

2020

ANNI REPORT:

ON THE PERFORMANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

DECEMBER 2021



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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 2020 on the Performance and Establishment of National Human Rights Institutions in Asia.

This report, which has been authored by ANNI member organisations, is a reflection of their dedication and commitment to the cause of human rights, and especially in ensuring credible, independent, and effective national human rights institutions (NHRIs) in their own countries. We extend our heartfelt appreciation and gratitude to our valued ANNI members for their sustained efforts and collaboration throughout the drafting of the report. We also thank the NHRIs who have provided their feedback on the information contained in this publication.

Since early in 2020, the COVID-19 pandemic has been gravely impacting the world, and in particular, the human rights situation in several countries. Asia has not been immune to this, where several governments have adopted authoritarian measures under the pretext of pandemic-related responses. As a result of this, the region continues to witness shrinking civic spaces, increasing attacks against human rights defenders, and a challenge to democratic institutions and processes.

It is within this context that the role of NHRIs becomes ever-important in protecting and promoting human rights for all, given their broad mandate and unique position as institutions that act as a bridge between civil society and the government. The pandemic has resulted in several challenges to human rights, and NHRIs have a long way to go in ensuring that the human rights of all are protected, especially those who are most vulnerable and most at-risk, and whose rights have been hardest-hit by the adverse effects of COVID-19.

The ANNI Report 2020 assesses the human rights situation in 11 Asian countries, based on country reports by ANNI's member organisations. It reviews the performance of these NHRIs, measured against the Paris Principles, and covers a reporting period of 2020 to early 2021. The chapters in this report have been informed by, and are structured according to, the ANNI Report Guidelines that have been developed in consultation with ANNI's member organisations, following the 14th ANNI Regional Consultation in February 2021.

FORUM-ASIA, as the ANNI Secretariat, would like to take this opportunity to acknowledge the authorship and contributions of all colleagues to this report. They are: Tamanna Hoq Riti and Maimuna Syed Ahmed (Ain o Salish Kendra, Bangladesh); Henri Tiphagne (People's Watch and AiNNI, India); Muhammad Hafiz (Human Rights Working Group/HRWG, Indonesia), Andi Muttaqien, Vita Yudhani, and Sayyidatihiyaa Afra (Institute for Policy Research and Advocacy/ELSAM, Indonesia), Ardi Manto (Imparsial/Indonesian Human Rights Monitor), and Auliya Rayyan (The Commission of Disappeared and Victims of Violence/KontraS, Indonesia); Hyun-Phil Na (KHIS, South Korea); Kenneth Cheng (SUARAM, Malaysia); the CSO Working Group on MNHRC Reform (Myanmar); Shree Ram Bajgain and Bijaya R. Gautam (INSEC, Nepal); Haroon Baloch and Fatima Khalid (Bytes for All, Pakistan); Dr. Sakuntala Kadirgamar and Sulochana Wijayasinghe (Law and Society Trust, Sri Lanka); Song-Lih Huang and Yibee Huang (Covenants Watch, Taiwan); and Chalida Tajaroenusuk, Don Tajaroenusuk, Thanarat Deejantuek (People's Empowerment Foundation, Thailand), and Dr. Duanghathai Buranajaroenkij (Assistant Professor, Mahidol University, Thailand).

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methodology

PURPOSE

The Asian NGO Network on National Human Rights Institutions (ANNI) Report (on the Performance and Establishment of the National Human Rights Institutions in Asia,) 2021 is intended as an advocacy resource for civil society organisations (CSOs), national human rights institutions (NHRIs), and other stakeholders who wish to gain insight into the functioning and performance of NHRIs in the Asian region.

This report focuses specifically on the functioning of select Asian NHRIs during the period of 2020, providing an overview of some of the pressing human rights challenges in each country, and how the concerned NHRI responded to them. The country-specific chapters within the report also include CSOs' recommendations for their NHRI and government to address in the future. These are meant to serve as a guide for both NHRIs and concerned stakeholders engaging with them in conducting focused advocacy.

RESEARCH METHODS

As a network, ANNI is guided by civil society member organisations who work at the grassroots level in their respective countries. Their extensive and informed research, as well as their advocacy on NHRIs, has contributed significantly to ANNI's overall advocacy at the sub-regional, regional, and international levels, and has strengthened its work on NHRIs since 2006.

Members' inputs and observations

The ANNI Report is based on civil society's assessment of the functioning and performance of NHRIs in compliance with the Paris Principles. It is informed by inputs and observations of member organisations that are a part of ANNI's network, who are engaged in NHRI-related advocacy in their countries. Their contributions to this Report are drawn from their immediate engagement with their respective NHRIs, as well as through their in-depth interviews with concerned stakeholders.

Information from NHRIs

In the spirit of a holistic and fair assessment, ANNI members have also contacted their NHRIs for their feedback and inputs on the country chapters. Some of the chapters in this report have incorporated the respective NHRI's feedback and comments, once they responded to members' requests for the same. Certain chapters could not include these, and this can be attributed to no responses from the NHRIs, or their inability to respond due to time constraints.

Desk research

The report is supplemented by desk research undertaken by the ANNI Secretariat at Asian Forum for Human Rights and Development (FORUM-ASIA), which includes accessing information from NHRIs' official websites, such as enabling laws, annual reports, and other publications; Global Alliance on National Human Rights Institutions-Sub-Committee on Accreditation (GANHRI-SCA) reports and recommendations; previous ANNI reports, news media coverage of particular examples and human rights challenges, and similar documentation.



LIMITATIONS OF THE METHODOLOGY

While there has been a concerted effort on the part of the ANNI Secretariat and members to ensure the accuracy of all information included in the Report, it would be remiss to not acknowledge some of the limitations of the methodology and the specific contexts in which we operate:

Geographical coverage

The report includes chapters from 11 countries. These are countries where ANNI's members are present and have some contact with their respective NHRIs.

Certain countries could not be included in the Report, for the following reasons:

1. Political turmoil within the country at the time of drafting this Report;
2. Risks to the safety of ANNI members; and
3. Challenges to members, owing to the continuing pandemic

The impact of the pandemic on the functioning of NHRIs

The Report is based on information regarding the functioning of NHRIs during 2020; however, the ANNI Secretariat and its members are cognisant that this has been a particularly challenging year, given the COVID-19 pandemic and its impact on society. NHRIs have been adversely impacted as well, with many of them not operating at full capacity during this period or facing a shortage of resources to efficiently fulfil their mandate.

A Gender-Sensitive Approach to Assessing NHRIs

In several countries, the enabling laws of NHRIs have a limited scope on gender—an observation common to quite a few countries covered in the Report. Within these laws, women and lesbian, gay, bisexual, transgender, intersex, questioning/queer identities (LGBTIQ) individuals do not find much mention; where they do, especially women, it is often as a requirement for filling the post of a Commissioner (e.g. '... at least one of the Commissioners should be a woman.'). Within predominantly male leadership in NHRIs in Asia, there is thus some scope for NHRIs to be more gender-inclusive, where more women and LGBTIQ individuals are recruited in leadership positions.

In addition, the usage of binary forms of representation (i.e. 'woman/man, girl/boy') that are institutionalised in the law and functions of some of the NHRIs, has limited the scope of this Report to include 'gender' as a holistic component in some instances. It would ideally also include members of, and references to, the LGBTIQ community.

Overall, while many NHRIs have addressed issues pertaining to 'women and girls,' and/or 'women and children,' there is still potential for them to actively work on issues and challenges faced by the LGBTIQ community and women human rights defenders (WHRDs) . Owing to limited information on the two, the Report could only incorporate some references, wherever available, to highlight these.



LEGEND

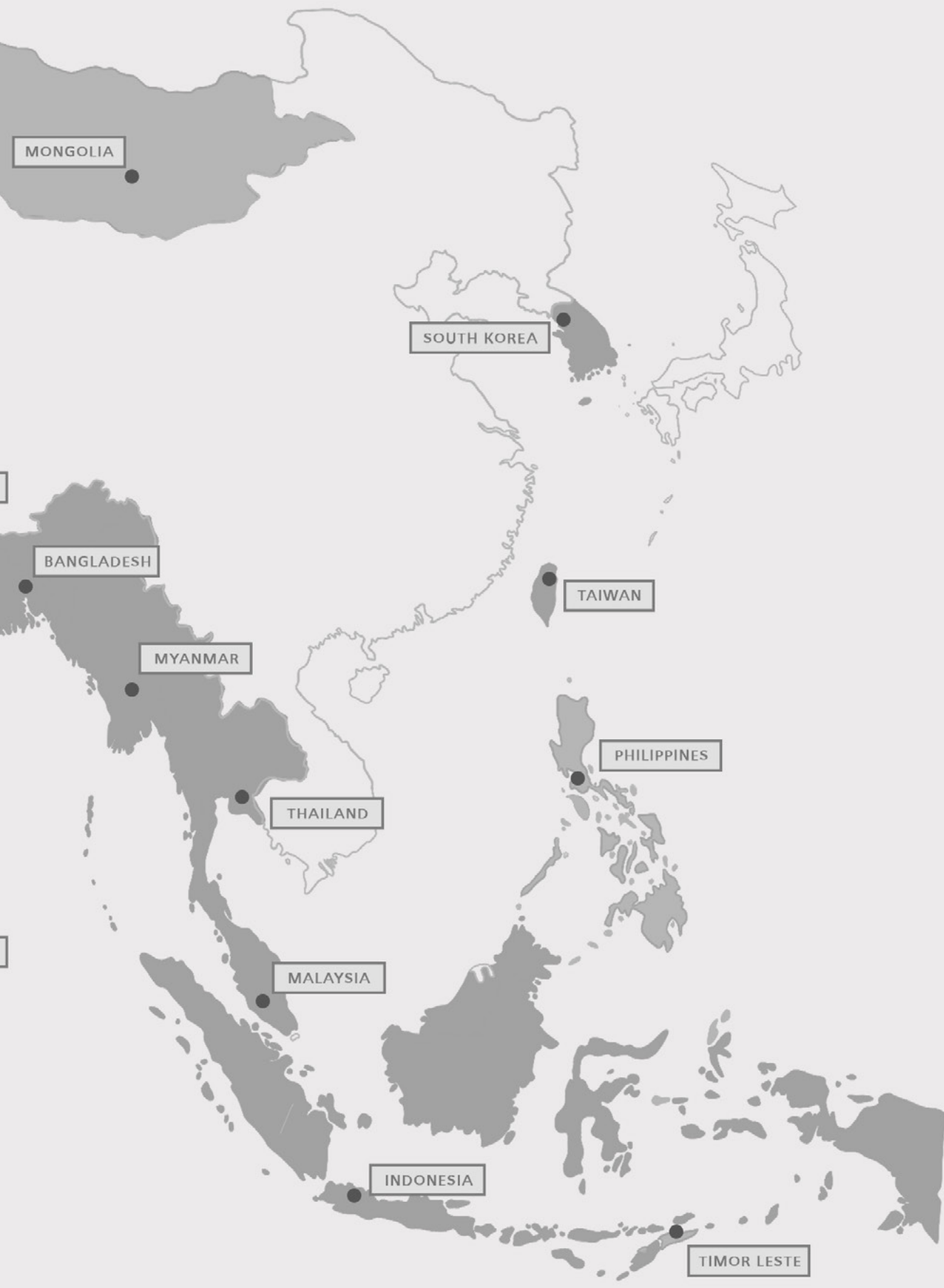
NHRIs NOT FEATURED
IN THIS REPORT

- AFGHANISTAN
- UZBEKISTAN
- MONGOLIA
- MALDIVES
- TIMOR LESTE
- PHILIPPINES

NHRIs FEATURED
IN THIS REPORT

- PAKISTAN
- INDIA
- NEPAL
- BANGLADESH
- MYANMAR
- SRI LANKA
- THAILAND
- MALAYSIA
- INDONESIA
- TAIWAN
- SOUTH KOREA

○ COUNTRIES WITHOUT NHRIs



MONGOLIA

SOUTH KOREA

BANGLADESH

MYANMAR

TAIWAN

THAILAND

PHILIPPINES

MALAYSIA

INDONESIA

TIMOR LESTE

regional overview

Introduction

From 2019 to 2020, the global human rights community was strongly impacted by the COVID-19 pandemic, which has affected human rights work to a great extent. Based on the World Health Organization's (WHO) documentation, as of 27 December 2020, there were over 79,2 million cases and 1,7 million casualties reported since the start of the pandemic.¹ The virus continued to increase in scale and severity such that many countries took extraordinary actions in response to the alarming level of spread within their countries, as urged by the WHO.² In light of the health crisis, CSOs from across Asia, who are also members of ANNI, have raised concerns about the inadequate actions and arbitrary constraints on human rights imposed by many countries through national legislation intended to address the public health emergency. Many of the restrictions on rights enforced by the governments were unjustifiable as they were broadly-worded and not always based on scientific evidence, not enforced with a legal basis, nor made through an inclusive and people-centred approach. The governments failed to ensure that many of these restrictions, in their planning and application, adhere to the principles of non-discrimination or proportionality in achieving the desired result.³ COVID-19 has shown that, in the time of this unprecedented crisis, the governments of many countries were unprepared to respect, protect, or fulfil the human rights of all.

NHRIs, as independent bodies with a constitutional and/or legislative mandate to protect and promote human rights, are the bedrock of a strong human rights protection system in a national context. An NHRI is a uniquely-positioned institution in a State as it should not be under the direct authority of the executive branch, legislature, or judiciary.⁴ They are funded by the Government, yet there are many NHRIs who are critical of the government's acts of commission or omission that have resulted in human rights violations. Moreover, the work of the NHRI is to ensure that the rights of the people are protected as a part of the State's responsibility; to propose the enactment, amendment, or repeal of national legislation, consistent with international human rights law and standards, as well as engage with regional and international human rights systems.⁵

The work of NHRIs is guided under a set of principles known as the Paris Principles. NHRIs' functions as stipulated in the Paris Principles are divided into human rights promotion and protection.⁶ The document, which has been adopted by the General Assembly Resolution 48/134, lays out the minimum international standards for an institution to show that it has the capacity to run effectively as an NHRI. In order to ensure that NHRIs work in compliance with the Paris Principles, they need to undergo a periodic accreditation process conducted by GANHRI-SCA. The NHRIs who are assessed are given the accreditation of either an 'A' status

1 WHO, COVID-19 Weekly Epidemiological Update, 29 December 2020, <https://www.who.int/publications/m/item/weekly-epidemiological-update---29-december-2020>.

2 'WHO Calls for urgent, aggressive actions to combat COVID-19, as cases soar in South-East Asia Region,' WHO, 17 March 2020, <https://www.who.int/southeastasia/news/detail/17-03-2020-who-calls-for-urgent-aggressive-actions-to-combat-covid-19-as-cases-soar-in-south-east-asia-region>.

3 Human Rights Watch, Human Rights Dimensions of COVID-19 Response, 19 March 2020, <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#>.

4 OHCHR, National Human Rights Institution: History, Principles, Roles and Responsibilities, 2010, https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

5 Ibid.

6 UN General Assembly, 'Principles relating to the Status of National Institutions (The Paris Principles),' 20 December 1993, GA Res. 48/134, <https://www.un.org/ruleoflaw/files/PRINCI~5.PDF>.



if they are deemed to be in full compliance with the Paris Principles, or a 'B' status if they are partially-compliant.⁷

As of 2020, there were 118 NHRIs in the world, 24 of which were in the Asia Pacific region.⁸ Among these, most of the Asian countries where NHRIs exist, and where ANNI has member organisations, have been included in the map below:

(Refer to map above)

During the COVID-19 pandemic, NHRIs have played an important role in responding to human rights situations in a highly restrictive environment in many countries. They have supported governments in the planning, implementation and prevention of the violation of the right to health; voiced their concerns on restrictions that affected the rights of the people which were not aligned with international human rights standards; advocated for the rights of marginalised groups; and developed innovative approaches to address the deterioration of human rights protection in many national contexts.⁹ However, members of ANNI have also reported that many NHRIs have failed to adequately address the impact of COVID-19 on human rights in various countries.

In 2020, ANNI's documentation of NHRIs' responses to COVID-19 showed that governments in the region did not consult with their NHRI in developing responses to COVID-19.¹⁰ This condition left NHRIs excluded from the planning of various measures by governments, many of which have mainly disregarded human rights in the implementation of their measures. Several NHRIs were also working heavily on only raising the public's awareness of the human rights situation during the pandemic while failing to hold their respective governments accountable for the human rights violations resulting from their COVID-19 responses or the lack of one.

As countries in Asia continue to experience a setback to democracy and the rule of law, NHRIs play a key role in ensuring that the rights of the people are protected, by advocating for a safe, democratic space for everyone. They are expected to address the heightened risks faced by the most vulnerable groups, such as elders, women, children, indigenous people, refugees, internally displaced persons (IDPs), and LGBTIQ persons. While some NHRIs have

7 GANHRI, 'Accreditation,' accessed 1 December 2021, <https://ganhri.org/accreditation/>.

8 GANHRI, 'Membership,' accessed 8 December 2021, <https://ganhri.org/membership/>.

9 GANHRI, 2020 Annual Report, accessed 1 December 2021, <https://ganhri.org/wp-content/uploads/2021/10/2020-GANHRI-Report.pdf>.

10 FORUM-ASIA, ANNI, National Human Rights Institutions' Responses to COVID-19, 21 December 2020, <https://www.forum-asia.org/uploads/wp/2020/12/Report-ANNI.pdf>.

conducted needs assessments on the required protections of these marginalised groups, many have left these communities at risk of human right violations and further discrimination from their governments.

HRDs continued to face attacks, harassment and intimidation during the pandemic as they persisted with their human rights work. Throughout 2020, there were at least 331 HRDs who were killed globally, 44 of whom were WHRDs.¹¹ From January to October 2020, FORUM-ASIA has documented 525 cases of human rights violations against HRDs in 22 Asian countries, affecting at least 1,305 HRDs. The most common violations were judicial harassment, intimidation, threats and physical violence.¹² The families and communities of the HRDs were also targeted with the intention to stop them from continuing their work. Many of the defenders were targeted as they exercised their freedom of expression, freedom of assembly and of association, and freedom of movement,¹³ in particular those who voiced their criticisms of their government's COVID-19 responses.

The role of NHRIs in ensuring a safe and enabling environment for HRDs to conduct their work effectively without fear of reprisals is of paramount importance as they are the cornerstone of democracy and rule of law in national frameworks. Moreover, NHRIs should be able to identify the intersectionality aspect of HRDs, as the risks they face are very diverse in accordance with their backgrounds, issues they advocate for, and even the values they promote. As HRDs themselves, NHRIs play a crucial role in ensuring protection is in place and in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms¹⁴ and the Marrakech Declaration of 2018.¹⁵

In the face of unceasing deterioration of democracy, erosion of the rule of law, and multifarious human rights violations during the COVID-19 outbreak, the ANNI Report 2020 on

11 Front Line Defenders, Global Analysis 2020, 9 February 2021, https://www.frontlinedefenders.org/sites/default/files/flid_global_analysis_2020.pdf.

12 'International Human Rights Defenders Day 2020,' FORUM-ASIA, 9 December 2020, <https://www.forum-asia.org/?p=33413>.

13 FORUM-ASIA, Human rights defenders in the face of COVID-19, 16 June 2020, <https://www.forum-asia.org/?p=32185>.

14 UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144, 8 March 1999, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.

15 GANHRI, The Marrakech Declaration: Expanding the civic space and promoting and protecting human rights defenders with a specific focus on women: The role of national human rights institutions, 12 December 2018, https://ganhri.org/wp-content/uploads/2019/11/Marrakech-Declaration_ENG_-12102018-FINAL.pdf.

the Performance of National Human Rights Institutions in Asia assesses the performance of NHRIs in terms of their conformity with the Paris Principles.

Shrinking Civic Space in Asia

Every country in the world is facing one of the most challenging moments in history as they combat the ever-growing outbreak of COVID-19. In January 2020, the WHO declared that the outbreak constitutes a Public Health Emergency of International Concern (PHEIC).¹⁶ The measures taken by countries in Asia varied. Many countries took aggressive measures, facilitated by a declaration of a state of emergency, using the pandemic as a pretext. This caused a massive increase of various human rights violations in many countries. Several major human rights concerns included the protection of freedom of expression, freedom of assembly and association, right to critical information, lawful restrictions in accordance with international human rights norms, protection of people in places of deprivation of liberty, protection of health workers, right to education, countering xenophobia and discrimination, and protection of community and CSOs.¹⁷

From 2019 to 2020, civil society experienced repressions of their fundamental rights in the presence of authoritarian governments in Asia. ANNI members reported a spike of judicial harassment conducted against HRDs, justified by the use of draconian laws, which stifled their freedom of expression and freedom of peaceful assembly and of association. In Bangladesh, the authorities targeted doctors, academics, students and opposition activists who shared their legitimate concerns and grievances relating to the government's response to COVID-19 using the Digital Security Act. The law punished persons who spread 'rumours' and 'misinformation',¹⁸ terms that are susceptible to broad interpretation by the Government.

Similarly, the Indian Government conducted systemic violations of freedom of expression and association through repressive laws, namely the Unlawful Activities (Prevention) Act (UAPA) and the National Security Act. At least nine students who peacefully protested against the Citizenship (Amendment) Act, 2019 (CAA) were arrested and detained as 'terrorists' and 'insurgents,' while hate speech and violence targeted against the protesters were overlooked by the authorities.¹⁹ The ongoing pro-

16 'WHO declares Public Health Emergency on novel coronavirus,' WHO, 30 January 2020, <https://www.paho.org/en/news/30-1-2020-who-declares-public-health-emergency-novel-coronavirus>.

17 Human Rights Watch, Human Rights Dimensions of COVID-19 Response.

18 'Blocking media access during COVID-19,' The Daily Star, 3 May 2020, <https://www.thedailystar.net/opinion/magic-madness/news/blocking-media-access-during-covid-19-1898767>.

19 Amnesty International, India 2020, accessed 1 December

democracy protests in Thailand have continued to face repercussions. Within one week in October 2020, at least 90 individuals involved in the protests were targets of judicial harassment. The protest leaders were charged with lèse-majesté (defamation against the monarchy) in order to stifle dissent.²⁰ In Indonesia, the Government curtailed civil society members protesting the Omnibus Bill on Job Creation, which ironically would further undermine workers' rights.²¹ Moreover, in response to the worsening COVID-19 situation in the country, the Indonesian Chief of Police issued an internal telegram to sweep people who used their social media for criticising the Government, curbing people's freedom of expression through online platforms.²²

The vicious enforcement of draconian laws in Asian countries throughout 2020 displayed a serious impediment to the human rights situation in the region. The recurrent use of dangerous legislation marked the failure of the governments in protecting, respecting and fulfilling the human rights of their people, in particular during a public health crisis.

Growing Violence Against HRDs and WHRDs

Amidst the pandemic, the risks faced by HRDs across Asia remained present, and even escalated in many countries. Judicial harassment, physical violence, sexual violence, stigmatisation and other forms of violence have hindered HRDs and WHRDs in working safely and effectively in their respective countries. They are often attacked by the Government when they voice their concerns on the actions or inaction of the government.

ANNI members have continued to monitor and document the cases of violence against HRDs. In the situation of an ongoing armed conflict, 58 HRDs in Myanmar became victims of an unfair trial as they were arbitrarily arrested and charged with violations of the Telecommunication Law and Sections 505(a) and 505(b) of the Penal Code.

2020, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/india/report-india/>.

20 'Thai Authorities Use Excessive Force, Lese Majeste Laws to Clamp Down on Pro-Democracy Protests,' CIVICUS, 2 December 2020, <https://monitor.civicus.org/updates/2020/12/02/thai-authorities-use-excessive-force-lese-majeste-laws-clamp-down-pro-democracy-protests/>.

21 'Indonesia: Thousands protest against 'omnibus law' on jobs,' BBC, 8 October 2020, <https://www.bbc.com/news/world-asia-54460090>; 'Omnibus Bill on Job Creation Poses 'Serious Threat' To Human Rights,' Amnesty International, 19 August 2020, <https://www.amnesty.id/omnibus-bill-on-job-creation-poses-serious-threat-to-human-rights/>.

22 'Criticism 'not an insult': Police's plan to nab slanderers of govt over COVID-19 questioned,' The Jakarta Post, 6 April 2020, <https://www.thejakartapost.com/news/2020/04/06/criticism-not-an-insult-polices-plan-to-nab-slanderers-of-govt-over-covid-19-questioned.html>.

Artists whose performances were critical of the military junta were charged with 'online defamation' under the aforementioned laws.²³

HRDs in Pakistan have faced persecution for opposing the government's leaders and policies. Journalists who work to uphold the right to information have been at a heightened risk as they were arrested following an accusation by the Pakistani military and charged with sedition and 'high treason' after making statements on social media.²⁴ After the change in government in Malaysia, civil society has suffered from the increasing use of the Sedition Act 1948 and Communication and Multimedia Act 1998 in silencing the opinions of HRDs. Several people involved in 'Save Malaysia' peaceful protests were investigated by the police without having specified the alleged offence. This process has restricted the public in exercising their freedom of peaceful assembly and of association in Malaysia.²⁵ In Nepal, WHRDs continue to experience sexual and gender-based violence (SGBV) as their work has been delegitimised. These WHRDs and their family members have been a target of attacks by State and non-state actors.²⁶

HRDs work to bring about changes that can make the world a better place by ensuring that the human rights of all people are protected. They come from very diverse backgrounds and advocate for a very broad range of issues. The cases documented by ANNI show that HRDs are often attacked, imprisoned and even killed by people in power. In times of the pandemic, governments in Asia often used draconian laws to gag the critical voices of HRDs under the name of national security. The threats, intimidation and harassment faced by HRDs in Asia are the evidence of democratic regression in the region as the democratic space and civil liberties that should have been broadened were curtailed.

23 Amnesty International, Myanmar 2020, accessed 1 December 2021, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/myanmar/report-myanmar/>.

24 'Express Tribune journalist Bilal Farooqi arrested in Karachi for 'defaming Pakistan army'', Dawn, 11 September 2020, <https://www.dawn.com/news/1579118>; 'Pakistani Journalists Face Treason Charges for Criticizing Military,' Gandhara, 16 September 2020 <https://gandhara.rferl.org/a/pakistani-journalists-face-treason-charges-for-criticizing-military/30841924.html>.

25 'Cops to probe Ambiga, Marina Mahatnir over 'Save M'sia' protest,' Malaysiakini, 2 March 2020, <https://www.malaysiakini.com/news/512927>.

26 FORUM-ASIA, Women Human Rights Defenders: Insights from the Struggle, 7 November 2019, https://www.forum-asia.org/uploads/wp/2020/03/WP_WHRD_Chapter-on-Nepal.pdf.

NHRIs' Response to Human Rights Violations in the Times of the Pandemic

The roles of NHRIs in these anomalous situations have been more significant than ever as they have been vested with a broad mandate to promote and protect human rights, at least for the NHRIs that are in compliance with the Paris Principles. An independent and effective NHRI that can elevate the human rights situation will be a strong instrument in a national context, even under challenging times such as during the COVID-19 outbreak and armed conflict. However, ANNI has recorded many failures of NHRIs across Asia in conducting their work, as their independence has been corroded through the enactment of new laws or changes to constitutions as a result of national political developments, which has been the case for the Human Rights Commission of Sri Lanka (HRCSL)²⁷ and the National Human Rights Commission of Thailand (NHRCT).²⁸ CSOs have continuously witnessed the ignorance of NHRIs in the face of human rights violations, as they were not able to perform independently, especially if the State was under political turmoil, as in Myanmar, for example.

The Myanmar National Human Rights Commission (MNHRC) was reported to have been idle in the presence of the genocide of the Rohingya, widespread SGBV conducted by the military, and increasing attack towards HRDs. In the situation of continuing internal unrest in Myanmar, the MNHRC has remained silent in the face of indiscriminate violence conducted by the military.²⁹ It failed to address the impunity of the military, which perpetrated SGBV against women, girls, boys, men and transgender people of ethnic minorities, resulting in an atrocious humanitarian crisis which is far from resolved within the country.³⁰

27 UN Human Rights Council, Letter to the Government of Sri Lanka from the mandates of the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 10 December 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25762>.

28 ANNI, '[Joint Statement] Thailand: Strengthen National Human Right Commission before Accreditation Upgrade,' 16 December 2020, <https://www.forum-asia.org/?p=33462>.

29 'Myanmar's rights commission failing to act on 'atrocities crimes' in Rakhine state, say advocates,' Myanmar Now, 25 September 2020, <https://www.myanmar-now.org/en/news/myanmars-rights-commission-failing-to-act-on-atrocities-crimes-in-rakhine-state-say-advocates>; FORUM-ASIA, '[Joint Statement] Myanmar: Myanmar National Human Rights Commission Must Ensure Human Rights are Protected amid COVID-19 Pandemic,' 27 May 2020, <https://www.forum-asia.org/?p=31809>.

30 'UN Fact-Finding Mission on Myanmar Calls for Justice for Victims of Sexual and Gender-based Violence,' OHCHR, 22 August 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24907&LangID=E>.

Despite receiving most of their funding from the state, NHRIs are required to remain neutral from the Government and CSOs. It is one of the most essential requirements of a functioning and Paris Principles-compliant national institution. At the heart of their work is the objective and nonpartisan way of working to promote and protect human rights. However, the independence of NHRIs has been corroded through various ways, such as restrictions on their financial autonomy, such as that experienced by the National Commission for Human Rights, Pakistan (NCHR). Here, funding for the NCHR requires approval by the Federal Government if the donation comes from a foreign source.³¹ In addition, the selection processes of the Commissioners in several NHRIs has been infiltrated by individuals who might be biased towards the people in power, as the process is implemented in a non-transparent manner, with a lack of public participation and inclusivity, for example, as was the case for the NHRCT.³²

Many NHRIs were also unable to work on their protection mandate in effectively and proactively responding to human rights complaints. The National Human Rights Commission, Bangladesh (NHRCB) failed to conduct an investigation into cases of human rights violations perpetrated by law enforcement agencies (LEAs), presumably in an effort to avoid politically sensitive issues.³³ Victims of human rights violations also reported the unresponsiveness of the NHRCB in following-up on complaints, pointing to their weak complaints-handling mechanism. During the COVID-19 pandemic, civil society in Malaysia has noted that National Human Rights Commission of Malaysia's (SUHAKAM) capacity in addressing human rights complaints was sluggish, as they were forced to close their office during the Movement Control Order (MCO) period. The prohibition of interstate travel imposed by the Malaysian Government also resulted in the suspension of several investigations and public inquiries that should have been done by SUHAKAM in a swift manner.³⁴

Despite immense challenges that obstructed the work of the NHRIs in the region, ANNI would like to acknowledge and celebrate some success stories throughout 2020. By providing him legal aid through the Commission's panel lawyers, a suo moto complaint initiated by NHRCB successfully released an innocent man who underwent an unfair trial and was imprisoned due to a similarity of

his personal information with the accused. SUHAKAM has taken a more prominent role in developing the Sexual Harassment Bill and Anti-Discrimination against Women Bill in Malaysia.³⁵

It conducted a needs assessment of disadvantaged and vulnerable communities such as refugees, undocumented migrants and indigenous people in Sabah and Sarawak as a response to the lasting pandemic.³⁶ The National Human Rights Commission of Korea (NHRCK) raised the issue of discrimination against Byun Hee-Soo, a transwoman staff sergeant who underwent sex reassignment surgery, as a human rights violation.³⁷ The action made by the NHRCK was a good example of advocating for the rights of LGBTIQ people in the region.

31 The National Human Rights Commission Act, 2012, Section 25, https://www.fidh.org/IMG/pdf/annual-hr-report-2020_eng.pdf.

32 ANNI, '[Joint Statement] Thailand: Strengthen National Human Right Commission before Accreditation Upgrade.'

33 Odhikar, Annual Human Rights Report 2020: Bangladesh, 25 January 2021, https://www.fidh.org/IMG/pdf/annual-hr-report-2020_eng.pdf, p. 20.

34 'Suhakam inquiry into disappearance of Joshua Hilmy, wife to resume Aug 12,' The Star, 10 August 2020, <https://www.thestar.com.my/news/nation/2020/08/10/suhakam-inquiry-into-disappearance-of-joshua-hilmy-wife-to-resume-aug-12>.

35 'SUHAKAM's Press Statement on International Women's Day 2020,' SUHAKAM, 8 March 2020, <https://www.suhakam.org.my/wp-content/uploads/2020/03/Press-Statement-No.-4-of-2020-International-Womens-Day-2020.pdf>.

36 'Dialogue with Vulnerable Communities: An Assessment of Needs and Next Steps Amid COVID-19 Pandemic,' SUHAKAM, May 2020, <https://suhakam.org.my/2020/05/>.

37 'Watchdog says forced discharge of transgender soldier violates human rights,' The Korea Herald, 18 December 2020, <http://www.koreaherald.com/view.php?ud=20201218000633>.

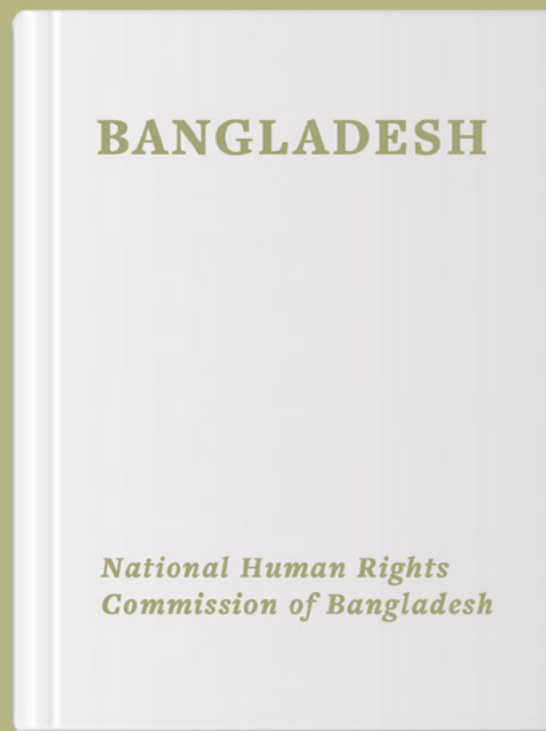
Conclusion

ANNI would like to acknowledge that many NHRIs in Asia continued to promote and protect human rights during the unprecedented public health crisis. However, ANNI has identified many gaps and challenges they need to overcome as an NHRI to conform to the minimum standards stipulated in the Paris Principles and to be attuned to the needs of civil society and victims of human rights violations. Maintaining NHRIs' independence and deepening their engagement with civil society elements in implementing their mandates are crucial in the pursuit of a safe and enabling environment for all people to be able to enjoy their fundamental rights and freedoms to the fullest, regardless of their social class, caste, economic status, gender identity, race, or culture.

In the occurrence of human rights violations due to a dramatic political change, the role of NHRIs become more significant than ever as they are expected to be able to carry out their functions in addressing said violations, most importantly if the perpetrators are the governments themselves. They should not contribute to the cycle of impunity, but rather put an end to it. The NHRIs must continue to strengthen their understanding of embracing diversity and pluralism not as a jargon, but internalise it within the institution and become a positive example to other institutions in the national context. Meaningful participation and involvement of every element of society in the work of NHRIs should also be considered the most integral part of their work. Therefore, ANNI will continue to advocate for the realisation of stronger NHRIs in Asia, voice our concerns and critically assess the effectiveness of NHRIs, as well as collaborate with them in various avenues as an equal partner in advancing human rights in the region.

BANGLADESH:

ENSURING THE BANGLADESHI GOVERNMENT'S HUMAN RIGHTS
ACCOUNTABILITY: IS THE NHRCB FULFILLING ITS MANDATE ENOUGH?¹



| | |
|--|---|
| YEAR OF ESTABLISHMENT | 2007 |
| COMPOSITION OF MEMBERS | SEVEN |
| DIVERSITY REQUIREMENT UNDER LAW | AT LEAST ONE MEMBER SHOULD BE A WOMAN, AND ONE MEMBER FROM AN ETHNIC GROUP ⁴ |
| TERM OF MEMBERS | THREE YEARS |
| CURRENT CHAIRPERSON | NASIMA BEGUM |
| CURRENT GENDER RATIO (WOMEN : MEN) | 4 : 3 |
| AUTHORITY TO APPOINT MEMBERS | PRESIDENT, UPON RECOMMENDATION OF THE SELECTION COMMITTEE |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | B (LAST REVIEWED IN 2015) |
| REGIONAL OFFICES | FOUR (RANGAMATI, KHULNA, COX'S BAZAR, AND GOPALGANJ) |
| ADDRESS | BTMC BHABAN (8TH FLOOR) 7-9 KAZI NAZRUL ISLAM AVE, KAWRAN BAZAR, DHAKA-1215, BANGLADESH |
| PHONE | 88-02-55013716 (SECRETARY) |
| HELPLINE NUMBER | 16108 |
| EMAIL | info@nhrc.org.bd |
| WEBSITE | www.nhrc.org.bd |



MANY PEOPLE, IN WRITERS, CARTOON TEACHERS, STUDENTS AND JOURNALISTS ARBITRARILY ARRESTED DURING THE DIGITAL SECURITY

I. Overview

The National Human Rights Commission, Bangladesh ('NHRCB' or 'Commission') is a statutory body whose primary function is the protection and promotion of human rights. It was established through the National Human Rights Commission Ordinance 2007, which came into effect on 1 September 2008. The NHRCB was then reconstituted through the National Human Rights Commission Act 2009 (hereinafter 'NHRC Act' or 'Act') passed on 14 July 2009. While enacted in July 2009, the Act operates from 1 September 2008.² The current Commission (Chairperson and members) took office in September 2019.³

(Refer to table above)⁴

1 Ain o Salish Kendra (ASK), a national legal aid and human rights organisation, provides legal and social support to the disempowered, particularly women, working children and workers. Its goal is to create a society based on equality, social and gender justice, and the rule of law. ASK: A Legal Aid & Human Rights Organisation, <https://www.askbd.org/web/>. To be consistent with the objectives of the ANNI report, the reporting in this chapter is not meant to be an exhaustive discussion of all the human rights issues in Bangladesh in 2020.

2 NHRC, 'Establishment of the National Human Rights Commission (NHRCB),' accessed 18 October 2021, <http://www.nhrc.org.bd/site/page/1c65dfa1-f9c2-48e9-a66b-eab8de75d9b1/->.

3 Ibid.

4 (Refer to table in previous page) National Human Rights Commission Act (2009), Section 5.

Human Rights Situation during the COVID-19 Pandemic

The outbreak of COVID-19 resulted in a series of human rights violations in the country. It particularly impacted the right of people to health and access to quality healthcare services during this period.⁵ The Government of Bangladesh was not able to adequately deal with the COVID-19 outbreak. The lack of an effective response attracted a lot of criticism, specifically related to: its failure to take pre-emptive measures;⁶ the lack of inter-department coordination;⁷ insufficient testing and hospital facilities; ⁸the unavailability of adequate safety

5 Saeed Anwar, Mohammad Nasrullah, Mohammed Jakir Hosen, 'COVID-19 and Bangladesh: Challenges and How to Address Them,' *Front. Public Health*, 30 April 2020, <https://www.frontiersin.org/articles/10.3389/fpubh.2020.00154/full>.

6 Dr. Raqibul Mohammad Anwar, 'COVID-19 pandemic: A plan that works,' *The Dhaka Tribune*, 26 April 2020, <https://www.dhakatribune.com/opinion/op-ed/2020/04/26/covid-19-pandemic-a-plan-that-works>.

7 'ARTICLE 19: Lack of transparency, management, coordination deepen crisis in Bangladesh,' *The Dhaka Tribune*, 3 May 2020, <https://www.dhakatribune.com/bangladesh/2020/05/03/article-19-lack-of-transparency-management-coordination-deepen-crisis-in-bangladesh>.

8 Md. Bodrud-Doza, Mashura Shammi, Laura Bahlman, Abu Reza Md. Towfiqul Islam and Md. Mostafizur Rahman, 'Psychosocial and Socio-Economic Crisis in Bangladesh Due to COVID-19 Pandemic: A Perception-Based Assessment,' *Front. Public Health*, 26 June 2020, <https://www.frontiersin.org/articles/10.3389/fpubh.2020.00341/full>.

