REGIONAL COLLOQUIUM FOR NATIONAL AND STATE HUMAN RIGHTS INSTITUTIONS

REVITALIZING DEMOCRACY AND THE RULE OF LAW AND PROMOTING DIVERSITY & INCLUSION THROUGH PARIS PRINCIPLES COMPLIANT SHRIs IN INDIA

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Asian NGO Network on National Human Rights Institutions

People's Watch

All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AINNI)

In collaboration with

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Tata Institute of Social Sciences, Mumbai

Regional Colloquium for National and State Human Rights Institutions

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FOREWORD

It is my pleasure to welcome you to this colloquium and share these relevant documents. Human Rights Institutions (HRIs) globally have gathered immense significance and India is a proud country with more than 170 HRIs. Having the largest network of HRIs in any country, India continues to demonstrate its commitment to protect and promote human rights and adherence to international conventions and declarations.

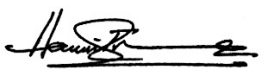
All India Network of NGOs and Individuals Working with National and State Human Rights Institutions (AiNNI) is a forum of individuals and organisations from across the country to monitor and strengthen the functioning of human rights institutions like the National Human Rights Commission, National Commission for Women, National Commission for Minorities, National Commission for Protection of Child Rights, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, Central Information Commission, Commissioner for Persons with Disabilities, National Commission on Safai Karamcharis and their state counterparts for their compliance to Paris Principles and their founding law and to activate them to better equip themselves for the protection and promotion of human rights.

AiNNI is also a member of the Asian Network of NGO's working with National Human Rights Institutions (ANNI), and ANNI is known to work in close collaboration with the Asian Pacific Forum of NHRIs (APF) of which National Human Rights Commission of India (NHRC) is a founding member since 1998. AiNNI is the only national network engaging with N/SHRIs in India and is mandated to engage with them through trainings, consultations, studies and advocacy for adherence to the Paris Principles. AiNNI undertakes national level studies, advocates with the law makers, engages with judiciary and the International Coordinating Committee on NHRI's (ICC) and strives for the establishment of a South-Asian and Asian regional human rights mechanism.

AiNNI over the coming few years will be closely engaging with a series of HRIs across the country through colloquiums. The objective of these colloquiums is to bring Indian HRIs closer to the international principles and standards on HRIs and also introduce with the members of these HRIs the recent debates around HRIs. AiNNI hopes that through these colloquiums, HRIs will be better equipped with regard to their roles and responsibilities and adhere to the already accepted standards, thus further their mission of upholding human rights and justice.

At this juncture, I would like to thank Mr. K.Rajavelu and Ms. Linnea Rosjo Johanssen for jointly putting this volume together meticulously and diligently under my guidance.

I hope this will be a commencement of a fresher and healthier relationship between HRIs and AiNNI. I also hope that you will be able to meet with experience former chairpersons and members of N/SHRI



(Henri Tiphagne)
National Working Secretary
All India Network of NGOs and Individuals Working with National and State Human Rights Institutions

CHAPTER 1

WHAT ARE NATIONAL HUMAN RIGHTS INSTITUIONS?

National human rights institutions are independent bodies established to stand up for those in need of protection and to hold governments to account for their human rights obligations. They also help shape laws, policies and attitudes that create stronger, fairer societies.

NHRIs are established by law or in the constitution, to promote and protect human rights in their respective countries. However, they **operate and function independently from government**. Strong and effective NHRIs help bridge the "protection gap" between the rights of individuals and the responsibilities of the State by:

- **Monitoring the human rights situation** in the country and the actions of the State
- **Providing advice to the State** so that it can meet its international and domestic human rights commitments
- **Receiving, investigating and resolving complaints** of human rights violations
- **Undertaking human rights education** programs for all sections of the community
- **Engaging with the international human rights community** to raise pressing issues and advocate for recommendations that can be made to the State.

CHAPTER 2

THE ORIGINS AND DEVELOPMENT OF NHRIs

Obligations under international human rights law fall on States. States are responsible for the promotion and protection of the human rights and the performance of the obligations that they voluntarily accept through becoming parties to (that is, ratifying or acceding to) treaties and that they acquire under international customary law.

The human rights obligations of States are said to fall into three categories:

> **the obligation to respect:** States themselves and their agents, including the police and the military, must not violate human rights
>
> **the obligations to protect:** States must prevent human rights obligations by others, including individuals, corporations and other organisations and actors
>
> **the obligation to fulfil:** States must take positive action to ensure the full enjoyment of all human rights by all people.

States are accountable internationally for their performance of these obligations. Through the UN Human Rights Council's Universal Periodic Review (UPR), each State must report every four and a half years on its performance, expose itself to questioning and the responses of other States to its report and answers, and receive the recommendations of other States on what action it should take to improve its performance. Through the treaty monitoring bodies, established by each of the core human rights treaties, each State party to each treaty must report regularly to the relevant treaty monitoring body, attend its meeting, answer the questions of its independent expert members and receive its findings and recommendations.

Domestic implementation and monitoring mechanism

National human rights institutions (NHRIs) established in accordance with the international minimum standards for NHRIs are one of many different domestic mechanisms to assist the State to meet its international obligations to respect, protect and fulfil human rights. NHRIs do not compete or take the place of other domestic institutions, such as the courts, but rather complement other institutions and mechanisms in their work.

Early encouragement of NHRIs

The international system has recognised since its earliest days that the implementation of human rights obligations is, first and foremost, a domestic responsibility. For almost 70 years it has encouraged the development and establishment of specialised domestic mechanisms for this.

In 1946, two years before it adopted the Universal Declaration of Human Rights, the –UN Economic and Social Council (ECOSOC) asked UN member States to consider "the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the UN Commission on Human Rights". These "local human rights committees" were not envisaged to be independent monitoring and investigation institutions that NHRIs are today, but the ECOSOC resolution recognised the need for domestic human rights groups and anticipated the later development of NHRIs. However, States did not rush to respond to this request.

Fourteen years later, in 1960, ECOSOC went further and was more specific. It recognised that national institutions could play a unique role in the promotion and protection of human rights and invited States to establish and strengthen them. There were some stirrings in that direction but little action.

After another 18 years, in 1978, the UN Commission on Human Rights took up the challenge of promoting domestic monitoring by specialised domestic institutions.

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of these international standards.

In 1978, the Commission on Human Rights decided to organise a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978, during which a series of guidelines was approved.

These guidelines suggested that the functions of national institutions should be:

(a) To act as a source of human rights information for the Government and people of the country;

(b) To assist in educating public opinion and promoting awareness and respect for human rights;

(c) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally that the Government may wish to refer to them;

(d) To advise on any questions regarding human rights matters referred to them by the Government;

(e) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;

(f) To perform any other function which the Government may wish to assign them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

(a) Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;

(b) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;

(c) In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The guidelines were then endorsed by the Commission on Human Rights and by the General Assembly. The Commission invited all Member States to take appropriate steps for the establishment, where they did not already exist, of NRHIs, and requested the Secretary-General to submit a detailed report on existing national institutions.

With this international encouragement, States began to establish NHRIs. However, progress was slow. In 1990, there were fewer than 20 NHRIs in the world. Two events in the early 1990s led to the rapid increase in NHRIs over the following 20 years. The first NHRI in India was the NHRC which was established on the 12th of October of 1993.

Sources:

A manual on national human rights institutions, published by Asia Pacific Forum, May 2015

National Human Rights Institutions – History, Principles, Roles and Responsibilities, published by the United Nations, 2010

CHAPTER 3

THE NATURE AND CONCEPT OF NHRIs

Defining NHRIs

The United Nations definition of NHRIs states that “National Human Rights Institutions are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State”.

A National human rights institution in compliance with the Paris Principles is one that can act independently from the government, including in coming to opinions and decisions on human rights matters within its jurisdiction.

NHRIs are not State institutions, not NGOs

NHRIs are unique and do not resemble any other parts of government: they are not under the direct authority of the executive, legislature or judiciary. They are at arm’s length from the Government yet funded exclusively or primarily by the Government. If the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise its ability to perform its role independently and effectively.

National human rights institutions are not only central elements of strong national human rights system: they also “bridge” civil society and Governments: they link the responsibilities of the State to the rights of citizens and they connect national laws to regional and international human rights systems. At the same time, NHRIs often find themselves criticizing the actions of the very Governments that created and fund them, which is not surprising since States are frequently the targets of human rights complaints.

NHRIs are fundamentally different from from non-governmental organizations (NGOs). They have greater authority, stronger investigative powers, more influence in domestic and international forums, greater resources and their recommendations have greater influence than the work of NGOs.

NHRIs are unique State Institutions

NHRIs are part of the State structure and are creatures of law: they depend on a statutory basis for their existence and their actions. The Paris Principles requires NHRIs to have a constitutional or legislative basis, or both. Executive instruments do not qualify.

Courts and NHRIs may have some overlapping responsibilities. Most NHRIs have jurisdiction to receive and investigate individual complaints of human rights violations and some NHRIs have power to make binding, enforceable determinations on those complaints, much as courts do. For the most part, however, courts and NHRIs have different but complementary roles and functions.

Understanding the complementarity of NHRIs and courts is important because comparisons between the two types of institutions are common. Some argue that, because courts have power to make binding, enforceable decision and NHRIs do not, there is no need for NHRIs. However, courts cannot do everything and they encounter significant structural limitations in their capacity to promote and protect human rights. Human rights needs good courts and good NHRIs, not one or the other.

The relationships between NHRIs and other State institutions should be based on mutual respect for the constitutional roles of each. NHRIs cannot direct parliaments or interfere in the parliamentary process. They can advise on existing and proposed legislation and make submissions to parliamentary inquiries but they cannot invalidate legislation, as this is a fundamental principle of democracy.

Similarly, NHRIs cannot overrule the courts. They can appear before the courts to argue cases. In the Indian context, the National Human Rights Commission as provided under section 12(b) of the Protection of Human Rights Act, 1993 can "intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court". They can also comment on judicial decisions where appropriate. However, they cannot overrule judicial decisions which is a fundamental principle of the rule of law.

Sources:

A manual on national human rights institutions, published by Asia Pacific Forum, May 2015

CHAPTER 4

HISTORY OF NATIONAL HUMAN RIGHTS INSTITUTIONS

The idea of establishing national human rights institutions was first conceived in the aftermath of World War II. In 1946, the Economic and Social Council considered the issue of national institutions, two years before the Universal Declaration of Human (UDHR) Rights became the “common standard of achievement for all peoples and all nations”. Member states were invited to consider establishing information groups or local human rights committees.

In 1978, the Commission on Human Rights organised a seminar which resulted in draft guidelines for the structure and functioning of institutions. The Commission on Human Rights and the General Assembly subsequently endorsed the guidelines. The General Assembly invited States to take appropriate steps to establish these institutions, where they did not already exist, and requested the Secretary-General to submit a detailed report on NHRIs.

In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights took place in Paris. A key outcome was the Principles relating to the status of national institutions (the **Paris Principles**, see annex I below). Today the Paris Principles are broadly accepted as the test of an institution’s legitimacy and credibility, and have become part of the human rights lexicon.

The 1993 World Conference on Human Rights in Vienna was a watershed for NHRIs. For the first time NHRIs compliant with the Paris Principles were formally recognized as important and constructive actors in the promotion and protection of human rights, and their establishment and strengthening formally encouraged. The 1993 World Conference also consolidated the Network of National Institutions, established in Paris in 1991, and laid the groundwork for its successor, the **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**.

Today there are well over 100 NHRIs operating around the world, 72 of which are accredited by the ICC in full compliance with the Paris Principles.

Sources:

National Human Rights Institutions – History, Principles, Roles and Responsibilities, published by the United Nations, 2010

CHAPTER 5

PARIS PRINCIPLES

The first significant event was a workshop of NHRIs, convened by the UN Commission on Human Rights in Paris, France from 7 to 9 October 1991. The workshop was attended by representatives of NHRIs and of States, the UN and its agencies, intergovernmental organisations and NGOs. For the first time the NHRIs were the key participants. The workshop was to review and update information on existing NHRIs, review patterns of cooperation of NHRIs with international institutions and explore ways of increasing the effectiveness of NHRIs.

The workshop did what it was told to do but, in addition, and far more importantly, it drafted the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles). The UN Commission on Human Rights endorsed the Paris Principles in 1992 and they were endorsed by the General Assembly in 1993. They are the standards against which NHRIs are assessed for recognition and participation in the international human rights system and are “the test of an institution’s legitimacy and credibility”.

The Paris Principles provide benchmarks against which proposed, new and existing NHRIs can be assessed or “accredited” by the International Coordinating Committee’s Sub-Committee on Accreditation.

The Paris Principles are not lengthy – only about 1200 words. They are quite general overall, though some parts are very specific. “They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism”.

Under the Paris Principles, NHRIs are required to:

- **Protect** human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- **Promote** human rights, through education, outreach, the media, publications, training and capacity-building, as well as advising and assisting Governments.

The Paris Principles sets out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be successful:

- **Mandate and competence:** a broad mandate based on universal human rights standards;
- **Autonomy from Government;**
- **Independence** guaranteed by statute or constitution;
- **Pluralism**, including through membership and/or effective cooperation;
- **Adequate resources;**
- **Adequate powers of investigation.**

Competence to ”promote and protect”

If human rights are to be fully secured, comprehensive action is needed *both* to promote and to protect them. Institutions whose mandates are limited to one or the other do not comply. This recognises that promotion is needed to change attitudes and behaviours.

As broad a mandate as possible

The requirement that an NHRI should have “as broad a mandate as possible” reflects the diversity of institutional models that exist. National human rights institutions that draw their mandate from international treaties and deal with all human rights are the most consistent with the indivisible, interdependent and universal nature of human rights and are considered the “best model”. Some NHRIs deal only with specific groups, women or children, for example. It is still possible to have such a more limited mandate and still comply with the Paris Principles.

Mandate set out in constitution or legislation

The Paris Principles provide that the NHRI mandate “shall be clearly set forth in a constitutional or legislative text”. According to the Sub-Committee on Accreditation, this is a requirement: executive instruments such as decrees and orders do not comply with the Paris Principles.

A constitutional or legislative base ensures greater permanence (since the mandate cannot be changed or withdrawn merely by executive order), greater independence (since the mandate is less likely to be changed or withdrawn if the NHRI does something the Government disagrees with) and greater transparency.

Where there is a constitutional base, it is advisable to have separate implementing legislation, since the level of detail required to establish and authorise the functioning

of an NHRI is not usually appropriate for a constitution. For example, it may be more appropriate to define the nature, purpose and operational powers of an institution in legislation than in a constitution. Additional powers may be provided more readily though a legislative process.

NHRIs that have only a legislative base still comply with the Paris Principles. However, legislative processes can be used to weaken an institution more readily than had it been protected constitutionally.

In some cases, the enabling legislation of a national human rights institution has quasi-constitutional status. This means simply that if laws or Government policies violate human rights, they are considered inoperative to the extent of the inconsistency with the human rights law. In countries that have such a provision (e.g. Canada), the institution has a powerful tool to seek adjudication before a human rights tribunal and to render the impugned law of no force or effect.

AUTONOMY

The issue of autonomy is intrinsically linked to independence and is perhaps the most important of the principles. It is however also arguably the most difficult and controversial. In the end, an NHRI is a state-sponsored body in the sense that its existence depends on an act of the State and on state funding. Therefore an NHRI is accountable to elected representatives or to the government in terms of reporting on its performance, at the same time as being autonomous and independent.

Accountability to the State is generally achieved through annual reports and other types of reports filed with Ministers or, preferably, directly to Parliament.

The dependence of NHRIs on government for funding may suggest that they cannot be truly autonomous. It is not unheard of for governments to restrict access to funding quietly – or to threaten to do so – when an NHRI is critical of the government's behaviour.

Despite these realities, it is possible for a state-funded entity to exercise autonomy: the courts for example are autonomous even though their funding comes from state coffers.

An institution's level of autonomy must be considered in light of a number of structural and procedural factors that should be in place to ensure a high degree of operational independence for an institution.

INDEPENDENCE

Independence guaranteed by constitution or legislation

The Paris Principles require merely a "sphere of competence", as set out in a constitutional provision or legislation. Obviously the breadth of the NHRI mandate is a function of both its competence and its jurisdiction, and these are interlinked concepts. It follows that the NHRI jurisdiction should be as broad as possible, following the standards set out for the mandate. The Paris Principles also state that an institution may examine any matter that is "within its competence".

The determination of jurisdiction and its extent is a matter of statutory interpretation. In practice, many enabling laws restrict the types of issues that NHRIs can address.

NHRIs generally have no authority over parliament, nor can they in any way affect the traditional immunities and privileges enjoyed by members of the legislative assembly. These immunities are meant to protect freedom of political discourse and are generally staunchly defended in democratic societies. NHRIs can comment on bills to ensure laws meet human rights standards; some may be able to initiate proceedings or to intervene before the courts to question the constitutionality of certain laws.

Courts and the judiciary are generally exempt from oversight by NHRIs. Courts, and the judges that serve on them, have an independence that is essential for ensuring full respect of the rule of law. Respect for the rule of law demands that administrative bodies should not sit in appeal or review of the courts. This does not, however, prevent monitoring and reporting court activities, and making independent recommendations meant to improve the application of human rights principles in the court setting or to remove undue delay in judicial proceedings.

Independence in operation and funding

Independence is both operational and financial. The truest test of independence is found in the actions of the institution: an institution should have the ability to conduct its day-to-day affairs independently from any outside influence. This means that the institution has the authority to draft its own rules of procedure that cannot be modified by an external authority. An institution's recommendations, reports or decisions should not be subject to an external authority's approval or require their prior review.

In terms of financial independence, the Paris Principles require that funding be sufficient to allow the NHRI to have its own premises and staff "in order to be independent of government". The constitutional provision or law that establishes an NHRI should give the institution a separate legal personality sufficient to allow it to make decisions and undertake responsibilities independently. Having the institution report directly to Parliament or to the Head of State can diminish perceived interference that might exist if the institution reported to a Ministry.

Independence through appointment and dismissal

The terms and conditions that govern appointment and dismissal of member should be transparent, i. e. set out in the constitutional provision or law (or both) that establish the NHRI.

The Paris Principles emphasise the importance of the selection process of members, but not the ideal or required process.

Criteria for appointment: The quality of members, leadership and staff are vital to the NHRIs' reputation and effectiveness. Transparent and merit-based procedures will likely result in independent and professional members who have the confidence of the communities they serve. Even if there is no requirement in the enabling law that members have human rights experience, this can be ensured by transparent and engaged process of appointment.

Government representatives on National Institutions: The ICC Sub-Committee noted that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making power or voting capacity.

Terms of Office: It should be noted that the term of office of members should be long enough to support the principles of independence and effectiveness. Terms that are too short – two years for example – may limit, or be seen as limiting, an NHRI's independence. Members may feel that their re-appointment is dependent on how acceptable they have been to the government of the day. Moreover, short terms of two years or less do not give members the time to both enunciate a vision and put it into effect and therefore may impact negatively on the NHRI's potential effectiveness.

Independence through privileges and immunities

The ICC Sub-committee has strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.

There are two types of immunity:

The first is specifically meant to avoid situations where members are sued for slander or similar causes of action as a result of doing their job as required by the law. This immunity is limited to acts performed under the enabling law and it is lifted for offences conducted outside the scope of that authority.

The second is general immunity: The purpose of this latter kind is to protect NHRI members and staff from malicious accusations, and from using such accusations as a pretext to oust a member or harass a staff person. As a general rule, NHRI legislation provides for the first type of immunity. The second is generally taken into consideration indirectly through rigour in dismissal procedures that require some form of Parliamentary or judicial approval prior to dismissing a member for illegal conduct.

CHECKLIST: BROAD MANDATE AND RESPONSIBILITIES

PRINCIPLE	REQUIREMENTS	YES	NO
BROAD MANDATE (Subject-matter jurisdiction)	Competence is as broad as possible (from most to least broad)		
	o Includes both CP and ESC Rights		
	o Includes most CP and ESC Rights		
	o Includes only CP Rights		
	o Includes a subset of CP Rights		
	o Is limited to a single rights issue (e.g., Race of Discrimination)		
BROAD MANDATE (Object-matter jurisdiction)	Competence is as broad as possible (from most to least broad)		
	o Over State and Private Sector (with public function), without restriction		
	o Over State, without restriction		
	o Partial restriction with regard to sensitive State Organs		
	o Total restrictions with regard to sensitive State Organs		
BROAD MANDATE (Time jurisdiction)	Competence is as broad as possible (from most to least broad)		
	o Can examine matter even if it predates institution		
	o No limits providing matter occurred since set up of institution		
	o Discretionary power to limit examination of “old” cases		
	o Limits on capacity to examine matters that are “old” set in law		
RESPONSIBILITY (to provide advice)	Can provide advice on own initiative		
	o On legislative or administrative provisions		
	o On any violation the institution takes up		
	o On the national situation generally or in specific		
	o On situations of violations and government reactions to it		

	o Can produce advice directly without referral		
	o Can publicise the advice without referral or prior approval		
RESPONSIBILITIES (other)	To encourage the harmonisation of national legislation and practices with international human rights instruments, as well as their effective implementation, including by:		
	o Participating in reviews of legislation and policy at time of ratification		
	o Regularly reviewing and providing formal comments on draft legislation and policy		
	o Regularly reviewing and formally commenting on the human rights situation generally or with respect to key issues		
	To encourage the ratification of human rights instruments		
	To contribute to country human rights reports (from most to least broad)		
	o Directly participates in drafting of complete report		
	o Drafts section(s) on work of institution and reviews report		
	o Drafts section(s) on work of institution		
	o Reviews report in whole or in part		
	To cooperate with international and regional human rights organs and other national institutions		
	To elaborate and take part in education and research programs in human rights, including by:		
	o Assisting in developing/reviewing curricula for schools		
	o Assisting in training of Prison Guards, Police, Army and Security Forces		
	To sensitise people on human rights through publicity, education, information and the use of press organs, including by:		
	o Publishing an Annual Report		
	o Regularly reporting on important cases through the media		
	o Developing basic brochures on the inst.		

CHECKLIST: AUTONOMY AND INDEPENDENCE

PRINCIPLE	REQUIREMENTS	YES	NO
AUTONOMY AND INDEPENDENCE (Mandate)	Mandate is set out in constitution or legislation		
	Mandate gives authority to promote and protect human rights		
AUTONOMY AND INDEPENDENCE (General jurisdiction)	Competence is defined in legislation		
AUTONOMY AND INDEPENDENCE (Appointment process)	Appointment is effected by official act		
	Appointment is for a specific duration, (but not too short – e.g. two years – as to potentially effect independence and effectiveness)		
	Appointment may be renewable, so long as pluralism is assured.		
	Appointment process, duration, renewability and criteria set out in legislation.		
	Appointment process supports pluralism and independence		
	o Nominations include input from civil society		
	o Selection process involves Parliament		
	o Criteria for selection includes demonstrated experience in human rights		
AUTONOMY AND INDEPENDENCE (Dismissal process)	Conditions for which a member may be dismissed are set out in legislation		
	Conditions relate to serious misconduct, inappropriate conduct, conflict of interest or incapacity only		
	Decision to dismiss require approval preferably by autonomous body such as a panel of high court judges, at a minimum 2/3rds vote of Parliament		
	If Government Officials have membership in the NHRI, they have advisory capacity only		
	Institution reports directly to Parliament		
	Members have immunity for official acts		
	State funding is sufficient to allow for independent staff and separate premises		

AUTONOMY AND INDEPENDENCE	State funding is sufficient to allow for core programming in protection and promotion		
	Funding not subject to financial control which might affect independence		
	Budget drawn up by the institution		
	Budget separate from any other Department's budget		
	Institution has authority to defend budget requests directly before Parliament		
	Budget are secure		
	o Not subject to arbitrary reduction in year for which it is approved		
	o Not subject to arbitrary reduction from one year to the next		
AUTONOMY AND INDEPENDENCE (In examination of issues)	The institution can consider any issue within its competence on its own initiative on the proposal of its member or any petitioner		
AUTONOMY AND INDEPENDENCE (Meetings)	The institution can let the public know of opinions or recommendations, including through the media, without higher approval		
	The institution meets regularly and in plenary		
	Special meetings can be convened as necessary		
	All members are officially convened for meetings		
AUTONOMY AND INDEPENDENCE (In organisational structure)	The institution can set up working groups (which may contain non-NHRI members)		
	The institution can set up regional or local offices		

CHECKLIST: PLURALISM

PRINCIPLE	REQUIREMENTS	YES	NO
	Member composition demonstrates pluralism		
	o Includes representatives of most social forces including NGOs, trade unions or professional associations		

PLURALISM (Membership and staff composition)	o Includes representatives of most vulnerable groups (ethnic, religious minorities, persons with disabilities, etc.)		
	o Single member, with representative consultative boards or committees, or similar structural mechanisms to facilitate and ensure pluralistic engagement		
	o Single member		
	Member composition demonstrates gender balance		
	Staff composition is broadly representative and gender balanced		
PLURALISM (Consultation cooperation)	The institution consults with other bodies responsible for promoting and protecting human rights		
	The institution consults with NGOs working in human rights or related fields		
	The institution carries out joint programming with NGOs working in human rights or related fields especially in awareness raising and education		

Sources:

A manual on national human rights institutions, published by Asia Pacific Forum, May 2015

CHAPTER 6

INTERNATIONAL CO-ORDINATING COMMITTEE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS (ICC)

Now known as the Global Alliance of NHRIs (GANHRI)

The International Coordinating Committee for National Human Rights Institutions (ICC) is the international association of national human rights institutions (NHRIs) from all parts of the globe.

Established in 1993, the ICC promotes and strengthens NHRIs to be in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights.

The ICC:

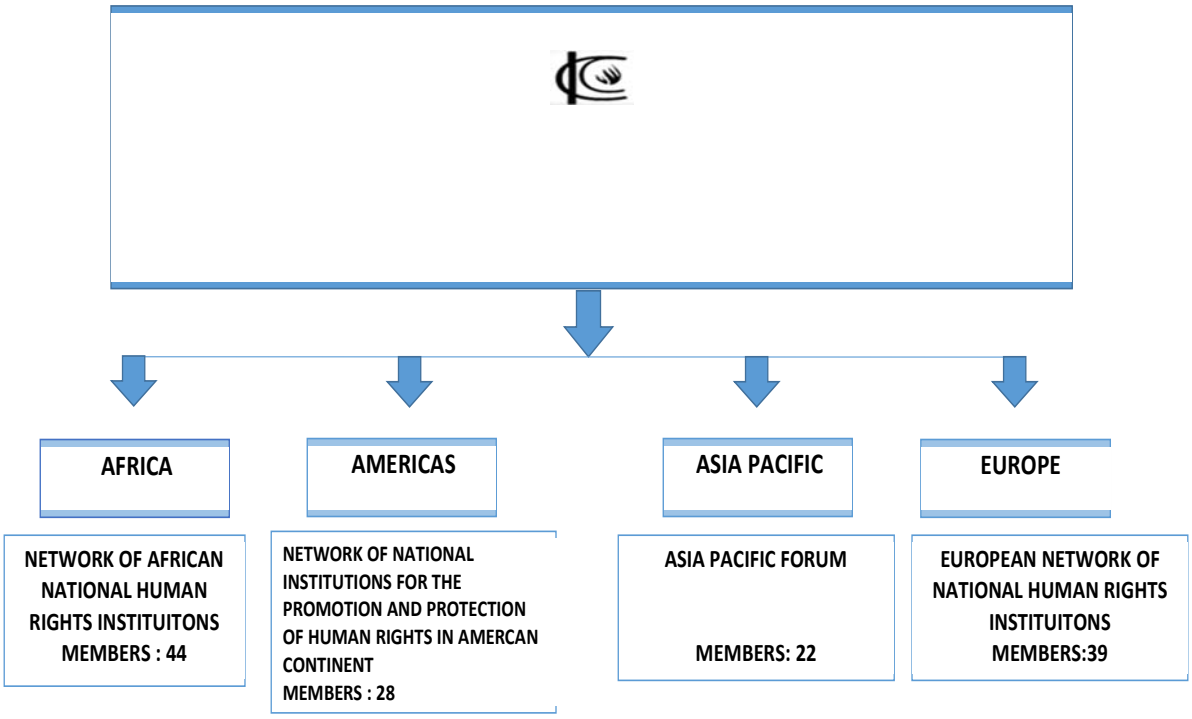
- Facilitates and supports NHRI engagement with the UN Human Rights Council and Treaty Bodies
- Encourages cooperation and information sharing among NHRIs, including through an annual meeting and biennial conference
- Undertakes accreditation of NHRIs in accordance with the Paris Principles
- Promotes the role of NHRIs within the United Nations and with States and other international agencies
- Offers capacity building in collaboration with the Office of the High Commissioner for Human Rights (OHCR)
- Assists NHRIs under threat
- If requested, can assist government to establish NHRIs

6.1 Global Alliance of NHRIs (GANHRI)

Established in 1993, and previously known as the ICC, The Global Alliance promotes the role of NHRIs worldwide, providing a forum for its members to interact and exchange, as well as facilitating their engagement with international organizations.

The Global Alliance supports and represents NHRIs on the global scene, bringing together the members of four regional networks:

- Network of African National Human Rights Institutions (NANHRI)
- Red de Instituciones Nacionales Para la Promocion y Protection de los Derechos Humanos en le Contenente Americano (Network for the Americas)
- Asia Pacific Forum of National Human Rights Institutions (APF)
- European Network of National Human Rights Institutions (ENNHRI)



6.2 ICC Sub-Committee on Accreditation (ICC-SCA)

In line with its key mission to support the establishment and strengthening of NHRIs, the ICC through its Sub Committee on Accreditation (SCA) reviews and accredits national human rights institutions in compliance with Paris Principles.

The ICC may also assist those NHRIs under threat and encourage NHRI statutory legislations' reforms and the provision of technical assistance, such as education and training opportunities, to strengthen the status and capacities of NHRIs.

The Office of the High Commissioner for Human Rights (OHCHR) is a permanent observer on the SCA and serves as the secretariat to the ICC and its SCA.

The ICC accreditation system has evolved and been strengthened over the past years, guided by the principles of transparency, rigor and independence. Measures that the ICC adopted improve to the process include: a system by which NHRIs are reviewed on a periodic basis of 5 years; an appeal process for NHRIs to ensure greater transparency and due process; a more rigorous review of each application; more focused recommendations; and wider distribution and greater knowledge of SCA recommendations by NHRIs and other stakeholders, so that they can follow up in-country and contribute to the accreditation process.

The SCA also develops General Observations on interpretative issues regarding the Paris Principles. They are intended to constitute guidance for NHRIs on accreditation and on the implementation of the Paris Principles. They are also useful for NHRIs to press for the institutional changes necessary to fully comply with the Paris Principles.

The General Assembly and the Human Rights Council, in their resolutions relating to national human rights institutions, encouraged NHRIs to seek accreditation status through the ICC and noted with satisfaction the strengthening of the accreditation process and the continued assistance of OHCHR in this regard.

Likewise, UN human rights mechanisms including the Universal Periodic Review, Treaty Bodies and the Special Procedures increasingly refer to the Paris Principles and the ICC accreditation process, to encourage the establishment and strengthening of fully Paris Principles-compliant NHRIs worldwide.

One of the key functions of the Bureau is to assess the applications for membership, review and determine the accreditation status of NHRIs, following a recommendation from the Sub-Committee on Accreditation (SCA). The SCA meets twice a year to make recommendations to the Bureau on NHRIs' accreditation status. The SCA comprises one 'A status' NHRI from each of the four GANHRI regional groupings.

6.2.1 ACCREDITATION STATUS

INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (ICC)

CHART OF THE STATUS OF NATIONAL INSTITUTIONS

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ACCREDITED BY THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Accreditation status as of 26 January 2016

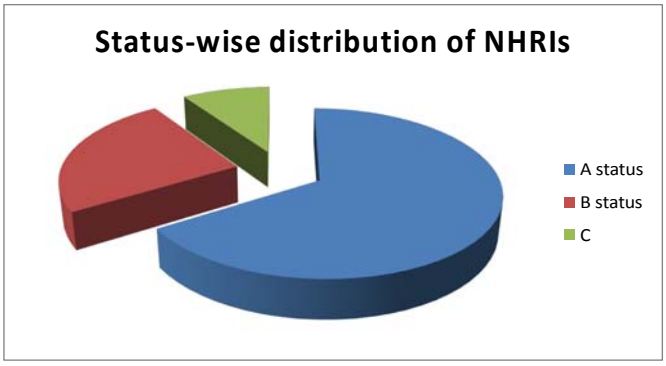
In accordance with the Paris Principles and the ICC Statute, the following classifications for accreditation are used by the ICC:

A Compliance with the Paris Principles;
B Not fully in compliance with the Paris Principles;
C Non-compliance with the Paris Principles.

*A(R): This category (accreditation with reserve) was granted where insufficient documentation was submitted to confer A status; is no longer in use by the ICC. It is maintained only for those NHRIs which were accredited with this status before April 2008.

Summary

Classification	Number of reviewed institutions
A - status	72
B - status	29
C - no status	10
Total	111



As of 26 January 2016
Note: Unless specified, previous years in the fourth column refer to the same status as the most recent one

6.2.2 ICC – SCA REPORTS

India: National Human Rights Commission of India (NHRCI) Recommendation: The SCA recommends that the NHRC be re-accredited **A status**.

