## 3 The Protection and Promotion of Human Rights

> *The Commonwealth is an association of 53 independent states consulting and co-operating in the common interests of their peoples and in the promotion of international understanding and world peace. The Commonwealth's 2 billion citizens, about 30 per cent of the world's population, are drawn from the broadest range of faiths, races, cultures and traditions.* [4]

The Commonwealth association of States spans the Americas, Europe, Africa and the Asia Pacific. Members of this association hold certain core principles in common such as a commitment to the promotion and protection of human rights.[5]

### 3.1 Protection of Human Rights – a World View

The story of human rights is an evolving and dynamic one and can be traced through an endless number of debates – legal, philosophical, moral, ethical, political, social, geographical and cultural. Academics, lawyers, philosophers and many others continue to devote their time to examining what is meant by the term human rights.[6] This study aims not to contribute to that debate, but to examine the practical mechanics by which NHRIs promote and protect human rights and defend the interests of individuals who suffer violations of their human rights. The focus here is on how NHRIs and Ombudsman Offices in the Commonwealth carry out this role. However, first it is important to define what is commonly meant by the protection and promotion of human rights.

The point has been well made by John Griffiths:

> *At the heart of the controversy about "rights" lie many confusions. The most serious is to assume that the word means the same in countries with histories as different as those of the United Kingdom, the United States of America and the Republic of South Africa ... Another source of the confusion in the discussion of "rights" is creedal. There are those who believe that certain rights are inherent and inalienable, attached to the individual as part of the individual's being and inseparable therefrom. There are others... who find no meaning in this belief. [They] say that*

**4** See www.thecommonwealth.org

**5** See Singapore Declaration of Commonwealth Principles, 1971 and Harare Declaration, 1991. See list of key Commonwealth Declarations at http://www.thecommonwealth.org/Internal/20723/key_declarations/

**6** Unfortunately only a brief discussion may be given here, but for a full account see Ishay, M., *The History of Human Rights. From Ancient Times to the Globalization Era*, Berkley: University of California Press, 2004 (hereinafter 'Ishay *History*'); Ishay, M., *The Human Rights Reader, Major Political Essays, Speeches and Documents From the Bible to the Present*, New York: Routledge, 1997 (hereinafter 'Ishay *Reader*'); and Gearty, C., *Can Human Rights Survive?* Hamlyn Lectures, Cambridge: Cambridge University Press, 2006 (hereinafter 'Gearty').

> *rights exist only in things separate from us. [They] say also that rights in their proper sense mean claims established by the laws of the society in which we live and enforceable in the courts or our country. It follows that such legal claims may be challenged by others and that their legitimacy falls to be decided by persons appointed for this purpose* "[7]

The latter legal interpretation of human rights has been adopted by around ten of the 28 NHRIs and Ombudsman Offices examined in this study. For ten of these institutions, human rights mean those rights articulated in international treaties and documents, enforceable in domestic courts. For another six NHRIs, human rights are those rights that have been constitutionally enshrined. Something more elemental is arguably at stake when we try to ascertain what it is that NHRIs are trying to protect in States that are not parties to international human rights instruments. We find across all states a consciousness or recognition that there are certain human values or privileges which ought to be protected. As noted, there are many moral philosophical suggestions as to the premise underpinning this consciousness, ranging from 'sad, sentimental stories'[8] to 'aspirations of people no matter who or where they may be'[9] Yet evidence of such consciousness is demonstrated time and again in human action and reaction. For example, campaigns by Ugandan women to criminalise defilement of young girls, protests by Tibetan monks against the destruction of sacred customs by Chinese authorities, protection of Maori land rights in New Zealand or outrage against the resort to human scavenging in India. The truth appears to be that certain inalienable human rights are championed through some variety of human rights language irrespective of country-specific conditions or legal regime.

Thus, beyond the legal instruments that set out what rights individuals are entitled to, there are many different ways of thinking about human rights[10]. Historically, the origins of human rights have been said to lie in religious texts such as the Bible or the Koran and have followed a trajectory through the periods of Enlightenment and Industrialisation, through the 20th century to the modern or even post-modern era.[11] Correlatively, international human rights law has developed 'in an unprecedented way' since the Second World War and the Cold War 'and has become a very substantive part of international law as a whole'.[12] Historical and political shifts continue to shape the evolving scope and meaning of human rights, for example the birth of economic and social rights through Socialist thinking and the development of the notion of collective rights from the cultural traditions of developing counties.[13] However, more recently there is growing concern over the way in which largely political actors have exploited and maligned the

**7** Griffiths, J., 'Making Rights Work', In Smith, P., *Making Rights Work* (ed.) Aldershot: Dartmouth Publishing Company Limited, 1999, chapter 6 (hereinafter 'Griffiths').

**8** Rorty, R., *Contingency, Irony, and Solidarity*, Cambridge: Cambridge University Press, 1989. Discussion of this is beyond the scope of this study, but for more information see Gearty.

**9** Weston, B.H., 'Human rights: Concept and Content', p. 3, in Claude, R.P., and Weston, B.H., (ed.), *Human Rights in the World Community Issues and Action*, 3rd Ed., Philadelphia: University of Pennsylvania Press, 2006. (Hereinafter 'Claude and Weston').

**10** Nussbaum, M.C., 'Capabilities, Human Rights and the Universal Declaration', in Weston, B.H., and Marks, S.P. (eds.) *The Future of International Human Rights*, Ardsley, N.Y.: Transnational Publishers, 1999, pp. 25-64.

**11** See Ishay *History* and Ishay *Reader*.

**12** Van Boven, T.C., 'Survey of the Positive Law of Human Rights', in Vasek, K. (ed.) *The International Dimensions of Human Rights*, 2 vols, rev. and ed. Alston, P., Westport, Conn.: Greenwood Press for UNESCO, 1982, 1:85:100, at p. 87.

**13** Baehr, P.R., and Castermans-Hollerman, M., *The Role of Human Rights in Foreign Policy*, 3rd Ed., London: Palgrave Macmillan, 2004, p.23.

human rights discourse, particularly in response to international terrorism and the demands of migration.[14]

The language of 'human rights' was first explicitly articulated in the Universal Declaration of Human Rights and Fundamental Freedoms 1948 (UDHR) following the horrors of the Second World War. The UDHR was signed on 10 December 1948 and recognises in its Preamble that the 'inherent dignity and ... the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Here, the modern language of human rights was born and is reflected in a number of seminal international treaties, such as the two core UN Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[15] Over time, international law has developed in its breadth and scope, as evidenced quantitatively in the subsequent emergence of a large body of treaties.[16] Individuals became recognised as subjects of international law and became capable of invoking treaty standards in legal actions against governments.[17] In certain cases, individuals can enforce their rights, for example under the First Optional Protocol to the ICCPR or through regional mechanisms such as the organs of the Council of Europe or the Inter-American System.[18] However, enforcement is imperfect and certainly not universal.

It is the human rights contained in these international instruments which the Commonwealth Heads of Government committed themselves and their countries to in 1991 in Harare.[19] Echoes of this language can also be found in many national bills and charters of rights, either because States have incorporated the provisions of international human rights instruments into domestic law post-ratification or because they have been influenced by them in the drafting of domestic legislation.

NHRIs are mandated to promote and protect the human rights obligations of States, whether these are defined in international treaties or in Constitutions or in other

**14** This is considered further below. Also see for more details Gearty, Ignatieff M., *The Lesser Evil: Political Ethics in an Age of Terror*, Edinburgh: Edinburgh University Press, 2004. See for example also the work of CHALLENGE Consortium – a network of 23 universities and research centres from around Europe, which analyses illiberal practices of liberal regimes and challenges their justification on grounds of 'emergency' and necessity'. See CHALLENGE (Bigo, D., Carrera, S., Guild, E. and Walker, R. J.) *The Changing Landscape of Liberty and Security: Mid-term Report on the Results of the Challenge Project*, February 2007, available at www.libertysecurity.org.

**15** Reference in this report will only be made to the most important of these including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention Against Torture (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination Against Women (CEDAW), the International Convention on the Rights of the Child (CRC) and most recently the International Convention on the Rights of Persons with Disabilities (ICRPD). Of course there are now a number of regional treaties and mechanisms of human rights protection including the European Convention on Human Rights (ECHR), the Inter-American Convention on Human Rights and the African Convention on Human and Peoples Rights.

**16** See for example the collections of treaties in Brownlie, I. and Goodwin-Gill, G., *Basic Documents on Human Rights*, 4th Ed., Oxford: Oxford University Press, 2002, and Evans, M., *Blackstone's International Human Rights Documents*, 6th Ed., Oxford: Oxford University Press, 2003.

**17** Mole, N., 'International Law, the Individual and A.W. Brian Simpson's Contribution to the Defence of Human Rights' in *Human Rights and Legal History*, O'Donovan, K., and Rubin, G., R. (eds.) Oxford: Oxford University Press, 2000, Chapter 1.

**18** For more details see Steiner, J., and Alston, P., International Human Rights in Context Law Politics Morals, 2nd Ed., Oxford: Oxford University Press, 2000, Chapters 9 and 10. (Hereinafter 'Steiner and Alston'). Note that the African System does not have an enforcement mechanism. There is no regional mechanism in the Asia Pacific Region.

**19** 1991 Harare Commonwealth Declaration – see section 3.2, below.

domestic legislation. Professor B. Dickson maintains that 'one of the greatest contributions [NHRIs] can make to the protection of human rights is ...engaging with issues at the international level', in order to better realise them at the national level.[20] It might be thought that this argument applies to a lesser extent to States yet to ratify international treaties. However, Amnesty International has emphasised the importance of wider acceptance of international human rights standards in its Recommendations for Effective Promotion and Protection of Human Rights Institutions.[21] The International Coordinating Committee of National Human Rights Institutions (ICC) has echoed this position, stating that international standards encompass those found in the Paris Principles and international treaties alike.[22] Indeed, these principles and standards prove incredibly useful tools and levers for NHRIs, particularly those NHRIs operating within States that are yet to ratify major international treaties or conventions, or which have failed to meet the international human rights obligations they have adopted.

Let us consider where these so-called standards fit within the corpus of international law?[23] The normative regime governing NHRIs, including those standards known as the Paris Principles,[24] constitutes 'soft law'. Soft law encompasses normative rules of law that either do not stipulate concrete rights or obligations or describe those values, guidelines, ideas and proposals that may develop into rules of international law but have not yet done so.[25] These normative standards are important within the Commonwealth, particularly because to date a significant number of the 53 Commonwealth nations have yet to ratify major international human rights treaties.[26]

## 3.2 The Framework for the Promotion and Protection of Human Rights in the Commonwealth

Whilst the members of the Commonwealth are drawn from 'six continents and five oceans'[27] a series of declarations and agreements set out the commitments and

**20** Dickson, B., The Contribution of Human Rights Commissions to the Protection of Human Rights. *Public Law*, 2003, SUM, pp. 272-285 (hereinafter Dickson, PL).

**21** AI Index: IOR 40/007/2001, 1 October 2001. National Human Rights Institutions – Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights.

**22** See Paper for the Discussion of the International Coordinating Committee of National Human Rights Institutions, *Appointment Procedures of National Human Rights Institutions*, Geneva, Switzerland, Room XVIII Palais des Nations, 13 April 2006.

**23** A discussion of the sources of international law is beyond the scope of this study. See as a starting point Article 38 of the Statute of the International Court of Justice, which provides that: (1) The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply, (a) international conventions, whether general or particular, establishing rules expressly recognised by contesting States; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognised by civilised nations; (d) subject to the provision of Article 59, judicial decision and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means for the determination of rules of law. For more information see Dixon, M., *Textbook on International Law*, 4th ed., London: Blackstone Press Limited, 2000, Chapter 2 (hereinafter 'Dixon'); and Harris, D.J., Cases and Materials on International Law, 5th Ed., London: Sweet and Maxwell Limited, 1998, Chapter 2.

**24** See below at section 3.3.

**25** Dixon, p.48.

**26** This report does not seek to cast a value judgment on the weakness of the system, but to examine in an objective way how the human rights mandate of NHRIs is and may be fulfilled. However, it is important to note that the ineffectiveness of the soft law regime applicable to NRHIs in the Commonwealth and beyond should not be considered in a vacuum. Indeed, the international legal system as a whole suffers from problems such as the absence of formal institutions, the disadvantage of vague and uncertain rules, the prevalence of state interests as opposed to those of the individual and the lack of enforcement mechanisms. This topic is a matter of some debate, but entirely beyond the scope of this study. For more information see Dixon, p.12-14.

**27** Singapore Declaration of Commonwealth Principles, 1971.

objectives of this voluntary association. The Commonwealth nations are not bound by a single constitutional text but rather a series of agreements, which have evolved as a result of discussions at a number of Commonwealth Heads of Governments Meetings (CHOGM).[28] These declarations include those concluded in Singapore (1971) and Harare (1991) – where the express commitment to the protection and promotion of human rights as a fundamental Commonwealth value was articulated.

The Singapore Declaration of Commonwealth Principles 1971[29] established in 1971 marked the first recognition by Commonwealth Member States that a multi-national approach to the expression of common values could promote the ideals of peace, equal rights of all and an equitable and non-discriminatory international society. Members pledged their belief in:

> "*... the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives. We therefore strive to promote in each of our countries those representative institutions and guarantees for personal freedom under the law that are our common heritage.*"

The 'unmitigated evil' of racial discrimination, prejudice and intolerance was expressly recognised. The Principles, in common with subsequent agreements and declarations, noted the individual and collective responsibility of the Member States of the Commonwealth. They were intricately linked to the political context of the time – the end of 'colonial domination' and the open recognition of the problems of 'huge disparities in wealth' between Member States.