CLUDING ONISTS, NTS, ACTIVISTS, S, WERE STED UNDER RITY ACT, 2018

gear for all frontline health workers;⁹ and mishandling and corruption in the management of the pandemic.¹⁰ However, the Government came down heavily on these criticisms, labelling them ‘rumours and ‘misinformation.’¹¹ Many people, including writers, cartoonists, teachers, students, activists, and journalists, were arbitrarily arrested under the Digital Security Act, 2018,¹² and more than 240 journalists were subjected to various forms of harassment.

9 Mohammad Al-Masum Molla, ‘Govt now scrambles for testing kits, PPE,’ *The Daily Star*, 19 March 2020, <https://www.thedailystar.net/frontpage/news/govt-now-scrambles-testing-kits-ppe-1882633>; Edris Alam, Khameis Al Abdouli, Amar Hassan Khamis, Hafiz Uddin Bhuiyan, Kazi Abdur Rahman, ‘Public Trust in COVID-19 Prevention and Responses Between January and May 2020 in Bangladesh,’ 20 July 2021, Dovepress, <https://www.dovepress.com/public-trust-in-covid-19-prevention-and-responses-between-january-and-peer-reviewed-fulltext-article-RMHP>.

10 ASK, Human Rights Situation of Bangladesh in 2020: An Observation, p. 3; Arifur Rehman Rabi, ‘Regent Hospital Scam: 160 Complaints against Shahed in 5 Days,’ *Dhaka Tribune*, 23 July 2020, <https://www.dhakatribune.com/bangladesh/2020/07/23/regent-hospital-scam-160-complaints-against-shahed-in-5-days>; Kamrul Hasan, ‘Regent Hospital Scam: Health Ministry, DGHS Scramble to Find Answers,’ *Dhaka Tribune*, 12 July 2020, <https://www.dhakatribune.com/bangladesh/2020/07/12/regent-hospital-scam-health-ministry-dghs-scramble-to-find-answers>.

11 Badiuzzaman Bay, ‘Blocking Media Access During Covid-19,’ *The Daily Star*, 3 May 2020, <https://www.thedailystar.net/opinion/magic-madness/news/blocking-media-access-during-covid-19-1898767>.

12 ‘BANGLADESH: Surge of Arbitrary Detention under Digital Security Act Leads to Deepening Crisis,’ Asian Human Rights Commission, 13 July 2020, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2020/>.

¹³ Law enforcement agencies (LEAs) further curtailed the right to peaceful assembly through their use of excessive force; supporters of the ruling party also interfered with peaceful protests.¹⁴

Violations of the right to life through extra judicial killings and deaths in custody were also evident throughout 2020.¹⁵ In addition, instances of violence against women were prevalent throughout the year.¹⁶ At different times in 2020, there were also attacks on religious¹⁷ and ethnic minority¹⁸ communities.

The Commission’s response to these violations came in the form of 16 press statements on human rights issues, letters, and notices to the relevant authorities,¹⁹ and webinars,

13 ASK, Journalist Harassment (Jan-Dec 2020), <https://www.askbd.org/ask/2020/12/31/journalist-harassment-jan-dec-2020/>; ASK, Human Rights Situation of Bangladesh in 2020: An Observation, p. 16.

14 Amnesty International, Bangladesh 2020, accessed 11 November 2021, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/bangladesh/report-bangladesh/>.

15 ASK, Death by Law Enforcement Agencies (Jan-Dec 2020), 31 December 2021, <https://www.askbd.org/ask/2020/12/31/death-by-law-enforcement-agencies-jan-dec-2020/>; ASK, Death by Law Enforcement Agencies (Jan-April 2021, 6 May 2021, <https://www.askbd.org/ask/2021/05/06/death-by-law-enforcement-agencies-jan-apr-2021/>.

16 Human Rights Watch, ‘‘I Sleep in My Own Deathbed’ Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support,’ 29 October 2020, <https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers>.

17 See CSW, General Briefing: Bangladesh, 1 May 2020, <https://www.csw.org.uk/2020/05/01/report/4636/article.htm>; ASK, Death by Law Enforcement Agencies (Jan-Dec 2020). For example: On 14 January 2020, fundamentalists attacked the mosque and houses of the Ahmadiyya community in Kandipara, Brahmanbaria. ‘Ahmadiyya mosque vandalized in Brahmanbaria,’ *Dhaka Tribune*, 16 January 2020, <https://www.dhakatribune.com/bangladesh/nation/2020/01/16/ahmadiyya-mosque-vandalized-in-brahmanbaria>. On 9 July, after a child from the Ahmadiyya community was buried, the body was dug up again a few hours later from the area only because ‘fanatics’ claimed the child was not Muslim. ‘Body of Bangladesh newborn baby dug from grave and dumped by roadside,’ *The Straits Times*, <https://www.straitstimes.com/asia/south-asia/body-of-bangladesh-newborn-baby-dug-from-grave-and-dumped-by-roadside>.

18 See Amnesty International, Bangladesh 2020; ASK, Human Rights Situation of Bangladesh in 2020: An Observation, p. 18. Another example is the case of Basanti Rema from Madhupur, Tangail. Rafiqul Islam, ‘Bangladesh’s Indigenous Forest Dwellers Fear Losing Ancestral Land as Officials Grapple with Land Grabs,’ *Inter Press Service*, 7 July 2021, <http://www.ipsnews.net/2021/07/bangladeshs-indigenous-forest-dwellers-fear-losing-ancestral-land-officials-grapple-land-grabs/>; Lakingme Chakma from Teknaf, Cox’s Bazar, is another example. *Star Online Report*, ‘Abducted, converted, murdered: Rights groups demand justice for Lakingme Chakma,’ 19 January 2021, <https://www.thedailystar.net/country/news/abducted-converted-murdered-rights-groups-demand-justice-lakingme-chakma-2030393>; The Mro community in Bandarban’s Chimbuk Hill continue to live in fear of being evicted from their lands for the planned construction of a five-star hotel and amusement park there. ‘Help protect the Indigenous Mro from forced eviction – Open Letter Submitted,’ IWGIA, 27 November 2020, <https://www.iwgia.org/en/news/3916-help-protect-indigenous-mro-forced-eviction-sign-open-letter.html>.

19 NHRC, Annual Report 2020, <https://drive.google.com/file/d/1>

workshops, and online meetings on various human rights themes.²⁰ In 2020, the NHRCB received 481 complaints, but was only able to act on 347 of them. Significantly, these 347 cases included complaints that had been filed prior to 2020.²¹ A total of 698 complaints remain pending as of the end of 2020.²²

II. NHRCB’s Mandate to Promote and Protect Human Rights

Independence

As per the NHRC Act, the Commission was established for ‘protecting, promoting, and providing guarantee of human rights properly’ in Bangladesh.²³ The Act provides complete independence for the Commission to carry out its mandate, including ‘perpetual succession and the power to dispose of property’²⁴ as well as financial independence.²⁵ However, in practice, the appointment process of members to the Commission severely affects its ability to discharge these functions independently.

As per the NHRC Act, the President appoints the Chairperson and Members of the Commission based on the recommendation of the Selection Committee.²⁶ The Selection Committee has seven members: (a) Speaker of Parliament, who shall be the Chairperson; (b) Minister of Law, Justice and Parliamentary Affairs; (c) Minister of Home Affairs; (d) Chairperson of the Law Commission; (e) Cabinet Secretary, Cabinet Division; and (f) two members of Parliament, with one coming from the Treaty Bench and the other from the opposition.²⁷ It is important to note that the quorum is complete if four members of the seven-member selection committee are present, with effectively six of them from the ruling party and one from the opposition. The composition and the required quorum for the selection of members can undermine the impartiality of the selection and appointment of members.

The Chair and full-time members, who are appointed to the Commission, assess a human rights situation from

their own perspective; that is, if they think an issue is politically sensitive and there is a high possibility that their interference may upset the Government or a section of the Government, they would be less active in inquiring into or monitoring that issue.²⁸ There is a perception shared among civil society groups that Commissioners are merely interested in securing re-appointment during their first term, and, during the second term, in being appointed to notable positions in other governmental agencies after the expiration of their term, which thereby affects the independence and effectiveness of the NHRCB in performing its mandate. There is also the view that the tendency to appoint bureaucrats in the Commission has increased, in light of former bureaucrats’ perceived advantage in maintaining communication with government ministries.²⁹

Despite recommendations from the GANHRI-SCA, and persistent demands from CSOs to hold public consultation and ensure a transparent selection process, the selection process still remains under wraps.³⁰ Regrettably, in more than 10 years since its establishment, the NHRCB has become a workplace for ‘retired government officials,’ raising further questions about its independence and effectiveness.³¹

28 Based on interactions between the experts, the NHRC, and other relevant stakeholders.

29 The statement is based on the analysis presented by CSOs regarding the performance of NHRC in Bangladesh. See also ASK, A Decade of Human Rights Commission Bangladesh – Efficacy, Existing Challenges and Opportunities, December 2020, <https://drive.google.com/file/d/1GkwiKKJyCCMMhshA7oSgYfcAgYypjY6W/preview>, pp. 91–97.

30 ASK, ‘What Kind of NHRC Do We Want?’ 30 May 2019, <https://www.askbd.org/ask/2019/05/30/what-kind-of-nhrc-do-we-want/>.

31 ‘Appointment of New NHRC Chief, Rights Body concerned,’

7z6MxeT87lvGubXaBnx2HkS4vixhsVPL/view, p. 57.

20 Ibid. pp. 49–56.

21 Ibid. p. 24.

22 Ibid. p. 25.

23 NHRC Act, Introduction

24 Ibid. Section 3(2).

25 Ibid. Section 25.

26 Ibid. Section 6.

27 Ibid. Section 7.



“In addition, instances of violence against women were prevalent throughout the year.”

Mandate

The NHRCB has a mandate to promote and protect human rights. However, the term ‘human rights’ is defined in the Act as merely the ‘Right to life, Right to liberty, Right to equality and Right to dignity of a person guaranteed by the constitution of the People’s Republic of Bangladesh and such other human rights that are declared under different international human rights instruments’ ratified by Bangladesh, which adds a precondition to human rights protection, and is therefore limited.³² Further, in practice, the Commission’s actions are less visible on issues related to civil and political rights, especially the right to freedom of expression, and repressive laws and policies of the government.³³ From the selective responses of the Commission on these issues, there is a perception amongst CSOs that the Commission does not want to upset or directly dissatisfy the Government.

With regards to the procedure which is followed by the Commission in cases of human rights abuses by the disciplined forces which include the police, Section 18 of the Act provides that the Commission may take action either suo moto (of its own accord) or on an application made to it, and call on the Government to report on the allegations of human rights violations. The Commission will not take any further steps if it is satisfied with the report of the Government, but if it ‘deems [it] necessary,’ it may make recommendations to the Government for appropriate action. The mere recommendatory power of the Commission limits its ability to protect human rights. Further, the nature of the power is discretionary, that is, it can choose not to conduct investigations, meet with the concerned authorities, send summons, or move the case to the High Court, etc.³⁴ In fact, the Commission has not utilised such powers effectively in the past.

The Daily Star, 25 September 2019, <https://www.thedailystar.net/city/news/rights-bodies-concerned-1804819>.

32 NHRC Act, Section 2(f).

33 See ‘A Decade of National Human Rights Commission Bangladesh: Efficacy, Existing Challenges and Opportunities,’ 30 June 2021, <https://www.askbd.org/ask/2021/06/30/a-decade-of-national-human-rights-commission-bangladesh-efficacy-existing-challenges-and-opportunities/>.

34 See NHRC Act, Sections 12– 17.

The Commission is restricted in its mandate to investigate human rights violations against disciplinary forces and submitted a proposal to amend Section 18 in February 2021. In the proposal, the Commission suggested amending the law to exclude the police from the definition of ‘disciplinary force’ in the NHRC Act.³⁵

The NHRCB may recommend the prosecution or other legal action against a person responsible for violating human rights based on its inquiry.³⁶ It is also empowered to recommend compensation to victims of human rights violations to the Government,³⁷ and for this purpose to file a writ petition against the government if it fails to comply with such recommendation.³⁸ However, this power was used for the first time in 2020 in the case of Khadija Akhter, seven years after the human rights violation had occurred in 2013, and only after the High Court had admonished the NHRCB for its inaction, writing that the Commission had been ‘sleeping with eyes wide open.’³⁹ The Commission also has the mandate to conduct a national inquiry on systematic human rights violations. But it was only in 2020 that the Commission resolved to conduct the first such inquiry on the increasing violence against women and children.⁴⁰

Regarding its mandate to visit jails or any other place of detention, the Commission does not conduct regular visits. When it does, it first sends the tour schedule to the Chair and members of the local administration for security and protocol purposes, allowing the latter to prepare ahead of the NHRCB’s inspection and therefore render the inspections ineffective.⁴¹ The report or recommendations made by the Commission after the visits are not available publicly although they claimed that they sent their recommendations to the authorities and authorities who are working on the recommendations. No follow-up information is made publicly available.

35 Zia Chowdhary, ‘12 Years on, NHRC now wants to probe rights violation complaints against police,’ TBS News, 13 March 2021, <https://www.tbsnews.net/bangladesh/12-years-nhrc-now-wants-probe-rights-violation-complaints-against-police-215569>.

36 NHRC Act, Section 19(1)(a).

37 Ibid. Section 19(2).

38 Ibid. Section 19(1)(b).

39 Mizanur Rehman, ‘NHRC Recommends Compensation for Tortured Domestic Help Khadija,’ The Dhaka Tribune, 14 September 2020, <https://www.dhakatribune.com/bangladesh/2020/09/14/nhrc-recommends-compensation-for-tortured-domestic-help-khadija>; Mizanur Rehman, ‘HC blasts NHRC for failing domestic help Khadija,’ Dhaka Tribune, 24 June 2020, <https://www.dhakatribune.com/bangladesh/court/2020/06/24/hc-blasts-nhrc-for-failing-domestic-help-khadija>.

40 See, for example, NHRC, Annual Report 2020, pp. 21–22,

41 NHRC Act, Section 12(1)(c).

Protection

The Commission has a simple complaint filing and handling procedure.⁴² As mentioned above, the NHRCB received 481 complaints in 2020, which was significantly fewer than those received in 2019 (779). The NHRCB attributes the fewer complaints received in 2020 to the COVID-19 pandemic. However, the Commission itself was only able to dispose of 347 complaints. Significantly, these 347 disposed cases included complaints that had been filed prior to 2020.⁴³ A total of 698 complaints remain pending as of the end of 2020.⁴⁴

Regarding the resolution of complaints, there is yet no online system to track the progress of the complaint. Furthermore, the follow-up mechanism of the NHRCB is also extremely weak. The Commission conducts limited follow-up and does not have a mechanism to monitor the status of its past activity and initiatives. They send reminder letters to the authorities seeking their response if the authorities fail to respond within the stipulated period. In most cases, they remind the authorities about their previous recommendations and urge them to implement the recommendations. These practical gaps in the internal complaint handling mechanism of the NHRCB limit its power to take substantive steps towards human rights protection.

Between January and September, the bodies of 63 female migrant workers came back to the country. They died from torture in Saudi Arabia, Lebanon, Jordan, and other Middle Eastern countries. According to news media reports, on 28 May 2020, 30 migrant workers, including 26 Bangladeshis, were shot to death by a human trafficking group in Mizda in Libya.⁴⁵ The Commission expressed grave concern over the killing and urged the Government of Bangladesh to take necessary steps.⁴⁶ The Commission was also comparatively

42 Ibid. Section 12(1)(a). The aggrieved person(s) or any other person on behalf of the aggrieved person may file the complaint directly by writing to the Commission's complaints receiving email address; the Commission also has the complaint form publicly available on its website; additionally, the Commission also receives complaints through mail posted to the Commission's postal address, through telephone, fax and its 16108 helpline. Besides, it also accepts complaints suo moto from the newspapers and other sources. We note that the Commission has yet to make its helpline number toll-free. This limitation has been in existence since the helpline was created.

43 NHRC, Annual Report 2020, p. 24.

44 Ibid. p. 25.

45 'NHRC expresses concern over killing of 26 Bangladeshis in Libya,' UNB, 29 May 2020, unb.com.bd/m/category/Bangladesh/nhrc-expresses-concern-over-killing-of-26-bangladeshis-in-libya/52258.

46 Jamil Mahmud, Porimol Palma, 'Killing of 26 Bangladeshis in Libya: Dhaka for quick probe, punishment of killers,' The Daily Star, 30 May 2020, <https://www.thedailystar.net/frontpage/news/killing-26-bangladeshis-libya-dhaka-quick-probe-punishment-killers-1906477>; http://www.nhrc.org.bd/sites/default/files/files/nhrc.portal.gov.bd/press_release/3c87fbec_b98e_4d2e_b22a_3385a28fdd66/2020-05-30-

“These practical gaps in the internal complaint handling mechanism of the NHRCB limit its power to take substantive steps towards human rights protection.”

silent in cases of border killings in the Bangladesh-India border areas by the Indian Border Security Force (BSF). Based on its observations, ASK has noted that there were no initiatives or statements from the NHRC on this issue in order to prevent the occurrence of such border killings in the future.⁴⁷

While initiatives such as expressing concern, condemning instances of violence, and sending letters to relevant ministries and authorities have the potential to create pressure on the relevant government agencies, they are by no means sufficient.

Although the Commission submitted a stakeholders' report in the third cycle of the Universal Periodic Review (UPR) of Bangladesh in 2018, they have not initiated any midterm review to assess the Government's progress in implementing the recommendations, and neither did they recommend the Government to develop a mid-term report in consultation with the stakeholders for 2020. Similarly, the lack of follow-up by the Commission, as has been mentioned above as well, further showcases the limited participation of the NHRCB in matters of concern. For instance, the NHRCB has not done any follow-up with the government regarding the work of different treaty bodies such as the Committee Against Torture and the Committee on Economic, Social and Cultural Rights concerning human rights in Bangladesh.

18-31-1731161fd02084b7584b26ed3a0b8b92.pdf, (Report in Bangla/Bengali).

47 Based on the observation of ASK members.

Research, investigation, and/or national inquiries are infrequent to the extent of non-existence. Even if the Commission does conduct them, information concerning these activities is not publicly available on the Commission's website. One notable exception is the NHRCB's announcement of conducting a national inquiry into preventing violence against women and children and rape, the process of which is underway.⁴⁸

An example of the Commission's success in suo moto complaints is the case of Salam Dhali, who was wrongly arrested and imprisoned for sharing the same name, father's name, and address as the accused on 1 March 2020. The Commission provided legal aid and applied for his release.⁴⁹ He was subsequently released from jail on 6 July 2020 by the High Court Division through a writ petition.⁵⁰

In Bangladesh, there is no law or policy on the protection of victims, survivors and witnesses in force, nor a witness protection programme at the Commission or governmental level. Although the country does not have a protection centre, it does have safe custody that it provides to women and children victims of violence.⁵¹ Thus, these safe custodies do not encompass all types of human rights victims. While draft guidelines on the protection of HRDs have been underway since 2019, no official documentation has yet been released.⁵² Many HRDs have faced harassment in the form of arbitrary arrest and torture, a strategy adopted by the government to stifle criticism of their management of the pandemic. The Commission's initiatives in such incidents were limited to condemnation, only visible through press statements in some limited cases.⁵³

For instance, the Commission issued a press statement on the custodial death of Mushtaq Ahmed, a writer who was arbitrarily arrested under the Digital Security Act.⁵⁴ The statement condemned the death and demanded a fair investigation from the authorities, however it remained silent on the misuse of the Digital Security Act, 2018 and the protection of the right to freedom of expression of journalists and other human rights defenders.

⁴⁸ Star Online Report, 'Cartoonist, writer and activist among 4 arrested under digital security act; 11 accused in the case,' The Daily Star, 6 May 2020, <https://www.thedailystar.net/country/news/cartoonist-writer-arrested-under-digital-security-act-1899973>; NHRC, Title of Report Here, Day Month Year, http://www.nhrc.org.bd/sites/default/files/files/nhrc.portal.gov.bd/press_release/86c29c93_9a7b_4987_bc08_562ff72eec6a/2021-02-27-14-57-8af82bafc83e8738ae062c020f0173fc.pdf (Report in Bangla/Bengali); Zyma Islam, Muntakim Saad, 'Digital Security Act: 11 Sued, 2 Sent to Jail,' The Daily Star, 7 May 2020, <https://www.thedailystar.net/frontpage/news/digital-security-act-11-sued-two-sent-jail-1900228>.

⁴⁸ Information from the homepage of the Commission's website, NHRC, Annual Report 2020, p. 47.

⁴⁹ NHRC, Annual Report 2020, p. 31.

⁵⁰ Mizanur Rehman, 'Man Released from Jail After being Mistakenly Arrested, Court Issues Show Cause Notice,' The Dhaka Tribune, 12 July 2020, <https://www.dhakatribune.com/bangladesh/court/2020/07/07/man-released-from-jail-after-being-mistakenly-arrested-court-issues-show-cause-notice>.

⁵¹ The Department of Social Services under the Ministry of Social Services had established the Safe Custody for Women, Children and Adolescent Custodians at the divisional headquarters where women and children who are victims of crimes of violence are often placed by judges under Section 31 of the Nari-o-Shishu Nirjatan Daman Ain, 2000. Those who stay in this safe custody are provided with free accommodation and food, the victims get psycho-social counselling, life-skill training and primary education. The women victims/survivors who stay in the safe home are also transported to the court safely at the time of the hearings. See <http://bdlaws.minlaw.gov.bd/act-details-835.html>; The Prevention of Oppression Against Women and Children Act (2000), https://iknowpolitics.org/sites/default/files/prevention_act_bangladesh.pdf (unofficial translation).

⁵² Based on an informal consultation with the NHRC; they are currently translating the guidelines in Bangla.

⁵³ NHRC, Annual Report 2020, p. 57



MALAYSIA:

SUHAKAM: ADJUSTING TO NEW EXPECTATIONS DURING THE PANDEMIC¹



| | |
|--|---|
| YEAR OF ESTABLISHMENT | 1999 |
| COMPOSITION OF MEMBERS | NINE |
| DIVERSITY REQUIREMENT UNDER LAW | NO REQUIREMENT ³ |
| TERM OF MEMBERS | THREE YEARS, ELIGIBLE FOR RE-APPOINTMENT ONCE FOR ANOTHER PERIOD OF THREE YEARS ⁴ |
| CURRENT CHAIRPERSON | TAN SRI OTHMAN BIN HASHIM |
| CURRENT GENDER RATIO (WOMEN : MEN) | 4 : 5 |
| AUTHORITY TO APPOINT MEMBERS | YANG DI-PERTUAN AGONG (KING), UPON RECOMMENDATION OF THE PRIME MINISTER. A SELECTION COMMITTEE SUPPORTS THE PRIME MINISTER IN MAKING THE RECOMMENDATION ⁵ |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | A (LAST REVIEWED IN 2021) ⁶ |
| ADDRESS | 11TH FLOOR, MENARA TH PERDANA, JALAN SULTAN ISMAIL, 50250 WILAYAH PERSEKUTUAN KUALA LUMPUR |
| REGIONAL OFFICES | <u>SABAH OFFICE</u> : SUITE E1, 8TH FLOOR, CPS TOWER NO.1, JALAN CENTRE POINT 88000 KOTA KINABALU <u>SARAWAK OFFICE</u> : SUITE 8.01, 8.02 & 8.03, TINGKAT 8, TUN JUGAH TOWER, 18, JALAN TUNKU ABDUL RAHMAN, 93100 KUCHING |
| PHONE | 03-2612 5600 |
| HELPLINE NUMBER | 16108 |
| EMAIL | humanrights@suhakam.org.my |
| WEBSITE | www.suhakam.org.my |



COVID-19 HAS AFFECTED SUHAKAM'S ABILITY TO MONITOR AND INVESTIGATE VIOLATIONS OF HUMAN RIGHTS.

I. Overview

Suruhanjaya Hak Asasi Manusia Malaysia ('SUHAKAM' or 'Commission'), Malaysia's NHRI, was established under the Human Rights Commission of Malaysia Act 1999, Act 597 ('HRCMA' or 'Act'), as amended in 2009. Currently, the Commission is chaired by Tan Sri Othman Bin Hashim. He and the eight commissioners were appointed in 2019, and they will serve until April 2022.²

(Refer to table above)^{3 4 5 6}

In the past two years, Malaysia has suffered setbacks with regards to civil, political, economic, social, and cultural rights under the new Perikatan Nasional Government headed by

Prime Minister Muhyiddin Yassin.⁷ The Government used repressive laws, such as the Sedition Act 1948 and the Communications and Multimedia Act 1998, to target HRDs, journalists, and perceived critics in order to stifle dissent.⁸ The new Government of 2020 also showed little hesitance in suppressing the right to peaceful assembly.⁹ Shortly after Muhyiddin was appointed as the Prime Minister, the police proceeded to investigate several individuals who protested the sudden change in government.¹⁰ SUHAKAM, as the NHRI, is undoubtedly affected by this change in administration, and therefore, the role of SUHAKAM in Malaysia has become more important during these turbulent times.

Human Rights Situation during the COVID-19 Pandemic

Like the rest of the world, Malaysia was badly affected by the COVID-19 pandemic in 2020. Many of the disadvantaged and vulnerable communities, such as the rural and urban

1 SUARAM is 'an independent human rights organisation working for victims of human rights violations, the poor and the oppressed, without fear or favour.'

2 SUHAKAM, 'About Us,' accessed 11 November 2021, <https://suhakam.org.my/about-us/>.

3 Although Section 5(3) of the Act, as amended in 2009, provides that Commissioners '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.'

4 Amendment to the HRCMA Act (2009), Section 5(4).

5 Ibid. Section 11(A).

6 Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), June 2021, <https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>.

7 ARTICLE 19, Rights in Reverse: One year under the Perikatan Nasional government in Malaysia, 3 March 2021, <https://www.article19.org/resources/rights-in-reverse-one-year-under-the-perikatan-nasional-government-in-malaysia/>.

8 'Malaysia: Call for Solidarity in advancing civil liberties and human rights,' ARTICLE 19, 9 December 2020, <https://www.article19.org/resources/malaysia-call-for-solidarity-in-advancing-civil-liberties-and-human-rights>

9 'Malaysia: End Harassment of Civil Society,' ARTICLE 19, 10 May 2021, <https://www.article19.org/resources/malaysia-end-harassment-of-civil-society/>.

10 'Report: Cops to probe Ambiga, Marina Mahathir over 'Save M'sia' protest,' Malaysia Kini, 2 March 2020, <https://www.malaysiakini.com/news/512927>.

AFFECTED TY TO RECEIVE COMPLAINTS F HUMAN

poor,¹¹ refugees,¹² asylum seekers and migrant workers,¹³ were disproportionately affected by the Movement Control Order (MCO) and its subsequent phases. While most economic activities were halted and most Malaysians were forced to stay at home, the plight of these communities was also accentuated by the media and caught the attention of many. Unfortunately, this inadvertently led to a rise in online hate speech and xenophobic rhetoric when Malaysia was experiencing its first MCO during the first six months of 2020.¹⁴ Sadly, the government did not try to combat this damaging and negative rhetoric; rather, it fuelled the same,¹⁵ with authorities conducting raids and arresting migrant workers and refugees.¹⁶

Despite the political context, SUHAKAM countered the damaging narrative by speaking about the need of showing more 'compassion and tolerance' towards these

11 'As Malaysia entered MCO 2.0, many low-income urban families were already close to breaking point,' UNICEF, 8 February 2021, <https://www.unicef.org/malaysia/press-releases/malaysia-entered-mco-20-many-low-income-urban-families-were-already-close-breaking>; <https://www.iseas.edu.sg/media/commentaries/covid19-in-malaysia-pandemic-impacts-on-the-poor/>.

12 Thomas Daniel, 'COVID-19 Highlights the Plight of Malaysia Refugees,' East Asia Forum, 18 May 2020, <https://www.eastasiaforum.org/2020/05/18/covid-19-highlights-the-plight-of-malysias-refugees/>.

13 International Labour Organization, 'The socioeconomic impacts of COVID-19 in Malaysia: Policy review and guidance for protecting the most vulnerable and supporting enterprises,' 12 October 2021, http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_751600.pdf.

14 Emly Fishbein, 'Fear and uncertainty for refugees in Malaysia as xenophobia escalates,' The New Humanitarian, 25 May 2020, <https://www.thenewhumanitarian.org/news/2020/05/25/Malaysia-coronavirus-refugees-asylum-seekers-xenophobia>

15 Mazwin Nik Anis, 'MCO or not, Ismail Sabri says efforts to weed out illegals will continue,' The Star, 12 May 2020, https://www.thestar.com.my/news/nation/2020/05/12/mco-or-not-ismail-sabri-says-efforts-to-weed-out-illegals-will-continue?fbclid=IwAR2mo-1jV-lbuyqe-z9Y8sJL5QaBC1XUHWVo7S7SwoWl2zGe3f9Vpm_W_ts#cxrecs_s.

16 Human Rights Watch, World Report: Malaysia, accessed 11 November 2021, <https://www.hrw.org/world-report/2021/country-chapters/malaysia>.

marginalised communities.¹⁷ It urged the Government of Malaysia to adopt more inclusive and humane refugee protection policies.¹⁸ Furthermore, SUHAKAM also condemned the large raids conducted by the Immigration Department, which often infringed on international human rights law and standards, and were counterproductive in controlling the pandemic.¹⁹ The issue of protecting refugees and migrant workers while controlling the pandemic has arguably been one of the biggest human rights issues in Malaysia, and SUHAKAM openly defended the rights of these communities in 2020, even including them in their Strategic Plan.²⁰

The Commission also released several press statements and voiced concerns over policies aimed at curbing COVID-19, which may infringe upon human rights principles.²¹ These include the questionable high-handed arrest and detention of alleged offenders of the MCO,²² the conditions in police lock-ups that exacerbated the spread of COVID-19,²³ advocating for refugees' rights amidst the increasing social stigmatisation against them during the pandemic,²⁴ and voicing concerns over large-scale raids against undocumented migrants.²⁵

17 'Press Statement,' SUHAKAM, 20 June 2020, <https://www.suhakam.org.my/wp-content/uploads/2020/06/Press-Statement-No.-17-Every-Action-Counts-on-World-Refugee-Day.pdf>.

18 'Press Statement,' SUHAKAM, 18 December 2020, https://www.suhakam.org.my/wp-content/uploads/2020/12/Press-Statement-No.-38-2020_International-Migrants-Day-2020.pdf.

19 Jerry Choong, 'SUHAKAM tells Immigration Dept to stop large operations and process existing detainees instead,' Malay Mail, 12 November 2020, <https://www.malaymail.com/news/malaysia/2020/11/12/suhakam-tells-immigration-dept-to-stop-large-operations-and-process-existing-detainees/1921948>.

20 'Press Statement,' SUHAKAM, 18 December 2020, https://www.suhakam.org.my/wp-content/uploads/2020/12/Press-Statement-No.-38-2020_International-Migrants-Day-2020.pdf.

21 FORUM-ASIA, 'National Human Rights Institutions' Responses to COVID-19,' December 2020, <https://www.forum-asia.org/uploads/wp/2020/12/Report-ANNI.pdf>.

22 'Respect human rights when enforcing MCO,' Malaysia Kini, 4 April 2020, <https://www.malaysiakini.com/news/518703>.

23 Azril Anuar, 'SUHAKAM Warns Against COVID-19 Spread in Police Lock-ups,' Malay Mail, 3 April 2020, <https://www.malaymail.com/news/malaysia/2020/04/03/suhakam-warns-against-covid-19-spread-in-police-lock-ups/1853333>.

24 'Press Statement,' SUHAKAM, 20 June 2020, <https://www.suhakam.org.my/wp-content/uploads/2020/06/Press-Statement-No.-17-Every-Action-Counts-on-World-Refugee-Day.pdf>.

25 Jerry Choong, 'Suhakam tells Immigration Dept to stop large operations and process existing detainees instead,' Malay Mail, 12 November 2020, <https://www.malaymail.com/news/malaysia/2020/11/12/suhakam-tells-immigration-dept-to-stop-large-operations-and-process-existing-detainees/1921948>.

II. SUHAKAM's Mandate to Promote and Protect Human Rights

Independence

The Human Rights Commission of Malaysia Act ('HRCMA' or 'Act') confers the power of inquiry to SUHAKAM to act on complaints regarding infringement of human rights. Under Section 12 of the HRCMA, the Commission can suo moto, or based on a complaint (by an aggrieved person or group, or their respective representatives), inquire into an allegation regarding the infringement of human rights. Under Section 14 of the Act, the Commission is also empowered to procure and receive evidence, summon anyone residing in Malaysia to testify, and to admit or exclude the public from its inquiry.

Though the roles and powers of SUHAKAM are clearly established, the HRCMA is still based on the Federal Constitution. SUHAKAM's human rights work refers to the Universal Declaration of Human Rights (UDHR) 'to the extent that it is not inconsistent with the Federal Constitution' of Malaysia.²⁶ The Act itself defines the term 'human rights' in Section 2 as 'fundamental liberties as enshrined in Part II of the Federal Constitution.' This fundamental limitation continues to undermine the role and function of SUHAKAM. For instance, in Malaysia, public sentiments on human rights issues such as the prohibition of corporal punishment have often been associated with western liberalism and seen as incompatible with Malaysia's culture and belief system.²⁷

Furthermore, previous incidents of executive influence over SUHAKAM, such as the time the Government cut 50 per cent of SUHAKAM's budget in 2015, indicate that SUHAKAM is still vulnerable to the will of the executive branch.²⁸ One of the commissioners also revealed in 2019 that SUHAKAM needed roughly RM16 million per year to function properly but was only allocated RM10 million annually.²⁹ Given that

²⁶ Human Rights Commission of Malaysia Act 1999, Section 4(4).

²⁷ A concept that was often endorsed by Malaysian leaders in the past. See 'Case Study: The Concept of Asian Values,' BBC World Service, accessed 2 December 2021, http://www.bbc.co.uk/worldservice/people/features/ihavearightto/four_b/casestudy_art30.shtml; see also Narasappa Kumaraswamy, Azizah Othman, 'Corporal Punishment Study: A Case in Malaysia,' *Psychology*, Vol. 2, No. 1, February 2011, <https://www.scirp.org/journal/paperinformation.aspx?paperid=3956>; 'Commentary: Let's move away from caning and corporal punishment for our kids,' *Channel News Asia*, 30 August 2020, <https://www.channelnewsasia.com/commentary/is-it-right-wrong-to-cane-smack-hit-punish-kids-635436>.

²⁸ 'SUHAKAM: We Can't Work with 50 pct Budget Slash,' *Malaysia Kini*, 16 November 2015, <https://www.malaysiakini.com/news/319708>.

²⁹ R. Loheshwar, 'Sukaham Says been Operating in Red for the Past Few Years,' *Malay Mail*, 19 April 2019, <https://www.malaymail.com/>

“SUHAKAM was forced to close its office during the MCO period (March 2020 to June 2020) ... only received 756 cases throughout 2020.”

there was a sudden change of government in the midst of the health crisis, it remains to be seen what the policy of the new government will be with regards to SUHAKAM's financial security. However, having said that, it is a positive step that the new Government in 2020 has not reduced SUHAKAM's budget.³⁰

Since the amendments to the HRCMA in 2009, there has not been any further change to the selection and appointment process.³¹ According to Section 11(3) of the HRCMA, the Selection Committee, which will advise the Prime Minister on who to nominate, has three members who are appointed by the Prime Minister. This might induce executive interference in influencing the decision of the Selection Committee. Furthermore, the public is not aware of the names of the candidates chosen by the Selection Committee as there is also no existing provision within the HRCMA that requires the Selection Committee to publish the names of candidates for the benefit of public scrutiny. The latest appointment of eight new commissioners on 26 June 2019 was done at the sole discretion of the Prime Minister without any consultation or approval from the parliament.³² This, despite the fact that the Parliamentary Select Committee on Major Public Appointments was established at that time and was formed for the very purpose of allowing Parliament to have a voice in determining the selection of commissioners.³³

³⁰ [news/malaysia/2019/04/19/suhakam-says-been-operating-in-the-red-for-past-few-years/1744977](https://www.malaymail.com/news/malaysia/2019/04/19/suhakam-says-been-operating-in-the-red-for-past-few-years/1744977).

³¹ Based on the author's interview with SUHAKAM.

³² Human Rights Commission of Malaysia (Amendment) Act 2009.

³³ 'New SUHAKAM commissioners announced,' *Free Malaysia Today*, 26 June 2019, <https://www.freemalaysiatoday.com/category/nation/2019/06/26/new-suhakam-commissioners-announced/>.

³⁴ 'New Suhakam members - Harapan broke promise again, rues Bersih,' *Malaysia Kini*, 27 June 2019, <https://www.malaysiakini.com/news/481447>.

The new Government has also ignored SUHAKAM's role in assisting the administration in formulating legislation consistent with international human rights law and standards. For instance, SUHAKAM voiced its concerns on the Independent Police Conduct Commission (IPCC) bill which was hastily tabled in 2020 as a watered-down version of its predecessor, the Independent Police Complaints and Misconduct Commission bill, yet SUHAKAM's recommendations were ignored.³⁴ Furthermore, the new Government has also reversed the decision set by its predecessor and decided not to debate SUHAKAM's 2019 annual report in Parliament because of insufficient time.³⁵

Lastly, the pandemic, along with the sudden change of administration, derailed the proposed amendments of the HRCMA. As stated in a previous ANNI report, SUHAKAM has submitted its draft amendment of HRCMA, which was in line with the Paris Principles, to the Attorney-General in January 2019. But since the change of administration, there has neither been any follow-up nor consultation from the Government to revisit the proposed amendment in 2020. The timeline for the proposed amendment remains unclear, and it has undoubtedly been complicated by the events of 2020.

Protection

In the past, SUHAKAM's intervention in addressing complaints of human rights violations has helped deter further physical abuse of detainees, strengthened compliance by enforcement agencies with existing laws and regulations and, in some cases, prompted the police to act to correct its misconduct or failings.³⁶ However, the government at times tends to dismiss SUHAKAM's efforts. For instance, in 2020, the task force created upon the advice of SUHAKAM to look into the alleged enforced disappearance of Pastor Raymond Koh and Amri Che Mat was never properly allowed to work and complete its investigation.³⁷

After receiving a complaint, SUHAKAM would usually send officers to visit the alleged victims of torture or

³⁴ 'Press Statement: SUHAKAM is Concerned by IGP's Statement on Corruption & Abuse of Power among Police Officers,' SUHAKAM, 30 March 2021, https://suhakam.org.my/2021/03/press-statement-no-16-2021_suhakam-is-concerned-by-igps-statement-on-corruption-abuse-of-power-among-police-officers/.

³⁵ Radzi Razak, 'Minister: SUHAKAM Report will not be Tabled in Parliament This Year,' Malay Mail, 1 December 2020, <https://www.malaymail.com/news/malaysia/2020/12/01/minister-suhakam-report-will-not-be-debated-in-parliament-this-year/1927694>.

³⁶ FORUM-ASIA, ANNI, 2019 ANNI Report: On the Performance and Establishment of National Human Rights Institutions in Asia, 2019, <https://www.forum-asia.org/uploads/wp/2019/10/2.0-Online-ANNI-Report-2019.pdf>, p. 32.

³⁷ Hariz Mohd, 'Task force to probe anew Amri Che Mat's disappearance first: Muhyiddin,' Malaysia Kini, 26 June 2019, <https://www.malaysiakini.com/news/481281>.

other abuses and interview or record statements from the authorities. The Commission would usually also do a follow-up after obtaining more information, or after visiting a victim of a human rights violation.³⁸ SUHAKAM may get in touch with the family or the victim after their release from enforcement authorities detention centres to confirm that the violation has ceased, and at the end of the investigation, will prepare a full report of its findings and recommendations to the authorities.

However, COVID-19 has affected SUHAKAM's ability to receive and investigate complaints on violations of human rights. SUHAKAM was forced to close its office during the MCO period (March 2020 to June 2020), while most of the staff were required to work from home. Instead of addressing complaints in SUHAKAM's office, most complaints could only be addressed through SUHAKAM's online complaint system, which in all likelihood led to the reduction of complaints received in 2020. Compared to 2019, when they received 1,154 cases, SUHAKAM only received 756 cases throughout 2020.³⁹ Visits and engagement with officials of detention centres were also significantly reduced and confined to online meetings with prison officials.

