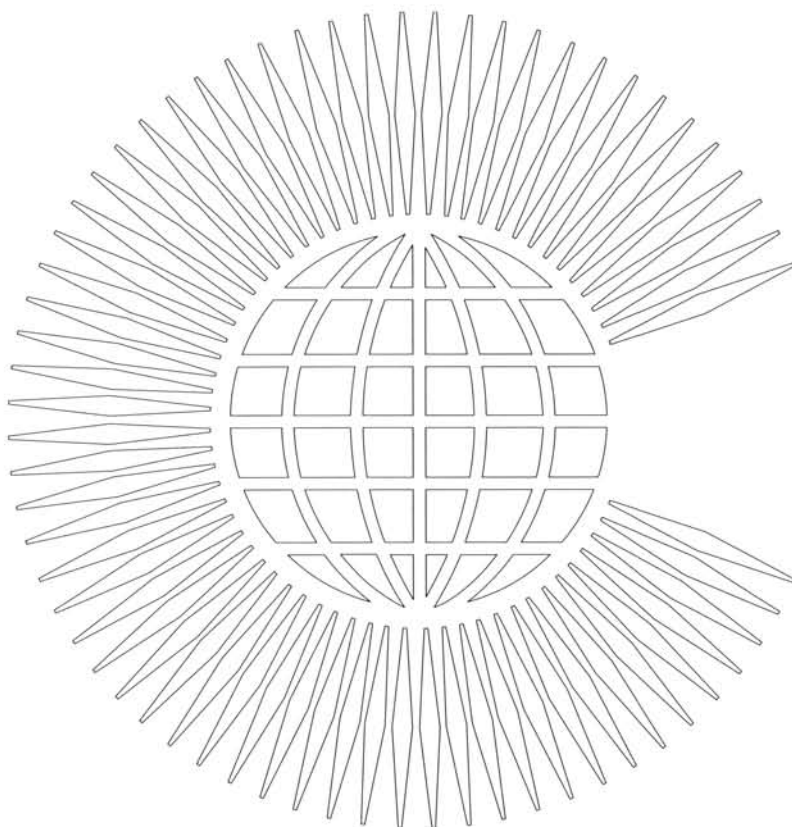


**COMPARATIVE
STUDY** *on*
MANDATES *of*
NATIONAL
HUMAN RIGHTS
INSTITUTIONS *in the*
COMMONWEALTH



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List of Abbreviations

ACHPR	African Charter on Human and Peoples Rights
APF	Asia Pacific Forum
AU	African Union
CARICOM	Caribbean Community
CAROA	Caribbean Ombudsman Association
CAT	UN Convention Against Torture
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CF-NHRI	Commonwealth Forum of National Human Rights Institutions
CHOGM	Commonwealth Heads of Government Meeting
CRC	International Convention on the Rights of the Child
DIHR	Danish Institute for Human Rights
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
GA	General Assembly
HREOC	Australian Human Rights and Equal Opportunity Commission
IACHR	Inter-American Commission on Human Rights
ICC	International Co-ordination Committee of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRPD	International Convention on the Rights of Persons with Disabilities
IOI	International Ombudsman Institute
NHRI	National Human Rights Institution
OAS	Organization of American States
OECS	Organization of Eastern Caribbean States
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations



Foreword by Mrs. Florence Mugasha, Commonwealth Deputy Secretary General

The Commonwealth recognises the important role of national human rights institutions in protecting and promoting human rights at the national level. Over the past 20 years, a large number of Commonwealth member countries have established such national institutions for the promotion of public awareness about human rights, and the protection of citizens' rights generally.

The Commonwealth Secretariat's first contribution towards institutional development of national institutions was the 'Best Practice' on NHRIs, developed on the Paris Principles and now accepted and used widely in the Commonwealth and elsewhere in relation to the process of establishment and operation of national human rights bodies. We have continued to attach great importance to the work of NHRIs, and we have devoted our efforts to assist in the establishment of strong and independent national institutions, and to support national institutions to effectively carry out their mandate.

There are over 60 such national and regional institutions in the Commonwealth at present, each with varying mandates, shapes and forms, often corresponding to the size, resources and perceived imperatives and priorities of a country. Some deal only with human rights issues; others combine a number of functions including oversight over the public sector and administrative decisions, community and race relations; while others have few powers beyond those of a traditional ombudsman.

This publication is the outcome of a request that emanated from a major gathering of Commonwealth national human rights institutions in London in February this year, to produce a comparative study on the various models of national human rights bodies and mechanisms. It is evident from the study that the existing national institutions vary in their mandates, structures, functions, and degree of independence.

I welcome the publication of the 'Study on Commonwealth National Human Rights Institutions'. The objective behind this work is to highlight the good practices of the various models in place. I hope that the various comparative models and experiences as brought out in this study would be found useful by governments and national institutions, and they can draw on the experiences and best practices of the more established and effective NHRIs, in their own endeavours to advance human rights at the national level.

Florence Mugasha
Commonwealth Deputy Secretary General
London, November 2007

1 Preface

The significance of national human rights institutions

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

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

The Commonwealth Secretariat, Human Rights Unit

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

The genesis of this report

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

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

The international normative context

The core international standards defining the mandate, powers and functions of NHRIs are the United Nations *Principles Relating to the Status of National Human Rights Institutions* (the Paris Principles²). The Paris Principles derive their authority in part from the broad consensus surrounding their adoption. The content of the Principles therefore represents the minimum standards which could be agreed without losing this broad consensus. Over time, the Paris Principles have evolved and best practice regarding the role and functions of NHRIs was set out in the 2002 Commonwealth Secretariat *National Human Rights Institutions: Best Practice* guidelines, as well as other publications such as the 2001 *Recommendations* published by Amnesty International.

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

Purpose of the report

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

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

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

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

Note on methodology

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

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

Author

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

Editor

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

Jarvis Matiya

**Human Rights Adviser, Commonwealth Secretariat
London, November 2007**

2 Introduction

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

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

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

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

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

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

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

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

3 The Protection and Promotion of Human Rights

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

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

3.1 Protection of Human Rights – a World View

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

The point has been well made by John Griffiths:

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

⁴ See www.thecommonwealth.org

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

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

rights exist only in things separate from us. [They] say also that rights in their proper sense mean claims established by the laws of the society in which we live and enforceable in the courts or our country. It follows that such legal claims may be challenged by others and that their legitimacy falls to be decided by persons appointed for this purpose 99⁷

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

Thus, beyond the legal instruments that set out what rights individuals are entitled to, there are many different ways of thinking about human rights¹⁰. Historically, the origins of human rights have been said to lie in religious texts such as the Bible or the Koran and have followed a trajectory through the periods of Enlightenment and Industrialisation, through the 20th century to the modern or even post-modern era.¹¹ Correlatively, international human rights law has developed 'in an unprecedented way' since the Second World War and the Cold War 'and has become a very substantive part of international law as a whole'.¹² Historical and political shifts continue to shape the evolving scope and meaning of human rights, for example the birth of economic and social rights through Socialist thinking and the development of the notion of collective rights from the cultural traditions of developing countries.¹³ However, more recently there is growing concern over the way in which largely political actors have exploited and maligned the

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

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

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

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

¹¹ See *Ishay History and Ishay Reader*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 See below at section 3.3.

25 Dixon, p.48.

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

27 Singapore Declaration of Commonwealth Principles, 1971.

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

The Singapore Declaration of Commonwealth Principles 1971²⁹ established in 1971 marked the first recognition by Commonwealth Member States that a multi-national approach to the expression of common values could promote the ideals of peace, equal rights of all and an equitable and non-discriminatory international society. Members pledged their belief in:

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

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

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

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

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

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

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

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

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

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

The Harare Commonwealth Declaration 1991³⁵ both reaffirmed and extended the Commonwealth Principles drawn up in Singapore in 1971. The Members at the Harare CHOGM stated that those principles deserved ongoing recognition, including the commitment to co-operate to ensure 'international peace and order', 'the liberty of the individual under the law', 'equal rights', the opposition of 'racial oppression' and the 'urgency of economic and social developments to satisfy the basic needs and aspirations of the vast majority of the peoples of the world.' These commitments reflected those contained in the International Bill of Rights (the UDHR, the ICCPR and ICESCR).³⁶ Well-established norms such as equality for women and access to education were identified. Yet beyond this, the Principles were also shaped by experience particular to the Commonwealth. For example, a commitment was given to sustainable development and poverty alleviation, to environmental protection and the combating of drug trafficking and communicable diseases.

The Coolum 2002³⁷ and Aso Rock 2003³⁸ Declarations recognised the work of civil society in promoting and consolidating this agenda.³⁹

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

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

³³ See HRU Scoping Paper, 2007.

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

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

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

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

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

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

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

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

The Vienna World Conference on Human Rights of 25 June 1993 also marked an important milestone, not only in the historical development of human rights in general, but also of NHRIs. This was so in two major respects. The two central objectives of the Conference were to examine the ways and means to improve the implementation of existing human rights standards and to formulate concrete proposals for improving the effectiveness of the [UN's] activities and mechanisms in the field of human rights⁴⁰ Through an 'unprecedented degree of participation by government delegates and the international human rights community',⁴¹ representatives of 171 States adopted the principle that human rights are universal, indivisible, interdependent and interrelated. This recognised the need for more formal equality between categories of rights⁴² and as a result, a new kind of global human rights scheme of action was conceptualised, which involved actors at the international, national and local level:

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

Specifically, representatives agreed the importance of 'strengthening and building institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable'. States were urged to draw up national action plans to give these commitments effect.⁴⁴ The final agreement of the Vienna Conference was later endorsed by the 48th session of the General Assembly⁴⁵ and has been reaffirmed in subsequent documents.⁴⁶

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

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

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

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

⁴³ *Ibid.*

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

⁴⁵ See Resolution 48/121 of 1993.

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

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

Commonwealth Secretariat Best Practice Guidelines⁴⁸ represent programmatic articulations adopted by national human rights institutions to make concrete this set of ideals.⁴⁹ Whilst these principles carry declaratory (rather than legal) force, they do nevertheless fill an important gap in the corpus of international human rights law and are capable of being translated into measurable and practical outcomes. This paper now turns to consider both sets of principles in more detail.

3.3 Paris Principles

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

The Principles focus on four general areas:

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

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

⁴⁹ HRU Scoping Paper, 2007.

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

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

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

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

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

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

Five of the seven responsibilities of NHRIs set out in the Paris Principles relate specifically to international human rights.⁵⁵ It is the responsibility of NHRIs to encourage accession to or ratification of international human rights instruments and (where appropriate) their Protocols by States. They may also assist with the preparation of new international treaties.⁵⁶ Once a treaty has been ratified, the NHRI should encourage its incorporation or implementation into domestic law.⁵⁷ NHRIs also have the responsibility to 'promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation'.⁵⁸ NHRIs should contribute to State Party Reports submitted to the UN treaty bodies and regional institutions.⁵⁹ The important contribution of NHRIs here is to submit reports which critique the State periodic reports examined by those bodies and possibly even attend the relevant hearing to provide supplementary information to that provided by the State.⁶⁰ These responsibilities have been recognised and further extended by the UN treaty bodies themselves, for example the Economic, Social and Cultural Committee,⁶¹ the Committee on the Elimination of Racial Discrimination⁶² and the Committee on the Rights of the Child.⁶³

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

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

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

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

⁵⁷ Dickson, PL.

⁵⁸ Paris Principles, *Competences and Responsibilities*.

⁵⁹ *Ibid.*

⁶⁰ Dickson, PL.

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

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

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

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

“Independence characterises all NHRIs designed to effectively monitor good governance and human rights in Commonwealth countries. NHRIs in many states operate alongside electoral and anti-corruption commissions and similar institutions. The requirement of independence is ... fundamental...”

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

Investigation of complaints of human rights violations

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

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

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

Fulfilling the human rights mandate

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

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

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

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

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

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

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

Discussions at the 4th Session of the newly formed UN Human Rights Council in Geneva in March 2007⁶⁷ more recently raised the profile of NHRIs in the context of the world human rights community again. As Pohjolainen has noted, “international support for the establishment and strengthening of these national institutions is currently considered as one of the most important ways to improve domestic human rights records, especially in emerging democracies and countries recovering from internal conflicts or times of extreme oppression”.⁶⁸

3.4 Commonwealth Secretariat Best Practice Guidelines for NHRIs

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

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

⁶⁵ *Best Practice Guide* p. 2.

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

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

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

⁶⁹ HRU Scoping Paper, 2007.

⁷⁰ Best Practice for National Human Rights Institutions, 2001, Commonwealth Secretariat.