The SCA notes:

1. Composition and Pluralism

The provisions in the Protection of Human Rights Act (Amendment) 2006 dealing with the composition of the Commission are unduly narrow and restrict the diversity and plurality of the board. The requirement for the appointment for the Chair to be a former Chief Justice of the Supreme Court severely restricts the potential pool of candidates. Similarly, the requirement that the majority of members are recruited from the senior judiciary further restricts diversity and plurality.

While the SCA understands that the justification for these restrictions is based on the NHRCIs quasi-judicial function, it notes that this is but one of 10 functions enumerated in section 12 of its enabling legislation. The SCA is of the view that determining the composition of the NHRCI's senior membership in this way limits the capacity of the NHRCI to fulfil effectively all its mandated activities.

The SCA notes the presence of "deemed members" from the National Commissions addressing caste, women's rights, minorities, and scheduled tribes on the full statutory commission. While this is a welcome initiative, there are concerns that they are not adequately involved in discussions on the focus, priorities and core business of the NHRC non-judicial functions.

The SCA notes that similar concerns were voiced by the Special Rapporteur on the situation of human rights defenders, who, at the conclusion of her official visit to India on January 21, 2011, made a statement regarding the restrictive nature of the appointments process to the board.

The SCA refers to Paris Principle B.1 and to General Observation 2.2 on "Selection and appointment of the governing body".

2. **The appointment of the Secretary General and the Director of Investigations from Central Government**

At the time of the NHRCI's re-accreditation in 2006, the SCA recommended that "*consideration be given to strengthening the consultation process regarding the*

selection and appointment of the Secretary General and staff under section 11(1) of the enabling law of the Commission in order to strengthen the independence of the staff appointed."

Section 11 of the founding legislation requires that the Central Government second to the NHRCI a civil servant with the rank of Secretary to take the role of Secretary General of the Commission, and a police officer of the rank of Director General of Police or above to take the post of Director (Investigations). Email correspondence dated 30 November 2006, and re-submitted on 23 May 2011, further indicates that the posts of Joint Secretary, Chief Coordinator (Training), Director, Deputy Inspector General Police and Senior Superintendent Police are also seconded from the government.

The SCA is not satisfied that the NHRCI has sufficiently addressed the recommendation it made in 2006. The SCA recommends that the NHRCI advocate to amend the PHRA 2006 to remove the requirement that the Secretary General and Director of Investigations be seconded from the Government, and to provide for an open, merit-based selection process. The SCA also remains concerned about the practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police. This practice has adverse implications for the actual and perceived independence of the NHRCI.

The SCA refers to its General Observation 2.4 on "Staffing by secondment".

3. The Relationship with Civil Society

The NHRCI highlights the existence of Core/Expert Groups as the means by which it complies with the Paris Principles requirement for pluralism and engagement with civil society and human rights defenders. The SCA notes however that information provided by civil society organisations, including those actually represented on the Core/Expert Groups, indicates that these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society defenders.

The SCA refers to Paris Principle C(g) and to General Observation 1.5" Cooperation with other human rights institutions"

The Sub-Committee will again consider these issues at its first session in 2013.

The SCA also notes the following issues. These issues will not be considered in session 1, 2013, but rather at the NHRCI's 2016 re-accreditation review.

4. Complaint handling function

The SCA notes that civil society groups allege that the NHRCI's complaint handling functions suffer from extended delays and that the NHRCI does not adequately address human rights violations that have occurred. Their concerns were reiterated by the Special Rapporteur on the situation of human rights defenders who, at the conclusion of her official visit to India in January 2011, stated: "(*A)ll the defenders that I met during the mission voiced their disappointment and mistrust in the current functioning of (the NHRC). They have submitted complaints related to human rights violations to the Commission, but reportedly their cases were either hardly taken up, or the investigation, often after a significant period of delay, concluded that no violations occurred. Their main concern lies in the fact that the investigations into their cases [were] conducted by the police, which in many cases are the perpetrators of the alleged violations*."

By contrast, the NHRCI has indicated that in recent years it has introduced changes to its complaint handling process to address the increasing number of complaints and delays in complaint handling.

On the information available, the SCA is unable to determine the veracity of the allegations raised above, however it is clear that there is at least a perception that there are significant delays, as well as ongoing concerns about the use of former police to investigate complaints, including those against the police. The SCA encourages the NHRCI to address these concerns.

5. Annual Report

The SCA notes that the most recent Annual Report available to it is for 2007-2008. An Annual Report cannot be made public until it is tabled in Parliament by the government, and this is not done until the government has prepared a response for follow up to the recommendations made by the NHRC in its Annual Report. The SCA acknowledges that it has been advised by the NHRC that Annual Reports for 2008-2009 and 2009-2010 have been submitted to the government, but as the government has not developed its responses to the recommendations in those reports, it has not yet tabled the reports in Parliament.

The SCA notes that Annual Reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI.

The SCA refers to General Observation 6.1 NHRI on “Annual Report”..

The SCA therefore encourages the NHRCI to seek such solutions as it considers would appropriately allow it to report on a more timely basis. The SCA refers to General Observation 1.6 “Recommendations by NHRIs”

6.2.3 Examples of two NHRIs downgraded that were an impetus for formation of AiNNI

i.) Malaysia: National Human Rights Commission of Malaysia (SUHAKAM) in 2008

Recommendation: The Sub-Committee informs the Commission of its intention to recommend to the ICC status B, and gives the Commission the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The Commission retains its “A” status during this period.

The Sub-Committee notes the following:

1) The independence of the Commission needs to be strengthened by the provision of clear and transparent appointment and dismissal process in the founding legal documents, more in line with the Paris Principles. The Sub-Committee refers to General Observation “Selection and appointment of the governing body”.

2) With regard to the appointment, the Sub-Committee notes the short term of office of the members of the commission (two years). It refers to General Observation “Guarantee of tenure for members of governing bodies”.

3) It further refers to General Observation “Ensuring pluralism” to highlight the importance of ensuring the representation of different segments of society and their involvement in suggesting or recommending candidates to the governing body of the Commission.

4) The Sub-Committee refers to General Observation “Interaction with the International Human Rights System”.

ii.) **Sri Lanka: Human Rights Commission (SLHRC) in 2009**

Recommendation: after reviewing the information provided by the SLHRC, the Sub-Committee recommends that its B Status be maintained. It encourages the SLHRC to submit a complete accreditation application for a future session.

The Sub-Committee ("SCA") notes the following:

It observes that new SLHRC members are due to be appointed in April 2009. While recognising that the Constitutional Council may not be constituted at this time to make recommendations on appointments as provided for in the SLHRC's legislation, the SCA nevertheless stresses the need for a transparent and consultative selection process in practice. The SCA strongly encourages the SLHRC to engage with the government to ensure the adoption of such a process. The SCA refers to General Observation 2.2 "Selection and Appointment of the Governing Body".

It expresses its concern that the SLHRC does not appear to have released regular and detailed reports or statements in relation to killings, abductions and disappearances stemming from the human rights crisis in Sri Lanka. While the SCA acknowledges the work of the SLHRC's regional offices in extremely difficult circumstances, it reemphasises the need for the SLHRC to carry out its core protection mandate to demonstrate its vigilance and independence during the ongoing state of emergency;

It commends the SLHRC on its concrete efforts to implement a regular consultation mechanism with civil society organisations in line with the ICC recommendation on the same. However, the SCA notes that consultation so far has been described as selective. The SCA emphasises that engagement with civil society must be broad based, to ensure the pluralistic representation of social forces as required by the Paris Principles;

4.3 ICC-SCA GENERAL OBSERVATIONS

1. Essential requirements of the Paris Principles

G.O. 1.1 - The establishment of National Human Rights Institutions

A National Human Rights Institution must be established in a constitutional or legislative text with sufficient detail to ensure the National Institution has a clear mandate and independence. In particular, it should specify the Institution's role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of a National Institution by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence

JUSTIFICATION

Pursuant to section A.2 of the Paris Principles: "*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.*"

The Sub-Committee recognizes that National Institutions are created in different socio-economic circumstances and political systems, which may in turn impact on the manner in which they are formally established. Nonetheless, the Paris Principles are clear on the requirement that National Institutions, regardless of the constitutional and legal system in which they operate, be formally entrenched in law and in this way be distinguished from an agency of state, a non-government organization, or an ad hoc body. Further, it is necessary that the constitutional or legislative text set out the National Institution's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the Institution's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability.

The Sub-Committee considers this provision to be of central importance in guaranteeing both the permanency and independence of the Institution.

The creation of a National Institution in other ways, such as by a decision of the Executive (through a decree, regulation, motion, or administrative action) and not by the legislature raises concerns regarding permanency, independence from government and the ability to exercise its mandate in an unfettered manner. This is because instruments of the Executive may be modified or cancelled at the whim of the Executive, and such decisions do not require legislative scrutiny. Changes to the mandate and functions of an independent agency of tate charged with the promotion and protection of human rights should be scrutinised by the legislature and not be at the fiat of the Executive. Any amendment or repeal of the constitutional or legislative text establishing the National Institution must require the consent of the legislature to ensure the Institution's guarantees of independence and powers do not risk being undermined in the future.

A) **<u>Excerpt from the Paris Principles</u>**

Competence and responsibilities –

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.

G.O. 1.2 - Human rights mandate

All National Human Rights Institutions should be legislatively mandated with specific functions to both promote and protect human rights.

The Sub-Committee understands 'promotion' to include those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling.

A National Institution's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights. Specifically, the mandate should:

- extend to the acts and omissions of both the public and private sectors;
- vest the National Institution with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs;
- provide the authority to address recommendations to *public authorities*, to analyse the human rights situation in the country, and to obtain statements or documents in order to assess situations raising human rights issues;
- authorize unannounced and free access to inspect and examine any public premises, documents, equipment and assets without prior written notice;
- authorize the full investigation into all alleged human rights violations, including the military, police and security officers.

JUSTIFICATION

According to sections A.1 and A.2 of the Paris Principles, a National Institution should possess, "*as broad a mandate as possible",* which is to be, *"set forth in a constitutional or legislative text",* and should include both, "the *promot[ion] and protect[ion] of human rights*". Section A.3 of the Paris Principles enumerates specific responsibilities the National Institution must, at a minimum, be vested with. These requirements identify two main issues which must necessarily be addressed in the establishment and operation of a National Institution:

(i) The mandate of the Institution must be established in national law. This is necessary to guarantee the independence and autonomy with which a National Institution undertakes its activities in the fulfilment of its public mandate;

(ii) The National Institution's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent.

Excerpt from the Paris Principles

A. 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 publicize 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 harmonization 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 cooperate 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 publicize 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.

G.O. 1.3 - Encouraging ratification or accession to international human rights instruments

Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of a National Human Rights Institution. The Principles further prescribe that National Institutions should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The Sub-Committee considers it important that these duties form an integral part of the enabling legislation of a National Institution. In fulfilling this function, the National Institution is encouraged to undertake activities which may include the following:

- monitoring developments in international human rights law;

- promoting state participation in advocacy for and the drafting of international human rights instruments;

- conducting assessments of domestic compliance with and reporting on international human rights obligations, for example, through annual and special reports and participation in the Universal Periodic Review process.

National Institutions should, in encouraging their governments to ratify international human rights instruments, advocate that this be done without reservations.

JUSTIFICATION

Sections A.3(b) and (c) of the Paris Principles require that National Institutions have the responsibility to "*promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation*". Additionally, the National Institution has the responsibility "*to encourage ratification of [these] instruments or accession to those instruments, and to ensure their implementation*".

In practice this requires National Institutions to review relevant national laws, regulations and policies to determine that they are compatible with the obligations arising from international human rights standards and propose the amendment or repeal of any legislation, regulations or policies that are inconsistent with the requirements of these standards. The Sub-Committee is of the view that the National Institution should be legislatively empowered to carry out these responsibilities.

The Sub-Committee notes the distinction between the state's own monitoring obligations as required by these instruments, and the distinct role played by the National Institution in monitoring the state's compliance and progress towards implementing the instruments it ratifies. Where the National Institution undertakes to carry out its own activities in promoting and protecting the rights contained therein, it shall do so in an entirely autonomous fashion. This does not preclude the National Institution from undertaking joint action with the state on certain activities, such as reviewing compliance of existing domestic legislation and regulations with international human rights instruments.

Excerpt from the Paris Principles

A) Competence and responsibilities –

3. A national institution shall, inter alia, have the following responsibilities:

....

(b) To promote and ensure the harmonization 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;

G.O. 1.4 - Interaction with the International Human Rights System

The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for National Human Rights Institutions in the promotion and protection of human rights domestically.

Depending on existing domestic priorities and resources, effective engagement with the international human rights system may include:

- submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees;

- making statements during debates before review bodies and the Human Rights Council;

- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and

- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

In considering their engagement with the international human rights system, National Institutions are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the ICC, their Regional NHRI Coordinating Committee and other National Institutions, as well as international and national NGOs and civil society organizations.

JUSTIFICATION

Sections A.3(d) and A.3(e) of the Paris Principles give National Institutions the responsibility to interact with the international human rights system in three specific ways. That is, National Institutions are required:

1. To contribute to country reports submitted to United Nations bodies and committees, and to regional institutions, in line with the States' treaty obligations;
2. To express an opinion on the subject, where necessary, with due respect for their independence;
3. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the National Institutions of other countries.

The Sub-Committee is of the view that National Institution engagement with international bodies is an important dimension of their work. Through their participation, National Institutions connect the national human rights enforcement system with international and regional human rights bodies. Domestically, National Institutions play a key role in raising awareness of international developments in human rights through reporting on the proceedings and

recommendations of treaty-monitoring bodies, special procedures mandate holders and the Universal Periodic Review. Their independent participation in human rights mechanisms through, for example, the production of parallel reports on the State's compliance with treaty obligations, also contributes to the work of international mechanisms in independently monitoring the extent to which states comply with their human rights obligations.

Moreover, National Institution participation in regional and international co-ordination bodies serves to reinforce their independence and effectiveness, overall. Through exchanges, National Institutions are provided with an opportunity to learn from shared experiences. This may lead to collectively strengthening each other's positions and contributing to resolving regional human rights issues.

National Institutions are encouraged to monitor the states' reporting obligations under the Universal Periodic Review and the international treaty bodies, including through dialogue with the relevant treaty body committees.

While it is appropriate for governments to consult with National Institutions in the preparation of a state's reports to human rights mechanisms, National Institutions should neither prepare the country report nor should they report on behalf of the government. National Institutions must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.

The Sub-Committee wishes to clarify that a National Institution's contribution to the reporting process through the submission of stakeholder or shadow reports under relevant international instruments should be done independently of the state, and may draw attention to problems, issues and challenges that may have been omitted or dealt with inadequately in the state report.

The Sub-Committee recognizes the primacy of a National Institution's domestic mandate, and that its capacity to engage with the international human rights system must depend on its assessment of domestic priorities and available resources. Within these limitations, National Institutions are encouraged to engage wherever possible and in accordance with their own strategic priorities. In so doing, the Sub-Committee highlights that National Institutions should:

> avail themselves of the assistance offered by the UN Office of the High Commissioner for Human Rights (OHCHR), which provides technical assistance and facilitates regional and global cooperation and exchanges among National Institutions; and
>
> engage with the ICC, their respective regional Sub-Committee representative and regional coordinating committees: African Network of NHRIs; Network of NHRIs of the Americas; Asia-Pacific Forum of NHRIs; and, European Group of NHRIs.

Excerpt from the Paris Principles

> ***A) Competence and responsibilities –***
>
> *3. A national institution shall, inter alia, have the following responsibilities:*
>
> *….*

(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 cooperate 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;

G.O. 1.5 - Cooperation with other human rights bodies

Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.

JUSTIFICATION

In prescribing the National Institution's methods of operation, sections C(f) and C(g) of the Paris Principles require Institutions to: "*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)*".

The Principles specifically recognize "*the fundamental role played by the non-governmental organizations in expanding the work of the national institutions*", and therefore encourage NHRIs to, "*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 specialized areas*".

To give full effect to these Paris Principle requirements, the Sub-Committee recommends that NHRIs should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights. Interaction may include the sharing of knowledge, such as research studies, best practices, training programmes, statistical information and data, and general information on its activities. For the following reasons the Sub-Committee considers such cooperation necessary to ensure the full realization of human rights nation-wide:

National human rights framework – The effectiveness of a NHRI in implementing its mandate to protect and promote human rights is largely dependent upon the quality of its working relationships with other national democratic institutions such as: government departments; judicial bodies; lawyers' organizations; non-governmental organizations; the media; and other civil society associations. Broad engagement with all stakeholders may provide a better understanding of: the breadth of human rights issues across the state; the impact of such issues based on social cultural, geographic

and other factors; gaps, as well as potential overlap and duplication in the setting of policy, priorities and implementation strategies. NHRIs working in isolation may be limited in their ability to provide adequate human rights protections to the public.

Unique position of NHRIs – The character and identity of a NHRI serves to distinguish it from both government bodies and civil society. As independent, pluralistic institutions, NHRIs can play an important role.

Improved accessibility **–** The NHRI's relations with civil society and NGOs is particularly important in improving its accessibility to sections of the populations who are geographically, politically or socially remote. These organizations are likely to have closer relations with vulnerable groups as they often have a more extensive network than NHRIs and are almost always likely to be closer to the ground. In this way, NHRIs may utilize civil society to provide an outreach mechanism to engage with vulnerable groups.

Expertise of other human rights bodies – As a result of their specialized mandates, other human rights bodies and civil society groups may provide a NHRI with valuable advice on the major human rights issues facing vulnerable groups across the nation. As such, NHRIs are encouraged to regularly consult with other human rights bodies and civil society at all stages of programme planning and implementation, as well as policy making, to ensure the NHRI's activities reflect public concerns and priorities. Developing effective relationships with the mass media, as a section of civil society, is a particularly important tool for human rights education.

Formalized relationships – The importance of formalizing clear and workable relationships with other human rights bodies and civil society, such as through public memoranda of understanding, serves as a reflection of the importance of ensuring regular, constructive working relationships and is key to increasing the transparency of the NHRI's work with these bodies.

Excerpt from the Paris Principles

C) Methods of operation –

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

(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 specialized areas.

G.O. 1.6 - Recommendations by National Human Rights Institutions

Annual, special and thematic reports of National Human Rights Institutions serve to highlight key national human rights concerns and provide a means by which these bodies can make recommendations to, and monitor respect for, human rights by public authorities.

National Institutions, as part of their mandate to promote and protect human rights should undertake follow up action on recommendations contained in these reports and should publicize detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.

In fulfilling its protection mandate, a National Institution must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and advocate for the implementation on its recommendations and findings, and the protection of those whose rights were found to have been violated.

Public authorities are encouraged to respond to recommendations from National Institutions in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the National Institution's recommendations.

JUSTIFICATION

The Paris Principles are not only explicit in their direction that National Institutions have the responsibility to make recommendations to public authorities on improving the national human rights situation, but also that National Institutions ensure their recommendations are widely publicized. Specifically, section A.3(a) of the Paris Principles requires National Institutions to "*submit to the Government, Parliament and any other competent body, […] recommendations […] on any matters concerning the promotion and protection of human rights*", and enumerates the three areas that these recommendations shall relate to:

1. The creation or amendment of any legislative or administrative provisions, including bills and proposals;
2. Any situation of violation of human rights within a state;
3. Human rights in general and on more specific matters.

In prescribing its methods of operation, section C(c) of the Paris Principles requires National Institutions to, *"[…] publicize its opinions and recommendations", "[…] directly or through any press organ […]*".

Finally, section D(d) of the Principles, requires National Institutions with quasi-judicial competence, that is, with the ability to hear and consider complaints, to: "*mak[e] 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.*"

The Sub-Committee is of the view that the three-fold reinforcement of the obligation to make and publicize recommendations is indicative that the drafters of the Paris Principles

considered that NHRIs would be more effective when provided with the authority to monitor the extent to which public authorities follow their advice and recommendations. To give full effect to this principle, the Sub-Committee encourages governments to respond to advice and requests from National Institutions, and to indicate, within a reasonable time, how they have complied with their recommendations.

National Institutions should monitor the implementation of recommendations from annual and thematic reports, inquiries and other complaint handling processes.

Excerpt from the Paris Principles

A) Competence and responsibilities –

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 publicize 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;

C) Methods of operation –

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

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

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

A national institution may be authorized 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

(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.

G.O. 1.7 - Ensuring pluralism of the National Human Rights Institution

A diverse decision-making and staff body facilitates the National Human Rights Institution's appreciation of, and capacity to engage on, all human rights issues affecting the society in which it operates, and promotes the accessibility of the National Institutions for all citizens. Pluralism refers to broader representation of national society. Consideration must be given to ensuring pluralism in the context of gender, ethnicity or minority status. This includes, for example, ensuring the equitable participation of women in the National Institution.

The Sub-Committee notes there are diverse models for ensuring the requirement of pluralism in the composition of the National Institutions as set out in the Paris Principles. For example:

a) Members of the decision-making body represent different segments of society as referred to in the Paris Principles. Criteria for membership of the decision-making body should be legislatively established, be made publicly available and subject to consultation with all stakeholders, including civil society. Criteria that may unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership should be avoided;

b) Pluralism through the appointment procedures of the governing body of the National Institutions, for example, where diverse societal groups suggest or recommend candidates;

c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or

d) Pluralism through staff that are representative of the diverse segments of society. This is particularly relevant for single member Institutions, such as an Ombudsperson.

JUSTIFICATION

Ensuring the pluralistic composition of the National Institution is a prime requirement of the Paris Principles as a guarantee of institutional independence. Section B.1 states: "*The composition of the national institution and the appointment of its members […] 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*." The same provision highlights that pluralism is intended to promote effective cooperation with an indicative list of stakeholders representing:

(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

The Sub-Committee considers the pluralistic composition of the National Institution to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility.

Where the members and staff of National Institutions are representative of a society's social, ethnic, religious and geographic diversity, the public are more likely to have confidence that the National Institution will understand and be more responsive to its specific needs. Additionally, the meaningful participation of women at all levels is important to ensure an understanding of, and access for, a significant proportion of the population. Likewise, in multilingual societies, the Institution's capacity to communicate in all languages is key to its accessibility.

The diversity of the membership and staff of a National Institution, when understood in this way, is an important element in ensuring the effectiveness of a National Institution and its real and perceived independence and accessibility.

Ensuring the integrity and quality of members is a key factor in the effectiveness of the Institution. For this reason, selection criteria that ensure the appointment of qualified and independent decision-making members should be legislatively established and made publicly available prior to appointment.

The Sub-Committee recommends that the adoption of such criteria be subject to consultation with all stakeholders, including civil society, to ensure the criteria chosen is appropriate and does not exclude specific individuals or groups.

The Sub-Committee cautions that criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the National Institution's membership and staff body, such

as the requirement to belong to a specific profession, may limit the capacity of the National Institution to fulfil effectively all its mandated activities. If staff and members have a diverse range of professional backgrounds, this will help to ensure that issues are not narrowly framed.

Excerpt from the Paris Principles

B) 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 cooperation 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).

G.O. 1.8 - Selection and appointment of the decision-making body of National Human Rights Institutions

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the National Human Rights Institution's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that promotes merit-based selection and ensures pluralism is necessary to ensure the independence of, and public confidence in, the senior leadership of a National Institution. Such a process should include requirements to:

a) Publicize vacancies broadly;

b) Maximize the number of potential candidates from a wide range of societal groups;

c) Promote broad consultation and/or participation in the application, screening, selection and appointment process

d) Assess applicants on the basis of pre-determined, objective and publicly available criteria;

e) Select members to serve in their own individual capacity rather than on behalf of the organization they represent.

JUSTIFICATION

Section B.1 of the Paris Principles specifies that: *"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."*

Section B.1 further enumerates which groups may be included in this process. These are: "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)."

The Sub-Committee interprets the reference to an election or other like process, together with the reference to broad participation, as requiring a clear, transparent, merit based and participatory selection and appointment process.

Such a process is fundamental in ensuring the independence and effectiveness of, and public confidence in, the National Institution.

For this reason, it is important that the selection process be characterized by openness and transparency. That is, it should be under the control of an independent and credible body and involve open and fair consultation with NGOs and civil society. Not only is this a means of developing a good relationship with these bodies, but consideration of the expertise and experience of NGOs and civil society is likely to result in a National Institution with greater public legitimacy.

Promoting broad consultation and participation in the application, screening, selection and appointment process promotes transparency, pluralism and public confidence in the process, the successful candidates and the National Institution.

The assessment of applicants on the basis of pre-determined, objective and publicly available criteria promotes the appointment of merit based candidates, limits the capacity for undue interference in the selection process and serves to ensure the appropriate management and effectiveness of the National Institution.

Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent is likely to result in an independent and professional membership

body. It is recommended that the selection and appointment process, bearing the hallmarks described above, be formalized in relevant legislation, regulations or binding administrative guidelines, as appropriate.

Excerpt from the Paris Principles

B) 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 cooperation 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).

G.O. 1.9 - Government representatives on National Human Rights Institutions

The Sub-Committee notes that the Paris Principles require a National Human Rights Institution to be independent from government in its structure, composition and method of operation.

With regard to the composition of a National Institution, this requires that members of a ruling political party or coalition, and representatives of government agencies should not, in general, be represented on the governing body of the National Institution.

Should they do so, a National Institution's legislation should clearly indicate that such persons participate only in an advisory capacity. In order to further promote independence in decision making, and avoid conflicts of interest, a National Institution's rules of procedure should establish practices to ensure that such persons are unable to inappropriately influence decision-making by, for example, excluding them from attending parts of meetings where final deliberations and strategic decisions are made.

The participation of members of a ruling political party or coalition, or representatives of government agencies, should be restricted to those whose roles and functions are of direct relevance to the mandate and functions of the National Institution, and whose advice and cooperation may assist the National Institution in fulfilling its mandate. In addition, the number of such representatives should be limited and should not exceed the number of other members of the National Institution's governing body.

JUSTIFICATION

Paris Principle C(a) states that a National Institution must be able to "freely consider any question falling within its competence".

Paris Principle B.2 states that the requirement of an appropriate infrastructure is intended to ensure the National Institution is "independent of the government".

Paris Principle B.3 requires that members of a National Institution are appointed officially, thereby promoting a stable mandate "without which there can be no real independence".

Paris Principles B.1 specifically provides that representatives of government departments can participate "only in an advisory capacity".

By clearly promoting independence in the composition, structure and method of operation of a National Institution, these provisions seek to avoid any possible interference in the National Institution's assessment of the human rights situation in the State and the subsequent determination of its strategic priorities. It follows therefore that members of parliament, and especially those who are members of the ruling political party or coalition, or representatives of government agencies, should not in general be represented on, nor should they participate in decision making, since they hold positions that may at times conflict with an independent National Institution.

The SCA acknowledges the value in developing and maintaining effective links with relevant ministers and government agencies, particularly where cooperation will assist in promoting the National Institution's mandate. However, it stresses that this must be done in a way that ensures both real and perceived independence of decision making and operation, and avoids a conflict of interest. The creation of Advisory Committees is an example of a mechanism where such relationships can be maintained without impacting on the National Institution's independence.

The SCA notes that Paris Principle B.1 specifically states that representatives of government agencies have only an advisory role, while no such restriction is explicitly stated in relation to representatives of parliament. It notes, however, that in providing an indicative list of relevant stakeholders, Paris Principle B.1 envisages either the "presence" or the ability to establish "effective cooperation" with such representatives. Given the explicit requirements for independence stated throughout the Paris Principles, examples of which are referenced above, the Sub-Committee is of the view that a similar restriction must apply to members of parliament, and particularly those who are members of the ruling political party or coalition.

Excerpt from the Paris Principles

> ***B) 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 cooperation to be established with, or through the presence of, representatives of:

(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.

(C) 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;

G.O. 1.10 - Adequate funding of National Human Rights Institutions

To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the Institution's operations and the fulfilment of its mandate.

Provision of adequate funding by the State should, as a minimum, include the following:

a) the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;

b) salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;

c) remuneration of members of its decision-making body (where appropriate);

d) the establishment of well-functioning communications systems including telephone and internet;

e) the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions.

Funding from external sources, such as from international development partners, should not compose the core funding of the National Institution, as this is the responsibility of the State. However, the Sub-Committee recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases National Institutions should not be required to obtain approval from the state for external sources of funding, which may otherwise detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the National Institution.

Government funding should be allocated to a separate budget line item applicable only to the National Institution. Such funding should be regularly released and in a manner that does not impact adversely on its functions, day-to-day management and retention of staff.

While a National Institution should have complete autonomy over the allocation of its budget, it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.

JUSTIFICATION

Section B.2 of the Paris Principles addresses the requirement for National Institutions to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: *"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."*

While the provision of "adequate funding" is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints. As such, the Sub-Committee believes that it is nevertheless possible to identify certain aspects of this Paris Principles requirement that must be taken into account in any particular context. They include the following:

a) *Accessibility to the public* – This is particularly important for the most vulnerable sections of society, who would otherwise have particular difficulty bringing attention to any violation of their human rights.

- As many vulnerable persons may be geographically remote from the major cities where most National Institutions are located, establishing a regional presence increases the accessibility of National Institutions, giving them as wide a geographical reach as possible, and enabling them to have full national coverage for the receipt of complaints. It is essential that where regional offices exist, they be adequately resourced to ensure their effective functioning.
- Another means of increasing the accessibility of National Institutions to vulnerable groups is to ensure that their premises are neither located in wealthy areas nor in or nearby government buildings. This is particularly important where government buildings are protected by military or security forces. Where National Institution's offices are too close to government offices, this may not only compromise the perceived independence of the Institution but also risk deterring complainants.

b) *National Institution staff* – Salaries and benefits awarded to National Institution staff should be comparable to those of civil servants performing similar tasks in other independent Institutions of the State.

c) *National Institution members* – Where appropriate, members of the National Institution's decision-making body should receive remuneration equivalent to those individuals with similar responsibilities in other independent Institutions of the State.

d) *Communications infrastructure* – The establishment of communications systems, including telephone and internet, is essential for the public to access the National Institutions' office. A well-functioning communications structure, including simplified complaints-handling procedures which may include the receipt of complaints orally in minority languages, increases the reach of vulnerable groups to the Institution's services.

e) *Allocation for activities* – National Institutions should receive adequate public funding to perform their mandated activities. An insufficient budget can render an Institution ineffective or limit it from reaching its full effectiveness. Where the National Institution has been designated with additional responsibilities by the State, such as the role of National Preventive or Monitoring Mechanism pursuant to an international human rights instrument, additional financial resources should be provided to enable it to discharge these functions.

Donor funding

As it is the responsibility of the State to ensure the National Institution's core budget, the Sub-Committee takes the view that funding from external sources, such as from international development partners, should not constitute the Institution's core funding. However, it recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support a National Institution in order to ensure it receives adequate funding until such time when the State will be able to do so. This is particularly applicable in post-conflict States. In these circumstances, National Institutions should not be required to obtain approval for external sources of funding, as this requirement may pose a threat to its independence.

Financial systems and accountability

Financial systems should be such that the National Institution has complete financial autonomy as a guarantee of its overall freedom to determine its priorities and activities. National law should indicate from where the budget of the National Institution is allocated, ensuring the appropriate timing of release of funding, in particular to ensure an appropriate level of skilled staff. This should be a separate budget line over which it has absolute management and control. The National Institution has the obligation to ensure the coordinated, transparent and accountable management of its funding through regular public financial reporting and a regular annual independent audit.

Excerpt from the Paris Principles

> ***B) Composition and guarantees of independence and pluralism –***
>
> *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.*

G.O. 1.11 - Annual reports of National Human Rights Institutions

Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government.

The importance for a National Institution to prepare, publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters, is stressed. This report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

The SCA considers it important that the enabling laws of a National Institution establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the National Institution has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them.

Where a National Institution has made an application for accreditation or, re-accreditation, it will be required to submit a current annual report, that is, one from the preceding year's reporting period. Where the published report is not in one of the ICC languages, a certified translation of the key elements of the report must be submitted in its application for accreditation. The Sub-Committee finds it difficult to assess the effectiveness of a National Institution and its compliance with the Paris Principles in the absence of a current annual report.

JUSTIFICATION

Section A.3(a) of the Paris Principles requires National Institutions to be responsible for, "*submit[ting] to the Government, Parliament and any other competent body, […] reports on any matters concerning the promotion and protection of human rights."* It states that institutions "*may decide to publicize them*", and enumerates the four areas that these reports shall relate to:

(i) Recommendations on the creation or amendment of any legislative or administrative provisions, including bills and proposals;

(ii) Any situation of violation of human rights;

(iii) Human rights in general and on more specific matters; and

(iv) Proposals to put an end to human rights violations, and its opinion on the proposals and reaction of government to these situations.

