
IMS book series – 2022
Defending Journalism

National human rights institutions and journalist safety

*Bridging civil society and government
to promote media freedom in four
Asian countries*



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List of acronyms

AJJC	Asian Institute of Journalism and Communication	KPU	General Election Commission (Indonesia)
AJI	Alliance of Independent Journalists (Indonesia)	LBH	Press Legal Aid Agency (Indonesia)
AMARC	World Association of Community of Radio Broadcasters	LPSK	Witness and Victim Protection Agency (Indonesia)
AMSI	Indonesian Cyber Media Association	MCW	Magna Carta of Women (Philippines)
AO	Administrative Order	MIL	Media and information literacy
APNS	All Pakistan Newspaper Society	MoIBNH	Ministry of Information and Broadcasting and National Heritage (Pakistan)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	NBA	Nepal Bar Association
CHR	Commission on Human Rights (Philippines)	NCHR	National Commission for Human Rights for Pakistan
CLD	Centre for Law and Democracy	NCSW	National Commission on the Status of Women (Pakistan)
CMFR	Center for Media Freedom and Responsibility (Philippines)	NFN	NGO Federation of Nepal
CPJ	Committee to Protect Journalists	NGO	Non-governmental organisation
CPJMP	Commission for Protection of Journalists and Media Professionals (Pakistan)	NHRC	National Human Rights Commission (Nepal)
CPNE	Council of Pakistan Newspaper Editors	NHRI(s)	National human rights institution(s)
CSO	Civil society organisation	NIMP	Nepal International Media Partnership
DOJ	Department of Justice	NUJP	National Union of Journalists of the Philippines
DPR	The House of Representatives (Indonesia)	OHCHR	Office of the United Nations High Commissioner for Human Rights
EO	Executive order	OSF	Open Society Foundation
EU	European Union	PAHRA	Philippine Alliance for Human Rights Advocates
FNJ	Federation of Nepali Journalists	PBA	Pakistan Broadcasters Association
FSPMI	Federation of Independent Media Workers Union (Indonesia)	PECA	Prevention of Electronic Crimes Act (Pakistan)
GANHRI	The Global Alliance of National Human Rights Institutions	PEMRA	Pakistan Electronic Media Regulatory Authority
HRCP	Human Rights Commission of Pakistan	PFUJ	Pakistan Federal Union of Journalists
HRD	Human rights defenders	PJSC	Pakistan Journalists Safety Coalition
ICCPR	International Covenant on Civil and Political Rights	PJSF	Pakistan Journalists Safety Fund
ICESCR	International Covenant on Economic, Social and Cultural Rights	PPASJ	Philippine Plan of Action on the Safety of Journalists
IFJ	International Federation of Journalists	PTFoMS	Presidential Task Force on Violations on the Right to Life, Liberty and Security of Members of the Media (Philippines)
IJTI	Indonesian Television Journalists Association	PWI	Indonesian Journalists Association
IMS	International Media Support	QRT	Quick Response Team (Philippines)
IRADA	Institute for Research, Advocacy and Development (Pakistan)	RRN	Rapid Response Network (Nepal)
JDC	Journalists Defence Committee (Pakistan)	RRT	Rapid Response Team (Nepal)
JSAG	Journalist Safety Advisory Group (Philippines)	RSF	Reporters Without Borders
KKJ	Committee for Journalists' Safety (Indonesia)	UN	United Nations
KPK	Corruption Eradication Commission (Indonesia)	UNESCO	The United Nations Educational, Scientific and Cultural Organization
		UPR	Universal Periodic Review
		YLBHI	Indonesian Legal Aid Foundation

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The lead researcher of this report and country chapter author for Nepal is Binod Bhattarai, a journalist and long-time media development and communication consultant for IMS based in Kathmandu. The other country chapters were drafted by Lestari Nurhayati for Indonesia, Muhammad Aftab Alam for Pakistan and IMS Programme Manager for the Philippines Roby Alampay and Ross Tugade for the Philippines.

The report was commissioned by IMS and led by Global Safety Advisor Colette Wahlqvist in collaboration with Regional Asia Programme Manager Helle Wahlberg. IMS Global Response Head of Department Gulnara Akhundova and Global Response Gender Adviser Emma Lygnerud Boberg provided substantive input during the editing process. This report was peer reviewed by Centre for Law and Democracy Executive Director Toby Mendel.

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This report was commissioned because protecting journalists is vital to safeguarding informed debate – the heartbeat of democracy. We have unending appreciation for the journalists and media workers who bring truth against the odds.



Activists from Youth Congress Nepal demonstrate against the new media directive that government plans to introduce which is claimed to curtail the freedom of expression and speech as well as right to privacy in Kathmandu, Nepal on Saturday, 20 February 2021. (Photo by Rojan Shrestha/ NurPhoto via Getty Images)

Foreword

by Jesper Højberg
Executive Director, IMS

Since its inception, IMS has adamantly advocated, along with our partners, for national protection mechanisms for media workers. While civil society organisations can certainly provide important and robust assistance to journalists in distress, it is and should be a public responsibility to ensure that journalists can do their jobs safely. Cognisant that State actors may not always be allies of the free press, the ideal institution to protect media workers should be independent and able to work with discretion. National human rights institutions (NHRIs) are therefore model candidates for the job.

“This report holds that journalists reporting in the public interest are indeed human rights defenders and it is an NHRI’s responsibility to protect these journalists.”

This report holds that journalists reporting in the public interest are indeed human rights defenders and it is an NHRI’s responsibility to protect these journalists. NHRIs are institutions with high integrity, statutory independence from government interference and have strong mandates to protect human rights. As journalists bring the truth to the fore, this is a public good that must be safeguarded.

For over a decade, a community of like-minded international press freedom and media development organisations has been involved in promoting press freedom in Nepal. Working closely with local partners such as the Federation of Nepali Journalists and the Association of Community Radio Broadcasters Nepal, the idea arose to engage the National Human Rights Commission – Nepal (NHRC). This was the beginning of

a long process of working in a collective effort with appointed political commissioners to offer practical guidance and legal and policy advice to better support journalist safety across the country.

An agreement was finally made to anchor a taskforce within the NHRC. With its broad-based membership and expansive geographic presence throughout Nepal, the Federation of Nepali Journalists was to support the NHRC taskforce with operational assistance. The arrangement was simple but effective.

This publication provides an in-depth look at the process of establishing a journalist safety mechanism in Nepal and how a collaborative effort of international organisations and motivated local actors guided by political acumen was able to effect change. This example from Nepal is not a one-size-fits-all solution,

but we hope to inspire ideas for anchoring and developing journalist protection mechanisms that assign a key role to NHRIs.

As we mark 10 years of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, we hope this report can inspire more progressive action. Establishing local mechanisms in national contexts is a leading recommendation in this plan and one we hope even more countries will follow. This book lays out key avenues for that.

Executive summary

This report explores the role of national human rights institutions (NHRIs) in South and Southeast Asia – Nepal, the Philippines, Indonesia and Pakistan – and how their engagement in supporting national protection mechanisms for journalists can contribute to upholding their mandate of promoting human rights for all.

Country experiences

Indonesia has an estimated 100,000 journalists in a population of over 271 million people. Its geography represents a challenge for monitoring violations of press freedom and the safety of journalists. In Indonesia, journalists' and civil society groups have begun to support vulnerable journalists and to collaborate on setting up a national safety mechanism for them. Such a mechanism could involve existing organisations of journalists, the National Human Rights Commission of Indonesia, the Press Council and other state agencies. Preliminary consultations are assessing which institutions might anchor such a mechanism and whether the existing legal framework is appropriate or adequate.

Nepal saw a rise in the persecution and assassinations of journalists during the Maoist government conflict (1996-2006) and the long transition to a new constitution (2006-2015). Some perpetrators were prosecuted successfully, but many cases remain open. Nepal was one of the first countries whose NHRI considered the establishment of a mechanism for journalists' safety. The Nepal National Human Rights Commission and the Federation of Nepali Journalists began working towards this in 2012, and their efforts culminated in 2019 when the Nepal National Human Rights Commission approved a directive to establish a multi-stakeholder mechanism for upholding the freedom of expression of all citizens, including journalists.

Pakistan has one of the world's highest rates of impunity for crimes against journalists, despite the formidable efforts of journalists' and civil society groups. For example, out of over 140 journalist deaths, only three perpetrators have been prosecuted and all three verdicts were overturned on appeal. However, change

could be in the air: Pakistan enacted a new national law in 2021 – based on one adopted earlier by a provincial government – to protect journalists’ safety. While this legislation is welcome, those laws do not include a role for the Pakistan National Commission of Human Rights and thus could be more robust, according to journalists’ and civil society groups.

The Philippines is one of the world’s most dangerous countries for journalists, but the government has begun working with its NHRI on a multi-stakeholder mechanism to protect them. Since 1986, 234 journalists and media professionals in the Philippines have been killed, including 19 after President Rodrigo Duterte took charge of the administration in October 2016. According to media and civil society groups, state agencies have allegedly been involved in 114 attacks and threats against journalists and civil society advocates who had first been “red-tagged” by the authorities for their supposed links with armed communist insurgents and/or “terrorism”.

In July 2018, the Philippine Commission on Human Rights (CHR) adopted a resolution to form a taskforce with a mandate to monitor and investigate media-related extrajudicial killings. This led to more collaboration between the CHR, media and civil society groups. As a result, the Philippine Action Plan on the Safety of Journalists was launched in November 2019, as part of a three-year European Union project that seeks to establish a national multi-stakeholder mechanism for the safety of journalists.

Reason for hope

Three of four countries covered in this research – Indonesia, Nepal and the Philippines – have begun to collaborate with their NHRIs to address the safety of journalists and to challenge the culture of impunity for violations against them. One country – Pakistan – has opted for legislation to form a commission to promote journalist safety, though presently with no role for its NHRI.

Regardless of how it happens, the establishment and operationalisation of independent multi-stakeholder mechanisms for journalist safety are vital steps for democracies because they ensure the free flow of information by protecting journalists, media professionals and human rights defenders. NHRIs contribute state authority and international credibility, while journalists and civil society groups bring expertise on advocacy, coalition building and media. Progressive collaboration between such key stakeholders – on journalists’ safety and the culture of impunity for their enemies – suggests that a friendlier and more enabling work environment may be on the horizon.

Collaborations with NHRIs can differ depending on national legal and political frameworks. Since each country has a unique NHRI, one “model” does not fit all. Instead NHRIs, media, civil society, government and other relevant stakeholders can choose or develop a model that works for them through

consultation and collaboration on its benefit to themselves and society in general. The research in this report discusses the various approaches underway and progress made in terms of partnership and collaboration.

In Indonesia, the journalists' associations that pioneered advocacy on safety are collaborating with civil society groups, the Press Council and the NHRI towards an independent multi-stakeholder safety mechanism. The development of a mutually acceptable institution will take time but, as country expert Lestari Nurhayati reports, Indonesia has taken the first steps.

Nepal is closer to a multi-stakeholder mechanism. Since 2012, the journalists' association and its international partners have been advocating for an independent mechanism to be based at the Nepal National Human Rights Commission. After seven years of consultations, in 2019 the Commission adopted a directive to form such a mechanism. Binod Bhattarai's chapter on Nepal discusses the background to the directive and the features of the emerging institutional arrangement.

Pakistan has taken a major step towards resolving a long-term problem: the many journalists killed and the impunity for those responsible. The federal government and Sindh province (one of four in the country) have enacted a law to address this, but enforcement may take time. Nonetheless, these positive moves could reduce the harrowing data on attacks against press freedom. Muhammad Aftab Alam reports on the challenges to journalists' safety and suggests that Pakistan's NHRI could have a role in both the Sindh province law and the federal legislation.

In the Philippines, journalists' associations and civil society groups have begun working with the NHRI, and the Philippine Plan of Action on the Safety of Journalists (PPASJ) is being implemented with support from the European Union. According to country authors Roby Alampay and Ross Tugade, this may enable stakeholders to collaborate on setting up an independent mechanism on journalists' safety, continuing a process that began after a July 2018 resolution of the Commission for Human Rights to create a "taskforce on media-related extrajudicial killings" with a mandate to monitor and investigate attacks against the Philippine press. The

Commission for Human Rights taskforce already has three regional offices for this work.

“... the establishment and operationalisation of independent multi-stakeholder mechanisms for journalist safety are vital steps for democracies because they ensure the free flow of information by protecting journalists, media professionals and human rights defenders.”

Introduction:

The path to proactive and holistic journalist and media worker safety

No more Band-Aids

In 2012, the national and international media support community working on journalist safety in Nepal was exhausted from facing, year after year, the same problem: attacks on journalists. Following the 2005 coup d'état that dismantled much of the country's once-thriving independent news media, they pledged to find a sustainable approach to promote journalists' safety.¹ Journalists and media workers needed more than just reactive emergency relief. The outcome was the first step towards bringing a range of key stakeholders together to devise a new approach.

Previous international missions had supported journalists displaced from their jobs and had seeded initiatives for exploring media reform and the protection of journalists in need. But as journalists' safety continued to present a major challenge, national stakeholders and members of the international mission began engaging with the NHRI to explore the creation of a mechanism to ensure sustainable security for media and the safety of journalists.

During the 2015 international mission, IMS held discussions with the NHRI and stakeholders on how a national journalist safety mechanism might be structured. Mission members met in Kathmandu and were hopeful that this approach – anchored in Nepal's National Human Rights Commission (NHRC) – was the best way to develop a national institution to protect journalists. Band-Aids were a thing of the past: it was clear that the international community must make every effort to stop threats to journalists by setting up effective national mechanisms to prevent them.

“But why should we only protect journalists? What about our teachers, human rights defenders or any other group?” asked then-NHRC Commissioner Gauri Pradhan, nominated as the contact point for consultations. In response, the

¹ Jones, K. (2005, May 6). Nepal: Out of the Silence. Committee to Protect Journalists. Retrieved June 9 2022, from <https://cpj.org/reports/2005/05/nepal-news/>.

media support community was able to cite the unique role of good journalism in strong democracies, but lacked a ready-made answer given the NHRI's mandate to uphold freedom of expression for all citizens, not just for one group of professionals.

Such was the tone in the early discussions on the formation of the Mechanism for Protecting Freedom of Expression and Safety of Journalists in Nepal, which the NHRC would adopt in 2019.

Planning to partner

Around the same time as the 2012 international mission to Nepal, the media development community began to draft the now-unanimously endorsed roadmap for journalist safety: the UN Plan of Action for the Safety of Journalists and the Issue of Impunity (UN Plan of Action). A key feature of the UN Plan of Action is the promotion of partnership, under the premise that no single sector can provide an enabling environment for journalism. The UN Plan of Action explains clearly why we need a safer world for journalists and media to engender free debate. Also, it urges states, civil society organisations (CSOs) and media to collaborate on ways to end violence against journalists and to punish those individuals who use violence to obstruct the flow of information.

This report focuses on emerging partnerships between media, CSOs and NHRIs in four countries: Indonesia, Nepal, Pakistan and the Philippines. Before looking in detail at the context of each country, the remainder of this section outlines the general structures and functions of NHRIs and why they are trusted allies in the provision of journalist safety.

National human rights institutions: bridging civil society and government

NHRIs are independent state agencies mandated to protect and promote human rights, including freedom of expression. In general terms, they have the necessary authority and resources – depending on public funding – to maintain oversight and report on human rights. Their human rights mandate includes the responsibility to monitor freedom of expression, a basic right of journalists. NHRIs' mandates also include monitoring of intersectional grounds of discrimination on gender, which are key to assessing and combatting violence against women journalists, particularly in countries where gender considerations are often overlooked in the name of culture and traditions. This explains efforts by journalists and civil society to build partnerships and alliances with NHRIs to make journalism safer.

The structures and functions of NHRIs derive from national law guided by the Principles relating to the Status of National Institutions, commonly known

as the “Paris Principles”, endorsed by the UN General Assembly in 1993.² These principles set the international minimum standards for NHRIs, the most important being independence: “independence in law, membership, operations, policy and control of resources”.³

By mandate, NHRIs report on human rights from a national perspective and advocate for them internationally. NHRIs are thus best positioned to assist journalists and media organisations to spotlight violations of freedom of expression of journalists and media and to assist judiciaries in bringing those accused of violations to justice. At a national level, they report to either the head of state or to parliament; at the international level, they engage with the UN Human Rights Council.

Their mandate to protect and promote freedom of expression means NHRIs can anchor the implementation of independent national journalist safety mechanisms. Even though journalists’ associations and civil society groups already protect journalists to some extent, they have been less successful in bringing vulnerable journalists to safety and in challenging individuals who attack media. This has resulted in a state of lingering fear which has had a chilling effect on journalism. An independent mechanism anchored in a country’s NHRI can unite all relevant stakeholders – media, civil society, government agencies and justice administration institutions – to discuss, devise and roll out journalist safety and protection systems. This requires all stakeholders to think beyond their mandates and devise mutually beneficial solutions that may work successfully.

In Nepal, the NHRI has adopted a directive outlining how a journalist safety mechanism might look and how it might operate. In the Philippines, with the support of IMS, the NHRI has started working with journalism and media stakeholders to roll out a national strategy: the Philippine Plan of Action on the Safety of Journalists. The EU-funded IMS programme for the Philippines provides a roadmap through 2022 for assisting the Commission on Human Rights of the Philippines to set up the safety mechanism. In Indonesia, journalist groups and the NHRI are discussing ways to collaborate. In Pakistan, efforts are underway to set up multi-stakeholder mechanisms to protect journalists’ safety under separate laws – one federal and one provincial. So far, however, neither law includes the NHRI as a potential convenor.

2 UN Commission of Human Rights. (1993, December 20). Principles relating to the Status of National Institutions (The Paris Principles). Adopted by General Assembly resolution, 48, 134. Retrieved June 9, 2022, from <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

3 Asia Pacific Forum. (n.d.). Paris Principles. Retrieved June 9, 2022, from <https://www.asiapacificforum.net/paris-principles/>.

How can partnerships be forged?

NHRIs are accorded independence by governments as they are also mandated to oversee its actions on human rights. Since these rights underpin democracy, NHRIs are thus important national institutions whose status can help protect free expression for journalists, media and human rights defenders. Therefore, when journalists and media practitioners work without fear, they can provide the independent and impartial information that NHRIs need to monitor human rights.

NHRIs also have the authority to investigate, report and litigate – depending on national laws – and the power to require other state agencies to uphold human rights. Finally, global and regional alliances and associations of NHRIs provide additional platforms for external advocacy, including to the UN Human Rights Council. These mechanisms can provide the leverage and visibility that attracts international attention and support for journalists' safety.

Dialogue among stakeholders can result in partnerships and a collective understanding of the goals and purposes of collaboration, and of how to develop practical modalities to support the work of such mechanisms. When seeking agreement on the roles and tasks of independent associations and organisations, partners in the mechanism need to determine their respective strengths and how best to apply them. For example, journalists' associations often have wide networks, are the first points of call for journalists in distress and can be useful sources of prime information and for prompt responses. On the other hand, NHRIs take a longer-term approach, such as monitoring the delivery of justice. This is how an independent multi-stakeholder mechanism can enable all concerned – NHRIs, journalists' associations, state agencies and civil society groups including women's rights groups – to continue with their own work while also collaborating on larger goals.

Are national human rights institutions already involved in journalist safety?

Journalists' associations and media freedom and development organisations have always led calls for safety and better working conditions for journalists, with varying degrees of success. Some state agencies have supported their efforts to prosecute violators of media rights but at other times, in the absence of a credible state authority, such help has been lacking. Journalists' associations and civil society groups have been able to provide short-term relief and have used advocacy to highlight the challenges they face, but problems persist and have become more entrenched. This is largely because such groups have difficulty mobilising the police and justice delivery institutions to prosecute and end the impunity enjoyed by predators of the press.

The independent mechanisms envisaged in the UN Plan of Action provide a platform for effective cooperation on journalist safety, especially if the

work of stakeholders is coordinated and led by NHRIs with a focus on protecting freedom of expression and a mechanism to uphold it. Such cooperation can unite all stakeholders – journalists, civil society groups, human rights defenders and agencies involved in the administration of justice – to address the problem.

Finally, collaboration on journalist safety can provide all stakeholders with a credible and more visible platform to spotlight the problem both nationally and internationally while they act to protect those under threat and bring perpetrators to justice. Each country in this report – Indonesia, Nepal, Pakistan and the Philippines – has a poor record on the safety of journalists and freedom of expression, despite the efforts of journalists' associations and civil society groups. This underscores the need for stakeholders in these countries to think beyond traditional, event-triggered responses and work towards establishing a permanent mechanism to engage in safety for journalists of all genders.

Methodology

Inspiration for this project draws from the completion of prior work for the establishment of the Nepal Safety Mechanism for Protecting Freedom of Expression that sits within the Nepal Human Rights Commission (NHRC). Towards the end of 2019, after seven years of efforts through international missions by IMS and other press freedom organisations to support engage the NHRC, a breakthrough materialised that led to approval of a directive on the formation of this independent safety mechanism and next steps. This experience in Nepal provides a roadmap example of how a long-term view for development and persistent dialogue can lead to tangible success.

