

Introduction

The Commonwealth Commitment to the Promotion and Protection of Human Rights

Commonwealth countries are committed to the principles outlined in the 1991 Harare Commonwealth Declaration. Drawing on the International Bill of Rights, Commonwealth Heads of Government have committed themselves and their countries to work with renewed vigour for the protection and promotion of the fundamental political values of the Commonwealth. These are:

- ◆ democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; and
- ◆ fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed, or political belief.

The commitments to the Harare Principles also include pledges to work in specific areas of special relevance which are reflected in the universal human rights instruments. These include:

- ◆ equality for women;
- ◆ provision of universal access to education;
- ◆ promotion of sustainable development and alleviation of poverty;
- ◆ extension of the benefits of development within a framework of respect for human rights;
- ◆ protection of the environment; and
- ◆ combating drug trafficking and abuse and communicable diseases.

The Harare Declaration reaffirms the Declaration of Commonwealth Principles agreed in Singapore in 1971. Accordingly, it reiterates:

- ◆ belief in liberty under the law;
- ◆ recognition that racial prejudice and intolerance is a dangerous sickness;
- ◆ awareness that racial discrimination is an unmitigated evil;

- ◆ opposition to all forms of racial oppression; and
- ◆ commitment to the principles of human dignity and equality.

Commitment to the Commonwealth principles and the organisation's fundamental political values is given firm expression when countries create national institutions to promote and protect the rights of citizens and others within their jurisdiction, in particular, those rights recognised as fundamental to development and well-being in democratic societies.

As recorded in the 1995 Millbrook Commonwealth Action Programme of the Harare Declaration, Commonwealth Heads of Government requested that the Commonwealth Secretariat work to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's fundamental political values, including assistance in creating and building the capacity of requisite institutions. National Human Rights Institutions (NHRIs) fall clearly within this remit.

National Human Rights Institutions as an Integral Part of a Democratic Society

When governments ratify or accede to an international human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained in the instrument. Often, however, the existence of a law that protects certain rights is not enough if that law does not also provide all the legal powers and institutions necessary to ensure the effective realisation of those rights. It is therefore important for a state committed to human rights to establish a national infrastructure, including relevant institutions, which can promote and protect human rights.

The 1993 World Conference on Human Rights (the World Conference) encouraged the establishment and strengthening of NHRIs, while recognising both the rationale and requirements of the Paris Principles¹ and that each state chooses the framework which best suits its particular needs. The World Conference also reaffirmed the importance of the role played by NHRIs for the promotion and

1 See Annex

protection of human rights, in particular, in advising the competent authorities, in remedying human rights violations, in disseminating human rights information, and in educating the public about human rights.

Since the World Conference, NHRIs have become more prominent actors in the national, regional and international human rights arenas. They support the basic institutions of democracy which include a pluralist and accountable parliament, an executive which is ultimately subject to the authority of elected representatives and an independent judiciary.

NHRIs have the capacity to make a substantial contribution to the realisation of human rights by transforming the rhetoric of international instruments into reality. Their ability to understand national circumstances and local challenges often means that NHRIs are better placed than external evaluators to monitor the human rights performance of governments.

There are many ways in which NHRIs can effectively contribute to the development of pluralistic and healthy democracies. Their most important contributions arise from the exercise of powers to:

- ◆ undertake investigations of alleged violations of rights;
- ◆ provide advice to government on legislation, policies and programmes;
- ◆ promote rights and educate the public;
- ◆ conduct public inquiries; and
- ◆ build bridges between government and civil society and between groups within civil society.

Their success depends on them being truly independent, qualified and diverse in their membership, adequately staffed and resourced, and accessible to the public.

National Human Rights Institutions in the Commonwealth

Many of the Commonwealth's member countries are small island states with limited human and financial resources. Many others are least developed or

developing countries. Indeed, over 90% of the countries of the Commonwealth are small and/or developing. However, differences in size and level of development does not preclude the ability to share common values as evidenced by the near complete sharing of a system of law which facilitates the development of common standards of legal behaviour, common definitions of the relations between the courts and other national institutions and a common understanding of the importance of laws which are in harmony with fundamental rights and freedoms.