With a view to assisting National Institutions to fulfil their obligations pursuant to this provision of the Paris Principles, the Sub-committee provides the following guidance on its requirements, as based on international proven practices:

Purpose of reports – Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of a National Institution. The reports also provide a means by which a National Institution can make recommendations to, and monitor respect for, human rights by government;

Content of reports – The annual report of a National Institution is a vital public document that not only provides a regular audit of the government's performance on human rights but also an account of what the National Institution has done. As such, this report should include an account of the activities undertaken by the National Institution to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern, and the government's action on its recommendations;

Publication of reports – It is important for a National Institution to publicize and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. It is vitally important that all the findings and recommendations of the Institution be publicly available as this increases the transparency and public accountability of the Institution. In publishing and widely disseminating its annual report, the National Institution will play an extremely important role in educating the public on the situation of human rights violations in the country;

Submission of reports – The National Institution should be given the legislative authority to table its reports directly to the legislature, rather than through the Executive. The legislature should be required to discuss and consider the reports of

the National Institution, so as to ensure that its recommendations are properly considered by relevant public authorities.

The Sub-Committee finds it difficult to review the accreditation status of a National Institution in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo an accreditation review by the Sub-Committee.

Excerpt from the Paris Principles

A) Competence and responsibilities –

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 publicize 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;

2. Practices that directly promote Paris Principles compliance

G.O. 2.1 - Guarantee of tenure for members of the National Human Rights Institution decision-making body

The SCA is of the view that in order to address the Paris Principles requirements for a stable mandate, without which there can be no independence, the enabling legislation of a National Human Rights Institution must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies.

The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law.

The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate.

Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction.

Dismissal should not be allowed based solely on the discretion of appointing authorities.

Such requirements ensure the security of tenure of the members of the governing body and are essential to ensure the independence of, and public confidence in, the senior leadership of a National Institution.

JUSTIFICATION

In prescribing the conditions to ensure a stable mandate for members of the National Institution decision-making body, section B.3 of the Paris Principles is silent on the scenario of their dismissal. Nonetheless, it is the view of the Sub-Committee that ensuring the security of tenure of National Institution members is consistent with the Paris Principles requirements regarding the composition of the National Institution and its guarantees of independence and pluralism.

Appropriate procedural protections and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as ensuring the independence of the National Institution and its membership. That is, National Institution members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. In this light, the Sub-Committee highlights the following:

Members may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law.

The dismissal of members by the Executive, such as before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective functional immunity being available to contest the dismissal is incompatible with the independence of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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.

G.O. 2.2 - Full-time members of a National Human Rights Institution

The enabling law of the National Human Rights Institution should provide that members of its decision-making body include full-time remunerated members. This would assist in ensuring:

a) the independence of the NHRI free from actual or perceived conflict of interests;

b) a stable tenure for the members;

c) regular and appropriate direction for staff; and,

d) the ongoing and effective fulfilment of the NHRI's functions.

An appropriate minimum term of appointment is crucial in promoting the independence of the membership of the NHRI, and to ensure the continuity of its programs and services. An appointment period of three years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the Sub-Committee encourages that a term of between three and seven years with the option to renew once be provided for in the NHRI's enabling law.

A further requirement in ensuring the stability of a member's mandate (and the independence of a NHRI and its members) is the requirement that the terms and conditions of a member's service cannot be modified to their detriment during their period of appointment. Additionally, such terms and conditions should be equivalent to those with similar responsibilities in other independent State agencies.

JUSTIFICATION

Section B.3 of the Paris Principles sets out the requirements to ensure a stable mandate for the members of the National Institution. It specifies that, "*their appointment shall be effected by an official act which shall establish the specific duration of the mandate*." It further clarifies that, "*this mandate may be renewable […]*".

Although the provision is silent on the duration of the appointment, the Sub-Committee is of the view that specifying an appropriate minimum term in the National Institution's enabling law is crucial in both promoting the independence of the membership and of the National Institution, and to ensure the continuity of its programs and services. Consistent with international good practices, it therefore recommends an appointment period that extends between three and seven years with the option to renew once.

In prescribing the conditions to ensure a stable mandate for members of the National Institution's decision-making body, section B.3 of the Paris Principles does not address the issue of whether members are required to be full-time or whether they are to be remunerated. The Sub-Committee is of the view that the appointment of members on a full-time basis promotes stability, an appropriate degree of management and direction, and limits the risk of members being exposed to conflicts of interest upon taking office. Furthermore, it clearly establishes the terms and conditions of service, including proper remuneration of members, and serves to reinforce their independence and integrity.

Excerpt from the Paris Principles

> ***B) Composition and guarantees of independence and pluralism –***
>
> *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.*

G.O. 2.3 - Guarantee of functional immunity

It is strongly recommended that provisions be included in national law to protect legal liability of members of the National Human Rights Institution's decision-making body for the actions and decisions that are undertaken in good faith in their official capacity.

Such functional immunity reinforces the independence of a National Institution, promotes the security of tenure of its decision-making body, and its ability to engage in critical analysis and commentary on human rights issues.

It is acknowledged that no office holder should be beyond the reach of the law and thus, in certain exceptional circumstances it may be necessary to lift immunity. However, the decision to do so should not be exercised by an individual, but rather by an appropriately constituted body such as the superior court or by a special majority of parliament. It is recommended that national law provides for well-defined circumstances in which the functional immunity of the decision-making body may be lifted in accordance with fair and transparent procedures.

JUSTIFICATION

The Paris Principles do not specifically refer to the term "functional immunity". It is now widely accepted that the entrenchment of this provision in law is necessary for the reason that this protection, being one that is similar to that which is granted to judges under most legal systems, is an essential hallmark of institutional independence.

Providing members of the National Institution's decision-making body with functional immunity, that is, specifically for actions and decisions undertaken in good faith in their official capacity, protects them from individual legal proceedings from anyone who objects to a decision of the National Institution.

It is understood that functional immunity is not absolute and should not cover circumstances where National Institution members abuse their official function or act in bad faith. In well-defined circumstances, the democratically-elected authority, such as the legislature, to which the National Institution is accountable, should have the power to lift immunity in accordance with a fair and transparent process.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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.

C) 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;

G.O. 2.4 - Recruitment and retention of National Human Rights Institution staff

National Human Rights Institutions should be legislatively empowered to determine the staffing structure, the skills required to fulfil the Institution's mandate, set other appropriate criteria (such as diversity), and select their staff in accordance with national law.

Staff should be recruited according to an open, transparent and merit based selection process that ensures pluralism and a staff composition that possesses the skills required to fulfil the Institution's mandate. Such a process promotes the independence and effectiveness of, and public confidence in the National Institution.

National Institution staff should not be seconded or re-deployed from branches of the public service.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff […] in order to be independent of the Government*". The Sub-committee interprets this provision to mean that:

(i) National Institutions should possess the legislative authority to hire their own staff according to written recruitment guidelines based on merit and conducted through a transparent selection process using published criteria.

(ii) National Institutions should be resourced in such a manner as to permit the employment and retention of staff with the requisite qualifications and experience to

fulfil the Institution's mandate. Additionally, such resources should allow for salary levels, terms and conditions of employment applicable to the staff of the National Institution to be equivalent to those of similarly independent State agencies and members of the public service undertaking similar work and with similar qualifications and responsibilities.

In this way, the Sub-Committee recognises that fulfilling the requirements of Paris Principle B.2 is fundamental to ensuring the independence and efficient functioning of a National Institution. Where the National Institution lacks either adequate resources or the legislative ability to recruit its own staff, particularly at the senior-level, and these are instead appointed by the Executive, this undermines the principle of institutional independence.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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.

G.O. 2.5 - Staffing of the National Human Rights Institution by secondment

A fundamental requirement of the Paris Principles is that a National Human Rights Institution is, and is perceived to be, able to operate independent of government interference. Where a National Institution's staff members are seconded from the public service, and in particular where this includes those at the highest level in the National Institution, it brings into question the capacity of the National Institution to function independently.

A National Institution must have the authority to determine its staffing profile and to recruit its own staff.

In accordance with the relevant Paris Principle, the Sub-Committee is of the view that:

a) Senior level posts should not be filled with secondees;

b) The number of secondees should not exceed 25% except in exceptional or relevant circumstances.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, a National Institution is required to be provided with adequate funding, the purpose of which is "*to enable it to have its own staff […] in order to be independent of the Government*".

Restrictions on the capacity of a National Institution to hire its own staff, or requirements to hire or accept seconded personnel from government agencies, except in exceptional or relevant circumstances, impacts on the real and perceived independence of an Institution and may impede its ability to conduct its own affairs in an autonomous manner, free from government interference. This situation is particularly compounded where senior staff members, who set the direction and foster the culture of the National Institution, are seconded.

The Sub-Committee highlights that this requirement should not be seen to limit the capacity of a National Institution to hire a public servant with the requisite skills and experience, and indeed acknowledges that there may be certain positions within a National Institution where such skills are particularly relevant. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the National Institution.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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.

G.O. 2.6 - National Human Rights Institutions during the situation of a coup d'état or a state of emergency

In the situation of a coup d'état or a state of emergency, it is expected that a National Human Rights Institution will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.

National Institutions are expected to promote and ensure respect for human rights, democratic principles and the strengthening of the rule of law in all circumstances and without exception. In situations of conflict or a state of emergency, this may include monitoring, documenting, issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

JUSTIFICATION

The Paris Principles do not explicitly give guidance on the expected conduct of a National Institution when its country is experiencing a state of emergency or coup d'état. However, Paris Principle A.1 clearly specifies that National Institutions shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of a National Institution including:

reporting on human rights violations (Paris Principle A.3(a)(ii) –(iii));

monitoring and reporting on government action or inaction (Paris Principle A.3(a)(iv)) ; and

publicizing its views on any matters concerning the promotion and protection of human rights (Paris Principle A.3(a)). This responsibility is further elaborated in Paris Principle C(c), which provides the capacity to address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.

While the impact of emergency circumstances varies from one case to another, the Sub-Committee is aware that they almost always have a dramatic impact on the rights recognized in international human rights standards, particularly on vulnerable groups. Disruptions to peace and security in no way nullify or diminish the relevant obligations of the National Institution. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. In such circumstances, the protection of human rights becomes all the more important, and National Institutions must ensure that individuals have accessible and effective remedies to address human rights violations.

National Institutions, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly and effectively. As such, National Institutions will be expected to promote and ensure respect for human rights, democratic principles and strengthening the rule of law in all circumstances without exception. This may include issuing public statements and releasing regular and detailed reports through the media in a timely manner to address urgent human rights violations.

In order to fulfil its obligations, it is necessary that the National Institution continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The Sub-Committee will scrutinize the extent to which the National Institution concerned has taken steps to the maximum of its available resources to provide the greatest possible protection for the human rights of each individual within its jurisdiction.

Excerpt from the Paris Principles

A. Competence and responsibilities –

1. A national institution shall be vested with competence to promote and protect human rights.

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 publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

…

(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;

C. Methods of operation –

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

…

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

G.O. 2.7 - Limitation of power of National Human Rights Institutions due to national security

The scope of the mandate of a National Human Rights Institution may be restricted for national security reasons. While this limitation is not inherently contrary to the Paris Principles, it should not be unreasonably or arbitrarily applied and should only be exercised under due process.

JUSTIFICATION

According to section A.2 of the Paris Principles, a National Institution should possess, "*as broad a mandate as possible*". To give full effect to this Principle, the Sub-Committee recommends that this provision be understood in the widest sense. That is, the mandate of the National Institution should extend to protect the public from acts and omissions of public authorities, including officers and personnel of the military, police and special security forces. Where such public authorities, who may potentially have a great impact on human rights, are excluded from the jurisdiction of the National Institution, this may serve to undermine the credibility of the Institution.

National Institutions, in their analysis of the human rights situation in the country, should be authorized to fully investigate all alleged human rights violations, regardless of which State officials are responsible. This should include the ability to have unannounced and unimpeded access to inspect and examine any public premises, documents, equipment and assets without prior written notice. Although the authority of National Institutions to undertake such an investigation may be restricted for national security reasons, such restriction should not be unreasonably or arbitrarily applied and should be exercised under due process.

Excerpt from the Paris Principles

A) Competence and responsibilities –

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.*

G.O. 2.8 - Administrative regulation of National Human Rights Institutions

The classification of a National Human Rights Institution as an independent State agency has important implications for the regulation of certain practices, including reporting, recruitment, funding and accounting.

Where a State has developed uniform rules or regulations to ensure State agencies are properly accountable for their use of public funds, the application of such rules or regulations on a National Institution is not considered inappropriate provided they do not compromise the National Institution's ability to perform its role independently and effectively.

The administrative requirements imposed on a National Institution must be clearly defined and should be no more onerous than those applicable to other independent of State agencies.

JUSTIFICATION

Section B.2 of the Paris Principles considers the "*adequate funding*" of a National Institution as a necessary guarantee of its independence. The purpose of this funding is: "*in order to be independent of the Government and not to be subject to financial control which might affect its independence.*" Such a provision is not, however, intended to limit the application of laws that require an appropriate level of financial accountability by public agencies.

To ensure respect for the principle of independence in circumstances where certain aspects of the administration of a National Institution is regulated by the Government, the Sub-Committee cautions that such regulation must not compromise the National Institution's ability to perform its role independently and effectively. It may therefore be appropriate for the State to impose general regulatory requirements to promote:

fair, transparent and merit based selection processes;

financial propriety in the use of public funds;

operational accountability.

Such regulation should not, however, extend to requiring a National Institution to seek government approval prior to carrying out its legislatively mandated activities, since this may compromise its independence and autonomy. Such practice is inconsistent with the exercise of the protection and promotion function that a National Institution is established to carry out in an independent and unfettered manner. For this reason, it is important that the relationship between the Government and the National Institution be clearly defined so as to avoid any undue Government interference.

Excerpt from the Paris Principles

B) Composition and guarantees of independence and pluralism –

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.

G.O. 2.9 - Assessing National Human Rights Institutions as National Preventive and National Monitoring Mechanisms

Where, pursuant to an international human rights instrument, a national human rights institution has been designated as, or as part of, a national preventive or monitoring mechanism, the Sub-Committee on Accreditation will assess whether the applicant has provided sufficient information to demonstrate that it is carrying out its functions in compliance with the Paris Principles.

Depending on the specific roles and functions ascribed to the NHRI, in undertaking this assessment, the Sub-Committee will consider, as appropriate:

- whether a formal legal mandate has been provided;
- whether the mandate has been appropriately defined to encompass the promotion and protection of all relevant rights contained in the international instrument;
- whether the staff of the NHRI possess the appropriate skills and expertise;
- whether the NHRI has been provided with additional and adequate resources;
- whether there is evidence that the NHRI is effectively undertaking all relevant roles and functions as may be provided in the relevant international instrument. Depending on the instrument and the mandate of the national human rights institution, such activities might include monitoring and investigation, the provision of constructive and/or critical advice to government and in particular, systematic follow up of its recommendations and findings on alleged human rights violations.

The Sub-Committee may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.

JUSTIFICATION

In recent years, international human rights instruments have begun to incorporate a requirement that States Parties create, or designate an existing domestic agency (or agencies) with responsibility for monitoring and promoting the objectives of that instrument.

These international instruments often specify particular roles and functions to be carried out by the relevant domestic agency or agencies, which are variously referred to as national preventive or monitoring mechanisms.

In response, States have often chosen to designate their NHRI as, or as part of, its national preventive or monitoring mechanisms. In so doing, the State signals that the NHRI has a primary role to play in the promotion and protection of rights contained in those instruments.

In assessing whether an NHRI is carrying out these function in accordance with the Paris Principles, the SCA will consider a range of factors that impact on the capacity of a NHRI to function independently and effectively. With regard to the requirement for a specific legal mandate, this may depend on the scope of a NHRI existing mandate and the breadth of any additional roles and functions ascribed to it as a national preventive or monitoring mechanisms. Where additional powers are proposed, such as specific powers to enter,

monitor, investigate and report on places of detention, and these go beyond the powers currently available to the NHRI, a more clearly defined legal mandate may be required in order to ensure the NHRI is able to undertake its role effectively and free from interference.

In undertaking its assessment, the Sub-Committee will also consider any guidelines developed by the relevant treaty body. It notes, however, that its role is to assess a NHRI against the Paris Principles, whereas the relevant treaty body undertakes its assessment of a national preventive or monitoring mechanism against the relevant international instrument upon which it is based. Guidelines developed by the relevant treaty body have, in general, been drafted for the broad range of agencies that may be designated as national preventive or monitoring mechanisms, and may not always be directly applicable to a national human rights institution.

Excerpt from the Paris Principles

(A) Competence and responsibilities.

…

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body . . . opinions, recommendations, proposals and reports on . . . :

(ii) Any situation of violation of human rights which it decides to take up;

(b) To promote and ensure the harmonization 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 cooperate 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;

G.O. 2.10 - The quasi-judicial competency of National Human Rights Institutions (complaints-handling)

When a NHRI is provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, it should be provided with the necessary functions and powers to adequately fulfil this mandate.

Depending on its mandate, such powers and functions might include:

- The ability to receive complaints against both public and private bodies in its jurisdiction;

- The ability to receive complaints that are filed by persons on behalf of the alleged victim(s), where consent is given;

- The ability to commence a complaint on its own initiative;

- The ability to investigate complaints, including the power to compel the production of evidence and witnesses, and to visit places of deprivation of liberty;

- The ability to protect complainants from retaliation for having filed a complaint;

- The ability to protect witnesses from retaliation for having provided evidence in relation to a complaint;

- The ability to seek an amicable and confidential settlement of the complaint through an alternative dispute resolution process;

- The ability to settle complaints through a binding determination;

- The ability to refer its findings to courts of law or specialized tribunals for adjudication;

- The ability to refer complaints falling beyond its jurisdiction or in a concurrent jurisdiction to the appropriate decision-making body;

- The ability to seek enforcement through the court system of its decisions on the resolution of complaints;

- The ability to follow up and monitor the implementation of its decisions on the resolution of complaints.

- The ability to refer its findings to government in situations where a complaint provides evidence of a widespread or systematic violation of human rights.

In fulfilling its complaint handling mandate, the NHRI should ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency. In order to do so, a NHRI should:

- Ensure that its facilities, staff, and its practices and procedures, facilitate access by those who allege their rights have been violated and their representatives;

- Ensure that its complaint handling procedures are contained in written guidelines, and that these are publicly available.

JUSTIFICATION

The Paris Principles do not require that NHRI have the ability to receive complaints or petitions from individuals or groups, regarding the alleged violation of their human rights. However, where it is provided with this mandate, the Paris Principles suggest that certain functions should be considered (see excerpt below). In essence, NHRIs are expected to handle complaints fairly, speedily and effectively through processes which are readily accessible to

the public. NHRIs may be empowered to carry out investigations into complaints and refer their findings to an appropriate authority. NHRIs should have the authority to deal with bodies against which complaints are made and may be authorised to seek compliance with its decisions through the judiciary.

Excerpt from the Paris Principles

> ***'Additional principles concerning the status of commissions with quasi-jurisdictional competence'***
>
> *A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, thirds 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.*

CHAPTER 7

ASIA PACIFIC FORUM (APF)

The Asia Pacific Forum of National Human Rights Institutions (the APF) is the leading human rights organisation in the region. Established in 1996, we are a coalition of national human rights institutions (NHRIs) from all corners of the Asia Pacific.

NHRIs are independent bodies, established by law or in the constitution, to promote and protect human rights in their respective countries. While they are established by the government, they operate independently from government.

The APF brings member institutions together to develop a shared vision and shared strategies to tackle many of the most serious and complex human rights challenges in the region.

The APF also develop partnerships at the international and regional levels to promote and protect human rights, raise the role of NHRIs and ensure that the collective voice of all members is heard.

The APF provides practical support and advice to the members in order to help them be as effective as possible. They also provide advice and expertise to governments and civil society groups in the region to support the establishment of independent NHRIs that meet the international standards set out in the Paris Principles.

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7.1 LIST OF APF MEMBERS

7.2 ACCREDITATION STATUS OF APF MEMBERS

Country	Name	Status	Website
Afghanistan	Afghan Independent Human Rights Commission	A	http://www.aihrc.org.af/
Australia	Australian Human Rights Commission	A	http://www.humanrights.gov.au/
Bahrain	National Institution for Human Rights in the Kingdom of Bahrain	Unknown	
Bangladesh	Bangladesh Human Rights Commission	B	http://www.bhrc-bd.org/
Fiji	Fiji Human Rights Commission	Unknown	

Hong Kong SAR, China	Equal Opportunities Commission	C	http://www.eoc.org.hk/eoc/GraphicsFolder/default.aspx
India	National Human Rights Commission	A	http://www.nhrc.nic.in/
Indonesia	National Commission for Human Rights	A	http://www.komnasham.go.id/
Iraq	Iraqi Independent High Commission for Human Rights	B	
Islamic Republic of Iran	Iranian Islamic Human Rights Commission	C	http://www.ihrc.ir/
Jordan	National Centre for Human Rights	A	http://www.nchr.org.jo/arabic/Default.aspx
Malaysia	Human Rights Commission of Malaysia (SUHAKAM)	A	http://www.suhakam.org.my/
Maldives	Human Rights Commission of the Maldives	B	http://hrcm.org.mv/dhivehi/homepage.aspx
Mongolia	National Human Rights Commission of Mongolia	A	http://www.mn-nhrc.org/
Myanmar	Myanmar National Human Rights Commission	B	
Nepal	National Human Rights Commission	A	http://www.nhrcnepal.org/
New Zealand	New Zealand Human Rights Commission	A	https://www.hrc.co.nz/
Oman	National Human Rights Commission	B	http://www.ohrc.om/homear.php
Palestine	Independent Commission for Human Rights/Palestine	A	http://www.ichr.ps/ar
Philippines	Commission on Human Rights	A	http://www.chr.gov.ph/
Qatar	National Committee for Human Rights	A	http://www.nhrc-qa.org/ar/

Republic of Korea	National Human Rights Commission	A	http://www.humanrights.go.kr/00_main/main.jsp
Samoa	Ombudsman of Samoa	Unknown	
Sri Lanka	The Human Rights Commission of Sri Lanka	B	http://www.hrcsl.lk/
Tajikistan	Ombudsman of Republic of Tajikistan	B	
Thailand	The National Human Rights Commission of Thailand	B	http://www.nhrc.or.th/Home.aspx
Timor Leste	Office of the Provedor for Human Rights and Justice	A	

CHAPTER 8

NATIONAL HUMAN RIGHTS INSTITUTIONS IN INDIA

National Human Rights Commission, Manav Adhikar Bhawan Block-C, GPO Complex, INA, New Delhi – 110001	Ph: 011-24651330, 9810298900 (MOBILE) Fax: 011-24651329 E-Mail: covdnhrc@nic.in**,** ionhrc@nic.in **Web:** www.nhrc.nic.in
National Commission for Women Plot No. 21, FC33, Jasola Institutional Area, New Delhi – 110025.	EPBAX No. 011- 26942369, 26944740, 26944754 Complaints Cell : 011-23219750 Email :ncw@nic.in Complaint Cell: complaintcell-ncw@nic.in RTI Cell : rticell-nc@nic.in
National Commission for Protection of Child Rights, 5th Floor,Chanderlok Building, 36 Janpath, New Delhi-110001	Ph:011-23478200 Fax:011-23724026 Complaint Section-011-23724030 E.mail: cp.ncpcr@gov.in Web: www.ncpcr.gov.in
National Commission for Minorities, 5th Floor, Lok Nayak Bhavan, Khan Market, New Delhi 110 003	Ph: 011-24615583 Fax: 011-24693302, 24642645, 24698410 **Toll Free Number:** 1800110088 **E-mail:** ro-ncm@nic.in web: www.ncm.nic.in
National Commission for Scheduled Castes, Lok Nayak Bhawan, Khan Market, New Delhi – 110003	Ph: 011-24632298 / 24620435 (O), 011-23795332 (Telefax) (R) **Toll Free No.1800118888 (atNew Delhi)** **Fax**: 91-11-24632298 E.mail:chairmanncsc@nic.in Web: www.ncsc.nic.in

National Commission for Scheduled Tribes 6th Floor, 'B' Wing, Lok Nayak Bhawan, Khan Market, New Delhi-110003	Ph: 011-24635721, Fax: 011-2462462 **Mail:** chairperson@ncst.nic.in Web: www.ncst.nic.in
National Commission for Safai Karamcharis, "B" Wing, 4th Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003	**Tel**: 011-24648924 / 24601707 Fax: 011-24634484 (O) **Email**: cp-ncsk@nic.in **Website**: http://ncsk.nic.in
Chief Commissioner for Persons with Disabilities, Office of the Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment Sarojini House, 6, Bhagwan Dass Road, New Delhi	Ph: 011-23383907 Fax: 011-23386006 E.mail: ccpd@nic.in Web: http://www.ccdisabilities.nic.in/
Chief Information Commissioner, **Central Information Commission**, Room No.306, II Floor, August Kranti Bhavan, Bhikaji Cama Place New Delhi - 110 066	Phone:- 011 – 26180512 E-mail:- secy-cic@nic.in Web: http://cic.gov.in/

8.1 Table of Comparison – National Human Rights institutions in India

Points of Comparison	NHRC/ SHRC	NCW	NCPCR/SCPCR	NCM	NCSC	NCST	CIC	NCSK	CCD
Constituting Authority	NHRC - Central Government SHRCs - State Governments "may" constitute a SHRC.	NCW - Central Government. The NCW Act, 1990 does not provide for the constitution of State Commissions. States have enacted legislation or issued notifications for the establishment of SCWs.	NCPCR - Central Government SCPCRs - State Governments "may" constitute a SCPCR.	Central Government. The NCM Act does not provide for the constitution of State Commissions. States have established SCMs through legislation providing for the establishment of SCMs or have issued notifications that provide for the establishment of SCMs.	Created under Article 338 of the Constitution The Constitution does not provide for constitution of State level Commissions. Some States have enacted legislation for establishment of Commission for SCs and STs jointly. The NCSC has established Regional Offices.	Created under Article 338A of the Constitution The Constitution does not provide for constitution of State level Commissions. Some States have enacted legislation for the establishment of a joint commission for SCs and STs at the state level.	Central Government shall constitute Central Information Commission under Right to Information Act, 2005.	Central Government shall constitute under National Commission for Safai-Karamcharis Act, 1993.	Central Government under 'The Persons with Disabilities (Equal oppurtunities, protection of rights and full participation) Act, 1995
Appointing Authority	NHRC - President of India SHRC - Governor	NCW- Central Government.	NCPCR - Central Government SCPCR - State Government	Central Government	President of India	President of India	President of India	Central Government	Central Government
Appointment Process	The Chairperson and Members of the NHRC and SHRC are to be appointed on the basis of recommendations of a Selection Committee comprising of representatives of the executive and legislature. Composition of the Selection Committee for selection of NHRC Chairperson and Members (a) The Prime Minister —Chairperson (b) Speaker of the House of the People — Member (c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member (d) Leader of the Opposition in the	The Chairperson and Members are to be appointed through nomination by the Central Government.	Chairperson of NCPCR/SCPCR to be appointed on the recommendation of a three member Selection Committee constituted by the Central Government/State Government under the Chairmanship of the Minister in-charge of the Ministry or the Department of Women and Child Development/ Minister-in-charge of the Department dealing with children. The Act does not indicate who the two other members should be and leaves it to the discretion of the government. The Act is also silent on the manner in which Members should be appointed.	Chairperson and Members are nominated by the Central Government.	The process has not been specified. It appears that the Central Government proposes names and the same are considered and approved by the President. Members can be appointed on a part-time basis also.	The process has not been specified. It appears that the Central Government proposes names and the same are considered and approved by the President.	Chief Information Commissioner and the Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of – i) Prime Minster, ii) Leader of the opposition, iii) Union Cabinet Minister to be nominated by the Prime Minster	Chairperson, Vice-Chairperson and the Members to be nominated by the Central Government.	By notification by the Central Government

	House of the People — Member (e) Leader of the Opposition in the Council of States — Member (f) Deputy Chairman of the Council of States — Member.								
Qualifications of Chairperson	NHRC - Chief Justice of the Supreme Court SHRC – Chief Justice of the High Court	"Committed to the cause of women"	"a person of eminence … has done outstanding work for promoting the welfare of children"	Chairperson and Vice-Chairperson should belong to a minority community and should be persons of eminence, ability and integrity.	Chairperson and Vice-Chairperson should be appointed from amongst eminent socio-political workers belonging to Scheduled Castes (SCs) who inspire confidence amongst the SCs by their very personality and record of selfless service.	Chairperson and Vice-Chairperson should be appointed from amongst eminent socio-political workers belonging to Scheduled Tribes (STs) who inspire confidence amongst the STs by their very personality and record of selfless service.	Persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.	Persons of eminence connected with the socio-economic development and welfare of Safai Karamcharis	Special Knowledge or practical experience in respect of matters relating to rehabilitation.
Qualification of Members	NHRC - Four members - one member who is or has been a Supreme Court Judge; one member who is or has been the Chief Justice of a High Court; and two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. Chairperson of NCM, NCSC, NCST and NCW are deemed members for the discharge of functions other than inquiry into complaints. SHRCs shall have two members – one who is or has been a High Court Judge, or a District Judge with a minimum of 7 years experience; and one who is to be appointed from amongst persons	Five members nominated from "amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare; At least one member each should belong to SC and ST.	Six members of which at least two are women from amongst persons of eminence, ability, integrity, standing and experience in (1) Education (2) Child health, care, welfare or child development; (3) Juvenile justice or care of neglected or marginalized children or children with disabilities; (4) Elimination of child labour or children in distress (5) Child psychology or sociology; and (6) Law relating to children. No person having any past record of violation of human rights or child rights shall be eligible for appointment as Chairperson or other Members of the	Five members to be drawn from amongst persons of eminence, ability and integrity and from amongst the minority communities.	Three members should be drawn from amongst persons of ability, integrity and standing who have a record of selfless service to the cause of justice for the Scheduled Castes. At least two members should be appointed from amongst persons belonging to the SCs and one from amongst women	Three members should be drawn from amongst persons of ability, integrity and standing who have a record of selfless service to the cause of justice for the Scheduled Tribes. At least two members should be appointed from amongst persons belonging to the STs and one from amongst women.			

	having knowledge of, or practical experience in, matters relating to human rights.		Commission. (Rule 3, NCPCR Rules)						
Term of Office	Five years or till the Chairperson or Members attain the age of seventy years. Only Members can be appointed for a second term.	Not exceeding three years as may be specified by the Central Government.	Term of three years or completion of 65 years for Chairperson and 60 years for Members. The Chairperson and Members cannot hold office for more than two terms.	Chairperson and Members shall hold office for a term of three years.	Members shall hold office for a term of three years from the date of assumption of office. Members are not eligible for appointment for more than two terms. The term of Chairperson and Vice-Chairperson has not been specified.	Chairperson, Vice-Chairperson and Members shall hold office for a term of three years from the date of assumption of office. They are not eligible for appointment for more than two terms.	Chief Information Commissioner and Information Commissioners– Five years or Sixty-five years of age.	Three years	Not Specified
Removal	Removal from NHRC and SHRC only by order of President on grounds of proved misbehaviour or incapacity after an inquiry by the Supreme Court.	Removal by Central Government. Reasonable opportunity of being heard should be given.	Removal by Central Government/State Government. Reasonable opportunity of being heard should be given	Removal by Central Government	Chairperson can be removed by President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has held an inquiry in accordance with the procedure prescribed by it and reported that the Chairperson should be removed. While the inquiry is pending, the President may suspend the Chairperson.	Chairperson can be removed by President on the ground of misbehavior after the Supreme Court, on reference being made to it by the President, has held an inquiry in accordance with the procedure prescribed by it and reported that the Chairperson should be removed. While the inquiry is pending, the President may suspend the Chairperson.	Subject to the the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.	The Central Government shall remove a person from the office of Chairperson, Vice-Chairperson or a Member if that person:- (a) becomes an undischarged insolvent; (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; (c) becomes of unsound mind and stands so declared by a competent court; (d) refuses to set or becomes incapable of acting; (f) has abused the position.	Not specified
Grounds of Removal	Removal only by order of President on grounds of: - Undischarged Insolvent - Engaging in paid employment outside duties of office; - Unfit	Removal by Central Government on grounds of: - Undischarged insolvent - Refusal to act or incapable of acting - Unsound mind	Chairperson can be removed from office by order of the Central/State Government on grounds of proved misbehaviour or incapacity. Chairperson and Members can be removed on grounds of:	Removal by Central Government on grounds of - insolvency - conviction and sentence to imprisonment for an offence which in the opinion of the	President may order removal of Chairperson, Vice-Chairperson and Members on the following grounds: - insolvency	President may order removal of Chairperson, Vice-Chairperson and Members on the following grounds: - insolvency - engaging in paid employment outside the duties of office			

	- Unsound mind - Convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.	- Absent from three consecutive meetings without obtaining leave - Convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.	- Insolvency - Engaging in paid employment outside duties of office - Refusing to act or incapable of acting - Unsound mind - Absenting from three consecutive meetings without obtaining leave - Convicted and sentenced to imprisonment for an offence which in the opinion of the Central/State Government involves moral turpitude. - Abusing office so as to render continuance in office detrimental to public interest.	government involves moral turpitude - Unsoundness of mind declared by a competent court - refusal to act or incapability of acting - absenting from three consecutive meetings without obtaining leave - abusing the position so as to render continuance in office detrimental to interests of minorities or public interest A reasonable opportunity of being heard will have to be given before effecting removal.	- engaging in paid employment outside the duties of office - conviction and sentence to imprisonment for an offence involving moral turpitude. - unfitness to continue in office - abuse of position so as to render continuance in office detrimental to the interests of Scheduled Castes. Further, if the Chairperson is interested in or participates in the profit, benefit, or emolument other than as a member and in common with other members of an incorporated company arising from a contract or agreement made by or on behalf of the Government of India or the Government of a State, he shall be deemed to be guilty of misbehaviour. The Vice-Chairperson and Members can also be removed on refusal to act or incapability to act and absenting from three consecutive meetings without obtaining leave of absence. Reasonable opportunity of being heard is given in the above matter to all chairperson, members before removal.	- unfitness to continue in office Further, if the Chairperson is interested in or participates in the profit, benefit, or emolument other than as a member and in common with other members of an incorporated company arising from a contract or agreement made by or on behalf of the Government of India or the Government of a State, he shall be deemed to be guilty of misbehaviour. The Vice-Chairperson and Members can also be removed on grounds of conviction and sentence to imprisonment of an offence involving moral turpitude, refusal to act or incapability to act, absenting from three consecutive meetings without obtaining leave of absence, and abusing the position so as to render continuance in office detrimental to the interests of STs. No person shall be removed until he has been given reasonable opportunity of being heard in the matter.			

