

Chapter II

Composition of National Institutions

2.1 Members and Staff

Members

- Members should have integrity, moral courage and competence, and be able to exercise sound judgment and fairness. They must also possess public credibility and be independent from executive influence. They should be sensitive to issues relating to gender, ethnicity, and the rights of indigenous peoples, people with disabilities and other vulnerable groups.
- NHRIs should consist of at least three leading members who should generally serve on a full-time basis.
- Members should be accorded a rank and salary comparable to that of senior judicial officers. If a sitting judicial officer is appointed to the NHRI, his or her tenure should not be affected.
- Once appointed, members must act independently and impartially of any person, authority or organisation. Members should avoid any conflict of interest and should one arise, declare it immediately.
- Members and the NHRI staff should have the power to determine how to allocate NHRI resources and, in general, should be accountable to the legislature for their budgetary decisions.

Staff of national institutions

- Members should have the autonomy to select and appoint the NHRI staff but may, in appropriate cases, consult with the public service commission.
- Staff should be suitably qualified and sensitive to the NHRI's mandate.
- Staffing levels should be sufficient to adequately support the group of members in discharging the full mandate of the NHRI.

- An NHRI should ensure that its employment processes promote professionalism and equal employment opportunities.
- An NHRI should have its own legal unit that is qualified to undertake the tasks needed to address effectively individual complaints.

Members of National Human Rights Institutions

There are two absolutely necessary features for an NHRI to function effectively: (i) high-quality members and staff; and (ii) independence. Individual members should possess the requisite expertise, integrity, experience and sensitivity to adequately protect and promote human rights. NHRIs must be free to perform their mandates and functions without outside restraint or improper influence.

The quality of the appointed members and staff of an NHRI will determine its effectiveness. Members should be afforded the titles and remuneration necessary to attract quality candidates. In addition to the strong personal and professional qualifications of the individual members, successful NHRIs are characterised by the plurality of their composition. The Paris Principles stress the importance of ensuring wide representation of civil society groupings in the membership of NHRIs. The interests of representation and plurality are best promoted by multi-member NHRIs. In those micro-states for which multi-member bodies may not be sustainable, a balance may be achieved by ensuring that the senior staff of the NHRI are appropriately representative of society.

Every effort should be made to decide issues of policy and NHRI priorities by consensus among members. When consensus among members is not feasible, a vote should be taken and the chairperson should cast the deciding vote when necessary.

Independence and the public perception of independence are essential to a well-functioning NHRI. To enable members of NHRIs to undertake their duties as independent professionals they should be appointed to full-time positions. The salaries of members of NHRIs should be linked to, and, reviewed in line with the salaries of members of the judiciary.

Similarly, independence is promoted if members have the financial autonomy to direct the spending of NHRI resources. Members should be able to rely on a specific allocation from Parliament at a level sufficient to ensure an active and professional NHRI. Nothing in the enabling law or in rules relating to fiscal autonomy should inhibit the power of an NHRI to collaborate with NHRIs in other countries, whether individually or collectively, on a global or regional basis. Similarly, nothing in the enabling law or in rules relating to fiscal autonomy should require the institution to act in accordance with the directives of the national government or any of its departments or agencies.

Staff

Most of an NHRI's work is performed by its staff. Members must be granted the right to appoint their own staff and, in appropriate cases, may consult with the relevant statutory authority having responsibility for public sector staffing. The level of professional staffing of NHRIs should be adequate to support the work of the commissioners and to conduct the functions of the commission.

2.2 Appointment of Members of an NHRI

- The appointment process should be designed to secure the best possible members.
- The executive should not exclusively determine the selection of members of an NHRI. It should be a transparent process that also involves both the legislature and civil society.
- A transparent process of selection and appointment should be characterised by wide consultation and include a process for public nomination of candidates.
- Collectively, the members should reflect gender balance, the ethnic diversity of society and the range of vulnerable groups in their respective society.
- Appointees should possess the qualifications necessary to undertake the role and should meet the advertised selection criteria.

The appointment process provides a clear signal to the public about an institution's independence. An appointment process that includes the legislature and the public is likely to be independent, and to be perceived as such. Appointments made purely by the executive in a State have the potential to undermine efforts to establish an independent "watch-dog". NHRI members need to be able to monitor impartially the actions of government.²

The appointment process should be as transparent as possible with the involvement of various groups of society. Among the groups identified in the Paris Principles are human rights NGOs, professions, religious groups and educational institutions. In addition, the membership of institutions should reflect national ethnic diversity and a proper gender balance.

2.3 Terms of Appointment

Terms of appointment should include: duration of appointment, whether members can be re-appointed, who may dismiss members, for what reasons and in what manner, and privileges and immunities enjoyed.

- Commissioners should not be removed except for reasons specified in the enabling law. These reasons, and the method of removal, should parallel those applicable to members of the judiciary.
- Generally, it is preferable that members be appointed for a fixed term of at least five years. There should be the possibility of re-appointment for one additional term of the same length.
- A vacancy in the position of commissioner should be filled expeditiously.

2 An appointment process could, for example, involve the establishment of a special and fully representative parliamentary committee to handle the selection process. This process would include the following elements:

- public advertisement of vacancies;
- short-listing of candidates for interview;
- interview of short-listed candidates;
- the making of a recommendation to Parliament; and
- consideration by Parliament and vote (by simple majority) on the name or names to be recommended to the head of state or head of government for appointment.

- Where the term of a commissioner expires and it is not immediately possible to appoint a new commissioner, the term of a serving commissioner should continue for such period, not exceeding 12 months, until a new appointment is made.
- It is desirable that there be continuity in the membership of NHRIs and, accordingly, it may be appropriate that the first commissioners appointed to a new NHRI be appointed for varying periods to ensure that not all Commissioners' terms of office expire at the same time.

An independent NHRI requires that members be protected from employment related reprisals for work performed in the line of duty. Members should be appointed on standardised terms that are publicly known. Members should serve a term long enough to permit them to hone their expertise and use that expertise for the benefit of the public. Also, it is preferable that when acting bona fide in the course of their official duty as established by law, members and staff of NHRIs should enjoy immunity from suit, subject only to laws relating to judicial review.