Throughout the Commonwealth NHRIs take many forms. Some deal only with human rights issues, often narrowly defined so as not to include the full range of issues covered by the international human rights instruments or the Harare Declaration. Others have wide mandates to address all issues covered in the international instruments. Some combine a number of functions relating to the international instruments with the traditional role of the Ombudsman who has oversight over operations in the public sector, others subsume an administrative law function, and yet others have few powers beyond those of a traditional Ombudsman. In other cases, the mandate is conferred as the result of domestic upheaval and reflects only the current preoccupations of a particular society. In many cases, the size and resource base of the country dictates the characteristics of NHRIs.

However, for whatever reason NHRIs are formed, the ideal is for each of them to have the capacity to deal with the protection and promotion of **all** rights recognised by international law as human rights.

Small and Developing Countries

In small and developing states or states with very limited resources, it may be more practicable to confer the mandates of both an NHRI and an Ombudsman upon a single institution. Where this is done it is important that the institution, whatever it may be called, has the charter and commensurate power to carry out the functions of an NHRI.

Each of the best practices outlined in this work is applicable to an NHRI in any country. Every effort has been made to include in the commentaries suggestions relevant to the particular challenges and constraints confronting small states.

Independence

Independence characterises all NHRIs designed to effectively monitor good governance and human rights in Commonwealth countries. NHRIs in many states operate alongside electoral and anti-corruption commissions and similar institutions. The requirement of independence is so fundamental that it is, therefore, a theme reflected throughout the booklet.

Evolving Changes

Recognition of the World Conference in 1993 that all human rights were universal, indivisible, interdependent and interrelated, has accompanied a rapidly growing recognition that human rights institutions at the national and international level must more effectively address and protect the rights of the most vulnerable in every society. NHRIs, therefore, should interpret their mandates creatively to address major challenges such as the AIDS pandemic and the marginalisation and discrimination of particularly vulnerable groups.

The 2000 Commonwealth Conference of National Human Rights Institutions

Meeting in Cambridge (UK) in July 2000, representatives from 41 Commonwealth countries and NHRIs recognised that NHRIs play a critical role in the entrenchment of the universality, interdependence, interrelatedness, and indivisibility of human rights and the maintenance of good governance.

The Cambridge Conference was convened to develop a consensus on progress based on the Paris Principles (Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights), adopted by the United Nations General Assembly in 1993, and to encourage the move towards a new era of human rights thinking.

The Conference reaffirmed the Paris Principles. Delegates sought, in their deliberations, to build on those principles and to articulate detailed and updated standards for the creation and operation of NHRIs in member countries.

At the conclusion of the Conference, the Commonwealth Secretariat was asked to bring together an expert group, representative of the diversity of the Commonwealth, to identify best practice in the establishment and operation of NHRIs.

The Development of Best Practice for National Human Rights Institutions

In March 2001 an expert group was convened by the Secretariat to consider the establishment and operation of national human rights institutions. Designed to represent all regions of the Commonwealth and to include developed and developing countries and large and small countries, the Group's work was assisted by senior representatives of the Office of the United Nations High Commissioner for Human Rights and the Asia Pacific Forum of National Human Rights Institutions.

All aspects of the processes involved in creating, appointing and administering national bodies to promote and protect human rights were considered. The group was conscious of the human and financial resource constraints of many member countries and sought to address these constraints in the proposals it made. What remained at the forefront at all times was the need for NHRIs to be accepted by the public and to be in a position to form part of the daily lives of citizens of all Commonwealth countries.

The following people who gave freely of their time, expertise and extensive experience wrote this guide, which brings together the experience of NHRIs across the Commonwealth:

| | |
|------------------------------|---|
| Justice Emile Short | Chairman, Commission on Human Rights and Administrative Justice, Ghana |
| Professor Mohd. Hamdan Adnan | Member, Human Rights Commission, Malaysia |
| Mrs Lawrence Laurent | Secretary/Treasurer, Caribbean Ombudsman Association, St Lucia |
| Mr Chris Lawrence | Commissioner, Human Rights Commission, New Zealand |
| Mrs Shirley Mabusela | Deputy Chairperson, Human Rights Commission, South Africa |
| Mr Brian Burdekin | Special Adviser on National Institutions to the United Nations High Commissioner for Human Rights, United Nations |
| Mr Kieren Fitzpatrick | Director, Asia Pacific Forum of National Human Rights Institutions |

They were assisted by officers of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat.