

5 Schedules of Commonwealth NHRIs

The core criteria of the NHRIs included in the schedules below are categorised according to the following criteria:^{117B}

- **Establishment and Mandate** – year of establishment, name, enabling statute, legal mandate for powers and functions, safeguards for independence, membership to regional bodies, evolution of institutes
- **Competence and Responsibilities (I)** – reporting, monitoring, visits to detention facilities.
- **Competence and Responsibilities (II)** – the process for the investigation of complaints, the inquiry procedure and associated powers, advisory capacity and awareness raising/educational function.
- **Quasi-judicial functions** – process for receiving and resolving complaints, power of referral to appropriate state authorities, enforcement powers and relationship with judicial institutions, power to subpoena, power to order disclosure, amicus curiae
- **Composition and Organisation** – appointment and dismissal of Commissioners; funding sources.
- **Additional Powers** – other distinctive functions, recent quantitative record, future direction

The schedules of NHRIs are split into the following regional groupings:

- **Asia Pacific:** Australia, New Zealand, India, Maldives, Malaysia, Sri Lanka and Fiji.¹¹⁸

^{117B} Note that the methodology has been, as far as possible, to: a) categorise and keep separate the specifics of the mandates as distinct units. However, it is recognised that there may be a degree of overlap and variation in practice; and b) keep the criteria as uniform as possible as between the schedules categorised as to geographical location.

¹¹⁸ Note that at the time of writing Fiji is currently suspended from the Commonwealth association of nations following the military overthrow of the democratically elected government (8 December 2006). See <http://www.thecommonwealth.org/YearbookHomeInternal/138476/> and http://www.thecommonwealth.org/news/34580/157590/fijimilitary_regime_suspended_from_commonwealth_c.htm. However, the Fiji Human Rights Commission continues to be extremely active in the protection and promotion of human rights – and in particular in its reminders to public officials that violations of human rights will not be tolerated. Therefore it is only right that the Fiji Human Rights Commission be included in this study despite the State's current suspension.

- **Africa:** Zambia, Nigeria, Ghana, Uganda, Mauritius, Kenya, Malawi, South Africa and United Republic of Tanzania.¹¹⁹
- **Canada and Europe:** Canada, England and Wales and Northern Ireland.¹²⁰ Denmark is also included¹²¹ (this grouping is not strictly limited to Commonwealth NHRIs).
- **Americas/Caribbean:** A separate schedule is also included of Ombudsman Offices, which are a feature of the countries of the Americas including Papua New Guinea, Belize, Jamaica, Antigua and Barbuda, Trinidad and Tobago, Barbados and Namibia.

The schedules are followed by additional commentary discussing particular novel features of individual NHRIs and Ombudsman Offices in cases where room does not permit adequate explanation within the schedules themselves.

119 Note that the Cameroon National Commission for Human Rights and Freedoms (NCHRF) is excluded on the basis that there was insufficient information for its inclusion in the study. However, the NCHRF has been taking steps to become ICC accredited and make its operations and services more accessible to the Cameroonian people. A new strategic plan was put in place following a workshop on 2-6 June 2007 in Yaoundé. See for details <http://www.thecommonwealth.org/news/163087/165555/210607humanrights.htm> Limited information is available in a research study carried out by the British Council on Commonwealth Human Rights Institutions, published in 2002. See <http://www.britishcouncil.org/governance-commonwealth-human-rights-commissions.doc> as well as Human Rights Watch Report 2001 available at <http://hrw.org/reports/2001/africa/cameroon/cameroon3.html>

120 Canada is found alongside European institutions because it does not follow the Ombudsman model as do other states in the Americas – which form an entirely separate part of the study in themselves.

121 Although Denmark is not a member of the Commonwealth, the Danish Institute for Human Rights (DIHR) performs an important supporting role for NHRIs in other countries (for example, Afghanistan etc.) The DIHR superseded the Danish Centre for Human Rights, which was established in 1987. The DIHR is one of the oldest NHRIs in existence and reference to DIHR would provide a good illustration in the discussion. For more information refer to <http://www.humanrights.dk>

5.1 Asia Pacific

Criteria	Australia ¹²²	New Zealand ¹²³	India ¹²⁴	Maldives ¹²⁵	Malaysia ¹²⁶
Year Established	1986 Human Rights and Equal Opportunity Commission (HREOC)	Human Rights Commission 1993	12 October 1993 National Human Rights Commission	27 November 2006 Human Rights Commission	Human Rights Commission of Malaysia)
Evolution	1981 Human Rights Commission superseded in 1986 by HREOC	The Human Rights Amendment Act 2001 merged the Office of the Race Relations Conciliator with the Human Rights Commission. Provision has also been made for the appointment of a full-time Equal Opportunities Commissioner.	N/A	First Human Rights Commission created by Presidential Decree on 10 December 2003. Human Rights Commission Act brought current Commission into force following statutory enactment of 2006.	N/A
Enabling Statute	Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act 1986)	Human Rights Act 1993	The Protection of Human Rights Act 1993 (PHR Act 1993)	Human Rights Commission Act No. 6/2006 (HRC Act 2006)	Human Rights Commission Act 1999 (HRC Act 1999)
Mandate	Human rights and equality/non-discrimination	Human rights and equality/non-discrimination	Human rights, although anti-corruption is targeted as a factor precipitating human rights abuse	Human rights	Human rights
Independent of government	Yes	Yes	Yes	Yes	Yes
Independent of NGOs and civil society	Yes	Yes	Yes	Yes	Yes
Safeguards for independence	HREOC Act 1986	HR Act 1993	PHR Act 1993	HRC Act 2006	The 1999 Act

122 For more information see Toohy, K., *Fulfilling the NHRI Mandate – the Australian Human rights and Equal Opportunity Commission*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007 (hereinafter Toohy, *Australia's Experience*). See also von Doussa J., *The Protection Role of the Australian Human Rights Commission*, chapter 1 in Ramcharan, 2005.

123 See for more information, McGregor, J., *Fulfilling the Mandate: Challenges, Opportunities and Learnings*, Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

124 See for more information, Rao, B., *National Human Rights Commission India, Experiences in Fulfilling Mandate*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007. Also Fernandez, J.L.S., *The Protection Role of the Mexican Human Rights Commission*, chapter 6 in Ramcharan, 2005. And Sripathi, V., *India's National Human Rights Commission: Strengths and Weaknesses*, chapter 9 in Lindsaes, Lindholt and Yigen *Working Papers*.