The restriction of movement and prohibition of interstate travelling imposed by the government to prevent the spread of COVID-19 also severely curtailed SUHAKAM's ability to investigate human rights complaints. For instance, the public inquiry into the disappearance of Joshua Hilmy and Ruth Hilmy that had been scheduled to begin on 18 February 2020 was suspended for more than six months because of the MCO, and it was only resumed on 12 August 2020.⁴⁰

³⁸ Human rights violations dealt with by SUHAKAM usually include cases of torture, abuses by enforcement agencies, and statelessness.

³⁹

⁴⁰ 'Suhakam inquiry into Joshua, Ruth Hilmy to begin Feb 18,' Malaysia Kini, 26 January 2020, <https://www.malaysiakini.com/>

“Visits and engagement with officials of detention centres were also significantly reduced and confined to online meetings with prison officials.”



Promotion

The HRCMA states under Section 4(1)(b) and (c) that the power of SUHAKAM in promoting and harmonising national legislation is confined to the role of advising the Government and recommending the subscription or accession to international human right treaties. In effect, the Government of Malaysia is not legally required to adopt the recommendations of SUHAKAM in drafting legislation.

Although SUHAKAM is empowered to review both draft and existing legislation and policies to ensure their compliance with human rights standards, the issues raised by SUHAKAM are often ignored by the Government. The most prominent example being the IPCC bill previously mentioned to which SUHAKAM has publicly objected.⁴¹ According to SUHAKAM, recommendations to the Government in the past to enhance the IPCC bill were not realised, and there is no indication that the government is planning to revise the bill to take into consideration SUHAKAM's recommendations.⁴²

In 2020, SUHAKAM made efforts to monitor the human rights impact of COVID-19 to inform the Government's response to the pandemic,⁴³ as well as on statelessness and human trafficking.⁴⁴

SUHAKAM also made recommendations regarding the Sexual Harassment Bill in line with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that Malaysia ratified in 1995.⁴⁵ Yet, the tabling of the bill was understandably disrupted by the sudden change of Government in Malaysia and the pandemic. Therefore, it is still to be determined whether the Sexual Harassment Bill scheduled to be tabled in 2021 would include the recommendations made by SUHAKAM.⁴⁶

news/508469; Rashvinjeet S. Bedi, 'Suhakam inquiry into disappearance of Joshua Hilmy, wife to resume Aug 12,' The Star, 10 August 2020, <https://www.thestar.com.my/news/nation/2020/08/10/suhakam-inquiry-into-disappearance-of-joshua-hilmy-wife-to-resume-aug-12>.

41 'SUHAKAM calls for greater independence of police oversight body,' Asia Pacific Forum, 27 August 2020, <https://www.asiapacificforum.net/news/suhakam-calls-greater-independence-police-oversight-body/>.

42 'Press Statement,' SUHAKAM, 27 August 2020, https://www.suhakam.org.my/wp-content/uploads/2020/08/Press-Statement-No.-24-2020_SUHAKAM-expresses-its-concerns-on-the-IPCC-Bill-2020.pdf.

43 'Dialogue With Vulnerable Communities: An Assessment of Needs And Next Steps Amid COVID-19 Pandemic' SUHAKAM, 27 August 2020, <https://suhakam.org.my/2020/08/dialogue-with-vulnerable-communities-an-assessment-of-needs-and-next-steps-amid-covid-19-pandemic/>.

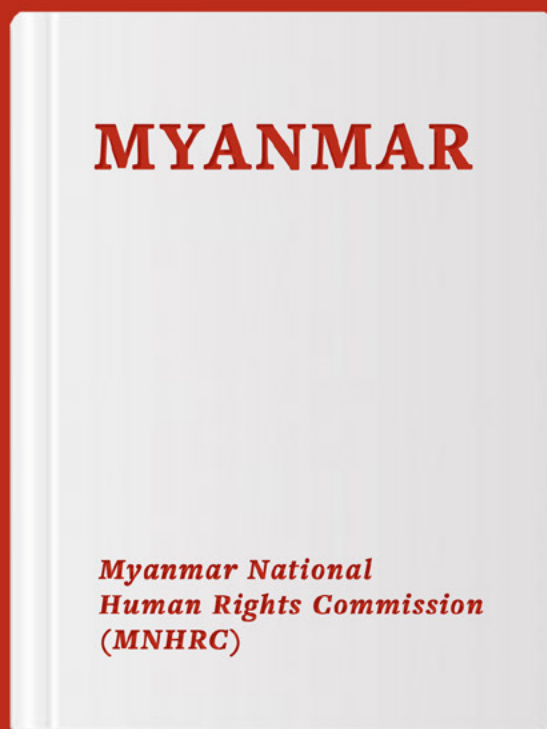
44 '[Joint Statement] Indonesia, Malaysia, Philippines national human rights institutions address the issue of statelessness,' Komnas HAM, SUHAKAM, and the Commission on Human Rights, 25 July 2020, <https://chr.gov.ph/indonesia-malaysia-philippines-national-human-rights-institutions-address-the-issue-of-statelessness/>.

45 'Press Statement,' SUHAKAM, 8 March 2020, <https://www.suhakam.org.my/wp-content/uploads/2020/03/Press-Statement-No.-4-of-2020-International-Womens-Day-2020.pdf>.

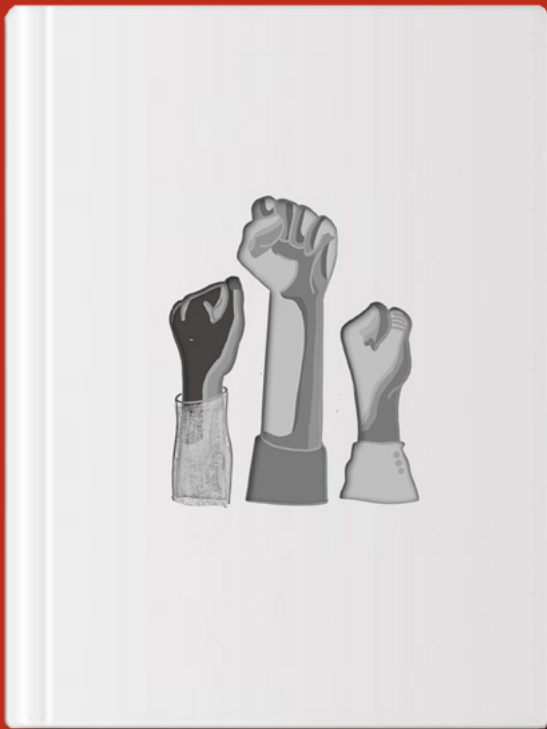
46 Martin Carvalho, 'Law on sexual harassment to be tabled in Parliament this year, says Rina Harun,' The Star, 12 September 2021, <https://www.thestar.com.my/news/nation/2021/09/12/law-on-sexual-harassment-to-be-tabled-in-parliament-this-year-says-rina-harun>.

MYANMAR:

'YOU'RE THE DEVIL IN DISGUISE' — THE DUPLICITOUS, OBSOLETE MNHRC¹



| | |
|---|--|
| YEAR OF ESTABLISHMENT | 2011 |
| COMPOSITION OF MEMBERS | ELEVEN |
| DIVERSITY REQUIREMENT UNDER LAW | NO REQUIREMENT⁵ |
| TERM OF MEMBERS | FIVE YEARS |
| CURRENT CHAIRPERSON | U HLA MYINT |
| CURRENT GENDER RATIO (WOMEN : MEN) | 4 : 7 |
| AUTHORITY TO APPOINT MEMBERS | SELECTION BOARD FORMED BY THE PRESIDENT⁶ |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | B (LAST REVIEWED IN 2015) |
| ADDRESS | 27 PYAY ROAD, HLAING TOWNSHIP, YANGON |
| PHONE | +951654684 (FROM ABROAD) 01 654684 (FROM MYANMAR) |
| HELPLINE NUMBER | 16108 |
| EMAIL | info@mnhrc.org.mm |
| WEBSITE | www.mnhrc.org.mm/en/ |



THE MNHRC CONTINU IGNORES THE MYANM PERSECUTION OF ETH THROUGH INCREASED ISOLATED MILITARY A BURMANIZATION POL ETHNIC COMMUNITIE

I. Overview ¹

In 2011, President Thein Sein issued a Presidential Decree that established the Myanmar National Human Rights Commission ('MNHRC' or 'Commission'). Its 2014 enabling law—the Myanmar National Human Rights Commission Law—articulated the organisation's formal mandate.²

Currently, it has 11 Commissioners and went through one round of accreditation by the GANHRI-SCA in 2015.³ It was given a 'B' status in November 2015, indicating that it failed to reach the standard of full compliance with the Paris Principles.⁴

(Refer to the table above) ^{5 6}

1 The research in this report was compiled by Progressive Voice on behalf of the CSO Working Group on MNHRC Reform. The MNHRC Working Group consists of 22 diverse Myanmar civil society organisations that work to advocate for the reform of the MNHRC so it is an effective, independent, and transparent NHRI that promotes and protects the rights of all people of Myanmar in line with the Paris Principles – the international standards for NHRIs.

2 Myanmar National Human Rights Commission, <http://mnhrc.org.mm/en/>; The Myanmar National Human Rights Commission Law, 28 March 2014, http://www.burmalibrary.org/docs23/2014-03-28-Myanmar_Human_Rights_Commission_Law-21-en.pdf, Section 3; President Thein Sein, 'Formation of Myanmar National Human Rights Commission,' Burma Partnership, 5 September 2011, <http://www.burmapartnership.org/2011/09/formation-of-myanmar-national-human-rights-commission/>.

3 Myanmar National Human Rights Commission, 'Commissioners,' <http://mnhrc.org.mm/en/about/commissioners/>.

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

5 Section 7 of the 2014 MNHRC Law provides: 'The Selection Board shall: (a) take into account the overall composition of the Commission in considering the nomination of prospective members of the Commission [...] (c) seek to ensure the equitable representation of men and women, and of national races [...].' However, the concept of 'national races,' entrenched in Myanmar's 1982 Citizenship Law, is in itself a driver of discrimination in Myanmar. For example, the Rohingya are not considered a 'national race,' which entrenches their exclusion in society. See International Commission of Jurists, Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible: A Legal Briefing, June 2019, <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf>.

6 Under Section 5 of the 2014 MNHRC Law, the Selection Board is composed of the following: (a) Chief Justice of the Union; (b) Union Minister, Ministry of Home Affairs; (c) Union Minister, Ministry of Social

JOUSLY MAR MILITARY'S NIC COMMUNITIES D MILITARISATION, ATTACKS AND LICIES TO OPPRESS ES

In its 2015 report, the GANHRI-SCA expressed a number of concerns on the functioning of the MNHRC:

1. Concern regarding the selection and appointment of the members of the Commission, wherein the SCA noted that the selection process did not guarantee independence of the Commissioners since it included a 'significant number of members of government within the selection board;'
2. Concern regarding NHRIs operating in situations of internal unrest or internal armed conflict, wherein the SCA encouraged the MNHRC 'to interpret its mandate in a broad, liberal and purposive manner, and to promote and protect human rights of all including the rights of Rohingya and other minority groups;'

Welfare, Relief and Resettlement; (d) Attorney-General of the Union; (e) a representative from the Bar Council; (f) two representatives from the Pyidaungsu Hluttaw; (g) a representative from the Myanmar Women's Affairs Federation; and (h) two representatives from registered non-governmental organisations. The inclusion of military representatives, such as the Minister of Home Affairs, within the Selection Board for the appointment of commissioners, including the current commission, has been criticized by civil society as undermining the independence and impartiality of the MNHRC. See 'Selection Process of New Commissioners for the MNHRC must be Transparent and inclusive,' Progressive Voice, 25 July 2019, <https://progressivevoicemyanmar.org/2019/07/25/selection-process-of-new-commissioners-for-the-mnhrc-must-be-transparent-and-inclusive/>; GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation, November 2015, Section 2, p. 11 (noting that the selection board consists of 'a significant number of members of government').

3. Concern regarding pluralism, wherein the SCA encouraged the MNHRC 'to advocate for the inclusion of provisions in its enabling law to ensure diversity in its membership and staff;'
4. Concern regarding adequate funding and financial independence, wherein the SCA recommended that the MNHRC's funding should be allocated as a separate budget line so that it is independent from the budget of the President's Office;
5. Concern regarding the monitoring of places of deprivation of liberty, wherein the SCA noted that because the MNHRC cannot visit prisons and detention centres unannounced, its power to monitor detaining authorities for human rights violations is limited;
6. Concern regarding the inadequate interaction of the Commission with the international human rights system, wherein the SCA encouraged the MNHRC to cooperate with international human rights bodies independent of the Government; and
7. Concern with regards to the annual reports of the Commission, which are submitted to the President's Office and not for wider circulation, discussion, and consideration by the Union Parliament, and the lack of legislative involvement in the process.⁷

Ongoing Armed Conflict, International Crimes and Disintegrating Democratic Space in Myanmar

Myanmar has been in perpetual cycles of conflict perpetrated by the Myanmar military in ethnic areas over seven decades. GANHRI-SCA and the Paris Principles make it clear that NHRIs operating in situations of internal unrest, internal armed conflict, or a coup d'état are to conduct themselves with heightened vigilance and independence '... to promote and ensure respect for democratic principles and the strengthening of the rule of law in all circumstances and without exception.'⁸ Upholding human rights in situations of armed conflict requires constant monitoring, issuing public statements, writing detailed reports, and

⁷ GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation, November 2015, Section 2, pp. 12–14.

⁸ GANHRI, General Observations of the Sub-Committee on Accreditation, 21 February 2018, https://ganhri.org/wp-content/uploads/2019/11/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf, p. 41; GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation, November 2015.

“This will undoubtedly be coloured by the events of the attempted coup d’état, a period of months in which more than 1,200 people have been killed,

undertaking rigorous and systematic follow-up activities.

In 2016 and 2017, the Myanmar military conducted ‘clearance operations’ against the ethnic Rohingya in Rakhine State, resulting in a catastrophic humanitarian crisis.⁹ These ‘clearance operations’ were the culmination of decades of systematic oppression by the Government of the ethnic group, starting with the denial of their citizenship and voting rights. In 2018, the UN Independent International Fact-Finding Mission on Myanmar reported that there was a reasonable basis to conclude that genocide, crimes against humanity, and war crimes had been committed against the Rohingya in the context of the ‘clearance operations.’¹⁰ It also reported in 2019 that the Myanmar military perpetrated sexual and gender-based violence against ethnic women and girls, which they considered to amount to war crimes and crimes against humanity.¹¹

9 The Independent International Fact-Finding Mission on Myanmar concluded that the Myanmar military should be investigated for genocide, war crimes and crimes against humanity. UN Human Rights Council, Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, 18 September 2018, <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

10 Ibid.

11 UN Human Rights Council, Sexual and Gender-Based Violence in Myanmar and the Gendered Impact of its Ethnic Conflicts, UN Doc. A/HRC/42/CRP.4, 22 August 2019, https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/sexualviolence/A_HRC_CRP_4.pdf.

9,193 total arrested, more than 7,000 continue to be held in detention,

Between late 2018 and the end of 2020, a new conflict began in Rakhine state, this time between the Arakan Army and the Myanmar military. Both parties to the conflict have been engaged in heavy fighting, displacing nearly 200,000 people in Rakhine and Chin states according to some estimates.¹² The Myanmar military indiscriminately

12 UN Human Rights Council, Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/

attacked civilians and civilian objects, such as schools, homes, and religious sites.¹³

During the reporting period, conflict within Kachin, Rakhine, Chin, Karen and Shan states, predominantly between the Myanmar military and ethnic armed organisations (EAOs) also escalated to unprecedented levels. This, coupled with a number of other violent acts, such as the attack by the military on a COVID-19 checkpoint in Karen State,¹⁴ or the human rights abuses against the most vulnerable and marginalised, as well as minority groups,¹⁵ have been ignored by the MNHRC.¹⁶ The Commission’s response has been muted, unwilling to confront the Myanmar military on these crimes and the resulting humanitarian crises, which indicates the complicity of the MNHRC as an NHRI

HRC/45/5, 3 September 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/MyanmarReportDetails.aspx>.

13 Ibid. paras. 8 and 18.

14 ‘[Joint Statement] Myanmar: Myanmar National Human Rights Commission Must Ensure Human Rights are Protected amid COVID-19 Pandemic,’ FORUM-ASIA, 27 May 2020, <https://www.forum-asia.org/uploads/wp/2020/05/Myanmar-National-Human-Rights-Commission-Must-Ensure-HumanRights-are-Protected-amid-COVID-19-PandemicENG.pdf>.

15 Ibid.

16 ‘How Myanmar’s Government Passed Up Two Chances to Address Human Rights While on Trial for Genocide,’ ASEAN Today, 23 January 2020, <https://www.aseantoday.com/2020/01/how-myanmars-government-passed-up-two-chances-to-address-human-rights-while-on-trial-for-genocide/>.

and 75 children killed and 1,000 detained as of writing.”

to the ongoing gross human rights violations. While they opened a regional office in Sittwe, Rakhine State to receive complaints, the opening was delayed by a year with no disclosure of their activities — a superficial answer to some of the gravest human rights abuses. Furthermore, during the pandemic, the MNHRC failed to comment on the rise in attacks on human rights defenders or the continuing conflict in ethnic areas.¹⁷

Tracing the events throughout the reporting period, this chapter shows how the endemic flaws in the structure of the MNHRC’s legal framework led to its eventual capitulation in the aftermath of 1 February 2021, when the Myanmar military attempted to seize power through a brutal coup following the 2020 general elections where the National

17 Asian NGO Network on National Human Institutions (ANNI) and FORUM-ASIA, National Human Rights Institutions’ Responses to COVID-19, December 2020, <https://www.forum-asia.org/uploads/wp/2020/12/Report-ANNI.pdf>.

“The escalation of conflict throughout the country has meanwhile displaced over 250,000 persons as of October 2021”

League for Democracy (NLD) again won a landslide victory. Since then, the MNHRC has been an active participant with, and unwavering in its loyalty to the military junta, failing the people of Myanmar by relinquishing its mandate and basic function to promote and protect human rights.¹⁸

For the purpose of this chapter, the evaluation of the MNHRC’s performance is mainly focused on the latter half of 2019 to the end of 2020, but this will undoubtedly be coloured by the events of the attempted coup d’état, a period of months in which more than 1,200 people have been killed,¹⁹ 9,193 total arrested,²⁰ more than 7,000 continue to be held in detention,²¹ and 75 children killed and 1,000 detained as of writing.²² The escalation of conflict throughout the country has meanwhile displaced over 250,000 persons as of October 2021.²³ Crucially, the site of conflict has spread all throughout Myanmar — Kachin, Karen, Karenni, Shan and Chin states, as well as Sagaing, Bago, Magway and Mandalay regions.²⁴ The MNHRC has remained deadly silent and ultimately complicit in these horrific human rights violations.

In a statement, civil society organisations decried the

18 Jonathan Liljeblad, ‘Speaking no Truth to Power in a Time of Coup: Myanmar’s Human Rights Commission,’ *Melbourne Asia Review*, Ed. 6, 29 March 2021, <https://melbourneasiareview.edu.au/speaking-no-truth-to-power-in-a-time-of-coup-myanmars-human-rights-commission/?print=pdf>.

19 ‘More than 1,000 Killed in Myanmar since February 1 Coup,’ *Al-Jazeera*, 18 August 2021, <https://www.aljazeera.com/news/2021/8/18/myanmar-coup-aapp-1000-killed-military>; ‘Daily Briefing in Relation to the Military Coup,’ Assistance Association for Political Prisoners (AAPP), 25 October 2021, <https://aappb.org/?p=18393>.

20 ‘Daily Briefing in Relation to the Military Coup,’ AAPP.

21 Ibid.

22 As of 17 July 2021. ‘75 Children Killed, 1,000 Detained since Myanmar Coup,’ *Al-Jazeera*, 17 July 2021, <https://www.aljazeera.com/news/2021/7/17/75-children-killed-1000-detained-since-myanmar-coup-un-experts>.

23 UN Office of the High Commissioner for Human Rights, Remarks by Thomas H. Andrews, Special Rapporteur on the situation of human rights in Myanmar at the 76th session of the General Assembly of the United Nations, 22 October 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27696&LangID=E>.

24 Bi-weekly situation update by the Karenni Civil Society Network, Oct 25-Nov 7, Karenni Civil Society Network, 9 November 2021, <https://www.facebook.com/photo/?fbid=2006820489468953&set=pcb.2006820612802274>.

MNHRC for being an “ally” to the military junta.²⁵ Civil society’s call for the MNHRC to stand with the people of Myanmar were met with silence, with the Commission adopting a business-as-usual approach while the people of Myanmar suffer.²⁶ The MNHRC’s continued silence makes it complicit in the widespread human rights violations committed by the military junta as their silence legitimises the actions of the military. The acts and omissions of the Commission in the wake of the coup d’état may not come as a great surprise given the flaws of the 2014 MNHRC Law, the professional background and mindset of the commissioners as former military officials, lack of independence in the selection process, and unwillingness to call out the grievous human rights violations committed by the Myanmar military.

Human Rights Situation during the COVID-19 Pandemic

The MNHRC received over 2,000 complaints related to COVID-19 restrictions, and civil society organisations voiced concerns over the lack of an intervention by the MNHRC on COVID-19 for the most vulnerable and marginalised groups, such as prisoners and people affected by conflict and confined to IDP camps.²⁷ Indeed, the MNHRC has limited their work to statements of support for the Government, such as the government’s decision to reopen schools amid the pandemic as an achievement for the right to education.²⁸

The MNHRC continued to commend the government’s efforts on COVID-19 in spite of genuine concerns for the healthcare systems’ ability to cope and the viability for

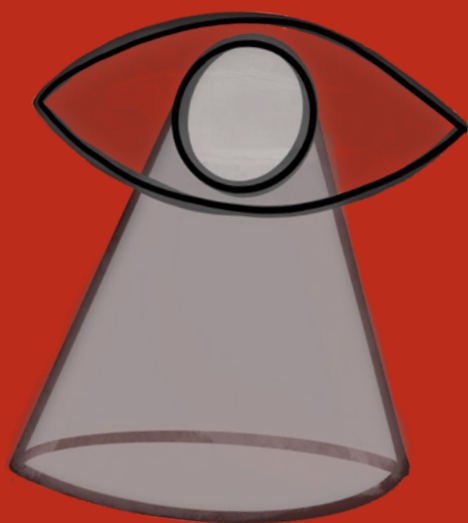
25 ‘International Partners Must End All Cooperation With The Myanmar National Human Rights Commission,’ CSO Working Group on MNHRC Reform and 56 Local and Regional CSOs and Networks, 11 March 2021, <https://progressivevoicemyanmar.org/2021/03/11/international-partners-must-end-all-cooperation-with-the-myanmar-national-human-rights-commission/>.

26 ‘Myanmar National Human Rights Commission: Denounce the Coup, Stand with the People of Myanmar,’ *Progressive Voice*, 11 February 2021, <https://progressivevoicemyanmar.org/2021/02/11/myanmar-national-human-rights-commission-denounce-the-coup-stand-with-the-people-of-myanmar/>. See also, [Joint Statement] ‘International Partners Must End all Cooperation with the Myanmar National Human Rights Commission,’ FORUM-ASIA, 12 March 2021, <https://www.forum-asia.org/?p=34124>.

27 Tint Zaw Tun, ‘Over 2000 Complaints Lodged Amid Virus Restrictions,’ *Myanmar Times*, 15 December 2020. <https://www.mmtimes.com/news/over-2000-rights-complaints-lodged-amid-virus-restrictions.html>.

28 ‘The Statement of the MNHRC on reopening of Schools in July No. (5 / 2020),’ MNHRC, 29 May 2020, <http://www.mnhrc.org.mm/en/s52020eng/>; ‘The Statement of the Myanmar National Human Rights Commission (MNHRC) on COVID-19 Second Wave Statement No. 12 / 2020,’ MNHRC, 15 September 2020, <http://www.mnhrc.org.mm/en/s-12-2020eng/>.

tracing cases.²⁹ COVID-19 has severely affected those living on the brink of poverty, and government assistance is completely inadequate and does not meet the needs of the most vulnerable.³⁰ Similarly, the MNHRC failed to address the attack by the Myanmar military on an event by the RCSS, which sought to monitor and raise awareness of COVID-19.³¹ For those IDPs in Kachin and Karen states, progressively dwindling COVID-19-related aid exacerbated these issues, with IDPs locked-down inside camps unable to seek outside sources of income.³² Worse, the Myanmar military burned down COVID-19 checkpoints and drove out villagers from three villages in Mu Traw (Papun) District in Karen State in its effort to re-ignite the conflict against the ethnic minority group. The MNHRC did not condemn these acts.³³



29 'The Statement of the Myanmar National Human Rights Commission (MNHRC) on COVID-19 Second Wave Statement No. 12/2020,' MNHRC; 'Myanmar's Effort to Trace Covid-19 Spread Treads on Sensitive Territory,' Radio Free Asia, 6 October 2020, <https://www.rfa.org/english/news/myanmar/covid-19-spread-10062020174513.html>.

30 'A Nation Left Behind – Myanmar's Weaponization of Covid-19,' Progressive Voice, June 2020, https://progressivevoicemyanmar.org/wp-content/uploads/2020/06/Final_PV-COVID-19_Report-2020.pdf.

31 Karen Peace Support Network, Terror from the Skies, May 2021, https://www.karenpeace.org/wp-content/uploads/2021/05/Terror-from-the-Skies_Briefing_KPSN_English.pdf; '[Joint Statement] Myanmar: Myanmar National Human Rights Commission Must Ensure Human Rights are Protected amid COVID-19 Pandemic,' FORUM-ASIA, 27 May 2020, <https://www.forum-asia.org/uploads/wp/2020/05/Myanmar-National-Human-Rights-Commission-Must-Ensure-HumanRights-are-Protected-amid-COVID-19-PandemicENG.pdf>.

32 Karen Human Rights Group, Left Behind – Ethnic Minorities and Covid-19 Response in Rural Southeast Myanmar, May 2021, <https://khr.org/2021/05/left-behind-ethnic-minorities-and-covid-19-response-rural-southeast-myanmar>. Fishbein, E. 'Despite Covid-19 Setbacks, Displaced Kachin Women Keep their Families Afloat,' 2 July 2020, The New Humanitarian, <https://www.thenewhumanitarian.org/photo-feature/2020/07/02/Myanmar-Kachin-displaced-women-coronavirus-conflict>.

33 'Short Update,' Karen Human Rights Group, 11 May 2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/20-37-d1.pdf>.

II. MNHRC's Mandate in Protecting and Promoting Human Rights

Protection

Under Article 22(b)(i) and (ii), the MNHRC is mandated to protect human rights by, among others, recommending to the Government the international human rights treaties to which Myanmar should become a party, as well as reviewing existing laws and proposed bills for their consistency with international human rights instruments to which the State is a party. The MNHRC has participated in the UPR, making two submissions for the third cycle: one reviewing the government's performance, and another on freedom of expression.³⁴

While the MNHRC has openly recommended that the Government should accede to the ICCPR and CAT, it has omitted ICERD despite the fact that discrimination on the basis of race is a pervasive problem in Myanmar and has been highlighted by States in successive UPR reviews.³⁵ The MNHRC has also supported the deeply-flawed draft Prevention and Protection of Violence Against Women Bill to be passed by the government,³⁶ which is inconsistent with CEDAW, and which falls abundantly short of properly addressing the issue of violence against women in Myanmar, such as the need to repeal a colonial era law that exempts marital rape.³⁷

One of the MNHRC's UPR submissions³⁸ referenced visits to IDP camps in Kachin and Rakhine states during the UPR reporting period, claiming that all their recommendations were implemented, which remedied the situation. The

34 MNHRC, The Submission of the Myanmar National Human Rights Commission to the Third Cycle of the Universal Periodic Review (UPR) of the United Nations Human Rights Council (the MNHRC UPR Submission), January 2021, https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/mnhrc_upr37_mmr_e_main.pdf; MNHRC, How much freedom of expression is enjoyed in Myanmar, January 2021, https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/1._myanmar_national_human_rights_commission_stmt.pdf.

35 MNHRC, The MNHRC UPR Submission, p. 1.

36 Ibid. p. 2; 'Statement of the Myanmar National Human Rights Commission Statement No. (1 / 2020),' MNHRC, 28 February 2020, (stating that the MNHRC provided comments and recommendations on the bill to the parliament), <http://www.mnhrc.org.mm/en/s128220/>.

37 Global Justice Center, Myanmar's Proposed Prevention of Violence Against Women Law, July 2020, https://www.globaljusticecenter.net/files/20200710_MyanmarPOVAWLawAnalysis.pdf; Penal Code (1861), Section 375; Samira Sadeque, 'Myanmar's Protection Bill Falls Short of Addressing Violence against Women,' IPS NEWS, 28 July 2020, <http://www.ipsnews.net/2020/07/myanmars-protection-bill-falls-short-of-addressing-violence-against-women/>.

38 MNHRC, The MNHRC UPR Submission.

submission also supported the government's deeply flawed National Camp Closure Strategy, which would, among other rights violations, deny IDPs the right to return home and the right to property restitution under the Pinheiro Principles.³⁹

However, in reality, hundreds of thousands of people remain in horrific conditions without basic necessities in violation of the ICESCR, to which Myanmar is a party. The MNHRC lauded the Tatmadaw for being delisted from the list of States that violate the prohibition on the recruitment of child soldiers and the Government for acceding to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.⁴⁰

However, the MNHRC failed to mention the hundreds of children who have been killed, injured and permanently affected by conflict during the UPR reporting period. Instead of praise, the MNHRC should have condemned the delisting.⁴¹ The situation for children in Myanmar is beyond anything any child should experience. In Rakhine State, 38 per cent of children (Rohingya, Rakhine and Kaman) under five years of age are chronically malnourished.⁴² In the first three months of 2020, over 100 children were killed or maimed in conflict.⁴³ Further, 302 boys were recruited into the Tatmadaw in the first half of 2020, which the MNHRC ignored.⁴⁴ Rohingya children in particular were used as human shields.⁴⁵

There was also no acknowledgement of the Rohingya genocide in the UPR submission, nor even a mention of the Rohingya, consistent with the MNHRC's repeated refusal to mention their name or acknowledge the ethnic group.⁴⁶ Additionally, the MNHRC continuously ignores the

Myanmar military's persecution of ethnic communities through increased militarisation, isolated military attacks and Burmanization policies to oppress ethnic communities, especially in Karen, Mon and Karenni States.⁴⁷ The MNHRC also did not push the government to seek reform on some of the blatantly discriminatory laws that continued to be enforced in 2020, such as the four Race and Religion Laws or 1982 Citizenship Law, which were used to deny Rohingya and other Muslim minorities the rights to citizenship, voting and freedom of religion or belief.⁴⁸

Therefore, in terms of the above, it can be stated that the MNHRC, instead of working towards the human rights of the general public, has instead painted a rosy picture of the government's performance and ignored the grave human rights violations committed by the Myanmar military; it has done so by refusing to acknowledge or investigate widespread allegations of the genocide of the Rohingya or crimes against humanity, war crimes and countless untold human rights violations perpetrated against the Rohingya and other ethnic communities, in violation of its own mandate as an NHRI. The MNHRC did not cover any of these crimes in its most recent UPR submissions. Worse, the MNHRC even recommended more security and ammunition for the police, thereby endorsing the government's approach on the issue.⁴⁹

39 See Office for the Coordination of Humanitarian Affairs, UN Guiding Principles on Internal Displacement, August 1998, <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>; UN OHCHR, Housing and Property Restitution for Refugees and Internally Displaced Persons: Implementing the 'Pinheiro Principles,' March 2007, https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

40 The MNHRC UPR Submission, MNHRC, p. 2

41 See '[Open Letter] Armed Conflict: All Perpetrators Of Grave Child Rights Violations Must Be Listed By The United Nations,' International Bureau for Children's Rights, 12 May 2021, <https://www.ibcr.org/en/news/open-letter-armed-conflict-all-perpetrators-of-grave-child-rights-violations-must-be-listed-by-the-united-nations/>

42 Human Rights Watch, 'An Open Prison without End,' 8 October 2020, <https://www.hrw.org/report/2020/10/08/open-prison-without-end/myanmars-mass-detention-rohingya-rakhine-state>

43 'Myanmar: 'Shocking' killing of children allegedly used as human shields,' UN News, 14 October 2020, <https://news.un.org/en/story/2020/10/1075362>.

44 Ibid.

45 Ibid. See also 'Myanmar's Military Still Using Children in Fighting,' Human Rights Watch, 17 November 2020, <https://www.hrw.org/news/2020/11/17/myanmars-military-still-using-children-fighting>.

46 See The MNHRC UPR Submission, MNHRC; See also 'Return

to Sender:' MNHRC Enabling Law must be Returned to Parliament for Structural Reform, Progressive Voice, October 2018, https://progressivevoicemyanmar.org/wp-content/uploads/2018/10/MNHRC_Report_English_Web.pdf; 'How Myanmar's government passed up two chances to address human rights while on trial for genocide,' ASEAN Times, 23 January 2020, <https://www.aseantoday.com/2020/01/how-myanmars-government-passed-up-two-chances-to-address-human-rights-while-on-trial-for-genocide/>.

47 Karen Peace Support Network, Terror from the Skies; 'KNU: Burma Army Militarization Forces Karen to Flee Villages – Government Used National Ceasefire Agreement to Increase its Troops in Brigade 5 and 7,' Karen News, 2 June 2020, <http://karennews.org/2020/06/knu-burma-army-militarization-forces-karen-to-flee-villages-government-used-national-ceasefire-agreement-to-increase-its-troops-in-brigades-5-and-7/>; 'NayPyiDaw's Weaponization of the Ceasefire in Karenni State,' Karenni Civil Society Network, 14 December 2020, <https://progressivevoicemyanmar.org/2020/12/14/naypyidaws-weaponization-of-the-ceasefire-process-in-karenni-state/>; 'Newly Elected NLD-led Government Must Work to End Burmanization,' Progressive Voice, 26 November 2020, <https://progressivevoicemyanmar.org/2020/11/26/newly-elected-nld-led-government-must-work-to-end-burmanization/>.

48 'Burma: Four 'Race and Religion Protection Laws' Adopted,' Library of Congress, 14 September 2015, <https://www.loc.gov/item/global-legal-monitor/2015-09-14/burma-four-race-and-religion-protection-laws-adopted/>; UN Human Rights Council, Human Rights Council opens special session on the situation of human rights of the Rohingya and other minorities in Rakhine State in Myanmar, 5 December 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22491>

49 Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, para. 1617.

Another group that has been severely let down by the MNHRC is the LGBTIQ community, who are marginalised, stigmatised, and excluded from Myanmar society.⁵⁰ The Commission has remained silent on attacks on the rights of LGBTIQ people, such as colonial era laws that criminalise consensual same-sex relations,⁵¹ police harassment through ‘Shadow Laws’ used for the purpose of criminalising LGBTIQ people,⁵² and the lack of Constitutional recognition.⁵³

In 2019, the MNHRC received a complaint by LGBTIQ groups on behalf of Ko Kyaw Zin Win who died by suicide after intense online bullying from colleagues at Myanmar Imperial University, and whose plight went viral.⁵⁴ Instead of taking this significant moment to promote and protect the rights of LGBTIQ persons or recommend to the Government to reform the law to ensure freedom from discrimination, the MNHRC released a statement saying no rights had been violated, dismissively blaming the victim by saying he was ‘mentally weak.’⁵⁵ This incident is indicative of the psychological, verbal and violent harassment LGBTIQ persons experience in the workplace and within society as a whole, only to be further perpetuated by the MNHRC, which failed to handle this incident through a sensitive and human rights-centred approach.⁵⁶

Promotion

When it comes to human rights promotion, the MNHRC has focused on issues that are not politically sensitive. However, genuine human rights promotion cannot happen without addressing the broader systemic human rights violations in Myanmar concerning ethnic, religious, and gender minorities. Within the wider context of the human rights situation in Myanmar these issues should be the starting point of any genuine effort towards human rights promotion.

Much of the MNHRC’s focus in 2020 was placed on: conducting seminars, informal gatherings and workshops on human rights issues, including a one-day disability inclusion training for 30 commissioners and staff members⁵⁷ donating books on anti-corruption,⁵⁸ and organising an International Human Rights Day online event and an online Facebook quiz to engage the general public on human rights and election issues.⁵⁹ The MNHRC went to educational institutions to give speeches on human rights, including Defence University, Yangon Police Academy, Fire Department Training School, and primary schools.⁶⁰

In general, it is unclear if the MNHRC monitors the outcomes or seeks to review the effectiveness of such activities. It is difficult to obtain information on the activities of the Commission as not all of their statements are provided on their webpage but mostly posted on Facebook, where they do not often provide detailed information on the scope

50 C.A.N-Myanmar, UPR Fact-sheet on LGBTI issues in Myanmar (Submission to the Universal Periodic Review of the United Nations Human Rights Council), January 2021, https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/7._can-myanmar_factsheet.pdf

51 See, for example, Section 377 of the Myanmar Penal Code; Equality Myanmar, In the Shadows: Systemic Injustice based on Sexual Orientation and Gender Identity/Expression in Myanmar, <https://www.icj.org/wp-content/uploads/2019/11/Myanmar-In-The-Shadows-Advocacy-Report-2019-ENG.pdf>.

52 Police Act (1945), Section 35.

53 Constitution of the Republic of the Union of Myanmar, Section 348.

54 Zarni Mann, ‘National Human Rights Commission to Investigate LGBT Suicide,’ The Irrawaddy, 27 June 2019, <https://www.irrawaddy.com/news/burma/national-human-rights-commission-investigate-lgbt-suicide.html>.

55 C.A.N-Myanmar, UPR Fact-sheet on LGBTI issues in Myanmar; ‘Gay Myanmar Man who took own life ‘mentally weak’: inquiry,’ Frontier Myanmar, 15 August 2019, <https://www.frontiermyanmar.net/en/gay-myanmar-man-who-took-own-life-mentally-weak-inquiry/>.

56 Ibid.

57 ‘Disability Inclusion: Training on Disability Inclusion for Commission Staff Kicks Off,’ MITV, 3 July 2020, <https://www.myanmaritv.com/news/disability-inclusion-training-disability-inclusion-commission-staffs-kicked>.

58 Facebook, ‘Myanmar National Human Rights Commission,’ <https://www.facebook.com/myanmarnhrc/photos/pcb.641979063065873/641978793065900/>, 10 June 2020, (showing a photo with the caption, in part: Myanmar National Human Rights Commission donated the reference letter and book documents published by the Anti-Corruption Commission ... Commission member Dr. Than Myint, Director U Phone Kywe and office staff attended.)

59 Facebook, ‘Statement of the Myanmar National Human Rights Commission on the observation of Multi-party Democracy General Election Statement No. (13/ 2020),’ 9 November 2020, <https://www.facebook.com/myanmarnhrc/photos/a.124243758172742/746606325936479/>; MNHRC, International Human Rights Day Virtual Event, 10 December 2020, <https://www.facebook.com/events/3835434349851102/?ref=newsfeed>; MNHRC, ‘Statement of the Myanmar National Human Rights Commission on the 72nd International Human Rights Day on 10 December 2020, Statement No. (15/2020),’ <http://www.mnhrc.org.mm/en/s152020eng/>.

60 The MNHRC provides photos of their activities through their Facebook page, see for example, Facebook, ‘Myanmar National Human Rights Commission Photos,’ 2020, <https://www.facebook.com/myanmarnhrc/photos/pcb.588956801701433/588956581701455/>, <https://www.facebook.com/myanmarnhrc/photos/pcb.588862481710865/588862211710892/>, <https://www.facebook.com/myanmarnhrc/photos/pcb.586612725269174/586612168602563/>, and <https://www.facebook.com/myanmarnhrc/photos/pcb.677478466182599/677478202849292/>

or follow-up of their activities. The MNHRC has also not published annual reports of its activities since 2017. Further, the effort to promote human rights seems superficial given the MNHRC's significant failure to implement human rights protection activities, such as conducting inquiries into allegations of widespread human rights violations and abuses throughout Myanmar.

The MNHRC has had little engagement with civil society during the reporting period, its interactions centred mostly with CSOs based in Yangon, and more commonly with CSOs the MNHRC has an existing working relationship with.⁶¹ Other than these groups, there has been no other publicly reported collaboration between the MNHRC and civil society for the furtherance of human rights.

“... a superficial answer to some of the gravest human rights abuses.”

⁶¹ 'Statement of the Myanmar National Human Rights Commission on the 72nd International Human Rights Day on 10 December 2020, Statement No. (15/2020)', MNHRC.



Pluralism

In the MNHRC, among both commissioners and staff, there is a lack of diversity on various fronts. Four of the 11 appointed commissioners are women,⁶² and while this is an improvement from the previous composition of the Commission, there is still a preponderance of male Commissioners. Furthermore, the Commissioners do not reflect the diversity of Myanmar in terms of age, qualifications, disability, social class, ethnicity, religion, sexual orientation, gender identity or gender expression, among others.⁶³

It appears that none of the commissioners selected in January 2020 has any formal human rights training or experience working within civil society apart from the Chairperson, who represents Myanmar on the AICHR.⁶⁴ Many of them have strong links with previous military regimes.⁶⁵

One commissioner, U Tin Aung, was a General within the Myanmar military during the Rohingya genocide and Rakhine conflict, which should have been a disqualifying factor.⁶⁶ This lack of pluralism in the composition of the Commission has contributed to the MNHRC's failure to provide sufficient responses to the various forms of discrimination in Myanmar and has affected its engagement with human rights victims and broader civil society.

III. Conclusion and Recommendations

The MNHRC was established 10 years ago and, though flawed since its founding, has now further become complicit in window-dressing of the military's crimes and now in legitimising its brutal attempted coup. The collective human rights expertise within the Commission is inadequate, in part due to the opaque selection process and flawed enabling law, and in part because of the limited independence of the Commission in performing its mandate. This impedes its functioning at a standard that should not be acceptable for an NHRI. Overall, the MNHRC does not act independently of the influence of the government and military, is compliant and complicit with the military junta, and is wilfully blind to some of the gravest human rights violations in living memory.⁶⁷ While a critical and independent NHRI may not have been able to end human rights violations in Myanmar, it would have served as a strong ally to civil society and the people of Myanmar. Currently, they are operating under the orders of the military junta,⁶⁸ cooperating with them on a business-as-usual basis amid a failing coup d'état.⁶⁹

62 MNHRC, 'Commissioners,' <http://mail.mnhrc.org.mm/en/about/commissioners/>.

63 'Reform of Myanmar Human Rights Commission Lacks Transparency,' Progressive Voice, 15 January 2020, <https://progressivevoicemyanmar.org/2020/01/15/reform-of-myanmar-human-rights-commission-lacks-transparency-critics-say/>; See International Commission of Jurists, International Commission of Jurists' Submission to the Universal Periodic Review of the Republic of the Union of Myanmar, 9 July 2020, <https://www.icj.org/wp-content/uploads/2020/07/Myanmar-UPR-Submission-2020-ENG.pdf>.

64 MNHRC, 'Commissioners,' <http://mail.mnhrc.org.mm/en/commissioner/u-hla-myint/>.

65 'Myanmar's rights commission failing to act on 'atrocities crimes' in Rakhine state, say advocates,' Myanmar Now, 25 September 2020, <https://www.myanmar-now.org/en/news/myanmars-rights-commission-failing-to-act-on-atrocities-crimes-in-rakhine-state-say-advocates>.

66 'U Tin Aung,' MNHRC, <http://www.mnhrc.org.mm/en/commissioner/u-tin-aung/>; 'How Myanmar's government passed up two chances to address human rights while on trial for genocide,' ASEAN Today, 23 January 2020, <https://www.aseantoday.com/2020/01/how-myanmars-government-passed-up-two-chances-to-address-human-rights-while-on-trial-for-genocide/>.

67 '[Statement] International Partners Must End all Cooperation with the Myanmar National Human Rights Commission,' FORUM-ASIA, 11 March 2021, <https://www.forum-asia.org/?p=34124>.

68 'Appointment and Duty Assignment of Chairman, Vice-Chairman and members of Myanmar National Human Rights Commission,' The Global New Light of Myanmar, 2 February 2021, <https://www.gnlm.com.mm/appointment-and-duty-assignment-of-chairman-vice-chairman-and-members-of-myanmar-national-human-rights-commission/>.

69 'Myanmar National Human Rights Commission: Denounce the Coup, Stand with the People of Myanmar,' CSO Working Group on MNHRC Reform, 11 February 2021.

To the National Unity Government and Committee representing the Pyidaungsu Hluttaw:

1. Conduct a public consultation and debate on the abolishment of the MNHRC, the formation of a new NHRI, and the selection of new commissioners in line with the Paris Principles;
2. Abolish the 2014 MNHRC Law, and adopt a new NHRI law in line with the Paris Principles and other relevant human rights standards pertaining to NHRIs, such as the Belgrade Principles and the Merida Declaration; and
3. Ensure the new NHRI is an independent commission that upholds pluralism and independence as its core principles.

To the MNHRC:

1. Release a statement on the resignation of the current Commission in solidarity with the people of Myanmar, as the Commission is unable to execute its functions as an NHRI under the junta.

To the Myanmar military:

1. Immediately cease all attacks against the peoples of Myanmar, including within ethnic areas, end the crimes against humanity, release all those who have been arbitrarily detained, and come under the control of the National Unity Government (NUG) as the legitimate civilian government consisting of 76 per cent of parliamentarians elected in the last general election, in line with the UN General Assembly resolution calling on the military to respect the will of the people.⁷⁰

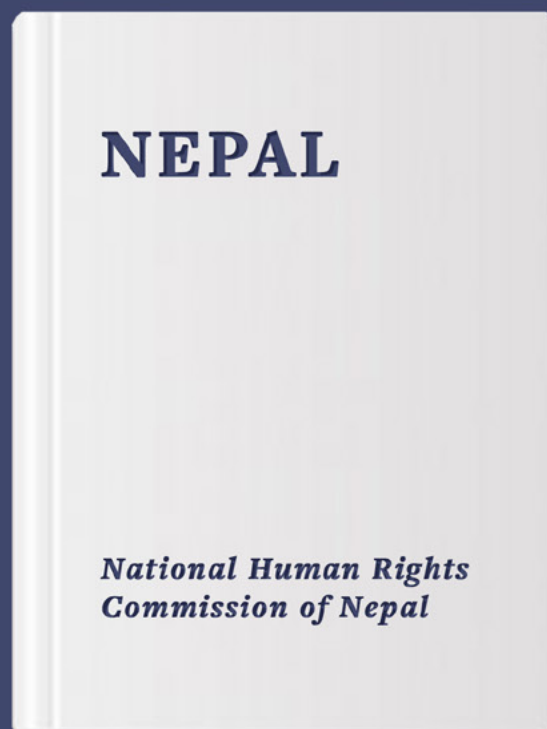
To the International Donor Community, Regional and International NHRI Networks:

1. Suspend all funding and technical support to the MNHRC, and cease communication with the MNHRC;
2. Suspend all memberships and activities with the MNHRC, and encourage other regional and international actors to follow suit; and
3. Recognise the NUG as the legitimate civilian government of Myanmar, which represents the voice of its people, and provide support including technical assistance to the NUG to form an NHRI that is fully Paris Principles-compliant.

⁷⁰ 'General Assembly Reappoints Secretary-General to Second Five-Year Term, Adopting Resolution Condemning Lethal Violence by Myanmar's Armed Forces,' 18 June 2021, <https://www.un.org/press/en/2021/ga12339.doc.htm>; The NUG was formed by The Committee Representing Pyidaungsu Hluttaw (CHRP) as the democratically-elected government of Myanmar.

NEPAL:

REVISITING THE NATIONAL HUMAN RIGHTS COMMISSION IN NEPAL:
A (IN)DEPENDENT INSTITUTION?¹



| | |
|--|---|
| YEAR OF ESTABLISHMENT | 2000 |
| COMPOSITION OF MEMBERS | FIVE |
| DIVERSITY REQUIREMENT UNDER LAW | NO REQUIREMENT |
| TERM OF MEMBERS | SIX YEARS |
| CURRENT CHAIRPERSON | TOP BAHADUR MAGAR (CURRENT CHAIRPERSON) ANUP RAJ SHARMA (CHAIRPERSON 2014–2020) |
| CURRENT GENDER RATIO (WOMEN : MEN) | 1 : 4 |
| AUTHORITY TO APPOINT MEMBERS | PRESIDENT, ON THE RECOMMENDATION OF THE CONSTITUTIONAL COUNCIL |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | A (LAST REVIEWED IN 2019) ⁶ |
| ADDRESS | HARIHAR BHAWAN, PULCHOWK, LALITPUR, NEPAL G.P.O. BOX: 9182, KATHMANDU, NEPAL |
| REGIONAL OFFICES | SIX PROVINCIAL OFFICES (BIRATNAGAR, JANAKPUR, SANEPA, POKHARA, BUTAWAL, DHANGHADI) PROPOSED PROVINCIAL OFFICE IN SURKHET PROVINCIAL BRANCH OFFICES KHOTANG, NEPALGUNJ AND JUMLA |
| PHONE | 00977-(0)1-5010015 |
| HELPLINE NUMBER | NONE SPECIFIED |
| EMAIL | nhrcc@nhrcnepal.org; complaints@nhrcnepal.org |
| WEBSITE | www.nhrcnepal.org |



THE NHRCN FOUND CO INSUFFICIENT IMPLEM NEPAL'S INTERNATIONAL OBLIGATIONS, WHICH THE COMMISSION, UN PROTECTION AND PRO HUMAN RIGHTS IN NE

I. Overview

The National Human Rights Commission of Nepal ('NHRCN' or 'Commission') is an independent constitutional body with the mandate to protect and promote human rights in the country. The Commission was initially established by a statute in 2000 under the Human Rights Commission Act 1997.² Later, it was reconstituted as a constitutional body under Article 131 of the Interim Constitution of Nepal, 2007.³ The National Human Rights Commission Act, 2012 ('NHRC Act, 2012') was also enacted to further govern the NHRCN.⁴

1 Informal Sector Service Center (INSEC) has been a strong member of Nepal's civil society movement since 1989. It advocates for improving the status of protection, promotion and fulfilment of human rights. It began documenting and disseminating human rights violations and the situation of human rights in Nepal when it was established. It collaborates with the people, national institutions, human rights friendly agencies, international communities, resource organizations and victims of human rights violation for social justice, human rights friendly governance, rule of law and democratic freedom. Furthermore, it monitors the accountability of the state on its commitment and performance.

2 See National Human Rights Commission Act, 2053 (1997), http://www.nhrcnepal.org/uploads/law/Human_Rights_Commission_Act_2053_1997.pdf; NHRCN, 'About Us: National Human Rights Commission, Nepal,' accessed 15 October 2021, <https://www.nhrcnepal.org/aboutus>.

3 Ibid.

4 National Human Rights Commission Act, 2068 (2012), <https://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/national-human-rights-commission-act-2068-2012>.

Subsequently, Nepal promulgated its current Constitution in 2015 and included the NHRCN in Part 25 (Article 248 and Article 249).⁵

(Refer to the table)⁶

The GANHRI-SCA granted an 'A' status to the Commission when it was last reviewed in March 2019.⁷ However, the GANHRI-SCA shared its concerns on, and encouraged the NHRCN to work towards, the following:

1. Selection and appointment: To advocate for a process that formalises and applies the principles of transparency, merit-based selection, and pluralism. Presently, the law does not require vacancies of the Commissioners' posts to be advertised, nor does it 'promote broad consultations and/or participation in the application, screening, selection, and appointment process;'
2. Conflicts of interest: To advocate for an amendment to the enabling law so that conflicts of interest can be reduced;

5 The Constitution of Nepal (2015).

6 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), March 2019, <https://ganhri.org/wp-content/uploads/2019/11/SCA-Report-March-2019-EN-.pdf>, p. 2.

7 Ibid.

CONTINUED PRESENTATION OF SERIOUS HUMAN RIGHTS VIOLATIONS, ACCORDING TO WHICH UNDERMINES THE PROMOTION OF PEACE IN NEPAL.

3. Adequate funding and financial autonomy: To advocate for the necessary funding needed for the Commission to function, as well as to propose amendments to the enabling law so that the NHRCN need not seek approval from the Finance Ministry to accept external sources of funding;
4. Annual report: To advocate for an amendment to its enabling law so that the annual report can be directly tabled by the NHRCN before the Parliament, instead of passing it through the executive; and
5. Addressing human rights violations: To strengthen its efforts to address all kinds of human rights violations, the SCA recommended the NHRCN to have an effective follow-up system to the Government to facilitate the adoption and implementation of its recommendations on human rights issues, and for the NHRCN's position on human rights issues to be made publicly available.

Human Rights Situation during the COVID-19 Pandemic

The COVID-19 pandemic affected Nepal in many ways. There was an increase in cases of caste-based violence, violation of minority rights, and violation of the rights

of disabled persons.⁸ In 2020, impunity for torture and extrajudicial killings by the State persisted.⁹ Many victims of caste-based discrimination were Dalits – the so-called ‘untouchables’ who are an oppressed caste group in Nepal. Furthermore, research showed a high number of cases of violence against women, including rape and sexual abuse, occurred last year.¹⁰

In 2020, students in Nepal were heavily affected due to school/university closures in response to the pandemic. Due to the lack of internet access, not all students could attend virtual classes.¹¹ This showed the government's ineffectiveness in ensuring equal rights to education for all children.

Nepal's healthcare system also failed during COVID-19 and the government was unable to address the inadequacies properly. Nepal reported 260,593 positive cases of COVID-19 and 1,856 deaths in 2020.¹² One of the reasons for such a high number of deaths in Nepal as it battled the pandemic in 2020 was the refusal of some of the hospitals to admit patients, offering no valid reason.¹³ The right to health is one of the fundamental rights enshrined in Article 35 of the Constitution of Nepal as well as in the International Covenant on Economic, Social and Cultural Rights, to which Nepal is a State Party; Nepal has failed to protect this right.¹⁴

The pandemic also affected daily-wage labourers and their economic and civil rights. Thousands of workers had to leave their jobs amidst the COVID-19 pandemic, and workers who tried to travel abroad were stranded at the

8 NHRCN, National Human Rights Commission of Nepal: Annual Report FY 2019–2020, December 2020, http://nhrcnepal.org/uploads/publication/Annual_Report_FY_2019-20_compressed.pdf; NHRCN, Human Rights Situation During COVID-19 Pandemic: A Brief Assessment, December 2020, <https://nepalindata.com/resource/human-rights-situation-during-covid-19-pandemic-brief-assessment/>.

9 Human Rights Watch, No Law, No Justice, No State for Victims The Culture of Impunity in Post-Conflict Nepal, 20 November 2020, <https://www.hrw.org/report/2020/11/20/no-law-no-justice-no-state-victims/culture-impunity-post-conflict-nepal>.

10 ‘What happened after COVID-19 hit: Nepal,’ UN Women, 16 November 2020, <https://www.unwomen.org/en/news/stories/2020/11/what-happened-after-covid-19-hit-nepal>.

11 NHRCN, Human Rights Situation During the COVID-19 Pandemic, p. 22; Human Rights Watch, Nepal: Events of 2020, accessed 15 October 2021, <https://www.hrw.org/world-report/2021/country-chapters/nepal>.

12 ‘Nepal's Covid-19 toll reaches 1,856 with nine more deaths; national tally reaches 260,593 with 534 new infections,’ The Kathmandu Post, 31 December 2020, <https://kathmandupost.com/health/2020/12/31/nepal-s-covid-19-toll-reaches-1-856-with-nine-more-deaths-national-tally-reaches-260-593-with-534-new-infections>.

13 ‘Press Releases,’ INSECOOnline, 16 August 2020, <https://inseconline.org/en/press/press-statement/>.

14 UN Treaty Collection, ‘International Covenant on Economic, Social and Cultural Rights,’ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4.

India-Nepal border with nothing to eat.¹⁵

The NHRCN made its services accessible during the lockdown, through their hotlines and mobile apps. It also issued several statements urging the Government to protect the most vulnerable during the pandemic.¹⁶

II. NHRCN's Mandate to Protect and Promote Human Rights

Mandate

Under the 2015 Constitution, the NHRCN has a duty to 'respect, protect and promote human rights and ensure effective enforcement thereof,¹⁷ and has the authority to make human rights-related recommendations to the Government of Nepal on human rights violations and necessary improvements on existing and proposed laws.¹⁸

Article 249(a) of the Constitution and Article 10 of the NHRC Act, 2012, respectively, provide the NHRCN with the power to inquire, suo motu, or on the presentation of a complaint by the victim or person on their behalf, on matters related to the violation of human rights.¹⁹ For this purpose, Article 249(3) of the Constitution of Nepal empowers the Commission to exercise all the powers of a court in relation to summoning and enforcing the attendance of any person, examining exhibits, search and seizure of evidence, seeking production of any documents, exhibits and proofs, as well as ordering compensation to a human rights victim after a proper investigation. It can also recommend the filing of a case in court against a person or organisation for human rights violations.²⁰

“The President subsequently appointed the current NHRC Chairperson and members on the basis of recommendations made by the Constitutional Council...

Apart from the functions enshrined under Article 249 of the Constitution of Nepal, 2015, Section 4 of the NHRC Act, 2012 provides the NHRCN the power to conduct inspections and monitor prisons, public institutions, or any other place for the protection of human rights, and to also provide necessary suggestions with regard to improvements within these agencies or departments for protecting human rights.

Section 6(3) and (4) of the NHRC Act, 2012 also provide the Commission with the mandate to provide consultations and recommendations to the Government of Nepal in the formulation or amendment of existing or developing legislation; the Commission may also make recommendations regarding the ratification of human rights treaties.

Though the NHRCN has the power to make recommendations to the Government, the government's implementation of those recommendations remains a challenge.²¹ The NHRCN claims that impunity in the country still needs to be fully addressed.²²

Under Article 249(2)(h) of the Constitution of Nepal and Section 7 of the NHRC Act, 2012, the NHRCN has the power to publish the names of the officials, persons or bodies that have knowingly failed to observe or implement a recommendation of the Commission concerning human rights violations and accordingly record them as human rights violators. For instance, the NHRCN published 286 names accused in cases of human rights violation during the decades-long armed conflict between the Government and the Communist Party of Nepal (Maoist).²³ Among the violating government organs mentioned were the Nepal

15 Impact of COVID-19 on Nepali Migrant Workers: Protecting Nepali Migrant Workers during the Health and Economic Crisis: Challenges and the Way Forward, International Labour Organization, 10 June 2020, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/briefingnote/wcms_748917.pdf; Raman Paudel, 'COVID-19: Our government failed us, say Nepalese workers stranded at border,' Down to Earth, 9 April 2020, <https://www.downtoearth.org.in/news/health/covid-19-our-government-failed-us-say-nepalese-workers-stranded-at-border-70337>.

16 See NHRCN, Human Rights Situation During COVID-19 Pandemic, p. 76.

17 Art. 249(1).

18 Art. 249(2)(e) and (f).

19 Constitution of Nepal (2015), Art. 249.

20 Ibid. Art. 249(2)(c)

21 'Nepal: Carry Out Rights Panel's Recommendations,' Human Rights Watch, 2 November 2020, <https://www.hrw.org/news/2020/11/03/nepal-carry-out-rights-panels-recommendations>.

22 NHRCN, A Precise Report on the Recommendations and State of Implementation in the 20 Years of NHRCN, http://nhrcnepal.org/uploads/publication/NHRCNepal_20_Years_Report_English_2077.pdf, p. 7.

23 Human Rights Watch, No Law, No Justice, No State for Victims; 'Nepal: Carry Out Rights Panel's Recommendations,' Human Rights Watch, 3 November 2020, <https://www.hrw.org/news/2020/11/03/nepal-carry-out-rights-panels-recommendations>.

army, police, and prison administration authorities.²⁴ Such power to publish the names of violating officials or bodies would help pressure the State to ensure a proper response to the implementation of the NHRCN's recommendations concerning the rule of law and an end to impunity.²⁵

Monitoring

Monitoring the activities of the other agencies of the Government of Nepal is one of the major functions of the NHRCN. As previously mentioned, the Commission has the power to inspect and monitor prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights. Further, Section 20 of the NHRC Act, 2012 allows the Commission to maintain relations with 'national and international organizations related with the protection and promotion of human rights,' and for this purpose, 'enter into agreements with them in order to exchange cooperation.'

During COVID-19, it was the NHRCN that had urged the Government to immediately evacuate Nepali nationals from the city of Wuhan, China at the very beginning of the pandemic.²⁶ The NHRCN also consulted with CSOs such as the NGO Federation and Federation of Nepali Journalists in monitoring the human rights situation, which has contributed to reducing the risk of excluding people from receiving health services and suffering potential violations of their human rights during the pandemic.²⁷

Furthermore, Article 249(2)(g) of the 2015 Constitution includes different facets of monitoring. It states that one of the functions of the NHRCN is to monitor the implementation of international treaties or agreements

24 NHRCN, A Precise Report on the Recommendations and State of Implementation in the 20 Years of NHRCN, pp. 11–14.

25 Ibid.; 'Nepal: Rights Commission's report exposing human rights violators a positive step towards justice,' FORUM-ASIA, 22 October 2020, <https://www.forum-asia.org/?p=33204>.

26 'NHRC directs govt to immediately evacuate Nepali nationals from coronavirus-hit China's Wuhan,' myRepublica, 9 February 2020, <https://myrepublica.nagariknetwork.com/news/nhrc-directs-govt-to-immediately-evacuate-nepali-nationals-from-coronavirus-hit-china-s-wuhan/>.

27 'NHRC to monitor human rights situation across Nepal during Covid-19 crisis,' Online Khabar, 10 April 2020, <https://english.onlinekhabar.com/nhrc-to-monitor-human-rights-situation-across-nepal-during-covid-19-crisis.html>.

to which Nepal is a party, and to make the necessary recommendation to the Government if these are not implemented. In November 2020, the Government submitted its UPR report on the review of its international commitments.²⁸ The Government admitted that it was implementing its international human rights obligations 'in earnest.'²⁹

However, the NHRCN found continued insufficient implementation of Nepal's international human rights obligations, which, according to the Commission, undermines the protection and promotion of human rights in Nepal.³⁰ This does not describe the inadequacies of the NHRCN. Rather, it specifies the lack of government coordination and action on the recommendations of the NHRCN, which therefore affects the work of the NHRCN.

Independence

Article 248 of the 2015 Constitution provides that the Commission shall consist of four members and one Chairperson with a tenure of six years. The appointment of the members and the Chairperson, as provided in Article 248(2) of the Constitution of Nepal, will be made by the President on the recommendation of the Constitutional Council. The composition of the Constitutional Council includes the Prime Minister (Chairperson of the Council), Chief Justice, Speaker of the House of Representative, Deputy Speaker of the House of Representatives, Chairperson of the National Assembly, and the Leader of the Opposition Party in the House of Representatives.³¹ Furthermore, Article 248(6) provides the eligibility criteria for the Chairperson of the NHRCN, which states that the Chairperson shall be a retired Chief Justice or retired Judge of the Supreme Court or a renowned person actively working for the protection and promotion of human rights for at least 20 years and who has rendered an outstanding contribution to the field or 'various fields of national life.'

However, there is potential for bias in the appointment of the Chairperson. The appointment of the Chairperson, who can be a retired judge, such as the Chief Justice of the Supreme Court, is done upon the recommendation of the Constitutional Council, which also includes the current Chief Justice as its members. The executive also influences the appointment process, which undermines the independence of the Commission, as evidenced by the events in 2020. In December 2020, the Government of Nepal promulgated an ordinance seeking to amend the

28 Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 3 November 2021, <https://digitallibrary.un.org/record/3893975?ln=en>.

29 See, for example, Human Rights Council, National report, p. 4.

30 NHRCN, Annual Report.

31 Constitution of Nepal, Art. 284; See also, Constitutional Council (Functions, Duties, Powers and Procedures) Act, 2066 (2010).

... It is believed that this move will undermine the independence of the NHRCN to perform its mandate"

Constitutional Council Act of 2010 unilaterally.³² The amendment changed the quorum requirement from a base of a majority of the members instead of all members.³³

As per the Constitutional Council Act of 2010,³⁴ the composition of the constitutional bodies must also be confirmed through a parliamentary hearing process, which could not take place in this case because the Parliament was dissolved a few days later.³⁵ The President subsequently appointed the current NHRC Chairperson and members on the basis of recommendations made by the Constitutional Council. Local civil society as well as international agencies condemned this development in the NHRCN.³⁶ It is believed that this move will undermine the independence of the NHRCN to perform its mandate. Both the ordinance and the Constitutional Council's recommendations were challenged before the Supreme Court and remain pending as of writing.³⁷ Also, the experts have raised their concerns on not following SCA recommendations of 'an independent and impartial national human rights institution' as the Government failed to follow the due procedure of law in the appointment.³⁸

Furthermore, Section 28 of the NHRC Act, 2012 provides for the appointment of the Secretary to the Commission by the Government of Nepal, based on the recommendation of the Commission. The Secretary has the power to administer the operation of the NHRCN, including taking care of and maintaining properties, initially preparing the annual budget and programmes and plans, as well as their implementation. The Secretary is mandated to act under the general direction of the Chairperson, and not in consultation with the other members of the Commission. This provides immense power to the Chairperson to delegate power to the Secretary and can lead to the functional autonomy of the Commission to one person.

32 'PM Oli introduces Constitutional Council ordinance after failing to meet quorum for convening meeting,' ANI, 15 December 2020, <https://www.aninews.in/news/world/asia/pm-oli-introduces-constitutional-council-ordinance-after-failing-to-meet-quorum-for-convening-meeting20201215214236/>.

33 'Nepal: appointments to the Human Rights Commission must be impartial and respect the Constitution,' OMCT, 29 March 2021, <https://www.omct.org/en/resources/statements/nepal-appointments-to-the-human-rights-commission-must-be-impartial-and-respect-the-constitution>.

34 Constitutional Council (Functions, Duties, Powers and Procedures) Act, 2066 (2010).

35 'In a midnight drama, Nepal President dissolves House and calls polls for November 12 and 19,' The Kathmandu Post, 22 May 2021, <https://kathmandupost.com/politics/2021/05/22/president-dissolves-house-calls-snap-polls-for-november-12-and-19>.

36 'Nepal: UN experts express concerns for independence and integrity of the NHRC,' UN Office of the High Commissioner for Human Rights, 27 April 2021, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27026&LangID=E>; 'Nepal: appointments to the Human Rights Commission must be impartial and respect the Constitution,' OMCT; 'Nepal: Human Rights Commission's Integrity in Jeopardy,' Human Rights Watch, 1 March 2021, <https://www.hrw.org/news/2021/03/01/nepal-human-rights-commissions-integrity-jeopardy>.

37 Prithvi Shrestha, 'Ordinance and constitutional body recommendations challenged in court,' The Kathmandu Post, 25 December 2020, <https://kathmandupost.com/national/2020/12/28/ordinance-and-constitutional-body-recommendations-challenged-in-court>.

38 'Nepal: UN experts express concerns for independence and integrity of the NHRC,' UN Office of the High Commissioner for Human Rights.

“Rather, it specifies the lack of government coordination and action on the recommendations of the NHRCN, which therefore affects the work of the NHRCN.”

III. Conclusion and Recommendations

The NHRCN has tried to perform its mandate to protect and promote human rights in Nepal to a large extent. It has also strengthened engagement with CSOs and other public bodies. However, the Government should amend the law to protect the integrity and accountability of the Commission by changing the appointment procedure. Furthermore, it should also adopt the recommendations of the NHRCN on key human rights issues as well as those made by the GANHRI-SCA.

To the Government of Nepal:

1. Address the recommendations of GANHRI-SCA regarding the functional independence, resources, and appointment of staff, the chairperson and members to enhance credibility;
2. Adopt recommendations made by the NHRCN that are not yet implemented; and
3. Amend laws on transitional justice and remedial mechanisms for human rights victims by ensuring that perpetrators of human rights violations, whose names have been published in a list by the NHRCN, are held criminally and civilly liable by an independent and impartial civilian court.

To the International Community:

1. Increase engagement with the Government and concerned authorities to implement the NHRCN recommendations on transitional justice; and
2. Increase pressure on the Government of Nepal to preserve the integrity and independence of the NHRCN.

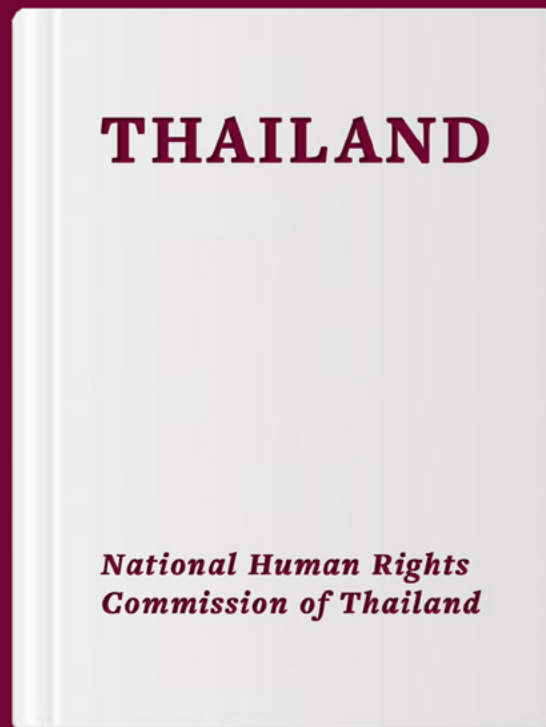
To the NHRCN:

1. Ensure that the NHRC Act is in accordance with international standards and advocate for the recommendations made by the GANHRI-SCA;
3. Advocate for legal reform on human rights issues such as impunity for gross human rights violations, violence against women and children, and discrimination;
4. Enhance engagement with local civil society and human rights defenders; and
5. Facilitate the enhancement of the capacity of the NHRCN.

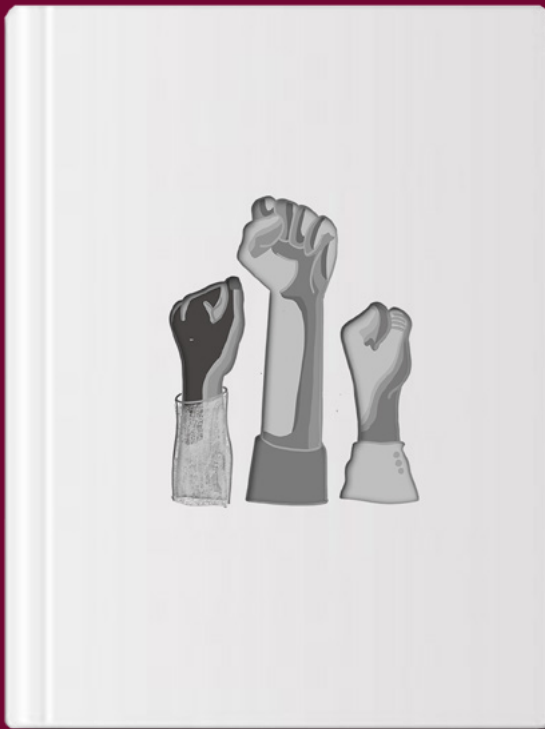


THAILAND:

A STATE OF DISARRAY:
NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND
(NHRCT) 'S FAILURE IN UPHOLDING HUMAN RIGHTS IN THAILAND¹



| | |
|--|--|
| YEAR OF ESTABLISHMENT | ESTABLISHED BY THE 1997 CONSTITUTION; FORMED IN 2001 |
| COMPOSITION OF MEMBERS | SEVEN |
| DIVERSITY REQUIREMENT UNDER LAW | NHRCT ORGANIC LAW ARTICLE 8: (A) HAS EXPERIENCES ON HUMAN RIGHTS; (B) EXPERT ON TEACHING AND RESEARCHING; (C) EXPERT ON NATIONAL AND INTERNATIONAL LAWS; (D) HAS EXPERIENCES ON STATE/ PUBLIC ADMINISTRATION ON PROMOTE AND PROTECT HUMAN RIGHTS; (E) HAS EXPERIENCES, UNDERSTANDS PHILOSOPHY, CULTURAL AND WAY OF LIFE WHICH WILL BE A BENEFIT FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS. |
| TERM OF MEMBERS | SEVEN YEARS |
| CURRENT CHAIRPERSON | MS. PORNPRAPAI GANJANARINTR (CURRENT, 4TH BATCH COMMISSION CHAIR) MR. WHAT TINGSAMITRA (3RD BATCH COMMISSION CHAIR) |
| AUTHORITY TO APPOINT MEMBERS | SELECTION COMMITTEES, APPROVED BY SENATE SIGNED BY THE KING |
| REGIONAL OFFICES | NHRCT HAS 12 COORDINATION CENTRES IN 12 UNIVERSITIES. CHIANG MAI UNIVERSITY, UNIVERSITY OF PHAYAO, UBON RATCHATHANI, KANCHANABURI RAJABHAT UNIVERSITY, KHON KAEN UNIVERSITY, BURAPHA UNIVERSITY, PHETCHABURI RAJABHAT UNIVERSITY, RHAMBAI BARNI RAJABHAT UNIVERSITY, SURATTHANI RAJABHAT UNIVERSITY, PHUKET RAJABHAT UNIVERSITY, PRINCE OF SONGKLA UNIVERSITY, YALA RAJABHAT UNIVERSITY THE 1ST REGIONAL OFFICE IN SONGKLA PROVINCE. |
| ADDRESS | THE GOVERNMENT COMPLEX COMMEMORATING HIS MAJESTY THE KING 'S 80TH BIRTHDAY ANNIVERSARY 5TH DECEMBER, B.E. 2550 (2007), BUILDING B , 6TH-7TH FLOOR, 120 CHAENG WATTANA ROAD, THUNGSONHONG, LAKSI DISTRICT, BANGKOK 10210 |
| PHONE | +66-2141-3800, +66-2141-3900 |
| HELPLINE NUMBER | +66-2141-3800, +66-2141-3900 EXT. 1377 |
| EMAIL | info@nhrc.or.th |
| WEBSITE | https://www.nhrc.or.th https://www.facebook.com/nhrct/ |



“WHILE THE PEOPLE SPEAKING ABOUT A INCREASING SOCIO-

I. Overview

Country Situation

Thailand is a constitutional monarchy, with the King as the head of the State. It has witnessed repeated cycles of coups, switching between general elections and military rule. The National Council for Peace and Order (NCPO) is led by Gen. Prayuth Chan-o-cha, who has governed Thailand since the 2014 military coup. The 2017 Constitution of Thailand was written by the Constitution Drafting Committee headed by Mr. Meechai Ruchuphan under the military administration. It is a hybrid regime Constitution, designed so that it enshrines the military's power following the coup, creates unfair elections and allows the military to control 250 parliamentary seats, which are appointed by the NCPO. The senate was appointed for the purpose of voting for Prime Minister Gen. Prayuth Chan-Ocha and to control the Parliament and support the Prime Minister General. Following the constitutional referendum on 29 March 2016, the Government arrested 212 people because they participated in a 'vote no' campaign.²

1 PEF acts as the secretariat for a coalition of community-based organisations (CBOs). It aims to create sustainable mechanisms for individuals, community organisations, grassroots coalitions and popular movements to work together to achieve social change.

2 'Thailand: Activists, Journalist Arrested for Vote-No Campaign,' Human Rights Watch, 12 July 2016 <https://www.hrw.org/news/2016/07/13/thailand-activists-journalist-arrested-vote-no-campaign>.

Thousands of citizens, especially students, marched in protest against the current regime. These groups called for: (a) the amendment of the Constitution to make it more democratic; (b) the resignation of the military Government; and (c) the reformation of the monarchy system.³ The peaceful protests were met with police brutality, including the use of tear gas and water cannons laced with purple dye on protesters. Police also conducted mass arrests and filed a slew of cases against pro-democracy activists.⁴ Further, in October 2020, the Prayuth regime imposed a state of 'severe' emergency, which prohibited five or more people from gathering, in an effort perceived to stop the mass protests.⁵ Until 2021, many youth activists were imprisoned and denied bail due to their supposed attempts to overthrow national security and the monarchy.⁶

Human Rights Situation during the COVID-19 Pandemic

The COVID-19 pandemic has had a sweeping adverse effect on the entire country. With the economic recession, poor people have found it extremely difficult to find sufficient sustenance, which has led to deaths and suicide.⁷ Tourism, which significantly contributed to the Thai economy, suffered in 2020 and cost the country major financial

3 Yvette Tan, 'Why a new generation of Thais are protesting against the Government,' BBC, 1 August 2020, <https://www.bbc.com/news/world-asia-53589899>.

4 See '[Joint Statement] Thailand: Respect free speech and right to peaceful assembly,' FORUM-ASIA, 13 August 2020, <https://www.forum-asia.org/?p=32503>; 'Thailand: End police brutality and use of violence against the democracy movement,' FORUM-ASIA, 18 November 2020, <https://www.forum-asia.org/?p=33335>; '[Joint Statement] Thailand: Statement on pro-democracy protests on 17 and 25 November 2020,' FORUM-ASIA, 26 November 2020, <https://www.forum-asia.org/?p=33374>

5 '[Statement] Thailand: State of emergency is a violation of international human rights standards,' FORUM-ASIA, 15 October 2020, <https://www.forum-asia.org/?p=33176>.

6 See 'Thai court says calls for monarchy reform unconstitutional,' BBC, 10 November 2021, <https://www.bbc.com/news/world-asia-59230566>

7 Aurora Almendral, 'The Dark Side Of Thailand's Coronavirus Success,' National Public Radio, 16 June 2020, <https://www.npr.org/sections/goatsandsoda/2020/06/16/874198026/the-cost-of-thailands-coronavirus-success-despair-and-suicide>; Emma Doyle-Houghton, 'Climate Change in Thailand,' StoryMaps, 1 February 2021, <https://storymaps.arcgis.com/stories/6a890abfd3d0470aa78c4cc006cd1502>.

OF THAILAND HAVE BEEN WELFARE STATE TO COMBAT THE ECONOMIC GAP IN THE COUNTRY...

**CURRENT ACCREDITATION
STATUS BY THE GANHRI-SCA**

**B STATUS
IN DECEMBER 2020, SCA RECOMMEND:¹⁵**

1. TO REMOVE THE PROVISIONS, SECTION 26 (A) OF ORGANIC LAW AND SECTION 247 (4) OF THE 2017 CONSTITUTION, TO REPORT CORRECT FACTS WITHOUT DELAY IN CASES WHERE THERE IS AN INCORRECT OR UNFAIR REPORT ON THE HUMAN RIGHTS SITUATION IN THAILAND. THE SCA IS CONCERNED THAT THIS FUNCTION COMPROMISES THE ACTUAL OR PERCEIVED INDEPENDENCE OF THE NHRCT;

2. SCA ENCOURAGES THE NHRCT TO CONDUCT ADVOCACY FOR THE CONCLUSION OF THE APPOINTMENT PROCESS IN A TIMELY MANNER THROUGH A TRANSPARENT AND PARTICIPATORY PROCESS;

3. NHRCT MANDATE SHOULD BE INTERPRETED IN A BROAD, LIBERAL AND PURPOSIVE MANNER. NHRCT ARE REQUIRED TO PROMOTE AND ENSURE RESPECT FOR ALL HUMAN RIGHTS, DEMOCRATIC PRINCIPLES AND THE STRENGTHENING OF THE RULE OF LAW IN ALL CIRCUMSTANCES AND WITHOUT EXCEPTION;

4. FORMULATION OF RECOMMENDATIONS MUST BE IN LINE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS;

5. NHRCT SHOULD UNDERTAKE RIGOROUS AND SYSTEMIC FOLLOW-UP OF ITS RECOMMENDATIONS;

6. NHRCT SHOULD ENSURE THAT COMPLAINTS ARE DEALT WITH FAIRLY, TRANSPARENTLY, EFFICIENTLY, EXPEDITIOUSLY AND WITH CONSISTENCY; AND

7. EXPANSION OF ITS COMPLAINT-HANDLING MANDATE TO INCLUDE THE POWER TO MEDIATE DISPUTES.

THE COMPOSITION OF THE 3RD BATCH NHRCT

| | | |
|-----------------------------|----------------------|---|
| MR. WAT TINGSAMIT | CHAIRPERSON | |
| MRS. CHATSUDA CHANDEEYING | COMMISSIONER | |
| MRS. PRAKAI RATTANTEERAWONG | COMMISSIONER | |
| MR. SURACHAT STINIRAMAI | COMMISSIONER | RESIGNED 5 APR 2016 |
| MR. CHATCHAI SUTHIKOM | COMMISSIONER | RESIGNED 1 JUNE 2019 |
| MRS. TUANJAI DEETET | COMMISSIONER | RESIGNED 31 JUL 2019 |
| MRS. ANGHANA NEELAPAIJIT | COMMISSIONER | RESIGNED 31 JUL 2019 |
| MR. SOM PROMROTE | INTERIM COMMISSIONER | APPOINTED BY ORDER NO. 1 /2019, CHIEF OF JUSTICE AND THE PRESIDENT OF THE SUPREME ADMINISTRATIVE COURT 1 NOV 2019 |
| MRS. AREEWAN JUTTUHONG | INTERIM COMMISSIONER | APPOINTED 1 NOV 2019 |
| MRS. PIROM SRIPRASERT | INTERIM COMMISSIONER | APPOINTED 1 NOV 2019 |
| MR. SUWAT THEPARAK | INTERIM COMMISSIONER | APPOINTED 1 NOV 2019 |

losses. This also led to joblessness for many locals.⁸ Climate change has also aggravated the issues faced by people in Thailand.⁹ Extremes of either floods or lack of adequate water, has adversely affected the agricultural sector, which is the biggest sector in terms of the country's economy.¹⁰ While the people of Thailand have been speaking about a welfare state to combat the increasing socio-economic gap in the country,¹¹ corruption is rampant from the lowest Government authority to the highest level.¹² As per the Corruption Perceptions Index 2020, with a score of 36, Thailand was ranked 104th amongst 180 countries.¹³

The 3rd Batch NHRCT Situation

2020 to 2021 was a significant year of transition between the 3rd batch to the 4th batch, which has been turbulent due to political change. Since the 2017 Constitution came into force, the 3rd batch of NHRCT were

8 Manop Udomkerdmongkol, 'Thailand Economic Focus: tourism industry plummets amid COVID-19 pandemic,' United Nations: Thailand, 21 July 2020, <https://thailand.un.org/en/53804-thailand-economic-focus-tourism-industry-plummets-amid-covid-19-pandemic>.