In common with the Singapore Declaration, the Heads of Government in Harare located the principles in the context of the challenges of that decade – debt, migration and the emergence of democracies from totalitarian regimes. However, the Harare Declaration went further, recognising the importance of 'principles of justice and human rights, including the rule of law and accountable administrations'. Thus the protection of human rights was identified as going hand-in-hand with the emergence and consolidation of democracy. South Africa provided an explicit example of this relationship.[30] The Principles remain equally applicable today as other states make the transition to multi-party politics, for example, Uganda.[31]

The Millbrook Commonwealth Action Programme on the Harare Declaration (1995) for the first time sought to incorporate an aspect of institutional consolidation, strengthening co-operation between States to deliver previous commitments.[32] The tri-partite

**28** At the time of writing the next meeting is to be held in Kampala, Uganda in November 2007. It is this report that will be presented at the CHOGM as agreed by the participants of the Commonwealth Conference of NHRIs held in London in February 2007.

**29** Singapore Declaration of Commonwealth Principles, Issued at the Heads of Government Meeting in Singapore on 22 January 1971. Available at http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=32987

**30** Sachs, A., 'Making Rights Work – The South African Experience' in Smith, P. (ed.) *Making Rights Work* Aldershot: Dartmouth Publishing Company Limited, 1999, Chapter 1 (hereinafter 'Sachs').

**31** See also United Kingdom Foreign & Commonwealth Office Annual Report on Human Rights 2005, Chapter 8 *Democracy, Equality and Freedom*.

**32** Millbrook Commonwealth Action Programme on the Harare Declaration 1995, Issued by the Heads of Government at Millbrook, New Zealand, on 12 November 1995. Available at http://www.thecommonwealth.org

Programme included the objectives to: (a) advance Commonwealth fundamental political values; (b) promote sustainable development; and (c) facilitate consensus building. The Secretariat was requested to provide advice, training and other forms of technical assistance to governments in the promotion of the Commonwealth's fundamental political values, including assistance in capacity-building of NHRIs.[33] A weak notion of sanctions was introduced to be used in the event of an unconstitutional overthrow of a democratically elected government (in violation of the Harare Principles).[34] This new Programme of Action envisaged a far more institutional and consensus-driven package of commitments, which was instrumental in the creation of NHRIs.

The Harare Commonwealth Declaration 1991[35] both reaffirmed and extended the Commonwealth Principles drawn up in Singapore in 1971. The Members at the Harare CHOGM stated that those principles deserved ongoing recognition, including the commitment to co-operate to ensure 'international peace and order', 'the liberty of the individual under the law', 'equal rights', the opposition of 'racial oppression' and the 'urgency of economic and social developments to satisfy the basic needs and aspirations of the vast majority of the peoples of the world.' These commitments reflected those contained in the International Bill of Rights (the UDHR, the ICCPR and ICESCR).[36] Well-established norms such as equality for women and access to education were identified. Yet beyond this, the Principles were also shaped by experience particular to the Commonwealth. For example, a commitment was given to sustainable development and poverty alleviation, to environmental protection and the combating of drug trafficking and communicable diseases.

The Coolum 2002[37] and Aso Rock 2003[38] Declarations recognised the work of civil society in promoting and consolidating this agenda.[39]

These Declarations demonstrate the commitment of Commonwealth Member States to agreeing common standards and principles of action and behaviour, as stated in the Human Rights Unit Paper presented to the London Conference in February 2007:

> *Over 90 per cent of the Commonwealth Member States will fall under the category of small and/or developing countries. However, differences in size and level of development do not preclude the ability to share common values as evidenced by the near complete sharing of a system of law across the Commonwealth which facilitates the development of common standards of legal behaviour, common definitions and a*

**33** See HRU Scoping Paper, 2007.

**34** Note that the Commonwealth Ministerial Action Group now adds institutional support in this regard and plays a vital role in monitoring persistent violators of the fundamental democratic principles. It has considered a number of countries recently, including Nigeria, Pakistan, Fiji and of course, Zimbabwe. The latter two States were suspended at the time of writing and raise credibility questions in respect of the Commonwealth.

**35** Harare Commonwealth Declaration, Issued by Heads of Government in Harare, Zimbabwe on 20 October 1991. Available at http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=34457.

**36** *Best Practice for National Human Rights Institutions*, Legal and Constitutional Affairs Division, Commonwealth Secretariat, 2001 (hereinafter 'Best Practice').

**37** Coolum Declaration, *The Commonwealth in the 21st Century: Continuity and Renewal*, Coolum Australia, 5 March 2002. Available at http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B5D88C133-679E-4F04-88E3-688B14E59749%7D_coolumdeclaration.pdf

**38** Aso Rock Commonwealth Declaration, 7/8 December 2003, Abuja. Available at http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=36175

**39** For a list of these declarations see: http://www.thecommonwealth.org/Internal/20723/key_declarations/

> *common understanding of the importance of laws which are in harmony with fundamental rights and freedoms* ".

The institutional support offered to NHRIs in effectively carrying out their mandates was further strengthened in 2002 when the Human Rights Unit (HRU) of the Commonwealth Secretariat was granted greater autonomy as a free-standing unit. HRU creates a vital nexus between national institutions, the Commonwealth Association of States and the Office of the High Commissioner on Human Rights (OHCHR). This was formalised in a 1998 Memorandum of Understanding.

The Vienna World Conference on Human Rights of 25 June 1993 also marked an important milestone, not only in the historical development of human rights in general, but also of NHRIs. This was so in two major respects. The two central objectives of the Conference were to examine the ways and means to improve the implementation of existing human rights standards and to formulate concrete proposals for improving the effectiveness of the [UN's] activities and mechanisms in the field of human rights'[40] Through an 'unprecedented degree of participation by government delegates and the international human rights community',[41] representatives of 171 States adopted the principle that human rights are universal, indivisible, interdependent and interrelated. This recognised the need for more formal equality between categories of rights[42] and as a result, a new kind of global human rights scheme of action was conceptualised, which involved actors at the international, national and local level:

> " *The recognition of interdependence between democracy, development and human rights, for example, prepares the way for future co-operation by international organisations and national agencies in the promotion of all human rights, including the right to development* ".[43]

Specifically, representatives agreed the importance of 'strengthening and building institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable'. States were urged to draw up national action plans to give these commitments effect.[44] The final agreement of the Vienna Conference was later endorsed by the 48th session of the General Assembly[45] and has been reaffirmed in subsequent documents.[46]

As a result of the growing global consensus on human rights articulated at the Vienna World Conference and through the Commonwealth Declarations discussed, important human rights principles were given firm expression by States through the creation of NHRIs to promote and protect human rights.[47] The Paris Principles and the

**40** UN General Assembly Resolution 45/155 of 18 December 1990.

**41** World Conference on Human Rights, 14-25 June 1993, Vienna, Austria, excerpt from DPI/1394/Rev.1/HR-95-93241, April 1995. Available at http://www.unhcr.ch/html/menu5/wchr.html

**42** Which had been called for by the UN Committee on Economic, Social and Cultural Rights in order to overcome the 'magnitude, severity and constancy' of unchecked violations of economic, social and cultural rights in comparison to civil and political rights: Statement to the Vienna World Conference in 1993, UN Doc. E/1993/22, Annex III, paras 5 and 7.