125 Saleem, A., *Human Rights Commission of Maldives Experience*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

126 Vohrah, D.K.C., *The Human Rights Commission of Malaysia: Fulfilling the National Mandate and the Challenges*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Criteria	Australia	New Zealand	India	Maldives	Malaysia
Membership of other regional bodies/ for a	Asia Pacific Forum (APF) ¹²⁷	APF	APF	–	APF
Other relevant national institutions and/or partnership arrangements	Anti-discrimination bodies in each of the states and territories have a crucial role in protecting and upholding fundamental values of fairness, equality, tolerance and non-discrimination. ¹²⁸ Human Rights, Race, Sex, Disability and Aboriginal and Torres Strait Islander Social Justice Commissioners (appointed by federal government).	–	Partnership project with the Canadian Human Rights Commission and the India Gandhi National Open University on rights of disabled persons. Research on trafficking in women and children in association with the Institution of Social Science, New Delhi.	Strategic development with Police Human Rights Unit	–
Promotional Role	Australia	New Zealand	India	Maldives	Malaysia
Legal Mandate for Powers and Functions	1986 HREOC Act	HR Act 1993	PHR Act 1993	HRC Act 2006	HRC Act 1999
Reporting Function – to Parliament / National Assembly	Yes. Through the Attorney-General.	Yes. To Prime Minister	Yes. Annual reports submitted to Central Government which lays it before Parliament.	Yes	Yes
Reporting Function – to UN treaty bodies	Indirectly	Indirectly	Yes	Indirectly	No
Monitoring function	Yes	Yes	Yes (particularly of recommendations)	Yes	Yes
Particular monitoring focus	–	Equal opportunities in employment Implementation of CEDAW	Prison conditions Custodial deaths Detention of children or those suffering from mental health problems	–	–
Visits places of Detention	Yes	Yes	Yes	Yes (consent not required)	Yes
Engages with press	Yes	Yes	Yes	Yes	Yes

¹²⁷ Asia Pacific Forum – see www.apf.org

¹²⁸ Toohey, *Australian Experience*.

SCHEDULES OF COMMONWEALTH NHRIS

Promotional Role	Australia	New Zealand	India	Maldives	Malaysia
Issues public statements	Yes	Yes	Yes	Yes	Yes
Advice to parliament and government on law and policy	Yes	Yes	Yes	Yes	Yes
Advice to individuals	Not directly	Yes, on equal opportunities and employment	--	No	No
Visit needs consent of state institutions	--	--	--	No	--
Other statutory responsibilities	Native Title Act 1993 mandates reporting on human rights of indigenous people with respect to native title (performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner)	Developing a national action plan	--	Power to prevent alleged human rights violators from leaving the Maldives	--
Research, Education & Training	Yes	Yes	Yes	Yes	Yes
Future Direction /Work	More work on discrimination arising from industrial disputes	Action plan includes: Poverty and abuse of children Removal of barriers for disabled persons Abuse in detention facilities/ institutional care Economic and social disparities of the Maori The Treaty of Waitangi	--	--	--
International education programmes	National consultation on specific issues Information sharing with groups and civil society	Yes	Yes	Special programmes for parliamentarians, law enforcement officials etc. Ensuring new legislation takes into account human rights	--

COMPARATIVE STUDY ON MANDATES OF NHRIS IN THE COMMONWEALTH

Protection Role	Australia	New Zealand	India	Maldives	Malaysia
Investigation of complaints	Yes	Yes	Yes	Yes, particularly torture and police abuse	Yes
Individual complaints mechanism	Yes	Yes	N/A	Yes	Yes
Conciliation of complaints	Yes	Yes	Yes	Yes	No
Mediation	Yes	Yes	–	No	No
Powers of intervention or <i>amicus curiae</i> in legal proceedings	Yes. Broad public interest standing.	Yes	Yes	Yes	No
Initiation of Public Inquiries	Yes. At own initiative or at request of Attorney-General	Yes	Yes	Yes	Yes
Legal basis for inquiries	Yes	Yes. HRA 1993 empowers the NZ HRC to inquire into any matter including any enactment or law, or any practice or any procedure that involves or may involve the infringement of human rights.	1993 Act	2006 Act	1999 Act
Inquiries completed	Investigations into alleged infringements of discrimination legislation (race, sex, disability and age discrimination). Investigation into alleged infringements of human rights under the HREOC Act.	Investigation into alleged discrimination against disabled persons using public transport.	–	–	–
Inquiry process	On own initiative or on those referred to it	<ul style="list-style-type: none"> ● Consultation process ● Research ● Submissions ● Hearing (public and private) ● Report published ● Post-Inquiry monitoring and evaluation 	On petition of the victim or his/her representative	On own initiative or on those referred to it	On own initiative or on those referred to it

SCHEDULES OF COMMONWEALTH NHRIS

Protection Role	Australia	New Zealand	India	Maldives	Malaysia
Powers ancillary to public inquiries	Yes. Power to compel attendance of witnesses or require the production of documents	Yes	Yes	Yes	Yes
Significant public inquiries and impact/	National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (investigation of State sanctioned removal of children in Indigenous communities.) Commission's report was tabled before Parliament in 1997. Formal apology issued.	-	-	-	-
Power of subpoena	Yes	-	Yes	Yes	Yes
Power to order disclosure of documents	Yes	-	Yes	Yes	Yes
Power to call and cross examine witnesses in investigations or inquiries	Yes	-	Yes	Yes	Yes
Advice to parliament and government. E.g. on compatibility of law and policy with international human rights standards.	Yes	Yes	Yes	Yes	Yes
Advice to individuals	Not directly	Yes on equal opportunities in employment	-	No	No
Research	Yes	Yes	Yes	Yes	Yes
Education and training programmes	Yes: National consultation on specific issues Information sharing with groups and civil society School-based programmes	Yes	Yes	Yes: Special human rights programmes for parliamentarians, law enforcement official and judges. Inclusion of human rights in school curriculum. Ensuring new legislation takes human rights into account.	Yes

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Protection Role	Australia	New Zealand	India	Maldives	Malaysia
International education programmes/ information sharing	Yes. China-Australia Human Rights Technical Cooperation Program.	Yes	Yes	Yes	Yes
Other distinctive functions	Power to grant exemptions under particular circumstances – i.e. under the Sex Discrimination and Disability Acts.	–	Mandatory requirement that state authorities report to the Commission in all cases of custodial death and rape within 24 hours of the event. Post-mortem examinations filmed. Detailed guidelines on arrest and detention, investigation and reporting on crime.	–	–
Quasi-Judicial Functions	Australia	New Zealand	India	Maldives	Malaysia
Power of Commission to intervene in court proceedings with leave of the Court	Yes	Yes	Yes	Yes	No
Power to act as <i>amicus curiae</i>	Yes		Yes	Yes	No
Other statutory powers	HREOC Act 1986 states that the Commission shall have all necessary or convenient powers for the performance of its functions	No	Yes • Powers of a civil court • Power to file proceedings in the High Court	–	–
Power to grant remedies	Yes: compensation	No. Can seek remedies only through tribunals	Yes: compensation	Not as such. Can seek 'amicable solutions' or referral of cases to Court	No
Reception of complaints	Formal written complaints are assessed by the Commission and accepted or rejected. Complaints largely relate to discrimination legislation (alleged violations by public bodies/ discrimination in employment).	–	Complaints Management System developed to deal with high load of complaints	–	Yes