Functions	1) Inquire *suo motu* or on the basis of petitions into complaints of human rights violations. 2) Intervene in proceedings before the court. 3) Inspect custodial institutions 4) Review safeguards and make recommendations for their effective implementation. 5) Study treaties and other international instruments and make recommendations for their implementation. 6) Promote research in human rights. 7) Human rights literacy 8) Encourage the efforts of NGOs working on human rights.	1) Examination of safeguards 2) Presentation of reports to the Government on the working of the safeguards. 3) Recommendations for effective implementation of safeguards. 4) Review of existing provisions 5) Deal with complaints or take *suo motu* notice of violations of women's rights and non-implementation of laws and non-compliance of policy decisions. 6) Undertake research and studies 7) Inspection of jails, remand homes, women's institutions or other places of custody. 8) Fund litigation.	1) Examination and review of safeguards. 2) Recommendation for effective implementation of safeguards. 3) Examination of factors affecting rights of certain groups of children. 4) Inquiry into violations of child rights and complaints relating to deprivation of child rights, non-implementation of laws, non-compliance with policy decisions. Can take *suo motu* notice. 5) Inspection of juvenile custodial homes or other places of residence for children under the control of Central/State Government or run by a social organization. 6) Reports to the government on working of the safeguards. 7) Research and Child Rights Literacy 8) Study treaties and other international instruments and make recommendations for their implementation. Additional functions have been prescribed under Rules including [1] analyse existing law, policy and practice to assess compliance with UNCRC, comment on proposed new legislation from a child rights perspective, [2] present to the government reports on working of safeguards, [3] undertake formal investigations where concern has been expressed by children or persons on their behalf, [4] ensure that the work of the Commission is directly	1)To evaluate the progress of the development of Minorities under the Union and States. 2) Monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures. 3) Make recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments. 4) Look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities. 5) Undertake studies into problems arising out of any discrimination against Minorities and recommend measures for their removal. 6) Conduct studies, research and analysis on the issues relating to socio-economic and educational development of Minorities. 7) Suggest appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments. 8) Make periodical or special reports to the Central Government	1) To investigate and monitor safeguards provided for the Scheduled Castes under this Constitution or under any other law and to evaluate the working of such safeguards. 2) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes; 3) To participate and advise on the planning process of socio-economic development of the Scheduled Castes 4) To present annual and at such periodic intervals as required to the President, reports upon the working of those safeguards 5) To make recommendations in the above report for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes 6) The Commission undertakes studies to evaluate the impact of the development schemes on the socio-economic development of the Scheduled Castes. For this purpose, the Commission may constitute Study Teams either at the Headquarters or at the State Offices.	1) To investigate and monitor safeguards provided for the Scheduled Tribes under the Constitution or under any other law or under any order of the Government and to evaluate the working of such safeguards. 2) To enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes 3) To participate and advise in the planning process of socio-economic development of Scheduled Tribes and to evaluate the progress of their development under the Union or any state 4) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards 5) To make such reports, recommendations as to the measures that should be taken by the Union or any State for effective implementation of those safeguards and other measures for protection, welfare and socio-economic development of the Scheduled Tribes 6) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.		The Commission shall perform all or any of the following functions, namely:- (a) recommend to the Central Government specific programmes of action towards elimination of inequalities in status, facilities and opportunities for Safai Karamcharis under a time-bound action plan; (b) study and evaluate the implementation of the programmes and schemes relating to the social and economic rehabilitation of Safai Karamcharis and make recommendations to the Central Government and State Government for better co-ordination and implementation of such programmes and schemes; (c) investigate specific grievances and take suo moto notice of matters relating to non-implementation of :- (i) programmes or schemes in respect of any group of Safai Karamcharis; (ii) decisions, guidelines or instructions, aimed at mitigating the hardship of Safai Karamcharis; (iii) measures for the social and economic upliftment of Safai Karamcharis; (iv) the provisions of any law in its	-Coordinate work of the State Commissioners - Monitor the utilization of funds distributed by Central Government - Take steps to safeguard the rights and facilities made available to Persons with disabilities - Submit reports to Central Government on the implementation of the Act such intervals as that Government may prescribe.

			informed by the views of children in order to reflect their priorities and perspectives, [5] promote, respect and serious consideration of views of children in its work and in that of all government departments and organizations dealing with children, [6] produce and disseminate information about child rights, [7] compile and analyse data on children, [8] promote incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children	on any matter pertaining to Minorities and in particular the difficulties confronted by them. 9) Any other matter which may be referred to it by the Central Government.	7) To discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may by Rule specify	7) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to the Scheduled Tribes living in forest areas. 8) Measures to be taken to safeguard rights to the Tribal Communities over mineral resources, water resources etc. as per law. 9) Measures to be taken for the development of tribals and to work for more viable livelihood strategies. 10) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects. 11) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place. 12) Measures to be taken to elicit maximum cooperation and involvement of Tribal Communities for protecting forests and undertaking social afforestation. 13) Measures to be taken to ensure full implementation of the Provisions of Panchayats Act, 1996 14) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by Tribals that lead to their continuous disempowerment and degradation of land and the environment.		application to Safai Karamcharis; and take up such matters with the concerned authorities or with the Central or State Governments; (d) make periodical reports to the Central and State Governments on any matter concerning Safai Karamcharis, taking into account any difficulties or disabilities being encountered by Safai Karamcharis; (e) any other matter which may be referred to it by the Central Government. (2) In the discharge of its functions under sub-section (1), the Commission shall have power to call for information with respect to any matter specified in that sub-section from any Government or local or other authority.	

Intervention in Courts	NHRC & SHRCs can intervene in proceedings involving allegation of violation of human rights pending before a court with the court's approval.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.	No express power to intervene in courts.
Consultations on policy matters	No such obligation placed on the government to consult the Commission on policy matters related to human rights.	The Central Government should consult the Commission on all major policy matters affecting women.	No such obligation placed on the government to consult the Commission on policy matters related to child rights.	No such obligation placed on the government to consult the Commission on policy matters related to minorities.	The Central Government and every State Government should consult the Commission on all major policy matters affecting SCs.	The Central Government and every State Government should consult the Commission on all major policy matters affecting Scheduled Tribes.	Not specified	The Central Government shall consult the Commission on all major policy matters affecting Safai Karamcharis.	Not spceified
Powers	1) Powers of civil court trying a civil suit. 2) Power to require any person to furnish information on points relevant to the subject matter of the inquiry. 3) Power of search and seizure. 4) Power to transfer complaint pending before NHRC to SHRC 5) Power to call for information or report from the government and if such report is not received in time, power to proceed with the inquiry on its own. 6) Power to forward the case to a Magistrate when offences under Sections 175, 178, 179, 180, and 228 of the Indian Penal Code takes place in its presence.	Powers of civil court trying a civil suit: a) summoning and enforcing the attendance of any person from any part of India and examining him on oath. b) requiring the discovery and production of any document. c) receiving evidence of affidavits. d) requisitioning any public record or copy thereof from any court or office. e) issuing commissions for the examination of witnesses and documents; and f) any other matter which may be prescribed.	1) Powers of civil court trying a civil suit: a) summoning and enforcing the attendance of any person from any part of India and examining him on oath. b) requiring the discovery and production of any document. c) receiving evidence of affidavits. d) requisitioning any public record or copy thereof from any court or office. e) issuing commissions for the examination of witnesses and documents; and 2) Power to forward the case to a Magistrate for non-compliance with any of the above powers.	Powers of civil court trying a civil suit. namely:- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath. b) requiring the discovery and production of any document. c) receiving evidence of affidavits. d) requisitioning any public record or copy thereof from any court or office. e) issuing commissions for the examination of witnesses and documents; and f) any other matter which may be prescribed.	Powers of civil court trying a civil suit namely:- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath. b) requiring the discovery and production of any document. c) receiving evidence of affidavits. d) requisitioning any public record or copy thereof from any court or office. e) issuing commissions for the examination of witnesses and documents; and f) any other matter which may be determined by the President	Powers of civil court trying a civil suit namely:- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath. b) requiring the discovery and production of any document. c) receiving evidence of affidavits. d) requisitioning any public record or copy thereof from any court or office. e) issuing commissions for the examination of witnesses and documents; and f) any other matter which may be determined by the President.	Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive inquire into a complaint from any person,— and (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information		Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to — (a) Deprivation of rights of persons with Disabilities. (b) Non-implementation of laws, rules, byelaws, regulations. Executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities. And take up the matter with the appropriate authorities.

							Officer or State Public Information Officer or senior officer specified in sub-section (/) of section 19 or the Central Information Commission or the State Information Commission, as the case may be; (b) who hits been refused access to any information requested under this Act; who has not been given a response to a request for information or access to information within the time limit specified under this Act; (d) who has been required to pay an amount of fee which he or she considers unreasonable; (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and in respect of any other matter relating to requesting or obtaining access to records under this Act.		
Investigation	Commission can utilize the services of any officer or investigating agency of the Central or State Government for investigation.	No powers of investigation	No powers of investigation	No powers of investigation	Commission may adopt any one or more of the following methods for investigating or inquiring into the matters falling within its authority: (a) by the Commission directly; (b) by an Investigating Team constituted at	The NCST follows three methods for conducting an investigation/inquiry: (a) by the Commission directly, (b) by an Investigating Team constituted at the Headquarters of the Commission (c) through its Regional Offices.			The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil

					the Headquarters of the Commission; and (c) through its State Offices (d) by State Agencies (e) by any other institution/Dept funded by Central Govt and its statutory bodies.				Procedure, 1908 while trying a suit, in respect of the following matters, namely:- (a) Summoning and enforcing the attendance of witnesses; (b) Requiring the discovery and production of any documents; (c) Requisitioning any public record or copy thereof from any court or office; (d) Receiving evidence on affidavits; and (e) Issuing commissions for the examination of witnesses or documents.
Compensation	Commission can recommend to the government to pay compensation or damages to the victim or his family.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.	Not specified.

CHAPTER 9

NATIONAL LEGAL SERVICES AUTHORITY ACT, 1981

CHAPTER 1V – ENTITLEMENT TO LEGAL SERVICES

Section 12: *Criteria for giving Legal Services.* - Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;

(c) a woman or a child;

(d) a mentally ill or otherwise disabled person;

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987);or

(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

DETAILS OF STATE LEGAL SERIVES AUTHORITIES

Andhra Pradesh State Legal Services Authority
Nyaya Seva Sadan, Purani Haveli,
HYDERABAD- 500002
O: 23446702, TF: 23446700 & 23446701
M: 09440621437
E-mail: apslsauthority@yahoo.com apslsauthority@rediff.com

Arunachal Pradesh State Legal Services Authority,
Law & Judicial Department,
Government of Arunachal Pradesh, ITANAGAR-791111
O: 2284913, F: 2284935
M: 9436040011
E-mail: danibelo2008@rediffmail.com

Assam Legal Services Authority
2nd Floor, District Judges New Court Building,
Guwahati – 781001.
E-mail: aslsa@gmail.com
Bihar State Legal Services Authority,
Buddha Marg, Opposite Patna Museum, Patna- 800001
Email- bslsa_87@yahoo.co.in

U.T. of Chandigarh Legal Services Authority
Additional Deluxe Building,
Ground Floor,
Sector 9-D, UT, Chandigarh
Office: +91-172-2742999 Fax: +91-172-2742888
Email : slsa_utchd@yahoo.com

Chhattisgarh State Legal Services Authority,
Warchouse "Vidhik Seva Marg", BILASPUR (CG), 495001
E-mail: cgslsa.cg@nic.in

Delhi State Legal Services Authority,
Central Office, Pre – Fab Building,
Patiala House Courts,
New Delhi.
Ph. 23384781
Fax: 23387267
Toll free Helpline No. 1516
E- mail : dslsa-phc@nic.in
dlsathebest@rediffmail.com

Delhi High Court Legal Services Committee,
Room No. 34-37, Lawyers Chambers, High Court of Delhi,
New Delhi
Ph. 23385421, 23383418
E-mail: dhclsc-dhc@nic.in

Goa State Legal Services Authority
High Court Building, Atinho, Panaji,
Goa.

Gujarat State Legal Services Authority
1st Floor, Advocate Facility Building, "A" Wing,
Gujarat High Court Complex,

Sola, Ahmedabad - 380 060.
Tele/Fax : - (O) 079-27664964, 079-27665296
Toll Free No.: - 1800-233-7966
E-mail : msguj.lsa@nic.in

Haryana State Legal Services Authority,
Institutional Plot No.09,
Sector-14 Panchkula.
Email : hslsa.haryana@gmail.com hslsa@hry.nic.in
Helpline:-18001802057

Himachal Pradesh State Legal Services Authority,
Block-22, SDA Complex, Kusumpti, Shimla-171009
O: 2623862 TF: 2626962

Jammu & Kashmir State Legal Services Authority,
JDA Complex, Janipura, Jammu-180007
(Office Jammu) 0191-2546753 0191-2564764 0191-2539962
(Office Srinagar) 0194-2452267 – Fax 0194-2450644 0194-2480408

Jharkhand State Legal Services Authority,
"NYAYA SADAN"
Near AG Office,
Doranda, Ranchi-834002 (O) 2482392, 2481520 (TF) 2482397

Karnataka State Legal Services Authority,
Nyaya Degula Building, 1st Floor, H.Siddaiah Road,
Bangalore-560027
Fax : 080-22112935
Ph. No. 22111714, 22111729, 22111875
Email : karslsa@gmail.com

Kerala State Legal Services Authority,
Niyama Sahaya Bhavan, High Court Compound,
Emakulam, KOCHI-682031 E-mail: kelsa@ker.nic.in

Madhya Pradesh State Legal Services Authority,
574, South Civil Lines, JABALPUR-482001
E-mail: mpslsa@nic.in

Maharashtra State Legal Services Authority,
105, High Court, PWD Building, Fort,
Mumbai- 400032
E-mail: mslsa-bhc@nic.in

Manipur State Legal Services Authority,
District and Sessions Court Complex, Manipur (East),
Uripok, IMPHAL-795001

Meghalaya State Legal Services Authority,
R.No.- 120, MATI Building, Additional Secretariat, SHILONG-793001
Mizoram State Legal Services Authority,
Junior Judge Quarters Building,
New Capital Complex, Khatla Aizwal, Mizoram

Nagaland State Legal Services Authority,
Department of Justice and Law, KOHIMA-797004
0370-2290338, 2292144

Orissa State Legal Services Authority,
SO IIB/1, Cantonment Road, CUTTACK-753002

Punjab State Legal Services Authority,
SCO No. 3001-3002, Sector 22-D, CHANDIGARH-160022
E-mail: pslsa_1998@yahoo.co.in

Rajasthan State Legal Services Authority,
Rajasthan High Court Building, JAIPUR-302 005
O: 2227555-direct, 2227481 F: 2227602, R: 2712240
E-mail- rslsajp@gmail.com

Sikkim State Legal Services Authority,
Opposite Nepal Sahitya Parishad, Sikkim Development Areas,
Gangtok, Sikkim-737101

Tamil Nadu State Legal Services Authority
High Court Building, CHENNAI-600104
E-mail: tnslsa@gmail.com

Uttar Pradesh Legal Services Authority
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CHAPTER 10

NHRIs AND THE INTERNATIONAL COMMUNITY

International Human Rights and the International Human Rights System

The engagement required of NHRIs does not stop at the national level but extends internationally. NHRIs should:

> *"… cooperate with the United Nations and any other organisations 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".*

There are now many opportunities for NHRIs to cooperate with and support the work of UN bodies and mechanisms, including the Human Rights Council and its Universal Periodic Review (UPR) and its special procedure, as well as the treaty monitoring bodies. According to the Sub Committee on Accreditation (SCA) this includes:

- submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees;
- making statements during debates before review bodies and the Human Rights Council;
- assisting, facilitating and participating in country visits by United Nations experts, including special procedures mandate holders, treaty bodies, fact finding missions and commissions of inquiry; and
- monitoring and promoting the implementation of relevant recommendations originating from the human rights system.

The State is responsible for reporting obligations under various human rights instruments. While an NHRI can play an important role in assisting the State to fulfil these obligations, any legislative provision must recognise the distinct role of the State and the NHRI.

In addition to monitoring and assisting the State, NHRIs should have the power to engage independently with the UPR, the special procedures and the treaty monitoring bodies and provide independent reports to these mechanisms.

Legislation should therefore provide an NHRI with the power to:

- monitor the State's reporting obligations under relevant international human rights instruments and mechanisms
- provide information to assist the State in fluffing its reporting obligations
- report to parliament and publicly on the State's implementation of international human rights obligations
- report to parliament and publicly on the State's compliance with reporting obligations under international instruments.

There is nothing stopping an NHRI from assisting the Government to engage with the international human rights system. One function may be to advise on ratification of human rights treaties and implementation of treaties and conventions, as well as declarations. Another may be to contribute to the preparation of State reports to international human rights mechanisms. NHRIs also engage directly themselves with the international system.

The international human rights system is usually described in terms of its two branches:

The **Charter-based system** developed under the United Nations Charter and the various organs and bodies of the UN. The principal organs of the UN – the General Assembly (UNGA), the Security Council (UNSC) and the Economic and Social Council (ECOSOC) – all have responsibilities that relate to human rights. The principal human rights body is the Human Rights Council (UNHRC), established in 2006 as the successor to the Commission on Human Rights. The Charter-based system has been responsible for the development of international human rights law, including the core human rights treaties, and of the international human rights system.

The **treaty-based system** is built upon those core human rights treaties. Each of the treaties has a treaty monitoring body that is responsible for the promotion of the treaty, its interpretation and monitoring compliance. The treaty monitoring bodies also receive and deal with complaints of treaty violation.

The UN Charter-based system

The UN Charter gives human rights a central place within the UN system. It states that one of the principal purposes of the UN is the promotion and protection of human rights and fundamental freedoms. The Charter indicates that the UN will promote human

rights education and awareness. Although the Charter itself does not establish a specialised human rights body within the UN system, it provides for one to be established. In 1946, the ECOSOC established the Commission on Human Rights and, in 2006, the UNGA replaced that Commission with the UNHRC.

The UN has three pillars with a high-level specialist council responsible for each pillar.

- The UNSC is responsible for international peace and security.
- The ECOSOC is responsible for development.
- The UNHRC is responsible for human rights.

General Assembly (UNGA)

The General Assembly is the principal political organ of the UN. The UNGA can consider any matter related to the UN Charter and its implementation, except situations that are on the agenda of the United Nations Security Council. This is a very broad mandate and inevitably leads the UNGA to consider human rights issues, in relation both to the development of human rights law and to the situation in specific countries.

Only UN Member States, inter-governmental organisations and a few Permanent Observers have the right to participate, including to speak, in the UNGA and its committees. NHRIs have no speaking rights and so they are unable to participate in human rights debates in the UNGA plenary or committees.

At present, NHRIs undertake their advocacy through more traditional lobbying, both written and in meetings, with State delegations and UN officials. They seek to influence the UNGA agenda and decisions in this way. UNGA consideration of country situations has been important in increasing international moral and political pressure on States that violate human rights. NHRIs want to, and should, influence that process.

Security Council

The Security Council is the most powerful UN organ, the only one with the legal authority to make binding and enforceable decisions. It is responsible for international peace and security, both through peaceful settlement of disputes under Chapter VI of the UN Charter and through enforcement action with respect to threats to peace, breaches of peace and acts of aggression under Chapter VII. Under the UN Charter, the UNSC has a monopoly on authorising the lawful use of force in the modern world.

The UNSC's rules of procedure are strict and exclusive. Only members of the UNSC and States directly affected by a matter under discussion are entitled to participate in debates. The UNSC has occasional "open debates" in which other UN Member States are permitted to participate. However, NHRIs and NGOs are never permitted to speak and are only occasionally permitted to attend these meetings.

Economic and Social Council

The Economic and Social Council is the principal organ responsible for the UN's development work. It promotes economic and social development, including:

- higher standards of living, full employment, and conditions of economic and social development
- solutions to international economic, social, health and related problems, cultural and educational cooperation
- universal respect for and observance of human rights and fundamental freedoms for all, without distinctions as to race, sex, language or religion.

The ECOSOC has promoted NHRI engagement with the UN system, especially the principal human rights bodies, but it does not have any role in accrediting NHRIs, in supervising their involvement or in adopting rules of procedure to govern their participation. NHRIs have no participation rights in ECOSOC meetings.

Human Rights Council

The Human Rights Council is the UN body with the most comprehensive scope for engagement by NHRIs. It has a very broad mandate for the promotion and protection of human rights. It is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. It can "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon". It also has a mandate to "promote the effective coordination and the mainstreaming of human rights within the United Nations system".

In establishing the UNHRC, the UNGA decided explicitly that:

"… the participation of and consultation with observers, including States that are not members of the Council, the specialised agencies, other intergovernmental organisations and national human rights institutions, as well as non-governmental

organisations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities…"

This ensures a firm foundation for NHRI participation in the HRC, though without any clarity on what the nature of that participation should be. The UNGA resolution, however, contained a direction to the UNHRC on "ensuring the most effective contribution" of NHRIs and, on that basis, the UNHRC agreed in its institution-building package, to very comprehensive participation.

Accordingly, NHRIs accredited with "A status" accreditation are entitled to:

(The NHRC in India has been accredited with A status)

- Have **full observer status** in the UNHRC. They now have participation rights more than those of ECOSOC-accredited NGOs and, in many respects, comparable to those of observer States. They are entitled to attend and participate in all sessions of the UNHRC, both regular and special sessions, apart from the small number of meetings that are private or confidential.
- Make **oral statements** to the UNHRC on any item on the agenda of the UNHRC session. Oral statements are made in person or by video, by a representative of the NHRI, at an UNHRC session during the debate on the agenda item to which the statement relates.
- Make **written statements** to the UNHRC. Written statements should be no longer than 2,000 words and should be relevant to the Council's Programme of Wok for the particular session.
- Submit **other documents,** for example, investigation reports, policy papers, studies and other publications, to the UNHRC. The documents should relate to a particular UNHRC agenda item. They will receive an official UN document symbol and number.
- Attend **informal consultations and working groups** that occur before and during UNHRC sessions. These meetings prepare UNHRC work, including proposals for resolutions, and negotiate draft resolutions. At the very least, attendance at these meetings gives NHRIs important information about what is developing and what is proposed so that they can be well informed in advocating their views directly with State representatives. At best, attendance gives NHRIs

the opportunity to participate directly in the negotiation of proposed resolutions. Often representatives of NHRIs will be given the opportunity to speak in these meetings, adding their views to those of member and observer States so directly influencing the content of resolutions.

- Organise **parallel events** during the period of the UNHRC sessions. Parallel events provide opportunities to discuss situations and issues that are relevant to the UNHRC agenda, that is, on any human rights situation or issue.
- **Move freely** through the UN's Palais des Nations in Geneva during UNHRC sessions. They can walk the floor of the UNHRC meeting room, have coffee with State representatives in the coffee shop, meet in the lobbies and corridors. Accreditation provides not only the right to participate in the UNHRC but the opportunity of access to key decision makers, both governmental and UN. It permits and enables advocacy on issues of concern to NHRIs.

The participation rights of NHRIs in the UNHRC extend to their international and regional associations. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and the APF, along with the regional associations of NHRIs in Africa, the Americas and Europe, can and do make oral and written statements, submit documents, attend consultations and working groups, sponsor parallel events and advocate in and around UNHRC sessions. The ICC has a permanent representative in Geneva and the APF sends a representative to Geneva regularly. They speak and act on behalf of their member NHRIs collectively and can also do so on behalf of individual NRHIs. Accredited NHRIs can also speak on behalf of other "A status" NHRIs. These are important opportunities as many NHRIs do not have the resources – financial and personnel – to be able to attend UNHRC sessions regularly and none has the resources to attend all sessions.

NHRIs can engage not only with the UNHRC itself but also with its most important human rights mechanisms, including the UPR and the Special Procedures.

Universal Periodic Review (UPR)

The Universal Periodic Review is the most significant development in the transition from the Commission on Human Rights to the UNHRC.

The UPR highlights each State's human rights performance in a major international forum, before other States, UN agencies, human rights NGOs, other NHRIs and the international community generally. It therefore provides an important opportunity for every NHRI to promote and protect human rights in its own country and internationally. NHRIs also have important roles in encouraging follow up and implementation of recommendations directed to their States as part of the UPR process.

An "A status" NHRI can contribute to the UPR process at every stage, in many ways, including through:

- Participating in the State consultation prior to the preparation of the State report
- Encouraging the State to report frankly and comprehensively, highlighting both significant achievements and important challenges and identifying priorities for action
- Recommending that the State make voluntary commitments in its report and in its statement to the UPR working group
- Promoting its views and recommendations to other States that can raise them during the UPR working group interactive dialogue
- Attending, but not speak at, the interactive dialogue to provide its expertise informally to the working group and to monitor the State's statements and commitments
- Organising parallel events at the working group session to provide information, expert analysis and recommendations
- Participating in the plenary discussion of the working group report, addressing the UNHRC under the special provisions by which the "A statu" NHRI of the State under review is "entitled to intervene immediately after the State under review during the adoption of the outcome of the review by the UNHRC plenary"
- Promoting the UPR report and its recommendations within its own country, to inform and encourage implementation of the recommendations
- Encouraging acceptance by the State of recommendations not accepted during the UPR process itself
- Monitoring implementation and follow up of the UPR report and recommendations
- Reporting to the UNHRC during the course of the cycle on progress with implementation and follow up
- Providing information on implementation and follow up to the next cycle of the UPR.

Special Procedures

The Involvement of NHRIs In The Work Of Special Procedures

NHRIs can be involved in the work of special procedures in a number of ways, including:

- Engaging in the process for nomination and selection of mandate holders; for example, NHRIs are able to nominate candidates for appointment to special procedure mandates and also comment on or support particular candidates who are under consideration
- Contributing to studies and reports by providing a special procedure with credible and reliable information
- Supporting the country visits of a special procedure
- Participating in the Human Rights Council dialogue around the reports of a special procedure ("A status" NHRIs only).

Country visits and communications about human rights violations are two areas where NHRIs can provide particularly valuable support to special procedures in relation to the human rights of women and girls.

Country visits

Country visits are an important means by which special procedures carry out their work, enabling them to bring a human rights situation to international attention. NHRIs can use country visits to build national and international support for a particular issue that is of concern to them. Any country visit requires the approval of the State. NHRIs should encourage their Government to issue a standing invitation to all the special procedures or to invite specific special procedures, such as the Special Rapporteur on violence against women, to visit the country to examine an issue of particular concern.

A typical country visit involving a special rapporteur will usually involve a series of meetings with government officials and other stakeholders, including the NHRI and civil society groups. The special rapporteur will also meet with victims and others directly affected by the human rights situation under investigation. After the visit, she or he will prepare a report, including findings and recommendations, for the Human Rights Council. The report is then discussed in an interactive dialogue with the State, during a plenary session of the Council at which "A status" NHRIs may participate according to the usual rules of procedure.

OHCHR provides support for the country visits of the special procedures and will generally provide the visiting special rapporteur or working group with background information prior to the visit. NHRIs can assist that process by providing OHCHR with information that may be included in background documentation, including suggestions for persons and organizations to meet. NHRIs can also support and advise the special procedures during and after the visit by providing credible and reliable information and responding to any queries that might arise. In addition, NHRIs can play a crucial role once the report of the country visit is made public. They can promote awareness of the report and its findings, advocate for implementation of the report's recommendations, monitor the progress of implementation and report on this to the different mechanisms of United Nations human rights system.

Less usually, special procedure mandate holders can conduct unofficial visits that do not result in a formal report to the Human Rights Council but which nevertheless make an important contribution to the national human rights dialogue.

The Human Rights Treaty Monitoring Bodies

The nine core human rights treaties that constitute the treaty-based system are:

- International Covenant on Civil and Political Rights (ICCPR) 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984
- Convention on the Rights of the Child (CRC) 1989
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) 1990
- Convention on the Rights of Persons with Disabilities (CRPD) 2006
- Convention for the Protection of All Persons from Enforced Disappearance (CPED) 2006

In addition there are another nine treaties that are Optional Protocols to these core treaties. They are supplementary treaties.

Each of the nine core treaties has its own treaty monitoring body that promotes the performance of treaty obligations by State parties. In addition, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002 (OPCAT) has its own treaty committee, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that carries out the responsibilities given in the Optional Protocol. In all cases but one, the treaty itself establishes the treaty monitoring body. The exception is the Committee on Economic, Social and Cultural Rights, which was established not by the ICESCR but by a decision of the UN Economic and Social Council (ECOSOC).

The treaty monitoring bodies are legal technical bodies, not political bodies. Their members are independent human rights experts who serve on an unpaid, honorary basis in their personal capacities.

NHRIs can be of great assistance to the treaty monitoring bodies. Indeed the treaty monitoring bodies themselves have recognised the value of NHRIs. The following three have adopted formal comments as guidance on the role of NHRIs in relation to their work and the implementation of the treaties for which they are responsible:

- the Committee on the Rights of the Child
- the Committee on Economic, Social and Cultural Rights
- the Committee on the Elimination of Racial Discrimination.

All NHRIs can participate in all aspects of the work of the treaty monitoring bodies. They can:

- recommend and facilitate the ratification of treaties and the acceptance of treaty monitoring bodies' complains jurisdiction by their State
- advocate for the incorporation of international and regional standards in domestic law and their application in policy and practice
- monitor the State's fulfilment of international human rights treaties under domestic law

- provide treaty monitoring bodies with information to assist in the consideration of State reports and support the implementation of recommendations made by the treaty monitoring bodies arising from that consideration
- contribute views and information to the other processes of the treaty monitoring, bodies for example, in relation to developing recommendations and comments on the interpretation of the treaties and to the general study or discussion days on critical issues.

The Paris Principles make it clear that NHRIs should "contribute to" State reports, not write them for the State. NHRIs should also make their own independent comments when a State is undergoing review by an international human rights mechanism. An NHRI should have the responsibility:

> *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.*

Sources:

A manual on national human rights institutions, published by Asia Pacific Forum, May 2015

International Human Rights and the International Human Rights System published by Asia Pacific Forum, July 2012

CHAPTER 11

ROLE OF NHRIS IN ECONOMIC, SOCIAL & CULTURAL RIGHTS

Human rights are a legal statement of what human beings require to live fully human lives. Collectively, they are a comprehensive, holistic statement. All human rights – civil, cultural, economic, political and social – are recognized as a universal, indivisible and interdependent body of rights, as originally overseen in the 1948 Universal Declaration of Human Rights. A comprehensive approach to the promotion and protection of human rights which include economic, social and cultural rights, ensures that people are treated as full persons and that they may enjoy simultaneously all rights and freedoms and social justice.

Economic, social and cultural rights (ESCR) are rights that relate to people's standard of living. They include the rights to education, work, food, shelter, health care, social security and cultural development.

Although human rights are recognized as "universal, indivisible, interdependent and interrelated", ESCR have historically received less attention than civil and political rights. For many years, they were pushed to the margins of the international human rights agenda on the grounds that they were too vague to be "justiciable". In other words, they were not seen as legal rights that could be enforced by courts.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the most comprehensive articulation of ESCR in international law. As outlined below, its provisions protect human rights relating to the workplace, family life, community life and cultural life. In addition, other international treaties set out the rights of particular groups and also contain relevant provisions on ESCR. These include the:

- Convention on the Rights of the Child (CRC), especially articles 23-32
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), especially article 5
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Part III
- Convention on the Rights of Persons with Disabilities (CRPD), especially articles 23-28

- Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), especially articles 27-31.

