

6 Commentary on the NHRI Schedules

6.1 Asia Pacific

In addition to the commentary provided below, readers are referred to the report by Professor Brian Burdekin, *National Human Rights Institutions in the Asia-Pacific Region*, which is referenced throughout this study.

Australia

The Australian Human Rights and Equal Opportunity Commission (HREOC) has a broad mandate encompassing human rights, equal opportunities in employment and anti-discrimination. The scope of the anti-discrimination mandate is also broad, encompassing industrial disputes, employment and minority and indigenous rights. This role coincides with the human rights mandate of the Commission in so far as it seeks to promote, protect and uphold: 'fundamental values of fairness, equality, tolerance and non-discrimination.'¹⁴⁵ However, the organisational arrangement of the HREOC into distinct units and working groups ensures that the implementation of the human rights and anti-discrimination mandate are kept separate. The HREOC has also established anti-discrimination bodies in each of Australia's states and territories, which play an important role in upholding the HREOC's anti-discrimination mandate.

The HREOC engages with national and international bodies to a greater extent than the majority of NHRIs considered in this study. The HREOC works with the state and territory anti-discrimination bodies (mentioned above) as well as the Human Rights, Race, Sex, Disability and Aboriginal and Torres Strait Islander Social Justice Commissioners. These commissioners are appointed by federal government pursuant to The Native Title Act 1993, which mandates the Commissioners to report on human rights of indigenous people with respect to native title.

The China-Australia Human Rights Technical Co-operation Program¹⁴⁶ was established in August 1997 following discussions between Premier Li Peng and Prime Minister John Howard. It represents a high level dialogue on human rights. The Technical Program activities fall into three categories: legal reform, women and children's rights, and ethnic and minority rights. The HREOC is responsible for designing and implementing these activities through co-operative ventures with particular Chinese organisations.

¹⁴⁵ Toohey, K., (2007), *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 'Australia's Experience'.

¹⁴⁶ For background information on the Programme see <http://www.dfat.gov.au/hr/achrd/hrta.html>

The HREOC also exercises a wide range of functions in relation to the international treaties and the reporting process and has held workshops to assess the government's compliance with human rights treaties.

The HREOC has also successfully intervened in legal proceedings and acted as *amicus curiae* on a number of occasions. It has a mandate to intervene, with the leave of the Court, in proceedings that involve issues of race, sex and disability discrimination, human rights issues and equal opportunity in employment. This mandate is not derived solely from the Commission's enabling Act but from a number of pieces of legislation, which makes the scheme precise and robust. The interventions concern aspects of race and disability discrimination, native title, human rights, criminal, family and refugee law.¹⁴⁷

Fiji

The Fiji Human Rights Commission operates as a hybrid human rights and equality institution. Under Part II of the Human Rights Commission Act 1999 (HRC Act 1999), the Commission is given a significant number of powers and duties in relation to the promotion and protection of human rights which reflect the Paris Principles. Part III of the HRC Act 1999 places duties on the Commission to challenge and investigate unfair discrimination and/or victimisation. Sections 25 and 26 of the Act respectively permit persons (or their representatives) to make complaints to the Commission about a 'contravention or alleged contravention of human rights' or 'unfair discrimination'.

Section 6(b) of the HRC Act 1999 states that the Commission may have 'any other function conferred on it by or under [the] Act or by or under any other written law.' This type of 'catch-all' clause is fairly typical of the enabling legislative provisions of NHRIs. It permits NHRIs to develop and interpret their mandates creatively in line with changing conditions and context. An extra safeguard for the autonomy of the Commission lies in the Constitutional entrenchment of provisions relating to its powers and functions (section 42(2) of the Constitution).

New Zealand

The New Zealand Human Rights Commission (NZHRC) has a broad mandate encompassing human rights, race and disability discrimination, equal employment opportunities, as well as rights arising under the Treaty of Waitangi.¹⁴⁸ One of the unique features of the NZHRC is its five-year human rights action plan. The Commission was mandated to design and implement the human rights action plan pursuant to the The Human Rights Amendment Act 2001. The current plan runs from 2005-2010. Other NHRIs should consider adopting this action plan model.

