2015

ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia

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Asian NGO Network on National Human Rights Institutions

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The Asian NGO Network on National Human Rights Institutions (ANNI)

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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), humbly presents the publication of the 2015 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia. Our sincere appreciation goes to all 30 ANNI member organisations from across 17 countries in Asia for their participation and commitment to ANNI and continued advocacy towards the strenghtening and establishment of NHRIs in Asia. Similarly, we would also like to extend our sincere thanks to the National Human Rights Institutions (NHRIs) that have contributed valuable inputs and feeback to the concerned country reports.

Reports submitted by organisations representing 15 countries consider the developments that took place in respective countries over the course of 2014 and significant events in the first quarter of 2015 As in previous years, the country reports have been researched and structured in accordance with ANNI Reporting Guidelines that were collectively formulated by the ANNI members at its 8th Regional Consultation in April 2015 (Dhaka, Bangladesh). The Report primarily focuses on issues of independence and effectiveness of the NHRIs and their engagement with other stakeholders such as civil society and Parliament. We believe that this annual report will continue to serve its purposes as an advocacy tool to enhance the effective work and functioning of NHRIs so that they can continue to play their role as public defenders and protectors of human rights on the ground.

FORUM-ASIA would like to acknowledge the contribution of everyone who has dedicated their time and effort to the publication of this Report; namely Aklima Ferdows Lisa (Bangladesh), Shahindha Ismail and Jauza Khaleel (Maldives), Dinushika Dissanayake, Sabra Zahid, K. Aingkaran and PM Senarathna (Sri Lanka), Sue-yeon Park, Minjoo Kim, Da Hye Lee, Ha-neui Kim and Eunji Kang (South Korea), Shoko Fukui (Japan), Enkhtsetseg Baljinnyam and Urantsooj Gombosuren (Mongolia), Jose Pereira (Timor-Leste), Khin Ohmar, Alex James and Matthew Gumley (Burma), Almaz Teffera and Stella Anastasia (Cambodia), Mathew Jacob (India), Sevan Doraisamy (Malaysia), Prashannata Wasti (Nepal), E-ling Chiu, Song-lih Huang and Yibee Huang (Taiwan), Chalida Tajaroensuk and Chutimas Suksai (Thailand), and Hassan Ali Faiz (Afghanistan).

Our sincere thanks extend to the Country Programme of FORUM-ASIA who has assisted throughout the process. ANNI would also like to convey its deep gratitude to Balasingham Skanthakumar for his expertise and guidance in editing the Report for a third successive year. Finally, we would like to acknowledge the financial support from the Swedish International Development Cooperation Agency (SIDA) in the publication of this Report.

We hope that this publication will be beneficial for all stakeholders involved in

the strengthening and establishment of NHRIs in the region.

Evelyn Balais-Serrano
Executive Director
Asian Forum for Human Rights and Development (FORUM-ASIA)
Secretariat of ANNI

Regional Overview

ANNI Secretariat

INTRODUCTION

Approaching twenty-five years since the Principles Relating to the Status of National Institutions (Paris Principles) were first drafted, National Human Rights Institutions (NHRIs) have grown at an unprecedented rate. They total some 106 globally today. NHRIs have also been conferred a certain pride of place in the international human rights system, with formal roles and rights designated to them.

This is further evinced in the steadily growing number of resolutions at the United National Human Rights Council and General Assembly. Notable shifts have been observed, from procedural texts to more issue-specific resolutions that reflect contemporary trends and issues (such as reprisals against NHRIs).

Indeed, there seems to be a "global adoption" of NHRIs today. The sheer increase in recommendations made, as well as enthusiasm with which they are met and accepted, at various platorms such as the Universal Periodic Review and treaty bodies, lends further credence to this assertion.

This seemingly unassailable tide has produced several milestones and achievements that should also be noted. These range from instituting dedicated HRD focal points/desks within NHRIs, to pivotal roles played in the passage of landmark legislation, to conducting national inquiries to investigate widespread, chronic and institutional human rights abuses and violations, and even joint campaigns with civil society to pressure governments to ratify important human rights instruments.

However, the assessment by human rights defenders (HRDs) and civil society in the ANNI Report 2015 depicts a more nuanced picture that reflects the political contexts as well as circumstances governing the existence and performance of NHRIs in this region.

CLOWNING AROUND WITH THE PARIS PRINCIPLES

The "Paris Principles" spells out the minimum international standards for an NHRI's structure, competence, working procedures. These principles provide guidelines for how NHRIs are to be independent from the government and reflect the pluralism of society in its membership. They address both promotional and protection aspects of the mandate and even provide some direction concerning the quasi-jurisdictional competence of NHRIs that possess such powers; a common feature of many NHRIs in Asia.

However, it appears that many NHRIs are "set up to fail", and this is most evident in problematic appointment and selection processes adopted by Asian NHRIs and their governments. With the exception of very few NHRIs, most are conducted in secrecy, devoid of consultation and public participation in the application, screening and selection process. There might be the occasional piecemeal concessions made through public calls in the national broadsheets or to civil society mailing lists, but very little else to substantially ensure the rigor and integrity of the process.

A cursory scan of Asian NHRIs under review by the International Coordinating Committee of NHRIs' Sub-Committee on Accreditation will reveal that recurring recommendations made in relation to independence and the process for the selection of Commissioners remain ignored (over at least two review cycles). This is certainly worrisome and a missed opportunity to

restore confidence and legitimacy deficits, because a comprehensive selection criteria and a coherent selection processes can certainly bolster the independence and good governance of an NHRI.

It is most ironic that civil society and HRDs- main constituencies of NHRIs- continue to be excluded from the process. The impacts are wide-reaching and long-lasting. The NHRC Thailand, criticized by the ICC-SCA for its lack of independence and neutrality and currently facing the imminent threat of downgrade, conducted a public inquiry into the 2010 political violence that suffered from poor turnout and distrust.

More recently, while successful advocacy and pressure finally prevented the proposed merger of the NHRCT and Ombudman's Office, deeply-entrenched issues continue to fester. Given a year after the ICC-SCA November 2014 review to *"show cause"* before the downgrade takes effect, a highly regressive selection process adopted by the military government that fell considerably short of the Paris Principles unsurprisingly resulted in the nomination of a candidate with a proven poor track record on human rights. The individual had even previously filed *lese majeste* (defamation of monarchy) charges against civil society activists and called for harsher enforcement and penalties under Article 112 of the Penal Code!

In Korea, the controversial appointment of a Commissioner who had previously gone on record taking positions that openly endorse discrimination on the grounds of sexual orientation and gender identity. This unilateral, non-transparent and non-inclusive selection process was again repeated in the nomination and confirmation of the incoming Chairperson (in August 2015), even despite being under intense scrutiny and confronting the possibility of a downgrade with repeated deferrals by the ICC-SCA to allow for measurable and progressive changes.

Once heralded as a model NHRI for the region, its standing has now taken a severe battering. In fact, the incumbent Chairperson was also alleged to have discredited civil society organizations publicly by claiming that their engagement in the ICC-SCA review process (through submission of documentation and stakeholder reports) caused undue disrepute and difficulty to the NHRCK.

GLOBAL ADOPTION

Formalizing a sound and robust selection process appears fundamental and straightforward enough. However, the chronic non-compliance of many Asian NHRIs suggests a more sinister undertone. Observers need to look no further than the Myanmar National Human Rights Commission (MNHRC), once proudly feted as one of the showpieces of the Burma/Myanmar government's reformist credentials. Certainly, its early establishment (by Presidential decree) inspired newfound optimism and expectations as civil society and human rights defenders (HRDs) welcomed a key actor and potential ally in national human rights protection and governance. Sadly, just four years after its inception, any early hype and promise has since dissipated.

As many in the country keenly awaited the formal reconstitution last year, the MNHRC however appointed new members in secrecy, with even several incumbent members not aware of their removal. From problematic positions (calling Rohingyas as Bengalis), to compromised complaints handing procedures that resulted in prosecution of the complainant, and its continuing refusal to investigate violations in the conflict-ridden border areas, the Burma/Myanmar chapter spotlights how the MNHRC falls spectacularly short as rights violations and abuses intensify and democratic rollbacks continue. It is increasingly apparent that the MNHRC is not more than an alibi institution to legitimize the State.

This should serve as a cautionary tale for Cambodia. The Royal Government of Cambodia (RGC) has displayed increasing enthusiasm towards the establishment of an NHRI in the country. The RGC accepted, without conditions, the recommendations made at the UPR and ICCPR reviews in 2014. Civil society in Cambodia however has approached these developments with caution and wariness. Given the RGC's knack of bulldozing problematic draft legislation in Parliament (most recently the repressive Law on Associations and NGOs), there are valid concerns that the NHRI bill would result in the creation of another compromised institution that ultimately would be reduced to a non-barking watchdog role in the country.

This calls to attention a related point—that the establishment of an NHRI in the country is highly contingent on the political landscape and quality of other "democratic" institutions in the country. At the moment, the Paris Principles are silent on its relevance and application to non/partially-democratic States, and in addressing the different contexts that NHRIs operate in and the practices undertaken under such circumstances. The Cambodia chapter in the ANNI Report 2015 details the complex terrain and formidable challenges that the establishment of an NHRI in the country entails.

PARIS PRINCIPLES IN PRACTICE

The Paris Principles and ICC-SCA's General Observations provide substantial guidance and direction in relation to the formation (and foundational objectives), structural framework and operational functions of NHRIs in general. However, it is unclear on how to enquire into or measure impact and effectiveness. So, while their creation may arguably open up an official space for human rights discourse, the institutional legitimacy of NHRIs is ultimately tested through their performance, and in particular, their impact or ability to render justice to victims of violations and abuses.

In reality, there are marked disjunctures in expectations of civil society and performance of NHRIs. Public expectations of NHRIs exist because their creation suggests an institutional approach to addressing and tackling violations domestically. After all, they are the only state-formed organ tasked exclusively to promote and protect human rights.

In the absence of a "barometer", the Paris Principles however do stress compliance in practice, namely through comprehensive and timely responses to that are proportionate to the scale of human rights violations and which are undergirded by a long-term and systematic follow up plan aimed at addressing issues at the institutional level.

In considering if an NHRI is effective, the ICC-SCA has indicated that an NHRI should, as appropriate, monitor alleged violations, conduct inquiries and publish reports on violations without undue delay. It also stressed that once an NHRI is aware of a human rights violation, it is not sufficient to simply bring the violation to the attention of the authorities.

Reference was made earlier to an inquiry launched by the NHRCT into the 2010 political violence that gripped the country. However, it took more than three years to publish and suffered from a lack of public trust and confidence. Even then, the report was riddled with serious doubts over its impartiality, glaring omissions on the liability of government and law enforcement personnel, among others. It is little wonder that when a coup d'état similarly occurred in 2013, the NHRCT was not equipped to deal with it in a time when heightened vigilance was expected, and offered little more than a few statements in reaction to the coup. Yet again, the NHRCT is yet to complete and publish a report into alleged serious human rights violations that occurred in the 2013 episode.

NHRIs are often also wont to showcase impressive statistics that exhibit cases taken up and resolved or disposed. Indeed, NHRIs deserve credit for devising a sound and efficient system to streamline their functions and optimize their resources.

However, and more importantly, many Asian NHRIs are vested with a protection mandate and have mechanisms in place to monitor and document, as well as receive complaints and investigate cases. It is thus expected that with this accouterment of powers and functions in place, NHRIs should pro-actively pursue and address known rights violations, especially those that occur on an endemic and institutional level.

SUHAKAM's landmark national inquiries into various important issues, ranging from the right to peaceful assembly to land rights of indigenous peoples, are some notable positive examples. They have followed up on a variety of human rights issues with inputs on repressive legislation, holding watching briefs in court, joint campaigns with civil society as well as dispatching assembly monitors on the ground when rallies/protests are held.

In a recent case of killing of 20 workers in Andhra Pradesh, the NHRC India took suomoto cognizance along with a complaint filed by People's Watch (national civil society organization) and directed an independent investigation. The NHRC proceeded actively on the case, by hearing it on a weekly basis and providing the scope for the petitioner to appear during the hearings and put across their points and demands. The NHRC utilized its powers guaranteed under the Protection of Human Rights Act, and ordered compensation to the victims' families, provided security for the witnesses in the case and issued conditional summons to the State authorities.

However, most times though, this is not the case. Just by way of example, in Bangladesh, there are several problematic legislation which are susceptible to abuse and restrict the legitimate work of HRDs. For example, laws such as the Anti- Terrorism (Amendment) Act (2013) or the Information and Communication Technology (Amendment) Act (2013) have the potential to be employed against critics of the government and to criminalize the legitimate work of HRDs. In addition, other restrictive bills, such as Foreign Donations (Voluntary Activities) Regulation Act, 2014, that are before Parliament and if passed, will further tighten the legal and regulatory environment in which civil society can operate. The NHRC has continued to be silent or invisible on these issues.

Moreover, the prospects look rather bleak as "new" issues emerge. A corollary of large-scale development projects by foreign investment and business companies is illegal land acquisitions, forced evictions, unsettled land disputes and inadequate compensation and resettlement packages, all of which feature prominently in many developing Asian countries.

For example, despite public acknowledgement that majority of the cases it receives are related to land rights and natural resources/environmental rights abuses, the MNHRC has not taken any adequate or necessary steps to ensure the safety of HRDs or corporate accountability, and facilitate reparations and justice for victims. In Sri Lanka, despite launching investigations into several development projects, HRC SL findings continue to be withheld and face undue delays in publishing, rendering access to justice a protracted wait.

While the proliferation of standards and guidelines (such as the ACJ reference on Corporate Accountability and the Edinburgh Declaration) is laudable, there is a severe implementation gap. It is hoped that the APF's thematic focus on Business and Human Rights for 2015-2020 is an initial step to plug such gaps.

ENABLING ENVIRONMENT

It has also become apparent that the performance and effectiveness of NHRIs is contingent on the environment they operate in. While not every NHRI is confronted with attempts to undermine its independence and impose restrictions to their jurisdiction and mandate, they admittedly still lack institutional support.

The inability to release critical reports due to a lack of protection and safety (Afghanistan) or enforce/monitor the implementation of recommendations (Malaysia) is common. In the case of SUHAKAM's national inquiry into land rights of indigenous peoples, the government oddly convened a separate task force to look into the veracity of the SUHAKAM report. Even today, many Asian NHRIs confront significant difficulties in having their reports promptly tabled and robustly debated before Parliament.

The *Belgrade Principles on the relationship between NHRIs and Parliaments* (Belgrade Principles) underscores the importance of legislative oversight/support, and provides guidance on how to secure the functioning, independence and accountability of NHRIs. It further outlines the modalities and bases of cooperation, and explores critical engagement/collaboration in the areas of legislation and even monitoring and implementation of recommendations.

Of course, the mere existence of such standards and mechanisms do not necessarily safeguard the independence and integrity of NHRIs. In this region, particularly, a much more nuanced reading of the Belgrade Principles is required. In the Maldives, a Parliamentary Standing Committee (of independent oversight bodies) exists. However, it has been used to instead summon, harass and question HRC members for activities and positions taken on various issues, among others.

In Korea, while there are Parliamentary confirmation hearings of Chairpersons-in-waiting, they have ultimately proved hollow despite vociferous objections and documentary evidence by civil society, and ultimately amount to nothing more than a rubber-stamp of the President's nominee. Despite the passage of the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (2009) in Taiwan, the execution of prisoners on death row has been continuously practiced since 2010.

This is not to say there are no exemplary cases. Significant results have been yielded where such practices are robust and genuine. The National Human Rights of Commission of Mongolia submits its Annual Reports on Human Rights and Freedoms in Mongolia to the State Great Khural (Parliament), which then considers and responds to the recommendations made by the Commission. This is usually done through binding resolutions to ensure that recommendations are enforceable and monitored through status updates and progress reports.

In Taiwan, MPs have been instrumental in the advocacy for a Paris Principles-compliant NHRI (see Taiwan chapter for trajectory and collaboration of efforts). This is in contrast to the inertia within the government, who is admittedly wary of an empowered human rights body with teeth in the face of escalating rights abuses.

The civil society coalition 'Covenants Watch', reviewed and updated the civil society version of the NHRC bill (first edition in 2002 and revised in 2008), and sent a Bill to the Legislative Yuan (Parliament) through an MP in December 2014. The ruling KMT's defeat in the nationwide local elections in November 2014 has now created an opening for constitutional reforms demanded by civil society. Pro-NHRI Legislators and NGOs also took this window of opportunity and came up with constitutional amendment proposals that would even grant NHRI a constitutional status.

The Taiwan example is a long-drawn journey filled with critical lessons that HRDs and civil society in Japan can draw on as they come to terms with the stalemate for an NHRI after a change of government in 2012 put an end to any early moves.

CONCLUSION

As we approach twenty five years of the Paris Principles, NHRIs are at a critical juncture. Certainly, positive behavioral changes and capacity building/strengthening of many NHRIs have been observed.

However, these have often also been accompanied by concerted attempts to undermine NHRIs and transform them into "non-barking watchdogs". It is not a stretch to assert that governments do not take their respective NHRIs seriously. In fact, it can also be argued that it is politically expedient (and some might argue "fashionable") to establish an NHRI nowadays.

The creation of NHRIs undoubtedly signals a possible avenue to address human rights concerns domestically. Legitimate social expectations are created when NHRIs are created. To HRDs and civil society, NHRIs arguably remain useful institutions and can make an immense contribution to the protection and promotion of human rights. However, at present, NHRIs suffer from not only structural problems and functional deficiencies, but they also lack adequate mechanisms for enforcement of human rights. Neither can it be said that they are able to operate in an enabling environment.

The idea underlying the establishment of NHRIs is to ensure that they remain vigilant over those who hold and exercise powers so that their conduct conform to national and international human rights norms. The work of NHRIs, therefore, must constantly improve and evolve (in response to contemporary challenges and increasing sophistication employed by States). Approaching twenty-five years of the Paris Principles, it is certainly the right moment to take stock and question the foundational objectives, standards and principles governing their existence and performance.

If NHRIs understand their proper role and are allowed to function freely, bearing in mind the objectives for which they were established, they would be able to fulfill social expectations and hold promises that their establishment creates. Then, NHRIs will also be able to claim that they are a key ally and discerning partner in human rights protection and governance.

BURMA: 'ALL SHOOK UP'

Burma Partnership[1]
Equality Myanmar
Smile Education and Development Foundation

1. INTRODUCTION

The next twelve months will be a revealing year for the Myanmar National Human Rights Commission (MNHRC). With the enabling law being finally passed in March of 2014, it is now possible for the MNHRC to fulfill its mandate of human rights protection. Unfortunately, instances of significant backsliding remain for the human rights situation in Burma, though Civil Society Organizations (CSOs) are hopeful for change in the upcoming general elections in November 2015. Discriminatory legislation in the form of the controversial "Race and Religion" bills, the harsh clamping down on freedom of assembly and expression during peaceful protests, and the systematic denial of civil and political rights for Rohingya are significant issues that will test the effectiveness of the MNHRC during its pivotal year.

The signing of the draft Nationwide Ceasefire Agreement (NCA) has come to a standstill as a number of Ethnic Armed Organizations (EAOs) collectively refused to sign the NCA over the lack of inclusion for all EAOs in the peace process and continued significant human rights violations by the Burma Army[2]. Additionally, ongoing violence such as the Burma Army attack on a Kachin Independence Army (KIA) training school, which left 23 cadets dead on 19 November 2014, illustrates the substantial political tension in ethnic regions of Burma[3]. By attempting to move forward without the inclusion of all political actors or at the least, the ending of conflict, the Burma Government cannot hope to achieve a sustainable peace.

In addition to exacerbating existing conflicts, the upcoming general elections are poised to significantly test Burma's fledgling transition to democracy[4]. Yet due to the decision to eliminate the White Card identification system earlier this year, a significant portion of Burma's 1.3 Million Rohingya will be unable to participate in the electoral process[5]. Finally, the leader of the main opposition party the National League for Democracy (NLD), Aung San Suu Kyi, will not be able to partake in the upcoming elections for presidential post due to a constitutional clause that specifically prohibits anyone with foreign-born relatives from becoming President[6].

The need for an effective MNHRC could not be more pressing. In her March 2015 report to the Human Rights Council, the United Nations Special Rapporteur on the situation of human rights in

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[1] ***info@burmapartnership.org.***
[2] Mark Inkey, "Burma Ceasefire Agreement: One Step Forward, Two Steps Back," *Asian Correspondent,* 8 May 2015, http://asiancorrespondent.com/132721/burma-ceasefire-agreement-one-step-forward-two-steps-back.
[3] Saw Yan Naing, "Attack on KIA a Setback for Nationwide Ceasefire, Negotiators Say," *The Irrawaddy,* 27 November 2014, http://www.irrawaddy.org/burma/attack-kia-setback-nationwide-ceasefire-negotiators-say.html.
[4] International Crisis Group, *Myanmar's Electoral Landscape Asia Report N. 266*, (Brussels, Belgium: International Crisis Group Headquarters, 28 April 2015), http://www.crisisgroup.org/en/regions/asia/south-east-asia/myanmar/266-myanmar-s-electoral-landscape.aspx.
[5] BBC News, "Why are so many Rohingya Stranded at Sea?" *BBC News Asia,* 18 May 2015, http://www.bbc.com/news/world-asia-32740637.
[6] Lindsay Murdoch, "Aung San Suu Kyi Concedes She Won't Become Myanmar's Next President," *The Sydney Morning Herald*, 9 January 2015, http://www.smh.com.au/world/aung-san-suu-kyi-concedes-she-wont-become-myanmars-next-president-20150109-12knaw.html.

Burma, Yanghee Lee, drew particular attention to the current restraints being placed on Freedom of Assembly and the Freedom of Expression[7]. She first made reference to the 'March 10th incident' in Letpadan, in which dozens of students were brutally attacked and made victim to mass arrests by the police during a peaceful protest on education reform[8] leading to condemnation from 130 civil society organizations (CSOs)[9]. A garment workers' peaceful protest in March also resulted in nearly 20 individuals being arrested[10].

These incidents are a byproduct of the Burma Government's "Peaceful Assembly and Peaceful Procession Law", which was passed in June 2014. Under this legislation, protestors wishing to exercise their basic civil and political rights are effectively forced to seek permission from the Burma Government to conduct planned peaceful protests, and subjected to overly onerous conditions such as a detailed description of the motivation behind the protest, the names of organizers, and the chants they will use during the course of the protest[11].

The suppression of the basic Freedom of Expression extends into the media as well. Currently, 13 journalists remain imprisoned in Burma on a variety of charges including defamation and the violation of the largely outdated 1923 State Secrets Act[12].

This figure includes the journalists from the *Unity* newspaper that were arrested last year and sentenced to seven years (initially ten) with hard labor as a result of having conducted an investigation into an alleged chemical weapons facility being used by the Burma Army[13]. These arrests run contrary to the statements issued by the MNHRC in recent times, calling on President Thein Sein to release "prisoners of conscience" [14].

The case of Htin Lin Oo, a former National League for Democracy information officer, who was recently sentenced to two years hard labour for speaking out against the rising Buddhist Nationalist movement is also noteworthy[15]. Clearly, Freedom of Expression in Burma is non-existent.

This past year saw the extrajudicial abduction and subsequent murder of journalist Ko Par Gyi. In addition to highlighting a significant lack of freedom for the media, the conclusion of this case

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[7] UN Office of the High Commissioner for Human Rights, "UN Rights Expert Calls on Myanmar to Address Worrying Signs of Backtracking in Pivotal Year," *UNOHCHR, March 18, 2015,* http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15714&LangID=E.

[8] BBC News, "Myanmar Riot Police Beat Student Protestors with Batons," *BBC News Asia,* March 10, 2015, http://www.bbc.com/news/world-asia-31812028.

[9] 130 Civil Society Organizations, "Burmese Government Urged to Cease the Assault and Arrest of Students Protesting in Letpadan and Rangoon," *Burma Partnership,* March 13, 2015,http://www.burmapartnership.org/2015/03/burmese-government-urged-to-cease-the-assault-and-arrest-of-students-protesting-in-letpadan-and-rangoon/.

[10] Yen Snaing, "Police Arrest Protesting Garment Workers," *The Irrawaddy*, March 4, 2015, http://www.irrawaddy.org/burma/police-arrest-protesting-garment-workers.html.

[11] Human Rights Watch, "Burma: "Peaceful Assembly Law" Fails to End Repression," *Human Rights Watch, January 26, 2015,* http://www.hrw.org/news/2015/01/26/burma-peaceful-assembly-law-fails-end-repression.

[12] Roy Greenslade, "Two Burmese Newspaper Journalists Jailed for Defaming Military MP," *The Guardian,* March 20, 2015, http://www.theguardian.com/media/greenslade/2015/mar/20/two-burmese-newspaper-journalists-jailed-for-defaming-military-mp.

[13] San Yamin Aung, "Supreme Court Rejects Appeal of Unity Journalists," *The Irrawaddy, November 27, 2014*, http://www.irrawaddy.org/burma/supreme-court-rejects-appeal-unity-journalists.html.

[14] Myanmar National Human Rights Commission, *Request Submitted in Open Letter by Members of the Myanmar National Human Rights Commission to the President of the Republic of the Union of Myanmar*, by Win Mra, Chairman, http://www.mnhrc.org.mm/en/statements-2/request-submitted-in-open-letter-by-members-of-the-myanmar-national-human-rights-commission-to-the-president-of-the-republic-of-the-union-of-myanmar/.

[15] Zarni Mann, "2 Years Hard Labor for Htin Lin Oo in Religious Offense Case," *The Irrawaddy,* June 2, 2015, http://www.irrawaddy.org/burma/2-years-hard-labor-for-htin-lin-oo-in-religious-offense-case.html.

(which will be discussed below) demonstrated the impunity shared by members of the Burma Army and the inability of the MNHRC to hold all stakeholders accountable during human rights violations.

The humanitarian crisis in Arakan State is representative of some of the worst human rights violations currently in Burma. In May 2015, thousands of refugees from Burma became stranded in the Andaman Sea, facing starvation, dehydration and sickness, after completing a lengthy overseas journey to neighboring Thailand, Indonesia and Malaysia[16]. The initial response from the destination countries to deny these refugees the right to seek asylum exacerbated the crisis; however most of the blame must be placed on the oppressive policies of the Burma government. After all, the majority of the refugees identified as Rohingya: Burma's long discriminated against ethnic group.

Since the outburst of violence between the Rohingya minority and Arakan Buddhists in Arakan State in 2012, tens of thousands of Rohingya have been confined to Internally Displaced Persons (IDPs) camps in which conditions are appalling. Rohingya in these camps face malnutrition, inter-communal violence, a lack of basic healthcare, and a severe shortage of clean water[17]. The Burma Government recognizes the Rohingya only as illegal immigrants, and as a result, members of the minority are denied citizenship, voting rights, and the freedom to move throughout the country[18].

The four Race and Religion bills currently being debated within parliament exemplify the extent of this discrimination. For instance, the Buddhist Women's Special Marriage Bill will be used in an attempt to control the marriage between Buddhist women and non-Buddhist men by placing additional restrictions on their union. In addition to its sexist and misogynistic language, the Bill insinuates that non-Buddhist men may attempt to forcibly convert their Buddhist spouses[19].

Serious human rights violations have become commonplace amongst Burma's conflict regions. Displaced refugees in the Kokang region have given testimony to a variety of crimes committed by the Burma Army including the disappearance of villagers, torture, the extra-judicial killing of civilians, and beheadings[20]. In Kachin State, continued offensives by the Burma Army on KIA positions have resulted in numerous casualties from both sides along with violence, detention and torture directed at civilians[21].

Most concerning is the widespread use of sexual violence in conflict. On 20 January 2015, Burma Army soldiers gang-raped, tortured and murdered two Kachin volunteer teachers, Maran Lu Ra

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[16] Simon Tisdall, "South-east Asia Faces its Own Migrant Crisis as States Play Human Ping-Pong," *The Guardian,* May 14, 2015, http://www.theguardian.com/world/2015/may/14/migrant-crisis-south-east-asia-rohingya-malaysia-thailand.

[17] Carlos SardinaGalache, "Myanmar's Rohingya Face a Humanitarian Crisis," *Al Jazeera,* April 19, 2014, http://www.aljazeera.com/indepth/features/2014/04/myanmar-rohingya-face-humanitarian-crisis-201441915381762 4529.html.

[18] Human Rights Watch, "Burma: Rohingya Muslims Face Humanitarian Crisis," *Human Rights Watch,* March 26, 2013, http://www.hrw.org/news/2013/03/26/burma-rohingya-muslims-face-humanitarian-crisis.

[19] Amnesty International, "Myanmar: Scrap 'Race and Religion Laws' that could Fuel Discrimination and Violence," *Amnesty International Asia and the Pacific,* March 3, 2015, https://www.amnesty.org/en/articles/news/2015/03/myanmar-race-and-religion-laws/.

[20] Shan Human Rights Foundation, " Killing, Beheading, and Disappearance of Villagers Instill Fear of Return Among Kokang Refugees," *SHRF,* May 11, 2015, http://www.burmapartnership.org/2015/05/killing-beheading-and-disappearance-of-villagers-instill-fear-of-return-among-kokang-refugees/.

[21] Fortify Rights, "Myanmar: End Military Attacks on Kachin and Shan Civilians," *Press Release and Briefing, November 6, 2014,* http://www.fortifyrights.org/publication-20141106.html.

and Tangbau Hkawn Nan Tsin, in Northern Shan State[22]. During an address to the United Nations Security Council this year, Secretary-General Ban Ki-Moon indicated that despite widespread sexual violence being propagated by the Burma Army, state actors continued to act with a high degree of impunity[23].

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	*Myanmar National Human Rights Commission Law, 2014 Notification No. (21/2014)*
Mandate	Taken from (http://www.mnhrc.org.mm/en/about/mandate/) (a) To promote and protect the fundamental rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar effectively; (b) To create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations; (c) To effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations accepted by Myanmar; (d) To engage, coordinate, and cooperate with the international organizations, regional organizations, national statutory institutions, civil society and registered non-governmental organizations working in the field of human rights.
Selection and Appointment	
Is the selection formalized in a clear, transparent and participatory process in	Chapter III of the Myanmar National Human Rights Law outlines the legislative basis for the

[22] Kachin Women's Association Thailand, "Details of the Rape and Murder of Two Kachin Teachers in Pangshai Township , Muse District, Northern Shan State," *Women's League of Burma Statement*, January 22, 2015, http://www.kachinwomen.com/kachinwomen/images/19Jan2015/WLB_statement_Kachin_murders_English.pdf.

[23] United Nations Security Council, *Conflict-Related Sexual Violence, Report of the Secretary General,* S/2015/203, March 23, 2015, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_203.pdf.

relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	selection of new MNHRC members. This includes how the Selection Board will be comprised, the criteria for the nomination of Commission members, the role of the Selection Board, along with the authority granted to the President to ultimately select and appoint nominations. In practice, the selection process has been substantially less transparent. On 24 September 2014, the previous 15-member commission was disbanded without sufficient prior public notice of the timing of the reshuffle and replaced with a new body of 11 commission members. In an article written by the Myanmar Times, it was pointed out that even key members of the Executive– along with one of the ousted Commission members, U HlaMyint – were unaware of who had been nominated for the commission[24].
Is the selection process under an independent and credible body, which involves open and fair consultation with NGOs and civil society?	The President – as opposed to an independent body – maintains authority over the final appointment and dismissal of MNHRC representatives. This point is especially salient in regards to the September 2014 presidential order to disband the Commission. During the disbandment, there was no communication with civil society over the dismissal of former Commission members and the appointment of their replacements[25]. The MNHRC enabling law is problematic in terms of how civil society is to be involved. It states that the Selection Board shall be comprised of two representatives from registered Non-Governmental Organizations (NGOs) though it fails to provide information as to how these organizations are selected. There is also concern in the eligibility of only "registered NGOs" to be considered for nomination to the Commission as the majority of civil society and human rights organizations in Burma operate without the government-approved registration [26]. According to the

[24] Bill O'Toole and Lun Min Maing, "Rights Body Shake-Up In Line with Law, Insists Government," *Myanmar Times*, October 3, 2014, http://www.mmtimes.com/index.php/national-news/11838-confusion-surrounds-reshuffle-of-new-human-rights-commission.html.
[25] Kyaw Thu, "Myanmar Revamps Human Rights Panel Amid Criticism from Rights Groups," *Radio Free Asia*, September 9, 2014, http://www.rfa.org/english/news/myanmar/commission-09252014174739.html.
[26] Nyein Kaw, Chester Toh, and JainilBhandari, "Setting Up an NGO in Myanmar," *Lexology, Globe Media Business Group*, July 29, 2013, http://www.lexology.com/library/detail.aspx?g=0272d66e-3a21-4097-9d81-b0e0f62ba266.

	MNHRC, "[The] stipulation for registration was considered necessary in order to have orderliness in consideration of NGO membership[27]."
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	Chapter III of the MNHRC Enabling Law outlines the criteria for the selection of Commission Members. This section – which has been made public – contains prerequisites involving citizenship, age, character, along with relevant experience in human rights and international law[28]. Unfortunately, the lack of transparency in the most recent September 2014 Member selection process prohibits civil society from determining whether the Selection Committee has followed the criterion. The failure of the MNHRC Enabling Law to guarantee the independence of the Selection Committee also calls into question whether correct procedures were followed when pursuing the hiring of new Commission members[29].
Is there a provision for broad consultation and/or participation, in the application, screening and selection process?	The September 2014 Commission reshuffle demonstrated that civil society and other stakeholders were not consulted in the application and selection process of the new Commission members. Furthermore, the singular involvement of the Executive in the selection process, with only limited interaction with the Speakers of the Lower and Upper Houses of Parliament, does not provide any room for participation. This has prompted a number of civil society organizations, including the Alternative ASEAN Network on Burma and the International Federation for Human Rights to highlight this point as a major cause for concern[30].
Is there a requirement to advertise vacancies? How is it usually done/describe the process?	Chapter IV of the MNHRC Enabling Law, which contains provisions related to the filing of vacancies within the Commission, does not specify how these positions will be advertised

[27] MNHRC personal communication to FORUM-ASIA, 27 July 2015.
[28] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, PyidaungsuHluttaw Law No. 21/2014*, March 28, 2014.
[29] International Service for Human Rights, "The Situation of Human Rights Defenders: Myanmar, UPR Briefing Paper – March 2015," *ISHR Global,* March 2015, http://www.ishr.ch/sites/default/files/article/files/ishr_-_upr_briefing_paper_on_myanmar.pdf.
[30] Alternative ASEAN Network on Burma and the International Federation for Human Rights, "Myanmar: 23rd Session of the Working Group on the Universal Periodic Review," November 9, 2015, https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf.

	to the general public. Moreover, it reinforces the idea of the Executive holding appointment and termination authority in the event of any vacancy, with only limited input from the two House Speakers representing parliament.[31]
Divergences between Paris Principles compliance in law and practice	According to the Paris Principles, the composition and appointment of members of a national human rights institution must be "in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights… [32] " The representation of Burma's "social forces" within the MNHRC falls short of the recommendations in the Paris Principles. In practice, the MNHRC has afforded a significant degree of authority to the President in forming and dismissing both the MNHRC along with the Selection Board[33]. Commission members must be free to criticize human rights concerns that are related to the government without fear of retribution in the form of dismissal or otherwise. Civil society is vastly underrepresented especially in comparison to the overwhelming representation of former government officials. Of the current 11 Commission members, nine have previously held positions as civil servants[34]. This includes officials with strong connections to the previous military regime such as Win Mra, the former Ambassador to the UN in New York, and Nyunt Swe, a former Deputy Ambassador to the UN in Geneva[35]. Win Mra had previously stated that ethnic representation among MNHRC members included delegates from Mon, Chin, Karen,

[31] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[32] Office of the High Commissioner for Human Rights, *Principles Relating to the Status of National Institutions (Paris Principles), Adopted by General Assembly Resolution 48/134 of 20 December 1993,* OHCHR, http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.
[33] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[34] Myanmar National Human Rights Commission, *Commissioners*, Last Modified 9 May 2015, http://www.mnhrc.org.mm/en/about/commissioners/.
[35] Alternative ASEAN Network on Burma and the International Federation for Human Rights, "Myanmar: 23rd Session of the Working Group on the Universal Periodic Review," 9 November 2015, https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf.

	Kachin, Shan, and Arakan, however there is no publicly-available information as to how this representation was determined and whether this representation has been maintained after the September 2014 dismantling of the Commission[36]. According to a former high-level staff member of the MNHRC, ethnic representation has been limited to Mon and Shan [37] . The MNHRC has stated that representation also includes Arakan and Karen, however they did not indicate as to whether Chin, Karen, Kachin, or other ethnic groups are represented[38]. Furthermore, while there is one current Member acting as a representative for Muslim Burmese, there is concern that the highly abused Rohingya population will not be represented, due in large part to systemic discrimination in the Burma Government[39]. The representation of women amongst MNHRC Commissioners is also shockingly low. The September 2014 Commissioner shakeup resulted in one female Commissioner being removed from her position, leaving only two women in the 11-Member body[40]. It should be noted that the MNHRC, in response to the claims made regarding its limited representation, states that the current makeup of the Commission is in line with section 7 (c) of the Enabling Law [41] . Unfortunately, this suggests that they are ignoring the inherent problematic nature of the Enabling Law, which fails to ensure a greater level of representation for women and ethnic groups.
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	The MNHRC Enabling Law indicates, in Chapter IV, that Members of the Commission are eligible for termination in the event that they are convicted for a criminal offence,

[36] Yadana Htun, "We Won't Be Influenced by the Gov't," *Myanmar Times*, 19 September 2011, http://www.mmtimes.com/index.php/national-news/2090-we-won-t-be-influenced-by-the-govt.html.
[37] Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.
[38] MNHRC personal communication to FORUM-ASIA, 27 July 2015.
[39] Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.
[40] Myanmar National Human Rights Commission, "Commissioners", Last Modified May 9, 2015, http://www.mnhrc.org.mm/en/about/commissioners/.
[41] MNHRC personal communication to FORUM-ASIA, 27 July 2015.

	determined by a court to be insolvent, or if they violate the regulations of the Commission[42]. While a "court of competent jurisdiction" is required to determine whether a Member is fit or unfit for participation in the MNHRC, the Executive holds ultimate authority. This is especially relevant to the 2014 reshuffle in which 9 Members of the Commission were dismissed. Among those dismissed were U Lahpai Zau Goone and U Hla Myint,, who in an interview with the Myanmar Times, expressed that they were both unaware of the grounds for their dismissal[43]. This prompts significant doubt as to whether these individuals were dismissed in accordance with MNHRC Enabling Law.
Does the NHRI founding law include provisions that promote: - Security of tenure - The NHRIs ability to engage in critical analysis and commentary on human rights issues free from interference; - The independence of the senior leadership; and - Public confidence in national human rights institution.	Chapter VI of the MNHRC Enabling Law includes a clause indicating the protection that Commission Members or staff should receive from anyone attempting to interfere in the undertaking of MNHRC functions. In addition, Chapter IX outlines the additional immunity from interference in the form of censorship, the search and confiscation of assets, and how the MNHRC can authorize the protection of identity for any civilian currently involved with an investigation[44].
Are there provisions that protect situation of a coup d'etat or a state of emergency where NHRIs are further expected to conduct themselves with heightened levels of vigilance and independence?	There is no information within the MNHRC Enabling Law on the role of the NHRI during a state of emergency or following a coup d'etat.
Divergences between Paris Principles compliance in law and practice	Under the *Composition of Guarantees of Independence and Pluralism* subsection of the Paris Principles, the third point states, "In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is

[42] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[43] Bill O'Toole, "Rights Body Shake-Up Under Fire," *Myanmar Times,* 29 September 2014, http://www.mmtimes.com/index.php/national-news/11803-rights-body-shake-up-under-fire.html.
[44] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

	ensured." Under the current MNHRC Enabling Law, the process in which Members of the Commission are dismissed is in violation of this component of the Paris Principles. The MNHRC does not outline, by an official act, the establishment of a specific duration of the mandate but rather allows Presidential authority to ultimately dismiss Members arbitrarily. This prevents Members of the Commission from fulfilling their duties and obligations for fear of reprisal from the Executive, thus severely impacting their supposed independence[45]. For this stipulation to be upheld in practice, the dismissal of Commission Members must be made transparent and substantiated with evidence. While the MNHRC Enabling Law attempts to provide a framework for dismissal – as discussed earlier – authority vested in the Executive overrides these principles in practice. The September 2014 dismissal of nine Commission Members, in which there was no public available information relating to the grounds for dismissal, provides evidence for the lack of independence available to Commission Members. The Paris Principles detail the importance of establishing "as broad a mandate as possible" for the protection and promotion of human rights[46]. Unfortunately, the MNHRC often falls victim to significant interference and deference to the military in Burma, which compromises the ability of the NHRI to conduct independent investigations within a broad mandate of human rights protection[47]. This is evident in the killing of journalist Ko Par Gyi, in which a military tribunal acquitted two soldiers involved in the death of the journalist despite suggestions from the MNHRC that a civilian

[45] International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *General Observations of the Sub-Committee on Accreditation,* Office of the High Commissioner for Human Rights, May 2013, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf.

[46] Office of the High Commissioner for Human Rights, *Principles Relating to the Status of National Institutions (Paris Principles), Adopted by General Assembly Resolution 48/134 of 20 December 1993,* OHCHR, http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.

[47] Burma Lawyer's Council, "Revealing Burma's System of Impunity: A Briefer for the Commission of Inquiry Campaign," *Burma Campaign UK,* http://burmacampaign.org.uk/images/uploads/Revealing_Burmas_System_of_Impunity_-_BLC_Briefer.pdf.

	court should handle the inquiry. The case (discussed below) demonstrates how the authority of the military compromises the mandate of the MNHRC to promote and protect human rights.
Capacity and Operations	
Adequate Funding	Within Chapter VII of the MNHRC enabling law, it is specifically stated that the Government is responsible for the provision of adequate funding to the Commission. It also allows for the receipt of contributions from external sources, so long as the independence of the Commission is not compromised as a result [48]. Currently, the MNHRC receives funding from the Government, the Raoul Wallenberg Institute of Human Rights, and the Swedish International Development Cooperation Agency[49].
Government representatives on National Human Rights Institutions:	Member nominees are required to have retired from public service if they are to be considered for a position within the Commission, according to MNHRC Enabling Law [50]. Considering how there are nine former civil servants currently operating as Members of the Commission, there is reasonable concern that there is indirect influence of government within the Commission.

3. EFFECTIVENESS

Case Study 1: Brang Shawng

In October 2012 Brang Shawng, an ethnic Kachin from Sut Ngai Yang village, Kachin State, wrote a letter to the Myanmar National Human Rights Commission that called for an independent investigation into the death of his 14 year old daughter, Ja Seng Ing, at the hands of the Burma Army. The complaint resulted in criminal proceedings against Brang Shawng that were initiated by the Burma Army on the basis of the complainant having issued "false charges"[51]. Not only did the MNHRC fail to investigate this human rights complaint, they failed to protect the complainant, which resulted in criminal prosecution.

[48] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[49] Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.
[50] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[51] Fortify Rights, "Myanmar: Overturn Wrongful Conviction of Brang Shawng," *Press Release,* 18 February 2015, http://www.fortifyrights.org/publication-20150218.html.

Brang Shawng provided a detailed description of the death of his daughter Ja Seng Ing in the letter he wrote to the President of Burma and later the MNHRC. Amidst intense fighting between the Burma Army and the Kachin Independence Army (KIA) in Sut Ngai Yang village, a group of soldiers belonging to the Burma Army encountered a landmine previously laid by the KIA. According to Brang Shawng, Ja Seng Ing was fatally wounded after soldiers from the Burma Army began firing indiscriminately throughout the village after the landmine exploded[52]. The military investigation, however, has claimed that Brang Shanwg's daughter was killed due to injuries sustained from the KIA landmine itself[53].

Independent investigations conducted after the military investigation support Brang Shawng's account of the events leading to the death of his daughter. The Ja Seng Ing Truth Finding Commission, comprised of 10 Kachin community-based organizations, interviewed a number of eyewitnesses that confirmed it was the Burma Army who was responsible for the death of Ja Seng Ing[54]. Fortify Rights, a human rights organization, supported this investigation and claimed that Brang Shawng's prosecution was in fact retaliation for implicating the military in his daughter's murder[55].

In February 2015, Brang Shawng was convicted of the charges laid against him after spending more than 45 sessions in court over a period of 12 months[56]. The defendant was provided with the option of serving six months in prison or paying a fine of 50,000 kyats, ultimately choosing the latter.

The MNHRC proved to be an ineffective NHRI by allowing the confidentiality of a complainant to be breached and for failing to overcome interference from an external actor, the Burma Army. In a letter written to President Thein Sein, Fortify Rights stated, "The United Nations Paris Principles outline international standards for the operations of national human rights institutions and emphasize the importance of ensuring they are independent, autonomous, and able to operate free from government interference. Moreover, according to the MNHRC Law in Myanmar, third parties "should not victimize, intimidate, harass or otherwise interfere with" an individual because he or she provides information to the MNHRC[57]. In the case of Brang Shawng, the MNHRC has both failed to act independently and to safeguard a human rights defender from retaliation demonstrating a severe lack of commitment to the Paris Principles.

In addition, this case study highlights a disturbing trend throughout Burma's transition towards democracy: the impunity of the military. The Enabling Law of the MNHRC specifically mentions, "A person shall not victimize, intimidate, threaten, harass or otherwise interfere with any person on the ground that that person, or any associate of that person… has given information

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[52] Matthew Thiman, Courtney Svoboda, and Tyler Giannini, "How One Father's Letters to the Government Got Him Convicted," *The Irrawaddy,* 7 April 2015, http://www.irrawaddy.org/contributor/how-one-fathers-letters-to-the-government-got-him-convicted.html.

[53] Matthew Thiman, Courtney Svoboda, and Tyler Giannini, "How One Father's Letters to the Government Got Him Convicted," *The Irrawaddy,* 7 April 2015, http://www.irrawaddy.org/contributor/how-one-fathers-letters-to-the-government-got-him-convicted.html.

[54] Ja Seng Ing Truth Finding Committee, "Who Killed Ja Seng Ing?" *Taken from the website of Burma Partnership,* http://www.burmapartnership.org/wp-content/uploads/2014/12/REPORT_Who-Killed-JSI_6.Dec_.14.pdf.

[55] Fortify Rights, "Re: Prosecution of Shayam Brang Shawng," 8 December 2014, http://www.fortifyrights.org/downloads/Brang_Shawng_Letter_20141208.pdf.

[56] Saw Yan Naing and Andrew D. Kaspar, "Kachin Man Accusing Army of Killing Daughter Found Guilty of Defamation," *The Irrawaddy,* 17 February 2015, http://www.irrawaddy.org/burma/kachin-man-accusing-army-killing-daughter-found-guilty-defamation.html.

[57] Fortify Rights, "Re: Prosecution of Shayam Brang Shawng," 8 December 2014, http://www.fortifyrights.org/downloads/Brang_Shawng_Letter_20141208.pdf.

or evidence in relation to any complaint, investigation or proceedings under this law[58]." Unfortunately, the Chair of the MNHRC has previously stated that the Commission will not investigate human rights abuses in conflict areas, demonstrating significant deference to the military in these matters[59]. In the Brang Shawng case, the MNHRC clearly disregarded – or was otherwise incapable of – protecting the human rights defender from the interference of the military.

In order to be an effective NHRI, the MNHRC must be restructured to allow for complete independence from external influence or interference. This involves empowering MNHRC Members and staff to fulfill their mandate for the protection and promotion of human rights throughout the complaint handling process in accordance with the Paris Principles. It also includes offering protection for human rights defenders and complainants who may be subject to reprisal.

Case Study 2: Protection of Human Rights Defenders

Brang Shawng is one of many human rights defenders that have been prosecuted, oppressed, or silenced in the last year. Unfortunately, the MNHRC has failed to take its role seriously, as many of these human rights defenders lack the protection that should be guaranteed by a functioning national human rights institution.

The second objective of the MNHRC, as stated in the Enabling Law, states that it will "…create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations[60]." The MNHRC has attempted to fulfill this obligation by conducting regular workshops and training sessions, designed to promote a culture of human rights amongst senior officials and other stakeholders within the government. This responsibility was also undertaken with the creation of the Political Prisoners Scrutiny Committee (PPSC), which would support Thein Sein's declaration of releasing all political prisoners by the end of 2013.

In reality, the MNHRC has consistently failed to publicly support, investigate, or identify human rights defenders that have been targeted by the Burma Government. Both Thein Sein's office and the MNHRC have issued statements regarding their commitment to releasing "prisoners of conscience," despite evidence suggesting a lack of progress[61]. According to the Assistance Association for Political Prisoners, there are currently 170 activists still imprisoned and an additional 437 awaiting trial[62]. Most disconcerting is the fact that this figure has actually increased substantially from the previous year's total of 40.

Over the past year, the Burma Government has detained, charged, and imprisoned a high number of political prisoners. On 27 May, nine farmers were arrested for conducting a peaceful protest on land confiscation, bringing the total number of land rights activists awaiting trial to 944 (not

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[58] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[59] Kyaw Thu, "Myanmar Revamps Human Rights Panel Amid Criticism from Rights Groups," *Radio Free Asia*, 9 September 2014, http://www.rfa.org/english/news/myanmar/commission-09252014174739.html.
[60] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[61] Myanmar National Human Rights Commission, "Statement of the Myanmar National Human Rights Commission on the President Order of Pardon No. 12/2014," December, 2014, http://www.mnhrc.org.mm/en/statements-2/statement-of-the-myanmar-national-human-rights-commission-on-the-presidential-order-of-pardon-no-12014/.
[62] Assistance Association for Political Prisoners (Burma), "Political Prisoner Data," 15 June 2015, *retrieved from:* http://aappb.org/political-prisoner-data/.

included in the 437 political prisoners awaiting trial)[63]. In addition, the land reform activist Sein Than was notably arrested and sentenced to two years in prison for leading peaceful protests in his Rangoon community[64]. San Tun, another land rights leader, was killed last June and the case remains unsolved as result of the Burma Police having shot and killed a key suspect[65]. While Win Mra has previously acknowledged that the majority of complaints received by the MNHRC are related to farmers claiming a lack of compensation for land seized by the Burma Army, the Commission has failed to protect the human rights defenders that step forward[66].

Political activists all over Burma have been targeted on baseless and transparent charges during the past year. In June 2015, Htin Lin Oo, a columnist and former member of the National League for Democracy, was convicted for promoting religious tolerance in an October speech. The activist received two years in prison, with hard labor, on the legal basis that he had wounded "religious feelings[67]." In July, eight Chin activists were arrested for staging a demonstration in protest of a Burma Army soldier who had beaten and attempted to rape a 55-year-old woman in Matupi Township, Chin State[68].

Human rights defenders Naw Ohn Hla, Nay Myo Zin, and Sein Htwe were also arrested in response to their peaceful protest against the death of Khin Win in the Letpadaung Copper Mine incident. In both the latter cases, the human rights defenders were charged under the Peaceful Assembly and Peaceful Protest Law. While these arrests comprise only a sample of those that have been subjected to arbitrary arrest this past year, they illustrate the lack of political will in the MNHRC to protect human rights defenders and adequately protect human rights.

Within the Paris Principles, the protection of human rights includes the protection of activists from arbitrary arrest[69]. Without the protection of an NHRI, these human rights defenders are vulnerable to persecution from the government, army, nationalist movements, and elsewhere.

With the announcement from the All Burma Federation of Student Unions stating their wish to involve the MNHRC in the investigation of the 10 March Letpadan protests, the Commission must reconsider how it is currently promoting and protecting human rights[70]. The MNHRC has the responsibility, as outlined in the Paris Principles and its own Enabling Law, to urge the government to release current political prisoners and cease the intimidation and arbitrary arrest of human rights defenders.

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[63] Naw Noreen, "Nine Sentenced for Plough Protest in Meikhtila," *Democratic Voice of Burma*, May 27, 2015, http://www.dvb.no/news/nine-sentenced-for-plough-protest-in-meikhtila-myanmar-burma/51417.

[64] Alternative ASEAN Network on Burma and the International Federation for Human Rights, "Myanmar: 23rd Session of the Working Group on the Universal Periodic Review," November 9, 2015, https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf.

[65] Alternative ASEAN Network on Burma and the International Federation for Human Rights, "Myanmar: 23rd Session of the Working Group on the Universal Periodic Review," November 9, 2015, https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf.

[66] APF Secretariat, "Myanmar: Land Grabbing Tops List of Rights Violations," *Asia Pacific Forum*, September 6, 2014, http://www.asiapacificforum.net/news/myanmar-land-grabbing-tops-list-of-rights-violations.

[67] Zarni Mann, "2 Years Hard Labor for Htin Lin Oo in Religious Offense Case," *The Irrawaddy,* June 2, 2015, http://www.irrawaddy.org/burma/2-years-hard-labor-for-htin-lin-oo-in-religious-offense-case.html.

[68] Network for Human Rights Documentation – Burma, "Report on the Human Rights Situation in Burma (July – December 2014)," *Periodic Report*, March 10, 2015, http://reliefweb.int/report/myanmar/report-human-rights-situation-burma-july-december-2014.

[69] Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4,* UN New York and Geneva, 2010, http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

[70] Mratt Kyaw Thu, "Students Threaten to Sue Police OverLetpadan Crackdown," *The Myanmar Times*, June 9, 2015, http://www.mmtimes.com/index.php/national-news/14934-students-threaten-to-sue-police-over-letpadan-crackdown.html.

Case Study 3: Ko Par Gyi

In October 2014, Ko Par Gyi, a journalist covering conflict between the Democratic Karen Benevolent Army (DKBA) and the Burma Army and who was detained the month earlier had been killed while in the custody of the Army[71]. Public outcry over the mysterious circumstances around the death of the journalist prompted Thein Sein to order the MNHRC to examine this case. The subsequent investigation contained numerous inaccuracies, contradicted the military account of events, and failed to include key issues such as whether Ko Par Gyi was tortured which led to the Commission recommending that the trial be handled in a civilian court[72]. Despite this recommendation, two soldiers involved in the death of Ko Par Gyi were acquitted of any charges in a privately held military tribunal in November, prior to the beginning of the civilian trial[73].

The details of the case shed light on a number of concerning shortcomings within both the MNHRC and the Burma Government. Firstly, the Burma Army's Light Infantry Battalion, publicly claiming that Ko Par Gyi was a member of the rival DKBA, detained the journalist on 30 September 2014[74]. It wasn't until 24 October, twenty days after Ko Par Gyi had been murdered, that the family of the journalist learned of his fate through a statement released by the Burma Army. In fact, the lack of transparency in the Ko Par Gyi case became a disturbing trend. Both the military acquittal of the two soldiers involved, and the beginning of the civilian court trial in April 2015, were kept secret from the media and the family of the slain journalist until much later[75].

The widow of Ko Par Gyi and well-known human rights activist, Ma Thandar, denied that her husband ever had any involvement with the DKBA[76]. While the resulting MNHRC investigation could not find conclusive evidence of Ko Par Gyi's involvement with any EAOs, it also did not adequately clarify that Ko Par Gyi was in fact a journalist. Testimony from a number of journalists, including members of the Myanmar Journalist Association should have been sufficient for clearing Ko Par Gyi's role in Burma[77]. It is clear that the Burma Army failed to properly identify and was responsible for the death of the journalist, however the MNHRC investigation nonetheless failed to hold the military accountable for this mistake.

Ma Thandar, along with the family's lawyer and two forensic experts, question the validity of the MNHRC report into whether Ko Par Gyi was tortured while in custody, citing numerous

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[71] The Irrawaddy, "Missing Reporter Killed in Custody of Burma Army: Report," *The Irrawaddy,* 24 October 2014, http://www.irrawaddy.org/burma/missing-reporter-killed-custody-burma-army-report.html.

[72] Lun Min Mang, "Commission Suggests Civil Court for Journalist's Death Case," *Myanmar Times,* 8 December 2014, http://www.mmtimes.com/index.php/national-news/12464-commission-suggests-civil-court-for-journalist-s-death-case.html.

[73] Yola Verbruggen, Naw Say Phaw Waa and Lun Min Mang, "Military Acquittal Raises Fresh Doubts About Civilian Inquest," *Myanmar Times*, 12 May 2015, http://www.mmtimes.com/index.php/national-news/14402-military-acquittal-raises-fresh-doubts-about-civilian-inquest.html.

[74] Aung Zaw, "Death of an Activist Reporter," *The Irrawaddy*, 4 May 2015, http://www.irrawaddy.org/from-the-irrawaddy-archive-burma/death-of-an-activist-reporter.html.

[75] Artan Mustafa, "Cases Proceed Silently in Myanmar Journalist's 2014 Killing," *International Press Institute,* 28 May 2015, http://www.freemedia.at/newssview/article/cases-proceed-silently-in-myanmar-journalists-2014-killing.html.

[76] Paul Mooney and Aye Win Myint, "Myanmar Activists Demand Independent Probe into Journalist's Killing," *Reuters,* 29 October 2014, http://uk.reuters.com/article/2014/10/29/uk-myanmar-journalist-idUKKBN0II1O120141029.

[77] Lun Min Mang, "Rights Team Contradicts Government on Journalist's Death," *Myanmar Times*, 21 November 2014, http://www.mmtimes.com/index.php/national-news/12326-investigation-confirms-ko-par-gyi-was-a-freelance-journalist.html.

consistencies between statements given by military officials and the MNHRC[78]. This only gives more credence to the MNHRC's suggestion that the case be examined in an impartial, civilian court. The acquittal of the two soldiers involved in the death of Ko Par Gyi through the military's internal oversight mechanism, however, has prevented any comprehensive examination into this case. By failing to adequately investigate the torture claims, the MNHRC passed up a valuable opportunity to demonstrate a commitment to the Prohibition Against Torture as enshrined within international customary law. Reoccurring incidents of harsh beatings during Burma Army interrogations in the Kokang area of Northern Shan State make this point especially relevant[79].

The impunity of the military from prosecution also presents a serious obstacle to the efficacy of the MNHRC. This impunity is entrenched in the 2008 Constitution, which allows members of the military to override civilian court judgments during the prosecution of their own members[80]. Ma Thandar believes that this impunity explains why the military conducted their own trial in secrecy to ensure that an early acquittal would prevent further inquiry during any subsequent civilian court case[81].

The Paris Principles require that NHRIs maintain "as broad a mandate as possible" and a competence to protect and promote human rights[82]. In this sense, competence includes outlining a broad jurisdiction in the investigation of human rights and the ability to conduct these investigations autonomously. The inability to hold accountable those directly involved with a human rights violation, such as the Burma Army in the Ko Par Gi case, exemplifies a disregard for these principles. This is also supported by Principle Six of the Paris Principles, which outlines the necessity for NHRIs to maintain adequate powers of investigation and states that they shall, "Hear any person and obtain any information and any document necessary for assessing situations falling within its competence[83]." The military acquittal of the two soldiers and the current lack of involvement of the military in the current civilian trial are evidence that the MNHRC lacks these necessary powers of investigation[84].

The MNHRC has also failed to continually pressure the Burma Army and the Government into adhering to their initial recommendation to have the Ko Par Gyi case tried in a civilian court. During the most recent hearing of the case in Kyaikmayaw Township, two key witnesses from the Burma Army failed to appear before the court[85]. Despite these shortcomings, the MNHRC has not yet made a public statement urging the Burma Government and Army to cooperate. This solidifies their inability to provide a long-term and systematic plan for human rights investigations. The outcome of the Ko Par Gyi case is disturbingly similar to that of last year's

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[78] Kyaw Hsu Mon, "The Report was Fabricated," *The Irrawaddy,* 3 December 2014, http://www.irrawaddy.org/interview/report-fabricated.html.

[79] Shan Human Rights Foundation, "Shooting, Killing and Torture of Civilians by Burma Army During Kokang Conflict," 4 March 2015, http://www.shanhumanrights.org/index.php/news-updates/205-shooting-killing-and-torture-of-civilians-by-burma-army-during-kokang-conflict.

[80] International Centre for Transitional Justice, "Impunity Prolonged: Myanmar and its 2008 Constitution," *ICTJ New York,* September 2009, https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Impunity-Constitution-2009-English.pdf.

[81] Ma Thandar in discussion with Burma Partnership, June 2015.

[82] Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4,* UN New York and Geneva, 2010, http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

[83] Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4,* UN New York and Geneva, 2010, http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

[84] Artan Mustafa, "Cases Proceed Silently in Myanmar Journalist's 2014 Killing," *International Press Institute,* 28 May 2015, http://www.freemedia.at/newssview/article/cases-proceed-silently-in-myanmar-journalists-2014-killing.html.

[85] Lawi Weng, "Army Witnesses Spurn Court Summons Over Journalists' Killing," *The Irrawaddy*, 12 June 2015, http://www.irrawaddy.org/burma/army-witnesses-spurn-court-summons-over-journalists-killing.html.

Du Chee Yar Tan incident, in which the MNHRC failed to conduct a credible investigation into the massacre of at least 48 Rohingya[86]. The ineffective and reactionary actions of the MNHRC call into question whether the institution is merely a smokescreen for human rights violations.

4. OVERSIGHT AND ACCOUNTABILITY

4.1 Civil Society

The MNHRC Enabling Law contains provisions for including civil society in its operational capacity and in a consultative role for the selection of a Selection Board and Commission members, reflecting a degree of adherence to the Paris Principles. The Enabling Law states that that the MNHRC will engage civil society – and specifically registered non-governmental organizations – that are working in the field of human rights[87]. In the formation of a Selection Board, the President will select two representatives from registered CSOs and a single representative from the Myanmar Women's Affairs Federation. The Enabling Law subsequently describes the criteria used by Selection Board to select nominations for prospective Commission members. The same section includes a clause that states that the Selection Board will consider prospective members that have knowledge or expertise in civil society, among other backgrounds.

The relationship of the MNHRC to civil society has seen some improvement since last year. According to their website, the past year has seen the MNHRC attend the Third Jakarta Human Rights Dialogue, the Regional Workshop on Human Rights and Agribusiness in Southeast Asia, and the Workshop on UN Security Council Resolution 1325 on Women, Peace and Security and Related Resolutions, among others[88]. In addition, the MNHRC is planning on attending training sessions, as part of the Grassroots Human Rights Forum, that are facilitated by Equality Myanmar, the Myanmar Women's Affairs Federation, and the Myanmar NGO Network[89].

Despite the improvements in civil society consultation, the MNHRC must encourage greater transparency to ensure commitment to the Paris Principles. During the consultation process on the upcoming Universal Periodic Review (UPR) report, a few civil society organizations acknowledged their involvement with the report but noted that the MNHRC refused to circulate the actual text of the finished draft[90]. In fact, a human rights defender involved in the consultation process also mentioned that the public statements issued by the MNHRC do not seem to reflect what is discussed during the consultation meetings.

For instance, during a meeting regarding the Four Race & Religion Protection Bills, a number of CSOs expressed concern over the fact that the passing of this legislation would violate international law. A subsequent statement by the Vice-Chair of the MNHRC revealed the contrary, stating that these Bills were in fact in accordance with international treaties such as the Convention on the Elimination of all Forms of Discrimination Against Women and the

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[86] Khin Khin Ei, "UN Envoy Calls for "Trust Building" Between Myanmar Government, Ethnic Rebels," *Radio Free Asia*, 19 February 2014, http://www.rfa.org/english/news/myanmar/special-rapporteur-02192014165927.html.
[87] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.
[88] Myanmar National Human Rights Commission, "Workshop on UN Security Council 1325 on Women, Peace and Security and Related Resolutions Organized by Myanmar national Human Rights Commission and UN Women," 29 April 2015, http://www.mnhrc.org.mm/en/2015/04/workshop-on-un-security-council-resolution-1325-on-women-peace-and-security-and-related-resolutions-organized-by-myanmar-national-human-rights-commission-and-un-women/.
[89] Human Rights Defender in discussion with Burma Partnership, June 2015.
[90] Human Rights Defender in discussion with Burma Partnership, June 2015.

Convention on the Rights of the Child[91]. This information calls into question whether or not these consultations are actually meaningful or inclusive.

As mentioned above, the MNHRC failed to involve consultation with civil society organizations during the September 2014 Commission reshuffle. To this day, Burma CSOs have reported not being made aware of how the Selection Board is currently comprised and whether its composition contains a diverse grouping of representatives, as outlined in both the Paris Principles and the MNHRC Enabling Law[92].

In response to the accusation that the formation of the Selection Board lacked transparency, the MNHRC pointed out that the establishment of the 10-member selection board was in fact made public in the Union Gazette on 25 July 2014, however they did not indicate how the representatives from parliament and civil society were selected, nor did they clarify whether civil society was involved in the formation process[93]. Furthermore, the Union Gazette is hardly an adequate outlet for the public disclosure of information considering its limited readership, reach, and lack of public confidence. Public disclosures through civil society and widely accessible media outlets will ensure that information is properly disseminated.

The limited involvement of civil society during the past year is reminiscent of the MNHRC's consultation with CSOs during the drafting of the enabling law in 2013. As highlighted in last year's report, the MNHRC had published the draft enabling law within *The Mirror* newspaper, inviting civil society to make recommendations. Unfortunately, the final enabling law contained only limited reference to the multitude of references and suggestions made by these organizations, indicating the lack of effort of the MNHRC to genuinely involve civil society during the consultation process[94].

More broadly, the lack of adequate Freedom of Expression in Burma constitutes a serious threat to how CSOs will become involved in consultation with the MNHRC. Recently, Thein Sein made a statement through the state-run newspaper, the Global New Light of Myanmar which urged all political forces and citizens to "avoid extreme views and passing on the bitter legacy of political and armed conflict to future generations"[95]. These statements illustrate the Burma Government's commitment to suppressing free speech, which will only further restrict civil society engagement.

4.2 Parliament

The MNHRC Enabling Law has attempted to reproduce the stipulations outlined in the Belgrade Principles, which describe the functional relationship between Parliament and NHRIs. The Law itself was enacted by members of the Pyidaungsu Hluttaw and includes provisions to include two representatives from Parliament to sit on the Selection Board[96]. During the selection and termination process, the President is to coordinate with Speakers from each of the upper house, the Amothya Hluttaw, and the lower house, the Pyithu Hluttaw. The Enabling Law also outlines the responsibility of the MNHRC to respond to requests for actions from parliament, demonstrate

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[91] Human Rights Defender in discussion with Burma Partnership, June 2015.
[92] Human Rights Defender in discussion with Burma Partnership, June 2015
[93] MNHRC personal communication to FORUM-ASIA, 27 July 2015.
[94] Burma Partnership and Equality Myanmar, "Burma: All the Presidents' Men," September 2014, http://www.burmapartnership.org/wp-content/uploads/2014/09/All-the-Presidents-Men1.pdf.
[95] Nay Pyi Taw, "All Political Forces and Every Single Citizen to Make Their Goal to Ensure Stability During Transitional Period Before General Elections," *Global New Light of Myanmar,* 3 June 2015, pp. 1 & 3.
[96] Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

accountability to Parliament through annual reporting, and to contribute to existing legislation surrounding human rights. It should be noted, however, that wording in the existing Enabling Law provides the MNHRC with their own discretion as to whether or not they may provide information relating to complaints or inquiries into human rights cases to the Pyidaungsu Hluttaw.

Once again, the interaction between the MNHRC and Parliament differs in practice than it does in the Enabling Law. According to a former high-ranking staff member of the MNHRC, the September 2014 reshuffle was shrouded in secrecy and a lack of transparency. Prior to the reshuffle, the formation of the new Selection Board was not made public, nor was information regarding the selected two representatives from Parliament[97]. This contradicts the Belgrade Principles involving the Appointment and Dismissal process, which recommend that the Parliament should draft the Enabling Law to urge transparency throughout the entire process[98].

Unfortunately, Parliament's role in shaping the practice of the MNHRC has been diminished to do a significant lack of interaction. The same former MNHRC staff stated that while the new Enabling Law allows the MNHRC to remain accountable to the Pyidaungsu Hluttaw, the consultation process was non-existent between March and August of last year[99]. Looking forward, there is considerable concern that the MNHRC's deeply rooted ties to the Executive will override its ability to remain accountable to Parliament. The independence of the MNHRC is therefore contingent upon parliamentarians improving their relationship with the Commission through regular and transparent interaction.

5. CONCLUSION AND RECOMMENDATIONS

When Burma's Minister of Foreign Affairs declared before the UN General Assembly in September 2014 that, "All major concerns related to human rights have been addressed to a larger extent in the new Myanmar," he could not have been more wrong[100]. The ongoing conflict between the Burma Army and Ethnic Armed Organizations (EAOs), the suppression of the Freedom of Assembly, Freedom of Expression and Freedom of the Media, the outright assault on ethnic minorities, and the number of human rights violations committed by the Burma Army are all serious threats to the state of human rights in Burma. While this provides a tumultuous and tense environment in which the MNHRC has to operate, it also provides an opportunity to demonstrate its effectiveness in promoting and protecting human rights. So far, the MNHRC has achieved little towards improving the human rights situation in Burma.

A review of the Enabling Law has revealed substantial points of concern and deviations from the Paris Principles. While 2015 could have been a pivotal year considering the release of the MNHRC mandate, there has been issues involving transparency, independence, and the involvement of the Executive in the Commission's core functions. Though the Enabling Law

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[97] Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.
[98] Office of the United Nations High Commissioner for Human Rights, *Belgrade Principles on the Relationship Between Human Rights Institutions and Parliaments,* 22-23 February, 2012, http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf.
[99] Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.
[100] Union Minister for Foreign Affairs, U Wunna Maung Lwin, "Statement by His Excellency U Wanna Maung Lwin, Union Minister for Foreign Affairs and Head of the Delegation of Myanmar in the General Debate at the 69th United Nations General Assembly," *New York*, 29 September 2014, http://www.mofa.gov.mm/wp-content/uploads/2014/09/Statement-by-His-Excellency-U-Wunna-Maung-Lwin-Union-Minister-for-Foreign-Affairs-.pdf.

outlines how civil society, parliament and other stakeholders are to be represented in the MNHRC Selection Board, as Members, and in regular consultation, the practice in reality has been disappointing. The reshuffle of Commission Members in September 2014 did not include civil society involvement while failing to deliver any real public transparency. In addition, this event illustrated the power held at the Executive level over the MNHRC in the Selection process. The Paris Principles, which prioritize values in transparency, accountability, diversity of staff, and independence, are not being met within the current practice of the MNHRC.

The case studies of Brang Shawng and Ko Par Gyi were successful in illuminating the shortcomings of the MNHRC. The complaint handling process, which is not sufficiently explored in the MNHRC Enabling Law, must be amended to protect the confidentiality of complainants such as Brang Shawng. Additionally, both cases show that the MNHRC lacks the independence required to hold all actors accountable for human rights violations. The impunity of the Burma Army will continue to be a problem unless the MNHRC can investigate human rights violations without external influence. There is little doubt that this event worsened public perception of the MNHRC. Failure to adequately investigate cases such as Ko Par Gyi's murder, or the inability to protect complainants will only motivate human rights defenders to seek justice elsewhere.

While engagement with civil society and parliament has made meaningful strides since the adoption of the Enabling Law, the Commission must do more to ensure greater transparency in order to demonstrate that the consultation process is resulting in tangible change. Furthermore, accountability to Parliament will only be provided if there is greater political will to separate the MNHRC from oversight of the Executive.

The MNHRC and the Burma Government have largely ignored the recommendations issued in last year's Asian NGO Network on National Human Rights Institutions (ANNI) Report. The first recommendation to the Burma Government to allow the MNHRC unrestricted access to conflict zones has been met with only a degree of success. Conflict zones, such as in Laukkai area, have been investigated by the MNHRC, however considering the multitude of conflict ongoing in Burma; the MNHRC must demonstrate a stronger commitment to conducting independent and in-depth investigations[101]. As conflict continues to rage on in areas of Kachin and northern Shan state, the MNHRC must become more vocal regarding the investigation of these conflict related human rights violations.

Previous recommendations to the Burma Government regarding requested amendments to the MNHRC Enabling Law have also been ignored. The Enabling Law still fails to ensure a more representative Selection Board that includes non-registered CSOs and does not provide for an independent mechanism for dismissal procedures.

While the Chair of the Commission, Win Mra, has stated that he did not read the 2014 ANNI Report, Equality Myanmar and Burma Partnership have in fact both previously received responses to the Report from Win Mra[102]. Unfortunately, recommendations made to the MNHRC specifically in last year's report have also been ignored. As observed in the Accountability and Enabling Law section of this report, the MNHRC fails to actively promote civil society engagement. The September 2014 Commission reshuffle is a notable example of this. The failure to prevent the Burma Army's intimidation in the Brang Shawng case has violated the second

[101] Myanmar National Human Rights Commission, "Press Release by the Myanmar National Human Rights Commission on the Armed Conflict in Laukkai Area Statement (2/2015)," 27 February 2015, http://www.mnhrc.org.mm/en/2014/12/.

[102] Bill O'Toole, "Rights Body Shake-Up Under Fire," *Myanmar Times,* 29 September 2014, http://www.mmtimes.com/index.php/national-news/11803-rights-body-shake-up-under-fire.html.

recommendation for the MNHRC to speak out in defense of human rights defenders. Finally, while the MNHRC might have been refraining from using anti-Rohingya rhetoric this past year, it is worth noting that the human rights body has failed to take a stance on the persecution ongoing in Arakan State.

Burma cannot make meaningful strides towards a democratic state it if continually fails to act as an effective and impartial institution that protects and promotes human rights. In light of the ongoing refugee crisis in the Andaman Sea, the ASEAN Parliamentarians for Human Rights recently published a report that stated the Muslim minorities, especially the Rohingya, were at a high risk of being subjected to atrocity crimes[103]. The urgency of this crisis, coupled with the numerous human rights violations mentioned in this report, demonstrate the importance of having an independent and effective NHRI. The following recommendations must be acknowledged if the MNHRC is to improve Burma's human rights discourse.

Recommendations to the Burma Government and Parliament:

1. *Ensure greater transparency surrounding the selection process of new Commission members at the MNHRC.*
2. *Remove Executive influence within the selection process and allow civil society and parliament to have more involvement in nominating prospective Members.*
3. *Refrain from interfering in MNHRC investigations and demonstrate the political will to respect and undertake recommendations from the Commission.*
4. *Hold all actors accountable for human rights violations. Members of the Burma Army are no exception. Allow the MNHRC to fulfill their mandate to conduct investigations regardless of which actors are involved.*
5. *Remove the impunity of the military from civilian prosecution in the 2008 Constitution.*

Recommendations to the MNHRC:

1. *Prioritize consultation with civil society during the selection process and ensure that the Selection Board is truly representative of Burma's diverse society. This should include non-registered rights-based CSOs as well.*
2. *Ensure that the composition of MNHRC members is representative, especially of vulnerable social groups such as the Rohingya, women, and other minorities.*
3. *Cooperate with Parliament in order to obtain additional funding from external sources. Direct government funding should be limited so as to improve independence.*
4. *Improve the complaint-handling process and ensure that complainants are protected from reprisal. This should include acting in a confidential manner with regards to information sharing between the Executive, Parliament, the Burma Army, and other branches of the law enforcement agencies/departments.*
5. *Recommendations stemming from human rights investigations must be accompanied with ongoing political pressure and analysis to ensure relevant stakeholders respect them.*
6. *Defend human rights activists when they have been suppressed or subjected to arbitrary detention and urge the Burma Government to release all current political prisoners.*
7. *The relationship between civil society and the MNHRC during regular consultation must be interactive and transparent. Consultations must be held on a regular basis.*

[103] ASEAN Parliamentarians for Human Rights, "The Rohingya Crisis and the Risk of Atrocities in Myanmar: An ASEAN Challenge and Call to Action," April 2015, http://burmacampaign.org.uk/media/APHR-Report-Rohingya-Crisis-and-Risk-of-Atrocities-in-Myanmar-final.pdf.

8. *Regular reporting to Parliament, as outlined in the Enabling Law, must be both frequent and should encourage meaningful debate on human rights-related legislation. These reports should also be publicly disclosed.*

CAMBODIA: SYMBOLIC INSTITUTIONS ARE NO SUBSTITUTE

The Cambodian Human Rights and Development Association (ADHOC)[1]

1. INTRODUCTION

The current human rights situation in Cambodia is strongly influenced by the political climate that emerged after the controversial July 2013 parliamentary elections.

Mass protests against the results of the election – which saw Prime Minister Hun Sen's Cambodian People's Party (CPP) confirmed as the ruling party – were violently suppressed by governmental security forces. The blanket ban on all public demonstrations which followed triggered three days of large-scale protests by garment workers demanding an increase of minimum wage. The response of the government was brutal, and lethal force used to subdue the protesters left at least five people dead and scores injured. A 16-year-old boy, who a witness says was shot in the chest by security forces, remains missing. The government failed to properly investigate these crimes and perpetrators were never held accountable for their acts.

Corruption remains rampant and violence against government critics is commonplace. Opposition party members, journalists, trade unionists, workers and human rights defenders have systematically been judicially harassed and/or arbitrarily arrested under fabricated charges, while state agents and well-connected individuals enjoy high levels of impunity.

Access to justice for vulnerable groups remains limited due to a general lack of knowledge of their rights, insufficient resources allocated to legal aid and the remoteness of complaints bodies. Courts continue to be used as a tool to curb dissent and serve the interests of the wealthy and powerful, especially against poor urban, rural, and indigenous communities struggling to maintain possession of individual and community lands against land grabbing and forced evictions. In stark contrast, villagers' complaints against private companies or authorities are systematically left unanswered or dismissed.

Despite international obligations to use pre-trial detention as a measure of last resort, this is still the norm in Cambodia. Arrested and detained individuals have frequently reported instances of ill-treatment and torture, including police and prison authorities beating and kicking them or using electro-shock to the point of unconsciousness in order to extract confessions or extort money from them.

A large group in Cambodia's society still lives in poverty, in particular in the countryside. While economic development in Cambodia is increasing, due to a growing number of investments into development projects by large foreign investment and business companies, illegal land acquisitions, forced evictions, unsettled land disputes and inadequate compensation and resettlement packages to those illegally losing their land remain one of Cambodia's most pressing human rights concerns.

Little has been done to preserve indigenous peoples' rights and to halt the encroachment upon and the destruction of sacred forests and burial sites by illegal loggers and land concession holders, which

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continue unabated. In many instances, communities have been left with no other choice but to protect their sacred sites through self-organized and self-funded patrols, exposing themselves to threats and intimidation, as those orchestrating illegal logging activities are often powerful and well-connected and operate in collusion with local authorities.

2. EXISTING HUMAN RIGHTS BODIES

In terms of human rights promotion and protection within the Cambodian legal and political system, Cambodia has established three main commissions and committees, which, as will become evident, are far from equipped to ensure that human rights are effectively implemented and enforced in Cambodia.

The *National Assembly Commission on Human Rights* ("NACHR") is one of the nine commissions forming part of the lower chamber of Cambodia's bicameral parliament, the National Assembly. It consists of nine members, the majority of which are CPP members. It is one of the existing forums for Cambodian citizens, which receives complaints with regard to human rights violations committed by state institutions. Most complaints deal with land disputes. It is also an advisory body to the Government on relevant laws and has an education and awareness-raising mandate.

The *Senate Commission on Human Rights* ("SCHR") is a commission forming part of the upper chamber (the Senate) of Cambodia's bicameral parliament, and consists of five Senators; of which as in the NACHR the majority are CPP members. It is responsible for monitoring the implementation of human rights in Cambodia, receiving and investigating human rights complaints, and taking initiative in the drafting of proposals on the implementation of human rights law.

The *Cambodian Human Rights Committee* ("CHRC") was established in 1998 by a simple Royal Decree instead of an act of parliament. It is the overarching human rights institution, which reports to the Council of Ministers. The CHRC is presided by H. E. Om Yentieng: senior advisor to Prime Minister Hun Sen; a high-ranking member of the ruling CPP party; the head of the Anti-Corruption Unit; and head of the Cambodian Intelligence Service. Sub-Decree No. 570 (23 December 2013) defines its roles which include duties to investigate and receive complaints related to human rights violations, follow up on the implementation of human rights, organise trainings, and disseminate information on human rights.

The Committee is organised into two departments, i.e. the department of administration and complaints and the department of investigation and human rights education. In addition, the CHRC is commissioned to create a network of 'volunteer watchdogs' at municipality, province, district and commune level, whose role is to facilitate and inspect enforcement of human rights in both public and private institutions, as well as to report to the Government about the current human rights situation, to cooperate with the Cambodian National Council for Women and other human rights-related institutions, and to provide on behalf of the Government legal services to persons without means.

The Government of Cambodia described in its report on the implementation of the International Covenant on Civil and Political Rights that the CHRC assisted the Government, "to advance the human rights and in solving all problems relevant to human rights violations".[2]

When the CHRC was created, it was indifferent to the Paris Principles. It is not accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.[3]

Other state organisations focus on specific groups of persons, such as the Cambodian National Council for Women and the Cambodian National Council for Children and the Disability Action Council. The fight against corruption is undertaken by the governmental Anti-Corruption Unit, which reports to the Council of Ministers.

Under the UN Optional Protocol to the Convention against Torture the Government of Cambodia was obliged to create an independent *National Preventive Mechanism* (NPM) to monitor and curb torture in places of detention – such as prisons, police stations and drug detention centres – within a year of its ratification of the protocol (i.e. by end of April 2008). However to this day it has failed to do so.

The established inter-ministerial panel composed of the ministries of justice and interior does in no way replace an independent NPM, as these ministries are the ones supposed to be under review. According to the assessment of the UN Special Rapporteur on Cambodia, the *Arbitration Council* – dealing with labour-management disputes – is one of the few national institutions in Cambodia which was able to preserve a certain degree of independence, and thus credibility, among parties bringing disputes before it including trade unions.

In 2006 Prime Minister Hun Sen had admitted that there was a need for the establishment of an independent NHRI that complied with the Paris Principles and that was separate from 'existing institutions'.[4]

So far, the approach of the Government has been to establish bodies under the control of the executive rather than independent ones, prompting some observers to argue that these are "more symbolic institutions" than mechanisms to effectively promote and protect human rights in Cambodia.[5]

The Special Rapporteur on Cambodia in unison with human rights groups has criticised the current national human rights protection infrastructure in Cambodia, which they claim is inherently flawed. The fact that investigations into allegations of human rights violations committed by state agents or

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[2] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Convention, Second periodic reports of States parties due in July 2002 Cambodia,11 April 2013, Doc. CCPR/C/KHM/2, p. 5, available at: http://cambodia.ohchr.org/WebDOCs/DocTreatyBodies/ICCPR/ICCPR-Eng_Apil-2013_Eng.pdf.

[3] Human Rights Watch, Cambodia: UN Should Condemn Rights Onslaught Address Worsening Situation, Demand Real Reforms, 27 January 2014, available at:http://www.hrw.org/news/2014/01/27/cambodia-un-should-condemn-rights-onslaught

[4] Cambodia – Joint Civil Society Report with CCPR Centre, *Civil Society Report on the implementation of the ICCPR in Cambodia*, Replies to the List of Issues CCPR/C/KHM/Q/2), To be submitted for the Review of the Second Periodic Report of CAMBODIA (CCPR/C/KHM/2), at the 113th session of the Human Rights Committee (Geneva –March 2015), coordinated by the Cambodian Human Rights Action Committee, Phnom Penh, 20 February 2015, p. 10, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KHM/INT_CCPR_CSS_KHM_19618_E.pdf.

[5] CCHR, Institutions Series: National Human Rights Bodies in Cambodia, March 2012, available at:http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_03_30_CCHR_Institutions_Series_Factsheet_National_Human_Rights_Bodies_ENG.pdf.

persons with political connections, are currently conducted by strategically selected persons under the control of the executive, certainly has raised doubts as to their independence and a strong conflict of interest, and on several occasions.

Generally speaking, the existing bodies have been characterised by their lack of rules and guidelines governing their functions, which renders it practically impossible to assess the discharge of their duties. There is also a lack of procedural clarity and accessibility, procedural guidance for the public on how to submit and follow their complaints, information about these bodies and, finally, of transparency.

In 2011, the UN Special Rapporteur on Cambodia, Professor Surya Subedi, voiced his concern as to the disproportionately low number of Government responses (250) in comparison to the high number of complaints lodged (1,158).[6] The UN Special Rapporteur on Cambodia considered the SCHR's reception of complaints slightly more effective than the NACHR's (100 responses in 300 complaints) and welcomed its initiatives to commence a small number of fact-finding missions on its own accord.[7] However, this latter assessment is only relative and far from reaching levels of effective protection of human rights in Cambodia. The SCHR is, just like its counterpart, ill-equipped to properly enforce human rights and prevent human rights violations in the future.

The NACHR, SCHR and CHRC are regarded to be heavily under the control of the executive. Their independence and autonomy have been questioned on several occasions by international human rights mechanisms and national human rights NGOs.

Both NACHR and SCHR consist solely of members of the legislature, and thus are reluctant to investigate complaints against state agents or persons affiliated with the Government in an independent and impartial manner. The shortcomings of the parliamentary committees are, however not compensated by the activities of the CHRC, Cambodia's main human rights institution, whose members are connected with the ruling party and chaired by one of the Prime Minister's advisors.

None of these bodies can be considered as an NHRI as they fail to meet basic requirements set out by the Paris Principles. The members are not a pluralistic representation of Cambodian society and their appointment is not transparent. There is also a problem of conflict of interest as human rights abuses often involve state agents and powerful individuals connected to the government. Other issues include the inaccessibility of CHRC to the rural population, and a general lack of cooperation with CSOs.

It must be noted that since the CHRC took over the lead of the NACHR in August 2014, some positive progress has been made as it has initiated investigations into high-profile and long-running land disputes. However, results have been disappointing so far. For instance, in September 2014 the Commission pledged to completely resolve "within a week" the Lor Peang case in Kampong Chhnang, where families have been locked in a dispute with a company owned by the wife of Mines and Energy Minister Suy Sem for nearly a decade. At the time of writing, the dispute is still on-going, and the situation has worsened as the company has taken possession of the land and a concrete wall has been built by the company around the contested land.

Despite the fact that the CHRC's president had a role in the drafting process for the establishment of an NHRI and presided over the joint working group between the Government and NGOs, the CHRC generally failed to provide to the Cambodian people an autonomous human rights mechanism.

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[6] *Ibid*.
[7] *Ibid*.

The CHRC's failure to send regular reports on the implementation of human rights in Cambodia to UN human rights bodies or the National Assembly, to acknowledge human rights violations committed by Government officials, and to conduct investigations or educational activities, underlines the large lacuna surrounding the human rights protection system in Cambodia.[8] The involvement of CHRC's president in the drafting process of the bill has thus not contributed to an expansion of CHRC's role.

The existing human rights bodies do not take the place of an independent and autonomous institution on the protection of human rights, as they lack sufficient autonomy to effectively discharge their duties and to hold the Government accountable for its human rights violations.

Moreover, the absence of an independent and impartial judicial system in Cambodia, emphasise the urgency of the establishment of an independent NHRI tasked to investigate into politically charged human rights allegations committed by state organs or affiliated bodies and persons, as victims of human rights violations are in the majority of cases denied justice.

As Professor Subedi concluded, on the renewed movement towards a draft bill though he does not wish to rush any initiatives prematurely he encourages "all those involved to work together collaboratively for the good of the country. There are many issues such as xenophobia and racism, LGBT rights and disability rights which do not receive sufficient attention from the existing State institutions that would benefit from continuous monitoring and policy recommendations by an independent national human rights institution."[9]

3. DRAFT LAW TO ESTABLISH A NATIONAL HUMAN RIGHTS INSTITUTION

What is the legal foundation for the establishment of the National Human Rights Institution (e.g. act of parliament, Constitution, Presidential Decree)?	A draft law for the establishment of the National Human Rights Institution (NHRI) was elaborated by civil society organisations. The draft law states that the establishment of the NHRI reflects principles enshrined in the Constitution of Cambodia and the Universal Declaration on Human Rights and other human rights instruments that Cambodia has ratified as well as the Paris Principles.
Impetus/motivation for establishment of NHRI?	In 2014, Prime Minister Hun Sen had urged further discussion with civil society and for a national workshop to collect inputs and recommendations from key stakeholders to finalise the NHRI-enabling draft law. The Government accepted recommendations on the establishment of a NHRI made in the

[8] Dr Kek Galabru, President of LICADO (Cambodian League for the Promotion and Defense of Human Rights), *We need an independent National Human Rights Commission*, May 2004.

[9] OHCHR Cambodia, Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi, Press statement, Phnom Penh, 23 January 2015, p. 7, available at:http://cambodia.ohchr.org/WebDOCs/DocNewsIndex/2015/012015/Press_statement_23-Jan-2015_Eng.pdf.

	framework of the UPR in 2014 and of the review of Cambodia's second periodic report by the Human Rights Committee in 2015.
Selection and Appointment	
What is the selection process for new members of the NHRI? Is the selection process formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines?	The Draft Law details the selection process of members of the NHRI, which will consist of members of the National Assembly (one representative per political party sitting in the National Assembly) and nine experienced representatives active in human rights NGOs. 14 potential candidates for the nine available posts of NGO representatives will be put on a publicly distributed list and, within a period of three months, sent to a designated selection committee of the National Assembly. The National Assembly will review the list on a case by case basis and will be allocated three months to render its decision on the composition of the NHRI. A two-third majority is needed for the election of a candidate. NHRI members will remain in office for an unrenewable term of seven years.
What are the qualifications for membership? Is the assessment of applicants based on pre-determined, objective and publicly?	General criteria and qualifications for selection are Khmer nationality by birth, at least 30years of age, a minimum of a Bachelor university degree or an equivalent thereof, a clear understanding of democracy, the rule of law as well as national and international human rights law, work experience defending the principle of a multi-party democracy, the rule of law and human rights for at least five years, no membership or affiliation to any political party or support activities within the previous two years, the absence of criminal charges or charges for human rights violations in the previous five years, and finally high moral character, impartiality and integrity.
Does the law provide that the composition of the NHRI must reflect pluralism, including gender balance and representation of minorities and vulnerable groups?	For the purpose of pluralistic representation within the NHRI the Draft Law imposes that the NHRI be composed of representatives of both sexes, minorities, different religious groups and other groups representing a cross section of Cambodian society.
Does the law provide for a fixed term of office, of reasonable duration? Is there a clear process for removal or impeachment?	A member can be removed from office by means of a two-third majority vote by the National Assembly or where 1 in 10 members of the NHRI

	agree upon a member's removal, due to misconduct, they can address this matter to the National Assembly. Where one of the members of the NHRI commits a crime, dies during her or his term, or is absent for a period of six months that member shall be removed from her or his office.

4. KEY INITIATIVES TOWARDS ESTABLISHMENT

Efforts towards the establishment of an NHRI began in 1997 when the Royal Government of Cambodia (RGC) issued a sub-decree forming an ad-hoc committee tasked with drafting a law to put in place an NHRI.

However, it was not until September 2006, that the RGC under the leadership of Prime Minister Hun Sen, conducted a national workshop on the establishment of an NHRI, held in Siem Reap province. The workshop was attended by human rights working groups, representatives of NHRIs of Malaysia, the Philippines and Thailand, the Working Group for an ASEAN Human Rights Mechanism, as well as the Asia-Pacific Forum of NHRIs and the Office of the High Commissioner for Human Rights (OHCHR) in order to share their experiences.

As a result of the workshop, in 2007 a committee comprised of both human rights officials from the government and civil society members was created to draw up an action plan on the process of preparing the draft law. On 11 December 2007, the committee led by Mr Kem Sokha and his successor Ms Pong Chhiev Kek, held a dialogue with a group of representatives from human rights organisations, trade unions, and academics, focusing on the composition and mandate of the NHRI. Following five consecutive meetings held in Phnom Penh, Koh Kong and Preah Sihanouk, in addition to a study trip to the Philippines by the joint working group, consensus was reached on a first version of the draft law on 6 February 2010. However, no further steps were undertaken.

While it seemed that the government was open to establishing an NHRI in 2006, the stagnation of any follow-up led observers to believe that momentum has subsequently been lost.

In a report on the human rights situation of Cambodia dated 15 January 2014, UN Special Rapporteur on Cambodia Professor Subedi, "was given to understand by the Government that a draft law on a national human rights institution had been under preparation for some time and that work on it would resume shortly."[10] The need to reopen a discussion on this matter was also reiterated by Subedi in his January 2014 report.

As a response, the government acknowledged the need for consultations "to collect more inputs, comments and recommendations from legal practitioners, lawyers and other relevant stakeholders to produce a good draft law and submit this finalized draft to the Council of Ministers to proceed."[11]

[10] A/HRC/27/70 - Human Rights Council, Twenty-seventh session, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi', 15 August 2014, para. 71, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/133/79/PDF/G1413379.pdf?OpenElement

[11] A/HRC/27/70/Add. 1, Human Rights Council, Twenty-seventh session, Comments received from the Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi, 17 September 2014, para. 6

Shortly after, a national workshop was conducted on 19 January 2014 to improve the draft law and to bring it in line with the Paris Principles. However, since then no attempt appears to have been made to present the draft law to parliament for discussion.

The Universal Periodic Review of Cambodia in February 2014 provided an additional platform for discussion on an NHRI. The recommendations by participating States, emphasising a pressing need for Cambodia to set up an independent NHRI in line with the Paris Principles, were accepted by the RGC. Similar recommendations were made by the UN Human Rights Committee in its concluding observation in spring 2015, where it encouraged Cambodia to establish an independent NHRI[12].

5. EVALUATION OF EFFORTS TOWARDS ESTABLISHMENT

While the reopening of discussion on an NHRI is a step in the right direction, recent tensions between the government and civil society organizations risk delaying the process even further. A Law on Association and Non-Governmental Organisations (LANGO), which has been in the works for almost 10 years, was approved by the Council of Ministers in June 2015 and is pending before the National Assembly. There is concern that this law will hinder the independence of local NGOs and that it will allow the government to shut down NGOs on vague grounds. The final draft currently under review by the National Assembly has not been disclosed to the public and CSOs were not consulted.

In March 2015 the government also agreed upon amendments to the Law on the Election of Members of the National Assembly; introducing in the electoral reform a controversial clause banning NGOs from giving interviews or releasing statements deemed "insulting" during election campaigns. The concern is that "vaguely worded provisions providing penalties for 'insulting' political parties or candidates would leave considerable room for broad interpretation by authorities to authorize crackdowns on dissenting voices."[13]

In the light of these recent developments, NGOs are concerned that ongoing tensions between the government and civil society will jeopardise genuine consultations and that criticism of the government would trigger their exclusion from the list of nominees to be elected as NGOs representatives within the NHRI.

It must be noted, however, that in addition to little political will to finalise the process by the government, the lack of concerted efforts by civil society actors have slowed down progress. As noted by Subedi, "[w]hile there seemed to be widely shared consensus on the need for such a mechanism, concern was expressed in different quarters on whether it was possible under current conditions to create a truly independent national human rights commission and/or appoint truly independent people with the requisite credentials to serve as members."[14]

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[12] Universal Periodic Review, Cambodia, Responses to Recommendations and Voluntary Pledges, Second Review in the Working Group, Session 18, 28 January 2014, adoption in the plenary: 26 June 2014, available at: http://www.upr-info.org/sites/default/files/document/cambodia/session_18_-_january_2014/recommendations_and_pledges_cambodia_2014.pdf

[13] A. Willemyns and Kuch Naren, NGOs 'Concerned' by Proposed Ban on Insults, Cambodia Daily, 5 February 2015, available at: https://www.cambodiadaily.com/news/ngos-concerned-by-proposed-ban-on-insults-77423/.

[14] A/HRC/27/70/Add. 1, Human Rights Council, Twenty-seventh session, Comments received from the Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi, 17 September 2014, para. 68.

The Cambodian Government has a past record of fast-tracking the adoption of human-rights impacting bills, after periods of stagnation and without previously consulting or involving civil society in the drafting process or rendering voting procedures in parliament transparent to the public.

There is thus a concern among civil society that the Government will act in a similar manner with regard to the draft bill on the establishment of an NHRI. This is currently the case with the Law on Associations and Non-Governmental Organizations (LANGO) – which the Government has hastily sent to the National Assembly without consulting civil society and which, if adopted, will jeopardise the work of NGOs and associations in Cambodia as well as restrict the freedoms of expression and assembly of the general public – and as was the case with the rushed adoption of the Union Law – which trade union advocates say violates international labour conventions.

Consensus among civil society or the capacity to prepare strong strategies have not visibly revived as of yet. It is to be hoped though that civil society will organise itself to prepare such strategies that will push for full compliance with the Paris Principles, in advance of any (rushed) passage of the draft bill, which results in a toothless or weak institution lacking independence from the government.

6. CONCLUSION AND RECOMMENDATIONS

Cambodia is in urgent need of a human rights institution, able to fight the persisting culture of impunity and corruption of state agents and persons affiliated with the Government. Therefore, civil society should not be discouraged in their efforts to push for the creation of an NHRI that complies with the principles of independence, transparency, accountability, a broad mandate and sufficient resources.

However, a genuine commitment by the government will be needed to address these issues prior to the establishment of such a body. To create a weak and politicised NHRI will not improve the protection of Cambodian people's human rights and their trust in human rights institutions. There are legitimate concerns over the kind of national institution that the Government of Cambodia has in mind. Many consider that such an NHRI will be just another bureaucratic institution, heavily controlled by the government, irrelevant to the needs of Cambodian people, and difficult to access, as is already the case with courts and the existing human rights bodies.

Moreover, to fulfil its mandate, the new institution will have to closely coordinate with the judiciary, which is notoriously used as a tool of the executive to silence dissent and is biased towards the interests of the powerful and wealthy. Without an independent judiciary, it is questionable whether the new human rights institution could be operationally effective. Cambodia's endemic problems such as rampant corruption, lack of transparency and the absence of the rule of law could seriously compromise the effectiveness of an NHRI.

Three Laws on the Reform of the Judiciary, aiming at an independent and impartial judicial system in Cambodia, were recently adopted. However these laws provide the government with excessive control over a number of aspects of the judiciary. An actual judicial reform is therefore still needed in order to strengthen and support the functioning of a human rights institution.

The exact extent of the relationship between the NHRI and the judiciary has, however, not yet been defined and will need to be determined during future discussions within working groups, who will be tasked to prepare the final draft bill for the establishment of an NHRI.

Despite the above-mentioned criticism, it is argued that "in many countries with fully fledged independent national human rights institutions, conditions for the initial establishment of those institutions were not always optimal from the outset, but progress was seen in due course."[15]

Enhanced coordination among CSOs, both at national, regional and international level, is crucial to identify common strategies and effectively lobby the government to agree upon a work plan that will strive at respect of the RGC's commitment in establishing a truly independent institution.

Social media and other media channels will play an essential role in coordinating civil society actions and reviving renewed discussions on this issue. The importance of the use of social media, in particular Facebook, should be utilised to reach the widest audience in Cambodia – including those living in remote areas. An awareness raising campaign involving the various actors in Cambodian society will help to revive a fruitful debate and receive wide media coverage.

Current debates and complaints as to the lack of independence of the judiciary and corruption of judicial officers could be used as platforms to promote the need for an independent forum that deals solely with human rights and their promotion and protection in Cambodia.

An NHRI will need to establish strong links with existing national, regional and international organisations and institutions, as it plays an important role in interlinking the government and civil society in efforts of providing human rights protection in Cambodia. Civil society is key in identifying human rights issues and submitting, on behalf of victims of human rights violations, complaints to the NHRI. In order to avoid overlapping and duplication of activities by the NHRI and civil society their roles need to be clearly defined.

A combination of independence, a broad mandate, sufficient human and financial resources, the availability and willingness of qualified individuals whose independence is widely accepted, and other principles set forth in the Paris Principles need to be ensured in order to provide for a solid legal foundation for an NHRI. The actual and perceived level of independence is central to its legitimacy.

Recommendations to Government and Parliamentarians:

- To take concrete steps to address Cambodia's endemic issues such as corruption and lack of independence of the judiciary and existing human rights bodies;
- To honour its commitment towards the Cambodian people and international community by designing a detailed work plan and adopting concrete measures towards the establishment of an independent NHRI;
- To revive the discussion by including, as a matter of priority, the establishment of an independent NHRI in the Parliamentary agenda;
- To engage in meaningful public consultations with civil society;
- To enhance dialogue with neighbouring countries which have successful established NHRI in order to exchange good practice and design solid safeguard procedures to secure the independence and mandate of the potential NHRI;
- To finalise and adopt the draft law on the establishment of an NHRI in line with the Paris Principles, including detailed procedures to ensure the independence of this body, especially with regard to the nomination of its members.

[1515] A/HRC/27/70 - Human Rights Council, Twenty-seventh session, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi', 15 August 2014, para. 72, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/133/79/PDF/G1413379.pdf?OpenElement.

Recommendations to the Asia-Pacific Forum (APF) and other international actors e.g. UN Human Rights Council/UPR Working Group or Troika/UN Treaty Body Committees/Regional Organisations etc.

- To provide a platform for dialogue and exchange of best practices and experiences with countries that have established NHRIs in the region;
- To provide support and technical assistance to the RCG on the drafting of a law on the establishment of a NHRI in line with Paris Principles, and to continue lobbying strategies encouraging the government to adopt the draft law;
- To follow up on any progress made towards the establishment of an NHRI;
- To actively participate in the dialogue between civil society and government;
- To hold the government accountable for failure to implement the recommendations made in the framework of the UPR and ICCPR review.

Recommendations to the Donor Community:

- To engage in periodic follow-up talks on progress made towards the establishment of an NHRI;
- To actively participate in the dialogue between civil society and government, including roundtables and workshops.

Recommendations to national CSO Groups/Networks/Platforms:

- To enhance dialogue and coordination to set up a common strategy;
- To engage in discussions with the government to ensure consultations on the draft law;
- To joint advocacy efforts in favour of the creation of an NHRI based on the Paris Principles;
- To strengthen cooperation at regional level in order to exchange lessons learned and good practices.

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MALAYSIA: ROOM TO BE PRO-ACTIVE

SUARAM[1]

1. OVERVIEW

In 2014, the human rights record under the Najib Razak administration hit a new low. When he first came to power in 2009, Najib Razak introduced several reforms in an attempt to win back votes after the fiasco for the ruling coalition in the 2008 general election. This attempt at reform has since been reversed after yet another debacle for ruling Barisan Nasional coalition in the 2013 general election. The most serious of these reversals was the about-turn in the promise to repeal the Sedition Act; the Prime Minister apparently bowing to pressure from the far-right in his political party and intent on teaching dissenting voters a lesson.

This assertion by Malay supremacist groups in 2014 saw an increase in hate speech and violence that has stoked racial and religious hatred and intolerance: which has been tolerated by the authorities. Ethnic relations have been further strained despite claims of commitment to moderation and tolerance by the prime minister at high profile international meetings. The gap between rhetoric and reality was further exposed by the appalling treatment of refugees, victims of trafficking and migrant workers in the country.

Malaysia's ranking plunged to a record low in the US State Department's Annual "Trafficking in Persons" Report and the "Global Rights Index: The World's Worst Countries for Workers". Malaysia was placed on par with Laos, Cambodia, Qatar, North Korea and Zimbabwe in the latter report. The year also saw the government accepting only 150 out of 232 recommendations made at the United Nations Human Rights Council during the Universal Periodic Review, with most of the crucial recommendations for human rights improvements rejected by the Malaysian government.

Freedom of Expression and Information

Freedom of expression took a heavy toll in 2014 with the unprecedented use of the Sedition Act. SUARAM recorded a total of 44 people being investigated, charged or convicted under the Act. These included elected representatives, lawyers, academics, journalists, activists and students. The situation worsened when Prime Minister made an about-turn on his electoral pledge to repeal the Sedition Act when he announced that his government had plans to 'fortify' the Act.

Freedom of Assembly

The infringement of the freedom of assembly was temporarily halted by the Court of Appeal judgment over the constitutionality of the Peaceful Assembly Act. Nevertheless, it did not stop the police from resorting to the Penal Code to arrest and charge 15 of those who had protested in June 2014 against health hazards, pollution and threats to livelihoods associated with the Lynas rare earth plant.

Freedom of Association

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The freedom of association was seriously undermined with the relentless harassment by the authorities against civil society organisations such as the Coalition of Malaysian NGOs in the UPR Process (COMANGO), Negara-ku, Peronda Sukarela (PPS) Pulau Pinang, Sarawak Association for Peoples' Aspiration (SAPA) and Sisters in Islam (SIS).

Freedom of Religion

Freedom of religion and belief has seen severe curtailment and restrictions based on the events in 2014, with the continuing legal disputes over the right to use the word "Allah" by non-Muslims, raids and seizures of Bibles, arrests of Shia Muslims etc. The enjoyment of this freedom or limitations to it are closely linked to the development of local politics, with the US Commission on International Religious Freedom (USCIRF) placed Malaysia on Tier 2, one level down from Tier 1, which lists countries including Myanmar, China, Iran, Iraq, Pakistan and Sudan, among others. It noted that, "the intertwining of religion, ethnicity, and politics in Malaysia complicate religious freedom protections for religious minorities and non-Sunni Muslims."

Detention without Trial

Detention without trial was once again employed by the Home Ministry with the increasing use of the Security Offences (Special Measures) Act 2012 (SOSMA), the Prevention of Crime (Amendment) Act 2013 (POCA) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (DDA). In 2014, SUARAM recorded a total of 31 people detained under SOSMA, bringing the total to 146. On 25 April, deputy Home Minister Wan Junaidi Tuanku Jaafar disclosed that 116 had been arrested throughout the country in the first few weeks since the POCA came into force on 2 April 2014.

Police Abuse of Power

The Malaysian police continued to operate with little oversight as the Independent Police Complaint and Misconduct Commission (IPCMC) has yet to be established and no new commissioners were appointed in the Enforcement Agency Integrity Commission (EAIC) between April and November 2014. There were 14 cases of death in police custody reported during the year.

Refugees and Migrants

2014 was another challenging year for refugees, asylum-seekers and migrant workers in Malaysia. Some of their problems were shared, not least with regard to the scant protection offered to these groups by the Malaysian authorities against activities of modern day slavers, human traffickers and other criminal elements. They also faced a range of abuses at the workplace, together with issues relating to marriage, family and domestic security, all in an environment of xenophobia among some politicians, enforcement personnel and sections of the local populace. However, there are distinct differences in the problems faced by refugees and asylum-seekers compared to those faced by migrant workers, and we will examine each separately.

Free and Fair Election

There were five by-elections held in 2014 and we continued to see flaws in the electoral process but generally no serious cases of violence or disturbance. These by-elections were in the state seat of Balingan (Sarawak), Parliamentary seat of Bukit Gelugor (Penang), state seat of PengkalanKubor (Kelantan), state seat of Kajang (Selangor) and Parliamentary seat of TelukIntan.

Death Penalty

While two known executions were halted early in the year, no public information has been made available on the exact number of executions carried out in 2014 although parliament disclosed that a total of 30 death sentences had been carried out between 1998 and 2014. According to Amnesty International Malaysia, there are still some 1000 people on death row in Malaysia, with 56 more people sentenced to death in 2014, more than half of whom were sentenced for drug offences.

Law and Judiciary

There was a mixed result of positive and negative judgments on human rights from the judiciary in 2014. The conviction of Anwar Ibrahim and excessive sentencing of SafwanAnang and Adam Adli under the Sedition Act have strengthened public perception of the lack of judicial independence in Malaysia. Yet, some positive development was seen at Court of Appeal level with the unprecedented ruling on the Peaceful Assembly Act and the right of transgender people.

SUHAKAM

Over the years, Malaysia's national human rights institution SUHAKAM has demonstrated its independence as a statutory body in promoting and protecting human rights of Malaysians. This is seen through SUHAKAM engagement with various human rights issues in the country and criticisms against the government, even in areas that are viewed as sensitive. Despite SUHAKAM's improved track record and its various reports and studies, the government has failed to take its findings and recommendations seriously. SUHAKAM's annual report and public inquiry reports have yet to be tabled and debated in Parliament ever since its establishment in 2000.

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	The National Human Rights Commission of Malaysia (SUHAKAM) was officially inaugurated on 24 April 2000 following the passage of the Human Rights Commission of Malaysia Act 1999 (Act 597). The Commission was founded based on the Paris Principles of 1992 which provided the international criteria by which an independent human rights commission should be established. The effectiveness and impartiality of the National Human Rights Commission of Malaysia (SUHAKAM) has improved in recent years although there is still room for improvement.
Mandate	The functions of SUHAKAM as set out in Section 4(1) of the Human Rights Commission of Malaysia Act 1999 are: 1. To promote awareness of and provide education relating to human rights;

	2. To advise and assist Government in formulating legislation and procedures and recommend the necessary measures to be taken; 3. To recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights; 4. To inquire into complains regarding infringement of human rights referred to in section 12 of the Act. Section 4(4) further holds that regard shall be given to the Universal Declaration of Human Rights 1948 (UDHR) so long it does not contradict with the Federal Constitution. This effectively confined the application of international human rights protect within the ambit of the Federal Constitution. Section 12 allows SUHAKAM to act on its own motion to inquire into allegation and complaints of human rights violations. SUHAKAM, however, may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have been finally decided by any court
Restrictions	According to Section 12 (2) The Commission shall not inquire into any complaint relating to any allegation of the infringement of human rights which: (a) is the subject matter of any proceedings pending in any court, including any appeals; or (b) has been finally determined by any court.
Selection and appointment	
Is the selection formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	Yes.The founding act (Act 597) was amended twice in 2009, particularly Section 5, to ensure a clear and transparent selection process of the members of the Commission. Section 5 was amended to include diversity and gender balance, duration of appointment and the establishment of a committee in regard to the appointment.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	Since the amendment, the Legal Affairs Division at the Prime Ministers' Office has advertised and called for nominations of potential candidates for the position of Commissioners. Government agencies, civil society, NGOs and individuals may submit their nominations. The Committee which was established after the amendment in 2009, consist of following persons: i. The Chief Secretary to the Government who shall be the Chairman ii. The Chairman of the Commission iii. Three other members of civil society who have knowledge of or practical experience in human rights matters, to be appointed by the

	Prime Minister As such, this is the committee which has been consulted before the appointment of the Commissioners.
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	Some of the criteria was included in the advertisement calling for nominations. Nevertheless, it is not clear if the committee has any pre-determined objectives.
Is there a provision for broad consultation and / or participation, in the application, screening and selection process?	No. There is no broad consultation, screening and selection process. The consultation is limited to the committee mentioned above.
Is there a requirement to advertise vacancies? How is it usually done/Describe the process?	Yes. The advertisement was advertise in national newspapers. Letters and nominations forms were mailed to organisations which was also available online.
Divergences between Paris Principles compliance in law and practice	The founding Act was amended twice in 2009 in make the selection process compliance to Paris Principle. The important element in the amendment was the establishment of the committee which plays instrumental role in the selection process. Any person who is actively involved in any political party and enforcement officer shall not be appointed as members of the committee. The committee may determine the conduct of its own proceedings. However, the committee only plays its role as consultative committee. It has no final say on the appointment although its recommendations would be strongly considered. The final appointment is made by the *Yang Di Pertuan Agong*, the King, based on the recommendation of the Prime Minister.
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	The Section 18 of Act 597 has clearly mentioned about the protection of the members and staff of the Commission as stated below: (1) No action, suit, prosecution or proceeding shall be instituted in any court against the Commission or against any member, officer or servant of the Commission in respect of any act, neglect or default done or committed by him in such capacity provided that he at the time had carried out his functions in good faith. Human Rights Commission of Malaysia 13 (2) Any member, officer or servant of the Commission shall not be required to produce in any court, any document received by, or to disclose to any court, any matter or thing coming to the notice of, the Commission in the course of any inquiry conducted by the Commission under this Act. (3) No action or proceeding, civil or criminal shall be instituted in any court against any member of the Commission in respect of

	any report made by the Commission under this Act or against any other person in respect of the publication by such person of a substantially true account of such report.
Does the NHRI founding law include provisions that promote: - security of tenure; - the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; - the independence of the senior leadership; and - public confidence in national human rights institution.	The founding Act mentioned the following: • The member of the Commission shall hold office for a period of three years and eligible for reappointment once for another period of three years (maximum six years or two terms). • The Commission may undertake any study, make public its findings and issue press statement on human rights issues without any interference. • The actions, the programmes and stand of the Commission which is usually made public through press statements reflects its independence. The independence of the senior leadership can be seen partially in addressing the complaints and making its stand on them. • Comparatively SUHAKAM is slowly gaining the public confidence in its actions within its given mandate
Are there provisions that protect situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	No such provisions
Capacity and Operations	
Adequate Funding	According to Section 19, the Government shall provide the Commission with adequate funds annually to enable the Commission to discharge its function. The Commission shall not receive any foreign funds except for the purpose of promoting awareness and providing education. The Commission receives an average of RM10 million annually, however it is subject to review based on the financial condition of the Government. Although Government's overall budget is tabled and discussed in Parliament, there is no specific discussion on the budget for the Commission. The NHRI is not invited to parliamentary debates in relation to its annual budget. The inadequate funding affects the priorities determined by the Commission. It also deters the Commission from expanding its human resources or establishing additional regional offices.

Government representatives on National Human Rights Institutions:	No such representation in the Commission The Commission is free and independent in its decision-making which is usually made at its monthly meeting. The Commission is free to determine the conduct of its own proceedings. Only members of the Commission and its staff attends the monthly meeting.

3. EFFECTIVENESS

The right to life is a moral principle based on the belief that a human being has the right to live and, in particular, should not to be unjustly killed by another human being (Article 3, UDHR).

Case Study: Deaths in Police Custody

The concept of the right to life is the foundation for every human being even when detained for investigation, conviction or sentencing. It is guaranteed under article 5 of the Malaysian Federal Constitution. In Malaysia, the increasing numbers of death in custody have raised major concerns among general public and also civil society. According to SUARAM's record and from police resources a total of 242 persons have died during police custody from year 2000 to February 2014. SUARAM's record also shows total numbers of death in custody in year 2014 are and until May 2015, total of persons have died in police custody. Since 2010, the numbers of deaths in custody keep increasing from 9 to 20 in 2013. However, the police claimed that only two were attributed to police misconduct.

Deaths in Police Custody from 2000 until 2014

Year	Numbers of Death
2000	7
2001	16
2002	18
2003	23
2004	19
2005	14
2006	14
2007	NA
2008	13
2009	7
2010	7
2011	17
2012	19
2013	12
2014	14

SUARAM together with other NGOs have lodged several complaints about the ongoing deaths in police custody to SUHAKAM. Following these complaints SUHAKAM conducted a study on custodial deaths. According to SUHAKAM's Annual Report 2014, the study focused not only on the rights and healthcare of the detainees under custody but also the rights of police personnel directly involved or in contact with the detainees. SUHAKAM has gathered data and information on standard operating procedures and practices by interviewing police personnel, sentries and detainees. A total of 913 police personnel including officers in charge of police stations (OCS), investigation officers (IO) and assistant investigation officers (AIO) were interviewed. SUHAKAM have also inspected 47 lock ups and 109 working stations of police. The findings are yet to be released as per the time of this report is written.

In general, the police have the duty and responsibility to protect the person detained from any harm whether from the authorities, inmates or inflicted by him or others. The authorities, either police or prison authorities, have to take full responsibility from the moment of action of arrest or ambush until the arrested is freed after investigation or imprisonment. This includes police shootings as this should be considered custodial deaths as well.

According to the United Nations Basic Principles for the Treatment of Prisoners (1990), "prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation". This clearly indicates that police or prison department hold full responsibility of the health and safety of anyone detained for whatever reason. In this regard, SUHAKAM's position should be clear that the police and the prison authorities hold full responsibility for all custodial deaths. Not only that, every custodial death should be subjected to a full and independent investigation.

SUHAKAM must ensure that there are appropriate safeguards so that the police cannot simply go on committing abuses, include torture and other ill-treatment, with impunity.

The never-ending deaths in police custody and other police related wrong doings and abuses reinforce the repeated calls for the Government to set-up an Independent Police Complaints and Misconduct Commission or IPCMC to enhance the operation and management of the police force and also to review their standard operating procedures. The IPCMC will also function as an independent and external oversight body to investigate complaints against any police personnel. Although SUHAKAM in their regular statements in relation to police misconduct have emphasized the need for the IPCMC; so far it has not taken a pro-active role in engaging the government to establish the IPCMC nor actively campaigned towards that purpose.

Case Study: National Inquiry on Native Land Rights

Indigenous Peoples or Orang Asli of Peninsular Malaysia and Orang Asal of Malaysia the natives of the States of Sabah and Sarawak had made numerous and continues complains to SUHAKAM and in response to it SUHAKAM conducted a National Inquiry into the Land Rights of Indigenous Peoples in Malaysia. This is a long-standing issue affecting the indigenous peoples of Malaysia it's best to resolve the issue in the interest of promoting and protecting the human rights of Malaysian indigenous community. The violations of the land rights of the indigenous peoples happened in many ways and it perpetrated in the name of economic activities and development. This includes plantation and logging

activities, quarrying, mining, housing and other infrastructure projects, gazetting of land into national or State forest reserves and/or parks and catchment areas. This involve encroachments on the traditional land of the community, forceful eviction, eviction or transfer to a place normally far from their native habitat which in a way or another, destroying their traditional way of life as a community.

SUHAKAM conducted its first ever National Inquiry into the Land Rights of Indigenous Peoples (IP) in Malaysia from December 2010 to June 2012. The inquiry took more than 18 months and its report dealt specifically with the increasing and incessant infringements or violation of indigenous peoples' rights. It was released in August 2013.

On 5 August 2013, Minister in the Prime Minister's Department, Datuk Paul Low, announced that a special task force will be set up to look into the outcome of the National Inquiry. Up through 2014 and at time of writing SUHAKAM has not been informed of government action following its report. Neither has the government tabled its report in Parliament. For the general public and civil society, it is not surprising that the government has ignored or did not table the report in parliament as previously similar important reports were ignored too. Any attempt by the opposition MPs to raise the issue were turned down by the speaker of parliament.

The delay in the government's attempt to rectify SUHAKAM's findings and implementation of its recommendations have resulted in more displacement and forced eviction happening to Indigenous communities in Malaysia. One of these is the Penan community who are facing displacement as their land were taken to develop Murum hydroelectric dam. The Murum Hydroelectric Dam is the first of a number planned to meet the energy requirements of the East Malaysian state of Sarawak's industrialisation projects and for export to neighboring countries.[2] The project affected 1, 415 people, comprised of 353 households: of whom 335 are indigenous Penan households with 1, 304 Penan, and 18 Kenyah Badeng households with 113 Kenyah. [3]

The construction of Murum Dam was strongly objected to by the affected villagers and civil society organisations for its lack of transparency and prior consultation with the people as well as gross violation of the rights of indigenous peoples.[4] It has dispossessed Indigenous People of their customary lands and forced them to resettle in areas with deplorable living conditions, where there is no food security, no economic opportunities and poor access to social services. The construction of the RM3.5 billion (approximately USD 1 Billion then) Murum Hydroelectric Power Dam project in Belaga was completed in September 2014.

In June 2014, SUHAKAM made a visit to the Murum Dam facilitated by the Sarawak Energy Berhad (SEB). SUHAKAM reported various "empty promises" made by the state government and SEB. One of the issues raised pertains to the inadequate access road to the resettlement areas, when it rains, the road is

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[2] "Murum dam on schedule, expected to begin producing power in Sept", 3 February 2014. See, http://www.thestar.com.my/Business/Business-News/2014/02/03/Murum-dam-on-schedule-It-is-expected-to-begin-producing-power-for-energyintensive-industries-in-earl/?style=biz

[3] Data from Business & Human Rights Resource Centre. http://business-humanrights.org/sites/default/files/media/121019responsetobusinesshumanrightsremurum.pdf

[4] Human Rights Watch, "Joint Letter on Situation of Penan Families at Murum Dam Site", 11 November 2013. See: http://www.hrw.org/news/2013/11/11/joint-letter-situation-penan-families-murum-dam-site-sarawak

impassable. This has resulted in the high absenteeism of students at the primary school SMK Tegulang located a few kilometres away. Other unfulfilled promises include monthly cash allowances, mains electricity supply, farming land, quality housingwith proper water disposal system, and playground facilities for children.[5]

SUHAKAM have recommended strict adherence to international human rights laws and standards and for the government to ensure transparency and objectivity of the Environment Impact Assessment (EIA); adequate and just compensation to the affected families; access to information; and availability and accessibility of public amenities and facilities before resettlement. Although this case study would be seen as a positive example of SUHAKAM's initiatives but the lack of a conducive environment where the government undermine it by forming the Task Force (in lieu of tabling the report in Parliament) to inquire into the veracity of the SUHAKAM report instead of implementing the recommendations. The failure of the government to look into the recommendations and the continuation economic activities in Indigenous People's land have resulted in more force eviction taking place.

In these both macro (Native Land Rights) and micro (Murum Hydroelectric Dam) level case studies, it is very clear that the lack of political will by the government. In SUHAKAM's report it has mentioned that there were few obstacles or challenges for the government in order to implement their recommendations. One of it is The Aboriginal Peoples Act (APA) empowers the Minister having charge of Orang Asli affairs to determine any question whether a person is an Orang Asli. This is clearly a provision allowing for the unilateral regulation and control of membership in a community by the Executive. SUARAM feels that this regulation is irrelevant and it's against fundamental Human Rights.

On the structure of land law in the country, where jurisdiction over land matters is vested in the individual States, this creates a number of issues, especially since the responsibility for the well-being and progress of the Orang Asli is vested in the Federal Government, in accordance with the Ninth Schedule of the Federal Constitution. As part of the findings, SUHAKAM have outlined the following four major reasons on why state and federal government very reluctant to revamp the related laws and implement their recommendations:

i. There is no uniformity in the policies affecting Orang Asli among States.
ii. States are reluctant to create Orang Asli reservations under the Aboriginal Peoples Act 1954, since in so doing the State would have to assign the said land to the Director-General of the Department of Orang Asli Development, effectively losing control over the land.
iii. Orang Asli settlements are on State land or in forest reserves, there is usually no recognition of their customary rights to the land; the land continues to be treated as State land or forest reserves as the case may be. The lack of recognition creates the risk of the land being alienated to parties other than the Orang Asli. Land is a source of revenue for States and the preference is to alienate land to persons or corporations for commercial purposes, thus attracting higher premiums. There is usually no payment of compensation for the loss of ownership of the land, it not being recognised as belonging to or being owned by the Orang Asli.

[5] fz.com, "Suhakam to help MurumPenans seek unfulfilled promises", 18 June 2014. See, http://www.fz.com/content/suhakam-help-murum-penans-seek-unfulfilled-promises; SUHAKAM's report on The Murum Hydroelectric Project and Its Impact Towards the Economic, Social and Cultural Rights of the Affected Indigenous Peoples in Sarawak",

iv. There is still no security of tenure for the Orang Asli. The State Government can revoke the status of the land as an Orang Asli reserve with much ease, in contrast with revoking a piece of Malay Reserve land.

SUHAKAM should continuously pressure the government to ensure early and effective implementation of the recommendations laid out in the National Inquiry report, given the long-standing nature of the problems facing the indigenous communities.

Case-Study:Shrinking Democratic Space: The comeback of Detention Without Trial

The passing of Prevention of Terrorist Act (POTA) during the parliament sitting on April 2015 saw a shrinking of more democratic space in Malaysia. This law allows suspects to be detained without trial. At the initial stage of the proposed act, SUHAKAM has clearly mentioned that it is against any kind of detention without trial. This stand is in line with human rights approach taken by the civil society who totally against this Act but the government went on to table it in parliament and subsequently the Act was passed in April 2015. There was no consultation with neither the civil society nor SUHAKAM on the passing of the bill.

Recently Low claimed that the federal government wants to be more inclusive of the civil society. But when asked as to why no civil society and SUHAKAM consultation took place prior to passing of the POTA, he refused to comment. SUHAKAM has released a press statement showing its disappointment in the passing of the law but there was no further alternative action taken by government.

The role of SUHAKAM and the concerning position of the said minister clearly indicates to us that both are comfortable at pointing fingers at each other leaving Human Rights and other related freedoms at stake.

More Pro-active role needed from SUHAKAM, especially during this current shrinking democratic situation.

SUARAM has led a long and massive campaign and succeeded in bringing down ISA (Internal Security Act) which enable the authority to detain anyone without trial. However, the passage of new and repressive laws and amendments including the POTA, Sedition Act amendments, extension of Prevention of Crime Act 1959 and Security Offences (Special Measures) Act 2012 clearly indicates that the government of Malaysia has no genuine intention in reforming the repressive laws. According to SUHAKAM, prior to passing these law and amendments in the Parliament, the government has consulted it. But SUHAKAM said that its suggestions were not reflected by the government when they introduced (for e.g. return of detention without trial) these changes in law and the new POTA. However, when its suggestions were not reflected, SUHAKAM must be bold enough to expose and criticize the government's undemocratic move.

On another note, recently the ruling regime has been using the Sedition Act of 1948 to arrest many social activists, opposition leaders, students, lecturers, lawyers, cartoonist, members of alternative media and social media commentator's in order to silent their critics and opinions. SUARAM is spearheading a national campaign to demand the abolition of the Sedition Act and SUHAKAM also in its statements have echoed the civil society's call, but all these were not reflected in any positive way by the

government of Malaysia. To make the situation worse, the government has proposed further amendments on the Sedition Act to widen the coverage under the Act by including clauses on causing disharmony using race and religion. Other amendments include compulsory fine and jail term even for first timers. This is a clear indication of the ruling regime's intention to punish activists and commentators severely in order to silent them which is a great setback for the freedom of expression in particular. This clearly shows that even SUHAKAM's call to abolish the Sedition Act is being ignored totally by the Malaysian government.

4. OVERSIGHT AND ACCOUNTABILITY

a. Civil Society

Throughout its 15 years of existence, SUHAKAM has been one of main targets of engagement, pressure and criticism by the civil society and NGOs. The nature of the establishment of SUHAKAM is very much criticised by the civil society as it lacks independence and its work has been taken lightly by the government as none of its annual reports was debated in the parliament.

The biggest criticism against SUHAKAM is its failure to proactively protect and promote human rights in Malaysia. In most cases of Human Rights violations, SUHAKAM has been seen merely as a complaint receiving entity rather than an institution to pro-actively protect human rights. Furthermore, SUHAKAM has been criticized for being selective in deciding the cases for enquiry.

However, SUHAKAM has engaged the civil society in many other ways. Their work include inviting the civil society to participate in SUHAKAM's programs, activities, investigations and enquiries against Human Rights violations and inviting the public or NGOS to be its partners in Human Rights related campaigns. There are broad network between SUHAKAM in case base engagement which includes interactions, sharing knowledge, exchanging data's research and other general view from NGO's and civil societies. For example, in one of the cases reported in previous section in this report, SUHAKAM has engaged with the representative from Center for Orang Asli Concern (COAC) in a systematical and professional way in their research and enquiry on Indigenous and their Native Land issue.

Recently, SUHAKAM together with Human Rights NGOs have launched a campaign called UN CAT to promote and demand the Malaysian government to ratify the Convention Against Torture (CAT). This is one of the first steps taken by SUHAKAM in engaging the civil society in constructive and systematic manner for a whole campaign. This can be seen as an important progress initiated by SUHAKAM in the year 2015.

However, in terms of a more concrete and broader coalition on Human Rights violations or to engage the civil society in drafting an action plan in pressuring the government to debate the report in the Parliament, SUHAKAM is seen to be lacking in initiatives to create a platform by playing an intermediary role between the civil society and relevant ministries or government departments by holding regular constructive meetings, including for the implementation of SUHAKAM's recommendations as well as reforms.

Overall, in term of the civil society engagement, there is room for SUHAKAM to pro-actively engage in a more systematically way; not only focus on case by case basis, but to tackle in a more holistic but constructive manner, looking and working into it in longer term. Moreover, SUHAKAM must use its resources to conduct regular monitoring on the ground, particularly in the cases where there are imminent threats of human rights violations, instead of acting after receiving complaints. SUHAKAM must engage with the civil society and be more prompt, vocal, and visible in tackling or responding Human Rights issues in Malaysia.

b. Parliament

Since its establishment in 1999, SUHAKAM has consistently submitted its annual reports to the Parliament as required under Section 21 of the National Human Rights Commission Act, 1999. However, none of their reports have ever been debated or discussed in the Parliament. While the decision to debate the Commission's Annual Report lies entirely with Parliament, it believes that as a body established by an Act of Parliament, a full parliamentary debate on its Annual and other human rights Reports must take place to enable Parliamentarians to thoroughly address human rights issues as important national issues.

On 15 April 2015, SUHAKAM's Chairman, Tan Sri Hasmy Agam said that, *"Global attention is falling on the country's chronic failure to discuss the SUHAKAM's annual reports in Parliament, which has been in existence for 15 years yet none of its annual reports have ever made it into parliamentary debate, despite its 2014 edition being tabled on March 25 this year"*. He added that, *"Perhaps our parliamentarians have not been disciplined enough to engage in discussions on human rights issues and are not using it as a political axe to grind. And 'the world is watching' as Malaysia was playing a prominent role internationally with its recent completion of a term as a United Nations Human Rights Council member as wells as its appointment as a UN Security Council non-permanent member and chair of Asean."*[6]

SUHAKAM's substantial recommendations to the government, mainly related to protection of Human Rights and Freedom of Expression as well as to ratify all remaining core international human rights treaties have been ignored by the government. None of SUHAKAM's reports, be it annual reports, thematic reports, or reports of public inquiries, has been debated in the Parliament. This can be seen as a failure of both sides as the government have not been doing this for past 15 years, and for past 15 years SUHAKAM has failed to ensure that the parliament debate its annual reports and recommendations therefore indicates that SUHAKAM has failed to suggest a concrete alternative way to discuss and debate its annual report.

SUHAKAM is currently working with ministers to set up a parliamentary committee on human rights. According to its Chairman, this is an interim measure but the idea of having a full parliamentary debate will still be pursued when they are more comfortable with discussing human rights issue without taking a partisan position.

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[6] *http://www.themalaymailonline.com/malaysia/article/world-is-watching-suhakam-warns-putrajaya-as-rights-report-still-ignored#sthash.3RbtgdFN.dpuf*.

It is important for SUHAKAM to be more pro-active in engaging like-minded parliamentarians and the civil society to set up a model select committee to look into its reports and recommendations which can act as an alternative body to counter balance the failure of the parliament and the government.

This was echoed by the minister in charge of human rights, Datuk Paul Low who said SUHAKAM should do more with the RM12million (approximately USD 3.1million) it is receiving annually from the government. Low said that, "*the government believes that this should provide sufficient capacity and teeth for SUHAKAM to not just criticize, but to engage and collaborate with government agencies to protect human rights in Malaysia"*.

On top of that, Low suggested that SUHAKAM should proactively engage lawmakers from both the Dewan Rakyat and the Dewan Negara to facilitate interest and promote familiarity with human rights issues.

On the other hand, the same minister who suggested SUHAKAM to do more has failed to give concrete commitment neither on parliamentary debate on the reports nor forming a select committee. Low's office have noted that most of SUHAKAM's proposed amendments are "structural" in nature and have been agreed to, noting that the existing SUHAKAM Act already provides the Commission "wide powers to ultimately advise and work as a stakeholder to see real gains in human rights in Malaysia".

5. CONCLUSION AND RECOMMENDATIONS

SUHAKAM have outlined 10 key human rights issues: national inquiry into the land rights of indigenous peoples in Malaysia; National Human Rights Action Plan (NHRAP); death in police custody; right to health in prison; human rights education in schools; alternatives to detention for children in detention; business and human rights; universal periodic review (UPR); freedom of assembly; and review of laws. Among the laws that were called for review are the Racial and Religious Hate Crimes Bill, the National Harmony and Reconciliation Bill, the Dangerous Drugs Act, the Anti-Trafficking in Persons, the Anti-Smuggling of Migrants Act, and the Sedition Act.

SUHAKAM in its report said that it had received a total of 717 complaints in 2014, an increase of 93 cases compare to 2013. Among the main issues arising from the complaints are right to nationality, right to security of person, matters pertaining to arrest and detention, academic freedom, Murum Dam in Sarawak and rights of workers and asylum seekers.

Since its establishment in 1999, SUHAKAM has consistently submitted its annual reports to the Parliament as required under Section 21 of the National Human Rights Commission Act 1999. However, none of their reports have ever been debated or discussed in the Parliament.

Recommendations

The above highlights how SUHAKAM, while performing a commendable role in the national human rights governance and protection system, needs external support in order to secure its independence and accountability while ensuring scrutiny of the government is maintained. Similarly, SUHAKAM must also

actively advocate for formal legislative oversight and forms of cooperation with Parliament, such as through the establishment of a standing committee on human rights.

To the Government of Malaysia:

i. Amend existing provisions in the SUHAKAM enabling law to allow for robust public participation in the nomination and appointment process of Commissioners;
ii. Promptly establish an appropriate and relevant mechanism to ensure that the annual reports of Suhakam are promptly tabled and robustly debated in Parliament to address and take action on both substantial human rights situation/issues in the country;
iii. Set up a Task Force comprising Members of Parliament, SUHAKAM and civil society representatives to evaluate the implementation of the agreed recommendations, including from the Universal Periodic Review;
iv. Amend the mandate of the National Human Rights Commission of Malaysia Act to be broadly based on international human rights law and standards, and not to be restricted by the Federal Constitution and the protection of human rights in Malaysia only;
v. Amend the National Human Rights Commission of Malaysia Act to allow for the Commission to conduct visit to places of detention without prior notifications;
vi. Establish a parliamentary committee on human rights to review the annual reportssubmitted by SUHAKAM and consider its recommendations on ways to improve thehuman rights situation in the country;
vii. Increase the annual budget allocation for SUHAKAM in order to ensure it hasadequate resources to carry out its mandates and duties effectively and efficiently.

To SUHAKAM:

i. Take actionable and measurable steps to implement the recommendations by the ICC-SCA in the 2009-2010 reviews, particularly on appointment and selection process;
ii. Advocate for formal legislative oversight and forms of cooperation between Parliament and SUHAKAM such that the independence and accountability of the NHRI can be secured;
iii. Pro-actively engage in legislative processes, including providing inputs and recommendations for amendments to its own founding law;
iv. Ensure timely and comprehensive responses, including through strategies such as public/national inquiries, to abuses committed under the ongoing crackdown against freedom of expression, such as the Sedition Act (1948);
v. Actively advocate for and ensure the monitoring and implementation of its recommendations, including by provide timely status and action-taken updates;
vi. Encourage the ratification of key international human rights instruments by the Government;
vii. Support and engage robustly with civil society, through formal modalities/mechanisms, and ensure their participation in the planning, design and implementation of SUHAKAM's activities;
viii. Maximize the involvement and leverage on the expertise of civil society organizations in addressing pressing, critical and emerging human rights issues in the country;
ix. Fully utilize its unique position as interlocutor or bridge with the government to facilitate and conduct regular dialogue sessions with relevant government agencies/representatives on human rights situation in the country.

In order to uphold human rights, freedom of expression and democratic freedom, SUHAKAM should openly work with civil society to intensify the campaigns that seek more democratic space in Malaysia. SUHAKAM must act boldly by sending clearer and louder message to the government to commit and bring the above said changes.

THAILAND: HUMAN RIGHTS CRISIS

Peoples' Empowerment Foundation; Justice for Peace Foundation; and Pro-Rights Foundation[1]

1. INTRODUCTION

Thailand used to be a constitutional monarchy. It used to be governed under the rule of law, democracy and good governance. There had been many political conflicts and much violence since 14 October 1973, 6 October 1976 and 'Black May' 1992. Peoples' and student's struggle resulted in democratic governance with elections in 1997.

After a four and a half year term, there was the 2003 coup in Thailand. Later, the 2007 constitution was drafted before an election in 2011. A female prime minister was elected. Another coup on 22 May 2013 by the National Council for Peace and Order (NCPO) followed. The NCPO vested itself with executive and legislative powers. The coup reflected Thailand's political instability. Thailand ranked the top in coup-making ranking in ASEAN. The coups have lowered political development and have greatly impacted human rights in the country.

After the 2013 coup, the National Human Rights Commission of Thailand's (NHRCT) operation to ensure the protection of human rights has been facing many difficulties. For example, the NHRCT has not been successful in demanding a list of secret detention centers under the Martial Law. The NHRCT's request to visit detention facilities in military camps has not always been granted.

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/ Presidential Decree?	The first National Human Rights Commission was established under the 1997 Constitution of The Kingdom of Thailand, Section 199 and 200 The National Human Rights Commission consists of a President and ten other members, appointed by the King with the advice of the Senate, from persons having apparent knowledge and experience in the protection of rights and liberties of the people, having regard also to the participation of representatives from private organizations in the field of human rights. The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term. The first Commission was appointed on 24

[1] ***Chalida Tachareonsak, People Empowerment Foundation chalida.empowerment@gmail.com; Chutimas Suksai, People Empowerment Foundation chutimassuksai@gmail.com; Angkhana Neelapaijit, Justice for Peace Foundation angkhana.nee@gmail.com; and Sansanee Suthisansanee, Pro-Rights Foundation prorightsfoundation@hotmail.com.***

	August 2001. The second National Human Rights Commission was appointed by virtue of the 2007 Constitution of The Kingdom of Thailand, Chapter 11: Constitutional Organizations, Part 2 pertaining Other Organizations, Sections 256 and 257. The National Human Rights Commission is an 'Other Organization' under the Constitution. The Commission consists of a President and six other members, appointed by the King with the advice of the Senate, from persons having apparent knowledge and experiences in the protection of rights and liberties of the people with due regard to the participation of representatives from private organizations in the field of human rights. The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term. The Second Commission was appointed on 24 June 2009. Their term ended in 24 June 2015. However, the Commissioners are serving in an interim capacity until the new members have been selected. The members of the Second NHRCT and their expertise are as follows: 1. Dr Amara Pongsapitch, Professor Emeritus in Political Science. 2. Dr Taejing Siripanich MD, Anti Drink Driving Campaigner. 3. Dr Nirun Pitakwatchara MD, social activist, human rights activist and former senator. 4. Mr Parinya Sirisarnkarn, 2007 Constitution Drafting Assembly member, former member of the National Economic and Social Advisory Council 2008, Vice Chairman of the Federation of Thai Industries, Nakhon Ratchasima Province, Police Committee of Non Thai police station, Nakhon Ratchasima Province. Sor. Sivalak petitioned the Royal Household Bureau Secretary General to launch an inquiry into Mr Sirisarnkarn's appointment as NHRCT commissioner. Mr Sirisarnkarn operated a rock salt boiler in Samrong Sub-District, Non Thai District, Nakhon Ratchasima Province. Thus, he allegedly engaged in activity resulting in human rights violations that affect the well-being of people and communities in the area where his factory is located.[2] In fact, the first National Human Rights Commission confirmed that Mr Sirisarnkarn was guilty of human rights violations and ordered that the

[2] See also http://www.prachatai.com/journal/2009/06/24642.

	limestone mining industry be closed. The order also demanded compensation for damages in this case for its impact on the community, etc. Such conduct is contrary to the relevant provision in the Constitution Act and the National Human Rights Commission Act on criteria for selection as Commissioner. Nevertheless, he was appointed as member of the Second NHRCT. 5. Mr. Paiboon Varahapaitoon, Director of the Committee Affairs Bureau of Secretariat of the Senate and Secretary General of the Constitutional Court. 6. Pol. Gen Wanchai Srinualnad, Chief Advisor on Security of the Royal Thai Police. 7. Ms. Visa Benjamano, Retired civil service officer, formerly Chief of Inspector-General and Spokesperson of Ministry of Social Development and Human Security.
Mandate	The second National Human Rights Commission has the powers and duties under the 2007 Constitution of The Kingdom of Thailand, Section 257 as follows: (1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceedings; (2) to submit the case together with opinions to the Constitutional Court in the case where the Commission agrees with the complainant that the provisions of any law are detrimental to human rights and beg the question of the constitutionality as provided by the organic law on rules and procedure of the Constitutional Court; (3) to submit the case together with opinions to the Administrative Courts in the case where the Commission agrees with the complainant that any rule, order or administrative act is detrimental to human rights and begs the question of the constitutionality and legality as provided by the law on establishment of Administrative Courts and Administrative Court Procedure; (4) to bring the case to the Courts of Justice for the injured person upon request of such person if it deems appropriate for the resolution of human rights violation problem as a whole as provided by law; (5) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the promotion and protection of human rights; (6) to promote education, research and the dissemination of knowledge on

	human rights; (7) to promote cooperation and coordination among government agencies, private organizations and other organizations in the field of human rights; (8) to prepare an annual report for the appraisal of situations in the sphere of human rights in the country and submit it to the National Assembly; (9) other powers and duties as provided by law. In the performance of duties of the National Human Rights Commission, regard shall be had to interests of the country and the public. The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law. After 2007, political instability and parliamentary crises has stalled the Draft National Human Rights Act of 2009, drafted after the enactment of the 2007 Constitution. Since the Act did not pass the parliamentary review, the 1999 National Human Rights Act has been used *mutatis mutandis* to determine the scope and the office of the second Human Rights Commission. Section 8 and 9 in the Draft National Human Rights Commission Act 2009 also empowered the NHRCT to recommend if Thailand should ratify an international convention and the power to appoint sub-commissioners to assist the commissioners. The 2007 Constitution allows the National Human Rights Commission to bring the case to the Courts of Justice for the affected person upon request. Nevertheless, after the recent coup, the NHRI cannot exercise this power.
Selection and appointment	
Is the selection formalized in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	*The Third Human Rights Commission selection process*: Following the announcement of the National Council for Peace and Order (NCPO) No. 11/2557 dated 22 May B.E. 2557 (2014) regarding the termination of the Constitution of the Kingdom of Thailand, except Chapter Two on the Monarchy and announcement No. 24/2557 dated 23 May B.E. 2557 (2014) regarding the continuing validity of the Organic Laws, the Office of the NHRCT has inquired in writing to the Office of the Council of State regarding the process for selection of new commissioners. The Office of the Council of the State has considered the inquiry and ruled that the selection process shall be in accordance with the criteria and process in the NCPO Order No, 48/2557, regarding the selection process

	for vacant positions, dated 29 May 2014. "Should there arise the need to appoint a Commissioner of the Human Rights Commission, where these positions are vacant, the selection process for the holders of such positions shall follow the rules and procedures as stipulated in the Constitution B.E. 2550 (2007), and which have been applied hitherto ...". An announcement from the Office of NHRCT, dated 22 May 2015, on the Selection Committee for the National Human Rights Commissioners, outlines the selection committee as follows: 1. The President of the Supreme Court of Justice 2. The President of the Constitutional Court, 3. The President of the National Legislative Assembly, acting as the President of the House of Representatives 4. Mr Peng Pengniti, a person elected at a general meeting of the Supreme Court of Justice 5. Mr Chalermchai Wasinon, a person elected at a general meeting of the Supreme Administrative Court They are empowered to select the commissioners within 30 days and nominate the candidate and their consent to the President of the National Legislative Assembly to pass on for the King's appointment.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	No. The selection process of the 3rd Commission follows the process used in the selection of the previous (2nd) Commission, except there are not 5 instead of 7 selectors (no representative of the Parliamentary Opposition and no President of the Supreme Administrative Court). There is no representation or consultation with civil society organizations. The process is secretive and therefore not transparent. There were 121 candidates. The 1st Commission was selected in accordance with the Paris Principles. The 27 member selection committee represented multiple sectors including 10 CSO representatives. There was a lot of discussion and exchange of views on suitability of candidates. In the first stage, candidates required two-thirds support from the selection committee i.e. at least 21 of the 27 members, to be short-listed. This meant that CSO's if they voted together could block unsuitable individuals. In the second stage, 22 names are submitted to the Parliament for its consideration. The Parliament then selects 11 from among this number and the Chair of the Parliament forwards their names to the King for his approval and appointment. This selection process was of high quality within the South-East-Asian region.

Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	No, the assessment process is not open to the public.
Is there a provision for broad consultation and / or participation, in the application, screening and selection process?	No, the assessment process only requires the participation of the Selection Committee.
Is there a requirement to advertise vacancies? How is it usually done?	Yes. According to the NHRCT, the vacancies were widely publicized through advertisements in the print media; radio spots including community radio stations; banner ads on many television stations; flags outside the NHRCT office; posters at the Government Complex; letters to state agencies and other organizations; online including websites and social media (personal communication 8 July 2015). Even so, it seems the majority of people, especially in rural areas were not aware of the call for applications and the selection process of the NHRCT. In comparison between the whole population and consumption of information, it could be said that the public relations had not been done efficiently. For example, the display of posters and Japanese-style flags only took place at the office of the NHRC within the Government Complex in Bangkok. These were not displayed in public or in the rural areas. The announcement of the Secretariat Office should not focus only on candidates, but should also address the public. It should have been an opportunity to publicize the work of the NHRI as well. Most people do not sufficiently know or understand the work of the National Human Rights Commission. A technical seminar was conducted by the Office of the NHRCT on the "Implementation of the Selection Process for the National Human Rights Commissioners" on 2 June 2015 with the attendance of about 100 people with diverse opinions, especially about the selection process. The meeting reflected concerns over the selection committee and the selection process that does not meet the Paris Principles. As a result, the commissioners selected would be inappropriate and may not be able to respond to various aspects of human rights. These views were not communicated to

	the Selection Committee members. The deadline for applications was 15 June 2015. There were a total of 121 candidates including NGO workers, soldiers, police, academics, retired government officials and businesspersons. The observations of the selection committee have not been released to the public. However, following direct request for information from the People' Empowerment Foundation, the NHRCT informed as follows (personal communication, 3 August 2015): "On 21 July 2015, the selection committee has announced the results of the selection of the third batch of the NHRC members including seven members recruited from 121 candidates. Based on the review of the experience in protecting rights and liberties of the people and assessment of their concepts, the candidates shortlisted are: 1. Mrs. Chatsuda Chandeeying, former court clerk of the Samut Prakan Juvenile and Family Court, married to Dr. Weerachai Chandeeying, medical doctor at the Samut Prakan Provincial Hospital; 2. Mr. Baworn Yasinthorn, [leader of the ultra-royalist movement Citizen Volunteers for Defense of the Three Institutions – PEF]; 3. Mrs. Prakayrat Tonteerawong, business-owner, former board member of the Thai Women Empowerment Funds and former associate judge of Nonthaburi Juvenile and Family Court and former President of the Association of Women Lawyers of Thailand (AWLT), former President of the Institute for Education and Development of Conflict Management by Peaceful Means Foundation (IDF); 4. Mr. Wat Tingsamid, a former Supreme Court judge, Office of the Court of Justice; 5. Associate Professor Supachai Thanomsap, a visiting lecturer and medical doctor at Ramathibodi Hospital; 6. Mr. Surachet Satidniramai, the acting Permanent Secretary of the Public Health Ministry; 7. Mrs. Angkhana Neelapaijit, a human rights defender, President of the Justice for Peace Foundation, former member of the 2007 Constitutional Drafting Committee [and wife of Mr. Somchai Neelapaijit, human rights lawyer who 'disappeared' in March 2004 – PEF]. The selection committee for the NHRC shall submit the names of the shortlisted candidates for confirmation to the President of the National Legislative Assembly (NLA), after which the appointments will be made following royal assent.

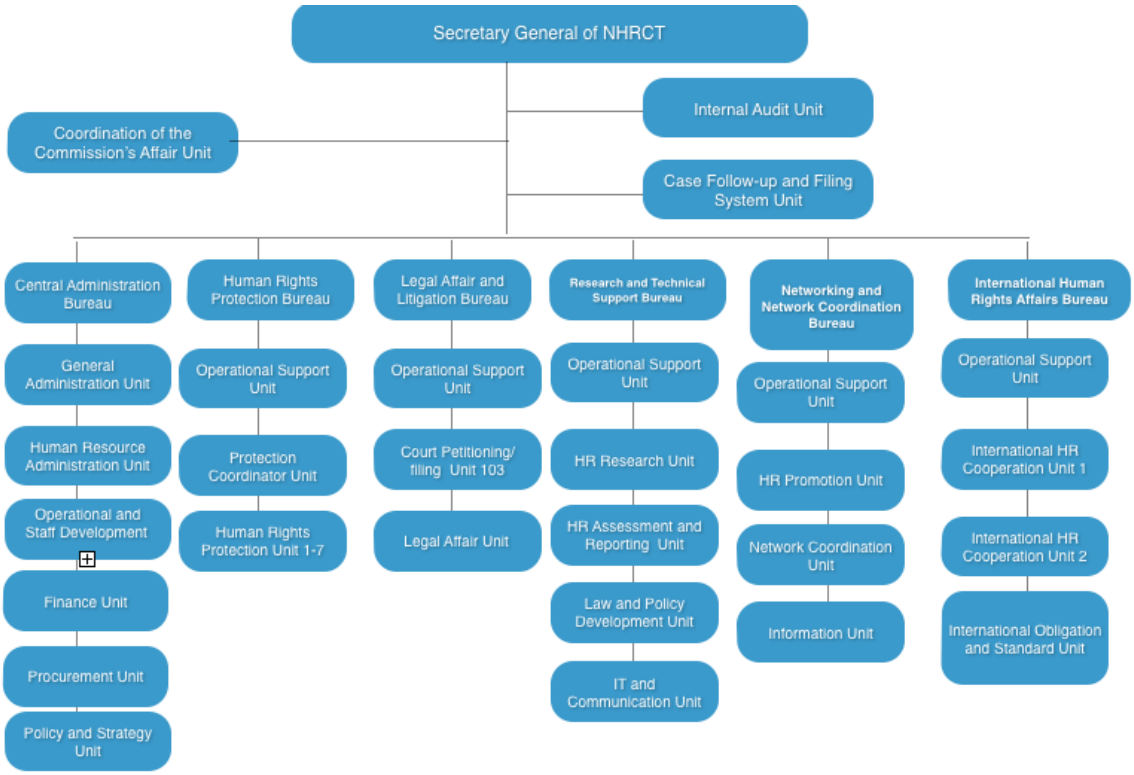
Divergences between Paris Principles compliance in law and practice	The selection process for the second and third NHRCT does not comply with the Paris Principles. The Constitution and the organic laws give power and authority to judges in the selection process. Judges may be upright and have legal knowledge; nevertheless, they may have limited understanding of human rights because human rights is about the universality of humanity, diversity and is broader than the law. The NHRCT has explained its incapacity to make proposals "to enhance the operation of NHRC, particularly collaboration with civil society sector, given the current political, social and economic context of Thailand now and in future" (personal communication, 20 July 2015).
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	The law does not grant the NHRCT immunity/protection in the course of their official duties.
Does the NHRI founding law include provisions that promote: * security of tenure; * the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; * the independence of the senior leadership; and * public confidence in national human rights institution.	No. For instance, Mr Charan Dittapichai is a former commissioner who have been impeached and removed from his position because he joined a 'Red-Shirt' political rally and gave a speech in front of former prime minister General Prem Tinsulanonda's residence. Despite the fact that he was not impeached by the 8 other Human Rights Commissioners because he has exercised his freedom to public assembly and freedom of expression in his personal capacity, the National Legislative Assembly considered his speech as a violation of the principle of political neutrality and impeached him. NHRCT officials monitor and comment on the current political crisis without State interference. A Commissioner can be removed from the office after an impeachment. Political criticism must be exercised with caution and it should also be noted that the lines between political and human rights commentary are blurred. The National Human Rights Commission should be protected from any litigation due to a critical analysis, when a commissioner gives a critical

	commentary in good faith.
Are there provisions that protect independence and effectiveness in a situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	No. After the coup, the atmosphere was one of surveillance and strict control. The Commissioners were monitored and their meetings with villagers required asking for the military authorities permission beforehand. The NHRCT has clarified that it is their right to conduct an inquiry without permission. According to the National Human Rights Commission of Thailand's report to the ICC-SCA on 28 October 2014; it is stated that, after the coup and the declared martial law, the NHRI has contested the declaration of the martial law and requested that the martial law should respect human rights. The Commission and the NCPO representatives have met at the Commission on Human Rights and have reached a common agreement that a detainee under the martial law must be released within seven days. The Committee can visit detainees. The NHRCT has visited detainees four times and found that everyone is treated with respect of human dignity, despite some claims of torture by lawyers representing detainees. The NHRCT confirmed that the declaration of martial law violates people's basic human rights. If the NCPO still insists on the necessity and need to declare a martial law, the NHRCT suggested that the NCPO should be able to provide its reasons to the public. The NHRCT is free from the domination of the NCPO. Nevertheless, it is facing many difficulties to visit any person in a prison to inspect a torture claim.
Divergences between Paris Principles compliance in law and practice	The 2007 Constitution on constitutional organization does not comply with the Paris Principles. The Thai government uses the domestic law as a mode of operation rather than its adherence to the international law. Thus, the Commission should advise the government on the need for adherence to international standards regarding to NHRIs, particularly in the Paris Principles.

Capacity and Operations	
Adequate Funding	The NHRCT is an agency under the jurisdiction of Parliament. It received a government budget for 2014 at THB 220, 784, 700 (USD6,899,522 i.e. 32 THB=1 USD) The Office has a total staff of about 200 people. The NHRCT must submit a strategic plan and a budget to Parliament. The NHRCT must attend a Parliamentary session for the review of its budget.
Government representatives on National Human Rights Institutions	Though there were no government officials on the commission, there were a police official, retired judges, retired state officers etc.

3. EFFECTIVENESS

The organizational structure of the National Human Rights Commission of Thailand is as below:



3.1 Complaints-Handling Mechanism

During 2014, the NHRCT received 689 complaints, categorized as follows:

Cases	No. of Cases	Percentage
Rights in judicial process	174	25.44 %
Community rights	87	12.71 %
Political rights	80	11.70 %
Rights to life and physical integrity	72	10.53 %
Unfair Treatment	69	10.09 %
Rights to property	60	8.77 %
Land rights	47	6.87 %
Personal rights and liberty	19	2.87 %
Rights to education	16	2.34 %
Administrative process rights	15	2.19 %
Labor rights	12	1.75 %
Rights to health and health services	10	1.46 %
Rights to housing	9	1.32 %
Rights and freedom of occupation	6	0.88 %
Consumer rights	2	0.29 %
Communication rights	2	0.29 %
Not specified	9	0.58 %

3.2 Performance of Sub-Commissions

The Chairperson of the National Human Rights Commission appoint sub-commissions. The Commissioners nominate the sub-commissioners. Each commissioner is composed of a President, who is a commissioner and an NHRCT official as secretary. The sub-commission assists the Commission in various affairs. Currently, there are 25.

The performance of the Sub-Commissions is not satisfactory.

- The nomination committee does not consider diversity of backgrounds and expertise especially in human rights in the selection of sub-commissioners and does not take into

account the proportion of women.

- Some sub-commissioners who have close ties with a commissioner are appointed in more than one sub-commission. Thus, their ability to function in a fact-finding mission is compromised.

- In preparing research reports or publications of the Commission, the staff grant contracts to those who have a personal connection with a sub-commissioner(s) or a working group.

- The NHRCT's investigation report on political protest in 2013 has not been published.

- The reports submitted to treaty-bodies of the United Nations pursuant to international conventions that Thailand has ratified, such as the Covenant on Economic, Social and Cultural Rights, which was drafted by the International Affairs Bureau, is short in content and does not cover all the provisions of the Covenant.

- The Southern border provinces organizations of people do not view the NHRCT as a credible human rights agency, because the NHRCT does not work with the public. In the Deep South, which is an area that has a lot of human rights violations, the NGOs' report on human rights abuses often presents a different picture and disputes the much fewer complaints recorded and reports conducted by the NHRCT. A small number of complaints are lodged with the NHRCT's office because the people/ victims do not have confidence in the investigations of the Southern Border Provinces Sub-commission.

3.3 Performance of Officials

The performance of officials of the NHRCT is also not satisfactory.

Many officials lack understanding of the universal principles of human rights.

The recruitment of staff happens in two ways including direct admission and transfer from other agencies. Those admitted directly are not tested on their knowledge of international human rights instruments: which is needed for competent performance of the human rights officers given that the domestic laws fail to properly address human rights issue, making it necessary to refer to international standards for guidance. Staff transferred from other agencies have no previous working experience related to the protection of human rights. The transfer to the NHRCT does not require an aptitude test for knowledge or experience in human rights. Thus, these officials also cannot function effectively.

Some officials lack perceived or actual neutrality in their operations. Some had attended a political rally, some are unusually close to security officials/ agencies, such as the military police. Hence, their human rights violation monitoring and handling of complaints has been slow.

Even if joining a political rally is a personal expression; the expression of a political stance during their duties is unprofessional. For example, comments from sub-commissioners during their official meetings often reflected various conservative political inclinations.

3.3 Policy Recommendations

According to information received from the NHRCT (personal communication, 20 July 2015), in 2014 the NHRC has written and submitted to the Parliament, the cabinet, the Prime Minister and concerned agencies policy proposals and recommendations on 49 issues. Of 37 policy proposals, 12 related to legal reforms.

Some of the policy recommendations to the Cabinet were: On the right to due process – remedies to victims and defendants in criminal cases; On reform of Security Laws i.e. the 1914 Martial Law Act, the 2005 Decree on the Administration in Emergency Situations, the 2008 Internal Security Act; On the Political Situation; On the Demand of the Eastern People's Network; On the trafficked Rohingya and Bangladeshis; On the rights of the public after the Coup; On reform of the Law on the Selection of the NHRCT commissioners.

At time of writing, the government has not acted on any of these proposals.

4. THE NHRCT CRISIS

4.1 Merging the NHRCT and the Ombudsman

An effort to merge the NHRCT and the Office of the Ombudsman has been underway since the drafting of the 1997 Constitution. At that time, the Constitution Drafting Assembly did not understand the importance and the role of national human rights institutions. There was fear of this human rights mechanism and a misperception that officials would be harassed when people can use the NHRI to lodge complaints of abuse. A human rights organization is perceived as a threat. That was the sentiment among conservative civil officials. The 1997 Constitution was drafted and opened to a public hearing, a referendum, and there was overwhelming public participation in its drafting. It was considered one of the best versions of the Thai Constitution.

In the 43rd session of the Constitution Drafting Commission (CDC) on 20 January 2015, the CDC proposed changing the status of the Commission on Human Rights and the National Ombudsman by establishing an 'Ombudsman and Guardian of the Rights of The People': having authority to defend human dignity, freedom and equality of the people. The details on its establishment, selection process, roles and responsibility, etc. will be specified in an 'Organic Law on the Ombudsman and Protector of the Rights of the People'.

There were many points of view on the proposed merger, both supporting and opposing it. The public that did not agree to it, observed that there is a misunderstanding of the role and functions of the National Human Rights Commission. Moreover, the debate demonstrated that the work to promote knowledge about human rights is not sufficiently accessible to the public; and that some people even resented the work of the Commission.

However, more than 50 human rights organizations and individuals from many countries have voiced a collective concerns opposing the merger of the two organizations. The reasons are that the mandate of the two organizations is different; their merger will negatively impact on the protection of the human rights of vulnerable groups.

There was also a statement from the Law Reform Commission of Thailand (LRCT) expressing its opposition to the merger. The LRCT also proposed to maintain the independence of the NHRCT and to ensure it has the same mandate as currently to carry out its duties. Additionally, the statement said that the NHRCT should have a relationship with civil society, and consider gender equality and independence from political interference in its operations. The NHRCT was recommended to improve its performance by setting clear guidelines in the law to achieve practical solutions.

The NHRCT sent an urgent letter dated 4 February 2015, regarding the draft of the constitution in respect of the National Human Rights Commission to the leader of the National Council for Peace and Order, the Speaker of the National Reform Council, the President of the National Assembly and Chairman of the Constitution Drafting Council. The content was against the merger.

The issues raised were as follows:

- Concern that the merger will affect the duty to promote and protect the human rights of the people because the two organizations have different mandates;
- The status of the NHRIs under the Paris Principles, the standard of the National Human Rights Institutions, will be affected;
- Merger will affect the status of human rights in Thailand within the international community;
- The mandate of the National Human Rights Commission requires efficiency and effectiveness to investigate violations; providing recommendations to the Administrative Court, the Constitutional Court and the Court of Justice and filing a case on behalf of the victim. The NHRC also provides recommendations on policy and legislative updates, harmonization of human rights promotion and protection, and research and information on the human rights situation. Therefore it is imperative the National Human Rights Commission should be independent and separate from other organizations.

The Ombudsman himself has sent a letter to the President of the Constitution Drafting Committee (CDC) on 29 January 2015, stating his disagreement to the merger.

It should be noted that various institutions including the Ministry of Foreign Affairs, and internationally renowned human rights experts such as Prof. Vitit Muntarbhorn were also not in favor of the merger.

In a technical note to the government of Thailand, the Regional Office for South-East Asia of the United Nations High Commissioner for Human Rights (OHCHR) also expressed its concerns that such a merger would weaken the NHRCT and put its effectiveness at risk.

The OHCHR outlined that in the event the NHRCT is not merged with the Office of the Ombudsman, then the NHRI should be strengthened by following the advice of the ICC-SCA on independence in the management of human and financial resources.

Alternatively, if the merger were to go ahead, the OHCHR recommended that the new institution should be in full compliance with the Paris Principles including:

- Clear provisions detailing how the new body will discharge its different mandates that require different working methodologies;

- Retention of all powers of the NHRCT under the 2007 Constitution and 1999 NHRCT Act, specifically "the power to demand relevant documents or evidence from any person or summon any person to give statements of fact".

Also, that regardless of the decision pertaining to the merger, to establish a revised selection process that complies with the Paris Principles for independent NHRIs, including:

- Ensuring pluralist representations of civil society and other key stakeholder groups in the selection committee;
- Requiring that the selection committee engage in broad consultation with and participation from the non-governmental sector during the application, screening and selection process;
- Providing clear and detailed criteria to assess the merits of eligible applicants to effectively discharge the mandate, taking into account the applicant's credible experience in the promotion and protection of human rights;
- Ensuring that the NHRCT Commissioners represent social, ethnic, religious, gender and geographical diversities in Thailand.

The current constitution drafting process has not been completed. Thus, the future of the two organizations is still uncertain. As of July 2015, the Constitution Reform Committee decided to suspend the merger.

4.2 Downgrading of NHRCT from 'A' to 'B'

The National Human Rights Commission of Thailand was first accredited "A" status in 2004. However, the ICC-SCA has been raising a number of concerns about the NHRCT's structure and functions, including the selection process since it was modified under the 2007 Constitution.

In October 2014, the ICC-SCA recommended that the NHRCT be downgraded to "B" status, because these concerns were not addressed, after a one-year grace period to correct itself. The NHRCT could submit supporting documents to show that concerns raised by the ICC-SCA have been addressed.[3] At time of writing no such efforts have been taken by the NHRCT to reverse the ICC-SCA's decision.

The ICC-SCA Assessment detailed five issues that contributed to the downgrading of the NHRCT.

1. The Selection and Appointment Process

The SCA expressed the following concerns towards a transparent and participatory selection process that promotes merit-based selection for qualified commissioners:[4]

- There is no requirement to advertise vacancies in the NHRCT;

[3] Office of the United Nations High Commissioner for Human Rights Regional Office for South-East Asia (2014). *Technical Note on the National Human Rights Commission of Thailand in the draft 2015 constitution*, accessed at http://bangkok.ohchr.org/files/OHCHR%20on%20NHRI%20150327.pdf.

[4] ICC-SCA (2014). *ICC Sub-Committee on Accreditation Report – October 2014,* accessed at *http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf*

- The selection committee established by Section 8(1) of the enabling law is composed of officials from a very small number of public institutions, with no clear representation, or a requirement for consultation with key stakeholder groups or civil society;
- There is no provision for broad consultation and/or participation, in the application, screening and selection process;
- There does not appear to be clear and detailed criteria upon which to assess the merit of eligible applicants.

2. Functional immunity and independence

The SCA encouraged the NHRCT to advocate for the inclusion of provisions to clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties.

- The NHRCT should be granted immunity from their official duties.
- It should be able to engage in critical analysis and commentary on human rights issues free from interference and with public confidence.

3. Addressing grave human rights issues in a timely manner

The ICC-SCA stressed that the mission of protecting human rights is not only through acting as an observer, but also conducting investigation and reporting. It also involves a systematic and relentless promotion and protection of the rights of the violated.

- The NHRCT failed to investigate and report on the 2010 and 2014 violent demonstrations and civil unrest in a timely manner.
- The investigation into the 2010 human rights violations was delayed by three years.

4. Independence and neutrality

- NHRCT officials displayed their personal political affiliations in the course of their duties. In a period when the country is undergoing political unrest, during and after the coup and in a state of emergency; the SCA noted that "it is expected that a National Human Rights Institution will conduct itself with a heightened level of vigilance and independence."[5] This had not been demonstrated by the NHRCT.

5. Legislative process

The SCA recommended that in the on-going legislative process, the NHRCT has an opportunity for the NHRCT to advocate for full compliance with the Paris Principles in its enabling law.

- The selection process is beyond the National Human Rights Commission's control. According to the Constitution and the organic Law on National Human Rights Commission

[5] ICC-SCA (2014). *ICC Sub-Committee on Accreditation Report – October 2014,* accessed at *http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf*

Act. It is the obligation of the National Human Rights Commission to communicate this understanding to the present government and the Constitution Drafting Committee to take into account the democratic selection process, including but not limited to involvement of civil society and transparency according to the Paris Principles. The selection process, if and when performed according to the Paris Principles will ensure that the Commission on Human Rights has a capacity to protect, upgrade and improve human rights in the country for the benefit of all people in Thailand.

The National Human Rights Commission has made proposals to the government and the Parliament to amend the selection process under the 2007 Constitution to comply with the Paris Principles. Nevertheless, it did not get much attention from both the governments of Prime Minister Abhisit and Prime Minister Yingluck. This implies that the both governments had failed to support and give priority to human rights.

5. CONCLUSION AND RECOMMENDATIONS

The downgrading of the status of the National Human Rights Commission of Thailand is a crisis that demands the Thai government to pay attention to advancing the full compliance of the NHRI with the Paris Principles.

The NHRCT has been established since 1999. For 16 years it has rarely served to sufficiently protect and defend human rights. The attitude of the authorities towards human rights is quite negative. The selection of the commission is far from open and transparent. The government has an unfavorable attitude towards this mechanism as a fault-finding and dangerous organization, rather than a mechanism to protect and claim the rights of citizens. The selection process is in the hand of judges that the state trusts, rather than the people. As a result, the commissioners do not have a good understanding of human rights, international mechanisms, and international human rights laws. Hence, the NHRCT's operations can hardly meet the standards expected of a national human rights institution.

The issue of internal conflicts within the Office of the NHRCT cultivates negative organizational culture. The conflict between the board of commissioners and senior staff has caused delay in its operations including timely release of human rights violation reports. The operations are hindered and the protection of human rights is sacrificed.

Consequently, the NHRCT needs to have quality and qualified commissioners, office and staff as well as public participation to make the public feel that the NHRCT is a mechanism to protect people.

Recommendations to the Government of Thailand:

1. The NHRCT should be maintained as a separate organization and not be merged with the Ombudsman;

2. The National Human Rights Act should be amended to ensure the selection process will comply with the Paris Principles and the ICC-SCA's recommendations in order to have competent Commissioners.

Recommendations to the NHRCT:

1. The NHRCT should have good quality branch offices in the regions for public access and for the promotion of people's human rights;

2. Human Rights Commission staff should maintain proper and professional positions while working with state officials to ensure impartiality. The Staff representing the Office of the NHRCT should be seen as supporting citizens rather than state officials;

3. The Commission should work with the Parliament to raise the importance of human rights to the Parliament and ensure that human rights and human security is balanced with 'national security';

4. Staff should be trained to have good knowledge on human rights and to work effectively with impartiality and a professional ethic.

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TIMOR-LESTE: PROACTIVE STEPS NEEDED FOR FURTHER IMPROVEMENT

Judicial System Monitoring Programme (JSMP)[1]

1. INTRODUCTION

The current situation of human rights development in Timor-Leste needs further advancement. After the restoration of the independence in 2002, there have been efforts by UN Agencies and the Office of the Ombudsman for Human Rights and Justice, to deliver training to police (PNTL) and armed forces (F-FDTL) on human rights and justice, in order to improve their knowledge and ability to respect human rights and prevent human rights violations. The PNTL and F-FDTL are considered to be the State institutions which have been most often responsible for major human rights violations compared to others.

In March 2014, the National Parliament approved Resolution No. 4/2014, which "*authorized the PNTL to disband all illegal organisations existing in the territories"*, including the Maubere Revolutionary Council (KRM) and the Popular Democratic Council of the Democratic Republic of Timor-Leste (CPD-RDTL).[2] The aim of the resolution is to prevent and respond to political instability, and threats to the rule of law. Subsequently the government, under Decree-Law No. 2/2007[3] on special operations of criminal prevention, authorised the PNTL and F-FDTL to establish the "Halibur*"* joint operation, which aimed to pursue the members of the organisations who refused to cooperate.

In April 2014, during the joint operation, the PNTL and F-FDTL exercised an excessive use of force and arbitrarily detained innocent people and forced them to dig for weapons and ammunitions, took them to mountains and forests, and forced and threatened them to expose members of those organisations in hiding in the jungle. Women and children were most vulnerable to human rights violations during the operation. Concerns were raised that the government may have violated the rights to freedom of association and expression by using parliament rather than the courts to declare the organizations illegal.[4]

In 2015, with resolution No. 11/2015 the Government condemned the acts of Revolutionary Council of Maubere (KRM) group as disturbing public order, and under Law No. 2/2010 ordered a joint operation called "Hanita" to capture the leader of the group named "Mauk Moruk" and his members. The President of the Republic, in the position as the Supreme Command of the Military Forces, ratified the resolution with the Decree of the President No. 41/2015.

Again there were reports from the Ombudsman for Human Rights and Justice (PDHJ) and NGOs regarding human rights violations committed during the operation. There was also reporting on the operation involving rampage and destruction of properties belonging to innocent people in the villages. In

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2 See http://jornal.gov.tl/?q=node/1085

3 See http://jornal.gov.tl/?q=node/1358

4 See the 2014/2015 report of Amnesty International, https://www.amnesty.org/en/countries/asia-and-the-pacific/timor-leste/report-timor-leste/

an effort to prevent further human rights violations, referring to Government Resolution No. 11/2015, the Government produced resolution No. 12/2015 on the rules of the operation, which called for respecting the freedoms and human rights of citizens.

Unfortunately, PDHJ did not report or disclose all of the results of its monitoring. PDHJ only reported eleven cases or complaints on human rights violations[5]. The Asian Justice and Rights (AJAR) and HAK Association discovered and reported more than one hundred cases or complaints of human rights violations.

The UPR (Universal Periodic Review) Mid-term Implementation Assessment report conducted in August 2014, showed that the government of Timor-Leste did not fully implement recommendation no. 67, in terms of ensuring respect of human rights and preventing further violations of human rights. This was true particularly in relation to violations regarding ill-treatment and excessive use of force by police; as well as armed forces carrying out trainings and strengthening civilian control of security forces[6].

The number of cases of gender-based violence in Timor-Leste is increasing every year, particularly domestic violence and sexual violence. According to JSMP's 2014 Annual Report, domestic violence constituted 49% and sexual violence constituted 8% of a total of 951 criminal cases. In order to fulfil its duties in promoting and protecting human rights of its citizens, particularly women and children, and comply with the international legal instruments on human rights ratified by Timor-Leste, the government has introduced Law No. 7/2010, Law Against Domestic Violence[7] and is currently developing a draft law on child protection. The law on child protection will guarantee the right of children to have access to formal justice. There have been number of children (legally considered as minor age) found in prison[8]. Based on PDHJ's Convention on the Rights of the Child 2015 report there are currently 2 prisoners of 16 years age; 5 prisoners who are 17 years old; and 28 prisoners who are between the ages of 16 and 21[9].

The international legal instruments on human rights which have been ratified by Timor-Leste included the International Convention on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Child (CRC).

According to the UPR Mid-term Implementation Assessment Report in 2014," the Government of Timor-Leste fully has implemented the UPR recommendation no. 26 "Persist in its efforts to eradicate corruption, corporal punishment of children, discrimination against women and domestic violence (Recommended by Holy See)"[10]. However, the 2015 PDHJ ICCPR report and surveys carried out by

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5 Only available in Tetum: http://pdhj.tl/wp-content/uploads/2014/06/REZULTADU-MONITORIZASAUN-MUNICIPIU-BAUCAU.pdf

6 See report here http://www.upr-info.org/followup/assessments/session26/timor_leste/MIA-Timor_leste.pdf

7 See Law No. 7/2010 on Law Against Domestic Violence http://jsmp.tl/wp-content/uploads/2013/08/LeiKontraViolensiaDomestika-No-7-2010-Eng.pdf

8 See JSMP report in 2014 on children access to justice http://ntba.asn.au/wp-content/uploads/Childrens-Access-to-Formal-Justice-in-TimorLeste_ENGLISH-Sophie-Knipe.pdf

9 PDHJ CRC 2015 report; P29

10 See report here http://www.upr-info.org/followup/assessments/session26/timor_leste/MIA-Timor_leste.pdf

PDHJ in 2012 and 2014 in several districts in Timor-Leste has shown that around 86% to 88% of students surveyed responded they have experienced physical punishment[11].

The government's Media Law has been considered as repressive, and violates the rights to freedom of expression and freedom of press and mass media, which are guaranteed under Article 19 of Universal Declaration on Human Rights (UDHR) and Article 19 of International Covenant on Civil and Political Rights (ICCPR) on the freedom of Expression, as well as Article 40 of the Timor-Leste's Constitution on the Freedom of Speech and Information, and Article 41 on the Freedom of Press and Mass Media.

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/ Constitution/ Presidential Decree	The PDHJ was established under legal provisions in the Constitution of the Democratic Republic of Timor-Leste (RDTL)[12] and Law No. 7/2004. The Constitution of RDTL only sets out general principles and guidelines in relation to a National Human Rights Institutions (NHRI). Law No. 7/2004 defines all of the specific details, processes and procedures of the PDHJ. In 2011, the Government established Decree Law No. 25/2011 on the organic framework and status of the PDHJ which establishes the rules necessary for the PDHJ to achieve its objectives as a specialised institution, with technical services in the areas of human rights and good governance.
Mandate	Based on the provision of Article 27.3 of the Constitution; the Ombudsman shall be appointed by the National Parliament through absolute majority votes of its members, for a term of office of four years. Under Article 19.1 of Law No. 7/2004, the Ombudsman for Human Rights and Justice (PDHJ) is elected for a term of four years and may be re-elected only once for the same period.[13] The Deputy Ombudsmen are also appointed by the Ombudsman for the same term and may be reappointed only once for an equal period. Within the term of office as above described, the Ombudsman and Deputy Ombudsmen have been conceded by Law No. 7/2004 to have broad and abundant powers or mandates, as demonstrated by the following articles: ***Article 3***

11 See the 2015 PDHJ's CRC report; P9.

12 See Art. 27 of the Constitution; http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf.

13 See Art. 19.1 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

	Scope of Action *1. The Ombudsman for Human Rights and Justice shall exercise his or her functions within the scope of action of public entities, notably the Government, the PNTL, the Prison Service, and the FFDTL.* *2. The action of the Ombudsman for Human Rights and Justice may also focus on the activities of public or private entities and agencies that, regardless of their origin, fulfill public functions and services or manage public funds or assets.* *3. The Office shall, subject to Article 37.3, investigate all complaints relating, but not limited to acts or omissions which:* *(a) are contrary to the law or regulation;* *(b) are unreasonable, unfair, oppressive or discriminatory;* *(c) are inconsistent with the general course of a public entity or agency's functions;* *(d) proceed from mistake of law or an arbitrary, erroneous or mistaken ascertainment of facts;* *(e) are otherwise irregular and devoid of justification.* ***Article 23*** ***Investigation*** *The Ombudsman for Human Rights and Justice shall be empowered to investigate violations of fundamental human rights, freedoms and guarantees, abuse of power, maladministration, illegality, manifest injustice and lack of due process, as well as instances of nepotism, collusion, influence peddling and corruption.* ***Article 24*** ***Monitoring and Advice*** *The Ombudsman for Human Rights and Justice shall, within the scope of his or her monitoring powers, be empowered to:* *(a) oversee the functioning of public authorities, notably the Government, its agencies and private entities fulfilling public functions and services and may conduct inquiries into systematic or widespread violations of human rights, maladministration or corruption;* *(b) submit to the Government, the National Parliament or any other competent body, on an advisory basis, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights and good governance;* *(c) request the Supreme Court to declare the unconstitutionality of legislative measures, including unconstitutionality through omission in accordance with Sections 150 and 151 of the Constitution of Timor-Leste;* *(d) monitor and review regulations, administrative instructions, policies and practices in force or any draft legislation for consistency with customary international law and ratified human rights treaties;* *(e) recommend the adoption of new legislation, and propose the amendment of legislation in force and the adoption or amendment of administrative measures.*

	Article 25 ***Promotion of human rights and good governance*** *1. The Ombudsman for Human Rights and Justice shall, within the scope of his or her action to promote human rights and good governance, be empowered to:* *(a) promote a culture of respect for human rights, good governance and fight against corruption, notably by making public statements, conducting information campaigns or by other appropriate means to inform the general public and public administration, and disseminate information regarding human rights, good governance and fight against corruption;* *(b) make recommendations on the ratification of, or accession to, international human rights instruments, monitor the implementation of those instruments, and recommend that reservations to those instruments be either withdrawn or raised.* *2. The Ombudsman for Human Rights and Justice may also:* *(a) advise the Government on its reporting obligations within the framework of international human rights instruments;* *(b) contribute to the reports that Timor-Leste is required to submit to United Nations bodies and committees, and to regional institutions;* *(c) express an independent opinion on the Government's reports.* *3. The Ombudsman for Human Rights and Justice may seek leave of the Court to intervene in legal proceedings in cases that involve matters under his or her competence, notably through the expression of opinions.* ***Article 27*** ***Fight against influence peddling*** *The Ombudsman for Human Rights and Justice shall, within the scope of fight against influence peddling, be empowered:* *(a) to investigate the legality of administrative acts or procedures within the scope of relations between public administration and private entities;* *(b) to monitor the legality and correction of administrative acts involving property interests, notably the award of public works contracts and contracts for the supply of goods or services, procurement and disposal of property assets or payment of compensations, import or export of goods and services, granting or refusal of credits and debt forgiveness;* *(c) to propose to the National Parliament and the Government the adoption of legislative or administrative measures for improving the functioning of services and respect for administrative legality, namely for the elimination of factors favoring or facilitating unlawful or unethical practices.* ***Article 28*** ***Scope*** *For the purpose of performing his or her functions under Articles 23 to 27, the*

	Ombudsman for *Human Rights and Justice shall have the following powers:* *(a) to receive complaints;* *(b) to investigate and inquire into matters under his or her competence;* *(c) to decide not to take any further action on, or dismiss, complaints brought before him or her, pursuant to Article 37.3 below;* *(d) to order a person to appear before him or her or at another place deemed more appropriate where it appears that person may have information relevant to an investigation initiated or to be initiated;* *(e) to have access to any facilities, premises, documents, equipment, goods or information for inspection and interrogate any person to whom the complaint relates somehow;* *(f) to visit any place of detention, treatment or care in order to inspect the conditions therein and conduct a confidential interview of the persons in detention;* *(g) to refer a complaint to a competent jurisdiction or another recourse mechanism;* *(h) to seek leave of the National Parliament to appear before a court, arbitration tribunal or an administrative enquiry commission;* *(i) to act as a mediator or conciliator between the complainant and the agency or entity which is the subject of a complaint, where the parties agree to submit to such a process;* *(j) to make recommendations for redress in complaints brought before him or her, notably by proposing remedies and reparations;* *(l) to provide advice including opinions, proposals and recommendations for the purpose of improving respect for human rights and good governance by the entities within his or her jurisdiction;* *(m) to report to the National Parliament in relation to the findings of an investigation or in relation to his or her recommendations.* Besides the competences and powers, there are also some restrictions as stated in Articles 29 and 42: ***Article 4*** ***Limits of Action*** *1. The activities of the National Parliament and the Courts performing their legislative and judicial functions shall not be subject to the investigative and supervising powers of the Ombudsman for Human Rights and Justice's, save insofar as their administrative activity as well as the acts that* *they perform in supervising the administration, are concerned.* *2. The Ombudsman for Human Rights and Justice may however review the constitutionality of legislative measures in accordance with Sections 150 and 151 of the Constitution of Timor-Leste.*

	Article 29 ***Limits of powers*** *The Ombudsman for Human Rights and Justice shall not be empowered:* *(a) to make decisions which dispose of fundamental human rights or freedoms;* *(b) to set aside, revoke or modify the decisions of the agencies or entities affected, or make compensation orders;* *(c) to investigate the exercise of judicial functions or challenge a decision issued by a Court; or* *(d) to investigate the exercise of legislative functions, except through the means of monitoring constitutionality under the Sections 150 and 151 of the Constitution of Timor-Leste;* *(e) to investigate a matter that is already subject of an action before a Court, and has not yet been determined.* ***Article 42.2*** ***Scope of investigative powers*** *2. The Ombudsman for Human Rights and Justice shall not investigate:* *(a) a matter which is already pending before a Court;* *(b) a matter involving the relations or dealings between the Government and any other Government or an international organization;* *(c) a matter relating to the grant of pardons or commutation of sentences, as per Section 85* *(i) of the Constitution of Timor-Leste.*
Selection and appointment	
Clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines	The selection process is defined in Law No. 7/2004, Article 12.1-5 and Article 16.1-6. The Ombudsman is appointed by the National Parliament with an absolute majority of votes.[14] The National Parliament publicly announces the candidacy of the Ombudsman for a period of one month.[15] The National Parliament will vote on all candidates; with one to be elected to the position of Ombudsman in a plenary session.[16] Then the Ombudsman him/herself will appoint two or more Deputy Ombudsmen.[17]
Independent and	The body that is responsible for the selection process is the National Parliament, under Article 12 of Law No. 7/2004. NGOs and Civil Society can participate in proposing their

[14] See 12.1 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

[15] See 12.3 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

[16] See 12.4 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

[17] See 16.1 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

credible body which involves open and fair consultation with NGOs and Civil Society	candidates. The election of the new Ombudsman will occur after two months, counting from the date of the vacancy.[18]
Assessment of applicants based on pre-determined, objective and publicly available criteria	There are several criteria for the candidate for Ombudsman based on the provision of the Law No. 7/2004, **Article 13** as follows: ***Eligibility requirements*** *A person shall not be qualified for appointment as Ombudsman for Human Rights and Justice, unless he or she has:* *(a) sufficient experience and qualifications in order to investigate and report on human rights violations, corruption, influence peddling, and malpractice in the administration;* *(b) proven integrity;* *(c) a sound knowledge of the principles of human rights, good governance and public administration.* *2. A person applying for the position of Ombudsman for Human Rights and Justice shall also be recognized for his or her standing in community, as well as his or her high level of independence and impartiality.*
Provision for broad consultation and/ or participation, in the application, screening and selection process	The provision of the Article 12.3 of the Law No.7/2004 clearly mentions that "the National Parliament will publicly solicit the candidacy for the Ombudsman of Human Rights and Justice for a duration of one month starting from the vacancy". The candidacy is opened to the public, and the public can participate in the application process. The National Parliament will consider all candidates, and in a plenary session will vote on one of them. In 2014, the newly elected Ombudsman established a new mechanism in the selection of the Deputy Ombudsmen a Dispatch or Order No. 13/PDHJ/XI/2014, which took into consideration the recommendations on pluralism and gender balance made by JSMP in the previous ANNI Report. Normally and under law, the Ombudsman himself nominates his Deputy Ombudsmen as he wishes to. The selection of the Deputy Ombudsmen in 2014 involved a high level panel for selection. Initially, JSMP was invited as an observer, but then became one of the panel members. There were three representatives from NGOs, one from the National University and one from the PDHJ. The Panel considered all of the candidates who submitted their applications and then conducted interviews with each one of them. After the interview, the Panel decides based on the results of the interviews, and ranks candidates numerically from number one (1) down. The Panel will recommend the candidates in the position of number one (1) and two (2) to be Deputy Ombudsmen. The Panel recommended one female candidate to hold the position as the Deputy Ombudsman for Good Governance and one male candidate for the position of the Deputy Ombudsman for Human Rights and Justice.

[18] See 20.2 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

	On 14 January 2015, the two Deputy-Ombudsmen, Ms. Jesuina Maria Ferreira Gomes as the Deputy-Ombudsman for Good-Governance and Mr. Horacio de Almeida as the Deputy-Ombudsman for Human Rights, were sworn in the National Parliament by Mr. Vicente da Silva Guterres, the President of the National Parliament. The process of the selection and appointment of the two Deputy Ombudsmen was to the satisfaction of the general public, and civil society in particular. The Ombudsman, alongside proposing a new manner of selecting the Deputy, has also restructured the administration level of the PDHJ, so as to promote the participation of more women in leadership. The Deputy Ombudsman for Human Rights is an individual who is very open and flexible in term of his public relationships. Both Ombudsman and Deputy Ombudsman for Human Rights and Justice have long working experience in dealing with human rights issues[19].
Requirement to advertise vacancies	Normally vacancy advertised through all of the national media including journals, TV and radio, on a daily basis. The National Parliament encourages the public in general to participate or apply for the position.
Divergences between Paris Principles compliance in law and practice	Even though there is political influence in the selection process of the Ombudsman, the candidacy is opened to public, and the selection of the Deputy Ombudsmen involved NGOs and Civil Society. On this basis there are no divergences between Paris Principles Compliance in law and practice.
Functional Immunity	
Are members of the NHRI granted immunity/ protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	The law No. 7/2004 fully granted PDHJ the privileges and immunities from the prosecution for actions taken in good faith in the course of its official duties. ***Article 18*** ***Privileges and immunities granted to the function*** *1. The Ombudsman for Human Rights and Justice and the Deputy Ombudsmen shall enjoy such rights, honors, precedence, rank, remuneration and privileges as the Prosecutor-General and the Deputy Prosecutor-General, respectively.* *2. Neither the Ombudsman for Human Rights and Justice nor the Deputy Ombudsmen shall be civilly or criminally liable for any act done or omitted, observation made or opinion issued, in good faith in the exercise of their functions.* *3. The Ombudsman for Human Rights and Justice and the Deputy Ombudsmen shall be answerable before the National Parliament for offences committed in the exercise of their functions and for clear and serious violation of their obligations arising from the present law.* *4. The National Parliament shall decide on the lifting of the immunities of the Ombudsman*

19 See the profiles of Ombudsman and Deputies here http://pdhj.tl/about/meet-the-ombudsman-and-deputies/?lang=en.

	for Human Rights and Justice or of the Deputy Ombudsmen in case of an offence committed in the exercise of their functions. *5. The National Parliament shall remit to the Prosecutor-General any criminal offence committed by the Ombudsman for Human Rights and Justice or by the Deputy Ombudsmen outside the exercise of their functions.* *6. All correspondence addressed or material and information furnished to, obtained or collected by the Ombudsman for Human Rights and Justice or his or her staff shall be immune from any kind of censorship or other interference.* *7. The premises of the Office shall be inviolable. The archives, files, documents, communications, property, funds and assets of the Office or in possession of the Ombudsman for Human Rights and Justice, wherever located and by whomever held, shall be inviolable and immune from search, seizure, requisition, confiscation or any other form of interference.*
Does the NHRI founding law include provisions that promote: - security of tenure; - the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; - the independence of the senior leadership; and - public confidence in national human rights institution.	The provision of the law No. 7/2004 does promote the security of tenure of PDHJ as prescribed in the following article: ***Article 19 (Term of office)*** *...* *4. Once appointed, the Ombudsman for Human Rights and Justice shall remain in office until expiration of his or her mandate except in the cases provided for in sub-article 5 below.* *5. The mandate of the Ombudsman for Human Rights and Justice is deemed to have expired in the following cases:* *(a) expiration of the term of his or her mandate;* *(b) death;* *(c) resignation;* *(d) mental or physical incapacity to carry out his or her duties, attested by a medical panel;* *(e) final conviction for a criminal offence that carries a prison sentence exceeding one (1) year;* *(f) final conviction for a criminal offence punished by actual imprisonment;* *(g) removal from office under the terms of Article 21.* The law also gives competence to the PDHJ to promote human rights through public campaigns, public statements, etc. as described in the following article: ***Article 25 (Promotion of human rights and good governance)*** *1. The Ombudsman for Human Rights and Justice shall, within the scope of his or her action to promote human rights and good governance, be empowered to:* *(a) promote a culture of respect for human rights, good governance and fight against corruption, notably by making public statements, conducting information campaigns or by other appropriate means to inform the general public and public administration, and disseminate information regarding human rights, good governance and fight against corruption;*

	The PDHJ officers have been prohibited entering into the localities where the F-FDTL and PNTL have been conducting operations. Unfortunately, PDHJ did not immediately report or publish the related information into public domain such as in media or in PDHJ own website for public access. Through this way, it could be possible prevent the repetition of the same thing in future and these institutions can also be accountable to public.
Provisions that protect situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence	There is no any provision that considers specifically the issue of coup d'état or state of emergency where the PDHJ should conduct itself with a heightened level of vigilance and independence.
Divergences between Paris Principles compliance in law and practice	Even though there is a special committee (Committee A) of the National Parliament responsible for Constitutional Affairs, Justice, Public Administration, Local Authority and Anti-Corruption, there has never been any intervention or intimidation or harassment practiced by this committee. There is a provision on the judicial intervention as prescribed in the following article: ***Article 43*** ***Duty of non-interference*** *The Courts shall not arbitrarily interfere with, nor shall issue any writ of injunction to delay, an investigation being conducted by the Ombudsman for Human Rights and Justice, unless there is prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman for Human Rights and Justice or if there is mala fide or conflict of interest.* Therefore there is no indication of divergence between compliance with the Paris Principles in law and practice.
Capacity and Operations	
Adequate funding	The law No. 7/2004 has provided a provision on the financial adequacy of the PDHJ as the following: ***Article 11*** ***Adequacy of funding for the Office*** *1. The Office shall have an annual budget sufficient to ensure its operation, and adequate to maintain its independence, impartiality and efficiency. Such budget shall be*

	appropriated in accordance with the law. *2. The budget for the Office shall be prepared, approved and managed in accordance with the law.* *3. The funds of the Office shall consist of all budgetary appropriations for the Office and all other funds lawfully received by the Office.* *4. The Office shall not receive funds from a source and in circumstances that could compromise its independence and integrity and any investigation.* *5. The Office shall keep proper books of account and other records in relation to its functions or activities, and shall be accountable under the law.* *6. The Office's statements of accounts shall also be submitted to the National Parliament, and may be audited by the High Administrative, Tax and Audit Court or shall, pending the creation of the latter, be subject to independent external auditing.* The PDHJ as a the State institution, will prepare its annual plan together with its budget, to submit to Ministry of Finance. This will be included in the Book of the State Budget proposal, and then submitted to the National Parliament for discussion and approval. During the discussion, the National Parliament will invite the PDHJ to provide answers to the questions raised by the MPs regarding its annual plan of activities, and the budget allocation for each of these activities. The budget can be increased, maintain or decreased. The budget of the PDHJ in 2015 was USD1.095 million. This is a decrease of 2.7% from the 2014 budget, which was USD1.512 million. The budget allocation appears to be insufficient to cover all of the activities and salaries of the staff of the PDHJ. In both 2014 and 2015, the PDHJ has complained about its budget which limited the number of activities it can conduct.
Government representatives on National Human Rights Institutions	There are no government representatives in the PDHJ.

3. EFFECTIVENESS

Mandate and Limitations/Restrictions

The Ombudsman and his Deputy Ombudsmen, within their term of office, have been granted by law broad mandate to receive, investigate and provide recommendations on cases of human rights violations and to oversee the function and performance of public and private entities that deliver public services, to assure the promotion of human rights and justice, and good governance. The mandate of the Ombudsman

has been described in detail in the provisions of the law No. 7/2004 Article 3, and Article 23 to Article 28[20].

Beside the mandate, the law also includes provisions on the limitations and restrictions on the Ombudsman's power. The restrictions are mostly with regards to preventing Ombudsman intervention into judicial and legislative functions, with the exception of administrative activities and the supervision of constitutionality under Articles 150 and 151 of the Constitution[21]. These limitations and restrictions are provided in Articles 4, 29 and 42.2 of the law No. 7/2004.

Complaint Handling and Investigation

In 2014, the PDHJ with the support of the Office of High Commissioner for Human Rights (OHCHR) through the United Nations Development Programme (UNDP) developed a new website with lots of useful information. This included information on the method for making complaints, online complaints, complaint handling, reporting on complaints, a case map, and access to justice for vulnerable groups[22]. In their role as Timor-Leste development partners, the OHCHR and UNDP, besides providing technical support to the PDHJ, also have provided other support through mentoring, training, workshops and courses, in order to consolidate the abilities of staff, and the improve the institutional structure of PDHJ. This support can increase the capacity of the staff in respect of complaint handling and investigation.

The scope of the power of the PDHJ in complaint handling, investigation and recommendations is in the provision of Article 28 of the Law No. 7/2004 as the following:

a) *receive complaints;*
b) *investigate and inquire about matters within its competence;*
c) *allow or disallow the complaints submitted to it under paragraph 3 of Article 37;*
d) *summon or call any person to appear before himself or another location that is deemed most appropriate, if it considers that it may have relevant information for a investigation started or start;*
e) *enter any premises, sites, equipment, documents, goods or information and inspect them and interrogate any person in any way related to the complaint;*
f) *visit and inspect the conditions of any place of detention, treatment or care and conduct confidential interviews with detainees;*
g) *forward complaints to the competent court or other mechanism of action;*
h) *request permission from the National Parliament to appear before a court, administrative tribunal or commission of inquiry;*
i) *mediate or reconcile the complainant and the agency or entity subject of the complaint, when they agree to undergo such a process;*
j) *recommend solutions to complaints submitted to it, including proposing remedies and reparations;*
k) *advise and give opinions, proposals and recommendations to improve compliance*

20 See Law No. 7/2004 http://pdhj.tl/wp-content/uploads/2013/11/Law-2004-7-PDHJ-Statutee.pdf.

21 See Constitution of Timor-Leste http://timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf.

22 See http://pdhj.tl/case-handling/?lang=en.

human rights and good governance by the entities within its area of jurisdiction;

l) report to the National Parliament the findings of its investigations and its recommendations.

Investigation can only be conducted on cases within the powers mandated to PDHJ. The cases that are outside of this power will be referred to relevant institutions. For example, criminal cases will be referred to Public Prosecution Office. The cases that are under the mandate of PDHJ, and cases of human right violations will be investigated by PDHJ. The mandate of PDHJ is outlined in the Article 23 of the Law No. 7/2004:

> *It is mandatory for the Human Rights and Justice Ombudsman to investigate violations of human rights and freedoms and guarantees, abuses of power, maladministration, illegality, manifest injustice and lack of a fair trial as well as cases of nepotism, collusion, trafficking influences and corruption.*

The rules of investigation are in the provision of the Article 41 of the Law No. 7/2004 as the following:

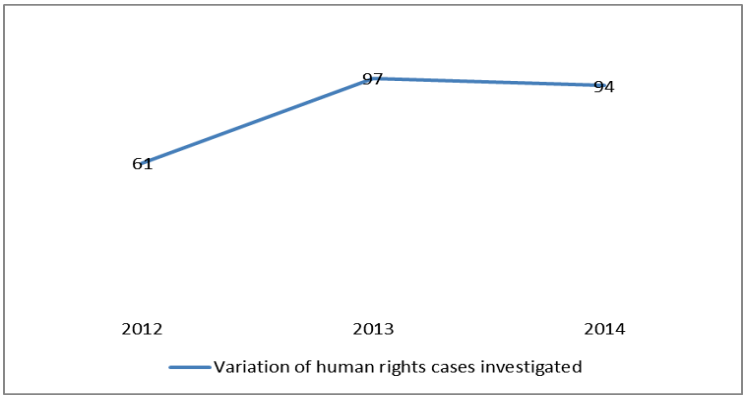
1. *Investigation is conducted safeguarding respect for the rights and freedoms of the people involved.*
2. *Investigations under this law are secret.*
3. *The persons summoned to appear before the Ombudsman for Human Rights and Justice may, if they wish, be accompanied or represented by an attorney or advocate with the permission of the Ombudsman for Human Rights and Justice.*
4. *The Ombudsman for Human Rights and Justice can hear the entities or persons concerned.*
5. *The Ombudsman for Human Rights and Justice may also listen to people who have been called into question by allowing them, or his representative, to provide the necessary clarifications and respond to allegations against them in the complaint, setting a deadline for it reasonable.*
6. *The investigations of the Ombudsman for Human Rights and Justice are not subject to civil or criminal procedural rules or those governing the production of evidence, but shall always be conducted with objectivity and in accordance with the rules of equity.*

Cases which do not have sufficient proof are to be filed, and those that have been proven to involve human rights violations, will be subject to recommendations by PDHJ that relevant institutions be subject to relevant administrative sanctions, or criminal prosecution for cases that contain both human rights violations and criminal offences. The provision of the Article 47 of the Law No. 7/2004 on the recommendations outlines the following:

1. *The Ombudsman for Human Rights and Justice should identify the causes of human rights violations, abuse, mismanagement, fraud, corruption and trading in influence in a public entity and make recommendations for its correction, prevention or elimination and the observance of highest standards of human rights, the principle of legality, ethics and efficiency.*
2. *The recommendations of the Ombudsman for Human Rights and Justice will be directed to the organ with powers to correct or repair the instrument or undocumented.*
3. *The body to which the recommendation is addressed must, within 60 days, inform the Ombudsman for Human Rights and Justice on the measures taken to comply with or implement the recommendations made by it.*

4. *When the recommendation has not been fulfilled or implemented, the Ombudsman for Human Rights and Justice may report it to the National Parliament, as per Articles 34 and 46.*

Although PDHJ has conducted investigations and provided recommendations to institutions whose members have committed human rights violations (such as PNTL and F-FDTL), the number of human rights cases investigated by the PDHJ has remained fairly static. Institutions must within 60 days inform PDHJ on the measures they taken to comply with recommendations, however further follow-up action is required to ensure that the institutions have complied, or taken measures to comply with the recommendations. This is necessary to ensure that institutions have legitimately taken such measures, and in order to assess whether those measures are appropriate for reducing violations of human rights in the future.

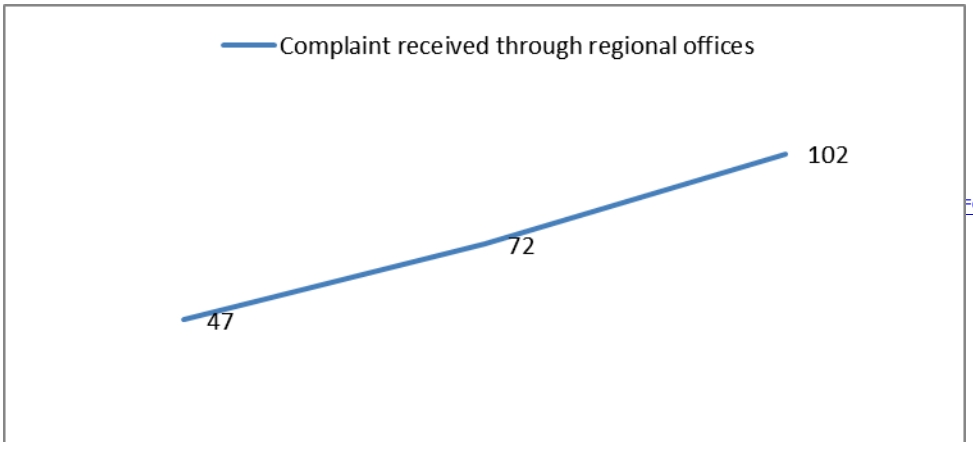


The newly elected Ombudsman has established a department for monitoring and following-up on recommendations. It is hoped that this strategy will be effective in contributing towards and to promoting human rights over time.

Methods of making complaints

The PDHJ has several methods by which members of the public may make complaints. This includes making complaints online, by phone call, mobile service, or directly visiting the central office in Dili and regional offices in Baucau, Maliana, Same and Oecusse. Another option available in all 13 districts lodging a complaint in one of the designated complaint boxes, which are located at the offices of each District Administration.[23] The number of complaints received through the regional offices increased from the year of 2012 to 2014[24].

Figure 2



en.

Mobile complaint service

The mobile complaint service in 2014 integrated into PDHJ's socialisation session. In 2014, the PDHJ held 60 socialisation sessions in whole territory to 4337 people and received 6 complaints on human rights issues.

Complaint boxes

The PDHJ has established complaint handling by providing complaint boxes located at the offices of the District Administrations in 13 districts.[25] Even though the PDHJ has established complaint boxes in all 13 districts, the number of complaints received very low.[26] There are probably several reasons for this. One is that this may be a result of limited information disseminated amongst the public regarding the existence of the complaint boxes. An additional reason may be the lack public confidence in the security of this method. It is recommended that PDHJ to evaluate this method of receiving complaints in order to gain a further understanding as to why the public do not use it effectively.

Complaint handling process

The PDHJ has described the complaint handling process on its website. The process is as follows:[27]

- complaint received by the Ombudsmen
- preliminary assessment
- case is either dismissed, opened for full investigation or postponed
- open cases then go into a process involving mediation/conciliation, investigation and/or referral
- mediation/conciliation can lead to a negotiated agreement and follow-up to that agreement, or it may be unsuccessful and result in the need for an investigation
- investigations lead to a report, and then follow-up to the report findings and recommendations for public authorities involved
- cases are closed when all actions and follow-up are completed

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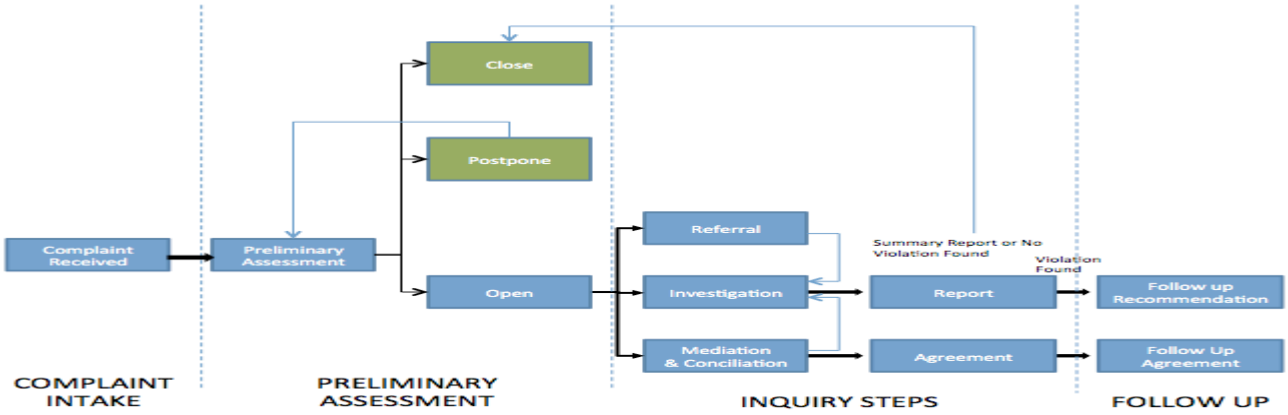
25 See the website of the PDHJ, http://pdhj.tl/case-handling/make-a-complaint-online/?lang=en.

26 See the 2013 Annual Report, p. 94, http://pdhj.tl/media-publications/annual-reports-budgets/?lang=en.

27 See the website of the PDHJ on complaints handling, http://pdhj.tl/case-handling/complaints-process/?lang=en.

The map of the complaints handling procedure is presented below:



Under Article 45 of Law No. 7/2004, the final report of the investigation has a clearly defined procedure with regards publishing the final report of the investigation. The provision cites that the after the investigation PDHJ is to send the complainant and the person or entity called into question a draft report containing the results of its investigation and its assessment, conclusions and recommendations, before publication.[28] The litigants have the opportunity to submit comments within 15 days from the date of receipt of the draft report.[29] After this period the PDHJ can publish the results of the investigation and its opinions, conclusions and recommendations.[30]

The PDHJ should not keep secret the results of the final report on the investigations, opinions, conclusions and specific recommendations based on specific cases of human rights violations; only the individual right to privacy can be protected.[31]

Referring of Findings to other State Institutions

According to its annual reports, the PDHJ has conducted investigations on complaints registered which were under its mandate. There have been recommendations made and directed to institutions responsible for violations committed. The PDHJ also referred the cases considered under the mandate of the Public Prosecutor[32] for further investigations and proceedings in court, as it has limitation in respect of

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28 See Art. 45.1 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

29 Art. 45.2 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view or http://pdhj.tl/wp-content/uploads/2013/11/Law-2004-7-PDHJ-Statutee.pdf and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

30 See Art. 45.3 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

31 See Art. 31.2 of Law No. 7/2004; http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

32 See Art. 33.4 of the Low No. 7/2004 http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

undertaking interventions in judicial process.[33] The PDHJ only has legal power to recommend or propose remedies and reparations to victims of human rights violations.[34]

Monitoring the Progress or Follow-up Recommendations

The provision the Article 47.2-4 of the Law No. 7/2014 has clearly about the process of the recommendations.

> …
> *2. The recommendations of the Ombudsman for Human Rights and Justice will be directed to the institution with powers to correct or repair the instrument or undocumented.*
> *3. The institution to which the recommendation is addressed must, within 60 days, inform the Ombudsman for Human Rights and Justice on the measures taken to comply with or implement the recommendations made by it.*
> *4. When the recommendation has not been fulfilled or implemented, the Ombudsman for Human Rights and Justice may report it to the National Parliament, as Articles 34 and 46.*

To effectively monitor the progress or follow-up the recommendations, the PDHJ has established a department responsible for undertaking this.

A department has been established within the PDHJ with the task to follow-up on recommendations to ensure compliance.

Involvement with Court

The provisions of the Article 4.1, Article 29 (c) and (e), Article 42.2 (a) of the Law No. 7/2004 have placed restrictions on the PDHJ in terms of its powers of investigate and oversight, so as to not to include the functional activities of the courts and matters or cases pending before a court, with the exception to administrative activities and acts taken for the administration oversight. The law only gives PDHJ power to request permission from the National Parliament to appear before a court, administrative tribunal or commission of inquiry to provide legal opinion or testimony in the form of *amicus curiae*[35].

The law also provides restriction to Courts to not interference in the work of the PDHJ. The Article 43 describes in detail as the following:

> *"The courts can not interfere arbitrarily with the investigation of Human Rights and Justice Ombudsman or issue any injunction to delay the investigation, unless there are strong indications that these are being conducted outside the scope of its competence, existence of bad faith or conflict of interest"*.

4. OVERSIGHT AND ACCOUNTABILITY

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33 See the 2013 Annual Report, pp. 48-50, http://pdhj.tl/media-publications/annual-reports-budgets/?lang=en.

34 See Art. 5.2 and 28 (j) of Law No. 7/2004, http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

35 See Art. 28 (h) of the Law No. 7/2004 http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124

4.1 Civil Society

Article 33.6 of the Law No. 7/2004 has defined and obliged the PDHJ to engage with other organs or organizations, including civil society.

> *"The Ombudsman for Human Rights and Justice should maintain close contact and consultation and cooperation with other persons and organs or organizations geared to the promotion and protection of human rights and justice, combating corruption and traffic of influence and protection of vulnerable groups".*

In the 2015 Annual Activity Plan submitted to the National Parliament with the proposed budget, the PDHJ described the type of cooperation that has been undertaken in conjunction with Civil Society. The cooperation has mostly involved the creation of reports on the obligations of Timor-Leste under international treaties and conventions, organizing seminars and socialization on human rights and justice, with civil society providing comments and appreciation in draft reports in respect of the PDHJ.

In terms of information sharing, the PDHJ has made available almost all of its annual reports and other relevant documents on its official website. Information which is not provided in the PDHJ's published reports, or is not available to public, includes information regarding the measures which have or have not been taken been taken by the institutions to which the PDHJ has directed its recommendations. Also not available is specific information on the results of monitoring the human rights violations which occurred during the joint police and military operation in 2014. The PDHJ has submitted the report to the National Parliament, but did not make the information available in public[36].

4.2 Parliament

The law obliges engagement of the PDHJ with the National Parliament. When the PDHJ wishes to provide a legal opinion or testimony before court, it must first request permission from the Parliament[37]. The PDHJ also should inform the Parliament of the findings of its investigations and recommendations[38].

Committee A of the National Parliament has competence to oversee the PDHJ, address legislative issues (such as advocating for changes in the PDHJ legislation) and the PDHJ's budget. The cooperation between the PDHJ and Parliament, particularly the Committee A, also includes providing opinions or submissions related to any draft law prepared by the Parliament.

The PDHJ is obliged by law to submit its annual report on 30 June every year, regarding its activities from 1

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36 See the press release in English http://pdhj.tl/wp-content/uploads/2014/09/Press-Release-Joint-Operation.pdf.

37 See Art. 28 (h) of the Law No. 7/2004 http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

38 See Art. 28 (m) of the Law No. 7/2004 http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

January to 31 December[39] of the previous year. There is a plenary session in the National Parliament for the presentation and debate on the report. On occasion the PDHJ does not submit its annual report timely.

There should be deep discussion on the recommendations of the PDHJ, particularly with regards to institutions' compliance with the PDHJ's recommendations. The PDHJ could have made use of this mechanism to make its recommendations more effective in bringing changes to the institutions that often commit human rights violations.

For example, the PNTL since its inception has committed lots of human rights violations and has received a number of recommendations; however the number of human rights violations occurring in Timor-Leste remains the same or has even increased.

The PDHJ is also obliged to send a financial report to the National Parliament on the execution of the budget approved by the National Parliament.[40] In every fiscal year, the PDHJ also presents its budget proposal to the National Parliament for the parliament to discuss and approve.

5. CONCLUSION AND RECOMMENDATIONS

After the restoration of independence in 2002, there have not been any large and systematic human rights violations in Timor-Leste. There have however been human rights violations committed during two joint police and military operations against groups considered as threat to the stability of the country. These joint operations took place in 2014 and 2015 in the eastern part of the country.

During the operation, there were numerous human rights violations committed by both police and military. The PDHJ conducted monitoring and produced a report (in Tetum and English language) with several recommendations to commanders of the joint operation[41]. During the monitoring, PDHJ rarely entered the areas that were most affected by the joint operation. They also did not make an effort to meet or contact victims of the operation even when they receive clear information on the whereabouts of victims (telephone numbers addresses). The number is very different compared with the results of monitoring conducted by NGOs such as AJAR (Asia Justice and Right) and HAK Association. The PDHJ started monitoring on the very first day of the operation on 21 March 2015, until 16 April 2015, almost one month, the same as done by the NGOs.

The report produced AJAR and HAK Association on 21 May 2015 described in detail the types of violations committed by PNTL and F-FDTL. The report stated that the total number of victims of human rights violations was 107, with 10 of those victims being women. Besides AJAR and HAK Association,

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39 See Art. 46.1 of Law No. 7/2004, http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

40 Art. 11.6 of Law No. 7/2004, http://www.asiapacificforum.net/members/full-members/timor-leste/downloads/legal-framework/Law-2004-7.pdf/view and the Portuguese version is here: http://jornal.gov.tl/?mod=artigo&id=124.

41 See the report here in Tetun: http://pdhj.tl/wp-content/uploads/2014/06/REZULTADU-MONITORIZASAUN-MUNICIPIU-BAUCAU.pdf & there is news on the report in English here: http://www.guideposttimor.com/pages/page_35.pdf

another NGO called Belun conducted monitoring on the operation site and produced a report on the situation[42].

Based on the results of monitoring, it appears that PDHJ seems to not conduct its monitoring effectively, when comparing its results with those of the other NGOs. The divergence of findings between PDHJ and NGOs could be due to the fact that PDHJ did not conduct monitoring of all of the locations where the joint operation took place. This has demonstrated the limitations, weaknesses and ineffectiveness of PDHJ in monitoring human rights violations. The presence of PDHJ at all locations of operation could possibly prevent and reduce human rights violations.

The PDHJ needs to improve its proactive response to human rights violations and its monitoring in order to be more effective. Follow-up action needs to be considered and undertaken in order to make sure that there is compliance with and implementation of the recommendations addressed.

The PDHJ has never produced any reports on the results of the follow-up of the recommendations to outline how many institutions have taken measure to implement the recommendations, and how many of them have refused to comply. Articles 47.3 and 4 of the Law No. 7/2004 have clearly stated that within 60 days, the institutions that the recommendations are addressed to are obliged to inform PDHJ on the measures taken to implement recommendations. The provisions also state that if an institution does not take any measures to implement the recommendations, the PDHJ can report the institution to the National Parliament. As demonstrated by the legislation, the PDHJ has legal authority and power to do so.

The PDHJ normally and based on the law, refers the cases that are beyond its mandate to other relevant institutions such as criminal or civil cases. The criminal cases will be referred to Public Prosecutor to conduct further investigation and take penal action.

Recommendations to the Government:

- To consider and take concrete measures to comply with the recommendations taken by the PDHJ regarding the human rights violations committed by the members of the PNTL and F-FDTL;
- To further consider the continuation of capacity building of officers and members of the PNTL and F-FDTL, with respect to law enforcement and human rights protection and promotion;
- To further consider the continuation of capacity building of members of the PNTL and F-FDTL on their standard of professionalism in dealing with problems in communities;
- To further consider the importance of selection processes of new members of the PNTL and F-FDTL, in order recruit professional and responsible officers in future.

Recommendations to the National Parliament:

- To consider, discuss and question the work of the PDHJ as described in its annual reports;
- To have effective oversight the PDHJ in terms of the execution of its functions and compliance with the law;
- To consider and allocate a sufficient budget to the PDHJ in order to effectively facilitate its work;
- To put in priority the draft law of juvenile justice when the Government submits it to the

42 See the report here: http://belun.tl/wp-content/uploads/2015/02/30012015-Alert-Saelari-visit-Final-Eng-1.pdf.

Parliament in order to protect and promote the rights of minor age young people access to formal justice.

Recommendations to the PDHJ:

- To consider and fully comply with Paris Principles and to adopt and comply with the recommendations of the ACJ;
- To be proactive in responding to human rights violations and improve the monitoring of these violations, making efforts to go into the most affected areas and reporting or updating information on human right violations timely, in order to be more effective in future;
- To publicize the final results of its investigation, opinions, conclusions and recommendations as prescribed in the Article 45.3 of the Law No. 7/2004;
- To consider and focus on building the capacity of its staff in the area of investigation;
- To include in its report the cases of human rights violations cases in which investigations have been concluded, with final reports and recommendations of the PDHJ;
- To include in its report the results of the follow-up to the recommendations made to the relevant institutions, particularly the PNTL in the term of the implementation of the recommendations of the PDHJ;
- To consider and create mechanisms for the protection of human rights defenders.

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AFGHANISTAN: STILL STUMBLING AHEAD

The Civil Society and Human Rights Network (CSHRN)[1]

1. Overview

2014 was the year of the double whammy in Afghanistan: the disputed presidential election result coupled with the withdrawal of the international combat troops. Afghans feared a turn for the worse. The crisis pushed the fledgling democracy to the verge of collapse.

Ashraf Ghani and Abdullah Abdullah, claimed victory after accusing each other's teams of engaging in fraud. Abdullah said the victory was stolen from him while Ghani accused Abdullah of bullying his way into power. Whatever the result, the run-off marked deep ethnic polarization in the second round. In subsequent arguments over the poll, supporters of both sides resorted to ethnic-based vitriol. The months-long standoff and intensely polarized political milieu raised fears of continuing instability and another dreaded round of civil war, like the one in the 1990s.

Finally a deal was brokered by the United States of America ('US') which led to the formation of the National Unity Government making Ghani the president, and Abdullah the Chief Executive.

Both incidents had grave implications for human rights. Afghans felt weary with the democratic processes, disheartened, and distrustful in the feeble democracy and political rights discourse. The uncertainty in the electoral process leached into the economy and security situation: causing capital flight, high prices of daily commodities, unemployment and increased sustained attacks from insurgents with increasingly higher casualties on both sides of conflict and, as usual, taking extreme toll on civilians. The uncertain political future of the country and economic woes including shrinking international grants and aid made many Afghan families and children escape the country, opting for perilous ways of reaching the safe countries in the West with a number of them being drowned and killed[2].

Additionally, there was declining respect for human rights throughout 2014. Civilian casualties hit record levels. Women's rights violations soared with only-one-of-its-kind incidents in the history of the country. Impunity for abusers remained the norm.

*Protection of Civilians in Armed Conflict***:** The chronic conflict in Afghanistan has had profound impact on Afghan life. Additionally, insurgent attacks, poor governance and enduring poverty have made life in Afghanistan challenging for millions.

As the conflict intensifies year-by-year, the civilians have to bear much of the brunt of the violence. Conflict-related violence causes thousands of civilian deaths each year. The United Nations Assistance

[1] Hassan Ali Faiz, Senior Human Rights Researcher at CSHRN (Faiz@cshrn.af / FaizHassanAli@gmail.com)
[2] On April 24, 14 Afghans were killed in Macedonia. Available at http://www.reuters.com/article/2015/04/24/us-macedonia-migrants-idUSKBN0NF0JD20150424.

Mission in Afghanistan (UNAMA) documented the highest number of civilian causalities in 2014: with a total number of 10,548 (3,699 deaths and 6,849 injured); a 22 per cent rise compared to 2013[3].

