise, skills, exposure, and experience.

The NCHR has its own budget and financial autonomy and budgeted 77.72 million rupees for 2021-22. Although the government increased the budget by 7% for 2022-23, it is still meagre in relation to inflation and the devaluation of Pakistani currency. The increase can barely cover the Commission's administration and staff costs and impacts the NCHR's core operations enlisted in its mandate. Additionally, there are bureaucratic hurdles to accessing the proposed budget, because it must first go through the Ministry of Human Rights (MoHR) for approval before being forwarded to the Ministry of Finance. Historically, the MoHR has reduced the NCHR's operational budget. While the NCHR has the legal right to raise external funds, the MoHR's reluctance to approve financial and staffing rules has hindered the NCHR's financial and operational independence.²⁶ Though the NCHR maintains autonomy over its budget, in terms of spending and execution, it cannot directly receive funds without a special fund, as mandated by the statute. This limitation applies to accessing grants, endowments, and other forms of income, as well as any sum or properties that may become payable to or vested in the NCHR.²⁷

26 "Human Rights Commission of Pakistan Report," Legislation Watch Cell, HRCP, 2022, <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2022-LWC01-Federal-budget-allocations-to-the-NCHR.pdf>.

27 Ibid.

ii. Promotion and Protection of Human Rights

The NCHR's statutory mandate is broad and comprehensive.

It regularly conducts visits to prisons and central jails across the country to assess the conditions of prisoners, either independently or as directed by higher courts.²⁸

In 2021-22, notably, the NCHR played a proactive role in the Usman Mirza case, involving harassment, blackmail, and the circulation of victims' videos on social media.²⁹ In another case, concerning the illegal hunting of Houbara Bustards and subsequent violence, the NCHR campaigned against the perpetrator, Jam Awais Jokhio, a Member of Parliament from the Pakistan People's Party. The NCHR also provided support to the victim's family. Furthermore, in the case of Priyantha Kumara's lynching related to an alleged blasphemy incident in Sialkot, the NCHR maintains ongoing communication with the investigating authorities to monitor developments.

iii. Engagement with the Public

NCHR's engagement with the public is limited. According to a representative of NCHR, they engage with the public. However, the current Commission is not as proactive as the previous one according to civil society organisations' observations.

“ There is no specific effort to engage citizens in remote areas. Instead, the NCHR relies on the media to do this.

For example, in January 2022, the NCHR's Chairperson and members held a press conference to share updates on the human rights situation in the country.³⁰ The Chairperson highlighted the need for collaborative efforts to protect human rights during an interactive session. During the session media practitioners discussed the state of human rights in Pakistan, the NCHR's role, and ways to enhance collaboration with human rights stakeholders, particularly the general public. The Commission stressed the importance of a strong partnership between media and the NCHR and highlighted the challenges that vulnerable groups in Pakistan face.

28 Saadia Salahuddin, "Alarming Number of Addicts in District Jail: NCHR," *The News*, February 25, 2022, <https://www.thenews.com.pk/print/932246-alarming-number-of-addicts-in-district-jail-nchr>.

29 Asad Malik, "Five, Including Usman Mirza, Sentenced to Life Imprisonment in Couple Harassment Case," *Dawn*, March 26, 2022, <https://www.dawn.com/news/1681913>.

30 "NCHR Chairperson Stresses for Collaborative Efforts to Protect Human Rights," *Associated Press of Pakistan*, January 20, 2022, <https://www.app.com.pk/national/nchr-chairperson-stresses-for-collaborative-efforts-to-protect-human-rights/>.

iv. Engagement with Marginalised Groups

Marginalised groups have remained at the forefront of the NCHR's human rights protection agenda. However, in a recent case when the Shariah court disapproved the Transgender Persons (Protection of Rights) Act 2018,³¹ the NCHR remained silent and any engagement with transgender communities was absent. The same is the case with political activists who are being persecuted by the current regime under military courts. The NCHR's engagement on this front has been disappointing, apart from the fact that they carried out visits to different jails to examine if any inhuman treatment was taking place with political prisoners.

The NCHR has, however, taken steps to engage with marginalised groups, including religious minorities, refugees, and internally displaced persons, with and without collaboration from civil society and other stakeholders. Their reports on sanitary workers titled "Unequal Citizens: Ending Systemic Discrimination Against Minorities"³² and on the state of psychological health of Pakistani citizens titled "Malpractice in Mental Health in Pakistan: A Call for Regulation"³³ are a few examples of this.

v. Engagement with Human Rights Defenders

The NCHR has established a Human Rights Defenders Network to provide support and protection to individuals and organisations working on human rights issues in Pakistan.

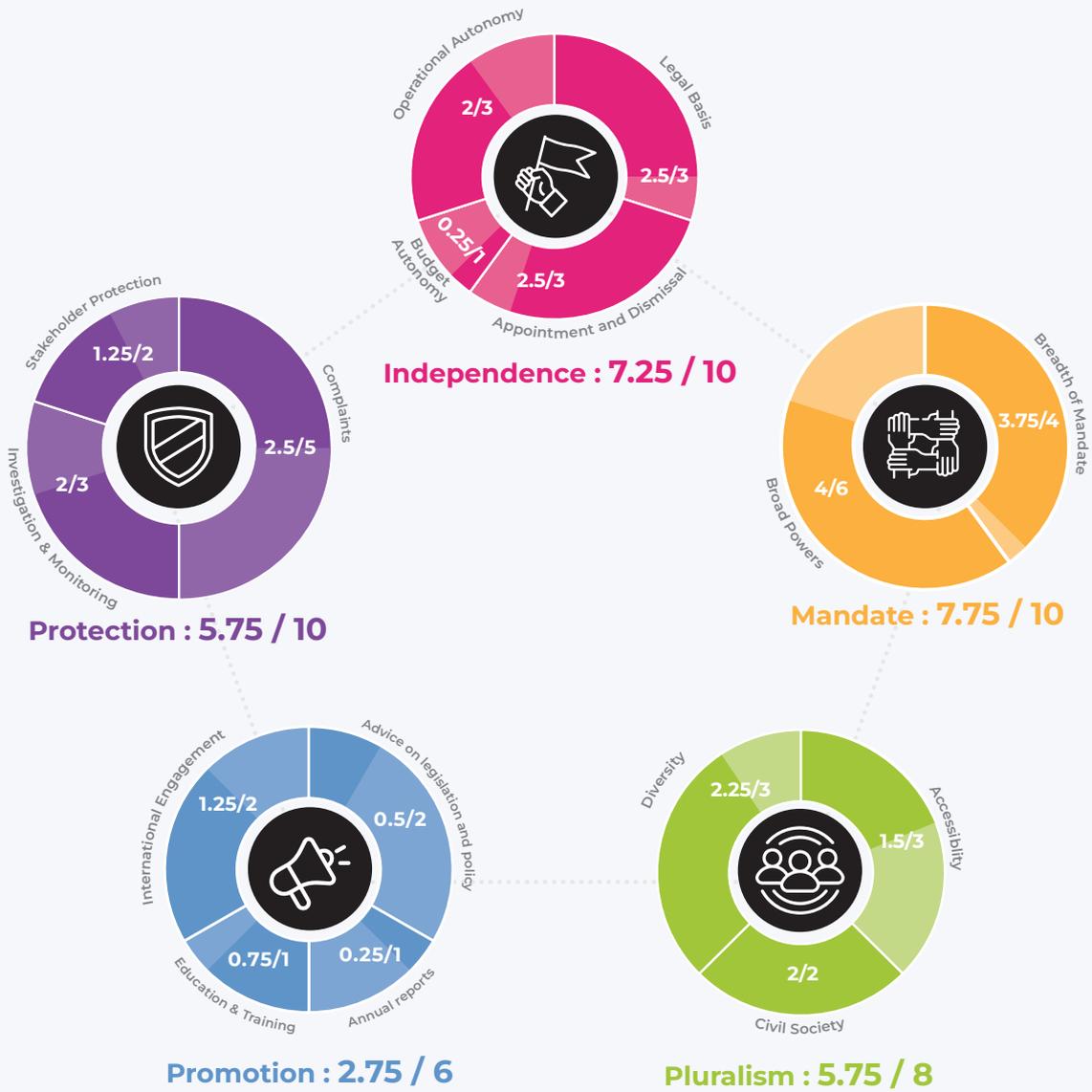
“ The Network provides training, legal assistance, and advocacy support to human rights defenders. The Network also provides training to journalists on how to report on human rights issues in a responsible and ethical manner.

31 "Pakistani Transgender Activists To Appeal Shariah Court Ruling Against Law Aimed at Protecting Them," *AP News*, May 20, 2023, <https://apnews.com/article/pakistan-transgender-courts-b1674911f47712782e8947ef273382ba>.

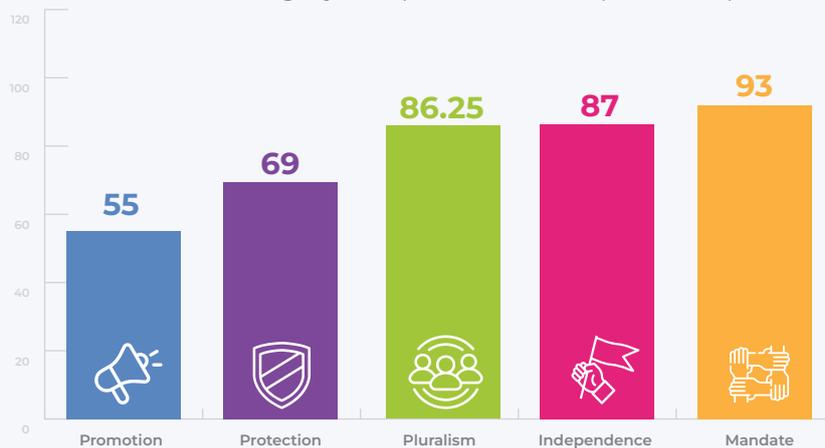
32 Sohail Khushbakht, "Unequal Citizens: Ending Systemic Discrimination Against Minorities. NCHR Factfinding report," NCHR, May 2022, <https://www.nchr.gov.pk/wp-content/uploads/2022/05/Minority-Report.pdf>.

33 Sohail, Khushbakht et al., "Malpractice in Mental Health in Pakistan: A Call for Regulation," *Taskeen Sehatmand Pakistan and NCHR*, August 2022, <https://www.nchr.gov.pk/wp-content/uploads/2022/08/Mental-Health-Report.pdf>.

Category and sub-category-wise scores for NCHR Pakistan



Inter-category comparative scores (out of 120)



Additionally, the NCHR's Human Rights Defenders Initiative provides support and protection to individuals and organisations working on human rights issues in Pakistan. For example, in 2022, the Network provided legal assistance to a group of activists who were arrested for participating in a peaceful protest.³⁴ However, on other occasions, the NCHR refrained from any intervention in cases of human rights violations. For example, when Baloch activist, Karima Baloch,³⁵ who was in exile in Canada, was killed by unknown attackers, the NCHR did not take its due position. Karima was an active dissenting voice against the military establishment's policies vis-à-vis Balochistan and their alleged involvement in human rights violations including enforced disappearances in the province. In this case, the NCHR's inability to intervene in the matter of handing her dead body over to her relatives after it arrived in Karachi and the burial in her homeland (which became a controversy³⁶) showed the NCHR's clipped independence and fear of the military establishment.

At the same time, despite a Commission of Inquiry on Enforced Disappearances being established, justice for victims' families remains elusive.³⁷ There is reluctance on the part of the government to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances. While local legislative efforts have been made, procedural anomalies have hindered progress.³⁸ This highlights the need for sustained commitment to address enforced disappearances and other human rights concerns in Pakistan.

vi. Review of Legislation and Policies and Harmonising with International Human Rights Framework

The NCHR's core function involves reviewing existing laws, rules, and regulations, and recommending necessary amendments to ensure compliance with human rights norms and standards. In 2022, as a result of the expansion of the parent law governing torture and custodial death investigations, the NCHR developed a Manual for Investigating Torture Complaints.³⁹ The NCHR has also been granted authority to oversee such investigations.

Similarly, during 2021-22, the NCHR reviewed several existing laws and proposed amendments to the government. These include:

- Prevention of Electronic Crimes Act (PECA) 2016;
- PECA Ordinance 2022;
- Protection of Journalists and Media Professional Act 2021;
- Punjab Free and Compulsory Act 2014;
- Home Based Workers Bill;
- Domestic Workers Act 2019;
- Federal Mental Health Bill;
- Torture and Custodial Death (Prevention & Punishment) Bill 2022;
- Decriminalization of Suicide in Pakistan Penal Code;
- The Code of Criminal Procedure;
- Criminal Laws (Amendment) Act 2022;
- Ending Enforced Disappearances in Pakistan Penal Code;
- Human Rights Courts in the NCHR Act 2012;
- Balochistan Early Child Marriage Restraint Bill;
- Balochistan Home-Based Workers Act 2022; and
- Mine Act 1923.⁴⁰

³⁴ "State of Human Rights in Pakistan: Annual report 2021," NCHR, 2022, <https://nchr.org.pk/wp-content/uploads/2022/02/NCHR-Annual-Report-2021.pdf>.

³⁵ Asad Hashim, "Prominent Pakistani Rights Activist Found Dead in Toronto," *Al Jazeera*, December 22, 2020, <https://www.aljazeera.com/news/2020/12/22/prominent-pakistani-rights-activist-found-dead-in-toronto>.

³⁶ Shah Meer Baloch and Hannah Ellis-Petersen, "Grief, Anger and a Curfew as Pakistani Activist Karima Baloch Buried," *The Guardian*, January 25, 2021, <https://www.theguardian.com/world/2021/jan/25/body-of-karima-baloch-returned-to-pakistan>.

³⁷ Commission of Inquiry on Enforced Disappearances. (n.d.). Government of Pakistan. <http://www.cid.gov.pk/>.

³⁸ Rehan Piracha, "Bill on Enforced Disappearances Lands in Parliamentary Limbo," *Voicepk.net*, January 13, 2023, <https://voicepk.net/2023/01/bill-on-enforced-disappearances-lands-in-parliamentary-limbo/>.

³⁹ "Manual for Investigating Torture Complaints, NHRC 2022," <https://www.nchr.gov.pk/wp-content/uploads/2023/05/Manual-for-Investigating-Torture-Complaints.pdf>.

⁴⁰ "Annual Report 2021-22," NCHR, 2022, <https://www.nchr.gov.pk/wp-content/uploads/2023/06/Annual-Report-2022.pdf>.

“ The NCHR website, however, lacks transparency regarding the number of recommendations made and their impact on driving change.

It also does not provide clear information about the processes involved in reviewing laws and implementing specific changes or amendments, which hinders public awareness and participation. This lack of transparency goes against democratic norms and the spirit of multi-stakeholder engagement.

vii. Communication Infrastructure and Accessibility

The NCHR has offices in Islamabad and various provinces, all equipped with disability-friendly facilities.

“ The NCHR operates a Rapid Response Cell to address urgent human rights violations and aid victims promptly.

Beyond investigations, this Cell assists victims during natural disasters and emergencies, offering support such as food distribution and medical aid, as seen in the 2021 flooding in Sindh⁴¹ and the COVID-19 pandemic.

The Commission has conducted investigations into various cases, including extrajudicial killings, enforced disappearances, and violence against women and girls. In 2021, the NCHR probed a student's killing in Sindh, recommending safety measures for students in educational institutions.⁴² Additionally, in 2022, the Commission issued a report highlighting concerns related to restrictions on freedom of expression, discrimination against religious minorities, and the use of torture by law enforcement agencies.⁴³

The NCHR has established communication infrastructure and accessibility mechanisms to facilitate complaints and inquiries from the public. The NCHR has also established several critical digital infrastructure components, including conducting digital audits and needs assessments for its headquarters and regional offices. The Commission has successfully implemented a comprehensive digital framework that includes elements such as local area networking, dependable internet access, and the procurement of necessary digital equipment like computers, laptops, and digital conferencing devices. Additionally, the NCHR has developed a functional website, an official email system, a complaints management system, and an encryption-enabled database for the secure storage of organisational digital data. These measures have significantly enhanced the Commission's digital capabilities and streamlined its human rights initiatives. The NCHR has access to government officials and agencies at all levels and can request information or assistance as needed.

⁴¹ *ibid.*

⁴² “NCHR Inquiry Report: Killing of a student in Sindh,” NCHR, 2021, <https://nchr.org.pk/wp-content/uploads/2021/05/NCHR-Inquiry-Report-Killing-of-a-Student-in-Sindh.pdf>.

⁴³ “State of Human Rights in Pakistan: Annual report 2021,” NCHR, 2022, <https://nchr.org.pk/wp-content/uploads/2022/02/NCHR-Annual-Report-2021.pdf>.

viii. Diversity and Inclusion

With a woman chairperson at its helm and women provincial members for Sindh and Balochistan, the NCHR maintains a strong gender balance in its leadership. Since the appointment of the current Commission in November 2021, women have occupied staff and managerial positions in a balanced manner in all departments.

“ Due to its multi-provincial presence and legally mandated non-discriminatory equal opportunity hiring practices, the NCHR staff hails from diverse socioeconomic, religious, and cultural backgrounds.

Varied ages, multi-lingual expertise, and a myriad of professional backgrounds ensure a diverse work environment. However, in terms of the inclusion of persons from other genders, the NCHR presents a disappointing picture. During the previous Commission's tenure, there was at least one transgender consultant, who primarily worked on the issues of their community.

Ensuring LGBTQIA+ representation continues to remain a major challenge in Pakistan's public institutions. The law of the land, such as explicit provisions under Section 377 of the Penal Code of Pakistan⁴⁴ as well as under the Sharia law 1990 (despite no specific mention of homosexuality), criminalises and/or punishes sexual activity between consenting, non-binary and homosexual adults.⁴⁵ Such provisions in Pakistani law shape public perceptions and attitudes and make it challenging to ensure the visibility and representation of persons from the LGBTQIA+ community in public institutions.

ix. Complaints Mechanisms

The NHRI is responsible for investigating complaints related to human rights violations in the country. In 2022, the NHRI began accepting complaints on behalf of victims through various channels, including email, phone, walk-in, and post. Complaints cells are available in all regional offices to facilitate the complaint process. During this reporting period, the NCHR with the help of local civil society and international donor agencies, including the United Nations Development Program and the European Union Delegation in Pakistan, has developed a digital solution to manage complaints.

During this reporting period, the NCHR faced a backlog of 1,968 complaints - the majority being from its suspension period and 843 being new. The Commission also initiated 161 Suo Moto actions from 10 December 2021 to 10 December 2022. While it promptly resolved 2,459 complaints, the exact number of victims who received relief remains uncertain.⁴⁶ Almost 513 complaints are still under investigation.

44 "Submission in the UPR Review of Pakistan," UPR Info, 2013, https://www.upr-info.org/sites/default/files/documents/2013-10/ilgapakuprs22_008internationallesbianandgayassociationuprsubmissionjoint.pdf.

45 "Pakistan: Situation of Homosexuals, Including the Application of Laws towards Homosexuals, the Number of Prosecutions of Homosexuals and Their Outcomes; Whether Any Regions Have an Open and Active Gay Community," Refworld, United Nations High Commissioner for Refugees, 2019, <https://www.refworld.org/docid/4784def1c.html>.

46 "Annual Report 2021-2022. National Commission for Human Rights," NCHR, 2023 <https://www.nchr.gov.pk/wp-content/uploads/2023/06/Annual-Report-2022.pdf>.

Conclusion and Recommendations

There is still room for improvement in the progressive realisation of the NCHR's mandate. The following recommendations are put forward to achieve this:

To the NCHR:

- Ensure inclusive conduct vis-à-vis the Commission's constitutional mandate, instead of deprioritising research functions on critical human rights violations, advocacy, and awareness-raising processes.
- Ensure transparency and inclusiveness in the Commission's processes, such as legal reviews and suggestions on amendments to statutes.
- Accelerate the review of outdated laws to align them with international human rights standards. Urgent attention should be given to the stalled amendment of the problematic blasphemy law, as its current state encourages extrajudicial actions and denies fair trials to those accused of blasphemy, leading to violence and injustices.
- Advocate for the government's adoption of the 2018 Policy Guidelines on the Protection of Human Rights Defenders.
- Liaise with the government for it to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and the International Convention for the Protection of All Persons from Enforced Disappearances.

To the Government:

- Prioritise the NCHR's financial independence, approve its financial regulations and establish a dedicated human rights fund promptly.

To Civil Society Organisations:

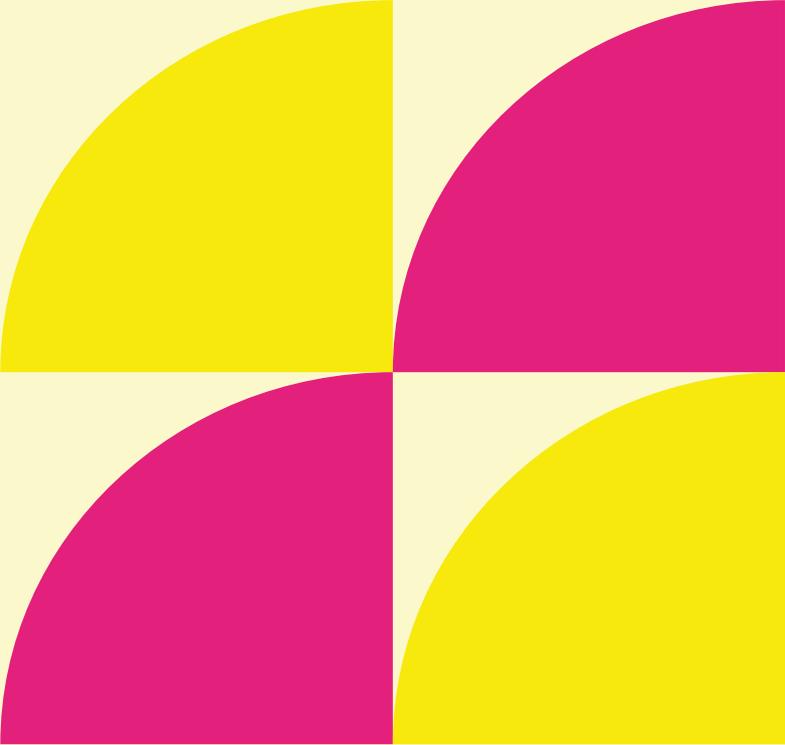
- Strengthen collaborations with the NCHR on a wide range of human rights themes to improve gap areas in capacity, especially research and human rights advocacy.

To the Asia Pacific Forum:

- Follow up with the NCHR on the assessment carried out in 2016 and support the NCHR to complete its accreditation phase with GANHRI.

To the Media:

- Regularly create space and time for the NCHR to enhance its public engagement by accommodating the points of view of the NCHR commissioners and the communications arm of the institution on issues related to human rights violations. This will also create a check on the performance of the NCHR and increase transparency in the affairs of the institution.



THE PHILIPPINES

Resilience of the Commission on Human Rights of the Philippines:

Upholding Independence Amidst Continuing Human Rights Crisis

Egay Cabalitan Jr.¹

The Philippine Alliance of Human Rights Advocates (PAHRA), the Philippines²



Overview of the Human Rights Situation in the Philippines

The Commission on Human Rights of the Philippines (CHR/ CHRP) operated in a challenging environment in 2021 and 2022, marked by an increase in human rights violations under former President Rodrigo Duterte's administration. This chapter provides an in-depth assessment of the CHRP's performance as the national human rights institution (NHRI) of the Philippines during this period. To set the context, this section starts with an overview of the human rights situation in the country in the last two years.

“ During 2021 and 2022, the Duterte administration actively employed various policies and laws to suppress dissent, leading to a surge in human rights violations in the Philippines.

These violations were largely attributed to policies targeting dissent, the ‘War on Drugs’, and the COVID-19 pandemic. Republic Act No. 10973 (which grants unprecedented power to law enforcement agencies) and Executive Order No. 70 (which establishes the controversial National Task Force to End Local Communist Armed Conflict) were among the measures targeting critics and ordinary citizens alike.

The ‘War on Drugs’ campaign resulted in a significant number of extrajudicial killings. Official figures are contested, with estimates indicating a higher toll. The majority of the victims were small-time drug dealers, predominantly from low-income backgrounds, illustrating a disproportionate impact on the impoverished. The ‘War on Drugs’ had a profound impact on women, children, and families. Women, particularly those from vulnerable communities, faced economic and psychological hardships due to the loss of their male breadwinners. Children suffered and there were cases of torture and limited psychosocial support for the victims.

On 14 June 2021, former International Criminal Court prosecutor, Fatou Bensouda, formally requested the judicial authority to launch a thorough investigation into Duterte and his drug war. She claimed to have found enough evidence to support the belief that murder, which constitutes a crime against humanity, had occurred. Bensouda's report stated her belief that state actors were accountable for the deaths of thousands of civilians as part of the ‘War on Drugs’. Additionally, the report implied that either police officers themselves or other private individuals, whom authorities had hired, carried out vigilante-style killings. This resulted in a civilian death toll estimated to be between 12,000 and 30,000.³

During the height of the ‘War on Drugs’, the call to reinstate the death penalty raised significant human rights concerns. On 2 March 2021, the House of Representatives approved House Bill No. 7814, which reinstates the death penalty under the Comprehensive Dangerous Drugs Act of 2002.⁴ The majority support for this measure in the House of Representatives challenges international human rights instruments to which the Philippines is a signatory.⁵

Prominent figures like former Senator, Leila de Lima, and Sally Crisostomo-Ujano faced legal challenges and detention, which was seen as a political retaliation for their advocacy. On 14 June 2022, Justice Secretary Menardo Guevarra stated that they would not drop charges against De Lima despite the witnesses’ retractions. The successive recantations sparked renewed calls for De Lima's release.⁶

1 Egay Cabalitan Jr. is the Deputy Secretary General for Campaigns at the Philippine Alliance of Human Rights Advocates (PAHRA).