¹⁴⁷ A list of the cases in which the HREOC has intervened and further information can be found at http://www.hreoc.gov.au/legal/submissions_court/index.html.

¹⁴⁸ Briefly, the Treaty was signed on 6 February 1840 between the British Government and about 540 Maori rangatira (chiefs). The Treaty represents a political compact between the British and the Maori containing a broad statement of principles to found a nation state and build a government in New Zealand. There are many human rights problems and dimensions which flow from the Treaty, including questions of native title. For information on the NZHRC's work in this area see <http://www.hrc.co.nz/home/hrc/introduction/humanrightsandthetreatyofwaitangi/humanrightsandthetreatyofwaitangi.php>.

The primary concerns addressed in the action plan include the following:¹⁴⁹

- Poverty and abuse of children
- Removal of barriers for disabled persons
- Abuse in detention facilities/ institutional care
- Economic and social disparities for Maori
- The Treaty of Waitangi

The action plan was drawn up following review of submissions and contributions of over 5,000 individuals, groups and organisations. Important guidance was provided by the National Advisory Council, Race Relations, Children's Rights and Disability Sector Advisory Group, Government Liaison Committee and other government departments, Mental Health Commission and the Maori Language Commission or (Te Taura Whiri I Te Reo Māori). Nationwide consultations and research on public opinion on the status of human rights in New Zealand was also considered.

India

One of the most creative aspects of the National Human Rights Commission of India (NHRCI) is the conferral of the powers of a civil court. The power contained in section 13 of the Protection of Human Rights Act 1993 applies in the context of inquiries into complaints. The power has two elements. The first is the power to order discovery and production of documents, examine witnesses etc. These powers are commonly found in the mandates of other NHRIs. The second is a referral power, whereby certain criminal offences under the Indian Penal Code may be determined by the Commission and forwarded to a magistrate for hearing. Whilst the Paris Principles talk of quasi-judicial powers, section 13(5) of the Protection of Human Rights Act 1993 states that 'Every proceeding before the Commission shall be deemed to be judicial proceeding' in cases concerning matters under specific provisions of the Indian Penal Code. Similarly, the NHRCI is deemed to be a civil court for matters arising under the Code of Criminal Procedure.

The NHRCI is empowered to grant compensation and may direct disciplinary action against public servants responsible for violations of human rights. The 1993 Act provides that following the conclusion of an inquiry into human rights violations by public officials, the Commission may exercise its discretion to:

- (a) recommend disciplinary action or proceedings be taken by the relevant government department (s18(1)); or
- (b) approach the Supreme Court or High Court for necessary directions, orders or writs (s18(2)); or
- (c) recommend the government department grant immediate interim relief to victims or family.

A special procedure is attached to investigations that concern members of the armed forces.

The NHRCI also has the power to intervene in any proceedings involving alleged human rights violations, provided leave of the court has been granted. Such action has resulted in the setting aside of orders of the High Court and orders for retrials or new investigations.

¹⁴⁹ <http://www.hrc.co.nz/report/actionplan/Oforeword.html>

The power of the NHRCI to intervene in legal proceedings and its powers to act as a civil court gives the NHRI a uniquely robust package of enforcement powers.

Maldives

The Human Rights Commission of the Maldives (HRCM) has faced a period of great transition in tandem with changes to the democratic process in the Maldives. The HRCM is a fledgling institution, therefore it is not possible at this stage to identify or accurately assess the creative features of its operational methodology. The HRCM was established by Presidential decree in 2003, but its work was subsequently halted. The HRCM was then re-established by the Human Rights Bill 2006. The HRCM became operational in November 2006, two months after the Maldives signed the ICCPR and ICESCR. In a survey conducted by HRCM, only 27 per cent of citizens could identify three human rights. Forty-two per cent could identify none. The HRCM's first task has been to address this lack of knowledge through a human rights awareness raising and education campaign, which has included workshops, initiatives in schools, training of the judiciary and engagement with the media.

