

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.

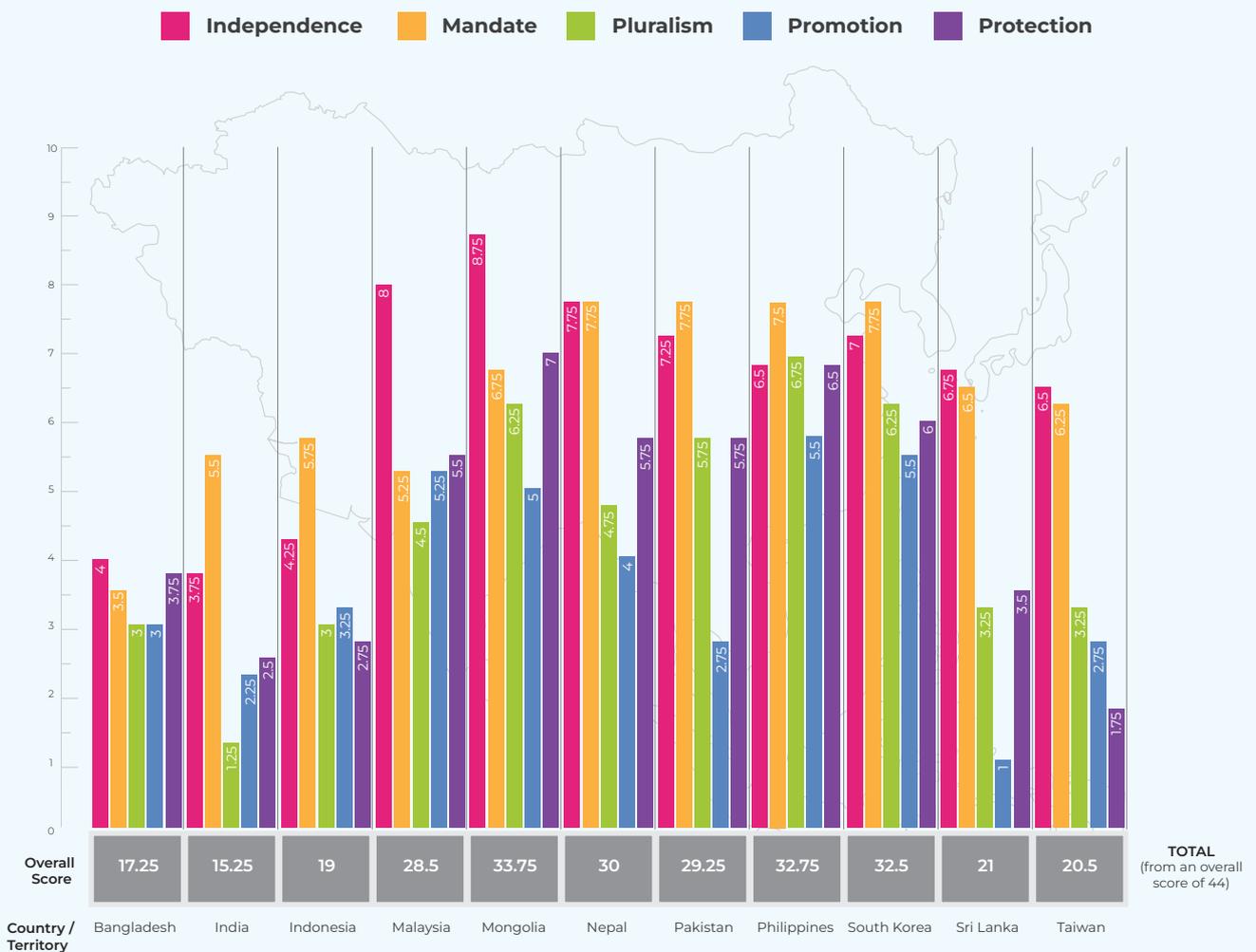
¹⁴ See Methodology section for a note on Myanmar and Cambodia not being a part of this process.