2 PAHRA is a non-profit alliance of individuals, institutions, and organisations committed to the promotion, protection, and realization of human rights.

3 Gabriel Pabico Lala, “Drug war death toll now at 6,165; arrested suspects at 298,348 — PDEA,” *Philippine Daily Inquirer*, July 28, 2021, <https://newsinfo.inquirer.net/1466072/drug-war-death-toll-now-at-6165-arrested-suspects-at-298348-pdea>

4 Grace Keane O'Connor, “Adoption of Bill Allowing the Imposition of the Death Penalty for a New Crime,” *The World Coalition Against the Death Penalty*, April 30, 2021, <https://worldcoalition.org/2021/04/30/adoption-of-bill-allowing-the-imposition-of-the-death-penalty-for-a-new-crime/>.

5 “Philippines and the Death Penalty,” *Parliamentarians for Global Action*, <https://www.pgaction.org/ilhr/adp/phl.html#:~:text=On%202%20March%202021%2C%20the,that%20passed%20to%20the%20Senate.>

6 Vince Ferreras, “TIMELINE: De Lima's six-year struggle in prison,” *CNN Philippines*, March 16, 2021, <https://www.cnnphilippines.com/news/2021/3/16/TIMELINE-Leila-De-Lima-arrest-prison-.html>.



“ The targeting of media practitioners and institutions highlighted the erosion of press freedom.

This included Maria Ressa, co-founder and Chief Executive Officer of Rappler and ABS-CBN, a media and broadcasting company. The Philippines also ranked high in the Global Impunity Index for unsolved killings of media workers, with evidence linking cyber-attacks to state-affiliated entities. The United Nations Office of the High Commissioner reported in a press release that the Court of Appeal affirmed Ressa's libel conviction on 7 July 2022. Ressa and Reynaldo Santos Jr., a former researcher-writer, were targeted because of an article they published that alleged that the Chief Justice of the Supreme Court had been involved in corruption.⁷ Furthermore, on 8 June 2022, the Philippine National Telecommunications Commission directed internet providers to restrict access to local news websites, *Bulatlat* and *Pinoy Weekly*, alleging that they violated anti-terrorism laws.⁸ The Committee to Protect Journalists (CPJ), a non-profit organisation that promotes press freedom, released its 2022 Global Impunity Index⁹ stating that the Philippines ranked seventh on the index. The CPJ Report cited the murders of two radio commentators, Percival Mabasa (on 3 October 2022) and Renato Blanco (on 18 September 2022).¹⁰

Civil society organisations (CSOs) criticised the government's response to the pandemic for its impact on vulnerable populations.¹¹ High unemployment rates and food insecurity had disproportionately affected women, while a militaristic approach to public health measures restricted freedoms.¹² The pandemic exposed weaknesses in the public health system, with issues ranging from limited testing accessibility to inadequate support for health workers. Corruption and insufficient resources further hindered effective pandemic response.¹³

The continuous deep concern regarding the human rights situation in the Philippines is characterised by a systematic increase in violations during both the Duterte administration and Ferdinand Marcos Jr.'s current administration. The administration's persistence in policies that harm human rights remains a concern for all.

7 “Philippines: UN expert slams court decision upholding criminal conviction of Maria Ressa and shutdown of media outlets,” U.N. Human Rights Office of the High Commissioner, July 14, 2022, <https://www.ohchr.org/en/press-releases/2022/07/philippines-un-expert-slams-court-decision-upholding-criminal-conviction>.

8 *Ibid.*

9 “PH still 7th worst country in prosecuting journalists' killers – report,”

CNN Philippines, November 2, 2022, <https://www.cnnphilippines.com/news/2022/11/2/Philippines-CPJ-Global-Impunity-Index-2022.html>.

10 Jennifer Dunham, “Killing with impunity: Vast majority of journalists' murderers go free,” Committee to Protect Journalists, November 1, 2022, <https://cpj.org/reports/2022/11/killing-with-impunity-vast-majority-of-journalists-murderers-go-free/>.

11 Karl Hapal, “The Philippines' COVID-19 Response: Securitising the Pandemic and Disciplining the Pasaway,” *Sage Journals*, March 18, 2021, <https://journals.sagepub.com/doi/full/10.1177/1868103421994261>

12 Raissa Robles, “In Philippines, coronavirus crisis led to massive PhilHealth corruption, whistle-blowers claim,” *SCMP*, August 19, 2020, <https://www.scmp.com/week-asia/economics/article/3097861/philippines-coronavirus-crisis-led-massive-philhealth>.

13 Camille Diola, “UN rights experts concerned over 'pervasive' corruption in Philippines,” *Philstar Global*, November 5, 2022, <https://www.philstar.com/headlines/2022/11/05/2221747/un-rights-experts-concerned-over-pervasive-corruption-philippines>.



The CHRP's Response to the Human Rights Situation

Fulfillment of Independence

Various quarters, including high-ranking government officials, levelled substantial criticism on the CHRP leadership for their perceived opposition to the administration's policies.

“ Despite facing political pressure and criticism, the CHRP's leadership maintained its independence and advocated for human rights without compromise.

After the unfortunate passing of the CHRP's Chairperson, Jose Luis Martin “Chito” Gascon, from COVID-19 on 9 October 2021, and with the conclusion of the fifth Commission's term in 2022, there was more focus on appointing a new set of commissioners. CSOs actively participated in this process, despite the absence of established official and formal avenues for engagement. CSOs raised concerns about the potential influence of the current administration's political agendas and biases when selecting the next Chairperson and members of the sixth Commission.

Chairperson Atty. Richard Paat Palpal-latoc will lead the CHRP Commission en banc VI as its new Chairperson. President Ferdinand Marcos Jr. appointed him on 15 September 2022 and he will serve a full seven-year term from 2022 to 2029. His term began after the previous Commission's term concluded on 5 May 2022.¹⁴ Additionally, Atty. Beda Angeles Epres, Atty. Faydah Maniri Dumarpa, and Retired Court of Appeals Justice, Monina Arevalo Zenarosa, have been appointed as members of the sixth Commission.¹⁵

Independent Investigation and Report on Extrajudicial Killings

Despite the overt outbursts from former President Rodrigo Duterte and the sustained intimidation of critics through his ‘War on Drugs’, the CHRP persevered and conducted its own inquiry into extrajudicial killings. They also provided support to affected families and victims throughout the last years of his term. However, the investigations appeared to halt at that point, failing to progress to prosecution and holding perpetrators responsible. Regrettably, the killings persisted. CSOs criticised the CHRP for lacking sensitivity and failing to provide psychological support to the victims and their families during the intervention.

As per the CHRP's report titled ‘Report on Investigated Killings In Relation to the Anti-illegal Drug Campaign’, released in April 2022,¹⁶ the CHRP's documentation and investigations revealed that the killings linked to the anti-illegal drug campaign were widespread, spanning across nearly all administrative regions of the country. The highest number of these incidents was reported in the National Capital Region (NCR), Region III, and Region IV-A.

The CHRP reported that in the NCR, Region III, and Region IV-A, there were a total of 579 incidents, encompassing 870 victims, including at least seventy-one women and a minimum of twenty-four who were classified as minors. Out of these incidents, 451 were linked to law enforcement operations, while 104 were connected to unidentified perpetrators. The circumstances of the remaining twenty-four cases lacked sufficient information.¹⁷

¹⁴ Gaea Katreena Cabico, “Rights groups hopeful new CHR appointees will be independent, transparent,” *Philstar Global*, September 28, 2022, <https://www.philstar.com/headlines/2022/09/28/2212918/rights-groups-hopeful-new-chr-appointees-will-be-independent-transparent>.

¹⁵ “CHR Commission En Banc The Sixth Commission (2022-2029),” *Commission on Human Rights Philippines*, <https://chr.gov.ph/chr-commission-en-banc-vi/>.

¹⁶ “Report on Investigated Killings in Relation to the Anti-Illegal Drug Campaign,” *Commission on Human Rights Philippines*, April 2022, <https://chr.gov.ph/wp-content/uploads/2022/05/CHR-National-Report-April-2022-Full-Final.pdf>.

¹⁷ “Report on Investigations Related to the Anti-Illegal Drug Campaign (with Analysis on Regions NCR, III, and IV-A),” *Commission on Human Rights Philippines*, September 2021, https://chr.gov.ph/wp-content/uploads/2021/11/National_Report_with_Analysis_on_Regions_NCR_III_and_IV_A_20211021_.pdf.



The CHRP faced challenges in securing adequate funding for its operations. While there was a marginal increase in the budget, it still fell short of what was needed for comprehensive investigations and operations.

The Commission actively collaborated with CSOs, advocacy groups, and human rights defenders (HRDs), especially to urge Congress to prioritise the passage of the Human Rights Defenders (HRD) Protection Bill, also known as House Bill No. 9199.¹⁸ In a statement issued on 23 March 2021, the CHRP stressed that the Bill's transformation into law should be of utmost importance, considering the ongoing assaults, threats, and the prevailing atmosphere of hostility that HRDs and advocates face. Although the House of Representatives successfully passed a Bill in 2022 aimed at safeguarding HRDs' rights, one of its authors expressed pessimism about its chances of gaining traction in the Senate. Rep. Edcel Lagman, the Bill's author, saw limited prospects for it to be passed in the Upper House.

Failure to Convene the Oversight Committee for the Implementation of R.A.9745¹⁹

“ Years after the enactment of the Anti-Torture Act, the Oversight Committee, that Section 20 of the Act (responsible for monitoring and supervising its enforcement) mandates, has yet to be convened.

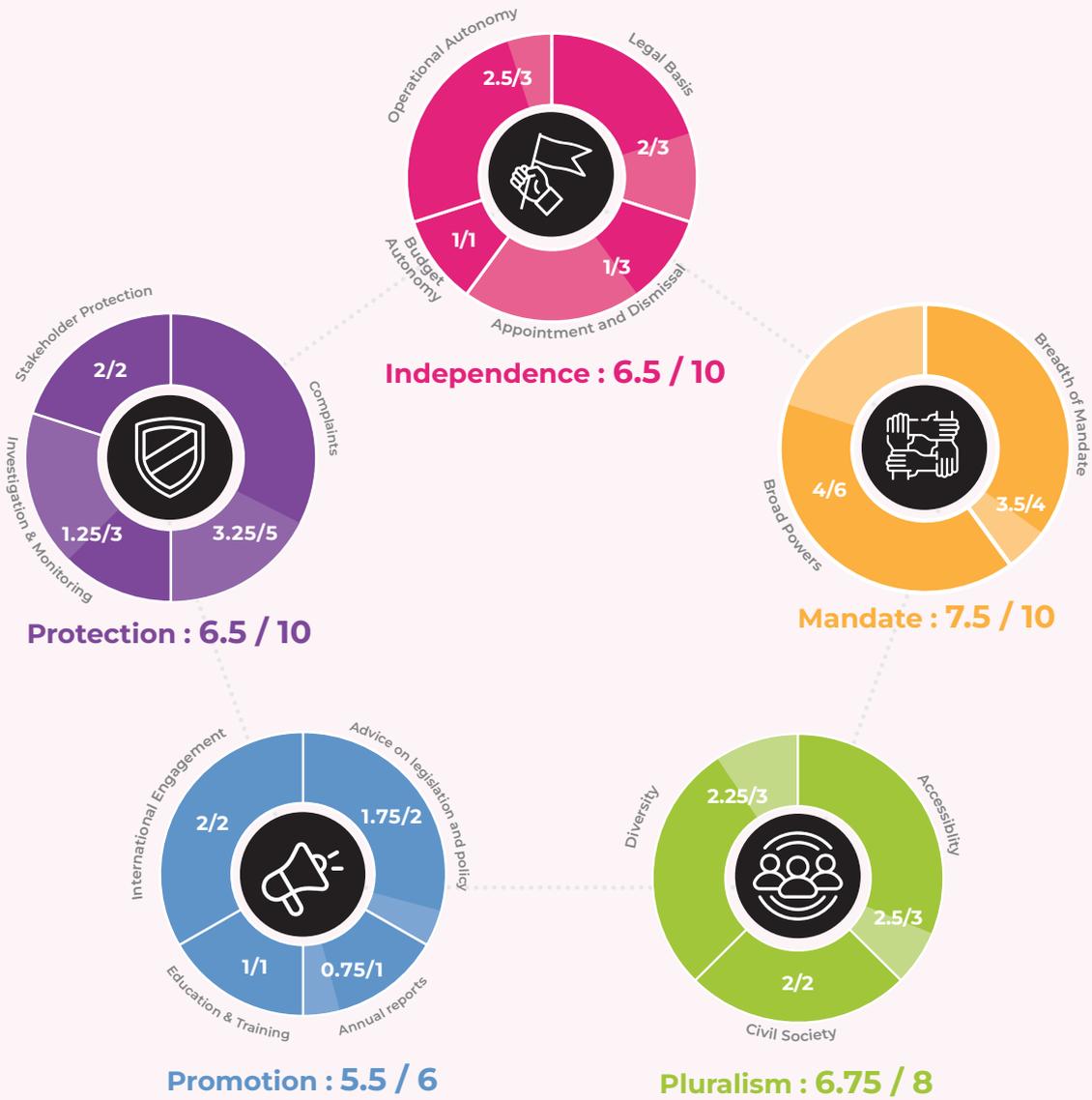
This delay persists despite numerous instances of collaboration and commitments from the Chairperson himself. As a result, the situation remains largely unchanged from the pre-law era. CSOs have consistently urged the CHRP Chairperson to take the lead in convening the Oversight Committee during relevant occasions such as the celebration of the enactment of RA9745 in November 2019. This committee should proactively establish a comprehensive database and systematically collect information on various aspects of the law's enforcement. This would cover investigations, prosecutions, accessibility to medical assessments, incidents of reprisals, the execution of rehabilitation programs, and the submission of a thorough inventory of all detention facilities and centres under the jurisdiction of both the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP).

¹⁸ “Human Rights Defenders Protection Bill approved,” Republic of the Philippines House of Representatives, June 12, 2019, <https://www.congress.gov.ph/press/details.php?pressid=11552>.

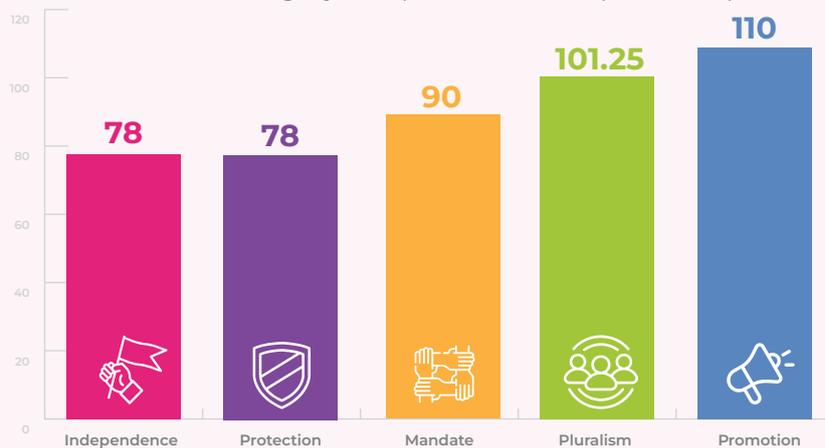
¹⁹ “Official Gazette, ‘Republic Act No. 9745,’” November 10, 2009. <https://www.officialgazette.gov.ph/2009/11/10/republic-act-no-9745/>.



Category and sub-category-wise scores for the CHR, Philippines



Inter-category comparative scores (out of 120)





Overview of the CHRP's Activities as per its Mandate

According to the CHRP's Annual Report in 2021,²⁰ the Commission released a total of sixty-three policy issuances on various human rights issues. These issuances were aimed at addressing human rights concerns and providing guidance to national, local, municipal, provincial, and regional stakeholders. The CHRP regularly provides situation reports that summarise the human rights situation in the Philippines.²¹ These reports include information on state compliance with international standards and domestic legislation, as well as cases of human rights violations. According to their 2021 Annual Performance Report, the CHRP released a total of 101 human rights situation reports. Additionally, they wrote thirty-six research papers covering various sectors, including women, children, academia, and the general public.²²

The community-based dialogue, known as the CBD Project, which CSOs together with the CHRP launched on 21 October 2008, demonstrated remarkable resilience and persistence throughout 2021 and 2022, even amid the challenges that the pandemic posed and the hostile environment at that time.

“Playing a pivotal role in its execution, the CHRP acted as a major facilitator in bringing together the security sector and relevant government agencies.

In July 2021, the Philippines and the United Nations embarked on a three-year collaborative program (United Nations Joint Human Rights Program) dedicated to human rights, aligning with the UN Human Rights Council's October 2020 resolution. This UN Joint Program significantly emphasised capacity-building and technical cooperation to promote human rights within the country. A pivotal element of this initiative is its call for the government to take all necessary steps to preserve the CHRP's current independence. This encompasses the enactment of the CHR Charter, the implementation of a transparent and inclusive appointment process for commissioners, and adherence to the Paris Principles. Regrettably, despite the pressing need for the enactment of the CHR Charter, which is designed to fortify the Commission, it was not presented in 2021 due to the enduring lack of support from the Duterte Administration.

Promotion and Protection Roles

Despite facing formidable obstacles, from 2021 to 2022, the CHRP maintained open channels of communication and engagement. The CHRP's Office of the Executive Director issued statements in response to queries that CSOs raised, addressing critical human rights concerns. This move was perceived as a countermeasure against the prevailing negative narrative surrounding human rights. The strengthened Strategic Communication Division initiated a shift in terminology, favouring 'dignity' as a tagline. Although this change was intended to bolster the stance on human rights, some CSO members viewed it as a defensive posture and a concession to the prevailing narrative.

²⁰ "Reports," Commission on Human Rights Philippines, 2021 and 2022, <https://chr.gov.ph/reports/>.

²¹ "Written Statement of the Commission on Human Rights of the Philippines on the High Commissioner's report on State response to pandemics (res. 44/2)," Commission on Human Rights Philippines, June 28, 2021, <https://chr.gov.ph/written-statement-of-the-commission-on-human-rights-of-the-philippines-on-the-high-commissioners-report-on-state-response-to-pandemics-res-44-2/>.

²² "Annual Accomplishment Report CY2021," Commission on Human Rights Philippines, 2021, <https://chr.gov.ph/wp-content/uploads/2022/08/2021-CHR-Annual-Report.pdf>.



“ The Commission issued policy advisory statements and formulated guideline positions with the aim of guiding the government in upholding international human rights standards and instruments.

The Human Rights Policy Advisory Office collaborated with CSOs in policy advocacy and research. With a dedicated focus on challenging the government's stance on drug policies, the office advocated for alternative approaches such as harm reduction and a rights-based framework.

Among the advisories issued by the CHRP in 2021 and 2022 were:

- The advisory ensuring a human rights-based approach to policies mandating the COVID-19 vaccination;²³
- The July 2021 advisory addressing the argument for the deterrent effect of the death penalty on crime;²⁴
- The Human Rights Advisory on the Reportorial Duties of Duty-Bearers under the Anti-Torture Act of 2009, Anti-Enforced or Involuntary Disappearance Act of 2012, and Anti-Terrorism Act of 2020 issued on 24 June 2021;²⁵
- The April 2022 Human Rights Advisory on the Accessibility of Elections.²⁶

Furthermore, the CHRP engaged in research, education, and the promotion of human rights through its Human Rights Institute. Collaborative efforts with CSOs under the Bantay sa Karapatan sa Halalan initiative played a pivotal role in fostering voter education in the lead-up to the 2022 elections.

Examples of research released by the Commission in 2021 include:

- An Inquiry into the Quarry: Lived Experiences and Narratives in Rombon's Mining Communities (9 February 2021);²⁷
- A Phenomenological Analysis of the Project Double Barrel and the National War on Drugs: The Case of Tondo, Manila (18 March 2021);²⁸
- "Harvard Study Examines the Social and Human Costs of Targeted Harassment to Human Rights Workers in the Philippines" (29 June 2021).²⁹

The Human Rights Promotion Office (encompassing the Human Rights Education and Promotion Office, Advocacy & Information Campaign Division, and Education and Training Division) partnered with CSOs in various human rights-centred projects and initiatives. They provided expert speakers for educational forums and events, while also collaborating with educational institutions, including the PNP Academy, particularly for human rights training.

23 "Human Rights Advisory On Mandatory Covid-19 Vaccination CHR (V) A2021-006," Commission on Human Rights Philippines, 2021, <https://chr.gov.ph/wp-content/uploads/2021/12/CHR-V-A2021-006-Advisory-on-Mandatory-COVID-19-Vaccination.pdf>.

24 "Advisory On Deterrence And The Death Penalty CHR (V) No. A2021-003," Commission on Human Rights Philippines, 2021, <https://chr.gov.ph/wp-content/uploads/2021/08/Human-Rights-Advisory-Deterrence-and-the-Death-Penalty-CHR-V-A2021-003.pdf>.

25 "Human Rights Advisory on the Reportorial Duties of Duty-Bearers under the Anti-Torture Act of 2009, Anti-Enforced or Involuntary Disappearance Act of 2012, and Anti-Terrorism Act of 2020," Commission on Human Rights Philippines, June 24, 2021, <https://chr.gov.ph/wp-content/uploads/2021/07/Human-Rights-Advisory-Reportorial-Duties-of-Duty-Bearers-Under-the-Anti-Torture-Act-of-2009-Anti-Enforced-Or-Involuntary-Disappearance-Act-of-2012-and-Anti-Terrorism-Act-of-2020.pdf>.

26 "Human Rights Advisory on the Accessibility Of Elections," Commission on Human Rights Philippines, 2022, https://chr.gov.ph/wp-content/uploads/2022/05/A2022-003-Advisory-on-Accessibility-of-Elections_Final-.pdf.

27 "An Inquiry into the Quarry: Lived Experiences and Narratives in Rombon's Mining Communities," Commission on Human Rights Philippines, February 9, 2021, <https://chr.gov.ph/an-inquiry-into-the-quarry-lived-experiences-and-narratives-in-rombons-mining-communities/>.

28 "A Phenomenological Analysis of the Project Double Barrel and the National War on Drugs: The Case of Tondo, Manila," Commission on Human Rights Philippines, March 18, 2021, <https://chr.gov.ph/a-phenomenological-analysis-of-the-project-double-barrel-and-the-national-war-on-drugs-the-case-of-tondo-manila/>.

29 "Harvard Study Examines the Social and Human Costs of Targeted Harassment to Human Rights Workers in the Philippines," Commission on Human Rights Philippines, June 29, 2021, <https://chr.gov.ph/harvard-study-examines-the-social-and-human-costs-of-targeted-harassment-to-human-rights-workers-in-the-philippines/>.



In June 2022, the CHRP, through its Human Rights Education and Promotion Office, established a Memorandum of Agreement with the Philippine Public Safety College - National Police College to enhance the current curriculum for their Officer Basic Course, with the aim of incorporating human rights concepts into their subjects. Additionally, the agreement sought to establish a Center for Human Rights Education within the college.³⁰

The CHRP disseminated their other initiatives through their social media platforms, including:

- Training module on the right to mental health for the security sector;³¹
- Cordillera highlights partnerships in human rights protection and promotion (published on 8 December 2022);³²
- National Human Rights Consciousness Week.³³

Notably, the CHRP released its national report on the first National Inquiry on Climate Change³⁴ on 6 May 2022. This report unequivocally identified climate change as a human rights imperative. Triggered by a petition filed in 2015 the inquiry conclusively affirmed that this crisis has gravely undermined the human rights of the Filipino populace, notably encroaching upon the fundamental right to life.

Human Rights Defenders

The CHRP disseminates vital information about the importance of defending human rights. They issue statements, participate in forums, and engage with the media.³⁵ In 2021, the CHRP issued a resolution on the alleged vilification of Geraldine Cacho.³⁶ Members of Baguio City Police and the Philippine Army purportedly vilified Cacho, a development worker and the Chairperson of Tangtangan Ti Umili- Cordillera Peoples Alliance.

Furthermore, the CHRP demonstrates its support for policy recommendations aimed at strengthening legal frameworks and mechanisms to safeguard HRDs. They engage in proposals for legislative changes through participation and facilitating dialogues with concerned government agencies.

“ Through collaboration with CSOs and non-governmental entities, the CHRP mobilises resources and support for HRDs’ protection, including financial and legal assistance.

30 “PPSC-NPC and CHR inks MOA to strengthen Human Rights Education for ITS Students,” National Police College, June 28, 2022, <https://npc.edu.ph/ppsc-npc-and-chr-inks-moa-to-strengthen-human-rights-education-for-its-students/2022/>.

31 “Training module on the right to mental health for the security sector,” Commission on Human Rights, 2022, <https://elibrary.chr.gov.ph/cgi-bin/koha/opac-detail.pl?biblionumber=4221>.

32 Jamie Joie Malingan, “Cordillera highlights partnerships in human rights protection & promotion,” Philippine Information Agency, December 8, 2022, <https://pia.gov.ph/news/2022/12/08/cordillera-highlights-partnerships-in-human-rights-protection-promotion>.

33 “National Human Rights Consciousness Week,” Commission on Human Rights Philippines Instagram, December 11, 2022, <https://www.instagram.com/p/CmBgZCQLHlx/>.