Malaysia

The Federal Constitution of Malaysia sets out fundamental liberties recognised and protected by the State. These fundamental principles are deemed to be human rights under the Human Rights Commission of Malaysia Act 1999. Section 4(4) of the Act states that regard must be had to the UDHR to the extent that it is not inconsistent with the Federal Constitution. This statutory provision grants precedence to the constitutionally protected rights (which are largely civil and political and omit a number of significant core rights such as the right to life). However, this provision also represents the first occasion in which the UDHR was mentioned in domestic legislation in Malaysia. The Commission's work on the meaning and scope of human rights is significant in the context of parliament's enactment of a number of statutes seeking to impose limitations on the exercise of the Constitutional guarantees.

Sri Lanka

Much of the work of the National Human Rights Commission (NHRC) of Sri Lanka takes place in the context of internal armed conflict, particularly in the northern and eastern regions of the country. Whilst large-scale conflict in recent years has diminished due to the ceasefire, clashes still exist between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam (LTTE). This has manifested itself in political assassinations, underage recruitment and intimidation.¹⁵⁰ It is unsurprising therefore that almost two-thirds of the complaints received by the NHRC of Sri Lanka relate to abuse of those arrested and detained by police and the security forces, whether through torture, disappearances or unlawful arrest and detention.

There is a visible nexus between these particular problems and the specific powers, set out in the enabling legislation regarding arrest and detention. The arresting authorities are required to inform the Commission of persons arrested and detained within 48 hours, as well as informing it of the transfer or release of detainees. The Commission carries out regular inspections of prisons, police stations and other relevant detention facilities. In contrast to other NHRIs, however, this function is bolstered by penal sanctions attached

¹⁵⁰ Foreign and Commonwealth Office (FCO) Report on Human Rights (2005), chapter 5.

to any kind of obstruction experienced by the Commission when attending to inspect a detention facility. The Commission also has significant enforcement powers in relation to court proceedings. Indeed, the Supreme Court may refer matters to the Commission for investigation or inquiry. Despite this strong mandate, the work of the Commission is hampered by the fact that there were no full-time Commissioners in place at the time of writing.¹⁵¹

6.2 Africa

Zambia

The Zambian Human Right Commission clearly suffers the constraints of many other NHRIs across the region, such as limited resources and an apparent lack of independence at varying levels. The Zambian Commission works primarily through a Committee system, whereby certain of its core functions are delegated to five committees working on the following key areas:

- children's rights;
- torture;
- economic and social rights;
- civil and political rights; and
- gender equality.

The Commission enjoys fairly extensive enforcement powers; for example, it has the power to order the release of detainees and the power to punish those persons found guilty of human rights violations. A computerised complaints database is utilised in order to keep consistent and accurate records and to facilitate speedy resolution of complaints.

The effectiveness of visits to places of detention is significantly curtailed by the fact that whilst the Commission is legally mandated to act as a quasi-judicial tribunal, its powers are limited to making recommendations. A second major constraint is that unannounced prison visits are not conducted. The Commission cites limited funding and working environment as the sources of this constraint.

Human rights education and training is a priority for the Commission given the widespread misunderstandings about what human rights actually mean entitlements they create. The Commission takes a creative and progressive approach to the protection and promotion of human rights with many novel ideas as to how to respond to and educate the Zambian people and state officials about human rights.

Nigeria

The National Human Rights Commission of Nigeria (NHRCN) pursues a hybrid mandate – the promotion and protection of human rights and anti-corruption.

However, a lack of guarantees of independence and non-interference from government has led to the presentation of a draft bill to parliament proposing amendments to the Commission's initial enabling Act of 1995. The amendment bill is designed to fortify the Commission's independence, safeguard its existence through constitutional entrenchment, change its funding structure and widen and strengthen its powers and functions in relation to complaint investigation and resolution. A second proposed development is the creation of a human rights fund for the NHRCN. The fund will be able

to receive contributions from government, public bodies and private entities. This creatively raises the number of stakeholders supporting the work of the NHRCN.