Right	Description	Provision
Adequate standard of living	The right to an adequate standard of living for individuals and families includes adequate health, food, clothing and housing. It also includes access to safe drinking water and sanitation.	ICESCR: Article 11 CRC: Articles 16 and 27 ICERD: Article 5 CEDAW: Article 14 CRPD: Articles 2, 5, 9, 19, 22 and 28 ICMW: Article 43
Cultural rights	Cultural rights protect an individual's or a community's lifestyle. This includes an individual's or a group's traditions, language, art, knowledge and values.	ICESCR: Articles 13-15 CRC: Articles 14, 28 and 29 ICERD: Article 5 CRPD: Article 30 ICMW: Articles 12, 31, 43 and 45
Education	The right to education includes free and compulsory primary education. Schools must meet minimum educational standards. A parent has the right to choose their child's school based on a particular moral or religious education.	ICESCR: Article 13 CRC: Articles 28 and 29 ICERD: Article 5 CEDAW: Article 10 CRPD: Article 24 ICMW: Articles 30, 43 and 45

Health	The right to health includes the right to physical and mental health. This includes access to necessary medical and social services.	ICESCR: Article 12 CRC: Article 24 ICERD: Article 5 CEDAW: Articles 12 and 14 CRPD: Article 25 ICMW: Articles 28, 43 and 45
Housing	The right to housing includes access to adequate living arrangements, including safe drinking water, sanitation and energy. It also includes a degree of security and safety from threats, such as harassment or forced eviction.	ICESCR: Article 11 CRC: Articles 16 and 27 ICERD: Article 5 CEDAW: Article 14 CRPD: Articles 2, 5, 9, 19, 22 and 28 ICMW: Article 43
Social security	The right to social security includes assistance and protection for all. Social security benefits should support all citizens, especially individuals experiencing unemployment, disability, ill-health, maternity or old age.	ICESCR: Articles 9 and 10 CRC: Article 26 ICERD: Article 5 CEDAW: Article 11 CRPD: Article 28 ICMW: Article 27
Water and sanitation	The right to water and sanitation includes access to safe drinking water and affordable sanitation services.	ICESCR: Articles 11 and 12 CRC: Article 24 ICERD: Article 5 CEDAW: Article 14 CRPD: Article 28

Work	The right to work includes an individual's right to employment. It also includes rights at work, such as fair wages, safe working conditions and the right to join a union.	ICESCR: Articles 6-8 ICERD: Article 5 CEDAW: Article 11 CRPD: Article 27

The International Covenant on Economic, Social and Cultural Rights (ICESCR) outlines the substantive measures required to fulfill the commitment in the Universal Declaration of Human Rights. The rights guaranteed by ICESCR include:

- Equality of men and women
- Just and favorable conditions of work
- Access to work
- Right to organize and to collective bargaining
- Adequate food, safe drinking water, clothing and shelter
- Health
- Social Security
- Education, etc.

However, renewed attention and commitment to the full realization of economic, social and cultural rights are vital. National Human Rights Institutions can play an important role in a concerted effort to address economic, social and cultural rights.

Various international bodies and mechanisms have identified the important role national human rights institutions can play in protecting and promoting economic, social and cultural rights. Most notably, the Committee on Economic, Social and Cultural Rights, in its General Comment No.10 stressed that NHRIs have:

> *"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".*

To give proper attention to economic, social and cultural rights, however, national human rights institutions need a comprehensive understanding of the legal nature of these rights and relevant State obligations under international and domestic law. They also need to explore the breadth of their mandates, renew their internal and external resources and address the challenges of implementing economic, social and cultural rights.

ECOMOMIC, SOCIAL AND CULTURAL RIGHTS IN PRACTICE

Mandate of the National Human Rights Commission of India

The National Human Rights Commission of India was created under The Protection of Human Rights Act 1993. Its mandate is to protect and promote rights guaranteed by the Indian Constitution or embodied in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and enforceable in Indian courts. The Human Rights Commission's functions include inquiring into alleged violations of rights, intervening in proceedings before a court, visiting jails, reviewing and commenting on domestic laws and international instruments, conducting research, re- viewing and commenting on the status of human rights, promoting awareness and education and encouraging the involvement of non-governmental organizations and other institutions. The Commission has undertaken many inquiries into issues of economic, social and cultural rights, including in relation to degrading labour, education and mental health facilities. In April 2000, the Commission held a Regional Consultation on Public Health and Human Rights in New Delhi.

According to general principles of interpretation, human rights should be interpreted as broadly as possible and restrictions on rights should be interpreted as narrowly as possible. A national human rights institution should interpret its mandate as widely and comprehensively as possible, subject to its establishing law and to domestic and inter- national law. In particular, to the extent that the words of the establishing law permit, references to human rights should be interpreted as including all human rights—civil, cultural, economic, political and social.

Economic, social and cultural rights may also come within the mandate of a national human rights institution through the principle of the indivisibility and interdependence of all rights. Human rights law is integrated and holistic. Rights relate to each other. The right to life, for example, has implications for the right to health and the right to education, and the right to freedom of movement has implications for the right to livelihood. Even though a national human rights institution's mandate may refer only to civil and political rights, it will have jurisdiction to deal with many issues of economic, social and cultural rights through the rights to life, equality and non-discrimination.

A national human rights institution's mandate may also limit its jurisdiction to violations of rights by certain categories of organization or individual. Most commonly, it might be limited to public sector perpetrators, that is, Governments and their officials and agents. The national human rights institution might be able to interpret its jurisdiction to investigate complaints against the State as including any acts by organizations that are substantially funded, subsidized or regulated by the State. National institutions are encouraged to include in their remit a mandate for the private sector, which is increasingly a provider of essential services. A national human rights institution's interpretation of its mandate and jurisdiction is generally subject to judicial review. This should encourage the institution to interpret its mandate as broadly as possible. It need not and should not be cautious. It can be confident that, if it exceeds its legal authority, a court can review its decision and give a definitive ruling on the scope of its establishing law.

CHALLENGES FOR NHRIs IN ADDRESSING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A national human rights institution is likely to encounter a number of challenges in addressing economic, social and cultural rights. It will need to look internally and externally to anticipate and address the obstacles and challenges that may arise.

Internal factors

The first challenge facing a national human rights institution may be that of increasing the level of *understanding and acceptance* of economic, social and cultural rights among its members and staff. They may recognize the importance of the indivisibility and interdependence of all human rights, but be more familiar and experienced in dealing with civil and political rights. The national institution will need to develop appropriate methodologies and approaches for addressing economic, social and cultural rights, and to allocate priority to their implementation.

Understanding of and commitment to economic, social and cultural rights of themselves will be insufficient. A national human rights institution will also require the *institutional capacity* to deal with economic, social and cultural rights, and that will be dependent on the availability of financial resources and staff time. The national institution is likely to have a heavy existing workload and case backlog. Its staff may be insufficiently experienced and trained in the area of economic, social and cultural rights. The institution's networking with external stakeholders may be undeveloped or ineffective. It may lack management coordination and planning. These are all factors that will challenge the institution's ability to protect and promote economic, social and cultural rights.

A national human rights institution will need to *define standards*, including indicators, benchmarks and targets, relating to economic, social and cultural rights. To monitor these rights, its staff will require a fuller understanding of the dimension and parameters of each right and the related State obligations. International standards, particularly those contained in International Covenant on Economic, Social, Cultural Rights, will assist them in this. They will need to supplement their skills in investigating individual violence with competency in fact-finding, the collection and analysis of primary and secondary data and the analysis of economic, including budgetary information.

External Factors

No national human rights institution can solve all of its country's human rights problems on its own. The effectiveness of its work on economic, social and cultural rights will re- quire an *external environment* that is supportive and enabling—an effective judiciary, accountable democratic institutions and an engaged and effective civil society. Few, if any, national human rights institutions will encounter these ideal conditions. A national institution must therefore remain conscious that the political, economic, social and cultural environment can inhibit its operating independently and effectively, and obstruct its work for economic, social and cultural rights. The national human rights institution should consider:

- The level of judicial capacity and independence and their impact on its ability to function;

- The domestic legislative framework for and international treaty obligations relating to the enforcement of remedies;
- Strategies to reduce risks that it will be drawn into party political conflicts;
- Steps to educate the public and civil society about its mandate;
- How to sensitize the Government, the military and the police to its role and authority?

A national human rights institution may also face conflicting interpretations of human rights, and challenges to the notion of the universality of all rights. In a State that has not yet ratified the key international human rights treaties, the national institution will give priority to promoting the ratification of treaties and their incorporation in domes- tic law. Indeed, a restrictive interpretation of human rights may also affect the Government's interpretation of the national institution's mandate, excluding the institution from addressing economic, social and cultural rights issues.

A national human rights institution may also need to address in its promotional activities *misconceptions*, lack of awareness and shared misunderstanding among the public, government officials and even the judiciary about the specific nature of economic, social and cultural rights and the State's obligation to respect, protect and fulfil these rights. It may encounter a public and institutional attitude that access to food, housing, employment and education are welfare issues rather human rights issues, or that economic, social and cultural issues are aspirational rather than legal. The realization of economic, social and cultural rights may be viewed as unrealistically expensive.

> *Public opinion may not accept that there is any deficiency in a country's performance of its obligations relating to economic, social and cultural rights. The relatively well off segment of society, whether the majority of the population or not, may lack interest in or be prejudiced against marginalized individuals and groups. This segment of society has a disproportionate effect on the public expression of views and disproportionate influence on Governments. Business competition, consumerism and the mass media can contribute to public apathy concerning economic, social and cultural rights.*

Even where there is good government and public appreciation of economic, social and cultural rights and obligations, the national human rights institution may encounter difficulty in promoting and protecting them. For example, the State may *lack resources* to address economic, social and cultural rights issues. The national human rights institution will need to understand the legal nature of the progressive realization of economic, social and cultural rights and the implications of obligations concerning these rights for government decision-making about budgets, revenue raising and public expenditure, and inform itself of the Government's available resources and be in a position to discuss this subject with it.

ROLE OF NHRIs IN PROTECTING AND PROMOTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

To work effectively in the area of economic, social and cultural rights, a national human rights institution must have a comprehensive understanding of:

- The international and domestic legal framework for economic, social and cultural rights;
- The issues affecting economic, social and cultural rights in its own country;
- The work of others involved in protecting and promoting economic, social and cultural rights in the country.

Many of the strategies and approaches a national human rights institution uses to promote and protect civil and political rights will be equally applicable to promoting and protecting economic, social and cultural rights. Indeed, work in these areas should not take place in isolation, but should be complementary and integrated. The national institution should strive to develop an integrated approach in its work on all human rights, including economic, social and cultural rights, ensuring that its strategies reflect the indivisibility and interdependence of human rights and that work in one area is co-ordinated with and informed by what is taking place in others.

A national human rights institution need not develop entirely new procedures for economic, social and cultural rights. The functions it performs and the strategies it employs should be mutually supporting.

Why deal with violations of economic, social and cultural rights?

Human rights are indivisible and interdependent. If a national human rights institution is to affirm through its operations this fundamental principle of international human rights law, then it must find ways to protect and promote economic, social and cultural rights, and not only civil and political rights. It should reflect the totality of human rights in its work.

Violations of human rights can be either individually based or system based. The two types of violation require different remedial approaches. An individual violation affects one person or a small number of persons and is often perpetrated by one or a small number of individuals. Economic, social and cultural rights are generally more often the subject of systemic violations. Systemic violations have broad causes and effects, often arising from the ways in which society is organized politically, socially and economically. It is often difficult to identify individual perpetrators who bear individual responsibility for systemic violations. An effective mechanism for investigating economic, social and cultural rights complaints can both hold perpetrators accountable for their actions and deter potential violators from initiating new violations.

Courts are the basic mechanism for the protection of human rights. But there are limitations on courts' ability to protect human rights as they have no, or only limited powers of investigation, depend upon matters being brought before them. National Human Rights Institutions therefore, can supplement the role of the courts and play a significant role in removing impunity and deterring violations. Because all human rights are interdependent, effective investigative responses to violations of economic, social and cultural rights will also prevent many violations of civil and political rights.

A national human rights institution has a distinctive role which complements that of the courts in dealing with human rights violations. It can deal with complaints, as well as initiating action on its own motion. It can recommend innovative and far-reaching remedies to address not only the particular circumstances of individual victims of human rights violations but also the broader systemic causes and consequences of the violations, acting to prevent further violations and not only to rectify past violations. Moreover, a national human rights institution has a particular focus on human rights and develops expertise in this area that most courts do not and cannot acquire. The complementary role of a national human rights institution is particularly important for economic, social and cultural rights because most courts traditionally have been unable to offer effective protection against, and remedies for, violations of these kinds of human rights.

CHAPTER 12

PROMOTING AND PROTECTING THE RIGHTS OF WOMEN AND GIRLS

The description of human rights above makes clear that all human rights apply equally to women and girls and that certain rights, such as political or economic rights, cannot be reserved solely for men or otherwise protected and respected differently for women. This understanding was first recognized in the Universal Declaration of Human Rights, which proclaimed that everyone was entitled to enjoy human rights and fundamental freedoms “without distinction of any kind”, including distinction based on sex.

The core international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, also affirm that the rights they contain apply to all persons, without distinction of any kind, and expressly guarantee the right of women and men to the equal enjoyment of those rights.

HUMAN RIGHTS ISSUES OF SPECIAL CONCERN TO WOMEN

There is little disagreement today with the notion that “women rights are human rights”. Few would openly challenge the idea that core human rights – from political participation, to education, to criminal justice – apply equally to men and women, without discrimination on the basis of sex. 19 20

But the concept of “women’s human rights” takes this a step further. It recognizes that women experience their human rights – and experience violations of their human rights – in ways that are different to men. It also recognizes that women are vulnerable to human rights violations in ways that reflect the fact they are women and the structures and expectations that are built into the idea of what it is to be “female”.

“Sex” refers to the biological differences between men and women.

“Gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women.

“Gender equality” refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender

equality implies that the interests, needs and priorities of both women and men are taken into consideration – recognizing the diversity of different groups of women and men. Gender equality is not a “women’s issue” but should concern and fully engage men as well as women.

Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development.

Violence against women: Women are subjected to different forms of violence, including physical, sexual, psychological and economic violence.

Discrimination in employment: Worldwide, women earn less than men for work of equal value. The wage gap between women and men is particularly marked in Asia. More women than men are employed informally and, as a result, lack job security and other safety nets. Women are still very rarely employed in jobs with status, power and authority. Maternity is a major source of discrimination in employment. Even where it is prohibited in law, many pregnant women are dismissed from their jobs.

Discrimination in access to justice: Women are often denied access to justice, which means they cannot seek or receive redress for discrimination and violence committed against them. Examples include the failure of public authorities to investigate and prosecute cases of sexual assault and domestic violence and the failure to provide remedies to women who are discriminated against in employment.

Discrimination in access to education and resources: While the situation is improving in many countries, girls are more likely than boys to be kept away from school and to finish school earlier. At the individual level, women’s lack of access to or control over resources limits their economic autonomy. This lack of access and control is often made possible through discriminatory laws and cultural practices relating to property ownership and inheritance rights.

Reproductive health: In every part of the world, women and adolescent girls bear the brunt of sexual and reproductive ill-health. Globally, it is women and girls in developing countries who are at most risk of reproductive-related disease, disability and death.

Participation in public life and decision-making: Women continue to be poorly represented in public life at all levels and in most spheres. While the figures are improving, women make up only a small percentage of the heads of States or Governments around the world. Similarly, women comprise more than 30 per cent in the lower or single house of their national parliament in only a handful of countries.

VIOLENCE AGAINST CHILDREN AND THE GENDER DIMENSION

No violence against children is justifiable; all violence against children is preventable. A child rights-based approach to child caregiving and protection requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them primarily as ‘victims’. The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy. Government should ensure that policies and measures take into account the different risks facing girls and boys in respect of various forms of violence in various settings. States should address all forms of gender discrimination as part of a comprehensive violence-prevention strategy. This includes addressing gender-based stereotypes, power imbalances, inequalities and discrimination which support and perpetuate the use of violence and coercion in the home, in school and educational settings, in communities, in the workplace, in institutions and in society more broadly. Men and boys must be actively encouraged as strategic partners and allies, and along with women and girls, must be provided with opportunities to increase their respect for one another and their understanding of how to stop gender discrimination and its violent manifestations.

INTERNATIONAL LEGAL FRAMEWORK

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the central and most important specialized instrument on the rights of women. It is sometimes described as an international bill of rights for women. It is supplemented by a number of other specialized instruments, such as International Labour Organization (ILO) conventions on discrimination in employment, equal remuneration and equal opportunities; by non-treaty standards of varying legal strength, such as the outcome documents of major world conferences; and by several regional treaties that seek to promote and protect the rights of women.

Committee on the Elimination of Discrimination against Women:

The Committee, established in 1982, is the primary international body for implementation of the international legal framework around women’s human rights. It monitors the performance of States parties in meeting their obligations under CEDAW, principally through the review of national reports submitted every four years. The

Committee discusses the reports with representatives of States parties and sets out its findings and recommendations in concluding observations. The Committee also makes recommendations on matters relating to the implementation or interpretation of CEDAW or, more generally, on issues affecting the human rights of women and girls.

Under the Optional Protocol to CEDAW, the Committee can receive and consider complaints from individuals or groups about violations of the rights protected in CEDAW within the jurisdiction of a State party to the Optional Protocol. The Committee has delivered a number of important decisions under this procedure on matters that have included domestic violence, sterilization, sexual and reproductive health, employment, nationality and conditions of detention. In 2011 the Committee issued the first-ever international decision which found a State responsible for a preventable maternal death. Along with NGOs, NHRIs have made important contributions to the work of the CEDAW Committee.

Supporting a strong national legal and policy framework:
Amman Declaration and Program of Action – ICC (Nov. 2012)
NHRIs agree to the following broad principles and areas of work:

- Monitor States' fulfilment of their human rights obligations and, where the NHRI mandate permits, non-State actors' compliance with human rights standards, including those relating to the human rights of women and girls and gender equality
- Support efforts to ensure the right of women to de jure and de facto or substantive equality with men, recognizing this may require special measures and differential treatment. These efforts can include integration of the human rights of women and girls and gender equality in Human Rights National Action Plans and other relevant laws and policies. The Beijing Platform for Action and its twelve areas of critical concern should serve as the guiding framework for assessing State action to ensure women's and girls' human rights
- Promote the realization of the human rights of women and girls, including as found in CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and other human rights norms and standards, into national law and policies

- Encourage the withdrawal of reservations to [such] treaties with a view to strengthening the implementation of all human rights treaties
- Develop guidelines, where applicable, relating to the human rights of women and girls and monitor State compliance with such guidelines

Amman Programme Of Action

In relation to women's public and political participation NHRIs agree to:

- Advocate for the removal of any discriminatory laws which inhibit women's ability to participate in public and political life
- Promote measures, including through education and the adoption of laws and practices, to eliminate traditions and social and cultural barriers and stereotypes that discourage or prevent women from exercising their right to vote or from otherwise participating in public, peace and political processes

In relation to women's economic, social and cultural rights, NHRIs agree to:

- Monitor and evaluate laws, public policies and budgets, including macroeconomic and trade policies, as well as poverty reduction strategies, population strategies and other strategies aimed at the achievement of the Millennium Declaration and Goals, and engage with relevant sectors, with a view to promoting the removal of provisions which are discriminatory against or have a discriminatory effect on women, and promoting corrective action, if and as appropriate.

In relation to violence against women and girls, NHRIs agree to:

- Promote and support the adoption of laws against domestic and family violence, sexual assault and all other forms of gender-based violence, in accordance with international human rights standards.
- Support the adoption of National Action Plans to address violence against women that include provision for the National Action Plans to be independently monitored and evaluated

In relation to reproductive rights, NHRIs agree to:

- Review national laws and administrative regulations relating to reproductive rights such as those governing family, sexual and reproductive health, including laws which are discriminatory or criminalize access to sexual and reproductive health services, and propose recommendations to assist States in meeting their human rights obligations

NHRIs can play an important role in promoting awareness about these human rights instruments and their value amongst various groups within the community. They can also support the ratification process by undertaking research to identify any changes in laws and policies that may be required prior to or on ratification.

Promoting Reform of Domestic Laws and Policies

The protection of women's and girls' human rights at the national level requires a strong legislative and policy framework. NHRIs have an important role to play in monitoring the domestic legal system, especially to identify weaknesses in national laws and policies that affect women and girls and the realization of their human rights.

The key question to be asked in relation to any analysis is **whether certain laws or policies impact negatively on women and girls and their rights.** The international human rights framework provides the basis for this analysis. It sets out the human rights of women and girls, as well as the obligations on States to respect, protect and fulfil those rights. Consideration and analysis can potentially include the following areas:

- The general legal framework including anti-discrimination laws
- Laws and policies on marriage and the family
- Laws related to violence against women
- Laws and policies on trafficking in persons
- Labour and workplace laws

The Complaint Handling Function: Effectiveness and Accessibility

The value of the NHRI's complaint handling function for women and girls will depend heavily on how accessible it is to women and girls and to those who support women and girls to defend their rights. The NHRI should examine its complaint handling procedures from a gender perspective, paying special attention to:

- Accessibility: with a view to identifying any obstacles that women and girls might experience in lodging or pursing a complaint with the NHRI
- Effectiveness: with a view to identifying how the complaint handling process can be made more effective in dealing with violations of women's and girls' human rights and bringing about positive results.

The NHRI should not expect that it will receive complaints from women and girls in proportion to the scope and seriousness of violations committed against them. Women and girls whose rights have been violated may face many obstacles to approaching the NHRI and submitting a complaint. These obstacles often reflect the social, economic and cultural challenges faced by women and which directly impact on their ability to access different services, including those provided by the NHRI. Accordingly, the NHRI should actively consider ways in which it can encourage complaints from women and girls generally, as well as from groups who are particularly vulnerable to human rights violations, such as:

- Migrant women and girls
- Women and girls from racial, religious and ethnic minorities
- Women and girls working in the informal sector, including export houses, domestic service, entertainment and the sex industry
- Women and girls with disabilities.

The NHRI can adopt different strategies to encourage women and girls to complain about human rights violations. Firstly, it is important to build awareness about the work of the NHRI: what it is, what it does and, specifically, its role to receive and investigate allegations of human rights violations against any individual in the country, regardless of their sex, nationality, migration status, age or any other difference. When providing information about its complaint handling procedures – for example, in brochures, radio programmes, public meetings and the like – the NHRI should explain:

- The type of human rights violations that they are able to investigate under their mandate
- How complaints can be lodged and any procedural or time requirements attached to the lodging of a complaint
- How a complaint will be investigated and the options for resolution and/or referral
- Any remedies that may be available as a result of the NHRI's involvement
- The advantages and disadvantages of pursuing a complaint through the NHRI.

Integrating Gender into Complaint Handling Procedures

NHRIs with a strong, well-structured complaint handling procedure are well placed to support women and girls whose rights have been violated. In other words, the integration of a gender perspective will be most effective when the complaint handling procedure itself is robust. Integration of a gender perspective into a poorly organized and poorly functioning complaint handling procedure is likely to yield little value to women and girls whose rights have been violated.

The integration of a gender perspective into the NHRI's complaint handling procedure should be based on a thorough understanding of how the procedure is currently working. This understanding can best be gained through reviewing the procedure from the perspective of the NHRI's capacity to meet the needs of women and girls. There are a range of issues and questions to consider.

NHRI involvement in the CEDAW Committee

In 2008, the CEDAW Committee issued a formal statement on its relationship with NHRIs, affirming that close cooperation between the two is "critical" and that "[n]ational human rights institutions may provide comments and suggestions to a State party's reports in any way they see fit. National human rights institutions may also provide assistance to alleged victims of human rights violations under the Convention to submit individual communications to the Committee or, when the situation arises, provide reliable information in relation to the mandate of the Committee to conduct an inquiry."

In practice, the CEDAW Committee has increasingly welcomed the participation of NHRIs and encouraged the submission of information to both the Committee and its pre-session working group, where the initial work is done to prepare for the Committee's dialogue with States parties. For example, at the 2010 review of Australia, the CEDAW Committee requested the Australian Government to provide an interim report on measures to address violence against women and on measures to improve Aboriginal and Torres Strait Islander women's enjoyment of their human rights. To contribute to the dialogue on these issues, the Australian Human Rights Commission prepared an independent interim report for the CEDAW Committee.

Sources:

Promoting and Protecting the Human Rights of Women and Girls: A Manual for National Human Rights Institutions published by Asia Pacific Forum, June 2014

CHAPTER 13

ROLE OF NHRIs IN PREVENTING TORTURE

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" states article 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

The prohibition of torture and other forms of ill-treatment has a special status in the international protection of human rights. It is included in a number of international and regional treaties and also forms part of customary international law, binding all States.

The prohibition of torture is absolute and can never be justified in any circumstance. This prohibition is non-derogable, which means that a State is not permitted to temporarily limit the prohibition on torture under any circumstance whatsoever, whether a state of war, internal political instability or any other public emergency. Further, the prohibition of torture is also recognized as a peremptory norm of international law, or jus cogens. In other words, it overrides any inconsistent provision in another treaty or customary law.

Considering the particular importance placed on the prohibition of torture, the traditional obligations of States to respect, to protect and to fulfil human rights is complemented by a further obligation to prevent torture and other forms of ill-treatment. States are required to take positive measures to prevent its occurrence. "In the case of torture, the requirement that States expeditiously institute national implementing measures is an integral part of the international obligation to prohibit this practice."

The United Nations Convention against Torture also places an explicit obligation on States parties to prevent torture and other forms of ill-treatment. According to article 2.1, "[e]ach State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction", while article 16 requires that "[e]ach State Party shall undertake to prevent (…) other acts of cruel, inhuman or degrading treatment or punishment." Its Optional Protocol sets out a mechanism to assist States parties to meet these obligations by establishing a system of regular visits to places of detention by independent international and national bodies.

Although States have a duty to prevent torture, it is often not applied in practice and there is commonly a lack of understanding about the concept of torture prevention. This introduction defines torture prevention, outlines an integrated strategy to prevent torture and describes the preventive role that NHRIs can play.

THE RELEVANCE OF TORTURE PREVENTION TO NHRIs

NHRIs are usually ideally placed to contribute at each level of an integrated strategy to prevent torture and ill-treatment in their country.

NHRIs can contribute to the development of an effective legal framework by:

- encouraging the State to ratify relevant international human rights treaties
- advocating legal reforms to make torture a criminal offence and to prevent its use by public officials.

NHRIs can contribute to implementation of the legal framework by:

- reviewing detention procedures
- investigating allegations of torture
- contributing to training programmes for relevant public officials.

NHRIs can contribute to, and act as, control mechanisms by:

- cooperating with international bodies
- monitoring places of detention
- promoting public awareness.

It is important to stress at the outset that the legal definition of torture differs quite significantly from the way the term is commonly used in the media or in general conversation, which often emphasizes the intensity of pain and suffering inflicted. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides the internationally agreed legal definition of torture:

Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

This definition contains three cumulative elements:

- the intentional infliction of severe mental or physical suffering
- by a public official, who is directly or indirectly involved
- for a specific purpose.

PROMOTING AN EFFECTIVE LEGAL FRAMEWORK

Legal Basis for NHRI Involvement

Paris Principles – *Competence and Responsibilities*

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 publicize 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;

(b) To promote and ensure the harmonization 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;

Legislative implementation of international obligation in domestic law

NHRIs should urge their State to:

Include a comprehensive definition of the term torture in domestic legislation

Ensure that torture is a specific criminal offence under domestic law

PROMOTING RATIFICATION OF INTERNATIONAL TREATIES

NHRIs should review whether their country has ratified all key international treaties related to torture, and in particular:

- the Convention against Torture (including articles 21 and 22) and its Optional Protocol
- the International Covenant on Civil and Political Rights and its Optional Protocol

If a State has not ratified these core treaties, NHRIs can develop and pursue a strategy to promote ratification. This can include making a formal recommendation to the Government to ratify certain treaties, actively lobbying governmental and parliamentary representatives and building public awareness on the issue.

PROMOTING LEGAL REFORM

The Convention against Torture contains a number of important measures that contribute to the prevention of torture. When a State ratifies the treaty it is obliged to implement these measures in its domestic laws and policies.

NHRIs in these countries have an important role to play to assess whether the national legal framework meets the requirements set out in the Convention against Torture. When this is not the case, NHRIs should use their mandate to promote the necessary legal reforms.

REFORMING DETENTION PROCEDURES

Establishing a legal framework that includes the provisions outlined above is an essential component in prohibiting and preventing acts of torture and other forms of ill-treatment. However, detailed and concrete procedures are also required to ensure that the legal framework works effectively in practice. It may even be appropriate to include some of the most important procedures in the law itself. As torture nearly always takes place in secret, promoting greater transparency of places of detention is

a substantial step towards prevention because it removes many of the opportunities for torture to occur. In addition, there are a number of other procedures that can provide important safeguards and help reduce the risk of ill-treatment of persons deprived of their liberty. NHRIs should actively promote and support the adoption of detention procedures that bring greater transparency and provide practical safeguards.

Detention Procedures contributing to transparency

The Committee against Torture, the Human Rights Committee and regional mechanisms recommend the adoption of a number of procedural safeguards that aim to reduce the risk of torture and ill-treatment in places of detention.

No unauthorized places of detention

Persons deprived of liberty should not be held in unauthorized places of detention. Unauthorized places of detention have no procedures or records and therefore provide no institutional protection to the detainee. It should be a criminal offence to hold persons deprived of their liberty in unauthorized places of detention.

No incommunicado detention

Incommunicado detention – which occurs when a person is isolated and has no contact with the outside world – creates an environment that is conducive to torture, especially when the situation is prolonged. All persons deprived of their liberty should be allowed to receive visits from a lawyer, family members

Right to inform a third party

It is essential that persons who have been arrested are allowed to contact a family member, friend, lawyer, consulate representative or any person of their choice and inform them of their arrest and where they are being held.

Access to a lawyer

Ensuring that a person has access to a lawyer immediately following his or her arrest, especially during interrogation, can significantly reduce the risk of torture. In addition, a lawyer will be able to provide advice about the legality of their client’s detention and take action on any complaints that may be made.

Access to a lawyer should include the right to contact and be visited by a lawyer and, in principle, the right to have the lawyer present during interrogation.

Access to a medical doctor

The right to receive a medical examination by an independent medical doctor – and, if possible, a doctor of the person's own choice – also helps reduce a culture of secrecy from developing in places of detention. A medical examination can establish the physical condition of the person at the time of his or her arrest or detention. This can be a significant deterrent against torture and can also help to detect torture if it does occur. The medical examination can also establish if the person suffers from any health problems that might be aggravated by detention. The results of the medical examination should be formally recorded

Appearing before a judge

Anyone who is arrested should be brought promptly before a judge. The judge should ensure that the person's arrest and detention are legal. The judge will also be able to investigate any complaint that the person may raise. Even in the absence of a formal complaint, the judge should be able to take action ex-officio if there are visible injuries or other indications that torture or ill-treatment may have occurred.

CONTRIBUTING TO THE IMPLEMENTATION OF THE LEGAL FRAMEWORK

Training Public Officials

Providing professional training programmes for public officials is a critical strategy to help prevent torture and ill-treatment of persons deprived of their liberty.

All personnel involved in the arrest, interrogation and detention of persons should receive training on human rights and, in particular, on the absolute prohibition of torture. NHRIs can play an important role in contributing to the provision of this training by developing training tools and delivering training courses. However, it is important to note that training programmes offered by NHRIs will generally only be useful when there is clear political will to prevent torture.

In these cases, training programmes should be integrated into the general work and procedure of the institution, whether it is a police service or prison service. To achieve the greatest impact, the training programme should have the strong endorsement and support of that institution's leadership.

When torture occurs at the instigation of an institution's authorities, or is tolerated by them, training will not be the right approach. It may in fact be counterproductive as it provides an opportunity for the institution's leadership to publicly promote that they are making efforts to prevent torture.

Police officers and prison warders may also be hostile to what they view as outside interference in how they do their job. They may resent receiving training from representatives of NHRIs, whom they might consider to be idealists with no practical understanding of the difficulty of their job.

It is therefore important for NHRIs to carefully consider their strategy for the development and delivery of training programmes. In some cases, the NHRI may not be the most appropriate organization to provide training. Instead it could contribute to the development and revision of curricula and training materials, as well as monitor and evaluate the effectiveness of training programmes.

Sources:

Preventing Torture: An Operational Guide for National Human Rights Institutions by Asia Pacific Forum, Association for Prevention of Torture, Office of United Nations High Commissioner for Human Rights, May 2010.

CHAPTER 14

PROTECTING RIGHTS OF MIGRANT WORKERS

Introduction

The core international human rights treaties set out the principle that human rights and fundamental freedoms belong to all people, regardless of their migration status. However, for many migrant workers, there can be a vast gap between principle and reality.

In recent years, labour migration has become a priority issue for many States around the globe.

While States have the sovereign right to determine and enforce their migration and labour policies, it is imperative that they respect and uphold the fundamental rights of all migrant workers living within their borders, regardless of their migration status.

However, migrant workers, especially those engaged in low-skills jobs or poorly regulated sectors of employment, can be vulnerable to discrimination, exploitation and abuse. Undocumented workers and migrants in an irregular situation can live and work at the very margins of basic protections and safety. In some cases, the working conditions that some migrants experience can amount to forced labour or, in the case of people trafficked across borders, slavery.

A country's legal framework should provide the foundation for ensuring that the human rights of all people within its jurisdiction are promoted and protected. However, in some cases, the domestic laws enacted by States can discriminate against migrants and limit their access to justice, especially migrants in an irregular situation.