The other countries studied in this report – Indonesia, Pakistan and the Philippines – were selected because of IMS’ programmatic presence in these countries and interest to keep focus in Asia for the promotion of best practice sharing in the region. This research was drafted to serve as a foundation for peer-to-peer workshops between national human rights institution (NHRI) stakeholders and civil society leaders concerning the role of NHRIs as strong allies and anchoring institutions behind efforts to strengthen the safety of journalists and freedom of expression.

The authors selected to write the country chapters were located in-country at the time of drafting. They are each specialists in media and communication and were chosen based on IMS’ experience in regional Asia and working relationships it had with the candidates.

Each researcher was provided the same terms of reference that outlined the parameters of the study. The authors reviewed existing literature on the subject, carried out interviews with informants and drew upon their knowledge of the countries concerned to undertake the research. First drafts were reviewed by the lead researcher and IMS, following which the authors finalised the country reports. The final versions were compiled into one document in alphabetical order, closing with recommendations and revised for context and consistency. The output was peer-reviewed and copy-edited.

This report acknowledges that NHRIs are defined as independent, but achieving full independence is a challenge if an NHRI’s budget is controlled by the state. It also acknowledges that the mandates of NHRIs also vary depending on the country where they operate – many have general human rights mandates, while others are more specialised. In summary, this report appreciates that not all NHRIs are the same, but their statutory origins make them unique candidates to establish independent journalist protection mechanisms.

Regarding the definition of a journalist, the 2012 UN Plan of Action on the Safety of Journalists and the Issue of Impunity – the unanimously-endorsed cross-sectoral roadmap for journalist safety – recognises those working formally working as journalists in addition to community media workers, citizen

journalists and others who may use new media to reach their audience. This publication accordingly uses the term “journalist” to refer to all individuals, of all genders, and to all institutions involved in the production and distribution of news and information, including media workers who might not necessarily write or produce content, and to individuals (citizen journalists/informants) producing and sharing online any information about current affairs.

Indonesia

by Lestari Nurhajati

Background

Indonesia is one of the world's most populated democracies and home to more than 270 million people. Journalists work in each of the country's 34 provinces. Estimates suggest that more than 120,000 individuals practice a form of journalism, but only 17,000 are verified by the Press Council—the main instrument for cultivating media professionalism and safeguarding press freedom.⁴

Indonesia recognises the press as the fourth pillar of democracy but falls short in terms of protecting journalists and media workers; journalist safety and journalist welfare both remain major challenges that constrict freedom of expression. Media companies rarely support journalists when they face work-safety issues, violence and/or legal harassment, even though Law No. 40 of 1999 on the Press provides for legal protections and obliges companies to ensure their welfare.⁵

The Alliance of Independent Journalists (AJI), along with several institutions supported by IMS, has launched a multi-stakeholder initiative to mitigate violence and ensure the safety of journalists and media workers. On 5 April 2019, at the Press Council in Jakarta, these groups announced the formation of a Committee for Journalists' Safety (KKJ), which seeks to mitigate violence and attacks on journalists and media workers.⁶ The Committee's goals are to protect them, to advocate against a culture of impunity and to bring perpetrators of violence to justice.

The Committee for Journalists' Safety is a coalition of 10 press and civil society organisations (CSOs). It consists of: AJI, Press Legal Aid Agency (LBH Pers), Safenet, Indonesian Television Journalist Association (IJTI), Indonesian Legal Aid Foundation (YLBHI), Indonesian Cyber Media Association (AMSI), Federation of Independent Media Worker Unions (FSPMI), United Media Workers and Creative Industry for Democracy (SINDIKASI) and Amnesty International.

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- 4 Romano, A., and Prasetyo, S. A. (2021). A press council with exceptional powers. *The Global Handbook of Media Accountability*, 33.
 - 5 National Law of the Republic of Indonesia (1999, September). *Undang-Undang Tentang Pers [Law No. 40 of 1999 on the Press]*. Retrieved June 9, 2022, from https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=77117&p_classification=01.05
 - 6 Alliance of Independent Journalists, and Duillah, I. (2019, April 6). *Community Declare Committee for Journalists Safety* [Press release]. Retrieved June 9, 2022, from <https://aji.or.id/read/press-release/923/community-declare-committee-for-journalists-safety.html>

The Press Council, then chaired by Yosep Adi Prasetyo (2016-2019), was fully supportive of the Committee for Journalists' Safety but backing has dwindled since a new chairperson and members took office on 21 May 2019. In Indonesia, there is no guarantee of policy implementation in organisations such as the Press Council, where continuity depends on the profile and commitment of office holders. Implementation of even written agreements can be uncertain following a change in leadership.

The Committee for Journalists' Safety will require the continued involvement of many journalists' organisations and CSOs to enhance the reach, visibility and effectiveness of collaborative effort. The Committee is a voluntary civil society movement; for it to grow into a fully-fledged mechanism will require extended collaboration with organisations sharing the same interests in – and experience of – journalists' safety and protections. The Committee for Journalists' Safety has had fair time to develop but many members with low capacity still rely on members of higher capacity for their safety.

Violence against journalists in Indonesia has continued even though there are legal provisions intended to create an enabling environment for journalists and media to work freely and without fear. There are several independent institutions whose functions relate to journalists' safety and protection: the Press Council (Press Law, 1999), National Human Rights Commission (NHRC) (Human Rights Law, 1999) and the National Commission on Violence against Women (Under Presidential Regulation 181/1998. However, as data reveals, violence against journalists and media workers has continued (Table 1).

The most recent piece of legislation that can serve to promote journalist safety is the Sexual Violence Crime Bill which passed into law on 12 April 2022.⁷ This long-awaited bill provides for increased protection against gender-based violence and provides a trust fund for victims.

This chapter discusses the role, contributions and potential of different independent institutions in the proposed national mechanism for journalists' safety. It focuses on the budding involvement of the NHRC. It also assesses the NHRC's current engagement on journalists' safety and protection, suggests the NHRC could engage in the proposed safety mechanism and outlines how the national safety mechanism might address gendered threats and the safety of women journalists.

“... but many members with
low capacity still rely
on members of higher capacity
for their safety.”

7 Widiyanto, S. (2022, April 12). Indonesia's parliament passes landmark bill on sexual violence. *Reuters*. Retrieved 27 June 2022, from <https://www.reuters.com/world/asia-pacific/indonesias-parliament-passes-landmark-bill-sexual-violence-2022-04-12/>.

Table 1: Violence against journalists in Indonesia recorded by the Committee for Journalists' Safety (KKJ)

In its first two years (2019-2020), the Committee for Journalists' Safety (KKJ) handled 27 cases of violence against journalists. In two cases, the victims were women.

Type of case	Background of case	Notes
Physical attack	In May 2019, 20 journalists were attacked during a mass protest opposing the national election result in Jakarta.	Four cases were reported and supported by KKJ.
Physical attack	In September 2019, 15 journalists were attacked during a mass protest against UU KPK (Corruption Eradication Commission's Law) in Jakarta.	Three cases were reported and supported by KKJ.
Physical attack	In September 2019, three journalists were attacked during a mass protest against UU KPK (Corruption Eradication Commission's Law) at Makassar.	KKJ supported all three cases.
Doxing	In September 2019, a journalist was harassed and attacked on social media.	KKJ provided a safehouse for the journalist.
Physical attack	In September 2019, an Indonesian journalist was shot during a mass protest in Hong Kong.	KKJ supported in the advocacy of the case.
Detention/Legal charges	In early 2020, a journalist from the US was detained by Indonesian Immigration in Palangka Raya for using a business visa to cover stories.	KKJ supported in the advocacy of the case.
Detention/Legal charges	On 30 January 2020, a journalist in Makassar, was detained by the local police for his stories.	KKJ supported in the advocacy of the case.
Detention/Legal charges	A journalist from Banjarhits/Kumparan.com was detained for his stories.	KKJ supported in the advocacy of the case.
Doxing and physical abuse	On 26 May 2020, a journalist experienced intimidation, doxing and threats because of his stories.	KKJ supported in the advocacy of the case.
Physical abuse	Several journalists experienced intimidation while covering the COVID-19 pandemic.	Two cases were reported and supported by KKJ.
Detention/Legal charges	Three student journalists in Makassar were arrested while covering a protest by the fishing community in Kodingareng, Makassar.	KKJ supported all three cases.
Physical abuse	Several journalists were abused physically while covering a protest against the job creation law.	KKJ supported the advocacy of the case.



National Human Rights Commission as anchor for journalists' safety

The National Human Rights Commission of Indonesia (NHRC) was formed under Law No. 39 of 1999 on Human Rights and is an independent institution with a similar status to other prominent regulatory bodies such as the Corruption Eradication Commission (KPK) and General Election Commission (KPU). It has quasi-judicial authority, and its functions include monitoring and research, making recommendations, conducting investigations, counselling and mediation.

In carrying out its functions, duties and powers, the NHRC is guided by both national and international human rights instruments. The national instruments include the 1945 constitution and its amendments; People's Consultative Assembly Decree No. XVII/MPR/1998; Law No. 39, 1999 concerning Human Rights; Law No. 26 of 2000 concerning Human Rights Courts; Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination; Law No. 7 of 2012 concerning Social Conflict Management. The relevant international instruments are the 1945 UN Charter; the 1948 Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the

Peaceful action of press organisations in Palembang, South Sumatra, demanding justice and freedom of the press on 1 April 2021. (Photo by Adam Rachman/Pacific Press/LightRocket via Getty Images)

International Covenant on Economic, Social and Cultural Rights (ICESCR). Indonesia has ratified both the ICCPR and ICESCR.

The Paris Principles set the minimum standard for NHRIs and, when compared against these principles, Indonesia's NHRI must improve in several ways.

According to the Paris Principles, independence is the most important requirement. This needs strengthening in Indonesia, especially in terms of financial autonomy. The budget allocated to the Commission offers inadequate support for optimal functions. Likewise, the secretariat's budget management mechanism is inflexible since it is based on the government's financial rules. This has undermined the Commission as an independent agency that should be more flexible, dynamic and responsive to human rights violations, particularly against journalists and media workers.

The Commission's independence also needs strengthening as regards the appointment and dismissal of members. By law, NHRC commissioners must be vetted by parliament. The House of Representatives (DPR) Commission III conducts a "fit and proper" test by assessing the record of accomplishment, integrity, vision, mission, understanding of human rights and the ability of each candidate to answer five questions. A score from one to 100 is allotted with the passing grade set at 75. After DPR approval, candidates are appointed by the President. This process appears robust on paper, but some appointments have been influenced by the dominant political interest.

Furthermore, the NHRC is led by a Secretary-General (*Sekjen* in Bahasa Indonesia, the national language) and all staff are civil servants who depend on the government for their careers and whose long-term loyalty may compromise the independence of the Commission by rendering it vulnerable to government intervention.

NHRC commissioners have a tenure of five years. Since its establishment in 1993, there have been six different teams: from 1993-1998, 1998-2002, 2002-2007, 2007-2012, 2012-2017, and 2017-2022. The Commission has seven commissioners assigned to the following two sub-commissions:

- Sub-Commission for the Advancement of Human Rights with assessment and research functions.
- Human Rights Enforcement Sub-Commission with monitoring/investigation, and mediation functions.

At the time of writing, the seven serving NHRC commissioners had been selected after rigorous screening in several stages. First, before the end of their duties, the incumbents hold a plenary session to elect members of the selection committee. Under Article 79 paragraph (1) of Law No. 39 of 1999 concerning Human Rights, seven selection committee members are appointed. The members of the selection committee have historically reputable standing in academia or government. After the appointment, the President authorises the committee to carry out the selection, starting with publicly announcing the positions through mass media.

The screening includes administrative selection processes and psychological tests, including a final interview.⁸ The 14 candidates nominated by the selection committee are then vetted by the DPR. The DPR selects seven from the 14, who are then appointed by the President. One woman and six men commissioners are serving from 2017 to 2022: Sandrayati Moniaga, Ahmad Taufan Damanik, Munafrizal Manan, Amiruddin, Beka Ulung Hapsara, Hairansyah and M. Choirul Anam.

Although each commissioner at the NHRC has formal duties and responsibilities, in practice they are free to carry out human rights work depending on their interests and specialisations. According to Commissioner Beka Ulung Hapsara and a focus group with the Journalists' Safety Committee, each NHRC commissioner has a different approach to human rights.⁹ Generally, a commissioner's performance will tend to be influenced too often by the interests of whichever political community supports them, rather than by the interests of the NHRC.

In general, the NHRC has always had at least one commissioner working on freedom of the press and journalists' safety. This provides a possible point of entry for discussing the proposed safety mechanism with the Commission. Many stakeholders have expressed willingness to work with the NHRC on journalists' safety, including professional journalists' associations (AJI, PWI, Sindikasi, IJTI, AMSI), the Press Council and the Committee for Journalists' Safety.

Hapsara is among the commissioners with an interest in journalists' safety. He has voiced various concerns about their work environment and spoken out on their behalf when they faced problems. He routinely coordinates his efforts with the CSO-led Committee for Journalists' Safety.

The members and chairperson Sasmito Madrim of the Committee for Journalists' Safety have been communicating with the Commission through Hapsara, who is committed to supporting the Committee and to facilitating meetings with the Indonesian police force, to ask the latter to issue a departmental circular on protecting journalists at risk.

8 National Commission of Human Rights, Indonesia. (2016, September 8). Peraturan Komisi Nasional Hak Asasi Manusia Nomor 3 Tahun 2016 [The National Commission on Human Rights Regulation No. 3 of 2016]. Retrieved June 9, 2022, from <https://www.komnasham.go.id/files/1480306265-peraturan-komnas-ham-tentang-pembentukan-5T8HDD0.pdf>

9 Personal interview conducted by author on 28 April 2021.

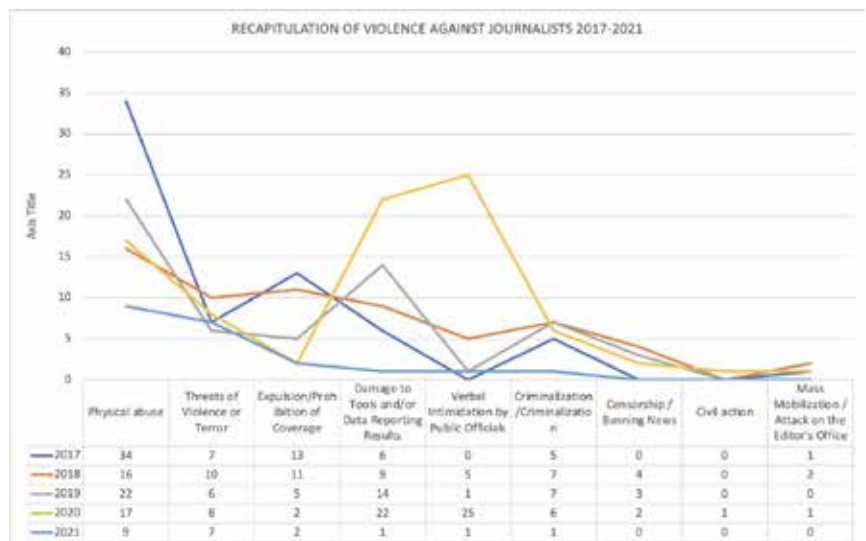
Civil society organisations’ efforts to address journalists’ safety

The independence of the NHRC is underpinned by law but in practice relies on the commissioners’ desire to function independently. This means it may not be easy to set up a special mechanism on the safety of journalists under the existing legal mandate of the Commission. There is no provision for such a mechanism in the law (No. 39 of 1999 on Human Rights), which would therefore need to be amended, itself a lengthy process requiring government proposal and parliamentary approval.

As a pragmatic alternative, Hapsara suggests advocating for amendments to Law No. 40 of 1999 on the Press in Indonesia, although that move would risk existing protections being downgraded. This absence of clear legal provisions for a safety mechanism prompted CSOs to come together and form the Committee for Journalists’ Safety, which monitors violations of media rights and advocates for an independent mechanism to protect journalists’ safety and free expression.

Before the Committee for Journalists’ Safety was established in 2019, independent CSOs – such as AJI and the Press Legal Aid Institute (LBH Pers) – reported and handled cases of violence against journalists. Former LBH Pers Director Nawawi Bahrudin (2012-2018) says the organisation dealt with three types of cases: violence against journalists while reporting, violence after the publication or broadcasting of news and violence related to the effects of unethical journalism, particularly when swift redress was seen to be lacking. Bahrudin adds that field investigations were often necessary to confirm and factcheck complaints before legal action could start. AJI and LBH Pers are the main sources of data on violence against journalists in Indonesia.

Figure 2: Records of violence against journalists



Safety of journalists in Indonesia has largely been gender-blind, which also explains the lack of segregated data on attacks against journalists. Existing data is also a result of CSOs' efforts because journalists' safety has yet to become a concern of state agencies, including the NHRI.

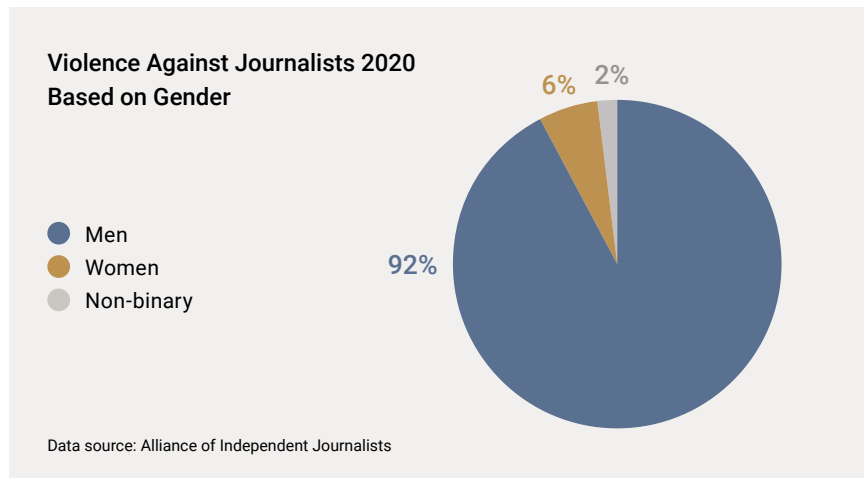
Despite institutional challenges, recent efforts by some NHRC commissioners to support press freedom and journalists' safety have been encouraging and influential, as shown by the Commission's denunciations of violence against journalists each time an attack has occurred. These moves have both helped journalist groups to build public support for their advocacy against such attacks and encouraged them to expect that the NHRC will be engaged in any mechanism that protects their safety and ends the culture of impunity for perpetrators.

Gender concerns and journalists' safety

The proposed safety mechanism is still in its formative stages, offering an opportunity to ensure that it accounts fully for gender concerns and the inclusion of relevant women representatives and rights organisations, which often tend to be overlooked. A member of the Committee for Journalists' Safety, Musdalifah Fachri, says the Committee has not yet specifically discussed cases of violence, harassment or threats experienced by women journalists and lacks a clear gender policy. This is evident in its monitoring report on violence against journalists, which omits gender-based violence.

In these first steps, members of the Committee for Journalists' Safety will focus on ways to integrate gender concerns. So far, challenges include frequent rotation and/or changes in representation at meetings, making it difficult to assess the Committee's gender balance. This could be corrected by having a policy to ensure that organisations nominating members to the Committee meetings also include women.

It is important to include a gender focus in such a mechanism not only because the 2020 AJI data shows that women journalists are increasingly targets of violence online and offline, but also because attacks against them are often different to those faced by men journalists. Even though men journalists still face a higher number of physical attacks, women journalists face sexual harassment and threats both online and offline. Also, in societies with stricter cultural expectations of women, it is difficult to quantify whether the attacks are against women in general or against women who are journalists. These and other questions merit consideration when building a gender-sensitive mechanism.



Regarding the prevalence of gender-based harassment, a 2020 AJI survey found that 25 out of 34 respondents (31 women, three men) had experienced some form of sexual abuse or violence.¹⁰ Among the respondents, 15 had faced abuse after office hours which was linked to their reporting, including eight instances in the office itself. One respondent had been abused at a press gathering.

National Human Rights Commission as potential host of a mechanism on journalists' safety

The quasi-judicial authority of the NHRC makes it a candidate for hosting the proposed national mechanism for journalists' safety in Indonesia. As a statutory state agency, it has a legal mandate to protect and promote human rights, which is directly related to protecting freedom of expression.