The NHRCN does not enjoy an overly broad mandate, but has been innovative in developing the areas of competence it does possess, predominantly in education programmes and complaints management. In both respects, the NHRCN has sought to widen its accessibility to the people, in line with the Paris Principles. First, it has created six zonal offices reflecting the geo-political zones of the country. Secondly, it provides structured education and training to those who may be most in need, particularly in areas of abject poverty. Thus there is an emphasis on a grassroots approach to its activities. Third, whilst complaints must be submitted in writing to the Commission (either directly or through a zonal office), the NHRCN offers a writing service for those unable to write. This is hugely important in areas where illiteracy is widespread and in one simple step increases the accessibility of the Commission and its services. A pilot project is currently being tested to allow complaints to be lodged via the Commission's website.

Ghana

The Commission on Human Rights and Administrative Justice (CHRAJ) pursues a hybrid human rights and anti-corruption mandate. It also operates as an Ombudsman Office too. The anti-corruption mandate permits investigation into complaints of corruption and abuses of power in accordance with Article 218 of the Constitution, as well as misappropriation of public monies by state officials. The Ombudsman Office seeks to secure administrative justice, which may include investigations into misconduct such as maladministration, tribalism or corruption. The mandate of the ombudsman office of the CHRAJ includes administrative justice or labour related cases, which formerly made up over three-quarters of the Commission's work. The establishment of the Labour Commission has reduced this figure, so that such complaints now account for a quarter of the Commission's work. In addition, the Commission investigates property confiscated by the military administrations of 1981-1993. The CHRAJ has been successful in investigating and making adverse findings against high profile public officials, including against the President of the Republic in 2005-6. There is some concern that the anti-corruption mandate of the CHRAJ impacts on the effectiveness of the institution's core human rights activities.

The CHRAJ does enjoy fairly strong enforcement powers, including Article 229 of the Constitution, which provides that the Commissioner may instigate court proceedings and seek remedies from the court. Despite this, enforcement action is rarely taken. About 50 per cent of cases referred to the Commission are resolved by conciliation or mediation. The remaining cases result in recommendations. The greatest number of complaints received by the Commission relate to family maintenance. The CHRAJ has powers to apply to a family tribunal to order child maintenance pursuant to the Children's Act. The Commission has also intervened in cases where children have been denied vital medical treatment (such as blood transfusions or open heart surgery) due to the beliefs of their parents.

Uganda

Many of the NHRIs studied were silent on the issue of their accountability to the public. The Uganda Human Rights Commission (UHRC) notes that a 'measure of accountability to the public' is achieved through its annual reports, which are debated in parliament.

This affords the public the opportunity to scrutinise and audit the work and achievements of the Commission. The Commission's relationship with the executive causes some concern in relation to perception of the Commission's independence. Autonomy is not guaranteed and there was consideration given to merging of the Commission with the Inspectorate of Government. The merger did not go ahead due to a public outcry.

The fulfilment of the Commission's mandate to protect and promote human rights is hampered by fairly weak enforcement powers. Whilst the Commission can receive complaints about alleged human rights abuses, it is limited to making recommendations where violations are found. The Commission lacks an effective relationship with judicial institutions.

Mauritius

A significant aspect of the mandate of the National Human Rights Commission of Mauritius (NHRCM) is that the protection of human rights is shaped by definitions, which are not common to international human rights instruments. Chapter II of the Constitution protects civil and political rights with some reference to economic, social and cultural rights. The protections afforded by the Constitutional definitions are country-specific. For example, Section 11 protects freedom of conscience and freedom to practice one's religion. An explicit link is made between religion and culture. Section 1 protects the right to life and encompasses the right to live with dignity. Poverty is identified within the Constitutional guarantee as an extreme form of indignity.

