

2 Introduction

This report consists of a comparative study of national human rights institutions (NHRIs) and Ombudsman Offices across the Commonwealth. For simplicity, the terms NHRI and Ombudsman Office will be used as generic references throughout the course of this study, although both types of institution are known by a divergent number of titles such as human rights commissions, consultative councils, ombudsmen, public defenders and protectors – the shape and form of the institution usually being contingent on the size and resources of the country.³

The NHRI is a new human rights actor, which has emerged over the last 60 years and tends to vary considerably in name, size and function. However, whilst NHRIs may differ greatly in their structure and mandates, they do nevertheless tend to share a number of common features. Broadly speaking, NHRIs are institutions created by national governments, but which operate autonomously and independently. Their mandate is the promotion and protection of human rights and they seek to co-operate with international, regional and national actors to this end. In this way, NHRIs serve as a means by which international and domestic human rights standards are preserved, strengthened and promoted. NHRIs adopt divergent approaches and practices to fulfil this objective. This study identifies the specifics of the mandates and compositions of individual NHRIs and analyses the mechanics by which such institutions protect and promote human rights at the national level. This study adopts a comparative perspective of NHRIs. A number of non-Commonwealth NHRIs are also analysed in order to broaden the parameters of the study and provide additional comparative experience.

The study also considers the protection of human rights and public administration by Ombudsman Offices of the Commonwealth in countries where no NHRI has yet been established. Like NHRIs, Ombudsman Offices are institutions created by the State, which retain independence from executive, judicial and legislative institutions. However, Ombudsman Offices are bound by a far less extensive mandate. The majority of Ombudsman Offices act as watchdogs of the exercise of public administrative powers. Only a limited number of Ombudsman Offices pursue an explicit human rights mandate.

This report begins by considering the framework for the protection of human rights at the international level. It is important to establish at the outset what we mean by human

3 *Towards a Commonwealth Forum of National Human Rights Institutions – A Scoping Paper by the Human Rights Unit on the Proposed Commonwealth Forum for National Human Rights Institutions. Commonwealth Conference of National Human Rights Institutions, Marlborough House, London, 26-28 February 2007 (hereinafter 'HRU Scoping Paper, 2007').*

rights and how such rights are promoted and protected (if at all) in countries that have yet to ratify core international human rights instruments. Thirty-two of the 53 Commonwealth States have yet to ratify a number of core international human rights treaties. The report therefore identifies the core minimum human rights standards which all Commonwealth nations are obliged to protect, irrespective of whether they have ratified international human rights treaties or not. Against this background, the study addresses the contemporary international, regional, domestic and local challenges facing NHRIs in the fulfilment of their human rights mandates. This provides the context for the comparative analysis of NHRIs.

Secondly, the report considers the historical and political backdrop to the creation of NHRIs. The end of colonialism, the First and Second World Wars and the end of the Cold War each introduced new political, social and economic dynamics, which impacted upon the development of the international human rights framework. In some states, NHRIs were established in an attempt to entrench core human rights standards. This process is dynamic, be it in fledgling or well-established democracies. The evolutionary development of the role and function of NHRIs is also dynamic and has enhanced both the potential power and effectiveness of NHRIs in the promotion and protection of human rights. This includes developments stemming from the UN system, most significantly, the Paris Principles and the establishment of regional and sub-regional groupings of NHRIs following the 1993 World Conference on Human Rights. The Commonwealth has itself established a number of important initiatives, such as the Harare Declaration and significant conferences on NHRIs (in particular, conferences held recently in Cambridge and London). All of these initiatives have been instrumental in the creation and strengthening of NHRIs and are discussed in this report. The key criteria for the operational success of a NHRI are also set out.

The schedules contained in this report examine the mandates, powers and functions of NHRIs. They are grouped loosely according to their regional geographical location. An accompanying commentary is provided to highlight unique features of particular NHRIs and identify best practice. The same approach is adopted in relation to the analysis of Ombudsman Offices.