- **The Mode of Establishment of NHRIs:** Establishment should be a national project premised on a consultative, inclusive and transparent process. The legal mode of establishment should be found in enabling legislation or preferably entrenched in the constitution of the State.
- **Composition of NHRIs:** Members should have 'integrity, moral courage and competence and be able to exercise sound judgment and fairness'; the process of appointments is considered, as well as the mechanics and terms of appointment (and dismissal).
- **Mandate and Powers:** Should refer to international human rights standards, as well as those in domestic law and should seek harmonisation; the legislative basis of the NHRI should confer powers to monitor government compliance, investigate and resolve complaints and work with referral agencies.
- **Accountability and Relationships with Other Institutions:** Includes accountability to the public through the evaluation of the work of the NHRI, as well as the adoption of strategic plans to meet future goals and targets. Addresses the NHRI's relationships with parliament, the executive and the courts (highlighting the principles of independence as well as complementarity) and the international human rights treaty machinery.
- **Accessibility:** NHRIs should reach out to the most marginalised and disadvantaged individuals in society using appropriate communication strategies (for example, in recognition that a substantial part of the population might be illiterate). NHRIs should ensure their services are widely accessible and links should be forged with NGOs and wider civil society.
- **Significant Issues:** Consideration of the context or experience in which the NHRI operates. The NHRI's role in the protection of rights in conflict zones, poor and developing areas, and in the context of racism, environmental degradation, migrant and refugee flows, discrimination towards indigenous people or based on gender, age or disability is also discussed.
- **Factors Which Affect the Operation of NHRIs:** discussion of technical training schemes and capacity building of democratic institutions.

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

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

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

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

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

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

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

The Conference mandated a Steering Committee to discuss the modalities of establishing the Forum, which met for the first time in London in May 2007.⁷⁵

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

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

⁷² HRU Scoping Paper, 2007.

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

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

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

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

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

3.5 National Human Rights Institutions

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

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

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

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

Thus, it is the role of NHRIs to encourage governments to ratify and implement internationally recognised standards⁷⁹ and to influence politicians and civil servants in the law-making process and in administrative decision-making.⁸⁰ NHRIs' complaints mechanisms facilitate the referral or investigation of alleged human rights violations. Some NHRIs intervene in court proceedings or bring cases in their own name. NHRIs also seek to hold the State to account for failing to meet its human rights obligations.⁸¹ NHRIs must themselves be both accessible and accountable to the public at large. They are critical to the evolution of a human rights culture and have an important role in raising awareness of human rights through education, media and training. This affords them the credibility they need to function effectively on both the local (domestic) and international level.

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

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

⁷⁸ Amnesty International’s Recommendations on NHRIs (2001).

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

⁸⁰ Dickson, PL.

⁸¹ Dickson, PL.

⁸² ECOSOC Resolution 2/9 of 21 June 1946.

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

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

However, it was not until the 1990s that the conceptual shift towards the protection and promotion of human rights at the national level by NHRIs took serious hold. NHRIs fill a vacuum in the architecture of state institutions⁸⁹ This is particularly true in States where the public lack access to alternative human rights enforcement mechanisms⁹⁰. Such institutions attempt to *incentivise* state compliance with human rights obligations.⁹¹ Of course there were some early exceptions: notably, New Zealand (1978) and Australia (1981). Some NHRIs also evolved from Ombudsman Offices or equal opportunities commissions into institutions with a human rights mandate. However, the huge increase in NHRIs over the last 20 years has led some to describe NHRIs as the 'norm'⁹² or even as 'status symbols' demonstrating a States' commitment to its human rights obligations.⁹³ Statistically speaking, experts at Human Rights Watch have estimated that the number of national institutions grew from eight in 1990 to 45 in 2002.⁹⁴

83 ECOSOC Resolution 772B of 25 July 1960.

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

85 Burdekin, p.6.

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

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

88 *Ibid.*

89 Dickson, PL.

90 Burdekin, B., p.5.

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

92 Pohjolainen, A.E, Introduction.

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

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

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

3.6 International, Regional and Sub-Regional Groupings of NHRIs

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

International

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

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

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

⁹⁵ HRU Scoping Paper, 2007.

⁹⁶ See HRU Scoping Paper, 2007.

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

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

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

⁹⁹ <http://nhri.net>

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

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

Regional

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

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

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

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

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

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

100 HRU Scoping Paper, 2007.

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

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

103 *Ibid.*

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

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

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

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

“The purpose of the network is to serve as a platform for strengthening the capacity of national human rights institutions and protect and promote human rights in West Africa”¹⁰⁷

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

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

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

3.7 Contemporary Challenges facing NHRIs

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

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

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

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

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

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

¹¹⁰ See for more information <http://www.omeineurope.info/> and <http://www.hrdc.net/nhris/>

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

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

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

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

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

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

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

114 Paris Principles, *Competence and Responsibilities*.

4 Key Criteria for NHRIs

Having set out the normative framework for the establishment and operational methodology of NHRIs, this section of the paper turns to consider the key criteria for the effective functioning of an NHRI.

4.1 Independence

Independence from government is a core theme of the Paris Principles and is firmly endorsed by the Commonwealth Secretariat Best Practice Guidelines. Independence is commonly guaranteed in some manner in the enabling legislation of the majority of NHRIs considered in this report. The preferable method of establishing an NHRI is through incorporation in the State Constitution. However, only 11 of the 28 States examined have entrenched the legal guarantees of independence in their Constitutions.¹¹⁵ It is not possible to evaluate with certainty the true extent of the operational independence of the NHRIs analysed here. The majority of the enabling legislation for the NHRIs explicitly recognises their independence from government. Where features of a particular NHRI appear to threaten its independence, these are highlighted. However, it is salutary to identify a number of common factors that may threaten the independence of NHRIs. These include:

- Funding arrangements or budgetary procedures determined by government;
- Method of appointment or termination of commissioners and power of presidential patronage;
- Salaries of commissioners paid by government;
- Links to government departments or ministries, particularly in operational matters;¹¹⁶
- Referral mechanisms for NHRIs, which also have the potential to undermine independence; and
- Funding arrangements made with donor agencies that may push forward a particular agenda or priority.

It is recognised that it is not possible to completely separate NHRIs from the executive. However, strong and effective procedural safeguards, which govern the relationship

¹¹⁵ On available information, these include Fiji, Zambia, Ghana, Malawi, South Africa, Tanzania, Papua New Guinea, Balize, Antigua and Barbuda, Trinidad and Tobago and Namibia.

¹¹⁶ Brian Burdekin, NHRIs in the Asia Pacific.

between the NHRI and the executive and protect the operational independence of the NHRI, are critical and must be argued for energetically.

4.2 Mandates, Functions and Powers

Protection and promotion of human rights

The Paris Principles require that NHRIs have a broad mandate *to protect and promote* human rights. All NHRIs possess this mandate, as do about 50 per cent of Ombudsman Offices examined (Papua New Guinea, Namibia and Jamaica). Notably, some NHRIs focus on protection rather than the promotion (for example, Ghana), while for others the opposite is true (for example, Nigeria and Denmark). Others conceptualise the issue as one of 'prevention' and 'cure' (for example, Northern Ireland and Canada), prioritising activities which aim to curb undue numbers of complaints arising through systemic abuse (Canada).

(A) PROMOTION OF HUMAN RIGHTS

- **Providing advice** to government, parliament and other relevant entities on any issues relating to legislative or administrative practices, or proposed legislation, policies or programmes within their jurisdiction.
- **Establishing advisory committees** from civil society to assist the institution in the performance of its functions.
- **Educating the public concerning human rights**, including preparing and disseminating information both through formal educational institutions and more widely through general public schemes; for example, workshops, training programmes and the provision of resources and fact-finding sheets.
- **Preparing and delivering information and educational materials and programmes to particular 'target groups'** – for example, police, prison officials, military, judiciary etc. Exploiting international, regional and sub-regional opportunities for training.
- **Monitoring** government officials, agencies and actors in the private sector in terms of their compliance with international human rights treaty observations.
- **Promoting ratification of human rights treaties and their incorporation into domestic law.** Advising on the development of new international human rights instruments (see work of Northern Ireland Human Rights Commission).
- **Reporting function:** Contributing to government reports to international treaty bodies and following up and disseminating reports by the treaty bodies.
- **Media Engagement:** Engaging with the press and issuing public statements to raise awareness of human rights and publicising issues of concern.
- **Co-operating with the UN, relevant international agencies/NGOs and NHRIs.**

(B) PROTECTION OF HUMAN RIGHTS

- **Inspecting custodial facilities and places of detention.** Ensuring the relevant powers are in place to visit detention facilities unannounced and unhindered.
- **Receiving, investigating and resolving complaints.**

- **Conducting national or local public enquiries into systemic violations of human rights.** This might include the power to review important laws that display qualities of discrimination.
- **Powers ancillary to investigation of complaints or inquiries:** Compelling the attendance of witnesses and disclosure of documents when necessary to conduct effective enquiries or investigations and taking evidence on oath or affirmation. NHRIs possess coercive powers here and criminal and punitive sanctions (for example, payment of fines or imprisonment) may be attached where witnesses fail to attend or mislead the commission. Fines and imprisonment must be proportionate and not oppressive.
- **Participation in legal proceedings:** a NHRI may be granted representative standing or may appear in its own right as a party (see Northern Ireland). Alternatively, NHRIs may participate as third party intervenors or in an *amicus curiae* capacity. Some NHRIs have strong enforcement powers as to the resolution of complaints and can make applications for high court orders for relief. Some NHRIs are able to enforce interim measures in this way but others are able to secure these in a non-judicial capacity too (see India).

Clearly defined mandate

It is preferable that, like guarantees of independence, NHRI mandates are constitutionally entrenched. This safeguards the mandate from restriction by future executive leaders.

It is critical that commissioners and staff understand the full parameters and limitations of the mandates of the NHRI as set out in the enabling legislation or charter. Many of the legislative provisions examined in this study are drafted in broad terms but lack precision.

It is also vital that commissioners understand the scope and meaning of human rights and are able to draw on international human rights instruments.

Functions and powers

The enabling legislation must set out the functions and powers clearly and precisely so that commissioners can carry out the mandate of the commission effectively. This also contributes to the accountability and transparency of the institution.

4.3 Membership and Composition

In line with the full range of normative standards under which the NHRIs operate, selection, appointment and removal procedures should be set out clearly in legislation. This was the case with all NHRIs studied. The duration of appointment of commissioners and opportunities for re-appointment were also specified. The principles of plurality and representative membership should also be considered.

National Human Rights Action Plans

The 1993 World Conference, which was so instrumental to the growth of NHRIs, emphasised the merits of National Human Rights Action Plans (NHRAPs). The Conference recommended that all countries adopt an NHRAP to provide an overarching strategy for the protection and promotion of human rights. However, the 1993 World Conference recommendation has not been universally implemented. Less than 20 NHRIs have developed NHRAPs to date.¹¹⁷ Indeed, only a small number of the NHRIs examined in

¹¹⁷ *Ibid.*

this study appear to have adopted NHRAPs: Australia, New Zealand, Malawi and South Africa, although others may have formulated overarching strategies without clearly publicising these as NHRAPs.

As part of its remit to develop and publishing best practice on the promotion and protection of human rights in the Commonwealth, the Commonwealth Secretariat's Human Rights Unit will shortly host a meeting of experts in London. The expert panel will formulate a model framework for countries pursuing a comprehensive national plan to advance human rights, based on both international human rights standards and national priorities. The experts will be drawn from all regions of the Commonwealth, and will represent government, academia, national human rights institutions, regional organisations and civil society.

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-commssions.doc> as well as Human Rights Watch Report 2001 available at <http://hrw.org/reports/2001/afrika/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	<p>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</p> <p>Human Rights, Race, Sex, Disability and Aboriginal and Torres Strait Islander Social Justice Commissioners (appointed by federal government).</p>	–	<p>Partnership project with the Canadian Human Rights Commission and the India Gandhi National Open University on rights of disabled persons.</p> <p>Research on trafficking in women and children in association with the Institution of Social Science, New Delhi.</p>	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	–	<p>Equal opportunities in employment</p> <p>Implementation of CEDAW</p>	<p>Prison conditions</p> <p>Custodial deaths</p> <p>Detention of children or those suffering from mental health problems</p>	–	–
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>Summons 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. Complaints: <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	<p>Yes</p> <p>Public information programmes to promote public understanding of the CHRA to facilitate complaint processing mechanism.</p> <p>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.</p>	Yes	Yes	<p>Yes</p> <p>Information Work.</p> <p>Public Library Functions.</p> <p>Publication of Materials.</p> <p>Website.</p>
International education programmes / information sharing	Yes	Yes	Yes	Yes
Other distinctive functions		<p>Lobbies the UK Government with respect to accepting the right of individual petition under UN human rights treaties.</p> <p>Comments on UK compliance with EU measures concerning human rights in Northern Ireland.</p> <p>Mandate includes advising Government on Bill of Rights for Northern Ireland.</p>	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

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 Edmondson, 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.

7 Ombudsman Offices

7.1 Role and Function

It has already been noted that in order for States to fulfil their international human rights obligations, it is vital to establish domestic infrastructure and institutions to promote and protect rights at domestic level. Further, it is desirable that these institutions fulfil the criteria set out in the Paris Principles and the Commonwealth Secretariat *Best Practice Guide*. However, some small island states lack the resources and infrastructure for a human rights commission. In such cases, an Ombudsman Office or even Public Defender may be created as an alternative. Ombudsman Offices and Public Defenders act as watchdogs of public administrative bodies, and in some cases also fulfil an explicit human rights mandate. Caiden's *International Handbook on the Ombudsman* describes the role as follows:

“The ombudsman is an independent and non-partisan officer... often provided for in the Constitution, who supervises the administration. He deals with specific complaints from the public against administrative injustice and maladministration. He has the power to investigate, report upon and make recommendations about individual cases and administrative procedures. He is not a judge or a tribunal, he has no powers to make orders or to reverse administrative action. He seeks solutions to problems by a process of investigation and conciliation. His authority and influence derive from the fact that he is appointed by and reports to one of the principle organs of the state, usually either the parliament or the chief executive.”¹⁶⁶

The notion of the Ombudsman was first conceived in Sweden in 1809. However, it was Great Britain's 1968 model of the Parliamentary Commissioner for Administration that is the most widely followed today.¹⁶⁷ This model is referred to as the 'classic Ombudsman'. It usually consists of a public official, appointed by the executive, who is responsible for the investigation of complaints and maladministration in the public law sphere (usually of different arms of the state like the police or prisons). The British Parliamentary Ombudsman sits between the legislature and the executive (and is closely linked to the latter), but is designed to be an extension of parliament.

¹⁶⁶ Caiden, G.E., (ed.), *International Handbook of the Ombudsman*, Westport, Connecticut: Greenwood Press, 1983, p.13. The author points out that an Ombudsman need not be a 'he' but can be a 'she'.

¹⁶⁷ A comprehensive discussion of the British model is beyond the scope of this study. However, for more information see Bradley, A.W., and Ewing, K.D., *Constitutional and Administrative Law* (14th Ed.) Edinburgh: Pearson Education Limited, 2007, pp. 715-724 (hereinafter 'Bradley & Ewing'). Note that the British model is derived from the Ombudsman model found in Scandinavian countries and New Zealand, but was designed to fit within the structure of existing British institutional remedies. See also Fenwick, H., and Phillipson, P. (2nd Ed.) *Text Cases Materials on Public Law and Human Rights*, Cavendish Publishing Limited: Abingdon, 2003, pp. 792-835.

The two central functions of an Ombudsman are:

1. Improving administrative efficiency of public bodies and government departments; and
2. Bridging the gap between the government and the people.¹⁶⁸

The Ombudsman fulfils an important public agenda by working towards limiting governmental power and governing the relationship between the citizen and the State. The establishment of an Ombudsman therefore reflects a commitment to the rule of law and principle of legality.

The status and jurisdiction of the Ombudsman is governed by statute.¹⁶⁹ The Ombudsman forms no part of the judiciary¹⁷⁰ and has no legal power to grant remedies. He/she simply reports to parliament.

The value of the Office of Ombudsman is its accessibility, flexibility and relative informality.¹⁷¹ This may be more effective in investigating allegations of maladministration and uncovering the factual truth than a traditional formal adversarial or inquisitorial process.

The hybrid Ombudsman model¹⁷² combines jurisdiction over maladministration with human rights. The classic Ombudsman model does not have an express human rights mandate. However, in practice, some Ombudsman Offices adopt a human rights based approach to their work, due in part to the nature of the complaints or grievances against public authorities which are submitted to them, including those regarding prison conditions, the police, local government, social security, health care, mental health, child care and support, education, tax and pensions.

Whilst there are some similarities, the scope of the powers of investigation of the Ombudsman varies. In Trinidad and Tobago, the Ombudsman is limited to investigations of decisions or recommendations made by government departments. The Guyana Ombudsman's powers are limited to investigations of actions (not decisions) of government in the exercise of administrative functions.¹⁷³ In contrast, the Barbados Ombudsman's investigatory powers are much broader, adopting almost a judicial review approach to the grounds of investigations – i.e. injustice caused by improper, unreasonable or inadequate conduct on the part of a government ministry or public authority.

Of the Ombudsmen Offices examined in this study, only Papua New Guinea, Namibia and Jamaica fulfilled an express human rights mandate. The other States examined – Antigua and Barbuda, Trinidad and Tobago, Barbados and Guyana – adopted a classic Ombudsman model. More detailed analysis is set out below.

168 See an early analysis by Cheng, H.Y., *The Ombudsman or Citizen's Defender: A Modern Institution*. *Annals of the American Academy of Political and Social Science*, Vol. 377, May 1968, pp. 20-30.

169 See for example in the UK, the Parliamentary Commissioner Act 1967.

170 See Report by Sir Cecil Clothier, Parliamentary and Health Ombudsman in the UK in 1984. Report for 193 (HC 322 (1983-4)), p.1.

171 Bradley & Ewing, p. 715.

172 Consolidation of a human rights commission and the Office of Ombudsman.

173 See speech by Edoe, K.G.A., Ombudsman of Trinidad and Tobago, *The Institution of Ombudsman – an Effective Accountability Mechanism*. Second Regional Conference of the Caribbean Ombudsman Association held in Trinidad, 7-10 May 2002.

7.2 Legal framework of the Commonwealth Ombudsman

The jurisdiction of the Ombudsman (usually set out in statute) is generally limited to matters that are not met by Constitutional remedies. The jurisdiction of the Ombudsman may be further limited by the exclusion of certain spheres of governmental activity or specifically named bodies from the remit of investigation. Thus the Ombudsman may be denied jurisdiction in matters relating to criminal law enforcement or grant of honours, government departments responsible for education, national ownership of industry and the activities of the armed forces.¹⁷⁴ This obviously impacts on the efficacy of the office.

The enabling legislation spells out the jurisdiction, powers and functions of the Office of Ombudsman. The Ombudsman commonly conducts investigations, disseminates information, raises awareness and conducts public education programmes. The most important function is that of investigation. The nature of the Ombudsman's investigatory powers is usually contingent upon the type of model of the Ombudsman – i.e., whether it follows the classic model or the human rights model. However, the line between the two is not distinct where the maladministration of public bodies also raises human rights concerns. The Ombudsman must have regard to constitutionally protected rights and international human rights instruments.

All Ombudsmen formally investigate and resolve complaints and issue recommendations. However, such recommendations are not legally enforceable. This undermines the strength of the Office. However, an Ombudsman can nevertheless exert influence over government in practical terms through the widespread publication of his/her findings and recommendations. Thus, albeit that the Ombudsman does not possess coercive powers, the status of the Office means that adverse findings are politically embarrassing for the government. Social pressure may therefore be brought to bear on a recommendation presented to parliament.

¹⁷⁴ See for example Parliamentary Commissioner Act 1967, ss 4,5 and schedules 2 and 3 respectively.

7.3 Schedules of Ombudsman Offices

Criteria	Ombudsman Commission of Papua New Guinea ¹⁷⁵ ('Commission')	Ombudsman of Belize ¹⁷⁶	Jamaica Office of the Public Defender ¹⁷⁷	Ombudsman of Antigua and Barbuda ¹⁷⁸
Established		Office established on 8 July 1999.	16 April 2000.	1994.
Constitutional or enabling legislation	Constitution Organic Laws setting out jurisdiction and functions of the Commission	Enabling Act passed in April 1994.	Public Defender (Interim) Act 1999	Constitution. Ombudsman Act later enacted in 1994 and first Ombudsman appointed 1995.
Bill of Rights	Yes.	Yes	Yes.	Yes. 1981 Independence Constitution contains Chapter on the Protection of Human Rights and Fundamental Freedoms
Type of office	Hybrid model. Established an Anti-Discrimination and Human Rights Unit within the Ombudsman ('ADHRU').	Classic model.	Hybrid model.	Classic model.
Jurisdiction	<ul style="list-style-type: none"> ● Maladministration ● Anti-corruption ● Human rights ● Anti-discrimination ● Office of the Governor-General (the only public official not subject to limiting legislation). ● Integrity of political parties ● Judicial appointments. 	Maladministration by public bodies.	<ul style="list-style-type: none"> ● Maladministration or allegations of injustice flowing from administrative action of the State or its agents ● Abuse or infringement of Constitutional rights. 	Maladministration by public or statutory bodies.
Functions	Papua New Guinea	Belize	Jamaica	Antigua & Barbuda
Investigation at own initiative	Yes	No. Complaints mechanism.	Yes. Under narrow circumstances defined in The Ombudsman Act 1978.	No. Complaints mechanism.
Other powers or functions	Power to make special reference to the Supreme Court on questions of constitutional interpretation.	Annual Reports. Established a tripartite Council in 2001 to deal with complaints against the police.	Power to appoint a Tribunal, after consultation with the Prime Minister and Leader of the Opposition, to assist in an investigation of a complaint.	Ombudsman attends meetings of Public Sector Reform Committee.

¹⁷⁵ For more information see Geno, I., *The Ombudsman Commission of Papua New Guinea – Its Role in Human Rights Issues in Papua New Guinea*. Paper presented at the Commonwealth Conference of NHRIs, London, 26-28 February 2007.

¹⁷⁶ For more information see: Rodriguez, P., *The Ombudsman of Belize and the Human Rights Mandate*. Paper presented at the Commonwealth Conference of NHRIs, London, 26-28 February 2007.

¹⁷⁷ For more information see: Witter, E., *Office of the Public Defender, Jamaica's Country Presentation*. Paper presented at the Commonwealth Conference of NHRIs, London, 26-28 February 2007.

¹⁷⁸ Thomas, H., *The Role of the Office of the Ombudsman of Antigua and Barbuda as a Human Rights Institution*. Paper presented at the Commonwealth Conference of NHRIs, London, 26-28 February 2007.

OMBUDSMAN OFFICES

Functions	Papua New Guinea	Belize	Jamaica	Antigua & Barbuda
Other powers or functions	Public interest standing and implied power to enforce rights such as right to life and right to freedom from inhuman treatment.		Power to make regulations in respect of the Tribunal.	
Remedies	Reports and recommendations. Has not pursued investigations through courts where human rights violations have occurred. Alternative Dispute Resolution such as mediation and persuasion. Refers cases to other more appropriate bodies.	Formal settlement of complaints.	Reports to Parliament where failure of an agency to comply with recommendation. Finds representation and legal aid for person violated. Makes recommendations that source of injustice (rule/ law etc) be amended. Recommends compensation be paid to complainant.	Formal settlement of complaints.
Advise government	Indirectly through recommendations/reports	Indirectly through recommendations/reports	Indirectly through recommendations/reports	Indirectly through recommendations/reports
Training	Yes.	–	No.	No
Education	Yes.	Yes.	No.	No
Anti-discrimination/ Equal Opportunities mandate.	Yes. Potential to take action in Court but to date has not done so.	No.	No.	No
Independence of the office	Yes: independent investigator (rather than advocate of victim).	Yes	Yes	Yes
Institutional support for the ombudsman	Office of Public Solicitor. UNDP – especially in setting up the ADHRU.	<ul style="list-style-type: none"> ● OAS ● CARICOM ● OECS 		<ul style="list-style-type: none"> ● CAROA. ● International Ombudsman Institute ● Danish Centre for Human Rights ● Inter-American Institute on Human Rights ● Caribbean Human Rights Network
Developments / Future work	Ratification of ICCPR and ICESCR would strengthen rights protection which falls short under the Bill of Rights.		Office associates itself with claims for equitable reparations in the form of direct financial settlement, debt relief, support for programmes of poverty eradication, the building or strengthening of democratic institutions and promotion of foreign direct investment and market access.	Recommendation that legislation amended to facilitate formation of hybrid model.

COMPARATIVE STUDY ON MANDATES OF NHRIs IN THE COMMONWEALTH

Criteria	Ombudsman of Trinidad and Tobago	Ombudsman of Barbados	Ombudsman of Namibia
Established	1977	1981	1990
Constitutional or enabling legislation	Constitution.	The Ombudsman Act (1981)	<ul style="list-style-type: none"> ● Constitution ● The Ombudsman Act 1990
Bill of Rights		Yes (based on UDHR)	Yes
Type of Office	Classic model	Classic model	Hybrid model
Jurisdiction		<p>Whether injustice has been caused by improper, unreasonable or inadequate conduct on the part of a government Ministry or department or other authority.</p> <p>Normally the Office cannot investigate a case where the complainant has other legal means of redress.</p>	<p>Human rights.</p> <p>Maladministration by public bodies.</p> <p>Exploitation or overuse of natural resources and the environment.</p> <p>Acts of private institutions which give rise to human rights violations.</p> <p>Anti-corruption.</p> <p>Any decision of a public body which breaches human rights is discriminatory, unjust, unreasonable or unfair etc or based on an error of law.</p>
Functions			
Power of investigation	Yes.	Yes.	Yes
Investigation at own initiative	Yes.	No. Through complaints.	<p>Dependent on subject matter of the investigation.</p> <p>It would appear that the Commission can only instigate investigations with respect to corruption but must receive complaints with respect to maladministration, human rights and the environment.</p>
Other powers or functions	<p>Advisory function.</p> <p>Power of a High Court to summon witnesses during investigations.</p> <p>In addition to annual reports, produces separate reports which focus on important areas of concern.</p>	<p>With some exceptions the Ombudsman has the power to request any minister or officer of a government department or any other person to supply information considered necessary.</p>	<p>Power includes capacity to enter premises, access to accounts and documents, require production of further particulars, power of seizure of items, power to summon witnesses.</p> <p>Reviewing legislation and making recommendations.</p>
Remedies	<p>Reports and settlement.</p> <p>Where recommendation not adopted Ombudsman under a legal obligation to refer the matter to Parliament.</p>	Settlement of complaints.	<p>Settlement of complaints.</p> <p>Referral to Prosecutor-General or to the Auditor-General or both.</p> <p>Bringing proceedings in Court of competent jurisdiction.</p>
Advise government	Yes.	No	Yes and make recommendations.
Training	No.	No	
Education	Yes.	No	Yes.
Anti-discrim/ Equal Opps mandate.	No.	No.	Yes.