SCHEDULES OF COMMONWEALTH NHRIS

Quasi-Judicial Functions	Australia	New Zealand	India	Maldives	Malaysia
Mechanisms of complaints resolution	Complaints accepted under race, sex and disability discrimination legislation usually resolved through conciliation. Commission = mediator	Mediation or conciliation preferred	Recommended payment of interim relief to victims (majority of cases). Disciplinary action or prosecution may be recommended for more serious human rights abuses.	Amicable resolution or referral to court	Referral to appropriate authorities
Remedies	<ul style="list-style-type: none"> ● Compensation ● Job reinstatement ● Work reference provided ● Apology ● Changes in policy or procedure 	–	Act 456 is silent as to remedies. Article 229 of Constitution provides that the Commissioner may bring court action and seek any remedy available before the court	2006 Act is silent as to remedies	–
Recent Quantitative Record	<p>2005-6 – 11000 individual inquiries;</p> <p>2005-2006 – 1397 complaints under discrimination legislation.</p>	–	<p>Over 70,000 complaints received every year.</p> <p>2005-6 74,444 complaints received; disposed of 80,923 disposed of (including cases from previous years).</p>	–	–
Composition and Organisation	Australia	New Zealand	India	Maldives	Malaysia
Head of Commission	President	President	Chairperson	President	Chairman
Number of Commissioners	5 full time Commissioners	3 full time Commissioners 5 part-time Commissioners	4 full time Commissioners	5 Commissioners	Currently 18 Commissioners including 13 women and 5 men
Duration of appointment	7 years	5 years	5 years	5 years	2 years
Renewable terms	Yes	Yes	Yes (provided over age 70)	Yes	Yes

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Composition and Organisation	Australia	New Zealand	India	Maldives	Malaysia
Mechanism of appointment			The Chairperson and other Members shall be appointed by the President by warrant under his hand and seal. (s4(1) PHR Act 1993)	By the President after consultation with People's Majlis	The Yang di-Pertuan Agong shall designate one of the members appointed to be the Chairman of the Commission
Termination	Governor General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity	Governor-General may terminate an appointment for 'incapacity affecting performance of duty, neglect or duty, or misconduct' or bankruptcy	President may terminate on the grounds of proved misbehaviour or incapacity, conflict of interest, insolvency or criminal conviction	President of the Republic may dismiss a member on a number of grounds but only upon seeking a 2/3 majority of the Peoples Majlis	Yang di-Pertuan Agong can remove Commissioners directly or on the recommendation of the Prime Minister depending on the ground for dismissal
Source of Funding	State	State	Grants by Central and State Governments	State Treasury, approved by Peoples Majlis	State. International sources only accepted for awareness raising and education purposes.

SCHEDULES OF COMMONWEALTH NHRIs

Establishment and Mandate	Sri Lanka¹²⁹	Fiji¹³⁰
Year established and name	March 1997. Commenced work July 1997. Human Rights Commission of Sri Lanka	1999 Fiji Human Rights Commission
Evolution	Combined the functions of 2 predecessor bodies, the Commission for the Elimination of Discrimination and Monitoring of Human Rights and the Human Rights Task Force	–
Enabling Statute	Human Rights Commission Act No 21 of 1996	1997 Constitution of Fiji Human Rights Commission Act 1999
Legal Mandate for Powers and Functions	Human rights and equality 1996 Act	Human rights (although also looks at unfair discrimination). 1999
Independent of government	Yes	Yes
Independent of NGOs and civil society	Yes	Yes
Safeguards for independence	HRC Act 1996	HRC Act 1999
Membership of other regional bodies / fora	Asia Pacific Forum for National Human Rights Institutions (APF)	APF
Other relevant national institutions	–	–
Promotional Role	Sri Lanka	Fiji
Reporting Function – to Parliament/ National Assembly	Yes	Indirectly – through Prime Minister
Reporting Function – to UN or treaty bodies	–	Advises Government on this
Reporting – Other	Periodic or special reports.	From time to time publishes reports in the public interest
Monitoring function	Yes. Particular focus in respect of detained persons/torture	–
Visits to places of Detention	Yes	No. Only capacity is to receive letters from prisoners.
Engages with press	–	Yes
Issues public statements	–	Yes (and has now established a Newsletter)
Other statutory responsibilities	May exercise discretion to award sums of money to aggrieved persons or their representatives in order to meet the costs of submitting their complaint to the Commission	Publishes guidelines for avoidance of acts or practices that may be inconsistent with or contrary to human rights
Future Work	–	Investigation into coup events of 5 December 2006

¹²⁹ Jawawickrama, D., *Human Rights Commission of Sri Lanka*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

¹³⁰ For more information see Shameem, S., *The Protection Role of the Fiji Human Rights Commission*, chapter 3 in Ramcharan, 2005.

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Protection Role	Sri Lanka	Fiji
Investigation of complaints	Yes	Yes
Individual complaints mechanism	Yes	Yes
Conciliation of complaints	Yes	Yes
Mediation	Yes	Yes
Initiation of Public Inquiries	Yes	–
Legal basis for inquiries	1996 Act	1999 Act
Inquiry process	Must be allegation of infringement or imminent infringement of a fundamental right of person/ group of persons caused by (a) executive/ administrative action; or (b) as a result of an act which constitutes an offence under the Prevention of Terrorism Act No 48 1979 committed by any person.	Inquiry process
Powers ancillary to public inquiries	Yes	Yes
Significant public inquiries	–	Events of 6 December 2006
Power of subpoena	Yes	Yes
Power to order disclosure of documents	Yes	Yes
Power to call and cross examine witnesses in investigations or inquiries	Yes	Yes (by the Proceedings Commissioner unless the proceedings are by way of appeal)
Advice to parliament and government on compatibility of law and policy with international human rights standards.	Yes	Yes
Advice to individuals	Yes	Yes
Research	Yes	Yes
Education + training programmes	Yes Programmes, seminars, workshops, Dissemination of results of research.	Yes Provision of human rights information in digital and print form. Education/ Promotions division disseminates human rights information and raises awareness through videos, publications, competitions and radio in co-ordinated manner.
International education programmes	–	–
Other distinctive functions	S28 of the Act requires the arresting authorities to report any arrest or order of detention to the Commission not later than 48 hours of the time of arrest and the location of the detention facilities, as well as of any relevant transfer or release.	