NHRIs can contribute to a strong and effective legal framework by promoting the ratification of relevant international human rights standards, especially the International Convention on the Protection of All Migrant Workers and Members of their Families ("the Convention on Migrant Workers").

They can also monitor and promote compliance with the human rights treaties that the State has ratified, review existing national legislation and propose amendments or recommend that new laws be enacted to properly promote and protect the rights of migrant workers.

In addition, NHRIs can engage with a broad range of stakeholders – including government departments, law enforcement agencies, business and employer organisations, labour recruitment agencies, professional associations, trade unions, NGOs, migrant organisations and others – to develop migration, labour, social and industry-specific policies that meet international standards and provide effective safeguards for migrant workers and members of their families.

In this way, NHRIs can play "an important role in ensuring efficient domestic legal protection of all migrants, including access to justice, non-discrimination and equal treatment, including full and effective protection in all areas of society.

Key issues for law and policy reform

In recent years, NHRIs from all regions of the world have met together on a number of occasions to share information and identify common goals for advancing the rights of migrant workers.

These gatherings have highlighted a range of priority areas for legislative and policy reform to ensure that migrant workers, undocumented workers and migrants in an irregular situation are not excluded from national human rights protection systems.

The reforms NHRIs have agreed to advocate for are based on international human rights standards and the principles of equality and non-discrimination. They include:

- strengthening national policies on the employment of migrant workers, including improved oversight and regulation of the activities of recruitment agencies, in conformity with international human rights standards
- establishing minimum standards on working conditions and workplace policies, including safety and health, overtime and irregular hours and adequate pay, clear information regarding work duties, reducing language barriers, respect for cultural and religious beliefs in the assignment of work duties and schedules, job termination and forceful dismissal
- increasing penalties for violations of national labour and employment laws, or recruitment policies
- establishing minimum standards for the living conditions associated with the employer-supplied housing for migrant workers, and their families, where appropriate, including requirements for the provision of basic amenities, such as shelter, running water, heat and lighting

- securing the application of domestic labour and employment laws to migrant workers in a manner equal to that of the national labour force, including the provision of medical services, participation in the national pension system, worker's accident and disability compensation, the right to join and form unions and the right to legal remedies for unpaid wages
- enhancing the right to change employer, especially in cases of exploitative or otherwise unjust working conditions
- promoting the right of asylum seekers to support themselves through temporary employment or other adequate means of livelihood while awaiting determination of their status
- ensuring the decriminalisation of victims of smuggling and trafficking.

Promoting reforms to domestic law and policy

When a State ratifies an international human rights treaty, it is obliged to implement the treaty's obligations into its domestic laws and policies and to ensure greater conformity between State practices and its laws and policies.

An important role of NHRIs is to assess whether national laws, policies and practices comply with the requirements set out in the treaty. When this is not the case, NHRIs can use their advisory mandate to recommend and advocate for the necessary reforms.

Information and data collected by NHRIs about human rights can identify emerging issues, demonstrate areas of progress and help prioritise areas for action.

Based on their human rights analysis, NHRIs can make recommendations to the Government about specific steps to bolster legislative protections for migrant workers that meet international standards, as well as practical reforms that can be made to relevant policies.

NHRIs can offer technical advice to assist the Government implement proposed changes, such as providing comments on draft legislation, working with government departments to incorporate human rights standards into their operational policies and conducting training sessions for public officials to ensure that policies can be effectively translated into practice "on the ground".

If a State has not ratified a particular treaty, such as the Convention on Migrant Workers, NHRIs can still make recommendations to the Government to introduce, strengthen or implement national laws and policies that meet international standards or best practice in the prevention of human rights violations, including those by corporations.

Engaging stakeholders in the policy-making process

The approach that NHRIs follow when providing legislative and policy advice to the Government and other stakeholders can have a significant bearing on their ability to influence positive change.

In providing advice on laws and policies to promote and protect the rights of migrant workers, NHRIs should seek to gather information and perspectives from a range of stakeholders, including parliamentarians, government departments, the judiciary, academia, business groups, public and private sector employers, labour recruitment agencies, trade unions and relevant NGOs.

A human rights-based approach also requires that migrant workers and migrant organisations will make a direct contribution to the development of laws and policies that affect them.

NHRIs should seek to develop effective strategies that engage and empower migrant workers to share their experiences and suggestions for addressing discrimination and human rights violations. This may, for instance, involve the NHRI providing information about laws and policies in accessible and plain language formats, which are then translated into the language of migrant workers in the country.

The goal of the NHRI should be to ensure that migrant workers can genuinely participate in discussion of the issues and have their perspectives and suggestions heard by the decision-makers.

By collecting and synthesising input from a range of stakeholders, NHRIs are well placed to develop practical recommendations that respond to current and emerging issues of concern.

A collaborative approach is also more likely to lead to implementation of these recommendations, especially if other stakeholders and advocate for the proposed reforms.

Working with business and industry

NHRIs should seek to establish relationships with the business and industry sector to promote greater understanding of their human rights obligations, including their responsibility to respect the rights of migrant workers within their employment.

The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises has highlighted the important role that NHRIs can play to provide guidance on human rights to business groups and other non-State actors:

> *Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advice on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalisation, recognising the specific challenges that may be faced by… migrant workers and their families."*

Working with migrant worker recruitment agencies

Many migrant workers seek to access employment opportunities in overseas labour markets through recruitment agencies. In a number of countries, the Government operates labour recruitment agencies. However, given the rapidly changing global labour market, there has been a strong growth in the number of private recruitment agencies operating in recent years.

Private recruitment agencies commonly provide a range of services to prospective migrant workers, such as conducting interviews, testing skills and qualifications, arranging medical tests, coordinating employment contracts, organising tickets and travel documents, providing pre-departure training and orientation and assisting with departure and employment.

Migrant workers, particularly women and low-skilled workers, can be especially vulnerable to exploitation and human rights violations in the recruitment and deployment phase. For example, they may be given misleading information, some may not receive a legal employment contract that sets out and protects their rights, while other may be forced to pay exorbitant recruitment fees and face severe indebtedness over long periods of time. Some individuals can find themselves in situations that amount to bonded labour.

As the ILO has noted:

> *Such situations point to a need for better official oversight of recruitment agencies and their practices. Moreover, the establishment of more legally regulated agencies could make informal systems that are outside the law less attractive to workers and employers.*

NHRIs can play an important role in advocating that the Government develop legislation to regulate the activities of private recruitment agencies and establish effective oversight mechanisms to ensure that the rights of workers are protected in practice.

This can be complemented by developing policy proposals for implementation by the Government which promote informed decision-making among prospective migrant workers, ensure migrant workers receive certified contracts that comply with human rights standards and require adequate pre-departure training and support.

NHRIs can also work directly with private recruitment agencies to assist them understand and comply with their human rights obligations to prospective migrant workers, as well as to encourage them to adopt good practice in their operations.

Promoting inter-agency coordination among government departments

During their journey from one country to another, settling in and taking up employment, migrant workers and members of their families will come into contact with a broad range of government departments and other agencies of the State.

They may, for example, engage with officials from departments of immigration, labour, social welfare, education, housing and health. Undocumented migrants and migrants in an irregular situation may also have contact with police, detaining authorities and the justice system.

In order to better promote and protect the rights of migrant workers, NHRIs have noted the importance of establishing clear lines of communication between relevant government agencies so that policies can be developed and services delivered in a more coordinated and effective manner.

NHRIs can support this process by:

- establishing a regular dialogue with relevant government departments and other agencies of the State
- holding conferences and other forums that bring together public officials to discuss issues of shared concern and develop policy solutions

- advocating for and advising on comprehensive policy approaches and appropriate inter-agency responsibilities.

NHRIs can also develop education and training programmes for government departments to build greater understanding of the human rights issues that migrant workers face and to identify ways in which their agencies can work more effectively with members of different migrant communities.

Developing National Human Rights Plans of Action

Delivering improved human rights protection for migrant workers requires the commitment and collaboration of a range of actors, across governmental, civil society and private sector bodies.

A National Human Rights Plan of Action (National Action Plan) – which is from the Vienna Declaration and Programme of Action, adopted in June 1993 at the World Conference on Human Rights - is an important tool that can help establish a roadmap for realising positive change over time for migrant workers and members of their families, as well as other vulnerable groups within a country.

The aim of the National Action Plan is to develop a “comprehensive and pragmatic programme of activities aimed at progressively bringing about improvements” to the human rights situation of a country.

A broad of stakeholders will be involved in the process of drafting and implementing the National Action Plan, including Government ministers, parliamentarians, government departments, law enforcement agencies, civil society organisations, the judiciary, trade unions, professional associations, business groups, employers, NGOs, academics and others.

NHRIs should obviously play a significant role in developing the National Action Plan by providing independent information, analysis and recommendations.

In addition to drawing on their monitoring and complains data related to migrant workers and migrants in irregular situations, NHRIs can compile all relevant recommendations and comments made to the State through the UPR process, by UN treaty bodies and special procedures, the ILO and other international organisations.

They can identify and highlight examples of good practice developed in other similar labour-sending or labour-receiving countries, as well as advocate for the inclusion of corporate human rights compliance in the National Action Plan.

It is crucial that representative members of vulnerable groups participate in the process of developing the National Action Plan. NHRIs should take proactive steps to ensure that the perspectives and concerns of migrant communities are heard, acknowledged and taken into consideration.

The final National Action Plan will normally include a range of broad objectives and practical activities to strengthen:

- the national legal framework
- civil and political rights
- economic, social and cultural rights
- the rights of vulnerable groups
- human rights education
- the work of NHRIs and civil society.

Protecting the rights of migrants in detention

There has been a growing trend among countries in all regions of the world to detain migrants who are in breach of their visa conditions, have an irregular status or who have arrived in an irregular way, including those seeking asylum.

They are commonly held in immigration detention facilities, holding centres at airports and other points of entry to a country, prisons, police stations and other places of detention. They may be detained on arrival, pending a determination of their migration status or claim for asylum or while awaiting deportation from the country.

Time spent in detention, or detention-like conditions, can vary significantly, from days to weeks and sometimes months and even years. Numerous reports and studies, including those prepared by NHRIs, have documented ill treatment and serious human rights violations against migrants held in detention, as well as the severe negative impact of detention on their mental health and well being. In some cases, this has resulted in suicides and acts of self-harm by detainees.

The traumatic impact of detention on children, who can often be held in facilities with unrelated adults, can be particularly severe and long lasting. Unaccompanied minors are especially vulnerable to abuse while in detention.

It is therefore important that NHRIs pay particular attention to the needs of vulnerable groups of migrants in detention, including children, women, older people, people with disabilities, people who have been trafficked for the purpose of sexual exploitation and people who have experienced torture in their country of origin.

CHAPTER 15

PROTECTING RIGHTS OF INDIGENOUS PEOPLE

(ADIVASIS AND SCHEDULED TRIBES)

International developments concerning indigenous peoples

Indigenous peoples are recognised as being among the world's most vulnerable, disadvantaged and marginalised groups of people. Spread across the world from the Arctic to the South Pacific, they number, at a rough estimate, more than 370 million in some 90 countries. While they constitute approximately 5% of the world's population, indigenous peoples make up 15% of the world's poor and one-third of the world's extremely poor.

Indigenous peoples each have unique and distinctive cultures, languages, legal systems and histories. Most indigenous communities have a strong connection to the environment and their traditional lands and territories. They also often share legacies of removal from traditional lands and territories, subjugation, destruction of their cultures, discrimination and widespread violations of their human rights.

In response to human rights violations, indigenous peoples and their organisations have lobbied domestically and internationally to have these violations addressed. After decades of obtaining little or no attention from the international community, indigenous peoples have increasingly gained visibility and made their voices heard at international forums.

The United Nations system has established a number of mechanisms with specific mandates to address the rights of indigenous peoples:

- The United Nations Permanent Forum on Indigenous Issues held its first session in 2002. It is an advisory body to the Economic and Social Council and is mandated to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum is also mandated to, inter alia, promote coordination of activities related to indigenous issues across the United Nations system.

- The Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 to provide the Human Rights Council with thematic advice on the rights of indigenous peoples. The Expert Mechanism provides its expertise mainly in the form of studies and advice on specific issues pertaining to indigenous people's rights. To date, it has worked on studies relating to the rights of indigenous people's to education: the right to participate in decision-making: the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples; and indigenous peoples' access to justice.
- The Special Rapporteur on the right of indigenous peoples was established by the Commission on Human Rights (now the Human Rights Council) in 2001. The Special Rapporteur has the mandate to, inter alia, examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of indigenous peoples; to identify, exchange and promote best practice; and to gather, request, receive and exchange information and communications from all relevant sources on alleged violations of their human rights and fundamental freedoms and to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations.

Who are indigenous peoples?

Considerable thinking has been dedicated to defining "indigenous peoples" in the international arena. Indigenous peoples have argued against the adoption of a formal definition at the international level, stressing the need for flexibility and for respecting the desire and the right of each indigenous people to define themselves. Reflecting this position, the former Chairperson of the Working Group on Indigenous Populations, Erica Daes, noted that "indigenous peoples have suffered from definitions imposed on them by others".

As a consequence, no formal definition has been adopted in international law. A strict definition is seen as unnecessary and undesirable.

The Martinez Cobo Study provided the most widely cited "working definition" of indigenous peoples:

> *Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.*

According to ILO Convention No. 169, indigenous peoples are descendants of populations "which inhabited a country or geographical region during its conquest or colonisation or the establishment of present state boundaries" and "retain some or all of their own social, economic, cultural and political institutions".

While not providing a definition, the Chairperson-Rapporteur of the Working Group on Indigenous Populations has listed the following factors that have been considered relevant to the understanding of the concept of "indigenous":

a) Priority in time, with respect to the occupation and use of a specific territory;
b) The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions;
c) Self-identification, as well as recognition by other groups, or by Stat authorities, as a distinct collectivity; and
d) An experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist.

The content of the Declaration: Equality and non-discrimination; cultural integrity; and collective rights

The right to equality and non-discrimination

Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of civil, political, economic, social and cultural rights.

The Committee on the Elimination of Racial Discrimination has clarified that the term "non-discrimination" does not signify the necessity of uniform treatments when there are significant differences in the situation between one person or group and another,

or, in other words, if there is an objective and reasonable justification for differential treatment. It is important that States take into consideration the special characteristics of indigenous peoples in applying the principle of non-discrimination in their law and practice.

The Declaration states that indigenous peoples and individuals are free and equal to all other peoples and that indigenous individuals have the right to be free from any kind of discrimination in the exercise of their rights. It specifically calls on States to take measures to combat prejudices and eliminate discrimination; promote good relations between indigenous and non-indigenous people; and provide effective mechanisms for the prevention of, and redress for, any form of propaganda designed to promote or incite racial or ethnic discrimination directed against indigenous peoples.

The right to equality and non-discrimination requires that States combat both formal and substantive or de facto forms of discrimination. The elimination of formal discrimination may require that a State's constitution, legislation, regulations or policies do not discriminate against indigenous peoples. The elimination of de facto discrimination requires States to implement laws and policies that facilitate substantive equality for indigenous peoples in the employment of their rights. The obligation to eliminate discrimination and prove for equality requires States to regulate the conduct of both public and private actors, as well as implement policies that provide for substantive equality.

In the context of indigenous peoples, the right to equality and non-discrimination is viewed as offering a dual protection. On the one hand, it focuses on the conditions inherently required to maintain indigenous peoples' way of living and, on the other hand, it focuses on attitudes and behaviour that exclude or marginalise indigenous peoples from the wider society.

Distinct identity and cultural integrity

Indigenous peoples' culture is a defining part of their identity. In many cases, the impact of assimilationist policies on indigenous peoples' languages and cultures has been extremely harmful, threatening the continuing cultural existence of indigenous peoples.

The Declaration provides for the protection of the distinct identity and cultural integrity of indigenous peoples through:

- The right to maintain and strengthen their distinct cultural institutions
- The right to belong to an indigenous community or nation in accordance with the customs of the community or nation concerned
- The right to practice, revitalise and transmit their cultural traditions and customs
- The rights to control their education systems and institutions providing education in their own languages
- The right to promote, develop and maintain their institutional structures, customs, spirituality, traditions and juridical systems
- The rights to maintain, control and develop their cultural heritage and traditional knowledge
- The right not to be subjected to forced assimilation or destruction of their culture.

States are also under an obligation to take action to prevent and provide compensation for any action that deprives indigenous peoples of their integrity as distinct peoples, their cultural values or ethnic identities and any form of forced assimilation or integration.

The Human Rights Committee has held that, for indigenous peoples, the right to culture can require that a range of other rights are also fulfilled. These can include the right to participate in customary activities; the right to access lands, territories and resources; the right to family; and the right to participate in decision-making processes that affect their cultural rights.

Significance of collective rights

Articles 1 and 2 of the Declaration state that indigenous peoples have the right to enjoy all human rights and freedoms from discrimination, as individuals and collectively. The Declaration gives prominence to collective rights to a degree unprecedented in international human rights law.

Given the collective character inherent in indigenous cultures, individual rights are not always adequate to give full expression to indigenous peoples' rights. The rights contained in the Declaration seek to protect, in addition to individual rights, the collective rights of indigenous peoples because recognition of such rights is necessary to ensure the continuing existence, development and wellbeing of indigenous peoples

as distinct peoples. Past experiences have shown that unless the collective rights of indigenous peoples are respected, there is a risk that such cultures may disappear through forced assimilation into the dominant society.

The notion that indigenous peoples can hold rights, such as the right to own property, as a collective is consistent with the principle of non-discrimination and the right to culture. For instance, the Committee on Economic, Social and Cultural Rights has required information from a State party regarding the protection of the collective rights of indigenous peoples related to their traditional knowledge and cultural heritage, including ancestral lands, as an integral part of their cultural identity. The Inter-American Court and Commission on Human Rights have in a number of cases confirmed that indigenous peoples hold collective property rights to their lands and resources.

The Declaration also seeks to protect and preserve indigenous peoples' traditional knowledge, including cultural expressions, as well as genetic resources. Many current legal frameworks protect the intellectual property of individuals only, rather than intellectual property interests of a community or group of people, this failing to adequately protect the collective rights of indigenous peoples.

The right to self-determination, autonomy, self-government and indigenous institutions

Indigenous peoples have long traditions of self-government, independent decision-making and institutional self-reliance. While particular circumstances vary, indigenous peoples throughout the world have exercised what is now described as the right to self-determination as an inherent right derived from their political, economic and social structures, as well as their cultures, spiritual traditions, histories and philosophies, throughout their histories.

Sources:

Promoting and Protecting the Rights of Migrant Workers: The Role of National Human Rights Institutions published by Asia Pacific Forum, August 2012.

CHAPTER 16

BUSINESS AND HUMAN RIGHTS

BUSINESS IMPACTS ON HUMAN RIGHTS

Business activities can have a wide range of impacts on human rights. These impacts are multi-dimensional, positive impacts of business on human rights can include employment, skills development and contributions to economic development at local and national levels. For example, where a company employs women and men, this can contribute to fulfilment of the right to just and favourable conditions of work. However, business activities can also have adverse impacts on human rights. For example, interference with the rights to health, property, and an adequate standard of living, such as where workers are exposed to environmental contaminants for which companies are responsible, or where people are resettled without adequate consultation and/or compensation.

Table, below, provides a few illustrative examples of how business activities may impact on human rights. Please note that these are examples only and that business activities have the potential to impact on virtually all human rights.

HUMAN RIGHTS	POTENTIAL POSITIVE IMPACT	POTENTIAL ADVERSE IMPACT OR HUMAN RIGHTS ABUSE
Right to an adequate standard of living	A company creates jobs for local communities contributing to people's ability to afford decent housing and food.	A company **resettles** local communities without due consultation and /or compensation, to an area with less fertile lands. As a result the resettled communities have insufficient access to housing and food.
Right to just and favourable conditions of work	A company has strong health and safety standards in place reducing the likelihood of injuries.	A company does not allow sufficient breaks during working hours.

Right to education	A company can use their CSR funds to improve infrastructure in schools or help in imparting ***human rights education*** in schools.	A company employs children as workers whose right to education is not respected as a result.
Right to access to information	A company publishes environmental performance data in languages and formats accessible to rights-holders impacted by the company operations.	The government does not make environmental impact assessments public and the company does not take steps to facilitate access of affected communities to impact assessment information.
Right to non-discrimination	A company treats all employees fairly in relation to hiring, promotion, in-work benefits and pensions without discrimination on unlawful grounds.	A company discriminates against women, e.g., by not allowing them to return to the same job after maternity leave.

Human Rights Duties and Responsibilities

When the focus is on business and human rights, respecting, protecting and fulfilling human rights are responsibilities shared amongst a wide range of State and non-State actors. This includes, for example, central and local government, regulatory agencies, large and small businesses, and international organizations and agencies.

DO COMPANIES HAVE HUMAN RIGHTS DUTIES UNDER INTERNATIONAL HUMAN RIGHTS LAW?

The 2008 ***UN Protect, Respect and Remedy Framework on Business and Human Rights*** differentiates the duties and responsibilities of States and companies, reaffirming the State duty to respect, protect and fulfil human rights and stating the corporate responsibility as one to 'respect' human rights, i.e., to do no harm. As such, the Framework does not create new legal obligations for companies under international human rights law

However, companies do of course have legal duties with regard to human rights where these have been integrated into domestic laws. For example, a company will be required to comply with domestic labour laws and relevant environmental regulation.

Business and Human rights standards

Business activities have the potential to impact on virtually all internationally recognised human rights, including civil and political rights, economic, social and cultural rights, labour rights recognised by the International Labour Organisation, and rights enjoyed by specific categories of rights-holders under specialised human rights instruments, such as the *UN Convention on the Rights of the Child*.

Businesses are therefore expected to act consistently with the human rights outlined in the *International Bill of Human Rights* and the *ILO Declaration on Fundamental Principles and Rights at Work*. These rights have been elaborated by additional specialised human rights instruments at international and regional levels.

THE UNITED NATIONS PROTECT, RESPECT AND REMEDY FRAMEWORK AND GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

There has been some debate within the international community about the roles and responsibilities of different duty-bearers in addressing business-related human rights impacts. In particular, the roles and responsibilities of States and businesses have been unclear, resulting in significant governance gaps.

Early attempts at defining the duties and responsibilities of States and business include the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977, revised in 2009) and the UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights (2003). Whilst gaining some take-up, these initiatives did not receive wide scale buy-in and implementation from States, business, civil society and other key actors, such as NHRIs and financial service providers.

In 2005, the then UN Secretary-General appointed a Special Representative on the issue of human rights and transnational corporations and other business enterprises (Special Representative on Business and Human Rights), Professor John Ruggie, to address the lack of clarity on the roles of States and businesses with regard to human rights. This included identifying and clarifying the expectations and obligations of business. The three-year mandate resulted in the 2008 report of the Special

Representative, **'Protect, Respect and Remedy: a Framework for Business and Human Rights'** (UN Protect, Respect and Remedy Framework). Unanimously welcomed by the UN Human Rights Council in 2008, the Framework rests on three complementary and interrelated pillars:

Pillar 1: The State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication;

Pillar 2: The corporate responsibility to respect human rights, which means that companies are expected to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved; and

Pillar 3: Access to remedy, which requires both States and businesses to ensure greater access by victims of business-related human rights abuses to effective remedy, both judicial and non-judicial.

THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND NATIONAL HUMAN RIGHTS INSTITUTIONS

The UN Guiding Principles recognise the important role of national human rights institutions with regard to business and human rights. For example, the commentary to Guiding Principle 3 notes that: *"National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non- State actors."* The role of national human rights institutions is noted under each of the three pillars of the UN Guiding Principles – protect, respect and remedy.

It is important to recognise that the mandates of many NHRIs span all internationally recognised human rights. This often includes not only civil and political rights, but also economic, social and cultural rights. The mandate of many NHRIs is broad enough to allow it to address issues related to business and human rights.

THE EDINBURGH DECLARATION

The Edinburgh Declaration was adopted by the 10th International Conference of the ICC, held in Scotland in October 2010. The Conference was hosted by the Scottish Human Rights Commission in cooperation with the Office of the High Commissioner for Human Rights and the ICC. The Edinburgh Declaration considers the ***ways in***

which NHRIs can engage with business and human rights issues, including by promoting greater protection against business-related human rights abuses, greater business accountability and respect for human rights, access to justice, and the establishment of multi-stakeholder approaches.

The Edinburgh Declaration highlights activities that can be taken by NHRIs on business and human rights within their core mandate areas under the Paris Principles, including:

Monitoring the compliance of State and non-State actors with human rights;

Advising all relevant actors on how to prevent and remedy human rights abuses;

Providing and/or facilitating access to judicial and/or non-judicial remedies, for example, by supporting victims, handling complaints and/or undertaking mediation and conciliation;

Conducting research and undertaking education, promotion and awareness-raising activities; and

Integrating business and human rights issues when interacting with international human rights bodies, including UN treaty bodies, UN special procedures, the Human Rights Council and the Universal Periodic Review, as well as regional human rights mechanisms.

Further activities identified for NHRIs' consideration include: the establishment of partnerships with a range of organisations (including the UN Global Compact, media and business organisations), the review in each ICC regional network of national action plans on business and human rights, the creation of business and human rights focal points within NHRIs, and reporting to the annual meeting of the ICC on any progress towards the development of national action plans.

THE CORPORATE RESPONSIBILITY TO RESPECT

The corporate responsibility to respect human rights, as outlined in pillar two of the UN Protect, Respect and Remedy Framework, requires business enterprises to avoid infringing on human rights and to address any adverse human rights impacts with which they are involved. Businesses are required to identify, prevent, mitigate and remedy any adverse human rights impacts that they are involved with through their business activities or relationships and account for how they meet this responsibility

The corporate responsibility to respect extends to the full range of internationally recognised human rights. This means that at a minimum, companies must respect all human rights enumerated in the International Bill of Human Rights and the labour rights contained in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.

The corporate responsibility to respect human rights under pillar two of the UN Protect, Respect and Remedy Framework requires consideration of actual and potential human rights impacts which are caused by the business, impacts that the business contributes to, and impacts that are directly linked to a company's operations, products or services through business relationships

WHAT CAN NHRIS DO TO PROMOTE THE CORPORATE RESPONSIBILITY TO RESPECT?

NHRIs can use their mandate to promote the corporate responsibility to respect in a range of ways, for example:

- Engaging in dialogue directly with business to inform businesses about the UN Guiding Principles, and to build the capacity of businesses to address human rights impacts, e.g., through providing training on human rights to business, or developing or disseminating human rights tools;
- Convening and facilitating multi-stakeholder dialogue on the UN Guiding Principles and specific business and human rights issues;
- Participating and promoting organisations that work with business and human rights issues, such as UN Global Compact Local Networks;
- Monitoring business activities for human rights impacts or undertaking investigations into situations of business-related human rights abuses;
- Undertaking a national mapping of business and human rights issues and developing an action plan to address key risks; and

- Undertaking human rights education with rights-holders to promote knowledge and understanding of relevant frameworks and participation in due diligence processes and related activities, e.g., impact assessment, monitoring, reporting.

CORPORATE COMPLICITY IN HUMAN RIGHTS ABUSES

The term 'complicity' in the context of business and human rights can have both legal and non-legal meanings. In a non-legal context, human rights organisations and activists, international policy makers, government experts and businesses frequently use the term 'business complicity in human rights abuses' to describe what they view as undesirable business involvement in human rights abuses. Examples of company acts or omissions that may give rise to allegations of complicity include: if a company takes over land where the people have been forcefully displaced by the government; any insufficient supply chain management, such as where children are employed in the supply chain; and may also extend to situations where company revenues are paid to an oppressive State.

Although significant consequences may flow from allegations of complicity, civil or criminal legal sanction will generally only result where it can be established that the company:

Caused or *contributed to* the human rights abuse(s) by enabling, exacerbating or facilitating the abuse;

Knew or should have *foreseen* that human rights abuse(s) would be likely to result from its conduct; and

Was *proximate* to the human rights abuse(s) either geographically or through the strength, duration or tone of its relationships.

WHAT CAN NHRIS DO TO PROMOTE ACCESS TO REMEDY?

The mandate and role of NHRIs in relation to non-judicial remedy is identified explicitly in the ***UN Guiding Principles*** and the ***Edinburgh Declaration***. This may be in the form of the NHRIs' own complaints handling, investigative and mediation functions.

More broadly, Paris-Principles-compliant NHRIs should have the mandate and opportunity to take a variety of steps to promote the effectiveness of both judicial and non-judicial remedies for business-related human rights abuses. For example, NHRIs can:

- Identify and advise the State on addressing barriers to access to judicial remedy;
- Provide outreach and advice to victims of corporate human rights abuse on how to access judicial remedies in home and host countries;
- Encourage or provide education and training for legal professionals on access to judicial remedy for business-related human rights abuses;
- Dialogue with the State, judiciary and legal profession on particular topics related to judicial remedies, such as complicity and extraterritorial application of laws relating to business-related human rights abuses;
- Support the complaints handling function of the local National Contact Point through sharing of information on cases and dispute resolution methodologies;
- Develop guidance material for business on the development and implementation of project-level grievance mechanisms;
- Apply the NHRI complaints handling, investigative and mediation function to business and human rights related cases; and
- Facilitate access of victims of business-related human rights abuses to available non-judicial mechanisms through outreach, education and referral.

Sources:

Business and Human Rights: A guidebook for NHRIs by International Coordinating Committee of National Human Rights Institutions (ICC) and Danish Institute for Human Rights (DIHR), November 2013.

CHAPTER 17

HUMAN RIGHTS EDUCATION AND PROTECTION

Human rights education is both a means to achieving the protection of human rights as well as a right in itself.

United Nations High Commissioner for Human rights, 1996

What is human rights education?

The obligations on States to recognise, respect, protect, promote and fulfil human rights are mandated across the broad range of international human rights treaties and conventions. Human rights education is an essential tool for meeting these obligations.

The preamble to the Universal Declaration of Human Rights states that "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms."

Forms of human rights education

Human rights education is a lifelong process that involves all ages and levels. It includes all forms of education, training and learning. It can take place in all settings: public or private, formal, non-formal or informal.

- **Formal education** extends from early childhood education, through primary and secondary school to tertiary education. It is generally curriculum-based, meaning it is decided by the State, and includes general academic studies and technical and professional training.
- **Non-formal education** involves organised educational activity, usually outside the formal education system. It is created for specific learning groups, with particular learning goals. Non-formal education can include work-based education and training, as well as adult and community education, advocacy for human rights, networking and community development.
- **Information education** is an unorganised and often unintentional lifelong process where individuals acquire attitudes, values, skills and knowledge from their experiences and the educative influences and resources in their environment. An NHRI can contribute to this education with their spreading of information.

The practice of human rights education

The practice of human rights education is consistent with, and guided by, human rights and education principles. As a result, the activity of human rights education focuses on strengthening respect for the human rights and dignity of participants by encouraging their full and active participation in the learning process.

Human rights education practice:

- demonstrates human rights principles of equality, human dignity, inclusion and non-discrimination
- uses facilitative and participatory methods, processes and techniques
- is focused on the participants
- is innovative and adaptable to a wide range of learning environments and people
- is relevant to the physical, emotional, social, intellectual, spiritual and cultural contexts of participants
- respects and is enriched by the diversity of participants
- aims at reflecting on lived experience through a human rights viewpoint
- prioritises the specific challenges and barriers faced by, and the needs and expectations of, persons in vulnerable and disadvantaged situations and groups
- encourages critical thinking and problem solving
- takes into account wider national and international human rights circumstances, while promoting local initiatives.

Goals of human rights education

Human beings need to understand their experiences in order to take control of their actions and circumstances. Human rights education aims to develop important human rights knowledge, skills, attitudes and behaviours that enable and motivate individuals, groups, communities and nations to contribute to making human rights a reality for all.

Human rights education has three goals. It aims to provide experiences where participants learn **about** human rights, learn **through** human rights and learn **for** human rights.

Learning about human rights encourages the understanding and application of human rights norms, principles, values and mechanisms. The goal is to ensure that participants and learners know about the history and structures of the international human rights system, treaties and declarations. It encourages an understanding among participants about how human rights relate to their own every-day-lives and realities and it helps them to make connections between their own lives and the lives of others, in particular those affected by human rights violations. Learning about human rights promotes understanding of, and the practice of, human rights values.

Learning through human rights means ensuring that the way in which human rights education occurs is in accordance with human rights principles and standards. This could include, but its not limited to: the way that learners and teachers, participants and facilitators behave toward each other; the nature of the education environment; the processes and tools that are used for the education activity; its accessibility; and its appropriateness to its context.

Learning for human rights involves building people's ability to enjoy and exercise their own rights and to respect and uphold the rights of others. It encourages people to act in response to human rights violations and teaches them about the tools that could be used in that action, for example filing an RTI or a complaint. Human rights education stimulates and engages learners, with the aim of transforming people's lives, the environment, the community and the broader society.

Specific outcomes for human rights education may include but are not limited to:

The spreading of knowledge and general awareness may include, but are not limited to:

- The Universal Declaration of Human Rights and other international human rights instruments
- Relevant domestic human rights legislation
- The historical processes that have prevented the realisation of human rights
- The rights of specific marginalised groups, for example women and children
- Mechanisms for addressing human rights grievances
- Power relations and social forces.