7.4 Commentary on Individual Ombudsman Offices

Papua New Guinea

The Ombudsman Commission of Papua New Guinea operates as a hybrid public institution. Its mandate includes the protection of human rights and anti-discrimination, as well as the classic function of watchdog of government administration. The Commission model empowers multiple office-holders to exercise constitutional powers, rather than a single specified person.¹⁷⁹

Antigua and Barbuda

The main functions of the Ombudsman of Antigua and Barbuda are to investigate any complaint relating to any decision or recommendation made or any act done or omitted by any officer of the government or statutory body in any case in which a member of the public claims to be aggrieved, or appears to the Ombudsman to have sustained injustice as a result of the administrative functions of that officer or body.¹⁸⁰ The government bodies that can be scrutinised are defined in an exhaustive list in the Act. This list excludes the investigation of complaints relating to powers conferred on the Governor-General by the Constitution or to any decision or recommendation made or taken by the Director of Public Prosecutions or any decision in respect of the Director of Audit.

The Ombudsman does not possess any express human rights mandate, but in practice, he/she is frequently called upon to perform such related functions when dealing with complaints of maladministration in the public service, for example, when investigating complaints regarding abuse of police powers.¹⁸¹

Trinidad and Tobago

The Ombudsman is charged with a four-point mandate:

- increasing public awareness of the Office;
- accessibility to the public;
- gaining public confidence; and
- resolving complaints satisfactorily for complaints and officials.¹⁸²

The Ombudsman has fairly well established investigatory and advisory competence to meet these objectives. Of particular importance is the power (possessed by many NHRIs) to enter and inspect any premises over which he/she has jurisdiction. The Ombudsman's power in such circumstances extends to the power to call and examine witnesses and if appropriate seize documents.¹⁸³

Namibia

The Ombudsman of Namibia has one of the broadest mandates, which includes the duty to promote and protect human rights, ensure fair and effective administration, combat corrupt practices and protect the environment and natural resources of Namibia through

179 Papua New Guinea Commission – <http://www.lawandjustice.gov.pg/www/html/102-the-ombudsman.asp>

180 Annual Report for the Ombudsman of Antigua and Barbuda for the year 2002, p.7 <http://www.ombudsman.gov.ag/reports/pdf/annualreport2002.pdf>

181 *Ibid.*

182 Henry, J., *The Ombudsman and His Society – the Case of Trinidad and Tobago*, available at http://www.ombudsman.gov.tt/applicationloader.asp?app=doc_lib_details&id=87.

183 <http://www.ombudsman.gov.tt/applicationloader.asp?app=articles&id=940>

the independent and impartial investigation and resolution of complaints and by raising public awareness.¹⁸⁴

However, the Ombudsman's power of investigation is limited in terms of complaints received – he/she may not initiate investigations. A noteworthy point here is the different powers of investigation and enforcement which the Ombudsman has in relation to each of the areas of his/her mandate.

The recommendations of the Ombudsman regarding maladministration are accorded greatest force. The Ombudsman can apply to the High Court to obtain an interdict to enforce recommendations or their implementation or prevent further maladministration. Further, the Ombudsman may, following investigation, recommend the more expeditious processing of applications to relevant ministries. The Constitution entitles individuals to 'approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient' (Article 25(2)).

The Ombudsman sees the power to investigate complaints relating to the environment as an adjunct of the right of sustainable development, due to its close nexus with exploitation of mineral resources and eco-systems. This can give rise to competing claims (for example, in situations such as the creation of dams or degradation of land belonging to indigenous minority groups). The importance placed on the right to development by the Ombudsman of Namibia is fairly unique.

Jamaica

The Office of Public Defender in Jamaica replaced the classic model of Ombudsman Office on 16 April 2000. The powers and functions of the Ombudsman were split between the Office of the Public Defender (by the Public Defender Act 1999) and the Political Ombudsman, a Parliamentary Commission. The Public Defender was given the jurisdiction for the first time to investigate alleged violations of an individual's Constitutional rights. The first Public Defender took up his office on 17 April 2000.

The Public Defender can only investigate complaints by individuals or groups who have sustained injustice or suffering. This is akin to the admissibility criteria in international human rights enforcement mechanisms, where the complainant must actually be a 'victim' of a human rights violation (see for example, Article 34 ECHR). The power to investigate complaints of maladministration is based on novel grounds, which differ to those included in the enabling legislation of other Ombudsman Offices and include the following:

- i. 'When a service takes longer to be provided than it should;
- ii. When service is not conducted in the right and proper manner;
- iii. When persons are not treated fairly;
- iv. When rules are not followed; and
- v. When faulty systems are used.'¹⁸⁵

¹⁸⁴ <http://www.ombudsman.org.na/>

¹⁸⁵ <http://www.opd.gov.jm/index.php>

The Public Defender also pursues important initiatives in the field of human rights, with a current focus on slavery and human trafficking.

Barbados

There is very little available information on the work of the office of Ombudsman of Barbados to add further commentary at this stage.

Guyana

There is insufficient up-to-date information available on the work of the office of Ombudsman of Guyana to add further commentary at this stage.

Belize

The Ombudsman of Belize does not have an express human rights mandate. However, human rights aspects may feature in investigations of injury, injustice or abuse by the actions or omissions of Government agencies. In particular, the Ombudsman of Belize focuses on abuse of police powers and maladministration within that department and is mandated to protect rights and freedoms of persons involved in the criminal law system.

The Ombudsman has endeavoured to change the conceptualisation of human rights, by public officials (in particular the police) as being inconsistent with criminal law enforcement and entitlements which only benefit vagrants and the lawless.

8 Conclusions

The role of National Human Rights Institutions and the Office of Ombudsman in the promotion and protection of human rights is critical. Independence is a prerequisite to the effective implementation of the mandates of both institutions. A perceived or actual lack of independence will undermine the work, authority and legitimacy of these organisations. Likewise, NHRIs and Ombudsman Offices with weak or limited enforcement powers may become dependent on government institutions to resolve complaints and provide adequate remedies. This too will weaken their mandate and status.

The evolution of human rights protection takes place in a time of significant legal and political change. The global challenges of terrorism, globalisation, climate change and natural disasters,¹⁸⁶ migration flows and internally displaced persons and armed conflict are significant. In the current climate, it becomes ever more vital to defend and protect established international human rights standards, challenge abuses of State power and limit maladministration in public offices. NHRIs and Ombudsman Offices have important and difficult work to do. We must all support them in their struggle to meet the challenges that lie ahead.

¹⁸⁶ See for example the Stern Review on climate change available from http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/sternreview_index.cfm For its impact on all 53 Commonwealth states, see the comments of the Commonwealth Secretariat Deputy Secretary General Ransford Smith on 12 September 2006 at http://www.thecommonwealth.org/news/155947/commonwealth_welcomes_call_for_action_on_climate_c.htm (last accessed 14 June 2007). Note also that the Inter-American Commission on Human Rights has accepted and will hear a petition filed by Inuit living in the Arctic, seeking relief from violations resulting from global warming caused by acts and omissions of the United States. See also *Lopez Ostra v. Spain* (App. No. 16798/90, judgment of 9 December 1994) where the European Court of Human Rights held that Spain's failure to prevent a waste treatment plant from polluting nearby homes violated the petitioner's 'right to respect for her home and her private and family life'.

9 Annexes

9.1 Normative Framework

9.1.1 Principles relating to the status and functioning of national institutions for protection and promotion of human rights – the 'Paris Principles'

Adopted by General Assembly resolution 48/134 of 20 December 1993

COMPETENCE AND RESPONSIBILITIES

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country

where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To co-operate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

COMPOSITION AND GUARANTEES OF INDEPENDENCE AND PLURALISM

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

METHODS OF OPERATION

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, and associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing

amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

9.1.2 National Human Rights Institutions:

Amnesty International's recommendations for effective protection and promotion of human rights

AI Index IOR 40/007/2001 1 October 2001

INTRODUCTION: STANDARDS ARE A PRE-REQUISITE FOR EFFECTIVE ACTION

National human rights institutions (NHRIs) include institutions such as ombudspersons for the defense of human rights, and the institutions in Latin America known as '*defensorias del pueblo*' and '*procuradorias de derechos humanos*'. Such NHRIs can be distinguished from non-governmental human rights organisations by their very establishment as a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people. The aim of their establishment should be to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly.

Amnesty International has developed the following recommendations, based on the organisation's observations of the work of NHRIs and their impact throughout the world. This document includes examples of good and bad practice. Amnesty International believes that these recommendations are essential elements to ensure the independent and effective establishment and functioning of national human rights institutions. They should be considered alongside other guidelines such as the 'Principles relating to the status of national institutions' (adopted in the UN Commission on Human Rights Resolution 1992/54, known as 'the Paris Principles') as a tool both to assess the effectiveness of existing national human rights institutions, and to ensure that new NHRIs are set up with the requisite ingredients for effective and independent functioning.

The recommendations set out in this document are Amnesty International's assessment of a foundation for effective work to promote and protect human rights. However, implementation of these recommendations on a formal level should not be seen as an end in itself - NHRIs should be judged on their results in effecting improvement in the human rights situation in their country, and in providing investigations and remedies in individual cases. The results of their investigations should be open to scrutiny by civil society, including human rights defenders. They should work to combat impunity for all those who order, carry out, and cover up human rights violations. NHRIs should be judged on how they implement these goals, not solely on their legal or institutional framework. Amnesty International has received reports of many examples of good practices and good results in these aims, but also many shortcomings and these recommendations are meant to encourage best practices in all NHRIs. It is Amnesty International's experience that those NHRIs which have been set up according to the principles in these recommendations and are functioning well and enjoy a level of credibility and trust which facilitates their relationship with the executive, the judiciary

and most importantly, the victims of human rights violations, and makes their work even more effective.

Some of the recommendations concern the establishment of NHRIs and as such are aimed at governments, but others concern the operation of NHRIs, and are therefore aimed at governments, so that they can do all that is necessary to facilitate the efficient running of NHRIs, but also the NHRIs themselves. They may also be useful to those in civil society who are monitoring their performance.

The position of NHRIs as institutions within the state structure and yet independent - and where necessary, critical - is relatively new development in the protection of human rights. It is important to clarify their true role: NHRIs should never be seen as a replacement or alternative to an independent, impartial, properly resourced, accessible judiciary, whose rulings are enforced. NHRIs can however constitute an effective complement to the judiciary and other institutions within the state in promoting and protecting human rights standards. There can be no alternative to a determined government policy to holding the perpetrators of human rights violations accountable.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS ON EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS

1. Establishment of NHRIs to ensure independence and effective action

The following recommendations on the establishment are to ensure that action can be taken by the NHRI in full independence and to ensure its ability to take effective action to address violations. Formal independence without effective action is not sufficient.

1.1 Founding legislation

NHRIs must be independent from the executive functions of government and its founding charter should reflect this. It is essential therefore that NHRIs should be established by law or, preferably, by constitutional amendment. Where NHRIs are established merely by presidential or other kinds of decree, it is easier to abolish them, or to limit powers which are necessary to their effective functioning.

1.2 Consultation with civil society

The consultation process on and about the establishment of NHRIs should include representatives of civil society, such as human rights organisations, human rights defenders, lawyers, journalists, academics, the medical profession, social workers, trade unionists, and non-governmental organisations generally. Members of sectors of the population such as women, children and those representing their interests, religious, ethnic and racial groups, and other groups which are vulnerable to human rights violations (and which may be under-represented amongst civil society bodies) should also be consulted about the kind of assistance they require to promote and protect their human rights. The consultation process should be transparent, adequate, effective and properly resourced to ensure proper consultation.

1.3 Effective jurisdiction in federal states

Amnesty International has frequently noted that NHRIs have difficulties in ensuring that they can address violations throughout the territory of federal states. In some federal countries, NHRIs have been established with mandates that only permit them to consider cases where federal personnel commit human rights violations, or where human rights violations take place during the enforcement of federal law.

Amnesty International recommends therefore that any legislation in federal systems setting up an NHRI is made explicitly applicable to all parts of the federal system so that there are no de facto gaps in jurisdiction. Any NHRI, whether in a federal state or otherwise, should be able to examine all human rights violations, as defined by international human rights law, throughout the country's territory and regardless of the identity of the perpetrator.

All citizens with complaints of human rights violations should be able to bring them to an NHRI.