Torture and Arbitrary Detention: There are widespread allegations of torture and inhuman treatment of detainees by the Afghan National Security Forces (ANSF). According to UNAMA, there is sufficiently reliable and credible information on occurrence of torture in detention facilities of ANSF (emphasis added). Of 790 pre-trial detainees and convicted prisoners interviewed: 278 were subjected to torture or ill-treatment upon arrest in certain detention facilities. Of the 105 child detainees interviewed, 44 were subjected to torture or ill-treatment[4]. However, the same report indicates a 14 per cent decrease in the incidents of torture at detention facilities compared to previously[5].

Harassment of Minorities: On 23 February 2015, 31 Hazaras were abducted by masked men in the southern province of Zabul. The abductors wearing masks stopped two passenger buses on their way from Kandahar to Kabul: singled out the Hazaras, and then forced them into a vehicle heading towards mountainous deserted areas. The Hazaras are Shiite ethnic group in Afghanistan. The group has been targeted by the Taliban and other Sunni extremists in Afghanistan and neighboring Pakistan. On 11 May 2015, 19 of the captives were released in exchange for a bunch of militants while the fate of the remaining 11 is still unknown.

Gender Equality and Violence against Women and Girls: For the past fourteen years since the collapse of Taliban regime in 2001, women made significant gains in terms of gender equality. But reports still demonstrate enduring prevalence of various manifestation of violence against women. Compounded with security concerns and the general climate of fear, women are further exposed to violence. Although the number of incidents of violence against women indicate a 6.3 percent decrease in 2014, compared to the same period in 2013 according to the AIHRC[6]; first-of-its-kind brutal incidents were recorded over 2014 and the first quarter of 2015. A few selected incidents are presented below.

Lynching of Farkhunda: On 19 March 2015, Farkhunda Malikzada was lynched by an angry mob on the Andarabi Street – now named Farkhunda Street after her killing – which is very close to the Presidential Palace (The 'Arg'). After an argument with a shrine keeper over the sale of a talisman (worn as charms) at the mosque turned bitter, he falsely accused her of burning a copy of the Quran. Hearing the allegation, angry men flocked into the mosque dragged her out and started beating her. She was beaten brutally with stones and sticks, and then run over by a car. Her body was set ablaze after being dumped on the banks of the Kabul River. While she was begging for help, a squad of policemen kept watch and did little to save her life. The brutal killing of Farkhunda caused a public stir in Afghanistan. Campaigns by civil society

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[3] UNAMA, 'Protection of Civilians in Armed Conflict', February 2015, http://www.unama.unmissions.org/Portals/UNAMA/human%20rights/2015/2014-Annual-Report-on-Protection-of-Civilians-Final.pdf.

[4] Ibid., p. 17.

[5] Between October 2011-2012, UNAMA interviewed 635 detainees and convicted prisoners out of which 326 were subjected to torture or ill-treatment. UNAMA explains the change in the number of incidents as follows: "It is important to note that the change in the incidence of torture and ill-treatment was observed solely within the samples of detainees UNAMA interviewed and locations visited on specific dates included in the samples over the observation periods. As such, UNAMA cannot make observations about the wider use and incidence of torture and ill-treatment in facilities UNAMA did not visit or where UNAMA had no access. The 14 per cent change among the detainees interviewed in the specific facilities at specific times by UNAMA could alternatively be explained by torture possibly increasingly occurring in facilities where UNAMA had no access", pp. 18-19, fn. 27.

[6] According to the latest report released by the AIHRC on 8 March 2015, 4873 incidents of violence were recorded in the AIHRC database which indicate a slight decrease in number of incidents of violence compared to the same period of time in 2013 which was 6611 (6.3 percent). The AIHRC attributes the change in number to modification of its Registration Form which does not really indicate a decrease rather divulgeprobable mistake in filling out the form either in 2014 or 2013. Authorities in the AIHRC also doubt the accuracy of the data. However, violence against women is prevalent and the hidden figure is extremely high.

and rights groups to punish her killers thrived across the country. Her killing has become a symbol of violence against women.

The Paghman Incident: On 23 August 2014, a group of ten armed men masquerading as policemen stopped a car in Paghman district on their way to Kabul. They forced out the passengers, tied up the men and dragged away the women. After robbing the women's jewelry, some of them gang-raped four of the women including a pregnant woman. One of the women was raped more than ten times. The family was on its way home from a wedding party. Fearing ostracism, the family took the women to a nearby hospital and only reported the armed robbery and not the rape case. The hospital officials reported to the police that the female victims were sexually assaulted and raped multiple times. The horrific incident triggered a wave of public protest. People across the country protested and demanded justice.

The Khatera Rape Case: In an interview with Khorshid TV Network[7], Khatera, 22, claimed that she has been repeatedly raped by her father beginning from the age of 14. Khatera says at 14 she was impregnated and since then she had five more pregnancies. Her first children were aborted. The fifth one a girl, is now 3 years old and she is three-months pregnant with a baby boy in her womb. In an interview with the BBC Persian service[8] she said, the baby girl still thinks I am her sister not her mother. While introducing the baby to the BBC journalist she said: "She is my daughter and the daughter of my father too ... we are mother and daughter and as well as sisters". Khatera's mother also admits in the video the sexual assault of Khatera by her daughter's father. In her first court appearance Khatera said, "When the court sat, the judge asked me,"Why you didn't kill yourself? Why you didn't kill the child in your womb? You should have aborted". I looked at him and said that if I had an abortion you would have told me, that it is someone else child. That's why I gave birth to it."

A 3-year-old Girl Raped: In November an appalling incident of rape shocked many Afghans. A 3-year-old baby girl was kidnapped and raped by an adult of around 18 years old. The toddler was playing with her friends outside her home when an adult picked her up, carried her to a nearby garden and raped her. The offender gagged her to keep her silent. By chance someone walked past and heard her screaming. He found Neelofar bleeding and took her to the village mosque. The assaulter had also tried to kill her. Neelofar was treated in a children's hospital in Kabul[9].

Gang-rape of a minor: On Friday, 14 November, armed men gang-raped a 12-year-old girl in northeastern Takhar province. They abducted the girl from her home in Yangi Qala district of Takhar. The girl was found in a jungle near Amu River some days later. In an interview with Tolo TV the mother of the victim said: "At night Rohullah came to our home beat me and my daughter and took away my daughter".

A Cleric Raped a Girl: In April but surfacing in the news the following month, Brishna aged 11, was raped by a Mullah (cleric) in Northern Province of Kunduz. Her parents had sent her to the local mosque to learn the Quran. The girl was admitted to a local hospital.

Rapists Get Away with a Rape Case for Five Years: **I**n November 2014, a five-year long impunity case was reported in the media. Five years before, the wife of a border policeman was gang-raped by a group of armed men in Badakhshan province. Jahangir, her husband, was away on duty when the incident of crime occurred. His several pleas to the previous government for justice remained unheard. Only two of the perpetrators were arrested then and later soon released. Later on, Jahangir received death threats to pressure him to drop the case. Despite that, in a televised appearance, he asked President Ghani to serve justice[10].

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[7] https://www.youtube.com/watch?v=vfufKwB7aTY.
[8] http://www.bbc.co.uk/persian/afghanistan/2015/06/150527_k03_afghanistan_rape_story.
[9] http://www.bbc.com/news/world-asia-30127463.
[10] http://www.tolonews.com/en/afghanistan/16985-no-justice-for-badakhshan-gang-rape-victim.

A Father Raped His Daughter for About One Year: Sahbia aged 17, has been repeatedly raped by her father over a one-year period. In an interview with 1TV Network on 10 September 2014, the victim's mother said that the father had started assaulting Sahbia five months ago before they moved to Qarabagh district of Kabul with their nomad tent. This case of incestuous rape shocked many around the country.

Cut Off Wife's Nose: Hakim a resident of Shahristan district of Daikundi province cut off his wife (Gul Chaman's) nose over squabbles on household problems. Gul Chaman who was Hakim's third wife was in her 20s when she married him just a few years back. Hakim had killed his second wife at the time of the Mujahidin before Taliban rule – a crime for which he was never tried. Hakim wanted to kill Gul Chaman when the neighbors rescued her. He escaped from the scene to an area under insurgent control before being arrested by police.

Husband Mutilates His Wife: In July 2014, Sadia aged 20, was beaten up severely by her husband. He then tied her legs and hands and mutilated her genitalia with a knife. Sadia was later admitted to a hospital in Taloqan the capital of Takhar province for medical treatment.

Man Burns Alive His Sister-in-Law: In August 2014, a man threw fuel on his pregnant sister-in-law and then set her on fire. Both mother and her unborn child died.

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	The Constitution of Afghanistan, 2004
Mandate	• Monitoring the situation of human rights in the country; • Promoting and protecting human rights; • Monitoring the situation of and people's access to their fundamental rights and freedoms; • Investigating and verifying cases of human rights violations; and • Taking measures for the improvement and promotion of the human rights situation in the country.
Selection and appointment	
Is the selection process formalized in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines?	On paper, the membership selection is done through a consultative process that takes into account the views of civil society. A list of names are nominated by civil society after a series of consultations. The President considers individual nominees on the basis of merit and the principles of pluralism in the process of selection of members of the AIHRC. The President then appoints the members of the AIHRC. There are nine Commissioners in the AIHRC appointed by the President for service terms of five years. To ensure the independence of the AIHRC, the President has no authority to remove the Commissioners once they are appointed. However, on 15 June 2013, after 19 months of overdue non-appointment, the president appointed five new commissioners

	(most of whom displayed poor human rights records). The President ignored the rule book set out in the Paris Principles by appointing these new commissioners without any consultation with civil society.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	No.
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	Under Article 11 of the law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, members of the Commission should have the following qualifications: 1) Afghan Citizenship; 2) Twenty five years of age [and above]; 3) Not being deprived of political and civil rights by a competent court; 4) Higher educational background in law, human rights law Islamic Jurisprudence or 5) An academic background in other fields of study with practical experiences in the field of human rights; 6) Not being accused of national treason or crimes against humanity; 7) Shall have a good reputation, be independent, hold popular trust and a commitment to human rights; 8) Shall not be a member of any political party during their term of office at the Commission.
Is there a provision for broad consultation and/or participation, in the application, screening and selection process	No. There is no broad consultation or proper selection process for appointment of members of the AIHRC
Is there a requirement to advertise vacancies? Describe the process.	The AIHRC normally advertises vacancies on its website and other job advertising websites such as ACBAR. The advertisement is only limited to program and support staff but for the positions of members of the AIHRC (commissioner) and the Executive Director there is no advertisement or selection process through individual application.
Divergences between Paris Principles compliance in law and practice	In the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, the membership selection process is not prescribed in clear terms. There are ambiguities with regard to gender and principle of pluralism. It also lacks detail on the process for seeking candidates and their subsequent assessment, selection and appointment. Members are appointed at the discretion of the President including the Chairperson of the AIHRC[11]. In November 2013 the ICC-SCA

[11] Unofficial translation of the Order is attached at the end of this report.

	had recommended in its report that "a clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution". Following the ICC-SCA's recommendation, the AIHRC's successful advocacy for a Presidential Order establishing a merit-based selection and appointment process for Commissioners bore fruit. On 13 September 2014, just before leaving office, President Karzai issued a 10-article Presidential Order on a mechanism for a merit-based selection process of the AIHRC members with clear and established criteria that takes into account the perspectives and participation of civil society. However, some Afghan civil society organizations are of the view that: 1) It is just lip service to human rights by the ex-president who stubbornly appointed five badly qualified Commissioners with poor human rights records in 2013. 2) It is an Order for selection beyond 2018 when he is no more in power. It is rather a snub at human rights. The current President can revoke it any time. 3) In an attempt to paper over the 'grading' of the AIHRC or butter up the ICC-SCA, the AIHRC lobbied for this unsatisfactory response to the ICC-SCA's recommendation. After the creation of National Unity Government—NUG, Afghans could breathe a sigh of relief which marked the end of a crisis that could push Afghanistan to the brink of civil war. However, the two rivals that make up the new government still face mutual animosity and distrust. Although, the NUG brokered by the US rescued Afghanistan from another round of civil war but the legality and legitimacy of the accord remains highly contested. The sole base for its creation is the agreement signed by the two rivals. The new position of CEO does not have any basis in the Constitution or electoral laws. While the 50/50 power-sharing agreement splits all major positions, it has created two masters with equal footing and confusion over the hierarchical division of power. It is still not clear whose share is the AIHRC or it is 50/50 too? In the best scenario of respecting the independence of the AIHRC both will have huge influence over the organization.
Functional Immunity	

Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	Article 16 of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission states that, "Members and all staff of the Commission, while carrying out their activities under their legal mandate, are immune from prosecution". However, the AIHRC law was enacted by the presidential decree in May 2005. It has not yet been approved by the Afghan parliament. Laws enacted by the presidential decrees do not always enjoy the significance of the laws approved by the parliament.
Does the NHRI founding law include provisions that promote: • security of tenure; • the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; • the independence of the senior leadership; and • public confidence in national human rights institution.	Security of tenure is not protected in law. In very few cases the Attorney General's Office or judicial authorities have questioned AIHRC members about their comments on human rights in media. However, there is no provision in the AIHRC law about non-interference of authorities in critical analysis and commentary on human rights issues. Not all senior members of the AIHRC are independent. Some of them are biased towards politicians or political parties. There has never been a credible and independent analysis conducted to show public confidence in the performance of the AIHRC. Civil society organizations assume that there is little public confidence in the AIHRC given the overall situation of the country where corruption is prevalent. The AIHRC is not corrupt but it has to work in tandem with passive and corrupt state institutions which adversely affects the reputation of the AIHRC among general public. However, in a consultation meeting with the AIHRC authorities, they claim their data show increased public confidence in the AIHRC.
Are there provisions for the situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	The AIHRC enabling law has not foreseen the appropriate increase in its responsibilities in a state of emergency.
Capacity and Operations	
Adequate Funding	Article 29 of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission stipulates: "The Commission shall prepare its budget and present it to the Cabinet Ministers as a part of the National Budget. The Commission shall implement its budget independently according to pertinent regulations".

	The AIHRC's budget is almost entirely (99%) funded by external donors. Despite being its Constitutional obligation, the government of Afghanistan has failed to provide financial support to the AIHRC ever since its establishment. The AIHRC has been constantly seeking state budget allocation but their demand has been unheeded for years. The AIHRC has a country-wide presence, with eight regional and six provincial offices and with more than 500 staff members. Recently donors have also limited their funding. According to the AIHRC itself, it grapples with 30–40% budget shortfall as a result. This may in turn force the AIHRC to send many of its staff members on unpaid leave, or even terminate their employment. The Afghan government provides half-a-million US Dollars to the AIHRC annually while the annual budget of the AIHRC is over 10 million US Dollars. The AIHRC does not submit its program of activities to the parliament to be considered during budget discussions. Neither has the AIHRC been invited to parliamentary debates in relation to its annual budget. As there is hardly any funding from government in the first place, the lack of resourcing has not been used by government to compromise the independence of the AIHRC and its ability to freely determine its priorities and activities.
Government representatives on National Human Rights Institutions?	There are none.

3. EFFECTIVENESS AND PERFORMANCE

The AIHRC addresses all cases of human rights violations in a timely manner, documents them and supports victims in seeking justice. The AIHRC has the record of almost all cases of human rights violation. It systematically follows up on violation of human rights of citizens. But the process has some serious faults and flaws or divergence from human rights philosophy. A few case-studies are highlighted below.

a. Death Penalty

It appears as if the AIHRC has a tendency towards populism by cottoning onto public sentiment. It supports what people like: no matter whether good or bad, to avoid being criticized by the general public.

For instance, in the 'Paghman Incident' (described above), just the same as some civil society organizations and women's rights groups, the AIHRC too supported the execution of the defendants.

In an interview with Radio Azadi (Radio Liberty/Radio Free Europe), the spokesperson of the AIHRC Dr. Rafiullah Bidar said if the execution is to the benefit of people, we support it[12]. On several other occasions when asked about the position of the AIHRC on death penalty, they have consistently favored the rule of law which is indirect support for execution. The Afghan penal law backs execution in some grave cases.

However, in a meeting with the AIHRC authorities, they argue that what Mr. Bidar has said to the media is not the official position of the NHRI. They state that the AIHRC does not back capital punishment, and even has asked the President to place a moratorium on the death penalty.

In the 'Paghman Incident', the trial hearing was marred by political interference, inconsistencies and un-investigated torture claims. The right of the defendants to a fair trial were violated in several ways:

1. One of the suspects claimed that he was coerced into confession. He claimed that he was tortured into confessing to the crime. The claim was never taken seriously and was not mentioned by the judge in the appeals hearing. Even the Supreme Court didn't assess it.
2. The Primary Court convicted the men with the crime of *zina* (sex outside marriage), while it was actually rape and not consensual sex. However, the appeals court convicted them of rape. Two courts charged differently for the same crime and same perpetrators.
3. The trial was marred by political interference. Karzai, the ex-president said that he had urged the Supreme Court to hand down the death sentence to the accused. The President's speech and similar statements by influential authorities and Mujahideen leaders including Mr. Abdul Rab Rasul Sayyaf[13], seriously undermined the prospects of a fair trial and the defendants' rights to the principle of presumption of innocence.
4. The whole trial process, from arrest to conviction, appeals and endorsement of the conviction by the Supreme Court lasted only some days. The accused were found guilty in a nationally-televised trial that lasted only for two hours at the Primary Court. The sentences were then quickly approved by the appeals court and the Supreme Court. The defendants and their lawyers were denied adequate time to prepare their defense.

The trial was criticized by the Office of High Commissioner for Human Rights and other rights groups such as Amnesty International and Human Rights Watch. EU ambassador Franz-Michael Mellbin said, "Today's executions cast a dark shadow over the new Afghan government's will to uphold basic human rights."

There was no reaction from the AIHRC. The silence of the AIHRC which was assumed as its consent to the verdicts, disappointed human rights activists. However, the AIHRC in its recent six-month report[14] states, that it considers the verdicts against the Fair Trial Standards. It further states that the AIHRC had sent a letter to the President and asked him to postpone the execution of the offenders. However, even in the report it does not clearly mention whether it supports the death penalty or not.

[12] http://da.azadiradio.org/archive/local_news/20140930/1094/2118.html?id=26624700
[13] The former notorious warlord accused of gross human rights violations, war crime and crime against humanity.
[14] http://www.aihrc.org.af/home/fourmonths_report/4654.

b. Restrictions on Freedom of Peaceful Assembly

During the first quarter of 2015, the Arg (Presidential Palace) attempted to restrict public gatherings by proposing an amendment to the law on Gatherings, Strikes, and Demonstrations. Masquerading as a public well-wisher, the Arg suggested security concerns to the life of demonstrators. The government suggested specific places for demonstrations. Civil society organizations rejected the government proposal and thwarted the plan to restrict the basic freedom of citizens.

The AIHRC was absent in the consultation meetings with the government. However, in a meeting with the AIHRC authorities, they argued that the AIHRC was in consultation with the government at a higher level.

c. Human Rights Defenders

The AIHRC does not have a strategic approach towards the issue of Human Rights Defenders. There is no single intervention in its new Strategic Plan (2014-2018) on protection of HRDs. There is only mention of 'Strengthening and enhancing cooperation with CSOs and human rights defenders' groups'[15], which probably means human rights-based organizations not individual HRDs.

The AIHRC has recently joined the Steering Committee for HRDs – an initiative administered by the European Union in Afghanistan. The Committee is composed of 9 representatives (2 EU officials and 7 Afghan nationals of civil society and NGOs).

In 2015 the COSPE[16], CSHRN and HAWCA[17] started implementing a three-year joint project on human rights defenders called AHRAM (Afghanistan Human Right Action and Mobilization). Implemented in all 34 provinces of Afghanistan, there is one focal point in all provinces each. The purpose of this project is to identify, mobilize and support Afghan human rights defenders. One intervention in the project is to establish 'Safe Spaces'[18].

Recently, the AIHRC has also allocated one room in its offices across the country to HRDs. It is in addition to 'Safe Spaces' run under AHRAM: two spaces with the same purpose in one location. It is only duplication which may cause confusion among HRDs.

Complaints handling mechanism: The AIHRC has extensive field presence across the country which enables it to effectively monitor and assess the overall human rights situation. The AIHRC investigates cases of human rights violations, documents them and supports victims in seeking remedies. The AIHRC has probably the best database for storing data on human rights violations.

However, the overall mechanism has its own faults and flaws.

According to para 2 Article 23 of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission: "The Commission shall assess and analyze the complaints, collect information and evidence as required, and shall cooperate with the concerned authorities in finding

[15] AIHRC Strategic Plan (2014-2018). Available at: http://www.aihrc.org.af/home/strategic/4095.
[16] Cooperazione per lo SviluppodeiPaesiEmergenti, an Italian based organization.
[17] Humanitarian Assistance for Women and Children of Afghanistan.
[18] Unlike protection shelters, the Safe Spaces are created "for daily operations, networking and coordination with other Safe Spaces" (p.10, AHRAM Project Proposal).

remedial solutions for these cases. If it is required, the Commission, in accordance with the paragraph 9 of Article 21 of this Law, may refer the case to the relevant judicial and non-judicial authorities".

The AIHRC sometimes does not proactively initiate actions to tackle human rights problems. Normally, the AIHRC, after registering and investigating a case refers it to the Attorney General's office or court for prosecution or redress. The process has three main points of concern.

1) The law enforcement agencies including the judiciary are the most corrupt institutions in Afghanistan according to Transparency International.[19]

2) In many cases, it makes no difference whether you lodge a case in person or send it through the AIHRC channels. Sometimes it is even trouble-free to lodge a case personally rather through other referral channels. Given that the prosecutor's office and judiciary sometimes take the AIHRC as a rival rather a complementary institution, they think the AIHRC unnecessarily interferes into their business and give itself the authority to oversee them. This is a particular problem for the judiciary, which believes that its independence is under challenge.

3) The capacity in understanding human rights violation is very low in both the prosecutor's office and judiciary. Most prosecutors and judges don't understand human rights violations very well. The lack of formal education, specifically among judges, and low level of understanding of human rights among prosecutors and the judges have hampered the consistent delivery of justice.

There is no mechanism in place to inform the parties of the status of the complaint.

The AIHRC affirms that it follows up on the recommendations it gives to the government. It further adds that so far, the AIHRC has given 53 recommendations to the government and only two recommendations have been implemented. There is no systemic mechanism in place to track the status of implementation of the recommendations within the AIHRC. The AIHRC has never been given an opportunity to discuss its report(s) in a parliamentary session.

Monitoring of Detention Facilities: The AIHRC has the legal power to initiate investigation into any allegation of human rights violation of citizens. The Commission has the right to full cooperation of all state institutions and authorities, which, in practice does not happen quite often. For instance, the AIHRC is entitled to free access to detention centers and to visit any place where human rights are potentially violated, without any prior notice. In practice sometimes the detention centers personnel do not allow AIHRC monitoring team to monitor the detention centers without prior notice. Also, the AIHRC is unable to conduct monitoring missions specifically in some insecure provinces of Afghanistan.

Article 24 of the 'Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission' stipulates, "During the investigation of complaints, the Commission may request individuals or relevant responsible officials to provide documents and testimonies." The AIHRC can only 'request' officials to provide documents or testimony but it can't 'compel' them. Moreover, there is no time limit for an authority against whom complaint is made to make its initial response.

[19] http://www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-

While the AIHRC is legally allowed to investigate, collect evidence and document cases of human rights violation, the AIHRC does not have a strategy on how to protect complainants and witnesses from retaliation for having provided evidence.

Likewise, there is no provision in the AIHRC law to allow it to seek reparations for victims of human rights violation or enable the victim to have access to factual information relating to the violations.

The AIHRC law[20] obliges all judicial, governmental and civil society organizations to cooperate with the AIHRC. However, these organs and in particular the judiciary, are not always willing to do so. No case in the past decade-and-half has surfaced in the media to show the AIHRC involvement with the courts in particular using its *amicus curiae* power. Additionally, there is no formal mechanism agreed-upon between the AIHRC and the judiciary to facilitate the AIHRC's intervention in certain cases.

There were two major human rights issues that the AIHRC addressed in 2014. The 'Conflict Mapping in Afghanistan Since 1978' report which is still pending with the AIHRC; and the 'Causes and Negative Consequences of BachaBazi' report.

Bachabazi: The AIHRC recently concluded a national inquiry into the causes and negative consequences of *BachaBazi* (lit. 'playing with boys' – practice of child slavery and sexual abuse). The report was released in August 2014. The AIHRC in its concluding observations had asked the government to modify the Penal Law and criminalize *BachaBazi*. In its recent six-month report the AIHRC claims that its recommendation has been incorporated in the draft penal code[21].

'Conflict Mapping in Afghanistan Since 1978': The AIHRC's conflict mapping report documents gross human rights violations committed in Afghanistan since 1978. The report of around 800 pages thoroughly details the severe human rights abuses committed during the different phases of the Afghan civil wars over the past three decades. It took years to prepare the report with huge human and financial investment. The report remains unpublished so far; and it is explicitly stated under Article 25 of the enabling law that "The Commission shall not be coerced to disclose evidence, documents or testimonies that it has in its possession".

Some believe that the reason behind not publicizing the report is that the AIHRC has not received a positive signal from the government of Afghanistan. However, the AIHRC officials argue that, firstly, truth-seeking and documentation was one of the four key actions[22] of the Action Plan[23] that the AIHRC had the responsibility to implement. The AIHRC completed its job and submitted its report to the government. Secondly, to implement a transitional justice strategy successfully all four actions should have been implemented. Thirdly, the release of the report at this juncture may pose serious risk to the

[20] The Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, Article 6: "Judicial and prosecutorial organs, ministries, governmental organizations, civil society groups, Non-Governmental organizations and all citizens are obliged to cooperate with the Commission in achieving the objectives set up by this law".

[21] http://www.aihrc.org.af/home/research_report/4654.

[22] Four key actions of the Peace, Reconciliation and Justice in Afghanistan Action Plan of the Government of the Islamic Republic of Afghanistan: 1) acknowledgement of the suffering of the Afghan people; 2) ensuring credible and accountable state institutions and purging human rights violators and criminals from the state institutions; 3) truth-seeking and documentation; 4) promotion of reconciliation and improvement of national unity.

[23] http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/Action_Pln_Gov_Af.pdf

AIHRC staff members, victims and witnesses. Fourthly, the release of the report should support an outcome which seems improbable in the current political and security context.

Whatever the reason, the victims of the past human rights violations are disappointed with unnecessary delay in making the report public. No one might be prosecuted on the basis of the information provided in the report even if it is published – given the presence of warlords in the government – but at least naming the perpetrators as violators might alleviate the pain of the victims.

'*Causes and Negative Consequences of BachaBazi*'*:* In 2014 the AIHRC launched a national inquiry into the traditional practice of *BachaBazi*, that is of boys who work as dancers, performing at parties attended by men. Women are not allowed to dance in public in Afghanistan, so the boys perform feminine gestures. Most often these boys are sexually abused after the parties. According to the findings of this report most of the victims of *BachaBazi* are children under the age of 18. Prepubescent boys aged between 12 and 18 are used for entertainment and illicit sex by wealthy and powerful patrons.

While Afghan penal law prohibits "pederasty", commonly understood to mean sex between a man and a boy, there is no age of consent for sex under Afghan laws. For the first time, the term 'rape' was used in the Elimination of Violence against Women law which refers to only the rape of women and girls. The rape of men and boys is not mentioned in the Afghan laws. So far, there have been very few attempts by the authorities to clamp down on this social institution. A comprehensive revision of Afghanistan's penal law is in process but whether the legislators will propose rape as a gender-neutral offence is not known as yet.

4. OVERSIGHT AND ACCOUNTABILITY

Civil Society: The AIHRC has improved its relationship with civil society organizations in recent years. Now, the AIHRC is more positive and supportive to the role of civil society organizations. The AIHRC continuously collaborates and interacts closely with civil society on improving the volatile human rights situation. The AIHRC undertakes joint projects with CSOs and also supports training initiatives in order to strengthen the capacity of CSOs to protect and promote human rights.

The AIHRC has already signed MOUs with several non-governmental organizations to collaborate on several human rights topics. However, there is still room for improved cooperation between the AIHRC and CSOs. There seems to be disengagement at a broader level, and sometimes even mutual antagonism. CSOs are critical of the AIHRC for its biased approach in certain human rights cases; or for being overcautious for instance in releasing the 'Conflict Mapping in Afghanistan Since 1978' report. On the other hand, the AIHRC perceives CSOs as donor-driven and project-based, with sketchy planning and over-expectation or unrealistic demands on the NHRI.

Parliament: After more than a decade of stand-offish relationship between the Afghan parliament and the AIHRC, it has begun to thaw a little recently, but still far from being normalized.

The AIHRC leadership has been tough towards warlords and has repeatedly voiced concern over the presence of alleged war criminals and perpetrators of human rights violations in the parliament. The warlords were also hostile towards the AIHRC. In 2007 an MP said that the "creation of the AIHRC was

a conspiracy by the foreigners against the Muslim people of Afghanistan[24]". The same year the parliament passed the amnesty law: 'The National Reconciliation, General Amnesty, and National Stability Law'. The law provides immunity and pardons former warlords who were involved in human rights violations, war crimes and crimes against humanity.

The AIHRC submits regular annual report to the Afghan Parliament and public. But none of its reports have been discussed in any parliamentary session. There is a Commission in the parliament called the 'Commission on Women, Civil Society and Human Rights' with which the AIHRC has no relationship. There is no formal mechanism in place between the AIHRC and Parliament for cooperation and collaboration.

5. CONCLUSION AND RECOMMENDATIONS

After a lingering election deadlock, the US-brokered National Unity Government was finally formed as an interim mechanism to overcome an acute threat to the very existence of the country. The NUG was probably the only option to put an end to the post-election crisis. The agreement reached by the leaders rescued the country from a new round of civil war which could undo all the achievements of the past 13 years. However, the election-related crisis seriously undermined the people's trust in the fledgling democratic process. It is the people who have to bear the costs of the economic downturn, joblessness and soaring prices for daily commodities.

The NUG was unable to form its cabinet for about four months after their agreement. Even after one year, as of time of writing, the post of Defense Minister is vacant; while security is the biggest threat to the very existence of the government. The lack of mutual political trust between the president and CEO has had enormous effect on enjoyment of basic rights of citizens. Still, weak rule of law, weak governance, and high level of corruption, insecurity and recurring impunity for abusers exist. The continued deteriorating security situation has severely hampered the enjoyment of human rights by Afghans.

Whereas, the whole bureaucratic system appears to have come to a standstill situation, surprisingly the AIHRC still stumbles ahead. The AIHRC performs admirably amidst challenging security and political environment where the culture of impunity persists and the perpetrators of past gross human rights violations are held unaccountable. The role of the organization was further undermined with setbacks such as the direct appointment of unsuitable commissioners with questionable human rights background in 2013, where the president deliberately ignored the rulebook in the Paris Principles.

The AIHRC faces operational and practical impediments in discharging its mandate. The State had attempted to influence the organization and undermined its effective functioning. The State has deliberately restricted funding and declined to provide adequate resources to the AIHRC which in turn has impeded the independence, effectiveness and credibility of the organization.

However, the AIHRC has the legal power to initiate investigation to any allegation of human rights violation of citizens. The Commission has the right to full cooperation of all state institutions and authorities, which in practice is not always received.

[24] http://www.kas.de/afghanistan/en/publications/12234/

The AIHRC releases its annual and thematic reports in a timely manner but in very few cases the reports are taken seriously. And, in very limited cases the AIHRC recommendations are implemented.

Recommendations to the Government of Afghanistan:

Protect women's rights:

- Ensure that the Supreme Court and the Attorney-General's Office and their subordinate courts and prosecution offices consistently apply the Ending Violence Against Women (EVAW) Law;
- Ensure that police register all complaints of violence against women and girls, and that all allegations of violence are promptly, impartially and effectively investigated, and that perpetrators are brought to justice;
- Raise public awareness of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), in particular among judicial officers, judges, lawyers and prosecutors;

Support the independence of the Afghanistan Independent Human Rights Commission:

- Provide financial support to the Afghanistan Independent Human Rights Commission (AIHRC) so that it discharges its mandate effectively;
- Respect independence of the AIHRC and the rule-book in the Paris Principles when appointing new commissioners;

Put an end to impunity:

- Repeal the National Reconciliation, General Amnesty, and National Stability Law;

Protect civilians in the conflict:

- Investigate in a transparent and timely manner all cases of civilian causalities attributed to Afghan National Security Forces, and ensure that perpetrators are brought to justice;
- Provide appropriate means of redress to victims of civilian causalities;

Torture and arbitrary detentions:

- Investigate in timely, impartially and effectively manner all cases of torture and arbitrary detentions, and prosecute all responsible;

Implementation of human rights conventions:

- Initiate a process to incorporate systematically the provisions of all human rights conventions ratified by Afghanistan into domestic legal system to make them applicable;

Recommendations to the AIHRC:

Combat racial discrimination:

- Conduct a study on ethnic discrimination. Also, lobby the government to implement and report on the implementation of the Convention on Elimination of all Forms of Racial Discrimination;

Disclose the *'Conflict Mapping in Afghanistan since 1978' Report*

- Make all arrangements to release the 'Conflict Mapping in Afghanistan since 1978' report without any further delay.

Follow-up on its own recommendations

- Establish appropriate follow-up mechanisms to recommendations issued by the AIHRC. Annual and thematic reports of the AIHRC must be presented and discussed in Parliament and ensure that adequate follow-up be entrusted to the corresponding parliamentary committees/task forces to mainstream their recommendations and monitor their implementation.

***

ANNEXURE

[Presidential] Order

Of the

President of the Islamic Republic of Afghanistan

On assigning

The Selecting Committee on, appointment/selection of the Commissioners of the Afghanistan Independent Human Rights Commission (AIHRC)

Abiding by the Article 58 of the Afghan Constitution and better implementation of Article XI of the Law on the Structure, Duties and Mandate of the AIHRC and in compliance with Resolution No. 48/134 of December 1393 of the UN General Assembly (Paris Principles), I endorse the following:

1. To appoint the members of the AIHRC through a transparent, inclusive and consultative process, a Selection Committee comprised of the ministers of Foreign Affairs, Women's Affairs, the Speaker of Parliament and four representatives of the civil society organizations active in the field of human rights, under the presidency of the Minister Justice of the Islamic Republic of Afghanistan [are commissioned]; and the head of the AIHRC, to participate as observer in meetings of the Committee.

2. The AIHRC would serve as the secretariat of the Committee.

3. At the first meeting of the Committee, its working procedures shall be approved in accordance with the provisions of the Law on the Structure, Duties and Mandate of the AIHRC.

4. In order to respect the principle of pluralism, the Committee during the selection of qualified candidates in addition to their legal entitlements; should also take into account the ethnic, gender, language and geographical distinctions as to assure that a broad range of citizens are encompassed.

5. The Committee shall select 50% female candidates among all eligible applicants.

6. After essential review and face-to-face interview, the Committee selects twenty-seven of the eligible candidates and suggest their names the President.

7. The President selects nine out of twenty-seven candidates with at least four of them women as the Commissioners of the AIHRC for a five-year period.

8. The Commissioners of the AIHRC cannot serve beyond two-terms of five years each.

9. The ceremony of taking the oath of office by the AIHRC commissioners shall be administered by the president and in the presence of the Chief Justices of the Islamic Republic of Afghanistan.

10. This [Presidential] Order will come into effect at the end office term of the current AIHRC Commissioners.

Hamid Karzai

The President of the Islamic Republic of Afghanistan

BANGLADESH: FAILING TO FULFIL ITS COMMITMENTS

Ain o Salish Kendra (ASK)[1]

This report is a critical assessment of the performance of the National Human Rights Commission (NHRC) of Bangladesh in the protection and promotion of human rights, mainly between January to December 2014 as well as during the first half of 2015. It is structured and prepared according to the guidelines for the 2015 ANNI Report. It draws attention to selected issues of concern on independence and effectiveness of the NHRC as an institution; and examines its full compliance with the international standard for national human rights institutions – the 'Paris Principles'.

1. INTRODUCTION

The overall human rights situation in 2014 was frightful due to prevalent political violence centring on the election process (5 January 2014) and boycott by the opposition. It was the culmination of vicious years of political unrest in Bangladesh's history, with tensions also heightened by the extensive abductions, enforced disappearances and extrajudicial killings (mentioned as "crossfire" and "encounter"). But the main concern in 2014 was an increase in political violence where religious minorities were particularly targeted.

Bangladesh has been elected to the United Nations Human Rights Council for 2015-2017 terms[2] with 149 votes. It has previously served on the Council from 2006-11[3]. The country kept up its momentum of achieving sustained economic growth and due to government's adoption of such measures as new pay scales, allowances, various income generating activities, increase in minimum wages, expansion of social safety net schemes and other interventions, the real income and purchasing power of the people have increased substantially in 2014. According to Export Promotion Bureau (EPB), Bangladesh earned US$27.5 billion from January to November 2014, whereas it was US$24.17 billion for the same period in 2013. Although few measures were taken in progress of the economy of this country, political turmoil, strikes, blockades, death, injury by petrol bombs, and worsening law and order situation created panic and huge insecurity among citizens.

1.1 Law and Policy in 2014:

(a) Legislation

- In 2014, the Government of Bangladesh enacted some important laws e.g. 'DNA Act', 'Chittagong Hill Tracts Board Act', 'Investment Corporation of Bangladesh Act', 'Rural Savings Bank Act' etc.
- The 'Finance Bill 2014' has been passed by the Parliament on 28 June 2014 with some changes in tax and customs duties;

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[2] bdnews24.com, http://bdnews24.com/bangladesh/2014/10/21/bangladesh-elected-to-the-un-human-rights-council.

[3] Dhaka Tribune, http://www.dhakatribune.com/bangladesh/2014/oct/22/bangladesh-wins-third-term-un-human-rights-council.

- The 'Bangladesh Journalists' Welfare Trust Bill 2014' was passed on 1 July 2014 aimed at ensuring welfare of the poor, insolvent, sick and wounded journalists and the family members of deceased journalists;

- The draft of 'Digital University, Bangladesh Bill 2014' was passed by the Cabinet on 29 December 2014 aiming to improve the standard of ICT education and gear up the country's development activities[4];

On the other hand some legislation has progressed that could impact negatively on human rights.

- On 1 December 2014, the cabinet gave the final approval to the draft 'Foreign Donations (Voluntary Activities) Regulation Bill, 2014' making registration with the NGO Affairs Bureau mandatory for all NGOs receiving foreign funds[5] and the Prime Minister's Office has been given authority to inspect, monitor and assess NGO activities and cancel registrations for violation of law which drew criticism from donor agencies, civil society as well as Human Rights Defenders. The effect is that NGOs documenting human rights violations, including torture and enforced disappearances, may be targeted arbitrarily by the authorities using this legislation.

- The 'National Broadcast Policy 2014', approved by the Cabinet on 4 August 2014[6] and gazetted on 6 August has been widely criticised by the media, civil society and human rights activists as it created scope for undermining the constitutional right to free media, access to information and freedom of expression.

- The 'Constitution (16th Amendment) Bill 2014'[7] was passed unanimously mandating Parliament to investigate and impeach Supreme Court judges on the grounds of incapability and misconduct which caused an extraordinary public confidence crisis in the judiciary. It created the possibility of a dependent judiciary which is politically expedient for the ruling executive and might perpetrate many unconstitutional acts.

(b) Court Judgments and Directions

- On 8 July 2014, Bangladesh has been awarded 19,467 square kilometres of the total 25,602 sq km sea area leaving 6,135 square kilometres to India[8]. The International Tribunal for the Law of the Sea (ITLOS) recognised Bangladesh's 12-mile territorial sea, 200 mile exclusive economic zone, and the rights of Bangladesh to the outer continental shelf beyond the economic zone (another 260 miles). Bangladesh achieved total rights over the undersea natural resources within the continental shelf.

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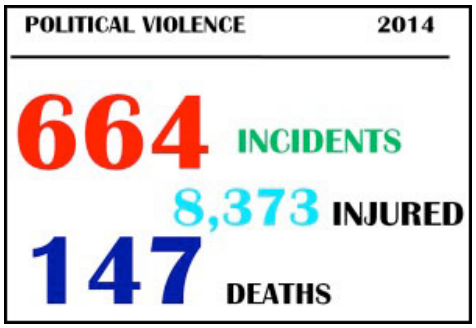
[4] http://www.eduicon.com/News/Details/5358.html.
[5] Dhaka Tribune, http://www.dhakatribune.com/bangladesh/2014/dec/02/cabinet-approved-ngo-draft-law-comes-under-fire
[6] bdnews24.com, http://bdnews24.com/bangladesh/2014/08/11/broadcast-policy-criticism-unfounded-inu.
[7] bdnews24. Com,
http://bdnews24.com/bangladesh/2014/09/17/16th-amendment-passed-to-restore-parliaments-power-to-sack-judges
[8] Dhaka Tribune, http://www.dhakatribune.com/bangladesh/2014/jul/08/bangladesh-gets-19467-square-km.

The Appellate Division of Supreme Court has commuted the death sentence given to Delwar Hossain Sayeedi to life imprisonment. He was found guilty of genocide, killing and rape during the 1971 independence war in Bangladesh and was sentenced to death in 28 February 2013 by the International Crimes Tribunal for his crimes against humanity by the war crimes tribunal[9].

1.2 Trends in Human Rights Violations

Political Confrontation and Violence

Violent incidents occurred throughout the country over the dispute around 10th National Parliament election held on 5 January 2014. Centring on the election process, members of the public in addition to political leaders and activists were arrested by a special operation drive conducted by the Joint forces. About 664 incidents of clashes took place in 2014 including confrontation between political parties and law enforcement agencies, ruling and opposition party and intra-party collisions. 147 people have died and about 8373 people were injured by these political clashes[10]. Bangladesh Nationalist Party (BNP) boycotted the national election held in January 2014 and is therefore not part of the present parliament.



Extrajudicial Killings and Enforced Disappearances

In 2014, abductions, enforced disappearances and extrajudicial killings (in the name of 'crossfire' and 'gunfight') were rampant; specially abduction and killings took an increasing toll in the first quarter. According to ASK documentation, based on different sources and media reports, 88 people have allegedly abducted by the law-enforcing agencies and 154 alleged deaths occurred[11] during January to December 2014[12].The most discussed incident was the gruesome abduction and killing of seven people by Rapid Action Battalion (RAB) Members[13] in Narayanganj district[14]. The activities of RAB came under huge criticism for their involvement with these killings and the trial process has been initiated against the alleged persons largely because of the intervention of the Judiciary.

Extrajudicial killings (in the name of crossfire, gunfight, and encounter) had an increase in 2014 comparing to 2013. 128 people have died in crossfire and gunfight with the law enforcement agencies compared to 72 in 2013. Though victims and their family members brought allegations of shooting against law enforcing agencies, the concerned authorities made denial in this regard.

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[9] bdnews24.com,http://bdnews24.com/bangladesh/2014/09/17/jamaat-leader-sayedee-to-be-in-prison-until-death-as-sc-commutes-death-sentence.
[10] http://www.askbd.org/ask/2015/01/17/political-violence-2014/.
[11] http://www.askbd.org/ask/2015/01/15/deaths-law-enforcement-agencies-2014/.
[12] http://www.askbd.org/ask/2015/01/15/forced-disappearances-2014/.
[13] Daily Star, http://archive.thedailystar.net/news2014/narayanganj-abduction-killing.
[14] bdnews24.com, http://bdnews24.com/bangladesh/2015/04/08/chargesheets-filed-in-narayanganj-seven-murder-against-3-ex-rab-officers-als-nur-hossain-31-others.

ASK DOCUMENTATION JANUARY TO DECEMBER 2014

Death by Law Enforcement Officials

Alleged deaths reported

Force/Agency Nature of Death	RAB	Police	RAB & Police	DB Police	BGB RAB	Joint Force	Coast Guard	BGB	Army	Total
"Crossfire" (not arrest)	33	32	1	7	2	1	3			79
"Crossfire (in Custody)	3	36		2	2	6				49
Physical Torture (not arrest)		1						1		2
Physical Torture (in custody)	1	11							1	13
Suicide (in custody)		1								1
Shoot (not arrest)		8								8
Shoot (in custody)		1								1
Cause of death could not be found		1								1
Total	37	91	1	9	4	7	3	1	1	154

In 2014, many people were picked up from their residences by people introducing themselves as members of law-enforcement agencies. Many of them are still missing and in some cases their bodies were found. As per statistics of disappearances as well as killings reported in the media, a total of 88 people became victims by these incidents and among them 12 people were released, 23 bodies were found, 2 people were sent to jail and there is no knowledge of the whereabouts of others.

ASK DOCUMENTATION JANUARY TO DECEMBER 2014

Forced Disappearances

(As Witnessed by families)

Alleged Abduction by Law Enforcement Officials

Total Abductions	Dead Body Later Recovered	Released after Abduction	Presented to the media by RAB After	Later Found in DB Office	Later Sent to Jail	Later found in Police Station
88	23	12	7	1	2	1

Breakdown of Profession/Political Affiliation	
Awami League (Ruling Party Affiliated)	2
Chatraa League (Ruling Party Student Wing)	4
Jubo League (Ruling Party Youth Wing)	5
Jamaat Affiliated	1
Shibir (Student Wing of Jamaat Party)	2
BNP (Opposition Party Affiliated)	12
Chatraa Daal (Opposition Party - Student Wing)	5
Jubo Daal	1
Businessman	14
Service Holder	9
Non Political Affiliated Students	4
UP Member	1
Council Members and Panel Mayor	1
Teacher	2
Lawyer	1
Unidentified	19
Farmer	2
Auto Driver	1
Toll Collector	1
Imaam	1
Total	88

Source:

Prothom Alo, Ittefaq, Janakantha, Inqilab, Jugantor, Samakal, Daily Star, New Age, Independent, Sangbad, Noyadiganto, Amar Desh, Dhaka Tribune

Ain o Salish Kendra (ASK)

Custodial Torture and Death

Despite the enactment of 'Torture and Custodial Death (Prevention) Act, 2013', deaths in custody of law enforcement agencies took place in 2014. 13 people have died because of custodial torture, 2 died prior to arrest, one committed suicide, and 60 people died in jail.

Violence against Minorities

In 2014, there were several attacks on houses, shops, and livelihoods of religious minorities in different districts and also on temples and churches in Thakugaon, Netrokona, Sherpur, Mymensingh districts. In the context of the controversial election held on 5 January 2014 there were attacks on houses, businesses and temples at Jessore, Dinajpur, Lalmonirhat, Luxmipur districts before and after the election date. According to ASK Documentation, 628 houses, 192 business institutions and 63 temple idols were destroyed; 106 people were injured; and 2 people died out of fear, in attacks in January of 2014 alone**.** It has also been reported that victims of those attacks left the affected areas due to the apprehension of further attack and lack of adequate security measures. There have been many reports of Hindus having been evicted from their properties, and of Hindu girls being raped, but either the police have refused to investigate or the families of the victims were terrorised and they were forced to leave their village.

ASK Documentation - Ain o Salish Kendra

Violence Against the Hindu Community Statistics 2014

January to December 2014

Homes Destroyed	Businesses Destroyed	Temple, Monasteries and Statues Destroyed	Rape	Death	Injured
761	193	247	2	1	255

Sources : Prothom Alo, Ittefaq, Samakal, Sangbad, Noyadiganto, Daily Star, New Age, Dhaka Tribune and Ain o Salish Kendra (ASK)

Border Violence

According to media reports and ASK's documentation, a total of 273 incidents including of killings, abduction and tortures have taken place along the Bangladesh-India border in 2014[15]. 16 people were shot dead, 16 died in physical torture and 110 people were abducted. Several meetings were held between Border Security Force (BSF) and BGB (Border Guard Bangladesh) on these killings and torture, but no concrete solution has come up.

Violence against Women

Violence against women through stalking, torture for dowry, physical torture, acid violence, rape and killings, violence on domestic workers, women and children trafficking, early marriage and *Fatwa* related violence remained of concern throughout 2014.

Freedom of Expression

The Government of Bangladesh started to tighten and curb the freedom of expression both online and offline through repressive laws and practices. One sign of the government's growing intolerance towards dissent and unorthodox views has been its use of section 57 of the Information, Communication and Technology (Amendment) Act of 2006 (further amended by Ordinance on 20 August 2013), also known as the ICT Act. Furthermore, due to the Broadcast Policy 2014, the government is facing a widespread

[15] http://www.askbd.org/ask/2015/01/15/border-violence-2014-2/.

criticism by media stakeholders, rights groups and political parties in Bangladesh. Under the policy, broadcast outlets are prohibited from disseminating any news, photos, or videos that could tarnish the image of law-enforcement agencies and armed forces.

Rights of the Indigenous Peoples

There were a number of attacks on lands and residences of indigenous people in the Chittagong Hill Tracts and other plain lands in 2014. Arson attacks were allegedly carried out in the presence and with the active participation of security forces. In June, members of Border Guards Bangladesh (BGB) allegedly carried out attacks on indigenous villagers at Babuchara, Khagrachari district, leaving between 14 to 17 people injured. Members of the International Chittagong Hill Tracts Commission (CHTC) came under attack and were injured by Bengali settler groups in Rangamati on 5 July 2014[16] during its pre-scheduled visit in spite of having police escort. The following month CHTC's coordinator was also attacked by Bengali settler groups in Bandarban; and in both attacks police and administration failed to provide protection and take necessary action against the perpetrators.

Workers' Rights

After no fewer than 1,129 workers died in the Rana Plaza factory disaster on 23 April 2013, efforts are underway to make Bangladesh factories safer. However, the progress is very slow. Many of the Rana Plaza victims and survivors are yet to get compensation and able to rehabilitate themselves. Around 1200 garment workers of Tuba Group were on hunger strike for over two weeks in July-August, demanding the payment of three months (May-July 2014) wages, overtime payments and *Eid* allowances. 92 workers had fallen ill, with 9 of them being hospitalised. The hunger strike was cracked down on brutally.

Rights of Migrant Workers and Human Trafficking

On 21 January 2014, 451 Bangladeshi migrant workers were arrested in Malaysia. 122 Bangladeshis were rescued from the deep jungle of Thailand in October 2014 and it was alleged that they were sold as slaves. Meanwhile the Bangladesh Navy detained 595 people including women and children who were being trafficked from the coast of Saint Martin's island on 17 November 2014.

1.3 General Human Rights Situation in 2015

Political tension and violent acts continued in the early days of 2015. From 6 January 2015 there had been non-stop blockades all over the country by Bangladesh Nationalist Party (BNP) led 20-party alliance and continued till the second week of April 2015. According to estimates by newspapers, during the 55 days of blockades (until 1 March 2015) 60 persons have been killed in petrol bombs and fire[17]. No one including women, children and the elderly have been spared from bomb and cocktail attacks and there were cases where vehicle fleets under police protection have come under attack, people have been burnt near the police station, and cars have been burnt in front of the police[18]. But only in a very few cases the police were able to catch these miscreants red-handed.

[16] Bdnews24.com, http://bdnews24.com/bangladesh/2014/07/05/cht-commission-convoy-attacked.
[17] Prothom Alo (Main Bengali Daily), 1 March 2015.
[18] Prothom Alo, 15 January 2015.

The first quarter of 2015 is particularly horrific as freethinkers have been repeatedly targeted by extremist groups throughout Bangladesh. The trend set in the past on handling such issues is discouraging. Religious extremist groups have emerged as an increasing threat to the safety of bloggers and online activists and as a force against pluralism, gender equality, non-violence and diversity. Fatal and vicious attacks on bloggers became alarming in the first half of 2015 and it not only silences the victims but also sends a chilling message to all in Bangladesh who espouse independent views on religious issues.

Killings of Online Activists: 3 in 4 months

Name	***Date and place of occurrence***	***Description***
Avijit Roy	***Killed on 26 February 2015 Dhaka University, Bangladesh***	*Avijit Roy was a prominent advocate of free expression in Bangladesh, coordinated international protests against government's censorship and imprisonment of bloggers. He was well known for his writings on his self-founded site Mukto-Mona. On the evening of 26 February 2015, he and his activist wife were attacked near Dhaka University. Roy was struck and stabbed with sharp weapons in the head and died at 10:30 pm (on 26 February 2015).*
Wasekur Rahman	***Killed on 30 March 2015 Tejgaon, Dhaka, Bangladesh***	*Wasekur Rahman Babu was hacked to death on 30 March 2015 morning in Tejgaon, Dhaka. Three assailants armed with machetes, swooped on Wasekur (27), a travel agency executive, around 9 am on Dipika Mosque Lane of Begunbari, close to Tejgaon Textile Engineering University, when he was going to office in Motijheel. Locals took him to Dhaka Medical College Hospital where doctors declared him dead. He was vocal against human rights violations against the religious minorities and indigenous people of the country.*
Ananta Bijoy Das	***Killed on 12 May 2015 Sylhet, Bangladesh***	*Ananta Bijoy Das, a blogger (and banker) was hacked to death by four masked men in Sylhet on 12 May 2015. Ananta used to write for Mukto-Mona Blog which used to be moderated by Avijit Roy. He was also an editor of a quarterly magazine called Jukti (Logic) and activist of the Ganajagaran Mancha*[19]*.*

Besides keeping the 'Information and Communication Technology (ICT) Act 2006' in effect, the government has decided to enact a Cyber Security Law with strict punishment for the offenders of cyber crimes which will permit maximum 20-year sentence for 'cyber-terrorism' and arrest of the suspects without a warrant. The Police would be able to take any necessary measure and even break open the doors and windows of the suspects to seize their computers, according to the draft Act.

In 2015, the country was also stunned by the sudden discovery of mass graves of the aspiring migrants and it raised questions regarding the nexus between human trafficking and illegal immigration. The latest

[19] The 2013 Shahbag protests, associated with the Shahbag central neighbourhood of Dhaka, Bangladesh, began on 5 February 2013 and later spread to other parts of Bangladesh, and became known as *Gonojagaran Mancha* (National Awakening Stage: *gono* means people, *jagoron* means awakening, and *moncho* means platform). The people demanded capital punishment for Abdul Quader Mollah, who had been sentenced to life imprisonment, and for others convicted of war crimes by the International Crimes Tribunal.

United Nations High Commissioner for Refugees (UNHCR) periodic Report titled 'South-East Asia: Irregular Maritime Movements (January-March 2015)'[20] on human trafficking only adds disgrace to the injury. It seems that the state machinery is not serious in eradicating human trafficking.

1.4 NHRC's initiatives in addressing the human rights situation

The NHRC has taken some positive initiatives in 2014 and its response to the human rights violations was visible through its statements, spot-visits, seminars and roundtable discussions. It seems that the Commission focused on promotional activities; rather than responding to gross violations of human rights. It has substantially depended on such activities by way of its performance.

For example, in the context of the discovery of several mass graves of migrants in Thailand, the NHRC organised a workshop on 'Combating Human Trafficking and Repatriation of Victims: Role of Key Actors' on 16 May 2015 at an expensive hotel in the capital. Another example was the Commission demanded prompt identification and trial of perpetrators in the Kalshi Bihari camp clash incident[21] at a workshop titled 'Follow-up on the implementation of 2nd Cycle UPR of Bangladesh' held on 24 June 2014 (also organised at a five star hotel in Dhaka). No progress has been made to the investigation of this heinous human rights violation for over a year now.

The NHRC was not proportionately vocal for freedom of expression issues in Bangladesh despite increasing threat to the safety of bloggers and online activists. The Commission didn't address this issue adequately when restrictive laws were being enacted or freethinkers have been repeatedly killed by extremist groups throughout the country. While it was encouraging that in 2014 the Commission demanded to bring back the exiled freethinker Tasleema Nasrin[22]; it did not speak loud and clear or take any action in favour of the arrested bloggers which was an important issue that time. The Commission has not also responded adequately to the killing of the bloggers in 2015.

Moreover, what is not very clear from NHRC's activities is, how they differentiate their activities from that of the Non-Governmental Organisations; and how they operate as a state institution with the human rights mandate given by the state. For example, the NHRC organised a conference on the Torture and Custodial Death Prevention Act 2013[23] on 16 June 2015 where no representative from law-enforcement agencies were present. Most importantly from the media reports, it has not been found that there was any discussion about the proposal from police to amend the act which was the talk of that time.

In another recent example, a Malaysia-based regional NGO, CARAM Asia, handed a list of 598 trace-less Bangladeshi trafficking victims to the NHRC on 14 June 2015[24]. However, we are not aware of any action from the NHRC as follow-up to that. The Commission was supposed to focus its work on core protection issues, such as the prevention of torture and degrading treatment, summary executions, arbitrary detention and disappearances, or the protection of human rights defenders. It was expected to play a critical role in

[20] Report was released on 8 May 2015, http://www.unhcr.org/554c8adf9.html, http://www.unhcr.org/554c6a746.html; http://www.thedailystar.net/country/25000-rohingya-bangladeshi-fortune-trafficked-3-months-unhcr-8116.1
[21] Dhaka Tribune, http://www.dhakatribune.com/crime/2014/jun/15/mirpur-clashes-kill-10-biharis.
[22] http://bangla.bdnews24.com/bangladesh/article749905.bdnews.
[23] Daily Star, http://www.thedailystar.net/city/law-enforcers-should-send-details-victims-nhrc-98374.
[24] Daily Star, http://www.thedailystar.net/country/nhrc-gets-list-598-trafficking-victims%E2%80%99-97003.

advancing all aspects of the rule of law, including with regard to the judiciary, law enforcement agencies and the correctional system.

At this critical juncture when it is about to start its new term, the general perception is that the NHRC is in a compromising mood and has become a mere appendage of the executive arm of the state. With regard to the reasons for this: partly the problem lies in its founding legislation; and partly in the failure of the key functionaries to adequately play their role for the people and their rights; and most importantly to comprehend the full meaning of human rights.

2. INDEPENDENCE

The enabling act (NHRC Act 2009) refers to the independence of the National Human Rights Commission. According to Section 3(2), "The Commission shall be a statutory independent body having perpetual succession and the power, among others, to acquire, hold, manage, dispose of property, both moveable and immoveable, and shall by the said name sue and be sued." The position of the Commission members has also been guaranteed by the Act.

Establishment of NHRI	
Established by Law (Founding Law)	The National Human Rights Commission Act, 2009[25] (NHRC Act 2009)
Enabling Law	The National Human Rights Commission Act, 2009
Mandate	The key roles can be summed up as follows:[26] (a) to inquire, suo-moto or on a petition presented to it by a person affected or any person on his behalf, into complaint of violation of human rights or abetment thereof, by a person, state or government agency or institution or organisation or into any allegation of violation of human rights or abetment thereof or negligence in resisting violation of human rights by a public servant; (b) To inspect any jail or any other places where persons are detained or lodged and to make recommendation to the government thereon for the development of those places and conditions; (d) To review the safeguards of human rights provided by the Constitution or any other law for the time being in force and to make recommendation to the government for their effective implementation; (e) To review the factors, including acts of terrorism that inhibit the safeguards of human rights and to make recommendations to the Government for their appropriate remedial measures;

[25] http://www.nhrc.org.bd/About_NHRC.html.
[26] *Ibid*.

	(f) To research or study treaties and other international instruments on human rights and to make recommendation to the government for their effective implementation; (g) To examine the draft bills and proposals for new legislation for verifying their conformity with international human rights standards and to make recommendations for amendment to the appropriate authority for ensuring their uniformity with the international human rights instruments; (h) To give advice to the Government for ratifying or signing the international human rights instruments and to ensure their implementation; (i) To research into the field of human rights and to take part in their execution in educational and professional institutions; (j) To publicise human rights literacy among various sections of society and to promote awareness of the safeguards available for the protection of those through publications and other available means; (k) To encourage and coordinate the efforts of Non-Governmental Organisations and institutions working in the field of human rights; (l) To enquire and investigate into complaint related to the violation or probability of violation of human rights and resolve the issue through mediation and conciliation; (m) To advise and assist the Government by providing necessary legal and administrative directions for protection and promotion of human rights; (n) To make recommendation to the Government so that the measures taken through the laws of the land in force and administrative programs are of international standard ensuring human rights; (o) To assist and advice the organisations or institutions working in the field of human rights and generally the civil society for effective application of human rights; (p) To raise public awareness through research, seminar, symposium, workshop and relevant activities and to publish and disseminate the outcomes; (q) To provide training to the members of the Law enforcing agencies regarding protection of human rights; (r) To provide legal assistance to the aggrieved person or any other person on behalf of the aggrieved person to lodge a complaint before the Commission; Section 18 of the NHRC Act, 2009 '*Procedure to be*

	followed in case of disciplined force'**:** (1) Notwithstanding any other provision of this Act, the Commission on suo-moto or on the basis of any application may call for report from the Government on the allegation of violation of human rights by the [state security forces] or any of its members. (2) If any report is called for under Sub-section (1), the Government shall submit the report to the Commission. (3) On receipt of the report under Subsection (2), the Commission. (a) If satisfied, would not proceed in the matter any further. (b)If it deems necessary, may make recommendation to the Government for actions to be taken into the matter. 4) On receipt of the recommendation under subsection (3) the Government shall inform the Commission in writing about the action taken into the matter within six months from the date of receipt of the recommendation. (5) On receipt of the report under sub-section (4) the Commission shall furnish its copy to the Complainant or his representative, as the case may be.
Selection and Appointment	
Is the selection process formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines?	The enabling Act[27] states that the Honourable President, upon recommendation of an impartial Selection Committee, will appoint the Chairman and Members of the National Human Rights Commission. According to Section 7(1) of the NHRC Act 2009, "To make recommendation on the appointment of the Chairman and Members, a selection Committee shall consist of seven members and it will be headed by the Speaker of the Parliament." It is not formalised through a transparent and participatory process.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	Headed by the Speaker of the National Parliament, the selection committee includes the Minister for Home Affairs, Minister for Law, Justice and Parliamentary Affairs, Chairman of the Law Commission, Cabinet Secretary, one Member of Parliament from the treasury bench and one Member of Parliament from the opposition bench as members of the Committee. So it appears from the composition that the selection committee is dominated by nominees of the executive.

[27] http://www.nhrc.org.bd/PDF/NHRC%20Act%202009_1_.pdf.

	The enabling law does not guarantee that civil society should be consulted in the selection process of Commission members. Earlier, the civil society was not consulted in the selection process despite urgings from them[28]. The selection committee also did not adopt any guideline to conduct this process.
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	As per Section 6(2) of the National Human Rights Commission Act, 2009: "The Chairman and the Members of the Commission shall be appointed from amongst the persons who have remarkable contribution in the field of legal or judicial activities, human rights, education, social service or human development." As per Section 7(4) of the National Human Rights Commission Act, 2009: 'For the purpose of making recommendation on the appointment of the Chairman and Members, the Selection Committee, Shall recommend two names against each vacant post on the basis of decision of majority of the votes of the Members present, and in case of equality of votes, the person presiding over the meeting shall exercise casting vote'. The Selection Committee neither makes any open call nor publicises the names for consideration. Thus people know about the selection only after the Chairperson and the Members are appointed.
Is there a provision for broad consultation and/or participation, in the application screening and selection process	The enabling law does not guarantee civil society's participation nor consultation in the selection process. The selection committee is not an independent body, being dominated by the executive. The selection process does not make an open call for applications nor is there fair consultation with civil society organisations.
Is there a requirement to advertise vacancies?	The NHRC Act, 2009 does not mention or bar any requirement to advertise vacancies for selection. Names of the Chairperson and Members are available only after they are appointed. As per Section 7(4), the selection committee is supposed to recommend two names against each vacant post. But there was no clear information on the recommendation for the two names for each post during the

[28] http://www.dhakatribune.com/law-amp-rights/2013/jun/14/ask-urges-speaker-engage-civil-society-selecting-nhrc-body.

	last selection.
Divergences between Paris Principles compliance in law and practice	The 'Paris Principles' states, the appointment of members of national human rights institution, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights. The selection process of NHRC members of Bangladesh is conducted by a selection Committee consisted of seven members and headed by Speaker of the Parliament. A transparent process is not followed with pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights.
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	Section 29 of the NHRC Act, 2009 states that no suit or prosecution or other legal proceedings shall lie against the Government, the Commission, any Member, officer or staff of the Government or the Commission for any publication, report or any other activity of the Government and the Commission, for anything which is, in good faith, done under this Act or the rules made there under, for any damage caused or likely to be caused by such thing.
Does the NHRC founding law include provisions that promote:- - Security of Tenure; - The NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; - The independence of the senior leadership; and - Public confidence in national human rights institution.	The founding/enabling law ensures the security of the tenure of the members (Section 6) which states that the Chairman and Members of the Commission shall hold office for a term of three years from the date on which they enter upon office. It also states that a person shall not be appointed for more than two terms as a Chairman or Member of the Commission. The NHRC Act, 2009 ensures indirectly the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference through Section 12 (Chapter-III) as it shall: i) enquire and investigate into complaint related to the violation or probability of violation of human rights and resolve the issue through mediation and conciliation; ii) To review the factors, including acts of terrorism

	that inhibit the safeguards of human rights and to make recommendations to the Government for their appropriate remedial measures; iii) Advise and assist the Government by providing necessary legal and administrative directions for protection and promotion of human rights; iv) make recommendation to the Government so that the measures taken through the laws of the land in force and administrative programs are of international standard ensuring human rights; v) undertake such other functions, as it may consider necessary for the promotion of human rights; But the enabling law has no such provision which directly speaks with regard to independence of the senior leadership as well as public confidence in national human rights institution. So absence of those assurances also constrains its efficiency and limits the fulfilment of its mandate and functions.
Are there provisions that protect situation of a coup d'etat or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	No such provision is inserted in the NHRC Act, 2009.
Capacity and Operations	
Adequate Funding	Section 24 (4) states that annual grant allocated by the Government and grants provided by the local authorities shall be deposited to the Human Rights Commission Fund and management and administration of this fund shall be vested on the Commission. In terms of resourcing, the founding Act ensured the independence of the NHRC in using its resources. The NHRC Act 2009 reads: "the Government shall allocate specific amount of money for the Commission in each fiscal year; and it shall not be necessary for the Commission to take prior approval from the Government to spend such allocated money for the approved and specified purpose" (Section 25)[29]. The very small allocation from the state and limitation of not getting direct funding from donors (due to enabling law) is hindrance for the

[29] The National Human Rights Commission Act of 2009, http://www.nhrc.org.bd/PDF/NHRC%20Act%202009_1_.pdf.

	independent functioning of NHRC. The largest part of the amount provided by the state is being used for the salary and remuneration for the staff and members of the NHRC.

The current Chairperson and Members (except one) are at the end of their second term in the Commission. The present chairman and members of NHRCB were appointed on 22 June 2010 for the first term and after the completion of the three years term, they were re-appointed on 23 June 2013 for another term; except for one member who already served for six years in two terms. The Chairperson, Full Time Member and four other members will finish their consecutive second term on 22 June 2016 and hence no way be considered for further appointment.

The time is not that far when the present team will hand-over the national human rights institution of Bangladesh to their successors who will run it from 23 June 2016. So, it is the duty of the present Commission to hand over a fully-functional institution with appropriate policies and practices in place. Still, there is no indication of any measure from the selection committee for open consultation with civil society for the upcoming selection.

As some provisions of the enabling law (the NHRC Act, 2009) evidently contradict the 'Paris Principles', the NHRC Bangladesh doesn't have the independence and autonomy of an independent rights institution. But the Commission seems very weak and reluctant to exercise the powers that it has within the existing enabling law. For example: Section 10(1) and (2) states that "the Chairman shall be entitled to get salaries, allowances and other privileges as a Judge of the Appellate Division of the Supreme Court and the Full Time Member shall be entitled to get salaries, allowances and other privileges as a Judge of the High Court Division of the Supreme Court". It is apparent from this provision that the Chair has been given the equivalent powers and privileges of a judge of the Appellate division. However, the NHRC's actions and statements do not reflect this authority.

Section 17 states that "the Commission, while investigating into the complaints of violation against human rights, may call for the report from the Government or any authority or organisation within the specified time and if the Commission does not receive the report or information within the specified time, the Commission may, on its own, start investigation". Section 18 states that *suo-moto* or on the basis of any application the Commission may call for report from the Government on the allegation of violation of human rights by the 'disciplined force' or any of its members.

While investigation into the violation is an important mandate of the NHRC, the Chairperson in a recent interview with *Probe* magazine[30] told: "We still don't have the capacity to carry out investigations. We lack the logistics. What we do now is issue a letter to the Home Ministry in regard to such incidents and give a certain time limit for an inquiry committee to be formed to look into the matter and submit a report to the Commission".

In October 2014, the NHRC Chair expressed the institution's helplessness once again. According to him, "In the majority of the cases, we have no other option but to directly write to the Home Ministry when

[30] How empowered is the Commission to protect human rights?, http://www.nhrc.org.bd/PDF/How%20empowered%20is%20the%20Commission%20to%20protect%20human%20rights.pdf.

[Rapid Action Battalion –RAB] or other law enforcement agencies show reluctance to consider an issue. As the Commission now understands that there is no way but to back off because of the influential quarters, it has mostly stopped dealing with such key issues"[31]. The inconsistency is that earlier on many occasions, this Commission gave the impression that it does not face any obstruction from the government and the Commission members praised the cooperation they receive from state authorities[32].

Under Section 19 (2), the Commission has power to recommend to the Government or concerned authority for interim financial relief to victim of human rights violations. Unfortunately, the Commission did not exercise this power yet. The Commission could use this provision for standard-setting on state responsibility to protect victim of human rights violations.

The Commission did not frame any rule under the NHRC Act, 2009 though Section 30 states that the Commission may, with prior approval of the President and by notification in the official Gazette, make rules for carrying out the purposes of this Act. Even after its two terms, still there is some ambiguity on the operation of the complaints mechanism, the decision-making process, etc.

3. EFFECTIVENESS

Case-Study: Violence against religious minorities

As described above, in 2014 there were scores of violent incidents against religious minority communities; in particular, arson and looting of temples, homes, shops and business establishments of Hindu communities.

After these atrocities, the police lodged a few 'FIRs' (First Information Reports) and 'General Diary' (GD) entries, with little or no subsequent progress in most cases. On 15 January 2014, the High Court Division issued a rule directing the Government to provide adequate security to minorities. In the absence of any positive political and policy move and mere parliamentary debate on this issue, the minority communities are exposed to future victimisation.

The NHRC has done solidarity visits to Jessore, Dinajpur, Thakurgaon[33], where attacks against religious minorities took an increasing toll. On 18 January 2014, NHRC organised a consultation in the capital titled 'Human Rights: Communal Cooperation'[34] where the NHRC Chair advocated the law enforcement agencies to bring perpetrators involved with communal attacks to account.

However, the spot-visits conducted by the NHRC are more in the nature of a solidarity visit than fact-finding. Hence it ends up with some media coverage but without any concrete action. The NHRC did not prepare its detailed observations of the visits and did not put forward a holistic recommendation to address the issue including the confidence building or rehabilitation of the devastated communities.

Case-Study : Enactment and implementation of repressive laws

[31] Dhaka Tribune, http://www.dhakatribune.com/bangladesh/2014/oct/04/%E2%80%98only-1-success-rate-nhrc%E2%80%99.
[32] Bdnews24.com, http://opinion.bdnews24.com/bangla/2012/05/17.
[33] Prothom Alo, 20 January 2014.
[34] *Ibid*.

A number of repressive laws and policies introduced recently have serious implications for human rights work for e.g. the 'Information, Communication and Technology (Amendment) Act of 2013'; 'Foreign Donations (Voluntary Activities) Regulation Bill, 2014'; 'National Broadcast Policy of 2014', as discussed above.

Although section 12 (1) (g) of the NHRC Act, 2009 provides that the NHRC shall examine the draft bills and proposals for new legislation for verifying their conformity with international human rights standards and to make recommendations for amendment to the appropriate authority for ensuring their uniformity with the international human rights instruments; the public is not aware of any action taken by the NHRC with regard to these restrictive laws and policies such as public statements and dialogue with the state authorities.

Case-Study: Attacks on Bloggers

Although bloggers and other online activists have been active for a long time in Bangladesh, their role was highlighted after their prominence in the Shahbagh Movement of 2013. Religious extremists opposed to them made an issue of their free-thinking on religion to target these activists and to create public feeling against them. The religious group, Hefazat-E-Islam, spearheaded a violent movement demanding the death of the bloggers and online activists. Consequently, three online activists were hacked to death in 2015.