This contextual feature may impact on the Commission's ability to carry out its mandate effectively with respect to the protection and promotion of international human rights standards. The recognised rights which safeguard liberty, the right to a fair trial and the prohibition against inhuman and degrading treatment are omitted from the list of Constitutional guarantees. Yet, the NHRCM reports that the greatest number of alleged human rights violations relate to police brutality, mistreatment in obtaining of evidence and undue delay in trials. The NHRCM is only mandated to investigate complaints about human rights defined in the Constitution. It is therefore prevented from challenging these violations. Allegations of police brutality and abuse may however be investigated by the Police Ombudsman. Where the Ombudsman has taken charge of a case, this precludes the Commission from looking at it.

As with other Commissions (for example, Uganda) the NHRCM enjoys a stronger relationship with parliament than with the courts. The Commission may act as a public administration watchdog, as it has the power to inquire into allegations of human rights abuses by state officials and government departments. The NHRC submits an annual report to the President to lay before the National Assembly. The Minister for Human Rights is required to report to the Commission on action taken to address human rights complaints and recommendations it has made. This is a unique feature that other NHRIs should consider adopting. The NHRCM recognises that this power does not guarantee that parliamentarians read the Commission's reports. It has therefore proposed that a parliamentary select committee be created to study and implement the recommendations of the NHRC.

The Commission has published a statement on its website on its complaints process. It is a clear and accessible statement and a good example of the way in which NHRIs can bridge the gap between the State and citizen in fulfilment of the human rights mandate.

Kenya

The Kenyan National Commission Human Rights Act 2002 sets out a broad and flexible mandate for the Kenya Human Rights Commission (KHRC). The primary aim of the institution is to create 'a strong and vibrant human rights culture founded on equality and social justice for all.'¹⁵² The text of the Act reflects a clear commitment to the Paris Principles. Anti-corruption is included as part of the human rights mandate. There is no restriction on the Commission investigating government dealings, although external affairs of the State are outside the Commission's remit. The NHRC also possesses fairly robust enforcement powers. It has the power to apply to the High Court for an order in relation to those found guilty of human rights violations.¹⁵³ The KHRC's explicit commitment to promote not only human rights but also social justice and equality is quite novel. This commitment is reflected in the provisions relating to the appointment of Commissioners, which require the National Assembly and the President to have regard to Kenya's ethnic, geographical, cultural, political, social and economic diversity and the principle of gender equality. These values are bolstered by the Commission's five-year strategic plan, which aims to increase human rights protection, dialogue, promotion (particularly the realisation of social and economic rights) and education.¹⁵⁴

The independence of the Commission may become less straightforward in the future. Currently, public servants may be seconded to the Commission (at the latter's request and under its direction) and at some point a conflict of interest may arise. The Commission must guard its independence and ensure that its work is not compromised or hindered.

Malawi

A unique feature of the Malawi Human Rights Commission (MHRC)¹⁵⁵ is the involvement of the public in the nomination of candidates for the role of Commissioners. This public element of nomination promotes openness and transparency. Public involvement also tends to ensure that those selected are more representative of society and offer a wide cross-section of views. However, it is important within such a process to ensure that the public element of nomination of candidates does not threaten the independence of the Commission. The concern here is that the nomination process may become partisan and manipulated by political bargaining.

South Africa

The South African Human Rights Commission (SAHRC) was established under the Human Rights Commission Act 1994 (the 1994 Act). However, reference is also made to the Commission in the Constitution. Of particular interest is the provision for the Commission to approach parliament to alter or vary its powers and functions. Further, section 19 of the 1994 Act allows the legal operational framework of the Commission to be extended beyond its origins in 1994 Act through the enactment of regulations and guidance materials. Examples include the Complaints Amendments Regulations and the Complaints Handling Manual.