34 “Report on the First National Inquiry on Climate Change (NICC),” Commission on Human Rights Philippines, May 6, 2022, https://chr.gov.ph/wp-content/uploads/2022/12/CHRP_National-Inquiry-on-Climate-Change-Report.pdf.

35 “Report on the Situation of Human Rights Defenders,” Commission on Human Rights Philippines, July 2020, <https://chr.gov.ph/wp-content/uploads/2020/07/CHRP-2020-Report-on-the-Situation-of-Human-Rights-Defenders.pdf>.

36 “CHR-CAR Resolution on the Alleged Vilification of Geraldine Cacho,” Commission on Human Rights Philippines, 2021, <https://chr.gov.ph/wp-content/uploads/2022/07/CHR-CAR-Resolution-Geraldine-Cacho-case.pdf>.



There has been a recent development in the ongoing discourse surrounding red-tagging that involves progressive lawmakers from the House of Representatives introducing a legislative proposal. This proposal seeks to criminalise the act of red-tagging. For decades, the Philippine government has employed red-tagging (also known as red-baiting) in its campaign against the communist New People's Army (NPA). As part of its counterinsurgency efforts, the government publicly accuses activists, journalists, politicians, and others, as well as their organisations, of direct involvement in fighting for or supporting the NPA. This pernicious practice targets individuals who frequently face harassment or even death. According to the explanatory note accompanying the Anti-Red-tagging Act of 2021 or House Bill 1152, authored by Kabataan Party-List Representative Raoul Manuel,³⁷ this step is considered crucial because it entails the use of public funds and has an “injurious and irreversible impact” on the victims. The Bill suggests penalties³⁸ such as imprisonment and removal from government positions. Moreover, in cases where the victim suffers harm, including death or disappearance, the responsible party would be held accountable for offences such as murder or enforced disappearance.

Furthermore, in the resolutions that were passed in June and December of 2021, the Commission's Cordillera regional office emphasised that red-tagging should be recognised as a violation of human rights. CHR-Cordillera argued that red-tagging infringes upon the human rights provisions enshrined in the 1987 Philippine Constitution. These provisions guarantee the freedom of expression, the right to assemble peaceably, the right to petition the government for redress of grievances, and the right to form organisations. It also cited the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, both of which uphold similar rights, including the fundamental right to equal protection under the law, which is a cornerstone of human rights.³⁹

37 “House Bill No.1152,” Kabataan Partylist, July 2022, https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_19/HB01152.pdf.

38 Teo S. Marasigan, “Red-tagging as a human rights violation in the Philippines,” *New Mandala*, April 13, 2022, <https://www.newmandala.org/red-tagging-as-a-human-rights-violation-in-the-philippines/>.

39 “Human Rights Advisory on the red tagging of human rights groups, civil society organizations and individuals in the Cordillera,” 2021, Commission on Human Rights Philippines, <https://chr.gov.ph/wp-content/uploads/2022/04/Human-Rights-Advisory-On-the-Red-tagging-of-human-rights-groups-civil-society-organizations-and-individuals-in-the-Cordillera-0CHR-Car-Advisory-CHR-CAR-A-2021-003.pdf>.

Gender Equality

In 2021, CSOs such as LILAK (Purple Action for Indigenous Women's Rights), Coalition Against Trafficking In Women – Asia Pacific (CATW-AP), and National Rural Women Coalition (PKKK) engaged with the CHR by submitting reports, referring cases, and providing assistance in promoting gender rights. The CHR assumed the role of a gender ombud, tasked with achieving equal opportunity for all genders while acknowledging women as active agents of development.

“ The CHR issued guidelines and policies to promote gender equality and women's empowerment, emphasising the implementation of the Magna Carta of Women and other related laws.

On 18 January 2021, the CHR released its report titled “Gender Ombud Situation for 2nd and 3rd Quarter: Gendered impact of the pandemic and the need for gendered and intersectional responses (March 15 to 30 September)”.⁴⁰

On 7 October 2021, the CHR released their report titled “‘Telling Our Own Stories’ - Report on the CHR National Inquiry on the Reproductive Health and Rights of Women with Disabilities.”⁴¹ Regarding assistance and support, as per CHR's 2021 National Human Rights Situation Report,⁴² the Protection Cluster Division's E-lawyering Project provided services to twenty-one women and girls. Most of these cases pertained to violations of RA 9262, followed by cases of violence committed on online spaces.⁴³

40 “Gender Ombud Situationer for 2nd and 3rd Quarter: Gendered impact of the pandemic and the need for gendered and intersectional responses,” Commission on Human Rights Philippines, March 15 to September 30, 2021, <https://chr.gov.ph/wp-content/uploads/2022/01/CHR-V-No.POL2021-001-3rd-and-4th-Q-Gender-Ombud-Situationer-Gendered-Impact-of-the-Pandemic-and-the-need-for-gendered-and-intersectional-responses.pdf>.

41 “‘Telling Our Own Stories’ - Report on the CHR National Inquiry on the Reproductive Health and Rights of Women with Disabilities,” Commission on Human Rights Philippines, October 7 2021, <https://chr.gov.ph/wp-content/uploads/2022/01/Telling-our-Own-Stories-Report-on-the-CHR-National-Inquiry-on-the-Reproductive-Health-and-Rights-of-Women-with-Disabilities.pdf>.

42 “The 2021 National Human Rights Situation Report released by the CHR,” Commission on Human Rights Philippines, 2021, <https://chr.gov.ph/wp-content/uploads/2022/05/CHR-Report-Addressing-Inequality-During-the-Pandemic.pdf>.

43 “Written statement of the CHR for the 47th Session of the Human Rights Council: Annual Full-Day Discussion on the Human Rights of Women,” Commission on Human Rights Philippines, July 7, 2021, <https://chr.gov.ph/written-statement-of-the-chr-for-the-47th-session-of-the-human-rights-council-annual-full-day-discussion-on-the-human-rights-of-women/>.



Conclusion

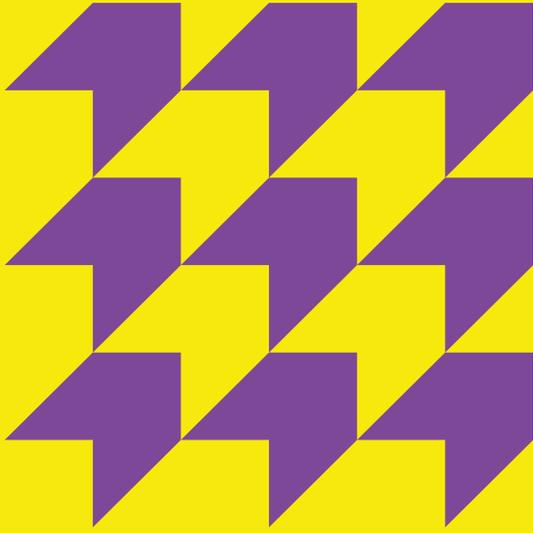
The CHRP's performance during 2021-2022 reflects a commendable commitment to its mandate of upholding and protecting human rights in the face of formidable challenges. The Commission's efforts towards advocating for human rights, documenting violations, and engaging with various stakeholders underscore its resilience and dedication to justice, accountability, and human dignity.

Recommendations

The following recommendations aim to address key areas of concern and further strengthen the CHRP's effectiveness in upholding human rights in the Philippines. They encompass a range of initiatives, from policy advocacy to operational improvements, with a focus on collaboration, transparency, and accountability:

To the CHRP:

- Continue to prioritise independence in its pursuit of human rights advocacy, even in the face of political pressure;
- Incorporate psychological first aid in interventions for victims and their families affected by extrajudicial killings to ensure a more sensitive and supportive approach;
- Advocate for continued investigations into extrajudicial killings and push for accountability of perpetrators through legal channels;
- Lobby for increased budget allocations for the CHRP to ensure comprehensive investigations and operations, addressing the current constraints;
- Advocate for transparent and unbiased processes in appointing new commissioners, ensuring the absence of political influence;
- Continue active collaboration with CSOs and advocacy groups, particularly to push for the passage of the HRD Protection Bill;
- Urgently convene the Oversight Committee for the Anti-Torture Act to monitor and supervise its enforcement effectively;
- Continue to issue policy advisory statements and guideline positions to oversee and advise the government on the compliance with international human rights standards;
- Advocate for the passage of legislation criminalising red-tagging to protect HRDs and hold accountable those engaging in such practices;
- Continue to implement and monitor policies promoting gender equality, emphasising the Magna Carta of Women and related laws;
- Continue conducting trainings, seminars, and orientations on gender equality and women's rights to raise awareness and understanding;
- Advocate for the enactment of the CHR Charter to fortify the Commission's role in upholding and protecting human rights.



SOUTH KOREA

National Human Rights Commission of the Republic of Korea:
Issues, Recommendations, and Way Forward

Hyun-Phil Na¹

Korean House for International Solidarity (KHIS), South Korea²



Overview of the Human Rights Situation in South Korea

Between 2021 and 2022, enacting anti-discrimination laws was the biggest challenge for the South Korean human rights movement. Korea's civil society and the National Human Rights Commission of the Republic of Korea (NHRCK)³ have continued to demand the enactment of anti-discrimination laws so that they can systematically reduce hatred and discrimination against persons with disabilities, non-regular workers, persons from the LGBTQIA+ community, and migrants.

After the Democratic Party won sole majority in the 2020 general election,⁴ the party was slated to control the administration and the National Assembly until at least May 2022.

“ Due to fierce opposition from the conservative Christian community, the Moon Jae-in government and the Democratic Party, which had been passive in enacting anti-discrimination laws before the general elections, now found it difficult to provide an excuse to not pass these laws.

An assembly member of the Justice Party in June 2021 first proposed an anti-discrimination law ('Bill on Non-Discrimination'), a year after the general election. In August and September of the same year, representatives of the Democratic Party proposed three anti-discrimination laws. One representative proposed a 'Bill on Equality', and two other representatives from the same party proposed a 'Bill on Equality' and a 'Bill on Non-Discrimination', respectively.⁵ However, the National Assembly has not actively discussed the anti-discrimination law.

The conservative People Power Party presidential candidate Yoon Suk Yeol won the support of young men who have not received support so far, by promising to abolish the Ministry of Gender Equality and Family.⁶ In addition, he clarified his opposition to the gender equality agenda, including the anti-discrimination law.⁷ When Yoon Suk Yeol was elected in the March 2022 election, two human rights activists began a hunger strike in front of the National Assembly demanding the enactment of an anti-discrimination law. Citizens and other human rights activists supported the two human rights activists' hunger strike, which began on 11 April 2022. Activist Lee Jong-geol stopped fasting after 39 days and Miryu stopped fasting after 46 days, but the National Assembly failed to reach an agreement to legislate an anti-discrimination law.⁸

1 Hyun-Phil Na is the Director of the Korean House for International Solidarity (KHIS).

2 KHIS was established in 2000. KHIS has been monitoring multinational corporations and is also engaged in Asian democracy and human rights solidarity in Korea. KHIS is the only ANNI member in Korea and also conducts monitoring activities for the NHRI.

3 The NHRCK urged the National Assembly to enact an anti-discrimination law in June, November 2021, and May 2022 through a statement by the Chairperson. The Korean civil society began a campaign to enact anti-discrimination laws in 2007, re-launched the "South Korean Coalition for Anti-discrimination Legislation" in 2017 and has been actively engaged in activities. More details on the South Korean Coalition for Anti-discrimination Legislation can be found here: <https://equalityact.kr/about/>.

4 "2020 General Elections: Implications on Post-Election State Affairs, Politics, Economy: Analysis," Arirang News, April 16, 2020, <https://www.arirang.com/news/view?id=210133>.

5 "NHRCK Chairperson Calls for Prompt Legislation of the 'Equality Act,'" NHRCK, November 10, 2021, <https://www.humanrights.go.kr/eng/board/read?boardManagementNo=7003&boardNo=7607404&page=&searchCategory=&searchType=&searchWord=&menuLevel=2&menuNo=114>.

6 Jean Mackenzie, "As South Korea abolishes its gender ministry, women fight back," BBC News, December 14, 2022, <https://www.bbc.com/news/world-asia-63905490>.

7 Sung Sang-hoon, "Yoon Suk Yeol 'The Anti-Discrimination Act is too comprehensive. Equality must not be enforced'," Hankyung, December 14, 2021, <https://www.hankyung.com/politics/article/202112147503i>.

8 Cho Sun-Hye, "Stopped fasting on the 46th day of the enactment of the Anti-Discrimination Act: Failure of Politics," Ohmynews, May 26, 2022, https://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002838369.



In addition to the Anti-Discrimination Act, the Framework Act on Human Rights Policy that the NHRCK and the Ministry of Justice jointly promoted and proposed was not passed. In December 2021, the Ministry of Justice and the NHRCK also proposed the Framework Act on Human Rights Policy. This stipulates the establishment and implementation of the National Action Plans by law and aims to establish a National Human Rights Policy Committee that the Prime Minister will chair. President Moon Jae-in said he hoped the law would be passed by May 2022⁹ before his term would end, but that did not happen.

The GANHRI-SCA reaccredited the NHRCK an 'A' status in October 2021 for its achievements, including President Moon Jae-in's nomination of two NHRCK Chairpersons (Cho Young-ae in 2018 and Song Doo-hwan in 2021) through a Candidate Recommendation Committee (CRC) that involved the civil society.¹⁰

“ In addition, there was progress in the human rights system, such as the passage of the Serious Disaster Punishment Act in January 2021, which strengthened the punishment of employers for serious accidents at companies and workplaces.¹¹

Even though industrial accidents are a serious problem in Korea, they are not properly resolved. When a worker dies in an accident, it is usually because the company does not have proper safety systems in place. This law provides mechanisms to punish company heads in such cases, so as to prevent industrial accidents. The law was passed as a result of the bereaved families of industrial accident deaths pressuring the National Assembly. Additionally, public opinion in favour of the legislation was at its peak. However, the passed law had weakened levels of punishment for companies than was stated in the original plan. This is because the Democratic Party was conscious of corporate opposition. It is positive that the Act guaranteeing safe workers rights has been passed, but it has also been proven that the positions of companies and the government still strongly reflect in discussions related to human rights.¹²

While the proposed anti-feminist policies of president-elect Yoon Suk Yeol's campaign conversely strengthened young women's support for the Democratic and progressive parties, he and his party still won the election, albeit by a very narrow margin. Finally, the People Power Party took control of the administration,¹³ while the Democratic Party failed to pass the anti-discrimination law as well as the basic human rights policy law that had been pledged.

9 “Written briefing on the president's words related to the Partial Amendment to the National Human Rights Commission Act and The Framework Act on Human Rights Policy, Korea Policy Briefing,” The Presidential Office, December 28, 2021, <https://www.korea.kr/briefing/presidentView.do?newsId=148897404>.

10 “GANHRI Sub-Committee on Accreditation Report – October 2021,” GANHRI, 2021, https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf.

11 Steven Borowice, “Fearing lawsuits, factories rush to replace humans with robots in South Korea,” Restofworld, June 6, 2022. <https://restofworld.org/2022/korea-factories-replace-humans-with-robots/>.

12 Shim Jin-yong, “‘Retreat’ and ‘Rags’ stigma Serious Disaster Punishment Act. Passed the National Assembly after four years of motion”, Kyunghang, January 8, 2021, <https://www.khan.co.kr/politics/assembly/article/202101082101025>.

13 Nina Pasquini, “Young Voters Split Along Gender Lines in Presidential Election”, CHOSUNILBO, March 14, 2022, https://english.chosun.com/site/data/html_dir/2022/03/14/2022031401116.html?utm_source=naver&utm_medium=referral&utm_campaign=english.



The NHRCK's Mandate to Protect and Promote Human Rights

The NHRCK, a statutory body responsible for upholding human rights and improving the human rights situation in Korea, was established under the National Human Rights Commission Act, 2001 ('NHRCK Act' or the 'Act'), last amended in 2021.¹⁴

Independence:

Article 3(2) of the NHRCK Act guarantees the independence of the Commission. By 2016, GANHRI-SCA's review of the NHRCK was postponed three times. Eventually, the NHRCK was able to protect its 'A' status, after GANHRI-SCA accreditation. The NHRCK was able to retain this status in its reaccreditation in October 2021, as well.¹⁵ However, in 2021 the GANHRI-SCA repeated its core recommendation to form a single independent selection committee.

The NHRCK consists of 11 members, who are nominated by the President, the National Assembly, and the Supreme Court.¹⁶

“ After the GANHRI-SCA's recommendation in 2016, the Democratic Party submitted a bill to the National Assembly mandating each member to form a CRC.

However, the National Assembly has not proceeded with the procedure for this bill so far. Since 2018, only the Presidential Office has formed a CRC involving civil society and the Korean Bar Association in order to nominate four members (including the Chairperson).¹⁷ However, in the case of the National Assembly and the Supreme Court, there is insufficient transparency on the composition of the CRC. In many cases in this regard, they have not even disclosed information on candidate recommendations. The Democratic Party and the People Power Party have a mandate¹⁸ to nominate commissioners of the NHRCK. On their websites,¹⁹ there is a notice that the NHRCK's candidates will be recruited, but there is no information related to the formation of the CRC. In the case of the Supreme Court, the website has information on the candidate contests since 2019 but even the Court has failed to provide any information on the formation of the CRC.²⁰ Compared to the National Assembly and the Supreme Court, President Yoon Suk Yeol maintains a transparent selection process like President Moon Jae-in.²¹

¹⁴ National Human Rights Commission of Korea Act (2001), Elaw, February 3, 2009, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=22488&lang=ENG.

¹⁵ "GANHRI Sub-Committee on Accreditation Report – October 2021," GANHRI, 2021, https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf.

¹⁶ The relevant provisions of the National Human Rights Commission of Korea Act are as follows:

Article 5 (Organization of Commission)

(1) The Commission shall be comprised of 11 commissioners for human rights (hereinafter referred to as "commissioners"), including one chairperson and three full-time commissioners.

(2) The following persons shall be appointed to be commissioners by the President of the Republic of Korea:

1. Four persons selected by the National Assembly (including two full-time commissioners);

2. Four persons nominated by the President of the Republic of Korea (including one full-time commissioner);

3. Three persons nominated by the Chief Justice of the Supreme Court.

¹⁷ Information related to this was dealt with in detail at the 2020 ANNI Korea Report Launch Event on 16 November 2022 at Seoul, "Event Highlights - ANNI South Korea Report Launch," FORUM-ASIA, December 7, 2022, <https://forum-asia.org/?p=37668&nhri=1>.

¹⁸ The name of both the parties have changed since the establishment of the NHRCK in 2001, but the practice of nominating commissioners by liberal and conservative parties, which occupy most of the seats in the Korean National Assembly, continues.

¹⁹ This is the result of searching for "NHRCK" and "Commissioner of NHRCK" as keywords in the "announcement" provided on the websites of the Democratic Party (<https://theminjoo.kr/main/sub/news/>) and the conservative party (<https://www.peoplepowerparty.kr/news/notice>).

²⁰ The search results were from the "News" section of the Supreme Court's website. Similarly, "NHRCK" was used as the keyword, <https://www.scourt.go.kr/supreme/news/NewsListAction.work?gubun=701>.

²¹ When President Yoon Suk Yeol did not start the nomination process for the successor to the non-executive member Moon Soon-hee's term of office, the South Korean NGO TF, which monitors the government's HR policies, delivered its position on 8 July 2022. On September 13, two months later, the NHRCK announced on its website the process of applying for recommendation members to form a Candidate Recommendation Committee, <https://www.humanrights.go.kr/base/board/read?boardManagementNo=9&boardNo=7608324&searchCategory=&page=6&searchType=&searchWord=&menuLevel=3&menuNo=88>.



On 18 February 2022, there was a meeting between Chairperson Song Doo-hwan and the South Korean Non-Governmental Organizations Task Force to Monitor Government Human Rights Policy ("HR Policy TF").²² In this meeting, the GANHRI-SCA raised a question about the selection procedure for commissioners. Chairperson Song Doo-hwan shared that the challenge was that while the Presidential Office was following this, the National Assembly and the Supreme Court were not following suit. He also shared that the NHRCK was considering how to unify the procedure of recommending commissioners through revisions to the NHRCK Act.

“ At a press conference on 2 September 2022 to mark the first anniversary of his inauguration, Chairperson Song Doo-hwan made it clear that he would serve independently, expressing his opinion on the abolition of the Ministry of Gender Equality and Family the Yoon Suk Yeol government was pursuing.²³

HR Policy TF has also been positively evaluating Chairperson Song Doo-hwan's activities after taking office. After the inauguration of the Yoon Suk Yeol government, Song Doo-hwan's position is expected to remain until September 2024. He is not expected to resign early under pressure from the heads of agencies who were appointed during the Moon Jae-in government.²⁴ But the selection of the next Chairperson is a problem.

The question of whether the current recommendation process can select commissioners who perform their duties in accordance with the Paris Principles, including the recommendation of the GANHRI-SCA, is overlooked in the discussion about the current recommendation process. The current CRC consists of three members that the President nominated, three that the NHRCK recommended, and one that the Korean Bar Association recommended. If three candidates are selected from here and recommended to the President, the President has to choose one of them. In this case, the President will still be able to recommend his preferred candidate from among these three. In other words, civil society can participate through the NHRCK, but in fact, the person the President prefers can be selected. If the minimum agreement to recommend people who agree with international human rights standards does not work, the President's Office's CRC (which is constituted as per the President's choice) can be an example for the National Assembly and the Supreme Court, but can also act as an alibi.

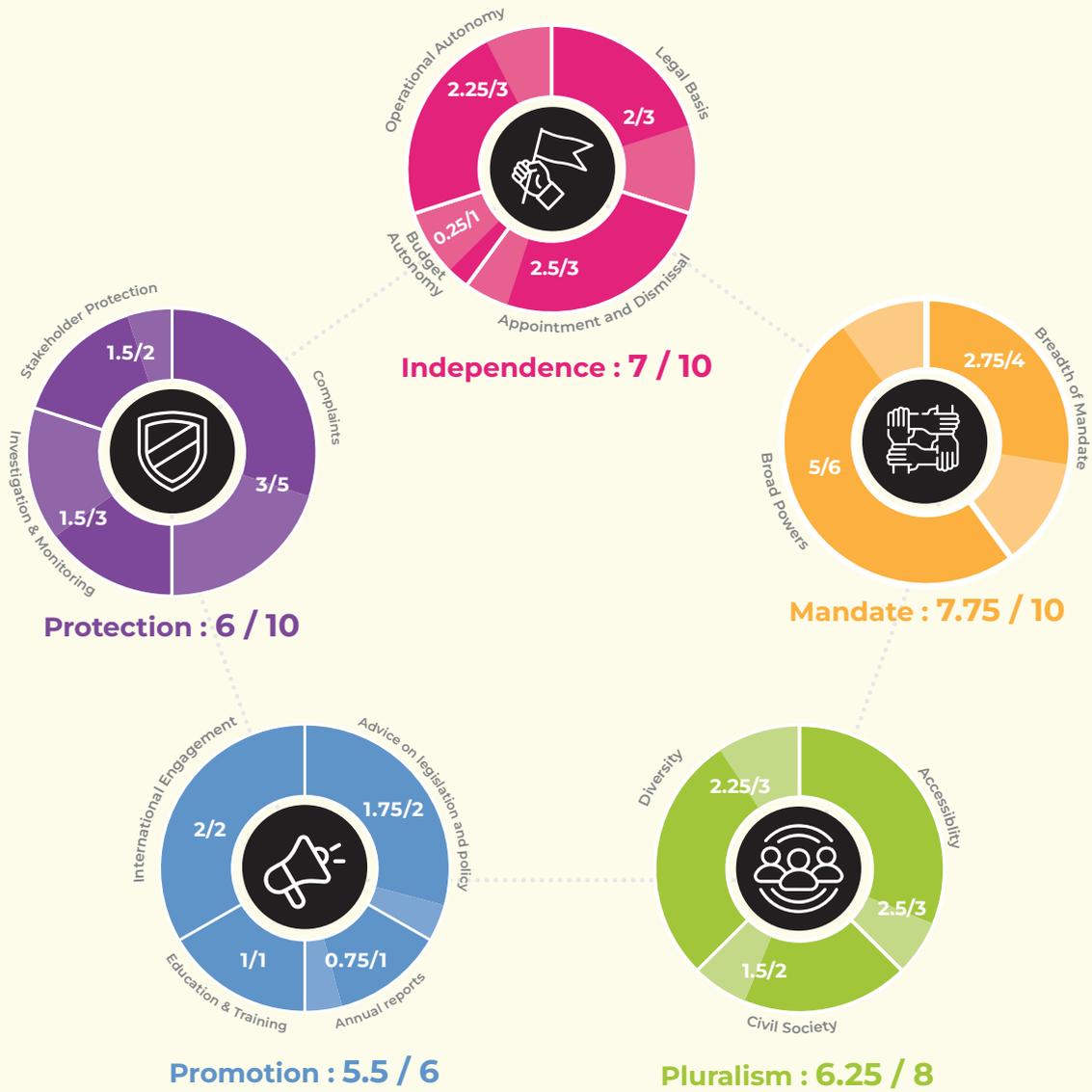
22 The South Korean Non-Governmental Organizations Task Force to Monitor Government Human Rights Policy ("HR Policy TF") is a group of Korean human rights organisations that respond to the Korean government's human rights policies. It mainly focuses on the Ministry of Justice and the NHRCK to monitor and respond, and consists of six human rights organisations, including the Korean House for International Solidarity.