SCHEDULES OF COMMONWEALTH NHRIS

Quasi-Judicial Functions	Sri Lanka	Fiji
Power of Commission to intervene in court proceedings with leave of the Court	Yes	Yes. The 'Proceedings Commissioner' may appear in the High Court.
Power to act as <i>amicus curiae</i>	No	Yes. All domestic courts.
Other statutory powers	Supreme Court may refer matters arising in the course of a hearing to the Commission for inquiry and Report Acts committed against the authority of the Commission are punishable before the Supreme Court.	Power to grant damages. The 1999 Act makes it a criminal offence to fail to attend before The Commission or obstruct it.
Power to grant interim relief	No	Yes. May make interim order in the interests of justice.
Complaints Handling Mechanism		Receives complaints of allegations of breaches of human rights or unfair practices. Complaints referred to appropriate agency if complaint not within Commission's jurisdiction. Complaints classified and investigated. Complaints resolved. Unresolved complaints referred to Commission's Legal division for court action.
Reception of complaints	Yes	Yes
Mechanisms of complaints resolution	<ul style="list-style-type: none"> ● Conciliation ● Recommendation ● Referral 	Declarations or orders made through the High Court
Recent Quantitative Record	Between 2000-2003, 3600 complaints were lodged. 40% related to abuse by government employees – e.g. denial of right to equal protection before the law. Other complaints related to violations by police and armed forces under terrorism legislation. Over 2000 cases annually related to arbitrary arrest and detention. Many cases of alleged torture.	–
Additional Powers	Sri Lanka	Fiji
Other statutory responsibilities	May exercise discretion to award sums of money to aggrieved persons in order to meet the costs of submitting their complaints to the commission	Publishes guidelines for avoidance of acts or practices that may be inconsistent with or contrary to human rights
Future work	–	Investigations into coup events of 5 December 2006

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Composition and Organisation	Sri Lanka	Fiji
Head of Commission	<ul style="list-style-type: none"> ● Chairperson 	Yes
Number of Commissioners	<ul style="list-style-type: none"> ● Chairperson and 4 members ● All members are part time 	3 Members <ul style="list-style-type: none"> ● Ombudsman (chairman) ● One judge ● One other member
Manner of appointment of Commissioners	<p>Members of the Commission are appointed by the President on recommendation of the Constitutional Council.</p> <p>In making recommendations the Prime Minister and Constitutional Council have regard to the representation of minorities.</p>	Appointment of Commissioners by President on advice of Prime Minister
Renewable terms	No. But if vacate office voluntarily (rather than removed) eligible for reappointment.	-
Termination	<p>President may terminate Commissioners appointment on specified grounds – e.g. moral turpitude or unauthorised absence from 3 Commission meetings. Parliament may also initiate a Presidential order of termination on grounds of proved misbehaviour or incapacity provided a majority of Parliament is secured.</p>	Constitutional Offices Commission may terminate the appointment of a member for inability to perform the functions of his office on the grounds of infirmity of body or mind or other causes, or misbehaviour.
Offices	Head Office and 10 regional offices	-
Source of Funding	Government	Government – through relevant minister
Budget	-	-
Challenges facing Commission	<p>Armed conflict which is ongoing in northern and eastern parts of Sri Lanka.</p> <p>Internally displaced people and migrant workers.</p>	Current suspension from Commonwealth as democratic government overthrown by military coup in December 2006.

5.2 Africa

Establishment of Mandate	Zambia ¹³¹	Nigeria ¹³²	Ghana ¹³³	Uganda ¹³⁴	Mauritius ¹³⁵
Year Established/ Name	1996. Zambian Human Rights Commission	1995. National Human Rights Commission of Nigeria	6 July 1993. Commission on Human Rights and Administrative Justice (CHRAJ)	1997. Uganda Human Rights Commission	April 2001. National Human Rights Commission of Mauritius
Legal mandate for powers and functions	HRC Act 1996 Act	NHRC Act 1995	CHRAJ Act 1993	HRC Act 1997	PHR Act 1998
Evolution	Established following recommendation of an ad hoc Commission of Inquiry into human rights violations, including torture, in 1993	Established by the military regime	CHRAJ absorbed the position of the Ombudsman which had been created by the 1979 Constitution. The framers of the constitution chose to establish a single national institution to address all aspects of human rights and administrative justice.	Commission of Inquiry into the violation of human rights concluded the desire of the people for a national institution to act as a check on abuse of power by the Government. This was entrenched in the Constitution.	–
Enabling Statute	Established by Article 125 of Constitution of Zambia 1996 and Human Rights Commission Act of 1996 (HRC Act 1996)	National Human Rights Commission Act 1995 (NHRC act 1995)	Commission on Human Rights and Administrative Justice Act 1993 (CHRAJ Act 1995)	Uganda Human Rights Commission Act 1997 (HRC Act 1997)	The Protection of Human Rights Act 1998. (PHR Act 1998)
Mandate	Human rights and investigation of maladministration of justice	Human rights and anti-corruption	Human rights and anti-corruption	Human rights	Human rights
Independent of Government	Act provides for autonomy but power of patronage threatens this. Significant involvement by Government in appointment of Commissioners.	Government pays staff salaries and rent	Yes. Article 225 Constitution provides for independence.	Yes	Yes

131 For more information see Yangailo, P., *Zambia Human Rights Commission, its Achievements and Challenges*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

132 See for more information: Ajoni, K.F., *My Experience in Driving the Mandate of the National Human Rights Commission of Nigeria and the Challenges of NHRIs in the African Sub Region*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

133 See for more information: Bossman, A., *Promoting and Protecting Human Rights, Ensuring Administrative Justice and Fighting Corruption in Ghana*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007. Also Bossman, A., *The Protection Role of the Ghana Human Rights Commission*, chapter 4 in Ramcharan, 2005. And Quashigah, K., *The Ghana Commission on Human Rights and Administrative Justice*, in Lindsnaes, Lindholt and Yigen, *Working Papers*, chapter 11..

134 See for more information: Sekaggya, M., *Experiences of the Uganda Human Rights Commission in Fulfilling its Mandate*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007. Also Sekaggya, M., *The Protection Role of the Uganda Human Rights Commission*, chapter 10 in Ramcharan, 2005.

135 Seetulsingh, M., *The National Human Rights Commission Mauritius, Experience and Challenges in Fulfilling its Mandate*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Criteria	Zambia	Nigeria	Ghana	Uganda	Mauritius
Independent of NGOs and civil society	Yes	Yes	Yes	Yes	Yes
Safeguards for independence	Contained in the HRC Act 1996	Few	Article 225 of the Constitution	Act silent on this	Act silent on this
Membership of other regional bodies	Yes	Yes	Yes	Yes	Francophone Association
Other relevant national institutions and/or partnership agreements	Collaborative efforts with NGOs, especially in the provinces Collaborative efforts with the press	Collaboration with National Working Group on Prison Reforms and Decongestion and the Open Society Initiative for West Africa	Collaboration with NGOs such as International Needs Ghana	–	–
Promotional Role	Zambia	Nigeria	Ghana	Uganda	Mauritius
Reporting Function – to Parliament/ National Assembly	Yes (Section 25 of the Act)	Yes – but to the Executive arm	Yes but no obligation to report annually to Parliament.	Yes. Annual Report submitted to Parliament which contains recommendations. Several of these have been debated.	Yes. Annual report submitted to the President who lays it before the National Assembly.
Reporting Function – to UN or treaty bodies.	Indirectly. Assists in State reporting process.	No	–	No	No
Reporting – Other	Consolidated Report under the African Charter. Other reports to public authorities.	No	Annual Prisons Report published	–	Special reports on matters of concern or urgency.
Monitoring function	Yes	No	Yes	Yes	Yes
Particular monitoring focus	–	–	Prisons, health and educational facilities	–	–
Visits to places of Detention	Yes. Consent to visit required.	Yes. Specialised committees can issue reports to Federal Government.	Yes	Yes	Yes
Engagement with press	Yes. In particular – use of radio and national television discussion programmes to promote human rights.	–	Yes	–	–