Building the capability of people to:

- Apply human rights knowledge and understanding to their own situations
- Apply international human rights standards to local, national and international contexts
- Translate United Nations legal and technical language and concepts into those appropriate to their contexts
- Analyse structures and systems through a human rights lens
- Reflect on their own actions and the consequences of their behaviours
- Identify those human rights issues that are most pertinent to their group, community or society
- Develop strategies to prevent and address human rights violations.

Strengthening individuals and communities to take action toward human rights outcomes.

Who is human rights education directed at?

Human rights education is for everyone. However, there are three identifiable groups to whom human rights education may be directed:

rights holders; those most vulnerable to human rights violations

duty bearers; those most able to defend or violate others rights

influencers; those most able to influence other's opinions and actions.

Everyone is potentially a rights holder, a duty bearer and an influencer. In a particular context, however, there is usually a set of dynamics that can identify the specific position that each person or group occupies. Looking at it in a structural analytical way these groups are based on power relations; who has the power in situation and who does not?

Rights holders are those who are entitled to specific rights and protections. On an individual basis, a rights holder may be such because of the relationship they have with a duty bearer; for example, a child to a parent, a student to a teacher, a woman

to a man, a disabled person to a non-disabled person, a teacher to the school board, a soldier to the General, a Government to a multinational corporation.

A rights holder:

- is entitled to rights
- is entitled to claim rights
- is entitled to hold the duty bearer accountable
- has a responsibility to respect the rights of others.

Duty bearers are individuals or institutions that are obligated to promote and protect the rights of the rights holders. As with the rights holder, a duty bearer may be such due to their relationship with someone who does not have power in that relationship. Institutionally, duty bearers are those with the role and ability to uphold the human rights of others.

The overall responsibility for meeting human rights obligations rests with the State or legal duty bearers. This responsibility includes all the agencies of the state, such as parliaments, ministries, local authorities, judges and justice authorities, police and immigration services, defence forces, teachers, lecturers and those involved in school communities. All are legal duty bearers.

Influencers have an important role to play in persuading the duty bearers to fulfil their obligations and the rights holders to understand and claim their rights. This group includes, among others, the media, religious leaders, tribal and ethnic leaders, unions, NGOs, human rights defenders and NHRIs.

As part of their human rights promotion function, NHRIs have a responsibility to:

- raise community awareness about their purpose, role and functions
- build practical and applied understanding of human rights and enable and mobilise others to become human rights actors and defenders
- use their unique national position to build cultures of human rights across all levels and sectors of society.

Basic requirements of NHRIs in providing human rights education

NHRIs promote understanding of human rights through their educational programmes and other activities. They provide basic information about human rights but also go further and explain human rights concepts and law. This requires much more than the production of posters, leaflets and even reports. It requires personal engagement and interaction through formal and non-formal educational programmes and activities.

NHRIs should ensure that their human rights education programmes and activities have action dimensions and action results. They can encourage and enable people to act for human rights by:

- proposing action possibilities through human rights education programmes and activities
- incorporating learning by action and reflection in human rights education programmes and activities
- assisting learners to develop human rights projects to follow up human rights education programmes and activities
- supporting learners to implement what they have learnt in human rights education programmes and activities.

A planned, strategic and resourced human rights education programme

A successful human rights education programme moves individuals beyond knowledge into action. In order to achieve this, the programme needs to be strategic, cooperative and leveraged. An NHRI will not, nor should not, have the resources available to meet a country's human rights education requirements. It therefore needs to ensure that its human rights education programme maximises its impact by identifying and focusing on priorities, partnering with others involved in human rights activity and motivating and enabling others to be human rights educators.

Adequate human rights education resources

Another basic requirement of an NHRI in providing human rights education is adequate resourcing. The most important resource is its human rights educators. Each NHRI has a responsibility to commit budget and human resourcing to ensure that its promotion mandate can be met. Most NHRIs in the Asia Pacific region have a team with dedicated education staff.

NHRIs will produce materials for education purposes. The nature and use of the resources, both the content and the medium, will vary according to its education purpose. Core education materials may include:

- general information about the NHRI, what it does and how to contact it
- general information on human rights and principles
- targeted information about specific rights and for specific groups
- publication of the NHRI's activities, for accountability reporting, education and advocacy
- resources developed from published research and outcomes of investigations and inquiries
- ongoing and updated information related to a particular sector or topic, such as newsletters, websites and social media sites
- model human rights education curricula and human rights training modules.

The mandate of NHRIs extends beyond promotional activities to include developing and delivering human rights education and training programmes for different groups in the community.

How can NHRIs achieve their awareness raising and educative mandates?

An effective campaign should have an agreed communication strategy, a specific objective and a clear message.

NHRIs should have a broad range of research and education materials on human rights available for spreading. These materials can contain information on:

- The role, function and activities of the NHRI
- International human rights standards and instruments
- The State's relationship with human rights standards and instruments
- State reports to treaty bodies
- Domestic human rights legislation
- Judicial decisions relating to human rights
- Domestic and international mechanisms for human rights protection
- Research undertaken by the NHRI on specific human rights issues
- Information regarding complaints mechanisms and avenues for redress for violation of human rights, including those contained in the Declaration.

NHRIs should have a human rights education plan, which should link to the strategic plan and annual activity plan of the NHRI. There is a range of public education activities that NHRIs can undertake. This includes seminars, workshops and professional training sessions, either for the general population or specific groups. Education initiatives targeted at a wider audience can include the development of school and university curricula for human rights, national media campaigns and human rights publications.

Awareness raising and educational activities around the Declaration can include:

- Conducting workshops and training for different minorities and their organisations
- Conducting workshops and training for State officials and bureaucrats
- Translating the Declaration into several of the country's official languages
- Developing plain language toolkits and education materials
- Producing materials using a range of media, including websites, documentaries, audio programmes and social media
- Distributing media releases when activities occur within the country that might be related to, or impact on, the rights contained in the Declaration
- Referring to the Declaration and its impact in speeches, submissions and publications.

Spreading the information

A strategy as to how to spread the information is crucial for the effective and efficient use of information produced by the NHRI. Spreading can be targeted to a wide variety of audiences – including government departments, NGOs, the general public and minorities – so it is important that the strategy is specific to its audience.

Once the target audience has been established, the NHRI must identify appropriate opportunities for spreading. Both general and specialised media are useful vehicles for spreading. However, widespread distribution should also make use of existing services and networks, such as schools, universities, libraries, government offices, community organisations, peak and representative bodies and minorities' organisations.

Promotional events

Promotional events play an important role in raising public awareness of human rights and giving NHRIs a community presence. NHRIs should not limit themselves to no type of event and should consider what events best suit their target audiences. There may also be opportunities to collaborate with existing community initiatives or programmes. Promotional events may include:

Human rights-themed events aimed at school-age children, such as drawing or photography competitions

University lectures and other higher education events

Public events to celebrate significant dates, such as the anniversary of the adoption of the Declaration (13 September) and other international anniversaries

Human rights awards and prizes

The launch of key publications

Human rights-themed art or music competitions

Partnerships

The work of NHRIs benefits greatly from partnerships and collaboration on public awareness raising and educational activities. These partnerships help to ensure that the efforts of NHRIs have maximum impact.

The State

Where possible, NHRIs should seek to develop cooperative working relationships with the State. State buy-in of education programmes for public officials will enhance their uptake and their effectiveness.

Source:

Human Rights Education: A Manual for National Human Rights Institutions

By Asia Pacific Forum of National Human Rights Institutions July 2013

CHAPTER 18

PROTECTION OF HUMAN RIGHTS DEFENDERS

Human rights defenders act “individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms” at the local, national, regional and international levels. They recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means

Article 1 of the UN Declaration on Human Rights Defenders reaffirms that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”. Moreover, both the UN General Assembly and the Human Rights Council have reaffirmed the important role of human rights defenders at the local, national, regional and international levels

In accordance with the UN Declaration on Human Rights Defenders, the term “human rights defender” is understood to include anyone who, individually or with others, acts to promote or protect human rights, regardless of their profession or other status.

Anyone promoting and striving for the realization of human rights is a human rights defender – regardless of profession, age or other status or whether they are carrying out their human rights activities individually or jointly with others, as part of an informal group or a non-governmental organization (NGO), or whether they act in a voluntary capacity or professionally. Lawyers, trade unionists, staff of national human rights institutions (NHRIs), journalists, medical professionals, public servants and students, among others, can be human rights defenders.

The active involvement of people, groups, organizations and institutions is essential to ensure continuing progress towards the fulfilment of international human rights. Civil society – among others – assists states to ensure full respect for human rights, fundamental freedoms, democracy and the rule of law. Accordingly, human rights defenders perform important and legitimate functions in democratic societies. State authorities should respect that dissenting views may be expressed peacefully in democratic societies and should publicly acknowledge the important and legitimate role of human rights defenders.

Need for protection of human rights defenders:

Human rights defenders face specific risks and are often targets of serious abuses as a result of their human rights work. Therefore, they need specific and enhanced protection at local, national and international levels. Certain groups of human rights defenders are exposed to heightened risks due to the specific nature of their work, the issues they are working on, the context in which they operate, their geographical location or because they belong to or are associated with a particular group.

Nature of State obligations:

The primary responsibility for the protection of human rights defenders' rests with states. They have an obligation to:

a) refrain from any acts that violate the rights of human rights defenders because of their human rights work;

b) protect human rights defenders from abuses by third parties on account of their human rights work and to exercise due diligence in doing so; and

c) take proactive steps to promote the full realization of the rights of human rights defenders, including their right to defend human rights.

A safe and enabling environment to empower human rights work:

Effective protection of the dignity, physical and psychological integrity, liberty and security of human rights defenders is a pre-requisite for the realization of the right to defend human rights. Furthermore, a safe and enabling environment requires the realization of a variety of other fundamental human rights that are necessary to carry out human rights work, including the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, freedom of movement, the right to private life and the right to unhindered access to and communication with international bodies, including international and regional human rights mechanisms

Accountability of non-state actors: While states have a duty to protect human rights defenders from abuses by non-state actors, the latter can play an important role towards the realization of the rights of human rights defenders. Non-state actors should respect and recognize the rights of human rights defenders and be guided by international human rights norms in carrying out their activities. Participating States should hold them accountable if they fail to do so in accordance with domestic legal procedures and standards.

Equality and non-discrimination: Human rights defenders shall not be discriminated against in the exercise of the full range of their human rights as a result of their work. The right to defend human rights must be guaranteed without discrimination, and measures to protect human rights defenders should be reflective of the specific needs of defenders facing multiple forms of discrimination. A gender- and diversity-sensitive approach should be mainstreamed into all activities to strengthen the protection of human rights defenders.

Legality, necessity and proportionality of limitations on fundamental rights in connection with human rights work: International human rights instruments only allow for limitations on certain rights and only if limitations have a formal basis in law and are necessary in a democratic society in the interest of one of the prescribed grounds. Furthermore, they must be proportionate and compatible with other fundamental human rights principles, including the prohibition of discrimination. International human rights mechanisms have emphasized that the scope for permissible limitations must generally be interpreted narrowly. The fact that the right to defend human rights is instrumental for the achievement of all other rights further narrows the scope for permissible limitations. The threshold to meet the principles of necessity and proportionality of any such limitations can be considered particularly high.

Freedom of opinion and expression and of information

States should review legislation concerning freedom of opinion and expression and should repeal or amend any provisions that do not comply with relevant international human rights standards. These include provisions that impose undue restrictions for reasons of national security, public order and public health or morals beyond what is permissible under international standards. Laws or regulations that impose specific limitations on the exercise of the right to freedom of opinion and expression by certain groups or professions, such as members of the armed forces or public servants, should also be reviewed to ensure their full compliance with international standards, i.e., that they fully meet the strict requirements of necessity and proportionality.

States should eliminate any vaguely-worded provisions in anti-terrorism or other national security legislation that may be open to arbitrary application in order to threaten, silence or imprison human rights defenders. They should also eliminate legislation that, for example, effectively prohibit advocacy against discrimination and

intolerance; criminalize criticism of or disrespect for the government and public officials, as well as disrespect for state institutions or symbols; and other legal provisions that do not meet the strict requirement of necessity and proportionality under international law. They should respect that dissenting views may be expressed peacefully.

Similarly, criminal defamation laws should be repealed. Defamation and similar offences – including those committed online – should be dealt with exclusively under civil law. Criminal liability, including prison sentences, should be excluded for offences regarding the reputation of others such as libel and defamation. Civil laws regulating speech offences should not provide for disproportionate financial penalties or other undue requirements that would lead to self-censorship, endanger the functioning of or lead to the bankruptcy of an individual or media outlet.

Journalists who promote human rights are human rights defenders, regardless of their accreditation status and the media through which they work (print, radio, television or the Internet). Journalists who report on human rights violations, corruption or mismanagement or on the work of whistleblowers should not face prosecution, arbitrary legal actions or other repercussions for doing so. Authorities should acknowledge the importance of independent and investigative journalism in uncovering abuses and misuse of power, and they should support it in order to enhance accountability. They should ensure that journalists are not subjected to arbitrary criminal prosecutions and have access to legal aid and other means of support to enable them to carry out their work without interference and fear of reprisals. In particular, they should take steps to ensure the safety of journalists and ensure that journalist human rights defenders are effectively protected from attacks and other abuses both by state and non-state actors. Any crime committed against human rights defenders, including against journalists defending human rights, must be promptly, effectively and independently investigated in a transparent manner, and those responsible must be brought to justice.

Freedom of peaceful assembly

Legislation on freedom of peaceful assembly and related practices must be in full conformity with international human rights standards. Limitations on the right to freedom of assembly can only be imposed if they are based in law and necessary in a democratic society in the interest of one of the specific grounds set out in international human rights standards. In addition, limitations on the right to freedom of

peaceful assembly must be proportionate. Authorities involved in drafting or reviewing relevant legislation, as well as those involved in implementing it (including national, regional and local authorities, law enforcement and the judiciary), are encouraged to apply the OSCE/ODIHR-Venice Commission *Guidelines on Freedom of Peaceful Assembly*.

Human rights defenders should not face any limitations on their right to freedom of assembly beyond those that are permissible under relevant international standards. Content-based restrictions imposed only because they convey messages that are critical of the authorities or perceived to be controversial in society are incompatible with these standards. An outright ban of an assembly can be permissible only in very exceptional circumstances as prescribed by international human rights standards.

Human rights defenders organizing assemblies should only be required to give prior notification of the assembly where this is necessary to enable the authorities to make arrangements in order to facilitate the assembly and to protect public order,

Freedom of association and the right to form, join and participate effectively in NGOs

Everyone should be able to freely exercise the right to form, join and participate in groups or associations for the defence of human rights without discrimination of any kind, including on the basis of the nature of the rights defended. Any limitations on the exercise of the right to freedom of association must have a clear legal basis and must fully comply with the strict requirements prescribed by international human rights standards. Any limitations imposed must be necessary in a democratic society in the interests of one of the specific grounds set out in international human rights standards. Any such limitations must be proportionate.

States should review all legislation relevant to the right to freedom of association and to form, join and participate effectively in NGOs in order to ensure its consistency, coherence and compliance with relevant international human rights standards. States should consult with civil society when discussing amendments to such laws, and are encouraged to seek international assistance in carrying out such legislative reviews.

Laws, administrative procedures and requirements governing the operation of NGOs

Human rights defenders should be able to form groups or associations without an obligation to register or obtain legal personality in order to pursue their activities. The exercise of the right to freedom of association is not contingent on registration, and human rights defenders must not be criminalized for not registering a group or association. Any offences related to activity on behalf of an unregistered organization, including in relation to funding, should be promptly removed from legislation.

Formal registration and procedures to acquire legal personality should be available as an option to empower human rights defenders in carrying out their work in association with others, for example, for the purpose of accessing benefits or other support that may only be available to legal persons. In general, the legislative and administrative framework should be designed to assist human rights defenders in creating organizations or groups and not to stigmatize them for their legitimate activities.

Laws and administrative procedures for NGOs to register officially or to obtain legal personality – if they so wish – should be clear and simple and not discriminatory. They should not impose undue and burdensome requirements on the organizations that may obstruct their work or unduly distract resources from their human rights activities. Any administrative and financial reporting requirements must be reasonable and provided for in law. Any inspections of NGO offices and financial records must have a clear legal basis and be fair and transparent. Audits should be specifically regulated by legislation. Such legislation should clearly define in an exhaustive list the grounds for possible inspections and the documents that need to be produced during the inspection. Furthermore, it should provide for a clearly defined and reasonable period of prior warning and maximum duration of inspections.

In overseeing compliance with reasonable requirements, authorities shall respect the independence and autonomous decision-making capacity of NGOs. They must not interfere with their internal affairs, management, planning and implementation of activities. They should respect the confidentiality of their internal matters and refrain from interfering by surveillance, infiltration or other means. The oversight and audit of NGOs should not be invasive, intrusive or paralyzing.

Where reasonable requirements for the registration or operation of NGOs are not met, the oversight or registration bodies should always give adequate warning so that corrections can be made. Members of human rights organizations must not be punished for non-compliance with unreasonable administrative or other requirements. Sanctions for the failure to comply with legitimate administrative requirements should be proportionate.

Access to funding and resources

States should assist and facilitate NGO efforts to seek and obtain funds for human rights work while not interfering with their independence. They should, to the extent possible, make funds available to support independent NGOs. They should also take appropriate steps to encourage donations by private individuals or business corporations for human rights work, including by offering tax benefits for donations. In their human rights and development policies, states should ensure that funding for NGOs is accessible without discrimination and prejudice to the activity of the organization

States should also, where required, assist and facilitate NGO efforts to obtain other material resources needed to carry out independent human rights work. They shall refrain from any arbitrary or unlawful acts that deprive NGOs of these resources, including by confiscating, damaging or destroying equipment or other property. They should also ensure that all public authorities and officials refrain from applying pressure on private actors in order to obstruct NGOs in their efforts to procure material resources. Furthermore, all public authorities and officials should fully respect the independence of NGOs and refrain from using government funding or other financial or non-financial means to influence the work of NGOs and the broader human rights movement. State funding schemes should be transparent, fair and accessible on an equal basis to all human rights defenders and their NGOs.

States should not place undue restrictions on NGOs to seek, receive and use funds in pursuit of their human rights work. Domestic laws must not criminalize or delegitimize activities in defence of human rights on account of the origin of funding. States should guarantee that NGOs operating on their territory – whether registered or not – can seek and receive funding from abroad without undue restrictions and requirements. States should refrain from invoking efforts to eradicate money laundering and terrorism financing as pretexts for imposing discriminatory restrictions on NGO access to funding or monitoring of their transactions.

Need for protection of human rights defenders

1. In its Resolution adopted in December 2013, the UN General Assembly (UNGA) reiterated its deep concern that in many countries persons and organizations engaged in promoting and defending human rights and fundamental freedoms frequently face threats and harassment and suffer insecurity as a result of those activities.

Certain groups of human rights defenders are exposed to heightened risks, for example, due to the specific issues they are working on, the context in which they operate or because they belong to or are associated through their work with socially excluded and marginalized groups. Depending on the human rights situation and specific circumstances in a given country, specific groups of human rights defenders who are at heightened risk may include, but are not limited to, the following: Women human rights defenders, i.e., women of all ages who engage in the defence of human rights and all people who engage in the defence of the rights of women and gender equality23 including those working on, for example, gender-based violence and maternal health, among other issues;

Human rights defenders with disabilities, including mental disabilities, and those defending the rights of persons with disabilities; LGBTI people who are human rights defenders and all those working against discrimination and violence based on sexual orientation, gender identity, gender expression and intersex status; Human rights defenders who are members of particular professional groups such as law enforcement officers, military personnel, judges and lawyers, government officials, civil servants and other state employees, human rights Ombudspersons and staff of NHRIs, journalists and other media workers;

Whistleblowers who disclose information about human rights abuses, as well as those who receive, possess or disseminate such information;

- Human rights defenders working on specific human rights issues in the field of civil and political rights, including in electoral contexts, on the protection of fundamental freedoms such as the rights to freedom of opinion and expression, assembly and association, the right to form, join and participate in trade unions, religious freedom and conscientious objection from military service, as well as those working against militarism and promoting peace and security;

- Human rights defenders working on economic, social and cultural rights, health, environmental or land issues and corporate accountability, and those defending the rights of socially-excluded and marginalized people – including the poor or homeless, drug users and people with HIV/AIDS – and of people facing exploitation, including children and trafficked people;
- Human rights defenders operating in rural or remote areas, contested or unrecognized territories and in ongoing or post-conflict situations, as well as those working on human rights in humanitarian crises or emergencies and in electoral contexts.

Protection from threats, attacks and other abuses

In accordance with Article 12(3) of the UN Declaration on Human Rights Defenders, the "state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration." Articles 6 and 7 of the ICCPR, require states to protect anyone within its territory and under its jurisdiction – including human rights defenders – from violations of their right to life and the absolute prohibition of torture and other ill-treatment. The UN Human Rights Council and the General Assembly have both expressed their grave concern "with regards to the serious nature of risks faced by human rights defenders due to threats, attacks and acts of intimidation against them." UN Treaty Bodies have also expressed their concern at reports of threats, assaults and other acts of violence, sometimes including murder, against human rights defenders.

Protection from judicial harassment, criminalization and arbitrary arrest and detention

By proclaiming that "all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual," participating States reaffirmed the priority of the legality principle with regard to the actions of public authorities, thus prohibiting the arbitrary or discriminatory targeting of individuals. In addition, they have committed themselves to "ensure that no one will be subjected to arbitrary arrest, detention or exile." With specific reference to journalists, they have condemned "all attacks on and harassment of journalists" and endeavoured "to hold those directly responsible for such attacks and harassment accountable." The UN Human Rights Council has called upon states to ensure that the promotion and protection of human rights are not criminalized and that human rights defenders are not prevented from enjoying universal human rights as a result of their work. Furthermore, the Council has called on states to ensure that no one is subjected to, inter alia, arbitrary arrest or detention, the abuse of criminal and civil proceedings or threats thereof.

CHAPTER 19

NATIOAL INQUIRY SYSTEM

THE PARIS PRINCIPLES AND NATIONAL INQUIRIES

The Paris Principles do not make specific reference to national inquiries. Nonetheless, the functions and powers set out in the Principles are the functions and powers an NHRI requires to undertake a national inquiry. In fact, an NHRI responds to many of its functions when undertaking a national inquiry and it is called on to exercise many of its powers. A national inquiry enables an NHRI to:

- conduct investigations into a serious human rights issue
- expose human rights violations
- develop findings and recommendations in relation to the issue considered
- raise public awareness and provide human rights education generally and on the specific issues
- considered
- identify future action that should be taken by the institution itself or by others to provide remedies to victims and to ensure better enjoyment of human rights in future.

THE NATURE OF A NATIONAL INQUIRY

A national inquiry is an investigation into a systemic human rights problem in which the general public is invited to participate. Many NHRIs undertake national inquiries as part of their activities to fulfil their mandates. National inquiries are conducted in a transparent, public manner. They involve public evidence from witnesses and experts, directed towards the investigation of systemic patterns of human rights violation and the identification of findings and recommendations. National inquiries require a wide range of expertise within the NHRI, including researchers, educators, investigators and people with experience in policy development.

A national inquiry results in the production of one or more reports that set out the evidence the inquiry has received, its analysis of the situation, its findings of fact and its recommendations. The recommendations can be quite wide-ranging, addressed to many within a country with responsibilities in the particular area of human rights examined. They can be addressed to government, private sector corporations, NGOs, academic institutions and other civil society bodies. They can also be addressed to individuals who have significant parts to play within the community, including in relation to the particular issue.

Because of their nature, national inquiries are unlike other functions undertaken by the NHRI, even if they include many of those functions. They involve investigation – but much of the investigation is conducted in a public forum and evidence is provided directly, usually in public, by victims and experts and possibly perpetrators. They have an educational component that is unlike other forms of education undertaken by the NHRI. A national inquiry requires research but much of the research has already been undertaken and the function of the inquiry is to collate and analyse it.

The national inquiry process has been developed by NHRIs within the Asia Pacific region. It has been found to be especially useful in enabling a broad examination of a complex systemic pattern of human rights violation. It deals with large situations rather than individual complaints. It can still result in recommendations that provide remedies for individuals but its principal focus is the systemic pattern of violation. For that reason it has high educational value. It introduces, exposes and explains a complex situation to the broad community, offering an analysis based in human rights law and providing recommendations for systemic responses. The conduct of a national inquiry is supported by the powers given to the NHRI in the law. NHRIs rarely exercise these powers, including in the course of a national inquiry, but the very existence of the powers provides a strong legal underpinning that encourages cooperation with the inquiry process and with the institution. The power to require the attendance of a witness, for example, may not need to be used. However, its mere existence is sufficient to ensure that the witness attends. The power to require production of a document may not need to be used because, again, its mere existence is sufficient to ensure that the document is produced. Strong powers are essential for the effective conduct of a national inquiry, even if those powers are never used. Because NHRIs, unlike NGOs and academic bodies, possess these powers, they are well-placed to conduct a national inquiry into a systemic pattern of human rights violation.

WHY HOLD A NATIONAL INQUIRY?

1. First, through a national inquiry, a large number of individual complaints can be dealt with in a proactive and cost-effective way – including cases of individuals who for various reasons, including disability, isolation or ignorance of the Human Rights Commission’s mandate or even its existence, would not have been able to approach the institution for assistance.
2. Second, the process of preparing terms of reference for the inquiry should be conducted in consultation with NGOs and others representing, or advocating on

behalf of, affected individuals. This process has a dual benefit – in enhancing NGOs' understanding of the NHRI's role and in enabling the institution to better inform itself by consultations with those in the community directly involved in the relevant issues.

3. Third, conducting public hearings open to the media is an extremely cost-effective way of educating both the general public about the institution and its responsibilities and also informing particular groups within the community who have specific responsibilities for the issues being investigated and their human rights implications. These "groups" include politicians responsible for framing legislation and programmes and bureaucrats responsible for policy advice.
4. Fourth, a national inquiry can most effectively address systemic violations of human rights – based on the evidence from individual cases, but also embracing an examination of the laws, policies and programmes (or lack of them) which have given rise to the violations in question. It is important to understand that many of the most vulnerable and disadvantaged groups, who most need the assistance of NHRIs, have been victims of widespread, systematic and sometimes systemic discrimination.
5. Fifth, as the national inquiries concerning homeless young people, indigenous peoples and those affected by mental illness clearly demonstrate, information assembled on a national basis, through hearings, submissions and research, enables the institution to effectively discharge its advisory functions in respect of legislation and government policies and programmes.
6. Sixth, since such inquiries afford opportunities to politicians, bureaucrats and other independent agencies, to present their views in submissions or at hearings, this strategy enables the NHRI to strengthen its cooperation with other important "institutions".
7. Seventh, based on experience, the scope of the national inquiry illustrates and educates, better than any other strategy, the indivisibility and interdependence of civil and political rights and economic, social and cultural rights. This is important for achieving practical results – particularly in jurisdictions where civil and political rights are regarded as being justiciable – but economic, social and cultural rights are not.

8. Eighth, as the national inquiries on homeless children and the human rights of those affected by mental illness demonstrate, these inquiries are premised on the principles prescribed in relevant international human rights treaties and other instruments. This is an extremely effective way of actually “implementing” these standards – by using them as benchmarks against which national laws, policies and programmes can be assessed.
9. Finally, the community awareness and political pressure generated by a well-publicized national inquiry maximises the likelihood that the NHRI’s recommendations to the parliament and/or Government will produce practical results. In the world of human rights institutions, integrity and good intentions are important – but credibility in the community comes only with the capacity to demonstrate that the institution is effective – and produces significant results.

SITUATIONS THAT LEND THEMSELVES TO A NATIONAL INQUIRY PROCESS

A national inquiry is a good means to address the most complex human rights situations that NHRIs confront. Whereas NHRIs may conduct public hearings into individual complaints, that process is quite narrow and confined to the specific facts of the particular complaints. A national inquiry, by contrast,

addresses patterns of violation that may be revealed by large numbers of complaints or other information addressed to the NHRI and that require a comprehensive approach.

National inquiries address situations of human rights violations that affect the entire country or a significant part of it. This is a space dimension. There is also a time dimension. A national inquiry is a good means to handle an historic pattern of human rights violations, including practices that have become embedded over many years or decades in the history and culture of the country and that are difficult to investigate on the basis of isolated individual actions. The complexity of the situation being investigated requires that any response be undertaken by a significant number of different actors, not only government. The national inquiry process enables the identification of all those who have some past, present or future role in relation to the situation or some responsibility for its causes or consequences. It therefore permits findings and recommendations to be made in relation to all those who share responsibility. The educational dimension of the national inquiry process makes it

especially useful to address human rights issues that have a low level of public and political recognition or acceptance. Often even situations that are well known may not be recognised for their human rights dimensions. A national inquiry will reveal the full dimensions of the situation in terms of human rights law and provide a human rights analysis and human rights recommendations. The public process of the inquiry ensures that the issue itself becomes better known and that its dimensions are better understood.

National inquiries attract significant media attention and so they can raise the profile of little known and little understood issues. That in turn encourages greater political attention to the issue and promotes pressure for an adequate response and for changes in public policy and practice. The national inquiry process is also well suited to the examination of situations of violation of economic, social and cultural rights. These situations are typically far more complex than situations of violation of civil and political rights. There are often many more actors involved and sometimes social and economic forces play significant parts in causing the violations and in making remedial action difficult to identify and implement. Seeking to identify and hold accountable a single individual or organisation for a violation of an economic, social or cultural right will usually confuse a situation and contribute little to its resolution. The complex nature of the enjoyment of these rights requires complex analysis to identify all of the actors that need to make a contribution to the resolution of violations.

Many national inquiries conducted by NHRIs have focused on violations of economic, social and cultural rights. They include, among others, the right to health; mental health and human rights; access to public transport for persons with disabilities; the removal of indigenous children from their families; and the right to education in rural and remote areas.

The capacity of the NHRI

The second factor is the capacity of the NHRI to undertake a national inquiry. A national inquiry is a complex exercise that can be expensive and staff intensive. Accordingly, the NHRI must be able to access the necessary resources, both financial and personnel, to undertake the inquiry effectively. Any decision to conduct a national inquiry must be preceded by a realistic assessment of the resources necessary to do so effectively and identification of those resources to ensure that they are available.

Realistic budgeting and identification of resources prevent mistakes being made in embarking on an inquiry without having the capacity to do so effectively and successfully to its conclusion and beyond. Ensuring that staff who have the necessary expertise and experience are available prevents a crisis developing during the conduct of the inquiry when some necessary skill is missing or when the number of expert staff required is not available.

The appropriateness of the NHRI

Finally the NHRI needs to consider whether it is the appropriate organisation to conduct an inquiry on this issue and whether conducting an inquiry would position it well within its society. Because of the public attention that national inquiries attract, they generally increase the public profile of the NHRI. They can place the institution in a different light and so change people's perceptions of its role. Because a national inquiry is well suited to the consideration of economic, social and cultural rights, an NHRI conducting one will be seen as having an interest in those kinds of rights, with broad public appeal, rather than being concerned solely with the civil and political rights of a small group. An NHRI must have a concern for the rights of prisoners, for example, including their humane treatment and freedom from torture, but these issues do not touch directly the great majority of the population. The right to health and the right to education do. Undertaking a national inquiry on an issue in these areas, therefore, can lead to the NHRI being seen as concerned about, and important to, a much greater proportion of the population. Not only does it change popular conceptions of the nature of human rights, it also changes perceptions of the nature of the NHRI. An NHRI that may have been seen as a "prisoners' rights institution" is transformed in the minds of the public into a broad "human rights institution" – one in which they now have a stake.

A national inquiry should not be undertaken when these factors cannot be satisfactorily addressed: if the NHRI is not the organisation best placed to examine the issue, if there are no realistic prospects of making a useful contribution for victims and their families, if the issue is not one that lends itself to public inquiry, or if the available resources are inadequate.

THE RESULTS OF NATIONAL INQUIRIES

National inquiries should expose the facts: the underlying causes of the particular human rights situation; the experiences of victims and their families; the effects on victims and their families, and on the community as a whole; and the identities of those with responsibility. They should recommend future action that should be taken to provide remedies to victims and to ensure better enjoyment of human rights in future.

Successful national inquiries lead to change:

- positive change in the community's knowledge, awareness and understanding both of the particular human rights issue investigated and of human rights generally
- positive change in the commitment of those involved in the particular human rights issue to right the wrongs of the past and to ensure that they do not occur again in the future
- most importantly, positive change in the lives of victims and their families.

At the centre of the inquiry process and of an inquiry's findings and recommendations are the victims of violations and their families and communities. National inquiries are not academic exercises but human rights projects that consider and involve real people and their real lives, experiences and needs. The victims and their families and communities should be the principal beneficiaries of national inquiries. Ensuring better promotion and protection of their human rights is the most important result of public inquiries and the most important goal of NHRIs. NHRIs are ideally suited to conduct national inquiries and to advocate for the implementation of the recommendations of national inquiries. Because NHRIs are "standing" or permanent bodies, they have continuing responsibilities to follow up work they have done, to advocate for, monitor and report on implementation. National inquiries are core components of NHRIs' work that enable NHRIs to effect change systemically and institutionally.