9 'Climate Change Physical Risks Are a Growing Threat to Sovereigns,' Fitch Ratings, 23 November 2021, <https://www.fitchratings.com/research/sovereigns/climate-change-physical-risks-are-growing-threat-to-sovereigns-23-11-2021>.

10 'Will COVID-19 give birth to a welfare state in Thailand?' Thai PBS, 25 March 2021, <https://www.thaipbsworld.com/will-covid-19-give-birth-to-a-welfare-state-in-thailand/>.

11 Ibid.

12 Transparency International, Corruptions Perceptions Index, accessed 29 November 2021, <https://www.transparency.org/en/cpi/2020/table/tha>.

13 Ibid.

THE SELECTION COMMITTEE

| SECTORS | NO. OF REPRESENTATIVES |
|-------------------------------|------------------------|
| NGOs | THREE |
| SUPREME COURT | ONE |
| ADMINISTRATIVE COURT | ONE |
| CHAIR OF THE PARLIAMENT | ONE |
| CHIEF OF THE OPPOSITION PARTY | ONE |
| BAR ASSOCIATION | ONE |
| DOCTOR / MINISTER OF HEALTH | ONE |
| MEDIA | ONE |
| UNIVERSITY PROFESSOR | ONE |

... CORRUPTION IS RAMPANT FROM THE LOWEST GOVERNMENT AUTHORITY TO THE HIGHEST LEVEL.”

immediately discharged, but those 3rd batch had to take temporarily interim positions until the end of the 4th batch appointment process

The Composition of the 3rd Batch NHRCT

As per Article 11 of the Organic Act, NHRCT commissioners shall be appointed by a Selection Committee. Additionally, all the candidates who are selected by the selection committee shall be approved by 250 senators under Article 14 Organic Act.

The Selection Committee

The selection process is doubtful, and some CSOs are concerned that the process by which the final candidates are selected by the 250 senators, who are appointed by the NCPO, is not through an independent process. Thus, making the appointment process constitutionally controlled by the legacy of the military, apart from being a closed-door procedure. There is no public participation, public hearing nor any discussion with any civil society representatives embedded in the process.

The Paris Principles, General Observation 1.8(c) suggests that CSOs should promote broad consultation and/or participation in the application, screening, selection and appointment process, and (e) selected members should serve in their own capacity rather than on behalf of the organisation they represent.¹⁴ To avoid a situation of non-choice or no selection of candidates as commissioners, the selection committee seemed to lack transparency

¹⁴ Paris Principles, General Observation 1.8 (Selection and appointment of the decision-making body of NHRIs), p. 22

in the final selection and appointment process. The senators played an important role in the final selection. This procedure however would not eventually attract independent commissioners who have strong experience working on the ground, but representatives who would compromise with state authorities.

The NHRCT Factsheet

(Refer to the tables on pages 55 and 57)¹⁵

National Human Rights Commission Thailand on Independence, Protect and Promote Human Rights in the country

Independence

The selection process of the appointees to the Commission, by the 250 Senate members (who are appointed by the NCPO), undermines the independence of the Commission and is mostly behind closed doors. Further, there is no scope for public participation, public hearing or any discussion with civil society in the appointment of the members. This stands in contravention to the Paris Principles as what the GANHRI-SCA had noted in its 2015 accreditation report granting the Commission a 'B' status. The GANHRI-SCA then urged the Commission to advocate for a more transparent and participatory process for screening and selection. The GANHRI-SCA also recommended that applicants be assessed based on a 'pre-determined, objective, and publicly-available criteria.'¹⁶ The structural and procedural barriers in the appointment process threaten the independence of the Commission.

Based on their interpretation of their mandate in practice, NHRIs have enough independence to select issues on their own initiative which can ensure that major rights are not ignored. But the NHRCT has a poor interpretation of its mandate, and some commissioners are afraid to work on sensitive issues. The actions on issues must achieve consensus among members of the NHRCT, and this rule in turn limits the independent role of the NHRCT.

¹⁵ GANHRI-SCA, Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), December 2020, <http://docs.nhrc.or.th/uploads/33650-thailand---sca-report-december-2020.pdf>, pp. 25–28.

¹⁶ GANHRI-SCA, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), November 2015, <https://ganhri.org/wp-content/uploads/2019/11/SCA-FINAL-REPORT-NOVEMBER-2015-English.pdf>, p. 39.

Promotion and Organisational Management

The NHRCT has the power to review and provide recommendations to proposed and existing legislation, policies or any practice related to human rights. Section 26(3) and Article 42 of the Organic Act provides a promotion mandate which says the NHRCT shall recommend measures or guidelines for human rights promotion and protection to the National Assembly, cabinet, council of ministers, and related agencies, including the amendment of laws, rules, regulations and orders to be compliant with human rights principles. In 2021, the NHRCT submitted reports to international human rights mechanisms, including CERD, CAT and the UPR, and also wrote national reports. However, the recommendations included in the reports have not been put into practice, and there is not enough advocacy to achieve these rights in practice.

On this front, the role of the NHRCT leaves much to be desired. For instance, as part of its mandate, in 2020, while the Commission published a statement responding to Human Right Watch's 'World Report 2020,' assuring that the election process under the 2017 Constitution was in alignment with international norms, there was no detailed legal analysis on the actions of the Government, which has been heavily criticised by civil society.¹⁷ For example, despite the prevalence of enforced disappearances in the country, and the NHRCT receiving complaints concerning cases of enforced disappearance, there is still no law to protect people against enforced disappearance.¹⁸

The NHRCT also recommended training of law enforcement on human rights to help reduce enforced disappearance.¹⁹ On critical issues, such as land rights, border issues and ethnic rights, the Commission's efforts have been

¹⁷ 'Statement of the National Human Rights Commission of Thailand No. 2/2020 Concerning 2020 Human Rights Situation in Thailand by Human Rights Watch,' NHRCT, 26 May 2020, <https://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Statements/Concerning-2020-Human-Rights-Situation-in-Thailand.aspx?lang=en-US>.

¹⁸ NHRCT, Assessment Report, accessed 29 November 2021, <https://www.nhrc.or.th/getattachment/b5dab406-dea6-4ed6-a5a6-f14efc1e3556/%E0%B8%9A%E0%B8%97%E0%B8%AA%E0%B8%A3%E0%B8%8E0%B8%9B%E0%B8%9C%E0%B8%B9%E0%B9%89%E0%B8%9A%E0%B8%A3%E0%B8%B4%E0%B8%AB%E0%B8%B2%E0%B8%A3-%E0%B8%A3%E0%B8%B2%E0%B8%A2%E0%B8%87%E0%B8%B2%E0%B8%99%E0%B8%9C%E0%B8%A5%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%9B%E0%B8%8F%E0%B8%B4%E0%B8%9A%E0%B8%B1%E0%B8%95%E0%B8%B4%E0%B8%87%E0%B8%B2%E0%B8%99%E0%B8%84%E0%B8%93%E0%B8%B0%E0%B8%81%E0%B8%A3%E0%B8%A3%E0%B8%A1%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%AA%E0%B8%B4%E0%B8%97.aspx>, p. 23; See 'Still No Law on Enforced Disappearance in Thailand,' Human Rights Watch, 1 September 2019, <https://www.hrw.org/news/2019/09/01/still-no-law-enforced-disappearance-thailand>; 'Thailand: Outlaw Torture, Enforced Disappearances,' Human Rights Watch, 16 September 2021, <https://www.hrw.org/news/2021/09/16/thailand-outlaw-torture-enforced-disappearances>.

¹⁹ NHRCT, Assessment Report, p. 23.

insufficient to curb human rights violations.²⁰ As part of its promotion activities, the Commission organises a Human Rights Executive Program to train Government executives; however, in practice, it is normally used as a tool for Governmental promotion. Therefore, the effectiveness of these programs must be evaluated.²¹ For instance, the NHRCT has made efforts to promote human rights education by incorporating it in the education curriculum of elementary schools²². The NHRCT mentioned such curricula for Diverse Target Groups as well as a human rights handbook for basic education during the latest UPR cycle.²³ However, the primary source of data collection for the NHRCT is from the Government, and it lacks sources from independent bodies such as civil society, media and empirical research based on field work.

Even when the NHRCT undertakes advocacy to promote human rights, it is not very effective due to its lack of engagement with the public and minimal effort to expand its networks and national campaigns for its advocacy. For instance, the Commission's recommendation to the Government titled, 'Human Rights Assessment Report of Thailand 2020,' merely stated that the Government's approach to human rights must be in consonance with the ICCPR, especially with regard to addressing nation-wide democratic demonstrations and political protests in 2020, without providing any analysis as to what the Government failed to do, and how it can protect political rights better.²⁴ Worse, in the most recent UPR submission, the NHRCT even defended state measures to control the protests, despite expressing concerns on how law enforcement exercised their authority.²⁵

Regarding the annual report, according to Article 45 of the Organic Act, the Commission is mandated to prepare an annual report and submit it to the Cabinet and National Assembly within 180 days from the end of the fiscal year. The report should list 'a summary of the problems, obstacles, and recommendations for action, at the minimum, and should also be disseminated to the larger public.'²⁶ In furtherance of this mandate, in 2020, the Commission published annual report presenting eight activities under the Commission's mandates, as follows: investigation and reporting of facts

of human rights; recommending a strategy to promote and protect human rights; a human rights evaluation report (the Human Rights Assessment Report of Thailand 2020); explaining and clarifying the facts of the human rights situation in Thailand; promoting human rights with other social sectors; researching on human rights; promoting international collaboration on human rights; and managing organisational capacity building.²⁷

However, the veracity of this report has come under question by many political activists, owing to unsubstantiated claims, insensitive terminology (especially towards migrant workers), factual inconsistencies, lack of field research, and weak and redundant recommendations to the Government.²⁸ Aside from civil society criticisms on its promotional efforts, the NHRCT also has come under criticism for not playing a conciliatory role in facilitating discussions between political activists and state authorities to find solutions on different human rights issues. This has created a lack of trust amongst stakeholders towards the Commission.

The NHRCT appears to engage only a limited number of stakeholders for purposes of its regional and international engagements, which also points to the lack of awareness of the commission's activities more broadly.

According to its budget, in fiscal year 2020, the NHRCT recruited 276 staff members. The NHRCT also received an annual budget from the Parliament of 247,944,711.75 THB, of which 143,052,700 THB has been used to pay for human resources on staff and the Commission, while 78,651,500 THB was spent on activities only. The NHRCT also expanded its organisation structure by creating 12 new coordination centres in 12 universities. The NHRCT has had adequate resources to proceed with its activities, but the outcome of this spending seems continually intangible.

Protection

The mandate of the NHRCT to protect human rights is clearly and specifically outlined in Section 33 the Organic Act.²⁹ One of the main functions of the Commission in this regard is to conduct investigations to establish the truth of allegations of human rights violations 'without delay.' An aggrieved person has the 'right to inform' or submit a petition to the Commission.³⁰ To carry out this function, the Commission has an incidental power to proceed 'in any

20 See International Commission of Jurists, *The Human Rights Consequences of the Eastern Economic Corridor and Special Economic Zones in Thailand*, July 2020, <https://www.icj.org/wp-content/uploads/2020/08/Thailand-SEZs-Publication-2020-ENG.pdf>.

21 Based on interviews conducted by the author with different human rights organisations.

22 NHRCT, *Handbook of Human Rights study for elementary education*, January 2020 <http://library.nhrc.or.th/ulib/document/Fulltext/F11152.pdf> (in Thai).

23 NHRCT, *Assessment Report*, p. 1.

24 NHRCT, *Assessment Report*.

25 NHRCT, *Assessment Report*, pp. 3–4.

26 Organic Act, Art. 45.

27 NHRCT, *Executive Summary - Annual Report for Fiscal Year 2020*.

28 See The Reporters, '#นายนิติธร ล้ำเหลือ ที่ปรึกษากลุ่มประชาชนคนไทยยื่นหนังสือถึง กสทช.' at four minutes and 50 seconds https://www.facebook.com/watch/live/?v=485152539229430&ref=watch_permalink.

29 พระราชบัญญัติประกอบรัฐธรรมนูญว่าด้วยคณะกรรมการสิทธิมนุษยชนแห่งชาติ พ.ศ. ๒๕๖๐, 13.

30 Organic Act, Section 34.

manner that does not create unnecessary steps or burden' for the relevant person or Government agency. It should provide an opportunity for concerned Government officials to explain and provide supporting documentation.³¹ Another function of the Commission is to investigate, by entering a dwelling or place and summon a Government agency or official to establish the facts of the case.³²

The NHRCT's mandate to protect human rights, especially the work of its operational officers, broadly encompasses seven categories of human rights violation cases: labour rights; property rights; legal rights; community rights; the right to privacy and the right to free assembly; the socially vulnerable; and nationality and personal status.³³ The NHRCT follows the process of accepting complaints, investigating them, submitting recommendations, and publishing annual reports. However, the Commission has often ignored politically sensitive cases while accepting complaints on human rights abuses. For instance, in 2020, of the 465 complaints that the Commission received, it considered only 280 of those, rejecting the remaining 185 due to inconsistencies with the institution's authority.³⁴ Based on interviews with CSOs, the NHRCT has the discretionary power to receive and reject complaints, but the lack of competent and well-trained staff also hinders the process of audits in cases of human rights violations.

Article 26 of the Organic Act provides that the NHRCT has the authority to examine and report correct facts on human rights violations, as well as recommend appropriate measures for the prevention and redress for those whose rights have been violated. However, a few instances in the recent past show that the Commission has not been fulfilling this mandate. For instance, there has been no progress in the case of Wanchalerm Satsaksit's disappearance or similar cases.³⁵ Many NGOs fear that the NHRCT has limited its role by simply inquiring with the Ministry of Foreign Affairs without actively inquiring with NGOs in Thailand and Cambodia. Moreover, in the more recent case of 'Anchan' (name withheld), she was sentenced to 43 years and six months in prison under the lèse majesté law (Article 112 of the Thai Criminal Code), for sharing audio clips from DJ Banphot, which was deemed insulting to the King.³⁶ While

the Commission should have played a role in assisting the victim, there has been no action from the NHRCT.³⁷

At the end of 2020, mass political rallies took place against the Thai Government's administration and the deprivation of rights and liberties led by the Prime Minister Prayut Chan-o-cha, including on enforced disappearances, the use of force by Government officials against protesters, and the prosecution and harassment of political demonstrators and activists by Government officials. In all these instances, the NHRCT did not take a strong stance towards human rights protection. According to interviews with both the NHRCT's officials as well as outsiders, it is apparent that the NHRCT has not played as much of a role in assisting with human rights issues as it should.

There is support for HRDs from the NHRCT, such as the Annual Human Rights Award. However, the question of the people's limits remains, on whether the Thai youth activists who have been fighting to save democracy in Thailand are considered HRDs or not, if referring to the NHRCT's assistance or support. This demonstrates the exclusion of political activists from the definition of HRDs, which differs from the OHCHR definition, that states: *The Declaration on human rights defenders refers to 'individuals, groups and associations contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.'*³⁸ As a result of this definition, anyone involved in the protection and enforcement of human rights principles is included.

31 Ibid. Section 35.

32 Ibid. Sections 35(1) and (2).

33 NHRCT, Human Rights Situation in Thailand: Submitted to the UN Human Rights Council under the UPR Process, <https://lib.ohchr.org/HRBodies/UPR/Documents/session12/TH/NHRC-NationalHumanRightsCommission-eng.pdf>, p. 1.

34 NHRCT, Assessment Report.

35 George Wright and Issariya Praithongyaem, 'Wanchalerm Satsaksit: The Thai satirist abducted in broad daylight,' BBC, 2 July 2020, <https://www.bbc.com/news/world-asia-53212932>; <https://www.forum-asia.org/?p=31988>

36 'ศาลพิพากษาจำคุก 87 ปี 'อัญชัญ' อดีตข้าราชการ จำเลยคดี 112 รับสารภาพผิดตลอด 29 ปี 174 เดือน,' 19 January 2021, <https://thestandard.com>

[co/anchan-112-case-defendants-confession-reduce-penalties/](https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-19-thailands-lese-majeste-dilemma-defending-the-monarchy-versus-silencing-critics-and-alienating-the-young-by-termsak-chalermmpalanupap/); ISEAS Yusof Ishak Institute, 'Thailand's Lèse Majesté Dilemma: Defending the Monarchy versus Silencing Critics and Alienating the Young' by Termsak Chalermmpalanupap, 2021, <https://prachatai.com/english/node/9029>; <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-19-thailands-lese-majeste-dilemma-defending-the-monarchy-versus-silencing-critics-and-alienating-the-young-by-termsak-chalermmpalanupap/>.

37 In 2021, the Special Rapporteur on the promotion and protection of right to freedom of opinion and expression, Ms. Irene Khan, issued a statement decrying the verdict. She also expressed concern about the implementation of Section 112 in the country in the statement, which was signed by: Ms. Irene Khan, Special Rapporteur on the right to freedom of opinion and expression; Ms. Leigh Toomey (Chair-Rapporteur); Ms. Elina Steinerte (Vice-Chair); Ms. Miriam Estrada-Castillo; Mr. Mumba Malila; Mr. Seong-Phil Hong, Working Group on Arbitrary Detention; and Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights to peaceful assembly and of association. The NHRCT, however, remained silent. It must be noted that previously, the Commission refused to amend Section 112, as per its statement in 2012. 'Thailand: UN experts alarmed by rise in use of lèse-majesté laws,' Office of the High Commissioner for Human Rights, 8 February 2021, [https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26727&LangID=E&fbclid=IwAR2-wfUx7EP31v2LeUm_gmoHaQ9sWxIOSkLAotNmGe6ZXCxCGXUJe10ArgQ; 'แถลงการณ์คณะกรรมการสิทธิมนุษยชน,' 18 January 2012, <http://www.NHRC.or.th/getattachment/52750a7d-d520b-4424-81c2-69f07c7e2ad9/.aspx>.](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26727&LangID=E&fbclid=IwAR2-wfUx7EP31v2LeUm_gmoHaQ9sWxIOSkLAotNmGe6ZXCxCGXUJe10ArgQ; 'แถลงการณ์คณะกรรมการสิทธิมนุษยชน,' 18 January 2012, http://www.NHRC.or.th/getattachment/52750a7d-d520b-4424-81c2-69f07c7e2ad9/.aspx)

38 OHCHR, 'About Human Rights Defenders,' accessed 7 December 2021, <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>.

III. Conclusion and Recommendations

The human rights situation in Thailand has worsened in 2020 and continues to decline. However, the NHRCT has failed to seriously address the human rights violations in the context of the pandemic and the mass protests calling for constitutional amendments in the past year. The NHRCT's independence is also at present threatened due to flaws in the appointment and selection process. For human rights to be realised for all communities in Thailand, it is essential that these structural and institutional challenges be reformed.

To the Government:

1. Amend the Organic Act to make the appointment process more transparent and participatory and to reflect the recommendations of the GANHRI-SCA in its accreditation report;
2. Implement the recommendations of the NHRCT to improve the laws affecting human rights in Thailand; and
3. Follow international human rights law and standards in laws, regulations, and the implementation of Government measures.

To the NHRCT:

1. Proactively perform its mandate under the Organic Act to effectively protect human rights in Thailand;
2. Strengthen engagement with various civil society groups to embody pluralism and diversity in line with the Paris Principles; and
3. Strengthen international advocacy on critical human rights issues affecting Thailand.



Annex: NHRCT's Recommendations to the Government 2020-2021

| Human Rights Assessment Report of Thailand 2020 | |
|--|---|
| Issues | Substances |
| COVID-19 | 1. The Government shall ensure jobs and economic security. |
| | 2. The Government shall provide remedy, particularly those vulnerable group. |
| | 3. The Government should provide and distribute COVID-19 vaccines to any person who might be at risk from their duties and vulnerable groups without discrimination. |
| | 4. The Government must not execute any person who is caught smuggling undocumented migrant workers and must close down any illegal gambling centres in the country. |
| | 5. The Government should provide information to make people understand that they must not engage in any form of stigmatisation, stereotyping or discrimination towards affected people. |
| Political Assembly | 1. The Government shall facilitate ensuring freedom of expression and peaceful assembly in a proper manner following those rights guaranteed by the ICCPR. |
| | 2. The Government and national police should be cautious in any action encountering political demonstrations. |
| | 3. The Government should respect the standard of assembly management following the UN standards. |
| | 4. The process of conducting an arrest should be in line with due process of law without discrimination. |
| | 5. The Government and parliament shall take a facilitation role among the different parties who have varied political stances. |
| | 6. The Government should provide compensation to any person who is adversely affected in political demonstrations in the year 2020. |
| Armed Conflict in Southern Thailand | 1. The Government and security authorities should review and reconsider the necessity of continuously using security laws. |
| | 2. The Government and the Ministry of Defence should provide training to local officials regarding use of laws based on human rights norms. |
| | 3. The Government operation shall not be based on discrimination. |
| | 4. The Government should provide proper compensation to any person who is affected by armed conflict. |
| Death Penalty | 1. Abolish the death penalty. |
| | 2. Revise criminal laws to abolish the death penalty. |
| | 3. The Government and human rights defenders should proactively equip the public and raise awareness about the different types of corrections and alternatives to death penalty. |
| Labour Rights | 1. The Government should have relief measures on long-term joblessness. |
| | 2. The government should investigate human rights violations in the workplace. |
| | 3. The Government and the Ministry of Labour should speed up to improve and amend the labour protection B.E. 2541. |
| | 4. Push informal workers into formal system. |
| | 5. Create systematic data collection on the number of informal workers. |
| | 6. Follow-up and provide protection to migrant workers. |
| | 7. The Government and the Ministry of Labour should work closely with NGOs to rapidly enact the laws and regulations to protect the labour in the fishing industry. |

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| Health | 1. Provide universal healthcare system to all citizens. |
| | 2. Provide knowledge on avoiding discrimination in medical sectors. |
| | 3. Urge to keep working on current proceeding medical measurement. |
| | 4. Educate the public on the benefits of marijuana use. |
| Education Rights | 1. The Government should be concerned on the lack of accessible education for over 900,000 children who are not able to access appropriate education. |
| | 2. The Government should further support equal education funds. |
| | 3. The Government should urgently improve the education system. |
| Environment Right | 1. The Government should enact laws to enhance the role of the local community to adjust the environment in line with SDGs. |
| | 2. The Government should follow the ministers' resolution on 3 August 2010 and 2 June 2010 regarding the rehabilitation of Karen and Chao Lae ethnic communities on conserving and respecting Indigenous rights. |
| | 3. The Government should consider inclusive engagement of local communities who might be affected by for-profit business operations. |
| Business and Human Rights | 1. The Government should provide an update on the implementation of their business and human rights plan. |
| | 2. Consider a new measurement plan to expand the network of business and human rights. |
| | 3. The Government should improve attractive measures to urge other business sectors to understand the national action plan on business and human rights. |
| Child Rights | 1. Develop a childhood development plan for 2020 to 2027. |
| | 2. The Government and relevant agencies shall create a strategic plan for the development of Southern Thailand from 2020 to 2025. |
| | 3. The Ministry of Education shall resolve the occurring problem of sexual harassment against children in education sectors. |
| | 4. The Ministry of Health shall provide knowledge of preventing unwanted pregnancies and protecting against sexually transmitted diseases. |
| | 5. The Government shall listen to the demands of children who participated in political demonstrations. |
| Elder Rights | 1. Improve welfare accessibility for elders. |
| | 2. The Government should improve quality of elder care based on four dimensions (economy, environment, health and society). |
| | 3. Decentralise power to local authorities for taking a role in caring for elders at the local level. |
| | 4. The Government and the Ministry of Health shall consider measures to protect vulnerable elders who are living in remote areas. |
| | 5. The Government and relevant agencies shall take measures to promote an understanding of elder living conditions. |
| | 6. The Government shall work intimately with volunteers in the local community to monitor the condition of elders. |

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| Disability Rights | 1. The Government should promote accessibility of the rights of disabled persons. |
| | 2. The Government should promote basic education accessibility. |
| | 3. The Government should promote fair employment. |
| | 4. The Government shall promote measures to protect disabled persons, especially girls. |
| | 5. The Government should research and review implementation of disability measures to improve further government capacity. |
| Women and Gender Equity | 1. The Government and the Ministry of Social and Human Development should examine measures to resolve violence against women. |
| | 2. The Government should provide protection for sex workers. |
| | 3. Abolish gender discrimination and promote gender equity. |
| | 4. Promote knowledge of gender equity and eradicate gender stereotypes. |
| Status | 1. The Government should promote measures to provide status or citizenship for anybody who requires it. |
| | 2. Provide training to public officials to support effective work in the field. |
| | 3. Urge monitoring of data of children with 'G' status to provide basic social services to those children. |
| | 4. The Government should hasten regulations on screening migrants' system to classify refugees among migrants. |
| | 5. The Government should urgently study a withdrawal of its reservation from CRC Article 22. |
| | 6. The Government should work on regulating detention of children as soon as possible. |

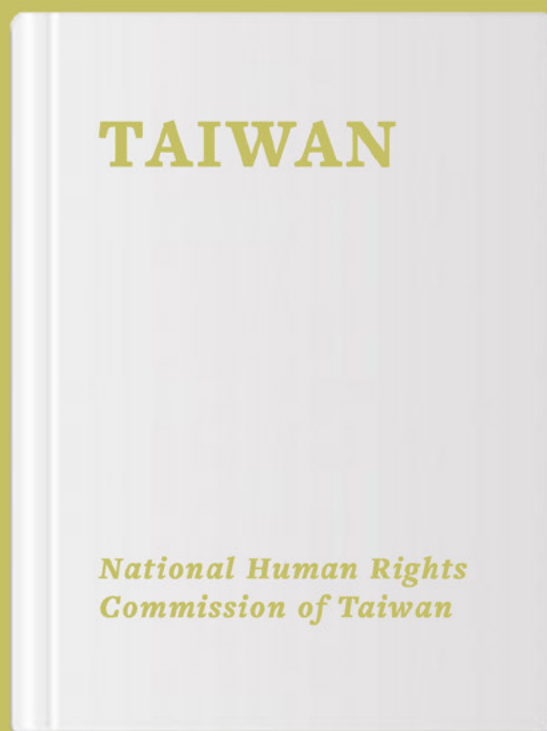
| Treaty Bodies Recommendations in 2020 | |
|--|---|
| Report | Recommendations |
| CERD | Preface |
| | 5. Thailand shall have a proper Act to prohibit unjust discrimination against persons on different grounds including radical difference. The Act should comply with the CERD's obligation. |
| | Stateless Persons |
| | 10. The Government should conduct a survey to find out the number of stateless persons. The Government should speed up the process of granting nationality to these groups of people. |
| | 12. The Thai Government should rapidly investigate the cause of action in removing names from the civil registration books and creating the protective action to prevent these actions which may be reoccurring. |
| | 15. The Thai Government should urgently explain the process to gain nationality following the Nationality Act (No. 5) B.E.2555 to Thai displaced persons and come up with a policy to protect the basic rights of this group of people, including the rights to education, state welfare and occupation. |
| | Malayu-descended Thais |
| | 17. The Government should promote the principle of rule of law in monitoring the use of power/authority by government officials to be strictly within the legal framework and should intensify the process of rehabilitation for the people affected by the respect unrest situations, on the basic of equality and non-discrimination. Moreover, the Thai Government should also respect the culture and way of life of the Malayu-descended Muslim. |
| | 19. The Thai Government should enforce laws without discrimination on grounds of racial difference. The Thai Government should review its enforcement of Martial Law Act B.E. 2457 (1914) and the Emergency Decree on Public Administration in Emergency Situations. The investigation process should be transparent, and government officials should allow the NHRCT to inspect places of detention and visit detained persons. |
| | Ethnic Groups |
| | 24. The Government should stop arresting the Karen ethnic group and other ethnic communities. The Government should arrange a process to prove their rights as residents in land before the declaration of the national forest conservation and national park. |
| | 25. The Government should practice the additional principle of The National Park Act B.E. 2562 (2019) for local community participation in specifying certain pieces of land as national park areas and should urgently ratify the International Convention for the Protection of All Persons from Enforced Disappearance (CED) |
| 27. The Government should protect the Manis identity by raising awareness of the state welfare manner which might jeopardise their | |

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| | identity. The Government should consider sustainable ways for their self-reliance, such as arranging land appropriately. |
| | Migrant Workers |
| | 34. The Government should enforce the laws to prevent illegal import of migrant workers and ensure birth certification for migrant children with other neighbouring countries. The Government also should join the party of ILO Conventions No. 87 and 98 and consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. |
| | Persons who fled from fighting / Asylum Seekers |
| | 37. The Government should urgently complete the process of considering the system of screening undocumented immigrants according to Cabinet Resolution on 10 January 2017 and work closely with UNHCR and consider becoming party of the Convention Relating to the Status of Refugees. |
| | 39. Resolve the over-crowding in detention centres. |
| CAT | Applicable domestic Laws of Thailand |
| | 6. The Parliament should enact legislation to be in accordance with the CAT |
| | Human Rights Problem in the Southern Border Provinces |
| | 11. (1). The Government should emphasise to the officers in the area to strictly abide by the law. (2). The Government should amend the Emergency Decree, particularly the part pertaining to monitoring and balancing. (3). The Government should amend Section 16 of the Emergency Decree to ensure fairness in trials. (4). The Government should abolish Section 17 of the Emergency Decree. (5). The Government must conduct investigation on torture complaints promptly and fairly as soon as it receives a complaint from the area and provide protection for the victims and witnesses to ensure safety from possible threats and intimidation. |
| | Human Rights Defenders |
| | 13. The Government must pay attention to ensure follow up in the cases of murder or disappearance of HRDs. |
| | Visit to Places of Detentions |
| | 17. (1). The Government should link and integrate the database of prisoners nationwide so that it can more effectively provide healthcare to those in detention. (2). The Government should reduce the number of prisoners in prisons. (3). The Government should allocate budget and personnel for prisons, as well as improve their physical conditions to sufficiently accommodate |
| | the number of prisoners and to be able to separate them into groups appropriately according to international standards. |
| | Protection of Torture for Victims and Remedies |
| | 23. (1). The Government should expand the categories of offences for which victims can be compensated to cover torture. (2.) The Government should expedite the process of providing compensation to victims of torture committed by government officers in the southern border provinces by reducing unnecessary bureaucratic processes. (3). The Government should amend Section 16 of Martial Law to protect the right of the victims affected by the exercise of the law to comply with Article 2 paragraph 3(a) of the ICCPR. |

| UPR Recommendations | |
|---|--|
| Strengthening the National Human Rights Institution | <p>7</p> <p>(1). Section 247(4) of the Constitution and Section 26(4) of the Organic Act should be removed.</p> <p>(2). The law should prescribe the NHRCT with conciliation to assist the victims of human rights violations by ending the conflict and duly providing them with remedies.</p> |
| The COVID-19 and Its Impacts | <p>11</p> <p>(1). The Government should set measures that are more inclusive, considering limitations in obtaining access to assistance packages for all.</p> <p>(2). The Government should provide assistance to the people with extreme difficulties for their self-reliance.</p> <p>(3). The Government should enforce the laws in tackling the problems of trafficking of migrant workers and gambling establishments.</p> |
| Political Demonstrations | <p>14</p> <p>(1). The Government should raise awareness of the people on the exercise of their rights to freedom of expression and peaceful assembly while respecting the rights of other people including avoiding hate speech.</p> <p>(2). The Government should present information to the public promptly to counter fake news rather than arresting people.</p> <p>(3). The imposition of disproportionate measures should be avoided</p> |
| The Right in the Administration of Justice: The Case of Just Fund | <p>16. The Government should amend the 2016 Regulations of the Justice Fund Committee which obstructs the people or defendants in criminal cases from fairly accessing the fund in accordance with the fund principles.</p> |
| Situation in the Southern Border Provinces | <p>18. The Government should enforce security laws to resolve the unrest as deemed necessary and within a limited timeframe. Any measures must be cautiously used such as the collection of DNA samples. The Government should organise regular training activities on human rights for officers at all levels. The financial compensation should be in line with General Comment No. 3 by the Committee Against Torture.</p> |

TAIWAN:

THE FIRST YEAR OF TAIWAN'S NATIONAL HUMAN RIGHTS COMMISSION:
THE DILEMMA OF DUAL IDENTITIES¹



| | |
|--|--|
| YEAR OF ESTABLISHMENT | 2019 |
| COMPOSITION OF MEMBERS | 10 (INCLUDING 7 MEMBERS OF THE CONTROL YUAN AS <i>EX OFFICIO</i> MEMBERS) |
| DIVERSITY REQUIREMENT UNDER LAW | NONE |
| TERM OF MEMBERS | ONE YEAR AND NOT SUBJECT TO REAPPOINTMENT FOR MEMBERS WHO ARE NOT <i>EX OFFICIO</i> MEMBERS ⁹ |
| CURRENT CHAIRPERSON | CHEN CHU |
| CURRENT GENDER RATIO (WOMEN : MEN) | 6:4 (CURRENT AND 2020) ¹⁰ |
| AUTHORITY TO APPOINT MEMBERS | NOMINATION BY THE PRESIDENT AND CONFIRMED BY THE LEGISLATIVE YUAN ¹¹ |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | -- |
| ADDRESS | NO.2, SEC. 1, ZHONGXIAO E. RD. TAIPEI CITY 100216, TAIWAN (R.O.C.) |
| PHONE | +886 2-2341-3183 |
| WEBSITE | www.nhrc.cy.gov.tw |



THE COMMISSION A WITHIN THE CONTR UNDERMINES THE N INDEPENDENCE AND TO PERFORM ITS MA

I. Overview

For two decades, civil society in the Republic of China ('ROC' or 'Taiwan') advocated for the establishment of an NHRI in line with the Paris Principles.² Although the government introduced legislation in the past with such a goal, there was an 'impasse' in the enactment of the law due to a variety of factors, such as a lack of understanding of the functions of an NHRI as well as different views on how the institution must be set up.³ As a result, the establishment of an NHRI was repeatedly delayed until 2017 when Covenants Watch invited an assessment team, comprising experts from ANNI and APF, to Taiwan and made recommendations.⁴ These efforts resulted in the enactment of The Organic Law of the Control Yuan National Human Rights Commission ('Organic Law') by the Legislative Yuan on 10 December 2019, in time

for International Human Rights Day, and promulgated by the President on 8 January 2020.⁵

Against this background, Taiwan's National Human Rights Commission ('NHRC' or 'Commission') began operations on 1 August 2020,⁶ marking an important milestone given almost four decades of authoritarian rule in Taiwan between 1949 and 1987.⁷ Consequently, the Presidential Office Human Rights Consultative Committee, which had been responsible for institutionalising international human rights law and standards in Taiwan's legal framework, ceased operations on 19 May 2020.

The Organic Law placed the NHRC under the Control Yuan, the impeachment, ombudsman and audit institution of Taiwan. Thus, the Organic Law also amended Paragraph 7, Article 3-1 of the Organic Law of the Control Yuan concerning the qualifications of its members to include a professional background in human rights.⁸

1 This Report has been drafted by the members of Covenants Watch (CW). Covenants Watch is an NGO based in Taipei, Taiwan. It is committed to promoting human rights and equality for all people. CW was established on 10 December 2009 (International Human Rights Day) by a coalition of human rights NGOs, lawyers, academics, and activists.

2 CW, 'NHRI Advocacy,' accessed 17 November 2021, <https://en.covenantswatch.org.tw/nhri-advocacy/>.

3 ANNI, 'Impasse faced by Taiwan on Establishing the NHRI' in 2010 ANNI report on the Performance and Establishment of National Human Rights Institutions in Asia, 2010, https://en.covenantswatch.org.tw/wp-content/uploads/2015/12/ANNI_2010.pdf; see also, FORUM-ASIA, ANNI and APF, Taiwan NHRI Assessment Report 2017, https://covenantswatch.org.tw/wp-content/uploads/2015/12/Final-Taiwan_NHRI_Assessment_Report_2017.pdf.

4 FORUM-ASIA, ANNI and APF, Taiwan NHRI Assessment Report 2017.

5 The Control Yuan, 'Human Rights Work,' accessed 17 November 2021, <https://www.cy.gov.tw/EN/cp.aspx?n=247>; Organic Law of the Control Yuan (2020), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0010071>.

6 Office of the President of the Republic of China (Taiwan), 'Human Rights Protection,' accessed 17 November 2021, <https://english.president.gov.tw/Page/148>; 'Inauguration of sixth Control Yuan and establishment of National Human Rights Commission,' International Ombudsman Institute, 11 August 2020, <https://www.theioi.org/ioi-news/current-news/inauguration-of-sixth-control-yuan-and-establishment-of-national-human-rights-commission>.

7 'Taiwan's human rights progress a matter of 'facing history': Tsai,' Taiwan News, 5 December 2020, <https://www.taiwannews.com.tw/en/news/4070406>; 'How Taiwan's authoritarian history could affect its current geopolitics,' East Asia Forum, 7 February 2017, <https://www.eastasiaforum.org/2017/02/07/how-taiwans-authoritarian-history-could-affect-its-current-geopolitics/>.

8 'Human Rights Work,' The Control Yuan, accessed 19 November 2021, <https://www.cy.gov.tw/EN/cp.aspx?n=247>. See Organic Law.

AS A UNIT CONTROL YUAN NHRI'S D EFFECTIVENESS MANDATE.

(Refer to table above) ^{9 10 11}

The NHRC has the following powers and functions: ¹²

1. To investigate incidents involving torture, human rights violations, or various forms of discrimination in accordance with its authority or in response to petition from the general public, and to handle them and provide remedy according to the law;
2. To study and review national human rights policies and make recommendations;
3. To publish thematic reports on major human rights issues or annual reports on the state of human rights in the nation to understand and assess the domestic human rights situation;
4. To assist government agencies in the signing or ratification of international human rights instruments and their incorporation, and to ensure the conformity of domestic laws, regulations, directives, and administrative measures with international human rights norms;
5. To conduct systematic studies of the Constitution and legal statutes based on international human rights standards in order to propose necessary and feasible recommendations to amend the Constitution, legislation and laws;

⁹ Note that Control Yuan Members serve a term of six years, eligible for re-appointment. Constitution of the Republic of China (Taiwan) (1947), Art. 93.