**43** *Ibid.*

**44** *Ibid*, in particular see paragraphs 66-67 Part C 'Cooperation, development and strengthening human rights.'

**45** See Resolution 48/121 of 1993.

**46** *Best Practice for National Human Rights Institutions*, Commonwealth Secretariat, 2001.

**47** *Best Practice for National Human Rights Institutions*, Legal and Constitutional Affairs Division, Commonwealth Secretariat (2001), p. 2. (hereinafter 'Best Practice Guide').

Commonwealth Secretariat Best Practice Guidelines[48] represent programmatic articulations adopted by national human rights institutions to make concrete this set of ideals.[49] Whilst these principles carry declaratory (rather than legal) force, they do nevertheless fill an important gap in the corpus of international human rights law and are capable of being translated into measurable and practical outcomes. This paper now turns to consider both sets of principles in more detail.

### 3.3 Paris Principles

The normative framework for NHRIs rests on the United Nations Principles Relating to the Status of National Institutions (the 'Paris Principles'). The Paris Principles were adopted following negotiations at a conference convened in Paris instigated and supported by the former UN Commission on Human Rights.[50] They set standards for, and guarantee the independence of, NHRIs The principles were subsequently endorsed by nation states through the Commission on Human Rights (1992) and the Vienna World Conference on Human Rights (1993) and formalised in a UN General Assembly Resolution 48/134 of 20 December 1993. Whilst lacking legal force, the international consensus surrounding the principles and their subsequent endorsement at the Vienna World Conference has raised their status. Some commentators suggest that it is the minimalism of the Principles that has been a major factor of their success, since they were 'prepared... to prevent, or at least discourage States from establishing 'window dressing' institutions designed to placate domestic critics or impress international donors'.[51] The marriage of core human rights principles with a clear outline of key powers and functions make the Paris Principles a practical users guide.

The Principles focus on four general areas:

- The competence and responsibilities of NHRIs, including their mandate, legislative or constitutional enactments and primary functions;
- The composition of NHRIs and guarantees of independence, including appointment and termination mechanisms for Commissioners, criteria to ensure plurality of representation and financial autonomy;
- The operational methodology, institutional competence and working methods and practices;[52] and
- Quasi-judicial competence – role and responsibilities of those NHRIs empowered to hear, investigate and resolve individual complaints.[53]

**48** On which more below. Note also Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights (2001) AI INDEX: IOR 40/007/2001, 1 October 2001, and the UN Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights published by the Centre for Human Rights (1995).

**49** HRU Scoping Paper, 2007.

**50** See Centre for Human Rights (CHR) Res. 1990/73 of 7 March 1990.

**51** Burdekin, B., assisted by Naum, J., National Human Rights Institutions in the Asia-Pacific Region. Martinus Nijhoff Publishers: Leiden (2007), p.5 (hereinafter 'Burdekin'), Preface xi.

**52** Principles Relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993. Available at http://www.ohchr.org/english/law/parisprinciples.htm

**53** Note that the original text of the Paris Principles referred to quasi-jurisdictional competences, but was later reproduced as quasi-judicial. For further information see Lindsaes and Lindholt *Standard Setting*, Chapter 1.

The Paris Principles identify key criteria for the establishment of NHRIs:

- A legal basis establishing the NHRI, i.e. in the Constitution or enabling legislation; Constitutional entrenchment is preferred;
- A clearly defined human rights mandate with emphasis on the national implementation of international human rights standards;
- Independence: independent from government, particularly in decision-making procedures and independent from (yet co-operative with) NGOs and civil society;
- Collegiate and representative membership – i.e. pluralist representation of civil society and vulnerable groups in the governing bodies; and
- Handling of individual complaints.[54]

Five of the seven responsibilities of NHRIs set out in the Paris Principles relate specifically to international human rights.[55] It is the responsibility of NHRIs to encourage accession to or ratification of international human rights instruments and (where appropriate) their Protocols by States. They may also assist with the preparation of new international treaties.[56] Once a treaty has been ratified, the NHRI should encourage its incorporation or implementation into domestic law.[57] NHRIs also have the responsibility to 'promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation'.[58] NHRIS should contribute to State Party Reports submitted to the UN treaty bodies and regional institutions.[59] The important contribution of NHRIs here is to submit reports which critique the State periodic reports examined by those bodies and possibly even attend the relevant hearing to provide supplementary information to that provided by the State.[60] These responsibilities have been recognised and further extended by the UN treaty bodies themselves, for example the Economic, Social and Cultural Committee,[61] the Committee on the Elimination of Racial Discrimination[62] and the Committee on the Rights of the Child.[63]

It should be emphasised from the outset that principles such as independence and pluralism are key to the effective operation and activities of NHRIs. The Commonwealth

**54** See for example, Burdekin, B., Human Rights Commissions, Workshop in Paris, 2nd European Meeting of National Institutions, 1991; Morten Kjaerum, Council of Europe and Danish Centre for Human Rights, January 1997 (hereinafter Burdekin Paris Workshop), pp. 41-57.

**55** See Professor Brice Dickson in Dickson, PL. However, Dickson argues that at least four of the responsibilities relate to international human rights and gives examples from his work as the head of the Northern Ireland Human Rights Commission. From the perspective of Northern Ireland however – most human rights treaties are already in place – therefore a fifth responsibility may be added in the form of NHRIs actually urging governments to ratify treaties in the first place in States where that is not the case.

**56** For example, the Northern Ireland Human Rights Commission was instrumental in the preparation of the new UN Convention on Disability. See Dickson, PL.

**57** Dickson, PL.

**58** Paris Principles, *Competences and Responsibilities*.

**58** *Ibid*.

**60** Dickson, PL.

**61** ICESCR General Comment No. 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights (14/12/98. E/C.12/1998/25).

**62** CERD General Comment No. XVII: Establishment of National Institutions to Facilitate Implementation of the Convention (25/03/93. Gen. Rec. No. 17) (42nd Session 1993).