1.4 Co-operation with other institutions

The founding legislation of an NHRI should include provisions whereby the NHRI is empowered, on its own initiative, to submit reports to, and where appropriate, to address in person, legislative bodies, the executive, or other political institutions.

The NHRI should be directed to establish effective co-operation with other human rights institutions, whether domestic or from other countries, non-governmental organisations, including human rights organisations, and UN human rights bodies. In some cases, it may be useful to develop memoranda of understanding between NHRIs and other institutions to facilitate such relationships. NHRIs should use such contacts to exchange first-hand information about reports of human rights violations and also to share expertise and experience of best practices.

The NHRI should consider using the NGO sector = s wider social outreach mechanics, which in many cases is larger than that of the NHRI itself, to publicise its activities and to facilitate receiving complaints from sections of society who are either geographically, politically or socially remote. In all its contacts with NGOs and other organs of civil society an NHRI must take steps to protect its independence and impartiality.

1.5 Referrals

Where complainants raise problems which are outside the mandate of the NHRI, referrals may be appropriate to other organisations. This may be appropriate to help with, for example, medical, housing or social problems or consumer difficulties, particularly where complainants coming to the NHRI for help are having difficulties in obtaining assistance. In one case reported to Amnesty International, the NHRI gives the complainant a short letter on NHRI letterhead to bring to the referral agency outlining the problem and suggesting an appropriate response, which frequently leads to a quicker solution for the complainant and is a much appreciated service.

1.6 Assess priorities, measure goals, follow up

NHRIs frequently have a broad remit and scarce resources. It is therefore important to assess priorities through consultation with those affected and work on priorities strategically, ensuring that those goals are met before ending work on the issue.

Violations of the right to life and the right to physical and mental integrity frequently involve crimes under international law, such as extrajudicial and other unlawful killings, torture, 'disappearance', war crimes and crimes against humanity. In many countries NHRIs will need to prioritise work on such violations in order to be effective and credible in their work to protect and promote human rights.

NHRIs should also be empowered to take action on violations of other rights particularly social, cultural and economic rights.

NHRIs should assess priorities and needs through consultation with victims of human rights violations, and the availability of redress through other institutions within the country.

2. Membership

NHRIs require experienced, trained and skilled staff, and particularly strong, independent and effective leadership. NHRIs workers include those who lead the NHRI and take main responsibility for the work. In many cases they are appointed by the legislative or executive parts of government. Amnesty International refers to them in this document as 'members.' NHRI workers also include the staff who assist them, either through administrative or substantive investigative and legal work.

2.1 Qualities of members of the NHRI

Members should be selected on the basis of proven expertise, knowledge and experience in the promotion and protection of human rights. They should have practical expertise and abilities.

2.2 Leadership

It is Amnesty International's experience that the leadership of NHRIs is particularly important, indeed vital, for the effective functioning of NHRIs, as frequently the actions of the senior leadership of the organisation sets the tone for the activities of the institution as a whole. It is of primary importance that the highest calibre candidates, with proven expertise of practical human rights work, be appointed.

2.3 Selection procedures and consultation

The independent procedures of selection, appointment, removal and terms of tenure of NHRI members and staff should be clearly specified, laid down in its founding legislation, so as to afford the strongest possible guarantees of competence, impartiality and independence.

The selection, appointment, and removal procedures of the members of the NHRI should not be handled exclusively by the executive branch of government.

The method of selection and appointment of the members of the NHRI should be fair and transparent, so as to afford all necessary guarantees of independence. Broad representation is also important, and steps should be taken to guarantee this - for example - by allowing members of civil society to nominate possible candidates for membership of the NHRI.

The selection and appointment process should involve representatives of civil society, especially human rights defenders representing the interests of particularly vulnerable sections of society (and members of those groups also), and may also include NGOs, opposition leaders, trade unionists, social workers, journalists.

Civil society should participate in the selection and appointment process as far as possible.

2.4 Representation of society

The NHRI members and staff should as far as possible include representation of all sections of society, including women, ethnic minorities, and people with disabilities.

who may be under-represented in other official bodies and would have particular relevant experience of the needs of those sectors of society. Non-nationals should not be deterred or specifically prohibited from taking up a post at the NHRI.

2.5 Freedom from bias and expectations for further career advancement

The members and staff should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason, for example, allegiances to political parties, or strong links with the executive part of government.

In some cases, there may be an expectation that office in an NHRI is a stepping stone leading to ministerial or other political office which limits the independence of NHRI members and staff - as with such expectations, they may be less willing to criticise the executive.

Salaries and working conditions have a positive role to play in recruiting and retaining effective staff, and in ensuring independence. This, along with local factors, such as salary levels for similar positions, whether in the public or private sector, must be taken into account when setting and revising staff terms and conditions.

2.6 Effective support to fulfil tasks

There should be sufficient staffing to fulfil the tasks allotted to the NHRI. The key issue is to ensure effective oversight and action. NHRIs must have a functioning and efficient secretariat to carry out the tasks entrusted to the members.

2.7 Privileges and immunities

Like the judiciary, members of NHRIs should be immune from criminal or civil legal action for all tasks undertaken by them in the proper exercise of their official functions. However, decisions made by them in their official capacity should still be subject to judicial review by the courts.

3. Mandate and powers

The mandate should make the NHRI truly independent in action, to promote and protect human rights in whatever manner is most appropriate. It should not be set up as a purely advisory body to advise the government, rather it should listen to victims of human rights violations, and have their concerns at the heart of its work. It should also work to promote a culture of respect for human rights through education and raising of awareness of human rights issues.

The scope of the NHRI's concerns should be principally and clearly defined in terms of international human rights law. This should include states' obligations under international law to respect and also to ensure that rights are respected by all, that is, to take steps to ensure that domestic law and practice form a framework where the abuses of human rights by non-state actors are effectively addressed. NHRIs should make recommendations for changes in law and practice where states are not fulfilling their obligation to be able to take reasonable steps to protect citizens from abuses of their human rights by other citizens.

3.1 Scope of human rights within an NHRI's jurisdiction

NHRIs should enjoy the broadest possible mandate to address human rights concerns as set out in international human rights law and standards. The mandate should not be defined solely in terms of those rights that are specifically provided for in the country's constitution - particularly as some constitutions do not contain key rights such as the right to life. Rather NHRIs should take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties. The mandate should include the power to protect and promote economic, social and cultural rights, as well as civil and political rights.

This is particularly important to ensure that human rights violations are monitored and acted upon in an accurate way. For example, Amnesty International has received reports that cases of torture are routinely described as 'abuses of official position' rather than torture, which leads to a misleading assessment of human rights violations occurring in the country, as well as a failure to take appropriate action.

3.2 Accountability to ensure effective action

NHRIs should report publicly on their activities and be held accountable for their results - either to an independent civil society body, or to a functioning and exacting parliamentary body. This is particularly important as an ineffective NHRI which does not address human rights violations actively can be an instrument of impunity, rather than a tool to promote and protect human rights.

3.3 Asserting human rights for all

The mandate should include the power specifically to promote and protect the rights those sections of society which are particularly at risk of violations of human rights, for example, children, women, people with disabilities, ethnic minorities, refugees, human rights defenders and non-nationals such as asylum-seekers and migrant workers. It should promote the right not to suffer discrimination, as this is often the source and motivation of other human rights violations, such as torture.

Frequently Amnesty International has received information indicating that NHRIs encounter difficulties because they are perceived to be promoting the rights of criminals because of their work on prison conditions, or the torture of criminal suspects. It is therefore important that all NHRIs emphasise the universal applicability of human rights standards to all persons.

3.4 Participation in international human rights law fora

NHRIs should recommend and facilitate the signature, ratification or accession of its state to new human rights treaties.

The mandate should include the power to monitor government fulfilment of international and regional human rights treaties and human rights obligations under domestic law. This should include the power to monitor and report - independently on its own behalf, not on behalf of its government - on compliance with and implementation of relevant and necessary international human rights standards, essential to the promotion and protection of human rights, including the Universal Declaration of Human Rights, the International Covenant on Cultural and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights

(ICESCR), the UN Declaration and Convention against Torture, the Convention of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, as well as the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions. They should also assess compliance with standards relating to the administration of justice, such as the Basic Principles on the Role of Lawyers, the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

NHRIs should as far as possible attend and participate in international meetings and fora including the treaty monitoring bodies and UN political bodies concerned with human rights. When doing so, they should represent themselves as independent NHRIs, rather than representing their government.

NHRIs should have the power to take note of and ultimately apply international human rights law and standards in their work. It is essential therefore that NHRIs establish effective means to keep abreast of recent developments of international human rights law and standards.

The NHRI should possess the power to follow-up on recommendations and reports made in relation to implementation and compliance with international human rights standards mentioned above. This should include a suitable framework within which the NHRI may compel the relevant authority to explain and report to the NHRI, within a reasonable period of time, as to why, for example, it has not followed and did not apply recommendations made by human rights treaty bodies or thematic mechanisms.

NHRIs should prepare 'shadow reports' (reports of their assessment of the human rights situation in their country) to submit to the UN human rights treaty monitoring bodies on their own behalf; they should not write the state's reports to treaty monitoring bodies.

3.5 Advising governments on domestic legislation

The mandate should include the power to review the effectiveness of existing legislation or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary.

This is especially important regarding internal security laws, administrative detention laws, and police detention and interrogation procedures, which can often facilitate human rights violations, or where enabling legislation implementing international standards does not implement the international obligations effectively.

The NHRI should also examine bills and proposals for new legislation put forward by

the government or parliament to assess its conformity with international human rights standards and to ensure the state's compliance with international human rights standards.

3.6 Participation in domestic legal cases

NHRIs should have the power to bring legal cases to protect the rights of individuals or to promote changes in law and practice. Amnesty International has received information about excellent work including the use of legal applications such as judicial review, constitutional applications and challenges, etc.

NHRIs should have the legal power to bring applications on behalf of those who may be unable to bring cases to protect their rights themselves (for example, children, those with mental health problems or otherwise lacking mental capacity, prisoners).

NHRIs should also have the legal power to bring cases (such as judicial review) to challenge the legality of executive action and to obtain judicial orders to remedy the situation, particularly where the executive has ignored the NHRIs recommendations on the subject.

NHRIs must also have the legal power to submit advice to the courts, such as *amicus curiae* briefs or third party interventions, on legal issues within its field of expertise in an independent capacity, without being a party to the case. This is important to ensure that the courts are informed about specialised human rights law concerns and to ensure that human rights standards are actively implemented in court decisions.

3.7 Effective communication with government to bring about change

NHRIs should be mindful of their official position within state structures and communicate their recommendations confidently and with the expectation that the executive part of government, or the prosecuting authorities, should implement them. NHRIs should open strong and effective methods of communication with all agencies of government, the prosecuting authorities and the judiciary in order to promote their recommendations, and should ensure compliance with recommendations, and not accept recommendations being ignored. NHRIs should also make recommendations to parts of the state, for example, the judiciary and the legislative organs.

4. Investigations and Inquiries

4.A General recommendations on investigations

The NHRI should have the powers to conduct wide-ranging national enquiries on human rights concerns; they should have access to government information; they should respond to victims' concerns in their investigations.

4.A.1 Time limits

Although some reasonable time limits may be used to ensure that complainants come forward speedily with their complaints, NHRIs should undertake any investigation where there is evidence in existence to consider; they should not be inhibited by arbitrary time limits on investigations, and should not be inflexible in rejecting cases for being brought to their attention outside of time limits.

4.A.2 Power to investigate on its own initiative

NHRIs should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations. It should be able to set clear

priorities for its work in accordance with the seriousness of the violations reported to it, specifically including alleged violations of the right to life and security of the person, and the right to physical and mental integrity, including the right not to be tortured; as well as to the right not to be arbitrarily arrested or detained.

Many NHRIs lose credibility within their countries by failing to engage with such issues directly, and instead focusing almost exclusively on human rights education or promotion or implementation of those rights which involve less criticism of the government.

NHRIs should accept information from any reliable source, and should co-operate with national and international NGOs.

4.A.3 Investigating individual cases and wider patterns

Pending completion of investigations the NHRI should always identify any systematic pattern of human rights violations, and address the root causes, rather than solely treating each case in isolation. They should not look at individual cases in isolation, nor report abstractly on trends and developments - rather they should focus on the facts of individual cases, and identifying patterns, using well-researched, well-attested and evidenced cases.

4.A.4 Persistent problems and root causes

In their reports, NHRIs should conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory. This should include an assessment of the failure of existing institutions and legal mechanisms to provide adequate human rights protection, and its links with impunity, the administration of justice, and for example, treatment of foreign nationals, women, and prisoners.

Recommendations for legal and institutional reform to address human rights violations should be proposed on the basis of the findings.

4.A.5 Addressing all perpetrators without fear

Many NHRIs undermine themselves and lose credibility by asking the alleged violators of human rights - such as the armed forces or the police - to investigate allegations of violations of human rights themselves, rather than the NHRI making an investigation itself. On some occasions, NHRIs simply forward the complainant's initial communication of his or her complaint to the alleged perpetrators (including the complainant's name, address, and other details) to ask the alleged perpetrators, or their colleagues, to investigate. This does not constitute an impartial investigation and can put complainants at risk.

