National Human Rights Commissions in India and Nepal:
State of Affairs and Challenges Ahead

I. Introduction

National Human Rights Institutions (NHRI) are a quite recent phenomenon in the range of bodies dealing with the promotion and protection of human rights. Most of them are fewer than twenty years old. In 2009, 65 NHRI all over the world were found to be in line with the Paris Principles on the status and functioning of NHRI as defined in October 1991. According to these principles, such institutions need to be independent (in terms of legal basis, budget, and regarding their members), members need to be an expression of the diversity and plurality in a country, and the mandate of the institution should be as broad as possible. NHRI can be organized as a collegial organ in the form of a commission or as an individual organ in the form of an ombudsperson. Both types can either have a general mandate or be assigned a special purpose. Examples for the latter are the national commissions for women or language issues or ombudspersons dealing only with persons belonging to national minorities.
In South Asia, only the National Human Rights Commissions (NHRC) of India and Nepal have the status of being in compliance with the Paris Principles. Sri Lanka and the Maldives have observer status, which means that their institutions are either not fully in line with the Paris Principles or insufficient information has been provided to make a determination. Other South Asian states either have no such commission or they have no registered status at the International Coordinating Committee of NHRI.

The present article assesses the functioning of the NHRC of India and Nepal, starting with an overview of the technical aspects related to their legal bases, composition, and mandate (II) and then presents a more substantive analysis of the major challenges encountered by these two bodies in their day-to-day work (III).

II. Formal Preconditions

A. Legal Bases

According to the Paris Principles, NHRI should be based on a law or even on the constitution of a country. The obvious purpose of this provision is to de-link the existence, mandate, and composition of the institution as much as possible from the arbitrary decisions of changing governments.

The NHRC in India is based on the Protection of Human Rights Act of 1993. The NHRC was immediately established and is thus one of the most longstanding institutions. However, from the beginning, the first NHRC detected a discrepancy between the aims and objectives of the Act and the means foreseen by the Act to reach these goals. Although a high-level Advisory Committee made suggestions as to the amendment of the Act already in 1999 and the Commission's proposals based on this work were submitted to the government in 2000, it was only in 2006 that the law was finally amended. Quite a number of proposed changes have not found their way into the new law. How they still hamper the functioning of the Commission will be analyzed in part III of this article.

Nepal's Commission has its foundation in the 1997 National Human Rights Commission Act. However, due to the political instability in the country, the Commission was set up only in 2000. After the turbulences connected to the killing of the king in 2001, the new king's dismissal of the government in 2005 to command the war against Maoists, and the democracy movement in 2006 which finally ended