**63** CRC General Comment No. 2: The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child (15/11/2002. CRC/GC/2002/2).

Secretariat attaches particular importance to the requirement of independence in its Best Practice Guidelines:

> *"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 ... fundamental..."*

Independence may be guaranteed through appointment and dismissal procedures, as well as via the financial autonomy of institutions.[64]

### Investigation of complaints of human rights violations

NHRIs vary greatly as to the scope and extent to which they deal with complaints into human rights abuse. The Paris Principles require the following:

- Quasi-judicial powers falling short of enforcement (for example, the ability to call and cross-examine witnesses, compel disclosure of documents etc.);
- Mechanisms of complaints resolution provided free of charge, including conciliation and mediation; and
- Power to refer issues to appropriate state agencies, such as the Ombudsman or Public Prosecutor.

The Principles are silent on the how readily accessible NHRIs must be to the people and the bodies they serve. Professor Burdekin has noted that this constitutes an important omission and creates an apparent accountability gap. Many NHRIs have recognised this flaw and have attempted to address the issue. This gives credibility to the argument that the Paris Principles represent a floor and not a ceiling in setting certain minimum standards for the operation of NHRIs. As such, NHRIs should not feel precluded from developing and enhancing the framework established by the Principles. This progressive approach is also evidenced with respect to enforcement powers enjoyed by some NHRIs, which are much stronger than those strictly required by the Principles in some jurisdictions (for example, the power to intervene in court proceedings, power to order compensation etc.).

### Fulfilling the human rights mandate

The Paris Principles articulate two particular approaches to fulfilling the human rights mandate:

- Monitoring the human rights situation of the country; and
- Hearing individual complaints and petitions and providing remedies.

NHRIs are provided with a number of the powers and functions in the Paris Principles to assist with this mandate, including:

- Investigating alleged human rights violations – either at the instigation of an individual or instigated by the Commission itself;
- Advising the government on legislation, policy and programmes and their compatibility with the States' international (and domestic) human rights obligations;

**64** A detailed discussion of independence of NHRIs is beyond the scope of this study but it may be useful for practitioners to refer to Yigen, K., Guarantees of Independence of NHRIs: Appointment and Dismissal Procedures of Leading Members, in *Articles and Working Papers of the Danish Institute for Human Rights (DIHR)*, Chapter 3.

- Conducting public inquiries;
- Promoting human rights; and
- Educating the public/awareness raising.

Significantly, States at the 1993 World Conference on Human Rights recognised 'both the rationale and requirements of the Paris Principles and that each state chooses the framework which best suits its particular needs'.[65] The overarching conclusion was that NHRIs constituted could form an important bridge between human rights norms and the individuals they sought to protect. Between 1948 and 1990, a handful of national institutions had been established. Following the adoption of the Paris Principles in 1991 and their global endorsement in 1993 at the Vienna World Conference, NHRIs were recognised as crucial actors in the protection, promotion and implementation of human right standards. The number of NHRIs has increased tangentially.[66]

Discussions at the 4th Session of the newly formed UN Human Rights Council in Geneva in March 2007[67] more recently raised the profile of NHRIs in the context of the world human rights community again. As Pohjolainen has noted, "international support for the establishment and strengthening of these national institutions is currently considered as one of the most important ways to improve domestic human rights records, especially in emerging democracies and countries recovering from internal conflicts or times of extreme oppression".[68]

### 3.4 Commonwealth Secretariat Best Practice Guidelines for NHRIs

The first meeting of Commonwealth NHRIs was convened in Ottawa in 1992 to discuss the operational experiences on mandates and functions of NHRIs.[69] A subsequent conference was convened in Cambridge (UK) in July 2000 where 41 representatives from Commonwealth Countries and NHRIs recognised the 'critical role in the entrenchment of the universality, interdependence, interrelatedness, and indivisibility of human rights and the maintenance of good governance'.[70] The delegates of the Cambridge Conference aimed to reach a consensus on the progress of the fulfilment of human rights mandates in accordance with the Paris Principles and sought to encourage greater conceptual discourse in the new era of human rights thinking.

In March 2001, an expert group convened by the Commonwealth Secretariat and supported by senior representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Asia Pacific Forum (APF) developed best practice guidelines on NHRIs, building on and expanding the Paris principles. The establishment of this expert group developed out of the Conference on NHRIS held by the Commonwealth Secretariat in Cambridge in 2000. The Best Practice Guidelines are split into seven chapters, as follows:

**65** *Best Practice Guide* p. 2.

**66** *NHRIs – Standard Setting and Achievements*, p. 13.

**67** See http://www.unog.ch/ for more information.

**68** Pohjolainen, A.E., *The Evolution of National Human Rights Institutions – the Role of the United Nations*. Copenhagen: Danish Institute of Human Rights, 2006. Introduction. Available at www.nhri.net

**69** HRU Scoping Paper, 2007.

**70** Best Practice for Ntional Human Rights Institions, 2001, Commonwealth Secretariat.

- **The Mode of Establishment of NHRIs:** Establishment should be a national project premised on a consultative, inclusive and transparent process. The legal mode of establishment should be found in enabling legislation or preferably entrenched in the constitution of the State.

- **Composition of NHRIs:** Members should have 'integrity, moral courage and competence and be able to exercise sound judgment and fairness'; the process of appointments is considered, as well as the mechanics and terms of appointment (and dismissal).

- **Mandate and Powers:** Should refer to international human rights standards, as well as those in domestic law and should seek harmonisation; the legislative basis of the NHRI should confer powers to monitor government compliance, investigate and resolve complaints and work with referral agencies.

- **Accountability and Relationships with Other Institutions:** Includes accountability to the public through the evaluation of the work of the NHRI, as well as the adoption of strategic plans to meet future goals and targets. Addresses the NHRI's relationships with parliament, the executive and the courts (highlighting the principles of independence as well as complementarity) and the international human rights treaty machinery.

- **Accessibility:** NHRIs should reach out to the most marginalised and disadvantaged individuals in society using appropriate communication strategies (for example, in recognition that a substantial part of the population might be illiterate). NHRIs should ensure their services are widely accessible and links should be forged with NGOs and wider civil society.

- **Significant Issues:** Consideration of the context or experience in which the NHRI operates. The NHRI's role in the protection of rights in conflict zones, poor and developing areas, and in the context of racism, environmental degradation, migrant and refugee flows, discrimination towards indigenous people or based on gender, age or disability is also discussed.

- **Factors Which Affect the Operation of NHRIS:** discussion of technical training schemes and capacity building of democratic institutions.

The most recent Commonwealth Conference of NHRIs took place in London in February 2007. The Conference provided an opportunity for NHRIs to reflect on and exchange experiences and challenges facing them. The primary focus of the Conference was to examine and discuss mechanisms through which NHRIs could co-operate and collaborate in order to further strengthen their human rights mandates in light of the success of other regional and international groupings.