SCHEDULES OF COMMONWEALTH NHRIS

Promotional Role	Zambia	Nigeria	Ghana	Uganda	Mauritius
Issuing public statements	Yes	–	Yes	–	–
Other statutory responsibilities	To propose preventive mechanisms to halt human rights abuses	–	Can pursue contempt of court action if witnesses fail to attend during investigation of alleged human rights abuse	–	–
Future Direction/Work	<p>Successfully investigated allegations of torture made by attempted coup plotters: led to establishment of Commission of Inquiry.</p> <p>Constitutional Review Process into proposed Constitution and National Bill of Human Rights.</p>	<p>Draft amendment bill before Parliament to give greater independence and powers to the Commission.</p> <p>Creation of 6 zonal offices has allowed greater reach to rural communities and number of complaints has increased as a result. Therefore looking to establish state and local government offices.</p>	<p>CHRAJ has identified need to streamline its mandate.</p> <p>Need constitutional review of composition, appointment and conditions of service of Commissioners.</p> <p>Proposal to amend budgetary procedure – i.e. to lay it directly before Parliament rather than the Ministry of Finance in order to decrease executive control.</p>		<p>Much of the Commission's work relates to abuse by police and delays in Court proceeding dealing with such matters.</p> <p>NHRC has recommended an all party Parliamentary Select Committee to study and implement its recommendations.</p>
Protection Role	Zambia	Nigeria	Ghana	Uganda	Mauritius
Investigation of complaints	Yes – including human rights abuses and maladministration of justice	Yes	Yes – extends from investigation into human rights abuses by public officials to private institutions	Yes	Yes
Individual complaints mechanism	<p>Power to initiate investigation of complaints.</p> <p>Power to investigate allegations or complaints received from individual victims or those with public interest standing/representatives.</p>	<p>Power to investigate complaints received by victims / representatives / public interest.</p> <p>Complaints must be in writing to the Commission (either directly or through a zonal office).</p> <p>Commission may investigate the complaint or request that the police, an NGO or other appropriate institution do so.</p>	<p>Negotiation or mediation.</p> <p>Panel hearings.</p> <p>Reports findings to a superior Office.</p> <p>Legal proceedings before Competent Court for enforcement.</p> <p>Anti-corruption mechanism includes reporting to Attorney General or Auditor General.</p>	Power to investigate complaints	<p>Examines all information submitted;</p> <p>Summonses the complainant, respondent and witnesses and examines them on oath or under solemn affirmation.</p> <p>Calls for the production of documents or exhibits.</p> <p>Visits the locus if need be.</p>

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COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Protection Role	Zambia	Nigeria	Ghana	Uganda	Mauritius
continued from page 54 Individual complaints mechanism					Commission attempts to resolve complaint by conciliation. Should this fail, refers the case to appropriate body such as the prosecutor.
Conciliation of complaints	Yes	Limited	Yes	No	Yes
Mediation	Yes	No	Yes	No	No
Powers of intervention or <i>amicus curiae</i> in legal proceedings	No	No	Yes	No	No
Initiation of Public Inquiries	No	–	Yes	No	Yes
Legal basis for inquiries	No	–	Yes	No	Yes
Powers ancillary to public inquiries	No	No	Yes	Yes (attendance and examination of witnesses on oath)	Yes
Power of subpoena	Yes	No	Yes	Yes	Yes
Power to order disclosure of documents	Yes	No	Yes	Yes	Yes
Power to call and cross examine witnesses in investigations or inquiries	Yes	No	Yes	Yes	Yes
Advice to parliament and government on compatibility of law and policy with international human rights standards	Yes	Yes. Particular strength with regard to inspection and reporting on prison conditions	Yes	Yes	Yes
Advice to individuals	Yes	Yes	No	No	No

SCHEDULES OF COMMONWEALTH NHRIS

Research	Zambia	Nigeria	Ghana	Uganda	Mauritius
Education and training programmes	<p>Yes</p> <p>'Human Rights Sensitisation and Education' Programmes. Performed countrywide through workshops, training, and discussion forums.</p> <p>Structured approach to training public officials: law enforcement agencies; teachers; health workers; heads of government in selected provinces; political parties.</p> <p>Human rights days to raise awareness</p>	<p>Yes</p> <p>Workshops, training sessions and seminars. ¹³⁶</p>	<p>Yes</p> <p>Publications, lectures and symposia.</p> <p>Community level education schemes.</p> <p>Targets social and customary practices.</p>	<p>Yes</p>	<p>–</p>
International education programmes/ information sharing	<p>No</p>	<p>No</p>	<p>Yes</p>	<p>–</p>	<p>–</p>
Other distinctive functions	<p>Rehabilitation of victims of human rights abuse</p> <p>Enlists support of the press when visiting detention facilities</p>	<p>With respect to complaints mechanism:</p> <p>offers writing service for those unable to write</p> <p>Pilot project being tested to allow complaints to be lodged via Commission's website</p>	<p>Investigates all instances of corruption. In addition, investigates property confiscated by the military administrations of 1981-1993.</p> <p>Power to enforce recommendations if not implemented in 3 months</p> <p>Has intervened where children have been deprived of life saving medical treatment due to the beliefs of their parents.</p>	<p>–</p>	<p>Legislative protection for actions of Commission taken in good faith.</p> <p>Provision of misleading information or failure to attend as witness in investigations constitutes a criminal offence.</p>

¹³⁶ For a list of these see <http://www.nigeriarights.gov.ng/mandate.html>

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Quasi-Judicial Functions	Zambia	Nigeria	Ghana	Uganda	Mauritius
Power of Commission to intervene in court proceedings with leave of the Court	No	No	No	No	No
Power to act as <i>amicus curiae</i>	No	No	Yes	No	No
Other statutory powers	Enforcement powers: punishment of human rights violators; release of detainees; payment of compensation to victim or their family	No	Enforcement powers fairly strong.	–	No
Power to grant interim relief	No	No	No	No	No
Reception of complaints	Yes	Yes	Yes	Yes	Yes
Mechanisms of complaints resolution	Conciliation or recommendation <ul style="list-style-type: none"> ● Complaint received and referred to Complaints Committee which decides on admissibility of cases ● Committee instructs legal department or refers to another authority ● Complaint may be heard before public hearing of the Commission 	Via website or otherwise.	Mainly enforcement <ul style="list-style-type: none"> ● Commission can enforce its decisions by going to court. ● Decisions and recommendations are considered akin to a Court decision. There is a right of appeal to a higher court. 	Makes recommendations to Parliament, in particular to award compensation in cases of human rights abuse.	Conciliation or referral to executive officers or Director of Public Prosecutions. <p>Complaints:</p> <ul style="list-style-type: none"> ● must be in writing. ● cannot concern economic and social rights. ● cannot have taken place more than 2 years ago.
Remedies for preferred method of complaint resolution	<ul style="list-style-type: none"> ● Punishment of officer (s10) ● Release of detainee ● Payment of compensation ● Permission to seek redress in a court of law ● Any 'such other action as it considers necessary' 			See above	No power to grant remedies. See above. Referral. May recommend that compensation be granted.
Who decides to terminate complaints and why	<ul style="list-style-type: none"> ● Cases Review Meeting of the Commission 			–	Commissioner

