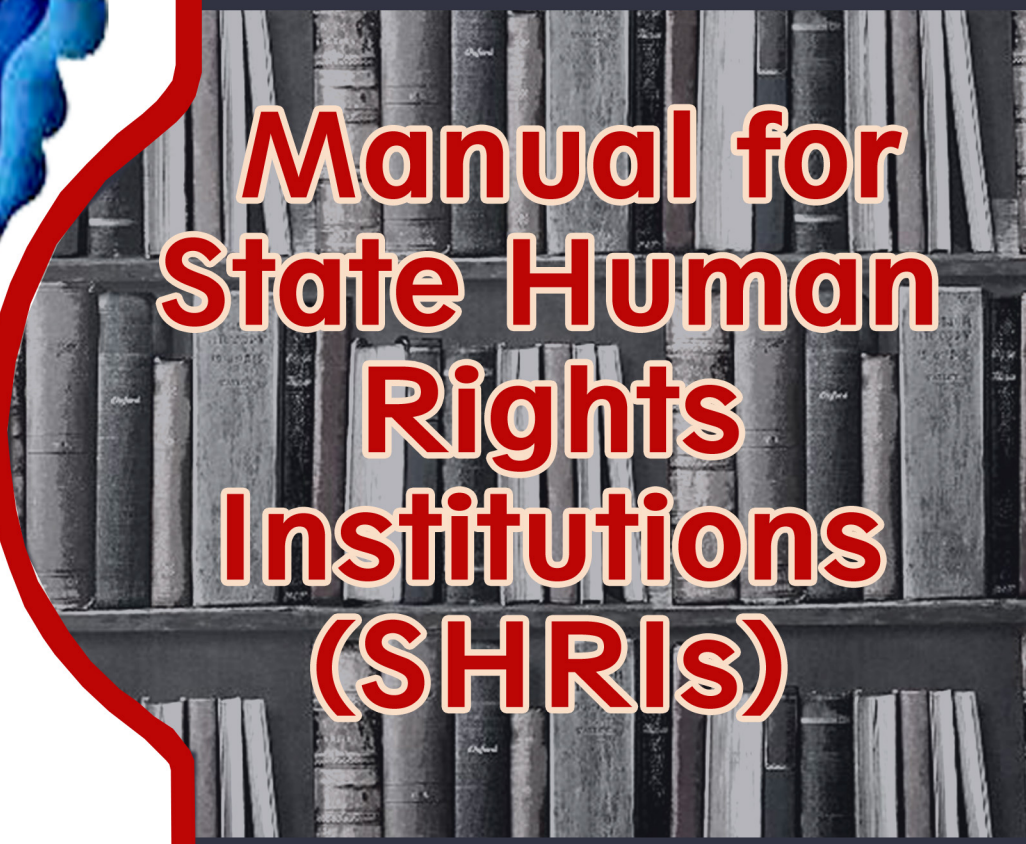

Manual for State Human Rights Institutions (SHRIs)

Compiled by

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

On behalf of

Civil Society Coalition in Solidarity with the SHRIs in Tamil Nadu

An Introduction to Global Alliance of National Human Rights Institutions (GANHRI)

History

National Human Rights Institutions (NHRIs) have been recognized at the international level as actors for the promotion and protection of human rights since 1946. Throughout the next three decades the United Nations and some of its affiliated organizations prepared a series of reports on the feasibility of national institutions as instruments for protection and promotion of human rights. These reports culminated in the UN International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris in 1991. The workshop led to the drafting of guiding principles – popularly known as the "Paris Principles" – that were adopted by the United Nations General Assembly in 1993.

When NHRIs met in Tunis for their second international workshop, they decided to establish the Global Alliance of National Human Rights Institutions (GANHRI)[1], previously known as the International Coordinating Committee of institutions for the promotion and protection of human rights (ICC). Since then, the UN General Assembly has adopted numerous resolutions calling for the strengthening of NHRIs.

Vision

A world where everyone everywhere fully enjoys their human rights

Mission

GANHRI unites, promotes and strengthens NHRIs to operate in line with the Paris Principles and provides leadership in the promotion and protection of human rights.

Principles and Values

GANHRI as a member-based global alliance, works in accordance with the Principles as laid down in its Statute.

[1] Please see the details of GANHRI here: Global Alliance of National Human Rights Institutions (GANHRI)
Address: UNOG Palais des Nations, Geneva
Phone: +41 22 917 27 16
E-mail: info@ganhri.org
Website: https://ganhri.org/

Identity

Representing more than 110 NHRIs, their members and staff across all regions, GANHRI is one of the largest human rights networks worldwide. With a Head Office in Geneva and a governance structure representing NHRIs around the world, GANHRI is truly global.

Enriched by its diversity, its membership is united by a common vision: a world where everyone everywhere fully enjoys their human rights. GANHRI works in close synergy with the four regional networks of NHRIs in Africa, the Americas, the Asia Pacific and Europe, creating one comprehensive structure of independent networks.

GANHRI is recognised, and is a trusted partner, of the United Nations. It has established strong relationships with the UN Human Rights Office, UNDP and other UN agencies, as well as with other international and regional organisations, NGOs, civil society and academia.

Theory of Change

GANHRI, with and through its members, positively impacts on human rights globally:

- when NHRIs are established and accredited as independent Paris Principle compliant institutions in all countries of the world;
- when NHRIs are supported, strengthened and protected to independently and effectively fulfil their mandate of promotion and protection of human rights;
- when NHRIs collaborate and share experience and knowledge regionally and globally;
- when NHRIs can speak with unified voices and influence the global policy agenda;
- when NHRIs contribute towards a world where everyone everywhere fully enjoys their human rights.

An Introduction to Asia Pacific Forum (APF)

Founded in 1996, the APF[2] has created a strong and united platform that brings together National Human Rights Institutions (NHRIs) from all corners of the Asia Pacific to address some of the most serious human rights challenges in our region.

Drawing on 25 years of human rights experience, a commitment to innovation and an outcomes-based approach to our work, APF's expertise lies in supporting the establishment of NHRIs and strengthening the capacity of our members to carry out their vital work.

[2] Please see the details of APF here: Asia Pacific Forum
GPO Box 5218, Sydney NSW 2001, Australia
P: +61 2 9284 9845
E-mail: apf@asiapacificforum.net
Website: https://www.asiapacificforum.net/

APF also works closely with governments, civil society organisations, regional human rights bodies, and the international community to build strong partnerships and strengthen the impact of our members as they work to build fair, inclusive, and resilient communities.

A fundamental goal of the APF is to promote the establishment of independent NHRIs in the Asia Pacific region and to support our members to do their work as effectively as possible. APF brings about change by supporting the establishment of national human rights institutions in the Asia Pacific and strengthening the capacity of its members to carry out their vital work. From five founding members, the APF membership has expanded to 26 NHRIs.

APF's network now supports over 4000 dedicated human rights defenders who work tirelessly on the ground to protect the rights of those most vulnerable. Through the sustained and dedicated efforts of our members, the APF is helping to build an Asia Pacific where everyone can enjoy their human rights.

An Introduction to Asian NGO Network on National Human Rights Institutions (ANNI)

After Asian civil society organizations walked out from Asia Pacific Forum (APF) conference which was held in Mongolia in 2005, FORUM ASIA came forward with an alternative called Asian NGO Network on National Human Rights Institutions (ANNI)[3] and it was established in December 2006. It is a network of Asian non-governmental organisations and human rights defenders working on issues related to National Human Rights Institutions (NHRIs). ANNI has members that are national organisations from all over Asia. ANNI currently has 33 member organisations from 21 countries or territories. The work of ANNI members focuses on strengthening the work and functioning of Asian NHRIs to better promote and protect human rights as well as to advocate for the improved compliance of Asian NHRIs with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI).

[3] Asian NGO Network on National Human Rights Institutions (ANNI)
Secretariat: Asian Forum for Human Rights and Development (FORUM-ASIA)
S.P.D Building 3rd Floor, 79/2 Krungthonburi Road, Khlong Ton Sai, Khlong San, Bangkok, 10600 Thailand
Tel: +66 (0)2 1082643-45
E-mail: anni@forum-asia.org
Website https://forum-asia.org/?page_id=19132&nhri=1

The annual/biennial reports of ANNI[4] are available on its website which is a great source of information/data for researchers on NHRIs and advocacy tools of civil society and human rights practitioners engaged with NHRIs in Asia in various capacities at different levels.

An Introduction to All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI)

AiNNI[5] is a Forum initiated by People's Watch in 2010 along with many activists and organizations from across the country to monitor human rights institutions like the National Human Rights Commission, the 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 and their state counterparts for their compliance to Paris Principles and their founding law and to activate them. Some of the prominent members of AiNNI include Ms. Maja Daruwala, Prof. YSR Murthy, Mr. Mathews Philip, Babloo Loitongbam etc.

AiNNI has been consistently submitting reports[6] to GANHRIs' SCA before NHRCI's each reaccreditation process on behalf of civil society coalitions and individuals who have been engaged with NHRCI for decades providing an accurate assessment of the performance of NHRCI on major human rights concerns and its performance as per the mandate of Paris Principles.

[4] ANNI Report 2020 - https://ainni.in/wp-content/uploads/2022/02/ANNI-Report-2020.pdf
ANNI Report 2019 -https://ainni.in/wp-content/uploads/2021/06/ANNI-2019.pdf
ANNI Report 2018 - https://ainni.in/wp-content/uploads/2021/06/ANNI-2018.pdf
ANNI Report 2017 - https://ainni.in/wp-content/uploads/2019/08/ANNI-Report-Final-2017.pdf
ANNI Report 2016 - https://ainni.in/wp-content/uploads/2021/06/2016-ANNI-Report.pdf
ANNI Report 2015 - https://ainni.in/wp-content/uploads/2018/06/1.7.8-ANNI-2015.pdf
ANNI Report 2014 - https://ainni.in/wp-content/uploads/2018/06/1.7.7-ANNI-2014.pdf
ANNI Report 2013 - https://ainni.in/wp-content/uploads/2018/06/1.7.6-ANNI-2013.pdf
ANNI Report 2012 - https://ainni.in/wp-content/uploads/2018/06/1.7.5-ANNI-2012.pdf
ANNI Report 2011 - https://ainni.in/wp-content/uploads/2023/01/ANNI-2011.pdf
ANNI Report 2010 - https://ainni.in/wp-content/uploads/2023/01/ANNI-2010.pdf
ANNI Report 2009 - https://forum-asia.org/wp-content/uploads/2018/03/ANNI-Report-2009.pdf
ANNI Report 2008 - https://forum-asia.org/wp-content/uploads/2018/03/ANNI-Report-2008.pdf
[5] All India Network of NGOs and Individuals Working with National and State Human Rights Institutions (AiNNI)
32, Besant Road, Chokkikulam, Madurai – 625002, Tamil Nadu. India.
Phone: +91-9994368540
E.mail: info@ainni.in
Website: https://ainni.in/
[6] AiNNI Submission to SCA 2011 -
https://ainni.in/wp-content/uploads/2019/07/AiNNI-2011-Report-on-NHRC.pdf
AiNNI Submission to SCA 2016
https://ainni.in/2016/06/26/the-red-kelly-story/reports/
AiNNI Submission to SCA 2017
https://ainni.in/wp-content/uploads/2019/08/ANNI-Submission-to-SCA.pdf
ANNI – AiNNI Joint Submission to SCA 2022
https://ainni.in/wp-content/uploads/2022/10/AiNNI-ANNI-Joint-Submission-to-SCA-2022.pdf

Principles relating to the Status of National Institutions (The Paris Principles)

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

Competence and responsibilities

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

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

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

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to 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 orgnization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;

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

(g) To 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.

Composition and guarantees of independence and pluralism

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

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

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

Methods of operation

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

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

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

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

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:

(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.

[Adopted by the GANHRI Bureau at its Meeting held in Geneva on 21 February 2018]

GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS (GANHRI)

General Observations of the Sub-Committee on Accreditation

Introduction

1. The 'Principles relating to the status of national institutions' (Paris Principles), endorsed by the World Conference on Human Rights and the United Nations General Assembly, are the minimum international standards for the establishment of National Human Rights Institutions (NHRIs). They provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism.

2. NHRIs are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of NHRIs pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant NHRI.

3. As a core function, the Global Alliance of NHRIs (GANHRI) promotes the establishment and strengthening of NHRIs in conformity with the Paris Principles and uses the Principles as criteria to determine GANHRI membership. The GANHRI Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles.

4. Since 2006, the SCA has used the knowledge gained through the GANHRI accreditation process to develop an important body of jurisprudence to give meaning to the content and scope of the Principles. Section 2.2 of the SCA Rules of Procedure provide the SCA with authority to develop 'General Observations' on common and important interpretative issues on the implementation of the Paris Principles.

5. The SCA, with its depth of experience and extensive study of the guiding principles, is well placed to articulate its standards and deliver the necessary guidance to ensure a consistency of approach in its implementation and application. The SCA possesses an understanding of the issues faced by NHRIs, operating in a wide range of circumstances, including a diversity of institutional models and political systems. As a result, it has developed clear examples of compliance with the Paris Principles in practice.

6. The General Observations are referred to in the SCA's recommendations issued to NHRIs upon review of their application for GANHRI accreditation, re-accreditation or special review. The General Observations, as interpretative tools of the Paris Principles, may be used to:

a) Instruct institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

b) Persuade domestic governments to address or remedy issues relating to an institution's compliance with the standards articulated in the General Observations;

c) Guide the SCA in its determination of new accreditation applications, re-accreditation applications or other review:

i. If an NHRI falls substantially short of the standards articulated in the General Observations, it will be open for the SCA to find that it was not Paris Principle compliant.

ii. If the SCA has noted concern about an NHRI's compliance with any of the General Observations, it may consider what steps, if any, have been taken by the NHRI to address those concerns in future applications. If the SCA is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts have been made, it will be open to the SCA to interpret such lack of progress as non-compliance with the Paris Principles.

7. The SCA is aware of the different NHRI structural models in existence, including: commissions; ombudsman institutes; hybrid institutions; consultative and advisory bodies; research institutes and centres; civil rights protectors; public defenders; and parliamentary advocates. (For a more complete discussion of the different model-types, the SCA refers to *Professional Training Series No.4: National Human Rights Institutions: History, Principles, Roles and Responsibilities*, United Nations Office of the High Commissioner for Human Rights, New York and Geneva, 2010, pp. 15-19). The SCA is of the view that its General Observations must be applied to every NHRI, regardless of its structural model type.

8. The citation of General Observations is done in tandem with the issuance of specific recommendations on individual accreditation applications, the latter of which are narrow in application and value to the NHRI concerned. Inversely, the General Observations, being independent of a specific set of facts pertaining to a single domestic context, are universal in their application and provide guidance in both individual cases and more generally.

9. The categorization of the General Observations into the following two sections clarifies for all stakeholders which of the General Observations are direct interpretations of the Paris Principles, and which are drawn from the SCA's extensive experience in identifying proven practices to ensure independent and effective NHRIs in line with the Paris Principles:

i. Essential requirements of the Paris Principles; and

ii. Practices that directly promote Paris Principles compliance.

10. As it gains further experience, the SCA will seek to develop new General Observations. In 2011, GANHRI adopted a formalized multi-stage process for doing so. This procedure was designed to promote their accessibility by ensuring consistency in their content and format; being clearly written, of reasonable length and readily understandable to a broad range of readers, primarily NHRIs and States.

11. The first stage consists of a discussion amongst SCA members, representatives of GANHRI Regional Networks, and OHCHR on the topic of the General Observation. Secondly, a Working Group is established. It canvasses GANHRI members, through the Regional Networks, for their views on the topic to be addressed. Thirdly, the Working Group, taking into account any comments received from the GANHRI membership, develops a draft and presents it to the SCA for review and comment. Lastly, once approved, the SCA will recommend the revised draft be formally adopted through its sessional reports to the GANHRI Bureau.

12. The SCA's work in developing a comprehensive and detailed interpretation of the Paris Principles is of widespread value as it serves to enrich the understanding of the requirements to ensure the effective establishment, functioning and strengthening of NHRIs. Ultimately a synthesis of the most important issues of interpretation that have been uncovered by the individual accreditation applications, the General Observations are relevant to NHRIs globally, including those not currently the subject of the immediate accreditation review. The General Observations further enable stakeholders to take a proactive approach to effect the necessary changes to their own processes and mechanisms without requiring the SCA to provide them with specific recommendations resulting from the outcome of an accreditation review.

13. NHRIs are reliant upon their national government to implement many of the provisions of the Principles, including their legislative establishment and provision of adequate funding. Where the SCA notes as an issue of concern, the failure of the State to fulfill its obligations pursuant to the Paris Principles, the NHRI may use the standards articulated in the General Observations to recommend the action required by the State to effect the necessary change to address or remedy issues before the accreditation status of the NHRI is next reviewed.

14. The General Observations have also been developed to preserve the institutional memory of the SCA and to ensure a consistency in approach taken by its rotational membership.

15. The appropriate implementation of General Observations is key to advancing NHRI maturity. By clarifying the requirements of the Paris Principles, the General Observations provide NHRIs with accessible, relevant and readily contextualized norms to speed their evolution into more efficient and effective institutions, resulting in the enhanced promotion and protection of human rights on the ground.

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**Adopted by the Bureau of the Global Alliance of NHRIs (GANHRI) at its Meeting held in Geneva, Switzerland, 6 March 2017.*

GENERAL OBSERVATIONS

1. Essential requirements of the Paris Principles

1.1 The establishment of NHRIs

1.2 Human rights mandate

1.3 Encouraging ratification or accession to international human rights instruments

1.4 Interaction with the international human rights system

1.5 Cooperation with other human rights bodies

1.6 Recommendations by NHRIs

1.7 Ensuring pluralism of the NHRI

1.8 Selection and appointment of the decision-making body of NHRIs

1.9 Political representatives on NHRIs

1.10 Adequate funding of NHRIs

1.11 Annual reports of NHRIs

2. Practices that directly promote Paris Principles compliance

2.1 Guarantee of tenure for members of the NHRI decision-making body

2.2 Full-time members of an NHRI

2.3 Protection from criminal and civil liability for official actions and decisions undertaken in good faith

2.4 Recruitment and retention of NHRI staff

2.5 NHRIs during the situation of a coup d'état or a state of emergency

2.6 Limitation of power of NHRIs due to national security

2.7 Administrative regulation of NHRIs

2.8 Assessing NHRIs as National Preventive and National Monitoring Mechanisms

2.9 The quasi-judicial competency of NHRIs (complaints-handling)

1. Essential requirements of the Paris Principles

G.O. 1.1 The establishment of NHRIs

An NHRI must be established in a constitutional or legislative text with sufficient detail to ensure the NHRI has a clear mandate and independence. In particular, it should specify the NHRI'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 an NHRI 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 SCA recognizes that NHRIs 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 NHRIs, 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 NHRI's mandate as well as the composition of its leadership body. This necessarily requires the inclusion of complete provisions on the NHRI's appointment mechanisms, terms and conditions of office, mandate, powers, funding and lines of accountability.

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

The creation of an NHRI 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 state 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 NHRI must require the consent of the legislature to ensure its guarantees of independence and powers do not risk being undermined in the future.

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.*

1. Essential requirements of the Paris Principles

G.O. 1.2 Human rights mandate

All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights.

The SCA 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.

An NHRI'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 NHRI 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, an NHRI 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 NHRI must, at a minimum, be vested with. These requirements identify two main issues which must necessarily be addressed in the establishment and operation of an NHRI:

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

(ii) The NHRI'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.

1. Essential requirements of the Paris Principles

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 an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations and practices with these instruments. The SCA considers it important that these duties form an integral part of the enabling legislation of an NHRI. In fulfilling this function, the NHRI 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; and
- 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.

NHRIs 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 NHRIs 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 NHRI has the responsibility "*to encourage ratification of [these] instruments or accession to those instruments, and to ensure their implementation*".

In practice this requires NHRIs 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 SCA is of the view that the NHRI should be legislatively empowered to carry out these responsibilities.

The SCA notes the distinction between the state's own monitoring obligations as required by these instruments and the distinct role played by the NHRI in monitoring the state's compliance and progress towards implementing the instruments it ratifies. Where the NHRI 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 NHRI 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;

1. Essential requirements of the Paris Principles

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 NHRIs 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.

While it is appropriate for governments to consult with NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right. NHRIs should not participate as part of a government delegation during the Universal Periodic Review, during periodic reviews before the Treaty Bodies, or in other international mechanisms where independent participation rights for NHRIs exist. Where independent participation rights for NHRIs do not exist in a particular fora and an NHRI chooses to participate in proceedings as part of a state delegation, the manner of their participation must clearly distinguish them as an independent NHRI.

In considering their engagement with the international human rights system, NHRIs are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), GANHRI, their Regional Network and other NHRIs, 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 NHRIs the responsibility to interact with the international human rights system in three specific ways. That is, NHRIs 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; and
3. To cooperate with the United Nations and any other organization in its system, as well as with regional human rights institutions and the NHRIs of other countries.

The SCA is of the view that NHRI engagement with international bodies is an important dimension of their work. Through their participation, NHRIs connect the national human rights enforcement system with international and regional human rights bodies. Domestically, NHRIs 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, NHRI participation in regional and international coordination bodies serves to reinforce their independence and effectiveness, overall. Through exchanges, NHRIs 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.

NHRIs 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 NHRIs in the preparation of a state's reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right.

The SCA wishes to clarify that an NHRI'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 SCA recognizes the primacy of an NHRI'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, NHRIs are encouraged to engage wherever possible and in accordance with their own strategic priorities. In so doing, the SCA highlights that NHRIs should:

- avail themselves of the assistance offered by OHCHR, which provides technical assistance and facilitates regional and global cooperation and exchanges among NHRIs; and
- engage with GANHRI, their respective regional SCA representative and Regional Network.

<u>Excerpt from the Paris Principles</u>

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;

1. Essential requirements of the Paris Principles

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 NHRI's methods of operation, sections C(f) and C(g) of the Paris Principles require NHRIs 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 SCA 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 SCA considers such cooperation necessary to ensure the full realization of human rights nation-wide:

- *National human rights framework* – The effectiveness of an 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 an 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 an 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.

1. Essential requirements of the Paris Principles

G.O. 1.6 Recommendations by NHRIs

Annual, special and thematic reports of NHRIs 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.

NHRIs, 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, an NHRI 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 NHRIs in a timely manner, and to provide detailed information on practical and systematic follow-up action, as appropriate, to the NHRI's recommendations.

JUSTIFICATION

The Paris Principles are not only explicit in their direction that NHRIs have the responsibility to make recommendations to public authorities on improving the national human rights situation, but also that NHRIs ensure their recommendations are widely publicized. Specifically, section A.3(a) of the Paris Principles requires NHRIs 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 NHRIs to, *"[…] publicize its opinions and recommendations", "[…] directly or through any press organ […]*".

Finally, section D(d) of the Principles, requires NHRIs 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 SCA 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 SCA encourages governments to respond to advice and requests from NHRIs, and to indicate, within a reasonable time, how they have complied with their recommendations.

NHRIs 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.

1. Essential requirements of the Paris Principles

G.O. 1.7 Ensuring pluralism of the NHRI

A diverse decision-making and staff body facilitates the NHRI'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 NHRI 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 NHRI.

The SCA notes there are diverse models for ensuring the requirement of pluralism in the composition of the NHRIs 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 NHRI's membership should be avoided;

b) Pluralism through the appointment procedures of the governing body of the NHRIs 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 NHRIs, such as an Ombudsperson.

JUSTIFICATION

Ensuring the pluralistic composition of the NHRI 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 SCA considers the pluralistic composition of the NHRI to be fundamentally linked to the requirement of independence, credibility, effectiveness and accessibility.

Where the members and staff of NHRIs are representative of a society's social, ethnic, religious and geographic diversity, the public are more likely to have confidence that the NHRI 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 NHRI's capacity to communicate in all languages is key to its accessibility.

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

Ensuring the integrity and quality of members is a key factor in the effectiveness of the NHRI. 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 SCA 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 SCA cautions that criteria that may be unduly narrow and restrict the diversity and plurality of the composition of the NHRI's membership and staff body, such as the requirement to belong to a specific profession, may limit the capacity of the NHRI 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).

1. Essential requirements of the Paris Principles

G.O. 1.8 Selection and appointment of the decision-making body of NHRIs

It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the NHRI'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 an NHRI. 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; and
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 SCA 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 NHRI.

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 an NHRI with greater public legitimacy.

Advertising vacancies broadly maximises the potential number of candidates, thereby promoting pluralism.

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 NHRI.

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

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).

1. Essential requirements of the Paris Principles

G.O. 1.9 Political representatives on NHRIs

The SCA notes that the Paris Principles require an NHRI to be independent from government in its structure, composition, decision-making and method of operation. It must be constituted and empowered to consider and determine the strategic priorities and activities of the NHRI based solely on its determination of the human rights priorities in the country, free from political interference.

For these reasons, government representatives and members of parliament should not be members of, nor participate in, the decision-making of organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI.

The SCA recognizes that it is important to maintain effective working relationships, and where relevant, to consult with government. However, this should not be achieved through the participation of government representatives in the decision-making body of the NHRI.

Where government representatives or members of parliament, or representatives of government agencies, are included in the decision-making body, the NHRI'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, an NHRI'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 government representatives or members of parliament, 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 NHRI, and whose advice and cooperation may assist the NHRI 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 NHRI's governing body.

JUSTIFICATION

Paris Principle C(a) states that an NHRI 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 NHRI is "independent of the government".

Paris Principle B.3 requires that members of an NHRI 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 an NHRI, these provisions seek to avoid any possible interference in the NHRI'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 NHRI.

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 NHRI'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 NHRI'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 SCA 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;

1. Essential requirements of the Paris Principles

G.O. 1.10 Adequate funding of NHRIs

To function effectively, an NHRI 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 NHRI'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 NHRI 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 NHRI, as this is the responsibility of the State. However, the SCA recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI in order to ensure it receives adequate funding until such time when the State will be able to do so. In such unique cases, an NHRI should not be required to obtain approval from the state for external sources of funding, as this requirement may detract from its independence. Such funds should not be tied to donor-defined priorities but rather to the pre-determined priorities of the NHRI.

Government funding should be allocated to a separate budget line item applicable only to the NHRI. 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 an NHRI 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 NHRIs 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 SCA 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 NHRIs are located, establishing a regional presence increases the accessibility of NHRIs, 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 NHRIs 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 an NHRI'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) *NHRI staff* – Salaries and benefits awarded to NHRI staff should be comparable to those of civil servants performing similar tasks in other independent institutions of the State.

c) *NHRI members* – Where appropriate, members of the NHRI'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 NHRI's 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 NHRI's services.

e) *Allocation for activities* – NHRIs should receive adequate public funding to perform their mandated activities. An insufficient budget can render an NHRI ineffective or limit it from reaching its full effectiveness. Where the NHRI 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 NHRI's core budget, the SCA takes the view that funding from external sources, such as from international development partners, should not constitute the NHRI's core funding. However, it recognizes the need for the international community, in specific and rare circumstances, to continue to engage and support an NHRI 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, NHRIs 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 NHRI 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 NHRI is allocated and should ensure the appropriate timing of release of funding, which is particularly important in ensuring an appropriate level of skilled staff. This should be a separate budget line over which the NHRI has absolute management and control. The NHRI 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.

1. Essential requirements of the Paris Principles

G.O. 1.11 Annual reports of NHRIs

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 an NHRI. The reports also provide a means by which an NHRI can make recommendations to government and monitor respect for human rights by government.

The importance for an NHRI 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 NHRI 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 an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It is preferable for the NHRI to have 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 an NHRI 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 GANHRI languages, a certified translation of the key elements of the report must be submitted in its application for accreditation. The SCA finds it difficult to assess the effectiveness of an NHRI 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 NHRIs 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 NHRIs in fulfilling their obligations pursuant to this provision of the Paris Principles, the SCA provides the following guidance on its requirements, 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 an NHRI. The reports also provide a

means by which an NHRI can make recommendations to government and monitor respect for human rights by government;

- *Content of reports* – The annual report of an NHRI 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 NHRI has done. As such, this report should include an account of the activities undertaken by the NHRI 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 an NHRI 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 NHRI be publicly available as this increases the transparency and public accountability of the NHRI. In publishing and widely disseminating its annual report, the NHRI will play an extremely important role in educating the public on the situation of human rights violations in the country;

- *Submission of reports* – The NHRI 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 NHRI, so as to ensure that its recommendations are properly considered by relevant public authorities.

The SCA finds it difficult to review the accreditation status of an NHRI 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 SCA.

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 NHRI decision-making body

The SCA is of the view that in order to address the Paris Principles requirements for a stable mandate, which is important in reinforcing independence, the enabling legislation of an NHRI 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 an NHRI.

JUSTIFICATION

In prescribing the conditions to ensure a stable mandate for members of the NHRI 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 SCA that ensuring the security of tenure of NHRI members is consistent with the Paris Principles requirements regarding the composition of the NHRI 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 NHRI and its membership. That is, NHRI members must be able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors. In this light, the SCA 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 NHRI.

<u>Excerpt from the Paris Principles</u>

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.

2. Practices that directly promote Paris Principles compliance

G.O. 2.2 Full-time members of an NHRI

The enabling law of the NHRI should provide that members of its decision-making body include full-time remunerated members. This assists 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 (3) years is considered to be the minimum that would be sufficient to achieve these aims. As a proven practice, the SCA encourages that a term of between three (3) and seven (7) 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 NHRI. 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 SCA is of the view that specifying an appropriate minimum term in the NHRI's enabling law is crucial in both promoting the independence of the membership and of the NHRI, 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 NHRI'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 SCA 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.

2. Practices that directly promote Paris Principles compliance

G.O. 2.3 Protection from criminal and civil liability for official actions and decisions undertaken in good faith

External parties may seek to influence the independent operation of an NHRI by initiating, or by threatening to initiate, legal proceedings against a member of the decision-making body or a staff member of the NHRI. For this reason, members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity. Such protections serve to enhance the NHRI's ability to engage in critical analysis and commentary on human rights issues, safeguard the independence of senior leadership, and promote public confidence in the NHRI.
While the SCA considers it preferable for these protections to be explicitly entrenched in NHRI legislation or another applicable law of general application, it acknowledges that such protection may also exist by virtue of the specific legal context in which the NHRI operates.
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 these protections. 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 provide for well-defined circumstances in which these protections may be lifted in accordance with fair and transparent procedures.

JUSTIFICATION

Providing members of the NHRI's decision-making body and staff protection from both criminal and civil liability for actions undertaken in good faith in their official capacity – often referred to as functional immunity – protects them from individual legal proceedings from anyone who objects to a decision or action of the NHRI.
It is now widely accepted that the entrenchment of these protections 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.
It is recognized that in some national contexts, functional immunity is not part of the legal tradition and it may therefore be unrealistic or inappropriate for the NHRI to request that formal legal provisions be adopted. In such exceptional circumstances, the NHRI under review should provide sufficient information to explain why this is the case given its particular national context. This information will be reviewed in line with other guarantees provided at the national level to ensure independence, security of tenure, and the ability to engage in critical analysis on human rights issues.
It is understood that these protections should not be absolute and should not cover circumstances where NHRI members or staff abuse their official functions or act in bad faith. In well-defined circumstances, the democratically-elected authority, such as the legislature, to which the NHRI is accountable, should have the power to lift these protections 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;

…

2. Practices that directly promote Paris Principles compliance

G.O. 2.4 Recruitment and retention of NHRI staff

NHRIs should be legislatively empowered to determine the staffing structure and the skills required to fulfil the NHRI's mandate, to set other appropriate criteria (for example, to increase diversity), and to 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 NHRI's mandate. Such a process promotes the independence and effectiveness of, and public confidence in, the NHRI.
A fundamental requirement of the Paris Principles is that an NHRI is, and is perceived to be, able to operate independent of government interference. The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire a public servant with the requisite skills and experience. However, the recruitment process for such positions should always be open to all, clear, transparent, merit-based and at the sole discretion of the NHRI. Where an NHRI is required to accept staff assigned to it by the government, and in particular where this includes those at the highest levels in the NHRI, it brings into question its capacity to function independently.
NHRIs must be provided with sufficient resources to permit the employment and retention of staff with the requisite qualifications and experience to fulfil the NHRI's mandate. Such resources should allow for salary levels, and terms and conditions of employment, equivalent to those of other independent of State agencies.

JUSTIFICATION

Pursuant to section B.2 of the Paris Principles, an NHRI 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) NHRIs 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) NHRIs 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 NHRI's mandate. Additionally, such resources should allow for salary levels, terms and conditions of employment applicable to the staff of the NHRI 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 SCA recognises that fulfilling the requirements of Paris Principle B.2 is fundamental to ensuring the independence and efficient functioning of an NHRI. Where the NHRI 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.
Restrictions on the capacity of an NHRI to hire its own staff, or requirements to hire or accept assigned personnel from government agencies, except in exceptional or relevant circumstances, impacts on the real and perceived independence of an NHRI 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 NHRI, are seconded.
The SCA highlights that this requirement should not be seen to limit the capacity of an NHRI to hire a public servant with the requisite skills and experience, and indeed acknowledges that there may be certain positions within an NHRI 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 NHRI.

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.

Practices that directly promote Paris Principles compliance

G.O. 2.5 NHRIs 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 an NHRI will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.

NHRIs 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 an NHRI when its country is experiencing a state of emergency or coup d'état. However, Paris Principle A.1 clearly specifies that NHRIs shall have the responsibility to promote and protect human rights. Furthermore, Paris Principle A.3 specifies the powers and responsibilities of an NHRI 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 SCA 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 NHRI. 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 NHRIs must ensure that individuals have accessible and effective remedies to address human rights violations.

NHRIs, as independent and impartial bodies, play a particularly important role by investigating allegations of violations promptly, thoroughly and effectively. As such, NHRIs 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 NHRI continue to conduct itself with a heightened level of vigilance and independence in the exercise of its mandate. The SCA will scrutinize the extent to which the NHRI 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;

2. Practices that directly promote Paris Principles compliance

G.O. 2.6 Limitation of power of NHRIs due to national security

The scope of the mandate of an NHRI 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, an NHRI should possess, "*as broad a mandate as possible*". To give full effect to this Principle, the SCA recommends that this provision be understood in the widest sense. That is, the mandate of the NHRI 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 NHRI, this may serve to undermine the credibility of the Institution.

NHRIs, 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 NHRIs 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.*

2. Practices that directly promote Paris Principles compliance

G.O. 2.7 Administrative regulation of NHRIs

The classification of an NHRI 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 an NHRI is not considered inappropriate provided they do not compromise the NHRI's ability to perform its role independently and effectively.

The administrative requirements imposed on an NHRI 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 an NHRI 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 an NHRI is regulated by the Government, the SCA cautions that such regulation must not compromise the NHRI'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; or
- operational accountability.

Such regulation should not, however, extend to requiring an NHRI 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 an NHRI 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 NHRI 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.

2. Practices that directly promote Paris Principles compliance

G.O. 2.8 Assessing NHRIs as National Preventive and National Monitoring Mechanisms

Where, pursuant to an international human rights instrument, an NHRI has been designated as, or as part of, a national preventive or monitoring mechanism, the SCA 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 SCA 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.[1]

The SCA may also consider, as it thinks appropriate, any guidance that has been developed by the relevant treaty body.[2]

JUSTIFICATION

[1] With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example Articles 17 – 13 of Part III of that instrument and the rights protected in the parent Convention. With regard to National Monitoring Mechanisms under the Convention on the Rights of People with Disabilities, see for example principles and functions outlined in Articles 3, 4, 31, 32, 33 and 35, and the rights protected in Articles 3 – 30.

[2] With regard to National Preventive Mechanisms under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, see for example the *Preliminary Guidelines for the Ongoing Development of National Preventive Mechanisms* developed by the Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and contained in paragraphs 24 – 29 of its First Annual Report (February 2007 – March 2008). (Ref: CAT/C/40/2).

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 SCA 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 an NHRI.

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;

…

2. Practices that directly promote Paris Principles compliance

G.O. 2.9 The quasi-judicial[3] competency of NHRIs (complaints-handling)

When an 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; and
- 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, an 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; and
- ensure that its complaint-handling procedures are contained in written guidelines, and that these are publicly available.

JUSTIFICATION

[3]The term 'quasi-jurisdictional competence' as cited in the Paris Principles has been recognized as a translation error. It is instead meant to be understood as 'quasi-judicial competence' and it refers to a NHRI's complaints-handling mandate and its related functions and powers.

The Paris Principles do not require that an 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.

***

Geneva, February 2018

The Marrakech Declaration

"Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions"

1. The 13th International Conference of the Global Alliance of National Human Rights Institutions (GANHRI) took place in Marrakech, Morocco, from 10 to 12 October 2018. It was co-hosted, under the High Patronage of His Majesty King Mohammed VI, by GANHRI and the National Human Rights Council of Morocco (CNDH), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR). The theme of the Conference was "*Expanding the civic space and promoting and protecting Human Rights Defenders, with a specific focus on women: The role of National Human Rights Institutions*".

2. The Conference marked the 70th anniversary of the Universal Declaration of Human Rights; the 25th anniversary of the adoption of the Paris Principles by the United Nations General Assembly and the establishment of the global network of NHRIs, today known as GANHRI; and the 20th anniversary of the Declaration on Human Rights Defenders.

3. National human rights institutions (NHRIs) expressed their gratitude to the CNDH for the excellent organization and the warmth of their hospitality. The Conference was enriched by the interactive and productive discussions and debates which reflected the wide range of experience and perspectives from NHRIs and partners from all regions.

The NHRIs participating in the 13th International Conference declare:

4. We recall the inherent dignity, equal and inalienable rights of all human beings, the need for universal and effective recognition of human rights and fundamental freedoms, as expressed in the Universal Declaration of Human Rights and codified in the international and regional human rights instruments and reaffirmed in the Vienna Declaration and Programme of Action;

5. States have the primary responsibility and are under the obligation to respect, protect, promote and fulfill all human rights and fundamental freedoms of all persons, including the exercise of due diligence with respect to protecting against all violations committed by

non-state actors. States also have the obligation to progress on implementing these human rights instruments and report on this to national and international levels;

6. We welcome that States have adopted the 2030 Agenda for Sustainable Development, and recall in this regard that human rights, development and peace and security are central, inter-related and mutually reinforcing pillars of the United Nations system. We recall the Mérida Declaration, and reaffirm that the implementation of the 2030 Agenda must be based on human rights and participation of all, including through the empowerment of women and girls (Goal 5). In line with this is the fact that Goal 16 indicates that the existence of independent National Human Rights Institutions in compliance with the Paris Principles is a contribution to promote peaceful and inclusive societies (Goal 16);

7. Human rights and fundamental freedoms including the right to freedom of expression, to peaceful assembly and association, and to participate, play a decisive role in the emergence and existence of peaceful and inclusive societies, as they are a channel allowing for dialogue, pluralism, and tolerance, and are preconditions for the enjoyment of all human rights by all;

8. We recall the Declaration on Human Rights Defenders, adopted by United Nations General Assembly in December 1998[1] as the international normative framework on human rights defenders;

9. Human rights defenders have a positive, important and legitimate role in contributing to the realisation of all human rights, at the local, national, regional and international levels, including by engaging with Governments and contributing to the efforts in the implementation of the obligations and commitments of States in this regard;

10. We reaffirm the principle of self-identification of human rights defenders. In line with the Declaration on Human Rights Defenders this includes anyone working for the promotion and protection of human rights, which encompasses: professional as well as non-professional human rights workers; those working for women's rights and gender equality; those working on the rights of ethnic, linguistic, sexual or religious minorities; persons with disabilities; defenders working on environmental and land issues; those working on indigenous rights; volunteers; journalists; lawyers; and anyone else carrying out, even on an occasional basis, a human rights activity.

[1] General Assembly resolution 53/144 of 9 December 1998.

11. We recall the resolution on women human rights defenders, adopted by the General Assembly in November 2013.[2] We stress the important role that women human rights defenders have in the promotion and the protection of all human rights, and that they often champion human rights issues that are overlooked and ignored.

12. We are deeply concerned about reports on the increasing number of physical attacks against human rights defenders particularly where this includes sexual violence or killings.

13. We are also *concerned* about reports on shrinking civic space and on threats, risks and reprisals faced by human rights defenders, worldwide. This happens through restrictions on the rights to freedom of opinion, expression, association or peaceful assembly, and the right to privacy, or through arbitrary use of civil or criminal proceedings, prosecution, cruel, inhuman and degrading treatment, or acts of intimidation or reprisals;

14. Women human rights defenders, whilst facing similar risks as other human rights defenders, may also face additional gender-specific discrimination and violence, not only by State agents but also private actors. This comes in the form of intimidation, threats, and sexual violence. This may also happen not only in their own organizations, in their communities, and in their families. They also face social, political, cultural and religious barriers;

15. Recent and increasing reports from all regions on reprisals, threats, attacks and other acts of intimidation against NHRIs, their members and staff are extremely worrying;

16. We *recognise* that independent and effective NHRIs, as well as their members and staff, are human rights defenders themselves;

17. Paris Principles compliant NHRIs can play an important role in promoting and protecting human rights for all by contributing to safeguarding and promoting civic space and protecting human rights defenders and women human rights defenders in particular. We therefore stress the importance of establishing NHRIs where they do not exist and strengthening those that exist in full compliance with the Paris Principles, and encourage them to seek accreditation with GANHRI;

[2] General Assembly resolution A/RES/68/181, adopted in November 2013.

18. We recognise the important role of the Special Rapporteur on human rights defenders, in promoting and protecting human rights defenders, including NHRIs, and the mandate's regional counterparts. We call on all to cooperate with them.

19. During the International Conference, we discussed several areas such as: what are the crucial elements of an enabling environment; how to monitor civic space and threats to it; how to protect human rights defenders; how specifically to protect women human rights defenders; how to protect NHRIs who are themselves human rights defenders; and how to develop effective communication on human rights and promotion of positive narratives;

20. On the basis of all this, and taking inspiration from NHRIs' lessons and good practices exchanged in Marrakech, we resolve to

A. <u>Promotion</u>

a) Call on states to ratify and implement all international human rights instruments;
b) Advise on national legislation, policies and programmes to ensure compliance with the State's international human rights obligations. For instance, any restrictions on fundamental freedoms such as the rights to freedom of peaceful assembly and association, and expression must be prescribed by law, should not be unreasonably or arbitrarily applied and should only be applied under due process. Legislation and policies must be in line with the principle of equality and thus protect against any discrimination on the basis of sex and gender;
c) Contribute to the establishment of national protection systems for human rights defenders, who need an enabling environment which is accessible and inclusive and in which all rights are respected. This should be done in consultation with those human rights defenders and civil society, media and other non-state entities and individuals (such as ethnic, indigenous and religious leaders);
d) Advance positive narratives on the importance of human rights in every aspect of our societies, and on the important and legitimate role of human rights defenders, in particular women human rights defenders. This should be done by communicating about human rights in an innovative way with the use of new technologies and a focus on youth;
e) Raise awareness about the Declaration on Human Rights Defenders, translate it into local languages and disseminate it widely;

f) Support the State in implementing the Declaration on Human Rights Defenders. This includes ensuring that the judiciary, administrative and law enforcement officials are trained to respect the Declaration and other human rights norms, and that human defenders can self-identify. This should be done with a specific focus on the position of women human rights defenders;

g) Promote gender equality and develop strategies to combat all forms of discrimination against women human rights defenders;

h) Raise awareness among private actors about their resposibility to respect the rights of human rights defenders and advise them on actions and measures to ensure that they meet this responsibility.

B. Protection

a) Monitor and report on civic space – online and offline - through the collection and analysis of disaggregated data, including gender-based disaggregation and statistics related to killings, fabricated legal charges, misuse of specific laws and other attacks against human rights defenders, journalists and trade unionists, lawyers, students, academics, in line with SDG indicator 16.10.1;

b) Identify when policy implementation disproportionately impact on human righs defenders and civic space;

c) Set up efficient and robust early warning mechanisms and focal points within NHRIs. This should be done with specific attention to groups at risk: human rights defenders, women human rights defenders and all those that advocate for the rights of those left behind. These mechanisms should have the mandate, capacity and expertise to initiate urgent actions;

d) Interact with the international and regional human rights systems in support of human rights defenders, and monitor follow-up and implementation of recommendations;

e) Report cases of intimidation, threats and reprisals against human rights defenders, including against the NHRI members or staff, and do what is possible to ensure protection;

f) Ensure that international, regional and national mechanisms available for the protection of human rights defenders are widely known, gender-sensitive and accessible also for persons with disabilities*;*

g) Monitor places of detention including where appropriate by conducting preventive visits, and provide legal aid to persons in detention;

h) Promote that victims of violations of rights and fundamental freedoms have access to justice, and work closely with the judiciary in that regard.