¹⁰ NHRC, 'About: Members,' accessed 1 December 2021, <https://nhrc.cy.gov.tw/about/member>.

¹¹ Additional Articles of the Constitution of the Republic of China (2005), Art. 7.

¹² Organic Law, Art. 2.

6. To monitor the effectiveness of government agencies in promoting human rights education, enhancing human rights awareness, and handling matters involving human rights;
7. To cooperate with domestic institutions and civic groups, international organisations, NHRIs, and NGOs to promote the protection of human rights;
8. To provide independent opinions for national reports submitted by the Government in accordance with the provisions of international human rights treaties; and
9. Other matters related to the protection and promotion of human rights.

The Commission shall deliberate on any of its work through a meeting for that purpose.¹³ The Organic Law also set up three divisions to enable the NHRC to perform its mandate effectively: (i) the Research and Planning Division, (ii) the Enquiries and Investigation Division, and (iii) the Education and Promotion Division.¹⁴

Human Rights Situation During the COVID-19 Pandemic

The NHRC was established in the midst of the COVID-19 pandemic. By 2021, the NHRC has reportedly still not made full use of its budget.¹⁵ It is also not clear how proactive the NHRC is in performing its mandate. For instance, there have been a number of data privacy concerns in Taiwan in its fight against COVID-19 and the roll-out of a digital ID,¹⁶ but it is not clear if the NHRC stepped up to advise relevant authorities about how such measures should comply with international human rights law and standards, which is part of their function as an NHRI. Similarly, it is not clear what the NHRC has done to advocate for justice and reparations or the abolition of the death penalty, which Taiwan adheres to contrary to international human rights law.¹⁷

¹³ Organic Law, Art. 6.

¹⁴ Organic Law, Art. 7.

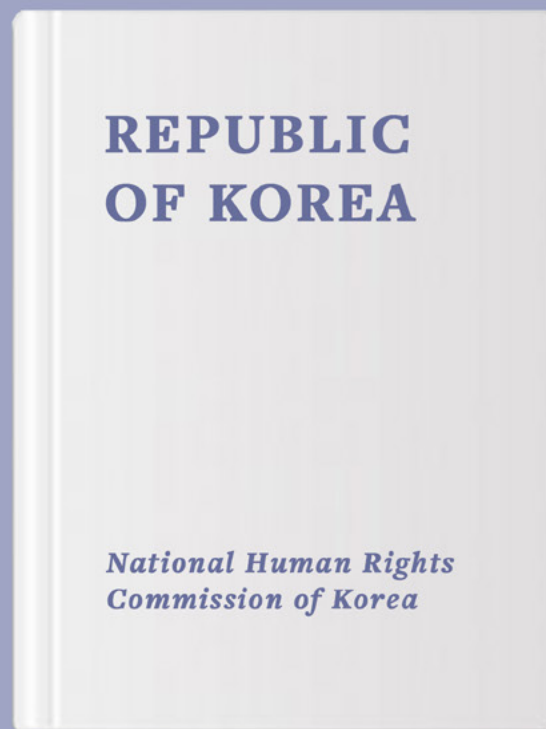
¹⁵ Shelly Shan, 'Rights Commission not Fulfilling its Duty: NPP,' Taipei Times, 3 August 2021, <https://www.taipeitimes.com/News/taiwan/archives/2021/08/03/2003761937>.

¹⁶ 'COVID-19 and Data Privacy Challenges in Taiwan,' Lex-Atlas, 28 June 2021, <https://lexatlas-c19.org/covid-19-and-data-privacy-challenges-in-taiwan/>; Huang Tzu-ti, 'Taiwan's digital minister says personal data protection agency needed for digital ID,' Taiwan News, <https://www.taiwannews.com.tw/en/news/3976854>; Freedom House, Freedom on the Net, accessed 19 November 2021, <https://freedomhouse.org/country/taiwan/freedom-net/2021>.

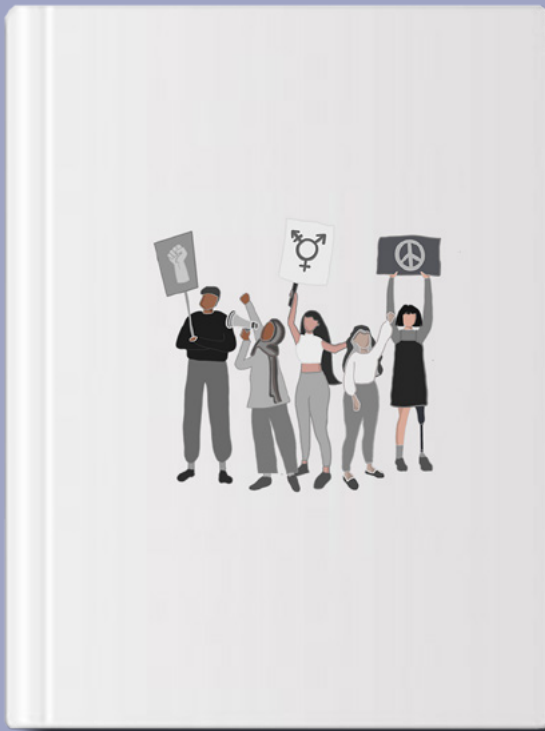
¹⁷ Amnesty International, Taiwan 2020, accessed 19 November 2021, <https://www.amnesty.org/en/location/asia-and-the-pacific/east-asia/taiwan/report-taiwan/>.

SOUTH KOREA:

NATIONAL HUMAN RIGHTS COMMISSION OF
KOREA'S STALLED EFFORTS TO PROTECT HUMAN RIGHTS¹



| | |
|--|--|
| YEAR OF ESTABLISHMENT | 2001 |
| COMPOSITION OF MEMBERS | ELEVEN ⁵ |
| DIVERSITY REQUIREMENT UNDER LAW | THE NUMBER OF COMMISSIONERS OF ANY GENDER NOT TO EXCEED SIX OF 10 OF THE TOTAL NUMBER OF COMMISSIONERS ⁶ |
| TERM OF MEMBERS | THREE YEARS |
| CURRENT CHAIRPERSON | SONG DOO-HWAN (PRESENT) CHOI YOUNG-AE (2020) |
| CURRENT GENDER RATIO (WOMEN : MEN) | 5:6 (PRESENT) 6:5 (2020) |
| AUTHORITY TO APPOINT MEMBERS | PRESIDENT, UPON NOMINATION OF FOUR PERSONS BY THE PRESIDENT (INCLUDING ONE FULL-TIME COMMISSIONER); FOUR SELECTED BY THE NATIONAL ASSEMBLY (INCLUDING TWO FULL-TIME COMMISSIONERS), AND THREE PERSONS NOMINATED BY THE CHIEF JUSTICE OF THE SUPREME COURT ⁷ |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | A (LAST REVIEWED IN 2016) ⁸ |
| REGIONAL OFFICES | FIVE (BUSAN, GWANGJU, DAEGU, DAEJEON, AND GANGWON) |
| ADDRESS | NARAKIUM JEODONG BLDG, 340, SAMIL-DAERO, JUNG-GU, SEOUL 04551 |
| PHONE | +82-2-2125-9700 |
| HELPLINE NUMBER | 1331 OR (02-1331) |
| EMAIL | nhrc@humanrights.go.kr |
| WEBSITE | www.humanrights.go.kr |



ALTHOUGH THE NHRCK HAS TAKEN SOME STEPS TO STRENGTHEN AND PROMOTE HUMAN RIGHTS IN KOREA, IMPROVING THE GANHRI-SCA'S RECOMMENDATIONS HAS STILL NOT BEEN IMPLEMENTED. DISCRIMINATION AND GENDER VIOLENCE ARE STILL RAMPLANT.

I. Overview

The National Human Rights Commission of the Republic of Korea ('NHRCK' or 'Commission') is the NHRI of the country. The statutory body was established under the National Human Rights Commission Act, 2001 ('NHRCK Act' or 'Act'), as amended.²

The Commission was established to uphold human rights and improve the human rights situation in Korea.³ The law defines 'human rights' as the 'human dignity and worth, liberty and rights' guaranteed by the Korean Constitution as well as human rights enshrined in treaties that Korea is a party to and in customary international law.⁴

(Refer to the table above) ^{5 6 7 8}

President Moon Jae-in has committed to advancing human rights as one of his national priorities.⁹ However,

1 Korean House for International Solidarity (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 is also conducting monitoring activities for the NHRI.

2 National Human Rights Commission of Korea Act (2001), https://elaw.klri.re.kr/eng_service/lawView.do?hseq=22488&lang=ENG.

3 Ibid. Art. 3.

4 Ibid. Art. 2(1).

5 Ibid. Art. 5(1). Among the 11 Commissioners, there are three full-time or 'standing' Commissioners along with the Chairperson. The rest are 'non-standing' Commissioners. See National Human Rights Commission of Korea, 'Organization,' accessed 26 November 2021, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002001005>.

6 Ibid. Art. 5(7).

7 NHRCK Act, Art. 5(2).

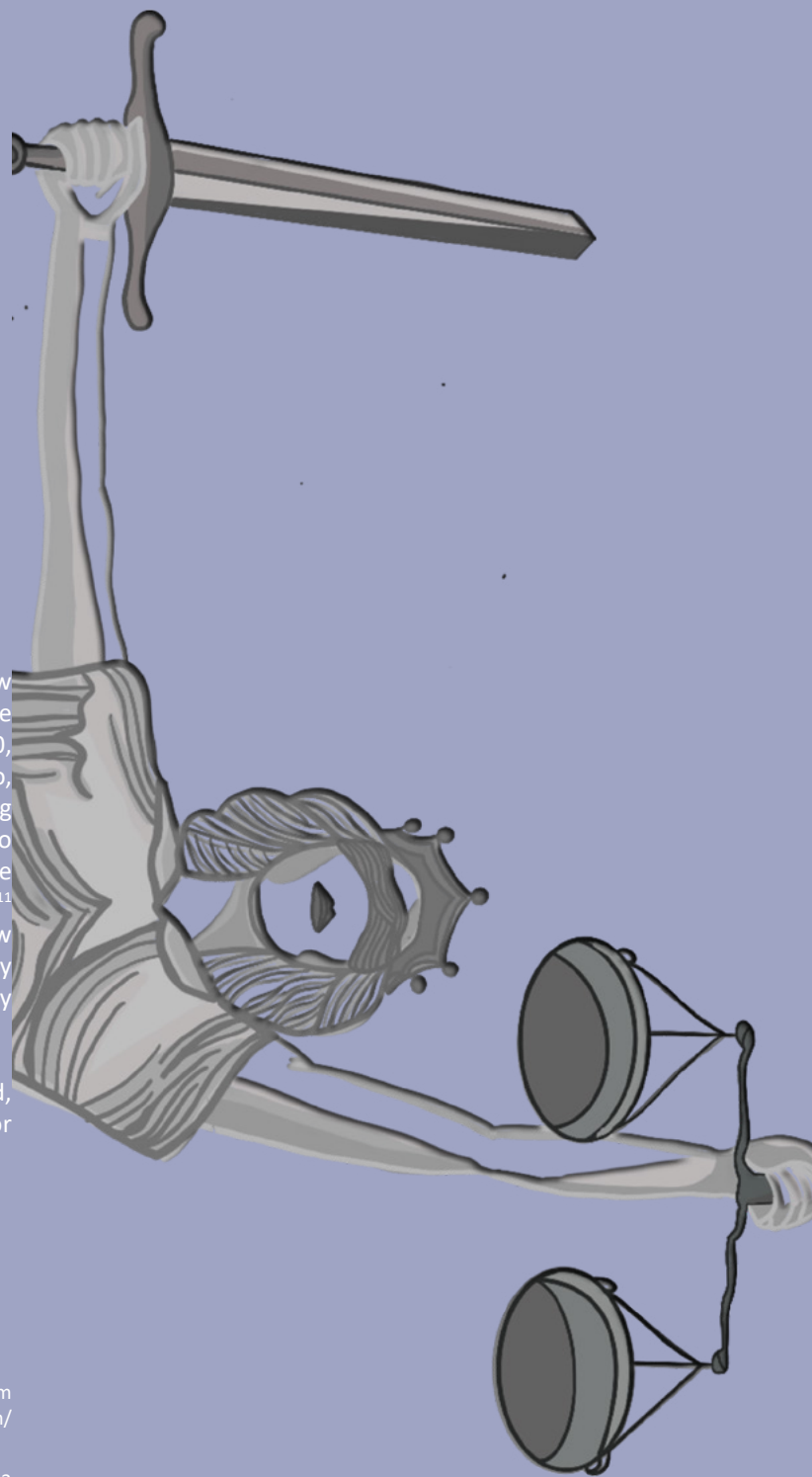
8 The NHRCK was re-accredited with 'A' status as of 2021. Though the report is not yet published, see The NHRCK, NHRCK Participates in GANHRI SCA Accreditation Review, 25 October 2021, <https://www.humanrights.go.kr/site/program/board/basicboard/view?menuid=002002005&pagesize=10&boardtypeid=7013&boardid=7607356>.

9 'Congratulatory Remarks by President Moon Jae-in on 2018 Human Rights Day,' Korea.net, 10 December 2018, <https://www.korea.net/Government/Briefing-Room/Presidential-Speeches/view?articleId=166297>.

AS TAKEN IMPORTANT AND PROMOTE HUMAN RIGHTS REMAIN. RECOMMENDATIONS HAVE NOT BEEN IMPLEMENTED. HARASSMENT, VIOLENCE AND GENDER-BASED DISCRIMINATION REMAIN A MAJOR CONCERN.

the human rights situation in Korea over the last few years has not improved significantly. The situation for the LGBTIQ community was particularly dire. In January 2020, a transgender soldier (male to female), Sgt. Byun Hee-soo, was forcibly discharged from the military after undergoing sex reassignment surgery while enlisted.¹⁰ Her appeal to be reinstated was denied in July 2020. In December, the NHRCK stated that Sgt. Byun's dismissal had no legal basis.¹¹ The NHRCK had been pushing for an anti-discrimination law in Korea since 2006, and in 2020, it renewed its advocacy to enact such a statute based on a draft law developed by the Commission.¹²

Impunity for gender-based violence remains unaddressed, as seen in the sexual harassment claims against the mayor



10 Ock Hyun-ju, 'Transgender sergeant forcibly discharged from military,' The Korea Herald, 22 Jan 2020, http://news.koreaherald.com/view.php?ud=20200122000800&md=20200125003111_BL.

11 'South Korea's first transgender soldier found dead,' BBC, 3 March 2020, <https://www.bbc.com/news/world-asia-56268409>.

12 'Taking Bold Step Towards Equality for All,' NHRCK, 7 July 2020, <https://www.humanrights.go.kr/site/program/board/basicboard/view?&boardtypeid=7003&menuid=002002001&boardid=7605641>; 'Time to take bold steps toward 'Equality for All,' NHRCK, accessed 26 November 2021, <https://www.humanrights.go.kr/site/program/board/basicboard/>

Commissioners represent each social group related to protecting and improving human rights.⁵⁵ A Commissioner can be a person ‘engaged in activities for human rights’ for at least 10 years, either by working for a non-profit organisation, company, or international organisation in the field of human rights. A Commissioner can also be any other person ‘highly respected in society’ as recommended by civic groups.⁵⁶ These provisions aim to achieve pluralism within the composition of the Commission.

Article 5 (7) of the NHRCK Act also provides that ‘the number of Commissioners of any gender shall not exceed 6/10 of the total number of Commissioners.’ While gender equality exists in the composition of the NHRCK’s membership, it has not yet been achieved in the composition of the Secretariat’s employees, as the 2018 Innovation Committee report points out.⁵⁷ The NHRCK does not disclose how much it has tried to realise gender equality within the institution. For example, it does not disclose the number of gender minorities and disabled people among all of its employees in its annual report, nor does it disclose the proportion of women among high-level employees.

According to the recommendation of the Innovation Committee, the NHRCK must disclose the employment and position status of minorities, including women and the disabled, in its annual report along with the realization of gender equality in the composition of the Secretariat.

Further, the NHRCK currently operates in Gwangju, Daegu, Busan, Daejeon, and Gangwon. In Korea, the population is concentrated in the metropolitan area, so people living in provincial areas are often isolated. To address this, the NHRCK needs to strengthen regional offices and cooperation with a broad base of local human rights defenders.

55 NHRCK Act, Art. 5(4).

56 Ibid. arts. 5(3)(3) and 5(3)(4).

57 2018 Innovation Committee, Recommendation about organizational innovation of NHRCK, 2018, <https://www.humanrights.go.kr/site/program/board/basicboard/view?menuid=001004002001&boardtypeid=24&boardid=7602376>, pp. 9-10.



III. Conclusion and Recommendations

Although the NHRCK has taken important steps to strengthen and promote human rights in Korea, impediments remain. The GANHRI-SCA's recommendations have still not been implemented. Harassment, discrimination and gender-based violence are still rampant. The Government also has yet to enact an anti-discrimination law that would protect these groups. Though the NHRCK has issued press statements and conducted investigations into some of these human rights incidents, the Commission must also improve its timely handling of cases for these vulnerable groups. Moreover, the Commission must strengthen diversity within its own institution in order to serve as a prime example of how diversity and equality should look in broader society. This is the only way to restore civil society's trust in the NHRC and realise human rights for all in Korea.

To the Government:

1. Amend the appointment process in the NHRCK Act to establish an independent Selection Committee involving civil society for appointing Commissioners; and
2. Implement the recommendations of the Commission.

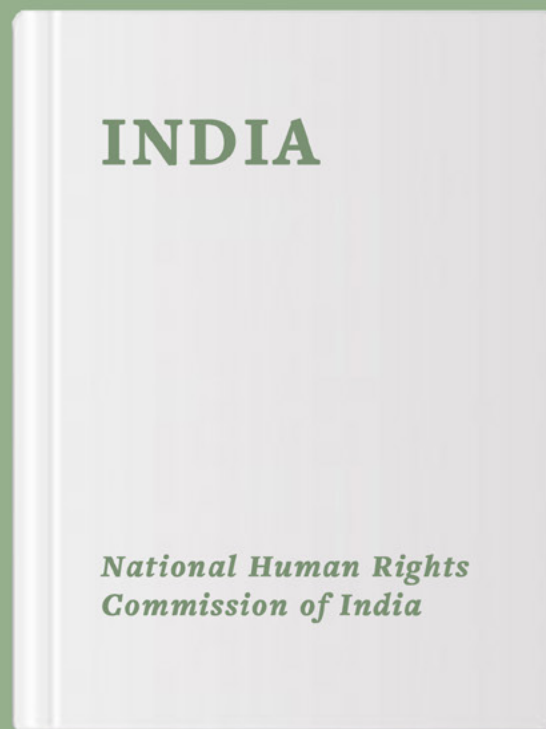
To the NHRCK:

1. Advocate with members of the National Assembly to amend the NHRCK Act;
2. Investigate and provide access to remedies to victims of human rights violations, particularly those stigmatised in Korean society such as migrants, refugees, and gender minorities;
3. Strengthen engagement with civil society; and
4. Publish reports on the Commission's efforts to strengthen diversity within its own institution.



INDIA:

NHRC NEEDS TO DO MORE AGAINST
RAPID HUMAN RIGHTS DECLINE IN INDIA¹



| | |
|--|---|
| YEAR OF ESTABLISHMENT | 1993 |
| COMPOSITION OF MEMBERS | FIVE (INCLUDING CHAIRPERSON) + SEVEN DEEMED MEMBERS (I.E., HEADS OF OTHER STATUTORY BODIES/COMMISSIONS) ⁵ |
| DIVERSITY REQUIREMENT UNDER LAW | AT LEAST ONE MEMBER SHOULD BE A WOMAN ⁶ |
| TERM OF MEMBERS | THREE YEARS |
| CURRENT CHAIRPERSON | JUSTICE (RETD.) ARUN KUMAR MISHRA (CURRENT CHAIRPERSON) SHRI JUSTICE H. L. DATTU (CHAIRPERSON FROM 2016-2020) ⁷ |
| CURRENT GENDER RATIO (WOMEN : MEN) | 1:4 (EXCLUDING DEEMED MEMBERS) |
| AUTHORITY TO APPOINT MEMBERS | PRESIDENT, UPON RECOMMENDATION BY THE SELECTION COMMITTEE ⁸ |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | A (LAST REVIEWED IN MARCH 2017) |
| REGIONAL OFFICES | 26 (STATE HUMAN RIGHTS COMMISSIONS 'SHRC') ⁹ |
| ADDRESS | MANAV ADHIKAR BHAWAN, BLOCK-C, GPO COMPLEX, INA, NEW DELHI - 110023 |
| PHONE | 91-11-24651330; 91-11-24663333 |
| HELPLINE NUMBER | 14433 |
| EMAIL | cr.nhrc@nic.in |
| WEBSITE | www.nhrc.nic.in |



HUMAN RIGHTS VIOLATIONS INVOLVING THE CENTRAL GOVERNMENT OCCURRED IN 2020, BUT THE NHRC DID NOT ADEQUATELY INTERVIEW VICTIMS OF HUMAN RIGHTS VIOLATIONS

(Refer to the table above) ^{5 6 7 8 9}

I. Overview

Human rights in India are recognized as fundamental rights enshrined in the Constitution of India.² The National Human Rights Commission, India ('NHRC' or 'Commission') was established as an independent body to protect human rights, with the promulgation of the Protection of Rights Ordinance on 28 September 1993 by the President of India.³ Subsequently, the Ordinance was repealed by the Protection of Human Rights Act (PHRA), 1993, which came into force on 8 January 1994, and presently governs the NHRC.⁴

The Indian Parliament amended the PHRA with the Protection of Human Rights (Amendment) Act, 2019.¹⁰ The Amendment brought substantive changes to the PHRA in terms of composition, appointment, and tenure. However, the Government made the amendments without conducting appropriate public consultations, much less with relevant stakeholders such as NGOs and local civil society. Neither the NHRC, any SHRC, nor the Ministry of Home Affairs ('the Ministry') consulted stakeholders or

1 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 to monitor human rights institutions like the National Human Rights Commission, the National Commission for Women, National Commission for Minorities, National Commission for Protection of Child Rights, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, Central Information Commission, Commissioner for Persons with Disabilities and their state counterparts for their compliance to Paris Principles and their founding law and to activate them.

2 Constitution of India (1950).

3 NHRC, 'About the Organisation,' accessed 17 October 2021, <https://nhrc.nic.in/about-us/about-the-Organisation>.

4 PHRA (1993), Section 43, https://www.indiacode.nic.in/bitstream/123456789/11184/1/the_protection_of_humen_rights_act_1993.pdf.

5 These are the following: National Commission for Minorities, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women, National Commission for Protection of Child Rights, National Commission for Backward Classes, and Chief Commissioner for Persons with Disabilities. NHRC, 'Composition of Commission,' accessed 18 November 2021, <https://nhrc.nic.in/about-us/composition-of-commission>.

6 PHRA (Amendment), 2019, Section 3.

7 'Mr. Justice H.L. Dattu today completes his tenure as the seventh Chairperson of NHRC, India,' National Human Rights Commission, accessed 18 November 2021, <https://nhrc.nic.in/media/press-release/mr-justice-hl-dattu-today-completes-his-tenure-seventh-chairperson-nhrc-india>.

8 As per Section 4 of the PHRA, the Selection Committee consists of the Prime Minister, Speaker of the House of People, Union Minister of Home Affairs, Leader of Opposition in the House of the People, Leader in Opposition in the Council of States, Deputy Chairman of the Council of States.

9 'Lok Sabha, Unstarred Question No. 1194,' Ministry of Home Affairs, 18 December 2018, <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2018-pdfs/lis-18122018/1194.pdf>.

10 The Protection of Human Rights (Amendment) ACT (2019), https://nhrc.nic.in/sites/default/files/PHR_ACT2019_27012020_1.pdf.

REGULATIONS CENTRAL ARRRESTED IN C FAILED TO WENE TO PROTECT RING THIS PERIOD

the public for that matter.¹¹ It was not clear if the Ministry discussed amendments with the NHRC or SHRCs; their position on the bill was not publicly available. The proposed amendments not only undermined the Paris Principles, such as those on diversity and pluralism, but run contrary to the 2011,¹² 2016,¹³ and 2017¹⁴ reports of the GANHRI-SCA.¹⁵

Human Rights Situation during the COVID-19 Pandemic

During the first year of the COVID-19 pandemic, the Government used various laws to harass and attack people deemed critical of government action. For instance, the Unlawful Activities Prevention (Amendment) Act, 2019

(UAPA),¹⁶ a repressive anti-terror legislation, was used to arrest and detain activists in 2020, including one pregnant student activist.¹⁷ Such harassment has continued to the present. In the 2018 Bhima Koregaon case related to violence during a Dalit march, 16 human rights defenders were arrested, convicted, and incarcerated under the UAPA.¹⁸ One of the persons arrested, Jesuit priest and indigenous rights activist Fr. Stan Swamy, recently died while in custody. His deteriorating health condition and COVID-19 infection was exacerbated by the denial of medical services by prison authorities.¹⁹ The Government also enacted the Foreign Contribution (Regulation) (Amendment) Act, 2020 which provided justification for the Government to cancel and suspend the licences of certain CSOs/NGOs for receiving foreign funding as prohibited by the law.²⁰ Various UN Special Rapporteurs expressed serious concern over these two laws for their incompatibility with international human rights law and standards, including India's human rights obligations.²¹

Kashmir has been a volatile region since independence, and one of the most militarised zones in the world, but in August 2019, the J&K Reorganisation Act scrapped the special status of Jammu and Kashmir provided under Article 370 of the Constitution of India.²² The previous special status of Jammu and Kashmir had provided powers and autonomy to the erstwhile state and allowed it to make separate laws for the state, meaning that not all central laws

11 Shrutika Pandey, 'Diluting NHRC's Autonomy Is the Latest Attempt to Throttle Human Rights,' *The Wire*, 13 August 2019, <https://thewire.in/government/nhrc-bjp-protection-human-rights-amendment-bill>.

12 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), May 2011, [https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf), p. 13.

13 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), November 2016, <https://ganhri.org/wp-content/uploads/2019/11/SCA-Final-Report-Nov-2016-English.pdf>, p. 24.

14 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), November 2017, <https://ganhri.org/wp-content/uploads/2019/11/SCA-Report-November-2017-ENG.pdf>, p. 18.

15 Shrutika Pandey, 'Diluting NHRC's Autonomy Is the Latest Attempt to Throttle Human Rights.'

16 Unlawful Activities Prevention (Amendment) Act (2019), <https://egazette.nic.in/WriteReadData/2019/210355.pdf>.

17 'India: Stop the false accusations and arrests of human rights defenders in the Delhi riots case,' FORUM-ASIA, 24 September 2020, <https://www.forum-asia.org/?p=32956>; 'India: Release human rights defenders at risk in the context of COVID-19,' FIDH, 26 May 2020, <https://www.fidh.org/en/issues/human-rights-defenders/india-release-human-rights-defenders-at-risk-in-the-context-of-covid>.

18 Apoorva Mandhani, '2 years, 3 charge sheets & 16 arrests — Why Bhima Koregaon accused are still in jail,' *The Print*, 31 October 2020, <https://theprint.in/india/2-years-3-charge-sheets-16-arrests-why-bhima-koregaon-accused-are-still-in-jail/533945/>.

19 Rajshree Chandra, 'Bhima Koregaon Case: Trying Without a Trial Is the Intent of Draconian UAPA Law,' *The Wire*, 9 July 2021, <https://thewire.in/rights/bhima-koregaon-case-trying-without-a-trial-is-the-intent-of-draconian-uapa-law>.

20 "FCRA Being Used to Crack Down on NGOs, But Why No Transparency on PM-CARES?" *The Wire*, 25 September 2020, <https://thewire.in/government/fcra-amendment-bill-transparency-ngos-crackdown>; 'India: FCRA Provisions Further Tightened, Non-Profits to Face Increased Government Scrutiny,' *The National Law Review*, 27 October 2020, <https://www.natlawreview.com/article/india-fcra-provisions-further-tightened-non-profits-to-face-increased-government>.

21 See OHCHR, Communication to the Government of India, 6 May 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25219>; 'India must review FCRA, says UNHRC chief Michelle Bachelet,' *The Hindu*, 20 October 2020, <https://www.thehindu.com/news/national/india-must-review-fcra-says-unhcr-chief-michelle-bachelet/article32902328.ece>

22 The Jammu and Kashmir Reorganisation Act (2019), <https://egazette.nic.in/WriteReadData/2019/210407.pdf>.

took no action following this violence.

Human rights violations involving the central government occurred in 2020, but the NHRC failed to adequately intervene to protect human rights during this period.³⁷ Though the NHRC tried to intervene or issue advisories, such as those for informal workers and prisoners, these were not enough.³⁸ Even some of the advisories are problematic; for instance, the NHRC did not recognise sex workers as informal workers entitled to COVID-19-related financial aid.³⁹ These examples show the failure of the NHRC to effectively perform its mandate during a critical time for human rights in India.

II. NHRC's Mandate to Protect and Promote Human Rights

Independence

Section 3 and Section 21 of the PHRA provide the mandate of the NHRC and SHRC, respectively. The PHR (Amendment) Act, 2019 broadened the criteria for the appointment of the chairpersons of NHRC and SHRCs. Under the amended Section 3, any former judge of the Supreme Court or the former Chief Justice of the Supreme Court can be appointed as the Chairperson of the NHRC; prior to the amendment, only the former Chief Justice of the Supreme Court could be appointed as Chairperson. Similarly, under the amended Section 21, any former judge of the High Court or the former Chief Justice of the High Court can be appointed as the Chairperson of SHRCs; before the amendment, only the former Chief Justice of the High Court could be appointed. The PHR (Amendment) Act, 2019 also reduces the term of office of the commissioners from five to three years, or until they attain the age of 70 years, whichever is earlier.⁴⁰

Section 3(4) also provides that the appointment of the Secretary-General who shall be the Chief Executive Officer of the Commission and discharge administrative and financial functions under the complete control of the Chairperson. Prior to the PHR (Amendment) Act, 2019, the powers of the Secretary-General were only those as may

lockdown/a-52946717.

37 Amnesty International, India 2020, <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/india/report-india/>.

38 'NHRC issues advisories on protection of human rights during pandemic,' The Hindu, 7 October 2020, <https://www.thehindu.com/news/national/nhrc-issues-advisories-on-protection-of-human-rights-during-pandemic/article32787299.ece>.

39 'National Human Rights Commission's U-turn on labour rights makes India's sex workers suffer a setback,' The Hindustan Times, <https://www.hindustantimes.com/sex-and-relationships/national-human-rights-commission-s-u-turn-on-labour-rights-makes-india-s-sex-workers-suffer-a-setback/story-vbbpaWPRIzfulrzqwVYoJJ.html>.

40 PHRA Amendment (2019), Sections 6 and 24.

be delegated to them by the Commission or Chairperson.

The judiciary is one of the state organs and, as per the procedure, the appointment and/or promotion of judges to the high courts or the Supreme Court of India does have the involvement of the President.⁴¹ The criteria restricting the appointment of Chairpersons of the NHRC and SHRCs to judges per se raises questions regarding the independence of the institution.⁴²

Section 4 of the PHRA provides the procedure for the appointment of the Chairpersons and the members of the NHRC. It prescribes the formation of a selection committee that includes the Prime Minister, Speaker of the House of the People (Lok Sabha), Minister-in-Charge of the Ministry of Home Affairs, Leader of Opposition of the House of the People, Leader of Opposition in the Council of the States, and the Deputy Chairperson of the Council of the States. The Committee will recommend the names to the President, who shall finally appoint the Chairperson and the members. Provided in case of the appointment of a sitting judge of the Supreme Court or the Chief Justice of the High Court, the nominee can only be appointed after consultation with the Chief Justice of India.

The current selection committee of the NHRC has representation from the ruling party and the opposition, in a four-to-two ratio; however, with the absence of the Leader of the Opposition in the Lower House of the Parliament, it stands reduced to four-to-one.⁴³ The absence of a comprehensive, objective and transparent appointment process is a concern for the independence and autonomy of the NHRC and SHRCs. The reduced term will result in inefficiency due to an exceedingly short amount of time for the commissioners to learn and understand the system and implement changes. Also, it will provide more room for government interference to replace a commissioner who is not acting as per the Government.⁴⁴ This has led to the controversial appointment of Justice Arun Mishra as NHRC Chairperson only months after his retirement from the Supreme Court, as well as that of a former director of the Intelligence Bureau as an NHRC Member.⁴⁵

41 Constitution of India, arts. 124 and 217.

42 Protection of Human Rights Act (1993), Sections 3, 21.

43 'Justice A.K. Mishra to head NHRC,' The Hindu, 31 May 2021, <https://www.thehindu.com/news/national/justice-ak-mishra-to-head-nhrc/article34692771.ece>

44 Henry Tiphagne, Jacob Matthew, 'PHRA Amendment, 2019: A critical Analysis,' The Leaflet, 30 July 2019, <https://www.theleaflet.in/phra-amendment-2019-a-critical-analysis/>

45 'Nine months after he retired from SC, Justice Arun Mishra is NHRC chief,' The Indian Express, 3 June 2021, <https://indianexpress.com/article/india/justice-arun-mishra-nhrc-chairman-7340811/>; 'India: Appointment of new Chairperson and members undermines Human Rights Commission's independence and credibility,' FORUM-ASIA, 11 June 2021, <https://www.forum-asia.org/?p=35065>; 'NGOs concerned over National Human Rights Commission appoint,' The Times of India,

Pluralism

The amended Section 3(2)(d) of the PHRA required the appointment of at least one woman as a member of the Commission. While in theory this was a welcome development, the amendment could also have been amended to include a more expansive diversity requirement among NHRC members, extending not only to gender, but also to race, ethnicity, religion, professional background, and disability, among others. Even the required gender ratio is insufficient in light of the fact that only three women have served as Commissioners in the NHRC's 28-year history. Following the 2019 PHRA amendments, in fact, the appointment committee did not appoint a retired woman Judge of the Supreme Court as NHRC's Chairperson, notwithstanding that there were two candidates available, namely, Justice R. Banumathi and Justice Indu Malhotra.

The PHRA Amendment meant to increase the deemed membership constitutes a superficial effort to comply with the Paris Principles of 'equality and pluralism' and not for genuinely and effectively strengthening pluralism in the composition of the Commission. The SCA previously expressed serious concerns over the lack of pluralism among NHRC commissioners.⁴⁶ The reservation of one seat for women among the NHRC members under the 2019 amendment is therefore grossly inadequate as a corrective measure to the lack of diversity in the Commission. The grossly inadequate representation of women judges in the Supreme Court also renders this diversity and pluralism elusive.⁴⁷

The amended PHRA also added the National Commission for Backward Classes, the National Commission of Protection of Child Rights, and the Commissioner for Persons with Disabilities as Deemed Members.⁴⁸ On the surface, the deemed membership provided under the Act appears to strengthen pluralism within the Commission. However, deemed members are often headed by those having close association with the ruling political party.

This can seriously influence the independence and efficacy of the NHRC in performing its mandate, as the deemed members are required to discharge functions specified in clauses (b) to (j) of Section 12 of the Act, which include

4 June 2021, <https://timesofindia.indiatimes.com/city/madurai/ngos-concerned-over-nhrc-appointments/articleshow/83215186.cms>

46 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), November 2017, p. 18.

47 Satya Pal Jain, 'More women judges needed in judiciary,' The Hindustan Times, 7 June 2021, <https://www.hindustantimes.com/cities/chandigarh-news/more-women-judges-needed-in-judiciary-101623059014130.html>; Geeta Pandey, 'India appointed three top women judges. Is it too early to celebrate,' BBC News, 13 September 2021, <https://www.bbc.com/news/world-asia-india-58498408>.

48 PHRA (Amendment) (2019), Section 2. This adds to the other national commissions under the PHRA 1993.

“On the surface, the deemed membership provided under the Act appears to strengthen pluralism within the Commission. However, deemed members are often headed by those having close association with the ruling political party.”

intervening in any judicial proceeding involving allegations of human rights violations, prison visits, review of existing and proposed laws in accordance with international human rights standards, and the study of treaties, among others.⁴⁹

The PHR (Amendment) Act, 2019 further deviates from the recommendations of the GANHRI-SCA to broaden the professional profile of the commissioners beyond members of the judiciary. In its last accreditation report, the GANHRI-SCA noted that although the NHRC is a quasi-judicial institution, this is just one among many functions of the Commission, and as such, not all members need to be members of the judiciary.⁵⁰ The 2019 amendment, however, did not address this gap and instead broadened the pool of judges that can be appointed.

Protection

The PHRA 1993 was adopted to provide for the 'constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights.' Section 12 of the PHRA enumerates the functions of the NHRC. It empowers the NHRC to inquire in three ways: (i) suo motu—without any request by the parties involved; (ii) upon complaint by a victim or representative; or (iii) on the court's direction on matters related to violations of human rights or negligence by any public servant in preventing the human rights violation.

However, during COVID-19, the Government introduced and/or passed laws that threatened a broad range of human rights, such as the UAPA, the Foreign Contribution (Regulation) (Amendment) Act 2020, the farm laws, and the CAA. These developments, however, did not generate

49 PHRA (1993), Section 3(3).

50 GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), November 2017, p. 18



INDONESIA:

STRIVING IN THE STORM:
REINFORCE KOMNAS HAM'S MANDATE AND
CAPACITIES AMIDST UNRESOLVED VIOLATIONS¹



| | |
|--|---|
| YEAR OF ESTABLISHMENT | 1993 |
| COMPOSITION OF MEMBERS | SEVEN |
| DIVERSITY REQUIREMENT UNDER LAW | NONE |
| TERM OF MEMBERS | FIVE YEARS, ELIGIBLE FOR RE-APPOINTMENT FOR ANOTHER FIVE YEARS ⁵ |
| CURRENT CHAIRPERSON | AHMAD TAUFAN DAMANIK |
| CURRENT GENDER RATIO (WOMEN : MEN) | 1 : 6 |
| AUTHORITY TO APPOINT MEMBERS | HOUSE OF REPRESENTATIVES, UPON RECOMMENDATION OF KOMNAS HAM AND VALIDATED BY THE PRESIDENT |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | A (LAST REVIEWED IN MARCH 2017) |
| REGIONAL OFFICES | JALAN LATUHARHARI NO. 4B, MENTENG KELURAHAN, CENTRAL JAKARTA 10310 |
| ADDRESS | BTMC BHABAN (8TH FLOOR) 7-9 KAZI NAZRUL ISLAM AVE, KAWRAN BAZAR, DHAKA-1215, BANGLADESH |
| PHONE | +62-21-3925230 |
| HELPLINE NUMBER | N/A |
| EMAIL | info@komnasham.go.id |
| WEBSITE | www.komnasham.go.id/ |



THERE IS NO AU LEGALLY BIND T ORDER TO IMPL RECOMMENDAT BY KOMNAS HA

I. Overview

The Republic of Indonesia (Indonesia) established the National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia or 'Komnas HAM' or 'Commission') through Presidential Decree No. 50/1993.² As per Articles 75 and 76 of Law Number 39 of 1999,³ which provides the current legal framework of the Komnas HAM, it has the mandate to protect and uphold the human rights of Indonesians, including developing conditions conducive for human rights protection through assessment, research, dissemination, monitoring, and mediation. Article 83 of Law Number 39 provides that the Komnas HAM shall be composed of 35 members. However, currently, there are only seven members present with one female member.⁴

(Refer to the table above)⁵

1 This report was developed by the Human Rights Working Group/HRWG; Institute for Policy Research and Advocacy/ELSAM; Imparsial/Indonesian Human Rights Monitor; The Commission of Disappeared and Victims of Violence/KontraS.

2 Presidential Decree No. 50 of 1993 The National Commission on Human Rights (1993), <https://www.refworld.org/docid/474d2ae22.html>.

3 Law of the Republic of Indonesia Number 39 of 1999 on Human Rights (1999), <https://peraturan.go.id/common/dokumen/terjemah/2019/UU%2039%201999%20English.pdf>.

4 Komnas HAM, 'Organizational structure,' accessed 27 October 2021, <https://www.komnasham.go.id/index.php/about/3/struktur-organisasi.html>.