During the February Conference, the Commonwealth Secretariat agreed to undertake a review of the comparative models, structures and mandates of the NHRIs and other relevant institutions in the Commonwealth with a view to presenting that study to the Forum's first meeting in Kampala in November.[71]

**71** Report of the Commonwealth Conference of NHRIs, Marlborough House, London, 26-28 February 2007.

It was also agreed that a Forum for Commonwealth NHRIs (the Forum) should be established:

> *"premised on the commitment to human rights values with which the Commonwealth is widely associated ... [to] provide a platform for joint advocacy or standard-raising, and for increased interaction between [NHRIs] and governments, civil society organisations and international bodies, including events such as CHOGM ... or meetings of the UN Human Rights Council"*.[72]

Establishment of the Forum was agreed by the consensus of the 40 delegates, composed of 23 Commonwealth NHRIs and Ombudsman Offices and partner organisations, including the Office of the UN High Commissioner for Human Rights.[73] The Concluding Statement presented by the Conference Chair, Mrs. Margaret Sekaggya (of the Ugandan Human Rights Commission) reaffirmed the need:

- for Commonwealth NHRIs to respect and function in conformity with the Paris Principles; and
- to strengthen co-operation efforts between NHRIs in the Commonwealth, and between NHRIs and international partners such as the UNHCR to promote and protect human rights at national level.[74]

The Conference mandated a Steering Committee to discuss the modalities of establishing the Forum, which met for the first time in London in May 2007.[75]

The Steering Committee made six major recommendations,[76] focusing on:

- the mandate and scope of the Forum – an informal and inclusive body of Commonwealth NHRIs and national accountability mechanisms fulfilling human rights mandates;
- the operating principles of the Forum – inclusiveness, complementarity and non-duplication, and pursuance of strategic objectives;
- Objectives of the Forum – a networking group of partnerships to develop and promote compliance with the Paris Principles, share consensus-based expressions of concern or support for the better protection of human rights, and increase interaction with Commonwealth Heads of Government;
- Membership of the Forum – based on 'inclusiveness,' but recognising the standards of the Paris Principles, Commonwealth Secretariat *Best Practice Guidelines* and ICC Accreditation status;
- Organisational structure of the Forum – the Human Rights Unit as 'co-ordinator,' with appointment of chairs; and

**72** HRU Scoping Paper, 2007.

**73** Report of the Commonwealth Conference of National Human Rights Institutions, Marlborough House, London, 26-28 February 2007. Note that a full list of participants was attached to the report at Annex 1. Report available from http://www.commonwealth.org

**74** See Concluding Remarks and Report of the Commonwealth conference of NHRIs, Marlborough House, London, 26-28 February 2007.

**75** The meeting was facilitated by the Commonwealth Secretariat's Human Rights Unit and was joined by the Office of the UN High Commissioner for Human Rights, Mr. Gianni Magazzeni.

**76** See Working Paper of HRU and Report of the Steering Committee Meeting, Commonwealth Secretariat, Marlborough House, London, 21-22 May 2007. Available at http://www.commonwealth.org

- Way forward – first meeting of the Forum in Kampala in November 2007 to mobilise governmental support for its work.

### 3.5 National Human Rights Institutions

As already noted, there is an important nexus between the existence and operation of NHRIs and the practical fulfilment of States' human rights obligations. This was recognised by the previous Secretary-General of the UN, Kofi Annan:

> *"Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The establishment or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the [UN]. These activities are especially important in countries emerging from conflict."* [77]

NHRIs are created by constitutional amendment or national legislation. They are official, statutory or constitutional bodies, which tend to be financed by the State, although assistance may also be offered by external donors or UN funding arrangements. The members of NHRIs are usually appointed by the State also. However, it is critical to the efficacy of NHRIs that they operate independently and autonomously from the State. This is a central requirement of the Paris Principles, and is discussed in more detail below.

Amnesty International states that 'NHRIs can be distinguished from non-governmental organisations by their very establishment as a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people'.[78]

Thus, it is the role of NHRIs to encourage governments to ratify and implement internationally recognised standards[79] and to influence politicians and civil servants in the law-making process and in administrative decision-making.[80] NHRIs' complaints mechanisms facilitate the referral or investigation of alleged human rights violations. Some NHRIs intervene in court proceedings or bring cases in their own name. NHRIs also seek to hold the State to account for failing to meet its human rights obligations.[81] NHRIs must themselves be both accessible and accountable to the public at large. They are critical to the evolution of a human rights culture and have an important role in raising awareness of human rights through education, media and training. This affords them the credibility they need to function effectively on both the local (domestic) and international level.

The idea of national protection of human rights via national institutions dates back to discussions by the Economic and Social Council (ECOSOC) of the UN in 1946. NHRIs were originally conceived as 'information groups or local human rights committees,' which would collaborate to develop the work of the Commission on Human Rights (now the UN Council for Human Rights).[82] NHRIs were to work proactively to monitor and

**77** Annan, K., 'Strengthening of the United Nations: an agenda for further change.' Report of the Secretary-General, 9 September 2002.

**78** Amnesty International's Recommendations on NHRIs (2001).

**79** A summary of the sphere of influence exerted by NHRIs in respect of international human rights standards is found below.

**80** Dickson, PL.

**81** Dickson, PL.

**82** ECOSOC Resolution 2/9 of 21 June 1946.

implement international standards.[83] Again, whilst the Resolutions affirmed important matters of principles, there was little evidence of real progress until the General Assembly of the UN endorsed a set of guidelines for the national institutional promotion of human rights.[84] However, the institutional remit was limited in scope. The Resolution envisaged the promotion of human rights at national level as being carried out by arms of the state (either by government bodies or public authorities) rather than by independent institutions established and governed by domestic law. Professor Burdekin notes, however, that the Resolution did 'represent an advance in the conceptual debate by addressing more specifically the types of promotional and advisory activities national institutions should carry out and the institutional modalities involved'.[85] The absence of the establishment of practical enforcement mechanisms provides the reason for the piecemeal establishment of NHRIs in the subsequent decade.[86]

It is thought that the first national human rights commission was established in France in 1947, a year after the ECOSOC Recommendation. The Commission Nationale Consultative des Droits de L'homme set an early standard, which was emulated by other national commissions.[87] The Commission forged early links with international actors such as the UN Commission on Human Rights (also newly created) which was responsible for drafting the UDHR.[88]

However, it was not until the 1990s that the conceptual shift towards the protection and promotion of human rights at the national level by NHRIs took serious hold. NHRIs fill a vacuum in the architecture of state institutions[89] This is particularly true in States where the public lack access to alternative human rights enforcement mechanisms[90]. Such institutions attempt to *incentivise* state compliance with human rights obligations.[91] Of course there were some early exceptions: notably, New Zealand (1978) and Australia (1981). Some NHRIs also evolved from Ombudsman Offices or equal opportunities commissions into institutions with a human rights mandate. However, the huge increase in NHRIs over the last 20 years has led some to describe NHRIs as the 'norm'[92] or even as 'status symbols' demonstrating a States' commitment to its human rights obligations.[93] Statistically speaking, experts at Human Rights Watch have estimated that the number of national institutions grew from eight in 1990 to 45 in 2002.[94]

**83** ECOSOC Resolution 772B of 25 July 1960.

**84** A/Res/33/46 of 14 December 1978. The Resolution had grown out of discussions by the Commission on Human Rights at a seminar in Geneva.