Very little action has been seen from the NHRC in this regard. Interestingly, the NHRC did not even come up with any public statement after all those killings. The NHRC Chairperson did write to the State Minister, Ministry of Home Affairs requesting him to take action against the perpetrators in order to maintain the law and order situation in the country.[35] However, there is at time of writing no visible progress in the investigation into the killings of bloggers Rajib Haider (killed in 2013), Avijit Roy, Wasekur Rahman Babu and Ananta Bijoy Das. The NHRC has not addressed the foot-dragging by the law enforcement agencies.

4. OVERSIGHT AND ACCOUNTABILITY

a. Civil Society

The National Human Rights Commission has expressed that it considers partnership with stakeholders including civil society organisations to be crucial to improve human rights in the country. The Commission also considers that it has developed specific and comprehensive strategy in partnership-building. However, in most cases, those partnerships are selective and on an ad-hoc basis. The NHRC is seen primarily partnering with big national or international NGOs – and it is mainly in organising events – compared to minimal cooperation to influence human rights policies.

Significantly, in the early days of 2015 when political tension, violent acts and non-stop blockades by the Bangladesh Nationalist Party (BNP) led 20-party alliance were ongoing across the country, the NHRC's

[35] http://www.nhrc.org.bd/PDF/Avijit%20Roy.pdf.

actions were limited to only remarks and statements. Subsequently when some sections of civil society called for a political dialogue to resolve the country's ongoing crisis, the NHRC Chair criticised[36] the civil society members for suggesting so. He argued that "any dialogue can be arranged with those who are friends of democracy, hold the spirit of democracy and obey the rules of democracy ... No discussion can be held with those who shunned the path of democracy and have resorted to terrorism". Regardless of one's personal views on responsibility for the political crisis, this statement is indicative of political bias and unbecoming of any member of the national human rights institution.

b. Parliament

The NHRC submits its annual report to the President as is its legal obligation. However, the report neither in full nor in part has ever been discussed in parliament. The NHRC annual reports highlight its activity without providing any analysis and recommendations on human rights issues. The '2014 Annual Report' has not been released as yet. The NHRC was recently invited to meet with the Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs. However, the outcome of the meeting has not been made public.

5. CONCLUSIONS AND RECOMMENDATIONS

According to the NHRC, from a position of being almost an unknown and unnoticed institution, the Commission has today established itself not only in the fields of human rights protection but equally in the larger arena of public life and consciousness with an increasing number of citizens approaching it for relief in the "last resort"[37]. Though, this not our observation, it is the aspiration of human rights defenders that the NHRC be upright in contributing to peoples' lives and the protection of their rights.

Status of previous recommendations:

Recommendation	***Initiative by State/NHRC***
Selection process for the nomination/application and appointment of the Chairperson and Commissioners that ensures civil society participation	In the selection process for the second term of the current Commission, no initiative was taken by the selection committee for open call or consultation with civil society on nominations and suitability.
Immediate step to set up independent functional secretariat in an accessible location	No change in location of Commission's office.
Government's speedy step to remove the limitations and loopholes in the enabling legislation • Including the provision of fact-finding on	The NHRC has made a proposal. However, no initiative from the government to place it before parliament.

[36] The NHRC Chair was addressing a discussion titled 'Awareness Campaign for Women's Empowerment and the Relevance of CEDAW Treaty' at the Jatiya Press Club, 17 January 2015, http://www.bdchronicle.com/detail/news/32/13594.
[37] NHRC Annual Report 2013, http://www.nhrc.org.bd/PDF/BNHRC%20Annual%20Report%202013%20English.pdf.

allegations against the security forces; • Repealing the current rule on deputation or secondment of staff to the senior management position;	
Focusing on effective complaint handling process to make the state liable for proper outcome and explanation regarding complaint and do own investigation on HR violations.	No initiative from NHRC for an effective complaints handling mechanism.

Recommendations to the Government of Bangladesh (GoB):

- Immediately abolish the loopholes and rectify the inadequacies in the enabling legislation, specifically:
    - Selection process including consultation with civil society;
    - Investigation on allegations of violation of human rights by the security forces;

- Take necessary measures for initiating the selection process of new members through assessment of applicants based on pre-determined, objective and publicly available criteria in full compliance with the Paris Principles;

- Ensure cooperation to the National Human Rights Commission in the complaints-handling process by complying with its recommendations;

- Be open to criticisms made by the National Human Rights Commission and put stress on those in the light of bringing changes to the GoB's actions;

- Provide sufficient budget to the Commission to lessen donor dependency and locate it in an accessible location.

Recommendations to the National Human Rights Commission (NHRC):

- Initiate a consultative process to review the 2010-2015 Strategic Plan and adopt a new strategic plan to ensure that it continues to be relevant, appropriate and implementable, and be committed to its full implementation;

- Make maximum and creative use of provisions in the enabling law and explore all required and exhaust last possible avenues to get remedy on the human rights violations;

- Focus on routine as well as new trends of human rights violations;

- Develop national-level standards based on its recommendations;

- Develop an active protection mechanism by establishing an HRD desk and provide temporary grants to the victim and family-members in need;

- Develop activities with the law enforcement agencies and other state institutions to increase their respect for human rights;

- Take initiatives to formulate its own rules and guidelines on disposal of complaints and make it public;

- Differentiate its role from that of non-governmental human rights organisations by making the government authorities accountable to implement its recommendations;

- Concentrate more on human rights protection rather than promotional activities.

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INDIA: IMMEDIATE REFORMS NEEDED

All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI)[1]

1. INTRODUCTION

India has attained a high level of legitimacy and acceptance through the establishment of the National and State Human Rights Institutions. However, these institutions have seldom been successful in promoting and protecting human rights. Be it the cases of disappearances in Assam and Jammu & Kashmir; killings by army and paramilitary forces in Kashmir, Manipur, West Bengal and Chhattisgar; farmer suicides in Maharashtra and Andhra Pradesh; land acquisitions and mining in Orissa and Jharkhand; droughts in Rajasthan and the rotting of food grains in the Haryana; atrocities against dalits and tribals; crimes against women; pogrom in Muzaffarnagar or the Batla House encounter in New Delhi – allthat the Commissions have done is seek a report from the Government of India or the respective state government.

In some cases, they did carry out investigations and issued recommendations but these are seldom abided by. 'Paper Tigers' or 'Toothless Tigers' are the words commonly associated with these institutions largely by those who have been continuously engaging with them through cases. The images of human rights activists protesting in front of the NHRC during the Batla House encounter are still fresh. Can justice be expected from an institution which is another organ of the perpetrator of human rights violation, i.e., the State? Or, in the struggle for justice, will approaching human rights institutions simply result in re-victimisation from the same forces that are accused of the violation. India is yet to make its National Human Rights Plans of Action, an action it committed to at the World Conference on Human Rights in Vienna in 1993.

2. INDEPENDENCE

Establishment of NHRI	
Established by Law	The NHRC and several SHRCs have been established through the Protection of Human Rights Act 1993 (PHRA).
Mandate	N/SHRCs have the power to look into any matter of human rights brought before them through the victim or on behalf of the victim by a complainant. It also has the power to carry out *suo moto* inquiries. They also have the power to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. The N/SHRIs have the power to review and study the safeguards provided by the constitution, treaties and other international instruments on human rights and institutions and make necessary recommendations to the government. The N/SHRIs should involve and encourage the efforts of non-governmental organisations and institutions and spread human rights literacy among various sections of the civil

[1] *Mathew Jacob, National Coordinator of AiNNI, <mj@pwtn.org>.*

	society. The N/SHRCs, while enquiring into a complaint, have the power of a civil court. Every proceeding before a commission is deemed to be a judicial proceeding. An N/SHRC, for the purpose of investigation into a matter, can utilise the service of any officer or agency. The N/SHRCs will issue recommendations. The recommendations can direct the concerned for payments of damages, initiate proceedings for prosecution, and/or move the high court or the Supreme Court. The recommendation issued by the N/SHRIs has to be supplemented with a compliance report by the government normally within a period of one month. However, in dealing with the complaints against armed forces, the N/SHRCs can only seek a report from the central government. Obtaining the report, the N/SHRCs can either proceed with it or make its recommendations to the central government which is duty bound to furnish the action-taken report normally within a period of three months. The N/SHRCs should then publish its report together with the recommendations and action taken. It has to be noted that other sections of this law are not applicable with regard to complaints against the armed forces. The N/SHRIs are duty bound to furnish annual reports, and special reports if needed. The reports have to be tabled on the floor of the house by the government along with the action taken report. If any recommendation has not been accepted by the government, the reason has to be mentioned. In each district a court of session *may* be specified as a human rights court. For each human rights court, there should be a specified public prosecutor or an advocate with not less than seven years of practice.
Selection and appointment	
Is the selection formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	The appointment of chairperson and the members of NHRC is done by a committee,as mandated by the PHRA, consisting of the Prime Minister, Speaker of *Lok Sabha*, Minister of Home Affairs, Leader of the Opposition in *Lok Sabha*, Leader of the Opposition in *Rajya Sabha* and Deputy Chairperson of *Rajya Sabha*. The duration of the term of the chairperson and the members is five years. Similarly, the appointment of the chairperson and members of the SHRCs is done by a committee consisting of the Chief Minister, Speaker of the Legislative Assembly, Minister in-charge of the Department of Home Affairs and the Leader of the Opposition in the Legislative Assembly. The duration of the term of the chairperson and the members is five years.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	The PHRA has legitimised the appointments in such a way that is always in favour of the ruling government. While the Paris Principles mention the diversity in the composition of the N/SHRCs, keeping it positioned between the government and civil society, the PHRA has given all the power to the government of the day with regards to the appointments to the N/SHRCs. According to the PHRA 1993, the appointment of members to the NHRC is to be conducted by a committee mentioned in the section above. If we look critically at the appointment committee, four out of six members are from the ruling government. It is evident that a person

	not acceptable to the ruling government cannot become a member or Chairperson of the NHRC. The story is the same for most of the Commissions. With the current provisions, the bias in appointment can't be dismissed
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	According to the enabling law, the NHRC ought to consist of a chairperson who has been a Chief Justice of the Supreme Court, one member who is, or has been, a judge of the Supreme Court, one member who is, or has been, a judge of a high court and two members who have practical knowledge and experience of human rights. The Chairpersons of the National Commission for Women, National Commission for Minorities, National Commission for Scheduled Castes and the National Commission for Scheduled Tribes only as of today are 'deemed members' of the NHRC. The chief executive officer of the commission is a Secretary General (serving bureaucrat from the Government).
Is there a provision for broad consultation and/or participation, in the application, screening and selection process	The appointments to N/SHRCs are a secretive process with civil society having no say. To ensure diversity in the appointment process, there needs to be an engagement between the government and civil society. There need to be nominations for the N/SHRCs which can then be elected by the committee, which again needs to be comprised of members who are independent of the government. While the government argues that there are retired judges in the N/SHRCs who provide legitimacy, these judges need to act like advisors for the N/SHRCs which should be represented by people who have expertise in human rights and have carried on such work for a considerable amount of time.
Is there a requirement to advertise vacancies? How is it usually done/Describe the process?	As per the PHRA, there is no requirement to advertise and seek public opinion. As mentioned in the above section, appointments to N/SHRCs are secretive process with civil society having no say.
Divergences between Paris Principles compliance in law and practice	Representation of women in the Commissions has been a serious worry. The NHRC has been devoid of a woman member since August 2004. No woman has ever been appointed as a chairperson of N/SHRCs as per the PHRA. Representation of the marginalised, such as dalits and tribals is also seldom seen except perhaps in the NHRC where we have had a member in the past and till recently the Chairperson. Though the PHRA mentions the appointment of two members who have knowledge and experience of human rights work in the NHRC, this provision is generally not adhered to and it has been the retired members of civil service (i.e. formerly of the Executive branch) who occupy positions under this head. Out of a whole pool of civil rights activists in India, none has ever made it to the NHRC. The international community concerned with the functioning of human rights institutions should look into the matter, the reasons for this are loud and clear. The PHRA contradicts the Paris Principles on the appointments and composition of the N/SHRCs. It has legitimised the appointments in such a way that is always in favour of the ruling government. While the Paris Principles mention the diversity in the composition of the N/SHRCs, keeping it positioned between the government and

	civil society, the PHRA has given the power to the government with regard to the appointments to N/SHRCs. This has been discussed in detailabove.
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	The N/SHRIs being quasi-judicial bodies established as per the PHRA and other concerned acts, enjoys immunity and protection from prosecution and legal liability. The process of removal of Chairperson and Members as per Section 5 of the PHRA requires President's orders.
Does the NHRI founding law include provisions that promote: • security of tenure; • the NHRI's ability to engage in critical analysisand commentary on human rights issues free from interference; • the independence of the senior leadership; and • public confidence in national human rights institution.	The mandates of the N/SHRCs have been mentioned in the sections above. The tenure for each member and chairperson as per the PHRA is five years. The non-independence of members and complete dependence on State has been described earlier. The Commissions' failures are not only because of the weak PHRA and other respective laws for thematic N/SHRIs but also because of the lack of political will on the part of the NHRIs. Positive clauses with regard to the effective powers of the N/SHRIs have not been put into practice. While the PHRA refers to engagement with civil society organisations and encourages human rights work in the country, the N/SHRCs appear to be happy to ignore civil society and be content being an extension of the State.
Divergences between Paris Principles compliance in law and practice	Although the PHRA and other respective laws for thematic commissions lay the ground for the establishment of the Commissions, it contains many flaws contradicting the Paris Principles, in terms of independence, appointments, engaging with civil society etc. Civil society groups lobbied and moved the Supreme Court in 2013 for amendments to be made to the PHRA for it to be in accordance with the Paris Principles, but to date, they have been ignored. The PHRA clearly violates the Paris Principles when it comes to independence. The N/SHRCs have been established by the PHRA and are answerable to the Parliament. The line between the legislative and the executive is very thin. Instead of answering to an independent authority, the NHRC and SHRCs are responding to the government of the day. The NHRC and SHRCs report to the Ministry of Home Affairs, the same ministry which also oversees the work of the police, immigration, communal harmony, border management, special laws for terrorism and insurgency etc. Although most complaints lodged with the N/SHRCs are made against these departments, the N/SHRCs appear to be bound by restrictions to move against them. For examples, MASUM an organisation from West Bengal has registered several hundred cases with regard to killings and torture by Border Security Force especially in the Murshidabad district. Till date, no action has been taken by the

	NHRC on any of the case[2]. In the states of Bihar, Rajasthan and Gujarat, the SHRCs have not moved an inch in the huge volume of cases filed by many human rights groups on the issue of dalit atrocities. In cases of custodial deaths and brutal police tortures, only meagre compensation amount has been recommended but still no prosecution has taken place of such guilty police officers and security forces. Most of the cases are, shockingly, still pending for many years. There are no recorded instances available which prove that departmental proceedings or criminal charges have been initiated against the accused. In Jammu & Kashmir, Manipur and Chhattisgarh establishes beyond reasonable doubts that the NHRC and SHRCs have largely been quiet observers of secret killings and disappearances. There have been many incidences of enforced disappearances, rapes and encounter killings towards which these SHRCs as well as the NHRC have been a silent spectator. The N/SHRCs have zero independence when it comes to investigation into a matter of human rights violation. The investigation mechanism of the N/SHRCs is completely flawed in nature. There are several recorded instances where the perpetrators of the crime and the accused were asked by the N/SHRCs to clarify the charges against them and furnish a report. Upon receiving a complaint of police torture, the N/SHRCs as a practice asks the same police to investigate the matter, and based on the report the matter is closed. Or, upon receiving a complaint of negligence by a government department leading to violation of human rights of the victims, the N/SHRCs have asked the same department to conduct the investigation and furnish the report. In some cases, comments were sought from the complainant but it remains a mere formality. Such practice of NHRC and other commissions has led to victimisation of those who approached them for justice. There are several examples from Chhattisgarh alone, where human rights defenders (HRDs) have been victimised for taking the matter to the NHRC. The SHRCs have constantly struggled to have a full board as per the current provisions of the PHRA. States like Himachal Pradesh, West Bengal, Chhattisgarh, Manipur, Uttar Pradesh have run for years without a Chairperson. In the Himachal Pradesh and Manipur SHRCs, there have been no chairperson or any members appointed for a long time making them defunct.
Capacity and Operations	
Adequate Funding	Financial autonomy of a Commission guarantees its overall freedom. This also means an independent way of operating, and not underobligation to the government. But the N/SHRIs in India depend solely upon the Ministry of Home Affairs and other concerned ministries. The N/SHRIs don't raise their funds on their own. The N/SHRIs should determine their budget and channel funds for the same. In the national five year plan, a separate fund is to be kept for the N/SHRIs to operate on. Financial independence will ensure the N/SHRIs are not accountable to the government but rather to the people. The financial situation of the N/SHRIs is very disappointing. The staff members are also appointed after requests to the government, and many of them are sent to these N/SHRIs on deputation, more often

[2] http://bdnews24.com/neighbours/2015/06/29/rights-body-demands-probe-into-bsf-opening-fire-on-bangladesh-nationals

	on punishment posting.
Government representatives on National Human Rights Institutions:	There are no directly appointed representatives of the government on the S/NHRC, however more often than not the appointments are political in nature.

2.1 Current Appointment Row in the NHRC

In the reporting year of 2014-15, the issue of the independence of NHRIs, particularly the highly-politicised selection process of the Chairperson of the NHRC of India has emerged as highly relevant and crucial which clearly reflects on the status of independence of Indian NHRIs in general.

It was widely reported in the Indian media[3] that the Government of India was considering the name of Justice (Retd.) Mr. P Sathasivam, a former Chief Justice of India (CJI) and currently Governor of the state of Kerala for appointment as the Chairman of the NHRC, succeeding Justice (Retd.) K G Balakrishnan who completed his five-year term in May 2015. It was also reported that Justice Sathasivam was being considered as the sole contender for NHRC's top post despite there being other qualified retired candidates. The proposed appointment of Justice Sathasivam for the office of chairperson of NHRC raised serious concern regarding the selection and appointment process of NHRIs which make an institution independent, accountable, transparent, and effective.[4]

Justice (Retd.) Sathasivam retired from the Chief Justice of India's post in April 2014. He was appointed as the governor of southern Indian state of Kerala in September 2014. His appointment as a governor had evoked strong reaction from the legal fraternity that opposed his move to accept the position. A report in the leading Indian national daily aptly describes the move that a just-retired CJI broke precedence and judicial ranks to join this less than august group was an action that was widely seen as diminishing the image of the head of the judiciary, with no countervailing public interest[5]. According to constitutional experts undue preference to one candidate only in the selection process would generate a conflict of interest.

Any candidate who is a part of the executive branch should be kept away from the post of NHRC because the body is responsible to deal with complaints of rights violation against the government. Appointing such person to head NHRC would also affect the very integrity, credibility and authority of the institution meant to protect violation of the human rights of citizens. In the case of Justice (Retd.)Sathasivam, his earlier acceptance of a governor's post makes him eminently unsuitable for the sensitive job as he became part of the executive branch of the government.[6]

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[3] http://indianexpress.com/article/india/india-others/lawyers-body-moves-supreme-court-on-nhrc-chairperson-appointment/, http://sikhsiyasat.net/2015/05/05/do-not-appoint-justice-sathasivam-as-chairperson-of-nhrc-pucl-president-writes-to-the-president-of-india/, http://www.livelaw.in/justice-sathasivam-requested-me-to-canvass-for-his-appointment-as-governor-senior-advocate-dr-adish-c-aggarwala-who-filed-pil-against-justice-sathasivam/, http://timesofindia.indiatimes.com/india/Sathasivam-may-take-over-as-NHRC-chief/articleshow/46952535.cms&http://www.scribd.com/doc/262183823/Anticipatory-appointment-of-Ex-CJI-Sathasivam-as-NHRC-Head-challenged-in-SC-by-All-India-Bar-Association#scribd

[4] http://www.deccanherald.com/content/475715/pucl-writes-prez-against-sathasivam.html&www.**pucl**.org/bulletins/2015/**PUCL**jun2015.pdf

[5] "An inappropriate appointment", SriramPanchu, The Hindu 05, June 2015.

[6] Ibid

All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) believes that the appointment of the new Chairperson in a non-transparent and non-consultative manner directly contradicts the Paris Principles. Independence, impartiality, and fairness are the main pillars set out in the Paris Principles for NHRIs' operations. To be able to achieve this, financial independence, operational independence, and independence in appointment procedures are emphasised.[7] Thus two of the six key elements of the `Paris Principles' require NHRIs to be autonomous and independent of the government in all their functioning.[8]

Also a case in point is the appointment of the two serving members of National Human Rights Commission: Shri S.C.Sinha and Justice Cyriac Joseph. The last ANNI report had specific reference to it in details when their appointments were strongly objected to by the members of opposition and was done overruling their dissent.[9]

Senior Journalist and author V. Venkatesan has made significant revelations. He says "there is considerable evidence to suggest that the appointment in 2013 of former Supreme Court Judge, Justice Cyriac Joseph and former Police Chief S.C. Sinha as members of the NHRC violate the transparency norms prescribed by the Supreme Court in P.J. Thomas case". [10]

The Supreme Court in P.J. Thomas case held his appointment as the Chief Vigilance Commissioner as unconstitutional by emphasising the concept of institutional integrity. The apex court held that "appointments made to statutory bodies were subject to judicial review and that whenever there was no unanimity or consensus, "that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent."[11]

Till date, the appointment of the chairperson of the NHRC has not been made keeping it vacant now for almost three months at time of writing. It is also important to mention that the vacancy that arose in March 2014 from the completion of the term of the NHRC's former member, Mr. Satyabrata Pal, till date has not been filled: a vacancy of more than 17 months till now. AiNNI calls for an independent and transparent appointment process, taking on board the concerns of the civil society and having standards and mechanisms to assess all qualified and eligible candidates for the post. It is also important to ensure principles of pluralism and diversity in the composition of the NHRC. Probably the time has come since 22 years of the establishment of the NHRC that a representative from the civil society is on board of the NHRC and that since there has not been a woman member since almost 11 years that this position is filled by a woman member of civil society.

2.2 Right to Association denied by the TN State Human Rights Commission

The Constitution of India through Article 19 ensures fundamental rights of freedom of speech and expression, peaceful assembly, forming associations and unions, moving freely, residing and settling throughout the territory of India and practicing any profession. Article 21 ensures fundamental rights to protection of life and personal liberty and states that no person shall be deprived of his/her life or

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[7] Shiva Acharya, " National Human Rights Institutions (NHRIs) and their role in the Policy Making Process: A Look at the Impact of the Equality and Human Rights Commission (EHRC) in the United Kingdom in the Context of Diminishing Power," School of Business and Social Sciences, University of Roehampton, London, 2013, pp-9.

[8] "National and State Human Rights Institutions in India – Needfor Revaluation", https://implicity.wordpress.com/2009/11/05/national-and-state-human-rights-institutions-in-india-need-for-revaluation/.

[9] He Gave Only 7 Judgments in 3 Years. So How Did Cyriac Joseph Make it to the NHRC", The Wire, June 14, 2015. Available at http://thewire.in/tag/nhrc/.

[10] V. Venkatesan, "Constitutional Conundrums: Challenges to India's Democratic Process", LexisNexis India, June, 2014

[11] M.A.Rashid&ApoorvaMandhani, "Fresh doubts about validity of appointments to NHRC," July 27, 2014 Available at http://www.livelaw.in/contact-us/.

personal liberty. Going a step ahead, the Supreme Court of India, while hearing the matter *Maneka Gandhi vs. Union of India*, in 1978, broadened the interpretation of Article 21 and drew inter-connections between Articles 14 (equality before law), 19 and 21. Thus, a law which prescribes a procedure for depriving a person of 'personal liberty' has to fulfil the requirements of Article 14 and 19. According to Justice Krishna Iyer, a pioneer of Indian judicial activism, "a fundamental right is not an island in itself". The expression 'personal liberty' in Article 21 was interpreted broadly to encompass a variety of rights within itself. The court further observed that the fundamental rights should be interpreted in such a manner so as to expand its reach and ambit rather than to concentrate its meaning and content by judicial construction.

The Tamil Nadu State Human Rights Commission (TN—SHRC), established as per the PHRA 1993, was envisioned to be an independent, credible, transparent and accountable body that will oversee and monitor the human rights situation and contribute towards new policies for upholding the same and express its commitment to protect and promote human rights. The record of the TN—SHRC since its establishment has been far from encouraging, based on the findings of those activists and researchers who have systematically engaged and documented its work.

The TN—SHRC in one of the most regressive orders, comprehensively humiliating the spirits of Articles 19 and 21 of the Indian Constitution, the scope of which has been broadened after the Supreme Court ruling in 1978, went to the extremes of banning the use of word 'human rights' in organisational titles. The TN—SHRC on doing so grossly violated fundamental rights to form associations and unions and, hence curtailed personal liberties. The state legislature, surprisingly complying with the SHRC order, amended the Tamil Nadu Societies Registration Act in the year 2010 and enforced this recommendation made by the TN—SHRCas law.[12]

In a recent matter pending before the Madras High Court relating to the right to association, clearly falling within the definition of the words 'human rights' in Sec 2 [d] of the PHRA 1993, the bench sought actions taken by the administration after the SHRC order and the amendment to the Tamil Nadu Societies Registration Act. It is in response to this and further in response to 'directions' from the higher police officers that a series of actions across the state followed – allbetween 24February and 07March 2015 – resultingin 142 criminal cases being registered and 33 persons who were running human rights organisations being remanded. In all these cases, the police themselves were the complainants.

Out of the 142 FIRs registered, six of them are against active leaders of *Citizens for Human Rights Movemen*t (CHRM), an unregistered platform for advocating for human rights protection and promotion in Tamil Nadu since 2002. One of its active members Mr. Kandasamy, was not only arrested but also remanded to judicial custody inspite of specific directions of the Supreme Court in 2014 in the case of *Arnesh Kumar vs. State of Bihar.*[13]The Supreme Court ordered that there can be no automatic arrest and remand where the offence charged is punishable with imprisonment for a term extending up to seven years.While hospitalised, he was also kept in chains, completely contrary to other directions of the Supreme Court of India.

The order passed by the SHRC is also in complete contradiction to the directions of the NHRC. The NHRC has issued clear directions on this through three circulars between 2009 and 2013 and is now a

[12]TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY PUBLISHED BY AUTHORITY CHENNAI, FRIDAY, JANUARY 22, 2010 Thai 9, ThiruvalluvarAandu–2.
[13]*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

respondent in this pending matter before the Madras High Court. The NHRC has been urged by the 'human rights' organisations to support the protection of the right to freedom of association.

The unconstitutional order of the SHRC calls for a deep scrutiny of its overt or covert action which has serious implications for the human rights fraternity in the state of Tamil Nadu and India. Article 1 of the United Nation's Declaration on the 'Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' clearly states that "everyone has the right, individually and in association, to promote and to strive for the protection and realization of human rights and fundamental freedoms at national and international levels."

As this matter is sub-judice, and pending before the NHRC with no action so far worth reporting except issuing of notice[14], civil society hopes the wisdom and spirit of the Constitution and fundamental rights enshrined in Articles 19 and 21, as well as the developments on the right to association enunciated by the UN SR on the Freedom of the right to peaceful assembly and association[15] are highlighted when the NHRC ultimately deals with this complaint. The NHRC also needs to urgently intervene in this matter before the Madras High Court since it deals with a human rights violation of the right to association; and help uphold right to association not only as a fundamental right but also as a human right.

2.3 Human Rights Defenders

India does not yet have a national law on the protection of HRDs; althoughcivil society and human rights groups in India have long been demanding that the NHRC should work closely with civil society groups and HRD networks to initiate the development of a national law on the protection of HRDs.

Following the recommendations of a National Seminar on HRDs held in October, 2009 the NHRC set-up a Focal Point for Human Rights Defenders to deal with complaints alleging harassment of HRDs by or at the instance of public and authorities in May 2010. The NHRC took the initiative to organise a day-long 'National Workshop on Human Rights Defenders' in February 2015 in New Delhi. The outcome emphasised the need to have a protection mechanism for the W/HRDs and evolve an environment for the safe functioning of W/HRDs.[16]

The NHRC claims to have attempted to give special attention to complaints of alleged harassment of HRDs. "In the year of 2014 till March 2015, NHRC took up 53 cases of HRDs and intervened on their behalf".[17]Fifty-Three is just a fraction of the complaints received by the NHRC. Human Rights Defenders Alert–India (HRDA), a national level network of HRDs itself filed 53 cases with NHRC during the same period. It is hence important to point out that NHRC takes up complaint based on criteria (if any) which are never known to the complainants.

To give an example of the same, the HRDA more than three times made written complaints[18] to the NHRC with regard to a well renowned professor of Delhi University Prof.G.N. Saibaba. Prof.Saibaba is a well-known intellectual who has been at the forefront of the democratic movement in the country

[14] NHRC Complaint No: 457/22/30/2015, 540 to 542, 535, 631, 678 & 1020/22/30/2015.
[15] freeassembly.net
[16] http://nhrc.nic.in/dispArchive.asp?fno=13503
[17] http://nhrc.nic.in/Documents/HRD_CASES_2015_02.pdf
[18] http://hrdaindia.org/wp-content/uploads/2013/09/132-hrda-ua-delhi-dr-saibaba-delhi-university-18-09-13.pdf&http://hrdaindia.org/wp-content/uploads/2015/07/2015-06-19-HRDA-UA-South-Maharashtra-Dr.-Saibaba.pdf

and is known for his sincerity and devotion to public causes. He suffers from 90 percent disability and is wheelchair-bound. He has multiple calculi in his gall bladder and atrophy of his shoulder muscles. There is also degeneration of his cervical spine and his rib cage is bending inwards. He has been accused of having Maoist links and imprisoned on 09 May2014. He was lodged in the '*Anda cell'*, which means egg-shaped prison. Dr.Saibaba was not allowed to use the toilet for the next 72 hours. The harassment took a heavy toll on his health. He embarked on an indefinite hunger strike from 11April 2015 demanding proper medical treatment and food, both of which were being denied to him by the authorities of the Nagpur Central Prison. His health condition completely deteriorated.

The NHRC despite repeated appeals from HRDA and other organisations never bothered to intervene in the case in any manner except on the first instance where they closed the report stating a reply from the police[19]. They directed the prison authorities for providing adequate medical aid[20] which was never complied with and his health deteriorated. If there was any order by the NHRC it is not in the knowledge of HRDA or any other group. This would also have been an opportunity for the NHRC to also intervene with regard to the inhumane conditions in the prisons.

He has been recently granted bail by the Mumbai High Court due to serious concerns about his health[21]. The inaction on the part of the NHRC has necessitated action before the Mumbai High Court to release Professor Saibaba. Inspite of this matter having been covered extensively in the media there has also been no *suo moto* action either by the SHRC Maharashtra or the NHRC. Therefore there is urgent need for NHRC to evolve principles and guidelines of case-work in matters relating to W/HRDs in the country. There is also dire need for the NHRC to coordinate its engagement with W/HRDs with the National/State/District Legal Services Authority, so that the most competent of senior criminal lawyers with experience can be made available to serve the interests of W/HRDs.

It is also imperative to mention here about the NHRCs complete silence on the issue of right to peaceful association which includes the right to receive resources. The Government of India till date has cancelled the foreign grants receiving license of more than 12,000 organisations. There has not been a single statement of concern issued by the NHRC since the year 2012 when this commenced and its intervention looks a distant possibility.

In the entire Greenpeace[22] row, where the organisation's foreign license was suspended;it was called anti-national; its staff member was off-loaded at the New Delhi airport while she was on her way to address British Parliamentarians; and foreign staff deported, the NHRC has throughout chosen to remain silent. The NHRC also had the opportunity to also intervene before the Delhi High Court when Priya Pillai and Greenpeace approached the court. But it did not. Even on the matter concerning the draconian order of the Tamil Nadu SHRC[23] mentioned in the section above, NHRC has not come out publicly condemning the statement and intervene before the Madras High Court.

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[19] http://nhrc.nic.in/display.asp ; Case No: 6101/30/4/2013.

[20] http://nhrc.nic.in/disparchive.asp?fno=13212.

[21] http://www.thehindu.com/news/national/professor-gn-saibaba-the-best-way-to-stop-me-was-to-throw-me-in-jail/article7389421.ece.

[22] http://timesofindia.indiatimes.com/india/On-blacklist-Greenpeace-activist-sent-back-to-Australia/articleshow/47595004.cms, http://www.ibnlive.com/news/india/greenpeace-india-issued-show-cause-notice-by-tamil-nadu-government-1008857.html, http://www.theindianpanorama.com/featured/suppressing-dissent-why-greenpeace-is-first-on-the-indian-governments-chopping-block-35683.html&http://indianexpress.com/article/india/india-others/greenpeace-campaigner-offloaded-at-delhi-from-flight-headed-to-london/.

[23] https://www.frontlinedefenders.org/node/28491.

In the case of TeestaSetalvad[24], facing immense personal threats and closure of her organisation from the Government of India due to her constant pursuit of justice in the aftermath of the 2002 Gujarat Carnage, the NHRC has not intervened in any manner whatsoever. The NHRC to do the least could have independently investigated the charges against the said activist and her organisation and placed the white paper in the court through its intervention. This would have provided much required security and assurance to the WHRD who is facing State's wrath for exposing and uncovering the wrong doings of the current Prime Minister who was the Chief Minister of Gujarat when the riots took place in 2002. Even the complaint sent in this regard by the HRDA demanding intervention before the SC by the NHRC has been dismissed stating:

"On perusal of the complaint, it is seen that the complaint relates to the matter which is sub judice before a Court/Tribunal, hence the complaint is not entertainable by the Commission, as per Regulation 9(xi) of the N.H.R.C. (Procedure) Regulations, 1997. The complaint is filed and the case is closed"[25].

Is this the superficial manner of defence of the rights of W/HRDs that the NHRC is engaged in? In a case filed in September 2014 as a matter of urgency the matter is only taken up in May 2015 and dismissed *in limine*? This cannot lead to effective protection of W/HRDs in India by the NHRC. There is also an urgent need for the NHRC taking sides with W/HRDs – somethingthat the NHRC is hesitating in doing – but this alone will demonstrate its real eagerness to be an independent body free from government interference and W/HRD friendly.

3. COMPLAINTS-HANDLING

An analysis of the figures given in the table below reveals that there has been a definite increase in the number of complaints received by the NHRC over the years. According to the NHRC, this reflects an increase in awareness of human rights and a "reflection of the increasing confidence of people in the NHRC."

The period under review also saw an increase in the number of *suo moto* cases of human rights violations. From January 2014 till March 2015, the NHRC took *suo moto* cognisance in the total number of 206 cases of alleged human rights violations reported by media and issued notices to the concerned authorities for reports.[26] In the period from January 2014 till March 2015, the NHRC intervened in 58 cases.[27] While this is to be appreciated, but still some observers feel that most of the time the NHRC takes *suo moto* cognisance in high profile cases: and that is only after tremendous NGO pressure. Sometimes it takes cognisance and then tends to pass it over after initial report. As one observer rightly commented the NHRC should "meet the ends of justice"[28] in its words and deeds.

The NHRC has undertaken 70 spot enquiries in the reporting months under review. NHRC holds public hearings and camp sittings in different states of the country to dispose of its cases and provide

[24] http://articles.economictimes.indiatimes.com/2015-06-18/news/63567692_1_collegium-system-maya-kodnani-gujarat-riots, http://twocircles.net/2015jul08/1436345368.html#.VZ08Yfmqqko, http://www.firstpost.com/politics/govt-plans-cancel-fcra-registration-teestas-ngos-2320006.html&http://www.firstpost.com/india/cbi-registers-case-teesta-setalvad-husband-foreign-funds-2332374.html.

[25] NHRC Case No :296/6/0/2015 dismissed on 08.05.2015.

[26] Collated from the NHRC's monthly newsletters for the said period with data contained therein.available on the Commission's website www.nhrc.nic.in.

[27] Ibid.

[28] Syed TazkirInam, "Role of National Human Rights Commission in Upholding human rights in India", September 23, 2010.Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1681512.

remedial measures at the state and district levels to the complaints of gross human rights violations. NHRC took up 1512 cases for interim relief in its various full Commission and divisional sittings during its camp Sittings from January 2014 till March 2015. The NHRC has the power to recommend the appropriate Government or authority to grant necessary 'interim relief to the victim or to his family members'. The NHRC recommended monetary relief on 389 cases, amounting to a total of 1032.1 Lakh (approx. USD1,612,000) for the victims or their next of kin, where it found that public servants had either violated human rights or been negligent in protecting them in the reporting period.[29] From January 2014 till March 2015, the NHRC received 247 compliance reports from different public authorities, furnishing proof of payments it had recommended, totalling 542.65 lakh (approx. USD848,000) to the victims of human rights violations or their next of kin.[30]

It is appreciated that there has been substantial improvement in cases where concerned government authorities have complied with the decisions of the NHRC. However, the reality is that due to the largely non-binding nature of the NHRC's recommendations, the effectiveness of NHRC is often put in question. But the figures clearly indicate substantial improvement in the system of handling of cases by NHRC which in turn also reflect on its increasing effectiveness compared to the past years.

Here we would once again strongly reiterate the recommendations made in the 2014 ANNI reportthat besides reporting the cases where compensations have been ordered, the NHRC in its newsletters should also report the cases where prosecutions of the perpetrators of human rights violations have been initiated on the basis of its recommendations.

It is also once again recommended that senior and experienced lawyers on behalf of the State/District/Taluk Legal Services Authority/Committee should be engaged to assist in the legal proceedings. A close collaboration between then NHRC and the National Legal Services Authority will strengthen its credibility and respect as an institution and make justice accessible to the victims in reality.

On an average, NHRC receives 9,000 complaints[31] a month and for the given report period (9,000*15), it would have received 135,000 complaints. Due to non-publication of annual reports of the NHRC, the exact figures are not accessible at present. As per the last published annual report of 2010-11, NHRC received 84,604 complaints. For an institution of such magnitude and importance, there have been no annual reports from the past five years.

An analysis of the total number of cases in which recommendations were passed that is 1512, against the assumed number of complaints, that is 135,000 (in absence of annual reports and based on the NHRC website),reveals that only 1.12 percent of the total cases received some relief. Clearly, there are needs for serious reforms in the functioning of the NHRC.

What has been encouraging, despite what has been so far stated, is the NHRC's efforts is organising and holding camp visits in several states across India. NHRC over the past few years has started the practice of visiting states and announcing a cause list of cases to be taken up. During the hearings, it issues notices to the concerned government officials to submit their responses. This activity of the NHRC, has instilled confidence within civil society and also enhanced the NHRC's visibility both in the state administration and the civil society.

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[29] Ibid.
[30] Ibid.
[31] http://nhrc.nic.in/. For the month of April 2015, NHRC received 8485 fresh complaints.

In a recent case of killing of 20 workers by a Special Task Force (STF) in Andhra Pradesh, the NHRC took *suomoto* cognisance along with a complaint filed by People's Watch and directed an independent investigation. The NHRC proceeded actively on the case, by hearing it on a weekly basis and providing the scope for the petitioner to appear during the hearings and put across their points and demands.The NHRC completely utilising its powers guaranteed under the PHRA, ordered compensation to the victims' families, provided security for the witnesses in the case and issued conditional summons to the State authorities.

However, the orders of the NHRC were put on stay by the Andhra Pradesh High Court when approached with this prayer by the Andhra Pradesh State. It would be desirable in the best interest of attaining justice that the NHRC also effectively moves the Andhra Pradesh High Court assisted and represented by competent senior lawyers and assist the court in this matter.

Month/Year	Suo Moto Cases	Important Interventions	Recommendation for Relief			Compliance with NHRC Recommendations	
			Cases for Relief	Cases Recommend	Amount of Relief	Received Compliance	Amount Recommended
Jan 2014	06	03	148	33	108.3 lakh	12	26.6 lakh
Feb 2014	16	06	231	47	180.9 lakh	14	45.3 lakh
March 2014	08	01	129	23	99 lakh	12	15.7 lakh
April 2014	09	06	42	24	36 lakh	23	44.7 lakh
May 2014	08	04	70	41	99.5 lakh	14	19.7 lakh
Jun 2014	15	03	66	10	26.5 lakh	09	20.45 lakh
July 2014	35	04	45	35	61.8 lakh	23	43.1 lakh
Aug 2014	16	07	123	21	132.25 lakh	15	32 lakh
Sep 2014	17	04	84	28	31.75 lakh	10	21.55 lakh
Oct 2014	21	02	86	31	40 lakh	19	32.5 lakh
Nov 2014	12	07	57	15	20.45 lakh	14	48.65 lakh
Dec 2014	11	03	98	11	15.55 lakh	09	13.80 lakh
Jan 2015	18	02	109	31	67.6 lakh	25	37.75 lakh
Feb 2015	06	02	100	11	21.5 lakh	13	15.45 lakh
March 2015	08	04	124	28	91 lakh	35	125.4 lakh
Total	**206**	**58**	**1512**	**389**	**1032.1 Lakh**	**247**	**542.65 Lakh**

4. OVERSIGHT AND ACCOUNTABILITY

a. Civil Society

The Commissions' relationship with civil society is very limited and restricted; if in fact there is any relationship at all. There is no membership of representatives of civil society in the Commissions in any capacity. Apart from the NGO core group on various issues in NHRC, there is no direct contact with the civil society organisations. NGO core groups also hardly meet and talk on issues concerning human rights and NHRC. There is no civil society representation in any manner in the NHRC. People from faraway places have constantly expressed their difficulties to approach the NHRC since it is located in New Delhi and with NHRC having no regional or state level office.

The NHRC has undertaken camp sittings in various states which have definitely helped to respond to this issue but not completely. It is time that the NHRC reflects on the huge volume of cases dealt by it and also find ways to address them more promptly and speedily. NHRC representation in various parts of the country will be instrumental in addressing human rights issues and having stronger relationship with the civil society.

While the SHRCs are there in states, but the issues dealt by NHRC and SHRCs are different and determined by the nature of the case and division among central and state lists. Also, people have less belief in engaging with the SHRCs considering their even closer proximity to the establishment.

The Commissions are duty bound to furnish annual reports, and special reports if needed. The last published annual report was in the year 2010-11. There has been no discussion in parliament with regard to NHRC and concerns raised for not tabling the annual report. The reports have to be tabled on the floor of the house by the government along with the action taken report. If any recommendation has not been accepted by the government, the reason has to be mentioned. This process is halted for past five years now.

5. CONCLUSION AND RECOMMENDATIONS

The NHRC will have to appear before the ICC-SCA for its accreditation in the year 2016. It is therefore time for the Government of India, and in particular the Ministry of Home Affairs, to reflect over the recommendations that were made by the ICC-SCA in May 2011. It is also important for the NHRC to make these recommendations formally known to all political parties and also both houses of Parliament to ensure that they are followed. It is also time for the Government to engage with Indian civil society on the need for changes to be brought in the PHRA 1993 to make it relevant to the challenges of the present day.

AiNNI's recommendations to the NHRC and Government of India are:

- *The appointing committee of the NHRC should take into consideration the contribution to human rights made by each of the eligible retired chief justices of the Supreme Court of India for the appointment of Chairperson of the NHRC. There is needfor definite criteria to be put in place to evaluate each of these eligible candidates which then forms the basis of selection by the appointing committee. It is also requested to take into consideration that no official post is held*

by them, post their retirement from the Supreme Court, hence assuring complete independence while their term as chairperson of the NHRC, as prescribed by Paris Principles and duly accepted by India.

- *The appointing committee should take into consideration the contribution to human rights made by each of the eligible candidate being considered for the post of Member of the NHRC. The positions should be filled through a public announcement and call for applications. There is needfor definite criteria to be put in place to evaluate each of these eligible candidates which then form the basis of selection by the appointing committee. It would be appropriate that for the currently vacant post, that the appointment committee considers a woman who has substantial knowledge and experience in the field of human rights. This will also ensure that India abides by the principles of plurality as laid down by the Paris Principles and also the 2011 Sub-Committee on Accreditation's recommendation to India.*

- *NHRC should immediately intervene in the Supreme Court of India with regard to the petition filed seeking reforms in the NHRC and advocate for compliance to Paris Principles. It should also immediately intervene in the petition in the Madras High Court with regard to banning of the work 'Human Rights' in organisational titles. It should also intervene in the cases restricting attacks on HRDs and restriction on freedom of peaceful association and assembly in India.*

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MALDIVES: ZIPPED, PACKED AND READY TO HEAD HOME

Maldivian Democracy Network[1]

The situation of human rights in the Maldives has been extremely unsteady through the past few years, and an overall look at 2014 shows a bleaker picture than the previous year.

While the year 2014 saw the ratification of the Right to Information Act and the new Penal Code, obstructions to implementation of these laws were put up quickly, causing more time and effort to be made into the realisation of rights. Maldives was removed from the human trafficking watch list by the US State Department reflecting on the effort made to stop human trafficking in Maldives[2] and then put back on the list in mid-2015.

Violations of human rights through extreme acts against individuals including attacks on journalists and political activists and reports of child abuse cases were also observed. A significant case is the abduction of Minivan News journalist Ahmed Rilwan on the 8th of August 2014 who has been missing since. The disappearance of Rilwan has been given very little attention by the authorities since he was reported missing[3].

While the number of sexual abuse cases and domestic violence cases decreased since 20134, a total of 423 child abuse cases were reported in the year 2014[5]. These numbers represent the cases that get reported to the Maldives Police Service, while many may go unreported either due to fear of the perpetrator or to the unreliability of the authorities. The difficulty in addressing these issues relate strongly to the loopholes in the justice system of the Maldives[6]. Moreover, an alarming amount of child prostitution cases have been reported in the country[7]. This further reflects the human rights situation in the Maldives.

Maldives in the year 2014 has also been criticised for having enacted a Regulation on the Implementation of the Death Penalty which ends a 62-year moratorium on the death penalty. The regulation now allows for children as young as 7 years to be sentenced to death[8]. However the implementation of the new Penal Code on 16 July 2015 creates a contradiction to this provision as it places several criteria for the death sentence.

The new Penal Code has been marked as thoroughly researched democratic and human rights friendly law which also incorporates Islamic *Sharia* into it[9]. Although forms of capital punishment still exist in

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[2]http://minivannewsarchive.com/politics/maldives-off-us-state-department-trafficking-watchlist-87333#sthash.5mK4jrTv.dpbs

[3]http://www.independent.co.uk/voices/comment/ahmed-rilwans-disappearance-is-a-perfect-illustration-of-the-maldives-ongoing-troubles-9721718.html

[4]https://www.police.gov.mv

[5]http://www.arc.org.mv/arc-expresses-concern-about-the-hidden-epidemic-of-child-abuse-in-the-maldives/

[6]http://minivannewsarchive.com/news-in-brief/gender-ministry-explains-5-year-delay-in-child-abuse-register-83385#sthash.aoR4rBTi.dpbs

[7]http://minivannewsarchive.com/politics/police-arrest-another-two-suspect-in-a-growing-series-of-child-abuse-reports-81857#sthash.VAizxcKW.dpbs

[8]http://minivannewsarchive.com/politics/maldives-should-repeal-the-death-penalty-un-human-rights-office-83772#sthash.f0Gni7wo.dpbs

[9]http://www.haveeru.com.mv/news/61161

the Penal Code, several precautions have been incorporated around these provisions which also provoked more conservative groups to heavily criticise it[10].

Among other human rights issues noted include the increase in incidents of torture in the detention centres[11] and death threats to journalists, human rights defenders and political activists and politicians such as members of parliament[12]. Despite the concerns, the respective authorities have failed to take action regarding the matters.

The year 2014 through to the early 2015 saw drastic measures taken by the judiciary, crossing boundaries of mandate and violating several fundamental rights, among significant cases which are the treason trials of the Elections Commission[13], the Human Rights Commission[14][15] and terrorism charges on the former President Mohamed Nasheed[16]. President Nasheed was denied legal representation despite repeated requests[17] and trial observers highlighted several violations of the Constitution and fundamental rights during the 11-day trial[18]. The UNSR for the Independence of Judges and lawyers, UN Human rights Chief and several other International Organisations and Governments expressed concerns over this backslide in rule of law[19][20]. Two former Defence Ministers, a sitting Defence Minister and a former military official faced similar trials then, and opposition leaders and politicians have been detained or in self-exile this year[21][22].

The Supreme Court initiated a *suomoto* treason case against the HRCM in September 2015 following a statement included in the Commission's stakeholder submission to the UPR this year which said that the Supreme Court influenced the judiciary. The trial concluded in June 2015 with a verdict that the HRCM had acted against the law and the formation of a "guideline" that the Commission was mandated to follow. This guideline results in the Commission being ripped of its independence in sharing information and opinion to external agencies[23].

July to September of 2015 will see the present NHRI complete its term. Nominations have been made for three commissioners who will replace the first outgoing batch and it is expected that the full commission will be replaced shortly after.

It is unfortunate that, despite several requests, the Human Rights Commission of the Maldives has

[10]http://minivannewsarchive.com/politics/new-penal-code-will-bury-islamic-sharia-96267
[11]http://minivannewsarchive.com/politics/torture-in-detention-increasing-says-human-rights-commission-79982#sthash.uMswK7Pa.dpbs
[12]http://minivannewsarchive.com/politics/mdp-mp-eva-abdulla-raises-concern-over-personal-safety-of-mps-journalist-with-ipu-human-rights-committee-90431#sthash.ARorJU69.dpbs
[13]http://jurist.org/paperchase/2014/03/maldives-supreme-court-sentences-election-commission.php
[14]http://www.haveeru.com.mv/news/56764
[15]http://www.mvdemocracynetwork.org/wp-content/uploads/2015/06/Statement_-Human-Rights-Commission-of-Maldives-HRCM-Latest-Victim-of-Judicial-Overreach.pdf
[16]http://minivannewsarchive.com/politics/former-president-nasheed-found-guilty-of-terrorism-sentenced-to-13-years-in-prison-93263#sthash.Sb82yF7l.dpbs
[17]http://minivannewsarchive.com/news-in-brief/rule-of-law-human-rights-severely-damaged-by-nasheed-conviction-says-mdn-93366#sthash.qLxKbqvG.dpbs
[18]http://www.mvdemocracynetwork.org/mdn-briefer-on-president-mohamed-nasheeds-trial/
[19]http://minivannewsarchive.com/politics/un-human-rights-chief-expresses-strong-concern-over-hasty-and-apparently-unfair-nasheed-trial-94041#sthash.KnhFeD8n.dpbs
[20]http://minivannewsarchive.com/politics/nasheeds-terrorism-trial-a-mockery-of-constitution-verdict-may-have-been-pre-determined-says-knaul-94159#sthash.tiSZPgp2.dpbs
[21]http://minivannewsarchive.com/news-in-brief/imran-appeals-pre-trial-detention-order-99183#sthash.qPrDKKjW.dpbs
[22]http://minivannewsarchive.com/politics/nazim-dismissed-as-defence-minister-replaced-by-moosa-ali-jaleel-92243#sthash.E69nrsQ9.dpbs
[23]http://minivannewsarchive.com/politics/translation-supreme-court-v-hrcm-100080#sthash.09wRpDU5.dpbs

failed to respond to requests for information and clarifications for this report and a request for a meeting to share views. A significant request was a clarification for the status of recommendations made in the *2014 ANNI Report*. None of thisinformation could be included due to lack of cooperation by the NHRI at time of writing.

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	Law number 6/2006 (Human Rights Commission Act) http://www.hrcm.org.mv/publications/otherdocuments/HRCMActEnglishTranslation.pdf
Mandate	Working towards the protection and maintenance of human rights in the Maldives as described in Islamic *Shari'a* and the Constitution of Maldives.[24]
Selection and appointment	
Is the selection formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	The selection process is prescribed in clear and transparent terms in the Human Rights Commission Act and the process is highly participatory.[25]The process requires interested persons to make an application to the President's Office. The President of the Republic is then required to nominate names of candidates and forward these names to the Parliamentary Oversight Committee for Independent Institutions, who evaluate the candidates and send the names to the floor for voting. The section in the founding law – contrary to the Paris Principles on pluralism of members – whichsays that a member of the HRCM should be a Muslimis a highly delicate and sensitive issue in the context of the Maldives being a hundred percent Muslim nation by Constitution. While debating on issues of Islam has always resulted in one or the other being labelled as un-Islamic, the HRCM faces this issue more seriously as extremist views label human rights as a "western and un-Islamic" concept. It can be understood that the Commission may opt not to make a move to amend this provision. It is possible that such an amendment will only get rejected by the Parliament on grounds of religious unity, and even if it was admitted it is highly unlikely that MPs would vote for such a change. The HRCM in such a case will only have more problems to face following it.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	The selection process does not involve the participation of NGOs and civil society at all. It is conducted primarily by the parliament with the discretion of the short-listing of names to the President of the Republic.

[24] Section 2, Human Rights Commission Act.
[25] Section 5, Human Rights Commission Act.

Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	No. The publicly available information is basic criteria for eligibility for membership. Information on the process of evaluation is not disclosed by the parliament.
Is there a provision for broad consultation and / or participation, in the application, screening and selection process	The Act prescribes broad criteria for eligibility as members of the Commission, and anyone who comply with the criteria can apply for membership. However screening and selection is limited to the President and the parliamentary special committee on oversight of independent bodies followed by a voting at the parliament floor.
Is there a requirement to advertise vacancies? How is it usually done/Describe the process?	Vacancies are required to be publicly announced, and the President's Office publishes vacancies to the Commission in the government *Gazette*.
Divergences between Paris Principles compliance in law and practice	While the Human Rights Commission Act prescribes a clear and transparent process for appointment of commissioners to the NHRI, it does not expressly require the consultation of civil society before making appointments. Although not specifically stated in the law, it would be ideal if the President's Office shares information of all applicants along with the names that have been nominated. The President does not practice this method and sends only the nominated names to the Parliament. It would also be ideal if the Parliamentary Committee consults with the civil society before sending the names of the nominees for voting on the floor. This is not practiced. It is also worth noting that the Parliamentary Oversight Committee for Independent Institutions, following the evaluation of nominees, is required to send the names for voting on the floor regardless of whether the Committee has approved or disapproved the candidate. This practice defeats the purpose of filtering nominees through an evaluation process. The most recent nominations process to the HRCM took place in June 2015. It raises much concern, requiring attention.A call for applications was announced by the President's Office to fill the positions of three outgoing commissioners. While over thirty applications were submitted, the President just sent three nominations to the Parliament within twenty four hours of close of the application deadline. One of the nominees is an ex-parliamentarian who defected parties three times, and was lastly with the ruling party. This nomination effectively negates the principle of non-partisanship of an NHRI member.
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of	Section 27 of the Human Rights Commission Act clearly states immunity of members of the Commission from civil and criminal suits following actions taken in good faith and in the course of their duties.

their official duties?	
Does the NHRI founding law include provisions that promote: - security of tenure; - the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; - the independence of the senior leadership; and - public confidence in national human rights institution.	Yes, the law promotes all of these criteria.
Are there provisions that protect situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	No legislation, including the Constitution, provides for the role and function of the NHRIin the situation of a coup d'état or an attempted coup in the Maldives. It is similar for instances of state of emergency.
Divergences between Paris Principles compliance in law and practice	The HRCM made a stakeholder submission ahead of the Maldives UPR, in September 2014 and subsequently published the report on their website. The report included a statement which said that the "judicial system is controlled and influenced by the Supreme Court weakening judicial powers vested in other superior and lower courts"[26]. The Supreme Court reacted to this report by claiming *suomoto* powers to press charges of high treason against each individual member of the Commission. The case, after a long recess, resumed in June 2015 where the Supreme Court in its verdict issued an 11-point guideline[27] on how the NHRI can share information with external parties. The guidelines remove all independent discretions provided for the NHRI by law. The members of the present NHRI also face charges on contempt of court by the Juvenile Court, following a confidential report compiled by the Commission in 2014, despite immunities granted by law[28].
Capacity and Operations	
Adequate Funding	• *Describe process of budget proposals/allocation? Is it*

[26]http://www.hrcm.org.mv/Publications/otherdocuments/UPR_submission_Sept_2014.pdf.
[27]http://minivannews.com/politics/supreme-court-renders-human-rights-watchdog-toothless-99848#sthash.pOh57fLz.wqFncvBb.dpbs.
[28]http://minivannews.com/politics/hrcm-members-summoned-to-juvenile-court-again-over-confidential-report-81575.

	adequate for mandated activities and priorities? Estimated budgets are compiled by the NHRI which is sent directly to the Budget Committee at the Parliament. The parliament then holds discussions over the estimates with the Ministry of Finance, who suggest cuts or shifts in allocations depending on state revenue. The Committee then holds further discussions with the NHRI before finalising a budget for voting. The complete state budget is passed through majority vote. • *Does the NHRI submit to Parliament a Strategic Plan and/or an Annual Programme of activities, such that Parliament is aware/takes into account these considerations while discussing budget proposals to ensure the financial independence of the NHRI?* The requirements by the Ministry of Finance when compiling the budget estimates include the annual plan for 3 years, and to some extent the strategic plans of the institution. • *Is the NHRI invited to parliamentary debates in relation to its annual budget?* The NHRI is consulted by the Budget Committee before finalising the budgets. However they are not invited to the debates on the parliament floor. • *Has (inadequate) funding been used to compromise its independence and its ability to freely determine its priorities and activities?* There have been instances where the NHRI has not been able to carry out their full mandate due to financial constraints. One such area is when the NI, as the National Preventive Mechanism, in unable to conduct frequent and regular visits to places of detention, prisons and other places where people are deprived of their liberties. The geography of the country is such that these institutions are placed on different islands which has the ocean separating them, resulting in high transport costs to reach it.
Government representatives on National Human Rights Institutions:	No. The Human Rights Commission Act clearly states independence and non-partisan-ship as characteristics of members.However, since the initial short-listing is made by the executive and voting taken in a highly politicised atmosphere at the parliament, it is perceived that individuals aligning with or those with relations to certain political affiliations may be favoured over others.

3. EFFECTIVENESS

3.1 Case-Studies

Enforced Disappearance

It has been a year since Maldivian journalist and human rights defender Ahmed Rilwan was last seen

on CCTV footage buying ferry tickets to go home to Hulhumalé from the ferry terminal in Malé around 0044hrs (1244am) on 8 August 2014. Analysis of the CCTV footage clearly shows two individuals following Rilwan's movements. He would have reached Hulhumalé around 0130hrshad he been on the 0100hrsferry from Malé, the capital city where he worked for online English news outlet Minivan News (recently rebranded as Maldives' Independent). In line with the length of time it would have taken for him to reach his apartment building by foot; at around 0200hrs his neighbours witnessed a tussle: they saw a man being forced into a car at knifepoint by two men while a third man sat in the driver's seat and sped away. This incident was reported to Maldives Police Service (MPS) immediately.

Rilwan was officially reported missing by his family on 13 August 2014. However, the Maldives Police Service searched his apartment and took eyewitness statements, 29 hours later around 2100hrs on 14 August 2014. On the same day, MPS publicly asked for assistance to find Rilwan. His office was searched 11 days after that. While Rilwan's family and friends organised a coordinated search of Hulhumalé island on 15 August 2014, MPS began its search, for 3 consecutive days, on 16 August 2014.

Since then the Human Rights Commission of the Maldives (HRCM) issued two press statements, one which was 6 days following the abduction, raising concern over the issue; and one 3 weeks after the abduction, informing the public of the efforts made by the Commission on the case. The statement read that the Commission had been monitoring the investigation into the alleged forced disappearance conducted by the MPS, made communications to the UN Special Rapporteurs on human rights defenders and freedom of expression in addition to a submission to the UN Working Group on Enforced and Involuntary Disappearances. The statement also read that the Commission was monitoring the State's actions following the disappearance, although it has not been disclosed how. According to the statement the Commission sent letters of enquiry to the Foreign Ministry and the Attorney General's Office, to which they received no response.

None of this information has been shared with Rilwan's family or the Maldivian Democracy Network either.

The Commission publicly claimed that the lack of progress might give way for normalization of disappearances in the Maldives.Furthermore, HRCM stated that the MPS must deploy much more substantial efforts into finding out what happened to the Maldivian journalist in order to stop repetition of such incidents. Since then the Commission has not undertaken renewed efforts to question the authorities regarding Ahmed Rilwan's disappearance.

Torture

Testimonials of police brutality and torture have been shared by those detained and imprisoned in the Maldives for longer than thirty years. The death of 19-year old inmate Evan Naseem[29] in Maafushi prison in September 2003 catalysed public awareness of torture in prisons and police brutality being widespread across Maldives. Evan Naseem was beaten to death in the prison and since then an alarming number of cases of torture, inhumane and degrading treatment have been recorded.

Members of Parliament and political activists were severely injured in the protest against the removal

[29]http://www.uncuffedmv.com/sites/default/files/Investigative%20Findings%20on%20the%20death%20of%20Hassan%20Evan%20Naseem.pdf.

of former president Mohamed Nasheed from power, held on 8th February 2012[30]. Most cases of police brutality and torture have been observed in protests and demonstrations[31][32][33]. More recently, Police have been accused of abusing protesters and detainees from the May Day rally in 2015[34][35].

43 cases were reported to the Police Integrity Commission under torture and inhumane and degrading treatment and punishment while in police custody in the year under review. These include 32 cases of torture and inhumane and degrading treatment while under police custody, 07 cases of such treatment while being taken into custody and 03 such cases in which the individuals were not taken into custody. One more case was reported which did not fit any of the categories mentioned above. Out of these 43 cases, a total of 32 cases have completed investigation[36].

In the year under review the Human Rights Commission of the Maldives recorded a total of 33 torture cases out of which 18 cases concluded investigation. 15 cases are pending conclusion[37].

A major achievement in December 2013 was the ratification of the Anti-Torture Act: three years after the Bill was submitted[38]. The law appoints the Human Rights Commission as the mandate holder to address torture in the Maldives. While cases of police brutality and torture in police custodial has been lodged at the HRCM as well as the Police Integrity Commission, it is questionable whether the law extends the mandate to the PIC. The Anti-Torture Act entrusts the HRCM with a wide ranging powers which the PIC does not possess, and cases of torture investigated at the PIC may result with limitations on recourse for the victim. However, the public has not been made aware of whether they should continue to lodge cases of torture with the PIC anymore or not.

The HRCM mentioned the compilation of a legal brief based on the definitions of torture in the Anti-Torture Act and the international conventions in its February 2014Anti-Torture report under the Anti-Torture Act[39]. However none of the information published on its official website contain any details on the said brief or other work carried out under the Anti-Torture Act.

Judicial Over-Reach

The Supreme Court,along with its verdict to annul the Presidential Elections in late 2013, also enforced a 16-point Guideline on Elections. The Elections Commission highlighted discrepancies in the guidelines that rendered it impossible to follow at the time[40]. The members of the Elections Commission shared their opinion on the impossibility of administering the said Guidelines at a meeting where they were summoned to the Parliamentary Special Committee on Oversight of Independent Institutions. Information shared at such meetings of the Committee are protected and

[30]http://pic.org.mv/wp-content/uploads/2015/02/media-report-2-oct-2012-English_Translation_of_Summary_Report_On_Feb_8.pdf.
[31]http://minivannewsarchive.com/politics/police-used-disproportionate-force-against-mdp-protesters-hrcm-53121#sthash.ZLLCbSzZ.dpbs.
[32]http://minivannewsarchive.com/politics/police-crackdown-on-february-8-brutal-without-warning-hrcm-42434#sthash.aMnVT0xw.dpbs.
[33]http://minivannewsarchive.com/politics/maldives-police-thugs-clash-with-pro-democracy-protesters-71389#sthash.I8Fv2v3F.dpbs.
[34]http://minivannewsarchive.com/politics/concerns-grow-over-police-abuse-of-may-day-detainees-97647#sthash.iZ84SzbZ.dpbs.
[35]http://minivannewsarchive.com/politics/lawyers-accuse-police-of-restricting-access-to-may-day-detainees-97764#sthash.1oYWoNZ4.dpbs.
[36]http://pic.org.mv/wp-content/uploads/2015/03/annual-report-20141.pdf.
[37]http://www.hrcm.org.mv/publications/annualreports/AnnualReport2014.pdf.
[38]http://www.presidencymaldives.gov.mv/?lid=11&dcid=13745.
[39]http://www.hrcm.org.mv/publications/otherreports/AntiTortureReport2014.pdf.
[40]http://www.haveeru.com.mv/news/51839.

held confidential by law. However the Supreme Court declared this sharing of information as an act of treason by the members of the Elections Commission.

The Supreme Court initiated a *suo moto* case against the members of the Elections Commission, unseated the Chair and Vice Chair and sentenced the members to imprisonment for failure to comply with the Elections Guidelines[41].

While the Human Rights Commission of Maldives in 2012 initiated a criminal investigation into the case of a former president of the republic allegedly ordering the arrest of a judge, it is noteworthy that the Human Rights Commission did not take any action on the gross violations of human rights in the case of the Supreme Court actions against the Elections Commission matter save for a press statement raising concern.

3.2 Protection of Human Rights Defenders

While the Human Rights Commission has a general complaints mechanism which includes a hotline, there has not been appropriate measures undertaken for the protection of human rights defenders. HRDs have continued to request the HRCM to establish such a mechanism either in the form of a special desk or section at the Commission to whom HRDs in difficulties can report or contact to seek urgent assistance for the prevention of targeted attacks. HRDs working individually or as organisations have faced several kinds of attacks and threats over the years and these incidents have not been addressed by the HRCM at all or satisfactorily. It is not known whether the HRCM has addressed any of the incidents of threats of de-registration of NGOs, government statements warning such NGOs to stop certain efforts for the protection of rights or threats to individuals working with NGOs. Some of these threats include that of physical assault, rape, death and disappearance. It is also unknown whether the HRCM has informed mechanisms such as the UN Special Procedures of these incidents.

Some notable incidents include the physical attacks of vandalism to the MDN offices and property in 2013, formal letter threatening to deregister Transparency Maldives in 2013, published photos and threats of disappearance, death and rape of MDN employees following the case of Rilwan's disappearance, violent threats against bloggers and social media activists on Twitter and the violent attack on the offices of Minivan News following Rilwan's disappearance.

Much of the present political turmoil began in February 2015 with the arrest of former president Mohamed Nasheed and the fast tracked terrorism trial (based on the above mentioned charges of arresting a judge) which has imprisoned him for 13 years. The trial has been since declared unfair by UN Special Procedures, the international community as well as local NGOs. Protestors, political activists and civil society who have been active around these incidents have constantly been obstructed from freely carrying out their efforts by the government, police and the Criminal Court. Several protesters including human rights defenders and employees at local NGOs have been arrested, beaten and detained[42].

HRDs continue to follow the general complaints mechanism at the HRCM with no means for preventive action in cases of threat or harm. One member of the Commission is active on social media

[41]http://jurist.org/paperchase/2014/03/maldives-supreme-court-sentences-election-commission.php.
[42]http://www.mvdemocracynetwork.org/wp-content/uploads/2015/05/Detainee_Employment-Brief-24-May-2015.pdf.

such as Twitter and interacts with individuals, but it is unclear whether the information shared on social media is addressed at the Commission or whether the member speaks in a personal capacity. Some instances of information shared has not been followed-up at time of writing.

Members of the HRCM have received threats on their phones and have recently had people entering their offices and posing threats of physical assault and even death. The Vice-Chair of the HRCM has said that the police publicised fabrications about a comment that he did not make regarding the police which invoked threats to him and his family[43].

4. OVERSIGHT AND ACCOUNTABILITY

4.1 Civil Society

The HRCM has developed a longstanding network of NGOs. Until a conference of human rights NGOs was organisedin 2014 by the Commission in partnership with the UNDP, the network was mostly used to assist with the public outreach efforts of the Commission. It is not known whether a formal platform for interaction with civil society exists within the HRCM.While the Maldivian Democracy Network and Transparency Maldives are the only active NGOs working on civil and political rights, these organisations were not included in any consultations or strategic planning of the Commission's efforts.

The HRCM maintains a relationship with CSOs in the outer atolls and these organisations at many times act as a contact point for the groups living in the rural areas.

Capacity building of civil society by the HRCM in partnership with other international organisations take place although not systematically. Examples of these training workshops are those held in partnership with the OHCHR to prepare NGOs for the Universal Periodic Review (UPR) and a training on documentation of torture held in partnership with Redress.

It is noteworthy that although the HRCM initiated a training session to assist NGOs to prepare the stakeholder submissions for the UPR, the Commission due to having misplaced the documents could not assist the NGOs with it after the initial session.

Although it would be ideal for the HRCM to regularly conduct sessions evaluating bills debated in the parliament or discussions on the current human rights situation or streamlining of civil society efforts, there is no regular interaction between the Commission and civil society. There is no interaction except for capacity building sessions, and these too are not regular and does not follow a transparent or inclusive process of participation.

The HRCM does not engage with civil society in planning or policy making at all. The Commission needs to improve heavily on how information is shared with civil society in a timely manner, without the present bureaucratic process.

The main offices of the HRCM is located in the capital city of Malé and an additional office was

[43]http://minivannews.com/politics/hrcm-vice-president-under-threat-after-police-%E2%80%98traitor%E2%80%99-claim-93046.

established in the southern city of Addu in December 2014. Accessibility is very low when considering that two-thirds of the population of the country live in the outer atolls. The primary mode of communication from the outer islands to the HRCM would be via telephone. However accessibility over the telephone can only serve to lodge complaints, and complainants would have to travel to Malé to provide information to investigations or wait until the Commission conducts a visit to the island.

Added to this difficulty is the bureaucratic layers that victims and complainants and also civil society organisations are faced with when attempting to interact with the HRCM; which often delays the submission of a complaint and timely address to situations, especially in urgent cases.

All reports compiled by the HRCM is made public via the official website. However the status of implementation of recommendations is not shared publicly.

4.2 Parliament

A special standing committee, the Independent Institutions Oversight Committee overlooks the HRCM and this is the primary point of cooperation between the two institutions. However the law does not obstruct the Commission from liaising with other parliamentary committees, and it is believed that the Commission would interact with such committees in connection with their mandates.The Commission has the power to independently liaise with government authorities, the parliament and the courts in the course of their mandate.

The parliament forms special temporary committees to address issues. The HRCM may be formally summoned to such committees for information gathering. In addition to this the Commission also falls under the primary accountability processes of the parliament where any MP can request the parliament to initiate this process over commissioners at the HRCM. It must be noted that proper evaluation of the Annual Report of the HRCM by the Parliament could minimise the need for such interactions. However, the annual report of the HRCM has never been discussed in Parliament debates. The HRCM reports directly to the Parliament, and their Annual Report contains sufficient information of its activities and summary of accounts and a summary of the human rights situation in the country in addition to important work that the commission carried out.

The Parliament does not follow closely the recommendations that the HRCM makes to authorities and is not seen to question any authority regarding a recommendation as such.

Some Members of the Parliament discussed the integration of independent institutions through amendment to the laws and Constitution. However it is unlikely that this change will take place given the impracticality of the suggestion. While some other independent institutions such as the Auditor-General has had changes made to legislation through Parliament, the HRCM Act is currently intact.

All business conducted at the Parliament is highly politically polarised, and their interaction with the HRCM is likewise. The Parliament does not conduct regular checks or balances of the Commission in relation to the mandate of the Commission on the Parliament.

It is questionable as to how far the Parliament is aware of the full mandate of the Commission in relation to different international obligations, for example the Convention Against Torture under which the HRCM is the National Preventive Mechanism, with obligations set forth.

The Parliament recognises the HRCM Act and it appears that they simply follow this law in monitoring the Commission. The Parliament often uses their authority to summon and question the HRCM to in what can be seen as targeting the Commission or members of the Commission to intimidate them, and raising selected issues with little consideration for prioritising gross human rights violations.

The verbal threat of unseating Commission members through votes of no-confidence is a common trend with some Members of Parliament, in relation to independent institutions across the board. Members of the HRCM, Police Integrity Commission, the Anti-Corruption Commission, The Prosecutor-General and the Auditor-General have faced such threats. The former Prosecutor-General resigned following a no-confidence motion; and the former Auditor-General was removed through amendment to the enabling law of the institution.

5. CONCLUSION AND RECOMMENDATIONS

The Human Rights Commission of the Maldives is proud to be one of the best performing National Human Rights Institutions in South Asia. However, this may not necessarily relate to a high performance but rather due to extremely low performance of others in the region. The expectation of human rights defenders is that the NHRI meets international standards and is able to satisfactorily address and take timely action in protecting and promoting human rights in the country.

The Maldives has been going through an extremely unstable and chaotic political situation for the past couple of years, and 2014 has been no different, if not worse. It is therefore understandable that the HRCM faces issues of gross human rights violations greater in numbers and gravity than the Commission can appropriately address.