The NHRC functions under four laws – Law No. 39 of 1999 on Human Rights, Law No. 26 of 2000 on Human Rights Courts, Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination and Law No. 7 of 2012 on the Handling of Social Conflict. But none of these laws specifically address the safety and protection of journalists. In practice, since journalists reporting in the public interest can be regarded as human rights defenders, any obstacle affecting their ability to work freely and without fear is a violation of freedom of expression – a human rights concern that falls under the purview of Law No. 39 of 1999 on Human Rights. Representatives of both the Committee for Journalists'

10 AJI Jakarta (2021, January 27). *Survei Kekerasan Seksual di Kalangan Jurnalis: Perlu Ada SOP Kekerasan Seksual yang Komprehensif* [Press release]. Retrieved June 9, 2022 from <https://ajijakarta.org/2021/01/27/survei-kekerasan-seksual-di-kalangan-jurnalis-perlu-ada-sop-kekerasan-seksual-yang-komprehensif/>.

Safety and the NHRC agree that this would be the most appropriate legislation to address the protection and safety of journalists.

In general, the NHRC of Indonesia takes two main approaches to resolving cases related to human rights abuses: 1) through a judicial route including criminal sanctions and 2) through mechanisms outside criminal prosecution (reparations, reconciliation and compensation). Each approach could also be used for addressing journalists' safety, although bureaucracy might delay the process.

The NHRC is the main institution mandated to investigate gross human rights violations. In addition, Indonesia also has the Witness and Victim Protection Agency (LPSK), whose mandate is to protect the rights of victims of gross violations of human rights and to provide protection to victims who are witnesses in criminal cases, including journalists. The combined authorities of these two agencies are matters for discussion – and decisions – when seeking an institutional fit for an independent national mechanism on the safety of journalists and free expression in Indonesia.

Indonesia witnessed gross human rights violations during the New Order era (1966-1998), but some violence also occurred at the start of the reform transition period.¹¹ An entrenched culture of impunity means redress has always faced obstacles and many past cases of severe human rights violations, long since brought before the NHRC, remain in limbo. In addition, research shows the NHRC to have been ineffective, despite its authority, at resolving gross human rights violations because its decisions are not legally binding and litigation on such cases must be taken up by the Attorney General's office, which has not always viewed them with the same urgency as the NHRC does.¹²

How the National Human Rights Commission works

The NHRC's involvement in a case typically begins with complaints from the public, which are then investigated. Thereafter, the Commission makes recommendations to law enforcement officials – namely the prosecutor, police and government – for resolving human rights violations.

This process is undermined by the Commission's lack of any clear and firm authority and by the fact that its recommendations are not legally binding. For example, some cases of gross human rights violations recommended for legal action have prompted neither in-depth investigations nor timely prosecutions by the Attorney General's Office. As provided by Law No. 26 of 2000 on

11 For example, the military emergency in Aceh lasted until 2005 and violence against civilians in Papua occurred in 2001 in Wasior, in 2003 in Wamena and in 2014 in Paniai

12 Firmandiaz, V., and Husodo, J. A. (2020). *Penyelesaian Kasus Pelanggaran Hak Asasi Manusia Berat Di Indonesia Oleh Komisi Nasional Hak Asasi Manusia Ditinjau Dari Kewenangannya (Studi Kasus Timor-Timur)* [Resolution of Cases of Gross Violations of Human Rights In Indonesia By The National Commission On Human Rights Reviewed From Its Authority (Timor Case Study)]. *Res Publica*, 4(1), 92-105.

Human Rights Courts, the Commission is a *pro justitia* investigator,¹³ but has no authority to require the Attorney General's Office to pursue its investigations or recommendations.

As Coordinator of the Sub-Commission for Human Rights Advancement and Commissioner for Education and Counselling, Beka Ulung Hapsara agrees that the Commission could do better. He adds that many past cases of human rights violations have not (and cannot) be resolved by the Commission alone.¹⁴ The NHRC's inability to influence resolution of such cases has led many to question the rationale for having the institution in the first place. In 2019, the NHRC recommended 15 cases of gross human rights violations to the Attorney General's Office for prosecution, of which only three – all relatively old cases – were resolved, namely the Tanjung Priok case from 1984, the East Timor case from 1999, and the Abepura case from 2000.¹⁵

The vast geographical area of Indonesia also limits the NHRC's ability to maintain effective oversight on human rights. The country is an archipelago covering some 1,905 million square kilometres, with 98 cities, 34 provinces, and 416 districts. Based in the capital Jakarta, the NHRC has the authority to establish regional offices but so far has only six: West Kalimantan, West Sumatra, Papua, Aceh, Ambon and Palu.¹⁶ This level of representation is inadequate for addressing the needs of a huge country, in terms of maintaining a visible and effective presence on the ground.

The last Universal Periodic Review (UPR) for Indonesia was conducted in May 2017 and raised several human rights issues, including the rights of women and children, and police brutality. The UPR recommendations highlighted Indonesia's failure to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and the Rome Statute of the International Criminal Court, among others.¹⁷ Indonesia's reply supported the UPR recommendations, but no ratification has occurred to date.

13 A Latin phrase meaning "on behalf of justice".

14 Includes major cases such as the Kedung Ombo case, the Lampung case, the shooting of Trisakti students, the May 1998 riots, the Lapindo case, the loss of voting rights in general election 2009, the case of Mesuji, Bima, and others.

15 Erdianto, K. (2019, November 7). Dari 15 Kasus pelanggaran HAM berat, hanya 3 perkara yang tuntas. *Kompas.Com*. Retrieved June 9, 2022, from <https://nasional.kompas.com/read/2019/11/07/14015421/dari-15-kasus-pelanggaran-ham-berat-hanya-3-perkara-yang-tuntas>.

16 Karisma, L. G. M., and Ariana, I. G. P. (2016). Kedudukan Komisi Nasional Hak Asasi Manusia Sebagai Lembaga Negara Independen Dalam Sistem Ketatanegaraan Indonesia [The position of the National Commission on Human Rights as an Independent State Institution in the Indonesian Constitutional System]. *Bagian Hukum Tata Negara Fakultas Hukum Universitas Udayana, Bali: Tanpa Tahun*.

17 United Nations Human Rights Treaty Bodies (n.d.). *UN Treaty Body Database*. Retrieved June 9, 2022, from https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN

Designing a gender-sensitive national safety mechanism for journalists

The NHRC reports on gender indicators generally. The NHRC published data on human rights includes a category on women's rights and women victims.¹⁸ However, data on violence against journalists does not report separately on violence faced by women journalists. Instead, all violence against journalists is reported under violations of freedom of expression.

In Indonesia, a similar but specialised institution deals with cases of violence against women: the National Commission on Violence against Women (*Komnas Perempuan*). As a state institution, it functions like the NHRC – its effectiveness depends on the capacity and commitment of 15 individual commissioners for the 2020–2024 period, and it makes recommendations to the government. In its annual reports for 2017–2020, the Commission cites few cases of violence against women journalists: one case in 2015, one in 2017 and two in 2019. This relatively small number does not necessarily correlate to gender equality as underreporting is more likely. Furthermore, the reports do not make specific recommendations on these cases.

The continued violence against journalists and the lack of a proper mechanism to address it presents an opportunity to develop a gender-sensitive national safety mechanism for journalists, wherein all institutions with related authority could be brought together in a collaborative institution, including journalists' associations and HRDs. According to a member of the National Commission on Violence against Women, Mariana Amiruddin, the institution has supported journalist organisations such as AJI and has followed up on reports of violence against women journalists.

Amiruddin adds that a gender-sensitive mechanism could be beneficial because the types and intensity of violence against women often differ – they face more online harassment and sexism than their male peers. She says that when women, including journalists, face threats or harassment for expressing themselves, the Commission would be willing to raise such issues if journalists' associations could keep it informed on specific cases and general trends.

Like the NHRC, the National Commission on Violence Against Women is well positioned to amplify the concerns of journalists. However, since the setting up of institutions requires a lot of time and resources, a question arises: could a single mechanism pay adequate attention to gender concerns and inclusion? The way forward could be an arrangement for close collaboration between agencies, such as the National Commission on Violence Against Women and the NHRC, in pursuit of a single, gender-sensitive mechanism that would allow different agencies to exert their influence.

18 National Commission on Human Rights, Indonesia. (n.d.). *Smart Map*. Komnas HAM. Retrieved June 9, 2022, from <http://dataaduan.komnasham.go.id/#/dashboard>.

As a member of the Committee for Journalists' Safety, AJI has begun focusing on gender concerns but needs support. Head of AJI's Women, Gender and Children Division Nani Afrida says that integrating gender into its programmes is problematic because the internal level of understanding of gender perspectives requires strengthening. AJI is preparing a standard operational procedure for handling cases of violence against women journalists, which would apply to AJI members.

The way forward

The different legislations that guide the operations of the NHRC – Law No. 39 of 1999 on Human Rights; Law No. 26 of 2000 on Human Rights Courts, Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination and Law No. 7 of 2012 on the Handling of Social Conflict – do not categorically provide for protection and safety of journalists. But a safety mechanism for journalists and CSOs falls under the mandate of the human rights watchdog because journalism is an extension of the freedom of expression – a basic human right. Freedom of expression is also important for all HRDs.

Furthermore, the laws do not allow the NHRC to initiate legal action against those alleged to have committed violence against journalists; it can only recommend that the police and Attorney General pursue such cases. Although this provision inhibits the NHRC's ability to take up the issue of journalist safety and protection, it also offers an opportunity to initiate multi-stakeholder discussions – with journalists, police, the Attorney General's office and the National Commission on Violence Against Women – to seek agreement on the need for a mechanism to protect journalists and then devise inter-organisational systems to bring perpetrators to justice.

The NHRC cannot initiate legal action in cases of violence against journalists, but should, at the very least, investigate and record such experiences and publish the resulting data – disaggregated by gender, age and region amongst other categories – in its annual reports. Mandate permitting, it could also secure evidence and provide protection. To date, none of the NHRC's annual reports contains information on violence against journalists, despite the efforts of some commissioners to raise the issue.

For example, the annual reports of 2017, 2018 and 2019 do not report any cases of violence against journalists. However, change may be in the air: the NHRC's 2020 report to the government says, "Violence was also experienced by at least 38 journalists when covering rallies where 13 people were allegedly intimidated." There is no further analysis, explanation or recommendation.¹⁹

19 Komnas HAM. (2021, August). Performance of government agencies (LKIP). *Annual Report 2020*, p. 13, 6. Retrieved June 9, 2022, from <https://www.komnasham.go.id/index.php/laporan/2021/08/30/84/laporan-tahunan-komnas-ham-ri-tahun-2020.html>.

LBH Press partners' recommendations and verifications of regional events are crucial for following up on attacks against journalists and building legal cases against alleged perpetrators. AJI's extensive regional network is also helpful in monitoring such incidents on the ground.

Interviewed for this report, one NHRC member suggested that the journalist safety mechanism could be placed at the Press Council since it is mandated to oversee the implementation of Press Law No. 40 of 1999, which includes legal protection for journalists. This idea needs further discussion because protecting freedom of expression and human rights defenders (including journalists) is part of any NHRI's core mandate. Press Council Regulation Number 1/Regulation-DP/III/2013²⁰ also attempts to address concerns and offer guidelines for handling cases of violence against journalists. That regulation proposes that the Press Council and professional journalist organisations might form a taskforce to implement Guidelines for Handling Cases of Violence Against Journalists. No taskforce has been formed, but stakeholders could still discuss this idea.

In the monitoring and reports of the NHRC and the Committee for Journalists' Safety, little or no attention is paid to a gendered perspective. Similarly, while the National Commission on Violence against Women has included attacks against women journalists in its reports, the safety of women journalists – in terms of monitoring and protection – warrants more coverage. This is another compelling reason for further consultations among stakeholders, so that they might agree on ways to apply their core strengths in creating the national mechanism for journalists' safety.

The following recommendations could help to set up an independent, gender-sensitive mechanism on the safety of journalists in Indonesia:

- 1. Promote informal, civil society-led approaches to address both the immediate safety of journalists and concerns about perpetrator impunity while continuing dialogues with state institutions to seek their participation and support.** The informal system refers to dispute resolution mechanisms outside the formal system. The precursor of a fully-fledged mechanism for journalist safety could therefore include partnerships with the NHRC and the National Commission on Violence Against Women, despite these institutions' limitations. CSOs have formed partnerships but NHRC's participation in the safety mechanism has been voluntary rather than the result of its duty to protect freedom of expression. As a first step towards a national mechanism, the NHRC could engage with the journalists' safety committee to jointly monitor cases of violence against journalists and prepare reports for

20 Press Council Indonesia. (2013, March 15). *Press Council Regulation Number 1/Regulation-DP/III/2013*. Retrieved June 9, 2022, from https://dewanpers.or.id/assets/documents/peraturan/1907030647_2013_Peraturan_DP_NO_01_TTG_PEDOMAN_PENANGANAN_KASUS_KEKERASAN_TERHADAP_WARTAWAN.pdf.

sharing on different platforms. Such collaboration could create the conditions for building understanding and support for a fully-fledged mechanism. Additional state agencies also need to be consulted for possible participation in a mechanism, particularly justice administration agencies such as the police and the Witness and Victim Protection Agency (LPSK).

2. **Engage with the National Commission on Violence Against Women in the proposed mechanism.** This agency can provide input on strengthening gender concerns. As the National Commission on Violence Against Women is already working to prevent violence against women, formal collaboration with the Commission could help to ensure that gender concerns are included in the formative stages of the national journalist safety mechanism. Further, since other state agencies that could support the mechanism have not been fully consulted, the best way to take the idea forward would be to intensify talks with them. This would also mean including justice administration agencies to arrive at an institutional framework that can produce results without duplicating effort.
3. **Indonesia is in the early stages of forming its mechanism on journalists' safety and thus well positioned to learn from regional countries whose mechanisms are active or more developed.** For example, any institutional arrangement for journalists' safety must be fully gender-responsive, so consultations with women's rights groups and HRDs working on gender and social inclusion in neighboring countries could be key. Regional consultations could help address intersectionality, wherein the experience of violence and threats against journalists can vary for different social groups.

Nepal

by Binod Bhattarai

Background

Nepal began democratising in the early 1990s, but a violent conflict, and major changes in the country's administrative structure interrupted this process. After Nepal's 2015 constitution took effect, Nepal transitioned from a constitutional monarchy to a federal republic. The country now has a federal government, seven provincial governments and 752 local governments.

Attacks against journalists increased during the Maoist-Government conflict (1996-2006) and culminated after the coup by Nepal's last reigning monarch King Gyanendra, who began ruling as Chair of the Council of Ministers in February 2005. The coup triggered protests by pro-democracy political parties, civil society and media, which led to the abolition of the monarchy in 2008 and the start of a protracted, ten-year transition to the new constitution.

During the conflict, concerns rose about the safety of journalists. Attacks had increased sharply: journalists were threatened, harassed, abducted and even killed. Since the new constitution of 2015, attacks against journalists persist but have become less frequent.

Since 2004, the Federation of Nepali Journalists (FNJ) has reported on threats to and the harassment of journalists and remains the primary institution monitoring these attacks in Nepal. It is also the country's largest association of journalists, with branches in all districts and more than 14,000 members including approximately 1,600 women. Representation of women journalists remains low in the FNJ, although 12 sit on its 49-member executive committee and one on the three-member accounts committee elected in 2020 – all elected through seats reserved for women. FNJ's monitoring data has included "gender violence" as a category since 2015, but the past five annual reports record no such violence – this reflects major lapses of monitoring, including in capacity. The lack of data could also indicate that few women reported such cases, given the typically sensitive nature of violence against them, and had little confidence that their complaints would be handled confidentially.

“Attacks had increased sharply: journalists were threatened, harassed, abducted and even killed.”

IMS began working in Nepal within weeks of the 2005 royal coup d'état.²¹ IMS formed a partnership of key stakeholders – including the international press and freedom of expression support organisations – to promote media freedom. They launched their activities with a fact-finding visit by the International Federation of Journalists (IFJ), followed by several joint international missions²² starting in July 2005. Before the seventh mission (February 2012), members deliberated on establishing a locally-led, independent mechanism to address the safety of journalists, enhancing their professional development and challenging the culture of impunity for enemies of the press.

The mission's report urged Nepali stakeholders “to set up a high-level independent taskforce with a mandate to take action to address the culture of impunity, including by carrying out transparent investigations of serious cases and working with the authorities to ensure that convictions are secured.”²³ The mission called on the National Human Rights Commission (NHRC) to play a key role. In time, these ideas would seed advocacy to set up an independent mechanism for protecting journalists and media, a process that began after a formal request from the FNJ to the NHRC during the 2012 mission.

This chapter documents the efforts leading to the NHRC's approval of the directive to form an independent mechanism on protecting free expression, including the safety of journalists, in Nepal. It is based on published and grey literature from different projects implemented by UNESCO Kathmandu, IMS and their partners between 2012 and 2018.

Nepal's new constitution and media freedoms

Nepal approved a new constitution in September 2015. However, even though the constitution contains guaranteed protections for free expression, it includes several vague and restrictive clauses that do not meet international standards. The wording of the restrictions related to freedom of opinion and expression (see excerpt below, from article 17) contain provisions on media freedoms – including the “right to communication” – and the same wording appears in draft bills and laws promulgated after 2018:

21 International Federation of Journalists (IFJ). (2005, February 17). IFJ mission releases preliminary findings on media conditions in Nepal. Retrieved June 14, 2022, from <https://www.ifj.org/fr/salle-de-presse/nouvelles/detail/article/ifj-mission-releases-preliminary-findings-on-media-conditions-in-nepal.html>.

22 The International Missions included representatives from AMARC, ARTICLE 19, Centre for Law and Democracy (CLD), Committee to Protect Journalists (CPJ), International Federation of Journalists (IFJ), International News Safety Institute (INSI), International Media Support (IMS), International Press Institute (IPI), Internews, Open Society Foundations (OSF), Reporters sans Frontières (RSF), South Asia Free Media Association (SAFMA), South Asia Media Solidarity Network (SAMSAN), and UNESCO.

23 International Media Support (2012, March). International Fact Finding and Advocacy Mission to Nepal: 23-27 February 2012 [Report]. Retrieved June 14, 2022, from <https://www.mediasupport.org/publication/international-fact-finding-and-advocacy-mission-to-nepal-23-27-february-2012/>

2. Every citizen shall have the following freedoms:
 - a. Freedom of opinion and expression

...

Provided that,

Nothing in section (a) shall be deemed to prevent the making of an Act to impose reasonable restrictions on any act which may undermine nationality, sovereignty, independence and indivisibility of Nepal, or federal units, or jeopardises the harmonious relations subsisting among the people of various caste, ethnicity, religion or communities, or incites racial discrimination, or untouchability, or disrespects labour, or any act of defamation, contempt of court, or an incitement of offence, or is contrary to decent public behaviour or morality.

The elected government of 2018 tried, until it was replaced in 2021, to amend several laws relating to media despite opposition from journalists' and civil society groups whose members feared that the same vague terms in the constitution would be replicated in the media laws, as was the case with other new legislation. At the time of writing, media laws remain unchanged.

The path to establishing a safety mechanism

Nepal's NHRI accepted the idea of hosting a multi-stakeholder mechanism but remained unconvinced by several issues that required clarity. Given that several civil society initiatives were already working on journalist safety, it was thus important to explain why the new mechanism was essential, a point resolved through many consultations on early drafts of the concept note. The next step was to prepare rules of procedure on how the intended mechanism would function. Participants in the consultations noted that it might be possible under Section 32 of the NHRC Act 2012, specifically regarding Power to Frame Rules, Procedures and Directives, which says:

- The Commission may frame necessary Rules to fulfil the objectives of this Act. Among such Rules, while framing the Rules involving monies to be charged on the Government of Nepal, it shall have to seek approval from Ministry of Finance.
- The Commission may formulate and implement necessary procedures or directives to carry out its functions in a well-organised way (unofficial translation).²⁴

²⁴ Nepal Law Commission. (2012, January 21). National human rights commission act, 2068 (2012). Retrieved June 14, 2022, from <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/national-human-rights-commission-act-2068-2012.pdf>.

Writing the directives involved numerous drafts and discussions. The NHRC led the way on designing the mechanism and took care to allow for collaboration with media stakeholders. Consultations focused first on a structure for the mechanism, including membership, work processes and authority. These talks helped stakeholders to understand how the various models of a mechanism might function within in an NHRI and how current models for protecting journalists – namely, in Colombia and Mexico – had had varying degrees of success, specific contexts and were cost-intensive.²⁵ Since those models did not fit Nepal’s context, few of their elements could be replicated. In short, the appropriate model would have to germinate and grow organically in Nepal.

NHRC’s willingness to lead the establishment of an independent mechanism on the safety of journalists triggered efforts to design one to fit the Nepali socio-political landscape. In the absence of a tested model to follow, the final design was a culmination of efforts by all stakeholders who drew on existing safety and protection measures, and on their knowledge of local legal systems.