Especially, NHRIs should be authorised to investigate the conduct of the police and the security forces throughout the national territory, and should promptly, effectively, independently and impartially carry out such investigations - especially in situations of internal armed conflict, and during states of emergency. This authorisation should not just be made explicit in its implementing legislation; it should also be made a practical reality in its work. NHRIs should not be debarred from operating during states of emergency.

NHRIs should also undertake investigations into human rights violations, even if those responsible include politicians or other powerful agents in society. To do this

effectively, the NHRI should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess. It should also have effective powers to protect its own staff and witnesses engaged in such investigations.

This is an all too frequent failure of NHRIs around the world, and a major cause of frustration and cynicism towards NHRIs from victims and the general population within countries, as well as NGOs, especially when the actions of major violators of human rights have not been addressed in a satisfactory way.

4.A.6 Compelling evidence

State officials should be legally obliged to co-operate with the NHRI's investigations. NHRIs should have full and effective powers to compel the attendance of witnesses and the disclosure and production of documents and other pieces of evidence. Effective sanctions should be in place to use when the NHRI's work is obstructed or otherwise interfered with.

4.A.7 Accurate statistics lead to an accurate picture of human rights violations

NHRIs should collect and publish accurate data on, for example, reports of 'disappearances', deaths in custody, rape and other forms of torture. Collection of data should be a by-product of day to day work, rather than an aim in itself. Statistics should detail the nature of the complaints, how and when they were investigated, the findings, and follow-up to recommendations.

4.B. Methodologies of investigation

In carrying out investigations NHRIs should pursue all available sources of information. These may include statements from victims, witnesses and alleged perpetrators; medical reports; police investigation files; court files; media reports; information from NGOs, families of victims and lawyers.

This is particularly important as investigations that, for example, simply constitute an examination of an existing police investigations file, may lead to a repetition of failures in investigation and in such cases, this may promote or contribute to impunity.

Amnesty International has also received information about cases where the onus of proof is on the complainant to prove his case, rather than the NHRI carrying out an investigation. NHRIs should always take steps to investigate information independently.

4.B.1 Independent investigation professionals

NHRIs should have their own investigative machinery and should have access to expert assistance (forensic pathologists, forensic doctors, ballistic experts, specialists on sexual violence etc.) whenever required to investigate alleged violations of human rights, particularly those involving physical injury (including injuries from sexual violence) and death. It is also important to have access to relevant experts to assist with interviews with victims who may be suffering from the psychological effects of torture, including sexual violence, to identify and record the psychological effects, and to ensure that interviews are conducted in a manner which does not lead to further psychological damage.

Sometimes it will be necessary to bring expertise in from outside the country, where no trained expertise is available.

Wherever possible, such forensic expertise should be at hand at short notice so that effective investigations and recording of, for example, injuries caused by torture or sexual violence, or post mortem investigations, can be made efficiently. When such reliable forensic information is available, then it is much more likely that effective action can be taken in prosecutions of perpetrators.

Such experts should be truly independent - frequently Amnesty International has received reports that such experts have strong links with state officials such as the police, as most of their work is for such state officials. Amnesty International has received some reports of investigators for NHRIs who are actually police officers on secondment from the regular police forces - who were unwilling to investigate allegations against fellow police officers.

NHRIs should have adequate facilities to carry out on-the-spot investigations, including transport, to be able to obtain access to any place in the territory where human rights violations take place.

4.B.2 Training

Effective and practical training of staff working on investigations - especially sharing of skills and best practice from colleagues abroad - should be a priority. Frequently investigations undertaken with good will fail because of lack of training in investigative sciences and skills. They should also receive training in international human rights law so that they can identify and understand legal issues regarding their investigations.

4.B.3 Protection of witnesses

NHRIs should have full and effective access to mechanisms to ensure that witnesses, complainants, or others providing evidence to the NHRI are given appropriate protection. Mechanisms should be in place, which can be triggered by the NHRI, that can lead to the suspension or transfer of officials allegedly involved - without prejudice pending completion of investigations - to other duties where they would have no power over witnesses or complainants.

4.B.4 Protection of evidence

Evidence gathered during investigations, such as witness statements, reports (including reports such as post mortem examinations or other expert reports) and physical evidence (such as evidence gathered during exhumations) should be kept securely by the NHRI.

4.C. Individual complaints

4.C.1 Who can complain?

NHRIs should have powers to begin investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if the complainants themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Individual complaints procedures should be free of charge.

It is important that all people have the opportunity to be represented in applications to NHRIs, regardless of their status under national law. Children, prisoners, the mentally ill, and foreign nationals, for example, must all have access to the NHRI.

4.C.2 Reaching out to victims

NHRIs should use networks of communication and outreach already existing among NGOs and civil society groups such as medical associations, to ensure that victims of human rights violations are aware of the procedures open to them.

4.C.3 Keeping the interests of victims at the centre of the process

Victims or relatives should have access to all relevant information and documents relating to the investigation into their complaints and be granted all necessary facilities to present evidence. Victims should in particular, be kept informed of the process of the NHRI's investigation, and be given reasons for decisions taken about their case, and consulted where there are choices as to how their case will develop. NHRIs should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the NHRI. Where the NHRI is unable to take up a case, for example, because it is outside its mandate, it should inform the complainant as soon as possible and give reasons for its decision.

4.D. Addressing failed investigations effectively

Where the police have made an inconclusive or otherwise unsatisfactory investigation, the NHRI should undertake a prompt, thorough, effective and impartial investigation and not be hampered or otherwise inhibited by following the conclusions of a previous investigation. Investigations should not simply constitute an examination of an existing police investigations file.

An NHRI which fails to investigate individual complaints effectively may be an instrument of impunity - rather than allowing a victim access to a remedy, it closes off opportunities to secure a remedy, deterring the reporting of abuses.

4.D.1 Separation of roles of the NHRI and the judiciary

A clear line should be drawn between appropriate roles for the NHRI and the judiciary. The NHRI should be able to investigate, but should not have judicial powers. The result of the NHRI's investigations should be referred to appropriate judicial bodies without delay so that they can take appropriate action.

Evidence obtained by NHRIs should not be made inadmissible in other proceedings simply by virtue of having been first given to the NHRI.

Amnesty International has received reports which indicate that some NHRIs consider that investigations by the police or the security forces *prima facie* are sufficient investigations. It is important that NHRIs make their own assessment of the effectiveness of such investigations and follow up themselves with prompt, effective, thorough and impartial investigations where existing internal police or army investigations, or judicial investigations are not effective.

Where the NHRI finds evidence that certain individuals may have been responsible for committing human rights violations or for ordering, encouraging or permitting

them, the facts of the case should be investigated promptly, effectively, thoroughly and impartially by authorities empowered to bring criminal prosecutions, and if appropriate, those responsible should be brought to justice in legal proceedings which respect internationally-recognised rights to a fair trial, and do not lead to punishments involving torture or cruel, inhuman or degrading treatment, including the death penalty. NHRIs should have powers to recommend that superior officers are brought to justice for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time. If the NHRI, in the course of its work, is able to identify short-comings in the law whereby it is not possible to hold such officers accountable, the NHRI should make recommendations for legal reform that would ensure that domestic law does not facilitate impunity.

The government should ensure that any prosecutions for crimes involving the abuse of human rights are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in human rights violations.

4.D.2 Parallel jurisdiction of NHRI and the judiciary

The fact that a complainant has been charged and a criminal prosecution is under way should not be a pretext for stopping NHRIs from acting on a complaint, or taking any other action within their mandate to address human rights concerns.

Where prosecutions are pending, the NHRI should not consider the substance of the criminal charge, but should be able to look at ancillary matters relating to the human rights of the accused person, for example, allegations that he or she has been tortured while in custody.

In some jurisdictions, the NHRI is not permitted to receive complaints from a person who has been charged with an offence or who is otherwise under judicial supervision; therefore if the judiciary is not taking appropriate steps to protect the accused person from human rights violations such as torture and ill-treatment in custody, then that person is without recourse to protect their rights.

4.D.3 Role of NHRI in following up the actions of prosecutors and the judiciary in cases of criminal acts

Although it is important to maintain independence of function between the judiciary and the NHRI, the NHRI should monitor whether its recommendations are followed up. Amnesty International frequently receives reports that an NHRI has recommended that, on the basis of their investigations, criminal investigations and prosecutions should be initiated - but the police or prosecuting authorities take no action.

NHRIs should not stand by in silence where recommendations to investigate and bring prosecutions are ignored. In such cases, the NHRI should continue to request that the authorities take up the case, if necessary through domestic and international publicity, or where possible, to bring judicial review action challenging the decision of the prosecuting authorities. NHRIs should not be complicit with impunity.

Where domestic remedies for human rights violations are exhausted or ineffective, NHRIs should raise the matter with the international bodies mandated to assess compliance with human rights standards, such as the human rights treaty monitoring

bodies, or the United Nations' thematic mechanisms and special procedures, such as the Special Rapporteurs.

5. Recommendations and non-judicial remedies

5.1 Remedies and interim measures

NHRIs should have powers to ensure effective non-judicial remedies, including interim measures to protect the life and safety of an individual and adequate medical treatment where necessary; it should ensure measures of redress and rehabilitation are taken in appropriate cases.

5.2 Remedies but not impunity

NHRIs should not broker agreements for only reparations, such as compensation, to be paid, where the appropriate response would rather be reparation and prosecution of the perpetrator - for example in cases of torture.

Amnesty International has received reports that some NHRIs order compensation for crimes such as torture, and where the government encourages this or other forms of conciliation rather than bringing cases forward for prosecution. Conclusion of a case through friendly settlement should not prevent or hamper prosecutions for crimes under international law, such as torture, war crimes, or crimes against humanity.

5.3 Recommendations should be followed up

The government should undertake an obligation to respond, within a reasonable time, to the case- specific as well as the more general findings, conclusions and recommendations made by the NHRI. The government's response should be made public.

In cases where the government fails to respond, or refuses to respond or implement recommendations, the NHRI should continue to take all possible measures to press the government, for example, through pressure by the media, through parliament, and through international pressure of opinion and bringing the case to the attention of the international human rights bodies, such as the treaty monitoring bodies and the special mechanisms. Cases should remain open and as far as practically possible, the members and staff who dealt with the case up to the NHRI giving its recommendation should remain actively involved with the case and monitoring the implementation of the recommendation to ensure that the situation has been remedied. Continuity of staff is important to ensure that the initial problem has been addressed effectively.

6. Human rights education

Amnesty International has noted that a population which is educated in their human rights is an asset to assist NHRIs to carry out their task. Educating the population on human rights is a task that NHRIs working even under the most repressive governments are able to attempt, so it is important that it is done effectively.

General human rights education should be undertaken in a practical, illustrative way - if possible using media broadcasts to illustrate or dramatise human rights issues - rather than producing glossy, but abstract, promotional material which simply sets out general principles. It is also vital to ensure that material is disseminated to suitable target audiences.

Human rights training should be targetted at people who may have to consider and apply human rights issues in their work - law-makers, administrative decision-makers, judges,

lawyers, the medical profession, teachers, social workers, prison officers and police officers, and the armed forces - and they should be encouraged to promote human rights standards among their colleagues. Again, this professional education should be undertaken in a practical way to illustrate the transformative effect of using human rights standards in daily professional life. NGOs and victims groups should be encouraged to participate in such training to ensure that a variety of viewpoints are expressed within the education process.

7. Visits to places of detention

An important role that NHRIs can fulfil is as independent professional body empowered to visit places of detention, with the aim of making recommendations to change conditions in order to prevent the incidence of torture and other cruel, inhuman and degrading treatment or punishment.

Amnesty International has received reports of a wide range of competence in fulfilling this role among NHRIs around the world. Amnesty International has received information regarding cases where an NHRI has given assurances that a certain individual although reported to have been tortured, was fine and in good health, only for the organisation's representatives to visit the same individual shortly afterwards to find him showing signs of torture consistent with earlier reports - giving rise to the possibilities that either the NHRI had not visited, or had mis-reported their findings, or lacked the necessary expertise to carry out visits. Thorough training is essential.

On the other hand, Amnesty International has received excellent general reports by NHRIs detailing the conditions of detention, and making recommendations which have led to a decrease in the incidence of torture and cruel, inhuman and degrading treatment and punishment. Unfortunately, recommendations are frequently not implemented by governments.

Even in cases where NHRIs undertake effective visits to places of detention, they are not provided with the human and practical resources (such as transport to all places of detention in all regions) so that they can ensure effective coverage and assessment of all places of detention.

7.1 Modalities of visits

The modalities of visits provided for in the Geneva Conventions of 1949 - Article 126 of the Third Geneva Convention, and Article 143 of the Fourth Geneva Convention - should be used by NHRIs in setting out the modalities for visits to places of detention.

These modalities are that:

I. the visiting mechanism shall have access to all places of detention, and have access to all premises in which detainees may be held.