The added burden of threats from violent elements in the country and intimidation by politicians may have led the Commission to take a step back and resort to self-censorship,at times when the HRCM is needed to raise an issue or take action. Bearing this in mind, the Commission has taken some very bold steps in some instances and have also faced grave consequences following these brave actions.

The Commission must be commended for the important and perhaps not so public efforts that it has undertaken to protect and promote human rights in a highly politically volatile and geographically dispersed nation.

The HRCM – whileit has conducted a number of activities and generated several important reports – has not sufficiently focused on the recommendations it makes to the authorities; and this focus needs to be made public, and followed up more aggressively. Several recommendations can be seen in the different reports published on the website of the Commission. However neither the parliament nor the general public is likely to make the effort to go through all of the recommendations in different reports and findings of the HRCM in order to assess the human rights situation of the country.

The important recommendations of the HRCM to the state authorities deserve to be acknowledged and commended. But these recommendations might end up collecting dust along with the reports they come in if they are not followed-up time and again.

The Human Rights Commission has not been able to demonstrate a strong commitment to fulfilling its

mandate effectively. The Commission has, time and again, given into threats and pressure from the judiciary and politicians rather than standing by their principles and legal and international obligations.

Status of Implementation of 2014 ANNI Report Recommendations

- *Establish a special mechanism or focal point dedicated to the protection of human rights defenders and women human rights defender*– Notimplemented;
- *Develop and enhance the engagement with NGO in such a way that it includes individuals and benefits civil society as much as it benefits the work of the HRCM* – Not implemented;
- *Take concrete and timely action following gross human rights violations in the country* – The Commission has described statements raising concern and taking issues up with authorities as timely action. This is not timely action that we seek from the wide mandate of the HRCM;
- *Ensure that the complaints mechanism is active at all times, and that immediate action is taken in cases where persons face the threat of physical or psychological harm* – The Commission explained that complaint mechanisms are active at all times, as in victims being able to lodge complaints via email, phone and through a dedicated hotline. The Commission also included the formation of an Anti-Torture Section (required under law) as such a measure. Regrettably when the hotline for complaints was tested by the MDN when finalising this report, there was no answer or call back;
- *Train and sensitise employees at HRCM on human rights and situation of victims of human rights abuses. Such training and sensitisation must focus at preparing staff to effectively communicate with victims of abuse* – Implementation has begun;
- *Train and sensitise parliamentarians on human rights and the situation of victims of human rights abuses* – Not implemented;
- *Increase communication with the public on the work of the Commission and remove bureaucratic barriers within the institution* – Not implemented yet.

As most of the recommendations made in 2014 have not been taken up by the Human Rights Commission of the Maldives, the Maldivian Democracy Network re-iterates them in 2015 too.

In conclusion, it is of crucial importance that the tenure of some of the sitting members will be over by around September 2015, when new members will be sworn in. At the time of drafting this report the President of the Republic has forwarded names of five nominees for the HRCM, to be evaluated and voted upon before being appointed as Commissioners. Concern was raised above on one of the nominees who is politically active and associated with the current government. None of the five nominees, or the remaining two commissioners, have a human rights background.

Recommendations

1. Create a dedicated unit or section at the HRCM for the protection of human rights defenders;
2. Conduct an Open Inquiry on the case of the disappearance of Ahmed Rilwan, journalist and human rights defender, missing from the Maldives since 8 August 2015;
3. Engage in consultations with civil society in policy planning;
4. Remove the existing bureaucracy and increase transparency when interacting with the public and the civil society.

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NEPAL: ALL EYES ON NEW TEAM

Informal Sector Service Centre (INSEC)[1]

1. INTRODUCTION

The election of the Second Constituent Assembly (CA) paved the way for formation of a representative government. The country got a new and elected government in January 2014, nineteen months after the former Prime Minister Baburam Bhattarai resigned. The Interim Election Government as it was called was headed by the then sitting Chief Justice of the Supreme Court, Khil Raj Regmi. His government completed the mandate and handed over the responsibility to the people's government.

The Common Program of the Government has mentioned that efforts shall be made to find consensus for promulgating new constitution, strengthening democracy and national interest by holding discussion with the political parties present at the CA and outside it. However the government's effort is not fruitful in addressing the issues raised by political parties not present in the CA.

As an important aspect of transitional justice, the Legislature passed the bill for formation of Truth and Reconciliation Commission despite criticism from national and international communities, saying the Bill is set to provide amnesty to perpetrators rather than punishing them and providing justice to victims. The verdict of the Supreme Court on 2 January 2015 ruled not to provide amnesty to persons involved in grave human rights violations and the Bill should be in line with the international principles of human rights.

The trend of impunity continued as the human rights situation of the country did not improve for a long time. The National Human Rights Commission (NHRC) remained without office bearers for 13 months from 16 September 2013 to 20 October 2014 as the government failed to appoint its commissioners for months.

Despite deferring the review of NHRC Nepal more than twice, the International Coordinating Committee of NHRIs' Sub-Committee on Accreditation (ICC-SCA) recommended that NHRC Nepal retain 'A' status in its accreditation review held in October 2014 after the appointment of the commissioners. The effectiveness of the NHRC Nepal was being undermined owing to lack of commissioners for more than a year, raising its possible downgrading.

The weak implementation of the law and court decisions has been the major obstacle for controlling violence against women, as the state failed to pay attention for effective implementation of existing laws and make timely amendments. However victims of domestic violence became active to seek legal treatment against such violence, which could be the outcome of laws related to domestic violence and campaigns against violence against women. Although there is some improvement in terms of practicing civil and political rights of people, the state failed to fulfil its responsibility regarding the economic,

[1] ***Prashannata Wasti, prashannata@insec.org.np.***

social and cultural rights of people, as there was little improvement in the situation of the right to education, health and food in year 2014 as well.

The country faced one of the worst natural disasters in 80 years when an earthquake of 7.6 magnitude struck the country on 25 April 2015. This, and its powerful aftershocks that hit the country on 26 April and 12 May badly affecting 14 of the 75 districts. As of 3 June, 2015, the Government reported a total of 505,745 houses destroyed and 279,330 damaged by the 7.8 magnitude earthquake on 25 April and the 7.3 quake on 12 May. The earthquakes killed 8,702 people (4,801 female; 3,899 male; 2 bodies remain unidentified) and injured thousands of people. An estimated 2.8 million people are still in need of humanitarian assistance. Reaching some 864,000 people in hard to reach areas who have lost their homes and live below the poverty line is a priority. With the impending monsoon rains expected to further isolate remote villages, district authorities and humanitarian partners continue to prioritize distribution of shelter materials in the northern-most Village Development Committees (VDCs).[2]

2. INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	*Human Rights Commission Act 1997, replaced by National Human Rights Commission Act 2012. The NHRC was upgraded to a constitutional body by the Interim Constitution of Nepal 2007*
Mandate	*The NHRC has a broad mandate for protection, promotion and enforcement of human rights. It is mandated to monitor prisons and implementation status of laws, investigate, conduct investigations, publish name of human rights perpetrators research, review existing state of human rights, receive and review complaints that are lodged at the commission. This mandate of the Commission also provides room for victims to lodge complaints against human rights violations that occurred even during Nepal's decade-long conflict.*
Selection and appointment	
Is the selection process formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines?	*There is no relevant legislation, regulation or administrative guidelines to ensure that selection process is clear, transparent and participatory. Article 131 of the Interim Constitution does not stipulate an open call for application and appointment of members into the Commission.*

[2] Nepal: Earthquake 2015 Situation Report No.20 (as of 3 June 2015), http://reliefweb.int/report/nepal/nepal-earthquake-2015-situation-report-no20-3-june-2015

Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	*The President appoints the Chairperson and the members of the NHRC on the recommendation of the Constitutional Council. The decision on appointment is taken by the Executive branch of the government leaving space for political influence in the selection process. There is no stipulation for consultations with NGOs and civil society or for the possibility of public nominations.*
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	*There is no assessment of applicants based on pre-determined, objective and publicly available criteria. The Constitutional Council[3] recommends the name of the Commissioners to the Parliament. The recommended Commissioners have to undergo parliamentary hearing, where they can be rejected by a two-third vote. If approved, the names are forwarded to the President for appointment.[4]The public notice is published for lodging complaints against proposed nomination of person. During the Parliamentary Hearing, the nominees are queried on the basis of the complaints but so far, the hearing are just a kind of ritual and the nominees are generally approved, as the nominee is rejected from the position only if s/he is rejected by two-third of the committee members.*
Is there a provision for broad consultation and/or participation, in the application, screening and selection process	*Article 131 (3) mentions that the President shall, on the recommendation of the Constitutional Council, appoint the Chairperson and the Members of the National Human Rights Commission. Article 131 (2) of the Interim Constitution requires that while appointing the chairperson and members of the NHRC, diversity, including, gender diversity, must be maintained.*
Is there a requirement to advertise vacancies? How is it usually done/Describe the process?	*There is no such mandatory requirement. However, practice of publication of notice for receiving expression of interest was practiced in last year.*

[3] Section 7 (1) of Constitutional Council (Functions, Duties, Powers and Procedures) Act, 2066 (2010)
[4] Ibid. Section 7 (2)

Divergences between Paris Principles compliance in law and practice	*The selection process is carried out by the Constitutional Council. Though non-partisan in law, the Council's appointments are considered heavily influenced by political parties. The names nominated are referred to the parliament for hearing. Once the parliament endorses the names, they are appointed by the President. The Commission remained without any commissioners for nearly a year. These appointments were made on the date it happened because composition of the advisory committee formed to nominate commissioners of Transitional Justice Mechanism could not be complete in absence of an NHRC member.*
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	*Section 33 of the NHRC Act says that any act carried out or intended to be carried out in good faith by the Commission or the Chairperson or a Member or employee or any individual assigned by the Commission pursuant to this Act or Rules there under, no suit or legal proceedings shall be initiated.*
Does the NHRI founding law include provisions that promote: --- Security of tenure; --- The NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; --- The independence of the senior leadership; and --- Public confidence in national human rights institution.	*The tenure of the chairperson or the members is secured as Article 131 (4) clearly says the term of office of the Chairperson and Members of the National Human Rights Commission shall be six years from the date of appointment. Article 132 (2) lists the functions, duties and power of the NHRC which includes conducting investigation or inquiries of human rights violations, monitoring human rights situation, monitoring the implementation status of the international treaties to which Nepal is a State, recommending for departmental action against the perpetrators, recommend for filing case against any perpetrator at the court among others. Though struck down by the Supreme Court, the provision of giving discretionary power to the Attorney General to decide whether a case is filed at the court or not is yet to be amended.* *Public trust in any organizations stems from the public perception of the chairperson or the team leading it. The new NHRC chairperson is considered good and honest Chief Justice and the public hope that his team would demonstrate similar performance at NHRC.*

Are there provisions that protect situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	*There is no law clearly mentioning about the role and duties of the NHRC with special reference to special situation as the time of a coup d'état or a state of emergency.*
Divergences between Paris Principles compliance in law and practice	*The Commission has been issuing press releases or writing letters to the government or government bodies but its concerns are rarely addressed or publicly acknowledged by the government.*
Capacity and Operations	
Adequate Funding	In 2014/15, the budget for the agency is Rs 120.170 million. The NHRC is free to accept the funds from different donors to perform the project within its mandate
Government representatives on National Human Rights Institutions:	There are no government representatives in the Commission.

II. INDEPENDENCE

The term of the Commissioners whose tenure expired on September 2013 was affected by disputes among the Commissioners. The Commissioners of NHRC are appointed by the Constitutional Council. The Council comprises of the Prime Minister as chairperson, the Chief Justice, the Speaker of the Parliament, the Chairman of the National Assembly and the Leader of the Opposition in the House of Representatives as other members.

The Council recommends to Parliament the names of the Commissioners. NHRC commissioners are appointed for six years. Their condition of services is equal to the judges of the Supreme Court. They are appointed by the head of the state under the recommendation of the Constitutional Council. Their appointment would be confirmed after the parliamentary hearing. The Secretary of the NHRC is appointed by the government upon the recommendation of NHRC.

For the appointment of new commissioners in the NHRC, though there is no relevant legislation or guideline calling for the application and appointment of commissioners, the Constitutional Council called for application to prepare a roster of eligible candidates for the posts.[5] Commenting on the advertisement issued, the ICC-SCA during its October 2014 review of the NHRC of Nepal said that despite the publication of the advertisements for the selection and appointment of the new Commissioners, the

[5] Notice published by Secretariat of Constitutional Council in Gorkhapatra Daily, 5 April 2014, p. 8

existing provisions regarding selection and appointment did not ensure a sufficiently transparent and participatory process.[6]

Elaborating its comments, the ICC-SCA stressed the need for constitutional or legislative provisions requiring the advertising of vacancies and the grounds for assessment of all applicants by the Constitutional Council and Parliament.

The ICC-SCA has called on the NHRC Nepal to advocate for publicising vacancies broadly, broaden the range to attract more applications, broaden consultation for selection and appointment process, assess applicants on the basis of pre-determined, objective and publicly available criteria; and select members to serve in their individual capacity rather than on behalf of the organization they represent.[7]

The chairperson and four other members were appointed on 20 October 2014 after 13 months long vacuum existed. Constitutional Council informed that it did not have data separately for NHRC, Election Commission and Commission for Investigation on Abuse of Authority, for the applications were called, but 442 in total had applied. At least two of the five commissioners currently appointed had applied for the post.[8]

The Parliamentary Hearing Special Committee (PHSC) has decided to draw the attention of the Constitutional Council (CC) regarding the latter's recommendations for new appointments at the National Human Rights Commission (NHRC). The parliamentarians accused of violation of the principle of inclusiveness and influence of political interests in the nomination for the NHRC chairperson and other members.[9] It can be safely said that the government was in urgent need for approval of the recommendation to pave way for the formation of the Truth and Reconciliation Commission and the Commission on Investigation of the Disappeared Persons.

The non-governmental-organisations (NGOs) and other civil society organisations (CSOs) have little or no role in the process of selection and appointment of the NHRC commissioners. However, public opinion and the media might influence the selection of the commissioners. The ground reality is that the appointments in such bodies are seen as political ones, heavily influenced by political parties. This is a general informal trend in Nepal that the seats are allotted to the parties and non-partisan individual has little chance of being selected. The NGOs and CSOs also monitor the performance of those appointed to ensure that once assuming the office, the members will be honest to their expected duties.

Constitutionally and legally, the NHRC is an autonomous body where the members can function within the mandate provided by the law. To remove an NHRC member from the post, s/he should be impeached. The Interim Constitution says that an NHRC member can be relieved only on the same grounds of Supreme Court Judges. Article 105 (2) mentions that a motion of impeachment against the Chief Justice or any other Judge may be moved in the Legislature on the grounds of his or her incompetence,

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[6] http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, pp. 37-38.
[7] *Ibid*
[8] Bed Prasad Bhattarai, Acting Secretary of NHRC in an interview with INSEC on 16 June 2015.
[9] PHSC to draw attention regarding NHRC recommendations, http://www.ekantipur.com/2014/10/10/top-story/phsc-to-draw-attention-regarding-nhrc-recommendations/396164.html

misbehaviour or failure to discharge the duties of his or her office in good faith or his or her inability to discharge his or her duties because of physical or mental reason; and if the motion is passed by a two-thirds majority of the total number of the then members, he or she shall *ipso facto* be relieved of his or her office.

The members are free to comment on the issues publicly and it also can summon[10] bureaucrats and even the ministers to inquire or express concerns on the issues.[11] As there were no members at NHRC till October, there is very little to comment on the performance of the members in year 2014. However, the chairperson gave a slogan for his tenure: 'Human Rights for all in Every Household, a Base of Peace and Development'. He has also been expressing keen interest and has public demanded several times for prompt implementation of NHRC recommendations. The day the commissioners assumed office, they made recommendations in two conflict-era cases urging to take action against the accused and to make arrangements for compensation and reparation to victim's families.[12] This indicated positive signs that the current team would pro-actively engage in protection and promotion of human rights and would also pressure the government to address past abuses of human rights. All the members began conducting prison monitoring. The report issued following one such monitoring visit asked the government for better prison conditions and expressed concern over the human rights issues of the visited districts.[13]

NHRC expressed its serious concern over impunity and corresponded on the same with the Government of Nepal. It objected to the inclusion of former SP Chuda Bahadur Shrestha as a conflict specialist in a taskforce for drafting the Truth and Reconciliation Commission (TRC) and wrote to the Ministry of Peace and Reconstruction (MoPR) and the Office of the Prime Minister and Council of Ministers (OPMCM) highlighting controversies around Shrestha[14] who is an alleged violator of human rights during the period of armed conflict.[15] Shrestha later opted out of the panel.

The NHRC has prepared six-year strategic plan targeting the tenure of the Commissioners. It focuses on major four strategies viz. Investigation of human rights violation and monitoring of human rights situation; strengthening the protection of human rights, ensuring the rights of the poor, marginalised and those left behind, and; expansion of NHRC's coverage, strengthening its effectiveness and institutional development.

The NHRC has also targeted to set up offices in all 75 districts to accept complaints and conduct investigation and for this, to work jointly with organisations having presence all over the country like Nepal Bar Association.

The establishment of a Human Rights Training Academy; special programme to ensure rights of prisoner;, close coordination with other commissions including National Women Commission and

[10] Section 12 (3) of NHRC Act 2012
[11] http://www.nhrcnepal.org/nhrc_new/doc/newsletter/PR-Internal%20Displacement%20-13-01-2015.pdf
[12] http://nhrcnepal.org/nhrc_new/doc/newsletter/PR-NHRC-Commissioners%20Appointment-Engl-20-Oct-2014.pdf
[13] http://www.nhrcnepal.org/nhrc_new/doc/newsletter/PR-Human%20Rights%20Monitoring%20four%20districts-eng-20Nov2014.pdf
[14] http://www.myrepublica.com/portal/index.php?action=news_details&news_id=71835
[15] http://www.nhrcnepal.org/nhrc_new/doc/newsletter/PR-Govt%20Nepal-Serious%20Concern%20over%20Impunity-Eng-28Mar2014-New.pdf

National Dalit Commission for effective support to the conflict; and operating safe houses for those whose human rights are threatened, are also are also its planned area of work.

It also intends to contribute to the making of a human rights-friendly constitution, the regulation on exposing the perpetrators of human rights, and review of the Human Rights Commission Act (its enabling law) among others. The NHRC has also identified protection and promotion of economic, social and cultural rights as its area of priority along with consumers' rights and people's right to health. The new Strategic Planning also mentions that poor, marginalised, women, children, elderly, dalits, disadvantaged people and people with disabilities should be matter of focus.

The NHRC called upon all to pay attention to implement the 4th five-year National Human Rights Action Plan (NHRAP) of the government beginning July, 2014 for timely improvement of existing human rights situation in the country. All state authorities ought to take collective ownership and extend necessary contribution from their own level for the implementation of the NHRAP. The government has identified the NHRC as a constitutional body to independently monitor the implementation of the Action Plan.

The NHRC Act has clear protection of action taken in good faith by NHRC chairperson or members or anybody assigned by the NHRC.[16] There has not been any incident reported where such problem was reported either.[17] Even when the matters related to human rights and NHRC mandate, the Act can override other conflicting provisions.[18]

The NHRC chief has expressed hope that the Government of Nepal (GoN) will pay its serious attention towards implementing all NHRC recommendations sent in the past. He also added that the implementation of the recommendations made via human rights related UPR session remains unsatisfactory as opposed to the commitment made by the government. Sharma also stressed the need for the government to pay heed to the submission of periodic reports on international human rights conventions to avoid undue delay.[19]

The National Plan of Action on Human Rights has set out priorities on implementation of the recommendations of the NHRC.[20] This also shows that the government admits its weaknesses in implementing the recommendations of the NHRC. Many a times, the Supreme Court of Nepal has reiterated that NHRC's recommendations are not optional but mandatory. Delivering verdicts on separate cases on 16 December 2007, 6 March 2013 and 7 August 2013, the Supreme Court of Nepal has said that the NHRC is not a government ministry or a government department and the recommendations of the NHRC has mandatory not recommendatory authority.[21]

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[16] Article 33 of NHRC Act 2012: Protection of action taken in Good Faith: Regarding any act done or intended to be done in good faith by the Commission or the Chairperson or a Member or employee or any individual assigned by the Commission pursuant to this Act or Rules there under, no suit or legal proceedings shall be initiated.

[17] Bed Prakash Bhattarai, NHRC Acting Secretary with an interview with INSEC on 16 June 2015.

[18] Article 34 of NHRC Act 2012: To be in Accordance with the Prevailing Laws: In the matters contained in this Act, this Act shall prevail and in other matters, action shall be taken in accordance with prevailing laws.

[19] Statement by Chairperson Justice Anup Raj Sharma of National Human Rights Commission-Nepal on the occasion of the 66th International Human Rights Day 2014.

[20] National Plan of Action on Human Rights pp. 117 to 119.

[21] Bed Prakash Bhattarai, in an interview with INSEC on 16 June 2015.

The NHRC Act 2012 had been criticised for some of the provisions including the time-bar where the cases had to be filed at the NHRC within six months of the occurrence of the incidents; and that the Attorney-General would have a say in whether the NHRC's recommendation for legal action against the perpetrators could be filed in court or not. Fortunately, the Supreme Court on 6 March 2013 ordered the government to scrap those sections. The verdict meant that the NHRC could investigate into and file cases against human rights violators on its own, regardless of the time-limit.[22] The NHRC has a separate desk to monitor the implementation status of its recommendations which keeps liaising with the Office of the Prime Minister for updates on the implementation status.[23]

The NHRC provided 22 advisory inputs on the draft NHRAP, along with the suggestions provided by the representatives of the Government agencies, NGOs, CSOs, and sent it to the Government of Nepal.[24] The government has also sought its comments on the Universal Periodic Review (UPR) report that the government submitted to the UN Human Rights Council; as Nepal is being reviewed in November 2015.

The NHRC has stressed that the transitional justice mechanisms (Truth and Reconciliation Commission and Commission on Investigation of Disappeared People) should be formed consistent with the internationally recognised practice to be independent, impartial, full of authority and capable of delivering justice to the victims of human rights violations and sustaining the environment for reconciliation in society apropos the Supreme Court order and the NHRC recommendations. Also stressed is the guarantee for such mechanisms to be autonomous and independent in nature.

Capacity and Operations

Staff and coverage

One of the concerns regarding the NHRC had been its staffing issue. The complication arose after it was upgraded from a statutory body to a constitutional body. By law, the recruitment at the constitutional bodies is carried out by Public Service Commission (PSC) and they can be transferred to other departments as well. The NHRC and the human rights community had been asking for a different system maintaining that the staff of the rights body cannot be moved to other government offices and vice versa.

Now, a middle ground has been identified where the PSC would be conducting written exams of the candidates and interviews will be conducted by the NHRC. These staff would not revolve to government offices. Many posts which lie vacant due to this complication now can be fulfilled and NHRC can function with its full strength. However, this policy is applicable only for the new recruits. Those already working in the NHRC are contract staff; and their status still remains unresolved.

The NHRC has one central office in Lalitpur, five regional offices in Biratnagar, Janakpur, Pokhara, Nepalgunj and Dhangadhi and three sub-regional offices at Khotang, Butwal and Jumla. In its Strategic Planning, the NHRC hopes to establish at least a contact person in all 75 districts to increase people's access to NHRC and increase its visibility.

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[22] http://www.ekantipur.com/the-kathmandu-post/2013/03/06/top-story/nhrc-can-now-probe-file-rights-cases-on-its-own/246060.html.

[23] Bed Prakash Bhattarai, in an interview with INSEC on 16 June 2015.

[24] NHRC e-newsletter April, p. 2.

Funding

The Ministry of Finance (MOF) finalises the allocation of budget for recurrent and capital expenditure after the budget request is reviewed and negotiated among MOF, Nepal Planning Commission and line ministries. The NPC gives policy approval for ministerial budgets, and the MOF finalises the funding part.

The budget for NHRC has gradually increased in the last three years. In 2012/13, it was Rs 61.32 million, in 2013/14, it was Rs 71.343 million and in 2014/15, the budget for the agency is Rs 120.170 million. The NHRC is free to accept the funds from different donors to perform the project within its mandate. Following the appointment of the new Commissioners, many donors have expressed interest in working with NHRC; however, no plan is yet forthcoming from the national institution.

On 25 January 2015, the Ministry of Finance endorsed the separate financial legislation for the NHRC. The approval of Financial and Administrative by-law 2015, drafted by the NHRC means that now the NHRC will function within its own financial policy and need not be guided by the government.

UNDP is supporting its capacity development activities through Enabling State Programme. NHRC also has signed MoU with UNICEF according to which the UN agency supports activities based program related to protection and promotion of child rights.

The NHRC has prepared and made public the Human Rights Defenders Guideline-2069 (2012). As per this Guideline, the NHRC has also formed a committee to oversee the issues of HRDs. The committee is not yet operational but plans to meet soon. The committee will devise ways to protect the rights of the HRDs including distributing HRD identity cards and monitoring HRDs activities based on HRD code of conduct. The delay can be attributed to the NHRC's lower priority towards HRDs and their interest.

3. EFFECTIVENESS

The functions, duties and powers of the NHRC are wide-ranging. Article 132 of the Interim Constitution holds that it shall be the duty of the NHRC to ensure respect for, protection and promotion of human rights, and their effective implementation.

3.1 In Law

Apart from that, the NHRC[25] can initiate inspections and monitoring of prisons, other agencies of the Government of Nepal, other private or public institutions to ensure protection of human rights and make suggestions to enhance the situation of human rights. Soon after the new team of commissioners were appointed, they inspected prison conditions across the country. The NHRC can also conduct investigations with the permission of the court concerned in any sub-judice case in which claims involving human rights violation have been made, monitor the implementation status of the human rights laws and recommend for implementation, conduct study and research, recommendation for inclusion of

[25] Section 4 (a) of NHRC Act 2012.

human rights related subject matter in the curricula, to publish reports on human rights situation and to carry any activity necessary to protect and promote human rights. [26].

Complaints-handling is one of the major functions of the NHRC. The NHRC, through its central, regional and sub-regional offices accepts complaints. The complaint form is quite detailed enabling the victims to give the account of their grievances and even the minute details are documented. The form in Nepali language can be downloaded from the NHRC website.[27] It also has a hotline and audio service notice board. The victim or anyone on his/her behalf can file a complaint at the NHRC and it can written, post, fax or telephone. In 2013/14, the NHRC received 240 complaints through these channels. [28] However, recommendations on only two cases could be made as the tenure of the commissioners ended two months after the beginning of this fiscal year. [29]

When a written complaint is received the complainant is given a receipt of the registration. When the oral complaint is received, that is also registered and the registration process is free. The NHRC is expected to initiate preliminary proceedings immediately as prescribed as soon as a complaint regarding the incidents of human rights violation or its abetment is received or the NHRC decides to investigate into the matter on its own discretion.[30] If the NHRC finds in its preliminary investigation that the human rights of any individual is being violated or abetted, it issues appropriate orders in the name of concerned agency or official to immediately stop such act. It can also carry out or cause to carry out inquiry or investigation if it finds likely that human rights violation has occurred.[31]

Generally, NHRC should provide its decision on the case in which it undertook inquiry or investigation whether on the basis of the complaint it received or on *suo moto* notice, within six months of registration of the complaint.[32] The decision should include the basis and reasons or whether or not human rights violation took place in that particular incident.

If the NHRC finds it necessary to provide compensation to the victim from the inquiry and investigation it conducted, the rights body has to make a decision based on its finding and the type, quantum or amount of compensation would be determined depending on the gravity of the violation, up to a maximum NPR300,000 [approx. USD 3,000].[33]

The NHRC can ask the related agency to provide relief or rescue a person, if a victim's security or situation has not been considered. The agency has to follow the NHRC recommendation.[34] The Commission recommendation, decision or order is communicated in writing to the concerned official, individual or agency for the implementation. Upon receiving recommendation, decision or order, the

[26] Section 4 (1) of NHRC Act 2012.
[27] http://www.nhrcnepal.org/nhrc_new/doc/downloads/130513070625_Complain-Form-Nepali-NHRC.pdf
[28] Annual Report of NHRC 2013/14 (Nepali version). P. 4, http://nhrcnepal.org/nhrc_new/doc/newsletter/Annual%20Report%20Nep%20Samchipta%202070-71.pdf.
[29] Annual Report of NHRC 2013/14 (Nepali version). P. 5, http://nhrcnepal.org/nhrc_new/doc/newsletter/Annual%20Report%20Nep%20Samchipta%202070-71.pdf.
[30] Section 11 (1) of NHRC Act 2012.
[31] Section 12 of NHRC Act 2012.
[32] Section 15 of NHRC Act 2012.
[33] Section 16 of NHRC Act 2012.
[34] Section 9 of NHRC Act 2012.

concerned official, individual or agency should send report to the Commission containing information about the difficulties in implementing the recommendation, decision or order of the Commission, citing the reasons thereof, within two months from the date of receiving the recommendation, decision or orders. Upon receiving the difficulties, the Commission can make recommendation for implementation or even amend the recommendation, decision or order.

If in the decision of the NHRC, it is deemed that human rights violation took place after an official acted with *mala fide* intention or with prejudice against anyone and that compensation has to be provided to the victim from such official, the compensation shall be provided by the agency in which such an official holds an office. The amount of compensation provided to the victim by the concerned agency is to be deducted from the monthly salary or any other amount to be received by the concerned official.

Section 21 (2) of the NHRC Act says that it shall have to write to initiate departmental action to the agency concerned against the official who, intentionally has not provided information, papers or evidence sought by the NHRC or who, intentionally, has not followed the recommendations, orders or decisions of the Commission or who, intentionally has not cooperate in its work or those who has intentionally refused to be present before the Commission on being summoned. But so far, no information is available whether NHRC initiated this action. NHRC can provide or seek expert services when asked for by any agency or it can also seek similar services from other concerned agencies.[35]

The government has overlooked about 38 per cent of recommendations made by the NHRC to address the deteriorating human rights situation in the country, the constitutional body has said.

Calling the government's response "unsatisfactory", the NHRC stated that a further 48 per cent of its recommendations have been implemented partially. It has so far made 737 recommendations to the government which include action against rights violators and policy-level decisions.[36]

Since its establishment on 26 May, 2000 up until 15 July, 2013, there have been 11,407 complaints of human rights violation filed of which 4,510 were resolved while others were on the different phases of the investigation. The NHRC has made 735 recommendations for compensation, relief and reparation in 13 years since its establishment.[37] NHRC itself has conceded that the government has failed to take concrete steps for full implementation of NHRC recommendations and but has received letters from government regarding distribution of monetary compensation to the victims.[38] The NHRC concluded that the government's reluctance to take departmental action against the perpetrators and to file cases at the court was encouraging impunity.

3.2 In Practice

NHRC response in post-earthquake scenario

[35] Section 19 of NHRC Act 2012.

36 'Recommendations of NHRC ignored by government'. The Kathmandu Post. http://www.ekantipur.com/the-kathmandu-post/2015/04/21/news/recommendations-of-nhrc-ignored-by-government/275671.html.

[37] Aayogka Terha Barsa Ujuri Upar Aayogka Sifarisharu ra Karyanwayanko Awastha (2057-2020) (Thirteen Years of NHRC Situation of NHRC Recommendation and Implementation Status (2000-2013), p. 3.

[38] Aayogka Terha Barsa Ujuri Upar Aayogka Sifarisharu ra Karyanwayanko Awastha (2057-2020) (Thirteen Years of NHRC Situation of NHRC Recommendation and Implementation Status (2000-2013), p. 12.

Following the earthquake, there were reports of distribution of sub-standard quality food to the quake victims as relief. The NHRC conducted a fact-finding mission in it said it found the claims of distribution of sub-standard food by World Food Program through Nepal Red Cross Society true and asked the government for intervention[39]. Later, WFP apologised for the misstep and pledged to continue its efforts to support the quake victims. NHRC also conducted field visits of all the quake-affected districts and released a report on the basis of its findings[40].

Selected Case-Studies in 2014

Godar Exhumation[41]:

A complaint was filed by Jay Kishor Labh informing about the disappearance of his son Durgesh Labh, along with Sanjeev Kumar Karn of Janakpur Municipality, Ward-10 of Dhanusha district, Durgesh Labh, Jitendra Jha (alias Machchali) of Ward-4, Pramod Narayan Mandal of Kurtha VDC-1and Shailendra Yadav of Duhabi VDC-7 on 8 October 2003 after they were arrested by the security forces from Kataiyachauri situated at Biswakarma Chok of Janakpur Municipality, Ward-4 of Dhanusha district.

Witnesses had reported that the arrestees were shot dead and buried on the banks of the Kamala River. Despite a series of communications with government authority and NHRC recommendations, the government provided the families with monetary compensation but no legal action was taken against the perpetrators nor steps to find the remains on the part of the government. This led to the NHRC to decide to locate the remains of the youths.

The first phase of exhumation was done on 6 –18 September 2010 at Tallo Godar and four bodies were exhumed by the NHRC led-team comprising the national and international experts and Nepal Police. The second phase of exhumation was carried out on 13-16 February 2011 and the remaining body was exhumed.

The human remains of all five dead bodies were examined at the Forensic Department of Tribhuvan University Teaching Hospital, Maharajgunj; while the DNA test was performed in Laboratory of Biology Department of Forensic Medicine Hjelt Institute University of Helsinki, Finland. The deceased persons have been identified on the basis of the comparative analysis of the DNA samples collected from the kin of the victims. The remains were handed over to the families on 20 July, 2014.

The NHRC has been very involved in the case, persistently following it up and even initiating the exhumation process on its own and recommending for action against the perpetrators. Sad part, as in many of the NHRC recommendations, is the lack of response from the government and inability of the NHRC, legally and practically, to ensure those recommendations implemented.

Aama Ghar Shelter Case

[39] Take Action Against WFP: NHRC To Govt., http://www.myrepublica.com/society/item/21563-nhrc-urges-government-to-take-action-against-wfp.html

[40] NHRC Releases Fact-finding Report. http://www.inseconline.org/index.php?type=news&lang=zxybxbhlpkerxvt&id=16234.

[41] A Brief Report on the Exhumation at Tallo Godar of Dhanusha District 23 July 23, 2014, Janakpur, http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Report-Godar-Dhanusha-Incident-body-recognized-Eng-23Jul2014a.pdf.

Aama Ghar is a well-recognized shelter for the abandoned, neglected and homeless elderly. Social worker Dil Shobha Shrestha who ran the shelter on her personal efforts was also well know and praised. However, following a media report that she had held some children illegally and supplied them to people for sexual purpose created a furore.

The case attracted much public attention and NHRC launched its investigation into the case. It concluded that the Aama Ghar is not following the existing laws required to run such an organization.[42] Its investigation team stated that Aama Ghar is being operated traditionally which is not recognized by the existing laws. The investigation team further urged the media not to publish unsubstantiated news that are directly related to the personal dignity of people. It revealed that she had taken in the children without registering at the authorities thus running child shelter illegal but found no evidence sexual exploitation of the children. The newspaper did not extend its apology and the storm petered out.

The NHRC investigation exonerated the social worker while exposed many of the shortcomings of this particular shelter and broadly the condition of the shelters privately run. It also admonished the media for publishing the unsubstantiated report.

Nanda Prasad Adhikari Case

NHRC, along with other human rights defenders and civil society members, had continuously called for government's attention to address the demand of Nanda Prasad Adhikari, of Phujel in Gorkha district. Adhikari staged a fast unto death demanding justice over the murder of his son Krishna Prasad by the then CPN Maoists in 2004, and died at Bir Hospital while on hunger strike on 22 September 2014. His body remained in the morgue as of 25 July 2015. The NHRC urged the Government of Nepal and other concerned parties to make serious efforts to protect the life of Ganga Maya Adhikari, the wife of Nanda Prasad Adhikari, whose is only taking fluids since her husband died.

In a press release, NHRC reminded the government of its "already sent recommendations to take actions against criminal offense upon conducting the investigation over the incidents of the murder of Krishna Prasad Adhikari, make arrangements for compensation to the victims and provide adequate security, including rehabilitation of the victims. "Absence of immediate investigation and prosecution on the incidents of the human rights violations that took place during the armed conflict and beyond, obliviousness in administration of justice, widespread bewilderment and pervasive dispirited notion have caused difficulty in timely and effective protection and respect of human rights",[43] according to the NHRC.

The rights body is continuously asking the government to heed to the demand of Ganga Maya. The government is apparently reluctant to take action against the accused fearing it will antagonize the former rebels and derail the peace process. The NHRC's efforts are falling short of pressuring the government to write the UK to repatriate one of the accused living there.

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[42] Brief report of the NHRC's monitoring of Aama Ghar (a shelter home), released on 071-2-8, http://nhrcnepal.org/nhrc_new/doc/newsletter/Report-Aamaghar-2071-02-08.pdf.

[43] http://www.nhrcnepal.org/nhrc_new/doc/newsletter/PR-Krishna%20Fathers%20Nanda%20Prasad%20Adhikari%20Sad%20Demise-Eng-23%20Sept%202014.pdf.

The NHRC has the power to may make public names of officials, persons or agencies that do not knowingly implement or observe the recommendations or orders or directives made by the NHRC with regard to violations of human rights as Human Rights Violators.[44] The Chairperson, after assuming the office, also reiterated that the names of the perpetrators would be blacklisted and their passports seized among others.[45] But, even after one year, none of such action has taken place while the warning for same continues. Though it is a bit early to comment on the performance of the new team, there is likely to be repetition of the same expression of helplessness because the NHRC is heavily dependent on the government for effective implementation of all of its recommendations.

Report on Anti-Trafficking

Anti-Trafficking issue is an area of focus by the NHRC. It has published a National Status Report on Trafficking in Persons Especially on Women and Children (2012-13). It is guided in this respect by the NHRC fourth Strategic Plan 2011-2014. The report unveils the major findings on situation of Trafficking in Persons, situation of foreign labour migration, monitoring of anti-trafficking initiatives including law-enforcement and judicial responses to Trafficking.

In the report, it is pointed out that National Committee on Combating Trafficking (NCCT) has been in place since 2007, but it is yet to be made functional. The NCCT needs to accelerate its activities to find out the gaps in current intervention strategies, avoid duplication of programmes and wastage of scarce resources.

The report further pointed out that the Government of Nepal has yet to adopt the standards of '5 R's' (Rescue, Rehabilitation, Repartition, Reparation, Rehabilitation and Reintegration) policy. With the absence of such policy, the protection of trafficking survivors is largely based on individual NGOs judgment and availability of resources and time.

The report recommended for effective criminal procedures to check trafficking of women and children, ensuring proper rehabilitation of the rescued victims and formulation of National Policy on prevention and combating trafficking and revise and amend the existing NPA, Acts and Rules and Standards accordingly.

Universal Periodic Review Report

The NHRC conducted regional and national level consultations before preparing and sending its report on the human rights situation in Nepal to the UN Human Rights Council. The NHRC has led the process with other NHRIs such as Nepal Women Commission and Nepal Dalit Commission playing a supportive role and contributing to the report.

4. OVERSIGHT AND ACCOUNTABILITY

4.1 *Parliament*

[44] Section 7 of NHRC Act 2012.
[45] "Perpetrators of Human Rights Will Be Black-listed". http://inseconline.org/index.php?type=interview&lang=en&id=20.

In article 133 of the Interim Constitution, it is mentioned that the NHRC should submit to the President an annual report on its activities. The President then arranges to submit such report to the Legislature through the Prime Minister. The NHRC does submits its annual report as expected, but unfortunately in the 15 years of the establishment of NHRC, none of the annual reports have been discussed in Parliament. (The annual reports and other publications are available on its website.)

Following the meetings with the Parliamentary Committee on Social Justice and Human Rights in 2014, the Committee members have promised that the NHRC's annual report[46] would be discussed in the next parliamentary session, as informed by Acting NHRC secretary Bed Prakash Bhattarai.

The Annual Report comprising the NHRC activities and related issues between 16 July 2013 and 15 July 2014 has been submitted to the President. The Annual Report includes the activities related to human rights protection and promotion. Only two recommendations could be made in this fiscal year as the delay in the appointment of the Commissioners mean no recommendation could be issued and the cases remain limited to investigation and report preparation.

According to it, in the fiscal year 2013/14, 240 complaints were filed of which most of them were regarding torture/maltreatment (47) followed by justice administration (39). Complaints related to violation of women rights were 26 while complaints of violation of child rights were 16. In the same period, the NHRC conducted investigation on 447 complaints. Most of the investigations was conducted by central office (112) followed by Dhangadhi (105) and Biratnagar (67). Similarly, 84 programs were jointly organised in the fiscal year and issued 14 publications.

The annual report includes recommendations for the government, the main opposition United Communist Party of Nepal- Maoists (UCPN-M) and other political parties. Main recommendations include creating viable environment to promulgate the Constitution, implementation of NHRC's recommendations, ensuring justice to the victims, dealing with the whereabouts of the disappeared people, the formation of the TRC as per international standards, ensuring the rule of law, and discussion of the NHRC report in the Parliament among others.

4.2 Civil Society

Coordination with civil society organizations in order to enhance awareness on human rights is one of the key mandates of NHRC.[47] It is working jointly with local NGOs, the Judges' Society, and journalists, for promotion of human rights. It conducted regional level orientation on National Action Plan on Human Rights for government authorities including Chief District Officers. NHRC has also developed Guideline on Collaboration 2012.

[46] NHRC Annual Report (2013-14) (Nepali version) http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual%20Report%20Nep%20Full%202070-71.pdf.
[47] Article 132 (2) (d) of the Interim Constitution of Nepal 2007.

In 2014, there was one such orientation program held in Pokhara, Western Development Region while the other two had been conducted in 2013. The orientation provided to the government officials created a realisation that their regular work is related to protection and promotion of human rights.[48]

Since 2009, the NHRC is leading the organisation of Human Rights Magna Meet, a convention of over 100 national human rights NGOs, held to mark International Human Rights Day. It also holds regular meetings and sharing with the NGOs working on different themes. Such meetings are coordinated by nine thematic committees, set up on the basis of the nine core UN treaties.

Similar activities are carried out at national as well as regional and district level too. The NHRC Sub-Regional Office in Butwal jointly organised the program on the Role of Stakeholders in Safeguarding the Rights of Senior citizens in coordination with the Association for the Rights of Senior Citizens, Senior Citizens Society, Human Rights Alliance, and NGO Federation, in Palpa on 23 March 2014.

5. CONCLUSION AND RECOMMENDATIONS

The absence of members at the NHRC led to a vacuum in its functioning. The staff could not make recommendations on the complaints thus hampering the conclusion of the case. The NHRC's performance was not unsatisfactory but it seemed toothless when many of its recommendations were not fully implemented. Constant apathy of the Parliament towards NHRC is reflected in the fact that its Annual Reports have not been discussed by legislators even once. This is not only a concern of Parliament's lack of interest in understanding the human rights situation of the country; it is also a challenge for the NHRC to prove its significance.

The 2014 ANNI Report recommended the Government of Nepal to fill the vacancies of the NHRC promptly. In 2014, the government appointed the Commissioners and the issue of new recruits was also sorted out. The appointment of the Commissioners cannot be called satisfactory because it is not reflective of the Nepali society. Four of the five commissioners are male and belong to the so-called upper caste group. There is no roster of experts and the basis of selection of the Commissioners is not transparent.

Though the Supreme Court had annulled the provisions of the limitation to file a complaint and AG's right to refuse to file court case, the enabling law has yet to be appropriately amended. This contradiction will only create confusion among victims and their representatives, as well as duty-bearers in government.

When the advisory committee for formation of the TRC was set up, there was provision for one representative from the NHRC. However, the, NHRC refused to participate in it questioning its legality. Following the appointment of new members, the current chairperson designated one member as the member of the advisory body; thus fully constituting the TRC and the Commission on Investigation of Disappeared People. Now, it is the heavy responsibility of the NHRC to ensure that both transitional justice mechanisms function well.

[48] Bed Prakash Bhattarai, in an interview with INSEC on 16 June 2015.

The NHRC took a commendable lead in investigation of the case of disappearance of six youths of Dhanusha; and once it had confirmed their burial site, took charge in exhumation of their bodies. There are many such unresolved cases occurred during the conflict period. The NHRC should show similar diligence in those cases too. Along with finding the whereabouts of the disappeared persons, it should also be able to bring the perpetrators to justice. Though, legally NHRC cannot infringe upon decisions of the Army Tribunal, it can exert pressure on the Army and other security institutions asking them to properly investigate the cases and cooperate with the civilian court to vet human rights perpetrators.

The NHRC needs to expand its coverage at grass-root level because with limited number of offices, it cannot fulfil its constitutional mandate. NHRC has devised a plan for security of the Human Rights Defenders but though the mechanism and the guidelines were formulated some three years ago, it is yet to become operational. The NHRC says that the mechanism was delayed because of the absence of the commissioners but apparently bureaucratic processes hampered the implementation of the guidelines.

It cannot be said that NHRC's performance was poor but it was marred by shortage of human resources included the vacant posts of the Commissioners and the reluctance of the government to take hard parts of the NHRC recommendations i.e. persecuting the perpetrators. If the government cooperates with the NHRC, there can be considerable achievements gained.

Recommendations to the Government of Nepal:

1. Amend law in accordance to the Supreme Court verdict of 6 March 2013 relating to the functional independence and statute of limitations of complaint.
2. Create a mechanism where the people can have a role in the selection of the NHRC commissioners.
3. Ensure selection of NHRC chairperson and members have sound experience in the field of human rights.
4. Give due priority to NHRC and its activities and make sure that the reports are discussed and concrete steps are taken to address the problems raised by the report.
5. Fully implement recommendations of NHRC with genuine urgency.
6. Ensure that NHRC is functional in line with the Paris Principles.
7. Ensure sufficient physical, human and administrative needs of the NHRC to enhance its effectiveness.

Recommendations to the National Human Rights Commission of Nepal:

1. Make the recommendation follow-up committee proactive to keep nudging the concerned stakeholders to ensure that the recommendations are implemented.
2. Demand amendment of the enabling law in line to the Supreme Court verdict.
3. Ensure that transitional phase will come to an end at the soonest.
4. Take charge in advising the government and legislators on draft and existing legislations and submit recommendations to the Parliament to reduce human rights violations.
5. Ask the government for ratification of key human rights treaties including the two core UN treaties on migrant workers and enforced disappearance
6. Participate and ensure participation of civil society in drafting of the human rights friendly Constitution

7. Resort to filing of litigation if government shows complete neglect to NHRC in cases pertaining to policy and principles.

SRI LANKA: LOST OPPORTUNITIES

Law & Society Trust*

1. OVERVIEW

In general Sri Lanka's human rights record deteriorated further in the latter half of 2014, with decreasing space in relation to freedom of expression and religion. Further restrictions on civil society and non-governmental organisations were proposed and notices were also issued in late 2014[1]. However, the change of presidency after the election on 08 January 2015 has resulted in change of attitude by the government, notably the removal of restrictions and improving conditions related to freedoms of speech, expression and religion. Yet, many challenges remain for the government to consider, especially those related to the reconciliation process.

The Government of Sri Lanka's (GoSL) inaction (under President Mahinda Rajapakse) on hate speech and growing intolerance[2], led to increased public presence and rhetoric of nationalist, extremist groups such as *Bodu Bala Sena* (Buddhist Power Force), Ravana Balakaya, Sinhala Ravaya. The culmination of these public rallies[3] and online postings[4] that spoke of the religious, ethnic superiority of the Sinhala Buddhists resulted in physical violence in Aluthgama and Beruwala areas in southern Sri Lanka[5]. The reported inaction of the Special Task Force (state paramilitary unit), who were mobilised to bring the violence to an end in the Aluthgama area on June 15-16 2014[6], and the silence of mainstream media is also another key aspect of this riot[7]. It also bears noting that the Rajapakse government had granted visa in September 2014 to the Buddhist monk Ashin Virathu, leader of the 969 group responsible for inciting violence against Muslims in Burma[89],who was an invited guest to a public BBS rally.

The shrinking space for freedom of expression, increased religious intolerance, and erosion of rule of law continued in year 2014, while the United Nations (UN) appointed three experts to support the Office of the High Commissioner on Human Rights (OHCHR) Investigation on Sri Lanka[10]. The Government of Sri Lanka continued its stance of defiance against the UN and refused to cooperate with the OHCHR investigation saying that the "the Government of Sri Lanka does not wish to help legitimize a flawed process and have a detrimental precedent established[11]."

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[1] Ministry of Defence and Urban Development Letter to NGOs with new restrictions dated 01 July 2014, accessible at, http://www.tamilguardian.com/files/File/MOD%20on%20NGOs/MoD%20letter%20to%20NGOs%20with%20new%20restrictions-01July2014.pdf

[2] Para 27, Report of the Special rapporteur on Minority issues, Rita Izsàk, A/HRC/69/226, 6 August 2014, http://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session7/GAReport_SR_MinorityIssues_en.pdf

[3] BBS public meeting held on 15 June 2014, "Galagoda Atte Gnanasara's Inciteful and fear mongering speech" published on June 18 2014, available at https://www.youtube.com/watch?v=YFeaR9acsvM.

[4] See generally, Centre for Policy Alternatives, "Liking Violence: A study of hate speech on facebook in Sri Lanka", September 2014, http://www.cpalanka.org/liking-violence-a-study-of-hate-speech-on-facebook-in-sri-lanka/

[5] Law & Society Trust, "Where have all the neighbours gone? Aluthgama riots and its aftermath", June 2014, http://www.lawandsocietytrust.org/images/PDF/Resources/aluthgama%20report%20final.pdf

[6] "The Agony of Aluthgama', Daily FT, 17 June 2014, http://www.ft.lk/2014/06/17/the-agony-of-aluthgama/

[7] Ibid.

[8] ESCR Team, Law & Society Trust, "Selective Policies", October 2014, http://lawandsocietytrust.blogspot.com/2014/10/selective-policies.html?q=bodu+bala+sena

[9] "Gnanasara Thero arrested", Adaderana.lk, 26 May 2015, http://www.adaderana.lk/news/31005/gnanasara-thero-arrested. At present, BBS have become less vocal and one of its main speakers GnanasaraThero was arrested for flouting a court imposed ban and protesting in front of the Bribery Commission

[10] OHCHR Investigation on Sri Lanka http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx

[11] Full Statement on the Permanent Mission of Sri Lanka, Geneva accessible at Ministry of Foreign affairs website, http://www.mea.gov.lk/index.php/en/media/media-releases/5284-sri-lanka-will-not-help-legitimize-a-flawed-process.

Sri Lanka also pursued massive infrastructural projects such as the Port City and Uma Oya developments, which came under scrutiny for environmental impact, lack of public consultation and corrupt practices of the companies involved[12][13][14].

Post-presidential elections Sri Lanka has seen key changes in terms of freedom of speech, freedom of expression and religion also increase in rule of law[15]. The present government under the new President Maithripala Sirisena passed the 19th amendment to the Constitution which re-established the Constitutional Council, and repealed some of more controversial articles of the 18th Amendment[16]. The Port City project[17] and *Uma Oya* project[18] are being re-evaluated. The national anthem was also allowed to be sung in Tamil, lifting an unofficial ban that existed since 2010[19]. An office on national unity has been formed under the former president Chandrika Bandaranaike Kumaratunga[20].

In February 2015 OHCHR decided to postpone the release of the report of the investigation on Sri Lanka by six months, allowing the new President to establish a proper domestic process on truth and reconciliation and also to improve the human rights climate in Sri Lanka[21].

Despite these positive changes, surveillance and monitoring on civic gatherings still continue in the North and the East; the war victim commemoration activities were heavily monitored in May 2015 in the North[22]. Although the 19th Amendment was passed, the civil society members of the Constitutional Council (hereinafter the 'CC') are still not appointed delaying the establishment of independent commissions, directly affecting the National Human Rights Institution of Sri Lanka.

2. INDEPENDENCE

Established by	
Law/Constitution/Presidential Decree	*Established by law*[23]
Mandate	*To give force to the commitment of Sri Lanka as a member of the United Nations in protecting human rights, and to perform the duties and obligations imposed on Sri Lanka by various international treaties at international level; and to maintain the standards set out under the Paris Principles*[24-25].
Selection and appointment	

[12] Vishaka Wijenayake, "The Colombo Port City Development Project", groundviews.org, 29 May 2014, http://groundviews.org/2014/05/29/the-colombo-port-city-development-project/
[13] The Uma Oya project is to supply water to Hambantota, in the south of Sri Lanka. The project was begun in the Uva province, and is marred by allegations of lack of environmental considerations.
[14] Chathuri Dissanayake, "Uma Oya project thumbs nose at the law", Sunday Times, 15 February 2015, http://www.sundaytimes.lk/150215/news/uma-oya-project-thumbs-nose-at-the-law-135873.html
[15] Written statement submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, A/HRC/29/NGO/94, 10 June 2015, https://www.forum-asia.org/uploads/wp/2015/06/FoAA-in-Sri-Lanka.pdf /
[16] However the eventual 19th Amendment was a much watered down version of the original bill, which proposed sweeping amendments restricting the powers of the executive President. For an analysis of the original bill, see "19th Amendment- Two steps Forward?" Dissanayake, Dinushika, 19th March 2015, accessible at http://lawandsocietytrust.blogspot.com/2015/03/the-19th-amendment-two-steps-forward.html
[17] "Cabinet to reconsider Port City Project", News.lk, 18 June 2015, http://www.news.lk/news/business/item/8275-cabinet-to-reconsider-port-city-project
[18] Rishan Hannan, "Cabinet sub-committee report on umaoya project completed", Newfirst.lk 3 May 2015, http://newsfirst.lk/english/2015/05/cabinet-sub-committee-report-on-uma-oya-project-completed/92869
[19] "Sirisena allows singing of Lankan National Anthem in tamil" Adaderana.lk, 15 March 2015, http://www.adaderana.lk/news/30176/sirisena-allows-singing-of-lankan-national-anthem-in-tamil
[20] "CBK to head national unity force", Daily News, 26 March 2015, http://www.dailynews.lk/?q=local/cbk-head-national-unity-office
[21] Reported by Tom Miles "Sri Lanka wins delay over UN war crimes report", Reuters, 16 February 2015, http://www.reuters.com/article/2015/02/16/us-sri-lanka-warcrimes-idUSKBN0LK17X20150216
[22] Ruki Fernando, "Tamils in North East Sri Lanka remember those killed despite intimidation and surveillance", Groundviews, 20 May 2015, http://groundviews.org/2015/05/20/tamils-in-north-east-sri-lanka-remember-those-killed-despite-intimidation-and-surveillance/
[23] Human Rights Commission of Sri Lanka Act, No.21 of 1996, hereinafter also referred to as the HRCSL Act
[24] Paris Principles (Principles Relating to the Status of National Institutions) available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx
[25] See, Establishment, *HRCSLWebsite*, available at http://hrcsl.lk/english/?page_id=615.

Is the selection formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	*Under the HRCSL Act[26], the members of the Commission were to be appointed by the President of the Republic, on the recommendation of the Constitutional Council.[27]The selection during the year under review, was to be done by the Parliamentary Council, comprised entirely of parliamentarians from the government and the opposition[28]. The general public, academics, NGOs and civil society had no input.* *Therefore in the year under review the selection process was not transparent nor participatory[29].*
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	*The CC was meant to be an independent and impartial body which was responsible for selecting members to the Commission.[30] However, with the passing of the 18th Amendment in 2010 (applicable in the year under review), the CC was transformed into a Parliamentary Council according to which the President was merely required to seek observations from the Council, which in effect makes it to a certain extent redundant.[31]Therefore, the independence and credibility of the Parliamentary Council (and the bodies to whose membership they make 'observations'), was severely compromised. With the repeal of the 18th Amendment and the re-introduction of the CC by the 19th Amendment, the selection body is expected to be more independent and impartial.* *In any event the process in the HRCSL Act does not envisage consultations with civil society or NGOs in appointing members to the Commission.*
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	*The enabling legislation sets out that the 5 members of the Commissioner shall be chosen from persons having special knowledge of or practical experience in Human Rights. However other than this, no objective or publicly available criteria has been set out for selection of Commissioners.* *Minorities are also to be especially represented on the Commission[32]. Unfortunately, the section does not define the term 'minorities' and whether this means representation of each racial, ethnic and religious minority in Sri Lanka; nor does the section encompass gender representation or any other form of diversity[33].*

[26] *Supra* fn. 26.
[27] "Art. 3 (2) Human Rights Commission of Sri Lanka Act No. 21 of 1996", HRCSL Website, available at http://hrcsl.lk/english/ACT/english.pdf
[28] See 18th Amendment to the Constitution of Sri Lanka
[29] Note that the 18th Amendment was repealed and substituted by the 19th Amendment which came into operation on 15 May 2015. Under the 19th Amendment, the President will appoint the Commissioners based on the recommendations of the Constitutional Council.
[30] Article 41 (B) 17th Amendment: 'No person shall be appointed by the President as the Chairman or a member of any of the Commissions specified in the Schedule to this Article, except on a recommendations of the Council'. The persons appointed through nominations are required to be persons of eminence and integrity who have distinguished themselves, who are not members of any political party and nominated to represent minority interests. The Constitutional Council comprised of the Prime Minister, the Speaker, the Leader of the Opposition in Parliament, one person appointed by the President, five persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition, and one person nominated upon agreement by the majority of the Members of Parliament belonging to political parties or independent groups other than those to which the Prime Minister and the Leader of the Opposition belongs and appointed by the President – See 17th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka 1978.
[31] The Parliamentary Council comprising primarily of members drawn from government and ruling coalition members of parliament of: the Prime Minister, the Speaker, the Leader of the Opposition, a nominee (who is an MP) of the Prime Minister, and a nominee (who is an MP) of the Leader of the Opposition, Article.41 (A) of the 18th Amendment to the Constitution of the Democratic, Socialist Republic of Sri Lanka.
[32] Section 3(3) of the HRCSL Act states that in making recommendations to the President, the Constitutional Council and the Prime Minister shall have regard to the necessity of the minorities being represented of the Commission.
[33] With the 19th Amendment coming into operation from 15 May 2015, the Constitutional Council will be making recommendations as to the appointment of Commissioners. Under the 19th Amendment, recommendations made by the Council are to include the pluralistic character of Sri Lankan society, including gender. The Human Rights Commission shall be responsible and answerable to Parliament per the 19th Amendment.

Is there a provision for broad consultation and / or participation, in the application, screening and selection process	*No. The President appoints the Commissioners. The President shall seek the observations of the Parliamentary Council (18th Amendment). Therefore in the period under review there was no space for any type of consultation or participation in the application, screening and selection process. This position is expected to change under the 19th Amendment (the Constitutional Council is a more independent body), with three of the ten seats reserved for civil society representatives*[34].
Is there a requirement to advertise vacancies? How is it usually done/Describe the process?	*No. The enabling legislation does not require advertising to fill vacancies. Under the 18th Amendment, the President appoints the Commissioners. In making the appointments the President shall seek the observations of the Parliamentary Council. In terms of the 19th Amendment (operative since 15 May 2015) the CC will make recommendations to fill vacancies to the members of the Commission. The President will appoint based on those recommendations. Replacing a member of the Commission remains non-transparent. In terms of the HRCSL Act, the selection mechanism and measuring the qualifications of the candidates, remain obscure.*

[34] See fn. 4 *supra*.

Divergences between Paris Principles compliance in law and practice	*In the year under review, the selection process of commissioners did not involve the participation of civil society/social actors. It was conducted by the President of the Republic, who is only required to seek the observations of a Parliamentary Council. The Parliamentary Council comprised purely of parliamentary members.*[35]. *The HRCSL appointed its members for the latest tenure on February 18, 2014*[36]*. Members of the Commission have not changed since the issuance of the 2013 ANNI Report, which explored in depth the qualifications of the individuals within the committee*[37]*.The HRCSL has therefore faced the political consequences of appointments being made primarily by the President at largely his own discretion, especially in relation to representing the pluralist nature of social forces as defined by the Paris Principles*[38]*.*
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	*The members, officers and servants of the Commission are immune from civil and criminal suit for acts done in good faith as a member/officer/servant or other person assisting the former*[39]*. The only exception is contempt proceedings.*
Does the NHRI founding law include provisions that promote: - security of tenure; - the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; - the independence of the senior leadership; and - public confidence in national human rights institution.	*A Commissioner can only be removed by the President, on a recommendation by the Speaker that to the member should be removed from office for one of the grounds set out in section 4 of the Act*[40]*. Alternatively the President can move for removal of a member by an order which is passed by a majority of parliament on grounds of proven misbehaviour or incapacity. Therefore technically there is security of tenure although the lack of political will can affect the tenure of members of the Commission.* *In terms of the enabling law, officers and Commissioners have functional immunity*[41]*. Whilst technically this should ensure free commentary and critical analysis of government actions, in reality the HRCSL has not displayed the true independence that its founding legislation appears to have envisioned. Political interference is not apparent but may be present, which may be leading to the*

[35] Article 41A of the 18th Amendment to the Constitution (now repealed).
[36] "Appointments Of Members To The HRCSL For The Present Term", HRCSL Website. February 25, 2014, http://hrcsl.lk/english/?p=2244.
[37] "Sri Lanka: The National Human Rights Commission Marionette of the State", ANNI Report on National Human Rights Institutions – 2013, Law & Society Trust, 190-216.
[38] Paris Principles, A/RES/48/134, 20 December 1993.
[39] Section 26 of the HRCSL Act.
[40] Being adjudged an insolvent or being declared to be of unsound mind by a court of competent jurisdiction, or being convicted of an offence involving moral turpitude are valid grounds for dismissal or for being unfit to continue in office by reason of infirmity of mind or body, or for engaging in paid employment outside the duties of his office, which conflicts with his duties as a member of the Commission.
[41] Section 26, HRCSL Act; proceedings, civil or criminal cannot be instituted against any member of the Commission (or any officer or servant appointed to assist the Commission), for any act or omission done in good faith.

	lacklustre role of the HRCSL in proactively preventing and investigating human rights violations by the State[42]*.* *The independence of senior leadership of the HRCSL has been questioned in the last two reports of ANNI. The independence of the Commission itself is in question, on the basis of statements by its members that may be considered pro-government.* *Thus, despite existing provisions within the statute, and proposed amendments, the public appears sceptical of the independence of the Commission*[43]*.*
Are there provisions that protect situation of a coup d'état or a state of emergency where NHRIs are further	*The enabling legislation does not contain any provisions for a coup d'etat or a state of emergency.*[44]*.*

[42] See analysis in part 2,3 and 4 of this report.
[43] "HRCSL unconcerned about rights", Ceylon Today, 3 July 2013, available at http://www.ceylontoday.lk/16-36636-news-detail-hrcsl-unconcerned-about-rights.html, accessed on 7 June 2014.
[44] However the HRCSL must be informed within 48 hours, in cases of arrests under the Prevention of Terrorism Act, No. 48 of 1979 or a regulation made under the Public Security ordinance (Chapter 10). Section 28, HRCSL Act.

expected to conduct themselves with a heightened level of vigilance and independence?	
Divergences between Paris Principles compliance in law and practice	*The appointment of the Commissioners is by an official act, as envisaged by the Paris Principles[45]. In addition, the functional immunity[46] and security of tenure of the members is ensured by a specific set of requirements within which their removal from office is restricted[47]. However, because the appointing authority during the period under review (the President), had no constitutional or legislative requirement to consult social actors, or to follow the recommendations of any other body (other than to seek observations from a body consisting of Parliamentarians), the appointments themselves were not in line with the Paris Principles[48]. The independence of senior leadership therefore is in question due to this flaw, and public confidence appears to have reduced in the period in question.*
Capacity and Operations	
Adequate Funding	*The funding for the HRCSL is in terms of the HRCSL Act. The state is under an obligation to provide it with adequate funds[49]. The budget allocation for the HRCSL is included in the Government Expenditure Estimates for 2015[50].* *There is no statutory method for the NHRI to submit a strategic plan to parliament before the discussion of budget proposals. The HRCSL has informed LST that it only submits its annual report to parliament and there are no other communication channels. Therefore it is unlikely that such a strategic or annual programme plan is considered before the budget estimate is decided.* *The NHRI is not invited to parliamentary debates in relation to its annual budget.* *Whilst there is no record of the State curbing or controlling the activities of the HRCSL through inadequate funding; the Secretary to the HRCSL has consistently stressed the lack of funding as a major concern and reason which holds back the HCRSL from taking a more active role in relation to certain human rights issues; for example adopting and promoting the ACJ recommendations in relation to transnational corporations. Therefore, the funding situation in effect, does have an impact on the independence of the HRCSL and its ability to freely determine its priorities and activities.*
Government representatives	*The enabling legislation does not provide for a ruling party/government*

[45] Paris Principles, *supra.*and section 3, HRCSL Act
[46] Section 26, HRCSL Act
[47] Section 4, HRCSL Act
[48] "…in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights…", Paris Principles, *supra*
[49]Section 29 of the HRCSL Act.
[50] National Summary Expenditure, Summary of Expenditure by Category and Object Code, Department of National Budget,http://www.treasury.gov.lk/images/depts/nbd/docs/budgetestimates/2015/approved/4.Expenditure/Expenditure.pdf, accessed on 26.5.2015

on National Human Rights Institutions:	*representative to be given an ex-officio appointment to the membership of the Commission*[51] *However, some of the Commissioners from time to time, have been accused of being partisan to the government in the past*[52]*. The enabling legislation provides for safeguards against conflicts of interest. In the year under review, the Commissioners have not been reviewed despite calls being made for review of some of the perceived conflicting paid employment engaged in by some Commissioners*[53]*. Although there are no documented instances of inappropriate influence, there is however a clear impact in perceived independence of decision making and operation by the Commission.*

[51] HCRSL Act, section 3, members are appointed by the President on the recommendation of the Constitutional Council.
[52] "Sri Lanka: The National Human Rights Commission Marionette of the State", ANNI Report on National Human Rights Institutions 2013, Law & Society Trust, 190-216.
[53] For example, one of the Commissioners, is also the Dean of Law of the Kotelawala Defence University (KDU). KDU is a military academy primarily established for officer cadets to pursue graduate and post-graduate qualifications and consequently raises the issue of independence of the Commissioner from the conduct of the armed forces.

3. EFFECTIVENESS

Mandate of the HRCSL

The HRCSL is vested with a broad mandate[54] to promote human rights, to inquire into and investigate complaints of violations or imminent violations of fundamental rights and provide relief through conciliation and mediation, to advise and assist the government in formulating legislation, to make recommendations to the government to ensure that laws and administrative practices are in accordance with international standards and on the need to subscribe or accede to international instruments. Additionally and most importantly the HRCSL can also conduct investigations on its own motion (*suo moto*) into infringements of human rights, although this has been exercised only on very rare occasions. The HRCSL has responded stating that *suo moto* action is not rare, and that there are lot of non-reported occasions in its regional activities, during mobile office functions and during police visits[55].

Restrictions to the mandate of the HRCSL

HRCSL in its response to LST[56] stated that non-implementation of its recommendations by the respondents to be the biggest restriction in terms of its mandate. HRCSL claims that the parties are summoned before the Chairman and given directions in the face of non-implementation[57]. The annual report of the HRCSL reports that where there is no implementation, the Chairman of the Commission reviews such cases[58]. In 2014, 136 cases are reported to have been taken up before the Chairman for re-consideration[59].

The method by which the HRCSL refers its findings to Parliament is through its Annual Report. Under the enabling legislation, it is a duty of the respondents to report to the HRCSL, as to how the recommendations were implemented[60]. Where parties disregard its recommendations or fail to adequately implement the same, the Commission shall compile a report of the facts to the President who "shall" place it before the Parliament[61].

Engagement with HRDs

The Commission has appointed a Director Inquiries and Investigation as the focal point for Human Rights Defenders[62]. In March 2015, the HRCSL submitted a draft version of Guidelines on Protecting Human Rights Defenders for the government, formulated with the consultation of CSOs which however is yet to be released[63].

The Paris Principles require NHRIs to publicise its recommendations and opinions, act speedily drawing the attention of the Government to systemic human rights violations occurring in any part of the country and make recommendations; all of which the HRCSL has failed to do in a consistent fashion[64].

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[54] S 1 (a-f), Human Rights Commission of Sri Lanka, Act No. 21 of 1996.
[55] Response of the HRCSL, 13 July 2015.
[56] HRCSL Response 21 May 2015. The response is to a questionnaire formulated by LST that was sent to the HRCSL, in order to obtain the HRCSL's response to produce this ANNI report. The Human Rights Commission of Sri Lanka has responded to the questionnaire with answers to the specific questions asked by the Law and Society Trust. The Responses can be accessed at https://drive.google.com/file/d/0B75uE6rVSlhxX2EzN0hqZkh6VlE/view?usp=sharing.
[57] HRCSL Response 21 May 2015, *supra* fn. 64
[58] Annual Report 2014, p. 7.
[59] *Id.*
[60] Section 15(7), HRCSL Act
[61] Section 15(8), HRCSL Act
[62] Ibid
[63] The Law and Society Trust submitted a number of recommendations to this initiative. The status of the formulation of guidelines is not known at the time of writing. The draft Guidelines, along with the recommended amendments by the Law and Society Trust, can be accessed at https://drive.google.com/file/d/0B9CfKwyYt9G1NUJ0eGk0eHpsekk/view?usp=sharing
[64] Para.3 (a-g), Paris Principles relating to the Status of National Institutions.

Complaints handling mechanism

Complaints can be submitted by either filing a written petition or calling the HRCSL hotline[65]. Complaint forms can also be obtained online in all three languages on the HRCSL website. Complaints handling procedure needs simplification, improved accessibility and handling needs to be expedited.

Complaints Concluded by HRCSL in 2014 (extracted from the 2014 Annual Report)

<table>
<tr><td colspan="2" rowspan="4">2012</td><td colspan="2" rowspan="4">2013</td><td colspan="2">2014</td></tr>
<tr><td>Complaints received</td><td>5074</td></tr>
<tr><td>Complaints under the Commissions purview</td><td>3730</td></tr>
<tr><td>Complaints concluded</td><td>1760</td></tr>
<tr><td>Complaints received (2012)</td><td>4726</td><td>Complaints Received</td><td>4979</td><td>Recommendations issued</td><td>28</td></tr>
<tr><td rowspan="3"></td><td rowspan="3"></td><td rowspan="3"></td><td rowspan="3"></td><td>Settlements</td><td>35</td></tr>
<tr><td>Relief granted</td><td>97</td></tr>
<tr><td>Directions Issued</td><td>14</td></tr>
</table>

Investigating complaints

Currently the Commission can summon the relevant party under the hand of the Chairman[66]. All parties summoned by the HRCSL must appear before it and produce any documentation required of him/her. Every offence of contempt against the Commission can be tried by the Supreme Court as though it were an offence against the Supreme Court[67]. Failure to appear before the HRCSL and/or produce evidence and/or refuses to be sworn or affirmed, is an offence[68].

The HRCSL is also empowered to visit places of detention, particularly with regard to arrests under the Prevention of Terrorism Act[69] and the Public Security Ordinance[70].

According to the 2014 Annual Report the Commission has conducted 1,479 inspections of police stations both through its head office and regional offices on a monthly basis[71]. The outcome of these events remain unpublished. Apart from police stations the Commission also conducted inspections of Terrorist Investigation Division and the Criminal Investigation Divisions of the Police department through which detention conditions and other issues faced by detainees were identified, some of which relate to their health

[65] See HRCSL Website, http://hrcsl.lk/english/complaint-resolve-procedure/
[66] S. 20, Human Rights Commission Act of Sri Lanka, Act No 21 of 1996.
[67] Section 21, HRCSL Act No. 21 of 1996
[68] Section 21(3)(a), HRCSL Act No. 21 of 1996
[69] Prevention of Terrorism Act No. 48 of 1979
[70] Public Security Ordinance, Chapter 10
[71] Human Rights commission of Sri Lanka, Annual Report 2014, at p. 28.

and physical conditions, access to their families and other safety related issues. The Commission should give equal priority to all cases instead of focusing only on high profile cases[72],[73]. LST appreciates at the same time, the distinction between being fair and even handed to all victims of right violations regardless of their class, gender, ethnicity etc; and the fast-tracking of emblematic cases which have a strategic value in galvanising public and political action.

Complainants, Witnesses and Respondents

A witness giving evidence before the Commission is provided the protection and privileges afforded to a witness giving evidence before a court of law[74].

Presently, the Chairman summons parties who have failed to implement recommendations, failing which the Commission would issue an 'order' for the recommendation to be implemented. If the parties act in violation of the order, the Commission has the authority to report this to the Supreme Court as a matter of contempt.