When this process began, the NHRC’s chairperson was former Justice Kedarnath Upadhyay, and its commissioners were Justice Ram Nagina Singh, Dr Leela Pathak, Dr K.B. Rokaya and Gauri Pradhan. During the 2012 mission, the NHRC assigned Pradhan to oversee preparation of the concept note. Thereafter, FNJ and its international partners – led by IMS – worked closely with Pradhan, amending each draft after consultations with stakeholders. The final concept note focused on protecting the freedom of expression of human rights defenders – including journalists – based on the premise that journalists were most likely to need this protection. NHRC reasoned that since its mandate was to protect the human rights of all citizens, it could not justify one mechanism specifically for journalists, especially as many other groups, such as HRDs, also contributed to the flow of information to the public and were under attack.

The objectives of the proposed mechanism were refined over time, particularly between 2013-2015, as part of UNESCO’s Safety of Journalists project, which extended until mid-2017 due to disruptions caused by the 2015 earthquake in Nepal. During this period, IMS worked with a new NHRC team to finalise the rules of procedures, undertook consultations and training to promote a wider understanding of the proposed mechanism, discussed the idea with security and law enforcement agencies and supported Nepali media stakeholders in preparing guidelines.

A major task was preparing the “terms of reference” mentioned in the NHRC’s decision of 2012. This required drafting rules of procedure, a clear understanding of how the mechanism would be funded and how gender concerns might be accommodated within Nepal’s male-dominated culture.

Careful to ensure local ownership of the mechanism, IMS engaged successfully with NHRC officials over a considerable period and supported their

25 IMS. (2020, April). *Shared Responsibility: Safeguarding press freedom in perilous times*, pp.48-58. Retrieved June 14, 2022, from <https://www.mediasupport.org/wp-content/uploads/2020/05/DJ2-FINAL-FINAL.pdf>. pp.32-38.

efforts to prepare it. Though often challenging, this approach enhanced the commissioners' understanding of rules and regulations, guidelines and processes, and how each of these could be matched to the proposed mechanism.

The NHRC assigned a team of six staff members to review its mandate, the law, regulations, guidelines and to map organisations involved in the safety and protection of journalists and media. The team also tasked to design response mechanisms that could fit the NHRC's mandate and operational rules. Their first review helped international mission partners, known as the Nepal International Media Partnership (NIMP), to understand the commission's work on the first draft of the directive.

The draft was discussed at a workshop (June 2016) attended by members of NIMP, five NHRC officials, an international legal expert from Centre for Law and Democracy (CLD) and an IMS adviser. Participants pored over the wording and implications of provisions and the proposal's compatibility with international standards. They agreed on the basic text and contours for the proposed mechanism, which was finalised by IMS and CLD and submitted to the commission. The final draft concept note proposed that the mechanism should:

- Help to protect lives of human rights defenders against threats and attacks.
- Enhance the effectiveness of agencies – by investigations, monitoring and oversight – to bring justice for victims and their kin, to provide adequate protection to those facing threats and harassment, and to ensure effective coordination and sharing of information.
- Support efforts to ensure fair trials for suspects and effective remedy for victims under the rule of law.
- Oversee the work of related officials/agencies to ensure due process and proper remedy.
- Undertake effective preventive measures in collaboration with various stakeholders.²⁶

Based on feedback from the journalists' association and media stakeholders, the draft²⁷ was discussed and refined further within the NHRC before being approved "in principle" in December 2012. Commissioners agreed that a taskforce was needed to protect the freedom of expression of journalists and human rights defenders. They noted that it would be led by a member of the NHRC and include senior representatives from the Office of the Prime Minister and Council of Ministers, the Attorney General's Office, Nepal Police, the president of FNJ or his/her representative, a representative from a human rights organisation and

²⁶ Source: Draft concept note, *National Mechanism for Promoting Freedom of Expression* (unpublished).

²⁷ At one of these consultations, Gauri Pradhan suggested that the mechanism could be extended to protect the free expression of all citizens, as all violations against media would automatically be protected under free expression laws.



Activists from Youth Congress Nepal demonstrate against the new media directive that the government plans to introduce, which is claimed to curtail freedoms of expression and speech as well as the right to privacy in Kathmandu, Nepal on 20 February 2021. (Photo by Rojan Shrestha/NurPhoto via Getty Images)

an expert on media.²⁸ They instructed the NHRC Secretary to prepare “terms of reference” to be discussed at the Commission’s next meeting. However, when the commissioners’ term in office ended in September 2013, this initial momentum was disrupted.

Their positions at NHRC remained vacant for 13 months until new commissioners were appointed on 20 October 2014.²⁹ Shortly afterwards, IMS/NIMP organised a meeting with the incoming team to explain how and why the idea had been conceived, to provide an update on progress so far and to suggest next steps towards launching the initiative. Until this point, little work had been done on the minutiae of the institutionalisation of the mechanism – namely the rules of procedure (terms of reference) and how the mechanism might be embedded at the NHRC – so the IMS briefing was timely in helping to familiarise the new commissioners and move ahead. They supported the preparation of the directives, which was subsequently approved before the end of their tenure.

²⁸ NHRC, unpublished internal circular, 6 January 2013.

²⁹ Informal Sector Service Centre. (2015). Nepal: All eyes on new team. Retrieved June 14, 2022, from <https://www.forum-asia.org/uploads/wp/2015/09/10-Nepal-FINAL-150803.pdf>

Structure of Nepal's safety mechanism for protecting freedom of expression

The directive for the mechanism was approved in April 2019. It is designed to have a seven-member Direction Committee at the top, with a three-tiered body: a taskforce, a rapid response network (RRN), and rapid response teams (RRTs). Once in motion, the Direction Committee will be led by a commissioner from NHRC and include representatives from the Office of the Prime Minister and Council of Ministers, FNJ (one man and one woman member), Nepal Bar Association (NBA), Deputy Inspector General of Police and the Head of Division Law, Investigations and Monitoring at the Commission (as Member Secretary). The NHRC directive stipulates that the FNJ representatives must be one man and one woman to promote a gender balance in the work of the mechanism and that both must be elected members of the association.

The Direction Committee is intended to be the main policymaking body; it will be supported by the taskforce and led by the Head of Division of Law, Investigations and Monitoring at the NHRC as coordinator, with membership from the FNJ, the NBA and the NGO Federation of Nepal (NFN). The next tier comprises the rapid response network (RRN), with membership from the FNJ, NBA, and the NFN. RRN members will be included in a roster from which the rapid response teams (RRTs) will be formed when required.

The purpose of RRTs as a third tier is to ensure that “first responders” are locally available; this is important both for timely assessments of a situation and for ensuring that evidence of attacks is preserved. Like the taskforce, RRTs will be coordinated by an NHRC official if available, or by another member of the team when not. All members of the network’s three civil society organisations (FNJ, NBA, NFN) will be trained on freedom of expression and human rights. The directive specifies that a third of all RRN members must be women to promote gender balance and a level of sensitivity that may be required when collecting data on violations.

Objectives

Based on the draft concept note, the directive outlines three objectives for the mechanism:

1. To provide protection to journalists, media workers and other individuals whose freedom of expression is attacked or is at risk of an attack on freedom of expression for whatever reason.
2. To control the trend of impunity in relation to attacks on freedom of expression, including through the immediate securing of evidence where necessary.
3. To the extent possible, to end attacks on freedom of expression, including through monitoring, research and awareness raising.



An official carries a sealed ballot box from a polling station during the country's 2022 local election at Bhaktapur, Nepal, on Friday, 13 May 2022. (Photo by Rojan Shrestha/NurPhoto via Getty Images)

These objectives meet the broad expectations of what a safety mechanism should do, but notably lacks a clear articulation of a gendered perspective as it fails to recognise that people of different genders may experience violence in different ways.

The directive indicates that in addition to regular meetings, the different organs of the mechanism will meet as needed to expedite urgent decisions. It also specifies the roles of different organs of the mechanism and proposes codes of conduct for all members.

Powers of the safety mechanism

The NHRC directive bestows powers on the various organs of the safety mechanism, similar to those exercised by the investigation and monitoring teams assigned by the Commission for other human rights investigations, these include the authority to:

- Exercise the powers of inquiry and investigation in the same way as the Commission.
- Conduct inquiries and investigations by visiting relevant places.
- Provide protection for evidence to prevent its loss.
- Obtain assistance from public agencies to verify an incident.
- Prepare a timely inquiry and investigation report.
- Maintain a record of an investigation and the activities of those involved in it.
- Conduct spot visits, inspections and investigations.
- Collect evidence.
- Conduct interactions and discussions.
- Invite witnesses to the relevant offices of the Commission.
- Take statements from victims and other relevant persons.
- Assess damages and recommend appropriate remedy or relief in accordance with the National Human Rights Act and regulations.

Protection measures

A key objective of the mechanism is to protect those at risk or those who have suffered an attack on their freedom of expression. When required urgently, protection can be provided by the organs of the mechanism and longer-term by the Direction Committee. The mechanism can provide:

- Basic safety equipment (alarms, communication equipment).
- Police or third-party monitoring or protection.
- Access to a helpline.
- Relocation.
- Rescue, in line with Section 9 of the (NHRC) Act.
- Training.
- Professional support, psychological counselling, including during relocation or return.

In addition, Sections 17-22 of the directive specify other roles of the RRTs, such as offering interim relief, securing evidence, ordering a stop to potential attacks in consultation with Commission, organising public hearings, reconciliation and mediation. Chapter 5 of the directive deals with procedural matters such as lodging a complaint, handling or transferring complaints, receiving information, assessing the urgency of situations and providing legal advice.

With the basic structure now in place, when the mechanism is operational, it will complement the efforts of journalists' associations, professional bodies, NGOs, the police and administration of justice organisations engaged in safety and protection measures for journalists in Nepal.

The NHRC directive is a major step towards testing the idea that an NHRI can bring together the authority, resources and timely coordination of relevant

stakeholders to provide effective remedy when freedom of expression has been violated, to help ensure the safety of journalists and to end the impunity of perpetrators.

Challenges in implementation

Although the directive provides a legal mandate for setting up an independent mechanism to protect the safety of journalists in Nepal, that mechanism has not materialised, due mainly to political instability and multiple changes of NHRC leadership, wherein new appointees need time to grasp the rationale behind the initiative. Implementation has been further delayed by a government effort to enact a new law curtailing some of the NHRCs' powers, which deflected commissioners' attention from operationalising the mechanism. However, that effort also united the mechanism's stakeholders in advocacy against proposed changes to both the human rights and media laws.

The Covid-19 pandemic also proved an obstacle, starting before members' terms ended in late 2020 and necessitating another round of meetings while Nepal was in lockdown. Whenever newly appointed decision-makers first take their seats, the rationale and purpose of the mechanism need to be explained and discussed, ideally during in-person meetings, and all this takes considerable time.

Further challenges have risen concerning the independence of the NHRC.

A new NHRC team was sworn in by the President on 3 February 2021,³⁰ but the appointments proved controversial after human rights experts, including with the United Nations, expressed concern on the independence of the NHRC, saying the new appointments were not consistent with international standards.³¹ Critics noted that Nepal failed to implement the extensive guidelines of the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation, which ensures individual NHRI's compliance through a unique peer-reviewed accreditation process.³² As of December 2021, the NHRC holds "A" status under the GANHRI Sub-Committee on Accreditation but will undergo a special review in regard to its selection and appointment process in October 2022.³³

30 Ghimire, B. (2021, July 4). "A" status of rights commission under threat due to controversial appointments. *The Kathmandu Post*. Retrieved June 14, 2022, from <https://kathmandupost.com/national/2021/07/04/a-status-of-rights-commission-under-threat-due-to-controversial-appointments>.

31 OHCHR. (2021, April 27). *Nepal: UN experts express concerns for independence and integrity of the NHRC* [Press Release]. Retrieved June 14, 2022, from <https://www.ohchr.org/en/press-releases/2021/04/nepal-un-experts-express-concerns-independence-and-integrity-nhrc>.

32 Global Alliance of National Human Rights Institutions. (2021). *Accreditation*. Retrieved June 14, 2022, from <https://ganhri.org/accreditation/>.

33 Global Alliance of National Human Rights Institutions. (2021, October 18). *Report and recommendations of the virtual session of the sub-committee on accreditation*. Retrieved June 14, 2022, from https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf.

Way forward

As of early 2022, the mechanism had not been operationalised, but the NHRC has written to relevant organisations requesting them to send representatives to it. This suggests the mechanism to protect journalists' safety and freedom of expression in Nepal is slowly but surely on its way.

Uncertainty remains on how the mechanism might evolve once anchored in the NHRC, but the existence of the directive provides a window for consultations. Notably, at an IMS online forum on 16 December 2021, the NHRC reconfirmed its commitment to operationalising the mechanism.³⁴

Next steps will require:

Formal announcement and establishment of safety mechanism at NHRC:

Formally establishing the mechanism will require making appointments to the Direction Committee and orienting members on their roles and the provisions in the directive. These activities will require nominations from organisations represented in the mechanism, and the orientation of representatives on the value of safety for journalists and the right to freedom of expression. Stakeholders will need to renew their consultations on the goals, purposes, and operation of the mechanism so that it can begin work.

Renewed focus on gender-sensitivity and ways to make the mechanism

work inclusively: The proposed mechanism has made some efforts towards gender-sensitivity by requiring at least one member of the Direction Committee to be a woman journalist. It has also required that women must comprise at least one-third of all members in the roster for the RRT. While these are positive steps, all provisions in the directive are gender-neutral and this could affect response planning. For example, protective gear for women would need to be sized differently to that for men. Furthermore, higher standards of confidentiality and data protection will be required to create an enabling environment for women to report violence and seek redress through the mechanism. In short, enhancing the gender sensitivity of the mechanism will require reviews of all provisions to prepare guidelines on requirements for gender-sensitive responses and support systems.

Capacity building of mechanism members including the different organs:

A major effort will be required to build capacity – through orientation and training of all individuals associated with the mechanism, including the Direction Committee, taskforce and the RRN – so that a ready-to-use roster of competent

³⁴ Bhattari B. (2022, January 5). IMS convenes national human rights institution stakeholders in Asia to promote safety of journalists. *International Media Support*. Retrieved June 14, 2022, from <https://www.mediasupport.org/news/ims-convenes-national-human-rights-institution-stakeholders-in-asia-to-promote-safety-of-journalists/>.

individuals can be compiled. Capacity building should begin with the RRN, as it would form the RRTs on the ground. This will require training about 300 members to ensure a resource pool of first responders across the country. These 300 individuals and their organisations will be expected to serve as the eyes and ears of the mechanism on the ground, while remaining available for mobilisation as first responders against attacks on freedom of expression, including that of journalists.

Building the capacity of members of the Direction Committee and task-force is also important because they will need a comprehensive and uniform understanding of their roles and powers to support the mechanism. Capacity building should include but not be limited to: training on freedom of expression, human rights, counselling, mediation and evidence protection. Practical requirements for operationalising the mechanism include establishing office space and a budget for activities. The NHRC can take steps in this regard by communicating its efforts to date, by building partnerships with international stakeholders working on the safety of journalists, and by fundraising.

Enabling laws to promote freedom of expression: A mechanism to protect the safety of journalists can only be effective where enabling laws exist for protecting freedom of expression. Ensuring this would require that the mechanism lead reviews of existing laws and advocacy – through participating organisations and other freedom of expression organisations – to make them compatible with international standards. The mechanism may also need to challenge sections of existing laws on free expression at the courts and seek orders for amendments.

Pakistan

by Muhammad Aftab Alam

Background

Since 2005, Pakistan has consistently been ranked as one of the world's most dangerous countries for journalists in the annual indexes of global media watchdogs such as Reporters without Borders (RSF), Committee to Protect Journalists (CPJ) and International Federation of Journalists (IFJ).³⁵ Media workers in Pakistan face work-related threats or violence and a culture of impunity means perpetrators generally go unpunished.³⁶ According to Pakistan's media rights watchdog Freedom Network, more than 140 journalists and media workers were murdered between January 2000 and January 2017.³⁷ The killers of Daniel Pearl, Wali Khan Babar and Ayub Khattak were identified and convicted, but had their verdicts overturned on appeal due to flawed prosecutions.³⁸ Suspects in the remaining 137 murder cases remain unpunished.

Since 2010, in response to threats to journalists and to freedom of expression, Pakistan's journalists' associations and civil society groups, including human rights defenders, have been demanding protections for journalists and free speech. They advocate for a dedicated safety law for journalists, media workers, bloggers and online activists. In May 2021, the Federal Cabinet proposed the Protection of Journalists and Media Professionals Act. The National Assembly approved it on 8 November 2021.³⁹ On 19 November 2021, the Senate approved the Protection of Journalists and Media Professional Act, 2021, which passed into law.⁴⁰

35 Rehmat, A., & Khattak, I. (2020, November 2). *Impunity Report 2020*. Freedom Network. Retrieved June 9, 2022, from <https://fnpk.org/wp-content/uploads/2020/10/FN-Impunity-Report-2020.pdf>.

36 IRADA. (2017). *Policy Brief on Journalists Safety*. Islamabad.

37 Rehmat, A., & Khattak, I. (2020, November 2). *Impunity Report 2020*. Freedom Network. Retrieved June 9, 2022, from <https://fnpk.org/wp-content/uploads/2020/10/FN-Impunity-Report-2020.pdf>.

38 Iqbal, N. (2021, March 27). Prosecution failed to prove guilt of main accused in Daniel Pearl case: SC. *Dawn*. Retrieved June 9, 2022, from <https://www.dawn.com/news/1614840>.

The News International. (2021, March 5). Death sentence of Wali Babar's killers quashed. *The News International*. Retrieved June 9, 2022, from <https://www.thenews.com.pk/print/799472-death-sentence-of-wali-babar-s-killers-quashed>.

Morning Star. (2021, April 22). South Asia the most dangerous part of the world for journalists, press freedom campaigners warn. *Morning Star*. Retrieved June 9, 2022, from <https://morningstaronline.co.uk/article/south-asia-most-dangerous-part-world-journalists-press-freedom-campaigners-warnhttps://morningstaronline.co.uk/article/south-asia-most-dangerous-part-world-journalists-press-freedom-campaigners-warn>.

39 The News International. (2021, November 09). NA passes Protection of Journalists, Media Professionals Bill. The News International. Retrieved June 9, 2022, from <https://www.thenews.com.pk/print/907266-na-passes-protection-of-journalists-media-professionals-bill>

40 Dawn. (2021, November 19). Senate passes journalists protection, NAB bills amid opposition's protest. *Dawn*. Retrieved June 9, 2022, from <https://www.dawn.com/news/1658991/senate-passes-journalist-protection-nab-bills-amid-oppositions-protest>.

The Act recognises the “right to life and protection against ill-treatment” of journalists and media professionals. It acknowledges the right to privacy and non-disclosure of sources and provides for the Commission for Protection of Journalists and Media Professionals (CPJMP) to be established.

The CPJMP will consist of four representatives of the Pakistan Federal Union of Journalists (PFUJ), one representative from each of the regional unions of journalists, one from Pakistan Bar Council, one from the National Press Club, one from the Parliamentary Reporters Association, one from the Supreme Court Reporters Association, one from the Ministry of Information and one from the Ministry of Human Rights.⁴¹ A chairperson, appointed by the Federal Government, will lead the CPJMP.

According to the Act, the CPJMP can take appropriate steps to ensure prompt, thorough, independent and effective investigations of reports of threats, coercion, abuse and violence to undermine the integrity and independence of journalists and media professionals.⁴² The Act also obligates the CPJMP to ensure prosecution of all perpetrators⁴³ and to produce an “annual report on the state of media freedom and safety to be tabled before the Parliament.”⁴⁴

Earlier in 2021, one of Pakistan’s four provinces, Sindh, also passed a law promoting journalist safety – “The Sindh Protection of Journalists and Other Media Practitioners Act, 2021” – despite Governor Imran Ismail’s initial attempts to block it after passage through the Sindh Provincial Assembly, by requiring clarification on the audit procedure and other technical points.⁴⁵ He asked the Assembly to reconsider the bill, but it was passed once again, without changes, on 28 June 2021.⁴⁶

While the Sindh law is similar in some ways to the Federal Bill, it differs in the composition of its multi-stakeholder investigatory commission. In Sindh, this commission is to have one chairperson, four ex-officio members: one from each of the Secretary of Information Department, Secretary of Home Department, Secretary of Law Department and Secretary of Human Rights Department and six non-official members: one representative from each of PFUJ, All Pakistan Newspapers Society (APNS), Council of Pakistan Newspapers Editors (CPNE), Pakistan Broadcasters Association (PBA), Sindh Bar Council and Human Rights Commission of Pakistan (HRCP).⁴⁷

41 National Assembly, Pakistan. (2021). *Protection of Journalists & Media Protection Act, 2021*. Retrieved June 9, 2022, from 1636461074_763.pdf (na.gov.pk)

42 *Ibid.*, Section 10(2)

43 *Ibid.*, Section 10(3)

44 *Ibid.*, Section 17(1)(b)

45 International Federation of Journalists. (2021, June 25). *Pakistan: Sindh Governor rejects journalist protection bill*. Retrieved June 9, 2022, from <https://www.ifj.org/es/centro-de-medios/noticias/detalle/category/press-releases/article/pakistan-sindh-governor-rejects-journalist-protection-bill.html>

46 The News International. (2021, June 29). *PA once again adopts bill for journalists’ protection*. *The News International*. Retrieved June 9, 2022, from <https://www.thenews.com.pk/print/856548-pa-once-again-adopts-bill-for-journalists-protection>

47 The Human Rights Commission of Pakistan, a non-governmental organisation, should not be confused with the National Commission for Human Rights in Pakistan, a state institution.