¹⁵² See website, available at: <http://www.knchr.org>

¹⁵³ The orders are not specified in the statutory provisions, but one would assume therefore that all available domestic orders are available according to domestic law. It is not known whether the HRC can apply for orders available as remedies for judicial review as in the UK – for example, declaratory, quashing or mandatory etc. (which are not mentioned at all in the legislation) or whether this refers to orders to pay compensation to victims or order release of detainees as noted in the legislation.

¹⁵⁴ *Ibid.* http://www.knchr.org/index.php?option=com_content&task=view&id=3&Itemid=35

¹⁵⁵ See details on website available at <http://www.malawihumanrightscommission.org/>

The Commission has the power to enter and search premises and seize evidence carried out in the course of an investigation into a human rights violation. This process is carefully regulated and warrants are required in certain circumstances. Section 14 of the 1994 Act provides monetary relief for those who incur cost or suffer loss or damage in the course of the Commission's investigations. Any such order is contingent upon the agreement of the Minister of Finance. Those persons who suffer damage as a result of the execution of an entry warrant may apply for damage to be made good. All such compensation payments are made from State funds. The Commission is under an obligation to publish its decisions in the Gazette from time to time. This strengthens the openness and transparency of the Commission.

The 1994 Act also embeds the rules of natural justice and fair trial guarantees. Indeed, section 9 of the 1994 Act largely mirrors ICCPR Article 14. The Commission is under an obligation to publish its decisions in the Gazette 'from time to time'. This strengthens the openness and transparency of the Commission and its work.

Whilst it is not wholly uncommon for the enabling statutes of NHRIs examined in this study to provide such extensive guarantees to alleged violators of human rights, section 9 of the 1994 Act is perhaps novel to the extent to which these rights and guarantees are explicitly spelt out. The guarantees ensure that the human rights of all individuals are protected in all aspects of the Commission's work.

United Republic of Tanzania

At the time of publication of this study, there was insufficient information available to analyse the particular and more general features of the Commission for Human Rights and Good Governance.

6.3 Europe and Canada

Canada

The Canadian Human Rights Commission (CHRC) has undergone significant change since 2002, in large part to overcome resource constraints and to eliminate the significant backlog of cases that had begun to fetter its effectiveness. The 'Quantum Project' set out this agenda for change. To increase the effectiveness of the Commission, it has adopted an operational approach which combines prevention, dispute resolution and knowledge development.

Indeed, the CHRC mandate to promote and protect human rights appears to have been conceptualised in terms of prevention and cure. The CHRC aims to target *systemic* abuse and discrimination. Thus, the Commission only represents persons in test cases involving allegations of systemic discrimination or human rights abuse. The Commission has also streamlined its complaints procedures. The Commission has the authority to refer complaints for mandatory conciliation, but there is also an opportunity for some case to proceed directly to a tribunal.

A Knowledge Centre has been established to raise awareness, conduct research and develop policy initiatives. Experts have taken part in international projects and consultations.

The CHRC has developed a comprehensive discrimination prevention programme, which establishes links with federally regulated employers and service providers to assist

employers and services providers to raise awareness of responsibilities relating to equal opportunities, human rights compliant practices and fair and effective internal grievance procedures. These relationships are formalised through memoranda of understanding (MOUs). There are 11 MOUs in existence covering over 170,000 employees under federal jurisdiction.

Northern Ireland

The Northern Ireland Act 1998 implemented the Peace Agreement reached in 1998 between the British and Irish governments and political parties. The Northern Ireland Human Rights Commission (NIHRC) was established a year later and its functions are provided for in the 1998 Act.¹⁵⁶

The Human Rights Act 1998, which incorporated the European Convention on Human Rights into domestic law in the UK (Great Britain and Northern Ireland), provides the domestic human rights framework for the NIHRC, although it seeks in its promotion and protection mandate to implement international human right standards. Much of the NIHR's activities are concerned with the promotion of human rights. Awareness raising campaigns are conducted according to identified need. The Commission also takes test cases (carefully selected and necessarily prioritised). The NIHR may only grant assistance to individuals in relation to proceedings involving law or practice concerning the protection of human rights (under sections 69 and 70 of the Northern Ireland Act). Whilst resources have limited the amount of its casework, the approach has been successful and a number of cases brought by the Commission have resulted in the establishment of independent inquiries.