5 Law Number 39, Art. 83(4).

Human Rights Situation during the COVID-19 pandemic

During the first year of the COVID-19 pandemic, human rights and civil liberties have been under threat in Indonesia. The World Project Rule of Law Index for 2020 ranked Indonesia 79th out of 128 countries in terms of respecting fundamental rights.⁶ As for upholding civil and political rights, the country ranked 61 out of 100.⁷

During the pandemic, the Ministry of Health adopted coronavirus guidelines.⁸ The guidelines were framed to hamper the right to freedom of expression and criticism of the government. The National Police Chief provided the guidelines via a 'classified police telegram' for carrying out duties in managing the COVID-19 outbreak, which included monitoring social media posts and taking action against people who 'insult' the president, officials and state institutions.⁹ Tempo fact-checking workers also received

6 World Justice Project, World Justice Project Rule of Law Index 2020, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf, p. 25.

7 Aqsa Alghiffari, 'Indonesia Doing Worse in Terms of Promoting Freedom of Expression Online according to New CYRILLA Report,' Association for Progressive Communications, 19 November 2020, <https://www.apc.org/en/node/37039>.

8 Betterwork, Compilation of Guidelines on Covid-19 Transmission, Prevention and Management and the Best Practices in the Workplace, https://betterwork.org/wp-content/uploads/2020/04/BWI_covid_guidance_eng_web.pdf.

9 Ghina Ghaliya, 'Criticism 'not an insult': Police's plan to nab slanderers of govt over Covid-19 questioned,' The Jakarta Post, 6 April 2020, <https://www.thejakartapost.com/news/2020/04/06/criticism-not-an-insult-polices-plan-to-nab-slanderers-of-govt-over-covid-19->

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doxing attacks due to fact-checking work related to claims of drugs that cure COVID-19.¹⁰

Law Number 40 was enacted in 1999 to protect journalists in the exercise of their work.¹¹ However, press freedom in Indonesia suffered a setback in 2020. The Press Legal Aid Institute (LBH) noted that the attacks against journalists increased sharply throughout 2020 with 117 cases, a jump from 2019's total of 79 cases.¹² The Government often used 'rubber articles,' i.e., laws that are interpreted broadly to cover expressions that would be considered protected under international human rights law. The Government often used Article 27(3)¹³ and Article 28(2)¹⁴ of the Law

questioned.html.

10 Nurita Dewi, 'Bukan Cuma Tempo.co, Peretasan Juga Dialami Situs Tirto.id,' Tempo 76, 23 August 2020, <https://nasional.tempo.co/read/1378519/bukan-cuma-tempo-co-peretasan-juga-dialami-situs-tirto-id>; 'Indonesia: Two fact-checkers face doxing,' International Federation of Journalists, 6 August 2020, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/indonesia-two-fact-checkers-face-doxing.html>.

11 Law No. 40 of 1999 on the Press (1999), https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=77117&p_lang=en.

12 Wahyudin Ade, 'Annual Report LBH Pers 2020,' LBH, 11 January 2020, <https://lbhpers.org/annual-report-lbh-pers-2020/>.

13 Law of the Republic of Indonesia No. 11 of 2008 Concerning Electronic Information and Transactions (2008), Art. 27(3) ('Any Person who knowingly and without authority distributes and/or transmits and/or causes to be accessible Electronic Information and/or Electronic Documents with contents of affronts and/or defamation.')

14 Ibid. Art. 28(2) ('Any Person who knowingly and without authority disseminates information aimed at inflicting hatred or dissension on individuals and/or certain groups of community based on ethnic groups, religions, races, and inter-groups.')

concerning Electronic Information and Transactions in 2020 to prosecute journalists.¹⁵

Institute for Policy Research and Advocacy (ELSAM) has identified various cyber-attacks that occurred against HRDs in 2020.¹⁶ Hackers successfully hacked, or attempted to hack, the social media accounts and messaging applications of human rights activists, the chairpersons of the student executive boards of several universities in Indonesia, the coordinator of the Gejayan Calling Action in Yogyakarta, journalists, and the Instagram account of the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia) so that it could not be accessed for some time.¹⁷ Similarly, in the case of HRDs in the natural resources sector, various NGO records showed an increase in threats and/or attacks against environmental HRDs.¹⁸

Another case of attacks on HRDs is the case of Novel Baswedan, a corruption investigator. Baswedan was the victim of an acid attack in 2017 because of his investigation on corruption cases.¹⁹ In response to his case, in 2018, Komnas HAM concluded that the Jakarta Regional Police Team was unsuccessful in capturing the perpetrators due to bureaucracy and an unnecessarily lengthy disclosure process.²⁰ Komnas HAM recommended the Indonesian National Police Chief General to establish a joint team in order to establish the facts and identify the perpetrators as soon as possible. In 2020, after further investigation and court of session judgement, the two attackers were sentenced for two years' and one and a half years' imprisonment.²¹ Nonetheless, many parties including Baswedan thought that the outcome of the case did not reflect a genuine commitment by the Government to eradicate corruption.

15 Press freedom still pending in Jokowi's second term,' Reporters Without Borders, accessed 26 November 2021, <https://rsf.org/en/indonesia>; FORUM-ASIA, Repressive Laws Mapping and Monitoring: Indonesia, accessed 26 November 2021, <https://forum-asia.org/hrlaw/countries/indonesia/>.

16 Pilihan, 'Mengidentifikasi Ancaman dan Risiko (Digital) Terhadap Pembela HAM,' ELSAM, 7 August 2020, <https://elsam.or.id/mengidentifikasi-ancaman-dan-risiko-digital-terhadap-pembela-ham/>.

17 Ibid.

18 Muhammad Azka, 'Resistance Forges Ahead in the Face of Storm of Threats,' ELSAM, 24 June 2020, <https://elsam.or.id/resistance-forges-ahead-in-the-face-of-storm-of-threats/>.

19 National, 'KPK's Novel Baswedan Falls Victim to Hydrochloric Acid Attack,' Tempo, <https://en.tempo.co/read/864676/kpks-novel-baswedan-falls-victim-to-hydrochloric-acid-attack>.

20 Latuharhary, Kabar, 'Recommendation to Establish a Joint Team to Investigate Novel Baswedan's Case,' Komnas HAM, 22 December 2020, <https://www.komnasham.go.id/index.php/news/2018/12/22/717/recommendation-to-establish-a-joint-team-to-investigate-novel-baswedan-039-s-case.html>.

21 'Novel Baswedan: Indonesian policemen jailed for acid attack on investigator,' BBC, 16 July 2020, <https://www.bbc.com/news/world-asia-53434719>

The verdict was light given the damage that happened to Baswedan and the threats for HRDs in the anti-corruption sector.²²

Despite the draconian measures to manage the pandemic, Indonesia was still hit hard. As of December 2020, Indonesia was fourth globally in terms of the number of people testing positive for COVID-19.²³ In its annual report taking stock of the government's handling of the pandemic, Komnas HAM submitted a recommendation to the President of Indonesia requesting the government to strengthen the legality of its policies aimed at handling the COVID-19 pandemic and to develop a centralised policy platform.²⁴

II. Komnas HAM's Mandate to Protect and Promote Human Rights

Protection

One of the challenges that still hinders the fulfilment, protection, and respect for human rights by Komnas HAM is related to the limited authority of Komnas HAM in following-up on recommendations. Article 89 of Law Number 39 provides Komnas HAM the authority to make recommendations concerning which human rights treaties should be acceded to or ratified; the human rights implications of existing or proposed laws; or human rights violations for further action by the Government or the House of Representatives. However, such power to recommend is not binding, so the Government has the discretion to disregard the recommendation. Thus, there is no authority to legally bind the state in order to implement the recommendations given by Komnas HAM. For instance, regarding the death of Pastor Yeremia Zanambani, the Komnas HAM investigation indicated that personnel of Indonesia's armed forces shot and tortured the victim.²⁵ However, there is no clarity on how the Government or the military will hold the perpetrator accountable.²⁶ This highlights the lack of power of the Komnas HAM to provide more than a recommendation.

Article 97 of Law 39 of 1999 requires Komnas HAM to 'submit annual reports concerning the execution of its functions, tasks and authority, and on the condition of human rights and cases handled to the House of Representatives and the President,' and submit copies to the Supreme Court. One of Komnas HAM's functions, tasks and authority is to give recommendations to relevant stakeholders in their handling of cases. In its Performance Report of 2020, Komnas HAM stated that their number of followed-up recommendations was beyond their target. Komnas HAM aimed to follow-up on 31.4 per cent of their recommendations.

Meanwhile, they reached 31.8 per cent in 2020 based on their calculations.²⁷ However, this progress needs to be analysed further. In 2020, Komnas HAM made 124 recommendations, nonetheless, there were only 41 recommendations that were followed-up as shown on the table below.²⁸

22 National, 'Novel Baswedan Claims to Have Been Informed of Courts Verdicts,' Tempo.co, <https://en.tempo.co/read/1366121/novel-baswedan-claims-to-have-been-informed-of-courts-verdict>.

23 Jan Senkyr, 'Indonesia: Cabinet reshuffle to improve Pandemic Control,' Konrad Adenauer Stiftung, 13 January 2021, <https://www.kas.de/en/web/indonesien/laenderberichte/detail/-/content/indonesien-kabinettsumbildung-soll-pandemiebekämpfung-verbessern>.

24 Komnas HAM, The Role of the National Commission on Human Rights of the Republic of Indonesia related to the Impact of COVID-19 Pandemic on Human Rights and Sustainable Development Goals in Indonesia, 7 November 2021, <https://www.komnasham.go.id/files/20211007-policy-brief-research-the-role-5XK9J.pdf>.

25 Budi Sutrisno, 'Soldier tortured, shot pastor, Komnas HAM alleges,' The Jakarta Post, 2 November 2020, <https://www.thejakartapost.com/news/2020/11/02/soldier-tortured-shot-pastor-komnas-ham-alleges.html>.

26 Victor Mambor, 'Intan Jaya pastor's family 'reluctantly' signs investigation report,' The Jakarta Post, 15 October 2020, <https://www.thejakartapost.com/news/2020/10/15/intan-jaya-pastors-family-reluctantly-signs-investigation-report.html>.

27 Komnas HAM, Performance Report of Komisi Nasional Hak Asasi Manusia, accessed 8 December 2021, <https://www.komnasham.go.id/files/20210517-laporan-kinerja-instansi-pemerintah-5EN0ORP.pdf>, p. 83

28 Ibid. p. 84

Table 1. The Achievement of the Recommendations of the Indonesian Human Rights

| COMMISSION TO BE FOLLOWED UP IN 2020 | | | | |
|---------------------------------------|-------------------------------------|--|--------------------------------------|--|
| FUNCTION OF RECOMMENDATION PUBLISHER | TARGET OF RESULTING RECOMMENDATIONS | ACHIEVEMENT OF RESULTING RECOMMENDATIONS | TARGET OF FOLLOWED UP RECOMMENDATION | ACHIEVEMENT OF FOLLOWED UP RECOMMENDATIONS |
| MONITORING AND INVESTIGATION FUNCTION | 52 | 54 | 16 | 18 |
| MEDIATION FUNCTION | 77 | 70 | 24 | 23 |
| TOTAL | 129 | 124 | 40 | 41 |

Source: Komnas HAM (2020).

The figures indicate that some progress has been made with respect to the targets set. However, the key issue is still related to the follow-up with other institutions—a mechanism for monitoring the implementation of the recommendations is crucial.

Komnas HAM has adopted Komnas HAM Regulation No. 5 the Year 2015 concerning Procedures for the Protection of Human Rights Defenders (Perkom Pembela HAM).²⁹ It defined HRDs as people and/or groups with various backgrounds, including those who are victims, either working as volunteers or receiving wages, who carry out work to promote and protect human rights by peaceful means. However, this has proven inadequate to protect HRDs. For instance, in 2020, Indonesia remains one of the deadliest countries for land and environmental activists.³⁰ Similarly, WHRDs and labour activists faced a spate of police brutality and cyber-attacks in the past year.³¹

Komnas HAM can also intervene as *amicus curiae* in human rights cases. For instance, Komnas HAM intervened in the criminal case against six neighbourhood heads in Bangka who fought for the rights of the people who were victims of pollution in December 2020.³²

Mandate

Article 75 of Law Number 39 provides the mandate of Komnas HAM, which includes developing conducive conditions for the execution of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter, and the Universal Declaration on Human Rights. It is also mandated to protect and uphold human rights for the personal development of the Indonesian people. In addition, Article 89 provides Komnas HAM the authority, while exercising its supervisory functions, to monitor the execution of human rights in the country and conduct investigations into allegations of human rights violations when warranted. For this purpose, the Commission has the power to call on complainants and witnesses and hear their statements, survey incident locations, and provide input on particular cases in judicial proceedings. In examining places of residence, the search can only be done upon approval of the Head of Court.

29 Komnas HAM Regulation No. 5 the Year 2015 concerning Procedures for the Protection of Human Rights Defenders (Perkom Pembela HAM) (2015), <https://www.komnasham.go.id/index.php/peraturan/2017/10/20/19/peraturan-komnas-ham-no-5-tahun-2015-tentang-prosedur-perlindungan-terhadap-pembela-ham.html#>.

30 Global Witness, Indonesia palm oil traders are failing land and environmental defender, 10 December 2020, <https://www.globalwitness.org/en/campaigns/environmental-activists/indonesia-palm-oil-traders-are-failing-land-and-environmental-defenders/>.

31 '2020: A Dark Page in the History of Human Rights in Indonesia,' Protection International, accessed 21 November 2021, <https://www.protectioninternational.org/es/news/2020-dark-page-history-human-rights-indonesia>.

32 Jong Nicholas, 'Acquittal of Indonesian Villagers Protesting Pollution Marks Rare Win against SLAPP,' Mongabay Environmental News, 2 August 2021, <https://news.mongabay.com/2021/08/acquittal-of-indonesian-villagers-protesting-pollution-marks-rare-win-against-slapp-bangka-asindo-agri/>.

Law No. 26 the Year 2000 consistent with Article 104 of Law No. 39 established a human rights tribunal that would have the authority to examine and judge cases concerning ‘massive human rights violations.’³³ This strengthens Komnas HAM’s authority to conduct investigations into massive human rights violations. However, the scope of ‘massive human rights violations’ in Law No. 26 is limited only to genocide and crimes against humanity.³⁴ Article 18 of Law No. 26 expressly authorises Komnas HAM to conduct a preliminary investigation of massive human rights violations and may form an ad hoc team for this purpose composed of the Commission and public elements.

Komnas HAM is mandated to conduct the preliminary investigation.³⁵ In the event that the Commission finds ‘sufficient evidence’ that human rights violations have been committed, it will forward the matter to the office of the Attorney-General, who is the investigator and public prosecutor under Law No. 26, for further investigation.³⁶ Komnas HAM must forward all the results and records of its investigation to the Attorney-General’s Office (AGO) within seven days after the completion of the investigation.³⁷ The AGO can return the results of the investigations to Komnas HAM if investigators consider them incomplete, as well as provide instructions for completion.³⁸

The authority of Komnas HAM is limited to following up on the results of the investigation. It appears that in most cases, the investigation submitted to the AGO was returned after years, and in cases where the file was returned after years, it has been marked as an incomplete investigation. However, there is a history of endless exchanges between the Commission and the AGO, resulting in prolonged delay in cases.³⁹ For instance, in 2020, Komnas HAM concluded that the incident concerning the shooting of indigenous Papuans in Paniai by security forces was a massive human rights violation. The Commission’s findings were the result of five years of investigation by an ad hoc team formed within the Commission.⁴⁰ However, in June 2020, the AGO rejected the files submitted to it by the Commission for

allegedly not meeting certain administrative and procedural requirements.⁴¹ This shows the limited authority of Komnas HAM in conducting investigations into massive human rights violations, as the timeline and direction of the investigation is ultimately within the control of the AGO.

Furthermore, Law No. 40 on the Elimination of Racial and Ethnic Discrimination of 2008 enhanced the mandate of Komnas HAM.⁴² Under Article 8, Komnas HAM has the power to supervise and monitor government policies and laws that aim to counter racial and ethnic discrimination, as well as make recommendations to Indonesia’s House of Representatives regarding the results of its monitoring and assessment of government measures. In particular, Komnas HAM needs to evaluate government policies, both central and regional, which are carried out periodically or incidentally by monitoring, finding facts, and conducting assessments in order to seek and find out whether there is racial and ethnic discrimination. Following such monitoring, Komnas HAM may follow-up with recommendations. Similarly, Law No. 7 enacted in 2012 on the Handling of Social Conflicts also designated Komnas HAM as a member of the National Social Conflict Resolution Task Force.⁴³

Pluralism

The COVID-19 pandemic did not stop Komnas HAM from proactively collecting complaints. It has an online complaints form that can be accessed by everyone.⁴⁴ Complaints could also be submitted through online social applications.⁴⁵ Nonetheless, there was still a digital divide in Indonesia that did not provide equal access to lodging complaints.⁴⁶ For instance, connectivity continued to be unreliable in Papua at several points due to political issues.⁴⁷

33 Law No. 26 (2000) <https://peraturan.go.id/common/dokumen/terjemah/2019/UU%2026%202000%20English.pdf>.

34 Ibid. Art. 7. See also Law No. 26, arts. 8–9 (defining the crimes of ‘genocide’ and ‘crimes against humanity.’)

35 Ibid. arts. 12 and 18.

36 Ibid. Art. 20.

37 Ibid. Art. 20(2).

38 Ibid. Art. 20(3).

39 ‘Komnas HAM categorises Paniai incident as serious human rights violation – Case submitted to Attorney General,’ The International Coalition for Papua, 16 February 2020, <https://www.humanrightspapua.org/news/32-2020/542-komnas-ham-categorizes-paniai-incident-as-serious-human-rights-violation-case-submitted-to-attorney-general>.

40 ‘Komnas HAM categorises Paniai incident as serious human rights violation – Case submitted to Attorney General,’ The International Coalition for Papua.

41 ‘Attorney General rejects the Paniai Case files again for further processing,’ The International Coalition for Papua, 3 June 2020, <https://humanrightspapua.org/news/32-2020/583-attorney-general-again-rejects-paniai-case-to-be-processed-by-human-rights-court/>.

42 Law of the Republic of Indonesia Number 40 of 2008 on Elimination of Racial and Ethnic Discrimination (2008), [https://peraturan.go.id/common/dokumen/terjemah/2019/LAW%20NO.%2040%20OF%202008%20\(LEMBARAN%20LEPAS\).pdf](https://peraturan.go.id/common/dokumen/terjemah/2019/LAW%20NO.%2040%20OF%202008%20(LEMBARAN%20LEPAS).pdf).

43 Undang-Undang Republik Indonesia Nomor 7 Tahun 2012 Tentang Penanganan Konflik Sosial (Law No. 7 2012 on the Handling of Social Conflicts) (2012), <https://www.komnasham.go.id/files/1565071914uu-no-7-tahun-2012-%20YGO.pdf>.

44 Komnas HAM, ‘Online Complaints Form,’ <http://pengaduan.komnasham.go.id/home/pengaduan-online>.

45 Komnas HAM, ‘Mekanisme Pengaduan,’ <https://www.komnasham.go.id/index.php/pengaduan-mekanisme/>.

46 ‘Disconnected Digital Divide May Jeopardize Human Rights,’ The Jakarta Post, <https://www.thejakartapost.com/news/2020/05/18/disconnected-digital-divide-may-jeopardize-human-rights.html>

47 Freedom House, Indonesia, accessed 8 December 2021, <https://freedomhouse.org/country/indonesia/freedom-net/2021>.

Based on the Performance Report of year 2020, Komnas HAM conducted open collaborations with various stakeholders. The local NGO, Imparsial, cooperated with Komnas HAM and Asosiasi Pemerintah Kota Seluruh Indonesia to organise a public discussion on standard norms and regulations on the rights to freedom of religion or belief.⁴⁸ Komnas HAM officials also held multi-stakeholder discussions to deliver human rights education in 2020.⁴⁹ Komnas HAM organised at least six public consultations from October to November 2020. These consultations were meant to foster dialogue on the right to freedom of expression and the right to health.⁵⁰ Nevertheless, Komnas HAM should enhance the participation of vulnerable groups—children, women, persons with disability, religious, ethnic and gender minorities—and human rights victims in every event.

The Commission is led by a Chair and two Vice-Chairs selected from among the members.⁵¹ Law Number 39, however, does not impose any gender criteria that should be adhered to. Based on the binary gender (men and women) analysis, the management of Komnas HAM for the 2020 to 2022 period only has one female commissioner out of a total of seven commissioners.⁵²

Before the reshuffle of Komnas HAM leadership in 2020,⁵³ the selection of leaders or commissioners was carried out in 2017. In the early stages, the selection conducted by written examination was able to attract 60 people. Then, after going through the stages of public dialogue and record tracking, the Selection Committee (Pansel) was able to recruit 28 people for the next series of tests and interviews.⁵⁴ In the final stage, the Pansel selected five female candidates. However, only one was appointed as the commissioner. Since the beginning, the number of women candidates was very small. This indicates an adverse impact on the gender balance of the Commission in the long run.

The low number of women candidates since the start of the process contradicted the spirit of gender balance as one of the underlying principles of the Pansel. In the formation

of the Pansel, the importance of ensuring the gender balance has been a crucial aspect as stipulated under Komnas HAM Regulation No. 3 the Year 2016 concerning the Establishment of Komnas HAM's Member Candidates Selection Committee. Thus, it should be applied by the Pansel throughout the selection process.⁵⁵ If equality between cisgender men and women is still hardly pursued in the top leadership of Komnas HAM, equality for other gender identities might need time to be actualised.

In this regard, not only does the Pansel need to improve but also the House of Representatives should strengthen their mechanism to ensure an inclusive appointment process. In the long run, civil society might have to analyse the possibility of reforming the appointment process in the House of Representatives to ensure the ideal result of an inclusive membership of Komnas HAM. Nonetheless, the Commissioner of Komnas HAM stated that this option has to be addressed through the revision of the Law No.39/1999 on Human Rights.⁵⁶

The lack of diversity among the commissioners might reflect the organisation's staff composition. Komnas HAM has 282 state apparatus of Komnas HAM, 12 candidates of state apparatus of Komnas HAM, and 99 government workers (non-state apparatus).⁵⁷ However, the gender proportion of Komnas HAM's staff is hardly found in the public domain. This resulted in the unavailability of sex and gender disaggregation data to further analyse the diversity within Komnas HAM. Nonetheless, Komnas HAM should ensure that gender equality is present within their staff composition and in the culture of the institution.

48 Komnas HAM, Laporan Kinerja Instansi Pemerintah, <https://www.komnasham.go.id/files/20210517-laporan-kinerja-instansi-pemerintah-5EN0ORP.pdf>, p. 26.

49 Ibid., p. 148.

50 Ibid., p. 30.

51 Law No. 39, Art. 83.

52 Komnas HAM, 'Struktur Organisasi,' accessed 24 October 2021, <https://www.komnasham.go.id/index.php/about/3/struktur-organisasi.html>.

53 Faorick Pakpahan, 'Komnas Ham Umumkan Jajaran Struktur Baru,' SindoNews, 13 June 2020, <https://nasional.sindonews.com/read/68698/14/komnas-ham-umumkan-jajaran-struktur-baru-1592042804/10>.

54 Fachrunin Fahcri, '28 Peserta Lolos Seleksi Calon Anggota Komnas HAM,' Kompas, 4 August 2020, <https://nasional.kompas.com/read/2017/07/04/12391331/28.peserta.lolos.seleksi.calon.anggota.komisiner.komnas.ham?page=all>.

55 Komnas HAM, 'Peraturan Komisi Nasional Hak Asasi Manusia, Art. 6(1),' JDIHN, accessed 26 November 2021, <https://jdihn.go.id/files/665/perkomnas%20no%203%20tahun%202016%20tentang%20panitia%20seleksi%20calon%20anggota%20komnas%20ham.pdf>.

56 The Statement of the Commissioner on Assessment and Research of Komnas HAM, Sandra Moniaga, at the CSO Consultation Meeting on 6 December 2021 by ANNI Members in Indonesia.

57 Komnas HAM, Laporan Kinerja Instansi Pemerintah, 17 May 2021, <https://www.komnasham.go.id/files/20210517-laporan-kinerja-instansi-pemerintah-5EN0ORP.pdf>, p. 10.

III. Conclusion and Recommendations

Although Indonesia has laws and institutions that aim to protect and uphold human rights, such as Komnas HAM, the weak enforcement of such laws fail to provide adequate protection to individuals especially when the Government continues to broadly interpret other laws in order to crack down on dissent. Komnas HAM's power to provide recommendations on human rights cases does not address the Government inaction to hold perpetrators accountable for human rights violations. Komnas HAM has agreed that it still needs to improve its compliance with the Paris Principles, as its work has yet to fully align with each of the principles.⁵⁸

In the end, the lack of accountability for impunity in Indonesia renders human rights protection elusive.

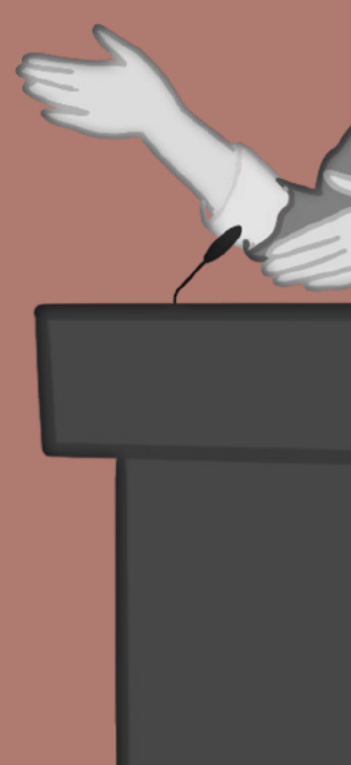
To Komnas HAM:

1. Develop an effective mechanism related to the implementation and follow-up of recommendations issued by Komnas HAM. This applies both to government agencies and private parties.
2. Ensure continuous monitoring of human rights violations;
3. Ensure gender diversity in the Commission, with no less than 30 per cent of female commissioners; and
4. Promptly intervene in matters filed in court concerning human rights violations.

To the Government:

1. Amend the enabling law to strengthen the authority of Komnas HAM to follow-up on investigations forwarded to the AGO but remain unacted upon;
2. Provide timely and adequate responses to the Commission's requests and queries; and
3. Support Komnas HAM in the conduct of investigations, including in allegations of human rights violations involving members of the military and police.

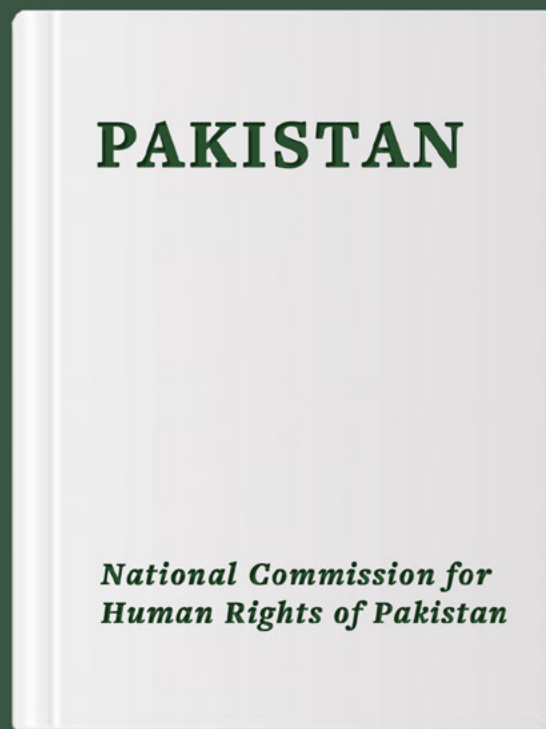
⁵⁸ The Statement of the Commissioner on Assessment and Research of Komnas HAM, Sandra Moniaga, at the CSO Consultation Meeting on 6 December 2021 by ANNI Members in Indonesia.





PAKISTAN:

NON-FUNCTIONAL NCHR AND PANDEMIC FURTHER DETERIORATE
HUMAN RIGHTS IN PAKISTAN¹



| | |
|---|---|
| YEAR OF ESTABLISHMENT | 2012 |
| COMPOSITION OF MEMBERS | EIGHT |
| DIVERSITY REQUIREMENT UNDER LAW | AT LEAST TWO MEMBERS SHOULD BE WOMEN AND ONE MEMBER FROM MINORITY COMMUNITIES |
| TERM OF MEMBERS | FOUR YEARS |
| CURRENT CHAIRPERSON | NOT APPOINTED ⁷ |
| CURRENT GENDER RATIO (WOMEN : MEN) | N/A |
| AUTHORITY TO APPOINT MEMBERS | FEDERAL GOVERNMENT INVITES SUGGESTIONS FOR SUITABLE PERSONS FROM THE PUBLIC FOR THE APPOINTMENT AS CHAIRPERSON AND MEMBERS OF THE COMMISSION AND SENDS IT TO THE PRIME MINISTER AND LEADER OF OPPOSITION IN THE NATIONAL ASSEMBLY, WHO, AFTER CONSULTATION, FORWARDS THREE NAMES TO THE PARLIAMENTARY COMMITTEE. THIS COMMITTEE SENDS THE NAMES OF THE NOMINEES TO THE PRESIDENT WHO MAKES THE FINAL APPOINTMENT. |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | NOT ACCREDITED |
| REGIONAL OFFICES | FOUR⁸ |
| ADDRESS | 5TH FLOOR, EVACUEE TRUST COMPLEX, AGHA KHAN ROAD, ISLAMABAD |
| PHONE | 051-9216771 |
| HELPLINE NUMBER | N/A |
| EMAIL | info@nchr.org.pk |
| WEBSITE | www.nchr.gov.pk/ |



SINCE THE COMPLETION OF THE FIRST SET OF COMMISSIONERS IN 2019, THE NCHR HAS REMAINED NON-FUNCTIONAL IN PAKISTAN DUE TO THE NON-APPOINTMENT OF NEW COMMISSIONERS.

I. Overview

The Islamic Republic of Pakistan (Pakistan) adopted the National Commission for Human Rights Act, 2012 (Act XVI of 2012) ('the Act' or 'NCHR Act'), which established the National Commission for Human Rights (NCHR) to promote and protect the human rights enshrined in the Constitution of Pakistan and international instruments to which Pakistan is a State Party.² Though formally established in 2012, the NCHR only began operations in 2015.³ It is an independent body and is directly accountable to the Parliament.⁴

However, since the completion of tenure of the first set of commissioners in 2019, the NCHR has remained non-functional in Pakistan due to the non-appointment of new commissioners.⁵ Some initially feared that the

failure to reappoint was due to the inability to reach a consensus between the Prime Minister and the Leader of the Opposition in the National Assembly.⁶ Another reason may be that the Government is reacting against a report by the NCHR on torture that reflects widespread allegations of torture in the country, contrary to the government's own account.⁷ The continued failure by the government to facilitate the appointment of new commissioners seriously threatens the protection and promotion of human rights in Pakistan, and if anything, demonstrates the flawed selection process under the NCHR Act.

(Refer to the table above) ⁸

1 Bytes for All (B4A), Pakistan is a human rights organisation and a research think tank that conducts research on issues related to information and communication technologies (ICTs) and how they impact society. They also implement field projects in light of this research. Its focus has always been on human rights, community development, the environment and social well-being.

2 The National Commission for Human Rights Act, 2012, Government of the Islamic Republic of Pakistan, Preamble.

3 UN Office of the High Commissioner for Human Rights, 'Human Rights Committee discusses the initial report of Pakistan,' 12 July 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21868&LangID=E>.

4 NCHR Act, Sections 16, 27 and 28; National Commission for Human Rights, 'Who we are,' accessed 9 November 2021, <https://nchr.gov.pk/who-we-are/>.

5 'Islamabad HC directs Pak govt to revitalise human rights commission after activists accuse PM of sabotaging it,' ANI, 9 April 2021, <https://www.aninews.in/news/world/asia/islamabad-hc-directs-pak-govt-to-revitalise-human-rights-commission-after-activists-accuse-pm-of-sabotaging-it>.

govt-to-revitalise-human-rights-commission-after-activists-accuse-pm-of-sabotaging-it20210409184421/.

6 Ikram Junaidi, 'National Commission for Human Rights dysfunctional for over three months,' Dawn, 19 September 19 2019, <https://www.dawn.com/news/1504289/national-commission-for-human-rights-dysfunctional-for-over-three-months>.

7 Shah Meer Baloch, Hannah Ellis-Petersen 'Pakistani government accused of 'sabotaging' rights watchdog,' 30 March 2021, <https://www.theguardian.com/world/2021/mar/30/pakistani-government-accused-of-sabotaging-rights-watchdog>.

8 The NCHR website lists six provincial branches plus one designated for 'Minorities' for a total of seven, but as of the observations of Authors, there are four regional offices namely, Lahore, Peshawar, Quetta and Karachi. The office in FATA has been merged with the Peshawar and Islamabad office is considered the head office. This change has not been made on the NCHR website.

ION OF TENURE COMMISSIONERS AS REMAINED PAKISTAN DUE TMENT OF NEW

Human Rights Situation during the COVID-19 pandemic

With no oversight from an independent and autonomous body on the human rights situation in the country since the NCHR became non-functional in Pakistan, human rights violations have been on the rise, exacerbated by the COVID-19 pandemic⁹ and socioeconomic inequalities, such as joblessness.¹⁰ During this period, there were reports of several cases of forced marriage,¹¹ child marriage and child abuse,¹² and honour killings.¹³ There was also a major increase in cases of domestic violence.¹⁴ Perpetrators of domestic violence and sexual abuse were put together with their victims for prolonged periods of time as a result

9 'Coronavirus being used by Pakistan as cover for increased human rights abuses,' ANI, 18 May 2020, <https://www.aninews.in/news/world/asia/coronavirus-being-used-by-pakistan-as-cover-for-increased-human-rights-abuses20200518232308/>.

10 'How the COVID-19 crisis is affecting Pakistan's economy' DW, accessed 9 November 2021, <https://www.dw.com/en/how-the-covid-19-crisis-is-affecting-pakistans-economy/a-54292705>; Afshan Subohi, 'A job-killing pandemic,' Dawn, 7 December 2020, <https://www.dawn.com/news/1594444>.

11 Zofeen T Ebrahim, 'Pakistan court orders arrests over Christian teen's forced marriage,' Thomson Reuters Foundation, 9 November 2020, <https://news.trust.org/item/20201109153543-0b2dx/>.

12 'Cruel Numbers 2020: Report Highlights' Sahil Mission, accessed 17 October 2021, <https://sahil.org/cruel-numbers/>.

13 'Pakistan: Three arrested over 'honour killing' of teenage sisters,' Al-Jazeera, 18 May 2020, <https://www.aljazeera.com/news/2020/5/18/pakistan-three-arrested-over-honour-killing-of-teenage-sisters>.

14 'Pakistan: Events of 2020' Human Rights Watch, accessed 10 October 2021, <https://www.hrw.org/world-report/2021/country-chapters/pakistan>.

of the pandemic, which resulted in an increase in these crimes due to 'work from home' instructions and restricted freedom of movement.¹⁵ The pandemic has also negatively affected the education system, as the Government closed schools and universities.¹⁶ Almost 40 million children were affected by school closures resulting from the lockdown, while weak internet access hindered online learning.¹⁷

In addition, COVID-19 revealed the inadequacies in the country's healthcare system, especially in terms of preparedness and infrastructure.¹⁸ The health crisis was further exacerbated by the closure of outdoor patient departments at major government hospitals during the COVID-19 lockdown.¹⁹ The polio vaccination and dengue control campaigns were essentially stopped until the end of the year as the pandemic drew attention away from other health issues, increasing fears of a return of these diseases.²⁰

Even in the time of COVID-19, the Government continued to prosecute religious minorities under blasphemy laws. Hearings for religious minorities accused of blasphemy were routinely postponed because of the pandemic.²¹ The anti-Ahmadi campaign increased, resulting in deaths in Peshawar.²²

The right to freedom of expression was also increasingly violated during COVID-19. Article 19 and Article 19A of the Constitution of Pakistan respectively guarantee the fundamental rights to freedom of expression and right to

15 Shehryar Warraich, 'Locked down and vulnerable' The News on Sunday (TNS), 28 June 2020, <https://www.thenews.com.pk/tns/detail/678152-locked-down-and-vulnerable>.

16 'How has COVID impacted Pakistan's education system?' DW, accessed 9 November 2021, <https://www.dw.com/en/how-has-covid-impacted-pakistans-education-system/a-59264829>.

17 Deutsche Welle, 'Explained: Impact of COVID-19 on Pakistan's education system,' Frontline, 23 September 2021, <https://frontline.thehindu.com/dispatches/explained-impact-of-covid-19-on-pakistans-education-system/article36625655.ece>.

18 Atiqah Khalid, Sana Ali, 'COVID-19 and its Challenges for the Healthcare System in Pakistan,' Asia Bioeth Rev. 13 August 2020, pp. 1–14.

19 UN Office for the Coordination of Humanitarian Affairs, Pakistan: Situation Report, 12 April 2020, https://reliefweb.int/sites/reliefweb.int/files/resources/pakistan_situation_report_20200412.pdf.

20 M. Din, M. Asghar, and M. Ali, 'Delays in polio vaccination programs due to COVID-19 in Pakistan: a major threat to Pakistan's long war against polio virus.' Elsevier Public Health Emergency Collection 189, (October 2020); Victoria Milko, Aniruddha Ghosal, 'Dengue prevention efforts stifled by coronavirus pandemic,' Associated Press, 13 July 2020, <https://apnews.com/article/asia-pacific-latin-america-middle-east-singapore-understanding-the-outbreak-036bb86275b43176cee5209c1b216106>.

21 'Pakistan: Surge in Targeted Killings of Ahmadis,' Human Rights Watch, 26 November 2020, <https://www.hrw.org/news/2020/11/26/pakistan-surge-targeted-killings-ahmadis>.

22 Ibid.

information to citizens of Pakistan.²³ However, the Pakistani Government persecuted HRDs in 2020 for opposing government leaders and policies, as well as journalists and media outlets for supposedly sharing and broadcasting 'illegal' content on social media and television, respectively.

24

Article 19 and Article 19A of the Constitution of Pakistan qualify the rights to freedom of expression and access to information with reasonable restrictions 'in the interest of the glory of Islam,' or the 'integrity, security or defence of Pakistan or any part thereof,' public order, decency or morality, or incitement to an offence, among others. Article 54(1) of the Pakistan Telecommunication (Re-organization) Act, 1996 (PTA) also provides government authorities with the power to intercept communications 'in the interest of national security or in the apprehension of any offence.'²⁵ On the basis of 'national security,' internet access in a number of areas in Balochistan and the erstwhile tribal districts of Khyber Pakhtunkhwa remained inadequate or non-existent throughout the year.²⁶ The ongoing control of internet services by the Special Communications Organization (SCO) in Gilgit-Baltistan (GB) and Azad Jammu and Kashmir (AJK) harmed connectivity to the disadvantage of students in both areas.²⁷

In 2020, the Government of Pakistan adopted the Citizens Protection (Against Online Harm) Rules, 2020, which was made in accordance with two parent acts: the PTA and the Prevention of Electronic Crimes Act, 2016 (PECA).²⁸ The Rules, if adopted, would give the PTA the authority to request the removal of online content that it deems illegal under Pakistani law.²⁹ The reaction to the new rules was not positive as the Government adopted the rules without following the proper process or engaging CSOs.³⁰ In

23 The Constitution of the Islamic Republic of Pakistan, 2012, Arts. 19, 19A.

24 Human Rights Watch, Pakistan: Events of 2020, accessed 10 October 2021, <https://www.hrw.org/world-report/2021/country-chapters/pakistan>; Ananya Varma, 'Pakistan's FIA Charges 49 Journalists Under Draconian PECA, Activists Lash Out,' Republic World, 25 September 2020, <https://www.republicworld.com/world-news/pakistan-news/pakistans-fia-charges-49-journalists-under-draconian-peca-activists.html>.

25 Pakistan Telecommunication Act, 1996, Art. 54(1).

26 Jahanzaib Haque, 'Pakistan's Internet Landscape, 2020,' Bytes For All, Pakistan, April 2021, <https://www.forum-asia.org/uploads/wp/2021/09/Pakistan-Internet-Landscape-Report.pdf>.