Frequently, NHRIs are denied access to particular categories of places of detention, such as police stations, military prisons, or prisons where detainees are held under security or 'anti-terrorist' legislation. These are frequently the very institutions from which many reliably attested complaints of torture are received, so it is vitally important that independent monitors have access to those places to assess conditions and make recommendations for change.

2. the visiting mechanism shall be able to interview detainees without witnesses, either personally or through the mechanism's own interpreter.

3. the visiting mechanism shall have liberty to select the places they wish to visit.

Frequently NHRIs are required to seek permission or give long notice of their visit. NHRIs should be able to visit 'any place, at any time' without prior authorisation in order to make a true assessment of conditions of detention.

4. the duration and frequency of visits shall not be restricted.

The only reason for denying access to a particular place of detention should be physical danger equal to the provision within the Geneva Conventions regarding compelling military necessity - which in practice means that a place of detention should only be out of bounds for visits if it is under weapon fire, and only during the period of danger. State security should not be an issue which would affect visits. The NHRI itself should assess and take appropriate precautions regarding any other risks, such as risk to health through disease prevalent within a certain institution.

8. Publicity

8.1 Media

NHRIs should ensure that they have access to the media in order to publicise their work to ensure that the population as a whole is aware of the services that the NHRI can provide; that they have human rights that can be protected and enforced; and to ensure a forum for discussion of human rights and publicity (therefore transparency) of the NHRI's activities. It is very important that the NHRI be seen by all to be taking effective action. NHRIs should also publicise their role as an institution independent from the executive part of the government, and its policies regarding confidentiality and security.

The NHRI should use the most effective media available to make contact with as many people as possible - so, for example, in places where illiteracy is high or where newspapers are hard to obtain, radio broadcasts should be used.

8.2 Annual reports

NHRIs should ensure that their reports, particularly their annual reports, are published and circulated widely.

Amnesty International recommends that NHRIs should be empowered to publish their materials at any time. Amnesty International has received reports that some NHRIs must present their reports to parliament or other political bodies before they are empowered to publish their reports, and frequently parliamentary time is not made available for this purpose. Therefore the NHRI is effectively silenced.

Many NHRIs do not produce annual reports - it is very important that they do so in order to be accountable and transparent, and to be seen to be fulfilling its role, evaluating its results, and planning its future activities. Statistics on the numbers and types of cases received, action taken and results achieved by the NHRI in resolving the cases should be included.

8.3 Confidentiality

Although there should be an assumption in favour of transparency, particularly in reports and the findings of investigations, in such publicity, care should be taken that

sensitive details which could lead to complainants, their families, witnesses and human rights defenders being put in danger, or which leads to an invasion of their privacy, should not be released. However this need for confidentiality for sensitive information should not be used as an excuse not to publish any information at all, as this could be an excuse to cover up evidence of human rights violations.

9. Accessibility

9.1 Regional offices

Local and regional offices are vitally important to the effective functioning of NHRIs in a large country, or a county with isolated and inaccessible centres of population, or where transportation is difficult. Mechanisms should allow local offices a positive role in following up cases. Unfortunately Amnesty International has received reports of local offices undertaking prompt and effective investigations, but they are not empowered to follow up with local authorities: instead they have to refer cases to a central office. This can frequently become a 'black hole' of bureaucracy, and effectively, cases are not followed up. Where there is a network of local and central offices, effective co-ordination and communication between all should be ensured. Responsibility for following up on cases must be clearly allocated and periodic evaluations should ensure that follow-up is taking place.

9.2 Accessible premises

NHRI offices must be stationed in appropriate places - unfortunately Amnesty International has received reports of NHRI offices being located near military installations or police stations. In such cases, potential complainants may fear being noticed or monitored by the security forces if they bring their complaints. Amnesty International has received other reports of offices being intimidatingly smart or located in very up-market areas, so that the poor and other disadvantaged groups feel too uncomfortable and conspicuous to be seen going there. Other reports indicate that some offices are located in inaccessible areas where it is difficult for complainants to visit.

Within offices, there should be facilities such as private meeting rooms where complainants can discuss their complaints with NHRI staff in confidence.

9.3 Communication with victims

NHRIs should take steps to ensure effective communications between itself and potential complainants.

Amnesty International has received reports of excellent initiatives to facilitate such contact - such as free-phone (toll-free) telephone lines, email and internet access, and travelling offices (one example was a specially adapted bus) or travelling field officers who can go to very isolated areas. NGO networks can also facilitate contacts with victims and witnesses.

In countries where some complainants are likely only to be able to speak minority or local languages, these should be catered for. When using interpreters, careful consideration should be given to issues of confidentiality and impartiality. Cultural sensitivities should also be taken into account, which may include the gender of the interpreter. Interviewees (including complainants and witnesses) should consent to the use of interpreters.

In countries where there is widespread illiteracy, there should be common use of oral communication techniques, such as radio, and NHRI staff should take care to explain their procedures verbally, rather than relying on explanatory leaflets.

10. Budget

The government must provide the NHRI with adequate funding and resources in order to be able to fully carry out, and without restrictions and limitations, the aims and functions set out within the mandate, and particularly, to address the demands of the caseload that has been brought to its attention. The NHRI should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.

NHRIs are mandated by international standards, such as the Paris Principles, and by recommendations of civil society, such as the recommendations in this document, to cover a wide range of human rights issues, and clearly some prioritisation of activities by NHRIs is required. Professional training and sharing of working skills so that NHRIs can maximise effective action within the bounds of resource constraints is therefore important.

Amnesty International has received reports that restrictions in NHRI budgets are used as a punitive measure to control an NHRI which is deemed to be too critical of government. AI has received reports of many examples where once set up, NHRIs are underfunded to the extent that they cannot function effectively - leading to reasonable doubts about how serious the government was in the first place about improving the implementation human rights through the NHRI.

The mandate should specifically and explicitly include the power to be able to establish effective and alternative routes to receive funding, either from private donors or international agencies, for whatever human rights activities the NHRI is undertaking. NHRIs should develop guidelines to ensure that any such fundraising does not compromise its independence and impartiality.

Funding should be secured with a longterm perspective to enable the NHRI to plan and develop its activities with confidence about being able to fulfil them.

9.1.3 Best Practice Guide of the Commonwealth Secretariat (2001)

Human Rights Best Practice Guide available in pdf at:

http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/{BF05153F-7565-4A2F-8F2A-F002F05594EC}_

9.2 UN Treaty Bodies recommendations and general comments

9.2.1 General Assembly Resolution: National Institutions for the Promotion and Protection of Human Rights A/RES/48/134

A/RES/48/134, 85th plenary meeting, 20 December 1993

48/134. NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

The General Assembly,

Recalling the relevant resolutions concerning national institutions for the protection and promotion of human rights, notably its resolutions 41/129 of 4 December 1986 and 46/124 of 17 December 1991 and Commission on Human Rights resolutions 1987/40 of 10 March 1987, 1988/72 of 10 March 1988, 1989/52 of 7 March 1989, 1990/73 of 7 March 1990, 1991/27 of 5 March 1991 and 1992/54 of 3 March 1992, and taking note of Commission resolution 1993/55 of 9 March 1993,

Emphasising the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for and observance of human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognising that the United Nations can play a catalytic role in assisting the development of national institutions by acting as a clearing-house for the exchange of information and experience,

Mindful in this regard of the guidelines on the structure and functioning of national and local institutions for the promotion and protection of human rights endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,

Welcoming the growing interest shown worldwide in the creation and strengthening of national institutions, expressed during the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis from 2 to 6 November 1992, the Regional Meeting for Latin America and the Caribbean, held at San Jose from 18 to 22 January 1993, the Regional Meeting for Asia, held at Bangkok from 29 March to 2 April 1993, the Commonwealth Workshop on National Human Rights Institutions, held at Ottawa from 30 September to 2 October 1992 and the Workshop for the Asia and Pacific Region on Human Rights Issues, held at Jakarta from 26 to 28 January 1993, and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights,

Bearing in mind the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights,

Noting the diverse approaches adopted throughout the world for the promotion and protection of human rights at the national level, emphasising the universality, indivisibility and interdependence of all human rights, and emphasising and recognising the value of such approaches to promoting universal respect for and observance of human rights and fundamental freedoms,

1. Takes note with satisfaction of the updated report of the Secretary-General, prepared in accordance with General Assembly resolution 46/124 of 17 December 1991;
2. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence;
3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans;
4. Encourages national institutions for the promotion and protection of human rights established by Member States to prevent and combat all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;
5. Requests the Centre for Human Rights of the Secretariat to continue its efforts to enhance co-operation between the United Nations and national institutions, particularly in the field of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights;
6. Also requests the Centre for Human Rights to establish, upon the request of States concerned, United Nations centres for human rights documentation and training and to do so on the basis of established procedures for the use of available resources within the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights;
7. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical co-operation in the field of human rights, as well as national centres for human rights documentation and training;
8. Encourages all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of such national institutions;
9. Affirms the role of national institutions as agencies for the dissemination of human rights materials and for other public information activities, prepared or organised under the auspices of the United Nations;
10. Welcomes the organization under the auspices of the Centre for Human Rights of a follow-up meeting at Tunis in December 1993 with a view, in particular, to examining ways and means of promoting technical assistance for the co-operation and strengthening of national institutions and to continuing to examine all issues relating to the question of national institutions;

11. Welcomes also the Principles relating to the status of national institutions, annexed to the present resolution;
12. Encourages the establishment and strengthening of national institutions having regard to those principles and recognising that it is the right of each State to choose the framework that is best suited to its particular needs at the national level;
13. Requests the Secretary-General to report to the General Assembly at its fiftieth session on the implementation of the present resolution.

ANNEX

Principles relating to the status of national institutions

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonisation of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To co-operate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

9.2.2 Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 10: The Role of National Human Rights Institutions in the Protection of economic, Social and Cultural Rights (14/12/98. E/C.12/1998/25)

Convention Abbreviation: CESCR: Committee on Economic, Social and Cultural Rights
Nineteenth session, Geneva, 16 November-4 December 1998. Agenda item 3

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

General comment No. 10:

The role of national human rights institutions in the protection of economic, social and cultural rights*

1. Article 2, paragraph 1, of the Covenant obligates each State party 'to take steps ... with a view to achieving progressively the full realisation of the [Covenant] rights ... by all appropriate means'. The Committee notes that one such means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights. In recent years there has been a proliferation of these institutions and the trend has been strongly encouraged by the General Assembly and the Commission on Human Rights. The Office of the United Nations High Commissioner for Human Rights has established a major programme to assist and encourage States in relation to national institutions.

2. These institutions range from national human rights commissions through Ombudsman offices, public interest or other human rights 'advocates', to 'defensores del pueblo'. In many cases, the institution has been established by the Government, enjoys an important degree of autonomy from the executive and the legislature, takes full account of international human rights standards which are applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights. Such institutions have been established in States with widely differing legal cultures and regardless of their economic situation.

3. The Committee notes that national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions. The following list is indicative of the types of activities that can be, and in some instances already have been, undertaken by national institutions in relation to these rights:

- (a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;
- (b) The scrutinising of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;
- (c) Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;

- (d) The identification of national-level benchmarks against which the realisation of Covenant obligations can be measured;
 - (e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realised, either within the State as a whole or in areas or in relation to communities of particular vulnerability;
 - (f) Monitoring compliance with specific rights recognised under the Covenant and providing reports thereon to the public authorities and civil society; and
 - (g) Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.
4. The Committee calls upon States parties to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights and requests States parties to include details of both the mandates and the principal relevant activities of such institutions in their reports submitted to the Committee.

9.2.3 Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. XVII: Establishment of National Institutions to Facilitate Implementation of the Convention (25/03/93, Gen. Rec. No. 17)

THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION,

Considering the practice of States parties concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination,

Convinced of the necessity to encourage further the establishment of national institutions to facilitate the implementation of the Convention,

Emphasising the need to strengthen further the implementation of the Convention,

1. **Recommends** that States parties establish national commissions or other appropriate bodies, taking into account, *mutatis mutandis*, the principles relating to the status of national institutions annexed to Commission on Human Rights resolution 1992/54 of 3 March 1992, to serve, *inter alia*, the following purposes:

- (a) To promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- (b) To review government policy towards protection against racial discrimination;
- (c) To monitor legislative compliance with the provisions of the Convention;
- (d) To educate the public about the obligations of States parties under the Convention;
- (e) To assist the Government in the preparation of reports submitted to the Committee on the Elimination of Racial Discrimination;

2. Also recommends that, where such commissions have been established, they should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned.

* Contained in document A/48/18.

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

THE ROLE OF INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE CHILD

1. Article 4 of the Convention on the Rights of the Child obliges States parties to 'undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention'. Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realisation of children's rights. In this regard, the Committee has welcomed the establishment of NHRIs and children's ombudspersons/children's commissioners and similar independent bodies for the promotion and monitoring of the implementation of the Convention in a number of States parties.

2. The Committee issues this general comment in order to encourage States parties to establish an independent institution for the promotion and monitoring of implementation of the Convention and to support them in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them. Where such institutions have already been established, the Committee calls upon States to review their status and effectiveness for promoting and protecting children's rights, as enshrined in the Convention on the Rights of the Child and other relevant international instruments.