However, in contrast to these efforts, actions by the State in recent years have resulted in additional restrictions on free expression. For example, despite its responsibility to combat impunity for crimes against journalists and to protect freedom of expression, the state has filed criminal cases against journalists for their work, effectively entangling them in the legal process as a form of punishment.⁴⁸ The Prevention of Electronic Crimes Act (PECA), 2016, aims to prevent “unauthorised acts with respect to information system” and provides for a mechanism to investigate and prosecute related matters.⁴⁹ However, various vague and subjective content-related provisions in the law – on cyber terrorism, hate speech, criminal defamation – are being misused against journalists and freedom of expression activists. In 2020, the government investigated several journalists for their work and content online.⁵⁰ Section 37 of the PECA gives unprecedented powers to the Pakistan Telecom Authority – the telecommunications sector regulator – to “remove or block or issue directions for removal or blocking of access to any [online] information.” In February 2022, this law was amended to extend the scope of online criminal defamation to include public figures, which will further chill speech in online spaces.⁵¹

Regarding signatory commitments, Pakistan is a party to the Universal Declaration of Human Rights and has ratified both the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination. These instruments require state parties to recognise and protect freedom of expression within their jurisdictions. Another instrument – the 2012 UN Plan of Action on Safety of Journalists and Issue of Impunity (UN Plan of Action) – focuses on safety and combating impunity for crimes against journalists,⁵² and Pakistan was a pilot country for its

“... various vague and subjective content-related provisions in the law – on cyber terrorism, hate speech, criminal defamation – are being misused against journalists and freedom of expression activists.”

48 Rehmat, A., and Khattak, I. (2020, November 2). *Impunity Report 2020*. Freedom Network. Retrieved June 9, 2022, from <https://fnpk.org/wp-content/uploads/2020/10/FN-Impunity-Report-2020.pdf>.

49 National assembly of Pakistan. (2016) *The Prevention of Electronic Crimes Act, 2016*, Preamble. Retrieved June 9, 2022, from https://na.gov.pk/uploads/documents/1470910659_707.pdf.

50 Alam, A., & Rehmat, A. (2021, April 25). *Pakistan media legal review 2020*. IRADA. Retrieved June 9, 2022, from <https://irada.org.pk/wp-content/uploads/2021/04/Pakistan-Media-Legal-Review-2020.pdf>.

51 Khan, S. (2022, February 27). On the PECA amendment. *The News International*. Retrieved June 9, 2022, from <https://www.thenews.com.pk/tns/detail/936681-on-the-peca-amendment>

52 UNESCO. (2012). *UN plan of action on the safety of journalists and the issue of impunity*. CI-12/CONF.202/6. Retrieved June 9, 2022, from <https://en.unesco.org/un-plan-action-safety-journalists>.

implementation in 2013.⁵³ Pakistan has met the objective of instituting legal and administrative mechanisms to combat impunity – as in the UN Plan of Action – through the legislative efforts above.

Efforts towards special legislation on journalist safety

Article 19 of the constitution of Pakistan recognises and guarantees freedom of expression as a fundamental right of all citizens. Until recently, however, and despite longstanding demands by relevant principals, no law dealt explicitly with the rights of journalists or guaranteed their safety. These issues were addressed indirectly within rights and laws guaranteeing the safety and security of citizens. The State did not acknowledge the need for special protections under criminal law for journalists.

Efforts to pass a special law began in 2011, when a Senate Standing Committee introduced the Journalists Protection and Welfare Act, 2011.⁵⁴ The leader of the opposition party introduced the bill in the Senate, but it was not enacted. In 2014, four members of the National Assembly – Sahibzada Tariq Ullah, Sahibzada Muhammad Yaqub, Sher Akbar Khan and Ayesha Syed – submitted the Protection of Journalists Act, 2014 as a private members' bill in the National Assembly.⁵⁵

In January 2016, the government constituted a committee of three government officials and the president of Pakistan Federal Union of Journalists (PFUJ) to review and re-draft the Journalists Protection and Welfare Bill, 2011. They were tasked with submitting their report within 20 days to the Ministry of Information and Broadcasting and National Heritage (MoIBNH), for consideration by the Senate Standing Committee on MoIBNH.⁵⁶ However, nothing was reported.

Starting in 2017, a sub-committee led by Senator Farhatullah Babar of the Senate Standing Committee prepared a revised bill. In 2018, the government led by Muslim League-N agreed to adopt this revised bill and present it for approval in Parliament. However, the party was defeated in the July 2018 election and the process stalled.

After two years of silence, the Federal Ministry of Human Rights (MoHR) prepared another draft – the Protection of Journalists and Media Professionals Act, 2020 – and submitted it to the cabinet in February 2020. The cabinet sent the bill to the Ministry of Law and Justice to combine it with the draft prepared

53 Alam, A., and Rehmat, A. (2016, July 20). *Supporting safety of journalists in Pakistan – An assessment based on UNESCO's Journalists' Safety Indicators*. UNESCO. Retrieved June 9, 2022, from https://en.unesco.org/sites/default/files/pakistan_jsi_final_working_document_20072016_0.pdf.

54 Senate of Pakistan. (2011). *The journalists protection and welfare act, 2011*. Retrieved June 9, 2022, from http://www.senate.gov.pk/uploads/documents/1326264326_477.pdf.

55 National Assembly of Pakistan. (2014). *The Protection of Journalists Act, 2014*. Retrieved June 14, 2022, from http://www.na.gov.pk/uploads/documents/1415360733_534.pdf.

56 Official Notification of Formation of the Committee. (2016, January 22), issued by the MoIBNH.

by MoIBNH, after necessary adjustments.⁵⁷ In May 2021, the cabinet approved the Protection of Journalists and Media Professionals Act, 2021, and submitted it to the National Assembly, which approved the bill on 8 November 2021, and the Senate passed the Protection of Journalists and Media Professionals Act, 2021, on 19 November 2021. The President of Pakistan assented to the Act on 1 December 2021, and the official gazette published it on 3 December 2021.

Notably, this Act was passed four months after the Sindh Protection of Journalists and Other Media Practitioners Act, 2021, had become law in August 2021. In short, federal lawmakers acted swiftly to follow the standard set by lawmakers of Sindh province.

International press freedom organisations, including IMS, CPJ, RSF, International Federation of Journalists (IFJ) and Open Society Foundation (OSF), have also implemented media safety programs in Pakistan since 2010. IMS, OSF and others have long supported initiatives to support the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

In 2011, IMS helped set up the Pakistan Journalists Safety Fund (PJSF) for journalists in distress. Housed at a media watchdog, Freedom Network, the fund has helped more than 170 journalists and/or their families with financial aid, legal assistance, medical support and relocation in-country for journalists under local threat.⁵⁸ In 2017, IMS supported the formation of the Pakistan Journalists Safety Coalition (PJSC) to relaunch advocacy on legislation for journalists' safety. The PJSC led campaigns for stakeholder input, including from political parties in Sindh and across the country.

In 2020, following an increase in criminal charges and lawsuits against journalists under the PECA law, the Pakistan Bar Council formed the Journalists Defence Committee (JDC), a national committee of lawyers to assist targeted journalists.⁵⁹ The Institute for Research, Advocacy and Development (IRADA) launched a legal cell to provide free legal aid to journalists facing threats, attacks, restrictions and/or judicial peril for their work.⁶⁰ This cell supports the JDC, with assistance from UNESCO's Global Media Defence Fund.⁶¹

The JDC has defended several individuals against criminal charges filed under the PECA, including journalists Asad Ali Toor, Absar Alam, Hamir Mir, Asma Sherazi, Ajeeb Ali Lakhoo and lawyer Shafique Ahmed. On behalf of the PFUJ, the JDC has challenged powers in the Removal and Blocking of Unlawful

57 Ali, K. (2020, February 26). *Cabinet stops short of okaying bill for journalists protection*. Dawn. Retrieved June 14, 2022, from <https://www.dawn.com/news/1536689>.

58 Alam, A., and Rehmat, A. (2016, July 20). *Supporting safety of journalists in Pakistan – An assessment based on UNESCO's Journalists' Safety Indicators*. UNESCO. Retrieved June 14, 2022, from https://en.unesco.org/sites/default/files/pakistan_jsi_final_working_document_20072016_0.pdf.

59 Iqbal, N. (2020, September 30). *PBC forms body to defend journalists*. Dawn. Retrieved June 14, 2022, from <https://www.dawn.com/news/1582417>.

60 IRADA. (2021, February 5). *IRADA launches legal cell to defend journalists in courts of law* [Press release]. Retrieved June 14, 2022, from <https://irada.org.pk/irada-launches-legal-cell-to-defend-journalists-in-courts-of-law/>.

61 UNESCO. (2022). *Global Media Defence Fund*. Retrieved June 14, 2022, from <https://en.unesco.org/global-media-defence-fund>



A woman holds a photo of Al Jazeera journalist Shireen Abu Akleh during a protest outside Karachi Press Club in Karachi, Pakistan, on 15 May 2022, on the killing of Akleh while covering an Israeli raid in West Bank.

Online Content (Protection, Oversight and Safeguards) Rules, 2020, of the Pakistan Telecom Authority at the Islamabad High Court.⁶²

Before examining the status of Pakistan's national human rights institutions (NHRIs) in relation to setting up a national journalist safety mechanism, the next section outlines the guarantees and protections available to journalists in the country's constitutional and legal framework.

Journalist safety and constitutional and legal environment for media

The constitution of Pakistan contains a general guarantee for freedom of expression (Article 19) and a 2010 amendment introduced, among other things, the right to information (Article 19A).

Article 19:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency, or morality, or in relation to contempt of court, [commission of] or incitement to an offence.”

Article 19A:

“Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”

There are also guarantees relating to safety and security of all citizens, including media practitioners, such as the right to be dealt with in accordance with the law (Article 4), security of person (Article 9) and the right to a fair trial (Article 10A). Article 199 entitles citizens to *habeas corpus*.

Pakistan is a party to the International Covenant on Civil and Political Rights (ICCPR) and thus required to respect international norms governing the right to freedom of expression. However, Pakistan's national legal framework seems to contravene international standards. Article 19 of the constitution restricts criticism of the judiciary, armed forces and Islam. A 2017 study commissioned by the Ministry of Human Rights says, “there is much yet to be done in our journey to realise the goal of a state and society fully conducive to protecting the human rights of its people.” The study adds, “several areas have been

⁶² Ministry of Information Technology, Pakistan. (2020, October 20). *Removal and blocking of unlawful online content (Protection, oversight and safeguards) rules, 2020*. Retrieved June 14, 2022, from [https://moitt.gov.pk/SitelImage/Misc/files/Social per cent20Media per cent20Rules.pdf](https://moitt.gov.pk/SitelImage/Misc/files/Social%20per%20Media%20Rules.pdf).

identified requiring reform in either substantive or procedural provisions” and “a number of areas in the criminal justice system need to be updated to bring the criminal justice system of Pakistan into the 21st century and in compliance with our international human rights obligations.”⁶³ Civil society has also argued that freedom of expression should only be limited in narrow terms, and these must meet the test of legality, legitimate aim and proportionality set out by Article 19(3) of the ICCPR.⁶⁴

Several media-related statutes, such as the Press Council of Pakistan Ordinance of 2002, the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance of 2002 and related press registration and defamation laws, aim at regulating the media. None of these provide for the protection and safety of journalists. Rather, a few codified references place the responsibility for it on media companies.

For example, the Code of Conduct of PEMRA states that the “Licensee shall provide necessary protection gear and training to its reporters, cameramen and other crew deployed for coverage of any crime incident or conflict zone.”⁶⁵ Similarly, the Newspaper Employees (Conditions of Services) Act, 1973, requires media houses to provide provident fund, medical care and wage board for newspaper employees. Pakistan has enacted the Protection against Harassment of Women at Workplace Act, 2010, but this does not specify journalism or media as a work environment.

On the other hand, PECA 2016 has been used against journalists and media workers. Its content-related provisions – Section 9 (glorification of an offence), Section 10 (cyber terrorism), Section 11 (hate speech) and Section 20 (offences against dignity of a natural person) are among those used quite often against journalists. Section 37 serves to abet online censorship, and under this provision, the Pakistan Telecom Authority has blocked access to more than one million websites in Pakistan.⁶⁶

The Press Council of Pakistan has the legal mandate to protect press freedom. According to its founding documents, the Council may receive complaints – from a newspaper, a journalist or any institution or individual concerned with a newspaper – against the “Federal Government, Provincial Government or any organisation including political parties for interference in the free functioning

63 Research Society of International Law, Pakistan (2018). *Pakistan's domestic implementation of its international human rights obligations - Summary of findings*. Ministry of Planning, Development, and Special Initiatives, Pakistan. Retrieved June 14, 2022, from <https://www.pc.gov.pk/uploads/report/Domestic.pdf>

64 Baig, A., and Khan, S. (2015). *Expression restricted: An account of online expression in Pakistan*. Association for Progressive Communications. Retrieved June 14, 2022, from https://www.apc.org/sites/default/files/Expression-Restricted.-An-account-of-online-expression-in-Pakistan_0.pdf

65 Ministry of Information, Broadcasting, and National Heritage. (2015, August 19). *The Electronic Media (Programmes and Advertisements) Code of Conduct, 2015*, Clause 8 (13). Retrieved June 9, 2022, from <http://www.moib.gov.pk/MediaLaws/coc2015.pdf>.

66 The Express Tribune. (2019, October 17). Pakistan blocked thousands of websites over hate speech. The Express Tribune. Retrieved June 14, 2022, from <https://tribune.com.pk/story/2081215/pakistan-blocked-thousands-websites-hate-speech>.

of the press.”⁶⁷ In practical terms, however, the Council offers no remedy for infringements.

National Commission for Human Rights for Pakistan

The National Commission for Human Rights for Pakistan (NCHR) was established in 2015 after the enactment of the National Human Rights Act, 2012, promulgated in recognition of the Paris Principles, which require the setting up of an NHRI that meets internationally agreed principles on independence, inclusion and a broad mandate to investigate human rights violations in a country.⁶⁸

In its first four years, the NCHR developed good working relations with local and international stakeholders including civil society and international human rights bodies. Founding members ended their tenure in May 2019, and the NCHR was inactive until new members were appointed in late 2021.⁶⁹

While functional, Pakistan’s NCHR did not earn accreditation from the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation, which is measured against the Paris Principles. It underwent prequalification processes in 2016, but never applied for accreditation. At its relaunch event in December 2021, NCHR Chairperson Rabiya Javeri Agha announced that the GANHRI accreditation process would be a priority during the first 100 days.⁷⁰

As mandated by the National Human Rights Act (hereafter “the Act”), the NCHR can review the safeguards provided by or under the constitution or any other law for the protection of human rights. The NCHR can also undertake and promote research in the field of human rights, maintain a database on complaints of violations of human rights and on development of human rights norms – the Act generally requires the NCHR to foster citizens’ awareness of human rights and of safeguards available.

To ensure representation across society, the Act requires the NCHR to consist of:

- a chairperson, who has been, or is qualified to be, a judge of the Supreme Court of Pakistan.
- a person having demonstrable knowledge of, or practical experience in, matters relating to human rights.

67 Press Council of Pakistan. (2002). *Press Council of Pakistan Ordinance, 2002*. Retrieved June 14, 2022, from http://presscouncil.org.pk//media/ordinance/pcp_ordinance.pdf.

68 NCHR Pakistan. (2015). *National Commission for Human Rights Pakistan: At a glance*. Retrieved June 14, 2022, from <https://www.nchr.gov.pk/wp-content/uploads/pdf/>

69 NCHR Pakistan. (2021, December 17). *NCHR holds launch event of the Commission*. Retrieved June 14, 2022, from https://www.nchr.gov.pk/press_release/nchr-holds-launch-event-of-the-commission/.

70 NCHR Pakistan. (2021, December 17). *NCHR holds launch event of the Commission*. Retrieved June 14, 2022, from https://www.nchr.gov.pk/press_release/nchr-holds-launch-event-of-the-commission/.

- one member from each Province, Federally Administered Tribal Areas and Islamabad Capital Territory, having demonstrable knowledge, or practical experience in, matter relating to human rights.
- a chairperson of the National Commission on the Status of Women.
- one member from minority communities.
- a secretary appointed by the Commission.

It also requires that “of the total membership of the Commission, at least two shall be women.”

The National Commission on the Status of Women (NCSW) is a statutory body working on gender equality and empowerment. Having its chairperson as a member of the NCHR indicates that the latter should have the capacity to ensure gender-sensitive policies and practices. Moreover, the Act defines “human rights” as relating to life, liberty and dignity of the individual guaranteed and included in the international instruments, including political and women rights.⁷¹

The Act empowers the NCHR to, either on a petition or *suo moto* (“of its own accord”), investigate complaints of, (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation by a public servant. It is also authorised to intervene in any proceedings involving any allegation of violation of human rights pending before a court, by applying to be a party to the proceedings before such a court. The NCHR is obliged to submit independent reviews on human rights to be included in government reports to United Nations. The Act also requires the NCHR to develop a national plan of action for the promotion and protection of human rights.

To highlight independence, Section 16 of the Act states, “the Commission and every member of its staff shall function without political or other bias or interference and shall, unless this Act expressly otherwise provides, be independent and separate from any government, administrations or any other functionary or body directly or indirectly representing the interest of any such entity.” Furthermore, the Act provides for creation of the National Commission for Human Rights Fund to support the NCHR functions and the government is required to contribute to this from its annual budget, as passed by parliament.⁷² The Act permits spending on “approved and specific purposes” without prior approval from the government,⁷³ but the Commission cannot receive any grants or contributions from donor and non-governmental organisations without such approval.⁷⁴

The NCHR has enjoyed support from all political parties and groups. The

71 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 2, clause (d). Retrieved June 14, 2022, from <https://www.nchr.gov.pk/wp-content/uploads/pdf/nchr-act.pdf>.

72 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 23. Retrieved June 14, 2022, from <https://www.nchr.gov.pk/wp-content/uploads/pdf/nchr-act.pdf>.

73 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 27. <https://www.nchr.gov.pk/wp-content/uploads/pdf/nchr-act.pdf>.

74 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 25. <https://www.nchr.gov.pk/wp-content/uploads/pdf/nchr-act.pdf>.

government is accountable for the enforcement of human rights obligations but tends not to follow up on NCHR recommendations.⁷⁵ On at least two occasions between 2015 and 2019, the NCHR acted in the cases of bloggers allegedly abducted by government authorities and helped to free them. In 2019, the NCHR reported on “enforced disappearances”⁷⁶ and on challenges faced by marginalised citizens including women, children, people with disabilities, religious minorities, transgender people and the internally displaced.⁷⁷ The NCHR has furthermore prepared a submission on proposed procedural amendments to check the misuse of blasphemy law.⁷⁸

The NCHR has a broad mandate to promote and protect human rights, including human rights defenders, and to set up an advisory committee of human rights activists, civil society organisations, bar associations, press clubs and representatives of the federal and provincial governments.⁷⁹

NCHR members realise that journalists are frontline human rights defenders and that their safety is key to protecting the human rights of all citizens.⁸⁰ In 2019, as a first step towards establishing a national journalists safety mechanism, the Commission appointed police officials, as focal persons in police departments, to report on crimes against journalists and collect relevant data.⁸¹ In Islamabad Capital Territory, 22 police stations have incorporated the category of crimes against journalists as an indicator in their automated databases to ensure an integrated and swift response.⁸²

From May 2019, the NCHR’s 18-month hiatus halted development of a national journalist safety mechanism including efforts by civil society and media rights groups. In November 2021, a new NCHR chairperson and board members

“... realise that journalists are frontline human rights defenders and that their safety is key to protecting the human rights of all citizens.”

75 Alam, A. (2021, April 28). Interview of Mr. Shafique Chaudhry, former member of the NCHR. Personal.

76 NCHR Pakistan. (2019, February 14). *The Unending Saga of Enforced Disappearances*. <https://nchr.gov.pk/wp-content/uploads/2019/02/Enforced-Disappearances.pdf>.

77 NCHR Pakistan. (2019, January 24). *First report on the marginalised segments*. <https://nchr.gov.pk/wp-content/uploads/2019/01/REPORT-ON-MARGINALISED-SEGMENTS.pdf>2019

78 NCHR Pakistan. (2016, August 9). *Submissions on proposed procedural amendments to check the misuse of blasphemy law in Pakistan*. Retrieved June 14, 2022, from http://nchr.org.pk/docs/reports/en1_1_Blasphemy.pdf.