C. Cooperation and partnerships

a) Interact with human rights defenders and civil society in a regular manner and include them in the planning and implementation of, as well as follow-up on, the NHRI's activities, in a gender and disability-sensitive manner;

b) Look for ways to cooperate with organisations including human rights organisations, the media, academia, business organisations, trade unions,

c) national statistics offices, and local, national, regional and international intergovernmental and non-governmental organisations and institutions;

d) Support the development of national and regional defenders' networks and strengthen existing ones, in coordination with human rights defenders. Specifically support networks of women human rights defenders.

21. We encourage GANHRI, its regional networks and all NHRIs, in line with their mandates under the Paris Principles, to collaborate in mutual capacity building and sharing of experiences and knowledge, including but not limited to the following:

a) In close collaboration with the United Nations, continue to promote the establishment and strengthening of effective and independent NHRIs worldwide in full compliance with the Paris Principles. States and NHRIs must ensure that NHRIs are independent in law and practice, and be pluralistic in order to increase the NHRIs' acessibility and ability to credibly engage on all human rights issues with all;
b) Ensure that NHRIs can rely on effective protection measures when the NHRI, its members or staff are at risk or under threat. This includes cases of political pressure, intimidation of any kind, harassment or unjustifiable budgetary limitations;
c) Support capacity-building, sharing of experiences and good practices as well as knowledge management with and among NHRIs in relation to civic space and human rights defenders, with particular attention to the situation of women human rights defenders;
d) Encourage regional networks to elaborate regional action plans to follow-up on this Declaration. Regional Chairs are encouraged to report thereon to the GANHRI Annual Meeting in March 2019 and to subsequent regional and international meetings of NHRIs;
e) Establish a mechanism on human rights defenders within GANHRI, mandated to identify emerging global trends and challenges in the area of civic space and human rights defenders and provide advice and support to the strategic work of GANHRI, regional networks and individual NHRIs in that regard.

Adopted in Marrakech, Morocco, on 12 October 2018

ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

A Manual on National Human Rights Institutions

Note

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the APF concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

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A Manual on National Human Rights Institutions

Asia Pacific Forum of National Human Rights Institutions
GPO Box 5218
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Australia

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Cover photographs

Left: Participants on *The Decision is Yours* program. Photo by the National Human Rights Committee of Qatar.

Centre: Staff of the National Human Rights Commission of Nepal talk with the families of victims of gross human rights violations. Photo by the National Human Rights Commission of Nepal.

Bottom: Staff from the Ombudsman of Samoa. Photo by Steven Percival.

Contents

Foreword

Respect for rights is the foundation on which strong, fair and inclusive communities are built.

Of course, many different individuals and groups – from both government and civil society – have a role to play to make this vision a reality. In recent decades, however, national human rights institutions (NHRIs) have played a leading role in putting human rights issues on the social and political agenda and driving long-term change.

Less than 20 NHRIs were in existence when the Paris Principles – the international benchmark for independent and effective NHRIs – were developed at a ground-breaking conference in 1991. Today, there are more than 100 NHRIs operating in all corners of the globe.

This rapid growth is recognition, among governments and the international community, of the enormous contribution that NHRIs make in their respective countries.

NHRIs occupy a unique place in the national human rights framework. They are established by the State but they operate independently from government. They have powers to monitor the human rights situation in the country, especially in relation to the most vulnerable and marginalised, and to review laws, policies and practices.

They serve as the conscience of a country, holding the government to account for its obligation to respect, protect and fulfil the human rights of all people within its borders.

NHRIs commonly have powers to investigate complaints of human rights abuses and to provide redress for victims. They deliver human rights education and training to different groups within the community to promote changes in attitudes and behaviour. And they contribute their independent analysis and recommendations to regional and international human rights mechanisms.

Independent and effective NHRIs can be powerful agents for change. However, they are still relatively young institutions and their unique nature, roles and functions are still being explored and understood.

This manual contributes to that process of discovery, drawing on the experiences of many of the NHRIs in the Asia Pacific region. It provides a thorough analysis of the Paris Principles and examines what the concept of independence means in practice for NHRIs. It also documents the ways in which NHRIs seek to undertake their functions in a wide range of settings, from stable democracies through to countries grappling with conflict and its aftermath.

I trust this manual will be a useful reference tool for those working in NHRIs, government, civil society and other settings. It provides a rich blend of theory and practice for all those who have an interest in strengthening NHRIs and supporting the important work they do to make human rights a reality for all people.

Kieren Fitzpatrick
Director
Asia Pacific Forum of National Human Rights Institutions

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As part of its 2020 strategy to integrate gender mainstreaming across all its existing thematic, functional and operational training programs, the APF has reviewed its training manuals to ensure that they have sufficiently integrated and highlighted gender issues.

This Manual was reviewed in May 2018 by Dr Jillian Chrisp, gender expert and APF consultant, with contribution from the Manual's author and subject matter expert, Adjunct Professor Chris Sidoti.

The APF particularly thanks the reference group that contributed its expertise to the review: Nurul Hasanah bt Ahamed Hassain Malim (Human Rights Commission of Malaysia); Rahman Ali Jawed (Afghanistan Independent Human Rights Commission); Walid al-Sheikh (Palestinian Independent Commission for Human Rights); and Joanna Maskell (New Zealand Human Rights Commission).

List of abbreviations

ACJ	Advisory Council of Jurists
AHRC	Australian Human Rights Commission
AIHRC	Afghanistan Independent Human Rights Commission
APF	Asia Pacific Forum of National Human Rights Institutions
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO(s)	civil society organisation(s)
CSW	UN Commission on the Status of Women
ECOSOC	UN Economic and Social Council
GANHRI	Global Alliance of National Human Rights Institutions
GO	General Observation of the SCA
HRCM	Human Rights Commission of the Maldives
HRDs	human rights defenders
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	Palestine Independent Commission for Human Rights
Komnas HAM	National Commission on Human Rights of Indonesia
NCHR	National Centre for Human Rights of Jordan
NGO(s)	non-governmental organisation(s)
NHRC	National Human Rights Commission
NHRCK	National Human Rights Commission of Korea
NHRI(s)	national human rights institution(s)
NIRMS	National Institutions and Regional Mechanisms Section, OHCHR
NPM(s)	national preventive mechanism(s)
OHCHR	Office of the High Commissioner for Human Rights
OP	Operative Paragraph

OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
PHRJ	Provedor for Human Rights and Justice of Timor Leste
PP	Preambular Paragraph
SCA	Sub-Committee on Accreditation of the ICC
SDGs	Sustainable Development Goals, adopted by the United Nations General Assembly in 2015 as part of the 2030 Agenda
SUHAKAM	Human Rights Commission of Malaysia
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
UNSC	United Nations Security Council
VDPA	Vienna Declaration and Programme of Action

Introduction for users

National human rights institutions (NHRIs) are official, independent legal institutions established by the State and exercising the powers of the State to promote and protect human rights. They are established by national constitutions or acts of legislatures, guaranteeing their independence from political direction or interference, both governmental and non-governmental. They have broad mandates for the promotion and protection of human rights. They comply with the international minimum standards for NHRIs, the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).[1]

NHRIs are innovative institutions, occupying space within the State structure among the three primary institutions of government, parliament and judiciary. They lie between the State and civil society; they are State institutions but independent of government. Because they are a new type of State institution, their natures, roles and responsibilities are still being explored and developed. This manual draws from and contributes to that work of exploration and development.

The first NHRIs were established in the late 1970s and 1980s. In 1991, there were still fewer than 20 NHRIs. At their first international meeting in Paris that year, they adopted the Paris Principles, which were subsequently endorsed by the United Nations (UN) Commission on Human Rights and the United Nations General Assembly (UNGA).[2] The Paris Principles provide a benchmark, a set of minimum requirements, for NHRIs.

The growth in the numbers and effectiveness of NHRIs over the past 20 years can be traced directly to the strong endorsement they received from the Second World Conference on Human Rights in 1993:

> The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.
>
> The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.[3]

Since 1993, the establishment and strengthening of NHRIs in compliance with the Paris Principles have been central concerns of the UN system and of States in encouraging effective national implementation of international human rights standards. The UN Human Rights Council (UNHRC) regularly passes resolutions,[4] as does the UNGA.[5] Treaty monitoring bodies have added their voices, often including recommendations in their Concluding Observations for establishing or strengthening NHRIs.[6] The UN High Commissioner for Human Rights (HCHR) has responded to the Vienna Declaration and Programme of Action (VDPA) and to the resolutions of UN bodies by supporting the establishment and strengthening of NHRIs.

1 Commission on Human Rights resolution 1992/54 and General Assembly resolution 48/134.

2 The Paris Principles were drafted and approved at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris 7-9 October 1991.

3 Vienna Declaration and Programme of Action; Part 1, para. 36.

4 The most recent is Human Rights Council resolution 27/L.25, adopted on 23 September 2014.

5 The most recent is General Assembly resolution 68/171, adopted on 18 December 2013.

6 GANHRI has prepared a compilation of treaty monitoring committee recommendations concerning national institutions, arranged by treaty committee and region, available at http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx.

This manual discusses NHRIs generally but it has a specific focus on those in the Asia Pacific region.[7] It looks first at the origins, development, concept and nature of NHRIs. It analyses NHRIs in terms of the Paris Principles. It outlines the requirements of the Paris Principles and then applies those to the primary requirement of independence, with implications for law, membership and funding. It discusses briefly the various models of NHRIs. It looks at the responsibilities and functions of NHRIs, as set out in the Paris Principles, beginning with their core competence for the promotion and protection of human rights.

In each area, the manual describes "good practice" for NHRIs' compliance with the Paris Principles. It also suggests model clauses for NHRI-establishing laws to reflect the Paris Principles and, where possible, "good practice".

The manual then presents NHRIs' approaches to particular human rights challenges. One section examines national inquiries into systemic patterns of human rights violation, an innovative mechanism developed by NHRIs in the Asia Pacific region. Other sections examine NHRIs' support for groups at particular risk of human rights violation and their work in situations of violent conflict.

The last part of the manual discusses NHRIs and the international community, including engagement with the international human rights system and collaboration among NHRIs at international and regional levels.

This manual complements other manuals published by the Asia Pacific Forum of National Human Rights Institutions (APF), dealing with NHRIs and:

- the prevention of torture
- the rights of migrant workers
- engagement with the international human rights system
- national human rights inquiries
- human rights education
- investigating human rights violations
- the rights of indigenous peoples
- women's and girls' rights
- the media
- the rights of disabled people
- the rights of lesbian, gay, bisexual, transgender and intersex communities.[8]

The APF's gender mainstreaming policy requires the APF to ensure that gender neutral and inclusive language is used in all APF publications. Direct quotations often contain gender specific language, especially masculine pronouns. Where the manual uses direct quotations, for example from laws or other sources, it uses the original language without alteration and without disrupting the flow of the language by use of the word 'sic'. Readers should appreciate that the language of the quotation is the language of the original text and does not reflect the policy or usage of the APF.

This manual was first published in January 2015 and reviewed in May 2018 to ensure integration of gender issues. Information in this manual is accurate as at 1 June 2018.

7 For that reason, all examples of NHRIs, legislation and case studies are from NHRIs in the Asia Pacific region, except in chapter 4 and section 6.2.6, where examples are drawn from other regions.

8 All APF manuals are available at www.asiapacificforum.net/support/professional-resources/.

Part I: NHRIs and the Paris Principles

Chapter 1: The origins and development of NHRIs

KEY QUESTIONS

- **How do State human rights obligations lead to the need for NHRIs?**
- **How and why has the UN system encouraged the establishment of NHRIs?**
- **What are the international standards for NHRIs?**

1.1. STATE OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

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.[9]

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 obligation to protect**: States must prevent human rights violations 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.[10]

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.[11] 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.[12]

9 See APF, *International Human Rights Law and the International Human Rights System*, 2012; chapter 3 discusses treaty-based human rights obligations and obligations arising under international customary law.

10 See, for example, Human Rights Committee, General Comment 31: *The nature of the general legal obligation imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13 (2004); Committee on Economic, Social and Cultural Rights, *General Comment 12: The right to adequate food*, E/C.12/1999/5 (1999); and Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and health* (20th Session, 1999).

11 See www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx. See also APF, *International Human Rights Law and the International Human Rights System*, 2012; chapter 6 discusses the UPR mechanism.

12 There are nine core human rights treaties, each of which has a specialised committee of independent experts to monitor performance of the treaty's obligations by States parties and to promote the treaty and its interpretation and implementation. See www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx and http://www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf. See also APF, *International Human Rights Law and the International Human Rights System*, 2012; chapters 10 to 12 discuss the role and functions of the treaty monitoring bodies.

1.2. DOMESTIC IMPLEMENTATION AND MONITORING MECHANISMS

The international human rights system has developed a range of mechanisms, including the UPR and the treaty monitoring bodies, to encourage and monitor implementation of human rights obligations. However, the international system recognises that implementation and monitoring are best undertaken at the national or domestic level. The international system is at best a residual system that, first, promotes domestic action and monitoring and, second, where domestic systems are ineffective or inadequate, provides some limited measures of international action.

There is a large range of domestic mechanisms and measures that States can use to implement and monitor the performance of their international human rights obligations. All the ordinary institutions of a democratic, pluralistic State can and should contribute.

- **Parliaments** can enact laws that respect, protect and fulfil human rights. They can hold governments to account for their policies, programs and actions that affect human rights.
- **Governments and their civil servants** can develop, adopt and implement policies and programs that respect, protect and fulfil human rights. They can take action to ensure that violations are prevented and, where violations occur, that violators are held to account and victims are provided with reparations.
- **Courts** can enforce laws that respect, protect and fulfil human rights. They can punish perpetrators of human rights violations and provide protection and reparations for victims. In particular, they can uphold the rule of law and ensure equality before the law and due process for all persons within their jurisdiction.
- **Official governance institutions**, such as anti-corruption commissions, administrative ombudsmen's offices and administrative review tribunals, have roles to play in promoting and protecting human rights within their specific mandates in the governmental structure of the State.
- **Political parties** have particular responsibilities, both positive and negative. Positively, they should be promoters of human rights, developing good policies and promoting those policies within the electorate through community education to build a constituency for human rights. Negatively, they must avoid campaigns that build on popular prejudices, such as racism and sexism, and reject policies that would lead to the violation of human rights.
- **The media** have similar responsibilities to promote positively human rights values and principles and to avoid committing, endorsing or encouraging actions and views that violate human rights. They can and should investigate and publicise the actions and defects of formal State institutions – parliaments, governments and courts – so that the broader community knows what is happening and the electorate can hold them to account.
- **Civil society, including non-government organisations (NGOs), trade unions, business associations, universities and schools, religious communities and groups**, share the responsibilities of the media in promoting positively human rights values and principles and avoiding committing, endorsing or encouraging actions and views that violate human rights. They too can encourage the implementation of human rights obligations and monitor and expose deficiencies in State performance.

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

> National Institutions are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground.[13]

This manual focuses specifically on the mechanism of NHRIs rather than other domestic mechanisms, although the manual also comments on how NHRIs can and should relate to other domestic mechanisms and to international mechanisms.[14]

1.3. 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".[15] These "local human rights committees" were not envisaged to be independent monitoring and investigation institutions that NHRIs are, but the ECOSOC resolution recognised the need for domestic human rights groups and anticipated the later development of NHRIs. However, there was little evidence of States rushing 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.[16] 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 organize 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 and 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;

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13 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, PP 2.

14 See APF, *International Human Rights Law and the International Human Rights System* (2012), which discusses the relationship between NHRIs and international human rights mechanisms at length.

15 ECOSOC resolution 9 (II) of 26 June 1946, para. 5.

16 ECOSOC resolution 772 (XXX) of 25 July 1960, Part B.

(f) To perform any other function which the Government may wish to assign to 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 subsequently 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 national institutions for the protection and promotion of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions.[17]

With this international encouragement, States began to establish NHRIs. However, in spite of the international encouragement, progress was slow. In 1990, there were fewer than 20 NHRIs.[18] Two events in the early 1990s led to the rapid increase in NHRIs over the following 20 years.

1.4. THE PARIS WORKSHOP AND THE 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. The key participants for the first time were the NHRIs themselves. 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.[19]

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 (the Paris Principles).[20] The Paris Principles were endorsed by the UN Commission on Human Rights in 1992 and by the General Assembly in 1993.[21] They are the standard 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".[22]

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17 United Nations Centre for Human Rights, *National Institutions for the Promotion and Protection of Human Rights: Fact Sheet 19*, April 1993.

18 The official report of the Paris workshop in 1991 lists the following national institutions as being present at the time: Human Rights and Equal Opportunity Commission, Australia; Beninese Commission on Human Rights, Benin; Council for the Protection of Human Rights, Brazil; Canadian Human Rights Commission, Canada; Chilean Commission on Human Rights, Chile; Commission on Civil Rights, United States of America; National Consultative Commission on Human Rights, France; Commission on Human Rights, Italy; Advisory Council on Human Rights, Morocco; National Commission on Human Rights, Mexico; Human Rights Commission, New Zealand; Advisory Commission on Human Rights, Norway; Commission of Inquiry into Violations of Human Rights, Uganda; Human Rights and Foreign Policy Advisory Commission, Netherlands; National Council on Human Rights, Peru; Commission on Human Rights, Philippines; Commission for Racial Equality, United Kingdom; Commission on Human Rights, Senegal; National Commission on Human Rights, Togo; Higher Committee on Human Rights and Fundamental Freedoms, Tunisia; Human Rights Commission, Turkey; Political Commission for International Cooperation and Humanitarian and Human Rights Problems, Union of Soviet Socialist Republics; Attorney-General of the Republic, Venezuela; and Committee for the Protection of Liberties and Human Rights, Yugoslavia (E/CN.4/1992/43, 16 December 1991). Not all of these NHRIs could be considered independent, however. Those accepted into the ICC, when formed in 1993, were the NHRIs of Australia, Cameroon, Canada, Denmark, France, Mexico, Morocco, New Zealand, the Philippines, Senegal, Togo and Tunisia.

19 Commission on Human Rights resolution 1990/73.

20 See Appendix 1 of this manual.

21 Commission on Human Rights resolution 1992/54; General Assembly resolution 48/134.

22 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 7.

The Paris Principles are not lengthy – only about 1,200 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."[23]

This manual will examine the various requirements of the Paris Principles in detail in later sections.

1.5. VIENNA DECLARATION AND PROGRAMME OF ACTION

The second significant event was the Second World Conference on Human Rights, held in Vienna, Austria, in June 1993. The Vienna World Conference saw the participation of NHRIs for the first time in such an important international forum. They participated in their own rights, not as members of their governments' delegations, as they had until then in meetings of the UN Commission on Human Rights. They had designated seating and independent speaking rights in the Conference plenary sessions. They played a major role in drafting and negotiating the Conference statement, the Vienna Declaration and Programme of Action (VDPA).[24]

Most importantly for NHRIs, the VDPA gave strong endorsement for the establishment and strengthening of NHRIs in accordance with the Paris Principles. It encouraged States that did not have an NHRI to establish one. It said:

> The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.
>
> The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.[25]

Interior view of Vienna Conference Centre, World Conference on Human Rights, 1993. UN Photo by A Rauscher.

23 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, PP 1.

24 A/CONF.157/23.

25 A/CONF.157/23, Part I, para. 36.

1.6. REGULAR RESOLUTIONS ON NHRIs BY UN BODIES

Over the past 20 years, the most important UN bodies with human rights responsibilities have regularly passed resolutions on NHRIs. These resolutions continue the VDPA's recommendation to States for the establishment of NHRIs and, where established, their strengthening. They take account of developments each year. In particular, they have expanded the role of NHRIs within international human rights system, including the participation rights of NHRIs within the official inter-governmental forums, such as the UN Human Rights Council. It has now been proposed that NHRIs have recognition and status, including participation rights, in the General Assembly itself.

The former Commission on Human Rights adopted an annual resolution on NHRIs for many years before its abolition in 2006. When the Human Rights Council was established to replace the Commission, it implemented Commission decisions relating to NHRI participation but it did not at first continue the practice of annual resolutions. That practice has now been revived and the Council has given the strongest endorsement yet to the important roles and functions of NHRIs established in accordance with the Paris Principles.[26]

1.7. THE GLOBAL SPREAD OF NHRIs

Since the Vienna World Conference in 1993, the number of NHRIs has increased more than fivefold, from less than 20 to more than 100, of which around 70% are recognised as fully compliant with the Paris Principles. In large part, this growth is due to the work of the High Commissioner for Human Rights.

Another of the VDPA's recommendations was the consideration of establishing the position of High Commissioner for Human Rights, a new UN official at the highest level with specific responsibility for human rights.[27] When the position was established, the High Commissioner and the Office of the High Commissioner for Human Rights (OHCHR) gave priority for implementing the VDPA's recommendation on NHRIs and General Assembly and Commission on Human Rights resolutions on NHRIs, supporting their establishment and strengthening in all regions. From 1995 to 2003, this support was provided by a Special Adviser to the High Commissioner.[28] More recently, it has been provided by a specialist unit within OHCHR, now called the National Institutions and Regional Mechanisms Section (NIRMS). The efforts of the High Commissioner and OHCHR have contributed significantly to the expansion in the numbers of NHRIs.

Another important influence on the spread of NHRIs has been the work of the international and regional associations of NHRIs themselves. These associations were formed as cooperative, peer-supported initiatives to:

- promote the establishment of Paris Principles-compliant NHRIs
- strengthen NHRIs once established
- support NHRIs to develop their capacities and increase their effectiveness
- build international best practice for NHRIs
- undertake joint activities
- liaise with the High Commissioner for Human Rights
- increase NHRI engagement with the international human rights system.

26 The most recent General Assembly and Human Rights Council resolutions on NHRIs are in Appendices 4 and 5 respectively of this manual.

27 A/CONF.157/23; Part II, para. 18. The position was established by General Assembly resolution 48/141.

28 The Special Adviser was a very experienced practitioner, Brian Burdekin, who had been Australian Human Rights Commissioner from 1986 to 1994.

At the global level, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was established about the time of the Vienna World Conference, meeting for the first time in the margins of the Conference. Various regional associations were also established and have developed at different rates. The Asia Pacific Forum of National Human Rights Institutions (APF) was established in 1996 with its own secretariat, based in Sydney, Australia, and a program of capacity building for its members and activities for its own development. The APF now has 24 members, of which 15 are fully compliant with the Paris Principles and the remaining nine are moving towards full compliance.[29] The other regional associations are the:

- European Coordinating Committee of National Human Rights Institutions
- Network of African National Human Rights Institutions[30]
- Network of National Institutions for the Promotion and Protection of Human Rights of the Americas.[31]

KEY POINTS: CHAPTER 1

- **The implementation of international human rights obligations is the responsibility of each State.**
- **NHRIs are one of the most significant and most effective means by which States meet that responsibility.**
- **Since the late 1940s, the UN system has encouraged the establishment of NHRIs, leading to strong endorsement by the Second World Conference on Human Rights in 1993 in its Vienna Declaration and Programme of Action.**
- **NHRIs themselves are subject to international standards set out in the Paris Principles.**

29 For APF members and their compliance status, see www.asiapacificforum.net/members/.

30 Established in October 2007, succeeding the Coordinating Committee of African NHRIs set up in 1996. It has a permanent secretariat located in Nairobi, Kenya.

31 Established in 2000.

Chapter 2: The nature and concept of NHRIs

KEY QUESTIONS

- **What are NHRIs?**
- **In what ways are NHRIs, as State institutions, different from other State institutions?**
- **What are the similarities and difference between NHRIs and courts?**

2.1. DEFINING NHRIs

NHRIs are far more often described than defined. Attempts at definition are few and often somewhat general.

> "National human rights institution" is a hybrid category and includes many varieties within it … it is a quasi-governmental or statutory institution with human rights in its mandate.[32]

The Paris workshop of 1991, at which the Paris Principles were negotiated and adopted, was even more general, reflecting the broad composition of participants.

> [A] national institution must be a body, an authority or an organization performing general and specific functions in the protection and promotion of human rights.[33]

The UN offers a short definition:

> 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.[34]

Elsewhere, the UN has said:

> An NHRI in compliance with the Paris Principles is one that has a broad responsibility to promote and protect human rights, and that can act independently from the Government, including in coming to opinions and decisions on human rights matters within its jurisdiction and publicizing them.[35]

This manual defines NHRIs similarly to the UN but includes specific reference to minimum international standards, including their statutory independence.

> NHRIs are official independent legal institutions established by the State by law for the promotion and protection of human rights. They are established by the constitution or an act of the legislature that guarantees their independence from political direction and political interference, both

32 International Council on Human Rights Policy, *Performance and legitimacy: national human rights institutions*, 2000, p. 3.

33 Paris workshop recommendation, PP 2, E/CN.4/1992/43, p. 45.

34 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 13.

35 Ibid, p. 164.

governmental and non-governmental. They comply with the international minimum standards for NHRIs, the Paris Principles.[36]

2.2. NHRIs ARE STATE INSTITUTIONS, NOT NGOs

As State institutions, part of the official governance structure of the State, NHRIs are fundamentally different from NGOs.

As State institutions, NHRIs have strengths that NGOs do not have.

- They have greater authority than NGOs, deriving from their official status. This gives them potentially more influence in domestic and international forums. Their opinions and findings can have greater credibility and their recommendations greater influence.
- They have stronger investigative powers than NGOs, usually including the powers to obtain documents, summon witnesses and enter premises, such as prisons and detention centres.
- They often have greater resources than NGOs, being funded under the State budget and often also receiving grants from international donors and philanthropic foundations.

However, NHRIs also experience limitations that NGOs do not have. NGOs are formed by their members and can do whatever their members decide they should do. Although NGOs are restricted by their constitutions, their members control the constitutions.[37] Members have the right and the power to amend an NGO's constitution if they want it to do different things or additional things. NGOs therefore are under the control of their members and have the freedom to do whatever their members want them to do, provided it is within the law of the States in which they are established.

NHRIs do not have the freedom that NGOs enjoy. They are subject to the constitution and law of their States. An NHRI can do only what the constitution or its establishing law permits it to do. Constitutions are subject to specific processes for adoption and amendment and laws are made by parliaments. NHRIs have no control over these processes. They are not only established by law but also restricted by law. They can speak and act only within the limits of the law that establishes them.

Both the strengths of NHRIs and the limits within which they work are the products of their status as State institutions.

2.3. NHRIs ARE UNIQUE STATE INSTITUTIONS

NHRIs have unique roles among State institutions. They are not the only State institutions with human rights responsibilities; parliaments, governments and courts also have essential roles in the promotion and protection of human rights. However, NHRIs are established for the specific purpose of promoting and protecting human rights and, in performing that role, they are required to act independently of all external direction or influence, except from directions of the courts relating to the interpretation and observance of the law.

NHRIs do not make laws. They have no legislative role. That is the role of **parliaments**. They can advise the parliament on laws and regulations, such as proposing the enactment of new laws or the amendment or repeal of existing laws. They can also advise the parliament on human rights issues, including cases and patterns of human rights violations. In these ways, they assist the parliament in the performance of its legislative, oversight and accountability responsibilities.

Enacting good laws, such as bills or charters of rights, is essential for the promotion and protection of human rights, but it is not enough. No matter how good they are, laws that are not implemented and

36 Principles relating to the Status of National Institutions; Commission on Human Rights resolution 1992/54 and General Assembly resolution 48/134.

37 NGO constitutions can have various names, including articles of association, rules or statutes. The term "constitution" is used generically here to refer to all the founding or establishing documents of NGOs, however they may be formally named.

enforced do nothing for human rights. Parliaments enact the laws, often with the advice of NHRIs, and then NHRIs need to work on interpretation, implementation, investigation, education and monitoring.

NHRIs do not replace **governments**. Their powers and functions are largely administrative in nature, rather than legislative or judicial, but they are not governmental decision makers. They can offer advice to government on government policies, programs and activities that will promote or protect human rights and they can investigate and expose governmental actions that violate human rights. However, NHRIs do not and cannot take the place of government in running the country. They should respect the role of government in making decisions and setting policy, while advising, investigating and, when necessary, criticising government.

NHRIs do not compete with the **courts**. They complement the courts. Formally, they have similarities with the status of courts. Courts are set up under the State's constitution and laws. They too are independent institutions. Courts and NHRIs are both subject to and limited by the provisions of the laws that establish them. Both courts and NHRIs must operate according to the rule of law and the principles of natural justice and due process. The members of courts and of NHRIs are appointed through executive or legislative processes or some mix of the two. The funding of courts and NHRIs is determined through the ordinary budgetary processes of the State and requires some form of parliamentary approval and allocation. Both courts and NHRIs have responsibilities for the promotion and protection of human rights.

Courts and NHRIs may have some overlapping responsibilities. Most NHRIs, for example, 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. NHRIs do things that courts cannot do or cannot do well.

Understanding the complementarity of NHRIs and courts is important because comparisons between the two types of institution are common. Some argue that, because courts have power to make binding, enforceable decisions and NHRIs generally 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. Some argue that NHRIs compete with courts and undermine their roles, but NHRIs have distinctive roles that do not replace the need for effective, independent courts within every State. Human rights need both good courts and good NHRIs, not one or the other.

The Palestinian Independent Commission for Human Rights operates five regional offices across the West Bank and the Gaza Strip.

Table 1: Comparing courts and NHRIs

	Courts	NHRIs
Establishment	By constitution or act of parliament	By constitution or act of parliament
Appointment	Through an executive or legislative or mixed process	Through an executive or legislative or mixed process
Funding	Through the ordinary budgetary processes of the State	Through the ordinary budgetary processes of the State, with the possibility of additional funding from international donors
Powers	Provide binding, enforceable decisions	Usually make recommendations
Accessibility	Difficult for ordinary people due to expense, formality and language	Easily accessible, informal, cost free
Law	Apply whatever the domestic law is	Apply international human rights law
Scope	Broad coverage of wide areas of law, usually resulting in little human rights expertise	Human rights specialists and strong human rights expertise
Jurisdiction	Dependent on cases coming before them	Able to initiate investigations and inquiries by its own decision
Investigation	Little or no independent power of investigation in most systems	Wide and strong powers of investigation
Hearing	Conduct hearings with strict formality and rules, including rules relating to parties, representation, procedure and admissibility of evidence	Conduct hearings with a minimum of formality and procedure, consistent with the requirements of natural justice
Research	Limited to interpretation of law	Unlimited range of research functions relating to human rights
Policy development	No policy development function	Unlimited policy development function relating to human rights
Education	No educational or human rights promotion role	Wide and strong functions of human rights education and promotion
Collaboration	Work in a detached way, sitting in judgement	Engaged and collaborative working relationships with other institutions and NGOs
Economic, social and cultural rights	Limited ability and expertise to deal with economic, social and cultural rights	Expertise in and suitable functions to deal with economic, social and cultural rights
Remedies	Give remedies only between the parties to cases before them Limited range of remedies	Able to take a broad systemic approach to violations and make recommendations to a wide range of institutions and persons Unlimited range of types of recommendation and of matters on which recommendations can be made, including legislation, government policies and programs

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 or call members of parliament to account for the performance of their parliamentary duties. This is a fundamental principle of democracy.

Similarly NHRIs cannot overrule the courts. They can appear before the courts to argue cases and to act as a "friend of the court" (*amicus curiae*) and they can comment on judicial decisions where appropriate. However, they cannot overrule judicial decisions and impose their own views in the place of the decisions of courts that have heard cases. This is a fundamental principle of the rule of law.

KEY POINTS: CHAPTER 2

- **NHRIs are defined as official independent legal institutions established by the State by law for the promotion and protection of human rights. They are established by the constitution or an act of the legislature that guarantees their independence from political direction and political interference, both governmental and non-governmental. They comply with the international minimum standards for NHRIs set out in the Paris Principles.**
- **NHRIs are not NGOs.**
- **NHRIs are unique State institutions, different from parliaments and governments.**
- **NHRIs are also different from courts, complementing courts and the roles of courts in the promotion and protection of human rights.**

Chapter 3:
The Paris Principles

KEY QUESTIONS

- **What are the Paris Principles?**
- **How were the Paris Principles developed?**
- **What do the Paris Principles require for NHRIs?**
- **How important is independence for NHRIs?**
- **What are the other requirements for NHRIs that comply with the Paris Principles?**
- **What is the "good practice" process for States wishing to establish an NHRI?**

3.1. THE PARIS WORKSHOP OF OCTOBER 1991

From 7 to 9 October 1991, representatives of NHRIs gathered for the first time at a workshop organised by the UN Centre for Human Rights, pursuant to a resolution of the Commission on Human Rights.[38] Representatives of human rights institutions or offices in 24 countries attended, although only around ten could be considered to be proper NHRIs.[39] In addition, representatives of ombudsman's offices in 13 countries attended.[40] There were also representatives of governments, four UN and inter-governmental bodies, three regional human rights institutions and nine NGOs and research institutes.

This first workshop on NHRIs:

> … was intended, in particular, to provide an opportunity for considering existing or potential forms of cooperation between these institutions and the intergovernmental organizations, such as the United Nations, in order to make them more effective.
>
> The Workshop was also intended to give each national institution an opportunity to describe its structures and functioning and to exchange experience, so as to increase the awareness of all States Members of the United Nations and encourage the existing national institutions to step up their action, if necessary, in order to ensure the optimum promotion and protection of human rights.[41]

The agenda was structured around these terms of reference:

- **Relations between national institutions and the State**
  - independence through legal status
  - independence through composition
  - independence through operation

38 UN Commission on Human Rights, *National institutions for the promotion and protection of human rights*, 7 March 1990, E/CN.4/RES/1990/73. Available at: www.refworld.org/docid/3b00f0a010.html.

39 Australia, Benin, Brazil, Canada, Chile, France, Italy, Morocco, Mexico, New Zealand, Norway, Netherlands, Peru, Philippines, Senegal, Togo, Tunisia, Turkey, Uganda, United Kingdom, United States, USSR, Venezuela and Yugoslavia.

40 Colombia, Denmark, Finland, France, Guatemala, Iceland, Ireland, Japan, Namibia, Romania, Spain, Sweden and Thailand.

41 Paris workshop report, E/CN.4/1992/43, p. 1; available at www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.4/1992/43.

- **Relations between national institutions and other partners**
  - the partners of national institutions
  - relations with the various partners: a partnership based on identity of purpose and complementarity of function
- **Jurisdiction and competence of national institutions**
  - domestic and/or international scope
  - participation in the drafting of legislation
  - quasi-judicial powers and mode of referral
  - protection and promotion of human rights
  - advisory jurisdiction or binding jurisdiction
  - conflicts of jurisdiction.

The workshop's results, however, went well beyond exchanging experiences and considering cooperation with UN agencies. The NHRI participants were anxious to agree on a statement of principles that would constitute international minimum standards for the establishment and operations of NHRIs. They drafted, negotiated and adopted the Paris Principles.[42]

The workshop recommended that the Paris Principles be conveyed to the Preparatory Committee for the World Conference on Human Rights, scheduled to be held in Vienna in 1993. The Paris Principles quickly received support within the UN human rights system. They were endorsed by the Commission on Human Rights in 1992.[43] They became the basis on which the Vienna World Conference on Human Rights in June 1993 urged the establishment of new NHRIs.[44] And they were endorsed by the General Assembly later in 1993.[45]

3.2. THE PARIS PRINCIPLES

The Paris Principles are the international minimum standards for NHRIs. They are not **aspirational** – what NHRIs should be – but **obligatory** – what NHRIs must be, if they are to be legitimate, credible and effective in the promotion and protection of human rights.

The Paris Principles run to just 1,200 words. They mix very broad and very specific provisions. They are also silent on some key issues, such as the structure of an NHRI. They are arranged in four sections:

- competence and responsibilities
- composition and guarantees of independence and pluralism
- methods of operation
- additional principles concerning the status of commissions with quasi-jurisdictional competence.[46]

The arrangement of the provisions is not always logical or consistent. It does not give appropriate emphasis or attention to some of the more important requirements; for example, the requirement for a constitutional or legislative basis for NHRIs. For that reason, this manual discusses the requirements of the Paris Principles thematically, rather than in the order in which they appear in the text, or with the degree of attention that they receive there.

42 Paris workshop report, E/CN.4/1992/43, pp. 45-49. The Paris Principles are included in full in Appendix 1 of this manual.

43 Commission on Human Rights resolution 1992/54.

44 A/CONF.157/23; Part I, para. 36.

45 General Assembly resolution 48/134.

46 The term "quasi-jurisdictional" is an error that arose from mistranslation of the original text, which was in French; see B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 24, footnote 37. The correct term is "quasi-judicial". The error is in the original English text and has never been corrected.

The Paris Principles have been the subject of General Observations developed over several years by the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) and endorsed by GANHRI.[47] The General Observations were consolidated and expanded and issued in May 2013, with a statement of justification for each General Observation.[48]

The General Observations are authoritative, interpretative statements that assist in understanding and implementing the Paris Principles. They are "an important body of jurisprudence to give meaning to the content and scope of the Principles".[49] This manual refers to the General Observations where they can be of assistance.

In spite of their limitations, the Paris Principles have proved to be the essential starting point for NHRIs throughout the world. NHRIs need to know and understand them thoroughly. This chapter provides an overview of the Paris Principles. Subsequent chapters deal in detail with the provisions of the Paris Principles, their interpretation through the General Observations of the SCA and the implications for the structure and work of NHRIs.

3.3. INDEPENDENCE

The first and most essential requirement for an NHRI is independence.[50] Although NHRIs are State institutions, they must be independent and act independently from all other institutions and organisations, governmental and non-governmental.

> True independence is fundamental to the success of an institution. An institution that cannot operate independently cannot be effective. It does not matter how well an institution measures up against the other aspects of the Paris Principles. If it is not independent, or is not seen to be independent, it is highly unlikely that it will be able to achieve much of lasting worth.[51]

The Paris Principles set out necessary guarantees of independence. Independence has six dimensions.

3.3.1. Legal independence[52]

Legal independence goes to the basis on which NHRIs are established and to guarantees of independence. The Paris Principles provide that establishment by an executive instrument – for example, a presidential decree or order – is not adequate or acceptable.[53]

> 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.[54]

47 Until 2016 GANHRI was known as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

48 *GANHRI SCA General Observations as adopted in Geneva in May 2013*. The General Observations are available in full at Appendix 2 of this manual.

49 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, PP 4.

50 See B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 43; and Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 5.

51 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 39. See also B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 43; and Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 5.

52 See chapter 5 of this manual for further discussion of legal independence.

53 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.1. See also Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 11.

54 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.1.

3.3.2. Operational independence

NHRIs need independence to determine their own priorities, programs and projects; that is, all aspects of their operations, subject to the law and available resources. They should be empowered to "[f]reely consider any questions falling within [their] competence".[55] They should also be empowered to determine freely which of their functions should be given priority in the performance of their mandates.

If governments can interfere to direct NHRIs what to examine or what to do, including in relation to priorities, the NHRIs will be prevented from identifying areas and issues of concern and acting on the basis of their own decisions. For example, governments are generally less threatened by human rights education than by human rights investigations and so they may wish to direct NHRIs to focus their attention, and their staff and financial resources, on education, thereby minimising their investigative work. There is no independence where an NHRI can be directed what to do.

3.3.3. Policy independence

There is no independence where an NHRI can be directed what to think. Policy independence means that NHRIs themselves determine their policies and their findings, conclusions and recommendations in the course of their work, whether in providing advice to parliaments and governments,[56] in undertaking broad investigations and inquiries[57] or in handling individual complaints of human rights violations.[58]

NHRIs are the human rights experts in their countries. They have the status and the authority to accompany their expertise so that their advice should be sought and heeded by all other State institutions, as well as by civil society and others, when a human rights issue or a human rights case is being considered. For example, when parliament is considering legislation, the view of the NHRI on the consistency of the legislation with human rights obligations is important. However, those views will be of no worth if they only repeat the Government's views or the view of a particular political party and are not the considered, independent conclusions of the NHRI itself. Similarly, where the NHRI is investigating a complaint of human rights violation, the complainant, other parties, including the Government and its agents, and the broader community, are all entitled to have the investigation conducted objectively according to law and to have the matter decided by the NHRI independently, on the basis of the law and the evidence. Policy independence is critical to the effectiveness of NHRIs.

3.3.4. Financial independence[59]

NHRIs are not entirely independent financially. They are State institutions, like courts, and, like courts, they rely on States to provide their core operational budgets. The Paris Principles recognise clearly the connection between independence and funding. They provide that an NHRI should have "adequate" funding "to enable it to have its own staff and premises, in order to be independent of the Government and not subject to financial control that might affect its independence".[60]

The nature of financial independence is complex. States – governments and parliaments – determine State budgets according to their own priorities and to the resources available to them. NHRIs do not replace governments and parliaments. An NHRI cannot require its government or its parliament to allocate a specific proportion of State funds or a specific amount to it, only an amount that is "adequate" to its needs. The requirement of independence, however, entitles NHRIs to have control over their budgets once they are allocated.

55 Paris Principles, 'Methods of operation', para (a).

56 Paris Principles, 'Competence and responsibilities', para. 3(a).

57 Paris Principles, 'Competence and responsibilities', para. 3(a).

58 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

59 See chapter 8 of this manual for further discussion of financial independence.

60 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 2.

3.3.5. Independent members[61]

The members of NHRIs determine the policies, programs, operational methods and activities of NHRIs, as well as their findings, conclusions and recommendations when they investigate cases or situations of human rights violations. The process by which the members of NHRIs are appointed, therefore, has grave implications for the independence of NHRIs.[62] The appointment of members is one substantial legitimate limitation on their independence. NHRIs are State institutions established by law. They do not have the total independence that NGOs have. They cannot be self-appointing and self-perpetuating.

3.3.6. Independent thinking

In addition to all the formal dimensions of independence, there is one dimension that is not expressed explicitly in the Paris Principles but which must underlie everything else. That is independent thinking. Independent thinking describes the way the members and staff of an NHRI go about their work. It is an attitude, a mindset, an orientation. It is an essential attribute of any NHRI that is effective. It is the most significant guarantee of true independence. In many ways, it is more important than any of the five formal dimensions of independence in the Paris Principles.

An NHRI can meet all the formal requirements of the Paris Principles and still lack independence if its members and staff do not possess independent thinking. If members and staff see themselves as defenders of the current regime or the current political system, or if they consider themselves as being under some form of obligation to the Government, or if they owe their loyalty to the Government, then they cannot be independent, no matter how good the law is and how closely the NHRI complies with the Paris Principles. True independence is a personal quality, best described as independent thinking.

On the other hand, an NHRI might meet few or even none of the five components of independence in the Paris Principles and yet be independent in fact if its members and staff think independently and act independently. Some of the most effective NHRIs have not been in full compliance with the Paris Principles and yet, because their members thought and acted independently, they proved to be strong defenders of human rights and protectors and promoters of human rights.

In addition to its central office in Kathmandu, the National Human Rights Commission of Nepal operates five regional offices in different parts of the country. Photo by the National Human Rights Commission of Nepal.

61 See chapter 6 of this manual for further discussion of requirements to ensure the independence of NHRI members.

62 Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 16.

Full compliance with the formal requirements of the Paris Principles does not guarantee the independence of an NHRI. Full compliance is essential but it is not enough. Only independent thinking throughout the institution will ensure true independence.

3.3.7. Limitations on independence

Parliaments and governments have constitutional roles in relation to the law, statutory appointments and budgetary allocations. They can exercise these roles in ways that affect the independence of NHRIs. These roles are legitimate restrictions on the independence of NHRIs. NHRIs cannot make law, appoint their own members and determine their own budgets. Although NHRIs may have proper roles in respect of each, ultimate responsibility for law, appointments and budgets lies elsewhere within the constitutional system. It is important, therefore, to maximise the independence of NHRIs that the laws establishing them are good and processes for appointments and budgeting are transparent and inclusive.[63]

3.4. OTHER REQUIREMENTS

3.4.1. Pluralism[64]

The Paris Principles require that the composition of NHRIs "ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights".[65] These "social forces" include

- NGOs responsible for human rights and efforts to combat racial discrimination
- trade unions
- concerned social and professional organisations; for example, associations of lawyers, doctors, journalists and eminent scientists
- trends in philosophical or religious thought
- universities and qualified experts
- parliament
- government departments.

3.4.2. Broad mandate[66]

NHRIs have "competence to promote and protect human rights".[67] They must have "as broad a mandate as possible".[68] The Paris Principles do not define human rights or limit the definition of human rights. The term therefore must be given its ordinary meaning in international law as all those rights recognised in international law as human rights. NHRIs should not have their jurisdiction restricted to some human rights only or to those human rights that have domestic recognition or definition. The broadest possible mandate for human rights required by the Paris Principles includes all internationally recognised human rights.

63 See chapter 6 of this manual for further discussion of appointment processes and chapter 8 for further discussion of budgetary processes.

64 See chapter 7 of this manual for further discussion of the meaning of pluralism.

65 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1. See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.7.