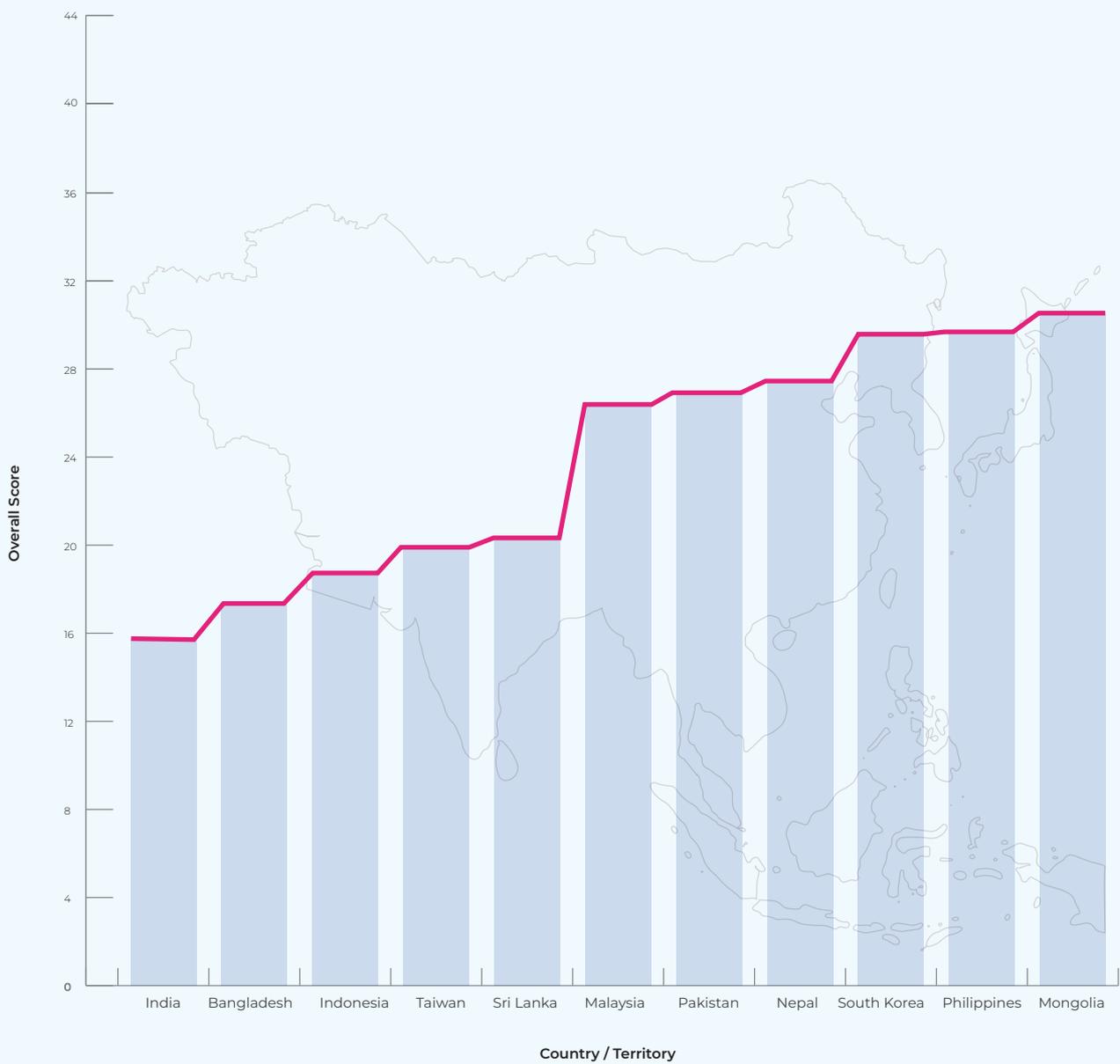
Major Trends of NHRIs' Performance in Asia

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.

