

## **1 Preface**

### **The significance of national human rights institutions**

The core international legal duty of States under both the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966 is to respect and ensure to all individuals, without discrimination, their respective civil, political, economic, social and cultural rights. The framework of the international system for the protection of human rights is founded upon the twin duties of States to first adopt measures to give effect to human rights and fundamental freedoms and second, to ensure that any person whose rights or freedoms are violated is provided with an effective remedy.

The role of strong and independent domestic institutions established by States but autonomous from them, to promote and protect human rights and hold States accountable for failing to meet their international and domestic human rights obligations, is well recognised. Indeed, the Vienna Declaration of the 1993 UN World Conference on Human Rights explicitly reaffirmed the important and constructive role played by such national human rights institutions, highlighting in particular their important advisory capacity to State authorities, their critical role in challenging and investigating human rights violations and their significant contribution to the consolidation of a human rights culture through dissemination of human rights information, provision of human rights education and training programmes and general human rights awareness raising.

### **The Commonwealth Secretariat, Human Rights Unit**

The Commonwealth Secretariat is the intergovernmental body serving the 53 member countries of the Commonwealth. The Human Rights Unit of the Commonwealth Secretariat is mandated to assist and support Commonwealth members in their efforts to better promote and protect human rights, in accordance with the Commonwealth's fundamental values. One core function of the Unit is to draw on shared and diverse experiences from around the Commonwealth to establish, develop, consolidate and promote international human rights standards and best practice. Central to the Unit's work is the provision of assistance to member countries establishing or seeking to strengthen national mechanisms for the promotion and protection of human rights. The production of this report, the Commonwealth Secretariat's first comparative audit of national human rights institutions and Ombudsman Offices, constitutes a further step in the objective of securing, protecting and promoting human rights standards across the Commonwealth.

### **The genesis of this report**

This report was envisaged by the participants of the Commonwealth Conference of National Human Rights Institutions in London in February 2007. Many of the participants found the 2006 publication *National Human Rights Institutions in the Asia-Pacific Region*<sup>1</sup> of great use in assessing both their own respective institutions, and the strengths of the then-proposed Commonwealth Forum of National Human Rights Institutions (which formed the focus of the 2007 Conference). Conference participants mandated the Commonwealth Secretariat's Human Rights Unit to conduct a further study encompassing National Human Rights Institutions (NHRIs) and Ombudsman Offices from the four major regions of Africa, the Asia Pacific, Europe and the Americas.

This report is the first Commonwealth-wide study of NHRIs. The report is comparative in two respects. First, the report allows a comparison between the normative framework under which existing NHRIs and Ombudsman Offices operate, in terms of the mandates on which they are established, the statutory powers which they are given and the actual functions which they perform in practice to fulfil their mandates: in simple terms, a comparison between what they are required or mandated to do and what they are actually doing. Second, the report provides a means by which the mandates and functions of existing NHRIs and Ombudsman Offices respectively can be compared against each other. NHRIs and Ombudsman Offices are significantly different institutions, which operate within different normative frameworks. The primary focus of this report is on NHRIs.

### **The international normative context**

The core international standards defining the mandate, powers and functions of NHRIs are the United Nations *Principles Relating to the Status of National Human Rights Institutions* (the Paris Principles<sup>2</sup>). The Paris Principles derive their authority in part from the broad consensus surrounding their adoption. The content of the Principles therefore represents the minimum standards which could be agreed without losing this broad consensus. Over time, the Paris Principles have evolved and best practice regarding the role and functions of NHRIs was set out in the 2002 Commonwealth Secretariat *National Human Rights Institutions: Best Practice* guidelines, as well as other publications such as the 2001 *Recommendations* published by Amnesty International.

This report seeks to recognise the context in which NHRIs operate and the contemporary challenges which they face, including issues related to resourcing, independence and capacity.

### **Purpose of the report**

Whilst NHRIs across the Commonwealth share some common features, they also differ in certain significant respects. Similarly, Ombudsman Offices differ quite markedly from NHRIs, but also from each other in terms of legislative and operational mandates. This report aims to identify both commonalities and differences, examining mechanisms for their establishment, appointment and termination procedures, resource constraints, independence from government, powers of intervention, monitoring and reporting functions, accreditation and membership of regional and other networks.

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<sup>1</sup> Raoul Wallenberg Institute (Professor Brian Burdekin and Jason Naum), Martinus Nijhoff Publishers, 2006.

<sup>2</sup> United Nations General Assembly Resolution 48/134 of 20 December 1993.

The 2007 Commonwealth Conference on NHRIs requested that the Commonwealth Secretariat produce a practical comparative study to assist and empower individual NHRIs and human rights practitioners so as to improve their organisational and operational methods to more fully adhere to the normative requirements set out, inter alia, in the Paris Principles. This publication is designed to assist governments, NHRIs, Ombudsman Offices, non-government organisations (NGOs), and international and regional organisations and actors to promote and entrench ever stronger and more independent national institutions for the promotion and protection of human rights in countries across the Commonwealth.

#### Note on methodology

This study provides a comparative account of the features of these institutions and offices – both through the schedules and in the accompanying commentary and comparative analysis. The criteria set out do not however purport to be exhaustive.

To some extent the report is a narrative statement of empirical evidence (predominantly, enabling statutes) from which critical conclusions are drawn. The Human Rights Unit believes that such global comparative research has not been collated and assimilated in this way before. The report seeks to highlight, where possible, the innovative and positive aspects of the legislative or operational mandates of particular NHRIs. It avoids, however, value judgements as to the success or failure of the actual implementation of the mandates of individual NHRIs.

#### Author

Any opinions expressed in this report are those of the author and should not be attributed to the Commonwealth Secretariat. The Human Rights Unit would like to record here its thanks to the author. Catherine Meredith is an Associate at the Advice on Individual Rights in Europe (AIRE) Centre, London. She holds a postgraduate degree in international human rights law from the London School of Economics, and is a visiting tutor in Public Law at King's College London. Catherine was previously a researcher with the Human Rights Unit and assisted in the Commonwealth Conference of NHRIs held in London in February 2007.

#### Editor

HRU was assisted in editing this publication by Jane Gordon. Jane Gordon BA (Oxon), LL.M (Distinction) is a qualified human rights lawyer. In 2002 she was appointed ad hoc Specialist Adviser to the Parliamentary Joint Committee on Human Rights (JCHR) in relation to its Human Rights Commission Inquiry. She provided comparative advice to the JCHR on the duties, functions and powers of Equality Commissions and Human Rights Commissions. In 2003, Jane was appointed Human Rights Advisor to the Northern Ireland Policing Board and, together with Keir Starmer QC, has devised the framework for monitoring the compliance of the Police Service of Northern Ireland with the Human Rights Act 1998. Ms Gordon is currently a Senior Lecturer in Human Rights at Kingston University.

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