27 S. M. Baloch, Z. Musyani, 'Pakistan's Great Digital Divide,' The Diplomat, 8 July 2020, <https://thediplomat.com/2020/07/pakistans-great-digital-divide/>.

28 Citizens Protection (Against Online Harm) Rules, 2020, Government of Pakistan, [https://moitt.gov.pk/SiteImage/Misc/files/CP%20\(Against%20Online%20Harm\)%20Rules%2c%202020.pdf](https://moitt.gov.pk/SiteImage/Misc/files/CP%20(Against%20Online%20Harm)%20Rules%2c%202020.pdf).

29 Citizens Protection (Against Online Harm) Rules, Section 4.

30 Usama Khilji, 'Draconian Internet Rules,' Dawn, 22 November 2020, <https://www.dawn.com/news/1591732>; 'Pakistan: Federal Government Issues Controversial Rules on Social Media Content,' Library

November 2020, the Rules appear to have been presumably replaced with the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2020, which are equally problematic in terms of safeguarding freedom of expression in Pakistan.³¹

II. NCHR's Mandate to protect and promote human rights

Independence

The NCHR Act, 2012 provides for the establishment of NCHR as an independent statutory body. Section 3 of the NCHR Act, 2012 provides for the establishment of an NHRI along with its composition, stipulating that the Commission shall comprise one Chairman and seven other members. The appointment process of the members and the Chairman of the Commission is enshrined in Section 4 of the Act. As per the procedure provided under Section 4, the Federal Government shall invite the public for suggestions for suitable candidates. After proper scrutiny and shortlisting, the Federal Government will submit the list to the Prime Minister and Leader of the Opposition in the National Assembly. Subsequently, the Prime Minister shall, in consultation with the Leader of Opposition, forward three names for each post to a Parliamentary Committee which will interview and finalise the nominees. The Parliamentary Committee will thereafter forward the list of nominees for confirmation by the President. The President will appoint the Chairperson and members from the list of nominees.

The NCHR has not been functional since 2019 due to the failure of the Government to appoint a new set of commissioners. Though efforts have been made to make the Commission functional, due to the complex and opaque procedure, it has been delayed. As noted above, the whole process is within the control of the Federal Government and its continued inaction on the appointment process threatens the independence of the Commission. At one point, the Islamabad High Court rejected an invitation for applications from the Ministry of Human Rights because, in addition to inviting suggestions on suitable persons from the public as required by the NCHR Act, the Ministry of Human Rights also invited applications from interested persons, which the Court found to be in contravention of the provisions of the NCHR Act.³²

Another important facet regarding the independence of

of Congress, 3 March 2020, <https://www.loc.gov/item/global-legal-monitor/2020-03-03/pakistan-federal-government-issues-controversial-rules-on-social-media-content/>.

31 Usama Khilji, 'Draconian Internet Rules,' Dawn.

32 Malik Asad, 'IHC overturns cabinet's decision on appointments in NCHR, NCSW,' Dawn, 30 March 2021, <https://www.dawn.com/news/1615426>.

Pakistan's NCHR is related to its financial autonomy. The NCHR Act grants a separate Fund for the NCHR.³³ However, any expenditure must be authorised by the executive or supervisory body—the Ministry of Human Rights—as well as the Ministry of Finance and Accountant-General of Pakistan, which can undermine the Commission's financial autonomy.³⁴ Further, the NCHR can transparently seek funds in the form of unconditional grants from donors or NGOs, however, approval of the Federal Government will be required if the donor or NGO is a foreign source.³⁵ These provisions undermine the financial independence of the NCHR.

Mandate

The NCHR has jurisdiction over the whole of Pakistan except the Islamabad Capital Territory, which is covered under Chapter V (Human Rights Courts) of the NHCR Act.³⁶ However, Gilgit Baltistan and Azad Jammu and Kashmir are outside the scope of the NCHR mandate.³⁷ Chapters III and IV of the NCHR Act provide the Commission's mandate: Section 9(a) of the Act enumerates the function of the Commission to enquire suo moto or on receipt of any petition filed by a victim into allegations of human rights violations or abetment of the same, or any negligence caused by a public servant to prevent the human rights violation. The statute does not categorically mention civil and political rights, even though the Preamble includes the same as the mandate of NCHR.

However, Sections 14 and 15 of the NCHR Act curb the power of the Commission. Section 14 prohibits the NCHR from directly investigating human rights violations involving members of the armed forces. Section 15 restricts the NCHR from inquiring into 'the act or practice of intelligence agencies.' Instead, the NCHR can only refer any complaints submitted to it to the competent authority concerned.

To enable the NCHR to perform its investigative mandate, Section 13(1) empowers the NCHR to: compel the attendance and examination of witnesses, discovery and production of documents; request a public record or copy from any court or office; and issue commissions for the examination of witnesses or documents. In addition, Sections 17(2)(b) and 17(2)(c) allow the Commission to require the discovery and production of any document and require any public record or copy thereof from any office for the purpose of investigation. Among other powers, as

per Section 9 of the Act, the NCHR can intervene in any case or court proceeding involving any alleged human rights violation.³⁸ Section 9(c) authorises the NCHR to monitor the conditions of inmates/detainees by visiting jails or detention centres and assessing their rights compliance.

However, with no functional NCHR at present, the protection mandate of the NCHR is rendered useless, leaving human rights victims with one less mechanism to pursue human rights accountability and remedy.

Pluralism

The composition of the first commission of the NCHR was gender balanced, with the members including four women and four men. As staff, NCHR employed an adequate number of women on a contractual basis, however, they were not in managerial or leadership positions.³⁹ The NCHR also had at least one transgender staff as a consultant.⁴⁰ Therefore, NCHR's staff included representatives of gender, religious minority groups, ethnicities, and youth, ensuring inclusiveness and pluralism. However, though women have adequate representation in the Commission, they still did not hold any managerial positions.⁴¹

33 NCHR Act, Sections 23 and 27.

34 NCHR, Annual Report: 2015-216, accessed 8 December 2021, <https://nchr.gov.pk/wp-content/uploads/2019/01/Annual-Report-2015-16.pdf>.

35 NCHR Act, Section 25

36 Ibid. Section 1(2).

37 Ibid. Section 3(2)(b).

38 NCHR Act, Section 9(b).

39 Based on author's professional interactions with the NCHR.

40 Ibid.

41 Ibid.

III. Conclusion and Recommendations

The surge in human rights violations during COVID-19 in multiple forms shows the incumbent government's failure to protect the human rights of the people of Pakistan. This is exacerbated by the continued failure to appoint members of the NCHR during COVID-19, demonstrating the government's overall failure to prioritise the protection of human rights.⁴² The failure of the Federal Government to facilitate the appointment of a new Commission demonstrates the flawed selection process under the NCHR Act, which is a serious blow to the independence of the NCHR. The non-appointment also suggests the Government's disregard for protecting human rights in Pakistan through an independent NHRI.

To the Government:

1. Immediately appoint NCHR commissioners;
2. Amend the NCHR Act, 2012 and include a more independent procedure with less involvement of the Federal Government, to appoint the members of the Commission;
3. Amend NCHR Act, 2012 to empower the NHCR to directly inquire into human rights violations caused by the military or investigative agencies;
4. Proactively address requests and queries of the Commission;
5. Amend the NCHR Act, 2012 to include a financial allocation process that is less cumbersome to the NHCR; and
6. Actively seek accreditation for the NCHR with the GANHRI-SCA.

To the future commissioners of the NCHR:

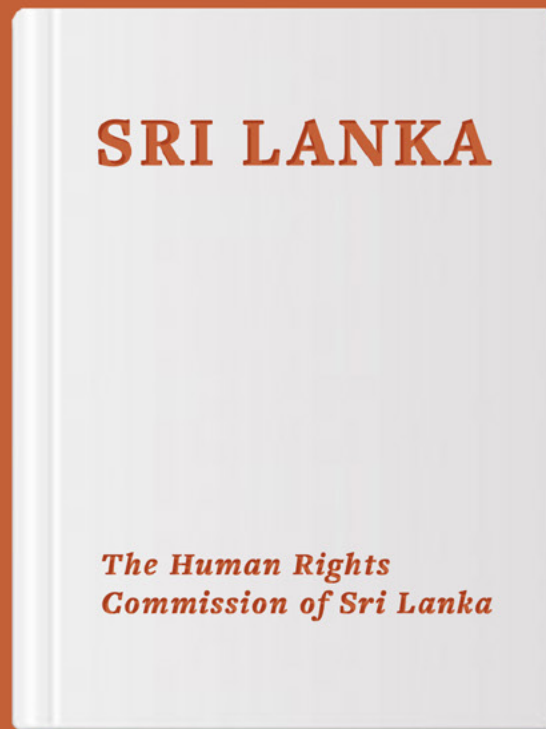
1. Strengthen advocacy with the Government to reform the NCHR's appointment process and expand the mandate of NCHR to include investigative agencies under the NCHR Act, 2012;
2. Ease the process of filing complaints online and make it accessible for all people;
3. Ensure access to the website and particularly the online complaint portal;
4. Promptly intervene in matters filed in the courts concerning human rights violations;
5. Develop a proper yearly plan of action and involve the provincial members in performing tasks;
6. Coordinate and track the reports of the provincial branches; and
7. Establish a mechanism to advocate for the rights of the marginalised sections of society.

⁴² Farahtullah Babar, 'Punishing the National Commission on Human Rights,' Friday Times, 19 June 2021, <https://www.thefridaytimes.com/punishing-the-national-commission-on-human-rights/>; Ikram Junaidi, 'National Commission for Human Rights dysfunctional for over three months,' Dawn, 19 September 2019, <https://www.dawn.com/news/1504289/national-commission-for-human-rights-dysfunctional-for-over-three-months>.



SRI LANKA:

HUMAN RIGHTS COMMISSION OF SRI LANKA: GOING BACKWARD¹



| | |
|--|---|
| YEAR OF ESTABLISHMENT | 1997 |
| COMPOSITION OF MEMBERS | FIVE |
| DIVERSITY REQUIREMENT UNDER LAW | NO REQUIREMENT ⁵ |
| TERM OF MEMBERS | THREE YEARS |
| CURRENT CHAIRPERSON | DR. JAGAT BALASURIYA (BEGINNING 20 DEC 2020) DR. DEEPIKA UDAGAMA (30 OCT 2015 TO 31 AUG 2020) |
| CURRENT GENDER RATIO (WOMEN : MEN) | 1:4 (COMMISSION FROM DECEMBER 2020) ⁶ |
| AUTHORITY TO APPOINT MEMBERS | PRESIDENT, UPON THE RECOMMENDATION OF THE PARLIAMENTARY COMMITTEE ⁷ |
| CURRENT ACCREDITATION STATUS BY THE GANHRI-SCA | A (LAST REVIEWED IN 2018) ⁸ |
| REGIONAL OFFICES | 11 (INCLUDING ONE SUB-OFFICE) (AMPARA, ANURADHAPURA, BADULLA, BATTICALOA, JAFFNA, KANDY, KALMUNAI, MATARA, TRINCOMALEE, VAVUNIYA, PUTTLAM) |
| ADDRESS | NO 14, R. A. DE MEL MAWATHA, COLOMBO 04 |
| PHONE | (+94) 112505580 / (+94) 112505581 / (+94) 112505582 |
| HELPLINE NUMBER | 1996 / (+94)112505575 (+94) 773088135 / (+94) 773762112 |
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| WEBSITE | www.hrsl.lk/home/ |



DESPITE INSTITUTIONAL CHALLENGES THE HRCSL IS STILL A LONG-STANDING COMMISSION THAT HAMPER THE TRANSFORMATION OF THE HRCSL AS A NATIONAL HUMAN RIGHTS INSTITUTION

I. Overview

The Human Rights Commission of Sri Lanka ('HRCSL' or 'Commission') was established in 1996 following the passage of the Human Rights Commission Act, Act No. 21 of 1996 ('HRC Act' or 'Act'), as a successor to the Human Rights Task Force and the Commission for Eliminating Discrimination and Monitoring Human Rights.² The HRCSL was endowed with a broad mandate and powers to promote and protect fundamental rights guaranteed by the Constitution, and to ensure State compliance with the international human rights obligations that Sri Lanka has undertaken.³ While the HRCSL does not derive its power from the Constitution, the Constitution refers to the Commission in the provision of appointments.⁴

(Refer to the table above) ^{5 6 7 8}

Human rights in Sri Lanka worsened in 2020. In February, Sri Lanka withdrew from the UN Human Rights Council Resolution 40/1 on promoting reconciliation, accountability and human rights in Sri Lanka.⁹ In March, President Gotabaya Rajapaksa pardoned former Sergeant Sunil Rathnayaka, who had been convicted of murdering Tamil civilians. These developments signalled the President's disregard for post-conflict reconciliation and accountability for heinous crimes.¹⁰

5 HRC Act, Section 2(3) provides that in making recommendations, the Constitutional Council and the Prime Minister 'shall have regard to the necessity of the minorities being represented of the Commission.'

6 The previous Commission attempted to balance the gender representation, and over a period of time, with successive changes within the Commission, the overall gender ratio was 4:3 (women:men).

7 Constitution, Section 41(a).

8 In June 2021, the SCA decided to initiate a special review of the HRCSL following concerns raised by civil society organisations and ANNI. 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA),' GANHRI Sub-Committee on Accreditation, June 2021, pp. 38–39, <https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>.

9 UN Human Rights Council, Promoting reconciliation, accountability and human rights in Sri Lanka, UN Doc. A/HRC/RES/40/1, 4 April 2019, <https://www.right-docs.org/doc/a-hrc-res-40-1/>; Statement made by Hon. Dinesh Gunawardana, Minister of Foreign Relations at the 43rd Session of the Human Rights Council, 27 February 2020, <https://www.lankamission.org/human-rights-humanitarian-affairs/2743-statement-made-by-hon-dinesh-gunawardana-minister-of-foreign-relations-at-the-43rd-session-of-the-human-rights-council.html>.

10 'Sri Lanka Pardons Soldier Who Killed Tamil Civilians,' Al-Jazeera, 27 March 2020, <https://www.aljazeera.com/news/2020/3/27/sri-lanka-pardons-soldier-who-killed-tamil-civilians>.

1 Law and Society Trust 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.

2 'About Us: History,' Human Rights Commission of Sri Lanka, accessed 15 November 2021, <https://www.hrsl.lk/about/history/>.

3 HRC Act (1996), Sections 10 and 11.

4 Constitution, Section 41(a).

CONSTITUTIONAL REFORMS, THREATENED BY SOME CHALLENGES TO THE EFFICACY OF THE CONSTITUTIONAL HUMAN RIGHTS.

In March, as the COVID-19 pandemic was spreading throughout Sri Lanka, President Rajapaksa dissolved the Parliament six months before the parliamentary term was set to expire.¹¹ The COVID-19 pandemic gave the President a pretext for postponing the elections, with the President refusing to reconvene Parliament even after the constitutionally-allowed time limit for parliamentary recess had lapsed.¹² This enabled him to exercise his powers without parliamentary oversight. During this time, the President issued Extraordinary Gazette notification no. 2178/18, which formed the Presidential Task Force to build a 'Secure Country, Disciplined, Virtuous and Lawful Society' composed of security forces and retired military personnel.¹³ The Presidential Task Force was authorized to take necessary measures against vague, ill-defined

11 'Sri Lankan President Gotabaya Rajapaksa dissolves Parliament, calls for elections on April 25,' Scroll, 3 March 2020, <https://scroll.in/latest/955002/sri-lankan-president-gotabaya-rajapaksa-dissolves-parliament-calls-for-elections-on-april-25>.

12 See Crisis Group, COVID-19 and Conflict: Seven Trends to Watch, 7 March 2020, <https://www.crisisgroup.org/global/sb4-covid-19-and-conflict-seven-trends-watch>; 'Sri Lanka postpones parliamentary elections for nearly two months amid Covid-19 crisis,' The Print, 21 April 2020, <https://theprint.in/world/sri-lanka-postpones-parliamentary-elections-for-nearly-two-months-amid-covid-19-crisis/405765/>.

13 Extraordinary Gazette notification 2178/18 (2 June 2020), http://documents.gov.lk/files/egz/2020/6/2178-18_E.pdf; 'PTF on Building a Secure Country, Disciplined, Virtuous & Lawful Society: Complaints Lodged With HRCSL,' Colombo Telegraph, 3 July 2020, <https://srilankatwo.wordpress.com/2020/07/04/ptf-on-building-a-secure-country-disciplined-virtuous-lawful-society-complaints-lodged-with-hrcsl/>. Additionally, the Presidential Task Force for Archaeological heritage Management in the Eastern province was also established. See also 'Sri Lanka: Newly constituted Presidential Task Force threatens rule of law,' International Commission of Jurists, 5 June 2020, <https://www.icj.org/sri-lanka-newly-constituted-presidential-task-force-threatens-rule-of-law/>.

offenses.¹⁴ A complaint was soon lodged against the task force with the HRCSL for an alleged breach of fundamental rights enshrined in the constitution.¹⁵

Parliamentary elections eventually took place in August 2020, and the Sri Lanka People's Freedom Alliance, the party of the incumbent President, achieved a landslide victory.¹⁶ Mahinda Rajapaksa, the President's brother, was sworn in as Prime Minister.¹⁷ Soon after, in October, the 20th Amendment to the Constitution was passed, which enhanced the executive powers that the 19th Amendment had precisely sought to limit.¹⁸

Human Rights Situation during the COVID-19 pandemic

The spread of the pandemic in Sri Lanka has brought forth several critical human rights issues.¹⁹ Daily wage workers, garment sector workers, and migrant workers faced job loss.²⁰ Women, particularly women garment factory workers, were disparately impacted as Sri Lanka saw a rise in domestic violence incidents.²¹ Prisoners rioted against their lack of protection against COVID-19, leading to

14 Extraordinary Gazette notification 2178/18 (2 June 2020), http://documents.gov.lk/files/egz/2020/6/2178-18_E.pdf. For example, '1. Taking necessary immediate steps to curb the illegal activities of social groups ... 2. Take necessary measures for prevention from drug menace ... to prevent other social illnesses caused by drug abuse; ... 4. To investigate and prevent any illegal and antisocial activities in and around prisons.'

15 'PTF On Building A Secure Country, Disciplined, Virtuous & Lawful Society: Complaints Lodged With HRCSL,' Sri Lanka Two, 4 July 2020, <https://srilankatwo.wordpress.com/2020/07/04/ptf-on-building-a-secure-country-disciplined-virtuous-lawful-society-complaints-lodged-with-hrcsl/>.

16 'Sri Lankan parliamentary elections: Five key takeaway,' Al-Jazeera, 7 August 2020, <https://www.aljazeera.com/news/2020/8/7/sri-lankan-parliamentary-elections-five-key-takeaways>.

17 'Mahinda Rajapaksa sworn in as Sri Lanka's PM after record victory,' Al-Jazeera, 9 August 2020, <https://www.aljazeera.com/news/2020/8/9/mahinda-rajapaksa-sworn-in-as-sri-lankas-pm-after-record-victory>.

18 20th Amendment, Constitution of the Democratic Socialist Republic of Sri Lanka, 29 October 2020, <https://www.parliament.lk/uploads/acts/gbills/english/6176.pdf>; 'Sri Lanka: newly adopted 20th Amendment to the Constitution is blow to the rule of law,' 27 October 2020, <https://www.icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/>.

19 See Ambika Satkunanathan, Sri Lanka: Minority Rights within Shrinking Civic Space, <https://thesouthasiacollective.org/wp-content/uploads/2020/12/SASM2020-SriLanka.pdf>, pp. 215–229.

20 Charles Knox-Vydmanov, Nuno Meira Simões da Cunha, 'Social protection and the COVID19 crisis: Responses to support workers and their families in Sri Lanka,' International Labour Organisation, June 2020, https://socialprotection-pfm.org/wp-content/uploads/2021/05/ILO_COVID-Sri-Lanka-SP-for-workers-2.pdf.

21 Human Rights Watch, World Report 2021: Sri Lanka, 18 November 2020, <https://www.hrw.org/world-report/2021/country-chapters/sri-lanka>

prison deaths.²² The minority Muslim community was also forced to cremate their deceased loved-ones, contrary to their religious custom, when the Government mandated cremation for COVID-19-related deaths despite the lack of a scientific basis for doing so.²³ Dominant nationalist groups weaponized social media and mainstream media to spread anti-Muslim rhetoric.²⁴ Police made arbitrary arrests in the guise of following pandemic-related restrictions.²⁵

There was also a climate of fear and self-censorship, with the police arresting social media users deemed to be critical of the Government.²⁶ Though the HRCSL made some efforts to perform its mandate, such as releasing a comprehensive study on Sri Lankan prisons,²⁷ issuing statements and general recommendations, initiating inquiries on the prison riot, and publishing human rights guidelines on COVID-19 health measures,²⁸ these efforts were insufficient given the utter and blatant disregard for the rule of law and human rights by the Government in 2020.

22 'Sri Lanka: Eight die in prison riot over Covid panic,' BBC News, 30 November 2020, <https://www.bbc.com/news/world-asia-55126199>; 'Mahara prison riot final report is ready,' Ceylon Today, 31 December 2020, <https://ceylontoday.lk/news/mahara-prison-riot-final-report-ready>.

23 'Civil Society Collective tells Govt. Heed advice of medical professionals, allow burial of Covid 19 dead,' Daily Mirror, 5 January 2021, <https://www.dailymirror.lk/news-features/Civil-Society-Collective-tells-Govt-Heed-advice-of-medical-professionals-allow-burial-of-COVID-19/131-203119>.

24 Roshni Kapur, 'Covid 19 in India and Sri Lanka: New Forms of Islamophobia,' Middle East Institute, 7 July 2020, <https://www.mei.edu/publications/covid-19-india-and-sri-lanka-new-forms-islamophobia>.

25 'Sri Lanka: Worker groups file complaint with national rights commission over alleged arbitrary detention of 98 garment factory workers,' Colombo Gazette, 17 October 2020, <https://www.business-humanrights.org/en/latest-news/sri-lanka-worker-groups-file-complaint-with-human-rights-commission-over-alleged-arbitrary-detention-of-98-garment-factory-workers/>; 'Sri Lanka: Increasing Suppression of Dissent,' Human Rights Watch, 8 August 2020, <https://www.hrw.org/news/2020/08/08/sri-lanka-increasing-suppression-dissent>.

26 'Sri Lanka Uses Pandemic to Curtail Free Expression,' Human Rights Watch, 3 August 2020, <https://www.hrw.org/news/2020/04/03/sri-lanka-uses-pandemic-curtail-free-expression>; 'Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19,' Office of the High Commissioner for Human Rights, 3 June 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920>.

27 HRCSL, Prison Study by the Human Rights Commission of Sri Lanka, January 2020, <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>.

28 'Statements/General Recommendations,' HRCSL, accessed 15 November 2021, <https://www.hrsl.lk/documentation/statements-general-recommendations/>; 'HRCSL issues guidelines on regularising quarantine processes,' Asia Pacific Forum of National Human Rights Institutions, 2 November 2020, <https://www.asiapacificforum.net/news/hrsl-issues-guidelines-regularising-quarantine-processes/>; 'HRCSL begins investigations relating to the incidents in Prisons,' Colombo Page, 15 September 2021, http://www.colombopage.com/archive_21B/Sep15_1631727983CH.php.

II. HRCSL's Mandate to Promote and Protect Human Rights

Mandate

The HRC Act sets out the mandate of the Commission as follows:²⁹

- to conduct inquiries and investigations into complaints of alleged violations of human rights and fundamental rights suo moto or upon complaint;
- to advise and assist the government in formulating legislation and regulation in furtherance of the promotion and protection of human rights;
- to make recommendations to the government regarding measures which should be taken
- to ensure that national laws and administrative practices are in accordance with international human rights norms and standards; as well as recommend human rights treaties and other international instruments for subscription or accession; and
- to promote awareness of, and provide education in relation to, human rights.

The Commission has jurisdiction over actions of state actors, and may conduct inquiries and investigations into allegations of human rights violations committed by state actors.³⁰ Despite institutional reforms, the HRCSL is still mired by some long-standing challenges that hamper the efficacy of the HRCSL as a national human rights institution. The non-implementation of HRCSL's recommendations has been a significant and persistent challenge, which has directly impacted public confidence towards the HRCSL and its work.³¹ The recommendations issued by the HRCSL have no binding effect on the government, leaving it with the discretion to adopt or disregard the recommendation. The HRCSL is of the view that imposing penalties by way of disciplinary actions against public officials and those who do not comply with the HRCSL's recommendations would be an effective mechanism to address this issue.³²

29 Human Rights Commission Act, 1996 (SL), <https://www.hrsl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>, Section 11.

30 Human Rights Commission Act, 1996, Sections 10(a), Section 11.

31 HRCSL, Annual Report 2019, <https://www.hrsl.lk/wp-content/uploads/2020/01/Annual-Report-2019.pdf>, p. 42.

32 'HRCSL Writes to the Ministry of Public Administration



The HRCSL made interventions in the 2020 parliamentary election to guarantee the ‘right to vote.’ It issued public directives for police officers and public officers to safeguard fundamental rights during the elections,³³ as well as to political parties and independent groups.³⁴ This included writing to public authorities to grant paid leave to workers in the public and private sectors so they could cast their vote,³⁵ urging the media to adhere to guidelines issued to them by the Election Commission,³⁶ and establishing a special unit to receive human rights-related complaints against government officials during the elections.³⁷

with Recommendations on Proposed Amendment to Establishment Code,’ HRCSL, 31 August 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/HRCSL-recommendation-to-Ministry-of-Public-Adminstraion-on-proposed-ammdement-to-establishment-code.pdf> [only in Sinhala].

33 ‘HRCSL issues Directives to Public Officers on Parliamentary Election 2020,’ HRCSL, 19 July 2020, <https://www.hrsl.lk/documentation/guidelines-and-directives/>; ‘HRCSL issues Directives to Police Officers on Parliamentary Election 2020,’ HRCSL, 19 July 2020, <https://www.hrsl.lk/documentation/guidelines-and-directives/>.

34 ‘The Human Rights Commission of Sri Lanka makes an appeal to Political Parties and Independent Groups on Parliamentary Election 2020,’ HRCSL, 23 July 2020, <https://www.hrsl.lk/documentation/statements-general-recommendations/>.

35 ‘HRCSL requested for leave to be granted to both private and public sector employees casting their votes,’ HRCSL, 24 July 2020, <https://www.hrsl.lk/documentation/statements-general-recommendations/>.

36 ‘HRCSL makes an appeal to media institution on parliament election 2020,’ HRCSL, 22 July 2020, <https://www.hrsl.lk/documentation/statements-general-recommendations/>.

37 ‘HRCSL establishes a unit to accept complaints in relation to the 2020 Parliamentary Election,’ HRCSL, 15 July 2020, https://www.hrsl.lk/wp-content/uploads/2020/02/Notice-on-a-Unit-to-Accept-Complaints-in-relation-to-the-Parliamentary-Election_-English.pdf.

Promotion

In 2020, the HRCSL conducted various activities to promote human rights. In March, it organized an event on ‘Countering Technology-based Violence against Women’ to commemorate International Women’s Day, with a former Supreme Court justice as the chief guest.³⁸ Similarly, to mark the International Day in Support of Victims of Torture, the HRCSL held its first webinar entitled, ‘Torture and other forms of Societal Violence in Sri Lanka: Parts of One Spectrum’ in June.³⁹ And in celebration of International Human Rights Day, the HRCSL launched a social media campaign with the hashtags ‘#recoverbetter’ and ‘#standup4humanrights.’⁴⁰ The campaign was set up to promote a human rights-centred approach to COVID-19 recovery and rebuilding efforts.

The HRCSL has also advocated for the needs of persons with disabilities. For instance, at the start of the pandemic, the Government disseminated COVID-19-related information on broadcast media. The HRCSL wrote to the Director General of the Government Information Department,⁴¹ requesting that the department issue directives to television networks to use sign language during special news, government announcements, and news broadcasts for the benefit of persons who are hard of hearing.

Apart from promoting activities within the country, the HRCSL has also engaged with the UN Human Rights Council on the Office of the High Commissioner’s Report on Sri Lanka in February 2020,⁴² and has welcomed the report of the UN Special Rapporteur on Freedom of Religion or Belief in March 2020.⁴³ In addition, the HRCSL participated in the

38 ‘Key note speech International Women’s Day 2020 Countering technology based violence against women,’ HRCSL, 6 March 2020, <https://www.hrsl.lk/key-note-speech-international-womens-day-2020-countering-technology-based-violence-against-women/>.

39 ‘HRCSL to hold its first webinar in commemoration of International Day in support of victims of torture – 2020,’ HRCSL, 27 June 2020, <https://www.hrsl.lk/hrsl-to-host-its-first-webinar-in-commemoration-of-international-day-in-support-of-victims-of-torture-2020/>.

40 ‘HRCSL launched a Facebook Page to commemorate the International Human Rights Day 2020,’ HRCSL, 10 December 2020, <https://www.hrsl.lk/hrsl-launched-a-facebook-page-to-commemorate-the-international-human-rights-day-2020/>.

41 ‘Human Rights Commission of Sri Lanka Write to the Director General of the Government Information Department about the Use of Sign Language for the Benefit of the Hearing Impaired (deaf) Community,’ HRCSL, 8 April 2020 <https://www.hrsl.lk/wp-content/uploads/2020/02/Human-Rights-Commission-of-Sri-Lanka-letter-to-Government-Information-Department.pdf> [available only in Sinhala].

42 ‘HRCSL Statement to United Nations Human Rights Council on the High Commissioner’s Report,’ HRCSL, 27 February 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/43HRC.HighCommReport.pdf>.

43 ‘HRCSL Statement to United Nations Human Rights Council on the Report of the United Nations Special Rapporteur on Freedom of Religion or Belief,’ HRCSL, 27 February 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/43HRC.FrReligionreport.pdf>.

virtual Annual General Meeting of the APF⁴⁴ and held a program on ‘Responsible Business and Human Rights’ with the Business and Human Rights Resource Centre (BHRRC), an international human rights organisation promoting business and human rights globally.

Protection

The HRCSL was proactive in 2020, especially in light of the pandemic. However, its engagement with authorities mostly consisted of issuing written statements and recommendations to relevant authorities on issues such as prison conditions.⁴⁵ When the Government imposed forced cremations affecting the Muslim minority community, the HRCSL wrote to the health ministry, stating that the forced cremation was not a valid restriction of the freedom to manifest religious belief.⁴⁶

The HRCSL also immediately responded to the prison riots. It deployed monitoring teams to the prison premises the day after the incident and commenced an inquiry suo moto. The Commission issued interim recommendations to help remedy the situation in the prison.⁴⁷ In October, the HRCSL wrote to the Inspector General of Police (IGP) to bring up the issue of the rise of custodial deaths and take all necessary actions to avoid their recurrence.⁴⁸ Further, HRCSL wrote to the IGP to raise the issue of detentions under the Prevention of Terrorism Act, which was used by the police as a tool to extract forced confessions and self-incriminating statements from detainees.⁴⁹

In April 2020, due to the rapid spread of the COVID-19 virus, the Police Media Division issued a directive that those who publish false and malicious messages, news or information against public authorities who are engaged in containing the spread of the virus would be arrested.⁵⁰ Following the announcement, the police made several arrests based on social media posts.⁵¹

Against this backdrop, the HRCSL issued a letter to the IGP expressing its deep concern over these actions.⁵² In particular, the Commission questioned the legal basis of the measure. The Commission reminded the IGP that arrests should be made firmly within the law, and must not be arbitrary, discriminatory or disproportionate. The HRCSL also underscored that the right to comment on the performance of public officials is a fundamental aspect of a democracy, and hence any arrest for the mere criticism of a public official would be unconstitutional.⁵³ The HRCSL also released an open letter to the IGP urging him to take action against those inciting religious division and hatred in the country, particularly against the Muslim community, in order to preserve peaceful co-existence among diverse communities.⁵⁴

44 25th APF Annual Meeting, Asia Pacific Forum of National Human Rights Institutions, 9 September 2020, <https://www.asiapacificforum.net/events/25th-apf-annual-meeting/>.

45 ‘Urgent Action Requested to Protect the Prison Population from COVID-19 Epidemic,’ HRCSL, 27 March 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/HE.Letter.pdf>; ‘COVID-19 Epidemic – Recommendation of HRCSL Regarding Protection of Prisoners,’ HRCSL, 24 December 2020, <https://www.hrsl.lk/documentation/statements-general-recommendations/>

46 Ramani Muttettuwagama, ‘Observations and Recommendations on the Disposal of Dead Bodies in the Context of COVID-19,’ HRCSL, 25 November 2020, https://www.hrsl.lk/wp-content/uploads/2020/02/Observations-Recommendations-Disposal-Dead-Bodies-Covid19_compressed.pdf.

47 Ramani Muttettuwagama, ‘Incidents at Mahara Prison on 29 November 2020-Interim Recommendations,’ HRCSL, 5 December 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/Interim-Recommendations-of-HRCSL-on-Incidents-at-Mahara-Prison-on-29-November-2020.pdf>.

48 ‘Deaths in Prisons: Letter Addressed to the IGP, Sri Lanka,’ HRCSL, 21 October 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/HRCSL-Letter-to-IGP-on-21102020.pdf> [only in Sinhala].

49 Ramani Muttettuwagama, ‘Detentions under the Prevention of Terrorism Act: Letter Addressed to the IGP, Sri Lanka,’ 24 November 2020, https://www.hrsl.lk/wp-content/uploads/2020/02/HRCSL-Letter-to-IGP-on-confessions-on-24_11_2020.pdf.

50 Vimukthi Vidarshana, ‘Sri Lanka government intensifies crackdown on social media,’ 9 April 2020, World Socialist Web Site, <https://www.wsws.org/en/articles/2020/04/09/medi-a09.html>.

51 Ibid.

52 ‘Limiting Freedom of Expression in a Democracy: The Need to Strike a Lawful Balance: Letter Addressed to the IGP, Sri Lanka,’ HRCSL, 25 April 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/Letter-to-IGP-Freedom-of-Expression.pdf>.

53 Ibid.

54 ‘Human Rights Commission writes to the IGP on the need to take legal actions against hate speech,’ HRCSL, 3 April 2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/Human-Rights-Commission-of-Sri-Lanka-letter-to-the-IGP-against-hate-speech.pdf> [only in Sinhala].

III. Conclusion and Recommendations

The HRCSL was constrained in carrying out its mandate and was forced to adapt to a transformed context given political changes and the COVID-19 outbreak. The Commission, which was appointed under the 19th Amendment to the Constitution, supported by a transparent and credible appointment process, was still holding office at the beginning of the year.

Despite the backsliding from a relatively free space for freedom of expression and the return of a hostile climate for human rights advocacy and human rights defenders, which was clearly demonstrated when the present Government withdrew itself from sponsoring a UN Human Rights Council resolution, the Commission continued to play an independent role and was proactive and interventionist in protecting human rights in the country. However, with the present Commission appointed under the problematic 20th Amendment to the Constitution in December 2020, the HRCSL now faces the challenge of earning back public trust.

To the Government of Sri Lanka:

1. Repeal the 20th Amendment to the Constitution and reinstate the 19th Amendment;
2. Enable the HRCSL to take disciplinary actions against state officials who do not comply with recommendations issued by the HRCSL for no valid reason; and
3. Allocate sufficient funding to the HRCSL to ensure efficient and effective implementation of the HRCSL mandate.

To the HRCSL:

1. Ensure independence in practice, and insulate itself from political interference in performing its mandate;
2. Adopt a more robust program on women's rights and workers' rights;
3. Enhance the capacity of staff to help promote and protect human rights;
4. Strengthen engagement, partnership, and collaboration with civil society and HRDs;
5. Continue to work closely with the UN human rights bodies, international non-governmental organisations, and regional platforms such as the APF; and
6. Implement institutional reforms to facilitate the conduct of investigations.

abbreviations

AiNNI – All India Network of NGOs and Individuals working with National and State Human Rights Institutions

AGO – Attorney General’s Office (Indonesia)

AICHR – ASEAN Intergovernmental Commission on Human Rights

AJK – Azad Jammu and Kashmir

ANNI – Asian NGO Network on National Human Rights Institutions

APF – Asia Pacific Forum of National Human Rights Institutions

ASEAN – The Association of Southeast Asian Nations

ASK – Ain o Salish Kendra

B4A – Bytes for All

BHRRRC – Business and Human Rights Resource Centre

BSF – Border Security Force (India)

CAA – Citizenship Amendment Act, 2019 (India)

CED – International Convention for the Protection of All Persons from Enforced Disappearance

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CSO – Civil society organisation(s)

COVID-19 – Coronavirus disease 2019

CW – Covenants Watch

DPR – People’s Representative Council of the Republic of Indonesia (Indonesian: Dewan Perwakilan Rakyat Republik Indonesia)

EAO – Ethnic armed organisation(s)

ELSAM – Institute for Policy Research and Advocacy (Indonesian: Lembaga Studi dan Advokasi Masyarakat)

FCRA – Foreign Contribution (Regulation) Act (India)

FORUM-ASIA – Asian Forum for Human Rights and Development

GANHRI – Global Alliance on National Human Rights Institutions

GB – Gilgit Baltistan



HRC – Human Rights Commission

HRCA – Human Rights Commission Act (Sri Lanka)

HRCMA – Human Rights Commission of Malaysia Act

HRCSL – Human Rights Commission of Sri Lanka

HRD(s) – Human rights defender(s)

HRW – Human Rights Watch

HRWG – Human Rights Working Group (Indonesia)

ICCPR – International Covenant on Civil and Political Rights

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR – International Covenant on Economic, Social and Cultural Rights

ID – Identity Document

IDP – Internally displaced person(s)

IGP – Inspector General of Police (Sri Lanka)

Imparsial – Indonesian Human Rights Monitor

INSEC – Informal Sector Service Centre

IPCC – Independent Police Conduct Commission, Malaysia

J&K – Jammu and Kashmir

KHIS – Korean House for International Solidarity

Komnas HAM – National Commission of Human Rights, Indonesia (Indonesian: Komisi Nasional Hak Asasi Manusia)

KontraS – Commission for Missing Persons and Victims of Violence (Indonesian: Komisi untuk Orang Hilang dan Korban Tindak Kekerasan)

LBH Pers – Press Legal Aid Institute (Indonesia)

LGBTIQ – Lesbian, gay, bisexual, transgender, intersex, questioning/queer identities

LEA – Law enforcement agency/ies

LST – Law and Society Trust

MCO – Movement Control Order

MOU – Memorandum of Understanding

MNHRC – Myanmar National Human Rights Commission

NGO – Non-governmental organisation

NCHR – National Commission for Human Rights, Pakistan

NCPO – National Council for Peace and Order (Thailand)

NHRC – National Human Rights Commission

NHRCB – National Human Rights Commission, Bangladesh

NHRCI – National Human Rights Commission, India

NHRCK – National Human Rights Commission of Korea

NHRCM – National Human Rights Commission of Mongolia

NHRCN – National Human Rights Commission, Nepal

NHRCT – National Human Rights Commission of Thailand

NHRI – National Human Rights Institution

NLD – National League for Democracy

NUG – National Unity Government of the Republic of the Union of Myanmar

OHCHR – Office of the United Nations High Commissioner for Human Rights

Pansel – Selection Committee (Indonesia)

PECA– Prevention of Electronic Crimes Act, 2016 (Pakistan)

PEF – People’s Empowerment Foundation

PHEIC – Public Health Emergency of International Concern

PHRA – Protection of Human Rights Act (PHRA), 1993 (India)

PTA – Pakistan Telecommunication (Re-organization) Act, 1996

PTA – Prevention of Terrorism Act (Sri Lanka)

RCSS – Restoration Council for Shan State

ROC – Republic of China (Taiwan)

SCA – Sub-Committee on Accreditation of GANHRI

SCO – Special Communications Organization (Pakistan)

SGBV – Sexual and gender-based violence

SHRC – State Human Rights Commission

SUARAM – Suara Rakyat Malaysia

SUHAKAM – National Human Rights Commission of Malaysia (Malay: Suruhanjaya Hak Asasi Manusia Malaysia)

UAPA – Unlawful Activities Prevention (Amendment) Act, 2019

UNICEF – United Nations Children’s Fund

UDHR – Universal Declaration of Human Rights

UN – United Nations

UPR – Universal Periodic Review

WHO – World Health Organization

WHRD(s) – Women human rights defender(s)