**85** Burdekin, p.6.

**86** For a more detailed account see Lindsnaes, B., and Lindholt, L., *NHRIs - Standard Setting and Achievements*, Chapter 1.

**87** See Dickson, B., *The Contribution of Human Rights Commissions to the Protection of Human Rights*, PL 2003, Sum, 272-185.

**88** *Ibid.*

**89** Dickson, PL.

**90** Burdekin, B., p.5.

**91** See Steiner, J., and Alston, P., International Human Rights in Context Law Politics Morals, 2nd Ed. (2000) Oxford: Oxford University Press Inc. (hereinafter 'Steiner and Alston'), chapter 7.

**92** Pohjolainen, A.E, Introduction.

**93** *National Human Rights Institutions in the Asia-Pacific Region*. Report of the Alternate NGO Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights Institutions, March 1998. In a similar vein, the NGO assessed that '[...] setting up a National Human Rights Commissions is clearly in fashion for the Governments in the region'. Ibid. 37.

**94** See for example *Human Rights Watch Report (2001)*. However, there are no official statistics for the number of national institutions, but there was an increasing trend in the creation of NHRIs during the period mentioned.

The Commonwealth Secretariat Human Rights Unit has recently stated that there are now over 60 national and regional institutions in the Commonwealth that deal with specific human rights related issues.[95]

### 3.6 International, Regional and Sub-Regional Groupings of NHRIs

In addition to NHRIs that operate within the national framework, there are a number of international, regional and sub-regional groupings relevant to NHRIs. These are considered in outline below.

#### International

- International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC): The ICC is the 'foremost representative body of NHRIs, established for the purpose of providing a collective body and voice for NHRIs.'[96] The ICC governs the accreditation and re-accreditation process for NHRIs as a means of ensuring the 'international recognition and trust' of NHRIs as 'credible, legitimate, relevant and effective.'[97] NHRIs become members of the ICC when they have been assessed by the ICC and found to comply with the Paris Principles. The ICC Sub-Committee on Accreditation is mandated to review and analyse accreditation applications and to make recommendations on compliance with the Paris Principles. The ICC Sub-Committee classifies members in the following way:
  - 'A' – compliant with Paris Principles;
  - 'B' – observer status: not fully in compliance or insufficient information for a determination of compliance to be made; and
  - 'C' – non-compliant.[98]

Beyond the assessment and peer monitoring function, the ICC was established as a representative body to increase networking and exchanges within the UN machinery.

- **National Human Rights Institutions Forum (NHRIF):**[99] The Forum is a virtual (electronic) research and information platform and forum for the benefit of

**95** HRU Scoping Paper, 2007.

**96** See HRU Scoping Paper, 2007.

**97** Guidelines for Accreditation and Re-Accreditation Application of NHRIs to the ICC of NHRIs.

**98** *Ibid*. See also Rules of Procedure for the ICC-Sub-Committee on Accreditation. The ICC Guidelines for Accreditation Applications for NHRIs state that: 'NHRIs may become a member of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC) when they are assessed by the ICC in compliance with the Paris Principles. The assessment of NHRIs is carried out in accordance with article 3(c) of the Rules of Procedure of ICC. The Sub-Committee on Accreditation (the Sub-Committee) has been mandated to consider and review applications for accreditation and to make recommendations to the ICC members with regard to the compliance of applicant institutions with the Paris Principles. Applications are received and process by the National Institutions Unit of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in its capacity as the ICC Secretariat'. See http://www.nhri.net/default.asp?PID=387&DID=0. See also the ICC Position Papers on NHRIs and the UN Human Rights Council. Volume II – NHRIs Special Procedures and the Universal Periodic Review Mechanism, 22 September 2006. See http://www.nhri.net/2007/Annex_C-ICC_Position_Volume_II.pdf

It might also be noted that the ICC accreditation scheme is also relevant to membership criteria for the new CF-NHRIs as set out by the Steering Committee Report of May 2007. Members of the CF-NHRIs must attain ICC category 'A' status and those other NHRIs falling under ICC categories 'B' and 'C' may be regarded as 'Associate Members'. Other national accountability mechanisms with a human rights mandate will also be relevant to this second category of membership (such as Offices of the Ombudsman, Public Defenders Office etc).

**99** http://nhri.net

all NHRIs.[100] The Danish Institute of Human Rights and the OHCHR offer support to this Forum.

In addition to the ICC and the Forum (which are permanent), a number of ad-hoc conferences and projects are run from time to time, such as those provided by Equitas or the British Council.[101]

### Regional

- **Asia Pacific Forum of National Human Rights Institutions (APF):** The APF was formed at the first meeting of NHRIs in the Asia Pacific Region in 1996, formalising the commitment made in the APF Larrakia Declaration.[102] The APF is an independent, non-profit organisation with three main objectives:

  '(1) Strengthen[ing] the capacity of individual APF member institutions to enable them to more effectively undertake their national mandates;

  (2) Assisting governments and non-governmental organisations to establish national institutions in compliance with the Paris Principles; and

  (3) Promoting regional co-operation on human rights issues'.[103]

  The APF has 13 full members, that is, those NHRIs that are fully compliant with the Paris Principles or ICC 'A' classified, with one 'candidate' institution (Timor-Leste).[104] The Asia Pacific is the only region without a regional inter-governmental human rights mechanism, which adds to the importance of the APF.[105]

- **The Network of African NHRIs:** The Network of African NHRIs is due to replace The Coordinating Committee of African National Institutions (CCANI) The OHRCR is currently assisting African NHRIs to set up a permanent Secretariat, preferred over CCANI which convened on an ad-hoc basis. The new Network is designed to fulfil the same broad objectives and functions as the CCANI.[106]

**100** HRU Scoping Paper, 2007.

**101** See Equitas – International Centre for Human Rights Education http://www.equitas.org/. Note that the British Council formerly ran an important project on NHRIs, but that came to an end in December 2006. HRU has taken over the functions in respect of information dissemination and exchange – in particular the E-Newsletter See for details http://resources.thecommonwealth.org/HRUNewsletter/HRU.htm and the HRU Report on the Commonwealth Conference on NHRIs, 26-28 February 2007 at paragraph 3.6.0.