66 See chapter 9 of this manual for further discussion of the mandates of NHRIs.

67 Paris Principles, 'Competence and responsibilities', para. 1.

68 Paris Principles, 'Competence and responsibilities', para. 2.

3.4.3. Broad functions[69]

The Paris Principles list a large number of specific functions that NHRIs should perform. The Paris Principles call these functions "responsibilities", indicating that the functions are essential to the character and work of NHRIs. These responsibilities include:

- advising and making recommendations to governments, parliaments and "any other competent body" on any matter concerning human rights, including advising and recommending on legislation, administrative provisions, human rights situations and situations of human rights violations[70]
- promoting harmonisation of national laws and policies with international human rights obligations
- encouraging ratification and implementation of international human rights treaties[71]
- contributing to State reports to international and regional human rights mechanisms
- cooperating and engaging with international and regional human rights mechanisms and other NHRIs[72]
- promoting research on and teaching of human rights
- promotion generally of human rights values and standards, through public awareness and education programs and activities.[73]

3.4.4. Adequate powers[74]

NHRIs require the powers necessary to perform their functions effectively. The Paris Principles set out some of those powers:

- to initiate inquiries and investigations
- to take evidence
- to obtain documents and information
- to make public statements and to publicise reports, findings and recommendations
- to undertake consultations
- to cooperate with other State institutions, including courts, and with NGOs.[75]

The specific powers listed in the Paris Principles do not include the power to enter premises, including prisons and detention centres, for the purpose of inspection and investigation. A power to enter premises, however, is a necessary means for NHRIs to exercise their broader responsibilities under the Paris Principles.

3.4.5. Adequate resources[76]

The Paris Principles require that NHRIs have "infrastructure which is suited to the smooth conduct of [their] activities".[77] Infrastructure is not limited to funding. It includes all that NHRIs require to perform their functions and discharge their responsibilities. The Paris Principles refer specifically to premises and staff. However, infrastructure also includes information and communications technology, transport, educational materials, staff and institutional capacity building activities and so on.

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69 See chapter 10 of this manual for further discussion of the functions of NHRIs.

70 See chapter 12 of this manual for further discussion of the advisory function of NHRIs.

71 The SCA considers this a "key function" that should be set out in the establishing legislation of NHRIs. See *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.3.

72 See chapters 22 and 23 of this manual for further discussion of the international engagement function of NHRIs.

73 Paris Principles, 'Competence and responsibilities', para. 3.

74 See chapter 11 of this manual for further discussion of the powers of NHRIs.

75 Paris Principles, 'Methods of operation'. See chapter 13 of this manual for further discussion of the education and promotion functions of NHRIs.

76 See chapter 8 of this manual for further discussion of NHRI resources.

77 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 2.

3.4.6. Cooperative work[78]

The Paris Principles recognise that effective human rights work requires engagement of and collaboration among all relevant actors. They require that NHRIs work in cooperation with other State institutions, NGOs and other parts of civil society, including parliament, judicial bodies,[79] the civil service, other State institutions with responsibility for the promotion and protection of human rights, such as ombudsmen and mediators, sub-national statutory human rights institutions and thematic institutions,[80] and the media.[81]

3.4.7. International engagement[82]

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 organizations 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.[83]

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 special procedures, as well as the treaty monitoring bodies.[84]

Reporting obligations under various human rights instruments are the responsibility of the State. While an NHRI can play an important role in assisting the State to fulfil these obligations, any legislative provision must recognise the distinct roles of the State and the NHRI.[85]

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

3.5. IMPLIED RESPONSIBILITIES

3.5.1. Accessibility

The Paris Principles do not have a specific section dealing with the accessibility of NHRIs. However, accessibility is implied in many provisions and indeed in broader human rights law dealing with access to remedies for violations of human rights. As NHRIs are established to provide remedies for violations, they must be accessible to victims seeking remedies. Accessibility has socio-economic, cultural, geographical and procedural dimensions.[86]

The Paris Principles require that NHRIs be pluralistic, representative of the "social forces of civilian society".[87] NHRIs "shall hear any person … necessary for assessing situations falling within [their]

78 See chapter 17 of this manual for further discussion of NHRI engagement with NGOs and cooperation with other national actors.

79 The Paris Principles include relationships with "jurisdictional" bodies; see Paris Principles, 'Methods of operation', para. (f).

80 Paris Principles, 'Methods of operation', para. (f). See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.4.

81 Paris Principles, 'Methods of operation', para. (g).

82 See chapters 22 and 23 of this manual for further discussion of the international engagement function of NHRIs.

83 Paris Principles ,'Competence and responsibilities', para. 3(e). See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.4.

84 See APF, *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions*, 2012.

85 Paris Principles, 'Competence and responsibilities', para. 3(d).

86 See B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 44.

87 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1.

competence".[88] They shall "develop relations with the non-government organizations devoted to promoting and protecting human rights … to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas".[89]

The provisions for NHRIs with quasi-judicial competence also reflect the concern for accessibility. They require that NHRIs be able to hear and consider complaints not only from the victims themselves but also from "their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations".[90]

International human rights law provides that victims of human rights violations are entitled to a remedy to which they have "equal and effective access".[91] As providers of remedies, NHRIs must ensure that they are accessible to victims on an "equal and effective" basis.

The SCA has commented on the issue of accessibility in the context of funding for NHRIs.

> 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.[92]

NHRIs must be accessible to everyone. They must have a particular regard for victims of violations, especially those victims who have difficulty in accessing State institutions for assistance.[93] Victims will have particular difficulties in accessing NHRIs if:

- they are poor
- they live in remote areas of the country
- they are poorly educated
- they have a disability
- they are young or old
- they are female
- they are part of a cultural, ethnic, linguistic, religious or indigenous minority group
- they are lesbian, gay, bisexual, transgender or intersex
- they are not documented for official purposes; for example, they do not have birth certificates or other proof of citizenship, do not have residential registration where required, are stateless or are undocumented migrants.

In short, any person who is a victim of human rights violation or at risk of human rights violation may encounter accessibility issues. NHRIs are required to take positive steps to ensure "equal and effective access". These steps can include:

- not imposing fees on filing complaints and cases
- providing legal advice and assistance to victims filing complaints and cases

88 Paris Principles, 'Methods of operation', para. (b).

89 Paris Principles, 'Methods of operation', para. (g).

90 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

91 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 11. See also International Covenant on Civil and Political Rights, Article 2(3).

92 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.10.

93 See chapter 20 of this manual for further discussion of NHRIs' relationship with vulnerable groups.

- ensuring that offices and facilities are physically accessible to persons with disabilities[94] and all gender identities[95]
- providing information in oral and written form, in simple language, in minority languages and in forms accessible to people with visual and hearing impairment
- opening offices outside the capital, in regional and district locations[96]
- providing mobile services and clinics to reach people in remote locations
- having members and staff who are drawn from and have lived experience of minority groups, are female and are able to communicate well with children and with older people
- using appropriate technology to facilitate access and communications.

Hmong women and child in Mae Salong, Thailand. UN Photo by Kibae Park, reproduced under a CC BY-NC-ND 2.0 license.

3.5.2. Accountability[97]

The Paris Principles do not have a specific provision on accountability but every organisation and individual needs to be accountable for performance. For NHRIs, there are legal accountability consequences that come from being State institutions established by law, as well as moral accountability consequences of being human rights organisations.

As State institutions under the constitution or legislation, NHRIs have reporting and accountability obligations to parliaments. They are established under the law and so parliaments are their founders. The Paris Principles contain general provisions by which NHRIs should report to parliaments but they do not make specific provision for annual accountability reports.[98] Most establishing laws, however, require NHRIs to report annually to the parliament on their activities and achievements.

94 See APF manual on human rights and disability at www.asiapacificforum.net/resources/human-rights-and-disability-manual-nhris, s10.2.

95 See APF manual on sexual orientation, gender identity and sex characteristics at www.asiapacificforum.net/resources/manual-sogi-and-sex-charactersitics, s8.2.

96 The Paris Principles provide specifically for NHRIs to have the power to "set up local or regional sections to assist it in discharging its functions. See 'Methods of operation', para. (e).

97 The accountability requirements of NHRIs are discussed in chapter 18 of this manual.

98 Paris Principles, 'Competence and responsibilities', para. 3(a).

According to the SCA, NHRI reports "provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution".[99]

The SCA has commented on the importance of formal State consideration of NHRI reports.

> 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.[100]

NHRIs also have moral accountability obligations to the community, especially to those who are victims of or at risk of human rights violations. The mandate to promote and protect human rights is a mandate of leadership on behalf of actual and potential victims of violations and service to actual and potential victims. NHRIs owe the community generally and victims particularly reports on their work, including their effectiveness and their failings.

3.6. THE IMPORTANCE OF COMPLIANCE WITH THE PARIS PRINCIPLES

Full compliance with the Paris Principles is essential to ensuring that NHRIs are as effective as possible. Compliance enables NHRIs to work independently and professionally in promoting and protecting human rights. It gives them legitimacy and credibility domestically and internationally. It ensures that they receive support from other domestic human rights advocates and organisations, from other NHRIs, from the UN and other inter-governmental agencies and from other international actors, possibly including international donors. It enables them to participate fully in the international human rights system through accreditation by the ICC.

The Paris Principles are international minimum standards. NHRIs can go beyond the requirements of the Paris Principles; for example, with greater independence, broader human rights mandates, stronger powers, better resources and so on. However, full compliance with the Paris Principles is the minimum required for NHRIs to be legitimate, credible and effective.

3.7. ESTABLISHING AN NHRI

The UN strongly encourages all States to have an NHRI that complies with the Paris Principles. This encouragement is found in resolutions of the Human Rights Council and the General Assembly, in recommendations of the UPR and the treaty monitoring bodies, and in reports of the special procedures. A State may respond for a variety of reasons, some positive and some negative. For example, it may commit to establish an NHRI because:

- it has a strong commitment to human rights and is convinced that an NHRI is a good means to ensure better promotion and protection of human rights
- it is committed to acting on recommendations from UN bodies
- of pressure from civil society within the State itself
- it wants to be seen positively, domestically and internationally, as a State that takes its human rights obligations seriously
- it hopes having an NHRI will divert international attention from its poor human rights performance.

99 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.11.

100 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.11.

Whatever a State's motivation may be, establishing an NHRI in compliance with the Paris Principles constitutes a significant development in human rights compliance. Even NHRIs established in inappropriate circumstances with limited mandates have often proved to be strong advocates and successful defenders of human rights.

In 2007, the APF developed guidelines for the process of establishing an NHRI.[101] These guidelines reflect "good practice" for States wishing to establish an NHRI in accordance with the Paris Principles. The guidelines state that:

> The establishment of a national human rights institution should be considered an important national endeavour. The process of developing the institution, its establishment and implementation should be treated with the same level of seriousness accorded to other major national activities.[102]

These guidelines identify broad public consultation as the most significant factor in achieving an effective NHRI in compliance with the Paris Principles. They provide that the consultation process should address:

- the human rights situation of the country concerned, which will help define the scope of the proposed institution
- the legal basis for the national institution; that is, whether by constitution or by legislation
- the mandate of the national institution, encompassing issues foreshadowed in the Paris Principles and covering the tasks of advising Government, investigating allegations of human rights violations, and education and human rights promotion
- measures to ensure independence
- measures to ensure pluralism
- the structure of the national institution, including staffing and geographical accessibility
- methods of appointing commissioners that are open and consultative and provide for the necessary qualities of competence, integrity, independence and pluralism
- adequate resources for the national institution
- cooperation between the national institution and non-governmental organisations
- accountability mechanisms.[103]

The APF itself and UN agencies, in particular OHCHR, provide support and advice to States interested in establishing an NHRI or in strengthening an existing NHRI, based on the expertise and experience of the APF and OHCHR in working with NHRIs over the past two decades.

101 The APF guidelines are available in full at Appendix 6 of this manual.

102 APF, *Guidelines for the process of establishing National Institutions in accordance with the Paris Principles*, October 2007, para. 1.

103 APF, *Guidelines for the process of establishing National Institutions in accordance with the Paris Principles*, October 2007, para. 14.

CASE STUDY

Establishment of the Myanmar National Human Rights Commission

The Myanmar National Human Rights Commission (MNHRC) was initially established in 2011 by presidential decree.[104] The MNHRC realised the need to convert the decree into an act of the national parliament, the Pyidaungsu Hluttaw, through broad consultation within Myanmar and with the assistance of international experts.

The proposed legislation was drafted over a period of a year. National and international legal expertise was provided to this process, including national experts from the President's legal advisors, the Attorney-General's Office and relevant government ministries, as well as international experts from the Raoul Wallenberg Institute, the APF and OHCHR. Comments from civil society organisations and the public were sought and obtained and given careful consideration.

The final draft, as submitted to the Pyithu Hluttaw, was published in official newspapers for public comments before enactment. The draft was also considered in the Bills Committees of both houses of parliament, the Pyithu Hluttaw and Amyotha Hluttaw, with the participation of members of the MNHRC.

The *Myanmar National Human Rights Commission Law*, Law No.21 of 201, was passed on 28 March 2014.

KEY POINTS: CHAPTER 3

- The Paris Principles are the international minimum standards for effective, credible NHRIs.
- The Paris Principles were developed in 1991 by NHRIs themselves, based on their experience.
- The Paris Principles require that NHRIs have independence in law, membership, operations, policy and control of resources.
- True independence requires independent thinking, in addition to the formal requirements of the Paris Principles.
- The Paris Principles also require that NHRIs have broad mandates for the promotion and protection of human rights, with pluralism in membership, broad functions, adequate powers, adequate resources, cooperative methods and international engagement.
- The Paris Principles imply requirements of accessibility and accountability.
- Full compliance with the Paris Principles leads to international recognition of NHRIs.
- Broad public consultation is an essential component in the process of establishing an NHRI in accordance with the Paris Principles.
- The APF and the UN, in particular OHCHR, provide support and advice to States interested in establishing an NHRI or in strengthening an existing NHRI.

104 No 34/2011 of 5 September 2011.

Chapter 4:
Models of NHRIs

KEY QUESTIONS

- **What do the Paris Principles say about models of NHRI?**
- **What are the four principal models of NHRI?**
- **What other kinds of human rights institutions are there?**

4.1. THE PARIS PRINCIPLES PRESCRIBE NO SINGLE MODEL

The Paris Principles set out in general terms how NHRIs should be established and operate. They do not prescribe any single model or set of models for how NHRIs should be structured or what their basic nature should be. States are entitled "to choose the framework which is best suited to its particular needs at the national level".[105] NHRIs take many forms with many natures. The number of members of the governing body currently ranges from one to 70 or more. The number of members of the governing body who are full-time currently ranges from none to all members. Their mandates can be comprehensive or restricted to advisory or research functions. However, in the case of those with only research functions, it is less likely that they will be found to comply fully with the Paris Principles.

Classifying NHRIs into models is difficult as no classification of models works for every NHRI. No matter what classifications are used, there will be as many NHRIs that are exceptions to the classifications as those that fit them easily. Many NHRIs will operate primarily according to one model but will also have some features of another model. And no single model is perfect; each has its strengths and weaknesses. Nonetheless, using a classification system assists in understanding the range of choices available in establishing NHRIs and of the ways in which they operate when established. It assists in identifying the particular strengths that can be built upon and the weaknesses that will need to be addressed.

The classification system that is most helpful, and so is most commonly used, identifies the models as:

- the commission model
- the ombudsman model
- the consultative council model
- the research institute model.[106]

These models are found across the world but only two of them are found in the Asia Pacific region.[107]

105 Vienna Declaration and Programme of Action, A/CONF.157/23, Part I, para. 36.

106 For a substantial discussion of definitional and classification issues, see L. Reif "Boundaries of NHRI definition" in R. Goodman and T. Pegram (eds), *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions*, 2012, particularly pp. 64-71. For discussion of slightly different classifications, see M. Kjaerum, *National Human Rights Institutions Implementing Human Rights*, 2003, p. 8; and International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions*, 2000, pp. 3-4.

107 Because only two models are found in the Asia Pacific region, all examples of the models in the following section are drawn from outside the Asia Pacific region. Also in section 7.2.6, dealing with the appointment of NHRI members by interest groups, the examples come from outside the Asia Pacific region as there are no examples of that appointment process within the region. All other examples in this manual are from within the Asia Pacific region.

4.2. THE COMMISSION MODEL

The commission model is distinguished by having a multi-member governing body that acts collectively or collegially and having a broad mandate for human rights promotion and protection.[108] This model is the one that complies most readily with the Paris Principles. The model has a common structure but within the general model there are significant differences.

- There is a governing board, the commission, made up of members, the commissioners. The number of members varies from three to 35.[109]
- The members can be full-time or part-time.[110]
- The members can all be appointed as generalist human rights commissioners or some or all could be appointed with specific statutory responsibilities to particular areas of human rights or particular human rights functions.[111]
- The members are supported in their work by part or full-time professional staff.[112]

NHRIs based on the commission model have broad mandates for promotion and protection of human rights. They undertake broad investigations of patterns of human rights violations. They have quasi-judicial functions for investigating and attempting to resolve complaints of human rights violations and so are subject to all the Paris Principles, including the final section ('Additional principles concerning the status of commissions with quasi-jurisdictional competence').

Twenty-one of the 24 APF member institutions have been established on the commission model.[113] This model is also the most common model for NHRIs in Commonwealth countries, including the Anglophone countries of Africa. The commission model is probably the most common model among NHRIs worldwide.

The office of the Australian Human Rights Commission. Photo by James Iliffe/APF.

108 Note that there are some NGOs that call themselves commissions but they are not NHRIs simply by virtue of the term. NHRIs are established by law in accordance with the Paris Principles.

109 The NHRI of Mongolia has three members. The NHRIs of India, the Maldives, Nepal and Sri Lanka have five members. The NHRI of Malaysia has seven members. The NHRI of Indonesia has 35 members under its law (*Law Number 39 Concerning Human Rights 1999*, Article 83) but in fact only seven members have been appointed to the current Commission.

110 Some NHRIs have only full-time members, others include a mix of full-time and part-time members and some have only part-time members. In general, the fewer the number of members, the more likely it is that they will all be full-time. The Sri Lankan NHRI's law does not specify whether members should be full-time or part-time.

111 The NHRI of Australia has a president and seven full-time commissioners with individual responsibilities for age discrimination, children's rights, disability discrimination, indigenous social justice, race discrimination, sex discrimination and human rights generally.

112 The number of the staff varies greatly, from fewer than 20 in some to more than 600 in the NHRIs of Afghanistan and the Philippines.

113 The three exceptions are the Provedor for Human Rights and Justice of Timor Leste, the Ombudsman of Samoa and the Commissioner for Human Rights of Kazakhstan, which have been established on the ombudsman model. The jurisdiction of the Ombudsman of Tuvalu was extended in 2017 to create the Ombudsman as an NHRI. It is also established on the ombudsman model. It is not yet a member of APF.

CASE STUDY

Kenya:
National Commission on Human Rights

The Kenya National Commission on Human Rights (KNCHR) is an autonomous national human rights institution, established under article 59 of the Constitution of Kenya 2010, with the core mandate of furthering the promotion and protection of human rights in Kenya. It has the dual responsibility of ensuring that all State organs observe democratic values and principles, as well as promote constitutionalism. It implements two key broad mandates: first, it acts as a watchdog over the Government in the area of human rights (the protection mandate); secondly, it plays a key leadership role in advising and moving the country towards becoming a human rights State (the promotion mandate). These mandates are implemented through various strategies including research, advocacy, lobbying, education and training, outreach, investigations and redress, issuing advisories and publications, and through building partnerships and networking. It has broad functions and powers, including powers to summons witnesses, obtain information and documents, enter premises and conduct audits. It can also adjudicate on any matter concerning human rights.[114]

4.3. THE OMBUDSMAN MODEL

The ombudsman model is built on one member who is full-time and supported by a significant number of staff. The position is variously named: ombudsman or ombuds, provedor(a), defensor(a) or public defender. These NHRIs principally undertake investigations of complaints or situations of human rights violations. For that reason, the final section of the Paris Principles – 'Additional principles concerning the status of commissions with quasi-jurisdictional competence' – is especially relevant to their operations.

Ombudsman institutions that are NHRIs need to be distinguished from the traditional administrative ombudsman now found in many countries. Administrative ombudsman offices primarily deal with maladministration by government agencies and may or may not include human rights within their mandate. For them, any human rights work is simply a part of the broader administrative mandate. Ombudsman offices that are NHRIs have explicit mandates, as broad as possible, for the promotion and protection of human rights.

Only three APF member NHRIs have been established on this model.[115] The model is principally found in Latin America and some European and Central Asian countries.[116] About a third of all NHRIs are established on the ombudsman model.[117]

114 Kenya National Commission on Human Rights, *Annual Report 2012–2013*, 2014, pp. 11-13. See also www.knchr.org.

115 The Provedor for Human Rights and Justice of Timor Leste, the Ombudsman of Samoa and the Commissioner for Human Rights of Kazakhstan have been established on the ombudsman model. So has the Ombudsman of Tuvalu which is not yet an APF member.

116 One major exception in Latin America is the National Human Rights Commission of Mexico, which is established on the commission model. European countries with ombudsman-model NHRIs include Poland, Portugal and Spain.

117 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 15.

CASE STUDY

Argentina: Defensoría del Pueblo de la Nación

Defensoría del Pueblo de la Nación of Argentina is an independent body under the National Congress, acting with full autonomy and without instructions from any authority. The Defensoría is established under articles 86 and 43 of the Argentinian Constitution and Law No. 24,284, as amended by Law No. 24,379. Its mission is two-fold, dealing with both human rights and public administration. It is responsible for the defense and protection of the rights, guarantees and interests safeguarded by the Constitution and laws, to investigate acts or omissions of the Administration and to control the exercise of public administrative functions. The mandate includes all forms of discrimination, problems with public services, human rights violations, social security and employment, abuse and poor care in public hospitals, environmental pollution, increases in taxes and fees, enforced disappearances and corruption in public, among other issues. To address complaints, the Defensoría is empowered to conduct investigations, inspections and verifications, obtain reports, documents and other records, determine the production of evidence or any other measures deemed useful for the purposes of research. It may require the intervention of the court to obtain any documentation that has been denied. It also has power to propose to the legislature and the Administration changes to laws, policies and practices that may cause injustice or harm.[118]

4.4. THE CONSULTATIVE COUNCIL MODEL

The consultative (or advisory) council model has a very large governing body, sometimes more than 70 members, none of whom is full-time, and a very small staff. NHRIs established in this model are principally advisory bodies to governments and others. Their major function is consultative and so they seek to include among their members representatives of all the key stakeholders in human rights: NGOs, academics, trade unions, business, professional associations, and religious and community groups, as well as representatives of government departments and agencies. Government representatives, however, do not have a decision-making role and do not have a vote in NHRI deliberations.[119]

Because of their consultative focus, NHRIs established on this model do not have or require many staff. As a result they conduct few, if any, programs of their own and they have only a limited capacity to do so. NHRIs established on this model undertake consultation and research but most of them do not have complaint handling functions and so the final section of the Paris Principles does not apply to them. Those with very limited mandates may not be accredited as compliant with the Paris Principles. However, some of the more recently established councils, as well as those that have been reformed in recent years, have acquired significantly broader roles and responsibilities, more akin to those of NHRIs established on the commission and ombudsman models.

The consultative council model is the oldest of the NHRI models and the basis on which the first NHRI was established in France in 1947.[120] This model is found principally among the NHRIs of francophone Africa.

118 The website of the Defensoría is www.dpn.gob.ar.

119 The Paris Principles permit representatives of government departments and ministries to be appointed to NHRIs provided that they do not exercise a vote in deliberations. See Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1(e). See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.9.

120 The French Commission (formerly Conseil) Nationale Consultative des Droits de l'Homme was first established by decree but received a statutory basis in Law No. 2007-292 du 5 mars 2007 relative à la Commission nationale consultative des droits de l'homme. It has up to 64 members, all of whom are part-time.

CASE STUDY

Morocco:
Conseil National des Droits de l'Homme

The Conseil National des Droits de l'Homme in Morocco was established in March 2011 as the successor of an earlier body established in 1990 on the consultative council model. Whereas the earlier body had been set up by Royal Decree, the current Council has a basis in the 2011 Constitution of Morocco and in law.[121] It has 39 members, drawn from NGOs, the judiciary, the legislature, distinguished persons and the chairs of regional human rights councils. The King appoints the President and the Secretary-General. The Council has a significantly broader mandate than its predecessor. According to the new law, it monitors human rights at the national and regional levels; intervenes to prevent human rights violations; investigates and inquires about any human rights violations; visits places of detention; contributes to the implementation of mechanisms provided for in the international human rights conventions ratified by Morocco; studies the harmonisation of laws and regulations with the provisions of the international human rights conventions and the International Humanitarian Law; and presents its annual report on the situation of human rights in Morocco to, and discuss its content before, the two houses of the parliament. It also prepares situational reports.[122]

4.5. THE RESEARCH INSTITUTE MODEL

The research institute model has developed in and through universities but NHRIs established on this model should have status independent of the universities that sponsored their establishment. The focus of these NHRIs is principally to conduct and publish research into human rights law and human rights issues. Sometimes the research leads to recommendations to governments, parliaments and others but not necessarily. These NHRIs are usually headed by a board of academic experts that may be quite large in number. They do not undertake investigations of complaints or into situations of human rights violations and so the final section of the Paris Principles does not apply to them. They are generally not involved in public education or advocacy, although some do have limited programs of these kinds. Some also undertake international development projects, on a fee-for-service basis. This is outside their scope of work as NHRIs but the product of their academic orientation. Their staff assigned to specific NHRI functions is usually small and is also very highly academically qualified.[123] NHRIs based on this model are found in some European States. Because of their very limited mandates, some human rights research institutes fall below the standards of the Paris Principles and so cannot receive accreditation and recognition as NHRIs.

121 Constitution 2011, Article 19 and Dasher 1-11-19 of 25 rabii I 1432 (1 March 2011) concerning the establishment of the Conseil National des Droits de l'Homme.

122 See www.ccdh.org.ma/spip.php?article88. The website of the Conseil is www.ccdh.org.ma.

123 Sometimes the staff undertaking international development projects significantly outnumber those assigned to NHRI-specific work.

CASE STUDY

Germany:
German Institute of Human Rights

The German Institute of Human Rights was founded on 8 March 2001, following a unanimous resolution passed by the German Parliament on 7 December 2000. The Institute promotes and protects human rights by conducting studies, documentation and academic research projects. It provides public library services, public seminars and educational programs, contributes to expert discussions and public debates, and gives policy advice to integrate human rights into domestic and international policies. The Institute plays an active role in shaping public opinion on all human rights issues. In addition, it offers a forum for the exchange of ideas and information between government institutions and NGOs. It cooperates with other NHRIs and academic human rights institutes in Europe and around the world. The Institute coordinates human rights education on the national level. It has no mandate to deal with individual human rights violations. If contacted, it attempts to direct individuals to specific helplines and services. It is led and managed by a Board of Trustees, composed of 17 members representing civil society, academia, the media and politics. It employs full-time research, educational and administrative staff.[124]

4.6. INSTITUTIONS FOR SPECIFIC GROUPS OR SPECIFIC REGIONS

Many States have independent legal institutions with explicit but limited human rights mandates. They include:

- institutions with responsibilities for the specific human rights of particular population groups, such as women's rights, children's rights, indigenous peoples' rights or minority rights
- institutions with responsibilities for human rights generally in specific regions of the country, not in the country as a whole, such as provincial human rights institutions in federal states.[125]

Individually, these institutions cannot be considered NHRIs established in accordance with the Paris Principles. They do not meet the Paris Principles requirements to be "vested with competence to promote and protect human rights" with "as broad a mandate as possible".[126]

Sometimes these institutions with limited mandates have been established alongside an NHRI established in accordance with the Paris Principles. In those circumstances, the NHRI should ensure consultation, coordination and collaboration in areas where they have overlapping or complementary jurisdiction, as the Paris Principles require.[127] This is best ensured through some formal arrangement among the institutions; for example, by having members in common or through memorandums of understanding.

124 See www.institut-fuer-menschenrechte.de/en/about-us/mandate.html. The website of the Institute is at www.institut-fuer-menschenrechte.de.

125 For discussion of "thematic" and "sub-national" institutions, see L. Reif "Boundaries of NHRI definition" in R. Goodman and T. Pegram (eds) *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions*, 2012, pp. 69-71.

126 Paris Principles, 'Competence and responsibilities', paras 1 and 2.

127 Paris Principles, 'Methods of operation', para (f).

CASE STUDY

India

Alongside the Indian National Human Rights Commission (NHRC), a number of other Commissions that specialise in particular rights or sections of the Indian community have been established: the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women. In recognition of the complementary mandates of the NHRC and these specialist Commissions, the Chairperson for each of the specialist Commissions is an ex-officio member of the NHRC.[128] While they are not permitted to inquire into complaints of a human rights violation or complaints of the negligence of preventing a human rights violation, they are deemed to be members of the NHRC for the discharging of all other functions of the Commission set forth in sections 12(b) to (i) of the Act.

In federal or decentralised systems, such as Australia, India and Canada, provincial or state jurisdictions often establish their own human rights institutions under provincial or state law. There are various forms of collaboration and cooperation among these national and provincial institutions. There should at least be a forum in which all the institutions with responsibilities for human rights meet regularly and exchange information about their programs and activities.

CASE STUDY

Australia

The Australian Council of Human Rights Authorities (ACHRA) is a human rights forum established in February 2003 by the Australian Human Rights Commission and the eight state and territory human rights, equal opportunity and anti-discrimination authorities. ACHRA is made up of the Commissioners and Presidents of the authorities. Its functions are to:

- **promote an understanding of and respect for human rights throughout Australia**
- **coordinate responses among all members to issues of common interest**
- **exchange information between agencies and with relevant other Australian, international and non-governmental agencies and organisations working in the human rights arena.**

Most importantly, it makes joint public statements on the most important human rights issues of common concern. It meets four times a year, twice in person and twice by teleconference.

ACHRA contributes to an annual report prepared by the Australian Human Rights Commission on the status of Australia's implementation of recommendations arising from the first round appearance in the Universal Periodic Review at the UN Human Rights Council. The report is lodged annually with the Human Rights Council, with the Commission exercising its speaking rights under a relevant agenda item.

A similar body, the Canadian Association of Statutory Human Rights Agencies (CASHRA), exists in Canada.

128 *Protection of Human Rights Act 1993*, s. 3(3).

Sometimes there is no NHRI, only these more limited institutions. In those circumstances, these institutions jointly can seek international recognition as collectively constituting a Paris Principles-compliant NHRI, even though they are separate statutory bodies.[129]

CASE STUDY

Sweden

Until 2009, Sweden did not have an NHRI. Instead, it had three Ombudsmen that specialised in particular human rights issues: the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination on Grounds of Sexual Orientation. The ICC recognised these three as constituting an NHRI, the Ombudsman of Sweden, as they "jointly covered a broad range of key human rights issues".[130] The group had "A status" accreditation.

Following the SCA's 2007 Decision Paper, it was less "inclined to accredit several institutions from one State with limited mandates".[131] That year, the Ombudsman of Sweden was due for re-accreditation. However, they withdrew their application due to the continuing attempts to merge the specialised ombudsmen into a single human rights institution.

On 1 January 2009, the Swedish Equality Ombudsman was established with by merging these separate anti-discrimination ombudsmen offices into one.[132] This new institution was accorded "B status" by the SCA in May 2011.[133]

KEY POINTS: CHAPTER 4

- **The Paris Principles do not prescribe a single model of NHRI.**
- **There are four principal models of NHRI: commission model, ombudsman model, consultative council model and research institute model.**
- **Certain models are more likely to be considered Paris Principles-compliant due to the breadth of their mandate and functions.**
- **Other human rights institutions have been established to deal with specific categories of human rights, the human rights of specific groups of people or human rights in specific parts of a country.**

129 There are special provisions in the Statute of the ICC for this process. See ICC Statute, Article 39 (SCA GO 6.6). The individual institutions must act collectively within the ICC, have only a single representative and exercise only a single vote.

130 M. Kjærum, *National Human Rights Institutions Implementing Human Rights*, 2003, p. 6.

131 European Union Agency for Fundamental Rights, *Strengthening the fundamental rights architecture in the EU*, 2010, footnote 18.

132 *Act Concerning the Equality Ombudsman* SFS 2008:568. See www.do.se/other-languages/english-engelska/.

133 SCA, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, Geneva 23-27 May 2011, pp. 9-10.

Chapter 5: Legal independence

KEY QUESTIONS

- **What does legal independence mean?**
- **How is independence guaranteed legally?**
- **What other kinds of human rights institutions are there?**

5.1. THE NATURE OF LEGAL INDEPENDENCE

Legal independence relates to the basis on which NHRIs are established and to guarantees of independence. The Paris Principles provide that NHRIs should be established by the national constitution or by legislation.[134] Establishment by an executive instrument – for example, a presidential decree or order – is not adequate or acceptable.[135]

> 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.[136]

5.2. ESTABLISHMENT BY THE NATIONAL CONSTITUTION

Increasingly, NHRIs have their basis in the constitution of the State. This form of establishment is seen as providing a greater guarantee of independence than legislative establishment.

> The most certain way of preserving the independence of an NHRI is to incorporate its establishment and vested powers into the national constitution. The constitutions of most countries enshrine fundamental human rights. The constitutional entrenchment of an NHRI provides for the protection and promotion of those rights by creating a specialist body with a role parallel to and complementary to that played by the courts.[137]

States with constitutionally based NHRIs include the Maldives,[138] the Philippines[139] and Thailand[140] in the Asia Pacific region.

134 Paris Principles, 'Competence and responsibilities', para. 2.

135 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.1. See also Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 11.

136 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.1.

137 Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 11. See also B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 43.

138 Constitution of the Republic of Maldives 2008, s. 189.

139 Constitution of the Republic of the Philippines 1987 Article XIII, s. 17.

140 Constitution of the Kingdom of Thailand B.E. 2540 (1997) s. 199 and s. 200.

In general, constitutions are more difficult to amend than ordinary legislation, with requirements for special parliamentary majorities or perhaps even popular referendums to effect any amendment. A constitutional basis provides a form of entrenchment for the NHRI that gives greater protection against the hostility of governments and temporary legislative majorities.

EXAMPLES OF CONSTITUTIONAL PROVISIONS ESTABLISHING NHRIs

The Philippines

Constitution of the Republic of the Philippines 1987, Article XIII s. 17

(1) There is hereby created an independent office called the Commission on Human Rights.

(2) The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.

...

(4) The approved annual appropriations of the Commission shall be automatically and regularly released.

Thailand

Constitution of the Kingdom of Thailand B.E. 2550 (2007), s. 256

The National Human Rights Commission consists of the President and six other members, appointed by the King with the advice of the Senate, from the persons having apparent knowledge and experiences in the protection of rights and liberties of the people, having regard also to the participation of representatives from private organisations in the field of human rights.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Human Rights Commission.

The qualifications, prohibitions, removal from office and determination of the remuneration of members of the National Human Rights Commission shall be as provided by law.

The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

...

There shall be the Office of the National Human Rights Commission, with autonomy in personnel administration, budgeting and other activities as provided by law.

Afghanistan

Constitution of Afghanistan 1382 (2002), Article 58 (Chapter 2, Article 36)

The State, for the purpose of monitoring, observation of human rights in Afghanistan their protection, shall establish the Independent Human Rights Commission of Afghanistan. Everyone in case of violation of his fundamental rights can launch complaint to this Commission. The commission can refer the cases of violation of the fundamental rights of the persons to the legal authorities, and assist them defending their rights. Structure and mode of function of this Commission will be regulated by law.

►►

The Maldives

The Maldives NHRI was first established by a presidential decree in 2003, then was given a statutory basis by the *Human Rights Commission Act 2005* and finally given constitutional status by the 2008 Constitution.

Constitution of the Republic of Maldives 2008, s. 189

(a) There shall be a Human Rights Commission of the Maldives.

(b) The Human Rights Commission is an independent and impartial institution. It shall promote respect for human rights impartially without favour and prejudice.

(c) The Human Rights Commission shall function as provided by the statute governing the Human Rights Commission. Such statute shall specify the responsibilities, powers, mandate, qualifications, and ethical standards of members.

Nepal

The Interim Constitution of Nepal not only establishes the NHRI and defines its membership but also makes very specific provision for its functions and powers.

Interim Constitution 2007

131. National Human Rights Commission

(1) There shall be a National Human Rights Commission of Nepal, which shall consist of the Chairperson and Members…

132. Functions, duties and powers of National Human Rights Commission:

(1) It shall be the duty of the National Human Rights Commission to ensure the respect for, protection and promotion of human rights and their effective implementation.

(2) For the accomplishment of the duty mentioned in clause (1), the National Human Rights Commission shall carry out the following functions:

(a) To conduct inquiries into, and investigations of the instances of the violation of the human rights of any person or a group of persons or abetment thereof, on a petition or complaint presented or communicated to the Commission by the victim of such violation or by any person on his or her behalf or on any information received by' the Commission from any source or on its own initiative, and make recommendation for action against the perpetrators;

(b) If any official who has the responsibility or duty to prevent violations of human rights fails to fulfil or perform his or her responsibility or duty or shows reluctance in the fulfilment or performance of his or her responsibility or duty, to make recommendation to the concerned authority to take departmental action against such official;

(c) If it is required to institute a case against any person who has violated human rights, to make recommendation to file case in the court in accordance with law;

(d) To coordinate and collaborate with the civil society in order to enhance awareness on human rights;

(e) To make recommendation, accompanied by the reasons and grounds, to the concerned body for taking departmental action against, and imposing punishment on, those who have violated human rights;

(f) To carry out periodic reviews of the laws in force relating to human rights and make recommendation to the Government of Nepal for necessary improvements in and amendments to, such laws;

►►

(g) If it is necessary that Nepal should become a party to any international treaty or agreement on human rights, to make recommendation, accompanied by the reasons therefore, to the Government of Nepal; and monitor whether any such treaty or agreement to which Nepal is already a party has been implemented, and if it is found not to have been implemented, to make recommendation to the Government of Nepal for its implementation;

(h) To publish, in accordance with law, the names of the officials, persons or bodies who have failed to observe or implement any recommendations or directives made or given by the National Human Rights Commission in relation to the violations of human rights, and record them as violators of human rights.

(3) In discharging its functions or performing its duties, the National Human Rights Commission may exercise the following powers:

(a) To exercise all such powers as of a court in respect of the summoning and enforcing the attendance of any person before the Commission and seeking and recording his or her information or statement or deposition, examining evidence and producing exhibits and proof;

(b) On receipt of information by the Commission in any manner that a serious violation of human rights has already been committed or is going to be committed, to search any person or his or her residence or office, enter such residence or office without notice, and, in the course of making such search, take possession of any document, evidence or proof related with the violation of human rights;

(c) In the event of necessity to take action immediately on receipt of information that the human rights of any person are being violated, to enter any government office or any other place without notice and rescue such person;

(d) To order the provision of compensation, in accordance with law, to any person who is a victim of the violations of human rights;

(e) To exercise and perform, or cause to be exercised and performed, such other powers and duties as provided in law.

(4) Notwithstanding anything contained elsewhere in this Article, the National Human Rights Commission shall have no jurisdiction over any matter falling within the jurisdiction of the Army Act.

Provided that nothing shall bar the institution of, actions on any matters of the violations of human rights or humanitarian laws.

GOOD PRACTICE

Where an NHRI is established by a constitutional provision, the provision should include language that clearly states that:

- the NHRI is to be established to comply with existing international standards
- the principal objectives of the NHRI include “the promotion and protection of human rights”
- the NHRI is independent of the Government
- there is to be no external interference with the operation of the NHRI
- the NHRI’s composition, functions and powers are to be set out in State legislation.

Some constitutional provisions include quite detailed provisions on some matters, including the composition of the Commission, the process for selecting members and their term of appointment. In deciding how detailed to make constitutional provisions, and whether to include certain provisions in the constitution or the legislation, the costs and benefits of each approach should be considered. Constitutional entrenchment certainly enhances independence and gives greater certainty and stability. Legislation, however, provides more flexibility should amendments to the law be necessary in future as the national context changes.

5.3. ESTABLISHMENT BY AN ACT OF PARLIAMENT

Constitutional provisions are rarely sufficiently detailed to provide a good basis for the operation of NHRIs. Constitutional provisions tend to be short and general. Most NHRIs with a constitutional basis also have a supplementary enabling law that provides the detail of how the NHRI will function, including appointment processes for members, specific functions and powers, and budgetary and reporting requirements.[141]

> Where there is a constitutional base, it is advisable to have separate implementing legislation, since the level of detail required to establish and authorize the functioning of an NHRI is not usually appropriate for a constitution.[142]

Establishing laws in the absence of constitutional provisions will usually contain both general provisions relating to the nature and independent status of the NHRI and detailed provisions for its operations, including appointment processes for members, specific functions and powers, and budgetary and reporting requirements.[143]

Parliament House, Ulaanbaatar, Mongolia. Photo by Dave Grey, reproduced under a CC BY-NC-ND 2.0 license.

141 See, for example, Thailand's *National Human Rights Commission Act* B.E. 2542 (1999), available at www.refworld.org/docid/474d303d2.html; and the Maldives' *Human Rights Commission Act*, Act No. 6/2006, available at www.hrcm.org.mv/publications/otherdocuments/HRCMActEnglishTranslation.pdf. The constitutional provision in the Philippines is supplemented by Executive Order 163 and Commission Resolution No. A96-005. The Philippines Congress is considering a draft law to provide statutory supplementation of the constitutional provision.

142 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 32. See also B. Burdekin with J. Naum, National Human Rights Institutions in the Asia Pacific, 2007, p. 43.

143 See for example *Australian Human Rights Commission Act 1986*, available at www.legislation.gov.au/Details/C2013C00080; and Jordan's *The National Centre for Human Rights Law*, Law No. 51 (2006), available at www.nchr.org.jo/english/AboutUs/NCHRLaw.aspx.

EXAMPLE OF STATUTORY PROVISIONS FOR THE INDEPENDENCE OF THE NHRI

Nepal
Human Rights Commission Act 2012, s. 4(2)

The Commission shall be independent and autonomous in fulfilling the work of ensuring respect, protection and promotion of human rights.

Republic of Korea
National Human Rights Commission Act, Act No. 6481, Article 3

(1) The National Human Rights Commission (hereinafter referred to the "Commission") shall be established to deal with affairs for the protection and promotion of human rights under this Act.

(2) The Commission independently deals with the matters which fall under its jurisdiction.

Qatar
Decree Law No. 17 of 2012 on the Organisation of the National Human Rights Committee, Article 4

The NHRC has full independence in the exercise of its human rights activities.

GOOD PRACTICE

Whether established by constitution or act of parliament, an NHRI's establishing law should contain an explicit provision that states and guarantees its independence.

The APF advises States seeking our advice and NHRIs to use language that is both gender-neutral and inclusive.

MODEL CLAUSE

The Commission shall be independent in performing its functions and undertaking its responsibilities and shall not be subject to any external direction or influence.

KEY POINTS: CHAPTER 5

- Legal independence is an essential component of independence under the Paris Principles.
- The Paris Principles require that NHRIs be established by the constitution of the State or by an act of parliament.
- NHRIs established by the constitution will still usually require implementing legislation that contains detailed provisions governing the NHRI, including its mandate, functions, responsibilities and powers.

Chapter 6:
The independence of NHRI members

KEY QUESTIONS

- **What are the requirements of the Paris Principles relating to the process of appointing NHRI members?**
- **What are the criteria for NHRI members?**
- **What are the processes by which members are appointed?**
- **What are the processes by which members can be dismissed?**
- **What protection from prosecution should members receive?**

6.1. BASIC PRINCIPLES

The members of NHRIs determine the policies, programs, operational methods and activities of NHRIs, as well as the findings, conclusions and recommendations of NHRIs when they investigate cases or situations of human rights violations. The process by which the members of NHRIs are appointed, therefore, has grave implications for the independence of NHRIs.[144] The appointment of members is one substantial legitimate limitation on their independence. NHRIs are State institutions established by law. They do not have the total independence that NGOs have. They cannot be self-appointing and self-perpetuating.

The legal guarantees of independence of NHRI members are ensured by processes for their appointment, by fixed terms of offices and by special procedures for their dismissal, if and when necessary. They should also be protected from legal action arising from the performance of their functions and responsibilities as NHRI members.

These kinds of legal provisions are certainly important to promote and ensure independence but, in addition, members need to be independently minded. In many respects, this personal quality is even more important than the legal guarantees.[145] Independently-minded members will work around limitations in the law, while no law, no matter how strong, will embolden those who are not independently minded. The Paris Principles provide a good framework but the quality of the individual members is still essential.