23 Lee Se-ah, "Chairperson of the NHRCK Song Doo-hwan, 'One year in office, said, 'We should enact the anti-discrimination law now instead of waiting for '100% support,'" Womennews, September 2, 2022, <https://www.womennews.co.kr/news/articleView.html?idxno=227601>.

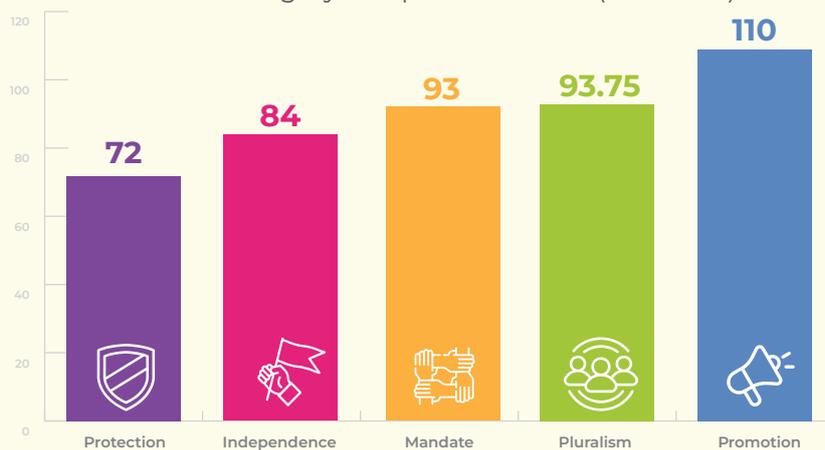
24 Ibid.



Category and sub-category-wise scores for NHRCK South Korea



Inter-category comparative scores (out of 120)





Human Rights Situation in the Military

“ Human rights in the military is a serious issue in South Korea.

One of the top 100 pledges President Moon Jae-in made when he took power in 2017 was the introduction of the position of Military Human Rights Officer. However the pledge to have a Military Human Rights Officer within the NHRCK did not go down well until 2021. This was because the Ministry of National Defense consistently took the opposite position.²⁵

While the human rights situation in the military has not improved, the issue of a soldier who declared herself as a transgender person in 2020 brought this into stronger focus. Late Sergeant Byun Hee-soo, who had already worked in the army in 2020 and had hoped to continue working as a female soldier after undergoing sex reassignment surgery, was forced to serve in the military and died by suicide on 3 March 2021.²⁶ On 7 October 2021, the court ruled in the first trial that the dismissal of the late Sergeant Byun Hee-soo was problematic.²⁷ Although she won the first trial after her death, her death left a huge challenge on both the human rights issues of soldiers and transgender people in Korean society.

After Sergeant Byun Hee-soo's death, Sergeant Lee Ye-ram, who worked in the Air Force, also made this extreme choice on 21 May 2021, after the military failed to properly protect her from the sexual violence she suffered at the hands of her superiors.²⁸ After the incident became known, the military was criticised for not resolving serious human rights violations within itself.²⁹ Eventually, in December 2021, an amendment to the NHRCK Act made it possible to have a Military Human Rights Officer in the NHRCK.³⁰

The issue of human rights in the military is not only one of sexual violence but also one of suicide.

“ Even under 24-hour control, thirty-seven suicide incidents occurred in the first half of 2021 alone.³¹

In South Korea, where all men are required to serve in the military, the high suicide rate itself represents a serious human rights situation in the military. These are the circumstances under which the Human Rights Protectors for the Military began working in July 2022.

25 Lee Yu Ji, "Checked the military pledge of the Moon administration, Military Human Rights officer drifted. 'salary will be raised well,'" HANKOOKILBO, June 24, 2021, <https://www.hankookilbo.com/News/Read/A2021062411200002774?did=NA>.

26 'South Korea's first transgender soldier found dead,' BBC News, March 3, 2021, <https://www.bbc.com/news/world-asia-56268409>.

27 Han Sohee, "Former Sergeant Byun Hee-soo, who changed her gender, won the cancellation of her dismissal. 'Should have seen me as a woman, not a man,'" SBS news, October 7, 2021, https://news.sbs.co.kr/news/endPage.do?news_id=N1006489384&plink=ORI&cooper=NAVER&plink=COPYPASTE&cooper=SBSNEWSEND.

28 Park Joo-pyeong, "From the death of Sergeant Lee Ye-ram to the results of the special prosecutor's 100-day investigation," News1, September 13, 2022, <https://www.news1.kr/articles/4800254>.

29 Cho Moon-hee, "NHRCK: 'Closed military, set up Military Human Rights officer for external surveillance,'" Kyunghang, June 8, 2021, <https://www.khan.co.kr/national/national-general/article/202106081734001>.

30 "Moon: 'I hope the Military Human Rights officer will also be a turning point for the drastic strengthening of military human rights'", Newsis, December 28, 2021, https://newsis.com/view/?id=NISX20211228_0001704812&clD=10301&plD=10300.

31 Park Sang-woo, "37 suicides occurred in the military in the first half of this year alone. A year's worth of last year," Insight, September 19, 2021, <https://www.insight.co.kr/news/359275>.



The standing commissioner of the NHRCK appointed by the President concurrently appoints the Human Rights Protectors for the Military. They have the following powers under the NHRCK Act revised on 4 January 2022:³²

1. They can conduct a visit to a military unit, which has been outside the authority of the NHRCK;
2. They can also investigate cases that have occurred a year later and cases under investigation or trial;
3. It is also possible for them to join military death cases;
4. In addition, even if there is no petition, an ex-officio investigation can be decided or an on-site investigation can be conducted.³³

Despite this authority, the Human Rights Protectors for the Military have limitations in protecting human rights in the military. The biggest problem is that the Human Rights Protectors for the Military cannot visit the military unit without prior intimation. The military unit should be notified of the visit in advance, and even in urgent cases, the Minister of National Defense should be notified in advance. Even so, the Minister of National Defense can suspend the door-to-door investigation for special circumstances.³⁴ Also, a Human Rights Protector for the Military is not authorised to investigate and cannot receive data on the case under investigation.³⁵

With the introduction of the Human Rights Protector for the Military, the NHRCK newly established the Bureau of Human Rights in Military, consisting of twenty-five employees from three divisions.³⁶ However, the NHRCK's staff recruitment is still a challenge, given that it has relocated existing personnel rather than new ones. Although it is necessary to expand the workforce and budget according to the increased role, the NHRCK's workforce and organisation are controlled by the government. The 2021 GANHRI-SCA report³⁷ also confirmed that the NHRCK does not have autonomy in staff recruitment and budget. Despite such limited authority and resources, the Korean civil society, including the Center for Military Human Rights Korea,³⁸ expected that the NHRCK would contribute to improving human rights in the military through the active role of the Human Rights Protector for the Military.

³² The revised NHRCK Act has not yet been updated on the NHRCK English website; it is provided only on the Korean website.: <https://www.humanrights.go.kr/base/board/read?boardManagementNo=186&boardNo=7607603&searchCategory=&page=1&searchType=&searchWord=&menuLevel=3&menuNo=84>

³³ "NHRCK - The Work of the NHRCK's 'Human Rights Protector for Military' Begins," July 13, 2022, <https://www.humanrights.go.kr/eng/board/read?boardManagementNo=7003&boardNo=7608142&searchCategory=&page=5&searchType=&searchWord=&menuLevel=2&menuNo=114>.

³⁴ NHRCK Act, arts. 50-4(2) and (3).

³⁵ Ahn Hye-min, "Human rights in the military. How far have we come?" SBS News, September 4, 2022, https://news.sbs.co.kr/hews/endPage.do?news_id=N1006882650&plink=ORI&cooper.

³⁶ Kim Jung-hyuk, "National Human Rights Commission Launches Military Human Rights Officer," TodayKorea, July 2, 2022, <http://www.todaykorea.co.kr/news/articleView.html?idxno=300201>.

³⁷ "GANHRI Sub-Committee on Accreditation Report," GANHRI, October 2021,

https://www.ohchr.org/sites/default/files/2021-12/SCA-Report-October-2021_E.pdf.

³⁸ It is a representative human rights organisation in Korea that specialises in human rights in the military. The website is: <https://mhrk.org/>.



The Rights of Transgender People

In order to support the aforementioned late Sergeant Byun Hee-soo, organisations supporting her applied on 9 August 2021 to post advertisements to raise legal fees at subway stations in Seoul. However, the Seoul Metropolitan Transportation Corporation (SMTC) notified on 8 September 2021, that they were not allowed to post the advertisement on the subways. In June 2021, the SMTC had already banned LGBTQIA+ organisations from advertising in subway stations with the phrase “LGBT is in your daily life”.³⁹ In response to the SMTC’s refusal, the NHRCK stated that the corporation’s decision violates freedom of expression and is discriminatory. It also recommended that the president of the transportation corporation improve advertising regulations.⁴⁰

Eventually, on 25 February 2022, the organisations were able to post an advertisement at Itaewon Station in Seoul in memory of the late Sergeant Byun Hee-soo. After the NHRCK’s recommendation, the SMTC approved the advertisement after a period of seven months.⁴¹

“ The reason for posting advertisements about the LGBTQIA+ community, including transgender people, was that they suffer from complaints from LGBTQIA+ hate groups.

But a public corporation like the SMTC rejecting such advertisements is an example of Korean society’s low awareness on the human rights of transgender people.

The NHRCK conducted a survey on transgender people and announced the results in February 2021. Out of the 591 transgender people aged nineteen and over who were surveyed, 65.3% of the respondents said they had experienced discrimination in the past twelve months because they were transgender and that they had encountered remarks and expressions on the internet from individuals who hate transgender people (97.1%), including social networking platforms, broadcast and media (87.3%), and video media such as dramas and movies (76.1%).⁴² Based on these findings, the NHRCK recommended that the government should establish a transgender survey item in the national statistical survey in March 2022 and exclude gender change from the list of mental disorders.⁴³

“ Though the NHRCK is striving for the rights of transgender people, it is more important and necessary to enact an anti-discrimination law.

At a press conference held at the National Assembly in April 2022, Harisu, an entertainer who was the first transgender person in Korea to broadcast and reveal the discrimination she had suffered, appealed for the enactment of an anti-discrimination law.⁴⁴

39 Lee Yuji, “Seoul Transportation Corporation Disapproves the Advertisement of The Late Sergeant Byun Hee-soo. ‘I can’t tell you the reason,’” *Hankookilbo*, September 13, 2021, <https://www.hankookilbo.com/News/Read/A2021091311340000153>.

40 Oh Dae-sung, “NHRCK said, ‘It is discrimination to prevent advertisements for ‘Byeon Hee-soo’s lawsuit’ from being placed in subway stations,’” *KBS News*, October 29, 2021, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=5312791>.

41 Oh Dae-sung, “Advertised in memory of the late Sergeant Byun Hee-soo, 4m x 2.5m, which took 7 months,” *KBS News*, March 1, 2022, <https://news.kbs.co.kr/news/pc/view/view.do?ncd=5406214&ref=A>.

42 “Announcement of Transgender Hate Discrimination Survey Results,” NHRCK, February 9, 2021, <https://www.humanrights.go.kr/site/program/board/basicboard/view?boardtypeid=24&boardid=7606311&menuid=001004002001>.

43 Kim Chi-yeon, “NHRCK recommends that the National Statistical Survey should establish transgender survey items,” *Yonhapnews*, March 21, 2022, <https://www.yna.co.kr/view/AKR20220321039400004>.

44 Lee Ji-min, “Harisu, Call for Enactment of Anti-Discrimination Law. ‘I can’t tell you about the discrimination I got on air,’” *MBN*, April 28, 2022, <https://www.mbn.co.kr/news/society/4750411>.



Conclusion

Following its accreditation in 2016, the NHRCK succeeded in obtaining an 'A' status from GANHRI-SCA in 2021. However, the establishment of a single independent selection committee, which the GANHRI-SCA continues to recommend, is being delayed. Another problem is that the anti-discrimination law and the Framework Act on Human Rights Policy have not been enacted in the Democratic Party government, which controls the National Assembly and the President. Although there has been progress via the introduction of the Military Human Rights Officers, the Yoon Suk Yeol government took office at a time when a law to strengthen the independence and efficiency of the NHRCK had not been institutionalised. The law that the NHRCK recommended has not been enacted.

The NHRCK has been holding the Chairperson position in the Asia Pacific Forum of National Human Rights Institutions (APF) since September 2022, which is one of the reasons it is receiving relatively good reviews from the international community. But in order for the NHRCK to remain independent, the Commission should continue its efforts to persuade the government and the National Assembly to actively revise laws related to the NHRCK, as recommended by GANHRI-SCA.

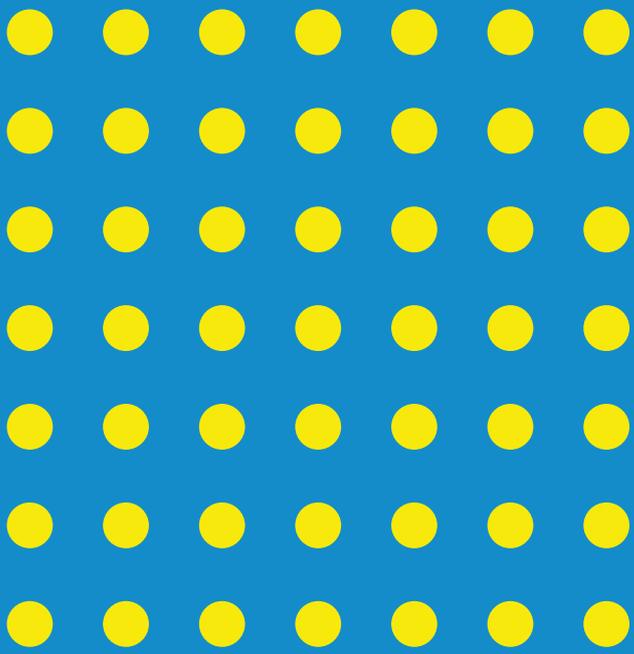
Recommendations:

To the Government:

- Revise the NHRCK Act to establish a single independent selection committee that can recommend all commissioners nominated to the President, the National Assembly, and the Supreme Court while ensuring civil society's participation;
- Revise the NHRCK Act and related laws to expand its financial autonomy;
- Actively accept the recommendations of the NHRCK regarding LGBTQIA+ persons, when enacting anti-discrimination laws and establishing the 4th NAP;
- Take all measures to ensure that those who comply with international human rights standards and the Paris Principles are selected as NHRCK commissioners.

To the NHRCK:

- Advocate with members of the National Assembly to amend the NHRCK Act and related laws in accordance with the GANHRI-SCA's recommendations in 2021;
- Give the necessary support to the Human Rights Protector for the Military to do their job;
- Propose and develop a system to increase the acceptance rate of the NHRCK's recommendations;
- As chair of the APF, proactively stand up for human rights issues in the Asia-Pacific region and strengthen cooperation with NHRIs and civil society in the region.



SRI LANKA

Sri Lanka Racked with Political and Economic Instability:

How Did the Human Rights Commission of Sri Lanka (HRCSL) Respond?

Megara Tegal¹

Law and Society Trust, Sri Lanka²

Overview of the Human Rights Situation in Sri Lanka

The COVID-19 pandemic that took the world by storm in early 2020 left Sri Lanka with a myriad of subsequent issues. This included the hastening of the economic crisis the country was already hurtling towards. The economic crisis is the worst the island nation has faced since gaining independence from British colonial rule in 1948.^{[3][4][5]}

A series of events occurred in 2021 and 2022 that affected many Sri Lankan citizens. The fuel crisis saw scores of people wait in line for several days to access fuel.^{[6][7]} Meanwhile, rationing of liquefied petroleum gas left many unable to prepare food for themselves for days⁸. Both instances led to several deaths, especially of the elderly, as they waited in queues for hours. There were also multiple scheduled daily power cuts that stretched for as long as 13 hours for some weeks. These power cuts even brought hospitals to a halt.⁹

“ Sri Lankan citizens took to the streets in March 2022, forming small clusters of protests around the island. This eventually evolved into month-long protests, as hundreds upon thousands gathered at Galle Face in April 2022¹⁰ amid attacks on protesters and social media blocks.¹¹

Protesters named the location Gota-go-gama¹² and called for the then-president, Gotabaya Rajapaksa, to step down. Smaller protests for the same cause emerged in other parts of the island as well. The collective protests are known as the Aragalaya.^{[13][14]} Protesters came under attack by regime loyalists on 9 May 2022, leaving over 200 injured, and five dead,¹⁵ including a minister. That evening, the residences of several ministers were set ablaze¹⁶ in what was thought to be “state-sponsored violence” and “state-sponsored terrorism”.¹⁷ The same night, Prime Minister Mahinda Rajapaksa tendered his resignation.¹⁸

On 11 May, the government authorised the deployment of the military with shoot-on-sight instructions to quell the violence. The military was granted the authority to detain individuals without a warrant for a maximum of 24 hours before transferring them to the police, while also being empowered to conduct searches of private property.¹⁹

1 Megara Tegal is a researcher at Law and Society Trust (LST).

2 LST is an organisation based in Sri Lanka which utilises rights-based strategies in research, documentation, and advocacy to promote the full realisation of the rule of law, justiciability of rights, and public accountability.

3 “Timeline of Sri Lanka’s Worst Economic Crisis Since Independence,” Al Jazeera, April 14, 2022, <https://www.aljazeera.com/news/2022/4/13/timeline-of-sri-lankas-worst-economic-crisis-since-independence>.

4 Salikuddin, Tamanna, “Five Things to Know About Sri Lanka’s Crisis,” United States Institute of Peace, July 16, 2022, <https://www.usip.org/publications/2022/07/five-things-know-about-sri-lankas-crisis>.

5 Jessie Yeung, “Sri Lanka is Facing an Economic and Political Crisis. Here’s What You Need to Know,” CNN, April 7, 2022, <https://edition.cnn.com/2022/04/05/asia/sri-lanka-economic-crisis-explainer-intl-hnk/index.html>.

6 Carolyn Beeler, “Sri Lankans Wait in Line for Days to Refuel Their Vehicles amid Shortages, Economic Crisis,” The World from PRX, July 26, 2022, <https://theworld.org/stories/2022-07-26/sri-lankans-wait-line-days-refuel-their-vehicles-amid-shortages-economic-crisis>.

7 Rajini Vaidyanathan, “Sri Lanka Fuel Crisis: Waiting for Days to Get Fuel,” BBC News, June 30, 2022, <https://www.bbc.com/news/world-asia-62002472>.

8 Matthew Loh, “People Are Waiting in Line for Days to Get Gas in Sri Lanka as the Country’s Economic Crisis Deepens,” Insider, July 1, 2022, <https://www.insider.com/fuel-crisis-sri-lanka-wait-2-days-in-line-gas-2022-7>.

9 “Sri Lanka Crisis Forces 13-Hour Blackouts, Hospitals Stop Surgery,” Al Jazeera, March 31, 2022, <https://www.aljazeera.com/news/2022/3/31/sri-lanka-crisis-forces-13-hour-blackouts-hospitals-stop-surgery>.

10 Teena Marian, “Occupy Galle Face Protest Continues,” Newsfirst, April 25, 2022, <https://www.newsfirst.lk/2022/04/25/occupy-galle-face-protest-continues-2/>.

11 “Defence Ministry Requests to Block Social Media: TRC,” EconomyNext, April 3, 2022, https://www.dailymirror.lk/breaking_news/Defence-Ministry-request-to-block-social-media-TRC/108-234369.

12 Gama means village in Sinhala.

13 Aragalaya translates to ‘The Struggle’ in Sinhala.

14 Nirupama Subramanian, “This Word Means: Aragalaya: Sinhalese for ‘Struggle’, Now Synonymous with the Movement That Led to the Fall of the Government in Sri Lanka,” The Indian Express, July 20, 2022, <https://indianexpress.com/article/explained/aragalaya-this-word-means-struggle-sri-lanka-gotabaya-rajapaksa-8039897/>.

15 “Sri Lanka’s Day Of Deadly Violence: Here’s All You Need To Know,” NDTV, May 10, 2022, <https://www.ndtv.com/world-news/sri-lankas-day-of-deadly-violence-heres-all-you-need-to-know-2961079>.

16 Swati Bhasin, “Sri Lanka Sees Most Violent Day in Recent Weeks; PM Quits, MP Dies: 10 Points,” Hindustan Times, May 10, 2022, <https://www.hindustantimes.com/world-news/sri-lanka-sees-most-violent-day-in-recent-weeks-pm-quits-mp-dies-10-points-101652145197076.html>.

17 Ibid.

18 “Sri Lankan PM Quits after Violent Clashes,” Dawn, May 9, 2022, <https://www.dawn.com/news/1688804/sri-lankan-pm-quits-after-violent-clashes>.

19 “Sri Lanka Issues ‘Shoot-on-sight’ Order to Quell Unrest,” Al Jazeera, May 10, 2022, <https://www.aljazeera.com/news/2022/5/10/sri-lanka-gives-emergency-powers-to-army-police-after-violence>.



On 9 July, the President fled his official residence after scores of protesters gathered demanding his resignation.²⁰ On 15 July, Gotabaya Rajapaksa's resignation letter reached the Speaker of Parliament²¹ and Ranil Wickremesinghe was officially sworn in as the Acting President, despite protests against his appointment.²² Violence against protesters continued from June to the beginning of July 2022.

In the following months, the police arrested many Aragala protesters under the Prevention of Terrorism Act. Among those arrested was the university student convenor, Wasantha Mudalige, who was detained for over 150 days.²³

Meanwhile, hundreds of garment workers suffered under unfavourable working conditions in 2021.

“ Human Rights Watch (HRW) noted repeated COVID-19 outbreaks in factories. There were also subsequent complaints from workers that factory managers pressured them to work without adequate occupational health and safety measures.

An HRW report claimed that “workers from different factories complained [...] they lost pay when they fell sick or needed to quarantine. [...] police or military personnel had intimidated [workers] to stop them from speaking out”.²⁴ Save the Children also reported: “All workers work extremely long hours that exceed the maximum working hours set forth in the law. Manpower and female workers work the same hours as contractual/permanent workers but are paid significantly less.”²⁵

20 “Protestors Storm Sri Lanka President’s Official Residence in Popular Uprising,” *EconomyNext*. July 9, 2022, <https://economynext.com/protestors-storm-sri-lanka-presidents-official-residence-in-popular-uprising-97159/>.

21 “Sri Lanka President Rajapaksa Emails Resignation Letter to Parliamentary Speaker - Source,” *Reuters*. July 14, 2022, <https://www.reuters.com/world/asia-pacific/sri-lanka-president-rajapaksa-emails-resignation-letter-parliamentary-speaker-2022-07-14/>.

22 Hannah Ellis-Petersen, “Sri Lanka’s Political Crisis Continues as Ranil Wickremesinghe Bids to Be President,” *Al Jazeera*. July 16, 2022, <https://www.theguardian.com/world/2022/jul/16/sri-lankas-political-crisis-continues-as-ranil-wickremesinghe-bids-to-be-president>.

23 “Sri Lanka Student Leader Wasantha Mudalige Released from Terror Case: Report,” *EconomyNext*. January 31, 2023, <https://economynext.com/sri-lanka-student-leader-wasantha-mudalige-released-from-terror-case-report-110919/>.

24 Human Rights Watch, “Sri Lanka: Protect Garment Workers’ Rights During the Pandemic,” July 12, 2021, <https://www.hrw.org/news/2021/07/12/sri-lanka-protect-garment-workers-rights-during-pandemic>.

25 Save the Children, “Child Rights Risk Assessment of the Textile and Apparel Sector Supply Chain in Sri Lanka”, *Save the Children Report*, page 26. February, 2022.

Background and Mandate of the Human Rights Commission of Sri Lanka (HRCSL)

The HRCSL was established 26 years ago, shortly after the Human Rights Commission Act No. 21 of 1996 was passed. The Commission was first acknowledged in the 17th Amendment of the Constitution in 2001, with regard to the HRCSL appointment process.

According to the provisions²⁶ of the Constitution, the Chairperson and four other members of the Commission are appointed by the President on the recommendation of the Constitutional Council. Their duties include promoting and overseeing the protection of the constitutionally granted fundamental rights as well as ensuring that Sri Lanka complies with all applicable international human rights standards. The Commission is given broad authority and the ability to look into any reports of fundamental rights violations or imminent violations of those rights. It also has unrestricted access to inspect and monitor any location where a person is deprived of liberty. However, the Commission may only provide appropriate redress in the form of recommendations, such as recommending compensation. The Commission has the authority to intervene in cases involving fundamental rights before any court. It also has the power to examine national laws, administrative rules, and practices to determine whether they are compliant with international human rights standards. The Commission can make recommendations to the government based on these parameters.

During 2021 and 2022, the HRCSL saw changes in the Commission’s board with Dr Jagath Balasuriya resigning in October 2021, reportedly due to ill health. This happened nine months after they assumed the position of Chair.^{[27][28]} Three months later, Justice Rohini Marasinghe was appointed Chair of the Commission^{[29][30]} and remained Chair during the years under review for this report.

26 Article 41C of the Constitution of Sri Lanka.

27 Asiri Fernando, “HRCSL Chairperson Steps Down: New Name Nominated to Chair HRCSL,” *The Morning*, November 13, 2021, <https://www.themorning.lk/articles/173552>.

28 The term for the Chair and other commissioners is three years. HRCSL. “Human Rights Commission of Sri Lanka Act No.21 of 1996. <https://www.hrcsl.lk/about/hrcsl-act/>.