The Commission has the power to appear as a third party intervenor in cases raising significant human rights issues. This allows the Commission to bring international human rights standards to the attention of the court. The Commission may also bring cases in its own name.

England and Wales

The Commission for Equality and Human Rights of England and Wales (CEHR) was established in early 2007 and commenced operation in October 2007.¹⁵⁷ At the time of writing, therefore, it is not possible to analyse or evaluate its functions, operational methodology or primary activities. However, the background to its creation and structure may be instructive for States or other parties attempting to establish NHRIs within their own jurisdiction. The Equality Act 2006 ('2006 Act'), which creates the CEHR, represents the most current and one of the most detailed legislative frameworks governing an NHRI.¹⁵⁸

In 2001, the Labour government made clear its intention to establish a single equality commission with sole responsibility for promoting equality of opportunity and enforcing compliance with anti-discrimination law in Britain. To meet this objective, the CEHR

156 Dickson, B., *The Protection Role of the Northern Ireland Human Rights Commission*, in Ramcharan, B.G., (ed.) *The Protection Role of National Human Rights Institutions*. Leiden: Koninklijke Bill NV, 2005, chapter 8 (hereinafter 'Dickson NIHRC'). Note that the author, Professor Brice Dickson, was the first Chief Commissioner of the Northern Ireland Human Rights Commission. Professor Ramcharan was the UN High Commissioner for Human Rights in 2003-4.

157 Unlike the Human Rights Act (HRA) 1998, the Equality Act 2006 is expressly limited in its territorial scope to England and Wales – therefore the Commission only has jurisdiction over acts which have taken place within those borders.

158 See Joint Select Committee on Human Rights, *Legislative Scrutiny: Equality Bill*, 4th Report of Session 2005-06, HL Paper 89; HC 766, para 6.

merges the existing equality commissions (the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission). A human rights mandate was added under The Equality Act 2006. As such, the CEHR is a hybrid institution with the mandate to reduce inequality, eliminate discrimination, strengthen good relations between people and protect human rights.¹⁵⁹ The appointment of the first Commissioners was made in July 2007.

The UK does not have a written or 'codified' constitution or any constitutionally entrenched Bill of Rights.¹⁶⁰ However, in 1998, the Labour government enacted the Human Rights Act 1998 which entered into force in October 2000. The Act incorporated the European Convention on Human Rights (ECHR) into domestic law.¹⁶¹ Whilst the government gave legislative expression to ECHR rights, which are now enforceable in domestic courts, there was no specific monitoring body established to monitor the government's compliance with its human rights obligations.¹⁶²

The experience of other Commonwealth NHRIs was considered in plans for the creation of the CEHR. The Joint Committee on Human Rights identified the following benefits of a single Commission:

- It brings together equality and human rights experts;
- It provides a single point of contact for information, advice and guidance for individuals, businesses and the voluntary and public sectors; and
- It promotes awareness of equality and human rights issues.

The 2006 Act provides a novel and flexible framework for the future of the Commission. The structure of the Commission's internal arrangements and its core functions are left to the new Commissioners to determine. The effectiveness of the CEHR will depend on the strength (and imaginative use) of its enforcement powers and the development of a practical and effective human rights mandate in tandem with its more well established equality agenda.

The Joint Committee on Human Rights has some concerns regarding the independence and accountability of the CEHR and has recommended that the CEHR should be directly accountable to parliament.¹⁶³ The quality of the Commissioners and their commitment to a dynamic and progressive human rights and equality agenda will inform the status and influence of this new Commission

¹⁵⁹ See work of CEHR <http://www.cehr.org.uk/>.

¹⁶⁰ Discussion of this is beyond the scope of this paper and there are many reasons cited for this. However, for an interesting discussion see Tomkins, A., *Public Law*, Oxford: Oxford University Press, 2003, chapter 1.