EXAMPLES OF LEGISLATIVE REQUIREMENT OF INDEPENDENCE OF MEMBERS OF AN NHRI

Myanmar
***Myanmar National Human Rights Commission Law*, No. 21/2014, s. 11**

A member of the Commission shall act impartially and independently in carrying out the functions of the Commission and shall not hold any other office or engage in any activity or practice that conflicts with or may be perceived to conflict with the functions of the Commission.

144 See Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 16.

145 B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 8.

6.2. APPOINTMENT

6.2.1. Paris Principles requirements

The Paris Principles provide that the appointment of members must be "in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation". The appointment can be "by means of an election or otherwise".[146] Further:

> 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.[147]

The SCA has observed:

> 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.[148]

The method of appointment of members and the criteria for selection should be clearly set out in the NHRI's enabling legislation.[149] The procedure varies considerably, reflecting significant constitutional differences among States.[150] In many States, appointment is made by the Head of State, after the consideration of candidates by some form of selection committee. The selection committee may be an internal one,[151] or one comprising leaders from government, opposition and the judiciary.[152] In other States, parliament has a role, interviewing candidates and conducting an election of members.[153] Finally, in some cases, members of NHRIs are elected or appointed by identified interest groups or stakeholders.

Whatever the process, it should meet basic principles of transparency and inclusiveness. It should ensure that

- appropriate criteria for NHRI members are adopted and well publicised
- the widest range of candidates are identified and considered
- their qualifications are assessed according to the public criteria
- decision makers receive independent advice about the qualifications of the candidates.

146 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1.

147 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 3.

148 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.8.

149 The appointment process is discussed further in chapter 7 of this manual.

150 For a table of methods of appointment among Asia Pacific NHRIs, see B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 52. A table of criteria is on p 54.

151 For example, for members of the NHRIs in Australia, Malaysia, New Zealand and the Philippines.

152 As in India and Nepal.

153 As in Indonesia, the Maldives and Thailand.

6.2.2. Criteria for NHRI members

The selection and appointment of NHRI members should be undertaken according to clear criteria that are publicly available. The criteria should set the standard for members, describing what is required in NHRI members. Developing and publicising criteria for members is in everyone's interests. Because the criteria are publicly available, those interested in appointment will know what is sought and can determine whether they should apply. Those recommending persons for appointment or making appointments will be able to measure applicants against some objective standards. When appointments are made, the broader community, including the media, will be able to assess the extent to which the criteria have been applied, increasing the accountability of the process and the likelihood of good appointments being made. Having public criteria reduces the scope for politicisation of the appointment process.

The criteria have two inter-connected dimensions, those that go to the personal qualities and qualifications of individual members and those that go to the composition of the NHRI as a whole.[154] The NHRI is the sum of its members and so their individual qualities and qualifications collectively need to provide the diversity of backgrounds, experiences and skills (the pluralism) that the NHRI requires. The criteria should be included in enabling legislation, at least in general terms. That ensures transparency and provides parliamentary direction to those involved in selections and appointments.

The basic requirement of NHRI members is that they be highly qualified human rights experts. That does not mean that they need to have postgraduate degrees in human rights. It means that they need to have the necessary understanding and experience of human rights and of situations of human rights violation. Understanding and experience can come from formal study or from human rights advocacy and activism or from working in organisations that deal with human rights issues or with victims of human rights violations. NHRIs require people with formal academic qualifications in human rights but they also require people with real life, hands-on experience in human rights work.

The criteria for appointment of NHRI members should reflect this diversity of expertise and experience. They should also reflect the need for pluralism among the membership. The requirement of pluralism should be explicit in the legislation, both in general terms and also in referring specifically to the need to ensure the appropriate inclusion of women and persons from other marginalised groups among the members.

Criteria for members also commonly include a requirement that members be persons of integrity, with a good standing and reputation in the broader community or within their own communities. Human rights work is controversial and human rights advocates can be subjected to legal action because of their activism. Human rights workers should not be disqualified from NHRI membership simply because of a criminal record arising from their non-violent advocacy of human rights.

Importantly, the criteria should include a requirement that members be independent and independently minded. This is at the heart of the Paris Principles and essential to the effectiveness of NHRIs. It is a criterion that is difficult to assess, however. For that reason, the experience of applicants should be examined and they should be interviewed in person so that their assertions of independence can be tested.

The following text box provides an example of a reasonably detailed set of selection criteria upon which to assess applicants.

154 B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 49; and R. Murray, "National human rights institutions, criteria and factors for assessing their effectiveness" in *Netherlands Quarterly of Human Rights*, Vol. 25; No. 2 (June 2007), p. 203.

EXAMPLES OF SELECTION CRITERIA FOR MEMBERS OF NHRIs

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014, s. 7

The Selection Board shall:

(a) take into account the overall composition of the Commission in considering the nomination of prospective members of the Commission;

(b) consider as prospective members of the Commission those who have knowledge of or experience or expertise in the following:

i. Domestic human rights laws and international human rights laws;

ii. Current economic, employment and social issues;

iii. Cultural issues and the needs and aspirations of individuals different communities and population groups in society;

iv. Other diverse matters likely to come before the Commission;

v. Human rights advocacy;

vi. Public education;

vii. Public governance, administration and financial management and

viii. Civil society, academia, social welfare, community development and law.

New Zealand

Human Rights Act 1993

11 Criteria for appointment

(1) In recommending persons for appointment as Commissioners or alternate Commissioners, the Minister must have regard to the need for Commissioners … appointed to have among them—

(a) knowledge of, or experience in,—

(i) different aspects of matters likely to come before the Commission:

(ii) New Zealand law, or the law of another country, or international law, on human rights:

(iii) the Treaty of Waitangi and rights of indigenous peoples:

(iv) current economic, employment, or social issues:

(v) cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society:

(b) skills in, or experience in,—

(i) advocacy or public education:

(ii) business, commerce, economics, industry, or financial or personnel management:

(iii) community affairs:

(iv) public administration, or the law relating to public administration.

►►

12 Further criteria for appointment of Chief Commissioner

In recommending a person for appointment as Chief Commissioner, the Minister must have regard … to the person's—

(a) ability to provide leadership in relation to the performance of the functions of the Commission (for example, being an advocate for, and promoting, by education and publicity, respect for and observance of human rights):

(b) ability to represent the Commission, and to create and maintain effective relationships between it and other persons or bodies:

(c) knowledge of New Zealand law, the law of other countries, and international law, on human rights, and of New Zealand's obligations under international instruments on human rights:

(d) appreciation of issues or trends in human rights arising in other countries or internationally, and of the relevance of those issues or trends for New Zealand:

(e) ability to perform the [Commission's statutory] functions ...

In most laws, however, what purport to be "selection" criteria are in reality "eligibility" criteria. They serve to determine who should and who should not apply, but not how to assess the relative merits of individual applicants. Examples of these provisions are included in the following text box.

EXAMPLES OF ELIGIBILITY CRITERIA FOR MEMBERS OF NHRIs

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 6

The Selection Board shall consider for nomination as prospective Commission members those who meet the following criteria:

(a) A person who is a citizen of Myanmar;

(b) A person who is not younger than 35 years;

(c) A person who is recognized as being a person of integrity and good character and is capable of fulfilling the responsibilities of a member of the Commission with independence and impartiality;

(d) A person who has extensive knowledge or experience in any area of the following:

- **i. Principles of human rights and relevant domestic and international human rights laws;**
- **ii. Promotion and protection of human rights;**
- **iii. Good governance and public administration;**

(e) A person who demonstrates commitment to the achievement of the objectives of the Commission.

▶▶

Indonesia
Law No. 39 of 1999 Concerning Human Rights, Article 84

Those eligible for appointment as members of the National Commission on Human Rights are Indonesian citizens who:

(a) have experience in the promotion and protection of individuals or groups whose human rights have been violated;

(b) are experienced as lawyers, judges, police, attorneys, or other members of the legal profession;

(c) are experienced in legislative and executive affairs and in the affairs of high level state institutions; or

(d) are religious figures, public figures, members of NGOs, or from higher education establishments.

Malaysia

Human Rights Commission of Malaysia Act 1999 Act No. 597 as amended by the *Human Rights Commission of Malaysia (Amendment) Act 2009* Act No. A1353 and the *Human Rights Commission of Malaysia (Amendment) (Amendment) Act 2009* Act No. A1357

s. 5 Members of the Commission and term of office

(1) Members of the Commission shall be appointed from amongst men and women of various religious and racial backgrounds who have knowledge of, or practical experience in, human rights matters.

Timor Leste
Law No. 7/2004 of 26 May 2004, Article 13

1. A person shall not be qualified for appointment as Ombudsman for Human Rights and Justice, unless he or she has:

(a) sufficient experience and qualifications in order to investigate and report on human rights violations, corruption, influence peddling, and malpractice in the administration;

(b) proven integrity;

(c) a sound knowledge of the principles of human rights, good governance and public administration.

2. A person applying for the position of Ombudsman for Human Rights and Justice shall also be recognized for his or her standing in community, as well as his or her high level of independence and impartiality.

In addition to listing certain essential criteria for appointment, some legislation includes criteria that exclude selection. These criteria can be restricted to one or two matters, such as conviction of a criminal offence, or they can constitute a relatively lengthy list of exclusory matters.

EXAMPLE OF CRITERIA FOR EXCLUSION FROM SELECTION

Thailand
National Human Rights Commission Act B.E. 2542 (1999)

6. The President and members shall have the qualifications and shall not be under any prohibition as follows:
   (1) being of Thai nationality by birth;
   (2) being not less than thirty five years of age;
   (3) not being a member of the House of Representatives or the Senate, a political official, a member of a local assembly or a local administrator;
   (4) not being a holder of any position of a political party;
   (5) not being of unsound mind or of mental infirmity;
   (6) not being addicted to drugs;
   (7) not being a bankrupt;
   (8) not being a person sentenced by a judgment to imprisonment and being detained by a warrant of the Court;
   (9) not being a person having been discharged for a period of less than five years on the nomination day after being sentenced by a judgment to imprisonment for a term of two years or more except for an offence committed through negligence;
   (10) not having been expelled, dismissed or removed from the official service, a state agency or a State enterprise or from a private agency on the ground of dishonest performance of duties, gross misconduct or corruption;
   (11) not having been ordered by a judgment or an order of the Court that is or her assets shall dissolve on the State on the ground of unusual wealth or an unusual increase of his or her assets;
   (12) not being an Election Commissioner, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Economic and Social Council;
   (13) not having been removed from office by a resolution of the Senate.
7. A person elected as a member shall:
   (1) not be a Government official holding a permanent position or receiving salary;
   (2) not be an official or employee of a State agency, State enterprise or local government organisation or not be a director or advisor of a State enterprise or State agency;
   (3) not hold any position in a partnership, a company or an organisation carrying out businesses for sharing profits or incomes, or be an employee of any person.

6.2.3. Identifying candidates

There are two means of identifying the widest range and number of suitably qualified candidates.

First, the vacancies should be publicised as widely as possible and applications invited. This requires public advertising of the positions both in the general public media and in specialised human rights publications and journals. The vacancies should also be advertised to relevant universities, NGOs, professional associations, trade unions and other organisations and to individuals who may be qualified and interested. The notification should set out clearly the criteria for selection and appointment and the terms and conditions of appointment. It should set a sufficiently lengthy period for applications to allow the notification to be widely disseminated, the vacancies to become widely known and applicants to be able to prepare strong applications. There should be a well publicised closing date for applications.

Second, interested organisations and individuals should be invited to nominate well qualified persons for appointment. Potential members may be reluctant to nominate themselves or may not think about applying. They should be encouraged to do so, of course, but others who know them and consider them highly qualified for appointment should be able to nominate them so that they can be assessed and, if appropriate, approached to consider becoming a member. Encouraging nominations from knowledgeable organisations and individuals can widen the range of persons for consideration for appointment and enable highly qualified persons to be considered.

6.2.4. Executive appointment

The most common means of appointing NHRI members is executive appointment. That is usually appointment by the Head of State on the recommendation of the Government but it may also be appointment by the Government itself or by a responsible minister. Whoever actually appoints, executive appointment is fundamentally a decision of the Government. The risk is that it will be a politicised process; that the Government of the day will appoint persons whom it sees as sympathetic to it rather than persons who are highly qualified for the position. There are ways by which this risk can be reduced.

Having public criteria for appointment is the first. It ensures transparency and enables the executive's decisions to be scrutinised and assessed for consistency with the criteria.

Providing independent advice to the executive to assist the selection process is important. This ensures that, even if the final decision is to be made by the executive, it will be made on the basis of an independent assessment of candidates and recommendation. This process can take two forms.

First, in some countries, the advice is provided by a selection committee that includes external persons recognised as independent and as having human rights expertise and experience. The members can be appointed by the Government or the responsible minister or they can be appointed by designated groups, such as the legal professional association, human rights NGO councils, academic bodies or human rights research institutes. This approach of the selection committee with independent experts provides the executive with expert advice on the appointments. It also assists in depoliticising the process.

EXAMPLE OF PROVISIONS FOR EXECUTIVE APPOINTMENT OF MEMBERS OF NHRIs, USING SELECTION COMMITTEES

Malaysia

Human Rights Commission of Malaysia Act 1999 Act No. 597, as amended by the *Human Rights Commission of Malaysia (Amendment) Act 2009* Act No. A1353 and the *Human Rights Commission of Malaysia (Amendment) (Amendment) Act 2009* Act No. A1357

s. 5 Members of the Commission and term of office

(1) The Commission shall consist of not more than twenty members.

(2) Members of the Commission shall be appointed by the Yang di-Pertuan Agong [King], on the recommendation of the Prime Minister who shall, before tendering his advice, consult the committee referred to in section 11A.

…

s. 11A Committee to be consulted with regard to appointment

(1) For the purposes of subsection 5(2), there is established a committee consisting of the following persons:

(a) the Chief Secretary to the Government who shall be the Chairman;

(b) the Chairman of the Commission; and

(c) three other members of civil society who have knowledge of or practical experience in human rights matters, to be appointed by the Prime Minister.

(2) The members of the committee referred to in subsection (1) shall serve the committee for such period and on such terms and conditions as may be specified in the instrument of appointment.

(3) The members of the committee referred to in paragraph (1)(c) may include former judges and former members of the Commission.

(4) The following persons shall not be appointed as members of the committee under paragraph(1)(c):

(a) any person who is actively involved in politics and registered with any political party;

(b) any person who is or was an enforcement officer.

(5) The committee may determine the conduct of its own proceedings.

(6) For the purposes of this section, "enforcement officer" means …

Alternatively, in some other countries, external advice is provided by a high-level committee of government and opposition leaders and the Chief Justice or persons of similar rank. Sometimes this arrangement is specified in the NHRI's establishing law and sometimes in the national constitution itself. This approach may increase the opportunity for appointments that have broad political support but it also has inherent difficulties. It can integrate domestic politics into the appointment process itself so that the process becomes more politicised, not less. It may lead to compromise decisions where both government and opposition have a person appointed, ensuring political balance but not necessarily human rights expertise. Having members associated with different political parties can lead to politicisation within the NHRI, deadlocking internal decision making and blocking any effective action by the NHRI. In addition, where such advisory bodies are dominated by government representatives, they may not be seen to comply with the Paris Principles requirements for a clear, transparent and participatory selection process.

EXAMPLES OF PROVISIONS FOR EXECUTIVE APPOINTMENT OF MEMBERS OF NHRIs, USING A HIGH-LEVEL SELECTION COMMITTEE

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014, s. 11

5. The President shall form a Selection Board comprising the following members to establish the Commission:
   (a) Chief Justice of the Union
   (b) Union Minister, Ministry of Home Affairs
   (c) Union Minister, Ministry of Social Welfare, Relief and Resettlement
   (d) Attorney-General of the Union
   (e) A representative from the Bar Council
   (f) Two representatives from the Pyidaungsu Hluttaw
   (g) A representative from the Myanmar Women's Affairs Federation
   (h) Two representatives from registered Non-Governmental Organizations.
9. The President shall select and appoint in coordination with the Speaker of the the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw, members of the Commission from the list of nominees submitted by the Selection Board…[155]

India

Protection of Human Rights Act 1993, as amended by the *Protection of Human Rights (Amendment) Act, 2006*, No. 43 of 2006, s. 4(1)

The Chairperson and [the Members] shall be appointed by the President by warrant under his hand and seal;

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of:

(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 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

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

▶▶

155 The Pyidaungsu Hluttaw is the Parliament of Myanmar. The Pyithu Hluttaw is the House of Representatives and the Amyotha Hluttaw is the House of Nationalities.

Sri Lanka
***Constitution 18th Amendment*, Article 41A**

(1) The Chairman and members of the [Human Rights Commission] … shall be appointed … by the President. In making such appointments, the President shall seek the observations of a Parliamentary Council (hereinafter in this Article referred to as "the Council"), comprising—

(a) the Prime Minister;

(b) the Speaker;

(c) the Leader of the Opposition;

(d) a nominee of the Prime Minister, who shall be a Member of Parliament; and

(e) a nominee of the Leader of the Opposition, who shall be a Member of Parliament:

Provided that, the persons appointed in terms of sub-paragraphs (d) and (e) above shall be nominated in such manner as would ensure that the nominees would belong to communities which are communities other than those to which the persons specified in paragraphs (a), (b) and (c) above, belong.

Whatever form the selection committee takes, the process should be similar. The committee as a whole should:

- examine all applications and assess them against the pre-determined and objective criteria
- shortlist for interview those candidates who meet the criteria at the highest standards
- interview all shortlisted candidates
- on the basis of the written applications and the interviews, prepare a list of those candidates assessed by the committee as suitable for appointment because they meet the criteria to the highest standards, with reasons for the inclusion of each person
- submit the list to the executive.

Where there is no candidate considered suitable for appointment, the committee should so advise the executive and the vacancies should be re-advertised. It would be a mistake to appoint persons who are not qualified for the position of member.

Appointment through this process is the responsibility of the executive. The selection committee should provide the executive with a list of qualified candidates so that the executive can choose whom to appoint. Once the executive receives the selection committee's report and recommendations, it can proceed to consider appointment. To reduce the risk of politicisation and of the appointment of unqualified persons, the executive should be restricted to appointing only persons who are on the selection committee's list of qualified candidates. If the executive declines to appoint anyone from the list, then it should refer the issue back to the selection committee with a request for further consideration of other candidates. If the committee considers no other candidates suitable, then it should so advise the executive and the vacancies should be re-advertised.

6.2.5. Parliamentary election

The second means of appointing members is parliamentary election. This process is used less than executive appointment but it has been increasingly used in recent years due to promotion of this method by the OHCHR.[156] The experience, however, is that this process is inevitably highly politicised, often resulting in appointments based on political party and ideological considerations more than human rights expertise and experience. It makes the NHRI more "democratic" but it also makes it far more "political".

EXAMPLES OF PROVISIONS FOR JOINT PARLIAMENTARY AND EXECUTIVE APPOINTMENT OF MEMBERS OF NHRIs

Samoa
Ombudsman Komesina o Sulufaiga Act 2013

7 Appointment

Subject to section 8, the Head of State may appoint a person recommended by the Legislative Assembly as the Ombudsman.

8 Selection and criteria-(1)

The Ombudsman is to be selected pursuant to the selection processes and criteria set out in Schedule 3.

Schedule 3 – Rules

1. Establishment

(1) The Screening Committee ("Committee") is established comprising the following members:

(a) the Chairperson of the Public Service Commission, as Chairperson;

(b) a retired judge or a lawyer qualified for appointment as a Supreme Court judge, appointed by the Chairperson;

(c) a member to represent civil society groups and the private sector, appointed by the Chairperson.

(2) The following persons are not eligible for appointment under clause 1(1)(b) or (c):

(a) a member of Parliament;

(b) a Minister;

(c) public servant or a person engaged by the Government or in the "service of Samoa" within the meaning under Article 111 of the Constitution;

(d) a director or employee of a public body regulated under the Public Bodies (Performance and Accountability) Act 2001;

(e) any other person prescribed by regulations.

▶▶

156 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 38. This reference speaks only of parliamentary involvement rather than parliamentary election. However OHCHR promotes parliamentary election as the best method of selecting NHRI members. The Commonwealth Secretariat also supports a role for parliaments; see *National Human Rights Institutions: Best Practice*, 2001, p. 16.

1 Functions

The Committee must consider applications and determine candidates for appointment or re-appointment as the Ombudsman.

3. Advertisement of vacancies

(1) When the position of the Ombudsman becomes vacant or will become vacant within six (6) months before expiry of the term, the Government must advertise the position in a newspaper having wide circulation in Samoa.

(2) The Government must send the list of applicants who responded to the advertisement under subsection (1), including any qualified individual it considers for appointment ("applicants"), to the Committee for determinations.

(3) If no applicant qualifies under clause 6, the vacancy must be re-advertised.

4. Determination of applications

When determining the suitability of the applicants for appointment or re-appointment, the Committee:

(a) must take into account clause 6; and

(b) may take into account clause 7.

5. Report of the Committee

(1) After determining the applications, the Committee must prepare and send to the Legislative Assembly a report on its determination setting out:

(a) the names of all qualified applicants; and

(b) the screening process.

(2) The report:

(a) must include information and documentation that demonstrates how an applicant meets the criteria in clause 6 and why the Committee believes the applicant is suitable to be recommended by the Legislative Assembly to the Head of State for appointment;

(b) may include information and documentation that demonstrate how an applicant meets any general criteria under clause 7.

(3) A copy of the report is to be sent to the Prime Minister.

Maldives
Human Rights Commission Act No 6/2006, s. 5

(a) As per subsection (b), members of the Commission shall be appointed by the President on the advice of the People's Majlis [Parliament].

(b) As per subsection (a), advice of the People's Majlis shall be sought as follows:

1. The President shall propose to the People's Majlis in writing when a new member is to be appointed to the Commission.
2. When members need to be appointed to the Commission, the names and profiles of at least the required number of members to be appointed shall be provided to the People's Majlis.
3. When the matter is proposed to the People's Majlis, an Ad Hoc Committee consisting of 7 (seven) members shall be set up to review the names and make recommendations to the People's Majlis.

►►

4. **The Ad Hoc Committee shall interview the candidates, review the outcomes of the interviews, and submit a report of their recommendations to the People's Majlis.**
5. **The People's Majlis shall make a decision based on the report submitted by the 7 member Ad Hoc Committee.**
6. **The Speaker of the People's Majlis shall inform the President of the decision of the People's Majlis in writing.**

(c) **The members to be appointed to the Commission shall be capable of undertaking the duties and responsibilities of the Commission, and shall fulfill the prerequisites stipulated in Section 6.**

(d) **The candidates to be appointed as members of the Commission, proposed by the President for the opinion of the People's Majlis, shall be among the President's nominees and respondents from the general public. The President shall emphasise the candidates to be representative of diverse professions.**

The parliamentary election process typically involves a parliamentary committee interviewing candidates for appointment and then making recommendations to a plenary session of the parliament. The interviews are usually conducted publicly, which is appropriate. However, they often involve unreasonably hostile cross-examination of candidates by the representatives of political parties or factions that oppose their appointment. Highly qualified candidates can be rejected because of this political hostility. Other highly qualified persons can be deterred from seeking appointment because they are unwilling to subject themselves to political interrogation. The process itself can operate to prevent the best persons nominating and being appointed to the NHRI. It needs to be well regulated if it is to result in appropriate appointments.

Procedures that limit politicisation in an executive appointment process can be used to limit politicisation in a parliamentary election process as well. These include having:

- publicly available selection criteria
- widely advertised vacancies and invitations to organisations to nominate candidates
- an independent expert selection committee to review candidates and prepare a list of those highly qualified for appointment
- election only from among candidates on the list submitted by the selection committee.

6.2.6. Appointment on nomination by interest groups

Some countries provide for NHRI members to be appointed on nomination by interest groups. Under this process, designated groups can each nominate a person to become a member of the NHRI or the designated groups together nominate one or more members to the NHRI. The nomination could lead directly to membership of the NHRI or the executive or parliament could formally make the appointment on the basis of the nominations by the interest groups.

This approach is common for NHRIs established on the consultative council model and the research institute model.[157] Under the consultative council model, the NHRI brings together all those organisations and groups that have an interest in human rights and so its members are often directly selected and appointed by those groups. Under the research institute model, the NHRI is constituted by senior academics appointed by or from universities and other academic institutes. In both cases, the decision making on appointments is effectively removed from government and parliament.

157 See chapter 4 of this manual for discussion of the different models of NHRIs.

Members nominated by interest groups owe their positions to the groups that nominate them, not to the political parties in the government or the parliament. They may be more independent of the State as a result. There may also be a better opportunity for them to be appointed on the basis of their human rights expertise and experience, rather than on the basis of their perceived sympathy to the Government or a political party in the parliament. The process may also be a better guarantee of pluralism due to the pluralist nature of the groups nominating. However, interest groups may also be political and they may be exclusive. If the process is to ensure independence, expertise and pluralism, the criteria for selection must be clear and the designation of interest groups that nominate must be broad and inclusive.

There are no examples of this model of appointment among NHRIs in the Asia Pacific region. An example from the Africa region is the NHRI of Togo.

EXAMPLE OF PROVISIONS FOR THE NOMINATION OF MEMBERS OF NHRIs BY INTEREST GROUPS

Togo
Organic Law No. 2005-04 of 9 February 2005, Article 3

The Commission is composed of seventeen (17) persons elected by the National Assembly by an absolute majority of its members because of their moral integrity, independence of mind, their experience in their respective fields and their interest in human rights:

- **two (02) persons on a list of four (04) persons elected by the National Assembly,**
- **one (01) judge from a list of two (02) judges nominated by their peers,**
- **one (01) lawyer a list of two (02) lawyers nominated by their peers,**
- **one (01) law school teacher from a list of two (02) teachers nominated by their peers,**
- **one (01) doctor from a list of two (02) doctors nominated by their peers,**
- **one (01) human rights activist woman from a list of two (02) activists offered by associations of women's rights' organizations,**
- **two (02) activists of human rights on a list of four (04) activists offered by associations of human rights the most representative,**
- **one (01) human rights activist child of a list of two (02) activists offered by associations of children's rights the most representative,**
- **two (02) unionists a list of four (04) unionists proposed by the most representative trade unions,**
- **one (01) traditional leader from a list of two (02) traditional leaders nominated by their peers,**
- **one (01) character from a list of two (02) persons nominated by the Catholic Church,**
- **one (01) character from a list of two (02) persons nominated by the Protestant Church,**
- **one (01) character from a list of two (02) persons nominated by the Muslim Union,**
- **one (01) character from a list of two (02) persons nominated by the Red Cross and Red Crescent Togo.**

6.3. TERM OF APPOINTMENT

The appropriate length of a term of appointment has been the subject of considerable debate. The Paris Principles do not prescribe a particular period but the connection between the length of the period of appointment and the independence of the members has raised concerns that the period should not be so brief as to compromise the member because of concerns for re-appointment. Experience and practice have established some benchmarks. A term of two years is considered inadequate and an infringement of the requirement of independence. Three years is tolerated at present, but reluctantly, and it may soon be recognised as unacceptable.[158] In general, five-year terms are seen as appropriate to ensure the necessary independence.[159] In some NHRIs, members have terms longer than five years but appointment for life, as often applies in the judiciary, is generally not considered appropriate for an NHRI.[160]

6.4. DISMISSAL

NHRI members, like judges, should be subject to dismissal only for reason of grave misconduct or incapacity in office. There should be limited specific grounds and a special procedure for dismissal.[161] Dismissal is an exceptional action with extraordinary consequences if it is used for political reasons rather than by reason of the grave misconduct or incapacity of the member. The procedure for dismissal of members should be set out in the NHRI's establishing legislation.[162] Typically, the procedure should involve some form of parliamentary inquiry, in which the NHRI member has an opportunity to defend himself or herself and argue the case against dismissal, followed by a resolution of the parliament itself, perhaps with a special majority, to determine the issue after the inquiry.[163] Alternatively, dismissal may follow a decision of an appropriately constituted and mandated judicial body, such as a criminal court.

The SCA has observed:

> … 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.

158 The accreditation review of the Human Rights Commission of Malaysia in 2008 and 2009 considered this length of term and decided it was inadequate. The legislation was amended by the Malaysian parliament and the term extended to three years. This was found acceptable at the time but, in future, it may still be considered too short to ensure independence. Other NHRIs with three-year terms for members are those in Republic of Korea and Sri Lanka. The Provedor of Timor Leste has a term of four years.

159 This is the length of term for members of NHRIs in Afghanistan, Australia (in practice five years but "up to seven years" in the law), India, Indonesia, the Maldives, Nepal, New Zealand and the Philippine. See Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, 2001, p. 16.

160 The legislation for the Australian Human Rights Commission provides for terms of "up to seven years", although appointments are typically made for five years. The members of the NHRIs in Mongolia and Thailand have six-year terms.

161 *GANHRI General Observations as adopted in Geneva in May 2013*, GO 2.1.

162 *GANHRI General Observations as adopted in Geneva in May 2013*, GO 2.1.

163 For a table of bases and methods of dismissal among Asia Pacific NHRIs, see B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, pp. 58-59.

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.[164]

EXAMPLES OF STATUTORY PROVISIONS RELATING TO DISMISSAL OF NHRI MEMBERS

Timor Leste

Law No. 7/2004 Approving the Statute of the Office of the Ombudsman for Human Rights and Justice, Articles 21 and 22

Article 21 Removal from Office

(1) The Ombudsman for Human Rights and Justice can be removed from office by a two-third (2/3) majority in the National Parliament, on the grounds of:

(a) acceptance and performance by the Ombudsman for Human Rights and Justice of an office, function or activity that is incompatible with his or her mandate, as set out under Article 17 above;

(b) permanent physical or mental incapacity preventing him or her from performing his or her functions, attested by a medical panel under the terms of Article 19.6

(c) incompetence;

(d) definite conviction for a criminal offence that carries a prison sentence …;

(e) acts or omissions in contradiction with the terms of his or her oath.

(2) Any motion for the removal from office of the Ombudsman for Human Rights and Justice must have the support of one-fifth (1/5) of the Members of Parliament.

(3) The National Parliament shall set up an ad hoc enquiry committee to review and investigate the matter that is the object of the motion for removal.

(4) The findings of the ad hoc enquiry committee provided for in the preceding subarticle shall, as soon as possible, be reported to the Ombudsman for Human Rights and Justice, who has the right of appeal to the Plenary. Such appeal shall be dealt with in a plenary session specifically scheduled to take a vote on the removal.

(5) The findings of the ad hoc enquiry committee shall not be voted on until the appeal lodged has been reviewed and the Ombudsman for Human Rights and Justice heard.

Article 22 Suspension from office

Where the Ombudsman for Human Rights and Justice is indicted for an offence that carries a penalty exceeding one (1) year's imprisonment, the National Parliament shall decide through a two-third (2/3) majority of its Members whether or not to suspend him or her from office.

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164 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.1.

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 18

The President may, in coordination with the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw, terminate the term of office of any member of the Commission on any of the following grounds:

(a) If he/she is determined by a medical board of competent jurisdiction to be unfit to continue in office by reason of permanent physical or mental incapacity;

(b) If he/she is convicted and sentenced to imprisonment by a court of competent jurisdiction for a criminal offence;

(c) If he/she is determined by a court of competent jurisdiction to be insolvent;

(d) If he/she violates the regulations of the Commission.[161]

Samoa
Ombudsman Komesina o Sulufaiga Act 2013

15. Removal and suspension

(1) The Head of State, acting on the recommendation of the Legislative Assembly, may remove the Ombudsman from office for inability to perform the functions of the office arising from infirmity of body or mind or for misconduct in office.

(2) The Ombudsman may not otherwise be removed except under this section.

(3) If the Legislative Assembly considers that the question of removal from office ought to be investigated, the Legislative Assembly may appoint a tribunal, consisting of:

(a) a retired judge in Samoa or elsewhere or a lawyer qualified for appointment as a judge of the Supreme Court, as chairperson; and

(b) two (2) other members.

(4) If the question relates to infirmity of body or mind, one of the members under subsection (3)(b) must be a medical practitioner registered under the Medical Practitioners Act 2007.

(5) The tribunal must enquire into the matter and provide a written report of the facts and its findings to the Legislative Assembly.

(6) If the question of removing the Ombudsman has been referred to the tribunal, the Head of State, acting on the recommendation of the Legislative Assembly, may suspend the person from office pending the determination of the question of removal.

16. Automatic vacation of office

(1) As an exception to section 15, the office of the Ombudsman automatically becomes vacant if the Ombudsman:

(a) becomes subject to an order of medical custody under the Mental Health Act 2007; or

(b) has been adjudged bankrupt by a court of competent jurisdiction; or

(c) has been duly nominated under section 48 of the Electoral Act 1963; or

(d) has been convicted by a court or tribunal of competent jurisdiction, in Samoa or elsewhere, of any of the following:

►►

165 The Pyidaungsu Hluttaw is the Parliament of Myanmar. The Pyithu Hluttaw is the House of Representatives and the Amyotha Hluttaw is the House of Nationalities.

(i) a serious criminal offence;

(ii) misuse of public funds;

(iii) a provision of this Act.

(2) In this section, "serious criminal offence" means an offence that prescribes a fine of at least 20 penalty units or imprisonment of at least two (2) years.

(3) The effective date of vacation of office is the date of the order, adjudication or conviction.

(4) If there is doubt as to the effective date of vacation of office, the Speaker may determine the date.

6.5. IMMUNITY FROM LEGAL ACTION

The independence of an NHRI requires that its members be granted immunity from liability at law, criminal or civil, for their official actions as NHRI members.[166] Immunity protects members from being prosecuted by a hostile government or government official or any other person. It protects them from punishment and from civil damages arising from their official activity as NHRI members. So, for example, they cannot be imprisoned if they make a finding against the government or a government official and they cannot be sued in defamation if they criticise a government minister or a police officer. In some States, criminal prosecution and civil proceedings, especially in defamation, are used both to punish critics and to deter those who would criticise if they could. NHRI members should be free from these threats so that they can perform their responsibilities without fear or favour.

The SCA has 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.[167]

OHCHR has recommended that the immunity provisions extend to cover NHRI immunity from other forms of State and police coercive action.

> Moreover, members and staff should be held inviolable and immune from search, seizure, requisition, confiscation or any other form of interference in their archives, files, documents, communications, property, funds and assets of the office or in their possession. This immunity is important to protect the ability of the NHRI to gather and maintain evidence and documents, and is vital to ensuring the safety of complainants and witnesses. This, in turn, is a requisite for the NHRI to undertake its responsibilities, which will often involve dealing with allegations of violations concerning individuals in positions of power, including the police, the armed forces and the security services.[168]

166 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.3.

167 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.3.

168 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 42.

EXAMPLES OF PROVISIONS IN NHRI LAWS GRANTING IMMUNITY FROM PROSECUTION TO MEMBERS

Afghanistan
Law on the Structure, Duties and Mandate of the AIHRC, Article 16

Members and all staff of the Commission, while carrying out their activities under their legal mandate, are immune from prosecution.

Malaysia
Human Rights Commission of Malaysia Act 1999, s. 18

(1) No action, suit, prosecution or proceeding shall be instituted in any court against the Commission or against any member, officer, or servant of the Commission in respect of any act, neglect or default done or committed by him in such capacity provided that he at the time had carried out his functions in good faith.

(2) Any member, officer or servant of the Commission shall be required to produce in any court, any document received by, or to disclose to any court, any matter or thing coming to the notice of the Commission in the course of any inquiry conducted by the Commission under this act.

(3) No action or proceeding, civil or criminal shall be instituted in any court against any member of the Commission in respect of any report made by the Commission under this Act or against any other person in respect of the publication by such person of a substantially true account of such report.

Sri Lanka
Human Rights Commission of Sri Lanka Act 1996, s. 26(1)

No proceedings civil or criminal, shall be instituted against any member of the Commission or any officer or servant appointed to assist the Commission, other than for contempt, or against any other person assisting the Commission in any other way, for act which to good faith is done or omitted to be done, by him, as such member or officer or servant or other person.

GOOD PRACTICE

Whatever process for appointment is adopted, it should be set out in the NHRI's establishing legislation. The legislation cannot be excessively detailed but it should provide:

- the required qualifications for members
- the requirement to advertise vacancies and invite nomination of suitable candidates for appointment
- the basis on which, and the process by which, candidates will be reviewed and assessed
- the basis on which, and the process by which, candidates will be appointed or elected.

The legislation should specify the term of office for members. The term should be at least five years and not more than seven years.

▶▶

The legislation should set out the grounds on which a member ceases to hold office, including death, incapacity, prolonged absence, serious criminal conviction and bankruptcy. It should also contain provisions setting out the procedure to be followed to dismiss a member for serious incapacity or serious misconduct.

To protect members from harassment by the executive and its agents in relation to the performance of their functions and responsibilities, NHRI members should be granted immunity from legal proceedings arising from their role.

MODEL CLAUSE

Prospective Commission Members shall meet the following criteria:

(a) recognition for integrity and good character

(b) capability of fulfilling the position with independence and impartiality

(c) extensive knowledge, skills or experience in one or more of the following:

  i. the principles of human rights and relevant domestic and international human rights law

  ii. the promotion and protection of human rights

  iii. good governance and public administration

(d) demonstrated commitment to the achievement of the objectives of the Commission.

In considering the appointments, the overall composition of the Commission shall be considered to ensure that the Commission as a whole has

(a) knowledge of, or experience in the following:

  (i) domestic human rights law and international human rights law

  (ii) current economic, employment and social issues

  (iii) cultural issues and the needs and aspirations of individuals, different communities and population groups in society

  (iv) other diverse matters likely to come before the Commission and

(b) skills in, or experience in the following:

  (i) human rights advocacy

  (ii) public education

  (iii) public governance, administration and financial management and

  (iv) civil society , academia, social welfare, community development and law.

(c) equitable representation of men and women, and of the diversity of society, including factors such as ethnicity, religion, culture, language, disability, sexual orientation, gender identity and sex characteristics.

At least three months before a vacancy among members of the Commission arises, the coming vacancy should be notified publicly and applications invited from suitably qualified persons. Members of the community may also nominate suitably qualified persons for consideration. A selection committee, at least half of whose members shall be independent of the Government, shall consider all nominations and determine those that meet the selection criteria to a high or very high standard. It shall also report on the nominees in terms of the overall composition of the Commission.

Members of the Commission shall be appointed for a term of five years. A member shall hold office after the expiry of the term until the appointment of a person to fill the position being vacated.

►►

Members of the Commission shall only be removed for serious incapacity or serious misconduct, namely,

(a) death

(b) permanent physical or mental incapacity preventing the performance of functions as a member of the Commission, as determined by an appropriately constituted and qualified court or tribunal

(c) final conviction, without further possibility of appeal, for a criminal offence carrying a minimum sentence of imprisonment for a period of x months, as determined by an appropriately constituted and qualified criminal court

(d) a final finding of corruption, without further possibility of appeal or review, by a court or a specialist independent anti-corruption institution

(e) acceptance and performance of an office, function or activity that is incompatible with membership of the Commission

(f) bankruptcy.

The procedure for the removal of a member shall be the same as that provided for the removal of a Justice of the highest court in the country.

No action, suit, prosecution or proceeding shall be instituted in any court, civil or criminal, against any member or officer of the Commission in respect of any act, neglect or default done or not done in good faith in the performance of functions under this law.

KEY POINTS: CHAPTER 6

- The Paris Principles do not prescribe any particular process for the appointment of NHRI members.
- The process of appointment should be transparent and consultative, with applicants sought broadly, including by advertising, from a wide range of social groups.
- There should be clear, publicly available criteria for NHRI members and those being considered for appointment should be assessed against those criteria.
- Processes for the appointment of members vary from country to country and include executive appointment, parliamentary election and appointment by particular sectors or groups.
- NHRI members should be appointed to office for the term specified in the legislation.
- NHRI members should only be able to be dismissed prior to the expiry of their terms on serious grounds specified in the legislation and by a special procedure set out in the legislation.

Chapter 7: Pluralism[169]

KEY QUESTIONS

- **What are the requirements of the Paris Principles relating to the pluralism of NHRIs?**
- **What is pluralism?**
- **How can pluralism be ensured?**

The Paris Principles require that the composition of NHRIs "ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights".[170] These "social forces" include:

- NGOs responsible for human rights and efforts to combat racial discrimination
- trade unions
- concerned social and professional organisations; for example, associations of lawyers, doctors, journalists and eminent scientists
- trends in philosophical or religious thought
- universities and qualified experts
- parliament
- government departments.

If the representatives of government departments are included among NHRI members, they should participate in the deliberations only in an advisory capacity, not as voting members or decision makers.[171] The SCA, however, has interpreted the requirement of independence as indicating that neither members of parliament, nor government departments should be represented on the governing body, to avoid the potential for political interference. Should they be represented, the SCA has suggested that a rule of procedure exclude them from final deliberations on strategic priorities or legal and policy decisions.[172]

The SCA has further stated:

> 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.[173]

The requirement of pluralism is not limited to NHRI members, but to NHRIs as a whole and to their internal and external structures for consultation – members, staff and committees. Some NHRIs have a single member, or a small number of members, and it would be impossible to represent all the relevant "social forces" among the NHRI members. Therefore the composition of the staff, and of any advisory committees or working groups, should reflect the broader community to ensure that the NHRI itself is able to hear the broadest range of voices and views.

169 See also section 3.4.1 in this manual.

170 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1. See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.7.

171 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1.

172 *GANHRI SCA General Observations, as adopted in Geneva in May 2013*, GO 1.9.

173 *GANHRI SCA General Observations, as adopted in Geneva in May 2013*, GO 1.7.

The SCA has observed that "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,

- members of the decision-making body represent different segments of society…
- pluralism through the appointment procedures of the governing body…
- pluralism through procedures enabling effective cooperation with diverse societal groups …
- pluralism through staff that are representative of the diverse segments of society…"[174]

Pluralism through staff is considered especially relevant for single-member institutions.

EXAMPLES OF STATUTORY PROVISIONS RELATING TO PLURALISM OF NHRI MEMBERS

Malaysia
Human Rights Commission of Malaysia (Amendment) Act 2009, s. 5

(3) The members of the Commission shall be appointed from amongst men and women of various religious, political and racial backgrounds who have knowledge of, or practical experience in, human rights matters.

Nepal
Interim Constitution 2007, s. 131

(1) There shall be a National Human Rights Commission of Nepal, which shall consist of the Chairperson and Members…

(2) There shall be maintained diversity including gender perspective while making appointment of the Chairperson and Members of the National Human Rights Commission.

Republic of Korea
National Human Rights Commission Act, Act No. 6481, Article 5

8 The President of the Republic of Korea shall appoint to be commissioners under the following subparagraphs among persons of whom possess professional knowledge of and experience with human rights matters and have been recognized to be capable of fairly and independently performing duties for the protection and promotion of human rights.

9 … Four or more of the commissioners shall be women.

Qatar
Decree Law No 17 of 2012 on the Organisation of the National Human Rights Committee, Article 5

The NHRC shall be comprised of no less than seven civil society representatives to be selected from experienced human rights advocates in addition to one representative from each of the following authorities:

1 – Ministry of Foreign Affairs
2 – Ministry of Interior
3 – Ministry of Labour
4 – Ministry of Social Affairs
5 – the Supreme Council for Family Affairs.

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174 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.7.

Each of the entities above shall nominate its representative for the NHRC's membership. Those representatives shall attend the NHRC's meetings but shall not have the right to vote. Members of the NHRC shall be appointed by an Emiri decree.

GOOD PRACTICE

While individual selection criteria should highlight the fundamental skills, knowledge and experience required of each applicant, in subsequently determining the overall composition of the Commission there should be a focus on ensuring a broad mix of relevant skills and diversity (including equitable gender representation).

MODEL CLAUSE

The Commission's members and staff should reflect equitable representation of men and women, and of the diversity of society taking account of, among other things, ethnicity, religion, culture, language, disability, sexual orientation, gender identity and sex characteristics

Datuk Dr Khaw Lake Tee, Vice Chairperson, Human Rights Commission of Malaysia addresses the media. Photo by the Human Rights Commission of Malaysia.

KEY POINTS: CHAPTER 7

- The Paris Principles require that NHRIs reflect the pluralist nature of their societies in their members and staff.
- Legislation establishing NHRIs can specify pluralist factors to be taken into account in the appointment of members and staff.
- Pluralism can be promoted through open selection procedures, by which vacancies are broadly advertised and candidates are independently assessed against those criteria.
- Pluralism can also be promoted through procedures for consultation and cooperation with diverse elements of society.

Chapter 8: Adequate funding and resources

KEY QUESTIONS

- **What are the requirements of the Paris Principles relating to the funding NHRIs?**
- **What are "adequate resources"?**
- **What are the processes by which NHRIs are funded?**
- **Can NHRIs accept funds from donors?**
- **How should NHRIs be accountable for their expenditure?**

8.1. ADEQUATE FUNDING

NHRIs are not entirely independent financially. They are State institutions, like courts, and, like courts, they rely on States to provide their core operational budgets. The Paris Principles recognise clearly the connection between independence and funding. They provide that an NHRI should have adequate funding "to enable it to have its own staff and premises, in order to be independent of the Government and not subject to financial control that might affect its independence".[175] The level of funding must be "adequate" but there is no statement as to what is adequate, even by implication, say, by giving indicative levels of staffing and other resources required. This is entirely a matter that is to be determined on a State-by-State basis, according to local conditions.