29 Asiri Fernando, “HRCSL Chairman: PC Approves Retired SC Judge Rohini Marasinghe,” *The Morning*, December 11, 2021. <https://www.themorning.lk/articles/178861>.

30 “Sri Lanka President Makes Two Key Appointments to Human Rights Commission,” *Economy Next*, December 14, 2021, <https://economynext.com/sri-lanka-president-makes-two-key-appointments-to-human-rights-commission-88826/>.

“ Overall, the Commission released 88 recommendations in 2021. 50 per cent of these pertained to personal liberty, 26 per cent involved employment matters, and 14 per cent were on school admissions. The HRCSL also undertook eight *Suo Motu* cases, mostly on police torture and abuse. Statistics for 2022 are yet to be collated.

It is also worth noting that based on third-party reports,³¹ the Global Alliance of National Human Rights Institutions (GANHRI) conducted a special review of the HRCSL in October 2021. As a result of members of the Sri Lankan civil society urging for a reevaluation of the HRCSL grading, GANHRI downgraded the Commission from status 'A' to 'B'. The civil society concerns mainly stemmed from the selection and appointment process of the HRCSL commissioners after the 20th Amendment of the Constitution was passed.³²

HRCSL: Protecting Human Rights?

The key pillars of the Paris Principles are independence, effectiveness, and pluralism.

“ According to the scoring index for 2021 and 2022, the HRCSL scored the best in terms of independence.

This does not imply that the Commission is completely independent. One of the more significant issues that the Commission faces in terms of independence is that the appointment process requires the President to select its members. Secondly, as per the HRCSL Act, the Commission has the autonomy to carry out investigations sans interference from the state. The state, however, can exert control over the Commission by controlling its budget. HRCSL sources have shared that this has, indeed, been the case. With budget cuts, the Commission was put on the back foot as it was unable to carry out awareness programmes and projects. In 2021 and 2022, the Commission was informed that due to the bankruptcy of the state, the government could not support the Commission's education programmes and projects. It must be noted, however, that this funds curtailment was not exclusive to the HRCSL; it applied to all other state organisations as well.

31 "Stakeholder Information Submission to the Global Alliance of National Human Rights Institutions (GANHRI) for The Special Review of the Human Rights Commission of Sri Lanka (HRCSL)," *The Asian NGO Network on National Human Rights Institutions (ANNI)*, February 19, 2020, https://forum-asia.org/wp-content/uploads/2021/05/SCA-GANHRI-Submission_Stakeholder-Information-HRCSL-Fin.pdf.

32 "One Year On: Independent Institutions Under the 20th Amendment," *Sri Lanka Campaign*, October 22, 2021, <https://www.srilankacampaign.org/one-year-on-independent-institutions-under-the-20th-amendment/>.

At the same time, the Commission was also unable to access funds from external donors due to bureaucratic processes. The current process dictates that, if no prior agreement of direct transfers has been made, any external donor must issue funds to the Treasury first before it is released to the HRCSL. This has led to several delays. For example, the HRCSL is currently over six months behind in its schedule for a European Union funded project.

Another stumbling block related to the HRCSL's independence is that the Commission is unable to hire staff without the approval of various state entities, such as the Department of Management Services under the Ministry of Finance, Economic Stabilization and National Policies. The non-senior staff are mostly university graduates who are appointed to undergraduate recruitment programmes and are paid by the public administration office, not the HRCSL. According to the directors, there are many vacancies to be filled, with some regional offices having only two staff members.

When looking at the parameter of effectiveness, the HRCSL was able to make recommendations against the police shooting of protesters in Rambukkana. This recommendation was put out in April 2022 under a *Suo Motu* inquiry. Other *Suo Motu* inquiries in this reporting period include:

1. An investigation on the assault of a journalist in Mullivaikkal in Mullaitivu in November 2021.³³
2. The manhandling of two female police officers and a female citizen by the Chief Inspector of Kalutara during his duties at the site and his directives to stop the peaceful march unlawfully and to arrest participants;³⁴ and
3. The threats made against prisoners at gunpoint by the Minister of Prisons, Lohan Ratwatte, during an unscheduled late-night visit to the Welikada prison with a group of friends all of whom were heavily inebriated.³⁵

It must be noted that apart from the Rambukkan incident, the Commission has yet to produce a report or recommendations for these inquiries.

33 "HRCSL Starts a *Suo Motu* Inquiry on Assault on a Journalist in Mullivaikkal, Mullaitivu," *HRCSL*, November 29, 2021, <https://www.hrsl.lk/hrsl-starts-a-suo-motu-inquiry-on-assault-to-a-journalist-in-mullivaikkal-mullaitivu/>.

34 "HRCSL Writes to IGP on the Misconduct of Panadura Police," *HRCSL*, November 21, 2022, <https://www.hrsl.lk/hrsl-writes-to-igp-on-the-misconduct-of-panadura-police/>.

35 "HRCSL Begins Investigations Relating to the Incidents in Prisons," *HRCSL*, September 15, 2021, <https://www.hrsl.lk/hrsl-begins-investigations-relating-to-the-incidents-in-prisons/>.



However, submitting a report in itself does not address the issue in its entirety. A submitted report usually indicates a set of recommendations to remedy the situation or to compensate a victim. If these recommendations are not followed through according to the HRCSL Act, the Commission can report the non-implementation to Parliament via the President. However, HRCSL sources point out that this has not been happening for many years now.

“ In order to circumvent this long process, previous HRCSL commissioners established a Non-Implementation Unit under the Inquiry and Investigation Department. The Unit is tasked with following up and pressuring individuals or organisations to adhere to the recommendations.

This unit has been active since it was established. However, most civil society members and human rights defenders who were interviewed stated that the HRCSL lacks the authority to ensure the recommendations are implemented, despite the establishment of the Non-Implementation Unit.

This report also takes into consideration the civil and political rights cases that the Commission took up in 2021 and 2022. These included the Commission condemning the social media ban that disrupted the activities of the Aragalaya protest. The Commission also summoned the Telecommunication Regulatory Commission of Sri Lanka, the Inspector General of Police, the Secretary of Defence and the Secretary of the Ministry of Information and Mass Media to look into the social media ban and the alleged assault on journalists and civilians at the Mirihana protest.³⁶ As with the Suo Motu cases, the outcomes of these investigations are yet to be seen.

Engagement with marginalised groups was another area where the HRCSL received a low score on the index. In 2016, the HRCSL established thematic subcommittees that prioritised certain marginalised groups such as torture victims, women, the LGBTQIA+ community, the elderly, persons with disabilities, migrant workers, and plantation workers. The Commissioner chaired each subcommittee, which consists of civil society members who are experts in these specified areas. However, following the 2019 Easter attacks³⁷, the subcommittees rarely met and by March 2020, they were completely defunct.

In 2022, the President of the Committee for Protecting Rights of Prisoners, Senaka Perera, alleged that prisoners were used to attack Aragalaya protesters on 9 May 2022.³⁸ Following an inquiry into the claims, the HRCSL released a statement titled: ‘HRCSL condemns the false media broadcast made by the President of the Committee for Protecting Rights of Prisoners’. This statement raised concerns among human rights defenders.³⁹ The Sri Lankan Collective Against Torture highlighted that the HRCSL statement “[made] many assertions and allegations that are detrimental to the safety and security of human rights defenders and freedom of expression”.⁴⁰

³⁶ “Sri Lanka Lifts Social Media Ban, HRCSL Summons Officials,” Newswire, April 3, 2022, <https://www.newswire.lk/2022/04/03/sri-lanka-lifts-social-media-ban-hrcsl-summons-officials/>.

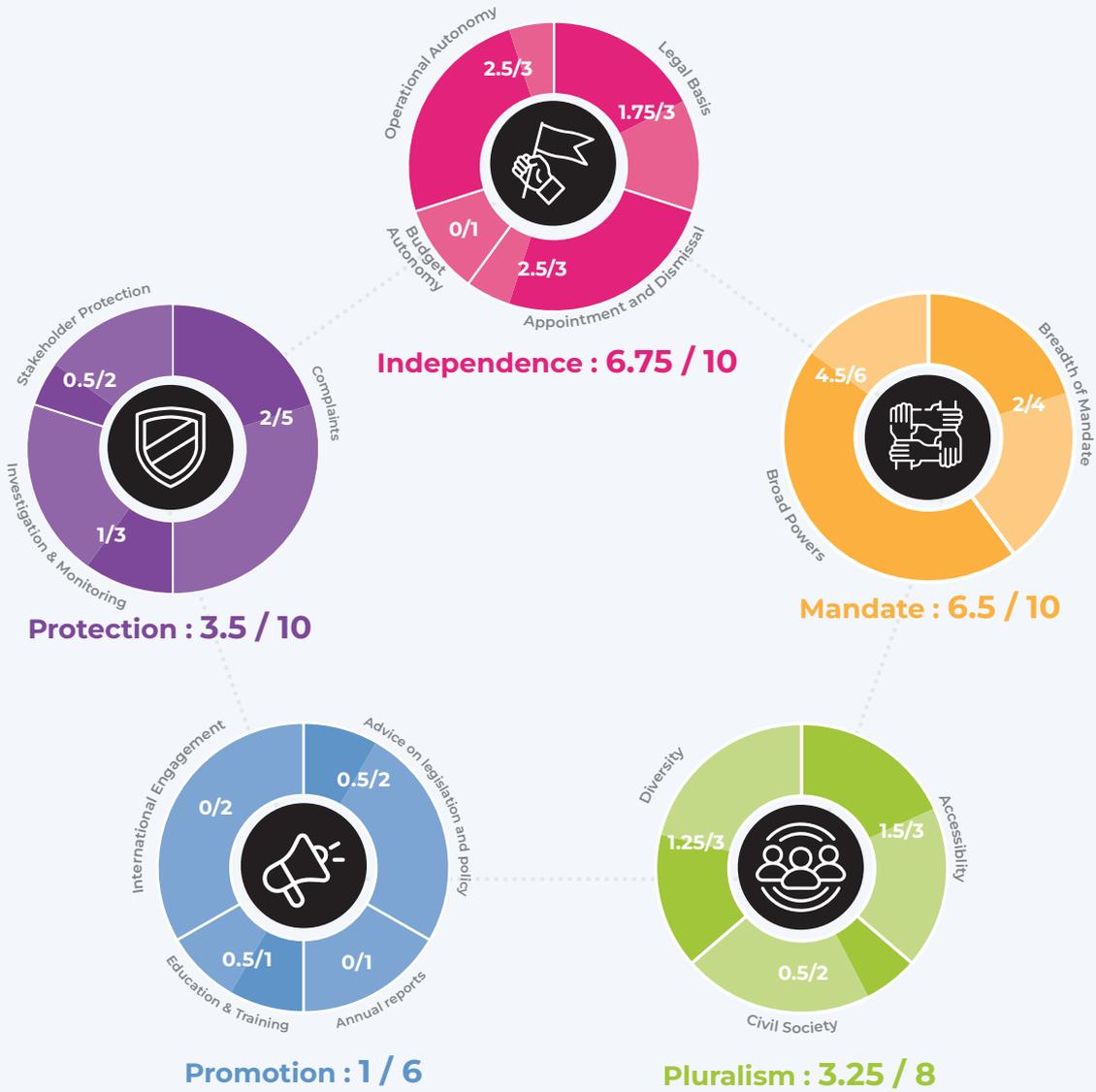
³⁷ “Sri Lanka Attacks: What We Know About the Easter Bombings,” BBC, April 28, 2019, <https://www.bbc.com/news/world-asia-48010697>.

³⁸ Dinitha Ratnayake, “Prisoners Among SLPP Thugs?” *The Morning*, May 10, 2022, <https://www.themorning.lk/articles/202510>.

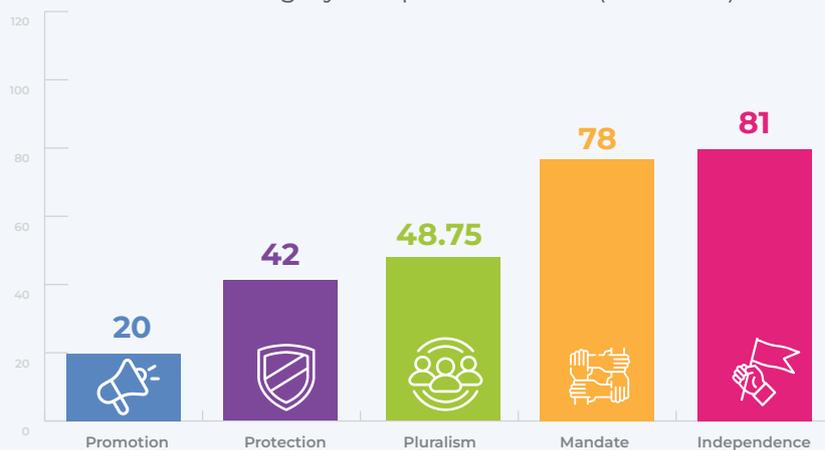
³⁹ “SLCAT Responds to HRCSL Statement Condemning Committee President’s Allegation,” *Daily FT*, July 9, 2022, <https://www.ft.lk/news/SLCAT-responds-to-HRCSL-statement-condemning-Committee-President-s-allegation/56-737253>.

⁴⁰ *ibid.*

Category and sub-category-wise scores for HRC Sri Lanka



Inter-category comparative scores (out of 120)





“ A number of human rights defenders interviewed for this review stated that their engagement with the HRCSL has been both positive and frustrating.

The Commission tends to prioritise issues that require immediate attention, such as state abduction of civilians and police torture of individuals in remand. Once the individual is out of immediate danger, follow-ups by the HRCSL are slow or even non-existent. For example, activist and journalist, Tharindu Jayawardhana, shared that when the state abducted one of the Aragalaya protesters, Eranga Pushpakumara while he was travelling by bus, his whereabouts were unknown. Tharindu and a group of activists filed a complaint with the HRCSL and the Commission acted quickly to locate where Eranga was being held. While this ensured Eranga's safety in remand, there were no follow-ups on this matter by the HRCSL. Tharindu and a few other human rights defenders stated that the reason for this was that the Commission is understaffed.

However, others who were interviewed stated that while they agree the HRCSL is indeed understaffed, there is also a lack of interest or enthusiasm to actually assist victims. They noted that the Commission only acts promptly with regard to high-profile cases, such as the incidents involving Aragalaya activists. Cases involving victims whose stories are of no interest to the media do not receive the same attention.

At the same time, reports from fact-finding missions are published far too late, as was seen with the report on the Rambukkana shooting. The incident took place on 19 April 2022 and the HRCSL recommendations were published exactly one year later. According to human rights defenders, the victims of the shooting are still struggling; unsure whether they should file fundamental rights cases.

“ Another important aspect raised by almost all human rights defenders interviewed is that the HRCSL has no real power. A case in point is that the HRCSL can publish recommendations, but state actors (such as the police, for example) cannot be forced to implement the recommendations.

According to the HRCSL Act, in the case of non-implementation of recommendations, the HRCSL can and must notify the President who then takes the matter up in Parliament. As mentioned previously, this step does not occur.

One human rights defender noted that it is unlikely that the President would even take up a complaint against state actors such as the police who were acting under his own orders to Parliament. They added that it is necessary for some other mechanism to be established to ensure that the HRCSL recommendations are fulfilled.

Finally, HRCSL's work on gender in 2022 was limited to lectures conducted by the Education and Special Programmes Division on women's and LGBTQIA+ rights. The workshops addressed issues related to gender discrimination and human rights, legal aspects of sexual harassment, and harassment in the workplace. The HRCSL organised these programmes for the military, police, state employees, university students, civil society, and doctors and nurses. However, according to the directors of the HRCSL, some workshops were open to the general public.

Conclusion

One of the most significant events involving the HRCSL in 2021 was the GANHRI downgrade of the Commission from status 'A' to 'B' due to its lack of independence. The HRCSL appealed to GANHRI to reconsider their revised score; however, when GANHRI held its October 2022 session it stated that the HRCSL had not provided sufficient evidence to indicate that the Commission had made any attempt to improve its performance since the downgrade. Thus, Sri Lanka's 'B' status remained unchanged.⁴¹

Human rights defenders who engage with the HRCSL frequently stated that the Commission is unable to function optimally mostly due to the lack of staff, but also because of its lack of independence and interest in investigating certain violations. Having adequate staff members could ensure that victims receive attention even once they are out of immediate danger, and that the HRCSL recommendations are published promptly.

⁴¹ "Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)," Global Alliance of National Human Rights Institutions (GANHRI), 3-7 October, 2022, <https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf>.

Recommendations

To the Government of Sri Lanka:

- Ensure the independence of the HRCSL.
- Repeal the 20th Amendment to the Constitution and reinstate the 19th Amendment.⁴²
- Enable the HRCSL to take disciplinary actions against state officials who do not comply with recommendations issued by the HRCSL for no valid reason.
- Expedite approvals for the HRCSL to hire staff or amend the HRCSL Act to allow the Commission to hire staff. There should also be a provision to hire without state approval, when necessary.
- Ensure prompt release of funds for the HRCSL by the Treasury.

To the HRCSL:

- Hire an adequate number of staff at the headquarters and regional offices.
- Ensure urgent complaints are prioritised even if it is not a high-profile case.
- Ensure HRCSL recommendations are published promptly.
- Follow-ups and assurance of the safety of victims who are out of immediate danger must be mandatory.
- Restore the thematic subcommittees and involve more civil society members by electing new members annually or biannually.
- Expand the thematic subcommittees to include economic rights. This is especially important because one of the recommendations from the International Monetary Fund is social security through cash transfers, given the current move to change labour laws by the government.
- Engage with the public and state in more creative ways aside from lectures.
- Publish timely annual reports and statistics.

⁴² The 20th Amendment broadens the powers of the President enabling them to dissolve Parliament after one year. It also weakens the powers of the Prime Minister and Cabinet and allows for the President to appoint members to government offices without prior approval from Members of Parliament, [chrome-extension://efaidnbmnnnibpcajpcgiclfefindmkaj/https://www.parliament.lk/uploads/acts/gbills/english/6176.pdf](https://www.parliament.lk/uploads/acts/gbills/english/6176.pdf)



TAIWAN

NHRC Taiwan:

A Slow Start in its First Two Years

Song-Lih Huang¹

Covenants Watch, Taiwan²

Overview of the Human Rights Situation in Taiwan

In 2021 and 2022, the COVID-19 pandemic and geopolitical events impacted Taiwan. Taiwan did relatively well in the defence against the spread of the virus in 2020 and most infection cases occurred after the public vaccination programs began. The mortality rate among the whole population was low (0.17%) in comparison to other countries. However, policies that restricted travel and personal movement impacted some businesses.

“ During this period, Taiwan has also constantly been under (mostly external) attacks of mis- and disinformation, aimed at disturbing social order and creating political disturbance.

These, coupled with geopolitical challenges, pose a threat to Taiwan’s democracy and threaten the hard-earned civil and political rights of the people. Apart from these, certain human rights issues, such as the abolition of the death penalty or the implementation of gender equality education in schools, have polarised society. This can possibly lead to mistrust in political institutions’ roles and responsibilities in addressing these social issues.

In such a climate, it can be difficult to uphold fundamental freedoms, especially the freedom of expression and association. Despite the various challenges before it, Taiwan managed to maintain democracy and a viable civil space, though some important human rights issues may have been kept out of the agenda. For 2021 and 2022, Freedom House reports gave Taiwan an overall ‘Free’ status, with its strong performance in terms of political and civil liberties.³

1 Song-Lih Huang is the Convener of Covenants Watch.

2 Covenants Watch is an NGO based in Taipei, Taiwan. It is committed to promoting human rights and equality for all people. A coalition of human rights NGOs, lawyers, academics, and activists. It established the NGO on 10 December 2009 (International Human Rights Day).

3 “Freedom in the World 2022/Taiwan,” Freedom House, 2022, <https://freedomhouse.org/country/taiwan/freedom-world/2022> and “Freedom in the World 2023/Taiwan,” Freedom House, 2023, <https://freedomhouse.org/country/taiwan/freedom-world/2023>.

On 5 May 2022, the Executive Yuan⁴ enacted the National Human Rights Action Plan 2022-2024,⁵ which is Taiwan’s first national action plan on human rights. In addition, there was the Taiwan National Action Plan on Business and Human Rights (December 2020) and the Action Plan for Fishery and Human Rights (July 2022). Although it is too early to examine the actual realisation of these plans, it demonstrated the government’s willingness to pay attention to some human rights issues.

Throughout 2022, Taiwan held reviews of state human rights reports on the following:

- International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (May 2022);⁶
- The Convention of the Rights of Persons with Disabilities (August 2022);⁷
- The Convention on the Rights of the Child (November 2022);⁸ and
- The Convention on the Elimination of All Forms of Discrimination Against Women (November 2022).⁹

4 The Executive Yuan is the executive branch of the government of the Republic of China (Taiwan).

5 “National Human Rights Action Plan 2022-2024,” The Executive Yuan, May 5, 2022, <https://www.humanrights.moj.gov.tw/media/20211932/national-human-rights-action-plan.pdf?mediaDL=true>.

6 “Review Meeting of the ROC’s Third Report under the ICCPR and ICESCR. International human rights experts visit Taiwan for local review,” Ministry of Justice, The Republic of China (Taiwan), May 10, 2022, <https://www.moj.gov.tw/2832/2833/2834/2835/133973/post>.

7 The Concluding Observations and Recommendations of the review on Taiwan’s state report on the Convention of the Rights of Persons with Disabilities,” CRPD, https://crpd.sfaa.gov.tw/BulletinCtrl?func=getBulletin&p=b_2&c=D&bulletinId=1696.

8 “Concluding observations of the international review of second national reports to the Convention on the Rights of the Child,” CRC, November 18, 2022, <https://crc.sfaa.gov.tw/Document/Detail?documentId=2BF473B4-5CAF-48DA-BB15-CC5F42124690>.

9 “The Concluding Observations and Recommendations of the Review on Taiwan’s State Report on the Convention on the Elimination of All Forms of Discrimination Against Women,” Gender Equality Committee of the Executive Yuan, 2022, <https://gec.ey.gov.tw/Page/8311232E3E16856>.



Independent international panels of experts (typically five experts for each convention) invited by the government, review these in Taipei.

In 2022, the government also started to prepare the state report on the International Convention on the Elimination of All Forms of Racial Discrimination, which will be reviewed in 2024. The National Human Rights Commission (NHRC) submitted its independent reports to the review panels. In the months following each of the reviews, the Executive Yuan arranged a series of follow-up meetings to discuss steps that government agencies can take in response to the concluding observations and recommendations on each convention. The NHRC participated in these meetings but did not hold separate follow-up meetings.

The NHRC Taiwan's Mandate to Protect and Promote Human Rights

The NHRC was established in August 2020 based on the Organic Act of the Control Yuan National Human Rights Commission (the Organic Act), which stipulated the NHRC's functions and powers in very broad terms.¹⁰ As a legal custom, a government body requires both an organic law and a functional law to operate. This is particularly important for the NHRC because structurally it was established in the Control Yuan, as the name 'the Organic Act' suggested.¹¹

“ A carefully drafted functional law will be able to clarify and distinguish the roles of the NHRC commissioners from other Control Yuan members who carry out mostly the ombudsman functions.

Since it was established in 2020, the NHRC has not made clear to the public the goals, roles, functions, or working methods of this new institution. Especially, because of its close ties with the Control Yuan, it is critical to demonstrate how its roles are different from the ombudsman. The NHRC commissioners have not been able to resolve the confusion between two overlapping roles for themselves and for society at large. While there were some accomplishments in 2021 and 2022, the amount and quality of output did not match a national institution with ten full-time members and a staff of twenty-six.

¹⁰ “Organic Act of the Control Yuan National Human Rights Commission,” Laws and Regulations Database of The Republic of China (Taiwan), January 8, 2020, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010119>.

¹¹ Taiwan's governmental structure is based on the division of power into five Yuans, the Legislative Yuan, the Executive Yuan, the Judicial Yuan, the Control Yuan, and the Examination Yuan. Control Yuan is the highest control organ of the State and shall exercise the powers of consent, impeachment, censure and auditing (Article 90, Constitution of the Republic of China). The Control Yuan shall have twenty nine members, including a president and a vice president, all of whom shall serve a term of six years. All members shall be nominated and, with the consent of the Legislative Yuan, appointed by the president of the Republic. (Article 7, para. 2, Additional Articles of the Constitution of the Republic of China) The NHRC shall consist of ten members, with the president of the Control Yuan and seven members who qualify under Article 3-1, Paragraph 1, Subparagraph 7 of the Organic Law of the Control Yuan as ex-officio members. Two members of the Control Yuan other than the ex-officio members of the NHRC may also be members of this Commission upon appointment by the president of the Control Yuan. (Article 3, para. 1 and para. 2, the Organic Act).

In November 2020, the NHRC drafted a bill on The Functions and Powers of the NHRC and submitted it to the Legislative Yuan through the Control Yuan. The Legislature rejected the bill, which insisted that a specific chapter on the NHRC in the Control Act (the functional law for the Control Yuan) is more suitable. Some members of the Legislative Yuan commented that the NHRC's power to investigate the private sector was not in keeping with the Control Yuan's power.¹² The Control Yuan revised the draft accordingly in 2021, but the bill has not been reviewed since. However, the combination of the Organic Law of the NHRC and the Control Act (the functional law of the Control Yuan, which grants Control Yuan members powers to investigate and gather evidence) should have allowed the NHRC to carry out most of the functions stipulated in the Paris Principles.

“ The relationship between the NHRC and the Control Yuan is complex and this could be one of the reasons why the NHRC does not have a distinct identity.