¹⁶¹ Excluding Articles 1 and 13. For an explanation see Starmer, K., *European Human Rights Law*, London: LAG, 1999; and Wadham, J., Mountfield, H. and Edmundson, A., *Blackstone's Guide to the Human Rights Act 1998* (3rd Ed.), Oxford: Oxford University Press, 2003.

¹⁶² For example, House of Lords declared indefinite detention without trial of foreign nationals suspected of having committed terrorist offences pursuant to the Anti Terrorism Crime and Security Act 2001 incompatible with Article 5 ECHR in *A & Others v SSHD* [2004] UKHL 56. This led to the control order regime under the Prevention of Terrorism Act 2005, which has been the subject of numerous challenges in the courts and at the time of writing was heard again before the Lords.

¹⁶³ Joint Select Committee on Human Rights, *Legislative Scrutiny: Equality Bill*, 4th Report of Session 2005-06, HL Paper 89; HC 766, paras 27-30, 126-42.

Denmark

Although Denmark is not in the Commonwealth, its national human rights institutions provide a good illustration on the subject matter of this study. The Danish Institute for Human Rights (DIHR) was established by statute in 2002. It continues the mandate vested in the Danish Centre for Human Rights in 1987, which included research, education and the implementation of national international programmes.¹⁶⁴ The Institute is part of the Danish Centre for International Studies and Human Rights (DCISM), which also comprises the Danish Institute of International Studies (DIIS). Whilst the DIHR is primarily concerned with the promotion and protection of human rights, in October 2003, the Institute established a Complaints Committee for Ethnic Equal Treatment, which hears complaints relating to discrimination on the grounds of race or ethnic origin. There is no similar complaints system for alleged human rights violations.

The DIHR's primary focus is on monitoring and research, making its promotion mandate more prominent in comparison to a number of the other NHRIs discussed here, which place a greater emphasis on complaints management and the protection mandate. The monitoring function of the DIHR operates on three levels:

1. Scrutinising enacted legislation and administrative provisions, as well as draft bills and proposed legislation;
2. Highlighting deficiencies relating to the implementation of legislation and regulations; and
3. Raising issues concerning specific human rights violations.¹⁶⁵

In carrying out its human rights promotion mandate, the DIHR has identified a number of effective methodologies that may be instructive for other NHRIs.

First, in terms of pre-legislative scrutiny, the DIHR relies on the Paris Principles which provide NHRIs with a mandate to make recommendations and proposals – this is wider than that afforded to courts or other machinery of the State. The Institute meets, on occasion, with the relevant parliamentary committee to discuss draft bills and their proposals providing the Institute the opportunity to elaborate its legal analysis and clarify more sophisticated legal points to non-human rights experts.

The DIHR adopts a selective approach to monitoring implementation of enacted laws to ensure that a wide range of matters raising human rights issues is reviewed. There are four major ways in which the DIHR carries out its post-legislative monitoring mandate.

- i. Consultation: the DIHR has appointed a sub-committee to consult with NGOs and experts in order to gain more direct access to the views of civil society and build capacity.
- ii. Media: which is used to raise the profile of the work of the Institute, although it notes that raising an issue in the press may compromise further negotiations to amend a bill or regulation.

¹⁶⁴ DIHR website <http://humanrights.dk/>

¹⁶⁵ See Kjaerum, M., *The Protection Role of the Danish Human Rights Commission*, chapter 2, p. 26, in Ramcharan.

iii. Large scale research projects to address specific areas of concern. The DIHR brings together different professional groups (for example, doctors, clinical psychologists, prosecutors, teachers etc.) to consider single issues. The groups meet regularly with each sector giving presentations on the issues from its particular professional perspective. The Institute collates the information and produces a report for public dissemination.

iv. Monitoring based on complaints submitted. This allows the DIHR to raise general concerns with the relevant authorities or private bodies. The Institute has also tried to forge links with legal advice clinics and pro bono groups.