Reparations for Victims

The enabling legislation allows for the Commission to award at its absolute discretion, a sum of money to meet the expenses of having made a complaint before the HRCSL[75], but does not provide for reparations particularly. However, under the general powers of the HRCSL it is arguable that the HRCSL is empowered to grant reparations[76]. The 2014 Annual Report of the HRCSL records a torture case, an incident where the petitioner on a complaint made by his mistress was arrested and tortured whilst in custody[77]. The Commission has recommended compensation to be paid to the petitioner. However there is no indication of any steps in terms of reparations or justice for the harm suffered and/or any action taken against the relevant police officers involved; blame free resolution is not sufficient in tackling rights issues in a systemic manner. The Commission in its response to LST states that reparation is provided for torture victims; the procedural details were not provided[78].

Intervening in Court proceedings

The HRCSL can intervene in pending matters before the Supreme Court in relation to fundamental rights, with the permission of the Court[79]. Further, the Supreme Court can refer matters to the HRCSL[80] for inquiry and report, where the matter refers to a violation or imminent violation of a fundamental right[81].However, the HRCSL in its response[82]does not refer to any references of non-implementation, to the Courts or any other quasi-judicial body.

a. Aluthgama (Religious Violence)

In June 2014 communal violence exploded in Southern Sri Lanka when Muslim communities in Aluthgama, Beruwela, Dharga Town and Velipanna came under violent attack[83]. This was the culmination of anti-Muslim sentiments propagated by nationalist groups as far back as 2011 and the emergence of the Bodu Bala

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[72] "HRCSL vigilant over the conditions of two human rights defenders" 19 March 2014, http://hrcsl.lk/english/2014/03/19/hrcsl-vigilant-over-the-conditions-of-two-human-rights-defenders/

[73] See for instance, "The arrest, detention and torture of Tamils in post war Sri Lanka", Groundviews, 11 April 2014, http://groundviews.org/2014/04/11/the-arrest-detention-and-torture-of-tamils-in-post-war-sri-lanka/

[74] However, such protection is not available for offences committed under Chapter XI of the Penal Code, Section 19, HRCSL Act.

[75] Section 11(g),HRCSL Act

[76] "do all such other things as are necessary or conducive to the discharge of its functions", Section 11(h), HRCSL Act

[77] Human Rights Commission of Sri Lanka, Annual Report, p. 8

[78] HRCSL Response to pre-preliminary draft information request, 21 May 2015.

[79] Section 11(c), HRCSL Act

[80] Section 11(e), HRCSL Act

[81] Section 12(1), HRCSL Act

[82] HRCSL Response received on 21 May 2015

[83] See generally, "The Law & Society Trust, "Where have all the Neighbours gone? Aluthgama Riots and its aftermath, A fact finding mission to Aluthgama, Dharga town, Valipanna and Beruwela".

Sena (BBS) (Buddhist Power Force) in 2012 responsible for spearheading sporadic incidents of violence against minority groups particularly the Muslims and Christians island-wide. The incident in the South lead to three deaths, many injuries and damage and destruction to property. To date perpetrators of the violence have not been prosecuted despite the availability of clear evidence except for the recent arrest of the BBS Secretary Gnanasara Thero, nor have there been any significant steps taken in relation to reconciliation amongst the communities.

The Aluthgama incident is the most violent incident out of a series of attacks perpetrated against the religious minorities of Sri Lanka and the HRCSL visited the area in its immediate aftermath on15 June 2014[84]. Dr. Prathibha Mahanamahewa stated that a team of five comprising of legal experts and senior investigators had visited the area with a view to "uncover accurate details of fundamental rights violation and to investigate whether there were any lapses by state officers," and "to recommend remedial actions"[85]. He further stated that the inquiry team will obtain records from police stations, senior DIGs, injured and victimised people, state officers, and Government Agents in connection with the incidents[86].

A point to note is that this incident was anticipated given the rise of anti-Muslim sentiments in both social and traditional media and increased anti-minority attacks island-wide; however the fact that the HRCSL took no prior action to at least issue a public statement condemning such acts or against parties involved indicates its lack of a proactive response to the situation[87]. Had the Commission acted in a timely manner perhaps an event of this magnitude could have been averted.

The report of the Commission along with all its findings and recommendations has not been made publicly available yet, one year after the incident. According to section 30 the HRCSL is required to submit periodic or special reports in terms of its activities. Failure to do so significantly undermines the actions thus far taken and reduces the public legitimacy of the Commission. LST received a communiqué dated 16 March 2015 from the Chairman HRCSL, Justice Priyantha Perera, pursuant to a public discussion held by LST on the launch of the Aluthgama report[88] in which he refers to the steps taken by the HRCSL in relation to this incident and states as follows:-

> "It is regretted that there is absolutely no mention of the role played by the Human rights Commission of Sri Lanka in the report prepared by your organization in this regard despite the very constructive role played by the Human Rights Commission."[89]

The failure to mention HRCSLs contribution in the report however was due to the non-availability of information in that respect in the public domain. Although affected parties were invited to file affidavits with the Commission the status of such is unknown, and there is no evidence of any recommendations made by HRCSL. Similarly information in terms of status of complaints, its progress and any steps to promote reconciliation amongst the communities remain unknown.

b. Colombo Port City Project (Corporate Accountability)

The HRCSL conducted an investigation into the Chinese funded Port City Project after a petition was filed to

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[84] Megara Tegal, "The burning fires of Aluthgama, The Sunday Leader, 22 June 2014, "http://our-srilanka.comnwww.our-srilanka.com/local-news/english/91368-the-burning-fires-of-aluthgama.html"
[85] *Ibid*.
[86] *Ibid*
[87] According to section 10 (b) the commission can inquire into imminent infringements of fundamental rights and provide remedial action.
[88] An initiative of Law & Society Trust "Where have all the Neighbours gone?Aluthgama Riots and its aftermath, A fact finding mission to Aluthgama, Dharga town, Valipanna and Beruwela".
[89] 16 March 2015, Justice Priyantha Perera, Commissioner, HRCSL.

it by several environmental groups on 23 February 2014[90]. The project planned on 252 acres of reclaimed land is to include shopping malls, a water sports area, a mini golf course, hotels as well as a Formula One race-track[91].

LST was informed by HRCSL of the on-going investigation (two inquiries completed and having received submissions from the respondents). However no report or public statement in this regard has been issued as per the law. One of the ex-Commissioners of HRCSL, Dr. Prathibha Mahanamahewa had stated that the regime change will not affect ties with China, "we need China", going on to say "the Port City Development Project has not been abandoned which is good."[92]. It is questionable on what basis the Commission makes statements of this nature in public forums without any regard to the impact it will carry. This is especially relevant since the Government temporarily suspended the project since March 2015, after taking into consideration the recommendations of the interim report submitted by its Sub-Committee on Economic Affairs[93]. The HRCSL has responded to LST stating that Dr. Mahanamahewa had ceased to be a Commissioner of the HRCSL on 8 February 2015, and therefore his comments are not the official stance of the HRCSL[94]. However, LST notes that Dr. Mahanamahewa's name continues to appear as a Commissioner on the HRCSL website, leading to public confusion as to his status vis-a-vis the HRCSL.

Similarly, a fact-finding mission was conducted *suo moto* on Uma Oya Multi-Purpose Project, which is currently under the purview of the Ministry of Mahaweli Development and Environment. The Commission conducted a fact-finding mission on the right to water and other effects caused by the project. The team had met several state officials, civil society organisations, community and religious leaders and visited several affected houses and areas as well as engineers from the Iranian company[95]. LST was informed that the Commission was currently awaiting submissions from the authorities and it would publish their findings in a report after considering these submissions.

By failing to publicly share the results of these fact finding missions and/or take timely and comprehensive actions for human rights violations relating to egregious business practices, the Commission fails to hold TNCs accountable.

c. NGO Circular (Civil Society Space)

The previous government, in an attempt to further limit civil society space, issued Circular No MOD/NGO/mon/4 dated 1.07.2014 issued by the National Secretariat for NGOs under the Ministry of Defence and Urban Development banning certain NGO and Civil Society activity. The Circular undermining democratic values instilled by the 1978 Constitution and contravening Sri Lanka's International human rights obligations reads:-

"It has been revealed that certain Non Governmental Organisations conduct press conferences, workshops, trainings for journalists and press releases which is beyond their mandate. We reiterate that Non Governmental Organisations should prevent from such unauthorised activities with immediate effect."

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[90] Disna Mudalige, "Port city goes before Human Rights Commission", Daily News, 25 February 2015, http://www.dailynews.lk/?q=local/port-city-goes-human-rights-commission.

[91] Vishaka Wijenayake, "The Colombo Port City Development Project", Groundviews, 29 May 2015,at http://groundviews.org/2014/05/29/the-colombo-port-city-development-project/.

[92] Ruwan Laknath Jayakody, "Leadership change wont affect ties with China", Ceylon Today, 17 February 2015, http://www.ceylontoday.lk/51-85032-news-detail-leadership-change-wont-affect-ties-with-china-hrcsl.html.

[93] The subcommittee was appointed to review the project on the basis that its implementation was carried out without the necessary approval of government agencies. "Colombo Port City Project Suspended" Ada Derana, 5 March 2015 http://www.adaderana.lk/news/30018/colombo-port-city-project-suspended.

[94] Response of the HRCSL 13 July 2015.

[95] See "HRCSL monitors Uma Oya Multi-Purpose Project – right to water & other effects of Inhabitants", 10 March 2015, available at http://hrcsl.lk/english/2015/03/10/hrcsl-monitors-uma-oya-multi-purpose-project-right-to-water-other-effects-of-inhabitants/

Civil Society Organisations pushed the HRCSL to engage with the NGO Secretariat as a result of which a meeting was held at the HRCSL on the 29 January 2015 and the Additional Secretary to the Prime Minister's office had given a verbal assurance to several civil society representatives present that there would not be any restrictions placed on NGOs to conduct their workshops and activities.[96] Despite these verbal assurances the Circular remains effective and the Commission has failed to engage in further dialogue with the government to have the Circular revoked[97].The HRCSL so far has not challenged the exercise of governmental power in a significant way nor has it had much to offer for victims of serious human rights abuse over the year.

3. OVERSIGHT AND ACCOUNTABILITY

a. Civil Society

Following the 2014 ANNI report and Asia Pacific Forum in August of 2014, the HRCSL re-initiated its efforts to involve Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs) by inviting them to a meeting at their head office after a lapse of more than one year. The reason for the absence of such meetings is cited as "unavoidable circumstances" in the 2014 annual report[98].

September 11. 2014 For All CSO/NGOs	28 civil society organizations participated[99] in this meeting which was used to choose a working committee for HRCSL to consult[100]
October 16, 2014 Working group	Action points were developed for HRCSL in consultation with the working group. These included: 1. The position paper on basic rights for policy makers 2. Advocating to abolish the Prevention of Terrorism Act 3. Organizing Visits to Detention Centres 4. Guideline on Protecting Human Rights Defenders 5. Election Monitoring
November 25, 2014 Working group	Following up on the action points, first and fourth was delegated, while second and third was pointed out as difficult to proceed due to the existing political climate[101]. Fifth was mentioned as an ongoing progress.
January 20, 2015 Working group	HRCSL in this meeting stressed how the media had not duly highlighted their role played during and prior to the presidential election. Out of the action points only the fourth had made progress.
February 18, 2015 For All CSO/NGOs	This meeting saw the report[102] (in Sinhalese) of the role played by HRCSL disseminated among CSOs and NGOs. SOGI rights representatives pointed out how their rights are not recognised within the Sri Lankan human rights culture.

[96] http://www.thesundayleader.lk/2015/02/01/no-restrictions-on-ngos/

[97] Section 10 (c) empowers the commission to advise and assist the government in formulating legislation, directives and procedures towards promoting and protecting fundamental rights however the commission despite having the mandate is very lethargic in terms of taking proactive steps under these provisions.

[98] Annual Report HRCSL 2014

[99] Minutes of the meeting 11.9.14 by HRCSL

[100] These organizations include 1. Law & Society Trust, 2.People's Action for Free & Fair Elections (PAFFREL), 3. Transparency International Sri Lanka, 4. National Peace Council, 5.Home for Human Rights, 6.Rights Now Collective, 7.Human Rights Organization, 8. Janawabodaya Kendraya, 9. INFORM Human Rights Documentation Centre.

[101] This was pointed out by the Commissioners but not expanded.

[102] http://hrcsl.lk/english/wp-content/uploads/2015/01/Election-report-2015-Final.pdf

The above overview is included to provide a general idea of the process of engagement of HRCSL's engagement with Civil Society Organizations.

Engagement and Interaction

Forming a working committee is a first, and welcome, step to re-initiating communication with, and receiving expertise from, CSOs and NGOs. However the HRCSL has to follow up with effective implementation of recognised goals or recommendations.

The working committee requested for monitoring agents from HRCSL to be present in training programs organised by human rights organizations due to intimidation tactics by parties who were ignored by law enforcement authorities. The HRCSL cited lack of staff as a reason for being unable to accommodate such a suggestion.

There are no official Memorandums of Understanding, joint fact finding efforts; utilization of incident reports by CSOs/NGOs and incorporation of their recommendations seems minimal, at least at national level advocacy. As per the annual report and the HRCSL response to pre-preliminary draft information request[103] it was stated that there is some leverage of civil society organizations at the regional level.[104]

However, there is minimal information in terms of regional reporting by the HRCSL to confirm the involvement of CSOs quantitatively or in terms of the effective nature of such involvement.

Communications and Impact

The main concern in relation to HRCSL's interactions with civil society organizations, or even with the public, is the lack of reporting, public statements and guidance at times of rights violations, as the National Human Rights Institution. The Annual Report for 2014 is published on the HRCSL website and is a welcome change from delays seen in 2013, although it is currently only available in English.

While in planning stages HRCSL may prioritize on issues affecting the public. The lack of transparency due to unavailability of information (unless organisations seek private consultations with the HRCSL[105]) leave implementation stages in the dark.

Communication related issues that affect the relationship between CSO/NGO and HRCSL can be delineated under three sections.

1. Public Statements and Media

HRCSL has a responsibility to make the public aware of blatant rights violations especially in issues that affect a large number of citizens. As stressed in many meetings prior to the drafting of this report, media statements, or press releases, statements on the website, which can be copied to related CSOs and NGOs, as well as related public offices can have a greater effect in fashioning the public opinion as well as making HRCSL visible to the vulnerable communities. Commissioners have a direct responsibility in initiating the publishing of these statements and press releases.

2. Reporting

Incident related reports and recommendations suggested by the Commission are published after much delay. Although reports need to be verified, a delay of more than one year on issues such as Rathupaswala events[106] might reduce the effectiveness of the reports and the HRCSL as well.

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[103] HRCSL Response 21 May 2015, *supra*f.n. 64

[104] HRCSL has ten regional centers 1.Kandy 2.Matara, 3.Batticoloa 4.Anuradapura, 5.Trincomalee 6.Vavuniya 7.Badulla 8.Ampara 9.Jaffna 10.Kalmune and two mobile clinics in Puttalam and NuwaraEliya

[105] LST as an organization that monitors HRCSL periodically remind and engage the staff members to understand reasons behind lack of action.

Following up on recommendations and making such recommendations available to the CSO/NGOs is another area where HRCSL can consider improving, as it only require using their already existing recommendations that were made available to other state actors.[107]

- Internal Reporting
  Regional reporting which use diverse formats can be vastly improved by making simple changes such as using uniform reporting formats. This could expedite managing of data as well as making such reports available to the public and identifying high priority violations. Some reporting can also use regional CSOs as information gathering points to provide a better understanding of regional issues.

For instance, at a public discussion of the fact finding report published by the Law and Society Trust[108] on Aluthgama and Beruwala violence, it was pointed out that 84 complaints have been made to HRCSL which did not receive any response[109]. Yet, following the event it was formally informed to LST by the HRCSL that they have in fact visited the site and have intervened[110]. This is a clear example of both the lack of timely release of reports and muted presence in the media diminishing the effective role that the HRCSL can play as the national human rights institution.

3. Complaint Processing

Hotline

As stressed many times during consultations with Civil Societies the hotline of HRCSL need to be functional at all times, and also be available in all three languages. The issue of the non-functional hot-line should be considered a priority and monitored consistently to ensure its availability.

Acknowledgment of Complaints

HRCSL is many times accused of not investigating the complaints lodged by victims; HRCSL deny this on the grounds that many complaints pertaining to the same issue do get investigated under one case thus making it difficult to respond to each victim. If this is the case the HRCSL needs to establish a confirmation mechanism to ensure that the individual, organization, or the group is notified of the process.

Therefore, HRCSL at the forefront need to make its planning stages of investigations consider communications or integrations with CSOs/NGOs. If this is made a priority HRCSL can also benefit from an improved image as well as a support structure even for capacity building. Repeated complaints by CSOs/NGOs need to be prioritized as these organizations represent public concerns.

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[106] http://hrcsl.lk/english/document-center/hrcsl-publications/
[107] In 2013 the report recommendations related to Rathupaswela was presented to the military but was not made public.
[108] http://www.lawandsocietytrust.org/images/PDF/Resources/aluthgama%20report%20final.pdf
[109] http://lawandsocietytrust.blogspot.com/2015/03/public-discussion-aluthgama-violence.html
[110] Letter by HRCSL dated 16.03.15 on "Public Discussion on Aluthgama Riots and its Aftermath"

b. Parliament

Overall, in its relationship with Parliament, it is clear that the HRCSL does not make use of the legal avenues available to engage with it. Communication channels at present are informal, and Parliament does not directly refer human rights related issues to the HRCSL. The HRCSL's annual report is submitted to the Prime Minister's office as a practice[111] and is reportedly under the overall oversight of the Presidential Secretariat[112]. The HRCSL reports state that Parliament discusses its annual reports[113] (LST has not independently verified this, but does accept the stance of the HRCSL).

Although there is a provision for a report by the HRCSL to be tabled in Parliament by the President when HRCSL's recommendations are not implemented by any parties before it, the ground reality however appears to be that the HRCSL does not make use of this legal provision. HRCSL itself monitors the implementation of its own recommendations by the relevant authorities, and where there has been a consistent failure to abide by the recommendations, the Chairman of the Commission takes such cases up for review. However the legally mandated review by the President and Parliament, of non-implementation of HRCSL recommendations, is not made use of by the HRCSL.

There appears to be no formal framework for co-operation between Parliament and the HRCSL. The HRCSL has reported that where questions are raised in parliament in relation to matters under the purview of the HRCSL, the relevant line ministry will thereafter direct such questions to the HRCSL for its observations[114]. There is no parliamentary committee as a main focal point with the HRCSL, and therefore the relevance of the HRCSL to the government, as the human rights organ and authority in the country, appears remote.

The enabling legislation of the HRCSL requires it to annually report to parliament, and the Act sets out the information which must be thus submitted. While the Commission may submit periodic or special reports to Parliament in respect of any particular matter or matters referred to it, and the action taken in respect thereof, HRCSL has not used this mechanism in the year under review.

When it comes to the HRCSL's annual report, other than a simple narration of the activities of the HRCSL, the annual report itself does not reflect a pro-active stance on human rights and nor does it hold government to account for any regressive policies in relation to human rights in the year under review[115]. The HRCSL's annual report contains statistics and information as required under the law, but fails to meaningfully engage with the actions or inactions of the State which should be review in line with its national and international human rights obligations.

In relation to the national budget, the recurrent and capital expenditure of the HRCSLare discussed under a separate heading under the approved Government Expenditure Estimates for 2015[116]. The HRCSL has informed the Law and Society Trust at previous meetings that due to lack of resources to ensure timely translation of the reports, the Sinhala and Tamil translations will also be uploaded to the website as soon as the same is processed[117].

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[111] HRCSL Response 21 May 2015, *supra* fn. 64.
[112] HRCSL Response 21 May 2015, *supra* fn. 64.
[113] HRCSL Response 21 May 2015, *supra* fn. 64. LST has not been able to independently verify the same.
[114] HRCSL Response 21 May 2015, *supra* fn. 64.
[115] The annual report of the HRCSL for the year 2014 contains a summary of the complaint handling mechanism of the HRCSL, consultation services offered, a summary of the categorization of complaints, follow up action taken on implementation of recommendations, activities undertaken by the HRCSL to promote human rights, monitoring of human rights by the HRCSL, and the financial statement for the year 2014, Human Rights Commission of Sri Lanka, Annual Report 2014.
[116] National Summary Expenditure, Summary of Expenditure by Category and Object Code, Department of National Budget,http://www.treasury.gov.lk/images/depts/nbd/docs/budgetestimates/2015/approved/4.Expenditure/Expenditure.pdf, accessed on 26.5.2015.
[117] HRCSL meeting with Law and Society Trust, March 2015.

The role of the HRCSL in actively engaging with the state on harmonization with international human rights laws and standards, has been very low. The enabling legislation of the HRCSL empowers the Commission 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[118]. However, the HRCSL has not reported either in its Annual Report for the year 2014, or in its response[119], of any occasions where it has made specific recommendations to the Parliament, on amendments to national laws in order to ensure harmonization with international human rights law norms and standards[120]. The HRCSL in its response has stated that it does not make recommendations to parliament on the State's human rights obligations, but that it informs the relevant Ministry, and holds discussions[121]. The opportunities for the HRCSL to engage with and make specific recommendations to Parliament have not been seized by the HRCSL in the year under review, especially given the fact that the Rights to Information Bill, the new Constitutional amendments and the Witness Protection Bill were all under review in the first three months of the year 2015[122]. The HRCSL has also consistently failed to effectively engage with the government on other repressive legislation such as the Prevention of Terrorism Act and accompanying regulations[123].

In the year 2014, the members of the HRCSL did urge the Government to make amendments to the enabling legislation of the HRCSL, giving it more powers and muscle[124]. The HRCSL's recommendations are yet to be implemented[125], and no information is available as to the reasons why this process has stalled currently.

The HRCSL reports that it intervened on behalf of disabled persons' rights in the year under review[126].The HRCSL has also reported that it is a member of the consultation team on the National Human Rights Action Plan[127].

4. CONCLUSIONS AND RECOMMENDATIONS

Although the mandate of the HRCSL is fairly in line with the Paris Principles with only a few exceptions, there are several aspects of the enabling legislation, both in the letter of the law, and in practice, that requires urgent amendment.

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[118] Section 10 of the HRCSL Act.
[119] HRCSL Response 21 May 2015, *supra* fn. 64.
[120] It must be noted however that the HRCSL has worked with line Ministries in relation to matters such as disability rights, sexual harassment in the work place and the rights of elders, which is a step towards making changes in administrative practices on those issues.
[121] HRCSL Response 21 May 2015, *supra* fn. 64.
[122] The enabling legislation empowers the HRCSL, among other powers, to advise and assist the government in formulating legislation and administrative directives and procedures, in furtherance of, the promotion and protection of fundamental 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; to make recommendations to the Government on the need to subscribe or acceded to treaties and other international instruments in the field of human rights; Section 10, HRCSL Act, *supra.*
[123] Prevention of Terrorism Act No. 48 of 1979.
[124] "When an official or an institution fails to carry out a recommendation by the HRC within the stipulated period, we have proposed powers for the Commission to submit a certificate to the Court of Appeal or Provisional High Court as appropriate, seeking a Court Order to implement the HRC recommendation", Prathiba Mahanamahewa, Commissioner of the HRCSL, reported in "Amendments to empower Human Rights Commission", Manjula Fernando, 13 December 2013, Sunday Observer, available at http://www.sundayobserver.lk/2013/12/15/fea01.asp, accessed on 29 May 2014. However, note that section 21 of the Act already provides for the Supreme Court to try every offence of disrespect towards the Commission, as an act of contempt of court against itself and to issue interim injunctions. Failure to comply with a direction of the Commission, or a notice or written order, can also amount to contempt, Section 21 (3) (c), Human Rights Commission Act No. 21 of 1996.
[125] "Amendments To The Human Rights Commission Act No. 21 Of 1996", Human Rights Commission of Sri Lanka, December 24, 2013, available athttp://hrcsl.lk/english/?p=2234, accessed on 26.5.2015.
[126] HRCSL Response 21 May 2015, *supra* fn. 64.
[127] *Ibid*.

The selection process of Commissioners is not formalised, other than for the recommendations to be made by a CC and for the President to appointment. In the year under review, even this safeguard was significantly watered down[128]. The selection of Commissioners therefore has not been transparent or participatory. The process is also not consultative with civil society actors, and was not by an independent, credible body[129]. No new members were appointed in the year under review, although calls were made to review the membership in the ANNI reports of both 2013 and 2014. The assessment of members is not based on a pre-determined objective criteria, other than the baseline requirement which states that members should be persons with special knowledge or practical experience in human rights.

The Commissioners and staff have functional immunity, and there have been no reported cases of third parties taking action against them. Security of tenure is also ensured by the Act, although in reality, the political nature of appointments at the almost absolute discretion of an executive President, compromises, at a minimum, the perceived independence of the Commissioners[130].

Unfortunately the HRCSL Act does not have any provisions to secure the role of the HRCSL in a state of emergency. In relation to addressing human rights, the HRCSL has a broad mandate which provides much room for the HRCSL to act as a check and balance on the state in relation to its national and international human rights treaty/legal obligations. However, the mechanisms in place to guarantee implementation of HRCSL recommendations is very weak, both in the law, and in practice. A robust system for implementation, and legal action against those who fail to abide by the recommendations of the HRCSL, is a pressing need. It appears that the HRCSL has conducted investigations both on complaints and *suo moto*, but there is a real need for sustained, and transparent investigation, and for follow up reporting.

There is no evidence of any occasion in 2014 when the HRCSL exercised its right to intervene in fundamental rights cases. In relation to investigations by the Commission into larger issues of violations, such as Aluthgama incident and Colombo Port City project, it appears that although the Commission conducts inquiries and investigations, the outcome reports are not released, and this seriously affects the efficacy of such investigations. By issuing timely press statements on its activities, reporting consistently, and processing complaints efficiently, the HRCSL can effectively become an efficient human rights protecting authority. It also appears that state authorities also do not efficiently and pro-actively respond to HRCSL's requests for information, which again points to a necessity for the HRCSL to wield its' statutory right to require information from these authorities.

Although the HRCSL has taken some steps to engage with HRDs in the year under review, it is insufficient and lacks genuine commitment to engage. Following recommendations in the ANNI report of 2014, the HRCSL initiated a draft guideline on HRDs, but a final document is yet to be released.

Parliament itself is lackadaisical in its relationship with the HRCSL. Parliament does not debate on the annual report of the HRCSL. No reports on implementation of recommendations are tabled. No pro-active steps have been taken to improve the independence of the HRCSL (the opposite may in fact be true, since Parliament passed the 18th Amendment). The HRCSL has made no recommendations to Parliament in relation to passing laws to harmonise Sri Lanka's domestic laws with international treaty obligations in 2014[131]. Other than forwarding recommendations to the line Ministry, and amendments to the HRCSL Act, the HRCSL has made no recommendations to Parliament on administrative and executive decisions.

[128] See the consequences of the 18th Amendment, discussed in part 1 of this report.
[129] The parliamentary council, under the 18th Amendment, apart from having no powers to make anything more than observations, was also not an independent body, and comprised solely of parliamentarians. See 18th Amendment to the Constitution of Sri Lanka.
[130] 18th Amendment to the Constitution, see discussion in part 1 of this report.
[131] No recommendations have been made in relation to Sri Lanka's need to ratify some important treaties and Conventions, for example the ILO Migration for Employment Convention Migration for Employment Convention C097, No. 97 of 1949, International Labour Organization.

In the year under review the HRCSL performed in circumstances that undermined its independence particularly in view of the 18th Amendment to the Constitution, and in the context of a repressive atmosphere for human rights defenders. Although the HRCSL could have seized the opportunity to proactively and vocally call for changes not only in executive and administrative action but also in terms of the GoSL's policies, it did so only in a handful of occasions. It has taken some steps to improve its monitoring mechanisms, but these remain inadequate. Whilst human resource constraints may be a legitimate issue for the HRCSL, there appear to be no concrete steps taken to address this effectively either by the HRCSL or by the GoSL. Therefore it is concluded that the HRCSL is not performing as effectively and efficiently as its founding law provides. The lack of legislative oversight to secure its independence, and lack of budgetary allocations to maintain an independent HRCSL effect its ability to function efficiently.

The HRCSL, although not as effective as it could be, is still very relevant to Sri Lanka as is evident by the active role it played in the 8 January 2015 Presidential Election[132], when it publicly advised local government authorities in particular to obey election laws and ensure the right to equality of all political parties in the run up to the election. Following the recommendations made in the ANNI report of 2014, the HRCSL has proven to be much more forthcoming with information, and has met with LST on several occasions.

Recommendations to the Human Rights Commission of Sri Lanka

1. Promptly and efficiently respond, with action, statements and reports on human rights violations by the state and other actors including transnational corporations;
2. Promptly produce and publicly disseminate the outcome reports of fact finding missions;
    a. Where state authorities fail to adhere to deadlines for responding, issue statements despite these delays, noting the reasons;
    b. Use the media to give publicity to its reports and mission outcome documents;
    c. Maintain publicly accessible databases on the status of pending matters before the HRCSL;
3. Make use of the expertise of CSOs and support CSOs and NGOs by:-
    a. Attending and providing institutional support to their activities
    b. Lobby the government on key issues raised by CSOs, particularly in relation to laws changes and responses to human rights violations;
    c. Actively protect HRDs;
4. Make use of the legal provisions available to ensure compliance with recommendations:-
    a. Place reports with the President and request that they be tabled in parliament, when there is non-compliance with recommendations;
    b. Actively attend parliamentary debates in relation to human rights issues;
5. Streamline reporting lines within HRCSL
    a. Make use of standard report filing formats to ensure clear and astute reports of rights violations;

Recommendations to the Parliament of Sri Lanka

1. Amend the enabling laws of the HRCSL including the following:-

[132]In the context of an excessively repressive regime, the HRCSL came to the fore and publicly advised all political parties to refrain from violence, urging local government authorities (LGA) in particular to allow all political parties equal access to public spaces for campaigning, in the context of some parties being denied this right by some LGAs. "Human Rights Commission of Sri Lanka advised All Commissioners and Secretaries of Local Government Authorities", December 17, 2014, http://hrcsl.lk/english/2014/12/17/human-rights-commission-of-sri-lanka-advised-all-commissioners-and-secretaries-of-local-government-authorities/, "Human Rights Commission of Sri Lanka advises local government authorities to obey election laws", December 18, 2014, Colombo Page, http://www.colombopage.com/archive_14B/Dec18_1418886761CH.php

   a. enabling it to make use of summary proceedings before the Magistrate's Courts/High Courts for failure by state authorities to implement its recommendations, including a substantial penalty for non-compliance and for contempt;
   b. providing for compensation to be granted to victims of fundamental rights violation with specific provisions for reparations, including for suffering and pain of mind;
   c. Provide for strengthening the HRCSL in emergency situations;
   d. Include broad consultation and consensus with civil society actors in screening, appraising, appointing Commissioners;
2. Increase the annual budget allocation for the HRCSL, particularly increasing its capacity to hire and retain staff of a high quality;
3. Table and debate the annual report of the HRCSL;
4. Invite the HRCSL to file reports in parliament, and discuss and debate such reports periodically;
5. Support the independence of the HRCSL by seeking broad consensus in making recommendations for the selection, screening and appointment of Commissioners, and maintain the cultural and ethnic pluralism of the country, in the make-up of the Commission;
6. Ratify outstanding human rights treaties, including the ICC Convention and the ILO convention on migrant employment;
7. Urgent amendments be made to the statutory powers of the HRCSL, permitting the HRCSL to move the High Courts of Sri Lanka in contempt proceedings against any person who fails to implement a recommendation or directive of the HRCSL.
8. The jurisdiction of the HRCSL be expanded to include other human rights, beyond the fundamental rights jurisdiction set out in the statute per the Constitution (time frame one year).
9. Establish a separate ministry to handle the issue of human rights and for specific liaison with the HRCSL;

Recommendations to the Government of Sri Lanka:

1. Support the work of the HRCSL by implementing its recommendations as a policy of the Government, including consequential penalties for officers who fail to comply;
2. Facilitate missions and investigations by the HRCSL by providing it with timely information, reports and support personnel, entry authorisation where necessary;
3. Include human rights knowledge component for public officers as a part of the efficiency bar examination, ensuring awareness of a rights based dialogue among public officers.

JAPAN: EAGER TO SEE A BREAKTHROUGH

Joint Movement for NHRIs and OPs[1]

1. INTRODUCTION

Revision of Code of Criminal Procedure

The draft to revise the Code of Criminal Procedure compiled in June 2014, was submitted to the Diet (Japanese Parliament) in March 2015. The instances in which wiretapping would be allowed are going to be expanded from four to nine: including organized crimes and crimes related to firearms, and also modifying some procedures during the conduct. However, as for the video recording of interrogations, where the suspects are often forced to confess during such interrogations, the partial audio or video recordings are only produced in trials that citizen judges participate in and cases prosecutors investigate on their own. Such recordings are conducted only as part of the investigation, that is, not from the beginning to the end. As for discovery, a mandatory disclosure of a list of items of evidence is very limited. These new revisions violate the right to privacy or right to a fair trial, as well as lack sufficient measures to prevent false accusations; thus, these do not satisfy the primary objectives of eradicating unjustifiable interrogations and false accusations.

Retrial of Hakamada Case

The Hakamada case concerns arson and the murder of four in June 1966. Iwao Hakamada, an employee of the company of one of the victims, was arrested in August 1966. He denied the charges during the interrogation consistently, but admitted the allegations after 19 days of interrogations that had lasted for extraordinary long hours, e.g. 16 hours a day with two breaks. He has insisted his innocence from the first trial onwards; however a death sentence handed down in September 1968, was confirmed in December 1980.

There are many suspicious issues such as he might have been forced to confess to the arson and the murder, the police might have fabricated the evidence; thus retrials or special appeals have been repeatedly filed. The Japan Federation of Bar Associations, parliamentarians and civil society organizations such as Amnesty International have supported review of this case due to their belief that Hakamada was falsely charged, or in view of their opposition to the death penalty.

Sizuoka District Court decided to conduct the retrial, a stay of execution and detention on March 27, 2014, and on the next day, March 28, the Higher Court also supported the decision. When the retrial would be started has not yet been decided.

Korean Elementary School in Kyoto Raided

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In 2009, Zaitokukai, a racist group named 'Citizens group who do not tolerate privileges for ethnic Korean residents in Japan', gathered in front of a Korean elementary school in Kyoto to conduct acts which "falls under facilitation and incitement of discrimination on the grounds of nationality or ethnic origin" (quotation from the statement by Kyoto Bar Association). The Korean elementary school has used the adjacent public park for children's activities for years as it lacks a playground. This was the subject of dispute with its neighbors and Zaitokukai tried to exploit this through its hate motivated acts.

The perpetrators were found guilty by both civil and criminal trials. The concluding observation issued by the Committee on the Elimination of Racial Discrimination in March 2010 mentioned this case and recommended the Japanese Government to withdraw the reservations to article 4 (a) and (b) of the Convention (para. 13).[2]

Act on the Protection of Specially Designated Secrets

On 10 December 2014, the Act on the Protection of Specially Designated Secrets came into effect. The law designates information "which is particularly required to be kept secret" among information concerning Japan's national security as "specially designated secrets." It also specifies to conduct an assessment of persons who handle such specially designated secrets and penal provisions in case such persons disclose such secrets without authorization.

The law attracts strong criticism from home and abroad because the scope to designate such secrets is unclear; because it violates the freedom of thought and creed of public servants who conduct such affairs as well as their families; and because the journalists who report something relating to this issue might be punished.

Partnership Code in Shibuya ward in Tokyo

On 31 March 2015, Shibuya ward in Tokyo enacted a code that specified respect to diversity, prohibition of discrimination and to allow the head of the ward to certify "a partnership" to same sex couples. This code prohibits discrimination against sexual minorities by the ward, its residents and business entities, and the ward certifies the same sex couples have the same rights as those in heterosexual marriages. The residents and the business entities in the ward are required to respect the relationship of the same sex couple who obtained the certificate. The couples will not be discriminated against when they apply for an available public apartment. Though some sexual minorities welcome the code, there are criticisms that the

[2] "The Committee reiterates its view that the prohibition of the dissemination of ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression and, in this respect, encourages the State party to examine the need to maintain its reservations to article 4 (a) and (b) of the Convention with a view to reducing their scope and preferably their withdrawal. The Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities, in particular the obligation not to disseminate racist ideas, and calls upon the State party once again to take into account the Committee's general recommendations No. 7 (1985) and No. 15 (1993), according to which article 4 is of mandatory nature, given the non-self-executing character of its provisions. It recommends that the State party:
(a) Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4;
(b) Ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, stepping up efforts to investigate them and punish those involved;
(c) Increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet."

code is administrative in nature, rather than human-rights based.

Hate Speech Regulations

The hate speech against Koreans living in Japan have got harsher for the last few years. Many Japanese citizens get a feeling of disgust to the hate speech. Also as Japan will host the Tokyo Olympic in 2020, as of March 2015, 104 municipal assemblies have adopted an opinion statement to request the State to regulate hate speech.

Although some Diet members worked on framing a regulation on hate speech, Prime Minister Abe is reluctant to legislate such a hate speech regulation. In February, Abe indicated his preference to tackle the issue through educational activities. Thus the possibility of some kind of law against hate speech is not high.

2. STATUS OF ESTABLISHMENT OF NHRI

As reported in the 2014 ANNI Report, the current Abe administration clearly stated that it would tackle any human rights violations through individual legislation rather than resolve the issues in a comprehensive manner by establishing a National Human Rights Institution (NHRI). The ruling Liberal Democratic Party has long opposed an NHRI; its objections include that such an institution would have too strong power; that it would over-regulate media coverage; that it would restrict the right to freedom of expression, for e.g. of people who criticize the human rights violations of a specific country (especially the Democratic People's Republic of Korea), etc. The political environment is unchanged.

2.1 Table on Draft Enabling Law

	Human Rights Commission Bill	Outline of NHRI proposed by JFBA	Outline of a bill to Establish a Desirable NHRI
Drafted by	Democratic Party of Japan	Japan Federation of Bar Associations	Study Group for Establishing NHRI
Ministries and agencies under which NHRI is established	Extra-ministerial bureau of MOJ[3]	Cabinet Office[4]	Cabinet[5]

[3] MOJ was planning to reorganize the existing Civil Liberties Bureau into this.
[4] The Cabinet Office is one of administrative agency headed by the PM. Not only Ministers of State but also other ministers are also specified to be the members.
[5] The Cabinet is a collegial decision making administrative body consisting of the PM and Ministers of State.

Organizational structure	Central Commission (state institution)	Central Commission (state institution) + Local Commissions (prefectural governments institution)	Central Commission (state institution) + Nine Local Commissions (in eight prefectures where High Court exists and Okinawa Prefecture)
Number of Commissioners	5 (2 of them are full time)	Central: 15 Local: set forth in a regulation according to the size of each prefecture	Central: 7 (majority are full time) Local: 5 in principle (majority are full time)
Terms of Commissioners	3 years (reappointment is allowed)	5 years (reappointment is allowed only once)	5 years (reappointment is allowed only once)
Requirement for Commissioners	1. The Commissioners shall be appointed among those who have moral character and insight regarding human rights, are able to make a fair and neutral judgment to carry out the affairs under the jurisdiction of Human Rights Commission, and have academic backgrounds and experience concerning law or society 2. It shall be ensured that one of the genders should not be fewer than two.	1. The Commissioners shall be appointed among those who have deep insight regarding human rights, and have knowledge and experience required to protect human rights. 2. It shall be ensured that one of the genders should not exceed two-thirds.	1. The Commissioners shall be appointed among those who have deep insight regarding human rights, and have knowledge and experiences required to protect human rights. 2. It shall be ensured that one of the genders should not exceed two-thirds. 3. It shall be considered that the independence of the Commission and the diversity of the society must be secured.
Appointing Authority	Prime Minister	Prime Minister for both Central and Local	Prime Minister for both Central and Local
Appointment Procedure	Consent of both Houses of the Legislature	Central: Recommendation Committee established in the Diet with the consent of both Houses. The members of the Recommendation	Central: Recommendation Committee established in the Diet with the consent of both Houses. The members of the Recommendation

		Committee are selected from members of both Houses, Courts, the Cabinet Office, media, bar associations etc. Local: Recommendation Committee established in the Prefectural Assemblies with the consent of both Houses. The members of the RecommendationCommittee are selected from members of the Prefectural Assemblies, Courts, the Prefectural Government, media, bar associations etc.	Committee are selected from members of both Houses, Courts, the Cabinet Office, media, bar associations, human rights organizations etc. Local: Recommendation Committee established in the Prefectural Assemblies with the consent of both Houses. The members of the RecommendationCommittee are selected from members of the relevant Prefectural Assemblies, the Prefectural Governors, Courts, media, bar associations, human rights organizations etc.

Independence			1. The chairperson and members of the Commission shall independently exercise their authority. 2. The Prime Minister shall not have any power of control and supervision over authorities of the Commission. 3. The Prime Minister shall not have any right to request reports concerning the authorities of the Commission. 4. The expenses of the Commission shall be independently included in the state budget.
Scope of human rights mandate	All human rights prescribed in the Constitution, human rights treaties Japan has ratified, and national laws and regulations	All human rights prescribed in the Constitution, international human rights treaties and national laws and regulations	All human rights prescribed in the Constitution and human rights treaties Japan has ratified
Definition of human rights violations	Unjustifiable discrimination, abusive treatment and other violations of human rights	Violations of all human rights prescribed in the Constitution, the international human rights treaties and Japan's laws and regulations	All acts that limit or deny human rights without any reasonable reason

Definition of discrimination	Politically, economically or socially unjust and discriminatory treatment	Discriminatory acts without any reasonable reasons(including the lack of legitimate considerations in case of the disabilities)	Discriminatory acts without any reasonable reasons (including the lack of legitimate considerations in case of discriminatory treatments due to the pregnancy and delivery, disabilities or diseases)
Grounds of Discrimination	Race, ethnicity, creed, sex, social status, family origin, disabilities, sickness or sexual orientation	Race, ethnicity, nationality, creed, sex, family origin, social status, disabilities, sickness, sexual orientation	Race, color of the skin ethnicity, nationality, sex, language, creed, social status, family origin, birth, marital status, family structure, disabilities, sickness, sexual orientation, sexual identity, pathogenic agent carriers.[6]

2.2 Key Initiatives for Establishment of an NHRI

Under the previous Democratic Party of Japan (DPJ) administration from September 2009 to December 2012, there were some concrete movement by the civil society groups for establishing an NHRI. For example, the 'Joint Movement for establishing an NHRI and Optional Protocols' published a booklet and distributed it to each Parliamentarian, organized public gatherings or seminars for them, organized a network among civil society groups for an NHRI.

The DPJ did hear opinions from some human rights groups, as well as meet and discuss this issue with several human rights activists and lawyers over the Human Rights Commission bill. They submitted the bill on December 2012 but did not introduce much of the opinions from the civil society, insisting they should aim for passing the bill first of all even if the bill was not to the satisfaction of civil society groups. The bill was scrapped on 16 November 2012, seven days after its submission.

Since the current administration came to power in December 2012, such movement for an NHRI gradually lost momentum because civil society organizations are well aware that the government has no intention to establish a human rights institution.

Human rights groups and activists are still convinced of the necessity of for an NHRI; not only to provide

[6] It quite often happens the infectious diseases carriers, such as HIV/AIDS or Escherichia Coli O157, have been discriminated exactly because of that. There are some cases of patients of non-infectious diseases being discriminated. Based on such various human rights violations in the past, the Act Concerning Prevention of Infection of Infectious Diseases and Patients with Infectious Diseases was amended in 2006. Among other things,the wording, "to respect human rights," was inserted in its fundamental principles.

complaint mechanisms for the victims but also to implement recommendations from the international human rights treaty bodies. However, the current situation is very tough for human rights movements, including the movement for an NHRI, thus the focus has shifted to other campaigns such as for a racial discrimination prohibition act.

As the hate speech issue has become well known internationally as well as nationally, more and more people, not only the human rights groups but also the general public, have understood the need for rules or laws to be implemented to regulate such act. There are also strong voices opposing such regulations among conservative people, parliamentarians, right-wing groups and some academics.

In July 2014, Japan's sixth periodic report to the UN Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights was considered. The Committee recommended that Japan "reconsider(s) establishing an independent national human rights institution with a broad human rights mandate, and provide(s) it with adequate financial and human resources" (para 7).

Also in August 2014, the UN Committee on the Elimination of Racial Discrimination in its concluding observations on Japan's 7th to 9th periodic reports, recommended that Japan "promptly resume the consideration of Human Rights Commission Bill and expedite its adoption with a view to establishing an independent national human rights institution, providing it with adequate human and financial resources as well as a mandate to address complaints of racial discrimination" (para 9).The recommendations from ICERD and Human Rights Committee accelerated the drafting of an anti-discrimination bill.

The Japan Federation of Bar Associations (JFBA) took some opportunities to issue statements calling for the establishment of an NHRI in Japan. For instance, on 20 February 2014, JFBA issued such an opinion, and raised three reasons why Japan needs to set up one: (1) to resolve bullying, corporal punishments and abuses on children; (2) to provide remedies to the disabled; and (3) to provide remedies for people whose human rights are violated by the public authorities. They also actively lobbied the international human rights treaty-bodies on every occasion.

3. EFFORTS FOR ESTABLISHMENT

It should be mentioned that the anti-discrimination law has been drafted (and submitted on May 2015) by a bipartisan lawmakers, owing to several civil society groups, especially who have worked on discrimination and foreigners' human rights issues tirelessly lobbying Diet Members to tackle the hate speech issues and the enactment of such a law. The ruling party however has avoided discussing the draft in the Standing Committee of Judicial Affairs of House of Councilors.

As for the disabled persons' rights, social model of discrimination was mentioned in official documents is a big step for the movements. The human rights defenders who worked on the issue as well as the Convention of the Rights of Persons with Disability must have an impact on this.

4. STRATEGIES

Unfortunately under the current administration, the possibility for an NHRI to be established is very low. Thus groups who work on an NHRI have tried to establish a wider network through inviting other activists who work on other issues, or through participating in other movements to try to implement the recommendations by the UN treaty bodies. In this way, attempts are made to convince others that the NHRI is a necessity to relieve victims of human rights violations, and to implement human rights protection measures effectively.

As mentioned above, hate speech issue is now recognized as a serious problem even amongst people who might not be concerned with human rights issues so far. Osaka City, the second largest city in Japan, has proposed an ordinance to regulate hate speech; and more than 100 municipalities nationwide adopted a statement to request the Government to take some measures to regulate such acts. As of June 2015, a racial discrimination prohibition act is submitted and is supposed to be discussed in the Committee on the Judicial Affairs of the House of Councilors.

The UN Business and Human Rights Guiding Principles asks governments to set up their National Action Plan, and some states already established them with initiatives from their own NHRI. Since Japanese Ministry of Economy, Trade and Industry, which is supposed to be taking responsibility of business related issues does not play such a role so far, business sector and civil society organizations working in the field are frustrated for not having a human rights institution for the said issue. It might be a possibility to encourage corporates to demand the establishment of the NHRI.

More people could be made aware of the valuable role and function of an NHRI if, for example, statements issued by Bar Associations or human rights organizations that welcome such endeavors by public authorities, would also explain that an NHRI is necessary to implement such measures effectively. The NHRI Realization Committee of the Japan Federation of Bar Associations (JFBA) should also continue its efforts for an NHRI, for e.g. through visiting the Human Rights Commissions in Asia Pacific countries.

Civil society groups could learn something from sharing information gathered by the JFBA and interacting with them to come up with new ideas to promote the movements. They could ask the government of Japan to establish a human rights agency which conducts various human rights related issues, and set it up in the Cabinet Office; which means separating it from the Ministry of Justice, which holds the current human rights protection bureau.

The monitoring of the national human rights policy needs to be dealt by an independent body as stipulated in the Paris Principles. The Japanese debate on the NHRI was dominated by the scope of its quasi-judicial function. Such function could be the part of the agency, but not compulsory. It might be an idea to separate the issue and focus only on the policy monitoring function.

5. RECOMMENDATIONS

To the Government of Japan:

- To repeal June 18 2013 cabinet resolution which stated that Japan has no obligation to implement the treaty bodies recommendations, as it seems to be contradictory with the 2nd Paragraph of Article 98 of Japanese Constitution, and restate that Japan still stays in line with such recommendations.
- To clearly define in its founding statute that the functions of the agency include recommendations to the Japanese Government or any other governmental agencies on human rights issues.

To the Diet of Japan:

- To restart the discussion promptly for establishing an NHRI whose main focus is policy proposal and international cooperation according to the Paris Principles.
- To provide opportunities to discuss human rights issues on a regular basis including establishment of an NHRI with civil society groups.
- To encourage the government to integrate its fragmented functions on human rights issues across various ministries, and to set up an agency under the cabinet office. The agency should be monitored by an independent NHRI, which is also to be established in line with Paris Principles.

To the United Nations Human Rights Council:

- To engage in close consultation with the Japanese government how to fulfil the requirements of independence of the NHRI within the Japanese legal system.

To the Asia-Pacific Forum:

- To encourage the Government of Japan and the relevant governmental agencies to provide information, as well as collaborate with civil society organizations in order to establish the National Human Rights Institution.

MONGOLIA: 'AMEND THE LAW'

Center for Human Rights and Development[1]

1.0 INTRODUCTION

Some progress has been achieved in strenthening of the national machinery on human rights protection. The Great State *Khural* (Parliament of Mongolia) has ratified the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 11 December 2014. A new law on protection of victims and witnesses adopted by the parliament led to the establishment of a new agency, the 'Takhar Authority', to take care of the safety of victims and witnesses.

However there are still a large number of human rights issues waiting for solutions: especially issues of child abuse, domestic violence, labor rights and environmental rights. For example, this year, several serious cases on domestic violence and violence against children happened resulting in the strong public push for adoption of the revised draft "Law Against Domestic Violence" by the parliament.

In connection with the country's worsening economic situation, a number of private business entities delayed workers' wages and stopped their activities. The number of entities decreased in 2013 more than twice in agriculture; almost 7 times in mining; 5 times in the processing industry in comparison to 2012. The number of those on unemployment benefit increased by 50% in 2013. Despite such gross violations on the right to work and earn a livelihood, there is no human rights research data. Meanwhile, mining activities continue to affect irreversibly the environment, and cause serious human rights violations of herder communities.

However these issues have not been adequately reflected in the 2014 human rights status report of the National Human Rights Commission of Mongolia (NHRCM). This report addresses the issues of human rights defenders, human rights education, some human rights issues in orphanages and nursing houses, pawn-shops and right to property, and right to labor of the police officers; and includes certain proposals concerning these.

The process of amending the enabling law of the NHRC (discussed in the 2014 ANNI Report) has stopped without progress.

2.0 INDEPENDENCE

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	The National Human Rights Commission of Mongolia (NHRCM) was established in 2001 under the Law on National Human Rights Commission as an administrative body set up to protect and monitor human rights in

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	Mongolia.The law has 6 chapters with 26 Articles and gives direction on the operation, structure and mandate of the Commission within Mongolia. Principles of the Commission include the protection of Human Rights, transparency throughout the entire operation, promotion of the rule of law and independence. The NHRCM has three Commissioners appointed by the State Great *Khural* (Legislature) based on proposals by the President, Supreme Court and Legal Standing Committee of the State Great Khural. The NHRCM has been reaccredited as an 'A' status institution in October 2014, after deferral of its periodic review in November 2013, by the International Coordinating Committee of National Institutions for the Promotion of Human Rights (ICC).
Mandate	The mandate is found in Article 3.1. of the National Human Rights Commission of Mongolia Act stating: "The Commission is an institution mandated with the promotion and protection of human rights and charged with monitoring over the implementation of the provisions on human rights and freedoms, provided in the Consitution of Mongolia, laws and international treaties of Mongolia".
Selection and appointment	
Is the selection formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?	The process used to select Commissioners in Mongolia is not clear, transparent and participatory, although, some provisions for the appointment of Commissioners are set out in the NHRCM Act. Article 5.1 The Speaker of the State Great *Hural* (Parliament) shall nominate names for candidates for Commissioners to the State Great *Hural* on the basis of proposals made by the President, the Parliamentary Standing Committee on Legal Affairs, and the Supreme Court. There is no clear guide for them on how to select the proposed candidates for the nomination process. Despite several recommendations by an array of different bodies, including the International Coordinating Committee of National Institutions for the Promotion of Human Rights, Sub-Committee on Accreditation (ICC-SCA) in 2008, and the discontent of the NGOs, there has been no change in the selection process. The ICC-SCA in its October 2014 report commended the NHRCM for attempting to change the law on the selection process. It noted, however, that

	the proposed changes would not "ensure a sufficiently transparent process in that they do not require broad consultation with civil society"[2]. This seems to be a recurring recommendation, which the Commission has repeatedly failed to implement.
Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?	The selection process is not managed by an independent body. It is not clear what procedure guides President, the Legal Standing Committee (LSC) and Supreme Court (SC) to select candidates for nominations. The existing practice is that each of them proposes one name for nomination and approval by the State Great *Hural*. The three bodies have total control over the entire selection process without transparency and participation. There have been several recommendations made to the NHRCM that non-governmental organizations (NGOs) should be involved in the selection process, in order to make it more transparent and creditable, although there is no provision of law which states this as a necessity.
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	Article 4 of the NHRCM Act 2000 states that "a candidate for Commissioners shall be a Mongolian citizen of high legal and political qualification, with appropriate knowledge and experience in human rights, with a clean criminal record and who has reached the age of 35". This 'job description' seems to place more emphasis on a political or legal background, rather than a specific interest in upholding human rights. The requirement to have high legal and political qualification for candidates conflicts with the principle of pluralism. There is no provision in the NHRCM Act which states the need for gender balance. Notwithstanding this, the Commission currently has two men and one woman.
Is there a provision for broad consultation and/or participation, in the application, screening and selection process?	The law does not require any consultation with the public and civil society organizations in the process of application, screening and selection of commissioners.
Is there a requirement to advertise vacancies?	There is no requirement to advertise vacancies in the law. In fact, most people don't know of a vacancy until media reports on the approval of a new Commissioner by the SGH.

[2] http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, p. 25.

Divergences between Paris Principles compliance in law and practice	Although the NHRCM was re-accredited with an 'A' rating in October 2014, the ICC-SCA also stated that the appointment and selection process did not meet the standard set-out in Paris Principle B.1 and the ICC-SCA General Observation 1.8. These provisions state that the selection process should be clear, transparent and NGOs should be able to participate. There is a requirement to: a) publicize vacancies broadly; b) maximize the number of potential candidates from a wide range of societal groups; c) promote broad consultation and/or participation in the application, screening, selection and appointment process; d) assess applicants on the basis of pre-determined, objective and publicly available criteria; e) select members to serve in their own individual capacity rather than on behalf of the organization they represent."[3] All elements above are equally as important to achieve a clear and effective selection process. If the specifics of the appointment process are made available, it would create more transparency within the selection process and dispel the growing concern that appointments are given based on a political agenda. Therefore, it is essential for better relations between the Commission, NGOs and wider civil society. that there be greater confidence in the selection process. The greater the transparency, the more effective the NHRI will be.
Functional Immunity	
Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?	The ICC-SCA has repeatedly recommended that functional immunity should be included within national law. There is no mention of any type of immunity for commission staff within the NHRCM Act. The Constitution of Mongolia in Article 29.2, states that "immunity of members of the [State Great *Hural*] shall be protected by law". This protects members of parliament. This clearly shows that immunity is a protection available within Mongolia, but which has simply not been applied to members of the NHRI. However it should be noted that so far there has not been any action taken against commissioners or staff of NHRC, which would require their immunity or protection for actions taken in good faith in the course of their official duties.

[3] ICC-SCA General Observations May 2013, http://nhri.ohchr.org/EN/AboutUs/Governance/Documents/ICC%20SCA%20General%20Observations.pdf, p. 29.

Does the NHRI founding law include provisions that promote: - security of tenure; - the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference; - the independence of the senior leadership; and - public confidence in national human rights institution.	The Commissioners have certain protections which are detailed in Articles 22 and 23 of the NHRCM Act. Article 23.2 states that it is prohibited to dismiss Commissioners, or to even transfer them to another job without their prior consent. Article 8.2 states that a Commissioner can have their powers suspended if they have been implicated in a crime and been arrested, providing it complies with the provisions in Article 23.1. (A Commissioner must be arrested in a criminal act, or at the scene of the crime with incriminating evidence to make it possible to detain them. Aside from that, it is prohibited to detain, imprison or impose sanctions on a Commissioner). Looking at these provisions, it seems that a Commissioner would only be removed from the Commission if they have committed a criminal act. This gives the Commissioners a lot of independence when making decisions. It is also stated that Commissioners should receive the same salary as Members of the Cabinet.[4] This guarantees Commissioners a healthy salary despite cuts in the past year to the Commission's funding. The founding law does not include provisions that promote the ability NHRI's ability to engage in critical analysis and commentary on human rights issues, the independence of the senior leadership and public confidence in national human rights institution.
Are there provisions that protect situation of a coup d'état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?	The law does not include any provisions on the role and responsibilities of the NHRC in a situation of a coup d'état or a state of emergencies.
Divergences between Paris Principles compliance in law and practice	There is no divergence observed or recorded between Paris Principles compliance in law and practice.
Capacity and Operations	

[4] Article 22.3 NHRCM Act, http://www.mn-nhrc.org/eng/28/29/.

Adequate Funding	Article 22 of the NHRCM Act states that the activities of the Commission shall be funded from the State Consolidated Budget. It also provides that the state shall provide "economic guarantees" for carrying out the Commission's activities. In previous years, the budget has been cut, and the Commission have not been able to carry on with some of the programs it started running. The Paris Principles directly refer to funding and define it as such: "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence."[5] The state has a duty to protect all of its citizens and while "adequate funding" is subjective to the financial state of the county, the safety of its people should be at the forefront of any decision. In October 2014 the ICC reviewed the financial situation of the NHRCM assessing its compliance with the Paris Principles and level of effectiveness on a national level. The outcome report emphasized the importance of adequate funding to "ensure the gradual and progressive realization of the improvement of the NHRIs operations and the fulfillment of it mandate"[6]. The budget is decided by SGH and then given to the NHRCM through the Ministry of Finance. Since 2010 the budget has increased by 56%. However, in 2014 the budget was reduced by MNT200 million (USD100,428)[7]; which is almost 25% of its annual budget. The newly adopted Law on Promotion of Gender Equality expanded the mandate of the Commission as it becomes responsible to submit a status report on implementation of the law to SGH every two years. Unfortunately, due to the lack of funding the Commission is unable to fulfill this requirement.

3.0 EFFECTIVENESS

[5] Paris Principles, 'Composition and Guarantees of Independence and Pluralism', para 2, http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.
[6] Report and Recommendations of the Sub-Committee on Accreditation , October 2014, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, pp. 25-26.
[7] Stakeholder submission by FORUM-ASIA and the Center for Human Rights and Development, Mongolia, on the National Human Rights Commission of Mongolia, to the International Coordinating Committee Sub-Committee on Accreditation, 30 June 2014, https://www.forum-asia.org/uploads/Submissions/NHRC-ICC-SCA.pdf, p. 3.

3.1 In Law

There are restrictions to the Commission's powers. Commissioners are not able to receive complaints about civil or criminal cases and disputes, which are registered, in investigation, in trial, or have already been decided.[8]

By forbidding the NHRCM to publish comments about a case regarding the police, either during investigation or trial, allows the case to be unaltered by public perception about its handling. This provision also helps to protect the independence of the judiciary, but it simultaneously creates a barrier to the Commission when it attempts to monitor the excessive force used by police during investigations and trial stages of criminal proceedings. When a complaint relating to a criminal or civil case or dispute is brought to the attention of the Commission, they cannot investigate it, but should refer it to the relevant authorities in that jurisdiction.[9]

Although the Commission cannot handle the cases, it can access the documents relating to cases which have been rejected by the authorities.[10] The NHRCM can research these cases and use them to make appropriate recommendations on police and court activities. Although being able to look into cases will help to see the reasons for decisions, it is not as valuable as being able to conduct its own direct investigations. Despite this power, the Commission has been wary to use their powers, and have not used them, for example to look into the cases of those who were arrested for alleged involvement in the 2008 riots.

In its 2014 status report on human rights and freedoms in Mongolia NHRCM has included a chapter on a study about the rights of Human Rights Defenders (HRDs) in Mongolia. The study was based mainly on activities of human rights NGOs and relevant legal environment. The study did not refer to any activities conducted by the NHRCM about HRDs. It seems likely that the Commission does not have any specific mechanism in dealing with and in the protection of HRDs.

Complaints should be lodged in writing or verbally in Mongolian. If the complainant does not speak Mongolian, then a complaint can be lodged in the complainant's mother tongue[11]. The ICC-SCA said that although this provision was in place, it had not been enforced.[12] They recommended that the Commission enforce this provision in order to make the complaints process accessible to everyone.

The Commission's powers to accept, and investigate complaints comes under the NHRCM Act 2000. These articles detail the complaints process which needs to be followed by a citizen wishing to make a complaint. This complaints procedure can also be found on the National Human Rights Commission of Mongolia website. This is accessible to the majority of citizens who would want to place a complaint.

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[8] Article 11.2 of the NHRCM Act, http://www.mn-nhrc.org/eng/28/29/ .
[9] Article 15.1.3 of the NHRCM Act, http://www.mn-nhrc.org/eng/28/29/.
[10] Article 18.3 of the NHRCM Act, http://www.mn-nhrc.org/eng/28/29/.
[11] Article 10.1 of the NHRCM Act, http://www.mn-nhrc.org/eng/28/29/.
[12] Report and Recommendations of the Sub-Committee on Accreditation, October 2014, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, p. 26.

According to Article 16.1.4 the NHRCM can "obtain without any charge the necessary evidence, official documents and infornmation from organisations and/or officials, and to get acquinted with them 'on the spot". However it does not have power to compel witnesses to testify. Article 23.4 of the NHRCM Act states that business entities, organizations and their officials, and citizens, shall have obligation to render all kinds of assistance to Commissioners in exercise of his/her powers.

The NHRCM does not have any provisions in the 2000 Act which protects witnesses and victims while giving evidence. It does not identify any witness protection, or relocation programs that should be used. The Law on Protection of Victims and Witnesses does provide some rights and protections to support witnesses and victims. Nevertheless, Mongolia does not have a comprehensive witness protection program. In most domestic violence cases especially, the victim can be at further risk from the abuser, after lodging a complaint about him.

Anyone who receives a demand from the NHRCM must respond to it within one week, stating what measures they have undertaken in response. The response period is 30 days if the Commission has made recommendations rather than demands.[13] The failure to respond to complaints or demands within the given time period can have financial consequences. The court will impose sanctions, mostly in the form of fines. Article 26.1.2 of the NHRCM Act states anyone who has violated the provisions in Article 19.4 shall be liable to 10,000-50,000 MNT (USD5-25) if it is a citizen, 20,000-60,000 MNT (USD10-30) for an official or 30,000-250,000 MNT (USD15-125) for a business or organization.

3.2 In Practice

In 2014, 710 complaints were received. This number has increased in comparison to 2013. Similar to 2013, is the high number (330) of complaints received from suspects and defendants. Of the 710 complaints: only 16 were related to land or property rights; 18 to child rights; 9 to domestic violence; and 55 on the right to work. There were no complaints on right to information although Mongolia has been greatly challenged by human rights violations in that area.

Complaints received in 2014		
1.	Torture, Inhuman and Other Degrading Treatment	330
2.	Land and Property	16
3.	Health	58
4.	Civil citizenship	11
5.	Child	18
6.	Labor	55
7.	Workplace harassment and Discrimination	6
8.	Environment	24
9.	Pensions and benefits	14
10.	Compensation for Damages	21

[13] Article 19.4 of the NHRCM Act, http://www.mn-nhrc.org/eng/28/29/.

11.	Cash Aid	16
12.	Domestic Violence	9
13.	Education	6

Source: Activity report of the NHRCM for 2014

The NHRC has the power to inquire following receipt of complaints and make orders, proposals and recommendations, to relevant agencies and authorities. In 2014 the NHRCM issued 14 orders and 11 recommendations. Their implementation has been assessed as 84%.[14]

In 2014, the NHRCM filed in total 3 cases in court. In 2 cases, the individuals were wrongfully accused of misleading an investigation and of serving an extra term without charge in prison and compensation for damage. The damage done to citizens in these cases were estimated at a total of MNT84,563,100[15].

3.21 Case 1: Citizen O

He was suspected of a serious crime and detained for a long time in a pre-trial detention centre. The NHRC helped him to make a complaint to the Primary Court. He claimed damage done at a total of MNT105,918,400. According to the court's decision, he received MNT80,918,400.

3.22 Case 2: Citizen S

The health of a 12 year old girl was damaged. The NHRC helped her make a complaint to the Primary Court. She claimed damages done at a total of MNT21,644,700. According to the court's decision, she received MNT3,644,700.

3.3 Torture and other Inhuman and Degrading Treatment

In the 2010 Universal Periodic Review (UPR) meeting, Mongolia accepted 13 recommendations relating to the prevention of, and protection from, torture.

In order to implement these recommendations, the NHRCM re-submitted the draft law on ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In January 2014, it also submitted an amendment to the Office of the President on the Law on the National Human Rights Commission of Mongolia.

In the draft law proposed by the NHRCM in 2014, it was proposed that the NHRCM Act be changed to a 'Human Rights Law'. However, the proposed draft does not protect victims of human rights violations, Human Rights Defenders (HRDs), or remedy any important issues. The draft concentrates mainly on the NHRCM itself.

In May 2015, Mongolia's human rights record was again examined in the UPR process. The recommendations included: abolition of the death penalty; not considering deformation as a crime; and awarding damages for physical and mental health issues of witnesses to a crime[16]. In the 2015 UPR it was

[14] http://www.mn-nhrc.org/index.php?do=cat&category=76 (in Mongolian).
[15] Annual Reports of NHRCM (in Mongolian), http://www.mn-nhrc.org/index.php?do=cat&category=60.
[16] "UNHRC Discusses Mongolia's Human Rights Record", The UB Post, http://ubpost.mongolnews.mn/?p=14446.

recommended by the Commission that torture should be classified as a criminal office. This would make the law in Mongolia compliant with the United Nations Convention against Torture (UNCAT).[17]

The NHRCM also showed its dedication to the prevention of torture when it organized a three-day training course on the 'National Preventative Mechanism Against Torture'. The training weekend was facilitated by Dr. Marko Mona who is a member of the National Commission for the Prevention of Torture in Switzerland. As part of the training, on 29 October 2014, the National Human Rights Commission Mongolia, along with experts from other countries, conducted an inquiry at the Pre-trial Detention Centre. The inquiry was conducted to a very high standard, based on international norms.

In its 2014 report[18], the Commission recommended that the Government "make the Mongolian law in compliance with UN Convention against Torture and all UN principles and standards related to human rights, and apply them in practice". This is a good example of the Commission raising human rights matters with Parliament, in order to further the campaign for change.

4.0 OVERSIGHT AND ACCOUNTABILITY

4.1 Civil Society Organisations

The NHRCM continued its policy of cooperation with CSOs in 2014. The Commission has previously cooperated with eight CSOs through six Memorandums of Understanding (MoU's). That number increased by one in 2014, when it entered an MoU with the Mongolian Journalists Association.[19] The activities under MoU's with CSOs focus on issues of the right to participation; prevention from torture; and human rights awareness raising of public servants.[20]

Public lectures on human rights (6 times a year) and human rights morning talks (10 times a year) were organized by the NHRCM in cooperation with the Open Society Forum in 2014, becoming a good form of cooperation with CSOs.[21]

In 2014 the NHRCM conducted an expanded ex-officio council meeting on three occasions. In the first ex-officio meeting the NHRCM presented its annual human rights status report and received feedback from CSOs.

The Commission has been attempting to strengthen the links between CSOs and itself by holding training sessions in conjuction with diverse NGOs to improve both their own human rights knowledge and the human rights knowledge of the public.

[17] *Ibid*.
[18] 2014 Status Report, Recommendations to the Government, http://mn-nhrc.org/eng/main2/188/, p. 102.
[19] http://takhar.gov.mn/?p=1370 (in Mongolian).
[20] file:///D:/Downloads/sanamj-bichig-list.pdf (in Mongolian).
[21] http://www.forum.mn/index.php?sel=project&menu_id=237#sthash.HgIi2KFd.dpuf (in Mongolian).

- Between 23 and 25 January 2014, the NHRCM carried out trainings in the 9 districts of UlaanBaatar for representatives of persons with disabilities. This was in conjunction with the 'Tegsh Niigem Holboo' NGO.[22]

- Between 22 and 26 April 2014, the NHRCM, with the help of the UNDP, provided human rights training sessions for people working in organizations providing public services in the Zavkhan Province.[23]

- On 5 May 2014, the NHRCM signed a memorandum with the CARITAS (Czech) NGO whereby it would work to provide prisoners with human rights education, both through handbooks and training sessions. The trainings includes topics such as "Basic concepts of human rights", "Prisoners' right to be free from forced labor" and "Ethics and duties and responsibilities of the prison staff". Educating prison staff and prisoners on these issues can help to ensure a higher standard of human rights in prisons[24].

The main civil society link is through the ex-officio boards. The establishment of such boards is provided in Article 24.3 of the NHRCM Act as follows: "The Commission may establish ex-officio boards, which consist of the representatives of advocates' association, confederation of trade unions and/or human rights non-governmental organizations, to be assisted in conducting its activities"[25]. The members of the ex-officio NGO Council have previous experience within the human rights field, as well as existing experience working with the NHRCM.

The relationship between civil societies and NHRIs is essential to effectively combat human rights violations. It is vital for the NHRCM in order to be a fully functioning national institution, to maintain a strong and stable relationship with civil society.

There have been several efforts to meet these goals through human rights open days, online training and activities. Following through on projects strengthens the relationship between CSOs and NHRCM. The continuity of projects and outreach programs will provide civil society with confidence in the Commissions' ability to fulfill its projects; and eventually create a seamless line of communication between the two.

There has been much discussion by both the Commission and civil society for an amendment in the NHRCM law. This is one of Mongolia's voluntary pledges following its election to the UN Human Rights Council in 2015.

On 4th April 2014, the NHRCM and the Office of the President of Mongolia organized a conference to

[22] "Training on the monitoring over the implementation of the UN Convention on the Rights of Persons with Disabilities", National Human Rights Commission of Mongolia, http://mn-nhrc.org/eng/main3/22/102-training-on-the-monitoring-over-the-implementation-of-the-un-convention-on-the-rights-of-the-persons-with-disabilities.html.
[23] "NHRCM conducting human rights campaign in Zavkhan province", National Human Rights Commission of Mongolia, http://mn-nhrc.org/eng/main3/22/108-nhrcm-conducting-human-rights-campaign-in-zavkhan-province.html.
[24] "Human rights training sessions being conducted in centralized prisons", National Human Rights Commission of Mongolia, http://mn-nhrc.org/eng/main3/22/112-human-rights-training-sessions-being-conducted-in-centralized-prisons.html.
[25] National Human Rights Commission Mongolia Act, Chapter 6, Article 24.3, http://mn-nhrc.org/eng/28/29/32-national-human-rights-commission-of-mongolia-act.html.

discuss the new draft law on Human Rights. The original law has not been revisited since its enactment in 2001, despite being criticized by various different bodies for not "legalizing fundamental norms which were guaranteed by the UN Paris Principles."[26] The draft law contains changes and amendments that are essential for the full potential of the Commission to be reached. The conference was attended by civil society organizations who articulated their views on the draft law. This is a step in the right direction to improving communication between the Commission, NGOs and wider civil society.

4.2 Parliament

The role of Parliament in oversight of the NHRCM is provided in the enabling law. According to Article 20.1: "The Commission shall submit to the State Great Hural a report on the human rights situation in Mongolia within the 1st (first) quarter of every year". Further, according to Article 20.2: "Report of the Commission shall be published in the 'State Gazette'".

The NHRCM publishes annual reports, all of which are submitted to Parliament. The annual status report and the activity report are then released to the general public. The annual status report details some of the isssues the Commission has dealt with in the past year, and how they have solved, or helped to improve the issues. The activity report details the activities of the Commission and is used by Parliament to calculate the budget. The human rights report submitted to Parliament in the first quarter of each year should represent the human rights situation in Mongolia. The recommendations are made by the Commission in their annual status report. The reports are also discussed with CSOs in a meeting in Parliament.

Initially, the parliamentary Human Rights Sub-Committee will discuss the report given to it by the NHRCM. The report is then passed onto the Standing Committee which decides whether to table it at the Parliamentary plenary session. However, this rarely happens at practice. The report will be discussed by the Sub-Committee but it generally fails to reach the Standing Committee. Currently there are 8 Standing Committees and 10 Sub-Committees.