79 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 11. Retrieved June 14, 2022, from <https://www.nchr.gov.pk/wp-content/uploads/pdf/.nchr->

80 Alam, A. (2021, April 28). Interview of Mr. Shafique Chaudhry, former member of the NCHR.

81 Junaidi, I. (2019, April 27). NCHR nominates focal persons in police stations. *Dawn*. Retrieved June 14, 2022, from <https://www.dawn.com/news/1478688>.

82 UNESCO. (2020, June 8). 22 Police stations in Pakistan’s capital territory incorporate indicators on crimes against journalists in automated crime database. *UNESCO News*. Retrieved June 14, 2022, from <https://en.unesco.org/news/22-police-stations-pakistans-capital-territory-incorporate-indicators-crimes-against->

– including at least one former journalist – were appointed by the president. It is hoped they will prioritise journalists’ safety during their four-year tenure.⁸³

Case for NHRI engagement in a journalist safety mechanism

Civil society stakeholders believe the independent Commission for the Protection of Journalist and Media Professionals (CPJMP), established by the 2021 journalist safety law, must be represented within the NCHR – the statutory NHRI of Pakistan – and help coordinate efforts to combat impunity for perpetrators of crimes against journalists. For example, if the CPJMP’s chairperson joined the NCHR as a member, the safety of journalists would become a priority for the NCHR since the number and frequency of violations against media practitioners constitute one of the largest categories of rights violations in the country.⁸⁴ However, the new laws fail to address this point and the commission as proposed does not provide for such representation.

Numerous civil society stakeholders acknowledge the need for an integrated statutory national journalist safety mechanism. They include initiatives such as the Pakistan Journalists Safety Fund, Pakistan Journalists Safety Coalition (housed at Freedom Network), the Journalists Defence Committee (formed by Pakistan Bar Council and housed at IRADA), Editors for Safety (led by print editors) and Media Matters for Democracy, whose digital app, *Muhafiz*, enables its users to report violations. To some extent, this widespread support is represented in the journalist protection commissions provided under federal and Sindh laws.

The operationalisation of the special laws for journalist safety and the formation of a mechanism may take time but, meanwhile, the reactivated NCHR could serve simultaneously as an institutional platform to facilitate gender-sensitive safety, advocacy and support. This could ensure an inclusive mechanism incorporating the chairperson of the NCSW, which works to redress violations of women’s rights and examines policies, programmes and other government measures for women’s development and gender equality. The NCHR has four women among its seven members and a strong NCSW voice might enhance the visibility of such issues, including the possibility of litigation against perpetrators and a gender-sensitive mechanism for journalist safety.

Another reason the NCHR should participate in a national journalist safety mechanism is that its mandate includes the institution of a special human rights court and special prosecutor for swift trial of offences that violate human rights.⁸⁵ The Act requires government to appoint a special prosecutor for that

83 APP (2021, November 19). Rabiya Javeri Agha new chief of human rights body. *Dawn*. Retrieved June 14, 2022, from <https://www.dawn.com/news/1658920>.

84 Alam, A. (2021, April 30). Interview with Adnan Rehmat, Program Manager, IMS Pakistan.

85 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 21. Retrieved June 14, 2022, from <https://www.nchr.gov.pk/wp-content/uploads/pdf/>.

special court.⁸⁶ This would enable cases of attacks on journalists – a violation of freedom of expression – to be fast-tracked, especially as most such cases remain to be prosecuted.

Several legal provisions related to Pakistan’s NHRI mean a special protection mechanism for journalists can be set up in the NCHR. For example, Section 9 of the Act allows the NCHR to:

- Inquire into the violation of human rights or abetment thereof and negligence in the prevention of such violations by public servants.
- Intervene in any proceedings involving any allegation of violation of human rights pending before a court by making application for becoming a party to the proceedings before such court.
- Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- Direct investigation or inquiry in respect of any incident of violation of human rights.

Section 11 allows the NCHR to “constitute an advisory committee consisting of human rights activists, civil society organisations, members of bar associations, members of press clubs and such other representatives of the Federal and Provincial governments as may be concerned with the functions of the Commission,” which encompasses all stakeholders advocating for journalist safety.

The NCHR is a quasi-judicial authority and Section 13 of the Act accords it all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. Subsection (5) says, “the Commission shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898.”⁸⁷ This means the NCHR can:

- Summon and enforce the attendance of witnesses and examine them under oath.
- Discover and produce documents.
- Receive evidence on affidavit.
- Requisition any public record or copy thereof from any court or office.
- Issue commissions for the examination of witnesses or documents.

The section also explains that the person enquired or directed to furnish information shall be deemed legally bound to do so within the meaning of

86 NCHR Pakistan. (2012). *National Commission for Human Rights Act, 2012*, Section 22. Retrieved June 14, 2022, from <https://www.nchr.gov.pk/wp-content/uploads/pdf/>.

87 Financial Monitoring Unit, Government of Pakistan. (1899, March 22). *Code of Criminal Procedure*, Chapter XXVI. Retrieved June 14, 2022, from https://www.fmu.gov.pk/docs/laws/Code_of_criminal_procedure_1898.pdf.

Sections 176 and 177 of the Pakistan Penal Code.⁸⁸ Subsection (4) says, “every proceeding before the Commission shall be deemed to be judicial proceedings with the meaning of section 193, 196 and 228 of the Pakistan Penal Code.”⁸⁹

For investigations under Section 17, the NCHR can requisition the services of any officer or investigation agency of the federal or provincial governments. The officer or agency, under direction of the NCHR, can summon and enforce the attendance of any person and examine them, require the discovery and production of any document and requisition any public record.

Under Sections 14 and 15, the NCHR can recommend actions against violators of human rights. In case of complaints of violations by members of the armed forces or intelligence agencies, it may seek a report from the government or a competent authority and recommend action by the federal government, which is obliged to inform the Commission about action taken within the time stipulated. Commission recommendations can include initiating proceedings for prosecution and granting immediate interim relief to the victim or members of their family. As with Section 18, the NCHR can publish its inquiry report with its recommendations.

Section 21 of the Act empowers the federal government, in consultation with the Chief Justice of Islamabad High Court, to notify a Court of Sessions in Islamabad as the Human Rights Court to try cases of violations. Under Section 22, government is required to appoint a special prosecutor from a list prepared by the Commission.

So far, the NCHR has taken several initiatives to promote and protect human rights. For example, in 2016 it proposed procedural amendments on the misuse of blasphemy law and submitted these to the Senate’s Functional Committee on Human Rights.⁹⁰ According to the NCHR’s Annual Report 2015-2016,⁹¹ it produced 18 reports reviewing various aspects of law and human rights, including child abuse, drought, hunger, forced evictions, blasphemy law, “honour” killings and the exploitative trade of human organs. It also helped Freedom Network to access certified copies of the investigation reports into the cases of journalists Taha Siddiqui and Asad Bitani.⁹²

Engaging the NCHR in journalist safety falls within its mandate of human rights protection, as recommended to Pakistan in the Universal Periodic Review

88 Financial Monitoring Unit, Government of Pakistan. (1860, October 6). *Pakistan Penal Code*, Section 176-77. Retrieved June 14, 2022, from https://www.fmu.gov.pk/docs/laws/Pakistan_per_cent20Penal_per_cent20Code.pdf.

89 Financial Monitoring Unit, Government of Pakistan. (1860, October 6). *Pakistan Penal Code*, Section 193 and 228. Retrieved June 14, 2022, from https://www.fmu.gov.pk/docs/laws/Pakistan_per_cent20Penal_per_cent20Code.pdf

90 NCHR Pakistan. (2016, August 9). *Submissions on proposed procedural amendments to check the misuse of blasphemy law in Pakistan*. Retrieved June 14, 2022, from http://nchr.org.pk/docs/reports/en1_1_Blasphemy.pdf.

91 NCHR Pakistan. (2019, January 25). *Annual Report 2015-16*. <https://nchr.gov.pk/wp-content/uploads/2019/01/Annual-Report-2015-16.pdf>.

92 Alam, A. (2021, April 29). Interview with Iqbal Khattak, Executive Director, Freedom Network – an award-winning media freedom watchdog in Pakistan.

(UPR) of 2017. The Report of the Working Group specifies the following steps to improve the safety of journalists in Pakistan:

- 152.172: Take steps to protect freedom of expression, including online freedoms (Australia).
- 152.173: Prevent impunity for crimes against journalists and media workers (Sweden).
- 152.174: Protect independent journalists and the media against any intimidation or violence, including enforced disappearance (Czechia).
- 152.175: Investigate all reports of attacks on journalists and human rights defenders and bring the perpetrators to justice (Norway).
- 152.176: Implement measures to protect the right to life and freedom of expression of journalists and human rights defenders, ensuring that the perpetrators of violence against them are brought to justice (Greece).
- 152.177: Bring to justice anyone who threatens, abducts or attacks human rights defenders, journalists, bloggers or others who work to promote democracy (Canada).
- 152.178: Introduce strong legislation prohibiting attacks against journalists, effectively investigate such acts and prosecute the perpetrators, as previously recommended (Austria).
- 152.179: Provide updated information regarding the judicial status of cases of murdered journalists for the report of the Director-General of the United Nations Educational, Scientific and Cultural Organization on the safety of journalists and the danger of impunity (Sweden).
- 152.180: Continue the adoption and implementation of administrative legal measures for the protection of journalists and human rights defenders and ensure that the perpetrators of violence against them are referred to the courts (France).
- 152.181: Continue its efforts to cooperate with the Special Rapporteur on the situation of human rights defenders, to ensure that all allegations of improper use of criminal laws against journalists and dissenting voices, including human rights defenders, are investigated in an effective, impartial and prompt manner (Ireland).⁹³

93 United Nations General Assembly. (2017, December 29). *Report of the working group on the universal periodic review – Pakistan*. Retrieved on June 14, 2022, from <https://digitallibrary.un.org/record/1466819?ln=en#record-files-collapse-header>.

Rationale for alternative national safety mechanism for journalists

A 2019 report⁹⁴ of the Freedom Network maps the murder of at least 33 journalists in Pakistan between 2013-2019. The Network's impunity scorecard for Pakistan cites these statistics:

- **Journalists murdered during 2013-19 period: 33.**
- Police First Investigation Report registered: 32 (96 percent).
- Police challan [charge-sheet] filed in courts: 20 (60 percent).
- Cases declared fit for trial by courts: 20 (60 percent).
- Prosecution and trial completed in cases: 6 (18 percent)
- Killers convicted: 1 (3 percent).
- Killers convicted and punished: 0 (0 percent)
- Justice for murdered journalists: 0 (0 percent)

A 2020 report by Freedom Network reports on 17 legal cases filed against journalists for their work between 2018-2019.⁹⁵ The findings revealed that the state, through government functionaries, was the biggest legal predator of journalists and initiated 80 percent of cases, of which 65 percent included charges of “acting against state institutions” or “defaming state institutions”.

Another 2020 report⁹⁶ by Freedom Network provides data for May 2010–April 2021 and cites at least 148 cases of attacks and violations against journalists and media workers between 3 May 2020 and 20 April 2021, including in the four provinces (Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh), the capital Islamabad,

Gilgit Baltistan and Azad Jammu and Kashmir territories. This represents an average of more than 12 violations each month – one every three days – and includes 25 arrests or detentions, 27 legal cases registered against journalists, 15 assaults, five kidnappings, seven failed assassination attempts and six murders.

The top three categories of violations against journalists in that period include 27 legal cases filed against them (18 percent), 26 verbal threats of murder

“Journalists murdered during
2013-19 period: 33.
Justice for murdered journalists:
0 (0 percent).”

94 Rehmat, A., and Khattak, I. (2019). *Impunity report 2019*. Freedom Network. Retrieved June 14, 2022, from <http://www.fnpc.org/wp-content/uploads/2019/11/PDF-Impunity-Report-2019-Final.pdf>

95 Rehmat, A., and Khattak, I. (2020, November 2). *Impunity Report 2020*. Freedom Network. Retrieved June 14, 2022, from <https://fnpc.org/wp-content/uploads/2020/10/FN-Impunity-Report-2020.pdf>.

96 Freedom Network. (2021, April 28). *Pakistan Press Freedom Report, 2020-21: Expanding theatre of threats against media practitioners in Pakistan*. Retrieved June 14, 2022, from <https://fnpc.org/wp-content/uploads/2021/04/FINAL-May-3-Report.pdf>



Kashmiri journalists hold placards and portraits of slain Reuters journalist Danish Siddiqui during a candle light vigil at Kashmir Press Club in Srinagar, India, on 18 July 2021. Danish Siddiqui, the Pulitzer Prize-winning photographer with Reuters news agency, was killed covering the fight between Afghan security forces and the Taliban near a border crossing with Pakistan, the media outlet reported, citing an army commander. (Photo by Saqib Majeed/SOPA Images/LightRocket via Getty Images)



or other dire consequences (17 percent), and at least 25 cases of arrests or detention by law enforcement agencies (16 percent). The three categories of violations – legal cases, threats and detentions – constitute more than 60 percent of the 148 categories of violations against media in Pakistan in the period.

The number of violations of media freedoms, including murders, makes Pakistan one of the most difficult countries for journalists. Since the state is responsible for ensuring citizens are safe to choose and practice a vocation, positive change is in the interest of democracy and governance. The new laws offer hope that the safety of journalists and human rights defenders will improve, but a timely review could assess the proposed institutions to guarantee they will function effectively and protect them.

The November 2021 appointments to the NCHR could prove critical in supporting the safety and protection of journalists. The NCHR Act gives it the necessary independence, including financial freedom, to work impartially. Pakistan has two laws on journalists' safety – one federal and one provincial – but no central repository for data on violations, except for civil society initiatives such as Freedom Network's annual reports on impunity⁹⁷ and on press freedom⁹⁸. Similarly, the watchdog IRADA reports annually on its monitoring and documentation of legal challenges faced by journalists and media.⁹⁹ Although time series data – observations obtained through repeated measurements over time – is not available for Pakistan (especially disaggregated by gender on journalist safety), IRADA's mapping of impunity for murder and legal cases against journalists reveals the scale and gravity of the situation. If the NCHR commits to overseeing countrywide data collection on journalist safety, this would be within its mandate and fill a void in civil society.

Way forward: Protection mechanism options and possibilities

Solidarity and outreach: Prior to the 2019 retirement of its inaugural members, the NCHR had developed good working relations at both local and international level – a prerequisite for leading a multi-stakeholder mechanism on journalists' safety. As stakeholders are willing to initiate dialogue and cooperate with the NCHR, it is important to assess how effective a safety mechanism could be before deciding which model might deliver the best results for Pakistan. The NCHR's current members could carry out this assessment but would need

97 Rehmat, A., and Khattak, I. (2020, November 2). *Impunity Report 2020*. Freedom Network. Retrieved June 14, 2022, from <https://fnpk.org/wp-content/uploads/2020/10/FN-Impunity-Report-2020.pdf>.

98 Freedom Network. (2020, April 30). *Pakistan Press Freedom Report, 2019-20: Murders, Harassment and Assault - the tough wages of journalism in Pakistan*. Retrieved June 14, 2022, from <http://www.fnpk.org/wp-content/uploads/2020/04/Pakistan-Press-Freedom-Report-2020.pdf>.

99 Alam, A. M., and Rehmat, A. (2021, April 3). *Pakistan media legal review 2020: Growing fear and hate in Pakistani online civic spaces*. Retrieved June 14, 2022, from <https://irada.org.pk/wp-content/uploads/2021/04/Pakistan-Media-Legal-Review-2020.pdf>.

support to engage with counterparts in Asia, so they can exchange experiences, insights and identify areas for collaboration.

Alternative support mechanism: Pakistan's statutory NHRI has the human rights mandate to host a national mechanism on the safety of journalists. Now that legislation on journalists' safety is in place, with provision of a safety commission, the NCHR can support lobbying of the executive to address threats to the safety of journalists, particularly if the commissions to be formed under the new laws are unable to deliver the objectives of legislation.

Collaborations with existing safety mechanisms: Several individual, non-integrated, smaller mechanisms for responding to attacks and threats against journalists exist already in Pakistan. They include the Pakistan Journalists Safety Fund (PJSF), Pakistan Journalists Safety Coalition (PJSC), the Journalists Defence Council (JDC) and Editors for Safety. These could contribute or be adapted in some way as additional national support mechanisms, bringing their proven capabilities, for example, in fact-finding and documentation that could help and be useful to the commissions.

Gender sensitivity in journalists' protection and safety

The developments in journalist safety offer hope for free media and informed debate in Pakistan. They also represent an opportunity to combine the strengths of existing agencies, such as the NCHR and CSO initiatives, with the potential of new agencies yet to be created. Concerns about the gender-neutrality of the provisions, however, must be prioritised in any discussions about the design of safety measures and should continue in consultations at home and abroad, for example with other NHRIs already working on establishing such mechanisms.

The Philippines

by Roby Alampay and Ross Tugade

Background

Although the Philippines is a democratic republic, it has seen both subtle and dramatic erosions in respect for human rights and protection of civic freedoms over the years. These rights and freedoms represented hard-won victories after the dictatorship of Ferdinand Marcos from the 1970s to the mid-1980s, but became vulnerable under Corazon Aquino's celebrated People Power government in 1986, and remained so under President Rodrigo Duterte. Following the May 2022 presidential elections, the consequential victory of Ferdinand Marcos's son casts a bleak outlook for Filipinos who lived under his father's repressive 21-year rule associated with widespread corruption, human rights abuses and poverty in the country.¹⁰⁰

Since 1986, some 234 media workers have been killed, including at least 19 during under the Duterte stewardship.¹⁰¹ At least seven women journalists were killed between 1992 and 2022.¹⁰² Meanwhile, laws on media ownership, libel, taxes and franchises have been weaponised to destabilise private media, including larger networks once thought untouchable.¹⁰³

In October 2016, four months into his presidency, Duterte created a presidential taskforce – his first Presidential Order – with a mandate to address media killings and ensure a safe environment for media workers. He issued an executive order for the right to information in the executive branch, and the police and military have cooperated with civil society on multi-sectoral committees and task forces to protect and promote human rights. Five years on, however, freedom of expression (FoE) and press freedom are under substantial pressure, notably the continued and widespread impunity for perpetrators of crimes against media workers and human rights defenders (HRDs).¹⁰⁴

100 Curato, N. (2022, 18 May). The return of a Marcos to power in the Philippines is a warning to the world. *The Guardian*. Retrieved June 14, 2022, from <https://www.theguardian.com/commentisfree/2022/may/18/marcos-power-philippines-dictators-son-presidency-social-media>.

101 Center for Media Freedom and Responsibility. (n.d.). *Press Freedom Watch*. Retrieved June 14, 2022, from <https://cmfr-phil.org/flagship-programs/freedom-watch/>

102 Committee to Protect Journalists. (2022). *Explore CPJ's database of attacks on the press*. Retrieved June 14, 2022, from https://cpj.org/data/location/?cc_fips=RP&start_year=1992&end_year=2022&report-builder-type=year&motiveConfirmed%5B%5D=Confirmed&status%5B%5D=Missing&gender%5B%5D=Female.

103 ABS-CBN News. (2020, June 1). Congress' franchise powers should not be 'weaponized', lawmaker tells colleagues. *ABS-CBN News*. Retrieved June 14, 2022, from <https://news.abs-cbn.com/news/06/01/20/congress-franchise-powers-should-not-be-weaponized-lawmaker-tells-colleagues>.

104 CIVICUS. (2020, June 25). Attacks on the press and critics persist as UN report on the Philippines finds widespread violations. *CIVICUS*. Retrieved June 14, 2022, from <https://monitor.civicus.org/updates/2020/06/25/attacks-press-and-critics-persist-un-report-philippines-finds-widespread-violations/>.

In short, the situation has worsened since 2016, as shown by the problems facing journalists and other human rights defenders (HRDs) during elections held every six years. Whereas the rhetoric of previous leaders at least referenced the importance of human rights, Duterte’s overt and unapologetically vicious language – towards media, civil society organisations (CSOs), human rights workers, even the very idea of rights and governance – underpinned six years of legal and physical attacks against them, including women rights defenders. At the time of writing, media and rights advocates can link state agents to more than half of 223 attacks and threats made against media workers since President Duterte took office.¹⁰⁵ Based on data from the Center for Media Freedom and Responsibility (CMFR) and the National Union of Journalists of the Philippines (NUJP), these agents are the alleged perpetrators in 114 cases, of which the police and the military can be linked to 42 cases, local government officials to 38, and national government officials to 34.¹⁰⁶

“Journalists, HRDs, bloggers, social activists and CSOs are increasingly the targets of pressure and threats related to their work and content.”