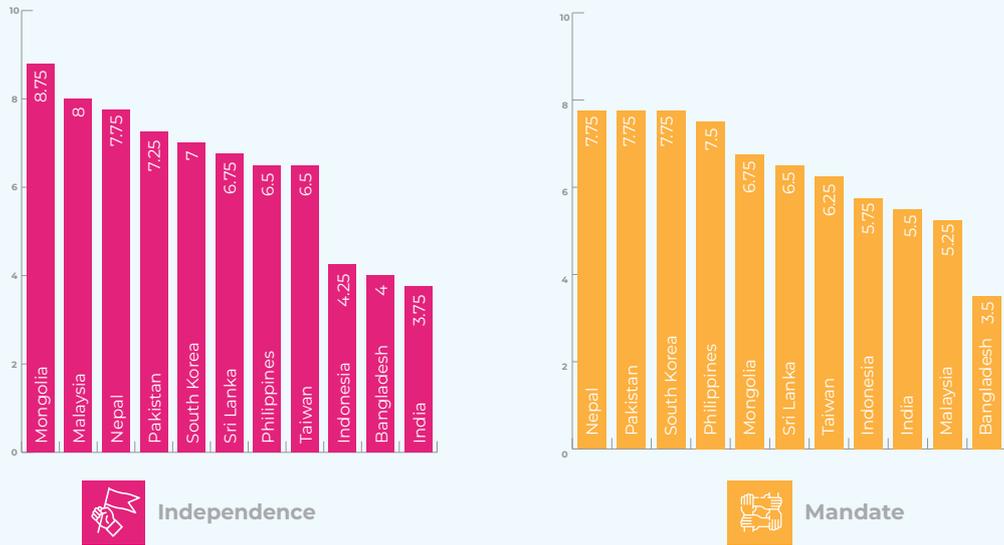
The Bangladesh chapter highlights that the NHRC in the country does some work on complaints and on the promotion front by organising meetings with civil societies. However, it has been selective in its engagements and lacks the courage to hold the government to account for how it has cracked down on 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.

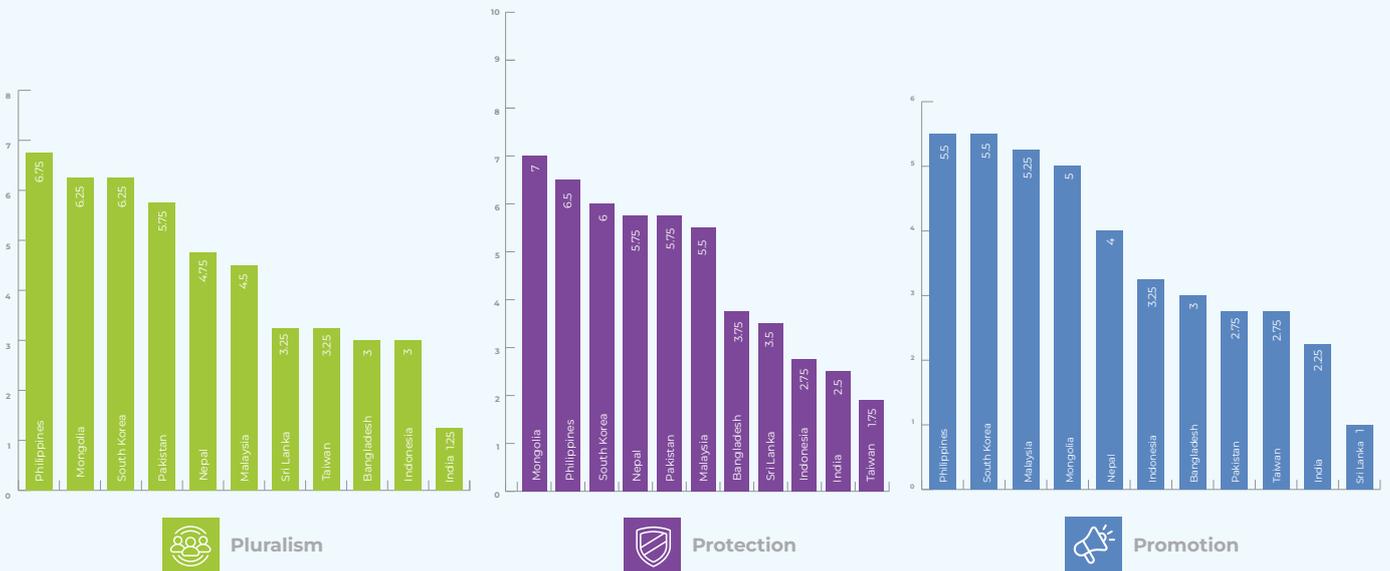
In the case of NHRC Taiwan, the score of 20.5 is not entirely a reflection of its poor performance. The Commission is in its infancy after being established in 2020. Due to Taiwan’s disputed sovereignty and its non-recognition as a UN member, there are a few indicators related to the Universal Periodic 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.