3. The World Conference on Human Rights, held in 1993, in the Vienna Declaration and Programme of Action reaffirmed '... the important and constructive role played by national institutions for the promotion and protection of human rights', and encouraged '... the establishment and strengthening of national institutions'. The General Assembly and the Commission on Human Rights have repeatedly called for the establishment of national human rights institutions, underlining the important role NHRIs play in promoting and protecting human rights and enhancing public awareness of those rights. In its general guidelines for periodic reports, the Committee requires that States parties furnish information on 'any independent body established to promote and protect the rights of the child ...', hence, it consistently addresses this issue during its dialogue with States parties.

4. NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The 'Paris Principles') adopted by the General Assembly in 1993 transmitted by the Commission on Human Rights in 1992. These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies.

5. While adults and children alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that children's human rights are given special attention. These include the facts that children's developmental state makes them

particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organisations that may protect their rights is generally limited.

6. Specialist independent human rights institutions for children, ombudspersons or commissioners for children's rights have been established in a growing number of States parties. Where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights.

7. It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is 'mainstreamed' and that all human rights institutions existing in a country work closely together to this end.

MANDATE AND POWERS

8. NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments - thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights. The legislation should include provisions setting out specific functions, powers and duties relating to children linked to the Convention on the Rights of the Child and its Optional Protocols. If the NHRI was established before the existence of the Convention, or without expressly incorporating it, necessary arrangements, including the enactment or amendment of legislation, should be put in place so as to ensure conformity of the institution's mandate with the principles and provisions of the Convention.

9. NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities.

ESTABLISHMENT PROCESS

10. The NHRI establishment process should be consultative, inclusive and transparent, initiated and supported at the highest levels of Government and inclusive of all relevant elements of the State, the legislature and civil society. In order to ensure their

independence and effective functioning, NHRIs must have adequate infrastructure, funding (including specifically for children's rights, within broad-based institutions), staff, premises, and freedom from forms of financial control that might affect their independence.

RESOURCES

11. While the Committee acknowledges that this is a very sensitive issue and that State parties function with varying levels of economic resources, the Committee believes that it is the duty of States to make reasonable financial provision for the operation of national human rights institutions in light of article 4 of the Convention. The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.

PLURALISTIC REPRESENTATION

12. NHRIs should ensure that their composition includes pluralistic representation of the various elements of civil society involved in the promotion and protection of human rights. They should seek to involve, among others, the following: human rights, anti-discrimination and children's rights non-governmental organisations (NGOs), including child- and youth-led organisations; trade unions; social and professional organisations (of doctors, lawyers, journalists, scientists, etc.); universities and experts, including children's rights experts. Government departments should be involved in an advisory capacity only. NHRIs should have appropriate and transparent appointment procedures, including an open and competitive selection process.

PROVIDING REMEDIES FOR BREACHES OF CHILDREN'S RIGHTS

13. NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.

14. NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.

ACCESSIBILITY AND PARTICIPATION

15. NHRIs should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children.

16. NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organisation and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRIs to facilitate the participation of children in matters of concern to them.

17. NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established.

18. NHRIs must have the right to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. In this respect, States parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children's rights and the State's compliance with the Convention.

RECOMMENDED ACTIVITIES

19. The following is an indicative, but not exhaustive, list of the types of activities which NHRIs should carry out in relation to the implementation of children's rights in light of the general principles of the Convention. They should:

- (a) Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate;
- (b) Conduct inquiries on matters relating to children's rights;
- (c) Prepare and publicise opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights;
- (d) Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights;
- (e) Promote harmonisation of national legislation, regulations and practices with the Convention on the Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention;
- (f) Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans;
- (g) Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realise children's rights;
- (h) Encourage ratification of or accession to any relevant international human rights instruments;

- (i) In accordance with article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond;
- (j) In light of article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights;
- (k) Advocate for and facilitate meaningful participation by children's rights NGOs, including organisations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children;
- (l) Promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field;
- (m) In accordance with article 42 of the Convention which obligates State parties to 'make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike', sensitise the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;
- (n) Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;
- (o) Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);
- (p) Take legal proceedings to vindicate children's rights in the State or provide legal assistance to children;
- (q) Engage in mediation or conciliation processes before taking cases to court, where appropriate;
- (r) Provide expertise in children's rights to the courts, in suitable cases as *amicus curiae* or *intervenor*;
- (s) In accordance with article 3 of the Convention which obliges States parties to 'ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision', undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement;
- (t) Undertake such other activities as are incidental to the above.

REPORTING TO THE COMMITTEE ON THE RIGHTS OF THE CHILD AND CO-OPERATION BETWEEN NHRIS AND UNITED NATIONS AGENCIES AND HUMAN RIGHTS MECHANISMS

20. NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights, including through dialogue with the Committee on the Rights of the Child at its pre-sessional working group and with other relevant treaty bodies.

21. The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee.

22. NHRIs should also co-operate with the special procedures of the Commission on Human Rights, including country and thematic mechanisms, in particular the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General for Children and Armed Conflict.

23. The United Nations has a long-standing programme of assistance for the establishment and strengthening of national human rights institutions. This programme, which is based in the Office of the High Commissioner for Human Rights (OHCHR), provides technical assistance and facilitates regional and global co-operation and exchanges among national human rights institutions. States parties should avail themselves of this assistance where necessary. The United Nations Children's Fund (UNICEF) also offers expertise and technical co-operation in this area.

24. As articulated in article 45 of the Convention, the Committee may also transmit, as it considers appropriate, to any specialised United Nations agency, OHCHR and any other competent body any reports from States parties that contain a request or indicate a need for technical advice or assistance in the establishment of NHRIs.

NHRIS AND STATES PARTIES

25. The State ratifies the Convention on the Rights of the Child and takes on obligations to implement it fully. The role of NHRIs is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities.

NHRIS AND NGOS

26. Non-governmental organisations play a vital role in promoting human rights and children's rights. The role of NHRIs, with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.

REGIONAL AND INTERNATIONAL CO-OPERATION

27. Regional and international processes and mechanisms can strengthen and consolidate NHRIs through shared experience and skills, as NHRIs share common problems in the promotion and protection of human rights in their respective countries.

28. In this respect, NHRIs should consult and co-operate with relevant national, regional and international bodies and institutions on children's rights issues.

29. Children's human rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to a variety of child rights issues (including, but not limited to, the trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children, etc.). International and regional mechanisms and exchanges are encouraged, as they provide NHRIs with an opportunity to learn from each other's experience, collectively strengthen each other's positions and contribute to resolving human rights problems affecting both countries and regions.

9.3 Co-operation Machinery for NHRIs

The International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC): Rules of Procedure

<http://www.nhri.net/2007/ICCProcedureEng2006.pdf>

[last accessed 11 October 2007]

Application for Accreditation and Re-Accreditation of National Human Rights Institutions to the International Co-ordinating Committee of National Human Rights Institutions. Version 2 – May 2007

http://www.nhri.net/2007/Statement_of_Compliance_May_2007_En.pdf

[last accessed 11 October 2007]

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http://www.nhri.net/2007/List_Accredited_NIs_Nov_2007.pdf

[last accessed 11 October 2007]

Commonwealth Secretariat Human Rights Unit Scoping Paper on the CF-NHRI

9.4 Enabling Legislation

AUSTRALIA

Human Rights and Equal Opportunities Commission Act 1986:

<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401635?OpenDocument>

[last accessed 11 October 2007]

NEW ZEALAND

Human Rights Act 1993:

<http://www.hrc.co.nz/index.php?p=308>

[last accessed 11 October 2007]

INDIA

Protection of Human Rights Act 1993:

<http://nhrc.nic.in/hract.htm>

[last accessed 11 October 2007]

MALDIVES

Human Rights Commission Act 2006:

<http://www.hrcm.org.mv/downloads/HRCM%20Act%20English%20translation.pdf>

[last accessed 11 October 2007]

MALAYSIA

Human Rights Commission Act 1999:

http://www.suhakam.org.my/en/act_597.asp

[last accessed 11 October 2007]

SRI LANKA

Human Rights Commission Act No 21 of 1996:

http://www.asiapacificforum.net/members/apf-member-categories/full-members/sri-lanka/downloads/enabling-legislation/slact_english.pdf

[last accessed 11 October 2007]

FIJI

Human Rights Commission Act 1999:

http://www.humanrights.org.fj/about_us/hrc_act_part02.html

[last accessed 11 October 2007]

ZAMBIA

Human Rights Commission Act 39 of 1996:

<http://www.nhri.net/Ni/Files/79/ZM%20Act%20no%2039%20of%201996%20Human%20Rights%20Commission.pdf>

[last accessed 11 October 2007]

NIGERIA

National Human Rights Commission Act 1995:

Not available online

GHANA

Commission on Human Rights and Administrative Justice Act 1993, Act 456:
Not available online

UGANDA

Uganda Human Rights Commission Act 1997:
<http://www.nhri.net/Ni/Files/60/UG%20Act%20no.%204%20of%201997%20Uganda%20Human%20Rights%20Commission%20Act.pdf>
[last accessed 11 October 2007]

MAURITIUS

Protection of Human Rights Act 1998:
<http://www.gov.mu/portal/site/nhrsite/menuitem.6a46a0254804c86512c7c91048a521ca/>
[last accessed 11 October 2007]

KENYA

Kenya National Commission on Human Rights Act 2002:
<http://www.knchr.org/>
[last accessed 12 October 2007]

MALAWI

Malawi Human Rights Commission Act 1998:
Not available online
Constitution of the Republic of Malawi:
<http://www.sdp.org.mw/constitut/intro.html>
[last accessed 12 October 2007]

SOUTH AFRICA

Human Rights Commission Act No 54 of 1994:
http://www.sahrc.org.za/sahrc_cms/publish/article_243.shtml
[last accessed 12 October 2007]

UNITED REPUBLIC OF TANZANIA

Human Rights and Good Governance Act 2001:
<http://www.bunge.go.tz/Polis/PAMS/Docs/7-2001.pdf>
[last accessed 12 October 2007]

CANADA

Canadian Human Rights Act 1985:
<http://laws.justice.gc.ca/en/showdoc/cs/h-6/20070213>
[last accessed 12 October 2007]
Employment Equity Act 1995:
<http://www.legislationline.org/legislation.php?tid=99&lid=2789>
[last accessed 12 October 2007]

NORTHERN IRELAND

Northern Ireland Act 1998:

<http://www.opsi.gov.uk/acts/acts1998/19980047.htm>

[last accessed 12 October 2007]

The Human Rights Act 1998 enacted by the UK parliament is also applicable in Northern Ireland:

<http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

[last accessed 12 October 2007]

ENGLAND AND WALES

Equality Act 2006:

http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060003_en.pdf

[last accessed 12 October 2007]

Human Rights Act 1998:

<http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

[last accessed 12 October 2007]

DENMARK

Act Governing the Establishment of the Danish Centre for International Studies and Human Rights 2002:

<http://www.humanrights.dk/about+us/founding+law>

[last accessed 12 October 2007]

9.5 Enabling Legislation: Ombudsman Offices of the Americas

PAPUA NEW GUINEA

No precise statute available online, but see:

<http://www.paclii.org/pg/OC/main.htm>

[last accessed 12 October 2007]

BELIZE

The Ombudsman Act 2000:

<http://www.belizelaw.org/lawadmin/PDF%20files/cap005.pdf>

[last accessed 12 October 2007]

JAMAICA

Public Defenders Act 1999:

<http://www.opd.gov.jm/act.php>

[last accessed 12 October 2007]

ANTIGUA AND BARBUDA

The Ombudsman Act 1994:

<http://www.laws.gov.ag/acts/1994/a1994-5.pdf>

[last accessed 12 October 2007]

TRINIDAD AND TOBAGO

The Ombudsman Act 1976:

<http://www.ombudsman.gov.tt/applicationloader.asp?app = articles&id = 947>

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BARBADOS

Not available online

NAMIBIA

The Ombudsman Act 1990:

<http://www.ombudsman.org.na/theact.html>

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

Annual Report for the Ombudsman of Antigua and Barbuda for the year 2002, p.7 See: <http://www.ombudsman.gov.ag/reports/pdf/annualreport2002.pdf>

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

Bedjaoui, M., The Right to Development, in Bedjaoui, M., and Mayor, F., (eds) *International Law: Achievements and Prospects*. Dordrecht: Martin Nijhoff, 1991.

Bosman, 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.

Bosman, A., The Protection Role of the Ghana Human Rights Commission, chapter 4 in Ramcharan, B.G. (ed.) *The Protection Role of National Human Rights Institutions*, Leiden: Martin Nijhoff, 2005.

Bradley, A.W., and Ewing, K.D., *Constitutional and Administrative Law* (14th Ed.) Edinburgh: Pearson Education Limited, 2007.

British Council on Commonwealth Human Rights Institutions, published in 2002. <http://www.britishcouncil.org/governance-commonwealth-human-rights-commissions.doc>

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