The nature of financial independence is complex. States – governments and parliaments – determine State budgets according to their own priorities and to the resources available to them. NHRIs do not replace governments and parliaments. An NHRI cannot require its government or its parliament to allocate a specific proportion of State funds or a specific amount to it, only an amount that is "adequate" to its needs. The requirement of independence, however, entitles NHRIs to have control over their budgets once they are allocated.

The SCA has observed that:

> … [t]o 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… 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.[176]

Allocations from States to NHRIs should be general allocations, not earmarked for particular activities or purposes and not subject to governmental approval prior to being expended. Otherwise States could in fact determine their NHRI's programs and priorities by earmarking funds or controlling their expenditure. Funds should be allocated to the NHRI and then the NHRI should be able to determine their use independently of government. This is the meaning of financial independence.

175 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 2.

176 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.10.

Perhaps uniquely among NHRIs, the constitutional provision establishing Thailand's NHRI recognises and protects its "autonomy in personnel administration, budgeting and other activities as provided by law".[177]

NHRIs can supplement their State's funding by receiving grants from donors. However, donor grants should not compose the core funding of the NHRI, "as this is the responsibility of the state".[178] Donors' grants should be limited to funding specific additional projects.

8.2. ADEQUATE RESOURCES

The Paris Principles require that NHRIs have "infrastructure which is suited to the smooth conduct of [their] activities".[179] Infrastructure is not limited to funding. It includes all that NHRIs require to perform their functions and discharge their responsibilities. The Paris Principles refer specifically to premises and staff but infrastructure also includes information and communications technology, transport, educational materials, staff and institutional capacity building activities and so on.

In providing for an NHRI's infrastructure, the Paris Principles refer to "its own staff and premises". This expression makes it clear that NHRIs require premises and staff over which they have exclusive control, regardless of the manner in which they are provided. For example, the premises may be a government office but the NHRI must exercise full control over opening and closing the office, access to the office and the security of information and persons in the office. The staff may be civil servants but the NHRI must have full control over selection, promotion, remuneration, performance, direction and accountability.[180] The premises and staff must be "its own".

The SCA has commented that NHRIs can accept staff on secondment from other organisations but that:

- senior staff positions should not be filled by secondees
- the proportion of secondees should not exceed a quarter of the staff of the NHRI.[181]

The Paris Principles require that NHRIs have adequate funding for these purposes.[182] There is no statement as to what is adequate, even by implication, say, by giving indicative levels of staffing and other resources required. This is entirely a matter that is to be determined on a State-by-State basis, according to local conditions.

However, the SCA has provided the following guidance:

> 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…;

177 Constitution of the Kingdom of Thailand B.E. 2550 (2007), s. 256.

178 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.10. The SCA has recognised, however, "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". See: *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.10. This recognition extends to NHRIs in extraordinary situations, such as in territories under foreign occupation or in war zones. The SCA accepts such situations as extraordinary but temporary and has accredited the NHRIs affected in spite of the total inadequacy of State support. See the report on the Palestine Independent Commission on Human Rights in SCA *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 26-30 March 2009, p. 7; and the reports on the Afghanistan Independent Human Rights Commission in SCA *Report and Recommendations of the Sub-Committee on Accreditation*, 22-26 October 2007, p. 8, and in SCA *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 3-6 November 2008, p. 11.

179 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 2.

180 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.4.

181 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.5.

182 Paris Principles 'Composition and guarantees of independence and pluralism' para 2.

(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...[183]

8.3. THE BUDGETING PROCESS

The process by which the level of State funding is determined and by which it is provided is critical for the independence of NHRIs. This has been recognised in some countries and attempts made to reduce the risks to independence. The Paris Principles do not prescribe any specific process. The process varies from State to State according to the constitutional and political arrangements for State budgeting and allocations.

In most States, in both presidential and parliamentary systems, approval of the annual State budget and allocation of funds are parliamentary responsibilities. Typically, the budget is prepared by the executive and submitted to the parliament for parliamentary consideration and approval. It may be examined in parliament in one or more committees and debated in plenary session. It may be altered during the course of the parliamentary consideration, either by the executive itself before approval or by a formal parliamentary amendment. In presidential systems, parliaments are usually more active and more independent in initiating budgetary measures and debating government proposals for expenditure.

There are wide variations in the amount of detail in the budget debated and finally approved in parliament. In some States, the budgets that are approved are very general and the executive is able to decide allocations within the very general budget headings approved by the parliament. In those circumstances, the executive has very wide discretion to determine how much money is allocated, for what purpose and to which agency or institution. For example, there may be a general budgetary item on "law and justice", with little or no disaggregation within that item. The executive can then decide how to distribute the amount allocated for "law and justice" among the department or ministry of justice, the courts and tribunals, the police, prosecutorial and legal defence agencies, prisons and independent legal institutions, including the NHRI, provided that the total expenditure does not exceed the amount provided in the approved budget for "law and justice". The executive can also make cuts to some allocations and increase others during the course of the year without parliamentary approval, provided again that the total expenditure does not exceed the amount allocated by parliament. By contrast, other States budgets have to be very detailed and there will need to be a specific item for the NHRI.

8.4. A "LOW RISK" PROCESS

The independence of NHRIs is respected and protected more effectively where the budgetary process is as transparent and as consultative as possible and involves the NHRI itself. It is most at risk where the NHRI budget is decided in confidential internal deliberations within the executive, without parliamentary or public scrutiny or debate.

A budgetary process that would present a low risk to the independence of NHRIs would provide that:

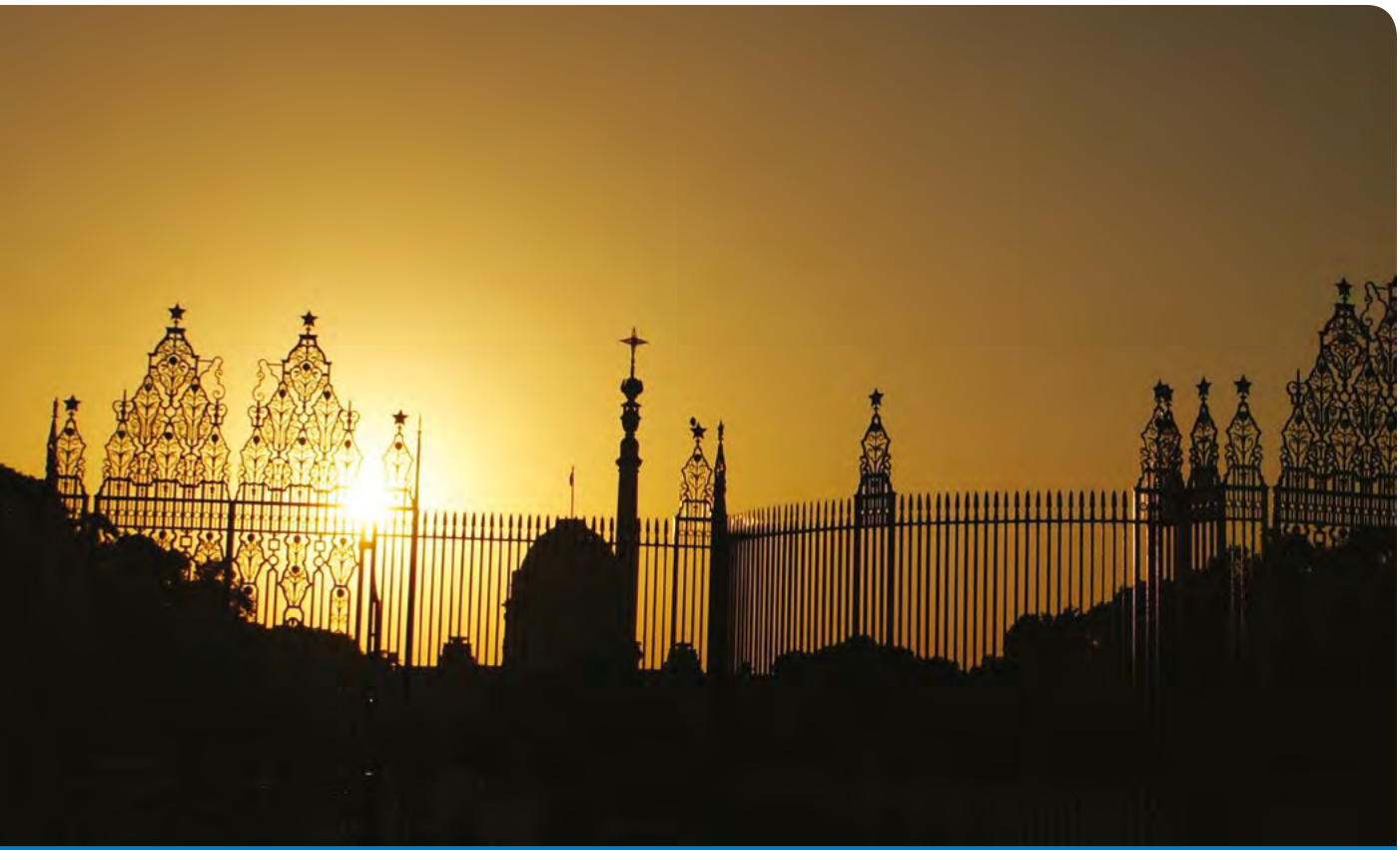
- the NHRI prepares its own budget proposal, reflecting its view on the level of resources that would be "adequate" to the responsibilities given to it by law and taking into account the economic and other dimensions of the context of the country in which it is working
- the NHRI discusses its budgetary proposal with the relevant budgetary officials within the executive and, if necessary, with senior ministers

183 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.10.

- the executive agrees on a proposed allocation to the NHRI and includes that allocation as a specific item within the State budget presented to the parliament for approval
- an appropriate parliamentary committee considers the proposed allocation to the NHRI and discusses it with members of the NHRI to assess its adequacy
- the parliamentary committee recommends any change to the proposed allocation to the NHRI that it considers necessary or desirable and that recommendation is considered by the executive and by the parliament
- the specific allocation to the NHRI is approved by the parliament, either as a separate allocation or as part of the State budget
- the NHRI is authorised to determine its expenditure within the total amount allocated to it by the parliament.

8.5. AN EXCLUSIVELY PARLIAMENTARY PROCESS

A few States and NHRIs have gone further in developing ways to insulate the independence of the NHRI from the State budgetary process. They have made the NHRI's budget entirely a matter for the parliament, without any role for the executive beyond being consulted. The NHRI makes a proposal for its budget directly to the parliament and has it considered by the parliament, usually a parliamentary committee in the first instance. The executive may be provided with a copy of the NHRI's proposal and may be invited to submit its views on the proposal to the committee or the parliament in plenary session but it has no role in determining the amount the NHRI is allocated. That determination is made by the parliament in plenary session and the amount allocated to the NHRI is provided to it by the State treasury.



Indian Parliament gates at sunset. Photo by Clara & James Dunning, reproduced under a CC BY-NC-SA 2.0 license.

EXAMPLES OF FUNDING PROVISIONS IN NHRI LEGISLATION

Mongolia
National Human Rights Commission of Mongolia Act, 7 December 2000, Article 22

22.1. Expenses for the activities of Commissioners shall be financed from the State Consolidated Budget, and the State shall provide economic guarantees for carrying out his/her activities.

22.2. The State Great Hural [Parliament] shall approve and reflect specifically the budget of the Commission in the State Consolidated Budget on the basis of a latter's proposal, and this budget shall fulfil the requirements for the independent conduct of its activities.[184]

Thailand
National Human Rights Commission Act B.E. 2542 (1999), s. 21

The Office of the National Human Rights Commission shall, with the consent of the Commission, submit an estimated annual budget to the Council of Ministers via the President of the National Assembly for its consideration of appropriation budgets, adequate for the independent administration of the Commission, in an annual appropriations bill or supplementary appropriations bill, as the case may be. In this matter, the Council of Ministers, the House of Representatives, the Senate or the Standing Committees may, if requested by the President, allow the President or the persons entrusted by the President to give explanations.

India
Protection of Human Rights Act 1993, s. 32

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

Indonesia
Law No. 39 of 1999 Concerning Human Rights, s. 98

The budget for the National Commission on Human Rights shall come from the National Budget.

Jordan
National Centre for Human Rights Law, No. 51/2006, Article 21

Despite the provisions of any other legislation, the Center, as well as its funds, transactions and non-investment revenues, shall be exempt of all taxes and fees of whatever type.

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184 The State Great Hural is the Mongolian parliament.

Myanmar
***Myanmar National Human Rights Commission Law*, No. 21/2014, s. 46**

The Government shall provide the Commission with adequate funding to enable it to effectively discharge the functions assigned to it by this law.

Philippines
***Executive Order No. 163*, May 5 1987, Article 5**

The approved annual appropriations of the Commission on Human Rights shall be automatically and regularly released.

8.6. SUPPLEMENTARY FUNDING

Most NHRIs, perhaps all of them, find that their State funding is insufficient to enable them to do all they want to do. Often they find that the State funding is so insufficient that they cannot do all they consider they need to do. They therefore seek supplementary funding outside the ordinary State budgetary process. There are a number of approaches taken.

First, NHRIs can seek funding from specific governmental agencies for specific projects in which the agencies are interested. For example, an NHRI receives its core funding from the State budget but that funding is not sufficient to enable it to conduct a human rights education project in schools that it wants to do. It might receive supplementary funding from the State education ministry for that purpose. Similarly, NHRIs can seek specific project funding from domestic organisations outside government. Civil society organisations or even private corporations could be interested in a project – for example, human rights education in schools – that an NHRI wants to undertake. They may decide to make a grant to the NHRI for that purpose.

Second, NHRIs could undertake joint projects, on a cost-shared basis, with other organisations, governmental and non-governmental. A project of human rights education in schools could be a joint project between the NHRI and the education ministry, with both agencies providing funds or other resources, such as staff and materials, for the project. It is a cooperative activity that can have benefits beyond the actual project itself. In a joint project on human rights education in schools, for example, the education ministry becomes far more involved in human rights and its staff acquire expertise and experience in conducting human rights education. The education ministry itself may decide to continue human rights education after the project with the NHRI has been completed and it will be able to do so because it will then have expert staff to implement it. Joint projects can be undertaken with NGOs and with private corporations too.

Third, NHRIs could undertake work on a cost-recovery basis. This is not necessarily restricted to a specific project. It does not involve cost-sharing. The NHRI is providing a service to another organisation and its costs of doing so are met by that organisation. A private school may be interested in human rights education for its students but its teachers do not have expertise in the area. It contracts the NHRI to train its teachers so that the teachers can provide the human rights education on a continuing basis as part of the school curriculum. The school meets the NHRI's costs of providing the training, including the salary costs of the NHRI trainers. This type of work can move beyond simple cost-recovery to permit the NHRI to make a surplus on the service provided, so that it can make a contribution to the NHRI's other work and its total budget.

Fourth, NHRIs can obtain funding from international donors, both governmental and inter-governmental. International donors are only interested in funding NHRIs in developing countries. This source of supplementary funding is not available to NHRIs in high income or middle income countries. In some States, domestic law prohibits donor funding to NHRIs or restricts it to funding for specific functions, such as education and training.

EXAMPLE OF POWER TO OBTAIN EXTERNAL FUNDING IN NHRI LEGISLATION

Nepal
National Human Rights Commission Act 2012, s. 20

The Commission may to discharge its responsibilities effectively in accordance with the Constitution, this Act and other prevailing laws, maintain necessary contact and relation

with the national and international organizations related with protection and promotion of human rights and enter into agreements with them in order to exchange cooperation.

If financial matters constitute part of such agreement struck pursuant to Sub-section (1), the Commission shall have to seek approval from the Finance Ministry with regards to such agreement.

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 47

The Commission may receive unconditional contributions from any individual or organization that do not prejudice the independence of the Commission concerning the promotion and protection of human rights.

EXAMPLE OF A LIMITATION ON EXTERNAL FUNDING IN NHRI LEGISLATION

Malaysia
Human Rights Commission of Malaysia Act 1999, s. 19

(1) The Government shall provide the Commission with adequate funds annually to enable the Commission to discharge its function under this Act.

(2) The Commission shall not receive any foreign fund.

(3) Notwithstanding subsection (2), the Commission may receive funds without any conditions from any individual or organisation only for the purpose of promoting awareness of and providing education in relation to human rights as may be approved by the Commission.

All four methods of supplementary funding raise two difficulties.

- They may undermine the State obligation to provide "adequate resources" to NHRIs by providing an excuse for States not to fund NHRIs adequately. They may even lead States to reduce the state budgetary allocation to NHRIs on the basis that other means of fundraising are available to NHRIs and should be pursued.
- They may give rise to a different form of dependence in NHRIs, thereby undermining their independence. Dependence on international donors, for example, is no more acceptable than State interference with the independence of NHRIs. It is as inconsistent with the Paris Principles.

The SCA has warned about these risks:

> 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 ...

> Funds should not be tied to donor defined priorities, but rather to the pre-determined priorities of the National Institution.[185]

However the SCA has recognised that extraordinary situations can justify NHRIs being wholly or largely funded by international donors on a temporary basis.

CASE STUDIES

Afghanistan

The Afghanistan Independent Human Rights Commission (AIHRC) was established in 2002. It has worked under extreme difficulties in a country that has experienced violent conflict for over 30 years. Although the Government of Afghanistan has repeatedly pledged to provide funds to support the AIHRC's operations, the Government has never done so. The SCA has had to consider the AIHRC's situation when it has considered its applications for accreditation.

At its meeting in 2007, the SCA reported:

> **The Sub-Committee notes the following concerns: … It refers to the General Observation on "Adequate Funding", in particular that funding from external sources, such as from donors or development partners, should not compose the core funding of the NHRI as it is the responsibility of the State to ensure the NHRI's minimum budget which allows it to operate in the fulfilment of its mandate.[186]**

When it returned to consider further the status of the AIHRC, the SCA reported:

> **It recognizes the need for the international community to continue to engage and support the AIHRC in order to ensure it receives adequate funding, until such time when the State will be able to cover the AIHRC's adequate funding.[187]**
>
> **The Sub-Committee expresses its concern over any attempt to undermine the effectiveness and independence of the AIHRC, in particular through financial or budgetary constraints and/or amendments of its legal structure.**

Palestine

The Palestine Independent Commission for Human Rights (ICHR) was established on 30 September 1993 by the Presidential Decree, "Establishing the Palestinian Independent Commission for Citizens' Rights".[188] The ICHR's mandate, as defined by the Decree, was to "follow-up and ensure that different Palestinian laws, by-laws and regulations, and the work of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organization (PLO) meet the requirements for safeguarding human rights". The Decree also laid out that the ICHR could draft its own constitution, laws and basic regulations in a manner that would ensure its independence and effectiveness.

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185 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.10.

186 SCA, *Report and Recommendations of the Sub-Committee on Accreditation*, 22-26 October 2007, p. 8.

187 SCA, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 3-6 November 2008, p. 11.

188 Published in the Palestinian Gazette, No.2 (January 1995), Decision No. 59 of 1994, p. 33.

Its status was later enhanced to a constitutional institution through the Palestinian Amended Basic Law, promulgated on 18 March 2003, which affirmed the ICHR's status as an independent national human rights institution. Like the AIHRC, the ICHR has always worked under extreme difficulties. Palestine is under foreign military occupation. Domestic resources are very limited and so the ICHR has been reliant on foreign donors for the great majority of its annual budget.

The SCA had to consider the ICHR's funding situation in March 2009 when it considered the ICHR's accreditation status. While acknowledging the unique situation of the ICHR, it noted with concern that:

> **The budget of the [ICHR] is nearly totally funded through international donor funding. The SCA refers to General Observation 2.6 "Adequate Funding", in particular that funding from external sources should not compose the core funding of the NHRIs.[189]**

There are ways in which NHRIs can reduce the risks to their independence in seeking and accepting supplementary funding. Supplementary funding should be:

- directed towards time-limited discretionary projects, not core activities, so that the NHRI does not become dependent on it
- sought only for projects already identified in the NHRI's strategic plan so that the NHRI remains in control of its program, rather than tailoring its activities to the interests and priorities of potential external funders
- under the control of the NHRI and its senior managers, not of the funders, whether governmental or non-governmental, domestic or international
- publicly reported and accounted for in at least the same manner as the core budget is publicly reported and accounted for.

Staff from the Afghanistan Independent Human Rights Commission. Photo by APF/Benjamin Lee.

189 SCA, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, 26-30 March 2009, p. 7.

8.7. ACCOUNTABILITY FOR EXPENDITURE

Receiving public funding carries certain obligations. NHRIs are independent and must have control over their priorities, including the priorities they have in the expenditure of their funds. However, they must be accountable for the proper expenditure of public money in the same manner as all other State institutions. It is not an infringement of the independence of an NHRI for it to have to meet the standard accountability requirements of other State institutions in its country. NHRIs should not be subjected to higher or more onerous accountability obligations than other similar institutions. Higher or more onerous obligations may indeed constitute a limitation on independence that is inconsistent with the Paris Principles. However, NHRIs should expect and accept that they will be subject to the same level of accountability as similar institutions.

Typically, the financial accountability obligations can include procedures for approving expenditure, keeping accounts and records of income and expenditure, annual auditing and reporting to parliament.

The imposition of accountability obligations can take three approaches:

- include in NHRI legislation a provision that subjects the NHRI to the standard legislation on accounts and expenditure that applies to all or most States institutions, authorities, ministries and departments
- provide directly in the NHRI legislation its own accountability obligations
- provide in the relevant financial accountability laws their application to the NHRI.

EXAMPLES OF FINANCIAL ACCOUNTABILITY PROVISIONS IN NHRI LEGISLATION

Malaysia
Human Rights Commission of Malaysia Act 1999, s. 20

The Statutory Bodies (Accounts and Annual Reports) Act 1980 [Act 240] shall apply to the Commission.

India
Protection of Human Rights Act 1993, s. 34

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

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(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded only to the Central Government by the Commission and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.

Qatar
Decree Law No 17 of 2012 on the Organisation of the National Human Rights Committee, Article 18

The NHRC shall have an auditor to be appointed by the NHRC Chairman for auditing the NHRC's accounts and to report thereon to the Chairman within a period not exceeding two months from the end of the fiscal year.

GOOD PRACTICE

The parliament and government should ensure that the NHRI has adequate funds and other resources, consistent with the national developmental context, necessary to perform its functions and responsibilities. It should have sufficient funds, in particular, to employ staff, maintain an office and be accessible to all groups in the country. The funds should be provided through special allocation by the parliament or through the ordinary processes for the State budget. The NHRI should not be subject to direction in relation to the expenditure of its funds once they are provided, subject only to its accounting for expenditure in accordance with the ordinary processes for financial accountability of State institutions. The NHRI should be able to receive additional funds from sources outside the State for the purpose of specific projects or activities. The additional funds should be provided unconditionally, except for specifying the purpose for which they are provided and subject only to accountability for their expenditure.

MODEL CLAUSES

The parliament shall provide the Commission with an adequate budget to enable it to discharge effectively the functions assigned to it by the law. The budget shall be appropriated by parliament in accordance with the ordinary procedures for the determination and allocation of the annual state budget. The Commission shall have financial and administrative independence.

The Commission may receive unconditional contributions for specific projects from any individual or organisation that do not prejudice the independence of the Commission concerning the promotion and protection of human rights.

The Commission shall cause proper accounts to be kept of its income, expenditure, assets and liabilities. The accounts of the Commission shall be audited by the public audit authority according to ordinary procedures for the auditing of State institutions.

The Commission's revenues, funds and monetary transactions shall be exempt from all taxes.

KEY POINTS: CHAPTER 8

- The Paris Principles require that NHRIs have financial independence and adequate resources.
- States have an obligation to fund NHRIs for their core operations, to enable them to carry out their statutory responsibilities.
- The process by which NHRIs are funded should not undermine their independence.
- NHRIs can accept supplementary funds from donors.
- NHRIs should be subject to the usual financial accountability requirements common to all State institutions of a similar nature.

Part II: The responsibilities and functions of NHRIs

Chapter 9:
Broad mandate – the promotion and protection of human rights

KEY QUESTIONS

- **What is the core competence of NHRIs?**
- **For what human rights should NHRIs be responsible?**
- **What is the promotion of human rights?**
- **What is the protection of human rights?**

9.1. THE CORE COMPETENCE OF NHRIs FOR HUMAN RIGHTS

NHRIs have responsibility for both the promotion and the protection of human rights. This is the mandate or core competence of all NHRIs.[190] These responsibilities respond directly to the State obligation under international human rights law to respect, to protect and to fulfil all human rights – civil, cultural, economic, political and social.

NHRIs' "competence to promote and protect human rights" must be "as broad a mandate as possible".[191] The Paris Principles do not define human rights or limit the definition of human rights. The term therefore must be given its ordinary meaning in international law as all those rights recognised in international law as human rights. NHRIs should not have their jurisdiction restricted to some human rights only or to those human rights that have domestic recognition or definition. The broadest possible mandate for human rights required by the Paris Principles includes all internationally recognised human rights.

The SCA has said:

> 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.[192]

It is often argued that the mandate of an NHRI should extend only to international human rights instruments to which the State is a party. However, this argument fails to recognise the application of customary international law, including international humanitarian law, as well as an NHRI's mandate to promote human rights observance, including through advocating for the ratification or accession to international human rights instruments to which the State is not yet a party.

NHRIs that comply with the Paris Principles do not and cannot include institutions established with responsibility only for a specific area of human rights or for the rights of a specific group. Institutions established to promote and protect only women's rights or children's rights or minority rights or to deal only with racial discrimination or sex discrimination are important institutions doing important human rights work. However, they are not NHRIs established in conformity with the Paris Principles.

190 Paris Principles, 'Competence and responsibilities', para. 1.

191 Paris Principles, 'Competence and responsibilities', paras. 1 and 2.

192 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.2.

EXAMPLES OF STATUTORY PROVISIONS RELATING TO THE DEFINITION OF HUMAN RIGHTS

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014, s. 2(c)

Human Rights means:

(1) the rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar;

(2) the human rights contained in the Universal Declaration of Human Rights adopted by the United Nations;

(3) the human rights contained in the international human rights instruments applicable to Myanmar.

Republic of Korea

National Human Rights Commission Act, Act No. 6481, Article 2

The term "human rights" means any rights and freedoms, including human dignity and worth, guaranteed by the Constitution and Acts of the Republic of Korea, recognized by international human rights treaties entered into and ratified by the Republic of Korea, or protected under international customary law.

India

Protection of Human Rights Act 1993, Article 2

"human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The Covenants are defined as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Australia

Australian Human Rights Commission Act 1986, Article 3

human rights means the rights and freedoms recognised in the Covenant, declared by the Declarations or recognised or declared by any relevant international instrument.

The Covenant, the Declarations and other "relevant international instruments" are

- International Covenant on Civil and Political Rights
- Convention Concerning Discrimination in Respect of Employment and Occupation
- Convention on the Rights of Persons with Disabilities
- Convention on the Rights of the Child
- Declaration of the Rights of the Child
- Declaration on the Rights of Disabled Persons
- Declaration on the Rights of Mentally Retarded Persons, and
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.[193]

193 CERD, CEDAW and CRPD are not declared international instruments under the *Australian Human Rights Commission Act 1986* as they have separate pieces of legislation effecting their implementation: the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*.

9.2. PROMOTION AND PROTECTION

The Paris Principles require that an NHRI's mandate include both promotion and protection of human rights.[194] **Promotion** relates to the full enjoyment of all the human rights to which people are entitled. It is more than the prevention of violation. It is directed towards fulfilling human rights, the third aspect of a State's international human rights obligations. **Protection** relates to the prevention of human rights violation or of the continuation of human rights violation. It is directed towards respecting and protecting human rights.

NHRIs that have a purely promotional mandate – for example, a mandate only for human rights education – will not be considered compliant with the Paris Principles.

> If human rights are to be fully secured, comprehensive action is needed *both* to promote and to protect them. ... This recognizes promotion is needed to change attitudes and behaviours. Finally, this inclusive approach to human rights underscores the universal and inter-dependent nature of human rights...[195]

The SCA has provided guidance on the meanings of "promotion" and "protection" for NHRIs:

> 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.[196]

For many NHRIs, the day-to-day demands of protection can be overwhelming. The danger is that they will find their resources consumed by reactive responses to specific human rights violations and threats of violation. They may have no resources left for the broader work of developing and implementing strategies for the fulfilment of human rights. The promotion responsibility requires attention and priority alongside the protection responsibility.

Promotion and protection are not functions but responsibilities. Each is a broad area of responsibility for which the use of many NHRI functions is required. Both the promotion responsibility and the protection responsibility can engage many of the functions listed in the Paris Principles:

- legislative review and recommendation
- advising government and parliament and other State institutions, private organisations and civil society
- intervention in court proceedings
- encouraging ratification of international human rights treaties
- cooperating with domestic and international organisations working for human rights
- human rights education and awareness raising.[197]

Typically the protection responsibility is associated with individual case work – complaints and investigations – but it also includes monitoring functions, such as inspections of detention centres. It seeks to investigate and identify violations that:

- have occurred and then provide remedies for victims
- are occurring and then stop them
- are at immediate or proximate risk of occurring and then prevent them.

194 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.2.

195 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 31.

196 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.2.

197 Paris Principles, 'Competence and responsibilities', para. 3.

The promotion responsibility is directed towards the positive fulfilment of all human rights. It is sometimes reduced to human rights education and awareness raising alone. It certainly includes education and awareness raising but it is also much more. It reaches government policies and programs to fulfil human rights, such as providing schools to ensure free compulsory primary education for all children or health clinics and hospitals to ensure the highest possible standard of health care. It also reaches macro-economic policies that will enable employment for all who want work with fair remuneration and good and safe working conditions.

Many NHRIs have adopted the methodology of national inquiries as an effective mechanism for both the promotion and the protection of human rights.[198] National inquiries enable a comprehensive examination of systemic patterns of human rights violation. They may lead to a finding that violations have occurred, as well as the development of recommendations that will address the situation and lead to full enjoyment of the rights in question.

EXAMPLES OF PROVISIONS RELATING TO THE MANDATE OF AN NHRI

Myanmar
***Myanmar National Human Rights Commission Law*, No. 21/2014, s. 3**

The objectives of this Law are as follows:

(a) To promote and protect the fundamental rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar effectively;

(b) To create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations;

(c) To effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations accepted by Myanmar;

(d) To engage, coordinate, and cooperate with the international organizations, regional organizations, national statutory institutions, civil society and registered non-governmental organizations working in the field of human rights.

Indonesia
***Law No. 39 of 1999 Concerning Human Rights*, Article 75**

The National Commission on Human Rights aims to:

a. …

b. improve the protection and upholding of human rights in the interests of the personal development of Indonesian people as a whole and their ability to participate in several aspects of life.

This part of the manual will examine some of the functions by which NHRIs implement their mandate of promotion and protection. It also examines how NHRIs address some particular challenges they face in the promotion and protection of human rights.

198 See chapter 19 of this manual for discussion of the national inquiry process.

9.3. EXCLUSIONS FROM JURISDICTION

NHRIs may be subject to certain restrictions in their mandate. One common exclusion is the capacity to review the action of State security services or State intelligence services. This kind of exclusion is clearly contrary to the requirement of a broad mandate.[199] There may be some justification if the State agents that are excluded are subjected to some other form of independent oversight that includes human rights.[200] Nonetheless the exclusion would still seem to be a significant issue in relation to compliance with the Paris Principles. The SCA has observed:

> 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 not unreasonably or arbitrarily applied and should only be exercised under due process.[201]

Another kind of restriction may provide a special procedure for dealing with some complaints or cases that excludes any investigation by the NHRI.[202]

The Paris Principles require NHRIs to have "as broad a mandate as possible" in relation to the promotion and protection of human rights. It follows therefore that any restriction on or exclusion from an NHRI's mandate raises concerns about compliance.

Officer, New Delhi, India. Photo by R Barraez D'Lucca, reproduced under a CC BY 2.0 license.

199 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.2.

200 *Australian Human Rights Commission Act 1986*, s. 11(3) and (4).

201 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.7.

202 *Protection of Human Rights Act 1993*, s. 19 in India, for example, requires that, in dealing with a complaint or case of violation by members of the armed forces, the NHRI can only seek a report from the Government. It cannot conduct its own independent investigation.

EXAMPLES OF STATUTORY PROVISIONS RESTRICTING THE MANDATE OF NHRIs

THE MILITARY

India
Protection of Human Rights Act 1993, s. 19

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:-

(a) it may either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may either not proceed with the complaint or, as the case may be make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

NATIONAL SECURITY AND INTELLIGENCE AGENCIES

Australia
Australian Human Rights Commission Act 1986, s. 11

(3) Notwithstanding paragraphs (1)(a), (d) and (f), the functions of the Commission do not include inquiring into an act or practice of an intelligence agency, and, where a complaint is made to the Commission alleging that an act or practice of such an agency is inconsistent with or contrary to any human right, constitutes discrimination, or is unlawful under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*, the Commission shall refer the complaint to the Inspector-General of Intelligence and Security.

A court or tribunal with expertise in the application of international humanitarian law may be preferred to an NHRI in relation to human rights violations allegedly committed by military or security forces during armed conflict. However, the NHRI should not be excluded from attending, monitoring and reporting on, or seeking to intervene in such proceedings. There should be no limitation of the NHRI's jurisdiction with regard to human rights violations allegedly committed by military or security forces when not engaged in conflict.

GOOD PRACTICE

An NHRI has a broad mandate for the promotion and protection of human rights. In determining the NHRI's mandate, the definition of "human rights" should be broadly defined to include:

- rights protected in the national constitution
- rights protect in domestic legislation
- rights contained in international human rights law.

There should be no limitations on the mandate except the limitations contained in human rights themselves, such as derogations during short periods of officially declared emergencies. Where there are other limitations, they must be narrowly confined, particularly when they relate to national security and the activities of military and security forces. General exemptions on the grounds of national security should be avoided in favour of provisions, where necessary, that allow the relevant minister to certify to the NHRI on a case-by-case basis that a particular matter raises national security concerns.

MODEL CLAUSE

The Commission is established for the promotion and protection of all human rights. In this law, "human rights" means the rights and freedoms recognised in the constitution and law of the State, in international human rights treaties and instruments, and in international customary law.

KEY POINTS: CHAPTER 9

- According to the Paris Principles, the core competence of NHRIs is the promotion and protection of human rights.
- The promotion of human rights relates to the full enjoyment, the fulfilment, of all the human rights to which people are entitled under international and domestic law.
- The protection of human rights relates to the prevention of human rights violation or of the continuation of human rights violation.
- Limits or exclusions to the jurisdiction of NHRIs should be strictly defined and as narrow as possible.

Chapter 10: Broad functions

KEY QUESTIONS

- **What are the core functions or responsibilities of NHRIs?**
- **How are these functions expressed in legislation?**

The Paris Principles list a large number of specific functions that NHRIs should perform. The Paris Principles call these functions "responsibilities", indicating that the functions are essential to the character and work of NHRIs. These responsibilities include:

- advising and making recommendations to governments, parliaments and "any other competent body" on any matter concerning human rights, including advising and recommending on legislation, administrative provisions, human rights situations and situations of human rights violations[203]
- promoting harmonisation of national laws and policies with international human rights obligations
- encouraging ratification and implementation of international human rights treaties[204]
- contributing to State reports to international and regional human rights mechanisms
- cooperating and engaging with international and regional human rights mechanisms and other NHRIs[205]
- promoting research on and teaching of human rights
- promotion generally of human rights values and standards, through public awareness and education programs and activities.[206]

In addition, NHRIs can have functions to investigate and attempt to resolve complaints of human rights violations.[207] These functions are additional or optional functions, whereas the other functions are essential for NHRIs.

The SCA has defined the required functions of NHRIs.

> 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;

203 The advisory function is discussed further in chapter 12 of this manual.

204 The SCA considers this a "key function" that should be set out in the enabling legislation of NHRIs. See *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.3.

205 The international engagement function is discussed further in chapters 22 and 23 of this manual.

206 Paris Principles, 'Competence and responsibilities', para. 3.

207 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'. The quasi-judicial function is discussed further in chapter 15 of this manual.

- 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.[208]

The functions of NHRIs should be set out specifically in their enabling legislation. The law should enable an NHRI to perform its broad mandate for the promotion and protection of human rights without being challenged on the basis that it does not have responsibility to do what it proposes to do.

Because of their operational independence, NHRIs do not require approval from any other institution or authority to undertake any function or related activity. They should have this authority themselves, based on their enabling law. They should also be authorised by the law to act on their own initiative in exercising their responsibilities and not have to wait until a complaint or matter is brought formally before them. NHRIs must be able to determine their own priorities, programs and activities, subject to the law, without interference or direction or restriction from any external person or organisation.

EXAMPLES OF STATUTORY PROVISIONS LISTING THE FUNCTIONS OF NHRIs

New Zealand
Human Rights Act 1993, s. 5

(1) The primary functions of the Commission are–

(a) to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and

(b) to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

(2) The Commission has, in order to carry out its primary functions under subsection (1), the following functions:

(a) to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights;

(b) to encourage and co-ordinate programmes and activities in the field of human rights;

(c) to make public statements in relation to any matter affecting human rights …;

(d) to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law;

(e) to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, this Act;

(f) to receive and invite representations from members of the public on any matter affecting human rights;

(g) to consult and co-operate with other persons and bodies concerned with the protection of human rights;

▶▶

208 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.2.

(h) to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights;

(i) to appear in or bring proceedings …;

(j) to apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations, if, in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its functions stated in paragraph (a);

(k) to report to the Prime Minister on–

i. any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights;

ii. the desirability of New Zealand becoming bound by any international instrument on human rights;

iii. the implications of any proposed legislation (including subordinate legislation) or proposed policy of the Government that the Commission considers may affect human rights;

(l) to make public statements in relation to any group of persons in, or who may be coming to, New Zealand who are or may be subject to hostility, or who have been or may be brought into contempt, on the basis that that group consists of persons against whom discrimination is unlawful under this Act;

(m) to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand;

(n) *[Repealed]*

(o) to exercise or perform any other functions, powers, and duties conferred or imposed on it by or under this Act or any other enactment.

Nepal

Interim Constitution 2007, Article 132(1)

It shall be the duty of the National Human Rights Commission to ensure the respect for protection and promotion of human rights and their effective implementation.

National Human Rights Commission Act 2012

4. Functions, Duties and Powers:

(1) In addition to the functions, duties and powers as returned to in Article 132 of the Constitution, other functions, duties and powers of the Commission shall be as follows: –

(a) To conduct or to cause to conduct inspections and monitoring of prisons, other agencies of the Government of Nepal, public institutions or private institutions or any other place for the protection of human rights, and to provide necessary suggestions or directives to the agency concerned with regard to the improvement to be made in such agency, institution or place for the protection of human rights,

(b) To conduct investigations with the permission of the court concerned in any sub-judice case in which claims involving human rights violation have been made,

…

►►

(e) To recommend to concerned institution for including human rights education oriented subject matter related into the syllabus of school and university,

...

(g) To carry out or cause to be carried out other activities as may be deemed necessary and appropriate for the protection and promotion, enhancement of human rights.

India
Protection of Human Rights Act 1993, s. 12

The Commission shall perform all or any of the following functions, namely:

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf, into complaint of

(i) violation of human rights or abetment thereof or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy 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;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the protection of human rights.

Thailand
National Human Rights Commission Act B.E. 2542 (1999), s. 200

The National Human Rights Commission shall have the powers and duties as follows:

...

(4) to promote co-operation and co-ordination among Government agencies, private organisations, and other organisations in the field of human rights;

...

Malaysia
Human Rights Commission Act 1999, s. 4(1)

In furtherance of the protection and promotion of human rights in Malaysia, the functions of the Commission shall be –

►►

…

(b) to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;

…

Jordan
National Center for Human Rights Law, Law No. 51/2006, Article 5

The Center shall employ the following means and methods in its quest to achieve its objectives:

…

(H) Participating in television and radio programs, panel discussions and interviews, as well as in the preparation of press materials.

…

(K) Establishing a database of information related to human rights.

…

Australia
Australian Human Rights Commission Act 1986, s. 11(1)

The functions of the Commission are:

…

(e) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination; and

(f) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and:

(i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry; and

…

(k) on its own initiative or when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument; and

(m) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination; and

…

(p) to do anything incidental or conducive to the performance of any of the preceding functions.

CASE STUDY

National Human Rights Commission of India

The Indian National Human Rights Commission (NHRC), under the *Protection of Human Rights Act 1993*, has a number of responsibilities in regard to the promotion and protection of human rights, including advocacy, law reform and encouraging the ratification and implementation of international standards; monitoring; and engaging with national bodies and international and regional mechanisms.

The NHRC reviews draft legislation and other legal provisions that have a human rights component, or have the potential bearing on human rights, to ensure they conform with international human rights standards. Two examples of this are the adoption of the *Right of Children to Free and Compulsory Education Act 2009* and the amendment to the *Central Civil Service (Conduct) Rules 1964*.

The *Right of Children to Free and Compulsory Education Act 2009* is a landmark law that makes education a fundamental right for children between the ages of six and 14, entitling them to free elementary education. While the implementation of this right had been on the Commission's agenda for over a decade, in 2008 it played a significant role in advocating for the Government to adopt this Act, thereby making the right a legally enforceable one. This was accomplished through issuing recommendations to the Government, roundtable meetings, seminars and discussions with government bodies at the local, state and national level.

The Commission had been lobbying the national and state governments since February 1997 regarding the employment of children below and up to the age of 14 years, especially where the child was employed by a civil servant. The NHRC directed that an appropriate Rule be included in the conduct rules of civil servants, at national and state levels, that would not only prohibit such employment but also make it a misconduct, inviting a major penalty. Due to this advocacy, a rule was introduced in the *Central Civil Service (Conduct) Rules, 1964* on 4 October 1999, prohibiting employment of this kind.

The NHRC is also charged with providing relevant government ministries with recommendations regarding the ratification of international human rights instruments and their effective implementation. India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 October 1997. Before its ratification, some Indian legislation needed to be amended. The NHRC had long been pressing the Government of India to make these amendments. This advocacy led to the drafting of the *Prevention of Torture Bill 2010*. Following the introduction of the draft bill in Parliament, the Select Committee of the *Rajya Sabha* (Upper House of the Indian Parliament) called on a number of stakeholders, including the NHRC, to comment on the Bill.

The NHRC have a number of different mechanisms to monitor the implementation of the protection of human rights within India. These include the establishment of core and expert groups on sectoral issues, the creation of a focal point for human rights defenders and initiation of open public hearings and camp commission sittings, as well as workshops, review meetings, spot investigations and regular visits to places across the country to monitor human rights. The Commission sends its recommendations to state authorities after the visits, following which Action Taken Reports are sought and received from the states and further monitored.

▶▶

The NHRC has established core and expert groups on sectoral issues such as health, mental health and the right to food, among others. It also has a core group on NGOs that draws on the expertise of grassroots NGO workers. The members of these groups are specialists in their field and drawn from civil society. The NHRC consults with the groups regarding complex technical matters. The NHRC has also appointed Special Rapporteurs to monitor thematic human rights issues and the human rights situation across the different geographical regions of India.

The protection of human rights defenders has been a major focus of the international human rights mechanisms and of NHRIs over the past few years. The NHRC has set up a focal point for human rights defenders. It provides a 24-hour dedicated mobile phone service which activists can call in the event of actual or potential threats to their personal life or liberty. These cases take priority, with the NHRC employing prosecutorial and compensational measures, as well as monitoring the implementation of its recommendations.

Providing forums for the general public to speak about human rights violations is a useful means of gauging and monitoring the human rights situation in a country. The NHRC has initiated open public hearings to hear and decide cases of atrocities against persons belonging to the Scheduled Castes. Information about the hearings is disseminated through electronic and print media, with an invitation to members of the community to submit complaints to the NHRC. Based on the information gathered, the NHRC calls for reports from the concerned authorities about the cases. At the public hearings, the NHRC hears the cases in the presence of the Chief Secretary of State and other senior officials. Similarly, the NHRC has been holding camp commission sittings across the states. These ensure the speedy disposal of pending cases and allow the NHRC to interact with officials from the state, NGOs, civil society and the media to understand the key human rights concerns within that state.

While the NHRC is the national NHRI for India, there are also other national commissions on specific thematic areas; on minorities, on scheduled castes and scheduled tribes, and on women, as well as state human rights commissions. The Chairpersons of the other three national commissions are deemed members of the NHRC and the commissions regularly work together on human rights issues that cross over in their mandates. The NHRC also convenes annual meetings with the state human rights commissions to consider issues of mutual concern.