SCHEDULES OF COMMONWEALTH NHRIS

Quasi-Judicial Functions	Zambia	Nigeria	Ghana	Uganda	Mauritius
Recent Quantitative Record		<ul style="list-style-type: none"> ● 1996-2001: 1,278 complaints ● 2001-2006: 2,548 complaints ● NB – 1996-2006 3,940 complaints of which 2,868 admissible, 1,388 disposed of, 1,480 pending. ● 2004: 287 complaints ● 2005: 551 complaints 		–	–
Composition and Organisation	Zambia	Nigeria	Ghana	Uganda	Mauritius
Head of Commission	Head is Judge of the Supreme Court of Zambia	Governing Council	Chair	Chairperson	Secretary of the Commission shall be the Chief Executive Officer
Number of Commissioners	7 Commissioners: Chairperson, Vice Chairperson; 5 other part time Commissioners ● Other staff or experts	Chairman of the Governing Council 15 Other members	1 Chief Commissioner. 2 Deputy Commissioners. Lawyers head regional offices.	Full time Not less than three. Commission Secretary plus other staff.	Chair plus 3 other full time members. Chief Executive Officer. Principal Assistant Secretary.
Mechanism of appointment	Chairperson and Vice Chair must be persons who are qualified to or hold high judicial office. President appoints the Commissioners with the agreement of the National Assembly Commissioners appoint Directors and Deputy Directors as appropriate	Appointed by the President, Commander-In-Chief	President acting on advice of the Council of State appoints Commissioner and Deputy Commissioners. Chair must hold or have held status of Judge of the Court of Appeal and Deputies must have status of Judges of the High Court.	By President on approval by Parliament	Appointed by President on advice of Prime Minister
Duration of appointment	3 years	–			4 years
Renewable terms	Yes	Yes			Once (unless over age of 70)
Termination	Removal from office for reasons of incompetence, infirmity of body or mind, misbehaviour.	–	–	–	The President may, on the advice of the Prime Minister, remove any member from office for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Criteria	Zambia	Nigeria	Ghana	Uganda	Mauritius
Offices	Offices in 5 provincial centres and is looking to expand	6 Zonal Offices mirroring geo-political zones of the country	Branches in all 10 regional capitals and in about 100 out of 138 district capitals	7 regional offices	No
Source of Funding	<p>Predominantly state-funded.</p> <p>Embassies of Norway, Sweden, Finland, Denmark and Japan.</p> <p>UNDP</p> <p>UNICEF</p>	<p>State funded.</p> <p>Development partners.</p> <p>Development of human rights fund by government, public bodies and private entities.</p>	<p>Salaries charged to Consolidated Fund.</p> <p>Budget is not linked to a government department.</p> <p>Budget is subject to approval by Ministry of Finance.</p>	<p>Parliament Consolidated Fund.</p> <p>Funds discharged by the Minister of Finance.</p>	<p>Government taxes.</p> <p>The Organisation Internationale de la Francophonie and the British Council fund attendance at workshops.</p>

SCHEDULES OF COMMONWEALTH NHRIs

Establishment and Mandate	Kenya ¹³⁷	Malawi ¹³⁸	South Africa ¹³⁹	United Republic of Tanzania ¹⁴⁰
Year established/ Name	12 March 2003. Kenya National Commission on Human Rights	26 December 1998. Malawi Human Rights Commission	6 December 1994. South African Human Rights Commission	1 July 2001. Human Rights Commission
Evolution	Succeeded the Standing Committee on Human Rights	Commission started functioning in January 1996 after the appointment of two ex-officio members, the Law Commissioner and the then Ombudsman who acted as Co-Chairpersons. The Commission became fully operational on 26th December 1998.	–	Commission became operational on 1 July 2001. The Commission was officially inaugurated in March 2002 following the appointment of Commissioners by the President.
Enabling Statute	The Kenya Commission on Human Rights Act, 2002	Chapter XI of the 1995 Constitution of the Republic of Malawi. Human Rights Act 1998	Constitution of South Africa (section 115) Human Rights Commission Act No 54 of 1994 (HRC Act 1994)	Article 129(1) of the Constitution of the United Republic of Tanzania of 1977 as amended by Act No. 3 of 2000. Commission the Human Rights and Good Governance Act No 7 of 2001 as amended by Act No 16 of 2001 and Government Notice No. 311 of 8th June 2001.
Mandate	Human rights	Human rights	Human rights. However includes an Equality Unit aimed at elimination of discrimination.	Human rights and anti-corruption
Independent of government	Yes	Yes	Yes	Yes
Independent of NGOs and civil society	Yes	–	Yes	–
Safeguards for independence	2003 Act silent	–	HRC Act 1994	–
Membership of other regional bodies/ fora	–	Yes: UN, AU, OAU	–	Yes

¹³⁷ See website for more details <http://www.khrc.or.ke/>

¹³⁸ See website for more details <http://www.malawihumanrightscommission.org/>

¹³⁹ See website for more details http://www.sahrc.org.za/sahrc/cms/publish/cat_index_26.shtml

¹⁴⁰ See website for more details <http://www.chragg.org/>

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Establishment and Mandate	Kenya	Malawi	South Africa	United Republic of Tanzania
Other relevant national institutions and/or partnership agreements	Public servants and officials may be seconded to the Commission. Swiss Embassy provides sponsorship Secretariat of African National Human Rights Institutions.	Law Commission The Ombudsman The Inspectorate of Prisons	Yes. Broad provisions regarding partnership support.	Yes
Promotional Role	Kenya	Malawi	South Africa	United Republic of Tanzania
Reporting Function – to Parliament/ National Assembly	Yes	Yes	Yes. Quarterly report unless other urgent issues arising.	Yes
Reporting Function – to UN treaty bodies	–	Yes Contributes to reports and where necessary, expresses its opinions on the subject matter.	No direct reporting function. From 1 April 2007 the Parliamentary Unit of the Commission commenced work to increase monitoring and engagement with the UN treaty body system.	Element of cooperation. Unknown whether direct/indirect contribution made.
Reporting – Other	In addition to the annual report, reports on specific issues may be submitted through the Minister to the President or National Assembly.	–	Report on Economic Social and Cultural Rights published annually.	–
Monitoring function	Yes	Yes	Yes	Yes
Particular monitoring focus	–	Thematic monitoring (e.g. child rights, economic and social rights etc.)	–	–
Visits places of detention	Yes	Yes	Yes	Yes
Engagement with press	Yes (detailed programme)	–	Yes	–
Issuing public statements	Yes	Yes	Yes	Yes
Other statutory responsibilities	Commission may request secondment of public servants in order to assist with investigations	–	Commission may approach Parliament at any time in respect of its powers and functions under the Act	–