Prosecutions of media outlets add to the crisis, notably a plethora of challenges to media ownership, accusations of tax evasion, charges of criminal and cyber-libel against the independent news site Rappler and a congressional block on renewing the franchise of the country’s largest and most influential broadcasting network, ABS-CBN. Furthermore, the undermining of FoE has resulted in pervasive gendered censorship online and offline, which affects the rights of journalists, media, civil society and the community in general. Journalists, HRDs, bloggers, social activists and CSOs are increasingly the targets of pressure and threats related to their work and content.

The attacks are personal, legislative and digital; they are felt physically, psychologically and emotionally. President Duterte’s brazen contempt for critical media and his framing of human rights as an inconvenience to his “all-out war” on drugs, crime and corruption, encouraged attacks on media and civil society and undermined public trust in both sectors. Since June 2016, journalists, the free press, human rights advocates, and even the Commission on Human Rights (CHR) – a statutory body mandated to conduct investigations on human rights violations – have all faced vilification,

105 Philippine Center for Investigative Journalism. (2021, May 3). State agents linked to over 100 attacks, threats against PH media under Duterte admin. *PCIJ*. Retrieved June 14, 2022, from <https://pcij.org/blog/1105/state-agents-linked-to-over-100-attacks-threats-against-ph-media-under-duterte-admin>.

106 Philippine Center for Investigative Journalism. (2021, May 3). State agents linked to over 100 attacks, threats against PH media under Duterte admin. *PCIJ*. Retrieved June 14, 2022, from <https://pcij.org/blog/1105/state-agents-linked-to-over-100-attacks-threats-against-ph-media-under-duterte-admin>.

as well as systematic attacks by trolls online.¹⁰⁷ Government and military leaders casually “red-tag” activists and CSOs, publicly linking them to communist organisations, armed insurgencies, and “terrorist” organisations – thus setting them up for attack in the very communities they serve. Notably, at least 43 jurists were reported killed between 2016 and 2019.¹⁰⁸ Moreover, CSOs advocating for indigenous peoples, farmers, women, workers, the environment and other sectors all report a more intimidating atmosphere.¹⁰⁹

The global rise of disinformation has been felt acutely in the Philippines, particularly during the Covid-19 pandemic, including gendered and sexualised content. As IMS has observed – in its many programmes around the world including in Myanmar, the Middle East and Eastern Europe – disinformation injures citizens and society, encourages unhealthy, risky, injurious behaviour and breeds division. Furthermore, the subset of gendered disinformation exploits gender and sex-based narratives against women, often with a degree of coordination, aimed at deterring them from participation in the public sphere.¹¹⁰ But the situation in Philippines illustrates that disinformation has a deeper and more troubling effect: while red-tagging can be framed as speech targeting media, CSOs and HRDs in particular, disinformation is not just a media and information literacy (MIL) issue, but a weapon against sectors that need and defend FoE as a prerequisite for democracy.

The Philippines prepared the Philippine Plan of Action on the Safety of Journalists (PPASJ) in consultation with the CHR, whose leadership is critical to success. The PPASJ includes collaborative actions with the CHR and the non-government Philippine Alliance of Human Rights Associations (PAHRA) for attaining gender-sensitive safety goals. The anticipated outcome is to create “sustainable mechanisms for the implementation of the PPASJ” and to set up and pilot, with the CHR and PAHRA, mechanisms for the protection of journalists and HRDs of all genders.

107 Center for Media Freedom and Responsibility. (2018, November 23). Relentless Attacks and Threats Online, On Ground, Across the Nation. *CFIJ*. Retrieved June 14, 2022, from <https://cmfr-phil.org/press-freedom-protection/the-state-of-philippine-media-relentless-attacks-and-threats-online-on-ground-across-the-nation/>.

108 Lawyers' Rights Watch Canada. (2019, July 5). *Killing the lawyers: 43 jurists murdered in the Philippines since 2016* [Report]. Retrieved June 14, 2022, from <https://www.lrwc.org/killing-the-lawyers-forty-jurists-murdered-in-the-philippines-since-2016-report/>.

109 CIVICUS. (2020, 12 February). *Philippines: Raids on NGO offices, arbitrary arrests of activists and freezing of accounts* [Press Release]. Retrieved June 14, 2022, from <https://www.civicus.org/index.php/media-resources/media-releases/4269-philippines-raids-on-ngo-offices-arbitrary-arrests-of-activists-and-freezing-of-accounts>.

See also Ranojo, B. D. (2019, November 13). Stop criminalizing development work and harassing activists. *Inquirer.net*. Retrieved June 14, 2022, from <https://opinion.inquirer.net/125190/stop-criminalizing-development-work-and-harassing-activists>.

110 Jankowicz, N., Hunchak, J., and Pavliuc, A., Davies, D. Pierson, S., & Kaufman, Z. (2021). *Malign creativity: How gender, sex, and lies are weaponized against women online*. Wilson Center. Retrieved June 14, 2022, from <https://www.wilsoncenter.org/publication/malign-creativity-how-gender-sex-and-lies-are-weaponized-against-women-online>.

Framework for freedom of expression and the press

The Philippines is party to the International Covenant on Civil and Political Rights (ICCPR), which recognises, among other fundamental rights, the freedom of expression and the press.¹¹¹ Generally accepted principles of international law, such as international human rights, are incorporated into the law of the land.¹¹²

Freedom of expression, of speech and of the press are enshrined in the Bill of Rights of the Philippine constitution¹¹³ ratified in 1987, a year after the fall of the Marcos dictatorship. These rights have a preferred status in the constitution. The Philippine Supreme Court has emphasised that “governmental action directed at expression must satisfy a greater burden of justification,” and so any prior restraint on these freedoms carries the presumption of invalidity.¹¹⁴ The prohibition on prior restraint is in line with a century-old legal characterisation of the freedom of the press as “the right to print and publish any statement whatever without subjection to the previous censorship of the government.”¹¹⁵

Despite the constitutional guarantee of free expression, speech and freedom of the press, certain laws pose a threat. The Revised Penal Code, enacted in 1930, punishes any person who commits libel¹¹⁶ or incites sedition.¹¹⁷ One media worker asked the UN Human Rights Committee to persuade the Philippine state

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- 111 ICCPR, Ar. 19 (2): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Source: <https://www.ohchr.org/sites/default/files/ccpr.pdf>
- 112 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article II (2). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.
- 113 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article III (4). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.
- 114 Supreme Court E-Library, the Philippines. (2009, April 2). *Newsounds Broadcasting, Inc. v. Dy*, G.R. Nos. 170270 and 17941. Retrieved June 14, 2022, from <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/49124>
- 115 Philippine Supreme Court Jurisprudence. (1918, September 24). *United States v. Vicente Sotto*, G.R. No. 13990. Retrieved June 14, 2022, from <https://www.chanrobles.com/cralaw/1918septemberdecisions.php?id=151>.
- 116 Revised Penal Code, Art. 353: “*Definition of libel*. – A libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonour, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead”. Source: <https://pcw.gov.ph/act-no-3815-the-revised-penal-code/>.
- 117 Revised Penal Code, Art. 142: “*Inciting to sedition*. – The penalty of *prison correccional* in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the (Government of the United States or the Government of the Commonwealth of the Philippines) or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices.” Source: <https://pcw.gov.ph/act-no-3815-the-revised-penal-code/>.

to decriminalise libel, in line with the ICCPR.¹¹⁸ The UN Human Rights Committee has said imprisoning the author of a complaint is a breach of freedom of expression.¹¹⁹ Libel is still penalised, despite the Philippine Supreme Court's Administrative Circular No. 08-2008 of 25 January 2008, which provides guidelines on the preference of monetary fines over imprisonment in libel cases.

More recent enactments of Congress imperil the freedoms of speech and of the press. Republic Act No. 10175, or the Cybercrime Prevention Act of 2012, punishes libel committed through a computer system, otherwise known as cyber-libel.¹²⁰ A lower court has furthermore affirmed republication online as a separate liable offense under a "multiple republication" doctrine and sided with the Department of Justice to move the period of liability for cyber offenses from one year to 12.¹²¹ Republic Act No. 11479, or the Anti-Terrorism Act of 2020, contains provisions which numerous petitioners, including media professionals, have challenged for contravening the Bill of Rights in the constitution. Pending its final verdict, the Supreme Court released a media advisory regarding the decision of the magistrates. The provision penalising incitement to terrorism, which petitioners argued is an affront to freedom expression, is not among provisions declared unconstitutional.¹²²

Different administrations of the Philippine government have set up mechanisms to tackle violations against journalists and members of the media. In 2012, President Aquino issued Administrative Order No. 35 (AO 35), creating the Inter-Agency Committee on Extra Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons. AO 35 covers killings, enforced disappearances, torture and other grave violations of the right to life, liberty and security where the victim is a media practitioner.¹²³ Its mandate includes investigation and referral for criminal prosecution in classes of violations covered by the AO.¹²⁴ This mechanism remains

118 United Nations Digital Library (2012). *Views adopted by the Committee at its 103rd session*, 17 October-4 November 2011, Communication No. 1815/2008. Retrieved June 14, 2022, from <https://digitallibrary.un.org/record/726159?ln=en>.

119 See *ibid.* para. 7.10. "In light of the above, the Committee considers that, in the present case the sanction of imprisonment imposed on the author was incompatible with article 19, paragraph 3, of the Covenant."

120 R.A. No. 10175, Sec. 4(c)(4): "Cybercrime Offenses. — The following acts constitute the offense of cybercrime punishable under this Act: (4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future". Source: https://www.doj.gov.ph/files/cybercrime_office/Rules_and_Regulations_Implementing_Republic_Act_10175.pdf."

121 Buan, L. (2020, June 15). Court affirms republication a separate libel offense, prescription period is 12 years. *Rappler*. Retrieved June 14, 2022, from <https://www.rappler.com/nation/court-affirms-republication-separate-libel-offense-prescription-period-12-years>.

122 Philippine Supreme Court Public Information Office [@SCPh_PIO]. (2021, December 9). *MEDIA ADVISORY in G.R. Nos. 252578, et al.* Retrieved June 14, 2022, from https://twitter.com/SCPh_PIO/status/1468776602871865346.

123 Office of the President of the Philippines. (2020, November 16). *Administrative Order No. 35*, Operational Guidelines, Art. 1(a)(iii). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/downloads/2020/11nov/20201116-AO-35-RRD.pdf>.

124 Office of the President of the Philippines. (2020, November 16). *Administrative Order No. 35*. Section 2. Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/downloads/2020/11nov/20201116-AO-35-RRD.pdf>.



A demonstrator journalist displays a slogan on his head at the protest on the commemoration of the International Human Rights Day in Quezon City, Philippines, on 10 December 2021. (Photo by Angie de Silva/Anadolu Agency via Getty Images)

functional but is used inconsistently; the Duterte administration was criticised for hardly using it all in its early years. In a rare and more recent instance, albeit under pressure from the UN High Commissioner for Human Rights and the International Criminal Court, the Department of Justice invoked AO 35 in March 2021 to probe the killings of activists “carrying out legitimate dissent”. Prior to this, out of 385 cases filed, 13 had resulted in convictions.¹²⁵

In 2016, President Duterte issued Administrative Order No. 1 (AO 1), which created a Presidential Task Force on Violations on the Right to Life, Liberty and Security of Members of the Media (PTFoMS), whose main function is the inventory and monitoring of cases of violence against media workers. The

¹²⁵ Buan, L. (2021, March 15). *Explainer: DOJ's AO 35 panel probing Calabarzon killings and mistrust*. *Rappler*. Retrieved June 14, 2022, from <https://www.rappler.com/newsbreak/explainers/things-to-know-doj-panel-probing-calabarzon-killings/>.

taskforce consists of *ad hoc* bodies that have not been fully institutionalised or integrated within the national human rights framework and could thus be dissolved at any time. PTFoMS serves directly under the Office of the President and some of its critics say it is politicised, inherently conservative and instinctively defensive of the administration.¹²⁶

In terms of proposed legislation, a bill for a Magna Carta for Journalists has been filed several times in Congress, most recently in 2013, during the 16th Congress of the Philippines, when Senator Jinggoy Estrada filed a version of this bill in the Senate.¹²⁷ It aims to provide journalists with security of tenure, humane conditions of work and a living wage. Other than the labour-related provisions, the bill also includes a section on journalists' security and protection and provides that a proposed Philippine Council for Journalists shall be notified of killings or arrests of journalists. At the time of writing, the bill has not been signed into law.

Despite existing measures, the institutionalised protective and preventive mechanisms remain unavailable to journalists and other human rights defenders in the Philippines. As a result, the adjudication and resolution of attacks on them is slow. The worst example is the Ampatuan Massacre – 32 media workers were killed¹²⁸ and a first-level court deliberated for ten years before convicting 28 of 84 persons accused.¹²⁹ Furthermore, the available *ad hoc* arrangements are reactive and do not respond fully to recommendations to the Philippines in the Third Cycle of the Universal Periodic Review to create and foster a safe working environment for the media.¹³⁰

“... 32 media workers were killed and a first-level court deliberated for ten years before convicting 28 of 84 persons accused.”

126 Center for Media Freedom and Responsibility. (2020, July 31). *PTFoMS tags media attack as “fake news”*. Retrieved June 14, 2022, from <https://cmfr-phil.org/press-freedom-protection/attacks-and-threats-against-the-media/alerts/ptfoms-tags-media-attack-as-fake-news/>.

127 Senate of the Philippines. (2013, August 1). *Sixteenth Congress: Senate Bill No. 380*. Retrieved June 14, 2022, from https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=16&q=SBN-380.

128 On the morning of 23 November 2009, in the town of Ampatuan in Maguindanao province, 58 victims were on their way to file a certificate of candidacy for Esmael Mangudadatu, vice mayor of Buluan, when they were kidnapped and later killed. The people killed included Mangudadatu's wife, his two sisters, journalists, lawyers, aides and motorists who were witnesses or were mistakenly identified as part of the convoy.

129 Buan, L. (2019, December 19). 56 acquitted, 28 convicted in Ampatuan massacre. *Rappler*. Retrieved June 14, 2022, from <https://www.rappler.com/nation/247507-acquitted-convicted-ampatuan-maguindanao-massacre-case/>. Only 28 people were convicted for 57 counts of murder in the 2009 Ampatuan massacre.

130 See UPR of Philippines (3rd Cycle – 27th session). Thematic list of recommendations: 133.180 Protect more effectively human rights defenders and journalists, especially through cooperation with civil society (Poland). <https://www.ohchr.org/EN/HRBodies/UPR/Pages/PHindex.aspx>. Source of position: A/HRC/36/12/Add.1.

The Commission on Human Rights

Alongside *ad hoc* bodies and orders, the constitution (1987) has strong provisions for the protection of human rights. Aside from the exhaustive Bill of Rights, a State Policy guarantees full respect for human rights.¹³¹ It also contains an entire Article dedicated to Social Justice and Human Rights. This established the Commission on Human Rights (CHR), which the framers of the constitution intended to be the independent national human rights institution (NHRI),¹³² a watchdog against government abuses. The inclusion of the CHR within the constitutional framework was partly a response to the dictatorship that preceded its ratification. The CHR was established through Executive Order No. 163, series of 1987 (EO 163) issued by President Aquino.

As of April 2022, the CHR has status “A” accreditation from the Global Alliance of National Human Rights Institutions (GANHRI).¹³³ The level of status depends on compliance with the Paris Principles. The CHR is also a member of the Asia Pacific Forum, a coalition of regional NHRIs.

The CHR is a multi-member body led by a chairperson and four commissioners, all appointed by the President. They comprise the Commission *en banc* (“on the bench”). The constitution provides that most of the Commission must be members of the Philippine Bar.¹³⁴ Their term of office, according to EO 163, is seven years without reappointment.¹³⁵ Any member who assumes a vacancy shall only serve for the unexpired term of their predecessor. The powers and functions of the CHR are included in the constitution.¹³⁶ These are to:

- Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.
- Adopt its operational guidelines and rules of procedure and cite for contempt for violations thereof in accordance with the Rules of Court.

131 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article II (11). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

132 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article XIII (1). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

133 GANHRI. (2022, April 27). *Accreditation Status as of 27 April 2022*. Retrieved June 14, 2022, from https://ganhri.org/wp-content/uploads/2022/04/StatusAccreditationChartNHRIs_27April2022.pdf.

134 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article XIII (17:2). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

135 Office of the President of the Philippines. (1987, May 5). *Executive Order No. 163, Sec. 2 (c)*. Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/1987/05/05/executive-order-no-163-s-1987/>.

136 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article XIII (18). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

- Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection.
- Exercise visitorial powers over jails, prisons or detention facilities.
- Establish a continuing programme of research, education and information to enhance respect for the primacy of human rights.
- Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights or their families.
- Monitor the Philippine government's compliance with international treaty obligations on human rights.
- Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority.
- Request the assistance of any department, bureau, office or agency in the performance of its functions.
- Appoint its officers and employees in accordance with law and perform such other duties and functions as may be provided by law.

One of the CHR's chief functions is investigation and the Supreme Court has defined this function through jurisprudence. According to the Court, the CHR is empowered only to investigate, i.e., "receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights."¹³⁷ Thus, it cannot perform any acts tantamount to adjudication, as it is not a quasi-judicial body. At best, at the end of the investigation and fact-finding process, the CHR may "refer the matter to the appropriate government agency or tribunal for assistance."¹³⁸ Any cases of potential human rights violations may only be lodged as complaints through the prosecutorial arm of the government. Likewise, the Supreme Court ruled that the CHR cannot issue any forms of injunctive reliefs, as this falls under the exercise of judicial power.¹³⁹

In line with its power to adopt its operational guidelines and rules of procedure,¹⁴⁰ the CHR promulgated its Omnibus Rules of Procedure in 2012, according to which it may investigate any case of human rights violations, on its

137 Supreme Court of the Republic of the Philippines. (1991, December 2). *Cariño v. CHR*, G.R. No. 96681.

Retrieved June 14, 2022, from https://www.lawphil.net/judjuris/juri1991/dec1991/gr_96681_1991.html.

138 Ibid.

139 Supreme Court of the Republic of the Philippines. (1992, April 14). *EPZA v. CHR*, G.R. No. 101476. Retrieved June 14, 2022, from https://www.lawphil.net/judjuris/juri1992/apr1992/gr_101476_1992.html.

140 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article XIII (18:2). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

own or at the instance of any party. This includes anonymous complaints.¹⁴¹ The procedure also contains a rule for the conduct of public inquiries. A public inquiry is fact-finding, non-adversarial in nature¹⁴² and focuses on human rights cases of domestic or international importance or implication.¹⁴³ In recent years, the CHR has conducted public inquiries and hearings on large-scale issues, which include threats to HRDs.

The CHR may also dispatch quick response teams (QRTs) to respond immediately to cases where human rights violations have just been committed or where rights are under grave threat or in imminent danger.¹⁴⁴ In practice, while the CHR may summon the QRTs to secure evidence, it lacks power to secure evidence in law.

Various other national laws include the CHR among its implementing agencies. These laws are in line with the CHR's monitoring function of the Philippine state's treaty obligations under international law. For instance, the CHR is designated as the Philippines' Gender Ombud under Republic Act No. 9710, or the Magna Carta of Women.¹⁴⁵ The Magna Carta of Women is the state's compliance with the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), to which it is a party. The role of the CHR, as defined in these laws, is limited by its constitutionally defined powers. It fulfils the functions of respecting, protecting and promoting core human rights, as perceived. In principle, the CHR as Gender Ombud may investigate violations of freedom of expression within a nexus of gender-based discrimination.

For all its intended and stipulated independence, the CHR remains exposed to the politics of governance in the Philippines. For instance, the CHR does not enjoy fiscal autonomy,¹⁴⁶ rendering it vulnerable to threats of being defunded in the national budget. In 2017, members of the House of Representatives threatened to award the CHR annual funding of only PHP 1,000 (about USD 20), and a first round of voting set this as the proposed allocation. Congress eventually awarded a more realistic amount, although even that was 20 percent less than the Commission had requested.¹⁴⁷

CHR chairpersons serve for seven years, one more than the single, non-renewable six-year term for Philippine presidents. This was designed to ensure no complete overlap in tenures but even so, with every succeeding administration,

141 Commission on Human Rights, the Philippines. (2012, August 31). *Omnibus Rules of Procedure of the CHR*, Rule 4, Sec. 4. Retrieved June 14, 2022, from https://pinoyfilecabinet.files.wordpress.com/2014/07/chr-procedures-final_approved_8-31-2012.pdf.

142 *ibid.*, Rule 7, Sec. 2.

143 *ibid.*, Rule 7, Sec. 3.

144 *ibid.*, Rule 13, Sec. 2.

145 Congress of the Philippines. (2009, August 14). *Republic Act No. 9710*, Sec. 39. Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/2009/08/14/republic-act-no-9710/>.

146 Supreme Court E-Library, Philippines. (2004, November 25). *CHREA v. CHR*, G.R. No. 155336. Retrieved June 14, 2022, from <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/46363>.