The NHRC is proactive in sharing knowledge, best practices and enhancing its cooperation with other NHRIs, both within its region and beyond. For example, it has hosted officers from the Rwandan, Australian and Indonesian NHRIs, visited commissions in the Maldives, Nepal and Rwanda, as well as participated in workshops and seminars with the NHRIs of Afghanistan, Bangladesh, Ethiopia, Oman and Myanmar on complaint handling mechanisms, training and awareness programs and other aspects of NHRI functioning. As a founding member of both the APF and the ICC, the NHRC actively participates in their annual meetings and in APF training programs.

The NHRC has also engaged with a number of the UN Special Rapporteurs regarding the human rights situation in India as it relates to their area of expertise. These include the Special Rapporteurs on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; on Freedom of Religion and Belief; on Human Rights Defenders; on Extrajudicial, Summary or Arbitrary Executions; and on Business and Human Rights.

GOOD PRACTICE

An NHRI's functions should be as broad as possible in relation to the promotion and protection of human rights. They should list specific functions directly related to the promotion and protection of human rights. In addition, they should include a general function to do all things necessary or incidental to the promotion and protection of human rights.

MODEL CLAUSE

The Commission shall have the following functions and powers to promote and protect human rights:

(a) to promote public awareness, knowledge and understanding of human rights through the provision of information and education

(b) to carry out the following to monitor and promote compliance with international and domestic human rights laws:

  i. to recommend to the Government international human rights instruments to which the State should become a party

  ii. to review existing legislation and proposed new legislation for consistency with human rights and to recommend additional legislation and measures to promote and protect human rights

  iii. to assist the Government as appropriate in its preparation of reports, including commenting on the contents of the reports, to be submitted in accordance with the international human rights instruments to which the State is a party and with the United Nations Human Rights Council's Universal Periodic Review

(c) to conduct thematic inquiries into alleged human rights violations

(d) to conduct inquiries into complaints by individuals of their own volition or on behalf of an individual by another individual, group of people or institution, alleging violations of the human rights of the individual

(e) to visit and inspect the scene of human rights violations and prisons, jails, detention centres and public or private places of confinement, including police cells

(f) to intervene, with leave of the Court, in judicial proceedings raising or dealing with significant issues of human rights law and fact

(g) to consult and engage relevant civil society, business and labour organisations and academic institutions, as appropriate

(h) to consult, engage and cooperate with other national, regional and international human rights mechanisms including the human rights treaty monitoring committees and the United Nations Human Rights Council's Universal Periodic Review, as appropriate

(i) to respond to any matter referred to it by the parliament or the Government

(j) to produce and publicise reports on the functions and activities of the Commission

(k) to prepare and submit an Annual Report and special reports on the human rights situation in … and the activities and functions of the Commission, with such findings and recommendations as appropriate

(l) to do anything incidental or conducive to the performance of any function of the Commission.

Students return home after morning classes in Tachilek, Myanmar. UN Photo by Kibae Park.

KEY POINTS: CHAPTER 10

- The Paris Principles require that NHRIs have broad responsibilities or functions.
- Legislation establishing NHRIs should set out their functions specifically.
- Legislation should ensure the operational independence of NHRIs, permitting them to undertake their functions on their own decision, without having to obtain approval from any outside authority, organisation or individual.

Chapter 11: Adequate powers

KEY QUESTIONS

- **What powers should NHRIs have?**
- **Are there any powers that NHRIs should not have?**

11.1. BASIC POWERS

NHRIs require the powers necessary to perform their functions effectively. The Paris Principles set out some of those powers, including:

- to initiate inquiries and investigations
- to take evidence
- to obtain documents and information
- to make public statements and to publicise reports, findings and recommendations
- to undertake consultations
- to cooperate with other State institutions, including courts, and with NGOs.[209]

Certain additional powers that are implied in the broad mandates of NHRIs include the power to enter premises, including prisons and detention centres, for the purpose of inspection and investigation. These powers are necessary means of exercising NHRIs' broader responsibilities under the Paris Principles. It may also be that additional powers arise under other international law, for example, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[210]

NHRIs with quasi-judicial competence necessarily require powers related to the performance of those responsibilities.[211] 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.

The existence of a power requires the imposition of a penalty if any person or organisation fails to comply with an order issued pursuant to that power. NHRIs should be able to issue orders under their investigative powers and have the courts enforce the orders and penalise those who do not comply.

209 Paris Principles, 'Methods of operation'. The education and promotion functions are discussed further in chapter 13 of this manual.

210 Article 20.

211 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

EXAMPLES OF POWERS PROVIDED BY LAW TO NHRIs

India

Protection of Human Rights Act 1993, s. 13

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the *Code of Civil Procedure, 1908*, and in particular in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses and examine them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the *Indian Penal Code*.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the *Code of Criminal Procedure, 1973*, in so far as it may be applicable.

Malaysia

Human Rights Commission Act 1999, s. 4

(2) For the purpose of discharging its functions, the Commission may exercise any or all of the following powers:

…

(d) to visit places of detention in accordance with procedures as prescribed by the laws relating to the places of detention and to make necessary recommendations;

...

(3) The visit by the Commission to any place of detention under paragraph (2) (d) shall not be refused by the person in charge of such place of detention if the procedures provided in the laws regulating such places of detention are complied with.

Jordan

National Center for Human Rights Law, Law No. 51/2006, Article 10

The Center has the right to:

(A) Visit reform and rehabilitation centers, detention centers and juvenile care homes and shall do so according to proper rules.

(B) Visit any public place, which has been reported to be the venue of past or present transgressions of human rights.

11.2. PROSECUTORIAL POWERS

In some countries there has been discussion of whether NHRIs should have prosecutorial powers. In general, NHRIs investigate possible violations of human rights but any prosecution arising from the investigation is undertaken by the police or public prosecutors' offices. Many victims and advocates often consider that police and prosecutors are very reluctant to prosecute and, where they do prosecute, do not pursue these prosecutions effectively or seriously. As a result, there have been calls for NHRIs to be given prosecutorial powers so that they can undertake the prosecutions themselves. In the Philippines, a proposal is before the Congress to allocate these powers to the NHRI.[212] In Nepal, the Supreme Court has decided that the NHRI has power to bring prosecutions for violations of human rights directly to the court, without any statute of limitations applying.[213] NHRIs have generally considered that these powers are inappropriate for NHRIs and that the better approach is to make the prosecutors prosecute.

EXAMPLE OF A PROPOSED LAW TO PROVIDE PROSECUTORIAL POWER TO AN NHRI

Philippines

Senate Bill No. 2818 *An act strengthening the functional and structural organization of the Commission on Human Rights, and for other purposes 2011*, s. 26

In the event of the failure of the Department of Justice or Office of the Ombudsman to initiate a preliminary investigation within twenty (20) days from its receipt of the case recommended for prosecution by the Commission, the inaction shall be considered as an automatic endorsement of the matter to the Commission without any further act or notice by the Department of Justice or Office of the Ombudsman for purposes of preliminary investigation. Thereafter, the Commission shall conduct the preliminary investigation and upon a finding of probable cause, issue a resolution for the filing of the appropriate information and prosecution of the offense/s found to exist.

For this purpose, the Commission shall have the power to deputize government prosecutors or private lawyers to prosecute the criminal offence/s that have been the subject of its preliminary investigation. The prosecution shall remain under the Commission's direct control and supervision.

This section shall apply only to the following cases:

(A) When committed by State Actors … and where the human rights violation constitutes a criminal offense under the Revised Penal Code and special laws, as follows:

a) Use of physical, psychological and degrading punishment, torture, force, violence, threats, and intimidation;

b) Extra-judicial killings, summary executions, and "massacres" or mass killings;

c) Violations of the right to be secure from unreasonable searches and seizures, including involuntary or enforced disappearances;

►►

212 Philippines Senate Bill No. 2818, *An act strengthening the functional and structural organization of the Commission on Human Rights, and for other purposes 2011*, s. 26.

213 See www.nepalnews.com/archive/2013/mar/mar07/news03.php.

d) Violations of the rights of persons arrested, detained, or under custodial investigation, including deprivation of the rights of political detainees;

e) Violations of the right to a speedy, impartial and public trial or disposition of cases;

f) Hamletting, forced evacuation or eviction, illegal demolition, development aggression and other violations of the right to travel and to freely choose one's abode and change the same;

g) Violations of the right to peaceably assemble, free association, and to petition the government for redress of grievances;

h) Violations of the right to worship and the free exercise of a religion;

i) Violations of the right to privacy;

j) Violations of civil and political rights of persons suspected, detained for, and/or accused of the crime of terrorism or conspiracy to commit terrorism; and

k) Political, religious, racial, ethnic, social or sexual persecution, oppression, or harassment committed with acts constituting offenses punished under the Revised Penal Code and special laws.

(B) When committed by non-State Actors – Non-state actors are persons, other than public officers, belonging to and acting on behalf or under the immediate control of a juridical or non-juridical person, whether legitimate or illegitimate, including but not limited to the following:

a) Armed groups, bandits, warlords and private armies;

b) Criminal organizations and groups; and

c) Multi-national, foreign and domestic corporations, and other business entities.

(C) When committed against vulnerable persons – in the investigation and prosecution of the following offenses as penalized under the Revised Penal Code and special laws when committed by any person against any member or group of vulnerable persons, as defined herein:

a) Involuntary servitude constituting Crimes Against Personal Liberty and Security under the Revised Penal Code;

b) Crimes penalized under Republic Act No. 7610, or the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act;"

c) Crimes penalized as Infanticide and Abortion under the Revised Penal Code;

d) Crimes penalized under Republic Act No. 9262, or the "Anti-Violence Against Women and Their Children Act of 2004;" and

e) Crimes penalized under Republic Act No. 8371 or the "Indigenous Peoples Rights Act of 1997."

Vulnerable persons shall include children, the unborn, women, elderly, persons with disabilities, migrant workers, indigenous peoples, and ethnic and religious minorities.

11.3. PROTECTION OF VICTIMS AND WITNESSES

NHRIs must have power to provide such protection as they can to those who are victims of human rights violations or witnesses to violations. Realistically, the protection NHRIs will be able to provide will not be strong. NHRIs are not police and do not have the means to ensure physical protection. Sometimes they might have "safe houses" where those at risk can be offered some security but usually they do not. At the very least, however, NHRIs' establishing legislation should provide criminal penalties for those who seek to prevent persons making complaints or giving evidence or to deter them from doing so or to threaten or otherwise harm those who have done so.

EXAMPLES OF PENALTIES FOR THREATENING OR HARMING VICTIMS AND WITNESSES

Australia
Australian Human Rights Commission Act 1986, s. 26

(2) A person who:

(a) refuses to employ another person; or

(b) dismisses, or threatens to dismiss, another person from the other person's employment; or

(c) prejudices, or threatens to prejudice, another person in the other person's employment; or

(d) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to, another person;

by reason that the other person:

(e) has made, or proposes to make, a complaint to the Commission; or

(f) has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to any human right; or

(g) has furnished, or proposes to furnish, any information or documents to the Commission or to a person acting for or on behalf of the Commission; or

(h) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission;

is guilty of an offence punishable upon conviction:

(j) in the case of a natural person—by a fine not exceeding 25 penalty units or imprisonment for a period not exceeding 3 months, or both; or

(k) in the case of a body corporate—by a fine not exceeding 100 penalty units.[214]

Korea
National Human Rights Commission Act 2001, Article 55

(1) Any person shall not be subject to removal from his/her office, transfer to another position, disciplinary action and unjust treatment, or other unfavorable measures in status or treatment on account of his/her petition, statement, witness, presentation of materials or reply under this Act.

▶▶

214 A penalty unit under Australian federal law is AUD 170, equivalent to about USD 135 (as at 1 January 2015). So 100 penalty units is AUD 17,000 or USD 13,500.

(2) The Commission may give any necessary support or reward to a person who either reveals the fact of any human rights violation or discriminatory act, or finds and presents evidence or materials.

Malaysia
Human Rights Commission of Malaysia Act 1999, s. 15

15. (1) A person who gives evidence before the Commission shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court.

(2) No person shall, in respect of any evidence written or oral given by that person to or before the Commission, be liable to any action or proceeding, civil or criminal in any court except when the person is charged with giving or fabricating false evidence.

GOOD PRACTICE

NHRIs should have the powers they require to perform their functions, including powers to:

- take evidence from victims and witnesses
- compel the attendance of a witness for questioning, even if in custody
- obtain documents and information
- enter premises, including prisons and places of detention, with or without prior notification.

Where the domestic context includes the possibility of extrajudicial or summary killings, NHRIs should also have power to order or conduct the exhumation of bodies.

NHRIs should have powers in relation to the protection of witnesses, including criminal sanctions in relation to harming, threatening, intimidating, harassing or otherwise penalising a person who has given evidence to the NHRI or who may give evidence to the NHRI.

MODEL CLAUSE

In the exercise of its functions under this law, the Commission may, if it so determines:

- compel the attendance of a witness for questioning, even if in custody
- take oral evidence from victims and witnesses, on oath or otherwise
- compel the production of documents and other materials, including written and electronic records and information, computers, memory sticks, telephones, videos and close circuit television footage, audio and video recorders and cameras
- enter premises, including prisons and places of detention, with or without prior notification.

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Any person who injures physically or in any other way threatens, intimidates, harasses, prejudices or otherwise harms or disadvantages another person on account of the other person actually or possibly giving or proposing to give information or evidence to the Commission, or making or proposing to make a complaint to the Commission or otherwise assisting or engaging with the Commission in the performance of its functions, shall be guilty of a criminal offence and liable to be prosecuted in a criminal court and punished.

The Commission may extend such assistance, support and protection as it sees fit to any person who actually or possibly gives or proposes to give information or evidence to the Commission or makes or proposes to make a complaint to the Commission or otherwise assists or engages with the Commission in the performance of its functions.

KEY POINTS: CHAPTER 11

- NHRIs require powers to undertake their functions effectively, to enable them to promote and protect human rights.
- Powers vary from one NHRI to another but generally include power to take evidence, to compel the attendance of a witness for questioning, to obtain documents and information and to enter premises.

Chapter 12: The advisory function of NHRIs

KEY QUESTIONS

- **What is the advisory function of NHRIs?**
- **How is advice initiated?**
- **To whom is advice directed?**
- **How is advice developed?**
- **What kind of advice is provided?**
- **How should the recipients of advice respond?**
- **What follow up to their advice should NHRIs undertake?**

12.1. WHAT IT IS

The Paris Principles list advising government and parliament among the responsibilities of NHRIs. It is the first, lengthiest and most detailed responsibility in the list. The Paris Principles provide that an NHRI shall have responsibility:

> 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.[215]

215 Paris Principles, 'Competence and responsibilities', para. 3(a).

Other responsibilities listed in the Paris Principles have advisory dimensions.[216]

Publicising the NHRI's advice and views is important for reasons of transparency but it is also important strategically. It enables pressure to be brought to bear on those receiving the advice to consider it carefully and accept it. Publicity encourages a response and in that way promotes accountability.

The advisory responsibilities or functions of an NHRI should be set out in the establishing law so that it is a clear and specific mandate. The law should provide a broad framework for the function, including specifying how the advisory responsibility is activated, to whom advice can be provided, what kind of advice can be provided and what the response to advice should or could be.

EXAMPLE OF A LEGISLATIVE PROVISION FOR THE ADVISORY FUNCTION

Myanmar
***Myanmar National Human Rights Commission Law*, No. 21/2014, s. 22**

(b) To carry out the following to monitor and promote compliance with international and domestic human rights laws:

i. to recommend to the Government international human rights instruments to which Myanmar should become a party;

ii. to review existing legislation and proposed bills for consistency with the international human rights laws to which Myanmar is a party and to recommend the additional legislation and measures to promote and protect human rights to the Pyidaungsu Hluttaw through the Government;

(h) To respond to any matter referred to it by the Pyidaungsu Hluttaw or the Pyithu Hluttaw or the Amyotha Hluttaw or the Government;

(i) To respond to the specific requests made by the President in connection with the promotion and protection of human rights;

CASE STUDY

SUHAKAM advice on freedom of expression

In Malaysia, Article 10(1) (a) of the Federal Constitution guarantees to all citizens the right of freedom of speech and expression. However, a number of laws have restrictive effects on the media. The most significant is the *Printing Presses and Publications Act 1984*, which prohibits the possession or use of a printing press without a license granted pursuant to the Act. Licenses granted under the Act were only valid for a period of 12 months or less, requiring the media to apply for a renewal of their licenses prior to expiration of the license.

Other laws effectively restricting media freedom in Malaysia include the *Sedition Act 1948*, the *Defamation Act 1957*, the *Internal Security Act 1960* and the *Official Secrets Act 1972*. These Acts have created a culture of fear among journalists to the detriment of transparent reporting of issues of public interest.

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216 For example, Paris Principles, 'Competence and responsibilities', paras. 3(b), (c) and (d).

There have also been allegations of unwarranted and excessive use of power by the authorities, forcing journalists to reveal anonymous sources through the seizure of laptops or by invoking the *Security Offences (Special Measures) Act 2012* (SOSMA) against the journalist or media agency involved.

SUHAKAM has continuously engaged with members of the mainstream and alternative media and government officials, in forums and workshops, not only to overcome the factors impeding media freedom in Malaysia but also to cultivate coherent and universally acceptable media practices. Consequently, SUHAKAM has made several recommendations to the Government, including:

- establishing a National Media Consultative Council as a self-regulation body to be managed by media practitioners
- authorising the Press Council to regulate and protect journalists, protect public interest, define freedom of expression, discipline journalists and provide an avenue for public complaints
- repealing the *Printing Presses and Publications Act 1984* (Act 301)
- enacting a Freedom of Information Act to foster administration that is less secretive and more open
- funding the media community to be more independent.

Over the years, freedom of expression has seen a number of progressive reforms at least in part as a result of SUHAKAM's advice, including:

- amendments to the *Printing Presses and Publications Act 1984* to remove the Minister's absolute discretion over the issuance of licenses or permits and also the requirement for these licenses or permits to be renewed annually, instead allowing such licenses or permits to subsist until revoked
- the proposed repeal of the *Sedition Act 1948*, which is to be replaced with the National Harmony Act
- the new Racial and Religious Hate Crime Bill, clause 7 of which is aimed to strike a balance between freedom of expression and hate crimes
- the repeal of the *Internal Security Act 1960* in 2011 under major civil liberty reforms and its replacement by the *Security Offences (Special Measures) Act 2012*.[217]

Currently, SUHAKAM is facilitating the establishment of an interim committee on the drafting of the Code of Media Ethics, comprising senior media practitioners in Malaysia. The proposed code of ethics aims to promote a greater degree of fairness, accuracy, impartiality and accountability in reporting. It recognises that the media require independence from political interests and ownership and are obliged to provide fair information obtained through ethical means.

217 While this may represent significant progress, the new Act still provides for preventive detention.

Construction work, Doha, Qatar. Photo by Dan A'Vard, reproduced under a CC BY-NC_SA 2.0 license.

12.2. INITIATING ADVICE

NHRI activity can be initiated in three ways:

- at the request of or by referral from another authority or institution, for example, the parliament or a parliamentary committee or the government or a minister
- on the basis of a complaint of an actual or threatened violation of human rights or a pattern or system of violations
- on the initiative of the NHRI itself (*suo motu*).[218]

The NHRI should not require the approval of any other authority or institution to commence an inquiry and provide advice. It should be able to decide itself what it does, how it does it and what advice it provides, subject to an obligation, if the law so provides, to act on all complaints of human rights violations and on all formal referrals from the Government.[219]

218 The Latin expressions *suo motu* and *suo moto* are both used.

219 Referrals from the Government, however, should not distort the NHRI's own determination of its priorities or its authority to determine the allocation of resources. They should not infringe its independence. The Government may have to provide additional resources to the NHRI to enable it to provide the advice sought without compromising its other work. See chapter 8 for discussion of adequate funding and resources.

12.3. RECIPIENTS OF ADVICE

NHRIs' advice can be directed to "the Government, Parliament and any other competent body".[220] "Government" and "Parliament" are clear enough. "Government" includes individual ministers as well as the Government collectively and it should also include ministries, departments and government agencies, including the police, prison authorities and the armed forces, unless the legislation exempts any of them from the jurisdiction of the NHRI. "Parliament" will include parliamentary committees, parliamentary officers and other parts of the parliamentary structure. It should also include individual members of parliament and the parliamentary leaders of political parties.

The scope of "any other competent body" is less clear. It must include all other State institutions, including judicial authorities (though not courts in individual cases unless the legislation so provides or the court grants leave to the NHRI to offer its advice) and other State institutions, such as an ombudsman or an anti-corruption commission. It should also include bodies outside government entirely. The expression is "other competent body", not "other competent authority" or "other competent institutions". It can and should include private sector and business organisations, trade unions, civil society organisations and NGOs, religious groups, universities and schools, and any bodies that do or can affect human rights, positively or negatively.

In undertaking any investigation and inquiry into a case or situation of actual or potential human rights violations with a view to providing advice, NHRIs should seek to identify all those actors that do or can influence the case or situation. They should consider what actions those actors could take that will have a positive effect on the promotion and protection of human rights and develop advice, including recommendations, to each of those actors.

12.4. DEVELOPING ADVICE

In undertaking their advisory responsibility, NHRIs will need to set clear priorities and adopt good strategies. The areas for investigation and advice are potentially unlimited but NHRIs only have limited resources. OHCHR has proposed a process for reviewing laws and policies.

The process is likely to involve some or all of the following:

- Selecting the laws, policies and practices that are to be reviewed and examining where responsibilities for them rest;
- Identifying national and international human rights standards;
- Assessing the degree to which the laws, policies and practices ensure the rights at issue are being enjoyed;
- Identifying the ways in which the law, policy or practice might be improved and who has the responsibility for this;
- Identifying the general public's expectations of the proposed changes and indicators of success (to assist in subsequent reviews);
- Preparing a report with recommendations;
- Issuing the report;
- Lobbying to ensure that the report is reviewed and the recommendations adopted;
- Reporting publicly on the degree to which the recommendations have been adopted.[221]

220 Paris Principles, 'Competence and responsibilities', para. 3(a).

221 *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 105.

Similar steps are taken when investigating and developing advice on human rights situations, including:

- selecting the human rights situation or issue to be investigated and examining where responsibilities lie
- identifying relevant national and international human rights standards
- finding the facts about the situation or issue
- assessing facts of the situation or issue by the standards of national and international human rights law
- identifying the ways in which the human rights situation or issue can be addressed through the law, policy, practice and other measures
- determining what remedies victims should receive to enable restitution, rehabilitation, compensation and prevention of future violations
- determining who has the responsibility for each proposed action
- identifying indicators of success (to assist in subsequent reviews)
- preparing a report with recommendations
- issuing the report
- advocating to ensure that the report is reviewed and the recommendations adopted
- reporting publicly on the degree to which the recommendations have been adopted.

12.5. THE KIND OF ADVICE

The Paris Principles refer specifically to a number of areas in which advice can be offered. They could include:

- the repeal of existing legislation
- the amendment of existing or proposed legislation
- the enactment of proposed or possible legislation
- the harmonisation of laws, regulations and practices with international human rights law
- the repeal, amendment or adoption of administrative processes
- the repeal, amendment or adoption of administrative orders and measures
- the withdrawal, amendment or adoption of policies
- the termination, amendment or development of programs and activities
- the ratification of international human rights treaties and the adoption of international human rights instruments
- reports to international and regional human rights monitoring mechanisms
- international cooperation for the promotion and protection of human rights
- human rights research, education and awareness raising
- remedies for victims by way of restitution, rehabilitation, compensation and means of prevention.

The advice can also deal with any issue that relates to the enjoyment of human rights, including employment, health, education, due process in courts and tribunals, conditions in detention, freedoms of speech, belief, movement and assembly, and so on. Finally, it can deal with remedies for victims of human rights violations, including recognition, restitution, rehabilitation, compensation and prevention.[222]

Advice can be directed to any political, social or economic actor and relate to any issue or area that affects the full enjoyment of all human rights and fundamental freedoms.

222 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005; at www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx.

CASE STUDY

Qatar National Human Rights Committee: Legal guarantee for payment of salaries

Qatar's human rights watchdog wants employers who default on payment of workers' salaries to be considered as committing a serious offence and punished accordingly, The Peninsula reported.

Smaikh Al-Marri, Chairman of the National Human Rights Committee (NHRC), said the Committee has asked the authorities to make amendments in the labour law to make delay in payment of workers' salaries a crime .

He said the NHRC, in its annual reports, had also been demanding a minimum wage be fixed for workers in Qatar.

"Our job is to give proposals to the authorities concerned and only the government can implement them. We are following up (on such issues) and we feel a serious intention on the part of the government to improve the situation of labourers, as well as the work environment," Al-Marri told The Peninsula.

He said the initiatives were not taken in response to criticism from the international community. Efforts were being made to improve the situation of workers even before Qatar won the bid to host the 2022 FIFA World Cup.

However, the NHRC, as the country's human rights watchdog, expects more from the authorities in this regard, he added.

Al-Marri appreciated the initiative of the Supreme Committee for Delivery and Legacy, which had released a set of standards related to salaries and accommodation of workers employed in sports projects associated with the World Cup.

"The new standards indicate that the issue of improving the labour situation is being taken seriously. It is a positive step by the government, but the judgment has to be made based on whether the standards and requirements are implemented on the ground. The role of the NHRC is to monitor and keep a track of what has been implemented," said Al-Marri.

Regarding the sponsorship system, he said, "the committee concerned is still studying the sponsorship law to see it in a balanced way from the perspective of the workers as well as the sponsors."

Asked if the NHRC had made any recommendation in this regard, Al-Marri said "we have been demanding implementation of international standards."[223]

12.6. THE RESPONSE TO ADVICE

The provision of advice is intended to assist those with responsibilities for respecting, protecting and fulfilling human rights to perform those responsibilities. NHRIs assist. They investigate, monitor, make findings and recommend. They do not usually order or enforce.

Those to whom advice is addressed are generally not required by law to accept and implement the advice. Were the views of NHRIs to have the force of law, they would be legislators (parliaments) and judges (courts), not NHRIs. However, because of their status as independent State institutions with human rights expertise, their views – their advice and recommendations – should be given due

223 See www.asiapacificforum.net/news/make-non-payment-workers-salaries-crime/.

consideration. The recipients of the advice can accept all the advice, part of it or none of it but they should respond formally and give reasons for their decisions on the recommendations.

The NHRIs establishing legislation should impose on those to whom NHRI advice is addressed a legal obligation to give that advice proper consideration and, within a prescribed period, to give the NHRI a formal response. An appropriate period of time for consideration should be not more than six months. The response should include the recipient's reply to the NHRI's findings and recommendations, including whether it accepts the recommendations and, if so, how and when it proposes to implement them.

If the NHRI released its original advice publicly, then it should also release the response publicly, after it has had an opportunity to consider it, if necessary.

12.7. FOLLOWING UP ADVICE

NHRIs issue many reports with findings and recommendations as part of the exercise of their advisory responsibilities. Unless they follow up on the reports and monitor implementation, they will never know how effective they have been. As permanent institutions, NHRIs are able to follow up, both advocating for implementation of their advice and monitoring the actions of those to whom the advice is directed so that implementation can be measured and reported. According to the SCA:

> National Institutions, as part of their mandate to promote and protect human rights, should undertake follow up action to recommendations contained in [their] reports and should publicise detailed information on the measures taken or not taken by public authorities in implementing specific recommendations or decisions.[224]

OHCHR suggests that this can be done through:

- annual or special reports
- monitoring
- lobbying government
- press releases and press conferences.[225]

To assist follow up, the advice and recommendations should be as specific as possible, clearly identifying who is responsible and what steps are required to be taken for implementation of each recommendation and when each recommendation should be implemented.

The first step in follow up after releasing advice is advocacy. NHRIs should be advocates for their views and advice. Unlike courts, they should not sit back and allow others to accept or ignore their advice. Advocacy can be both public and private.

Public advocacy can involve the media, conferences and meetings, with NHRI leaders presenting their findings and recommendations. Public advocacy can also include appearances before parliamentary committees to give evidence and make submissions based on their advice. An NHRI should be active in persuading parliamentary committees and individual members of parliament. It should ensure, first, that the report is on the political agenda and, second, that its recommendations are given serious consideration. It can do this, for example, by encouraging a parliamentary debate on the report or examination of the report by a parliamentary committee. It can arrange for questions to be asked in parliament about the Government's response to the report.

Private advocacy includes meetings with government and parliamentary leaders and others to whom advice is addressed to explain and urge acceptance of the report. NHRI leaders and staff should also identify those who can influence others to accept the advice and brief them and assist them in

224 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.6.

225 *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 105.

their supporting advocacy. Advocacy for implementation is a strategic approach that builds broader community support for the report.

Advocacy needs to be accompanied by monitoring and reporting. A good means of monitoring implementation is the preparation and publication of follow up reports that principally focus on implementation – a kind of report card on the response to the NHRI's report from parliament, government and others to whom recommendations were made. This is an effective way to continue to promote implementation.

CASE STUDY

National Human Rights Commission of Nepal: Advice to the Nepalese Government on post-conflict transitional justice mechanisms

The period of war between the then Maoists and the Nepalese Government from 13 February 1996 to the signing of the Comprehensive Peace Accord (CPA) on 21 November 2006 resulted in thousands of incidents of human rights violations including killings, enforced disappearances, abductions, torture, thrashing, sexual violence, intimidation, property seizure and damage, looting and enforced displacement. These violations were committed by both parties. As part of the CPA and under the provisions of the Interim Constitution of Nepal (2007), a Truth and Reconciliation Commission (TRC) was to be established to deliver justice to the victims of the conflict. However, seven years later the transitional justice mechanisms have yet to be established, compounding victims' suffering even further.

The National Human Rights Commission of Nepal (NHRC) has repeatedly called for the formation of "independent, competent, powerful and impartial transitional justice mechanisms" that meet international standards. Following consultation with the concerned stakeholders, the NHRC provided advice on the Ordinance related to the TRC, as well as the bills under consideration in the Constituent Assembly regarding the high-level Commission on the Inquiry of Disappeared (CoID). Throughout 2012, the NHRC Chairperson corresponded with the Prime Minister regarding the formation of a powerful TRC. He requested the Government to hold consultations and discussions with concerned stakeholders while promulgating laws related to such mechanisms.

The Ordinance related to the CoID and TRC (2069) was published in the Nepal Gazette on 14 March 2012. It received widespread criticism at both national and international levels. In fulfilling its function to advise the Nepal Government in making laws concerning human rights (section 6 of the NHRC Act 2012), the NHRC repeatedly requested the Government to take advice from the NHRC and other relevant stakeholders in the formation of the TRC. With no forum in which to present its findings, the NHRC published its advisory opinion in the March 2013 edition of its monthly newsletter.

The NHRC set out what it considered to be strong aspects of the Ordinance, as well as its flaws and concluded with some recommendations. On a positive note, it found that the provisions on the formation of the TRC were independent and fair. It welcomed the inclusion of a provision on the protection of witnesses and other concerned persons, the arrangement of reparation for victims and the incorporation of the arrangement of reconciliation.

▶▶

The biggest flaw in the Ordinance was that there were no clear provisions to prevent amnesty being granted to persons involved in serious violations of human rights and crimes against humanity. This created anxiety that the transitional justice mechanism would be inclined more towards a blanket amnesty rather than delivering justice to the victims. There was also concern that serious violations of human rights had not been clearly defined, reparation was not accepted as the right of the victims and there was no arrangement to encourage people extending support in truth investigations.

The NHRC called for amendment to the Ordinance, particularly in regard to the transitional justice elements. It made its view clear on making the bases of the truth-seeking, justice to the victims, reparation, and the mitigation of conflict through peace and reconciliation under the transitional justice mechanisms. In the context of cautioning the Nepal Government and the political parties concerning the withdrawal of the cases against persons involved in serious human rights violations and crimes against humanity and blanket amnesty leading to an increased culture of impunity, the NHRC urged the Government to amend the Ordinance on the CoID and TRC Bills by incorporating its past advice and to establish the transitional justice mechanisms without any further delay.

GOOD PRACTICE

NHRIs should be authorised to provide advice:

- at the request of the Parliament, the Government, a court, any other official institution or
- in response to or following investigation of a complaint of human rights violation
- on its own initiative

concerning human rights issues that arise in relation to:

- any existing or proposed law
- any public policy or program
- any situation or incident
- any place or location
- any individual or group of persons

and to include in the advice its:

- human rights analysis
- findings
- recommendations.

Those to whom the advice is directed may have discretion whether or not to accept it but they should be obliged by law to provide a response to the Commission, and to the Parliament where relevant, within a set number of days of receiving the advice, indicating:

- their views on the advice
- whether they will adopt the findings and recommendations
- the timetable and other arrangements for implementation of the adopted recommendations.

KEY POINTS: CHAPTER 12

- According to the Paris Principles, NHRIs should provide advice on the more effective promotion and protection of human rights.
- NHRIs initiate their advisory function at the request of an institution or agency, as a result of a complaint of human rights violation and on its own initiative.
- NHRIs can provide advice to any institution, agency or person, governmental or non-governmental, relevant to the particular human rights issue being considered.
- Advice should be developed through processes of research and consultation.
- NHRIs can provide advice on any matter that relates to the promotion and protection of human rights, including law, government policies and programs, and the acts and practices of private and civil society organisations and persons.
- NHRIs are entitled to expect that their advice will be carefully considered by those to whom it is addressed and that recipients will make a formal, public response.
- NHRIs, as permanent institutions, should follow up on their advice, advocating for it and monitoring and reporting on implementation.

Chapter 13:
The human rights education function of NHRIs[226]

KEY QUESTIONS

- **What is the human rights education function?**
- **What are the three dimensions of human rights education?**
- **What is effective human rights education?**
- **What is required of human rights educators?**

13.1. WHAT IT IS

The United Nations Declaration on Human Rights Education and Training defines human rights education and training broadly.

> 1. Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.
>
> 2. Human rights education and training encompasses:
>
> (a) Education about human rights, which includes providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection;
>
> (b) Education through human rights, which includes learning and teaching in a way that respects the rights of both educators and learners;
>
> (c) Education for human rights, which includes empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others.[227]

According to the UN Secretary-General, human rights education is directed towards five specific goals, drawn from the International Covenant on Economic, Social and Cultural Rights:[228]

> [H]uman rights education may be defined as training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes, which are directed towards:
>
> (a) the strengthening of respect for human rights and fundamental freedoms;
>
> (b) the full development of the human personality and the sense of its dignity;

226 The APF published *Human Rights Education: A Manual for National Human Rights Institutions* in 2013. It is available at www.asiapacificforum.net/support/professional-resources/.

227 Article 2.

228 Article 13.

(c) the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;

(d) the enabling of all persons to participate effectively in a free society;

(e) the furtherance of the activities of the United Nations for the maintenance of peace.[229]

EXAMPLES OF PROVISIONS FOR THE FUNCTION OF HUMAN RIGHTS EDUCATION

Indonesia

Law No. 39 of 1999 Concerning Human Rights, Article 89(2)

To carry out its function as disseminator as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:

a. disseminate information concerning human rights to the Indonesian public;

b. take steps to raise public awareness about human rights through formal and non-formal education institutes and other bodies;

c. cooperate with organizations, institutions or other parties at national, regional and international level with regard human rights.

Australia

Australian Human Rights Commission Act 1986, s. 11

(g) to promote an understanding and acceptance, and the public discussion, of human rights in Australia; and

(h) to undertake research and educational programs and other programs … for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities.

Qatar

Decree Law No 17 of 2012 on the Organisation of the National Human Rights Committee, Article 3

9 To raise awareness on human rights and freedoms, to entrench human rights culture, and to consolidate human rights principles on both the intellectual and the practical levels.

…

12 To organize conferences, symposiums, courses and debates on human rights and freedoms issues and to coordinate with the concerned authorities in this regard when necessary.

13 To take part in the preparation of educational and research programmes related to human rights and to participate in their implementation.

229 A/51/506/Add.1, Appendix, para. 2.

GOALS AND OUTCOMES[230]

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.[231]

Learning about human rights encourages the understanding and application of human rights norms, principles, values and mechanisms. It aims at ensuring that participants and learners know about the history and structures of the international human rights system, treaties and declarations. It also encourages an understanding about how human rights relate to their own worlds and helps them to make connections between their own lives and those of others, particularly those affected by human rights violations. Learning about human rights promotes understanding and practice of human rights values.

Learning through human rights involves ensuring that the way that human rights education occurs is congruent with human rights principles and standards. This could include: 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 about the tools that could be used in that action. Human rights education stimulates and engages learners, aiming to transform people's lives, the environment, the community and society.

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

- the dissemination of knowledge and general awareness about human rights such as:
  - those set out in the Universal Declaration 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
  - mechanisms for addressing human rights grievances
  - power relations and social forces.
- building the capability of people to:
  - apply human rights knowledge and understanding to lives and practices
  - apply international human rights standards to local, national and international contexts
  - translate UN 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 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.

230 APF, *Human Rights Education: A Manual for National Human Rights Institutions*, 2013, pp. 15-16.

231 United Nations Declaration on Human Rights Education and Training, Article 2.2.

The three dimensions of human rights education drawn from the international instruments focus on:

- **knowledge:** provision of information about human rights and mechanisms for their protection and building understanding of human rights through an analysis of situations of human rights violations and of what steps are required to address them
- **values, beliefs and attitudes:** promotion of a human rights culture through the development of values and attitudes which uphold human rights
- **action:** education which enables the individual to defend human rights and prevent human rights abuses within their context and community, including through the promotion of knowledge and understanding of human rights and of values, attitudes and action that build human rights cultures and societies.[232]

The definition and these three dimensions reflect the fundamental nature of human rights education. They distinguish human rights education from other forms of education about the relationship between government and people, about relationships among people, about values and about good conduct.

- Human rights education is **not the same as civics or citizenship education**. It deals not with the local or national political structure or with the roles, responsibilities and entitlements of citizens under local or national law. Rather, it deals with the universal entitlements of all human beings, regardless of the type of political system in which they live and regardless of the provisions of national law. Human rights should be an essential part of civics or citizenship education but human rights education is different.
- Human rights education is **more than information dissemination**. It certainly requires the provision of information about human rights laws and remedies but it also requires assistance in understanding and applying the information to the specific contexts of the particular society and State.
- Human rights education requires a **change of attitude and perspective**. It is values oriented. It does not accept the prevailing circumstances and structures of a society without questioning. Rather, it provides a standard against which those circumstances and structures can be measured and by which they can and should be subjected to analysis and criticism.
- Human rights education is **more than values education**. Human rights are not simply broad statements of principle. They have specific legal content in the provisions of international law and specific national laws.
- Human rights education affects **behaviour**. Human rights impose legal obligations that govern behaviour, regardless of the particular personal beliefs and values of any individual or group of individuals. They concern not only how people think but how they act. Human rights education is directed towards both right thinking and right acting.

The United Nations Declaration on Human Rights Education and Training saw a specific role in this for NHRIs and encouraged States to ensure they can play it:

> States should promote the establishment, development and strengthening of effective and independent national human rights institutions, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"), recognizing that national human rights institutions can play an important role, including, where necessary, a coordinating role, in promoting human rights education and training by, inter alia, raising awareness and mobilizing relevant public and private actors.[233]

232 OHCHR, *Guidelines for national plans of action for human rights education*, 27 October 1977, A/52/469/Add.1, para. 13.

233 Article 4.

The World Programme for Human Rights Education Second Plan of Action also identifies NHRIs as one of the significant bodies to work with State agencies in the scoping, planning, implementation and evaluation of national human rights education implementation plans.[234] It is incumbent on NHRIs to monitor the progress of country human rights education implementation plans and to report this progress to the United Nations through human rights reporting mechanisms.

The Paris Principles distinguish between raising awareness about human rights and educating on human rights and they list both among the responsibilities of NHRIs:

> (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.[235]

They also provide that NHRIs shall:

> … [a]ddress public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.[236]

The APF has published a manual on human rights education for NHRIs.[237] It provides much more detailed consideration of human rights education and of the role of NHRIs in human rights education than it is possible to cover in this section.

Teacher with students in Chhattisgarh, India. Photo by GlobalPartnership for Education/Deepa Srikantaiah, reproduced under a CC BY-NC-ND license.

234 See www.ohchr.org/Documents/Publications/WPHRE_Phase_2_en.pdf.

235 Paris Principles, 'Competence and responsibilities', paras. 3(f) and (g).

236 Paris Principles, 'Methods of operation', para. (c).

237 *Human Rights Education: A Manual for National Human Rights Institutions*, 2013; available at www.asiapacificforum.net/support/professional-resources/.

CASE STUDY

National Human Rights Commission of India

Since 1996, the National Human Rights Commission of India (NHRC) has provided human rights education, producing resources for teaching and raising awareness. In that year, the National Council for Educational Research and Training, under the aegis of the NHRC, developed a source book on human rights. This book gave information about important historical documents on human rights, the major international covenants, conventions and declarations and how human rights were enshrined within the Indian Constitution.

The NHRC has made a concerted effort to develop and introduce human rights education into Indian schools, universities and colleges. It has attempted this through a number of different approaches. In 2001, it prepared a model curriculum on human rights education for the University Grants Commission. In 2003, the National Council for Teacher Education, under the aegis of the NHRC, produced a handbook for teachers and teacher educators to raise awareness of discrimination based on sex, caste, religion and disability. In 2006–2007, the NHRC provided a strong focus on developing human rights modules for use in both universities and schools. The NHRC's advocacy, based on the deteriorating human rights situation of children, as well as the national outrage over the Delhi gang rape incident in December 2012, has helped contribute to the Central Board of Secondary Education deciding to introduce a "human rights and gender studies" unit for Class XI starting in the 2013–2014 academic year.

The NHRC has also run human rights awareness programs for school principals.

In addition, the NHRC has done considerable work on human rights education for those in law enforcement. It has collaborated with a university in conducting an online sensitisation program for police personnel. In conjunction with this, it has developed a basic human rights manual for the police. Similar programs have also been held for personnel of para-military forces posted along the border, with a focus on custodial and extrajudicial killings and torture.

Apart from running human rights education programs, the NHRC has produced a number of educational resources. The 2005 publication, *Human Rights Education for Beginners*, was prepared by the Karnataka Women's Information and Resource Centre for grassroot level organisations. Some of the NHRC's publications focus on providing in-depth knowledge and information on a specific human rights issue, such as *Care and Treatment in Mental Health Institutions: Some Glimpses in the Recent Period* (2012), *Professional Policing: A Perspective on Interviewing Skill & Report Writing* (2012) and *A Handbook on International Human Rights Conventions* (2012). Others have a more general approach, such as the 2005 *Know Your Rights* series; an eight-booklet series that focused on the issues of bonded labour, child labour, elderly people, human rights and HIV/AIDs, human rights and manual scavenging, the rights of persons with disabilities, rights to work, and rights to adequate shelter.

The NHRC has also been involved in regular consultation with educators and education providers in reviewing human rights education courses. It receives regular reports from education departments and universities in different states to assess the content of human rights education being imparted in schools and colleges. It has also organised a national conference to discuss various aspects of human rights education and to obtain feedback and recommendations on how best to proceed with this.

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The NHRC conducts in-house education and training through regularly recruiting university and college students for internships. Through these programs, students are exposed to all human rights issues, in particular the international conventions and declarations, police and prison-related issues, rights of people with disabilities, women's rights and children's rights.