SCHEDULES OF COMMONWEALTH NHRIS

Protection Role	Kenya	Malawi	South Africa	United Republic of Tanzania
Investigation of complaints	Yes	Yes	Yes. Broad powers of entry search and seizure into premises (defined as land, any building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container).	Yes
Individual complaints mechanism	Yes	-	Yes	Yes
Quasi judicial powers	Yes	-	Yes	-
Public interest standing to appear before courts or tribunals	No	-	Yes	-
Conciliation of complaints	Yes	-	Yes	-
Mediation	-	-	Yes	-
Powers of intervention or <i>amicus curiae</i> in legal proceedings	No	-	Yes	Yes
Initiation of Public Inquiries	Yes	Yes. The Commission can investigate general human rights violations and make inquiries to that end.	Yes	Yes
Powers ancillary to public inquiries/ investigations	Yes	Broad power to hear any person and obtain any information or any other evidence necessary for assessing situations falling within its competence.	Commissioners may enter and search properties in the course of an investigation. It is an offence punishable by payment of a fine or 6 months imprisonment to fail to attend/ wilfully obstruct the investigations of the Commission when summonsed.	-
Power of subpoena	Yes	-	Yes	-
Power to order disclosure of documents	Yes	-	Yes (enforceable upon request to the Attorney General)	-
Power to call and cross examine witnesses in investigations or inquiries	Yes	-	Yes	-

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Protection Role	Kenya	Malawi	South Africa	United Republic of Tanzania
Advice to parliament and government on compatibility of law and policy with international human rights standards	Yes	Yes	Yes	Yes
Advice to individuals	Yes	Not directly or individually	Yes	Yes
Research	Kenya	Malawi	South Africa	United Republic of Tanzania
Education + training programmes	Yes	Yes Assists in the formulation of programmes for the teaching of, and research in, human rights and, where appropriate, takes part in their execution in institutions and other bodies, including in schools, universities and professional circles.	Yes Develops and conducts information programmes to foster public understanding of the role and activities of the Commission.	Yes
Information sharing	A continuing programme of research, publication, lectures and symposia. Yes (including in Somali and Swahili)	Yes	Yes	–
Other distinctive functions	Secondment of public officials Resolution of complaints	–		Right to judicial review where a violation of human rights has been found following an investigation by the Commission
Quasi-Judicial Functions	Kenya	Malawi	South Africa	United Republic of Tanzania
Power of Commission to intervene in court proceedings with leave of the Court	No	–	Commission can bring proceedings in its own name or has public interest standing to appear on behalf of others.	Yes
Power to act as <i>amicus curiae</i>	No	–	Yes	Yes
Other statutory powers	After an inquiry into a complaint Commission may: Recommend to the Attorney General that the perpetrator be prosecuted or other action is taken against them. <i>continued on page 64</i>	–	–	–

SCHEDULES OF COMMONWEALTH NHRIs

Quasi-Judicial Functions	Kenya	Malawi	South Africa	United Republic of Tanzania
<p>continued from page 63</p> <p>Other statutory powers</p>	<p>File an order with the High Court</p> <p>Provide or order compensation to victims.</p> <p>Order release of detainees.</p> <p>Persons who fail to attend summonses or obstruct proceedings may be fined or imprisoned or both.</p>			
<p>Complaints Handling Mechanism</p>	<p>Commission can investigate complaints on own initiative.</p> <p>Complaints can be communicated orally or in writing.</p> <p>Upon receipt of the complaint, the Commission calls for information/ report from Government department.</p> <p>Commission reaches finding and informs complainant in writing.</p> <p>If violation found, Commission provides perpetrator with opportunity to make representations.</p> <p>Resolution of complaint.</p>	<p>–</p>	<p>Commission receives complaints or instigates investigation.</p> <p>Investigation conducted and complaint resolved.</p> <p>Findings made available to the complainant and any person implicated thereby.</p> <p>Compensation ordered for loss or damage incurred by persons in the course of the investigation.</p>	
<p>Reception of complaints</p>	<p>Yes</p>	<p>Not clear</p>	<p>Yes</p>	
<p>Mechanisms of complaints resolution</p>	<p>Conciliation</p> <p>Application for High Court for Order</p> <p>Recommendation or instigation of prosecution.</p> <p>Compensation or release of detainee.</p>	<p>–</p>	<p>Mediation</p> <p>Conciliation</p> <p>Negotiation</p>	

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Composition and Organisation	Kenya	Malawi	South Africa	United Republic of Tanzania
Head of Commission	Chairman	Chairperson	Chief Executive/ Chairperson	Chairperson
Number of Commissioners / Part-time or fulltime staff	1 Chairman + 9 Commissioners: all full time. Commission may establish sub-committees and committees but at time of writing there is no evidence of this.	10 Commissioners in total, 2 ex-officio = the Law Commissioner and the Ombudsman	Not less than five members are appointed on a full-time basis	Chairperson plus 5 other Commissioners
Mechanism of appointment	The National Assembly, upon receipt of the recommendations of the Committee nominate twelve persons for appointment and submit list to Attorney-General for transmission to President. who, by notice in the Gazette, appoints 9 Commissioners.	Public element to nomination process	Not certain	Commissioners appointed by the President upon recommendation of the Appointments Committee, which in turn acts upon the proposals received from the civil society.
Legal Basis	2002 Act	1998 Act	1994 Act	2001 Act
Duration of appointment	5 years	–	Term determined by the President - not exceeding 7 years but more than 5 years.	3 years
Renewable terms	Yes + 5 years.	–	Yes. One renewable term.	Yes + 3 years (provided not over age 65)
Termination	President may remove a Commissioner for one of the specified grounds after a finding made by a tribunal. The termination is listed in the Official Gazette.	–	President may remove Commissioners if requested by Joint committee and subject to approval by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of members present and voting at a joint meeting.	By the President following investigation and determination by a tribunal.
Offices	Mandated to create regional officers suitable for the better performance of its functions.	–	Has power to form Committees, lead by chairperson, which issues report.	–
Source of Funding	Government	–	Government	Government

5.3 Canada and Europe

Establishment and Organisation	Canada ¹⁴¹	Northern Ireland ¹⁴²	England & Wales (from 2007) ¹⁴³	Denmark ¹⁴⁴
Established	1981 Canadian Human Rights Commission (CHRC)	1 March 1999 Northern Ireland Human Rights Commission	October 2007 Commission for Equality and Human Rights	2002 Danish Institute for Human Rights (DIHR)
Evolution	CHRC faced major problems in fulfilling its mandate in the late 1990s. The Quantum project aimed to eliminate the backlog of cases.	Established as a result of the Peace Agreement reached in Belfast in 1998 between the British and Irish governments and local political parties. Predecessor body was the Standing Advisory Commission on Human Rights (SACHR) which only had a promotional role.	Combines 3 existing bodies (Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission) within a new organisation and adds a human rights mandate.	DIHR took over the functions of the Danish Centre for Human Rights established in 1987.
Enabling Statute	Canadian Human Rights Act 1977 (CHRA 1977)	Northern Ireland Act 1998 (NIA 1998)	Equality Act 2006	Act Governing the Establishment of the Danish Centre for International Studies and Human Rights 2002 ('2002 Act').
Sole human rights mandate	Human rights and equality	Human rights	Human rights and equality	Human rights and equality
Independent of government	Yes	Yes	Yes	Yes
Independent of NGOs and civil society	Yes	Yes	Yes	Yes
Safeguards for independence	Yes	Yes	Yes	Yes
Membership of other regional bodies	OSCE UN World Bank	Council of Europe European Union OSCE UN World Bank	Council of Europe European Union OSCE UN World Bank	Council of Europe European Union OSCE UN World Bank
Other relevant national institutions and/or partnership agreements		Equality Commission of Northern Ireland Children's Commissioner Victim's Commissioner Police Ombudsman	Scottish Human Rights Commission NIHRC Children's Commissioners Prison's Ombudsman	