**102** See http://www.asiapacificforum.net/about/annual-meetings/1st-australia-1996 as well as the Paper Presented by Pip Dargan, Deputy Director of the APF to the Conference for Commonwealth NHRS, 26-28 February, The Asia Pacific Forum of NHRIs ... a partnership for human rights in our region – *'The role of the APF in relation to the application of the Paris Principles'*. See also for more information *Asia Pacific Forum of National Human Rights Institutions Constitution* setting out the object, powers, finance, membership and meeting of the Forum, amongst other things. See www.asiapacificforum.net

**103** *Ibid*.

**104** The 13 full NHRI members or 'Forum Councillors' are: Afghanistan, Australia, Fiji, India, Indonesia, Malaysia. Mongolia, Nepal, New Zealand, Philippines, Republic of Korea, Sri Lanka and Thailand.

**105** For a detailed comparative account of NHRIs in the APF see Brian Burdekin assisted by J. Naum, 2007. It is also interesting to note that many of the NHRIs in the Asia Pacific Region have and continue to face challenges arising out of armed conflict situations or terrorism. For a critical account of the way in which NHRIs face such challenges see Evans, C., Human Rights Commissions and Religious Conflict in the Asia-Pacific Region, *International and Comparative Law Quarterly* (ICLQ) 53.3(713).

**106** See for more information the HRU Scoping Paper, 2007, Draft (2) Constitution of the Network of African National Human Rights Institutions (8 March 2006). An interesting article on the role of NHRIs in Africa, since the transformation of the Organization of African Unity (OAU) into the African Union (AU) is Lloyd, A., and Murray, R., Institutions with Responsibility for Human Rights Protection under the African. *Union Journal of African Law* (2004), 48: 165-186.

- **Economic Community of West African States (ECOWAS):** ECOWAS recently assisted in forming a Network of NHRIs in November 2006 following a Consultative Meeting in West African countries held in the Gambia. The Meeting was organised by ECOWAS in conjunction with the African Commission on Human and People's Rights (ACHPR). The Final Communiqué states,

  "*The purpose of the network is to serve as a platform for strengthening the capacity of national human rights institutions and protect and promote human rights in West Africa*".[107]

  The ECOWAS Secretariat is to act as the co-ordinating office for the Network in the interim period.[108]

- **Network of National Institutions of the Americas:** This network was formed in November 2000 drawing inspiration from the experiences of the APF. The OHCHR was again instrumental in the establishment of this Network. Canada is the only Commonwealth member of the network.[109]

- **The Ombudsmen of Europe:** The governments of Central and Eastern Europe have been keen to establish Ombudsman Offices. A loose platform for exchange exists in the form of The Ombudsmen of Europe.[110] These States do not form part of the Commonwealth.

### 3.7 Contemporary Challenges facing NHRIs

The growth of human rights institutions at national level reflects a changing global political landscape. Respect for human rights has become a recognised part of this new landscape. Current challenges facing NHRIs include:

- Globalisation and corporate responsibility;
- Changing governance arrangements;
- International terrorism and national security;
- Conflict or post-conflict states; and
- Climate change.

NHRIs also face challenges on the local level. As many of the participants of the Commonwealth Conference of NHRIs in London in 2007 observed, great efforts are being made to reconcile the potential challenge to human rights posed by local cultural traditions. Key issues include physical practices, such as corporal disfigurement (female

**107** See Final Communiqué of the Consultative Meeting of National Human Rights Institutions in West Africa, 8-10 November 2006, Sunbeach Hotel, Banjul: *ECOWAS Establishes a Network of National Human Rights Institutions in West Africa. See also HRU Scoping Paper, 2007.*

**108** See also http://www.ecowas.int/. 'The Economic Community of West African States (ECOWAS) is a regional group of fifteen countries, founded in 1975.' 1 Its mission is to promote economic integration in 'all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters ...'.

**109** See HRU Scoping Paper, 2007. It might also be noted that the institutions found in the Americas tend to be based on the Ombudsman model and networks also exist to facilitate and strengthen their work. For example, see IberoAmerican Federation of the Ombudsman (FIO) at http://www.iccnow.org/?mod=fio and the OmbudsNet at: http://www.iidh.ed.cr/comunidades/ombudsnet/ (Sistema Integrado de Información y Comunicación para las oficinas de Ombudsman en América Latina y el Caribe), administrado por el IIDH. Information is available at www.nhri.net

**110** See for more information http://www.omineurope.info/ and http://www.hrdc.net/nhris/

genital mutilation, scarring and tattooing), mandatory abortions, corporal punishment (whipping or stoning), 'honour killings', infanticide, torture and behavioural practices, which include the sale of brides, discrimination (caste systems, human scavenging), banishment, dress codes (body covering or veils), marriage (sale of brides, child or forced marriage), forced labour, and state-sponsored deprivations (in terms of political expression or assembly or access to housing or social benefits).[111]

The Commonwealth Secretariat *Best Practice Guidelines* express an awareness of the need for dynamism in the fulfilment of the NHRIs' human rights mandate in response to such emerging challenges, stating:

- 'NHRIs should proactively and reactively respond to new challenges as and when they arise, for instance the human rights implications of the AIDS pandemic, scientific and technological advances and privacy considerations; and
- NHRIs should 'interpret their mandates creatively to address major challenges such as the AIDS pandemic and the marginalisation and discrimination of particularly vulnerable groups'.[112]

The role of NHRIs in meeting these challenges is becoming more and more widely accepted. Indeed, the UN Committee on the Rights of the Child has expressly recognised the importance of the independent contribution of NHRIs to the reporting process.[113] This role fits with another core responsibility pf NHRIs, which is 'to co-operate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotions and protection of human rights'[114]

**111** As noted in many of the presentations delivered at the Commonwealth Conference on NHRIs in February 2007. See also Claude and Weston table 1 at page 40. For a detailed and comprehensive report on cultural practices in Malawi, which may be common to other States, see Report for the Malawi Human Rights Commission (led by Banda, A.) 'Cultural Practices and their Impact on the Enjoyment of Human Rights, Particularly the Rights of Women and Children in Malawi', May 2006. Available at http://www.malawihumanrightscommission.org/docs/cultural_practices_report.pdf

**112** *Best Practice for National Human Rights Institutions*, Legal and Constitutional Affairs Division, Commonwealth Secretariat (2001), p. 2 (hereinafter *'Best Practice Guide'*).

**113** CRC General Comment No. 2: The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child (15/11/2002. CRC/GC/2002/2.) – particularly paragraphs 20-24.

**114** Paris Principles, *Competence and Responsibilities.*