13.2. THE THREE DIMENSIONS OF HUMAN RIGHTS EDUCATION

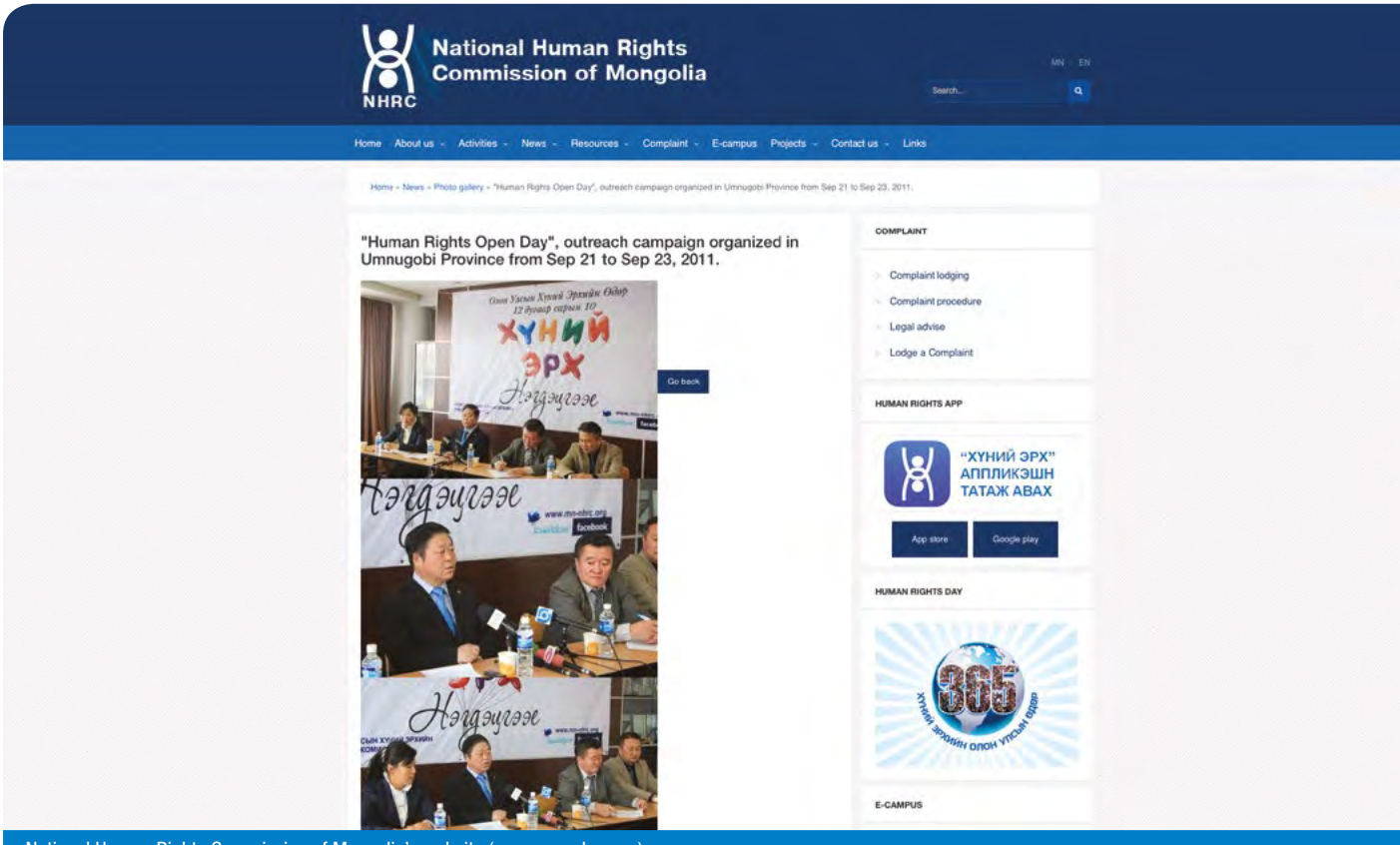
The first, and simplest, dimension of human rights education is **increasing knowledge**. Human rights constitute a body of law. They are specific entitlements with corresponding obligations, not mere aspirations or general principles. They are often very specific in their own terms and on other occasions they become very specific when the broader statements in treaties are supplemented by the very precise provisions of other international instruments. Rights holders cannot demand and enforce their rights unless they know them. Duty bearers cannot be held accountable for the performance of human rights obligations unless they know them. Human rights education includes informing both rights holders and duty bearers of the requirements of international human rights law.

NHRIs can increase knowledge of human rights through:

- encouraging the teaching of human rights in formal educational institutions, such as schools, colleges and universities, for example, by preparing school curricula on human rights and educational resource materials for schools
- conducting non-formal educational programs on human rights
- producing booklets, leaflets, posters and postcards containing human rights information
- preparing materials for or participating in public media discussions of human rights
- having a good, informative website.

Australian Human Rights Commission website (www.humanrights.gov.au/human-rights-education-and-training).

Human Rights Commission of Malaysia's website (www.suhakam.org.my).



National Human Rights Commission of Mongolia's website (www.mn-nhrc.org).

CASE STUDY

Myanmar National Human Rights Commission

From its experience over two years in handling complaints of human rights violations, the Myanmar National Human Rights Commission (NHRC) observed that a lack of knowledge about human rights on the part of local authorities is one important factor that leads to many violations and grievances. The NHRC considered that it needed to reach these authorities and communities to educate them about human rights. It responded with a large program of outreach to provide human rights information at the local level.

The NHRC conducted a series of workshops in 38 townships in various states and regions between August 2013 and May 2014.[238] The team of Commissioners gave talks on the UDHR, the UN human rights mechanisms and the work of NHRC. As part of its promotion work, the MNHRC also arranged outreach visits by Commissioners and staff to seven other states between July and November 2014.[239] The visits had two purposes.

First, the NHRC conducted three-day workshops on human rights for government officials, dealing with the historical development of international human rights law, including the UDHR and the core human rights instruments, with a particular focus on CEDAW, CRC and CRPD, to which Myanmar is party. The lectures also covered the nature of NHRIs, their roles in the promotion and protection of human rights at the national level, and the work of the NHRC and how it relates to the global monitoring system, including the Universal Periodic Review, the special procedures, and the treaty monitoring bodies.

Second, the NHRC organised human rights talks for the people in important townships.

In addition, the Commission conducted many other promotional activities during 2014, including a radio program in which a Commissioner answers questions on human rights and a television program on children's rights issues.

The NHRC has also undertaken awareness raising activities on specific human rights issues. In cooperation with the Forest Peoples Programme, based in London, the NHRC conducted a regional workshop on Agribusiness and Human Rights, which followed similar meetings held in Cambodia and Thailand under the sponsorship of the Forest Peoples Programme.

In October 2014, the NHRC organised a regional workshop on trafficking in persons. As the issue involves many countries in the region as countries of destination as well as countries of transit, the NHRC thought it should organise a regional workshop to identify ways on processes to cooperate and coordinate among the relevant countries. NHRIs in the region and representatives of the relevant governments participated in the discussions.

The NHRC will publish a human rights booklet in the Myanmar language for extensive distribution to the public. It will raise awareness of the basic norms of human rights, educate people on what their rights are and help them recognise when their rights are violated. It also plans to publish a quarterly human rights magazine to contribute to the promotion of human rights in the Myanmar over the longer term.

238 Kawthoung, Taninthayi State; Myitkyina in Kachin State; Phalam, Chin State; Mawlamyine (Hluttaw Committee), in Mon State; Pathein, Kyaung Kone, Myaung Mya, Pantanaw, Ayeyarwaddy Region; Thahtone, Mawlamyine, Kyaikmyaw in Mon State; Pha-An, Kayin State; Magway, Natmauk, Chauk, Pakokku in Magway Region; Monywa, Shwe Bo, Sagaing in Sagaing Region; Thabaikkyin, Mong-Kok and Pyin-Oo-Lwin in Mandalay Region.

239 Kachin, Kayah, Kayin, Chin, Mon, Rakhine and Shan.

Receiving information, however, is not enough. Knowledge includes understanding. Human rights education must move beyond the simple imparting of facts to ensuring an understanding of the concept and meaning of human rights and of human rights law. For some, the knowledge and understanding must be expert – lawyers advising clients on human rights and responsibilities are required to be experts in the law and its application. Duty bearers must have a high level of understanding of at least those aspects of human rights law that are relevant to their responsibilities. For others, however, the level of understanding need not be profound but it should be sufficient for participation in society on the basis of equality and for acting to claim and to defend human rights.

NHRIs promote understanding of human rights through their educational programs and their other activities. They certainly start with providing information about human rights but they 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 program and activities.

Changing values, beliefs and attitudes is the greatest challenge for human rights education. There are many examples of educational programs that increase knowledge and increase understanding. However, success in changing behaviour and attitudes is harder and slower.

Changing behaviour is far easier than changing attitudes. Laws and policies that punish bad behaviour and reward good behaviour have been very effective in shaping behavioural change. They may not eliminate bad behaviour – for example, murders continue even though all countries have strong criminal laws that punish murderers harshly – but they are successful in minimising it. Countries with effective legal systems, good laws, diligent police and independent courts generally have far lower murder rates that those without these advantages.

Good human rights laws are a principal means of shaping and changing behaviour. They make clear what conduct is acceptable and what is not and they raise expectations that State officials – civil servants, police, prison officers and the military – will comply. They provide the standards by which the courts judge. To be effective, laws have to be respected and enforced. However, even laws that are not fully enforced can play a useful role in changing behaviour by changing expectations.

Changing attitudes is harder. It is a long-term task. It requires fundamental shifts in mindset and in values. It is difficult but not impossible. In every country, it is possible to point to issues or practices that have been the subject of dramatic shifts in public attitudes. The concern for the environment, in the face of grave threats from pollution and climate change, is one change that is common to most people in most countries. Attitudes to smoking tobacco are another in many countries. Aspects of human rights have been the subject of many attitudinal changes over the past century. Although practice is still far from perfect, the enjoyment of human rights is far better in many areas now than it was 100 years ago or even 50 years ago. Slavery has been abolished in law in all countries, even if it persists in practice in some. There are international campaigns to end violence against women and children because this violence offends human dignity. There are fewer dictatorial regimes, although those that remain are often more authoritarian than ever as they find they have fewer friends and so become more isolated. Attitudes have changed and are still changing, though there remains a long way to go. Human rights education encourages and enables that further attitudinal change.

All NHRIs have considerable experience in the struggle to change attitudes and many even have some successes. Effective educational courses will go a long way toward facilitating attitudinal reflection and change.[240]

Attitudinal change can also be effectively accomplished through other activities of NHRIs such as investigating and exposing human rights violations. People come to question their own attitudes and the attitudes of others in government and in the community when they are confronted with the experiences of those who have suffered human rights violations. Most of the work of NHRIs can and should have an

240 See Chapters 4 and 5 of the APF Manual, *Human Rights Education: A Manual for National Human Rights Institutions*, published by the APF in 2013; available at www.asiapacificforum.net/resources/human-rights-education-manual/.

educational component. NHRIs should be conscious of this and ensure that all programs and activities have a specific component of human rights education. Some NHRI activities, such as national inquiries into situations of human rights violation, have human rights education as one of their principal goals and one of their main methodologies.[241]

Human rights education should compel **action**. It is not enough to know. A response is required. Action should be directed not only to protecting human rights and preventing violations. It should also be action for the fulfilment – the full enjoyment – of human rights. Those whose behaviour and attitudes have changed because of human rights education will be motivated to act. Further, action is itself a form of human rights education as participants learn more and more deeply about human rights.

NHRIs should ensure that their human rights educational programs 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 programs and activities
- incorporating learning by action and reflection in human rights education programs and activities
- assisting learners to develop human rights projects to follow up human rights education programs and activities
- supporting learners to implement what they have learnt in human rights education programs and activities.

One important form of action is communicating human rights. Human rights education is directed towards enabling people to communicate the human rights message to others. It should give learners the information, skills and confidence they need for that. In this way, learners become teachers. Some will be teachers in formal educational settings, such as schools and colleges. Most, however, will teach human rights in and through their ordinary work and activities; in their homes, workplaces, neighbourhoods and community groups.

Improving relationships between Thai and migrant workers at a factory in Mae Sot, Thailand. Photo by the ILO/Areeluck Phankhian, reproduced under a CC BY-NC-ND 2.0 license.

241 See chapter 19 of this manual for further discussion of national inquiries. See also the *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, published by the APF and the Raoul Wallenberg Institute in 2012; available at www.asiapacificforum.net/support/professional-resources/.

NHRIs produce materials that assist people to talk about human rights. Some of these materials are purely informational but others are more specifically directed to education. They include educational modules and manuals. NHRIs also conduct training-of-trainer courses for the formation of human rights educators. Training trainers and educating educators are effective ways for NHRIs with limited resources to maximise their impact in communicating the human rights message. NHRIs cannot provide human rights education directly to everyone. Equipping others to do so is one of the most effective and efficient means of broadening human rights education. They have to rely on others to spread the human rights message. This is part of the action dimension of human rights education – training trainers and educating educators to encourage others to human rights action. Human rights education programs conducted or sponsored by NHRIs should develop strategies for this.[242]

13.3. EFFECTIVE HUMAN RIGHTS EDUCATION

To be effective, human rights education must be responsive to the situations of those to whom it is directed. NHRIs need to strategise so that their human rights education programs are as successful as possible. This requires consideration of target groups, forms of education, means of education and educational methodologies.

Everyone in the community can be a **recipient of human rights education** in one way or another. Large numbers of people will hear about human rights. Many will see human rights information or educational materials. A relative few may participate in human rights educational programs and activities conducted by an NHRI. Those who could receive and benefit from human rights education are found in all parts of the community, covering all diverse groups. NHRIs could potentially seek to educate everyone in their countries but that would be well beyond their resources and capacities.

NHRIs need to target their human rights education programs and activities if they are to have the maximum impact. They can direct their educational endeavours to very different target audiences:

- parliamentarians and political leaders
- civil servants
- police and prisons officers
- community leaders, including religious leaders, indigenous leaders and leaders of NGOs
- business people
- workers
- women
- children and families
- students, both at universities and at schools
- members of groups at risk of human rights violation, including people with disabilities, indigenous peoples and people from minority groups.

These target groups are very different from each other. They have different needs and interests and respond in different ways to different kinds of programs and different kinds of materials. Most importantly for human rights education, they have different levels of literacy. NHRIs need to identify their priority target groups and develop the **programs and activities appropriate for each target group**. Many NHRIs are very creative in the kinds of programs and activities and educational materials they develop to reach their priority target groups. Some have extensive publications programs, including reports written at an academic level, publications written simply, publications that are highly visual and cartoons on human rights issues. Many NHRIs produce video materials, recognising that most people now learn more by watching than by reading. They also produce material that meets the needs of people with vision or hearing impairment.

242 See Chapter 5 of the APF Manual, *Human Rights Education: A Manual for National Human Rights Institutions*, published by the APF in 2013; available at www.asiapacificforum.net/resources/human-rights-education-manual/.

As well as providing a range of educational activities and materials NHRIs can consider human rights education in a range of **educational settings**.

Formal education extends from early childhood education, through primary and secondary school, to tertiary education. It is generally curriculum-based 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 designed for specific learning groups with particular learning objectives. Non-formal education can include work-based education and training, adult and community education, advocacy, networking and community development.

Informal 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.[243]

NHRIs have worked in all three educational settings. Some have provided human rights education themselves in one or more of these settings. Others have provided model syllabuses or curricula or resources materials so that others can draw on its expertise for their own educational work. Some NHRIs have recognised that significant engagement in formal educational settings, such as schools, is well beyond their resources and so they have sought to contribute to teacher education to support teachers to provide human rights education in their classrooms. This is a resource-efficient way for them to discharge their responsibilities.

Providing or supporting human rights education for different groups in different settings inevitably requires different **educational methodologies**. Because most NHRIs work more with adults than children, they need expertise in adult learning methodologies. Adults do not learn well in a classroom. They do not learn much from listening to lectures. Yet often human rights education is delivered through classroom lectures to hundreds of people. Members of the audiences in these settings remember little of what is said and learn even less. NHRIs need to be expert in adult learning and many are.

THE APF MANUAL ON HUMAN RIGHTS EDUCATION HAS IDENTIFIED SIX PRINCIPLES AND TEN PRACTICES FOR GOOD HUMAN RIGHTS EDUCATION.[244]

Human rights education principles apply across all levels of human rights education activity whether in non-formal or formal settings. While specific settings will influence what and how the educator develops and delivers human rights education, the following six principles have been developed as a guide for this manual.

Human rights education:

- **is participant-centred and relevant**
- **is enhanced by partnerships and collaborations**
- **acknowledges participants as educators**
- **deepens knowledge and experience**
- **recognises that societal change comes from informed action**
- **is transformative.**

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243 APF, *Human Rights Education: A Manual for National Human Rights Institutions*, 2013, p. 13.

244 *Human Rights Education: A Manual for National Human Rights Institutions*, 2013, pp. 13-14.

The practice of human rights education is consistent with, and guided by, human rights and education principles. Hence the activity of human rights education focuses on strengthening respect for the human rights and dignity of participants, and enabling 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 participant-centred**
- **is innovative and adaptable to a wide range of learning environments**
- **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.**

13.4. HUMAN RIGHTS EDUCATORS

Human rights education is a specialist professional role. It requires skilled trainers and educators. It does not necessarily require only qualified teachers but it does require trained educators. It does not necessarily require that only those staff in a human rights education unit should conduct education programs but anyone who conducts a program should be trained and qualified to do so. Too often NHRIs assume that any member of their staff can conduct human rights education. Perhaps all members of the staff have the potential to be human rights educators – hopefully, that is so – but not everyone has the expertise and experience to do so. NHRIs need to ensure that they have trained human rights educators on their staff and that they provide training in human rights education to their staff.

The training of staff should incorporate the essentials of human rights education, including:

- the goals and results of human rights education
- values and attitudes underpinning human rights
- the concept of human rights
- the content of human rights law
- effective methodologies for human rights education for adults and younger people.

GOOD PRACTICE

NHRI establishing legislation should include a broad function of awareness raising on human rights and human rights education and training.

KEY POINTS: CHAPTER 13

- Human rights education and training comprises all educational, training, information, awareness raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms.
- 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.
- Human rights education has three dimensions: increasing knowledge; changing values, beliefs and attitudes; leading to action.
- Effective human rights education requires strategic approaches that take account of different target groups, forms of education, means of education (formal, informal and non-formal) and educational methodologies.
- Human rights education is a specialist professional role. It requires expert, trained and skilled trainers and educators.

Chapter 14: The monitoring function of NHRIs

KEY QUESTIONS

- **What is the monitoring function of NHRIs?**
- **Should NHRIs monitor human rights situations?**
- **Should NHRIs monitor places of detention?**
- **What is the process of monitoring?**

14.1. WHAT IT IS

Monitoring a State's performance of its international human rights obligations is a key strategy in promoting and protecting human rights. But it is principally directed towards protection. By keeping the State's performance under scrutiny, monitoring seeks to deter human rights violations and encourage change that prevents human rights violations. In this way, monitoring is a different function from complaint handling and investigation. Investigations and complaint handling deal with allegations of human rights violations that have occurred, that is, that are past. They are directed towards fact finding and redress for victims. Monitoring supplements that with its preventive focus. It seeks to identify risks of violation before they occur and then address those risks. Its focus is the present and the future, rather than the past.

Monitoring is a process of continuing oversight and review. It has been defined as "the activity of observing, collecting, cataloguing and analysing data and reporting on a situation or event".[245] Human rights monitoring commonly has two dimensions:

- oversight of the human rights situation within the State, either generally or in relation to a particular category of rights, for example, under a specific human rights treaty
- on-site inspection of places where the risk of human rights violation is high or at least relatively higher than elsewhere, for example, places where persons are detained or forced to reside.

NHRIs have important roles in both dimensions of human rights monitoring. All NHRIs undertake monitoring functions, through research, investigation and reporting. On the basis of their monitoring, they provide information to international human rights mechanisms, including the Universal Periodic Review (UPR) and treaty monitoring bodies.[246] Some NHRIs have specific statutory obligations to prepare and submit to the Head of State or parliament an annual report on the human rights situation in their country. Some NHRIs have specific statutory responsibility for monitoring places of detention, for example, as designated National Preventive Mechanisms (NPMs) under the Optional Protocol to the Convention against Torture and All Forms of Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).

245 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 113.

246 See section 23 of this manual for further discussion of the international engagement function of NHRIs. See also APF, *Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions*, 2012.

OHCHR has proposed 18 principles for human rights monitoring by UN officials. These principles apply equally well to members and staff of NHRIs. They are:

- do no harm
- respect the mandate
- know the standards
- exercise good judgement
- seek consultation
- respect the authorities
- credibility
- confidentiality
- security
- understand the country
- need for consistency, persistence and patience
- accuracy and precision
- impartiality
- objectivity
- sensitivity
- integrity
- professionalism
- visibility.[247]

14.2. MONITORING HUMAN RIGHTS SITUATIONS

Monitoring the general human rights situation or specific human rights situations within a State can take many forms that are evident in the work of NHRIs in the Asia Pacific region. Frequently NHRIs are required to prepare annual "state of human rights" reports that are presented to the Head of State, the Government or parliament. In some instances, these reports may deal with the situation of all human rights across the country as a whole. The Palestine Independent Commission for Human Rights (ICHR), the National Human Rights Commission of Mongolia (NHRC), the Jordan National Center for Human Rights (NCHR) and the Ombudsman of Samoa, for example, prepare annual reports on the status of human rights in their respective countries.[248] The Jordan National Centre for Human Rights prepares its report under a specific legislative obligation to do so.[249] These reports are comprehensive, covering human rights issues in a number of areas, although each year the focus may be on different specific areas. The Palestine ICHR reports deal with all human rights – civil, cultural, economic, political and social – under broad categories or groups.[250] As well as the annual report, the Palestine ICHR also issues monthly monitoring reports that provide quick, current pictures of the continuing human rights situation in Palestine. The Mongolian NHRC report of 2013, on the other hand, focused on three specific areas, namely human rights and mining, the rights of children and the rights of LGBT persons in Mongolia.[251]

247 OHCHR, *Training manual on human rights monitoring*, Professional Training Series No. 7, 2001.

248 Annual reports on the status of human rights in Palestine for the years 2008 to 2013 inclusive can be accessed at http://ichr.ps/en/1/6. Annual reports on human rights and freedoms in Mongolia for the years 2002 to 2013 inclusive are available at www.mn-nhrc.org/eng/main2/188/. Annual reports on the status of human rights in Jordan are available at www.nchr.org.jo/english/Publications.aspx.

249 Law No. 51/2006, Article 12.

250 *The status of human rights in Palestine: 18th Annual Report 2012*; available at http://ichr.ps/en/1/6/273/ICHR-18th-Annual-Report.htm.

251 *12th Annual report in rights and freedoms in Mongolia 2013*, available at www.mn-nhrc.org/eng/main2/188/.

CASE STUDIES

Palestine Independent Commission on Human Rights: Monthly monitoring reports

The Palestine Independent Commission on Human Rights (ICHR) documents the numbers and patterns of human rights violations in Palestine in monthly reports. These reports are widely distributed and are considered the reference about the status of human rights in Palestine by many other organisations, stakeholders and decision makers. The monthly reports are prepared through monitoring and documenting human rights violations by ICHR's field researchers, who use reliable documentation methods. They also draw on complaints that the ICHR receives from Palestinian citizens. Receiving and managing complaints is one of the ICHR's main tasks, and it is considered practical and effective, especially because ICHR's regional offices are able to reach a wide base of Palestinian citizens and receive complaints from them. The monthly reports utilise a human rights-based approach and are reflect the standards set out in international treaties.

The ICHR follows up with all cases of human rights violations mentioned in the monthly reports. It uses these reports to put pressure on duty bearers and official decision makers, including the Government and the Palestinian High Court of Justice, to take serious measures in response to these violations. For example, it advocates with the Court for it to execute all its decisions, including decisions related to the release of detainees.

National Human Rights Commission of Mongolia: Investigating human rights violations by mining companies

Mongolia is currently in the midst of an unprecedented mining boom due to its rich natural resources. This boom has brought great economic development to the country but, with the development, it has also contributed to a number of negative effects on the environment. This in turn affects the rights of many Mongolians to a healthy and safe environment, among others.

In September 2011, the National Human Rights Commission of Mongolia (NHRC), in partnership with the Mongolian Confederation of Trade Unions, the Confederation of Trade Unions for Energy, Geology and Mining, the Confederation of Trade Unions for Transportation, Communication and Oil, the Mongolian Environmental Civil Council NGO, the Mongolian National Broadcasting Television, the National Post newspaper and other media, began investigating the human rights impact of mining on the local population.

The NHRC conducted a number of field missions and inquiries to assess whether certain mining companies operating in the Umnugobi Province were breaching the human rights of local Mongolians. It held a number of meetings and discussions with local people, including traditional herders in the area, people residing along the roads adjacent to the mine and those living and working in the mining settlements. The NHRC identified a number of human rights violations, including the right to health, property and culture.

Throughout the course of the investigation, the NHRC consistently heard complaints about significant air pollution and erosion of pastureland due to the heavy mining traffic using the surrounding roads. These environmental problems have resulted in a number of serious health issues for the population.

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There have been significant increases in respiratory disease, gastrointestinal disease due to contaminated drinking water, and an increase in the infection rates of sexually transmitted diseases as prostitution is on the rise among young women and minors. These health issues have led to many social problems in the settlements, as well as affecting the livelihoods and traditional way of life for many nomadic herders.

Following the investigation, the NHRC submitted a report and recommendations to the Prime Minister of Mongolia, aiming for a number of the issues raised to be addressed immediately. They also established a new project with UNDP, "Strengthening national human rights oversight capacity in Mongolia". Part of this included conducting further research into the human rights issues and potential solutions to the violations by mining companies in more detail across a broader spectrum of the country. The project was conducted between 2012 and 2014.

The NHRC's research and investigations culminated in an international conference, "Mining and Human Rights in Mongolia", hosted by the NHRC in 2012. It brought together all the relevant stakeholders: state, central and local administrative bodies; mining companies; international and national civil society organisations from the human rights and environmental fields; international and national media organisations; scientists and researchers; local communities; herders; artisanal miners; APF member institutions; embassy staff; and UN human rights experts. Results were shared and recommendations were developed with contributions from all sectors.

In other NHRIs, the reports are required to deal with the human rights situation of only one part of the population or only one part of the country or in relation to only one issue. The Aboriginal and Torres Strait Islander Social Justice Commissioner, a member of the Australian Human Rights Commission, is required by law to submit annual reports to the Australian Parliament on the state of the enjoyment of human rights by indigenous peoples and on the operation of the *Native Title Act 1993* and its effect on the enjoyment of human rights by indigenous peoples.[252]

Other reports prepared by NHRIs may also be part of the monitoring function where they examine State compliance with human rights obligations broadly, rather than in relation to a specific violation or complaint. All NHRIs do reports of this kind. Sometimes they are the result of research and consultation; at other times they are the product of a national inquiry process.[253] These reports are not comprehensive examinations of the human rights situation generally but are more focused and more intensive examinations of specific situations.

Many NHRIs monitor human rights compliance in relation to certain events, such as political protests and demonstrations, and elections. In these circumstances, the NHRI is acting preventively, seeking to deter violations through the presence of its representatives as observers and reporters. In both kinds of situation, NHRI monitoring has been found to be of great significance in ensuring compliance with human rights standards. The presence of NHRI monitors has kept demonstrations peaceful and elections free and fair. In most instances, the monitoring is followed by a report by the NHRI on the situation, analysing the total picture arising from the monitors' reports and expressing the NHRI's findings and recommendations in relation to the situation.

252 *Australian Human Rights Commission Act 1996*, s. 46C(1)(a) and *Native Title Act 1993*, s. 209(1). See www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/social-justice-and-native for copies of the most recent reports.

253 The national inquiry process is discussed in section 19 of this manual.

CASE STUDY

The experience of the Human Rights Commission of Malaysia on monitoring the right to freedom of assembly

The Human Rights Commission of Malaysia (SUHAKAM) has closely followed developments relating to public assemblies and demonstrations in Malaysia. It has advocated directly to parliament and the Government, and through its annual reports[254] and many media releases, for the right to freedom of peaceful assembly.[255] It has also monitored police conduct during peaceful assemblies and rallies through Commissioner and staff monitoring teams observing the assemblies on-the-spot. Through its six public inquiries on allegations of human rights infringements by the authorities during public assemblies and rallies, SUHAKAM has made various recommendations on the proper conduct of the authorities and participants in balancing the right of the freedom of peaceful assembly and peace and order. In 2012, for example, SUHAKAM observed rallies in Pahang, in Pengerang, Johor, and at the May Day Rally in Kuala Lumpur.[256] It expressed the opinion that certain restrictions in the law and conditions imposed by the police were impractical and curbed the freedom of assembly.[257]

The Chairperson of SUHAKAM wrote in his foreword to the 2012 Annual Report:

> "Closely related to this is freedom of assembly, which is enshrined in the Federal Constitution and the UDHR. Unfortunately, this right has not flourished in the country. Many laws are security-oriented, given the Government's preoccupation with issues of peace and national security since Independence; this has become a major bone of contention between the authorities and members of the public who wish to more freely exercise this right. In spite of the repeal of specific sections of the Police Act and passage of legislation that dispensed with the need for a police permit for peaceful public assemblies, there are concerns that the discretionary powers given to the police and other limitations in the new law will inhibit, rather than facilitate, the holding of peaceful assemblies. It is hoped that the new law can be refined to make it fully compliant with international human rights standards and that, in the interim, the authorities will facilitate rather than hamper the exercise of this universal right. The people, on their part, should conduct themselves responsibly in exercising this right.

Arising out of this is the somewhat negative public perception of the role of the police in dealing with peaceful assemblies. While the pivotal role of the police in the maintenance of public order and security is beyond dispute and is generally appreciated by the people, some of its standard approaches and procedures in carrying out its law and order function have raised questions. The Commission is of the view that this issue of perception of the police needs to be addressed in order to instil public confidence in the police as a professional force and for it to emulate best practices in the world."[258]

254 See, for example, SUHAKAM, *Annual Report 2012*, pp. 12-13.

255 See www.suhakam.org.my/pusat-media/sumber/arkib/press-statements/.

256 See SUHAKAM, *Annual Report 2012*, pp. 189-204.

257 SUHAKAM, *Annual Report 2012*, p. 58.

258 *Annual Report 2012*, p. 2.

Finally, NHRIs undertake human rights monitoring in conjunction with international scrutiny of State compliance with human rights obligations. NHRIs contribute to the preparation of State reports to the UPR and the treaty monitoring bodies. They also prepare their own parallel reports to these international mechanisms when the State reports are being considered and they often participate in the actual examination of the State.[259] Some NHRI legislation makes specific mention of this but, in most cases, it is undertaken as a general function of the NHRI.

The Convention on the Rights of Persons with Disabilities uniquely makes provision for domestic monitoring and implicitly nominates NHRIs for this role:

> States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.[260]

The provision recognises the importance of domestic monitoring institutions to supplement and, indeed, enable the role of international monitoring bodies.

The monitoring function should also be applied to follow up of NHRI recommendations to governments and of recommendations from international mechanisms, such as the UPR and the treaty monitoring bodies. NHRIs are permanent institutions and so do not disappear after they have completed a report. They have the capacity to promote and follow up the implementation of recommendations contained in their own reports. As national institutions, they are also very well placed to promote and monitor implementation of recommendations of international mechanisms. The international mechanisms have to deal with almost 200 States and they struggle to do so. They do not have the capacity to follow up implementation closely or often at all. The best they can hope to do is review implementation in the context of the next State report under the particular reporting cycle.

In relation to implementation of both their own recommendations and those of international mechanisms, NHRIs can publish progress reports as a result of their monitoring. These reports increase both transparency and accountability in the implementation process. They are also advocacy tools that increase the pressure on States to implement those recommendations.

Young girls, West Bank. UN Photo by Stephenie Hollyman.

259 NHRIs engagement with international human rights mechanisms is discussed in section 22 of this manual.

260 Article 33.2.

EXAMPLES OF STATUTORY PROVISIONS RELATING TO THE FUNCTIONS RELATING TO MONITORING HUMAN RIGHTS SITUATIONS

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014, s. 22

(b) To … monitor and promote compliance with international and domestic human rights laws

…

(l) To submit to the President and the Pyidaungsu Hluttaw an annual report on the situation of human rights in Myanmar, the activities and functions of the Commission, with such recommendations as are appropriate;

(m) To submit to the President special reports on human rights issues as and when necessary.

Afghanistan

Decree on the Enforcement of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, Decree No. 16 (2005), Article 21

The Commission shall have the following duties and power to achieve the following objectives set-up by this law:

1. Monitoring the human rights situation;
2. Monitoring the implementation of the provisions of the Constitution, other laws, bills and regulations, and Afghanistan's commitment to human rights standards;
3. Monitoring the performance of those administrative systems, legal and judicial institutions, and national and international profitable and non-profitable organizations in the country that effect human rights.
4. Monitoring the performance of state authorities and Non-Governmental organizations concerning the fair and accessible distribution of services and welfare.
5. Monitoring the situation of citizens' access to their human rights and freedoms…

…

27. Submitting annual reports to the President on the human rights situation;
28. Releasing and publishing reports and statements on human rights situation in Afghanistan…

Samoa

Ombudsman Komesina o Sulufaiga Act 2013, s. 40

(1) The Ombudsman must, before 30 June in each year:

(a) prepare a report on the status of human rights in Samoa for the previous year, including the following –

(i) recommendations about reforms and other measures, whether legal, political or administrative, which could be taken to prevent or redress human rights violations;

(ii) any action taken by the Government on recommendations in any previous report;

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(iii) any action taken by the Government to promote and protect human rights; and

(b) submit the report to the Speaker for tabling in the Legislative Assembly under its Standing Orders at its next meeting.

(2) When the report is tabled, the Legislative Assembly must refer the report to the parliamentary committee responsible for human rights to scrutinise the report pursuant to the Standing Orders.

(3) The parliamentary committee must:

(a) summon a Minister, public servant or other person affected by the report to appear before it to respond to any matter in the report; and

(b) prepare and transmit its report and recommendations to the Legislative Assembly to debate the report and the state of human rights in Samoa.

14.3. MONITORING PLACES OF DETENTION

Persons in detention are inherently at risk of suffering human rights violation. They are under the power of others and that power is usually founded, directly or indirectly, on the ability to use weapons or other force. Detainees cannot leave the place of detention and so have no means to escape from a situation of human rights violation. They are at risk both from those responsible for the detention, generally State officials or persons authorised by State officials, and from other detainees. The detention can be lawful or unlawful, under either or both domestic and international law. For example, it can be lawful if it is the result of criminal conviction through a process that meets international standards for a fair trial but it will be unlawful if arbitrary, unreasonable or disproportionate. Whether lawful or unlawful, the detention itself must comply with international standards and must not be inhumane or involve torture or cruel, inhuman or degrading treatment or punishment.

NHRIs typically have the function of monitoring places of detention for compliance with human rights standards. In most instances, "places of detention" is defined or interpreted widely to include not only prisons but any place to which a person is compulsorily consigned and from which the person is not permitted by law to depart.[261] It includes immigration detention centres, psychiatric hospitals and children's residential services.

This monitoring function may arise specifically under the NHRI's own legislation or under State arrangements under the OPCAT.[262] In both cases, the purpose of this monitoring is preventive; in the words of OPCAT:

(a) to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) to submit proposals and observations concerning existing or draft legislation.[263]

261 See, for example, OPCAT, Article 4.

262 OPCAT, Article 17.

263 OPCAT, Article 19.

EXAMPLES OF STATUTORY PROVISIONS FOR THE FUNCTIONS RELATING TO MONITORING INSPECTIONS

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014

43. The Commission has the power to inspect prisons, jails, detention centres, and places of confinement in order to ensure that persons imprisoned, detained or confined are treated humanely and in accordance with international and national human rights laws. The inspection shall be carried out in accordance with relevant laws.

44. In exercising this function in accordance with Section 43, the Commission shall have the following powers:

    (a) To visit for inspection prisons, jails, detention centres and places of confinement after notifying the relevant authorities of the time of its intended visit;

    (b) To inspect all areas and facilities for those detained or confined in prisons, jails, detention centres and places of confinement;

    (c) To interview freely and privately prisoners, detainees and those confined;

    (d) To make recommendations for action to the relevant authorities and to require them to inform the Commission of the steps that they have taken to give effect to those recommendations.

45. The Commission may convey to the relevant organizations at the Union level its findings and recommendations and make them public as appropriate.

India

Protection of Human Rights Act 1993, s. 12(c)

12. The Commission shall perform all or any of the following functions, namely:–

    ...

    (c) visit, notwithstanding anything contained in any other law for the time being in force, 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 conditions of the inmates thereof and make recommendations thereon to the Government.

Jordan

National Center for Human Rights Law, Law No. 51/2006, Article 10

The Center has the right to:

(A) Visit reform and rehabilitation centers, detention centers and juvenile care homes and shall do so according to proper rules.

Maldives

Human Rights Commission Act No. 6/2006, s. 21

(c) The members of the Commission or persons assigned by the Commission accompanied by the members may without prior notice, inspect any premises where persons are detained under a judicial decision or a court order.

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(d) The Commission, during their inspections as per subsection (c), shall inquire whether infringements of human rights of the detainees have occurred, and review the well-being of the detainees and make recommendations to the relevant government authorities should they deem the amenities offered to them or the facilities of detention need improvement.

Nepal
***Human Rights Commission Act 2053* (1997), Article 9(2)**

(e) Visit, inspect and observe any authority, jail or any organization under His Majesty's Government and to submit necessary recommendations to His Majesty's Government on the reform to be made on the functions, procedures and physical facilities which may be necessary for such an organization for the protection of human rights…

Samoa
***Ombudsman Komesina o Sulufaiga Act 2013*, s. 33**

The Ombudsman has the following human rights functions:

. . .

(e) to visit all public and, subject to section 48, private places of voluntary and involuntary confinement or detention…

Where a State with an NHRI has ratified the OPCAT, the NHRI will usually be designated as the National Preventative Mechanism (NPM) or one of a number of independent institutions comprising the NPM.[264] OPCAT provides explicitly that the NPM should have:

(a) access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location

(b) access to all information referring to the treatment of those persons as well as their conditions of detention

(c) access to all places of detention and their installations and facilities

(d) the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information

(e) the liberty to choose the places they want to visit and the persons they want to interview

(f) the right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.[265]

These powers should also be provided to NHRIs as part of their normal monitoring function, whether or not the State is a party to the OPCAT and, where it is, whether or not the NHRI is the designated NPM. They are the kinds of powers any NHRI would require to be able to carry out its monitoring function effectively.[266]

264 OPCAT, Article 17. Among Asia Pacific States with NHRIs, only the Maldives, New Zealand and the Philippines are parties to the OPCAT. In all cases, the NHRI has been designated as the NPM or one of the independent institutions comprising the NPM.

265 OPCAT, Article 20.

266 See APF Manual, *Preventing Torture: An operational guide for national human rights institutions*, published by the APF, APT and OHCHR in 2010; available at www.asiapacificforum.net/resources/preventing-torture-operational-manual-national-human-rights-institutions/.

CASE STUDIES

Palestine Independent Commission on Human Rights: Monitoring places of detention

The Palestine Independent Commission on Human Rights (ICHR) conducts regular visits to all places of detention, including prisons and correction centres, to monitor the human rights situation and living conditions of citizens. This is considered one of the ICHR's main tasks. ICHR staff adhere strictly to the highest human rights standards and are known and trusted by detention staff and detainees alike.

During the monitoring visits, ICHR staff document human rights violations, including physical assaults and torture, and ensure that law enforcement officials involved in these violations are punished. For example, in the Gaza Strip, the ICHR reported a number of allegations of violations of the right to physical safety. It received responses to its reports, mostly from the Public Prosecution and a few from the police agency and the internal security. Some of them recognised that the right of some citizens to physical safety was violated by law enforcement officials. They assured that those who were involved in such violations were punished in accordance with the provisions of the law.

Other violations to the right to physical safety of detainees were reported. As a result of the ICHR's continuous pressure, the competent authorities took penal disciplinary measures against persons involved in violations, although the number of the allegations the authorities accepted is small and the sanctions imposed on perpetrators were not proportionate to the severity of the offences.

The ICHR's regular monitoring also seeks to improve the living conditions of detainees, according to the international standards. For example, the ICHR did succeed to push for establishing correction centres in Jericho, Bethlehem, Jenin and Nablus, based on international standards for prisoners' living conditions, including the provision of suitable health and protection services. The correction centres still confront obstacles in meeting international standards and there are still violations to the right to physical safety. However, the ICHR continues to visit places of detention to reduce the number of these violations, punish those who commit violations and improve the living conditions of detainees.

Human Rights Commission of the Maldives: Imprisonment of two young girls

The Human Rights Commission of the Maldives (HRCM) has always closely monitored the State Children's Centre, owing to the number of cases it receives concerning the Centre. The HRCM has a mandate both generally as the NHRI under its establishing legislation and as the NPM under OPCAT.

Two girls who were victims of both sexual and physical abuse were detained in the Shelter for psychological and social rehabilitation and treatment. When they escaped from the Centre, the Gender Ministry sought the assistance of the Police to find them but, when they were found, they were first held at a police custodial centre and then transported to the main prison on a boat with convicted criminals.

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The HRCM had become aware through the media of the girls' escape from the Centre and sought the assistance of Gender Ministry. It was informed that the girls had been found and were being accommodated in a residential area of Maafushi Island, where they were being well looked after. A team from the HRCM went to the Maafushi Prison for a random check. Upon inquiry, it learned that the girls had been placed in the prison for the want of a place to house them. The HRCM at once launched an investigation. It made a public statement and began dialogue with the authorities. Eventually, the parliament took up the issue. After several meetings, including with the President of the Maldives, the HRCM argued that the girls could not be placed in the prison under any circumstances because the prison had no legal mandate to hold underage girls with no criminal records. The HRCM considered this a violation of the rights of the child and an unlawful disappearance, since the girls' whereabouts were withheld from the HRCM itself.

The HRCM secured the girls' transfer to an annex at the State Children's Centre, in accordance with their entitlement to State care. The legal aspects of the case are continuing.

The SCA has identified the issues that arise in relation to NHRIs exercising national preventive and monitoring responsibilities under international treaties:

- 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.[267]

One significant issue concerning monitoring places of detention is whether the NHRI should be required to give notice in advance of an inspection. Some legislation requires notice and other legislation does not. Some legislation has provisions for both inspections with notice and inspections without notice. The SCA has said that NHRI mandates should "authorize unannounced and free access to inspect and examine any public premises … without prior written notice".[268]

Certainly the ability to arrive at a detention centre unannounced and have full access to all areas and all detainees (often known as a "surprise visit") increases the effectiveness of the monitoring as it makes it difficult for unpleasant persons to be removed and unpleasant facts to be hidden. However, it may also prevent the centre being "prepared" in the positive sense of ensuring that the people and information the NHRI requires are available and on-the-spot to allow the investigation to be conducted and completed. The power to inspect with or without notice is the best practice as it allows the NHRI to determine on a case-by-case basis, according to the situation and context, whether or not notice would be helpful or whether surprise is required.

Monitoring places of detention should be both planned and responsive. The NHRI's strategic plan and annual activity plans should include a program of regular visits to and inspections of places of detention. The program should be developed with priorities clearly determined so that those places of detention where the risk of human rights violation is greater are visited more frequently and more intensively. The program should ensure that no category of places of detention is omitted, even though it may not be possible to visit places in each category each year or even during the life of the strategic plan. The program of visits should include at least some return visits so that the implementation of recommendations of earlier visits can be monitored. It also helps ensure that conditions do not deteriorate after an NHRI visit on the basis that "now that they have been here, they won't be back".

267 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.9.

268 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.2.

CASE STUDY

National Human Rights Commission of Nepal: Monitoring places of detention

An effective function of NHRIs is the ability to conduct on-the-spot inspections of State institutions, such as prisons, detention centres and health facilities. These "surprise visits" enable NHRIs to gain a better understanding of the real situation and running of these facilities.

In March 2013, the National Human Rights Commission of Nepal (NHRC), through its Khotang Sub-Regional Office, carried out an on-the-spot monitoring visit to the district prison to examine the condition of the prison and its inmates. As part of the investigation, the NHRC team met with the prison's director, the Chief District Officer, the Superintendent of Police and a number of inmates.

The NHRC found that, like many of the prisons in the country, this district prison was overcrowded with detainees and inmates. The overcrowding had a negative impact on the daily life of the prisoners, especially mentally ill inmates who were accommodated with other inmates. The NHRC also discovered that inmates were not given access to meet legal advisers.

Following the visit, the NHRC monitoring team provided the prison with a list of recommendations. These included the renovation of prison cells to improve prison conditions, moving mentally ill inmates to a place appropriate for their treatment, human rights training for all prison officials and staff, as well as pre-emptive action as the prison was at high risk due to natural disasters.

At the time of writing, the NHRC was awaiting a response from the prison.

Detainees at Bamyan Central Prison, Afghanistan. UN Photo by Eric Kanalstein.

14.4. MONITORING ELECTIONS

Several NHRIs in the Asia Pacific region are actively engaged in monitoring elections to ensure that the elections are free and fair and that all citizens have opportunities to cast their votes in peace and security and without intimidation or harassment. They are seeking to promote and protect the right to "vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".[269]

The need for an NHRI to monitor elections is greater where there is no independent elections authority in a country. Under those circumstances, there may be no other independent institution that can ensure free and fair elections. Election monitoring is a very intensive exercise and requires considerable resources if it is to be done properly and effectively. Few NHRIs alone have the resources necessary for this. Forming coalitions or partnerships with NGOs becomes essential in those circumstances to ensure that monitors can be placed as widely as possible across the country before and during the voting and to provide scrutineers to observe and verify the count.

Where there is an independent elections authority the role of an NHRI is better directed to oversight of the electoral law and processes established by the elections authority. While being the monitor of the process, the NHRI allows the elections authority to do its job of conducting a free and fair election. In these circumstances, many NHRIs consider that their scarce resources are not appropriately used by placing staff or organising observers in voting places.