Although the NHRC claims to be an independent body, it sometimes seems to be under the influence of the Control Yuan. For example, the Secretary General of the Control Yuan regularly attends the NHRC's monthly meetings. There is no clear rule as to whether the Secretary General can speak (as opposed to just participate as an observer) or enjoy a status equal to the NHRC members. Further, the NHRC's decisions (such as the draft Bill on the Functions and Powers of the NHRC) have to be submitted to the administrative procedures of the Control Yuan for approval by other Control Yuan members before they can be submitted to the Legislative Yuan.

The NHRC does not have an independent mechanism to receive complaints. As per details on the NHRC's website, one can send complaints by mail/letter to the NHRC. All other in-person complaints or those submitted via the website or email have to go through the Control Yuan.¹³ It is conceivable that complaints to be dealt with by the Control Yuan may arrive at the NHRC and vice versa, therefore it relies on a triage process to direct the complaints appropriately, preferably with the Control Yuan and the NHRC administering it jointly. However, the procedure or criteria for this triage process have not been made clear to the public.

As stipulated in Article 6 of the Organic Act, “All resolutions on matters listed under Article 2 of this Act shall be discussed and deliberated through the NHRC meeting.” However, it has been difficult for the NHRC to make collective decisions to set priorities, lay out action plans, and allocate resources necessary for their implementation. Part of the difficulty in collective decision-making lies in the absence of a set of rules for various procedures. For example, it is unclear whether a unanimous decision, a supermajority, or a simple majority must be sought among the commissioners for a proposition to be adopted in the monthly NHRC meeting.

Article 5 of the Organic Act stipulates that “the NHRC shall convene once a month, and if necessary, a meeting may be convened upon the proposal of three or more members” and “meeting resolutions shall be made with the approval of the majority.”¹⁴ However, without the mechanisms to negotiate toward consensus, the commissioners prefer to function as individual ombudsmen, because in this role they do not have to seek endorsement from another person. Each Control Yuan member can decide to initiate an investigation on their own. Therefore, the NHRC commissioners appear in the media primarily as Control Yuan members. The NHRC remains an obscure figure in the press and for ordinary people.

“ As the commissioners are busy with their ombudsman functions, for which they can use the Control Yuan resources to conduct investigations (including commanding a team of investigation officers and enjoying the status of “supervisors of the government”), it is up to the staff to carry out the NHRC functions.

It is difficult, firstly, because no clear decisions and action plans are laid out for the NHRC. Secondly, while the staff is supposedly under the command of the Executive Secretary, their work can be constantly interrupted. Any of the commissioners can hand down an order with tasks to be completed by the staff since a chain of command has not been established. Thirdly, the staff is mostly occupied with administrative duties.

¹² “The Supervision Law adds a special chapter on the exercise of powers of the Human Rights Council but does not include controversial provisions,” CNA, October 12, 2021, <https://www.cna.com.tw/news/firstnews/202110120311.aspx>.

¹³ “Public Complaints and Petition,” National Human Rights Commission, Taiwan, <https://nhrc.cy.gov.tw/petition>.

¹⁴ See footnote 10 above.



The NHRC released a Strategic Plan in 2021¹⁵ and again in 2022¹⁶ but the plans were without specific and measurable goals, not attached to corresponding resources, and no commissioners were responsible for seeing through its execution. The Strategic Plans were hardly actionable.

The review process of the Concluding Observations and Recommendations of the state reports on ICCPR and ICESCR in May 2022 included the NHRC.¹⁷ The independent review panel read the NHRC's report and parallel NGO reports, and directly communicated with NHRC commissioners during the review. Thereafter, it recommended that the NHRC "build the trust and respect of the people of Taiwan by identifying the most pressing human rights issues, reporting and speaking out publicly on them; dealing with complaints of human rights violations; advising the Executive Yuan and the Legislative Yuan on the relevant international human rights standards and their incorporation in legislation and making that advice public; engaging at the grass roots with the communities most marginalised and disadvantaged, including in close cooperation with civil society organisations; and reviewing persistent, long-standing individual claims of human rights violations" (para. 12), "conduct a national inquiry into systemic eviction and displacement" (para. 53), to "take a leading role in human rights education" (para. 66), as well as to develop a relationship with the Global Alliance of National Human Rights Institutions (GANHRI) and the Asia Pacific Forum of National Human Rights Institutions (APF) (para. 13).¹⁸

It is not clear how seriously the NHRC has taken these recommendations. The NHRC has not been trying to build up its capacity to conduct a national enquiry. The NHRC was not vocal when the Parliament procrastinated passing the Act to Implement the UN Convention Against Torture and the Optional Protocol to the Convention Against Torture (CAT and OPCAT). Nor was it vocal about the lack of progress towards the abolition of the death penalty. The NHRC held several conferences on various human rights issues, particularly to draft independent reports to the state human rights reports, but it has not been able to lay out a plan for human rights education.

Government agencies and judges often make mistakes in the definition of indirect discrimination and have failed to recognise the denial of reasonable accommodation as a form of discrimination. The NHRC has not been helpful in providing guidelines to the public and government agencies to better understand the proper definition of discrimination. At the same time, Taiwan has not domesticated the Convention Against Torture, Article 7 of the ICCPR, which requires the government to prevent anyone from being subjected to "torture or to cruel, inhuman or degrading treatment or punishment".¹⁹ It is imperative that the definition of these terms be made clear and that the boundary of government obligations be laid out by case laws. The NHRC has not contributed significantly in this aspect either. The Commission has also not provided technical support to enhance knowledge and skills towards promoting or protecting human rights, nor has it coordinated various human rights training programmes that various government agencies offer.

¹⁵ The 2021 Strategic Plan included six strategies: (1) To respond to the provide remedy for human rights violations; (2) To establish a human rights database and related indicators; (3) To submit independent reports for State Human Rights Reports; (4) To cooperate with public and private organizations; (5) To establish an international human rights exchange network; (6) To strengthen social communication, popularize the concept of human rights, and take root in human rights education.

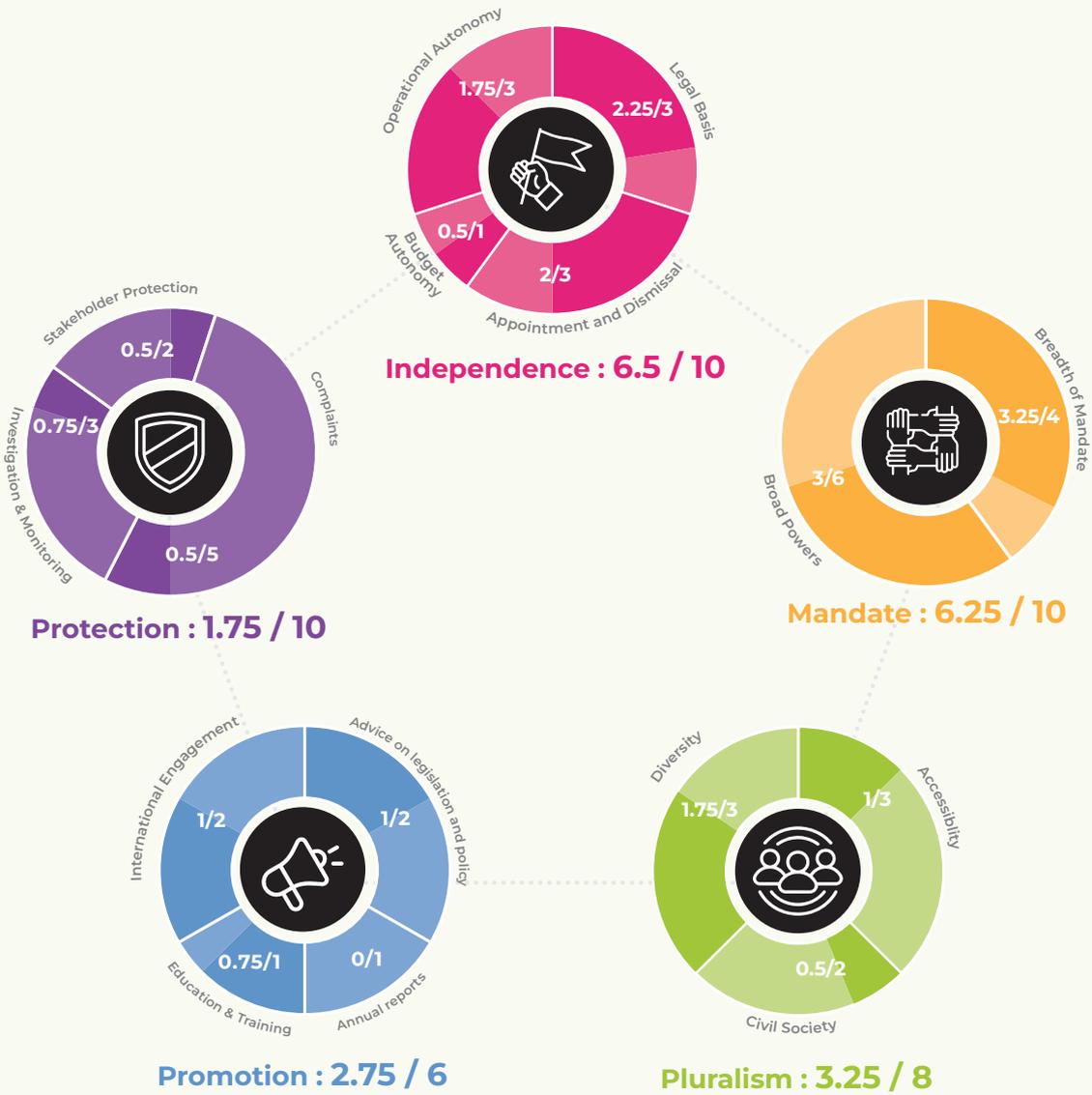
¹⁶ "2022 Annual Strategic Plan," National Human Rights Commission Taiwan, 2022, <https://nhrc.cy.gov.tw/en-US/about/strategy>. The 2022 Strategic Plan included six strategies: (1) To respond to complaints of human rights violations; (2) To pay attention to new human rights issues and promote human rights protection; (3) To implement international human rights conventions; (4) To strengthen social dialogue; (5) To expand international exchanges; (6) To take root in human rights education. (<https://nhrc.cy.gov.tw/about/strategy/detail?id=be20b0d8-da0f-4f3e-85b9-20b9fecedf02>).

¹⁷ "Review Meeting of the ROC's Third Report under the ICCPR and ICESCR. International human rights experts visit Taiwan for local review," Ministry of Justice, The Republic of China (Taiwan), May 10, 2022, <https://www.moj.gov.tw/2832/2833/2834/2835/133973/post>.

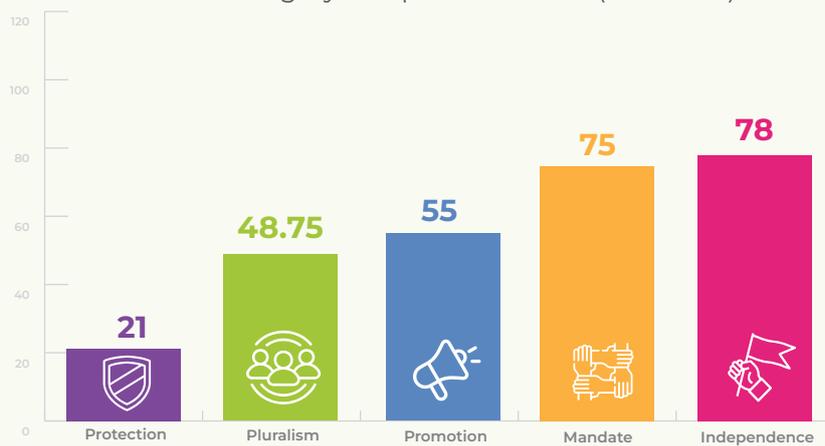
¹⁸ "Concluding Observations and Recommendations adopted by the International Review Committee, Taipei," Ministry of Justice, The Republic of China (Taiwan), May 13 2022, <https://www.humanrights.moj.gov.tw/17725/17733/17735/17740/37227/37228/37234/post>.

¹⁹ "International Covenant on Civil and Political Rights," UN General Assembly, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

Category and sub-category-wise scores for NHRC Taiwan



Inter-category comparative scores (out of 120)





“ However, despite the structural and resource limitations described above, the NHRC managed to perform well on certain aspects in 2021 and 2022, some of which are discussed below:

(1) It published the first investigation report of the NHRC in July 2021.²⁰ The report addressed the case of Lin Shui Chuan, who was proclaimed a hooligan and then deprived of freedom based on an administrative order without a trial in 1961 for 575 days, simply because he criticised the government. Because there was no judicial procedure and he was not convicted, Lin did not qualify for Taiwan's scheme to compensate victims of political oppression during the authoritarian rule. Following the NHRC's report, in 2023 the Ministry of Justice amended the regulation to include victims of executive orders in addition to the miscarriage of justice.²¹

(2) In April 2021, the NHRC launched the first systemic investigation on the sexual assault of children in placement institutions and on campuses, particularly special education schools for children with disabilities.²² The investigation intended to carry out face-to-face interviews with children who were victims of sexual assault. After one year of research and internal training, it started to recruit interviewees in July 2022.²³

(3) In December 2021, the NHRC published a thematic report on the rights of migrant workers in the fishery business, titled “The Road to Migrant Fishers' Rights”.²⁴ The report was based on six Control Yuan member investigations on migrant fisher workers. Inputs from NHRC members and NGOs supplemented the report.²⁵

(4) In 2021, the NHRC conducted a series of visits to juvenile correction facilities and correction schools as a practice in preparation for its role as the National Preventive Mechanism (NPM), according to the draft bill on the Implementation of the Convention Against Torture and the Optional Protocol to the Convention Against Torture. The report that resulted from this exercise was finally published in September 2023.²⁶ This exercise is to be commended, but participating NHRC members and staff should be better prepared by familiarising themselves with the United Nations and relevant documents detailing the NPM's purpose and related methodologies.

20 “NHRC's press release on the release of the first investigation report by the NHRC, on the violation of Mr. Lin's rights to liberty by an administrative order,” July 14, 2021, https://www.cy.gov.tw/News_Content.aspx?n=742&s=20492.

21 “The first case of administrative illegality has been vindicated and Lin Shuiquan's reputation will be wiped out through discipline training,” CNA, March 16, 2023, <https://www.cna.com.tw/news/aipl/202303160114.aspx>.

22 “NHRC press release announcing the launch of a systemic investigation on “Sexual Assault of Children in Institutions and Schools,” April 22, 2021, <https://nhrc.cy.gov.tw/monitor/systematic/detail?id=cfed2469-4ead-4cf9-bb14-a98f3d85af8b>.

23 “NHRC announced the recruitment of participants for the systemic investigation on sexual assault of children”, July 4, 2022, <https://nhrc.cy.gov.tw/news/detail?id=4e73f06d-3970-4cbf-b3b2-c7d20872adbe>.

24 “The Road to Migrant Fishers' Rights,” NHRC, 2021, <https://nhrc.cy.gov.tw/Content/Uploads/ArticleArea/93b616b9-8e01-49c3-b35f-21a885437cd0.pdf>.

25 “NHRC announced the release of a thematic report on the rights of migrant fishery workers,” NHRC, December 3, 2021, <https://nhrc.cy.gov.tw/monitor/report/detail?id=da0c9264-2429-4514-8315-3bf1321f2519>.

26 “2021 Pilot Project on National Preventive Mechanism”, NHRC, September 1, 2023, <https://nhrc.cy.gov.tw/monitor/torture-prevention/detail?id=7890bbaf-9d52-4d31-88d3-3299b0644e4e>.

Conclusion

Since its establishment in 2020, the NHRC has not made it clear to the public the goals they want to pursue, nor the roles, functions, or working methods of this new institution. Especially, because of its close ties with the Control Yuan, it is critical that the NHRC demonstrates how its roles are different from the ombudsman. The NHRC commissioners have not been able to resolve the confusion, for themselves and the society at large.

While the NHRC has taken actions to address some human rights issues, they did not follow a well-written strategic plan and appeared sporadic. Furthermore, the NHRC's outputs do not match what is expected of a national institute of ten full-time commissioners and twenty-six full-time staff.

Recommendations:

To the NHRC:

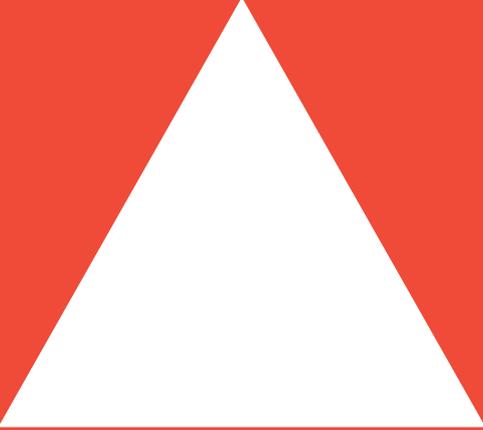
- While awaiting the Legislative Yuan to pass its functional law, use the Organic Law, the Control Act, the Paris Principles, and international human rights treaties, along with relevant general comments, as the legal basis of their power;
- The commissioners should reaffirm their duties and priorities and reduce their ombudsman roles;
- Establish rules of procedures for its internal operations and decision-making processes as well as establish the chain of command to facilitate the proper functioning of the staff, led by the chief commissioner;
- Identify important human rights issues and develop action plans accordingly. The action plans should have clear and measurable goals, with adequate resources allocated to each plan. One commissioner should be responsible for its implementation;
- Build up the Commission's capacity, such as setting up mechanisms to collect data for monitoring the human rights conditions in Taiwan and for conducting systemic investigations, including national inquiries; and
- Develop tools such as human rights impact assessment and legal analysis of domestic laws against international human rights standards.

To the Legislative Yuan:

- Review the functional law of the NHRC.

To International Stakeholders:

- Regional institutions such as the APF may help arrange training sessions for the NHRC to conduct national inquiries and build up monitoring mechanisms;
- NHRIs in the Asia Pacific region should engage with Taiwan's NHRC to build collaborative networks on issues such as the rights of migrant workers and the protection of human rights defenders.

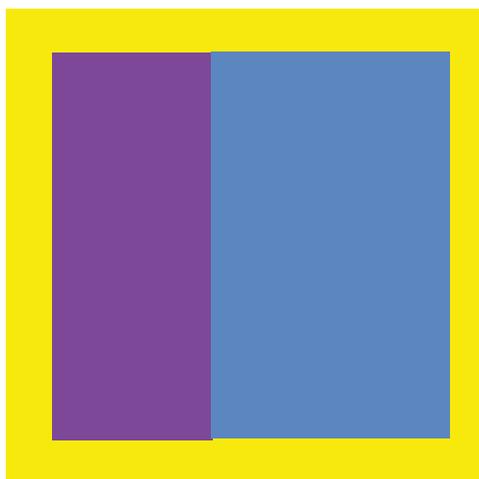


List of Acronyms

AiNNI	All India Network of NGOs and Individuals working with National and State Human Rights Institutions	FCRA	Foreign Contribution (Regulation) Act (India)
AICHR	ASEAN Intergovernmental Commission on Human Rights	FORUM-ASIA	Asian Forum for Human Rights and Development
ANNI	Asian NGOs Network on National Human Rights Institutions	GANHRI	Global Alliance of National Human Rights Institutions
APF	Asia Pacific Forum of National Human Rights Institutions	GANHRI-SCA	Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation
ASEAN	The Association of Southeast Asian Nations	GESI	Gender Equality and Social Inclusion
B4A	Bytes for All	GONGOS	Government-Organised Non-Governmental Organisations
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	HRC	Human Rights Council
CED	Committee on Enforced Disappearances	HRCA	Human Rights Commission Act (Sri Lanka)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	HRCMA	Human Rights Commission of Malaysia Act
CCP	Cambodian People's Party	HRCSL	Human Rights Commission of Sri Lanka
CHRC	Cambodian Human Rights Committee	HRD(s)	Human Rights Defender(s)
CHRP	Commission of Human Rights in the Philippines	HRW	Human Rights Watch
CMD	Complaints and Monitoring Division (Malaysia)	ICCPR	International Covenant on Civil and Political Rights
CPJ	The Committee to Protect Journalists	ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
COVID-19	Coronavirus disease 2019	ICESCR	International Covenant on Economic, Social and Cultural Rights
CRPH	Committee Representing Pyidaungsu Hluttaw (Myanmar)	ID	Identity Document
CRC	Candidate Recommendation Committee (South Korea)	INSEC	Informal Sector Service Centre
CSO	Civil Society Organisation(s)	ITE	The Electronic Information and Transactions Law (Indonesia)
CW	Covenants Watch	J&K	Jammu and Kashmir
EAO	Ethnic Armed Organisation(s)	KHIS	Korean House for International Solidarity
		Komnas HAM	National Commission of Human Rights, Indonesia (Indonesian: Komisi Nasional Hak Asasi Manusia)



HRCMA	The Human Rights Commission of Malaysia Act 1999	PECA	Prevention of Electronic Crimes Act (Pakistan)
KontraS	Commission for Missing Persons and Victims of Violence (Indonesian: Komisi untuk Orang Hilang dan Korban Tindak Kekerasan)	PHRA	Protection of Human Rights Act (PHRA), 1993 (India)
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, and other identities	PM	Prime Minister
LST	Law and Society Trust	PNP	The Philippine National Police
MOU	Memorandum of Understanding	PRC	Prior Reference Category (India)
MoHR	Ministry of Human Rights (Pakistan)	PTA	Pakistan Telecommunication Authority
MNHRC	Myanmar National Human Rights Commission	PTA	Prevention of Terrorism Act (Sri Lanka)
NCHR	National Commission for Human Rights, Pakistan	RAB	Rapid Action Battalion (Bangladesh)
NCR	National Capital Region (The Philippines)	RGC	Royal Government of Cambodia
NGO	Non-governmental organisation	ROC	Republic of China (Taiwan)
NIA	National Investigation Agency (India)	SCA	Sub-Committee on Accreditation of GANHRI
NIG	National Internet Gateway (Cambodia)	SEANF	Southeast Asia National Human Rights Institutions Forum
NHRC	National Human Rights Commission	SHRC	State Human Rights Commission
NHRCB	National Human Rights Commission, Bangladesh	SUARAM	Suara Rakyat Malaysia
NHRCI	National Human Rights Commission, India	SUHAKAM	National Human Rights Commission of Malaysia (Malay: Suruhanjaya Hak Asasi Manusia Malaysia)
NHRCK	National Human Rights Commission of Korea	UAPA	Unlawful Activities Prevention (Amendment) Act, 2019
NHRCM	National Human Rights Commission of Mongolia	UNICEF	United Nations Children's Fund
NHRCN	National Human Rights Commission, Nepal	UDHR	Universal Declaration of Human Rights
NHRI	National Human Rights Institution	UN	United Nations
NLD	National League for Democracy	UPR	Universal Periodic Review
NPA	New People's Army (The Philippines)	WHO	World Health Organization
NPM	National Preventive Mechanism (Taiwan)	WHRD(s)	Women human rights defender(s)
NUCC	National Unity Consultative Council (Myanmar)		
NUG	National Unity Government of the Republic of the Union of Myanmar		
OHCHR	Office of the United Nations High Commissioner for Human Rights		



Annexure

The NHRI Scoring Index Codebook



Scoring Index Codebook

This Index Codebook is a one-stop repository of the indicators/questions along with the indicator justification and description of why and how these indicators are crucial for NHRI performance and effectiveness. The justification also tries to establish why these indicators are important to assess the performance of NHRIs vis-à-vis the promotion and protection of human rights in a country. The codebook starts with an overview of the categories and sub-categories of the indicators (see table I). The indicators/questions are then presented under the five parent categories. All the studies and reports from which this codebook adapts or borrows insights have been cited/referenced in the footnotes. It is hoped that this codebook will help the members in the scoring process as well in developing evidence-based country chapters.

Table I: Category Overview of the Indicators of the Scoring Index

Parent Category	Subcategory	Number of Questions/Indicators
Independence	Legal Basis	3
	Appointment and Dismissal	3
	Budget Autonomy	1
	Operational Autonomy	3
Mandate	Breadth of Mandate	4
	Broad Powers	6
Pluralism	Accessibility	3
	Civil Society	2
	Diversity	3
Promotion	Advice on Legislation and policy	2
	Annual report	1
	Education and training	1
	International engagement	2
Protection	Complaints	5
	Investigation and Monitoring	3
	Stakeholder Protection	2
Total Indicators		44

Independence (10)

Legal Basis

1. What is the legal basis for the NHRI's establishment?

0	1	2
Executive decree (or no formal basis)	Statute (passed by legislature)	Constitution

Indicator Description and Justification

Constitutionally-enshrined NHRIs are theoretically more difficult to alter or abolish than NHRIs established via legislation or by executive decree. Similarly, NHRIs with a statutory basis should be more resistant to meddling from the executive.¹ The GANHRI SCA notes that the “establishment of an NHRI by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence

2. Is the NHRI clearly operationalised in its founding text and/or accompanying enabling legislation? (NOTE: does not include the NHRI's own administrative regulations)

0	1	2	3	4
No founding text/enabling legislation	Founding text/enabling legislation is vague and does not clearly outline most roles, functions, and powers; considerable ambiguity with regards to overlap or conflict with other state bodies/entities exists	Founding text/enabling legislation sufficiently outlines some roles, functions, and powers, while others are vague or in conflict with other state bodies/institutions	Founding text/enabling legislation clearly establishes the NHRI's roles, functions, and powers, including vis-a-vis other state bodies/institutions, with a few exceptions or areas of ambiguity	Founding text/enabling legislation clearly establishes the NHRI's roles, functions, and powers, including vis-a-vis other state bodies/institutions, with no notable exceptions

Indicator Description and Justification

Some NHRIs have vague or general founding texts (particularly constitutionally-established NHRIs) that are then accompanied by separate enabling legislation that enumerates “the NHRI's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members.” Other NHRIs may include this operational language in its founding text alone, be it constitutional, statute, or executive decree.