¹⁴¹ See Langtry, D., *Canadian Human Rights Commission*. Paper presented at the Commonwealth Forum of National Human Rights Institutions, London, 26-28 February 2007.

¹⁴² See Dickson, B., *The Protection Role of the Northern Ireland Human Rights Commission*, chapter 8 in Ramcharan, 2005.

¹⁴³ See <http://cehr.org.uk>

¹⁴⁴ See Kjaerum, M., *The Protection Role of the Danish Human Rights Commission*, chapter 2 in Ramcharan, 2005.

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Protection Role	Canada	Northern Ireland	England & Wales (from 2007)	Denmark 2002 Act
Investigation of complaints	Yes	Yes	Yes	Yes.
Individual complaints mechanism	Yes	Yes	Yes	Yes through separate supplementary report
Alternative dispute resolution	Yes	Yes	Yes	–
Conciliation of complaints	Yes. The CHRC has the authority to refer complaints for mandatory conciliation at any time.	Yes	Yes	Yes
Mediation	Yes	Yes	Yes	–
Quasi jurisdictional competence	Yes	Yes	Yes. Can bring judicial review of decisions of public authorities.	Yes
Public interest standing to appear before courts or tribunals	Yes	Yes	No	–
Powers of intervention in legal proceedings		No	Yes	No
Initiation of Public Inquiries			Yes	–
Promotional Role	Canada	Northern Ireland	England & Wales	Denmark
Legal Mandate for Powers and Functions	CHRA 1977	NIA 1998	Equality Act 2006	2002 Act
Reporting Function – to Parliament/ National Assembly		Yes. Reports annually on implementation of its programme of action.	Yes	No
Reporting Function – to UN treaty bodies.		Yes through shadow reports	Not yet established	No
Monitoring function	Yes	Yes	Yes	No
Particular monitoring focus		Conditions in detention Treatment of female prisoners Human rights based approach to healthcare	Effectiveness and quality of human rights legislation	As an alternative to Committee hearings of cases of ethnic or racial discrimination. Strictly voluntary. Committee can conduct independent surveys concerning discrimination on the basis of ethnicity and race.
Visits places of detention	Yes	Yes	Not yet established	Visits to places of detention
Engages with press	Yes	Yes	Yes	No

SCHEDULES OF COMMONWEALTH NHRIS

Powers and Functions	Canada	Northern Ireland	England & Wales	Denmark
Issues public statements	Yes	Yes	Yes	
Power to order disclosure of documents		Yes	Yes	-
Power to call and cross examine witnesses in investigations or inquiries		Yes	Yes	Yes
Advice to parliament and government on compatibility of law and policy with international human rights standards	Yes	Yes	Yes	Yes
Advice to individuals	Yes	Yes	Yes	
Research and Education	Canada	Northern Ireland	England & Wales	Denmark
Education + training programmes	Yes Public information programmes to promote public understanding of the CHRA to facilitate complaint processing mechanism. Knowledge Centre established in 2005 carries out research, develops policy and takes responsibility for regulatory affairs relating to the CHRA and the Employment Equity Act.	Yes	Yes	Yes Information Work. Public Library Functions. Publication of Materials. Website.
International education programmes / information sharing	Yes	Yes	Yes	Yes
Other distinctive functions		Lobbies the UK Government with respect to accepting the right of individual petition under UN human rights treaties. Comments on UK compliance with EU measures concerning human rights in Northern Ireland. Mandate includes advising Government on Bill of Rights for Northern Ireland.	Mandated to promote good relations between different groups.	

COMPARATIVE STUDY ON MANDATES OF NHRIS IN THE COMMONWEALTH

Quasi-Judicial Functions	Canada	Northern Ireland	England & Wales	Denmark
Power to act as <i>amicus curiae</i>		Yes	Yes	–
Other statutory powers		Power to seek judicial review in its own name is fairly extensive.	–	No
Complaints Handling Mechanism	<p>Complaints dealt with by inter-disciplinary teams and accepted or redirected.</p> <p>Alternative Dispute Resolutions service established. Before a complaint is filed, complainants are asked whether they are interested in mediation.</p> <p>CHRC may refer complaint for mandatory conciliation at any time.</p> <p>CHRC may also make assessment based on submissions of parties and through investigation</p> <p>Some cases proceed directly to Tribunal without further investigation if settlement efforts exhausted.</p>	<p>Casework must complement other activities of the Commission</p> <p>Legislative criteria must be fulfilled in order to deal with complaints under ss69 and 70 of the NIA 1998.</p> <p>Commission has deemed its statutory provisions for complaints handling vague and has added further tests, including whether the application falls within the current Strategic Plan and whether it has a reasonable chance of success.</p> <p>Nature of assistance granted is contingent</p> <p>Commission may engage a barrister.</p>	To be established	<p>Receive complaint.</p> <p>Secretariat decides admissibility.</p> <p>Secretariat may take representation from the parties.</p> <p>Committee hearing/ mediation between the parties.</p> <p>Committee makes decision (not legally binding).</p> <p>Decision sent to parties and published in DIHR yearbook. Can recommend free legal aid representation to those Committee found to have been discriminated against.</p>
Preferred mechanisms of complaints resolution and why	Conciliation and mediation	Investigation Litigation Recommendation	Investigation Recommendation	Mediation Recommendation
Recent Quantitative Record	<ul style="list-style-type: none"> ● 17,478 initial contacts from potential complainants in 2005. ● Length of time taken to resolve complaints 8.3 months in September 2006. ● Only 5% of complaints are over 2 years old today. 	Estimated that the Commission has provided assistance in 100 cases since 1999.		–

SCHEDULES OF COMMONWEALTH NHRIs

Composition	Canada	Northern Ireland	England & Wales	Denmark
Head of Commission	Chief Commissioner	Chief Commissioner	Chief Commissioner	Chief Commissioner
Number of Commissioners/ Part-time or fulltime		Full time Chief Commissioner. Up to 10 part time Commissioners	10-15 Commissioners appointed by Secretary of State.	
Termination	For misconduct	For misconduct. Secretary of State has power of dismissal.	For misconduct. Secretary of State has power of dismissal.	For misconduct