The Standing Committee meets weekly to discuss and submit draft laws for the plenary session. The Sub-Committee deals with specific issues within the Standing Committee and must co-operate with both the Government (including the Standing Committee) and the NHRCM. The Sub-Committee can conduct their own research, within the human rights spectrum, through assessments, inspections and interviewing human rights defenders, institutions or government officials.

The most recent achievement of the Standing Committee is Resolution No 13 following the 10th annual report by the NHRCM. Recently the Standing Committee held a budget meeting with the SGH in June of this year. The agenda included draft laws on funding, economic transparency and future heritage foundation. There were also discussions on renewed draft law on audit and accounting. The Standing Committee submits several draft laws and recommendations to the SGH and its role is essential for the implementation of human right protection.

[26] "Founding law of the NHRCM needs to be renewed", National Human Rights Commission of Mongolia, http://mn-nhrc.org/eng/main3/22/111-founding-law-of-the-nhrcm-needs-to-be-renewed.html.

Despite the work that the Standing Committee achieves for the Commission, the NHRCM is not in a position to review draft laws once these are in the legislative process. In order for the NHRCM to review and comment on draft legislation, it must be invited. This opportunity is not guaranteed and causes great difficulty for the Commission. Furthermore, even if the Commission is invited to review the draft law, there is no guarantee as to whether its comments are accepted. Without this opportunity to comment and assist the law-making process relating to human rights, the effective implementation of the Commission's mandate is impeded.

5.0 CONCLUSION AND RECOMMENDATIONS

The selection process has caused a large amount of concern regarding transparency and independence of the Commission. A clear and open selection process will ensure confidence in the process and bring down barriers between the NHRI and civil society.

Adequate funding is vital for the Commission to run effectively. Without this, the Commission cannot meet its objectives or complete its projects fully. The funding has decreased in recent years and causes disruption to the ventures of the Commission. With stable and adequate funding the NHRCM can follow through on all of its projects and begin to create a relationship with NGOs and civil society that is stable and reliable.

The Commission has received a total of 3329 complaints since its establishment. To ensure the relevant authority deals with the complaints effectively, the Commission must follow-up on the cases and ensure the handling is appropriate and the complaint is properly dealt with.

Following the UPR in May 2015, the recommendations should be implemented as far as possible to demonstrate Mongolia's full commitment to the protection and promotion of human rights. Implementing the recommendations "has great potential to promote and protect human rights in the darkest corners of the world".[27]

The ongoing functioning of ex-officio boards will promote a stable relationship between the NHRCM and civil society. Including more organizations into the ex-officio boards has been effective in expanding the work of the Commission. The draft law amendments to the NHRCM law have failed to include essential elements of NHRIs in full compliance with the Paris Principles. For the further progress of the Commission, the amendments should incorporate proposals made by the ICC-SCA.

Recommendations to the State Great Hural and its Members:

1. The SGH and its members need to strengthen the independence of the NHRCM by adopting amendments in the law on NHRCM in compliance with the Paris Principles and implementing fully the 'Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments'.

[27] UN Secretary-General Ban Ki-moon with reference to the Universal Periodic Review in March 2007, http://www.un.org/apps/news/story.asp?NewsID=21834.

Recommendations to the NHRCM:

1. Strengthen efforts to amend the enabling law to comply with the Paris Principles and in accordance with the recommendations of the International Coordinating Committee Sub-Committee on Accreditation.

2. Conduct a human rights review of the Mongolia's political, economic and social situation and include this analysis in its annual report on the 'Status of Human Rights and Freedoms'.

3. Continue efforts to expand its cooperation with CSOs.

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SOUTH KOREA: 'LOOKING ON WHEN NOT LOOKING AWAY'

Korean House for International Solidarity[1]

1. INTRODUCTION

The year 2014 saw a number of major accidents and incidents claiming many lives including the Sewol Ferry tragedy, the collapse at Pangyo Techno Valley,[2] the collapse of Mauna Resort in Gyeongju,[3] and fire at a long term care hospital for the elderly in Jangseong.[4] In particular, the Sewol Ferry tragedy claiming a total of 304 lives caused the entire country to be in sorrow and shock.

The Sewol Ferry tragedy and its aftermath shows most clearly where Korean society stands in terms of human rights. The company ignored safety regulations in operating the ferry and the government failed to fully manage and supervise such misconduct. The government has not shown sincere commitment to the revelation of the truth. The victims' families and citizens demanding to know the truth only faced brutal and violent crackdown of their peaceful assemblies and demonstrations. Most recently, Mr. Raegoon Park who has been one of the most respected human rights defenders in Korea and continued to demand the truth in solidarity with the bereaved families was arrested and indicted for organizing unlawful assemblies.

Violence and sexual assaults cases continue to be reported in the military and police. While Korea has compulsory military service system, human rights protection mechanisms for the conscripted soldiers have yet to be fully established, leading to continuous deaths due to serious violence and beating. Moreover, proper investigations and punishment for these human rights violation cases in the military and police are hardly achieved. Sexual harassment and sexual assaults of female soldiers and police officers by their superiors are also commonplace.

On the other hand, the National Security Law continues to be used to suppress and threaten the freedoms of expression and assembly. Recently the National Intelligence Service was found to acquire hacking tools in the name of anti-espionage operations. The intelligence agency's surveillance activities are highly suspicious and an infringement of the citizen's right to privacy. However the government refuses to investigate these concerns, with the excuse of national security.

When accidents and incidents continue to threaten the right to life, which is the most fundamental rights to be guaranteed, the role of a national human rights institution is more critical than ever. However, the NHRCK not only failed to fulfill its mandate of protecting human rights, but also provided blanket impunity to the state's violations of human rights by ignoring them. As a result, the NHRCK has been continuously criticized by both domestic and international human rights organizations as well as the National Assembly for its abrogation of responsibility.

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[1] ***Prepared by Sue-yeon Park, with the assistance of Minjoo Kim, Da Hye Lee and Ha-neui Kim. Contact Person Eunji Kang khis21@hanmail.net.***

[2] A vent cover over the underground parking lot collapsed at the Pangyo outdoor concert stage and claimed 16 lives on 17 October 2014.

[3] The collapse of a gym in Mauna Ocean Resort in Gyeongju on 17 February 2014 claimed ten lives including nine university students.

[4] A fire in a long term care hospital for the elderly in Jangseong took 21 lives and left eight persons injured on 28 May 2014.

These failures are mainly resulted from the lack of independence and transparency of the NHRCK's operation as well as its composition of many unqualified commissioners who don't have professional experience, knowledge, and sensitivity of human rights.

For example, it was recently reported that a commissioner opposed to the issuance of the NHRCK's opinion regarding the government's "comprehensive plan to address non-regular job issue" in a plenary committee meeting in May 2015, saying "I don't understand why the NHRCK should take up labor issues". It was a case in point to show that many commissioners have no idea of what human rights are, leading the Commission to fail in fully addressing serious human rights violation issues.

2. INDEPENDENCE

2.1 Establishment of NHRCK

The National Human Rights Commission of Korea (hereafter 'NHRCK') was established under the National Human Rights Commission Act (No. 6481, established on 24 May 2001/ Act No. 12500, amended on 18 March 2014).

Under Article 19 of the National Human Rights Commission Act (hereafter the 'NHRCK Act'), the mandate of the NHRCK is as follows:

> 1. Investigation and research with respect to statutes, legal systems, policies and practices related to human rights; and recommendation for their improvement or presentation of opinion thereon; 2. Investigation and remedy with respect to human rights violations; 3. Investigation and remedy with respect to discriminatory acts; 4. Survey on human rights conditions; 5. Education and public awareness on human rights; 6. Presentation and recommendation of guidelines for categories of human rights violations, standards for their identification, and preventive measures therefore; 7. Research and recommendation or presentation of opinions with respect to the accession of any international treaty on human rights and the implementation of the treaty; 8. Cooperation with organizations and individuals engaged in any activity for the protection and promotion of human rights; 9. Exchanges and cooperation with international organizations related to human rights and human rights institutions of other countries; and 10. Other matters deemed necessary to protect and promote human rights.

2.2 Selection and appointment

According to Article 5 of the NHRCK Act (Composition of the NHRCK):

1. The NHRCK shall be comprised of eleven commissioners, including one chairperson and three standing commissioners.
2. The President of the Republic of Korea shall appoint to be commissioners among persons of whom possess professional knowledge of and experience with human rights matters and have been recognized to be capable of fairly and independently performing duties for the protection and promotion of human rights: four persons selected by the National Assembly; four persons nominated by the President of the Republic of Korea; and three persons nominated by the

Chief Justice of the Supreme Court.

3. The President of the Republic of Korea shall appoint the Chairperson of the Commission from among the commissioners. In this case, the Chairperson shall undergo personnel hearings held by the National Assembly.

Except the above three provisions, the NHRCK Act does not prescribe any specific selection processes.

In this regard, the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions (hereafter the ICC-SCA) which evaluates and accredits NHRIs based on their compliance to the Paris Principles, deferred its reaccreditation decision of the NHRCK, first in March 2014, again in October 2014, and once more in March 2015. The reason for the deferral and the subsequent recommendations for improvement have been exactly the same.[5]

In March 2014, the ICC-SCA mentioned that "the SCA had previously expressed a concern about the failure of the legislation to provide a clear, transparent and participatory selection process in compliance with the Paris Principles" and subsequently in October 2014 presented a set of criteria to be met.[6]

In order to prevent a downgrade of its status at the next review, the NHRCK prepared potential amendments to the NHRCK Act in September 2014, and recommended that the government and the National Assembly revise the Act accordingly. The NHRCK also presented the "Guidelines Regarding Principles and Procedures on the Selection/Appointment of Commissioners (hereafter the Guidelines)".

For example, the NHRCK proposed an amendment to Article 5 as follows "(3) the National Assembly, the President, and the Chief Justice of the Supreme Court shall ensure that in selecting and appointing Commissioners, a transparent and fair process will be observed that ensures a selection that reflects the diversity of our nation's social stratum regarding the promotion and protection of human rights"; and the Guidelines stipulated principles regarding qualifications and duties and measures to secure the diversity of its commissioners.

While the NHRCK prepared various measures to implement the ICC-SCA recommendations, in its second notice of deferral, the ICC-SCA noted that "at this stage no changes have been made". It also noted that "the proposed Guideline may not sufficiently ensure Paris Principles compliance … The proposed Guideline is not binding".

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[5] As to the selection and appointment process, the ICC-SCA in March 2014 recommended: (a) Publicize vacancies broadly; (b) Maximize the number of potential candidates from a wide range of societal groups; (c) Promote broad consultation and/or participation in the application, screening selection and appointment process; (d) Assess applicants on the basis of pre-determined, objective and publicly available criteria; and (e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20MARCH%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, p. 15.

[6] While Article 5(2) specifies limited 'eligibility' criteria, the SCA in its review of October 2014, is of the view that this provision does not ensure a sufficiently transparent and participatory selection process and one that promotes merit-based selection. In particular, the SCA notes that the enabling law does not appear to require the advertising of vacancies for commissioners; establish clear and uniform criteria upon which all nominating parties assess the merit of eligible applicants; and promote broad consultation and/or participation in the application, screening, selection and appointment process, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf), p. 28.

In its first deferral in March 2014, the ICC-SCA pointed out that "a clear, transparent and participatory selection and appointment process for membership of the NHRI's decision-making body must be included in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a NHRI".

However, the NHRCK responded by preparing non-binding 'guidelines' instead of enforceable legal amendment, on which the ICC-SCA reiterated its concerns. The ICC-SCA, in its third deferral notice in March 2015, reaffirmed the same principle that "a clear, transparent and participatory selection and appointment process for the selection of Commissioners must be included in relevant legislation, regulations or binding administrative guidelines, as appropriate".

True to the ICC-SCA's concerns, the Guidelines were not followed by nominating authorities. On 3 November 2014, soon after the Guidelines were adopted, a religious personality who had opposed the enactment of an anti-discrimination law and maintained an anti-homosexuality stance was appointed as a non-standing commissioner by the President.[7] As there were no opportunities given for civil society participation or engagement and even no official notice of vacancy was made, as recommended by the Guidelines, civil society organizations held a press conference demanding the resignation of the new commissioner.[8]

The Guidelines in its principles on securing diversity of NHRCK members state that "institutions with legal authority to select and appoint human rights commissioners shall guarantee that individuals and groups from across the social spectrum would be able to nominate candidates or present opinions during the process of selecting or appointing human rights commissioners". The Guidelines also encourage the participation of diverse social groups by providing that "the selection/appointment of human rights commissioners shall be conducted via a transparent and fair process, with participation from diverse segments of the society; and relevant procedures shall be set as rules".

However, none of the appointments made after the above Guideline are in compliance with the principles stated therein.

Moreover, though the NHRCK could have questioned and re-recommended the government to follow the selection process prescribed in the Guidelines, it did not take any such measures, but only tried to save its face by saying that "it is difficult to stipulate the Guidelines in a written law, considering the principle of separation of powers, and [the NHRCK] explained to the ICC-SCA that different selection processes by different nominating authorities could help ensure the diversity of commissioners".[9]
While the Guidelines also state that "selection/appointment institutions may establish a candidate

[7] Mediaus, 10 November 2014, "International Shame: Anti-Homosexual Pastor Choi Ee-woo Appointed to a Commissioner of the NHRCK", http://www.mediaus.co.kr/news/articleView.html?idxno=45352.
[8] On 10 November 2014, the NHRCK Watch, a network of human rights organizations dealing with the NHRCK issues, including Korean House for International Solidarity along with the Minority Rights Committee of MINBYUN-Lawyers for a Democratic Society and Rainbow Action Against Sexual-Minority Discrimination held a press conference to urge the resignation of commissioner Choi Ee-woo ("No to the appointment of the NHRCK commissioner incompatible with the NHRCK Act and the ICC-SCA recommendations"), http://khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=321&ncount=300&s_text=&s_title=&pageno=3&basic_url.
[9] National Human Rights Commission of Korea, "The NHRCK Statement regarding the ICC-SCA's deferral of its reaccreditation", 10 November 2014, http://www.humanrights.go.kr/04_sub/body02.jsp.

recommendation committee" to ensure diverse participation and enhance representation of the diverse social stratum of Korean society, such candidate recommendation committee has never been established since the Guidelines were created.

As of June 2015, three commissioners have been appointed. One was appointed by the President of Republic of Korea while two were nominated by the National Assembly (one by the ruling party and the other by the opposition party); but there was no participation of civil society encouraged or ensured except for the notifications of vacancy and opinion collection. This makes civil society doubt whether there were transparent and objective criteria and process for selecting commissioners.[10]

It was clearly contrary to the ICC-SCA's recommendation in its October 2014 review that, "the SCA encourages the NHRCK to advocate for the use of a transparent and participatory selection process in the selection of two new Commissioners in January and February 2015. It again encourages the NHRCK to seek advice and assistance from OHCHR and the APF in addressing these concerns"[11].

Meanwhile, regarding pluralism (diversity), the ICC-SCA in March 2014 stated that, "while the enabling law contains a provision regarding gender diversity in the selection of NHRCK members, it does not contain provisions to ensure diversity in other ways".

In response, the NHRCK proposed to amend Article 5.5 that reads "four or more of the commissioners shall be women", to read "five or more commissioners shall be women".

The NHRCK mentioned selecting persons with disability for its commissioner only in its Guidelines: "Principles on securing diversity of human rights commissioners, B. one or more human rights commissioner shall be appointed from among persons with disability". However, there is no legal consequence even if none of the commissioners is appointed from among persons with disability, as the Guidelines are not legally binding.

Since the legislation on the Prohibition of Discrimination against Disabled Persons, Remedy against Infringement of their Rights, etc., the disability rights groups have continued to criticize the exclusion of the disability groups from the NHRCK's standing committee body.[12] The fact that the ICC-SCA in its second deferral encouraged the NHRCK "to advocate for the inclusion of provisions in its enabling law to ensure diversity in its membership and staff" shows that the ICC has the same concern as the disability rights groups.

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[10] Human Rights Solidarity for New Society, "Saenuri Party should withdraw the recommendation of Lawyer Eun-gyeong Lee for a Commissioner of NHRCK", 9 January 2015, http://nblog.nsociety.org/news/1272?category=2,; The NHRCK Watch, the Minority Rights Committee of MINBYUN-Lawyers for a Democratic Society, "We Condemn New Politics Alliance for Democracy [the opposition party—KHIS] for nominating a commissioner, without any consultation with civil society", 3 March 2015, http://khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=344&ncount=323&s_text=&s_title=&pageno=1&basic_url.

[11] http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, p. 28.

[12] Seongyeon Kim, "The qualification for the NHRCK chairperson as the head of a national body to investigate and remedy discrimination against persons with disability" in the Resource Book of the panel discussion on 'Qualifications of the NHRCK Chairperson', co-organized by Reps. Eunhi Kwon, Insoon Nam, Jwahyun Boo, Kiho Seo, Hana Jang, Cheon Jeongbae; the NHRCK Branch of Korean Government Employees Union; and 'the Roundtable for the Transparent Selection Process of the Chairperson of the NHRCK' (Korean civil society groups' joint network including members of the NHRCK Watch) on 8 June 2015.

Moreover, the partial amendment proposal by the NHRCK has not been officially submitted to the National Assembly for legislation by either the government or lawmakers.

2.3 Functional Immunity

While Article 8 of the NHRCK Act "Guarantee of Commissioners' Status" mentions dismissal, there is no provision to guarantee the functional immunity for commissioners or staff members of the NHRCK.

In all of the three deferral notices and recommendations, the ICC-SCA noted that "there is no provision in the law to provide immunity for its members from legal liability for actions undertaken in good faith in their official capacity" and encouraged the NHRCK "to advocate for the inclusion in its founding legislation of provisions that clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties".[13]

In response, the NHRCK proposed to establish a new provision to the NHRCK Act: "Article 8.2 (Immunity from Compensation Liability for Damages): Commissioners or commission staff shall not assume compensation liability for damages incurred due to unlawful acts conducted while performing duties, unless the unlawful act is committed purposefully or with gross negligence".

However, it only shows that the NHRCK misinterpreted what the ICC-SCA was concerned with i.e. the possibility of the NHRCK's being independence undermined due to external pressures. The NHRCK's proposal of establishing immunity from compensation liability for damages falls short of answering to the ICC-SCA's concerns over functional immunity issue. Moreover, there have been criticisms that this new provision is intended to do no more than cover up and provide excuses for any claims of responsibility against unqualified or incapable commissioners.[14]

Moreover, the ICC-SCA explained the specific content of functional immunity by saying that "such a provision promotes security of tenure, the NHRI's ability to engage in critical analysis and commentary on human rights issues free from interference, the independence of the senior leadership, and public confidence in the NHRI", in all of its three deferral notices. However, as of June 2015, no other provisions except a provision regarding the security of tenure is incorporated in the NHRCK Act, the proposed partial amendments to the NHRCK Act, or the Guidelines.

2.4 Capacity and Operations

While the NHRCK is not a constitutionally independent body,[15] the NHRCK Act states that "the commission independently addresses matters which fall within the purview of its authority (Article 3(2)" as an independent body that is not under the legislative, administrative or judicial branch.

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13 http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf, p. 29.

14 Resource Book of the public hearing, 'Beginning of the Normalization of the NHRCK: reviewing the proposed partial amendments to the NHRCK Act', co-organized by Reps. Hana Jang and Younggyo Seo and the NHRCK Watch, 10 December 2014, p.44.

15 The most recent Constitutional amendment was in 1987, and the NHRCK was established in 2001. To make the NHRCK constitutionally independent, the Constitution should be revised accordingly, which is difficult to achieve.

However, as the NHRCK is considered as one of the central government agencies under the National Finance Act, it cannot be said to have complete independence in its financial management. As with other government agencies, the NHRCK has to consult with the Ministry of Government Administration and Home Affairs on matters of its human resource management, organization, and budget.[16]

In response to this, the NHRCK proposed a new provision: "Article 3.2 (Budgeting and Accounting): In relation to budget compilation, the commission shall be deemed as an independent institution pursuant to Article 40 of the National Finance Act".

However Article 6(1) of the National Finance Act only states that "the term 'independent government body' in this Act means the National Assembly, the Supreme Court, the Constitutional Court, and the National Election Commission", leaving the status of the NHRCK in its independence not clarified.

Accordingly, arguments have been made that in order to ensure the financial independence required by the Paris Principles, the relevant provision in the National Finance Act must be revised to include the NHRCK in the category of independent government body.[17]

Though government officials are not appointed as commissioners, the National Assembly as one of the three nominating authorities can nominate a total of four commissioners (two from the ruling party and two from opposition parties).

As aforementioned, since there is no transparent and objective selection process guaranteeing civil society participation, there is the possibility that persons who represents certain political interests of nominating parties may be appointed as the NHRCK commissioners. This increases the possibility of undermining the independence of the NHRCK.

For example, it was recently revealed that a number of politically controversial issues were omitted from the Information Note submitted to the UN Human Rights Committee in February 2015 under the direction of a standing commissioner who had actively participated in the presidential election campaign activities for the current President Park Geun-hye in 2012 and later was nominated by the ruling party for the NHRCK commissioner.[18]

The omitted issues include a number of socially controversial and important issues such as the intensifying restrictions over the freedom of expression and association and assembly clearly shown in arbitrarily arresting citizens and banning them from wearing yellow ribbons in commemorating the victims of the Sewol Ferry Tragedy and the Constitutional Court's decision of dissolving the Unified Progressive Party, and increasing hatred toward sexual minority groups.

Even issues on which relevant recommendations have been already made either by the NHRCK itself

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[16] Doosik Kim, "The NHRCK under the LeeMyung-bak Government, Opportunity or Crisis?", *Law and Society*, Issue no. 39, Korean Law & Society Association, 2010, p. 64.

[17] Resource Book of the public hearing, 'Beginning of the Normalization of the NHRCK: reviewing the proposed partial amendments to the NHRCK Act', co-organized by Reps. Hana Jang and Younggyo Seo and the NHRCK Watch, 20 December 2014, p. 44.

[18] Joong Ang Ilbo, 1 March 2015, "NHRCK, deleted items about the Sewol Ferry Tragedy from the Information Note submitted to United Nations Human Rights Committee", http://article.joins.com/news/article/article.asp?total_id=17251668&ctg=.

or by international treaty bodies including the Universal Periodic Review – including the issue of conscientious objection and the National Security Law – were either completely excluded or represented as minor issues.

The NHRCK explained that it had to cut down on the number of issues as the original draft was too long in length and pending issues on which no official position was made were excluded. However, the NHRCK's explanation is not convincing, considering that there is no restriction on the length of the Information Note and the UN Human Rights Committee's state review covers the progress of implementation by the time of review.[19]

Furthermore, according to recent news reports, the same standing commissioner who directed to delete politically sensitive issues from the Information Note strongly opposed issuing the chairperson's statement on the excessive crackdown of the police over the one year memorial ceremony of the Sewol Ferry Tragedy, though the draft statement was prepared by the NHRCK investigators after closely monitoring police responses. Consequently, there was no statement or official opinion expressed by the NHRCK regarding the issue.[20]

When persons with political interests become human rights commissioners, it becomes more difficult to expect the NHRCK to monitor or criticize state authorities.

3. EFFECTIVENESS

According to the NHRCK Act, the NHRCK's mandate consists of (1) investigating/researching human rights related statutes (legal systems, policies and practices) and presenting recommendations or opinions; (2) investigating and providing remedy with respect to human rights violations and discriminatory acts; and (3) surveying human rights conditions. These essential functions of the NHRCK were significantly weakened in 2014.

3.1 Policy Recommendations

There is a continuous increase in the number of yearly policy recommendations presented by the NHRCK, which shows 40 in 2011, 41 in 2012, 43 in 2013, and 47 in 2014. When confined to the total number of recommendations, it might seem reasonable, but a staff member of the NHRCK argues that it is necessary to look at the statistics of the Policy and Education Bureau within the NHRCK in order to get a true sense of the quality and quantity of policy recommendations.

While both the Investigation Bureau and the Policy and Education Bureau present policy recommendations, the Investigation Bureau's main tasks are focused on investigating individual petitions and issuing recommendations related to these investigations. Also, the stance and coverage of policy recommendations made by these two Bureaus are somewhat different. Considering the

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[19] The NHRCK Watch, Korean Lawyers for Public Interest and Human Rights, Gong Gam Human Rights Law Foundation, Democratic Legal Studies Association, Korean Progressive Network Center Jinbonet, People's Solidarity for Participatory Democracy, "It is pure nonsense of the NHRCK to ask for civil society's opinions after omitting important issues from the Information Note to the UN Human Rights Committee", 1 April 2015, http://khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=354&ncount=333&s_text=&s_title=&pageno=1&basic_url=.

[20] Pressian, "The NHRCK, acting like a simple bystander of a traffic accident in dealing with the Sewol Ferry Tragedy", 21 May 2015, http://www.pressian.com/news/article.html?no=126599&ref=nav_search.

Policy and Education Bureau may pick up on overall human rights issues in Korea immediately after important human rights issues emerge and link them to recommendations or opinions, it can demonstrate whether the NHRCK truly intends to address issues by making policy recommendations.

On closer scrutiny, for the past 5 years, the number of policy recommendations made by the Policy and Education Bureau has remained about 60% of the number in 2008, when it reached its highest. The NHRCK reports that the recommendation acceptance rate is 80%.

This statistic suggests that recommendations are largely accepted, but considering the ambiguous standard for calculating the rate – partial acceptances being counted as acceptance, while cases without any response for a long time are ruled out from the total – it can only be higher than the actual percentage of acceptance.

For example in 2015, in response to the NHRCK's recommendation of the Guidelines Regarding Principles and Procedures on the Selection/Appointment of Commissioners, the President's office replied that it would "make an effort to sufficiently reflect the recommendation", and even though nothing changed, this was counted as full acceptance of the recommendation.

With the weakening social effect of the NHRCK recommendations, opinions presented by the NHRCK —the main form of the NHRCK's policy recommendations— are barely being recognized as well. To give an example, even though the NHRCK deemed the "Bill of Preventive Custody Act"[21] draft to be deficient in December 2014, this legislation was presented by the Executive to the Cabinet, which approved the draft bill in March 2015.

3.2 Recommendations on Complaints

The status of each recommendation on different complaint cases varies: prosecution, disciplinary action or warnings, depending on the severity of human rights violation concerned. If a settlement is made between concerned parties before the NHRCK's decision, it is categorized as consensual settlement.

Among the total cases admitted since 2008, while the number of cases concluded in general recommendation shows a significant decline (in terms of human rights violation cases, 213 cases in 2008, 235 in 2009, 198 in 2010, 130 in 2011, 155 in 2012, 113 in 2013, and 76 in 2014), the number of cases with consensual settlement has been on the steep rise (in terms of human rights violation cases, 48 cases in 2008, 118 in 2009, 122 in 2010, 117 in 2011, 103 in 2012, 242 in 2013, and 229 in 2014).

Of course, it can be held positively in that concerned parties reached consensual settlement without external intervention by the NHRCK involved. However, the continuous decline of the NHRCK's recommendations shouldn't be ignored as these recommendations have significantly important social implications in discerning what constitutes human rights violations.[22]

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[21] The Preventive Custody Act intends to put highly dangerous criminals such as sexual offenders, murderers, or child sex offenders in custody for a certain period of time (up to seven years) after they serve out the term of their sentence. The NHRCK expressed its opinion that the enactment is not desirable due to concerns over double punishment.

[22] Resource Book of the panel discussion on 'Qualifications of the NHRCK Chairperson', co-organized by Reps. Eunhi Kwon, Insoon Nam, Jwahyun Boo, Kiho Seo, Hana Jang, Jeongbae, Cheon, the NHRCK Branch of Korean Government Employees Union, and 'the Roundtable for the Transparent Selection Process of the Chairperson of the NHRCK (Korean

3.3 Case-Studies

3.31 'Sewol Ferry Tragedy'

On 16 April 2014, the Sewol Ferry sank near the Jindo Island in South Jeolla Province. 295 passengers and crew-members are dead while 9 are still missing and believed dead; including 250 students from Danwon High School (Ansan, Gyeonggi Province) and 11 of their teachers. As the ferry began to sink, the crew-members told every passenger to stay onboard while most of them escaped, committing a heinous dereliction of duty. Even with so many lives in immediate danger, the rescue agencies didn't take any appropriate measures, failing in its initial response and delaying the rescue operations.

The results from the 2014 inspection on the government offices by the National Assembly and the inspection conducted by the Board of Audit and Inspection clearly show that the ad-hoc headquarters for emergency responses merely focused on controlling media, leaving behind its duties in dealing with the crisis. As a result, there were serious distortions of truth in media reports, even reporting that the passengers were successfully being rescued or even that there wasn't a single death.

To enact the special law aimed at truth-seeking and establishment of prevention measures, the bereaved families collected petitions, went on hunger strikes, initiated street protests, participated in "three steps, one bow" walks, and shaved their heads by themselves.

The Sewol Ferry Tragedy is a complete violation of human rights. The right to safety, life, rescue, and truth, the right to demand those responsible held accountable, the right to get both physical and mental compensation, which all add up to a decent life with human dignity were all deprived. The dignity of the bereaved families was brutally violated by false announcements on rescue procedures and provocative broadcasts that were insensitive to the rights of the victims.

On the other hand, citizens who sympathized with the families and were outraged at the government's incompetent response gathered and demanded the truth. However these assemblies were suppressed. The government questioned every single person with yellow ribbons near the Blue House, and restricted their passage[23]. No assemblies near the Blue House were allowed and 150 citizens and students who peacefully marched on the street were detained[24]. In April 2015 around the anniversary of the tragedy, a huge memorial took place near the Blue House in Gwanghwamoon Square. The government fired water cannons that contained capsaicin and arrested tens of assembly participants. One journalist even had his iris ruptured while reporting on the assembly[25]

The NHRCK however, despite having the right to investigate authorities and implement emergency remedies, didn't even criticize the government's lack of effort in protecting the rights of citizens. Two weeks after the tragedy, the NHRCK visited the site merely for monitoring, rather than more serious investigation.

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civil society groups' joint network including members of the NHRCK Watch) on 8 June 2015.

[23] "Police only questioning people with yellow ribbons?", KBS TV, 15 May 2015, http://news.kbs.co.kr/news/NewsView.do?SEARCH_NEWS_CODE=2863735&ref=A.

[24] "Police Used Water Cannons and Tear Gas on Sewol ferry memorial held at Gwanghwamoon Square", YTN, 18 April 2015, http://www.ytn.co.kr/_ln/0103_201504182304117907.

[25] "A reporter covering the Sewol ferry rally injured by water cannon, Iris damaged", Mediaus, 28 April 2015, http://www.mediaus.co.kr/news/articleView.html?idxno=48109.

Later, the NHRCK announced a Chairman's statement in August; but the key demands of the bereaved families: the rights to investigation and prosecution within the special law were ignored. One year after the accident, the Chairman released another Sewol Ferry Tragedy Statement. The issue of the enforcement ordinance draft that violated the purpose of the special law – which was the main controversy at the time – was ignored. Instead there was only an empty resolution about making the country safe[26].

Even with the complaints that were filed, the NHRCK dismissed or delayed any complaints that had to do with the Sewol Ferry Incident. While there were more than 20 complaints filed after April 2014 concerning the Sewol Ferry Memorial, etc.; as of May 2015, there are still no complaints that have been approved for inquiries and investigation[27].

In May 2014, when people who had participated in another Sewol Ferry Assembly called the "Stay Still" March (named as such because the ferry crew had told the students and passengers to "stay still" while they escaped) were in the custody of the police, there were instances of sexual harassment when male policemen groped women and treated the women in such a way that made it possible for others to see women's underwear and legs under shorts or skirts. Complaints were filed, but the NHRCK dismissed them.

When some people went to protest at the memorial hall of former President Park Jung-Hee, father of current President Park Geun-Hae, the police took the protesters into custody through a dangerous passageway on the rooftop without air mattresses. While the protesters submitted a complaint concerning the excessive police force which included confiscation of cell-phones, the NHRCK again dismissed the complaint[28]. With regard to the complaint on the police refusal to approve the application for assembly near the Blue House, the NHRCK has yet to make a decision (as of May 2015)[29].

During the Sewol Ferry Incident memorial service, the police mixed tear-gas in their water cannons, even though this is not permitted. Consequently, the bereaved families of the Sewol Ferry Incident filed a constitutional appeal, claiming violation of their fundamental rights. While the NHRCK has the legal basis to express their opinions on this matter, it is still hesitating to make a public statement[30].

3.32 Assault and death of Soldier Yoon

After continuously being assaulted by a senior soldier in the army, soldier Yoon died on 7 April 2014. Soldier Yoon's seniors not only constantly assaulted Soldier Yoon every day, but insulted his parents and even sexually harassed him only because he was slow in answering questions and had bad pronunciation. They forced Yoon to lick their spit from the living hall floors; eat toothpaste; sit in a saddle position until 3am (when his leg was already injured); and antiphlamine fluids were poured on his genitals. Subsequent report revealed that Yoon had begged his assailants not to kill him some 2~3

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[26] "NHRCK only looking upon Sewol ferry tragedy issue like an onlooker to a car accident", Pressian, 21 May 2015, http://www.pressian.com/news/article.html?no=126599&ref=nav_search.
[27] See fn. 22.
[28] "Police in Wide-Range Violation of Human Rights: Depriving Mobile Phones for 3 weeks and Lifting Skirts", Media Today, 09 June 2014, http://www.mediatoday.co.kr/news/articleView.html?idxno=117134.
[29] "Violation of Human Rights After On Sewol ferry tragedy issue, What has NHRCK Done?", Pressian, 19 May 2015, http://www.pressian.com/news/article.html?no=126544&ref=nav_search.
[30] See fn. 22.

days before his death; and that the seniors had attempted to cover-up their crime when Yoon lost consciousness[31]. Later, the assailants were sent to military court. In April 2015 they were convicted of murder and assault, and sentenced to 35 years in prison by the appellate court.

Yoon's family filed a complaint to the NHRCK on 7 April, shortly before his death. After receiving the complaint, on 15 and 16 April 2014, the NHRCK met with the director of the military police and the staff-on-duty on the day of the crime for a field investigation, instead of meeting with the assailants. They did collect statements on the severe assault and cruel activities taken by the assailants, but they did not take any further action besides asking the military to 'conduct an accurate investigation and explain to Yoon's family the contents of the investigation'.

On 2 June 2014, the NHRCK told Yoon's family of the measures taken by the military – such as the dismissal of personnel involved in the incident – and dismissed the complaint, following the family's request that they did not want any additional investigation. According to Article 48 of the National Human Rights Commission Act, "in the case the NHRCK judges the complaint to be an urgent issue, it can take 'emergency relief measures'", and furthermore "participate in the investigation process of a different institution". This means that the Commission could have conducted an ex-officio investigation by participating in the investigation of military police, but did not.

At the beginning of July 2014, the NHRCK was ready to close the Yoon case. However, after the horrendous reality of the incident was revealed thanks to the work of a civil society organization on military rights, it became a controversial issue. It forced the NHRCK to conduct an ex-officio investigation on the formally dismissed Yoon case on 7 August 2014. Later, the NHRCK revealed in its annual report that it was actively responding to the issue by setting up a military human rights team (27 August 2014) to promote military human rights and improve the conscription system. However, there was a lot of criticism that these measures were only taken to avoid criticism on the passive way the Yoon incident had initially been handled)[32].

In response, an NHRCK source admitted its fault by stating that "it is true that we should have carried out investigation more actively at first" but also confessed that "this could be the limit of the NHRCK". The source added that even if the NHRCK evaluates the complaint and makes a decision; under the current law, it could only give recommendations but had no power to enforce them[33].

During the administrative inspection conducted by the National Assembly in 2014, one lawmaker stated that "while the NHRCK conducted a field investigation a week after Yoon's death on April 28, it requested that Yoon's family dismiss the complaint as the assailants were being prosecuted under the law". He also criticized the typically late response of the NHRCK by pointing out that the NHRCK only conducted an ex officio investigation on soldiers labeled as those requiring special attention later in August"[34].

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[31] "Private first-class Yoon's Assailant, 'Thought he was feigning illness' … Battle over Intentionality of the Murder", Newsis, 8 October 2014, http://www.newsis.com/ar_detail/view.html?ar_id=NISX20141008_0013218770&cID=10803&pID=10800.

[32] "NHRCK could not be found on the site of violation of human rights in the Sewol Ferry Tragedy. Do as NHRCK Should Do Now!", The Roundtable for the Transparent Selection Process of the Chairperson of the NHRCK (Korean civil society groups' joint network including members of the NHRCK Watch), 10 May 2015, http://khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=360&ncount=339&s_text=&s_title=&pageno=1&basic_url.

[33] "Why Did NHRCK Conceal 'Private First-Class Yoon's Death Case?", Ohmynews, 7 August 2014, http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002021252.

[34] "Only 5% of Citations of Petitions from Military Human Rights Committee", The 300, 29 October 2014,

Out of the 182 complaints in the military in 2014, only 12 were approved with 89 cases dismissed[35]. Out of all the complaints involving the military, only 44 out of 745 cases were approved. Although the NHRCK argues that the approval rate is low because many cases are resolved during the investigation process, there are still 515 cases that were dismissed after at least a year after the initial submission of the complaint. This was also a matter pointed out during the administration inspection in the process of requesting that the NHRCK partake in more active investigations[36].

3.33 Slavery on Salt Farms in Shinan County

On 28 January 2014, the police rescued two disabled men who were working unpaid on the Shinan-Gun salt farms in confined and abusive conditions. They were held in captivity for 5 years and 2 months and 1 year and 6 months respectively, during which time they were beaten and forced to work for 19 hours a day as slave-labor. After several attempts to escape, they were rescued by the police. The owner of the salt farms and the employment agency are arrested and sent to prison.

According to an interview with a disabled rights activist, the NHRCK went to monitor the case in Shinan County but did not conduct an investigation. Its rationale was based on Article 32 of the National Human Rights Commission Act where it is stated that a complaint can be dismissed when, at the time of a complaint, an investigation committee is in the middle of an investigation on the complaint's cause or some other relief process through law is ongoing or has been completed[37]. In accordance with the National Human Rights Commission Act however, the Commission has the authority to conduct an ex-officio investigation aside from the criminal investigation and even in the absence of a complaint where there are substantial grounds to believe that human rights violations or discriminatory acts have taken place and that the matter is deemed significant.

Nevertheless, the NHRCK did not conduct any investigation even though the Salt Farm slavery was a serious human rights violation equivalent to forced labor incidents that require an investigation from a human rights-based approach. The NHRCK is criticized by the disability rights organizations for its lack of capacity to properly handle disability discrimination complaints. This is explained by its lack of disability representatives and lack of understanding of disability issues.

The average number of complaints involving disability discrimination submitted is 1300 annually; which is over 50% of the total number of discrimination complaints received by the NHRCK. With this volume of complaints, it is evident that the standing committee should include a member with relevant background and/or expertise. Since the term of the only committee member with a disability committee member ended, there is no committee member in the NHRCK who has knowledge or experience on disability issues. The committee lack empathy for disability issues, and are ignorant and insensitive to the special circumstances surrounding disability issues and appropriate human rights remedies[38].

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http://the300.mt.co.kr/newsView.html?no=2014102919087636132.

[35] 2014 NHRCK Annual Report, p.77.

[36] See fn. 30.

[37] Interview with the general secretary of 'Disability Discrimination Act of Solidarity in Korea', June 2015.

[38] Seong-yeon, Kim, "Qualifications of the NHRCK Chairman viewed from outside the NHRCK: Institution Rectifying Discrimination Against the disabled – A Role as the Head of the Institution", in 'Qualifications of the NHRCK chairman', Report of the seminar organized by Congressman Yoon-hi Kwon, In-soon, Nam, Joe-hyun Boo, Ki-ho Seo, Hana Jang, Jeong-bae, Cheon, co-hosted by the National Human Right Committee Branch of Korean Government Employees Union and 'The Roundtable for the Transparent Selection Process of the Chairperson of the NHRCK (Korean civil society groups' joint network including members of the NHRCK Watch', on 8 June 2014.

There are two departments handling disability issues: the Disability Discrimination Investigation Department 1 (11 staff) in charge of general disability discrimination issues and Disability Discrimination Investigation Department 2 (10 staff) dealing with cases involving those in the disability welfare facilities or mental health facilities. The shortage of the number of people to handle around 1300 complaints every year results in many complaints to be delayed for an average of 6 months, making it very difficult to expect the NHRCK's timely action in urgent situations.

4. OVERSIGHT AND ACCOUNTABILITY

4.1 Civil Society

In evaluating the NHRCK's performance of 2014 and 2015, one of the most important keywords would be the weakening of cooperation between the NHRCK and civil society organizations (CSOs). In the past, the NHRCK and CSOs had maintained a tense and critical but cooperative relationship and struggled to protect human rights from their respective positions.[39] Since Chairperson Hyun took office however, they have hardly cooperated.

Human rights organizations as field-based experts in human rights issues continued to submit their findings on the human rights situation and on human rights violations to the NHRCK. However, these suggestions were often ignored or simply rejected. It is only natural that many human rights organizations have come to find there is no meaningful means of cooperation with the NHRCK.

During the earlier term of Chairperson Hyun, it was obvious that he was reluctant to cooperate with any human rights organizations. However, the NHRCK investigators have consistently asked cooperation with human rights organizations as it was critical for them to fulfill their mandates. On the other hand, the NHRCK deliberately distorted civil society organizations' participation in providing consultants or surveying human rights situations with the aim of addressing urgent issues, as signaling their support for the commissioners including chairperson Hyun. This was with the intention of misleading the international community on the status of relations with civil society. In response, human rights organizations have held several press conferences, criticizing the NHRCK.[40]

According to the Paris Principles, the National Human Rights Institutions should cooperate with the plurality of civil society. The ICC-SCA has underlined its recommendations to the NHRCK to cooperate with civil society by stating:

> "The SCA wishes to highlight that regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfill their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including civil society and non-governmental organizations. The SCA encourages the NHRCK to maintain and strengthen these

[39] "Q: How is the cooperation with civil society organizations? A: We aim at 'tense cooperation'. We will listen to CSOs with professional knowledge and experience and cooperate with them. This is the UN's basic principle and the government and the civil society should go hand-in-hand. Cooperation is essential, considering that civil society can raise live issues while state authorities are rather rigid", Seoul Sinmun, "Assemblies should not be prohibited simply for the reason of possibility of violence (interview with Gyeong-hwan Ahn, chairperson of the NHRCK)", 11 December 2006, http://www.seoul.co.kr/news/newsView.php?id=20061211003007.

[40] NHRCK Watch issued a total of six statements regarding the NHRCK in 2014.

relationships and refers to Paris Principle C(g) and to its General Observation 1.5 on 'Cooperation with other human rights institutions'."

However, the NHRCK has been criticized for passively responding to the ICC-SCA recommendations, and pretending to cooperate with civil society, only in order to avoid its status degradation.[41]

In 2008, the ICC-SCA re-accredited the NHRCK as A-status, but issued several recommendations to the NHRCK as a condition. However, the NHRCK did not submit any plans to implement the recommendations and only in June 2014, three months after the deferral decision of March 2014 did the NHRCK reveal the recommendations to public and organize an advisory meeting with civil society.

In July 2014, the NHRCK created a Special Committee on the Amendment to the NHRCK Act. However there was no consultation or dialogue with Rep. Hana Jang of New Politics Alliance for Democracy and civil society organizations who have continuously monitored the NHRCK activities and proposed the bill on 'Partial Amendment to the NHRCK Act' to strengthen the independence and transparency of the NHRCK in 2013. In this context, civil society organizations which have been active in developing an amendment bill to the NHRCK Act decided not to participate in a public hearing organized by the NHRCK in August 2014.

Moreover, after the reaccreditation of the NHRCK was deferred second time, chairperson Hyun was reported to say "while NGOs in other countries don't complain (about their NHRIs to the ICC), Korean NGOs are challenging too much causing divisions in public opinion".[42] This remark, completely deny the legitimate role of human rights organizations to criticize the activities of NHRI's, outraged civil society.

The NHRCK hurriedly issued an explanatory briefing and asked civil society organizations to participate in a panel discussion on implementing the ICC-SCA recommendations on 29 January 2015. In protest, human rights organizations held a press conference outside of the conference venue instead of participation and condemned the NHRCK for excluding civil society.

Many human rights organizations again refused to participate in a "roundtable to discuss the current situations and pending issues regarding the civil and political rights including freedom of expression" on 31 March 2015. These organizations instead issued a statement criticizing the NHRCK for its elimination of major issues concerning freedom of expression in the Information Note submitted to the UN Human Rights Committee by the NHRCK on 14 February 2015.

The press release for the special lecture of Michael K. Addo, then chairperson of the UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises,

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[41] "Press Conference – If the NHRCK wants to maintain A-status, unqualified commissioners should resign first: without apology and improvement of the NHRCK, there is no civil society cooperation", 29 January 2015, organized by the NHRCK Watch, Rainbow Action Against Sexual-Minority Discrimination, The Minority Rights Committee of MINBYUN-Lawyers for a Democratic Society, Korean Solidarity against Precarious Work, People's Solidarity for Participatory Democracy, Working Voice, Korea Women's Association United, and Solidarity for Peace and Human Rights, http://khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=notice1&no=340&ncount=6&s_text=알리바이&s_title=content&pageno=1&basic_url.

[42] "Controversial remarks of chairperson Hyun blaming NGOs for the repeated deferral of its reaccreditation in the ICC-SCA", Hankookilbo, 14 January 2015, http://www.hankookilbo.com/v/fcf5e56f185d46b1b6969b65b045f1f8.

organized by the NHRCK on 18 May 2015 was posted on its website only on the very day of the event. Even those civil society organizations which have been working on the issue for a long time were not informed of the event in advance. It is no more than a deception, that the NHRCK argues it is cooperating with civil society, while deliberately excluding those who are critical to it.

In certain cases, the so-called civil society cooperation promoted by the NHRCK was even very anti-human rights. It has opened its meeting rooms for civil society organizations for free as an effort to cooperate with civil society. On 19 March 2015, this meeting room was used as a venue for the "2nd Human Rights Forum to Overcome Homosexuality" organized by anti-LGBT groups. The forum was to promote conversion therapy for lesbian, gay and bisexual Koreans, regarding homosexuality as a disease not sexual orientation. Despite the NHRCK Act stating that discrimination based on sexual orientation is a violation of the right to equality, the Commission granted permission for use of its premises to propagate disrespect for human rights in the name of human rights.

The fact that the NHRCK deleted the phrase "civil society" when proposing an amendment bill to the NHRCK Act and in its new 'Guidelines' is also a case in point; making CSOs seriously doubt whether the NHRCK is willing to cooperate with them. In a plenary committee meeting regarding the amendment bill, one commissioner argued that the phrase "civil society participation" should be deleted as it could be misconstrued as "people's participation" which is impossible to achieve in a representative system. This could be indicative of either the NHRCK commissioners' lack of understanding of the concept of civil society and its context, or an intentional distortion with the purpose of cutting off all potential cooperation with and the criticism of civil society organizations[43].

The absence of cooperation with civil society can be seen in terms of the NHRCK's inaccessibility and in transparency as well. According to Article 14 of the NHRCK Act, plenary committee meetings should be open to the public. However, many of the meetings are closed and the minutes of these closed meetings are often not made public or names of speakers are erased, making the public impossible to access unless one attends the meetings or requests the release of information. According to the analysis from information submitted by the NHRCK on the request of Rep. Min-hee Choi, the number of closed meetings has been significantly increasing: the rate of closed meetings has increased to 42% (261 open meetings and 206 closed meetings) since Chairperson Hyun's inauguration in 2008, from 36% between 2001 and 2007.[44]

In its second deferral notice, the ICC-SCA specifically brought attention to cooperation with civil society by stating:

> "It requests the NHRCK to provide information on its engagement with civil society including any formal and informal mechanisms, the organizations with which it has regular engagement and the frequency of that engagement."

The NHRCK submitted a response to the ICC-SCA stating that it was cooperating with civil society. However, as Korean human rights organizations continued to submit opinions criticizing the

[43] Resource Book of public hearing 'Beginning of the Normalization of the NHRCK: reviewing the proposed partial amendments to the NHRCK Act', co-organized by Reps. Hana Jang and Younggyo Seo and the NHRCK Watch on 10 December 2014, p.38.

[44] "The NHRCK processed a half of agenda behind closed doors under the Park administration", Rep. Min-hee Choi on 30 March 2015, http://minheetalk.net/5595.

NHRCK's unwillingness of engaging with civil society, the ICC-SCA might have recommended that the NHRCK cooperate with civil society more in terms of the 'quality' than 'quantity' of those interactions.

4.2 Parliament

According to the NHRCK Act, the NHRCK shall prepare an annual report on its activities and report to the National Assembly and if required by the National Assembly attend and make a report or reply. However, when the NHRCK refuses the National Assembly's request, there is no effective institutional means for the National Assembly to compel the NHRCK.

Moreover, the NHRCK decided not to submit its meeting minutes upon any request including that from the National Assembly in the 10th plenary committee meeting on 9 June 2014, for the reason that "it may undermine the independence of the NHRCK". In fact, when Rep. Nam-choon Park of the New Politics Alliance for Democracy asked on what legal ground the NHRCK refused to submit its minute of the 11th plenary committee meeting (23 June 2014), chairperson Hyun only reiterated it was "a matter of the NHRCK's independence".[45]

5. CONCLUSION

The term of chairperson Hyun Byung-chul is over in August 2015. Given that the ICC-SCA deferred its decision of the NHRCK's reaccreditation for reasons of lack of a transparent selection process – three times in a row – the nomination and appointment of the next chairperson should have been in compliance with the ICC-SCA recommendations. The NHRCK showed certain efforts to implement the ICC-SCA recommendations by posting the vacancy announcement on its website and collecting civil society opinions.

Korean civil society held a panel discussion on the selection process of the next chairperson at the National Assembly, co-organized with concerned lawmakers on 8 June 2015. A joint statement was submitted to the President, calling for the selection process to be in compliance with the ICC-SCA recommendations.

However, the President again abandoned civil society's expectations and unilaterally nominated the incumbent chief judge of the Seoul Central District Court as the next chairperson of the NHRCK. It is in direct contradiction to the repeated recommendation of the ICC-SCA and it will impact negatively on the ICC-SCA review scheduled in March 2016. Even if the NHRCK manages to maintain its 'A' status in the next review, it will be an undesirable example of completely ignoring the ICC-SCA's recommendation.

It is really regrettable that the Korean government does not respect the international community's concerted efforts for NHRI's to function in compliance with the Paris Principles. The NHRCK which has suffered a series of crises for the last six years is now on the verge of degradation of its status.

The Korean government should take urgent actions to reform its selection process for commissioners

[45] http://www.yonhapnews.co.kr/bulletin/2014/10/29/0200000000AKR20141029207400004.HTML?input=1179m.

in compliance with the ICC-SCA recommendations.

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TAIWAN: BETTING ON THE 2016 GENERAL ELECTION[1]

1. OVERVIEW

In 2014, there were two large scale public protests in Taiwan, in response to which there were violations of human rights. The ruling Kuomintang (KMT) party insisted on passing the Cross-Strait Service Trade Agreement (CSSTA) with China without transparency of key information. This undemocratic act, together with the fact that a KMT legislator who chaired the discussion on 17 March violated the normal procedure and passed the controversial CSSTA in less than one minute, triggered the 'Sunflower Movement'. A coalition of civic groups and students occupied the Legislative Yuan (Parliament) for 24 days starting from 18 March.

The government was unable to respond to people's requests, the occupation movement escalated and people tried to occupy the Executive Yuan on 24 March. Premier Jiang Yi-huah ordered the forcible eviction of the protestors within a time limit; and the police used excessive force, including water cannon and baton on the non-violent protesters – including legislators, activists, students and citizens – causing injury to many of them. None of the officials and policemen apologized for this violent event. Though the photos of policemen who attacked the public were revealed, the National Police Agency claimed that these policemen could not be identified.

The year was also significant for the opposition movement against the construction of the fourth nuclear power plant in Taiwan. Along with the hunger strike led by Lin Yi-hsiung, a major advocate against nuclear power; an extensive anti-nuclear protest was sparked on April 27. The anti-nuclear activists marched to Taipei Railway Station, and occupied the major artery of traffic. Despite the commitment made by the government under public pressure that the Nuclear Plant would be "sealed for safekeeping", the next morning the police used disproportionate force in brutally dispersing the masses who were exercising their freedom of peaceful assembly.

Apart from the above-mentioned large-scale demonstrations by the general public, several major types of human rights violation occurred in 2014, including repression of the right of speech and the right to parade; the controversy over imposition of the death penalty, together with numerous forced evictions due to expropriation of housing, land and property for development projects.

The Assembly and Parade Act in Taiwan violates citizen's right of assembly. Though the process to amend the act has been stalled in the Legislative Yuan, the Act to Implement the Two Covenants has to a certain extent challenged the legitimacy of the Assembly and Parade Act. On the other hand, the Justices of the Constitutional Court also ruled that the Assembly and Parade Act violated the Constitution in certain aspects in their Interpretation No.718 (regarding the Approval for Urgent and Incidental Assemblies and Demonstrations). Therefore, the police have chosen not to use the Assembly and Parade Act to harass or restrict the activists; instead, they turned to laws with graver consequences, such as

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Article 304 of the Criminal Code, Offenses Against Public Safety, and Offenses of Obstructing an Officer in Discharge of Duties, etc. They use these laws to trivialize the act of peaceful assembly, into a conflict between individual protestors and the police. The cause of action is forced to spend scarce resources in the litigation process to establish their innocence. A number of social activists who exercised the right of freedom of speech were convicted, and sent to jail as a result.

Despite the fact that the Taiwan government passed the 'Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights' in 2009, the execution of prisoners on death row has been continuously practiced since 2010. This shows that the government completely neglects the UN Resolutions of Moratorium on the death penalty. In 2014, Luo Ying-shay took office as Minister of Justice. She issued execution orders of several death row inmates in April, including the Du Brothers. This case is particularly controversial because the sentence was based solely on crime scene investigation records, forensic medicine reports, evidence examination reports, and expert reports of imprint inspection that were provided by the Public Security Administration of the People's Republic of China.

Last but not least, in recent years, special interest-oriented development projects or the urban renewal plans orchestrated by businesses, triggered numerous forced evictions. These undoubtedly violated the citizens' right to housing and also resulted in a series of calamity in which farmers and residents who were forced to leave their homes, finally leading two of them to commit suicide.

In 2014, the most alarming issue was the Taoyuan Aerotropolis, a massive urban development project near the Taoyuan International Airport in Taoyuan City. Though the project is still at the review stage; due to its significant impact on people and its wide coverage, its necessity, and whether it is purely for public interest, is questionable. What is more, government officials responsible for this project are under investigation for alleged corruption. With all these factors, the Taoyuan Aerotropolis Project may potentially be the greatest eviction incident in Taiwan. However, it is only the tip of the iceberg. Indeed, there are similar threats from destructive development projects that are taking place everywhere in Taiwan.

As the above-mentioned major street protests and human rights violations demonstrate, the executive power of the government is arrogant, and is trying to summon the specter of state violence. In the meantime, legislative power is monopolized by a handful of self-interested politicians and special interest groups. Even worse, some members of the Legislative Yuan contravened the principles of democratic procedure to pass controversial bills. Unfortunately, rather than standing as the ultimate frontline to defend human rights' values, the judicial power has bowed to authority and made pernicious court decisions against protesters. Moreover, the failure of checks and balances to the executive, legislature and judiciary, has fostered opportunities for big contractors and corporations with tremendous amount of capital to infringe people's economic, social and cultural rights.

Following the Concluding Observations and Recommendations of the 2013 initial State report on the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), Taiwan has made itself bound by the Convention of the Child (CRC) and Rights of Persons with Disabilities (CRPD) in 2014 by adoption of a series of

implementation acts. This monitoring process was undertaken independently of the international human rights expert committees as Taiwan is not a member of the United Nations. Although there was a Second Review of the State Report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) in June 2014, the protection of human rights in Taiwan did not progress significantly.

Even after the Presidential Office Human Rights Consultative Committee prepared a draft to set up a National Human Rights Institution, it has been at a standstill because of political manipulation. Obviously, the overall circumstance of human rights in 2014 was backsliding; while the quality of the human rights protection mechanisms left much to be desired.

It should be noted that, in addition to the judiciary, there are several agencies with the function of human rights protection in Taiwan. For examples, the Control Yuan (Ombuds) has a Human Rights Group; several task-force-based committees could be found in the Presidential Office Human Rights Consultative Committee, the Human Rights Protection and Promotion Committee under the Executive Yuan, the Department of Gender Equality under Executive Yuan, and Human Rights Working Groups organized by every ministry as well as Gender Equality Committees established by every level of central authorities.

Nonetheless, boasting itself as a National Human Rights Institution, the Control Yuan, which aims at examining illegal behavior and dereliction of duties among government officers and public servants, usually does not utter a word on significant events of human rights infringement. In addition, committees scattered within the hierarchies of government institutions lack their own independent budgets and human resources. And the civil members in these committees are often the 'friendly' professionals or scholars designated by potentates.

Being short of credible selection mechanism, and the infrequent (typically once every 6 months) meeting, the mission-based committees are not equipped to respond to crucial human rights events. Likewise, specific issues focused by committee members are deficient in scope as well as strategic thinking and planning. In this regard, the agenda of committees have degraded into particular topics which are of concern to these individual professionals and scholars. Apparently, there is no pro-active planning or inter-departmental coordination and collaboration.

Because the aforementioned mechanisms fall short of human rights protection, there is a need for Taiwan to establish an independent national human rights institution that is in accordance with the Paris Principles. Another vital reason of setting up a human rights institution is relevant to the inability of Taiwan to engage in the human rights system of the United Nations through existing channels. If such an institution is founded, the resources will allow it to facilitate the education and promotion necessary for the effective implementation of the six core human rights conventions which enjoy legal status in Taiwan; it may also coordinate the work required for the international review of the six human rights conventions, so that the government and civil society can contribute to the review in a more efficient way.

2. ESTABLISHMENT OF AN NHRI

i. Table on Draft Enabling Law

What is the legal foundation for the establishment of the NHRI?	The legal foundation can be an Act of Parliament or through amendment of the Constitution. There are two versions of the NHRC Bill. Both the civil society version (primarily by the Covenants Watch, through the help of Legislator Yu) and the version proposed by the Presidential Office Human Rights Consultative Committee (POHRCC) propose establishment of an NHRI through an act of parliament.
Impetus for establishment of the NHRI? When?	There was a wave of efforts to establish the NHRI in the early 2000s, following the first transition of governmental power from the KMT to the DPP. However, the proposal based on the work by the President's Office faced resistance from the Executive Yuan, the Control Yuan, and the Legislative Yuan. The efforts waned after a few years. In 2009, the Implementation Act (to implement the two Covenants) was enacted. The government prepared the State Reports to ICCPR and ICESCR pursuant to the UN reporting guidelines in 2011-2012, and two committees composed of independent international experts were established to review the State Reports. The Concluding Observations and Recommendations were officially presented to the government on 1 March 2013. An NHRI was recommended for establishment by the review committees as a mechanism to promote human rights. Afterwards, a 5-member task force was established within the POHRCC to oversee the process. A separate CEDAW state report review committee in 2014 urged the Taiwan government to establish a national human rights institution promptly.

What is the selection process for new members of the NHRI? Is the selection process formalized in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines?	In the draft law, the members are to be nominated by the President and approved by the Parliament. In the parliament there can be public hearings at the discretion of parliament members to initiate public participation and scrutiny.
What are the qualifications for membership? Is the assessment of applicants based on predetermined, objective and publicly available criteria?	The members are to meet one of the three requirements: (1) having worked as a member of an NGO with particular contribution to the advancement of human rights, (2) a scholar with specialty in human rights, (3) a judge, prosecutor, lawyer or a person affiliated with another legal profession.
Does the law provide that the composition of the NHRI must reflect pluralism, including gender balance and representation of minorities and vulnerable groups?	The bill included pluralism in terms of gender, ethnicity, and areas of expertise.
Does the law provide for a fixed term of office, of reasonable duration? Is there a clear process for removal or impeachment?	A term is for 6 years. Removal and impeachment cannot take place unless the member of the NHRC is penalized by criminal law, impeached for misconduct as a governmental official, or has a severe mental disability.
What is the policy on secondees or appointments to the NHRI by government?	There is no specific indication of secondee and temporary transfers in the POHRCC draft. Personnel recruitment in government is managed by the Examination Yuan. Those who pass the qualification examination, and acquire the governmental employee status, are then assigned to each department according to their specialties by an independent system. According to the POHRCC draft, the 13 commissioners have command over a body of 140 staff members (10 of them supporting staff such as personnel and accountants). NGOs suggested in a meeting with the 5-member Task Force of the POHRCC, that some of the staff should be from the civil society, assuming roles like the staff to MPs. The Task Force eventually decided that each commissioner will be allowed to employ two ‘researchers’ (total 26) who are not selected through the governmental examination system.

	Hopefully, these individuals will bring fresh experiences and insights and serve as bridges between the NHRI and civil society.
Are there elements of the state that are beyond the scrutiny of the NHRI?	In the draft bills of NGO and POHRCC, no elements of the state are beyond the scrutiny of the NHRI.

(ii) Key Initiatives

The recent action to establish the National Human Rights Commission (NHRC) was primarily a response toward the Concluding Observation and Recommendations of the review of the State Human Rights Report in 2013. The action of the POHRCC and the large-scale, high-profile civil society mobilization from within and outside the bureaucracy was the driving force. Some members of the POHRCC were among the group involved in the first wave of the civil society movement for the setting up of the NHRC before the year 2000.

The POHRCC designated a 5-member Task Force on the establishment of the NHRI. Since the POHRCC is strictly consultative in its function (the chairperson, Vice President Wu, regularly emphasized this limitation), it has no secretariat of its own, and has to rely on the Department of Legal System under theMinistry of Justice for all the administrative work. The Task Force proposed a draft in August 2014. The draft has three different versions, which are the same in the main text and different only in its organizational arrangement. There could be three possible ways to set up the NHRI within the existing Constitutional structure: the NHRI could be either completely independent; set up under the Presidential Office; or within the Executive Yuan.

In two of the POHRCC meetings, one in December 2014, and the other in March 2015, there did not seem to be disagreement regarding the establishment of an NHRI, and supposedly the Department of Justice (DoJ – Secretariat of POHRCC) should take the work of an administrative analysis for the current proposals on setting up of the NHRI (for example, the DoJ should consult with the Personnel and Budget Administrations of the Executive Yuan regarding the three versions of the organizational arrangement) and come up with a final proposal to be sent to the Executive Yuan for approval. However, having completed the process of internal consultation within the Executive Yuan, the DoJ insisted that it did not receive a final signal of approval from the Vice-President (as to when and which version of the draft to present), and cannot hand in the final draft to be examined by the Executive Yuan.

In contrast to the inertia within the government, the civil society coalition 'Covenants Watch', reviewed and updated the civil society version of the NHRC bill (first edition in 2002 and revised in 2008), and sent a Bill to the Legislative Yuan through Legislator Yu in December 2014. The Bill never made it to the plenary session for first reading, because of the reluctance of KMT lawmakers.

KMT's defeat in the nationwide local elections in November 2014 seemed to open a window for constitutional reform demanded by civil society. Pro-NHRI Legislators and NGOs also took this opportunity and came up with constitutional amendment proposals that grant NI's constitutional status. Despite all the intensive efforts, all the proposals were denied any substantive discussion because of the KMT's political machinations.

Consultation Process

In preparation for the establishment of an NHRI, the POHRCC convened four panel sessions of consultation between May and July 2014. The first meeting invited the diplomatic representatives in Taiwan; the second was conducted with governmental officials from the five Yuans (the Legislative, Executive, Judiciary, Examination, and Control); the third session invited NGOs, and the fourth invited scholars.

In July 2015, the Ministry of Justice invited POHRCC members, scholars, and delegates from the Control Yuan and several departments of the Executive Yuan for consultation. Representatives from Covenants Watch, TAHR and AI Taiwan were also present at that meeting.

It seemed that no one objected to the idea of setting up an NI; however, the same old challenge emerged: no agreement could be reached regarding its institutional arrangement (see below).

In general, government officials did not oppose the idea of setting up an NHRC, but they showed no enthusiasm for it, and were skeptical about the legitimacy of the NHRC. The diplomats, particularly those from European countries, were very supportive of the idea. The NGOs expressed high expectations of the NHRC, while scholars raised some issues.

The major points of debate were:

- The possible overlap and even conflict among governmental bodies, especially in the power of investigation. It is argued that the power of the NHRI to investigate creates conflict between human right institution and the judiciary system, or between the human rights institution and the Control Yuan.
- Some scholars insisted that the NHRC does not fit into the traditional separation of powers: legislative, judicial, and executive.
- Some insisted that it would require a constitutional reform to put the NHRI in the constitution, to give it legitimacy. Others thought that a parliamentary act is quite enough.
- Some insisted that the Control Yuan can play the role of the NHRI, and there is no need for a new institution. This view was not well received, partly because of the less than satisfactory track record of the Control Yuan.
- There was no consensus on where to put the NHRC within the governmental structure.
- It was mentioned that the government has gone through a series of downsizing in recent years, and now is not the right time to talk about creating a new institution.

The consultation held by the POHRCC was limited for the civil society to participate, since there was just one meeting with the NGOs. However, the Covenants Watch was able to hold several rounds of

discussion, involving about a dozen NGOs with prior exposure or awareness of the role and functions of an NHRI. The representative of Covenants Watch was therefore able to bring the message of many NGOs into the actual meeting. It must also be stated that the campaign for establishment of an NHRI did not raise a lot of interest among NGOs and the press. Its nature and potential contribution to the promotion and protection of human rights is still not understood by large sections of civil society

With regard to the current stalling of the NHRC draft bill in the Ministry of Justice: this can be explained by the lack of political authority on the part of the President and the Vice-President. Part of the reason was the landslide loss of the ruling party KMT in the last election of Mayors and City Councilors in November 2014 (however, the KMT still holds the majority in the Legislature, the re-election of which is in January 2016), which drew the attention away from human rights issues.

Yet another reason was the 'Sunflower' movement, which stopped the KMT from taking more pro-China cross-strait policies, but the tension between the ruling and opposition parties has escalated ever since. As a matter of fact, human rights awareness was regarded by conservative members within the KMT as "leading the youth astray".

There is a close-to-complete halt in the process of establishing the NHRC. In fact, as in many other human rights matters, such as the execution of persons on death row, there are signs of regression.

The civil society has taken several steps to try to bring some momentum to the NHRI. Covenants Watch has paid visits to the Ministry of Justice, has tried to arrange a visit to the Secretary-General of the President's Office (was declined), has asked a Legislator to help present the bill, has held a press conference, and has asked for letters of support from the APF and ANNI.

In order to promote awareness, Covenants Watch held a press conference together with Legislator Yu in November 2014, and invited civil society groups each connected by specialized activity to at least one of the Conventions: including indigenous people (CERD), women's groups (CEDAW), youth (CRC), migrant workers (CRMW), anti-torture (CAT), and persons with disabilities (CRPD).

However, these efforts were not rewarded with immediate responses. The current situation seems to depend on the larger scale political situation. Some were totally frustrated with the current administration, and felt that it would be more effective to wait for the next government. Both the President and the Parliament will be re-elected in January 2016. The KMT has been perceived broadly as having no interest in pursuing any human rights advancement.

3. EVALUATION OF EFFORTS TO ESTABLISH AN NHRI

- TAHR and Covenants Watch drafted the NGO version of NHRC bill and submitted it to the parliament with the support of legislators. We also keep contact with the POHRCC and the Parliament. During the session of Legislative Yuan, parliamentarians from the two main political parties proposed constitutional reforms and held lots of public hearing. Only a few legislators agreed to expand human rights provisions in the Constitution. NGOs also suggest that

international human rights conventions should be incorporated at the national level through constitutional reform, and the government should establish an NHRI.

- In 2014, ANNI and TAHR held a training workshop on NHRIs in Taipei. The former Chairperson of New Zealand NHRI, members of POHRCC, Control Yuan, scholars and NGOs were invited. In the workshop, the proposals from POHRCC and Control Yuan, and the power balance between the 5 branches of the State and the NHRI were discussed. Examples about the complementary roles of the Ombudsman and NHRI, from other countries, was also provided.

- After the Taiwanese government domesticated the ICCPR, ICESCR and CEDAW, in the concluding observations from the international experts in the review meeting, it was recommended that the Taiwanese government establish an NHRI soon. However, since Taiwan is not a member of UN, the follow-up to this recommendation could only be monitored by the local NGOs.

4. STATUS OF PREVIOUS RECOMMENDATIONS

The NGO version of the draft of NHRC which is submitted and supported by some MPs in the legislative Yuan was also boycotted by some KMT legislators and cannot go through the review process.

The POHRCC still has not decided which proposal of the NHRC is their final choice. The Control Yuan, which said it had proposed three plans (whether to establish NHRI under CY or transfer Control Yuan into NHRI) in the beginning, also did nothing further and did not send any of its drafts to the parliament.

5. CIVIL SOCIETY STRATEGY FOR ESTABLISHMENT OF AN NHRI

Since some members and the president of the Control Yuan usually lack human rights consciousness and sensitivity, Human Rights Defenders question the credibility of an NHRI that is established under the Control Yuan.

After the break down of the constitutional reform opportunity in the last session of the parliament, it is not certain if there will be another chance to create an NHRI and add human rights provisions in our current Constitution.

The key point for lobbying is still the POHRCC. Human Rights Defenders will try to urge and follow up the development of the three proposals from POHRCC, and participate in related public hearings and consultations. The possibility of further meetings with members of the POHRCC to keep up the pressure including through review of the implementation of the international human rights conventions will be considered.

As the NGO draft bill for establishment of the NHRI is suspended in the parliament, CSOs will also try to revive it through lobbying of the key officials and parliamentarians of the majority party.

Since so far most people cannot accept a NHRI which is not under any branch of government, HRDs prefer to set up the NHRI under the Presidential Office, rather than Executive Yuan or Control Yuan. But we still need to have a more convincing discourse to relieve some scholars' worries on the Separation of Powers. A series of consultations with legal scholars by Covenants Watch will be scheduled soon for this purpose.

6. CONCLUSION AND RECOMMENDATIONS

The existing human rights protection system falls short of fulfilling Taiwan's state obligations to respect, protect and promote human rights. A well-functioning NHRC shall help strengthen human rights protection by taking on a comprehensive role to address human rights issues, ranging from research, education, and investigation to redress.

Taiwanese efforts to establish an NI started as early as in late 1990s. Its establishment was also a political commitment made by the first President of the Democratic Progressive Party (DPP) back in 2000. That wave for an NI failed because of opposition from the Executive and Control Yuans'. Fifteen years later, the Executive branch as a whole does not appear to reject the idea of setting up an NHRC. Yet, it shows no enthusiasm for it, and is skeptical about the raison d'être of the NHRC. The peculiar existence and poor performance of the Control Yuan of Taiwan further complicates the issue as detailed in Section 2 of this report.

Four versions of NI draft laws are already in place, despite the fact that they are either between the Procedural Committee and First Reading in the Legislature (the NGO version) or lying in the Ministry of Justice waiting for the cue from the top. As the general elections to elect the President and Legislators are approaching, Covenants Watch and TAHR will advocate for the Presidential candidates to commit to the establishment of an NI. Considering the DPP is expected to win the elections, we shall in next few months urge all the DPP Presidential and Legislative candidate to promise to honor the party's commitment when elected. We look forward to quality debates and for the Legislative Yuan to pass the bill that establishes a strong and effective national human rights institution to respond to the expectation of civil society.

Being a non-member of UN, the Taiwanese government has lost the opportunity to obtain support from or to be monitored by any international human rights mechanism. Nevertheless, people living on this soil should not be denied their human rights and isolated from the international and regional human rights community. Their full enjoyment of human rights should be guaranteed, not only by its government but other members of humanity; especially so for vulnerable groups, including immigrants and migrant workers.

Recommendations to the Executive and Legislative Yuans:

- *Being the Secretariat of the POHRCC, the Ministry of Justice shall work proactively to assist the POHRCC in selecting one from the three versions of draft law and ensure its submission to the*

Legislature for deliberation as soon as possible. The NGO proposal should also be considered simultaneously by legislators.

- *The Legislature can also play an active role by supporting the existing NGO version to proceed to the first reading procedure and referred to the Judiciary and Statutes Committee for deliberation. Given the circumstances, the POHRCC, together with the MOJ, will be compelled to send in their versions for comparison.*