Regardless of its origin, this operational language is strongest when it is clear, including establishing the NHRI's role vis-à-vis other institutions and bodies. While in some cases vague language could be an opportunity to interpret the NHRI's mandate broadly, in general, vague language introduces opportunities to weaken the NHRI's mandate and independence, even if some of the NHRI's core functions, powers, and other areas are determined by the NHRI's own administrative regulations.² Some scholarship shows that vague language is much more likely to be ignored, particularly by more authoritarian states³—a view that is backed by many civil society organisations in the region.

¹ Linos and Pegram, “What Works in Human Rights Institutions?”

² GANHRI, “General Observations of the Sub-Committee on Accreditation.”

³ Linos and Pegram, “The Language of Compromise in International Agreements.”

3. Outside of founding/enabling legislation, do other rules and regulations (e.g. NHRI's administrative regulations, state financial compliance rules, civil service code, or other applicable laws/regulations) allow the NHRI to fulfill its mandate without infringement on its independence/ autonomy?

0	1	2
Regulations of the NHRI are more onerous than other independent State agencies AND/OR require substantial prior approvals from the government with relation to the NHRI's mandate and/or create other opportunities for interference	Regulations are no more onerous than other State agencies, yet require some prior government approvals related to select areas of the NHRI's mandate and/or create other opportunities for interference	Regulations are no more onerous than other State agencies and do not require prior government approvals for any aspects of the NHRI's mandate and/or create other opportunities for interference

Indicator Description and Justification:

The SCA states that “the administrative requirements imposed on an NHRI must be clearly defined and should be no more onerous than those applicable to other independent of State agencies” and should not require “an NHRI to seek government approval prior to carrying out its legislatively mandated activities, since this may compromise its independence and autonomy.”⁴ It is important to note that some regulations with regard to accountability are appropriate, but must not require prior approval or create opportunities to interfere in the NHRI. Potential examples might include onerous financial reporting/approval regulations, civil service codes that compromise the independence of staff members, or even the NHRI's own administrative regulations that introduce room for outside interference

Appointment and Dismissal

4. Does law/regulation ensure an independent, open, transparent, and clearly defined appointment process (throughout nomination, screening, and selection phases) of NHRI members as well criteria for their dismissal?

0	1	2
By law/regulation, NHRI members are appointed by the executive without genuine public consultation (i.e. consultation has no meaningful impact on the outcome of the process); OR executive can interfere in/heavily influence selection process in the legislature. No dismissal criteria exists	By law/regulation, NHRI members are appointed by the legislature (or other independent body, including the NHRI itself); OR by the executive with genuine public consultation/nomination . Dismissal criteria exist but unclear	By law/regulation, NHRI members are appointed by the legislature (or other independent body, including the NHRI itself) with genuine public consultation . Clear criteria exist that only allow dismissal in cases of serious misconduct, malfeasance, incompetence, or incapacitation

Indicator Description and Justification:

The laws/regulations that establish appointment processes for NHRI members (i.e. commissioners, ombudsmen) are among the most important for ensuring the independence of an NHRI. When NHRI members are selected by the executive—or by the legislature in processes heavily influenced by the executive—it does not necessarily mean that independent-minded members will not be selected, yet it does open the door to abuse. Appointment by the legislature or other independent body (such as an advisory board or commission or even the NHRI itself) or by the executive after **genuine** public nomination or consultation established by law can increase independence safeguards. Genuine consultation/nomination means that these processes have clear avenues to impact who is selected and considered. However, it is also important to recognise that legislatures and independent bodies can have their own biases and motivations in the selection of members, which can be reduced by requirements for genuine public nomination and consultation.⁵

⁴ GANHRI, “General Observations of the Sub-Committee on Accreditation.”

⁵ Linos and Pegram, “What Works in Human Rights Institutions?”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions”; Carver, “Assessing the Effectiveness of National Human Rights Institutions.”



5. Does law/regulation establish clear skill requirements and/or human rights expertise as criteria for NHRI membership?

0	1	2
No criteria in law or regulations that stipulate skill requirements (legal qualification, investigation skills, etc.) or human rights expertise for members	Criteria specify general skill requirements (legal qualification, investigation skills, etc.) but does not require human rights expertise	Criteria <i>requires</i> human rights expertise (which may or may not be in conjunction with legal qualification or other skills)

Indicator Description and Justification:

NHRI members should be experts in the field of human rights. Other skills or qualifications relevant to their duties can be important—particularly when balanced with the capacities of other members and staff—yet are not a sufficient substitute for human rights expertise.⁶

6. Do NHRI members have established term limits?

0	1	2
No set term or term of less than 3 years	Three to seven years, no option to renew	Three to seven years, option to renew

Indicator Description and Justification:

The SCA recommends terms from between three to seven years, with an option to renew once. Clearly defined terms of sufficient length promote independence and lend stability to an NHRI's mandate by ensuring the "continuity of its programs and services."⁷ Shorter terms risk a constant state of churn at the NHRI and could potentially increase opportunities for interference by the government of the day.

Budget

7. Does NHRI have control over its own budget?

0	1	2	3	4
Budget allocated under and controlled by line ministry or other entity (e.g. Ministry of Justice and/or Ministry of Finance)	Budget allocated separately but spending must be authorised by the executive or supervisory body OR budget allocated under line ministry or other entity, but spending/execution does not require separate	Budget allocated separately with complete autonomy of spending/execution for the NHRI (aside from financial accountability requirements)	Budget allocated separately with complete autonomy of spending/execution for the NHRI (aside from financial accountability requirements) NHRI is allowed to raise funds externally, but with a corresponding reduction in public funds or other limitations	Budget allocated separately with complete autonomy of spending/execution for the NHRI (aside from financial accountability requirements) NHRI is allowed to raise funds externally without any limitations or corresponding reduction

⁶ Carver.

⁷ GANHRI, "General Observations of the Sub-Committee on Accreditation."

Indicator Description and Justification:

As the SCA states, “government funding should be allocated to a separate budget line item applicable only to the NHRI. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.” Budgets allocated or controlled by other entities impinge on the independence of the NHRI, particularly when prior approval or vetoes of programming can occur. It is important to note that the NHRI should still be “obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.”⁸ the ability to seek funding from other sources can enable NHRIs that otherwise would not have an adequate budget to fulfill their mandate. As the SCA notes, the funds should only be accepted if they match the “predetermined priorities of the NHRI.”⁹

Operational Autonomy**8. What best describes the NHRI's ability to resist outside direction/intervention?**

0	1	2	3	4
NHRI has no functional independence and operates as a fully-controlled mouthpiece of the government	NHRI has some nominal independence in limited areas , such as on non-controversial issues, yet government largely dictates the agenda and decision-making of the NHRI (including through cooption, pressure, and/or threats and other forms of coercion)	NHRI acts without instruction or direction from the government on most issues , but pressure/coercion targeting staff and members and/or the institution itself (such as through administrative or budgetary harassment) constrains issue selection, influences content on reporting on findings, and/or impacts the resolution of complaints in some instances	NHRI largely withstands direction , although politicisation of some rights issues may impact some agenda setting and issue selection	Law clearly prohibits instruction from government and establishes processes and/or penalties for noncompliance. NHRI successfully resists all attempts to direct/intervene in the form, content, or any other aspect of the NHRI's work

Indicator Description and Justification:

While independence safeguards are critically important, they are not necessarily determinative of the NHRI's ability (or willingness) to withstand outside direction/intervention. Enterprising members often creatively maintain independence even in situations where safeguards are limited and/or outside pressure is intense. Similarly, there are also many examples in ANNI reports of NHRIs with relatively strong legal safeguards that nonetheless act at the beck and call of the State. Interference can take many forms, from directly influencing the content or findings of investigations, to more general and difficult to detect effects on agenda setting and issue selection.

⁸ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”

⁹ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”



9. Are independent lines of accountability established for the NHRI?

0	1	2
NHRI is accountable to the executive or includes considerable executive involvement and there is interference in decision making as well	NHRI is accountable to the legislature or other non-executive body, except with regards to certain administrative issues	NHRI is fully accountable to the legislature or other entity independent of the executive but not allowed to participate in decision making

Indicator Description and Justification:

NHRIs that are accountable to legislatures are theoretically more resistant to interference than those that report to the executive. While this may not always play out in practice, accountability to the legislature at least increases the likelihood that reports and publications will be considered and discussed in committees and that decision-making with regard to NHRI accountability will occur in public.¹⁰

10. Does law/regulation enable the NHRI to determine its staffing structure and hire staff?

0	1	2
Significant percentage of staff are seconded civil servants; key senior staff roles are required to be seconded civil servants; AND/OR other elements of staff hiring are outside of the control of the NHRI	Secondment of civil servants required for some administrative roles only	NHRI has complete autonomy in staffing and hiring

Indicator Description and Justification:

An NHRI's ability to determine who works for the institution and in what capacity is a critical component of its independence. NHRIs that require seconded civil servants from other government agencies insert a level of executive influence into the commission. While there may be instances where the NHRI deems it useful or necessary to second a civil servant, such as to fill a specific skill gap, this should be left entirely to the NHRI's discretion.¹¹

¹⁰ Murray, "National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness"; Carver, "Assessing the Effectiveness of National Human Rights Institutions"; Asia Pacific Forum, "A Manual on National Human Rights Institutions," n.d.

¹¹ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Murray, "National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness"; Carver, "Measuring the Impact and Development Effectiveness of National Human Rights Institutions."

Mandate (10)

Breadth of Mandate

11. Does the NHRI's mandate cover civil and political rights (CP) as well as economic, social, and cultural rights (ESC) (as defined in ICCPR, ICESCR and other international law)?

0	1	2
Rights mandate does not include CP & ESC rights OR interpretation of these rights is functionally meaningless	Rights mandate includes both CP & ESC rights, albeit with some deviations and omissions from international standards, including potential areas of conflict/inconsistency between national law /statutory language and international standards	Rights mandate includes both CP & ESC rights as defined by international law without exception

Indicator Description and Justification:

A broad rights mandate is a key precept of the Paris Principles. Founding or enabling laws that do not make reference to international standards or otherwise define rights in ways that conflict or are inconsistent with human rights standards weakens this mandate. In some cases, the restrictive interpretations of rights, such as ill-defined but superseding local frameworks, can go so far as to render reference to specific rights or international standards effectively meaningless. Economic, social, and cultural rights are more often excluded from NHRI mandates.¹²

12. Regardless of law/regulation and recognising the limitations of NHRIs to address every rights issue, what best describes the NHRI's coverage of rights issues?

0	1	2	3	4
NHRI focuses on a narrow subset of rights issues that excludes most pressing rights challenges	NHRI <u>addresses rights within a single rights domain</u> (CP or ESC rights), albeit with <u>notable exceptions</u> , such as socially or politically sensitive rights issues	NHRI addresses <u>rights across domains</u> (CP and ESC rights), <u>albeit with notable exceptions</u> ; <u>OR</u> within a <u>single domain without notable exceptions</u>	NHRI addresses <u>rights across domains with some minor exceptions</u> mostly related to capacity or the need to overcome limiting national definitions of human rights issues	NHRI addresses rights issues <u>across domains without exception</u>

Indicator Description and Justification:

Regardless of the rights mandate established by law, NHRI members and staff can have a profound impact on how this mandate is interpreted in practice. NHRIs with enough independence to select issues on their own initiative can ensure that major rights are not being ignored, regardless of “order or hierarchy.”¹³ Likewise, even NHRIs with the broadest possible rights mandate can end up focusing on a narrow set of rights or be blind to some particularly important rights issues.

¹² GANHRI, “General Observations of the Sub-Committee on Accreditation”; Linos and Pegram, “What Works in Human Rights Institutions?”; Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”

¹³ Carver, “Assessing the Effectiveness of National Human Rights Institutions”; GANHRI, “General Observations of the Sub-Committee on Accreditation.”



13. Does the NHRI's mandate cover all public bodies and entities, (including police, security, and intelligence agencies) as well as acts and omissions of the private sector and non-state actors?

0	1	2
Some or all security forces (or other public bodies) are either explicitly or functionally excluded from the NHRI's mandate. Likewise Private sector and other non-state actors not included in the NHRI's mandate	Security forces (or other public bodies), private sector and other non-state actors are not explicitly excluded, yet the NHRI's ability to investigate abuses is limited by other laws, policies, or regulations AND/OR requires special procedures with regard to abuse by security forces	Security forces (or other public bodies) as well as private sector, and other non-state actors are included in the mandate and NHRI has sufficient authority to investigate

Indicator Description and Justification:

NHRI jurisdictions should cover all public bodies without exception, including and especially security forces. While a significant portion of human rights committed by governments are perpetrated by security forces, including police, military, and intelligence agencies, these bodies are often excluded, either *de jure* or *de facto*, from the NHRI's mandate. This could include explicit exclusion in the law, special procedures or prior approvals required, or functional limitations on the NHRI's ability to investigate or compel participation from these actors. While security forces are most likely to be excluded, no public body should be similarly exempt from jurisdiction.¹⁴

The SCA states that NHRI mandates should “extend to the acts and omissions of both the public and private sectors.” In particular, businesses or violent non-state actors are often complicit in significant human rights violations, and NHRI mandates must be sufficient to investigate these abuses.¹⁵

14. Do violations or issues investigated by the NHRI have a statute of limitations in any law or regulation?

0	1	2
A statute of limitations of any duration exists	No statute of limitation exists but there are thresholds and limitations in practice	No statute of limitations exists

Indicator Description and Justification:

While NHRI's may end up having practical thresholds for triaging complaints, NHRI's should not have statutes of limitations for human rights violations—including abuses that occurred prior to the founding of the NHRI. As Carver notes, “fear, psychological trauma or difficulty in gathering supporting evidence may delay the lodging of such complaints. . . Passage of time should not allow those responsible to escape accountability or those affected to lose the right to obtain redress.”¹⁶

¹⁴ Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions”; GANHRI, “General Observations of the Sub-Committee on Accreditation.”

¹⁵ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Carver, “Assessing the Effectiveness of National Human Rights Institutions.”

¹⁶ Carver.

Broad Powers**15. Does the NHRI have the power to compel the production of evidence including testimony/ attendance of witnesses?**

0	1	2
No power	Yes, with no penalty for non-compliance or process to enforce compliance	Yes, with penalty for non-compliance or process to enforce compliance

Indicator Description and Justification:

NHRIs require the formal power to compel the production of evidence in their investigations of complaints and/or systemic rights abuses. However, when these powers are not combined with clear processes to enforce compliance or issue significant penalties, these powers may be difficult to enforce. Without these powers, NHRIs have few tools that set them apart from civil society organisations.¹⁷ NHRIs similarly require the formal power to compel the testimony and/or the attendance of witnesses in their investigations of complaints and/or systemic rights abuses.

16. Does the NHRI have authority to be party to court action?

0	1	2
No authority	Authority to be party to action, dependent on the issue in question or the leave of the court	Unlimited authority to join or initiate action

Indicator Description and Justification:

NHRIs can protect and promote human rights through court actions in a variety of ways, including filing amicus curiae briefs, serving as expert witnesses, or even initiating appeals or suits on behalf of individuals or groups of victims of human rights. In many cases, the NHRI must ask leave of the court to become involved in a case, which has the potential of functionally shutting out the NHRI from on-going miscarriages of justice.¹⁸

17. Does the NHRI have the power to search/access/examine public premises, documents, and resources and to visit all places of deprivation of liberty?

0	1	2
No power OR significant places of deprivation of liberty left outside of mandate	Yes, but with prior notification or other constraints	Yes, without prior notification or other constraints

Indicator Description and Justification:

The SCA notes that as part of NHRIs' investigatory role, they should have "unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice."¹⁹ These powers are frequently weakened by required special procedures or prior approvals for accessing some premises. Similarly NHRIs should have the ability to access all places of detention or deprivation of liberty.

¹⁷ Carver, "Measuring the Impact and Development Effectiveness of National Human Rights Institutions"; Linos and Pegram, "What Works in Human Rights Institutions?"; Carver, "Measuring the Impact and Development Effectiveness of National Human Rights Institutions."

¹⁸ Asia Pacific Forum, "A Manual on National Human Rights Institutions," n.d.

¹⁹ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Carver, "Measuring the Impact and Development Effectiveness of National Human Rights Institutions."



18. Does the NHRI have the power to investigate rights abuses on its own initiative (suo moto)?

0	1	2
NHRI lacks any suo moto powers	Yes, but with some limitations (such as limitations on some issues or jurisdictions or limits on cases taken up by other entities such as courts or state commissions)	Full powers to investigate suo moto

Indicator Description and Justification:

NHRIs must be able to proactively investigate human rights abuses on their own initiative (*suo motu*) “in contrast to [the] reactive role of the judiciary.”²⁰ *Suo motu* investigation powers contribute to an NHRI’s independence, as well as their capacity to identify and address the most serious rights abuses of the day. This initiative should include the power to take up individual complaints, “collective issues,” and systemic human rights violations with waiting for a complaint or other process to trigger an investigation.²¹

Civil society in some countries have noted that it is particularly important that NHRIs are able to take up rights abuses regardless if they have been or are being considered by other entities. For instance, some NHRI laws place restrictions on issues that have been considered by the courts. While this may seem appropriate at first glance, such provisions can be abused by the government to remove sensitive cases from the scrutiny of the NHRI. This is particularly problematic in more authoritarian countries and/or countries that have weak judicial independence.²²

19. Does the NHRI employ the full range of powers granted by law and regulation?

0	1	2
No, the NHRI does not employ many of the powers granted by law	Yes, with a few notable exceptions	Yes, with no exceptions

Indicator Description and Justification:

Just because an NHRI has been granted powers by law or regulation does not mean that an NHRI will use these powers. Some NHRIs have powers that have never been used or tested within the legal framework of the country, leading to considerable ambiguity about their mandate. While using the powers it is given will clearly impact the performance of an NHRI, it can also impact the NHRI’s ability to seek additional powers or a broader mandate.²³

²⁰ Linos and Pegram, “What Works in Human Rights Institutions?”

²¹ Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions”; GANHRI, “General Observations of the Sub-Committee on Accreditation.”

²² Amnesty International, “Amnesty International’s Recommendations on Effective Protection and Promotion of Human Rights.”

²³ Murray, “National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness.”

20. By law/regulation, are authorities required to formally consider and respond to NHRI recommendations/ decisions/ advice?

0	1	2
Response to recommendations/ advise/decisions not required	Authorities are required to respond, but without processes for compliance (including deadlines and penalties for non-compliance)	Authorities are required to respond, with clear processes for compliance (including deadlines and penalties for non-compliance)

Indicator Description and Justification:

Carver notes that “government should be required to respond to advice and requests from national institutions, and to indicate, within a given time, how they have complied with national institutions’ recommendations.”²⁴ In contexts where a requirement for response exists, NHRIs should monitor compliance and with this requirement, including processes to compel a response. This reporting should be include “detailed information on practical and systematic follow-up action.”²⁵ Civil society in the region has frequently cited the ability of the state to ignore NHRIs as one of the biggest hurdles to their effectiveness and their legitimacy.

²⁴ Carver, “Assessing the Effectiveness of National Human Rights Institutions.”

²⁵ GANHRI, “General Observations of the Sub-Committee on Accreditation.”



Pluralism (8)

Accessibility

21. Does the NHRI have local offices or representation throughout the country and partnership/engagement with local stakeholders and communities?

0	1	2
No local offices and partnership with local stakeholders	Local offices / staff / stakeholder partnership in some areas (regional) but in other areas engagement is noticeably lacking	Local offices / staff / stakeholder/community engagement throughout the country (provincial or lower)

Indicator Description and Justification:

NHRIs have a responsibility to reach the entire national territory. Without local offices or representation, NHRIs are not accessible to those living outside of capitals or large cities, particularly those living in remote areas. NHRIs (and some would argue human rights movements more broadly) are often at risk of being perceived as “urban-based” and “elitist-oriented.”²⁶ Local representation can help overcome these biases, support promotion efforts, and facilitate access to marginalised groups.²⁷ It should be noted that geography matters; a small country like the Maldives or Timor-Leste may be able to adequately cover the national territory from a HQ or with a small number of branch offices. A larger, more spread out country like Indonesia requires a broader reach to cover the national territory.

22. Does the NHRI routinely engage with the general public openly, regularly, and transparently (i.e. beyond civil society, interest groups, and/or stakeholders)?

0	1	2
NHRI does not meaningfully engage with the public on a regular basis	Yes, but only at the national/headquarters level	Yes, at all levels including specific effort to engage citizens in remote areas

Indicator Description and Justification:

Engagement with civil society, interest groups, and other stakeholders is an important part of representing a plurality of interests that reflects the diversity of the country. However, NHRIs must also ensure that they meaningfully engage with the general public. Addressing public opinion and raising awareness of human rights issues are key components of an NHRI's education mandate. Public engagement can take a wide variety of forms, but it is important that it occurs at the local level, with a specific effort to engage citizens in remote areas.²⁸ Doing so transparently can increase an NHRI's credibility and legitimacy.²⁹

²⁶ Murray, “National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness.”

²⁷ Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”

²⁸ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions”; Murray, “National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness.”

²⁹ Carver, “Assessing the Effectiveness of National Human Rights Institutions.”

23. Is the NHRI enabled with sufficient communication infrastructure and are the premises accessible by people with a wide variety of needs and concerns (including staff)?

0	1	2
NHRI comes with severe telecommunications limitations (e.g., phone, internet/website, staff capacity to respond) as well as significant accessibility concerns (disabled access, child-friendly, multilingual, etc)	NHRI lacks sufficient communications infrastructure and premises are accessible with some limitations or fully accessible but not at all locations	NHRI has sufficient communications infrastructure and staff capacity (time and language abilities) and the premises are fully accessible as well

Indicator Description and Justification:

The accessibility of NHRI premises impacts who is able to directly engage with the NHRI (or feels comfortable doing so). NHRIs by their nature should be making a special effort to reach marginalised groups to address their rights concerns, and should therefore meet a wide variety of needs, including accommodating multiple languages, children, and various forms of disability. Accessibility of premises also ensures the NHRI can employ a diverse staff representative of the population served by the institution. NHRIs should not be co-located with other government offices, which undermines perceptions of independence and could seem threatening to the “most vulnerable in society, or those most likely to be hostile or wary of its work.”³⁰

³⁰ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Murray, “National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness”; Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”



CIVIL SOCIETY

24. Does the NHRI formally consult with civil society (stakeholder meetings, regular consultations, strategic planning, consultative councils, or advisory boards, etc.), partner in joint activities and solicit inputs from them?

0	1	2
No formal consultation/partnering mechanisms exist with civil society, and no inputs are solicited from them	Some formal consultation/irregular joint activities with civil society occur on a case-by-case basis and a limited outreach for soliciting inputs from them exists	NHRI regularly consults with civil society with frequent joint activities on a formal basis, including routine opportunities/structures for interchange and routinely solicits input from a wide range of civil society

Indicator Description and Justification:

The SCA recognises that civil society is often an important bridge to “engage with vulnerable groups” who are “geographically, politically or socially remote.” CSOs are often in the best position to provide on-the-ground information and facilitation connections to the communities they serve and represent. Formal consultations with civil society such as routine consultations, co-planning, or even consultative councils or advisory bodies composed of civil society helps to maintain “regular, constructive working relationships and is key to increasing transparency of the NHRI’s work.”³¹

25. Does the NHRI facilitate meetings with or access to government on behalf of civil society?

0	1	2
NHRI does not facilitate access to government	NHRI occasionally facilitates access to government (arranging meetings, holding dialogues, securing invites to stakeholder meetings, etc.)	NHRI routinely facilitates access to government (arranging meetings, holding dialogues, securing invites to stakeholder meetings, etc.) AND/OR government is fully open and an NHRI role is not needed

Indicator Description and Justification:

Murray notes that NHRIs should be assessed in part by “how they negotiate space between civil society and government.”³² This view is shared by many CSOs who have pointed to this facilitation role as one of the key ways in which NHRIs can amplify their work. Facilitating access could be in the form of invites to official meetings, convening spaces for dialogue, or even connecting or accompanying CSOs to opaque branches of government or those unused to interaction with civil society. It should be noted that if government is operating in a fully open and transparent manner, this facilitation role may be less important.

³¹ GANHRI.

³² Murray, “National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness.”

Diversity

26. What best describes the NHRI's engagement with marginalised groups, including systematic engagement efforts (i.e. policies and/or procedures for engagement, focal points, special desks, advisory committees, network engagement, consultations, public forums, etc.)?