THE ESSENTIAL NATURE OF PUBLIC HEARINGS

A public hearing is an opportunity for persons with expert knowledge of the human rights situation under investigation to come forward in a public setting to provide their views, experiences and knowledge to the inquiry. The conduct of public hearings is an essential part of the national inquiry methodology. The central purpose of public hearings is to enable a wide range of perspectives to be placed before the inquiry and

before the general community. The use of public hearings distinguishes the national inquiry process from other NHRI methodologies. NHRIs conduct many forms of investigation and research. For example, they are often required by their establishing laws to handle complaints in confidence and so to investigate and seek to resolve them without any publicity. They may also conduct confidential investigations for practical reasons, to increase the chance of successfully identifying violations and perpetrators or to ensure the safety of victims and witnesses. They can undertake research projects that are of a more academic nature and so do not seek to engage the public, at least not until the research report is published. National inquiries, by contrast, are very public in nature and public hearings are the essential means of proceeding.

Public hearings are key to achieving the national inquiry's objectives.

Investigation

The evidence given by victims and witnesses assists the inquiry to find out what is going on, the nature and extent of a pattern of human rights violation.

Analysis

The evidence given by experts, including victims, academics, professional practitioners, NGOs, officials and others, assists the inquiry to determine the underlying causes and extent of a pattern of human rights violation.

Information

The public nature of the evidence ensures that both the public and key stakeholders are better informed about and more aware of the particular issue.

Education

The public nature of the evidence also increases understanding of human rights generally and commitment to better human rights observance.

Recommendation

Witnesses can propose ways to address the situation and so assist the inquiry to develop proposals for action to remedy the pattern of violation and prevent future violations.

Empowerment

Public hearings provide a forum in which victims of violation are acknowledged, affirmed and supported to act to seek redress for the harm done to them.

Public hearings provide opportunities for the inquiry to ask critical questions, in public and before the media, to those with responsibilities relating to the issue being investigated. They also enable the inquiry to identify areas of inconsistency and conflict in the evidence provided in written submissions or given by different witnesses and to put these contradictions to the witnesses in public for their response. For example, the inquiry can put to Government officials the evidence provided by victims and witnesses and seek the officials' responses to this evidence. The public examination places everything on the record. Public hearings are also critical to the inquiry's strategy for follow-up. They build the momentum of the inquiry and public support for the recommendations the inquiry will make when it reports. In this way, the inquiry's report is released into a community that has been prepared for it, is looking with anticipation for its findings and recommendations and is expecting positive responses from those to whom recommendations are addressed. Finally, public hearings ensure transparency in the conduct of the inquiry. The inquiry is not proceeding in secret and gathering evidence in secret, but in the full glare of publicity. The picture of the particular human rights situation is gradually put together, piece-by-piece, with the nature of the evidence and its sources openly available and well known. Every submission is made public, unless there is a good reason related to an individual submission to keep it confidential. Public hearings are conducted in public. If video or audio recordings of the hearings are made, they can be made public too, perhaps being placed on the inquiry's website, unless on a case-by-case basis the safety or privacy of a witness requires the evidence to be kept confidential. Transparency protects the inquiry from charges that it is biased or lacking objectivity or uninformed. The basis of its conclusions and recommendations is known and so those conclusions and recommendations are far more easily defended.

CONFIDENTIAL EVIDENCE

National inquiry hearings are always conducted in public unless the inquiry considers it necessary for some particular part of the hearings or a particular witness to be given the opportunity of a confidential hearing in a closed session. This can occur where the identity of the witness has to be protected or

where the information he or she provides is especially sensitive. For example, a victim may wish to testify confidentially because of the very personal nature of the experience or because he or she may be in danger if perpetrators know of the evidence. Or a

whistleblower may wish to testify confidentially so that his or her superiors are not aware of the evidence. In both cases, the information provided to the inquiry may be important to the inquiry's task of discovering all relevant material, understanding the underlying causes of the problem and developing solutions. Most national inquiries have power to take the evidence in confidence where they consider it necessary for the performance of their functions. Because public hearings are essential to the national inquiry methodology, all alternatives should be explored before evidence is taken in a closed session. It may be sufficient, for example, simply to suppress the name of the witness rather than close the hearing entirely. Or it may be sufficient to hide the identity of the witness by permitting the person to address the inquiry without being seen by the media, members of the public and others attending the hearing – heard but not seen. Any reduction in the fully public nature of the process should be as limited as is necessary in the particular circumstances.

Alternatives should always be considered before a decision is made to conduct a hearing in confidence in a closed session.

HEARING VICTIMS

Victims and members of their families who appear at a public hearing are in unique situations, different from all others who appear. Their appearance can have particular significance for them and they have particular needs that must be anticipated by the inquiry and met. Appearing publicly before the inquiry can validate and affirm victims and their experiences. Telling the story of what they have experienced can be healing for them. Often the hearings will be the first occasion on which the victims have been able to state, before an official body what has happened to them, what the consequences have been for them and what they need in order to recover, as best as possible, from those consequences. Many victims may have tried previously to tell their stories and obtain redress but have been abused and rejected when doing so. They will want the inquiry to listen to their experiences objectively and compassionately, to recognize the injustice done to them and the harm they have suffered, and to acknowledge their status as victim and their entitlement to redress.

Appearing in public before an official inquiry can be a frightening experience for some. It can be especially traumatic for victims who, through the process of telling what happened, will have to re-live the experience of violation. The inquiry team needs to

prepare victims properly and sensitively for the hearings. It should provide advice on who will conduct the hearing, how it will be conducted, who else will be present, what might happen at the hearing and what the effect on them might be. It should ensure that nothing that occurs at the hearing comes as a shock to the victims. Simply appearing is difficult enough for a victim, without being surprised during the hearing by the nature of the proceedings or the way they are conducted or the presence of some individual or group. The team should discuss with each victim ways in which some measure of protection can be provided. Most inquiries can take evidence in confidence if it is necessary for the safety of the witness or to protect the privacy of a witness. In other cases, the inquiry can suppress the name of the witness and all information that does or could lead to identification of the witness. The inquiry team should ascertain in advance whether a witness does not want to give public evidence or wants to give public evidence but with his or her identity kept confidential. Victims and other witnesses should be able to express any fear or concern they have and then seek an appropriate assurance from the inquiry that enables them to give their evidence with the least risk to themselves and their safety. Some victims may also need a support person at the hearing and even afterwards. Some victims may have support persons whom they will want to bring to the public hearing with them. Others will ask the inquiry to provide them with support. The inquiry should be flexible in attempting to meet their needs. For example, it can permit victims to have the support person sitting with them while giving evidence. It should also plan to respond to victims' needs as a result of giving evidence, for example, if the experience causes further trauma. Some victims may require psychological counselling.

HEARING GOVERNMENT OFFICIALS

States have human rights obligations under international human rights treaties and so any national inquiry will need to examine the role of the State in relation to the human rights situation being investigated. In placing the State and State agents under scrutiny, the inquiry demonstrates its independence and integrity. State officials should generally be accorded the same treatment as others who can assist the inquiry and not be given special privileges or dispensations. The appearance of Government officials at public hearings will be necessary for the inquiry to obtain the governmental information it needs. This will include information about government policies and programmes and the basis (data and analysis) for government policies and

programmes. They should be pressed by the inquiry to defend the present policies and programmes or propose new approaches that ensure compliance with human rights obligations. Government witnesses should give formal, public evidence on the record so that their evidence can be assessed and tested against other evidence and so the inquiry's findings can be compared with their evidence. Government officials may attempt to avoid appearing and being questioned in public by offering to provide "intensive briefings" to the inquiry or written answers to the inquiry's questions. While the inquiry may agree to receive briefings and written information, it should not do so on the basis that Government officials will not participate in the public hearings. Their presence for examination and questioning is important to the inquiry's independence. Further, any information received through oral or written briefings should be made publicly available to ensure that it is known and can be challenged by others. Written submissions from government agencies received in advance of the public hearings provide the Inquiry Commissioners with valuable material in preparing questions to ask officials at the hearings.

WITNESS PROTECTION

Some witnesses will be vulnerable because of their evidence to the inquiry. Victims might be put at risk because they give evidence about their experiences of human rights violations. What they say may identify perpetrators, directly or indirectly. Government officials who cooperate with the inquiry might be exposed to victimization or reprisal because they give evidence about the practices of their agencies. In planning and conducting the hearings, the inquiry should take care to ensure that it provides as much protection as it can to witnesses, especially victims, who require it. This protection can take various forms.

Most laws establishing NHRIs provide penalties for threatening, harassing, intimidating or harming any witness in proceedings conducted by the NHRI. The inquiry might need to remind all interested parties of those penalties and express the willingness of the NHRI to take appropriate action if it becomes aware of any threats or improper action directed towards witnesses. The inquiry should also remind the Government that the penalty provisions of the legislation protect civil servants, including senior officials, who cooperate with the NHRI's procedures by assisting the inquiry. The inquiry should identify potential risks in relation to individual witnesses before the hearings begin and take such action as it can to address the concerns

before they eventuate. Part of this will involve identifying which witnesses will need to have their identities suppressed or will need to give their evidence in confidence to the inquiry alone. In extreme circumstances, the inquiry may need to seek assistance from police, if appropriate, or other agencies to provide protection for any witness who is in immediate danger. It may be necessary to have safe houses ready to accommodate those who need protection from physical violence. The nature of risks will vary from place to place and from time to time. In some countries, there may be a risk of retribution of some kind but little or no possibility of violence. In others, there may be an extreme risk of violence. The inquiry should undertake a risk assessment before conducting a public hearing and prepare responses to identified possible threats before they arise. The risk assessment should determine whether security measures are required to protect the proceedings and the persons in attendance generally, not only particular witnesses. Public hearings can be emotionally charged and there may be a risk of violence, even in relatively peaceful countries. The inquiry has a duty of care towards those who attend public hearings – witnesses certainly but also inquiry staff and members of public who sit in the audience.

STEPS IN THE NATIONAL INQUIRY PROCESS

There are fourteen steps in the national inquiry process:

1. Choose the issue
2. Prepare a background or scoping paper
3. Identify, consult and engage stakeholders
4. Draft objectives and terms of reference
5. Appoint Inquiry Commissioners and staff
6. Gather other resources
7. Finalize an inquiry plan
8. Obtain information: research and evidence
9. Conduct public hearings
10. Develop recommendations
11. Prepare the report
12. Release the report
13. Follow up
14. Evaluate

CHAPTER 20

COMPLAINTS HANDLING

The Paris Principles contain a separate section of “additional principles concerning the status of commissions with quasi-jurisdictional competence”. The term “quasi-jurisdictional” is an error that arose from mistranslation of the original text, which was in French. The correct term is “quasi-judicial”. The error is in the original English text and has never been corrected.

This “quasi-jurisdictional competence” is the complaint handling function. It is not cited in the Paris Principles as an essential function of NHRIs but many, perhaps most, NHRIs have it. All NHRIs in the Asia Pacific region have complaint handling responsibilities and so are “commissions with quasi-jurisdictional competence”. The investigation and resolution of complaints is central to their functions but NHRI complaint handling is “not a replacement for law enforcement officials or a properly functioning judiciary”.

This function is “quasi-judicial”; that is, it is similar to the function of courts. Courts receive and determine complaints, making binding, enforceable orders. They proceed by way of a judicial process. This means that they are neutral between the parties, favouring neither one nor the other. Some courts have an investigative role, while others simply consider the evidence before them, applying the law and then making a decision based on the evidence and the law. They apply the rules of natural justice or procedural fairness in their procedures.

In handling complaints, NHRIs are required to apply the rules of natural justice or procedural fairness. They may be advocates for human rights and for the human rights legislation they administer but they must be impartial and objective in their complaint handling, not pre-judging the allegations. They must collect and assess the evidence and apply the law.

The Protection of Human Rights Act 1993 (PHRA) mandates the NHRC to perform the following functions:

> proactively or reactively inquire into violations of human rights or negligence in the prevention of such violation by a public servant
>
> by leave of the court, to intervene in court proceeding relating to human rights

to visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living condition of the inmates and make recommendations

review the safeguards provided by or under the Constitution of any law for the time being in force for the protection of human rights and recommend measures for their effective implementation

review factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures

to study treaties and other international instruments on human rights and make recommendations for their effective implementation

undertake and promote research in the field of human rights

engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means

encourage the efforts of NGOs and institutions working in the field of human rights

such other function it may consider necessary for the protection of human rights.

What complaints can an NHRI accept?

The subject matter of a complaint

The law indicates what complaints the NHRI can accept and deal with and it should not accept and deal with complaints that raise matters that are outside the scope of the country's law. An NHRI is a human rights institution and so the complaints it handles should concern an issue that arises under human rights law.

Who may complain?

The Paris Principles provide that, for NHRIs with quasi-judicial functions:

> "Cases may be brought before it by individuals, their representatives, third parties, representative organisations. "

In most cases, the law establishing an NHRI will also define who may make a complaint of a human rights violations. Any person harmed as a result of a human rights violation is entitled under international law to a remedy.

Who may be the respondent to a complaint?

NHRIs may be limited by their establishing laws to acting only on complaints against some categories of respondents.

Other requirements going to jurisdiction

Often the NHRI cannot accept and deal with a complaint relating to a matter that is subject to court proceedings; that is, a matter that is currently before a court or has been dealt with already by a court. This recognises the supremacy and independence of the courts under the rule of law. NHRIs are not courts but are subject to the law and the courts in the same manner as all other institutions, organisations and individuals in the country.

There may also be a geographical limitation, either that the NHRI can only accept complaints of a violation that occurred in a particular area or alternatively that the NHRI may not accept complaints of a violation that occurred in a particular area.

Steps in complaint handling

The process by which complaints are handled vary from law to law and from NHRI to NHRI. In most NHRIs, the successive steps in complaint handling are:

receipt
investigation
conciliation
report or referral.

Receipt

The first step is both mechanical and technical. On receipt, the complaint must be registered, a mechanical action, and then subjected to an initial technical (or legal) assessment to ensure that it comes with the jurisdiction f the NHRI.

Unless complaints are registered on receipt, and the progress of their handling is tracked through a good database, they could be lost among the high volume of complaints the NHRI receives. The database should permit the Commissioners and

senior managers to know at any time what stage the handling of a specific complaint has been reached and what the timetable is for further action on it.

Each complaint also needs to be subjected to an initial assessment on receipt to ensure that it falls within the jurisdiction of the NHRI. This intake assessment is not a final determination of the validity of the complaint. Rather it is a first assessment of whether the NHRI can even receive the complaint and seek to resolve it.

Part of the initial assessment of the complaint includes considering whether it should be dismissed without investigation under one of the grounds of dismissal in the NHRI's legislation. NHRIs are generally authorised to dismiss certain complaints, including those that are "trivial, vexatious, misconceived or lacking in substance".

Investigation

Once it is established that a complaint is within jurisdiction, the next step is investigating the allegations made. The nature of the investigations undertaken by NHRIs varies enormously because the nature of the complaints varies enourmously.

Investigations have to be carefully planned and then thoroughly undertaken. Although different weight will be given to different aspects of the investigative process, depending on the nature of the complaint, there are certain elements that are common:

- interviewing, usually the complainant, other victims, witnesses and the alleged perpetrator
- obtaining and analysing documentary evidence
- obtaining and analysing other evidence, including physical and digital evidence
- assessing all the evidence available.

NHRIs will need adequate powers to undertake investigations successfully. Those powers are not specified in the Paris Principles but they are necessary to the responsibilities set out there. The powers are basic powers of investigation, including:

- to take evidence from victims and witnesses
- to compel the attendance of a witness for questioning, even if in custody
- to obtain documents and information
- to enter premises and conduct inspections.

The existence of a power requires the imposition of a penalty if a person or organisation fails to comply with an order issues pursuant to that power. NHRIs should be able to issue orders under their investigative powers and have courts enforce the orders and penalise those who do not comply.

The powers of investigation must also include protection of those who cooperate with or contribute, whether voluntarily or compulsorily, to an investigation. Victims and witnesses may be reluctant to assist an investigation if they fear reprisals as a result. The protection of witnesses and others assisting NHRI investigations should be incorporated in the establishing legislation and include criminal penalties for those who take reprisals or threaten to do so.

Conciliation (or mediation)

Some NHRIs are required by their establishing law to attempt to resolve complaints by agreements between the parties, that is, between the complainant and the respondent. They seek to do this by conciliating (or mediating) between parties. The Paris Principles provide that NHRIs with quasi-judicial functions should "seek… an amicable settlement through conciliation".

The goal of conciliation is to resolve a complaint on a basis that both parties agree to and with which they feel some sense of satisfaction. Conciliation is essentially a cooperative venture, even if the parties are hostile towards each other and express that hostility.

The NHRI conciliator is neutral or impartial between the parties. That is, the conciliator:

- does not agree with one and disagree with the other
- makes no judgement as to the credibility of the parties and the truthfulness or either account of what happened
- is an advocate for human rights but not for either party.

The conciliator is a facilitator of the discussion between the parties. The conciliator can suggest steps and approaches and, to that extent, steers the process. Not every complaint of human rights violation lends itself to conciliation or is appropriate for conciliation. NHRIs need to be scrupulous in ensuring that conciliation is not pursued without consideration of the nature and context of the violation and the situation of the victim. The wellbeing and needs of the victim should be the priority concern of the NHRI.

Referral to government or report

NHRI complain handling generally does not conclude with a binding judgement and enforceable orders for remedies. Making judgements and orders is primarily a judicial function, not a function of an NHRI.

When referring a case to a specialist human rights tribunal or to the ordinary courts, NHRIs may be able or even required to prepare a report and submit it to the court with the case. The report usually details the nature of the complaint, the course of the NHRI's handling of the complaint, and the process and results of the investigation, including statements by witnesses and copies of documentary and other evidence. It may also include the NHRI's findings from its investigation of the complaint and recommendations as to action that, in its opinion, should be taken to provide appropriate accountability of the perpetrator and reparations for the victim.

In other NHRIs, unresolved complaints are reported not to the courts but to parliament. Again, in these circumstances, the report generally contains:

> a description of the nature of the complaint, the course of the NHRI's handling of the complaint, and the process and results of the investigation, including statements by witnesses and copies of documentary and other evidence
>
> the NHRI's findings from its investigation of the complaint
>
> the NHRI's recommendations as to action that, in its opinion, should be taken to provide appropriate accountability of the perpetrator and reparations for the victim.

Investigation of violations on the NHRI's own initiative

Many NHRI's can also undertake investigations of human rights violations on their own initiative (suo motu). Information concerning human rights violations can come to the attention of the NHRI through NGOs, communities, the media or other sources. There may not be a formal complaint or even anyone who is able or willing to make a formal complaint. The NHRI's law may enable it to commence an investigation in the absence of a formal complaint. The procedure will be similar to that used in relation to a formal complaint except that there is no complainant who can be involved. Nonetheless, the NHRI should engage with victims and their families as much as possible during the course of investigation and in making findings and recommendations.

Complaints staff

NHRIs require expert, suitably trained staff to handle cases of human rights violation. It cannot be assumed that anyone can handle complaints but that assumption is often made and staff are allocated complaints, including complaints of the most serious human rights violations, without proper training and expertise. They also need to be experts in human rights law so that they are able to understand the nature of the allegations being made and of the violations and form an opinion on whether the facts constitute a human rights violation.

Regardless of the approach take by an NHRI all staff involved in complaint handling have to be properly trained in whatever functions they are required to perform.

Complaints data and analysis

NHRIs should collect and analyse carefully the data of its complaint handling work to enable them:

to identify and understand the underlying patterns of human rights violation

to report on the human rights situation in the country as a whole

to learn whether the complaints work is addressing the most important human rights issues or whether it is focusing on less important matters or issues

to contribute to the NHRIs' own strategic planning.

International complaint procedures

The various complaints procedures have certain common requirements for complaints. In general, a complaint has to be lodged by a victim but it is also possible for other persons and organisations to lodge a complaint on behalf of a victim. In each case, a complaint must provide:

the name of the alleged victim(s)

the name of the alleged perpetrator(s)

the name of the person(s) or organisation(s) submitting the communication

the date and place of the incident that is the subject of the complaint

a detailed description of the circumstances of the incident.

RELATIONSHIP BETWEEN NGOS AND NATIONAL INSTITUTIONS

KANDY PROGRAM OF ACTION: COOPERTATION BETWEEN NATIONAL INSTITUTIONS AND NON-GOVERNMENTAL ORGANISATIONS

Relations with non-government organisations and national institutions are of great importance in any effort to work more effectively to promote and protect human rights. Bringing together the human rights expertise, the energy, commitment, moral authority and information gathering of both NGOs and national institutions, while taking account of their different roles and structures, will have a multiplying effect on their ability to address human rights issues. The exchange of information will be of benefit to both parties. Interaction with NGOs will ensure that the work programs of national institutions are of continuing relevance to the community. Interaction with national institutions can empower NGOs to give voice to issues of concern. There are already many examples of effective co-operation around the world. It is suggested that member commissions could consider further measures to promote more effective co-operation. Such action could include:

Encouraging governments to appoint persons with NGO backgrounds as members of national institutions;

Establishment of formally constituted advisory bodies to national institutions that would include representatives of the community or of community organisations;

Establishment of regular consultative processes, both formal and informal between national institutions and governments;

Extension of training activities to include personnel of NGOs as well as of national institutions;

The commissioning of NGOs to carry out activities, such as research on behalf of national institutions.

Sources:

Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation published by Asia Pacific Forum, September 2012.

MATERIALS AVAILABLE ON THE PEN DRIVE

1.National Human Rights Institutions		
1.1.	**NHRI General Materials**	
	1.1.1	NHRI - UPR Good Practice Compilation
	1.1.2	NHRI - Amnesty International - Recommendations on effective functioning of NHRIs
	1.1.3	NHRI - Commonwealth - Best Practices
	1.1.4	NHRI - General – Cooperation between NHRIs and NGOs - Kandy Program of Action
	1.1.5	NHRI - ISHR - Assessing the effectiveness of NHRIs
	1.1.6	NHRI - OSCE - ODHR - Handbook for NHRIs on women's rights and gender equality
1.2.	**Paris Principles**	
	1.2.1	NHRI - General - Paris Principles
	1.2.2	NHRI - General Paris Principle No 1 - Broad_Mandate
	1.2.3	NHRI - General Paris Principle No 2 - Autonomy
	1.2.4	NHRI - General Paris Principle No 3 - Independence
	1.2.5	NHRI - General Paris Principle No 4 - Pluralism
	1.2.6	NHRI - General Paris Principle No 5 – Adequate Resources
	1.2.7	NHRI - General Paris Principle No 6 - Adequate Powers of Investigation
	1.2.8	NHRI - APF - Guidelines on Establishing NHRIs
1.3.	**ICC**	
	1.3.1	NHRI - ICC - SCA - Rules of Procedure
	1.3.2	A handbook on the establishment of NHRIs by United Nations.
	1.3.3	ICC - Rules of Procedure for the ICC Sub Committee on Accreditation

	1.3.4	ICC - SCA - General Observation November 2009
	1.3.5	ICC - SCA - Statue
	1.3.6	NHRI - ICC - General Observations as on May 2013
1.4.	**APF**	
	1.4.1	APF - ACJ - Reference - 2000 - On Child Pornography on the Internet
	1.4.2	APF - ACJ - Reference - 2000 - Death Penalty
	1.4.3	APF - ACJ Reference - 2002 – Trafficking of Women and Children
	1.4.4	APF - ACJ – 2004 - Reference - Rule of law and combating terrorism
	1.4.5	APF - ACJ - References - 2005 – Torture
	1.4.6	APF - ACJ - References - 2007 - HR and Right to environment
	1.4.7	APF - ACJ - Reference - 2010 - SOGI rights
	1.4.8	APF - ACJ - References – 2011 - On Corporate Responsibility
	1.4.9	APF - ACJ - References - Corporate Responsibility - OECD Guidelines on Multinational enterprises
	1.4.10	APF - ACJ references briefs on each
1.5.	**Manuals on / for NHRIs**	
	1.5.1	NHRI - APF - Guidelines on Establishing NHRIs
	1.5.2	NHRI - APF - Manual - A UN Dec on the Rights of Indigenous Persons - A Manual for NHRIs
	1.5.3	NHRI - APF - Manual - International HR and HR System - A manual for NHRIs
	1.5.4	NHRI - APF - Manual - Preventing Torture
	1.5.5	NHRI - APF - Manual - Undertaking Effective Investigations - A Guide for NHRIs
	1.5.6	NHRI - APF - Manual on conducting a National Inquiry into systematic Patterns of HR Violations

	1.5.7	NHRIs - APF - Manual - Capacity Assessment Manual for NHRIs
	1.5.8	NHRIs - APF - Manual - Protecting and promoting the rights of migrant workers
	1.5.9	NHRI - General - OHCHR - NHRIs and UN Treaty Bodies - Infonote - April 2011
1.6.	**Law related to NHRIs in India**	
	1.6.1	The Protection of Human Rights Act 1993
	1.6.2	The National Commission for Women Act 1990
	1.6.3	The National Minorities Act XIX of 1992
	1.6.4	The Commissions for Protection of Child Rights Act 2005
	1.6.5	The Right to Information Commission Act 2005.pdf
	1.6.6	The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
	1.6.7	The Constitution (Eighty Ninth Amendment) Act, 2003 on SC / ST Commission
	1.6.8	The National Commission for Safai Karamchari Act 1993
1.7.	**The Asian NGOs Network on National Institutions (ANNI) ANNUAL REPORT**	
	1.7.1	ANNI 2008
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	1.7.5	ANNI 2012
	1.7.6	ANNI 2013
	1.7.7	ANNI 2014
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	1.7.9	An NGO Report on the Compliance with the Paris Principles by the National Human Rights Commission in India - AiNNI Report 2011
	1.7.10	NHRC Comments on AiNNI Report 2011
2.United Nations Human Rights Mechanisms		
2.1.	Vienna Declaration and Programme of Action 1993	
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2.3.	Simple Guide to the UN Treaty Bodies	
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2.5.	UN Charter 1945	
2.6.	Universal Declaration of Human Rights 1948	
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	2.7.1	ICCPR
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	2.7.4	Human Rights Committee Fact Sheet
	2.7.5	Membership Human Rights Committee
	2.7.6	General Comment No. 36 – Article 9: Liberty and security of person
	2.7.7	General comment No. 35, Article 9: Liberty and security of person
	2.7.8	General comment No. 34 - Article 19: Freedoms of opinion and expression
	2.7.9	General Comment No. 32: Article 14: Right to Equality before Courts and Tribunals and to Fair Trial
	2.7.10	General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant
	2.7.11	General Comment No. 30: Reporting Obligations of States parties under article 40 of the Covenant
	2.7.12	General Comment No. 29: States of Emergency (article 4)

2.7.13	General Comment No. 28 Article 3 (The equality of rights between men and women) (Replaces general comment No. 4)
2.7.14	General Comment No. 27: Freedom of movement (Art.12)
2.7.15	General Comment No. 26: Continuity of obligations
2.7.16	General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)
2.7.17	General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant
2.7.18	General Comment No. 23: The rights of minorities (Art. 27)
2.7.19	General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)
2.7.20	General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10) (Annex VI)
2.7.21	General Comment No. 20 Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment),
2.7.22	General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses
2.7.23	General Comment No. 18 - Non-discrimination (Thirty-seventh session, 1989)
2.7.24	General Comment No. 17 - Rights of the child, (Article 24), (Thirty-fifth session, 1989)
2.7.25	General Comment No. 16 - Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation)
2.7.26	General Comment No. 15 The position of aliens under the Covenant
2.7.27	General Comment No. 14: Nuclear weapons and the right to life (Art. 6)

2.7.28	General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)
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2.7.31	General Comment No. 10 Article 19 (Freedom of opinion and expression)
2.7.32	General Comment No. 09: Humane treatment of persons deprived of liberty (Art. 10)
2.7.33	General Comment No. 8 Article 9 (Right to liberty and security of persons)
2.7.34	General Comment No. 7 Article 7 (Torture or cruel, inhuman or degrading treatment or punishment) [General comment No. 7 has been replaced by general comment No. 20]
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2.7.38	General Comment No. 3 Article 2 (Implementation at the national level) [General comment No. 3 has been replaced by general comment No. 31]
2.7.39	General Comment No. 2 Reporting guidelines [Has been superseded by CCPR/C/66/GUI, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights
2.7.40	General Comment No. 1 Reporting Obligation [General Comment No. 1 has been replaced by General Comment No. 30]

2.8.	Committee on ESC rights	
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	2.8.3	Economic and Social Council resolution
	2.8.4	Concluding observations of the Committee on ESCR India 2008
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	2.8.7	General comment No. 22 (2016) on the right to sexual and reproductive health (Art. 12)
	2.8.8	General comment No. 21: Right of everyone to take part in cultural life
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	2.8.10	General Comment No. 19, The right to social security (art. 9)
	2.8.11	General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights
	2.8.12	General Comment No. 17 (2005): The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author
	2.8.13	General comment No. 16 (2005): The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)
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	2.8.17	General comment 12 (Twentieth session, 1999): The right to adequate food (Art.11)
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	2.8.23	General comment No. 6: The economic, social and cultural rights of older persons
	2.8.24	General Comment No. 5 (1994): Persons with disabilities (Annex IV)
	2.8.25	General Comment No. 4: The right to adequate housing (Art. 11 (1))
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	2.9.5	General recommendation No. 34 adopted by the Committee - Racial discrimination against people of African descent

	2.9.6	General recommendation No. 33: Follow-up to the Durban Review Conference
	2.9.7	General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination
	2.9.8	General recommendation 31: Prevention of racial discrimination in the administration and functioning of the criminal justice system (para.460)
	2.9.9	General Recommendation No.30: Discrimination Against Non Citizens (p.469)
	2.9.10	General Recommendation No. 29: Article 1, paragraph 1 of the Convention (Descent) (Annex XI, F)
	2.9.11	General recommendation 28 on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance
	2.9.12	General Recommendation No. 27: Discrimination against Roma (Annex V, C)
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2.10.	**Committee on Elimination of Discrimination Against Women**	
	2.10.1	CEDAW
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2.10.6	General Comment No. 33 – Women's access to justice
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2.10.8	Joint General Recommendation/Comment No. 31 of CEDAW and No. 18 of CRC on harmful practices
2.10.5	General recommendation No. 30 (fifty-sixth session, 2013) on women in conflict prevention, conflict and post-conflict situations
2.10.6	General recommendation No. 29 -- fifty-fourth session, 2013 - Article 16 - Economic consequences of marriage, family relations and their dissolution
2.10.7	General recommendation No. 28 -- forty-seventh session, 2010 - The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women
2.10.8	General recommendation No. 27 -- forty-seventh session, 2010 - Older women and protection of their human rights
2.10.9	General Recommendation No. 26 -- forty-second session, 2008, Women Migrant Workers
2.10.10	General recommendation No. 25 -- thirtieth session, 2004 article 4 paragraph 1 - Temporary special measures
2.10.11	General recommendation No. 24 -- twentieth session, 1999 article 12 - women and health
2.10.12	General recommendation No. 23 -- sixteenth session, 1997 women in political and public life
2.10.13	General recommendation No. 22 -- fourteenth session, 1995 article 20 of the Convention

2.10.14	General recommendation No. 21 -- thirteenth session, 1994 equality in marriage and family relations
2.10.15	General recommendation No. 20 -- eleventh session, 1992 reservations
2.10.16	General recommendation No. 19 -- eleventh session, 1992 violence against women
2.10.16	General recommendation No. 18 -- tenth session, 1991 disabled women
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2.10.20	General recommendation No. 15 -- ninth session, 1990 women and AIDS
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2.10.26	General recommendation No. 9 -- eighth session, 1989 statistical data
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	2.10.29	General recommendation No. 6 -- seventh session, 1988 effective national machinery and publicity
	2.10.30	General recommendation No. 5 -- seventh session, 1988 temporary special measures
	2.10.31	General recommendation No. 4 -- sixth session, 1987 reservations
	2.10.32	General recommendation No. 3 -- sixth session, 1987 education and public information programmes
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2.12.6	General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para .1)
2.12.7	General comment No. 13 (2011) - The right of the child to freedom from all forms of violence
2.12.8	General comment No. 11 (2009) - Indigenous children and their rights under the Convention
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2.12.12	General comment No. 7 (2005) - Implementing child rights in early childhood
2.12.13	General comment No. 6 (2005) – Treatment of unaccompanied and separated children outside their country of origin
2.12.14	General comment No. 5 (2003) - General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)

	2.12.15	General comment No. 4 (2003) - Adolescent health and development in the context of the Convention on the Rights of the Child
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	2.18.2	Fact Sheet No.03 (Rev.1), Advisory Services and Technical Cooperation in the Field of HR
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		We are grateful to Asia Pacific Forum for allowing us the use of these videos.

PARIS PRINCIPLES

The Paris Principles, as they became commonly known, identify six criteria that national human rights institutions should meet in order to be effective, including:

- a clearly defined and broad-based mandate based on universal human rights standards
- autonomy from government
- independence guaranteed by legislation or the constitution
- pluralism, including membership that broadly reflects their society
- adequate resources
- accountable to the people through Parliament / Legislature

UN Guidelines for National Human Rights Institutions, 1993

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