147 Cayabyab, M. J. (2017, September 12). House of Representatives threatened to award the CHR annual funding of only PHP 1,000. *Inquirer.net*. Retrieved June 14, 2022, from <https://newsinfo.inquirer.net/930106/house-budget-deliberations-chr-p1000-budget-speaker-alvarez>.



less overlap between terms would mean greater independence and more checks and balances. The arithmetic, however, can create a dilemma. For example, the next CHR chairperson could have been appointed by President Duterte, and human rights advocates – eager to test the accountability of the incumbent beyond the president’s term – could have found the CHR not necessarily sympathetic to their advocacy.

Creating mechanisms for media safety under the Commission on Human Rights

On 2 July 2018, the CHR announced a formal resolution expressing its resolve “to constitute a taskforce on media-related extra-judicial killings (EJKs)”. The mandate of the taskforce is to “monitor and investigate various attacks on the Philippine press.”

On 28 May 2021, during the launch of the EU-funded project Safeguarding Journalists and Human Rights Defenders in the Philippines, in line with the

Activists and human rights advocates in the Philippines staged an Independence Day action on 6 May 2022, focused on the state of freedom of the press, economic freedom and national sovereignty, which are believed to be under threat by the incoming administration of Ferdinand Marcos Jr. (Photo by Ryan Eduard Benaid/SOPA Images/LightRocket via Getty Images)

PPASJ, the CHR's Executive Director Jacqueline De Guia said the taskforce must be seen as "part of a continuing process". So far, it has offices in the three main regions of the Philippines – in Bicol (for the northern Luzon region), in Cebu (for the central Visayas region) and in Cotabato (for the southern Mindanao region) – each serving as "focal points," to "monitor and investigate attacks against the free press."¹⁴⁸ This work, De Guia said, can continue in the context of the objectives of the PPASJ, and in coordination with IMS's work with the Asian Institute of Journalism and Communication (AIJC) and the multi-sectoral stakeholders of the PPASJ.

The CHR and civil society will address various types of threats and violence against media, including old cases. Attacks have become diverse and more dynamic over the years. For example, "red-tagging" is not new but was notorious, relentless and consequential under Duterte's administration. One senator proposed legislation to define the practice as a criminal offence. While journalists and HRDs were among the first to point out this proposal's potentially negative impact on free speech, it represents a formal acknowledgement, nonetheless, of dire and rising concern.

Another worry is disinformation and speech designed to isolate, demoise and harass media and human rights advocates in the public sphere both online and offline. Here, as late CHR Chairperson Chito Gascon told IMS in an interview, the CHR needs support for its competence and capacity to go beyond traditional definitions of "attacks against the free press". For example, the trolling of media and individual journalists on social media requires legal definitions of attacks, technical savvy and counterpart expertise in the legislature and the judiciary – all of which are lacking.

According to Gascon, this is why transparency and commitment are vital to the process of creating dedicated mechanisms and units for media safety under the CHR. Committed to seeing such mechanisms established and enhanced, he was convinced that seeds planted in 2018 could take root and flourish before the 2022 national elections and the arrival of a new appointee. For her part, CHR Executive Director De Guia says both the CHR's charter and the Philippine constitution offer sufficient protection to career executives in the Committee's secretariat and they will be able to sustain any reforms initiated, regardless of who may be appointed as chairperson.

In any case, the basis of what can be achieved to bolster journalist safety will remain as follows: while the law limits the CHR to fact-finding or investigations, the Committee may still perform crucial functions that could lend greater protections to journalists and media workers. The recommendations in the third cycle of the UPR, which calls on the Philippines to create a safer environment for journalists and to establish protection systems, could be met through the CHR to the extent legally permissible. Congress, in turn, would need to create laws

148 Meeko, A.C. (2021, May 29). CHR to boost measures for safety of journalists. *VERA Files*. Retrieved June 14, 2022, from <https://verafiles.org/articles/chr-boost-measures-safety-journalists>.

granting the CHR more power to protect freedom of expression, including media and journalists.

The CHR has already concluded a public inquiry, by virtue of a resolution issued by the Commission, and released the Report on the Situation of Human Rights Defenders in July 2020.¹⁴⁹ The scope of the inquiry includes attacks against journalists, who are categorised as human rights defenders. Among other conclusions, the report recommends:

- Recognising the role of journalists, media outlets, civic organisations and HRDs in monitoring human rights.
- Preventing the use of “overly subjective administrative regulations”, including licensing and taxation to close or censure media outlets.
- Granting journalists and members of the press full access to information on the promotion of human rights and activities of HRDs.
- Dismissing libel and slander cases against journalists and reporters filed in connection with the exercise of their duty to report human rights violations and avoiding the instigation of other criminal and civil suits as a tool for censorship.¹⁵⁰

Way forward

The CHR was an active resource and supporter in the crafting of the PPASJ. It also delivered a message at the November 2019 launch of the PPASJ, where it promoted the importance of building institutions, partnerships and the mechanisms needed to sustain gender-sensitive safety measures for journalists and media. The CHR is regarded as a crucial strategic partner not only to help realise efforts to protect media and journalists, but also to expand the scope and impact of the PPASJ’s capacity to cover and benefit HRDs as a separate yet co-dependent sector to the free press. “Effective engagement with the CHR and the CSO network Philippine Alliance of Human Rights Advocates (PAHRA)” is a key part of the EU-funded IMS programme in the Philippines 2021-2022, which can support preliminary work underway towards establishing a safety mechanism.

To this end, as IMS and AIJC are in the implementation phase of the PPASJ, one outcome calls for building on CHR’s and PAHRA’s commitment and involvement as stakeholders in the PPASJ. In turn, the stakeholder team is committed to working with the CHR and other national human rights networks to build coalitions and ensure sustainability. The PPASJ must be seen and used as a platform for stronger alliances between the media and human rights

149 Commission on Human Rights, Philippines. (2020, July). *Report on the situation of human rights in the Philippines*. Retrieved June 14, 2022, from <http://chr.gov.ph/wp-content/uploads/2020/07/CHRP-2020-Report-on-the-Situation-of-Human-Rights-Defenders.pdf>.

150 *Ibid.* pp. 98-99.

communities, uniting both sectors around the common aim of creating a safer and more conducive FoE environment to allow the larger rights environment in the Philippines to operate more freely and effectively.

The planned outputs of the IMS programme provide a roadmap to guide and assist the CHR in setting up the mechanism for journalist safety. These planned outputs include:

- Establishing local mechanisms to coordinate implementation of the PPASJ, as precursor to the national mechanism. Activities for establishing communication and coordination between stakeholders will include close cooperation with those implementing the PPASJ with the Journalist Safety Advisory Group (JSAG) – the informal network of media and FoE advocacy groups that helped develop the PPASJ – and with CHR and other rights networks.
- Strengthening strategic alliances between media and the human rights community. The implementation of the PPASJ will focus on coalition building to ensure that HRDs benefit as well as media and journalists, while expanding the network and engaging with the CHR.
- Dialogue between HRDs, journalists and state enforcement agencies and task forces, such as that between media and security forces/police while drafting the PPASJ, must continue to build confidence and mutual understanding for addressing violence against journalists and HRDs and ways to protect them. As an independent platform, the CHR can facilitate consultations and confidence building activities. Previous forums, organised under “Safeguarding Press Freedom in the Philippines”, helped to establish collaborative mechanisms, fostering trust and understanding between media and security forces/police.
- Strengthening and operationalising provincial safety networks for journalists and HRDs. Much of the violence against journalists and HRDs takes place beyond the Philippines’ urban centres. Due to inadequate resources at provincial levels, many such cases are not documented or do not receive the necessary response. Setting up local mechanisms to monitor and respond swiftly to these continuing threats would have a significant impact but requires the strengthening of existing provincial safety networks and the mobilisation of quick response teams in coordination with the CHR’s regional units.
- Bolstering a gender sensitive approach to journalist safety. The CHR is also the Gender Ombud under the Philippine Magna Carta for Women and thus can inform, guide and strengthen gender sensitivity while working on the safety of journalists and HRDs. Recognising that women journalists and HRDs face different challenges than their male peers, the Ombud can initiate the internalisation of gender concerns in all efforts towards implementing the PPASJ.

The planned outputs above are covered by the EU-funded IMS project. In addition, the CHR could create dedicated quick response teams with designated roles for PPASJ stakeholders to respond to attacks against journalists and media workers. It could also renew lobbying to decriminalise libel and cyber-libel, in line with its power to recommend to Congress effective measures to protect human rights.¹⁵¹

In 2020, the CHR entered into a data-sharing agreement with the Department of Justice (DOJ) with a view to strengthening the mandate of the Inter-Agency Task Force created under AO 35,¹⁵² wherein the CHR Chairperson may be invited as a resource person. AO 35's mechanism creates a flow of data and information from the CHR to the DOJ's prosecutorial arm. Any cases investigated by the CHR that fall under the types of incidents contemplated by AO 35 may then be recommended for the filing of criminal charges before the courts.

Based on its current internal structure¹⁵³ that responds to a State's obligation to respect, protect and fulfil human rights, the CHR may need to augment its capacity to create protective and preventive mechanisms. For instance, it has a Security, Protection and Assistance Division that could craft preventive mechanisms in case of an imminent threat of human rights violations, particularly against HRDs and journalists. The mandate of its Citizens' Help and Assistance Division could also be explored for ways to aid journalists or other human rights defenders in distress.

There is much potential in creating a gender-sensitive protection mechanism well within the powers and functions of the CHR. In 2016, the CHR released its Gender Ombud Guidelines,¹⁵⁴ in accordance with the Magna Carta of Women, which include the provision of legal services, case referral mechanisms, monitoring, issuance of gender Ombud advisories and protection and support against risks faced by women journalists. The referral pathways under these guidelines include directing complaints to law enforcement agencies and the Office of the Ombudsman in case the violator is a public officer.

Finally, to encompass all aspects of protection needed by journalists and media workers in the Philippines, the CHR should continue its partnership with a broad range of CSOs. In turn, the CSOs could furnish updated data and cases of violations from the ground, which could then trigger the investigative mechanisms of the CHR. Formal agreements for data and information-sharing could

151 Official Gazette of the Republic of the Philippines. (1987, February 2). *The Constitution of the Republic of the Philippines*, Article XIII (18:6). Retrieved June 14, 2022, from <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>.

152 Department of Justice, the Philippines. (2020, September 2). *CHR sign data sharing agreement vital to AO35 cases of extra-legal killings, enforced disappearances, torture and other grave human rights violations*. Retrieved June 14, 2022, from <https://www.doj.gov.ph/files/2020/news%20articles/DOJ%2C%20CHR%20Data%20Sharing%20Agreement.pdf>.

153 Commission on Human Rights, the Philippines. (2020, August 27). *CHR organizational structure*. Retrieved June 14, 2022, from <http://chr.gov.ph/chr-organizational-structure/>.

154 Commission on Human Rights, the Philippines. (2016). *CHR gender ombud guidelines: Promoting gender equality and women's empowerment under the MCW (RA 9710) and related laws*. Retrieved June 14, 2022, from <http://chr.gov.ph/wp-content/uploads/2018/09/CHR-Gender-Ombud-Guidelines.pdf>.



Filipino journalists, press freedom activists, supporters and employees of ABS-CBN, the country's largest broadcast network, protest to mark the first-year anniversary of the rejection of a new franchise for the broadcasting network in front of its headquarters in Quezon City, Metro Manila. The Philippine Congress on 10 July 2021 voted to reject a new franchise for the multi-media network ABS-CBN, after the expiration of its 25-year operating franchise. (Photo by: Basilio H. Sepe/Majority World/Universal Images Group via Getty Images)

also be forged between CSOs and the CHR. Another way to develop coalitions would be by the CHR providing capacity-building trainings, to CSOs working on the specific issues of journalists' and media workers' rights, as part of its continuing programme on human rights education. This training may include paralegal guidance, which could allow CSOs or even journalists themselves to assist in case build-up by securing evidence or other quick response action, as well as technical training on the new and evolving forms of threats and attacks online, and sessions on how to monitor, investigate and address these rapidly changing forms of violence.

The way forward: Independent journalist safety mechanisms are possible

The year 2022 marks a decade since the adoption of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity – a roadmap which reveals that no single institution can take sole responsibility for protecting journalists. According to UNESCO, at least 1,454 journalists have been killed around the world since 1993, and the killings continue. This proves that arrangements for ensuring journalists' safety have been inadequate, and that engagement between a broader range of stakeholders is essential for tackling the challenge. Such a cross-sectoral approach can build on the strengths of existing institutions and work collaboratively to protect journalists and free expression.

It is not possible to prescribe a standard format for the ideal national safety mechanism for journalists, and that is not the goal of this report. Each country has a unique national context, and any institutional mechanism on journalists' safety must match its political, legal, social and administrative architecture. That is easier said than done because each country has uniquely complex policies, laws and institutional arrangements requiring bespoke solutions to be devised nationally. In many countries, multiple institutions already play a role in ensuring gender-sensitive journalism, albeit often ineffectively for lack of clear mandates, coordination and overlapping jurisdictions. Numerous countries already have provisions in policies and laws that articulate the intention to protect freedom of expression, journalists and media. However, no country in this study has a fully-fledged multi-stakeholder mechanism that draws from the strengths of key stakeholders such as human rights institutions, law enforcement actors, government, civil society organisations, journalists and women's rights defenders.

National institutions that are already engaged in some level of journalists' safety and protection include NHRIs, police, attorneys general and prosecution services, journalists' associations, press councils and civil society organisations. Among these, NHRIs have the broadest mandates and are independent state agencies established by law to oversee and safeguard human rights. Many also have convening power as they are constitutional bodies and could evolve into credible institutions for taking up the challenge of keeping journalists and media safe, while also protecting free expression for citizens of all genders.

Various efforts seek to enhance the safety of journalists. Different approaches have been piloted in Latin America (Mexico, Colombia), the Middle East (Iraq, Syria), Asia (Afghanistan, Indonesia, Nepal, Pakistan and the Philippines) and elsewhere. These are places where journalists and media have been subjected to significant attacks and violence, and where government, journalists' associations and freedom of expression organisations have been advocating for safety mechanisms to protect them. Therefore, it makes sense to have multi-stakeholder mechanisms convened by independent state agencies, including main stakeholders and why NHRIs could convene them.

NHRIs could host safety mechanisms, particularly ones adhering to the Paris Principles – the international minimum standards for legitimacy and credibility, which require NHRIs to be independent in law, membership, operations, policy and control of resources; to a large extent, many are. NHRIs also have the power to investigate, make recommendations to the government and even litigate. Their independence and authority mean NHRIs are best placed to facilitate the setting up of journalist safety mechanisms under their mandate to protect freedom of expression.

The authority of NHRIs in this research varies, as does their progress in establishing safety mechanisms. In Nepal, which has moved furthest in this regard, the Nepal National Human Rights Commission has issued a directive defining the structure and operations of such a mechanism. Its operationalisation stalled, however, due to a change in leadership at the Commission, political instability and the logistics of putting a new institution in place. Though following regional consultation to mark 10 years of the UN Plan of Action, hosted by UNESCO in May 2022, there is renewed focus on journalist safety in Kathmandu.

Stakeholders in Indonesia, Pakistan and the Philippines have initiated dialogues with their respective NHRIs to explore which institutional design might best protect journalists and freedom of expression. In Indonesia, journalists' and civil society organisations formed a safety committee that is discussing collaboration with the NHRI and the Press Council. In Pakistan, two separate processes culminated in two laws on journalist safety – one in Sindh province and one at federal level. In the Philippines, media and civil society organisations are collaborating with the Philippines Commission of Human Rights to implement the Philippine Plan of Action on the Safety of Journalists. It is hoped and expected that these various regional activities will lead to comprehensive national mechanisms to protect journalists' safety.

Building on this progress in different countries, the next major steps should be:

- 1. Continual dialogue and consultations:** Since the level of understanding of the need to protect journalists and freedom of expression varies by country, continual dialogue and consultations between all stakeholders would help, including prosecutors, policy and other justice administration agencies, especially any who may lack understanding of the larger goal of the initiative.

Discussions in Indonesia, Nepal, Pakistan and the Philippines should continue, and while their objectives could differ, all should focus on including women stakeholders, particularly journalists and HRDs, and on setting up systems for better monitoring of gender-based violence in journalism and human rights work. Reporting of gender-based violence is low in all countries in this study, so it is important to consider mechanisms that will encourage vulnerable parties to report violence and enable them to seek support in an environment that guarantees confidentiality.

In Nepal, dialogue should focus on operationalising the mechanism for which a blueprint exists. In Pakistan, it should focus on remobilising its long-dormant statutory NHRI and exploring possibilities for it to engage in journalist safety initiatives now underway, including the new laws. The need for wider consultations is most evident in Indonesia, where it would be helpful to involve institutions whose mandates seem to overlap and those which have specific ones; together they could further the purpose of protecting journalists and free expression. Focus on the Philippines in the next phase of PPASJ implementation should also be on consultations, for which support is available from the IMS-led and EU-funded Safeguarding Journalists and Human Rights Defenders in the Philippines programme. These consultations must focus on finalising and formalising the responsibilities of different stakeholders and the operations of the journalist safety mechanism. The IMS programme can provide the same momentum to the proposed mechanism.

- 2. Research and documentation of existing mechanisms and national plans to promote journalist safety:** Effort will be required to research and document the experiences of developing different safety mechanisms in these different countries, so that lessons learned can inform initiatives underway elsewhere. This would require documenting the different capacities of journalism and human rights stakeholders and the mandates of different state agencies, including justice administration agencies, to arrive at a better understanding of what each stakeholder can bring to the table. Similarly, comparative studies across countries can also assist knowledge building to inform future initiatives on journalists' safety.
- 3. Strong advocacy for written rules and procedures to drive the mechanism:** Alongside efforts to engage different stakeholders from government and justice administration agencies, there must be continued advocacy for written rules and procedures to operationalise the safety mechanism. This is to ensure institutional memory, so the mechanism can continue after individuals leading the initiative move on.
- 4. Increased international support for the establishment of safety mechanisms:** As the key agency for the implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, UNESCO and other

freedom of expression and media development organisations need to make additional efforts to help proposed national initiatives move forward. Some countries, like Nepal, may require this support to provide the last push, while in others a longer-term engagement would be needed to ensure that consultations do not fizzle out when funding stops. Nepal is closest to operationalising an NHRI-convened safety mechanism and therefore could require both material and technical assistance as it takes the first steps towards improving journalists' safety. Start-up activities can be aided with engagements to support local efforts by international agencies, as happened under the international media mission about a decade ago.

Specific recommendations

National media associations and civil society

1. Engage with NHRIs and other state agencies, including police and prosecutors, to arrive at a shared understanding on the need to protect journalists and freedom of expression to build and strengthen national democracies.
2. Organise collaborations including joint monitoring and investigating of attacks on journalists and freedom of expression.
3. Continue monitoring and documenting attacks against journalists and media organisations.
4. Advocate for journalists' safety mechanisms by highlighting possible collaborations and contributions from various agencies.

National Human Rights Institutions

1. Begin reviewing existing policies, laws and mandates to explore openings for sharing their independence and authority with other national stakeholders for forming national mechanisms on journalists' safety and protecting freedom of expression. Such reviews can provide information on potential legal entry points for setting up safety mechanisms and inform the legal changes required.
2. Initiate and/or participate in joint monitoring and investigation of attacks against journalists and human rights defenders with media and CSO groups for documentation in their annual reports.
3. Explore institutional capacity and resource needs for accommodating journalist safety mechanisms within existing institutions.
4. Organise and lead local consultations on journalist safety and the need to protect freedom of expression with law-enforcement, justice administration, government agencies, media and civil society groups and human rights defenders.

International agencies and media development organisations

1. Establish a funding mechanism for supporting on-going efforts to establish national journalist safety mechanisms in countries that require additional assistance during start-up years.
2. Organise joint international missions, including with UN agencies, to countries experiencing a high number of attacks on journalists and media, as part of advocacy for working towards attaining the Sustainable Development Goal 16.1 and consult with national stakeholders, including governments and justice administration agencies, on setting up national journalist safety and protection mechanisms.
3. Incorporate the setting up of national journalist safety mechanisms into existing media development support provided to different countries, as a strategy to create multiple stakeholder platforms for consultations on the role of media in democracy and to counter growing threats to independent content in offline and online spheres.

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The Human Rights Commission of Pakistan, a non-governmental organization, should not be confused with the National Commission for Human Rights in Pakistan, a state institution.

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IMS supports local media to reduce conflict and strengthen democracy. We promote press freedom, save journalists' lives and pave the way for good journalism and reliable information for everyone.

This report explores the role of national human rights institutions in South and Southeast Asia – Nepal, the Philippines, Indonesia, Pakistan – and probes how their resolute engagement in supporting national protection mechanisms for journalists can contribute to upholding their mandate of promoting human rights for all. Entrusted with the responsibility for monitoring freedom of expression – the basic right that most broadly covers journalistic work – national human rights institutions can serve as strong allies in the promotion of journalist safety.