0	1	2	3	4
NHRI does not engage with most marginalised groups	NHRI engages with some marginalised groups with many notable exceptions; systematic engagement efforts are sparse, non-existent, or problematic	NHRI engages with many marginalised groups routinely, with some notable exceptions; systematic engagement efforts occur but are not comprehensive and/or have significant deficiencies	NHRI engages with marginalised groups routinely with exceptions related mainly due to capacity; systematic engagement is generally strong but has some room for improvement in terms of reach (such as reaching specific groups) or effectiveness	NHRI engages with marginalised groups routinely without exception; systematic engagement is comprehensive and strong

Indicator Description and Justification:

NHRIs have a responsibility to address the human rights of all, yet doing so often requires special effort to reach those that are marginalised and vulnerable. In some cases, those most in need are often those most likely to distrust government and/or view the NHRI with deep skepticism or even suspicion.³³ Because of this, the SCA notes that NHRIs require “procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums” and other concerted outreach efforts. Covering the needs of the marginalised and vulnerable can often require specific capacity within an NHRI as well, such as staff with thematic knowledge and/or organisational structures like special desks to ensure the needs of all are represented.³⁴

27. Does the NHRI have gender balance in its leadership (includes NHRI members, top staff position, and/or other leadership positions) as well as its managerial and professional staff positions? NOTE: In Ombudsman models, include the Ombudsman, deputies, and other relevant staff position(s)

0	1	2
0% to <25% women in leadership as well as managerial and staff positions	>=25% to <40% women in leadership as well managerial and staff positions	>=40% women in leadership as well as managerial and staff positions

³³ Murray, “National Human Rights Institutions. Criteria and Factors for Assessing Their Effectiveness.”

³⁴ Asia Pacific Forum of National Human Rights Institutions and United Nations Development Programme Asia-Pacific Regional Centre, *Capacity Assessment Manual for National Human Rights Institutions*.

**Indicator Description and Justification:**

While leaders of any gender can display a strong commitment to gender equality and rights issues impacted by gender, gender diversity in the NHRI's leadership is a crucial safeguard to ensuring a diversity of perspectives within the institution across the rights spectrum.³⁵ The Paris Principles requires that NHRIs represent different segments of society, and while criteria with regard to diversity should not "unduly narrow and restrict" this diversity, gender equality in leadership can ensure the NHRI has the "capacity to understand and address gender and women's human rights issues both in its strategies and programs for the promotion and protection of human rights and in its own internal policies, procedures and staff management."³⁶

28. What best describes the diversity of staff and membership of the NHRI?

0	1	2
NHRI lacks diversity (or fails to reflect society's diversity) in all of the following: age, religion, culture/ethnicity, sexual orientation, socioeconomic class, physical ability, and professional background	NHRI has diversity (or reflects society's diversity) in a few of the following categories: age, religion, culture/ethnicity, sexual orientation, socioeconomic class, physical ability, and professional background	NHRI has diversity (or reflects society's diversity) in many of the following categories: age, religion, culture/ethnicity, sexual orientation, socioeconomic class, physical ability, and professional background. These diversity requirements are also established and backed by law.

Indicator Description and Justification:

The success of laws/regulations intended to protect and promote diversity within NHRIs should be reflected in the ultimate composition of NHRI staff and members.³⁷ Diversity should be considered broadly and in the context of the country. For instance, in smaller and/or particularly homogenous countries there may be an overwhelming majority of staff/members from the same culture/ethnicity or religion—ideally no more than the same proportion of society as a whole. Even in these cases, staff/members from small minorities can provide a valuable perspective on rights abuses, particularly as these communities are often more likely to be vulnerable. Many elements of diversity cut across even the most homogenous societies, including age, sexual orientation, socioeconomic class, physical ability, and professional background (gender is captured in Q55 and Q56). Experience and skill requirements for some positions within the NHRI can result in limited diversity in some areas such as age and professional background; special care should therefore be taken these areas are not neglected within the NHRI as a whole.

³⁵ Eliadis; Fitzpatrick, "NHRI Guidelines for Mainstreaming the Human Rights of Women and Girls into Our Everyday Work."

³⁶ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Asia Pacific Forum of National Human Rights Institutions and United Nations Development Programme Asia-Pacific Regional Centre, *Capacity Assessment Manual for National Human Rights Institutions*.

³⁷ GANHRI.

PROMOTION (6)

Advice on legislation and policy

29. Is NHRI able to review both existing and draft legislation/policies for compliance with human rights standards or propose new legislation or amendments to legislation or refer policies to court --either formally or informally-- to address systematic human rights abuses or gaps in the protection of human rights?

0	1	2
NHRI has never reviewed existing legislation nor proposed new ones or even amendments. It has no such power	Yes, but with some notable exceptions or this happens upon request for consultation.	Yes, consistently and without exception to any particular rights issues.

Indicator Description and Justification:

Reviewing existing and draft legislation and policies for their compliance with human rights principles is a core responsibility of all NHRIs. Strong NHRIs have the power to review both draft and existing policies/legislation on their own initiative. This power is sometimes limited in some aspect, such as requiring consultations for a formal review, or limiting the scope of the NHRI's review to existing or draft legislation/policies.³⁸

³⁸ Carver, "Assessing the Effectiveness of National Human Rights Institutions."



30. What best describes the NHRI's review and recommendations of legislation and policies and efforts to harmonise international human rights standards throughout the country?

0	1	2	3	4
NHRI does not review or make recommendations on laws/policies or any effort to harmonise international human rights standards at any level	NHRI reviews relevant laws/policies, with some notable exceptions; recommendations/proposed amendments are either non-existent or are not made public and ineffectual/ limited attempts	NHRI reviews relevant laws/policies, and limited attempts with some notable exceptions; recommendations vary in quality , occasionally proposing specific language or formal amendments to bring law/policy into compliance with international human rights standards	NHRI reviews relevant laws/policies, and significant attempts to harmonise international human rights standards with some notable exceptions ; recommendations are uniformly strong , including routinely incorporating specific language or formal amendments to bring laws/policies into compliance with international human rights standards; OR NHRI reviews all relevant laws/policies, but recommendations vary in quality , occasionally proposing specific language or formal amendments to bring law/policy into compliance with international human rights standards	NHRI reviews all relevant laws/policies and significant attempts to harmonise international human rights standards at both national and local level, with no notable exceptions. Recommendations are uniformly strong and include specific language or formal amendments to bring law/policies into compliance with international human rights standards

Indicator Description and Justification:

NHRIs are tasked with harmonising local and national laws/policies with international human rights standards. Examples of harmonisation efforts could include pushing for the ratification of international human rights instruments (without reservations), examining laws and policies that do not meet international human rights standards, conducting advocacy/awareness raising on practices that fall short of international standards or avenues for meeting standards, and highlighting discrepancies between local and national laws with regard to human rights. These efforts should be regular, systematic, and reach down to the local level.³⁹

³⁹ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Linos and Pegram, "What Works in Human Rights Institutions?"; Carver, "Measuring the Impact and Development Effectiveness of National Human Rights Institutions."

Annual reports and other reporting

31. What best describes the content as well as promotion of the NHRI's annual report and other products of monitoring and investigations?

0	1	2	3	4
NHRI does not produce an annual report or equivalent regular report that cover any of the following aspects: activities (and results) of the NHRI taken during the reporting period; recommendations and proposals to address human rights concerns; and performance of the government on human rights issues, including responses to recommendations from the NHRI	The NHRI produces an annual report, but does not cover most of the aspects (mentioned under column 0) or does so with critical deficiencies. The reports are not widely disseminated and promoted; may include significant accessibility concerns such as language or format of publication	The NHRI produces an annual report, but only some of these aspects (mentioned under column 0) are covered thoroughly. There are some limited efforts to disseminate, publicise, and promote the reports; some accessibility concerns may exist in select instances	The NHRI produces an annual report that covers most of these aspects (mentioned under column 0) thoroughly, with a few notable exceptions. NHRI posts and publishes all of its reports in an accessible fashion accompanied by at least some attempt to disseminate, publicise, and promote the reports widely, including via social media, traditional media outreach, public hearings, report launches, stakeholder dialogues, etc.; some efforts to promote efforts are insufficient or ineffective	The NHRI's annual report comprehensively covers all of these aspects with no exception. NHRI posts and publishes all of its reports in an accessible fashion; reports are routinely accompanied by effective, broad-based dissemination, publicity, and promotion, including via social media, traditional media outreach, public hearings, report launches, stakeholder dialogues, etc.

Indicator Description and Justification:

The SCA notes that “annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI.” However, if these reports are not accessible and promoted publicly, their impact will be minimal. There are a wide variety of methods an NHRI can take to disseminate, publicise, and promote reports, including social media, traditional media outreach, public hearings, report launches, stakeholder dialogues, and more. NHRIs should strive to ensure all reports receive at least some promotion. Likewise, all reports should be accessible online and in other formats as relevant. Reports should also be published in all national languages and other languages of important strategic languages.⁴⁰

⁴⁰ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”



Education and Training

32. Does the NHRI organise public awareness on human rights issues, collaborate with educational authorities (schools and universities), and train officials on human rights?

0	1	2	3	4
NHRI does not organise any of the above activities for the promotion of human rights.	NHRI might organise an activity once in a while but not all of the activities	NHRI organises some of these activities with an irregular pattern and not so frequently	NHRI organises and conducts most of these activities with somewhat regular pattern but not in a routine or systematic fashion or regularly trains public officials with notable exceptions (such as elements of the security establishment)	NHRI regularly organises public awareness activities, routinely and systematically collaborates with educational authorities and trains public officials in human rights in a widespread and regular manner without exceptions

Indicator Description and Justification:

According to the Paris Principles and the SCA, NHRIs should be empowered to promote education on human rights as part of their promotional mandate.⁴¹ Given resource constraints and the special skills needed to work with schools and universities, this mandate is often only partially addressed. However, NHRIs that manage to routinely and systematically engage with the education sector could potentially have a powerful, if diffuse long-term impact on respect for human rights in the country. Many in civil society have noted that low public awareness of human rights is often a major obstacle in their work and the work of NHRIs.

⁴¹ GANHRI, "General Observations of the Sub-Committee on Accreditation."

International Engagement

33. What best describes the NHRI's monitoring and reporting on compliance with international human rights obligations, such as treaty bodies, UPR, and Special Procedure mechanisms?

0	1	2	3	4
The NHRI does not monitor compliance with international human rights obligations. No advocacy with the state to play an active role in international and regional human rights bodies	The NHRI monitors compliance with human rights obligations, with some notable exceptions ; results are not submitted independently to international bodies	The NHRI monitors compliance with human rights obligations, with some notable exceptions ; results are sometimes submitted independently to international bodies (shadow reports or independent participation in reviews), in other cases findings may formally constitute some or all of the state's official reporting obligations. The NHRI occasionally calls on the state to play an active and positive role in international and regional human rights bodies	The NHRI monitors human rights obligations comprehensively, with a few exceptions ; the NHRI always reports independently from the state (although some findings may be used in the state's own reporting) OR NHRI monitors human rights obligations comprehensively, with no exceptions ; the NHRI submits results independently from the state with a few exceptions (although some findings may be used in the state's own reporting)	The NHRI monitors human rights obligations comprehensively, with no exceptions ; the NHRI always reports independently (although some findings may be used in the state's own reporting). The NHRI routinely calls on the state to play an active and positive role in international and regional human rights bodies

Indicator Description and Justification:

Chris Sidoti notes that the international human rights system relies on “independent, objective information about human rights situations” and that NHRIs are some of the few actors “able to speak authoritatively” on these matters while applying local experience to identify international gaps and needs.⁴² The SCA identifies a number of ways in which NHRIs can formally engage with the international human rights system, including through “submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees; making statements during debates before review bodies and the Human Rights Council; assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry.” When doing so, however, NHRIs must maintain their independence from state delegations and official state reports, even it may be appropriate for the state to consult with the NHRI to prepare reporting on human rights in the country.⁴³

⁴² Sidoti.

⁴³ GANHRI, “General Observations of the Sub-Committee on Accreditation”; Carver, “Assessing the Effectiveness of National Human Rights Institutions.”



34. Does the NHRI engage with other NHRIs or other international human rights actors including participation in regional NHRI networks and/or GANHRI to address transnational human rights issues?

0	1	2
The NHRI does not engage with other NHRIs or other international human rights actors to address transnational human rights	The NHRI occasionally engages with other NHRIs or other international human rights actors to address transnational human rights, including some notable exceptions. It participates passively in regional NHRI networks and/or GANHRI	The NHRI routinely engages with other NHRIs or other international human rights actors without notable exceptions. The NHRI is also a regular active participant in regional NHRI networks and/or GANHRI

Indicator Description and Justification:

Actively participating in regional and international NHRI networks (such as APF and GANHRI) is an important avenue for spreading best practices and developing training opportunities for NHRI members and staff. Even for NHRIs that may have participation limited by accreditation status, such as in GANHRI, active engagement is still an important avenue for developing the norms and strategies to bring an NHRI into Paris Principles compliance (and beyond).⁴⁴ Sidoti notes that international engagement can identify “human rights issues of common concern across regions and develop strategies to address them” while also building “international and regional alliances around particular rights issues.”⁴⁵

⁴⁴ Carver, “Assessing the Effectiveness of National Human Rights Institutions”; Carver, “Measuring the Impact and Development Effectiveness of National Human Rights Institutions.”

⁴⁵ Sidoti, “National Human Rights Institutions and the International Human Rights System.”

Protection (10)

Complaints

35. What best describes the NHRI's determinations of complaints that fall within the mandate of the NHRI?

0	1	2	3	4
The NHRI does not consider complaints or often dismisses/disqualifies valid cases	The NHRI is open to complaints but the procedures are difficult or not easily accessible and many valid cases do not make it to the Institution	The NHRI generally makes appropriate determinations of qualifying cases related to its mandate, with some notable exceptions <i>OR</i> valid cases are occasionally turned down due to lack of capacity; NHRI does not receive complaints on behalf of victims	The NHRI makes appropriate determination of cases but takes cases selectively despite easy and accessible procedures in place	The NHRI accepts and considers all valid complaints. The NHRI also receives complaints on behalf of victims/ by those not directly affected (if consent is given)

Indicator Description and Justification:

The first step of the complaints handling process is determining if a case fits within the NHRI's mandate. Ideally, an NHRI will accept and consider all complaints covered by the institution's mandate. As such, it is important that procedures and criteria are clearly elaborated and made public for applicants.⁴⁶ The reality is that many NHRIs triage cases due to lack of capacity or otherwise turn away valid complaints, by policy or in practice.⁴⁷ NHRIs that arbitrarily fail to consider valid complaints risk undermining faith in the complaints mechanism as well as the NHRI as a whole.

⁴⁶ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Asia Pacific Forum, *A Manual on National Human Rights Institutions*, 2018.

⁴⁷ UNDP and OHCHR, "UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions."



36. What best describes the NHRI's investigations of complaints (including their timeliness) that *qualify* within the NHRI's mandate?

0	1	2	3	4
The NHRI does not investigate complaints / not applicable OR all investigations are pro forma/ineffective	Investigations in <u>almost all cases are pro forma</u> , consisting of only exchanges of documents, or are otherwise not investigated effectively. No meaningful procedures or policies for timeliness	Investigations in the <u>majority of cases are pro forma/ineffective</u> (> ~50%), but some cases are thoroughly investigated (collection of evidence, witness testimony, expert opinion, etc.). NHRI has procedures or policies for timeliness that are sometimes followed, but procedures are not met in the majority of cases (> ~50%)	Some investigations are pro forma/ineffective, but <u>the majority (> ~50%) of cases are thoroughly investigated</u> (collection of evidence, witness testimony, expert opinion, etc.). NHRI has procedures or policies for timeliness that are followed in the majority of cases (> ~50%)	The vast majority (> ~90%) of qualifying cases are investigated thoroughly (collection of evidence, witness testimony, expert opinion, etc.). NHRI has procedures or policies for timeliness that are almost always met (> ~90%)

Indicator Description and Justification:

Once an NHRI determines that a complaint qualifies for consideration, the next step is to commence an investigation. The quality of an investigation obviously has an important bearing on the efficacy of the complaints mechanism, but it is equally important for establishing the NHRI as a credible actor for all involved parties. Without belief that their cases will be thoroughly investigated, victims of human rights violations will be reluctant to engage the NHRI, as civil society has observed in many cases. Thorough investigation should include rigorous collection of evidence, witness testimony, expert opinion (as needed), or other actions. Given resource constraints and the sheer number of complaints, NHRIs can often fall into a trap of pursuing investigations in a pro forma or otherwise ineffective manner, such as depending solely on submitted documents from complainants.⁴⁸

⁴⁸ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Carver, "Measuring the Impact and Development Effectiveness of National Human Rights Institutions"; Carver, "Assessing the Effectiveness of National Human Rights Institutions."

37. What best describes the responsiveness and communication of the NHRI during the complaints process?

0	1	2	3	4
No communication with complainants/parties to complaints in many cases OR not applicable	Communication with complainants/parties is limited to requests for official documentation and/or final determinations; requests for updates on process and status usually go unanswered	Communication with complainants/parties includes responses to requests for updates on process and status, albeit with some delays, inconsistencies, and/or exceptions	Communication with complainants/parties is almost always responsive to requests for updates on process and status; in some cases, communication is also proactive and concerned with the ongoing well-being of the complainant	Communication with complainants/parties is almost always responsive AND proactive and concerned with the ongoing well-being of the complainant

Indicator Description and Justification:

One of the more frequently cited concerns of civil society in engaging on cases relates to the responsiveness of NHRIs throughout the process. When done well, NHRIs are communicative and responsive to inquiries, including surrounding the status of the case and on-going concerns. While perhaps not possible in every case, NHRIs should also proactively reach out to particularly vulnerable/at-risk complainants with regard to their well-being and new developments, as situations can often change quickly and contact with an NHRI can provide a measure of protection. Responsive communication can also help to manage expectations of complainants and assure them that their case has not been forgotten.

38. Does the NHRI facilitate/support individual complaints to regional or international human rights bodies, including Special Rapporteurs?

0	1	2
Never / not applicable	Occasionally	Yes, as a regular part of the institution's work

Indicator Description and Justification:

Referring cases of human rights violations to regional or international bodies can help resolve rights crises, particularly when local political will or the mandate of the NHRI prevent adequate resolution. Active participation in these mechanisms can also support the growth and legitimacy of these mechanisms and contribute to building international human rights norms (as noted in International Engagement subcategory above)--even if there is no capacity to resolve the individual issue.⁴⁹

⁴⁹ Sidoti, "National Human Rights Institutions and the International Human Rights System."



39. What best describes the NHRI's ability to resolve or remedy complaints?

0	1	2
No power / not applicable	Power to recommend remediation/restitution/reparations AND/OR arrive at settlements through non-binding alternative dispute resolution (ADR). NHRI has power to refer cases for prosecution	Power to issue binding determinations and power to prosecute cases directly or otherwise initiate a prosecutorial process

Indicator Description and Justification:

Many NHRIs are equipped to resolve the complaints they receive through an “amicable and confidential settlement of the complaint through an alternative dispute resolution process” or through binding determinations and enforcement of decisions through the courts.⁵⁰ While ADR or recommendations may be adequate in many cases, a strong NHRI will also have the power to ensure enforcement when applicable—even if this power is limited by mutual agreement to a binding decision by the involved parties. As with Q81, some power to compel follow-through on decisions is particularly important in countries where the judicial system is compromised or otherwise unlikely to give fair hearing to those suffering from human rights abuses.

Investigation and Monitoring

40. Does the NHRI monitor detention/prison facilities?

0	1	2
Never	Yes, but irregularly or infrequently	Yes, regularly and systematically

Indicator Description and Justification:

NHRIs should have the power to monitor all places of deprivation of liberty—especially prisons, detention centers, or even medical facilities. This power should encompass all facilities (and all areas of facilities) and should require little or no notice. However, having power to monitor detention/prison facilities does not necessarily mean the NHRI does so in a regular, systematic, and effective manner. While it is likely unrealistic for an NHRI to visit all such facilities, the NHRI should have a process for identifying those prone to abuse. Carver notes that visits should be repeated so that “inspectors can evaluate progress over time.”⁵¹

41. What best describes the NHRI's follow-up on recommendations, decisions, and reports?

0	1	2	3	4
NHRI does not conduct follow-up on / monitor the implementation of recommendations, decisions, and reports	NHRI conducts limited follow-up on some recommendations, decisions, and reports, but follow-up is not rigorous or systematic	NHRI has some systems for ensuring follow-up on recommendations, decisions, and reports, but follow-up is variable in consistency and rigor	NHRI has systems for ensuring follow-up on recommendations, decisions, and reports; most follow-up is consistent and sufficiently rigorous, with some exceptions mostly related to capacity	NHRI has strong systems and ensures rigorous follow-up on recommendations, decisions, and reports without exceptions

⁵⁰ GANHRI, “General Observations of the Sub-Committee on Accreditation.”

⁵¹ Carver, “Assessing the Effectiveness of National Human Rights Institutions.”

Indicator Description and Justification:

While NHRIs do not always have the ability to compel a response to their recommendations (Q86), follow-up on recommendations, including public reporting on “the measures taken or not taken by public authorities in implementing specific recommendations or decisions” can place pressure on the State to take action.⁵² In doing so, monitoring and follow-up of recommendations should be systematically tracked by the NHRI to ensure this follow-up is consistent and rigorous. Civil society has noted that without follow-up, momentum surrounding the launch of reports or findings is often lost and there is little accountability for those that ignore the NHRI.

42. Does the NHRI investigate systemic human rights abuses and conduct large scale national inquiries into particular widespread violations?

0	1	2
The NHRI does not investigate systemic human rights abuses nor conducts national inquiries	The NHRI occasionally investigates systemic abuses, with some notable exceptions. It conducts national inquiries, but inquiries include only some of the following components: 1. extensive participation from victims, witnesses, stakeholders, and experts; 2. extensive evidence gathering (complaints, testimony, documentation, etc.); 3. public hearings and fora; 4. dialogue with stakeholders and authorities; 5. final reports on findings, including policy recommendations for resolving the issue	The NHRI regularly investigates systemic abuses as a core function. It conducts national inquiries, but inquiries include all the following components: 1. extensive participation from victims, witnesses, stakeholders, and experts; 2. extensive evidence gathering (complaints, testimony, documentation, etc.); 3. public hearings and fora; 4. dialogue with stakeholders and authorities; 5. final reports on findings, including policy recommendations for resolving the issue

Indicator Description and Justification:

Some scholars have noted that NHRIs that focus too greatly on complaints risk missing out on opportunities to address systemic human rights violations.⁵³ While ANNI members (and the APF) view complaints handling as a necessary function for NHRIs, this point is still important to consider when assessing the performance of NHRIs, as the volume of individual complaints can threaten to overwhelm other priorities. It is therefore important the NHRI address systematic human rights violations as a core function, including through promotional aspects and monitoring and reporting. Actions could range from investigating groups of complainants, to thematic reports, to full-scale national inquiries.

⁵² GANHRI, “General Observations of the Sub-Committee on Accreditation.”

⁵³ Carver, “Performance & Legitimacy.”



Stakeholder Protection

43. What best describes the NHRI's efforts/powers to protect complainants and witnesses?

0	1	2
No power to protect complainants/witnesses	Some modest protection powers, such as confidentiality measures and recommending suspension from duty of officials under investigation OR the NHRI has stronger powers, such as securing access to witness/complainant protection programs that are unevenly or ineffectively applied	Robust powers, including securing access to witness/complainant protection programs

Indicator Description and Justification:

An NHRI must be able to offer protection to those that come forward either as victims of or witnesses to human rights abuses.⁵⁴ All NHRIs should have confidentiality measures to keep information shared in confidence, yet stronger powers such as securing access to witness protection programs can keep stakeholders safe from retaliation and encourage engagement with the institution.⁵⁵

⁵⁴ Asia Pacific Forum, *A Manual on National Human Rights Institutions*, 2018.

⁵⁵ GANHRI, "General Observations of the Sub-Committee on Accreditation"; Carver, "Assessing the Effectiveness of National Human Rights Institutions."

44. What best describes the NHRI's policies and procedures related to supporting threatened human rights defenders (HRDs)?

0	1	2	3	4
No policies or procedures related to threatened HRDs	The NHRI has an HRD policy, but <u>little to no action is taken on HRD issues</u>	The NHRI has no formal HRD policies or procedures, but does <u>support threatened HRDs informally</u> (i.e. publicly commenting on attacks, opening or referring cases as part of a complaints handling mandate, supporting HRDs to access emergency assistance from the government or local or international actors, etc.)	The NHRI has <u>formal HRD policies or procedures that are routinely followed</u> and compel the NHRI to provide some forms of support (i.e. publicly commenting on attacks, opening or referring cases as part of a complaints handling mandate, supporting HRDs to access emergency assistance from local or international actors, etc.)	The NHRI has <u>formal HRD policies or procedures that are routinely followed</u> and compel the NHRI to provide a range of support (i.e. publicly commenting on attacks, opening or referring cases as part of a complaints handling mandate, supporting HRDs to access emergency assistance from local or international actors, etc.), <u>including mechanisms to directly provide protection measures</u> (resettlement, provision of safe housing, legal aid, security details, etc.) Comment: This may be too far for some.

Indicator Description and Justification:

GANHRI's 2018 Marrakech Declaration affirmed the importance of human rights defenders and NHRIs' roles in protecting and supporting HRDs and broader civic space issues. NHRIs should have concrete policies and procedures for supporting at-risk HRDs, such as focal points, special desks, and rapid response mechanisms to pursue urgent actions for those threatened.⁵⁶ Actions could range from publicly commenting on attacks, to referring cases to protection systems, or, in its strongest form, directly providing some form of protection assistance such as resettlement, safe houses, legal aid, security, or other assistance to help mitigate threats. Some civil society have noted that many HRDs would not feel comfortable trusting such assistance to an NHRI, particularly when the threat is coming from the State itself. These direct measures may be more appropriate in cases where threats to HRDs originate with non-state or local actors, and the effectiveness of direct protection would hinge heavily on the NHRI's independence and legitimacy.

⁵⁶ GANHRI, "The Marrakech Declaration."