A woman casts her ballot during an election in Timor-Leste. UN Photo by Martine Perret.

269 ICCPR Article 25(b).

CASE STUDY

The experience of the Jordan National Centre for Human Rights in monitoring the parliamentary election

Voting in free and fair elections is a human right recognised in international and regional human rights treaties ratified by Jordan. Monitoring parliamentary election falls within the general functions of the Jordan National Centre for Human Rights (NCHR) under its law. Through election monitoring, it promotes and protects a number of basic human rights, including:

- **the right of movement, assembly and association in the formation of political societies and parties during the period of the election**
- **the ability of political societies and parties to undertake activities within the law**
- **the ability of political societies and parties and candidates to access the media to express their views without any arbitrary restraints or interference**
- **equal security for all parties and candidates**
- **the ability of voters to cast their ballots without being exposed to any threat or intimidation**
- **monitoring the confidentiality of the balloting process**
- **ensuring that all phases and measures of the election process comply with the law and are free from corruption and forgery.**

Under the Election Law No. 25/2012, the NCHR deploys election monitoring teams to observe voting and counting. It built a coalition of 55 civil society organisations that join NCHR staff in these teams. Through these teams the NCHR observes and monitors:

- **voter registration**
- **candidate registration**
- **political campaigns**
- **voting and counting on election day**
- **processes for review and appeal of the results of the elections.**

The NCHR issues a statement on the eve of the elections describing its overall assessment of the extent to which the elections have met the universal criteria of an open, fair and transparent election. After the election, the NCHR publishes a comprehensive monitoring report that covers all stages of the process.

14.5. THE MONITORING PROCESS

There is no standard monitoring process that is or should be common to all NHRIs. Each NHRI will develop a process appropriate to its own context, including the external political context of the State and the internal context of the NHRI's resources and capacities. There will also be variations according to the provisions of the local law, including the NHRI's own law. There are, nonetheless, some characteristics that most monitoring processes share.

The monitoring process should be **planned**. The NHRI should have determined in advance what specific human rights issues will be monitored and how the monitoring will be undertaken. The planning should identify:

- the resources (personnel and financial) that are available so that the process developed is achievable
- the training that staff may require, both in the standards to be monitored and the process by which the monitoring is to be done
- the timetable and schedule for the process
- to whom and how the results of the monitoring are to be reported
- how the report will be followed up.

Whether a monitoring activity is directed towards a human rights situation or places of detention, its purpose is preventive and its orientation remains the present and the future. Where the monitoring concerns a single, isolated event, such as a demonstration or political protest, the procedure is relatively straightforward and simply takes the form of **observation and report**.

CASE STUDY

Jordan:
The experience of the National Centre for Human Rights in monitoring demonstrations, sit-ins and protests

The Jordan National Centre for Human Rights (NCHR) has responsibility for protecting human rights, including through monitoring situations of actual or potential violation. It has authority to visit any place in which human rights violations may have occurred or are occurring.

Since 2011, Jordan has experienced numerous public protests, demonstrations, marches and sit-ins. The NCHR formed teams to monitor and observe these protests to assess the extent to which protesters and demonstrators have exercised their rights and observed the requirements of peaceful assembly and freedom of opinion and expression in accordance with the guarantees in Jordan's Constitution and the international treaties ratified by the Jordan.

The NCHR issued several statements and a fact-finding report on the events of 24–25 March 2011 at the Ministry of the Interior Square. (Demonstrators had been planning to occupy this particularly sensitive area, replicating the protests in Cairo's Tahrir Square in Egypt that had precipitated the downfall of the Mubarak regime.) The NCHR reported on the compliance of all involved with international and national human rights standards and the effectiveness of the measures taken by the authorities to ensure the necessary protection for the demonstrators, including protection of persons and public and private property.

Following those events, the NCHR formed a fact-finding team to investigate a large march and sit-in on 15 July 2011. It documented violations by all parties, in particular attacks on the participants, the media and the security personnel. The NCHR wanted to ensure the effectiveness and sufficiency of measures taken by the concerned authorities and submit recommendations to prevent similar violations in future.

In all its reports, the NCHR sought to maintain the highest standards of objectivity, impartiality, accuracy, confidentiality and commitment to international human rights standards in monitoring. The investigation teams proceeded by:

- **studying the overall scene that preceded and accompanied the events**

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- **listening to the testimonies of all the parties that took place in events, including:**
  - **participants in the sit-in from all the organising groups**
  - **those who were injured in the sit-in, whether in the hospital or their places of residence or work.**
  - **field commanders and the injured of the public security directorate**
  - **eye witnesses who took part in the sit-in or saw most of the events or a certain event in particular**
  - **the journalists who covered the events**
- **making announced field visits to the area of the sit-in and listening to the shopkeepers and residents of the area overlooking the site**
- **reviewing videos recorded by the media, the organisers of the sit-in and the public security directorate**
- **monitoring all statements relating to the sit-in issued by the official authorities or the organising groups.**
- **monitoring social media and public media sites**
- **collecting and analysing all the information relating to the sit-in and the events that accompanied it, as well as the reports relating to it.**

After collecting and analysing the evidence, the NCHR made findings and recommendations. It stressed the necessity of implementing its recommendations to guarantee the enjoyment of all citizens of their civil and political rights, particularly the right of freedom of opinion and expression, the right to peaceful assembly and the right to physical safety.

Most monitoring is more complex than that, however. It requires a **comparison over time**, either in relation to the situation or a place of detention or a detention system. The monitoring seeks to determine whether the observance of human rights standards has improved or deteriorated. This requires a more rigorous methodology that is applied consistently over a period of time so that comparisons can be made and conclusions reached. The methodology will include:

- a **baseline** study to assess the situation at the beginning of the monitoring period
- **indicators** identified in advance that will indicate improvement or deterioration
- **benchmarks** or **milestones**, also identified in advance, that can mark the progressive steps towards improvement during the monitoring period
- **targets** that set identified goals that will enable assessment of the level of success in improving human rights observance.

CASE STUDY

Palestine Independent Commission for Human Rights: Monthly monitoring reports

The Palestine Independent Commission for Human Rights (ICHR) produces monthly reports on human rights violations in Palestinian controlled territory. The monthly report for January 2014, for example, presents a comprehensive overview of the major violations monitored by the ICHR and the conclusions it reached.

- Unnatural deaths continued. ICHR registered *ten* cases of unnatural death, *seven* of which occurred in Gaza Strip and *three* in the West Bank. These deaths occurred due to misuse of firearms, security mess, and negligence of public safety precautions, clan disputes, manslaughter, vengeful acts and tunnel-related accidents. Some incidences of unnatural death occurred under mysterious conditions.
- Cases of torture and ill treatment during detention continued. Furthermore, it increased in the centres of the Preventive Security Agency in the West Bank. ICHR received *56* complaints of torture and ill treatment, *36* of which occurred in the Gaza Strip and *19* in the West Bank.
- ICHR received complaints of violations of the right to appropriate legal procedures during detention in breach of guarantees to a fair trial, which are enshrined in the basic law.
- Some official security and civil authorities still refrain from implementing courts' decisions or procrastinate their implementation. ICHR received *eight* complaints in this regard, in addition to *16* other previous decisions. Furthermore, one of the inmates remained in prison despite completing his sentence.
- ICHR received complaints concerning expropriation of citizens' property by security agencies in the West Bank without judicial order.
- ICHR received a number of complaints of violations concerning the right to freedom of expression, freedom of the press, peaceful assembly and academic freedoms. It also received a number of complaints concerning assaults on persons, as well as on public and private properties.[270]

270 See http://ichr.ps/en/1/5.

GOOD PRACTICE

NHRIs should have strong monitoring functions that enable them to research and report on compliance with and implementation of domestic and international human rights obligations. The monitoring mandate should relate to all human rights within the jurisdiction of the particular NHRI. Monitoring should be undertaken regularly, for example, on the state of human rights generally within a country or on the state of a particular area of human rights or of the human rights of a particular group. The results of NHRI monitoring should be published in reports that are presented to the Government and the parliament, debated in the parliament and released to the community for broader discussion. The reports can contain findings and recommendations.

MODEL CLAUSES

As part of its mandate to promote and protect human rights, the Commission shall monitor the general human rights situation in the State and specific human rights situations for compliance with domestic and international human rights laws and:

(a) make findings and report them publicly

(b) make recommendations to the government, the parliament and others for action that should be taken to ensure greater compliance with domestic and international human rights laws, including in relation to legislation, public policy and programs, and private action

(c) conduct thematic inquiries into alleged human rights violations

(d) visit the scene of human rights violations

(e) visit prisons, jails, detention centres and public or private places of confinement

(f) consult and engage relevant civil society, business and labour organisations, academic institutions and other bodies as appropriate

(g) submit to the government and the parliament an Annual Report on the human rights situation in the State

(h) submit to the government and the parliament special reports on human rights issues as and when necessary.

The Commission has the power to inspect prisons, jails, detention centres, and places of confinement to ensure that persons imprisoned, detained or confined are treated humanely and in accordance with international and domestic human rights laws.

In exercising this function, the Commission has powers to:

(a) visit and inspect prisons, jails, detention centres and places of confinement

(b) inspect all areas and facilities for those detained or confined in prisons, jails, detention centres and places of confinement

(c) interview freely and privately prisoners, detainees and those confined

(d) make findings and recommendations for action to the relevant authorities and to require them to inform the Commission of the steps that they have taken to give effect to those recommendations.

KEY POINTS: CHAPTER 14

- Monitoring is a process of continuing oversight and review. It has been defined as "the activity of observing, collecting, cataloguing and analysing data and reporting on a situation or event".
- One form of monitoring is oversight of the human rights situation within the State, either generally or in relation to a particular category of rights, for example, under a specific human rights treaty. Follow up of implementation of recommendations is a key component of monitoring.
- The second major form of monitoring is on-site inspection of places where the risk of human rights violation is high or at least relatively higher than elsewhere, for example, places where persons are detained or forced to reside.
- Monitoring the general human rights situation or specific human rights situations within a State can take many forms, including preparing annual reports on the "state of human rights" generally or on a specific human rights issue and observing events as they occur.
- Monitoring prisons and other places of detention seeks to prevent violations of the human rights of some of the most vulnerable people in any community. It should be undertaken as a planned program of inspections that is also responsive to situations as they arise. It should include both inspections of which notice has been given and "surprise" inspections.
- Monitoring activities should enable the assessment of improvement or deterioration in human rights compliance over time, based on a baseline study, indicators, benchmarks and targets.

Chapter 15: Complaint handling

KEY QUESTIONS

- **What are the "quasi-judicial responsibilities" of NHRIs?**
- **What complaints can NHRIs receive?**
- **What are the steps in complaint handling?**
- **Who should handle complaints?**
- **What information should be kept and reported about complaints?**

15.1. WHAT IT IS

The Paris Principles contain a separate section of "[a]dditional principles concerning the status of commissions with quasi-jurisdictional competence".[271] The term "quasi-jurisdictional" is an error that arose from mistranslation of the original text, which was in French.[272] 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. Certainly 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 substitute for law enforcement officials or a properly functioning judiciary".[273]

The SCA has pointed out that NHRIs with this function require "the necessary functions and powers to adequately fulfil this mandate".[274] These powers and functions, according to the SCA, can 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 specialised tribunals for adjudication

271 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.10.

272 See *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.10, footnote 1; and B. Burdekin with J. Naum, *National Human Rights Institutions in the Asia Pacific*, 2007, p. 24, footnote 37.

273 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 77.

274 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.10.

- 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.[275]

EXAMPLES OF GENERAL PROVISIONS FOR THE RECEIPT AND INVESTIGATION OF COMPLAINTS

Qatar
Decree Law No 17 of 2012 on the Organisation of the National Human Rights Committee, Article 3

3 To consider any abuses or violations of human rights, to get involved in the settlement of complaints reported to it on such violations, to coordinate with the competent authorities for necessary action, and to propose ways to address and prevent them from being repeated.

Bangladesh
An Act to establish National Human Rights Commission, Act No. 53/2009, s. 12

(1) The Commission shall perform all or any of the following functions, namely:

(a) to inquire, suo-moto or on a petition presented to it by a person affected or any person on his behalf, into complaint of violation of human rights or abetment thereof, by a person, state or government agency or institution or organization;

(b) to inquire, suo moto or on a petition presented by the person affected or any person on his behalf, into any allegation of violation of human rights or abetment thereof or negligence in resisting violation of human rights by a public servant.

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, favoring neither one nor the other. Some courts have an investigative role, while others simply consider the evidence put before them by the parties to a dispute. All courts act as independent judges of the facts, examining 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.

NHRIs are not courts. They do not generally make binding, enforceable decisions, although some may have a limited jurisdiction to make some orders. However, they are court-like when they have quasi-judicial functions. They receive complaints. They may investigate them, by seeking evidence. They also receive whatever evidence the parties to a complaint can produce. Many NHRIs are required by law to attempt to resolve disputes by conciliation or mediation. If a dispute is not resolved, NHRIs can generally refer the complaint to a court for trial and final determination. Sometimes the referral is accompanied by the NHRI's own findings of fact and recommendations as to remedy.

275 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.10.

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 SCA describes this process as handling complaints "fairly, transparently, efficiently, expeditiously, and with consistency".[276] An NHRI should "ensure that its complaint handling procedures are contained in written guidelines and that these are publicly available".[277]

CASE STUDY

National Human Rights Commission of Korea

The number of complaints received by the National Human Rights Commission of Korea (NHRCK) in 2013 exceeded 10,000 for the first time and is up around 500 from the previous year. During the same period, the number of consultations and inquiries registered to the NHRCK increased by 21.3 per cent (35,508 in 2013) and 18.5 per cent (36,670 in 2013) respectively, compared to the previous year.

According to the NHRCK, this reflects a stronger will of the citizens to address human rights violations and discrimination that occurs as awareness of human rights becomes more widespread.

The number of complaints processed and completed by the NHRCK during 2013 also exceeded 10,000 for the first time since it was established.

The NHRCK statistics reveal that complaints relating to human rights violations have decreased slightly, while cases of discrimination have increased. Complaints related to facilities that care for people, such as mental health facilities, have soared, while cases related to correctional facilities, including penitentiaries, have decreased.

Violation cases related to facilities caring for people, such as mental health facilities, comprise 17 per cent (10,168) of the NHRCK's accumulated total of 59,567 cases. However, last year's figures show that 35.6 per cent (2,659) of the total of 7,460 cases involved facilities such as these.

Conversely, violation cases related to detention facilities make up 34.6 per cent (20,615) of the NHRCK's accumulated total of 59,567 cases, while last year they comprised 22.5 per cent (1,682) of 7,460 cases, a decrease of more than ten per cent.[278]

15.2. WHAT COMPLAINTS CAN AN NHRI ACCEPT?

15.2.1. The subject matter of a complaint

An NHRI is a State institution established by law. Its functions, responsibilities and powers are defined by the law that establishes it. It is not an NGO that can decide itself, through its members and general meetings, what it does. 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 its law.

276 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.10.

277 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.10.

278 See www.humanrights.go.kr/site/program/link/statisticsEng?menuid=002003005.

An NHRI is a human rights institution and so the complaints it handles should concern an issue that arises under human rights law. Laws establishing NHRIs will usually define human rights and that definition will govern what complaints are within jurisdiction and what are not. Human rights can be defined by reference to the national constitution and national law and by reference to international human rights law. They may be defined to include all human rights recognised in international law or to be restricted only to those human rights in treaties that the particular State has ratified. The Paris Principles require that the human rights mandate of NHRIs be as broad as possible and related to the breadth of international human rights law.

A complaint of unfairness or bad administration may deserve to be dealt with but an NHRI has jurisdiction to deal with it only if it also raises an issue under human rights law.[279] Every NHRI encounters expectations in the community that it will accept, investigate and resolve every manner of complaint against the State or its ministries or agencies. NHRIs cannot do that. They are limited by their establishing laws. Although they may be sympathetic to complainants who may have no other recourse to a remedy, they will find that they will be unable to do their human rights work if they accept and act on every complaint they receive, whether or not it raises a human rights issue.

15.2.2. 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, non-governmental organizations, associations of trade unions or any other representative organizations.[280]

In most cases, the law establishing an NHRI will also define who may make a complaint of a human rights violation. Any person harmed as a result of a human rights violation is entitled in international law to a remedy. The domestic law establishing an NHRI, however, might not be so broad in its approach. Some laws may permit only some specific categories of victims to lodge complaints. There are two issues that frequently arise.

The first is whether a complaint, to be valid, must be lodged by or on behalf of a victim or whether an unrelated third party, such as a human rights advocate or an NGO, can lodge a complaint. Clearly victims themselves should be entitled to lodge complaints. In addition, most laws recognise that others should be entitled to lodge complaints on behalf of victims. There are many circumstances in which a victim may not be able physically to lodge complaints, most obviously where the victim has been killed or disappeared or detained secretly or is in isolation. Other victims might not be able to lodge a complaint themselves because of their age, being either very young or very old, or because of physical or intellectual disability. In these circumstances, others acting on behalf of the victim should be entitled to make the complaint of their behalf. In addition, a legal representative should be able to make a complaint on behalf of the person represented.

Many laws recognise that victims themselves, because of vulnerability or incapacity or ignorance, may not lodge complaints and so human rights advocates – NGOs or individual advocates – should be able to do so, even if the advocates have no direct personal interest in the case and even though the advocates are not instructed to represent or act on behalf of the victims. These kinds of provisions ensure that disadvantaged victims are not left without a remedy because of their disadvantage. They also serve a very useful purpose in broadening the application of the legislation and the scope of the NHRI's authority.

279 Some NHRIs are also administrative ombudsmen and so have jurisdiction over administrative matters. This jurisdiction is not part of their human rights jurisdiction but is additional to their jurisdiction as NHRIs. Among APF member institutions, the NHRIs with this additional responsibility include those of Kazakhstan, Samoa and Timor Leste.

280 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

EXAMPLES OF NHRI LEGISLATION PROVISIONS ON CATEGORIES OF COMPLAINANT

Malaysia
Human Rights Commission of Malaysia Act 1999, s. 12(1)

The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons, inquire into an allegation of the infringement of the human rights of such person or group of person.

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 30

An individual may lodge a complaint with the Commission on his/her own behalf, or on behalf of another person or on behalf of a group of persons with a similar cause of complaint concerning any alleged violation of human rights.

Mongolia
National Human Rights Commission of Mongolia Act 2000, Article 9.4

Non-governmental organisations and trade union organisations shall exercise equally the right provided in Art 9.1 and lodge complaints through their representatives.

Afghanistan
Decree on Enforcement of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, Decree No. 16 (2005), Article 23.1

The Commission shall investigate all complaints on human rights violations received by the Commission.

The second issue is whether corporations can complain of human rights violations or only persons, that is, human beings. This issue goes to whether human rights apply to corporations or only to people. One view is that only human beings can have human rights. The other view is that a corporation is no more than a collection of human beings and those human beings have human rights as a collective and so the corporation, as the legal expression of their collective identity, can claim human rights and complain of violation of its human rights. Some NHRIs can take complaints from corporations while others only receive complaints from persons.

15.2.3. 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 respondent. Most commonly they may only be able to act on complaints against the State or its agents, such as civil servants, the police and the military. They may not be permitted to act on complaints against private individuals or corporations. With some important exceptions, international human rights law imposes legal obligations and requires legal accountability for human rights on States and only on States.[281] Laws establishing NHRIs may reflect that limitation of international human rights law and so only require accountability of State institutions and agents. However, this does not accurately reflect the requirements of international human rights law. International law obliges States to protect human rights, including by preventing human rights violations by non-State actors, such as individuals and corporations. States can respond to this obligation by making non-State actors accountable under domestic laws to NHRIs for violations of human rights for which the non-State actors are responsible.

281 Exceptions include the obligations of individuals and corporations in relation to genocide, crimes against humanity, war crimes and slavery and their accountability for those human rights violations in international criminal tribunals.

States can go further in restricting the jurisdiction of NHRIs by excluding some categories of State agents from the scope of the NHRI's complaint handling role. For example, some States exclude or limit the NHRI's jurisdiction in relation to the military and security services. As a result, the NHRI is unable to investigate and report on complaints that involve the military and security services. This can constitute a failure to provide remedies to victims of human rights violation, as required by international law, unless there is another independent mechanism that is at least as effective as the NHRI that can accept and investigate the complaints. It also raises questions of the NHRI's compliance with the Paris Principles.[282]

EXAMPLES OF STATUTORY PROVISIONS RESTRICTING THE MANDATE OF NHRIs

India

Protection of Human Rights Act 1993, s. 19

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:-

(a) it may either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may either not proceed with the complaint or, as the case may be make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

Australia

Australian Human Rights Commission Act 1986, s. 11

(3) Notwithstanding paragraphs (1)(a), (d) and (f), the functions of the Commission do not include inquiring into an act or practice of an intelligence agency, and, where a complaint is made to the Commission alleging that an act or practice of such an agency is inconsistent with or contrary to any human right, constitutes discrimination, or is unlawful under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*, the Commission shall refer the complaint to the Inspector-General of Intelligence and Security.

Another example of a limitation of NHRIs' jurisdiction to deal with all complaints against State agencies and officials arises in some federal States. In these States, the NHRI may be limited to dealing with complaints against national-level agencies and agents. However, it may not be able to deal with complaints against provincial-level officials. Similar issues arise here as in relation to the exclusion of military and security services. In international law, the State as a whole is accountable for human rights obligations. Most human rights treaties contain a specific provision dealing with federal States and apply to all levels of federal States the obligations imposed by the treaty.

282 See chapter 9 of this manual.

INTERNATIONAL HUMAN RIGHTS TREATY COMMON CLAUSE ON FEDERAL STATES

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.[283]

15.2.4. Other requirements going to jurisdiction

NHRI legislation often imposes other requirements or restrictions on the complaints that NHRIs can receive and act on. Most commonly there is a **time restriction**; the complaint must be lodged within a prescribed period after the occurrence of the violation to which it relates. The length of the period varies.

Table 2: Time restrictions on accepting complaints

State	Article number	Time period
Afghanistan	23	None specified in the Act
Australia	20.2(c)	More than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice.
Bangladesh	12.1(a), (b), (l)	None specified in the Act
India		None specified in the Act
Indonesia	90-96	None specified in the Act
Jordan	17(c)	None specified in the Act
Malaysia	Part III	None specified in the Act
Maldives	33a	The Commission may inquire into a matter concerning an event that occurred prior to the enactment of this Act, if the event took place after 1 January 2000.
	33b	Unless stated otherwise, the Commission shall only inquire into complaints that had occurred after the enactment of this Act, should the time period between the events complained of and filing of the complaint at the Commission have not exceeded a period of one year as per the Gregorian calendar.
	33c	Notwithstanding subsections (a) and (b), this Act does not restrict the Commission from inquiring into a complaint where the Commission deems such a complaint is necessary to be investigated based on its nature and severity.
Mongolia	12.1	Within 1 (one) year from the date on which their rights and freedoms were violated or from the date on which they came to know about such violation.

283 See ICCPR, Article 50; ICESCR, Article 28; CRPD, Article 4.5; and ICCPED, Article 41.

State	Article number	Time period
Myanmar	Chapter IV	None specified in the Act
Nepal	11-13	None specified in the Act
New Zealand	80.2	The Commission may decline to take action or further action under this Part in relation to a complaint if the complaint relates to a matter of which the complainant or the person alleged to be aggrieved (if not the complainant) has had knowledge for more than 12 months before the complaint is received by the Commission.
Oman		None specified in the Royal Decree
Palestine		If more than a year has lapsed since the violation took place, unless the violation is continuous.
Philippines	3	None specified in the Act.
Qatar	2(3)	None specified in the Act.
Republic of Korea	32.1(4)	In the case a petition is filed after one or more years have elapsed since the facts causing the petition occurred, provided that this shall not apply to the case if the statutory limitation for civil case and public prosecution with respect to such facts is not completed and the Commission determines to conduct an investigation.
Samoa		None specified in Act.
Sri Lanka	Part II	None specified in Act.
Thailand	Chapter III	None specified in Act.
Timor-Leste	36	None specified in Act.

In some cases, the NHRI has discretion to accept a complaint that is beyond the prescribed period. In others, there is an absolute bar.

EXAMPLES IN NHRI LEGISLATION OF DISCRETION TO INVESTIGATE OLD COMPLAINTS

Maldives
Human Rights Commission Act No. 6/2006, s. 33

a. The Commission may inquire into a matter concerning an event that occurred prior to the enactment of this Act, if the event took place after 1st January 2000.

c. Notwithstanding subsections (a) and (b), this Act does not restrict the Commission from inquiring into a complaint where the Commission deems such a complaint is necessary to be investigated based on its nature and severity.

Korea
National Human Rights Commission Act, Article 34.1(4)

In the case a petition is filed after one or more years have elapsed since the facts causing the petition occurred, provided that this shall not apply to the case if the statutory limitation for civil case and public prosecution with respect to such facts is not completed and the Commission determines to conduct an investigation;

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.

EXAMPLE IN NHRI LEGISLATION OF EXCLUSION OF COMPLAINTS SUBJECT TO COURT PROCEEDINGS

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 37

The Commission shall not inquire into any complaint which:

(a) involves any current proceedings before a court, cases under appeal or revision;

(b) has been finally determined by a court.

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. Some NHRIs have jurisdiction to accept complaints relating to violations that occurred outside the State but this is unusual.

EXAMPLE OF PROVISIONS FOR EXTERNAL JURISDICTION COMPLAINT POWER

Philippines
Executive Order No. 163, s. 18

The Commission on Human Rights shall have the following powers and functions:

(2) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measure and legal aid services to the underprivileged whose human rights have been violated or need protection.

15.3. STEPS IN COMPLAINT HANDLING

The processes by which complaints are handled vary from law to law and from NHRI to NHRI. Some NHRIs have a quite formal procedure through which all complaints pass, with little flexibility. Others are very informal, with no single strict procedure but an approach that varies on a case-by-case basis, according to an assessment of which methodology is most likely to be effective. Some NHRIs are required to attempt to resolve complaints through conciliation or mediation, while others are not. The basic outline of the procedure is similar in most NHRIs, however. In most NHRIs, the successive steps in complaint handling are:

- receipt
- investigation
- conciliation
- report or referral.

Most NHRIs have complaints handling manuals that establish the practice and procedures of the NHRI in dealing with allegations of violations of human rights. They ensure that staff know what is expected of them in dealing with complaints. These manuals are generally public documents and so they also ensure that the parties to complaints – complainants and respondents – know and understand how a complaint will be handled, what to expect to happen and what will be asked of them.[284] The publication of the complaints manual is both good practice, as it assists the process to be undertaken more efficiently and effectively, and good governance, as it promotes the transparency and accountability of the NHRI.

15.3.1. 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 within the jurisdiction of the NHRI.

NHRIs require good, useable registration and tracking databases for complaints. The caseloads of NHRIs can be enormous. The National Human Rights Commission of India, for example, deals with more than 100,000 complaints a year.[285] One of the smallest NHRIs in the Asia Pacific region, the National Human Rights Commission of Mongolia, receives around 220 complaints a year.[286]

284 Examples of NHRI complaint guides includes those from Korea, www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002004006002; and New Zealand, www.hrc.co.nz/enquiries-and-complaints/.

285 A total of 8,478 complaints were received in January 2014; see www.nhrc.nic.in/.

286 In 2010; see National Human Rights Commission of Mongolia, *Activity Report*, 2010.

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 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. It ensures that the complainant is entitled to lodge the complaint, that it raises a human rights issue that is within the jurisdiction of the NHRI and that it concerns persons who are proper respondents to a complaint. If these conditions are not met, there is no point in wasting the scarce resources of the NHRI in pursuing the complaint. Indeed handling complaints that are outside the NHRI's jurisdiction can result in the NHRI not having the resources it requires to handle complaints that are within jurisdiction professionally and expeditiously. NHRIs may be reluctant to dismiss a complaint that is outside jurisdiction because of concern for the complainant and a wish to be of assistance. This sympathy is understandable but misplaced, however, because of the impact on effectiveness in promoting and protecting human rights where NHRIs become diverted from their core mandate.

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".[287] NHRIs should be willing to exercise their power to dismiss complaints that are trivial or vexatious because these complaints, if pursued, would consume limited resources and divert NHRIs from acting on well-founded, serious cases of human rights violation.

Still from the Introduction to the Jordan National Centre for Human Rights video available at www.youtube.com/watch?v=J9in0BlSeNA&t=25.

287 *Australian Human Rights Commission Act 1986*, s. 46PH.

EXAMPLES OF LEGISLATION ON POWERS TO DISMISS

Australia

Australian Human Rights Commission Act 1986, s. 46PH

(1) The President may terminate a complaint on any of the following grounds:

(a) the President is satisfied that the alleged unlawful discrimination is not unlawful discrimination;

(b) the complaint was lodged more than 12 months after the alleged unlawful discrimination took place;

(c) the President is satisfied that the complaint was trivial, vexatious, misconceived or lacking in substance;

(d) in a case where some other remedy has been sought in relation to the subject matter of the complaint – the President is satisfied that the subject matter of the complaint has been adequately dealt with;

(e) the President is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to each affected person;

(f) in a case where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority – the President is satisfied that the subject matter of the complaint has been adequately dealt with;

(g) the President is satisfied that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority;

(h) the President is satisfied that the subject matter of the complaint involves an issue of public importance that should be considered by the Federal Court or the Federal Magistrates Court;

(i) the President is satisfied that there is no reasonable prospect of the matter being settled by conciliation.

(2) If the President decides to terminate a complaint, the President must notify the complainants in writing of that decision and of the reasons for that decision.

(3) On request by an affected person who is not a complainant, the President must give the affected person a copy of the notice that was given to the complainants under subsection (2).

(4) The President may revoke the termination of a complaint, but not after an application is made to the Federal Court or the Federal Magistrates Court under section 46PO in relation to the complaint.

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014, s. 32

The Commission shall conduct an inquiry into a complaint unless it decides not to do so because:

(a) the complaint is not made in good faith;

(b) the complaint is not within the competence of the Commission;

(c) a more appropriate redress or reasonable channel of complaint is available to the complainant;

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New Zealand
Human Rights Act 1993, s. 115

The Tribunal may at any time dismiss any proceedings brought under section 92B or section 92E if it is satisfied that they are trivial, frivolous, or vexatious or are not brought in good faith.

Indonesia
Law No. 39 of 1999 Concerning Human Rights, Article 91(1)

Investigation shall not be undertaken, or shall be suspended if already underway, in the event that:

a. there is insufficient evidence;
b. the subject matter of the complaint is not a violation of human rights;
c. the complaint is not presented in good faith, or if the complainant is not in earnest;
d. more effective legal measures are available to resolve the complaint;
e. resolution through available legal means, in accordance with the law.

Timor-Leste
Statute of the Office of the Ombudsman for Human Rights and Justice, No. 7/2004, Article 37(3)

The Ombudsman for Human Rights and Justice may decide to dismiss the complaint or not to take further action where:

(a) the complaint is anonymous;
(b) the complaint is made in bad faith, unfounded or patently frivolous or vexatious;
(c) under the law or existing administrative practice, there is adequate remedy for the complaint, whether or not the complainant has availed himself or herself of it;
(d) the complaint is not within the mandate of the Ombudsman for Human Rights and Justice;
(e) the complaint is in connection with acts or omissions that were committed before the present law came into force;
(f) the complaint was lodged after the period provided in the present law;
(g) the complaint has been manifestly delayed too long to justify an investigation;
(h) the alleged damage has been effectively and adequately redressed;
(i) the matter or substantially the same matter has already been addressed, or is currently being addressed by the Ombudsman for Human Rights and Justice or another competent organ;
(j) having regard to all the circumstances of the case, any further investigation is unnecessary.

15.3.2. Investigation[288]

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 enormously. In many countries, typically where there is violent conflict or political instability, there may be large numbers of extrajudicial killings and a high incidence of torture. Complaints of these violations typically require intensive, forensic-like investigations. The Philippines Commission on Human Rights, for example, has rooms that are fully equipped for post-mortem procedures and forensic medical analysis. In other countries, such extreme forms of human rights violation are rare and most complaints relate to discrimination of some kind. NHRIs in these countries will have little or no forensic expertise but will undertake investigations that are based more on witness statements, documentary evidence and sometimes statistical analysis.

Investigations have to be carefully planned and then thoroughly undertaken. The APF manual on investigations makes that point clearly.[289] Although different weight will be given to different aspects of the investigative process, depending on the nature of the compliant, there are certain elements that are common:

- interviewing, usually the complainant, other victims, witnesses and the alleged perpetrator[290]
- obtaining and analysing documentary evidence[291]
- obtaining and analysing other evidence, including physical and digital evidence[292]
- assessing all the evidence available.[293]

NHRIs will need adequate powers to undertake investigations successfully.[294] 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.[295]

The existence of a power requires the imposition of a penalty if any person or organisation fails to comply with an order issued 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.

288 The APF has published a manual for NHRIs on human rights investigations. *Undertaking Effective Investigations: A Guide for National Human Rights Institutions*, 2013; available at www.asiapacificforum.net/support/professional-resources/.

289 APF *Undertaking Effective Investigations: A Guide for National Human Rights Institution*s, 2013, chapter 5.

290 Ibid, part III.

291 Ibid, chapter 24.

292 Ibid, chapters 20 to 23.

293 Ibid, chapters 19, 25 and 26.

294 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

295 See chapter 11 of this manual for discussion and examples of legislative provisions for NHRI powers.

EXAMPLES OF PROVISIONS IN LEGISLATION PROTECTING WITNESSES OR PENALISING REPRISALS

Australia

Australian Human Rights Commission Act 1986, s 26

(2) A person who:

(a) refuses to employ another person; or

(b) dismisses, or threatens to dismiss, another person from the other person's employment; or

(c) prejudices, or threatens to prejudice, another person in the other person's employment; or

(d) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to, another person;

by reason that the other person:

(e) has made, or proposes to make, a complaint to the Commission; or

(f) has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to any human right; or

(g) has furnished, or proposes to furnish, any information or documents to the Commission or to a person acting for or on behalf of the Commission; or

(h) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission;

is guilty of an offence punishable upon conviction:

(j) in the case of a natural person – by a fine not exceeding 25 penalty units or imprisonment for a period not exceeding 3 months, or both; or

(k) in the case of a body corporate – by a fine not exceeding 100 penalty units.

Timor Leste

Statute of the Office of the Ombudsman for Human Rights and Justice, Law No. 7/2004

Article 40 Victimisation

1. No person shall be liable to prosecution for an offence committed by reason of his or her compliance with a requirement of the Ombudsman for Human Rights and Justice under this law.
2. Absence from work shall be deemed justified where it stems from the duty to appear before the Ombudsman for Human Rights and Justice.
3. No person, or a relative or associate to that person, shall be unfairly treated in their employment or be discriminated against by any other means by reason of his or her lodging a complaint, his or her cooperation with the Ombudsman for Human Rights and Justice, or by reason of his or her taking any action under this law.

Article 49 Other Offences

It shall be a serious offence for any person to:
…

►►

(e) threaten, intimidate or improperly influence any person who has complained to or cooperated with the Office or is intending to complain to or cooperate with the Office in accordance with Article 35 of the present law.

Maldives
Human Rights Commission Act No. 6/2006, Article 22(d)

This Act does not permit a person who has lodged a complaint to be subjected to any form of harassment, intimidation, agony or any other repercussions.

EXAMPLES OF PROVISIONS IN LEGISLATION PROTECTING THE NHRI AND ITS COMMISSIONERS AND STAFF

Australia
Australian Human Rights Commission Act 1986, s. 26

(1) A person shall not hinder, obstruct, molest or interfere with:

(a) a member participating in an inquiry or examination under this Act; or

(b) a person acting for or on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act.

Samoa
Ombudsman Komesina o Sulufaiga Act 2013, s. 58

(1) A person commits an offence who:

(a) without lawful justification or excuse, wilfully obstructs, hinders, threatens, intimidates, interferes with or resists the Ombudsman, staff or any other person when carrying out a function, duty or power under this Act; . . .

15.3.3. Conciliation (or mediation)

Some NHRIs are required by their establishing law to attempt to resolve complaints by agreement between the parties, that is, between the complainant and the respondent. They seek to do this by conciliating (or mediating) between the parties.[296] The Paris Principles provide that NHRIs with quasi-judicial functions should "seek… an amicable settlement through conciliation".[297]

296 In the literature on conflict resolution there are technical differences between conciliation and mediation. NHRIs, however, use the terms interchangeably. In this manual, the technical distinctions are not pursued and the single term "conciliation" is used to refer to the conflict resolution processes of NHRIs.

297 Paris Principles, 'Additional principles concerning the status of commissions with quasi-jurisdictional competence'.

EXAMPLES OF LEGISLATION ON RESOLUTION OF COMPLAINTS

Thailand
National Human Rights Commission Act, B.E. 2542 (1999), s. 27

In conducting the examination of human rights violation, the Commission shall, if it deems mediation is possible, mediate between persons or agencies involved to reach an agreement for compromise and solution of the problem of human rights violation. If the parties agree to compromise and solve the problem and the Commission considers the agreement is within the scope of human rights protection, the Commission shall prepare a written agreement for the parties and settle the matter.

If it appears to the Commission thereafter that there is non-compliance with the written agreement under paragraph one, the Commission shall further proceed with the examination under its powers and duties.

Timor Leste
Statute of the Office of the Ombudsman for Human Rights and Justice, Law No. 7/2004, Article 38(1)

The Ombudsman for Human Rights and Justice may act as a mediator and a conciliator in a dispute between the complainant and the entity or agency the subject of a complaint, where both parties agree to submit to such a process.

Sri Lanka
Human Rights Commission of Sri Lanka Act 1996, s. 16

(1) Where the Commission refers a matter for conciliation or mediation under section 15 it shall appoint one or more persons to conciliate or mediate between the parties.

(2) The manner of appointment and the powers and functions of conciliators or mediators shall be as prescribed.

(3) The Commission may direct the parties to appear before the conciliators or mediators for the purpose of conciliation or mediation. Sittings of the conciliators or mediators may be held in camera.

(4) In the event of the conciliation or mediation not being successful, or where one party object to conciliation or mediation, the conciliator or mediator shall report to the commission accordingly.

(5) Where the conciliators or mediators are successful in resolving the matter by conciliation or mediation they shall inform the Commission of the settlement arrived at.

(6) Where a matter is referred to for conciliation or mediation under this section and a settlement is arrived at, the Commission shall make such direction (including directions as to the payment of compensation) as may be necessary to give effect to such settlement.

Bangladesh
An Act to establish National Human Rights Commission, No. 53/2009

14. Steps to be taken in case of revelation of Human Rights violation:

(1) If any human rights violation is revealed from the enquiry of the Commission, the Commission may take steps to resolve it through mediation and arbitration.

▶▶

15. Appointment of arbitrators or mediators:

...

(6) If there is a settlement through mediation or arbitration, the mediator or arbitrator shall inform the matter to the Commission.

(7) In order to execute the settlement made under sub-section (6), the Commission may, along with other instructions, give instruction to impose fine as it deems appropriate.

As with investigations procedures, there are different approaches to conciliation. The methodology used by NHRIs typically has the following characteristics.

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 complaint has arisen from events that at least one party sees as a human rights violation. The nature of the complaint is that the other party is accused of being responsible for a human rights violation and is to be held accountable as a perpetrator. Hostility between the parties is to be expected in such circumstances. Nonetheless, in conciliation they strive for an agreement that will resolve the complaint.

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 of 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. However, the process itself is subject to the consent of the parties and the parties are in full control of the result, if a result is agreed. The process progresses by agreement but the conciliator is an active facilitator of agreement.

The process of conciliation can take many forms. For example, the conciliator can meet together with both parties at the same time and act as facilitator in their face-to-face conversation. Or the conciliator can move from one party to the other, back and forth, conveying messages between them but also proposing and discussing options for settlement that they might consider without commitment. The parties can express themselves directly and personally, through face-to-face meetings where there is less possibility of misunderstanding the other's position. However, the frankness of this exchange can often make resolution more difficult, not less. It may increase the parties' hostility towards each other and entrench their positions. Where the conciliator moves between the parties, they can explain the other party's views in ways that can be better understood and can present proposals for settlement in ways that encourage further discussion and, ultimately, agreement.

Not every complaint of human rights violation lends itself to conciliation or is appropriate for conciliation. This is a most important consideration in deciding whether to commence or continue an attempt at conciliation, even where the NHRI's legislation requires conciliation to be attempted. To take the most extreme example, conciliation cannot settle the crime of genocide. Genocide is the most serious violation of human rights, a crime of such gravity that legal accountability is required, not merely an agreed settlement between two parties. Certainly conciliation can be used, even in a situation of genocide, to provide a remedy to individual victims but, for a violation so profound, conciliated agreements cannot be a substitute for legal accountability. Similarly, conciliation between the parties may be totally inappropriate in situations of torture, especially torture involving sexual assault. It is unreasonable and unacceptable to require victims of sexual assault to sit with the perpetrators to discuss the situation and seek a mutually agreeable resolution.

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 well-being and needs of the victim should be the priority concern of the NHRI.

15.3.4. Referral to government or report

NHRI complaint 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. Nonetheless, some NHRIs have this power.

EXAMPLES FROM LEGISLATION ON REFERRAL TO GOVERNMENT AND REPORTING

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 38

Where a complaint involves a government department, organization or related entity, the Commission shall refer its findings on the complaint to the relevant government department or organization with recommendations for further action. That department or organization shall respond to the Commission on its action regarding the Commission's recommendations within thirty days and also the action to ensure that complainants are not subjected to reprisals.

Nepal
Human Rights Commission Act 2053 (1997), s. 13

(1) If, while taking proceedings by the Commission on the complaints and petitions filed under its jurisdiction pursuant to Section 11, the accused is found guilty, it shall write to the concerned body, or authority to take necessary action against the guilty.

(2) While writing pursuant to sub-section (1), if the Commission thinks it necessary to provide the victims with necessary compensation, it shall also write therefore.

(3) The bases and procedures to be followed while providing compensation pursuant to sub-section (2) shall be as prescribed.

(4) Upon receiving a writing for actions pursuant to sub-sections (1) and (2), the concerned body or authority shall take action as written by the Commission, or if such action cannot be taken, setting out the reasons thereof, the concerned body or authority shall send the report of the action taken accordingly to the Commission within three months of the date of receipt of the writing from the Commission.

Thailand
National Human Rights Commission Act B.E. 2542 (1999)

28. If the Commission is, subject to section 27 and when the examination is completed, of the opinion that there is a commission or omission of acts which violate human rights, the Commission shall prepare a report of the examination which shall specify details of the circumstances of human rights violation, reasons for such opinion and remedial measures for solving human rights violation which shall clearly set forth the legal duties and methods of performance of a person or agency, including the period for implementation of such measures.

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In setting forth the remedial measures under paragraph one, the Commission may require a person or agency to perform his or its duties by appropriate methods to prevent a recurrence of similar human rights violation.

In the case the Commission is of the opinion that the said commission or omission of acts does not violate human rights but there is an unjust practice from which the aggrieved person deserves a remedy, the Commission may set forth remedial guidelines and notify a person or agency to appropriately perform within the scope of powers and duties of such person or agency.

The Commission shall promptly notify the examination report to the person or agency having duties to perform and to the petitioner in case a petition has been lodged with the Commission.

29. The person or agency shall, upon receiving the examination report under section 28, implement the remedial measures for solving the problem of human rights violation within the period specified by the Commission and shall notify the results of the implementation to the Commission.

In the case where the implementation of the remedial measures for solving the problem of human rights violation cannot be completed within the specified period, the person or agency shall, before the expiration of the previous period, request the Commission for an extension of the implementation period together with reasons and the length of period sought for extension; provided that no request shall be made for an extension of the implementation period more than two times.

30. When the period under section 29 is lapsed, if the person or agency has not implemented the remedial measures for solving the human rights violation or has not completed the implementation without justifiable reasons, the Commission shall report to the Prime Minister to order an implementation of the remedial measures within sixty days as from the date the report is received. In this case, the Commission shall specify, to the Prime Minister, details for the exercise of the legal power in the issuance thereof, except the implementation of such remedial measures is not within the power of the Prime Minister, the Commission shall proceed in accordance with section 28.

33. In the performance of duties under this Act, members, members of the sub-committee or official appointed by the Commission to examine human rights violation shall be official under the Penal Code.

More commonly, the legislation establishing an NHRI or legislation supplementary to it may also establish a court or judicial tribunal to take and judge cases arising from NHRI complaints. Alternatively, those cases may be referred by the NHRI to the ordinary courts for hearing and determination. These procedures represent a proper separation of powers between judicial bodies (courts) and non-judicial bodies (NHRIs), even though NHRIs have some court-like (quasi-judicial) functions and powers.

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.

CASE STUDY

New Zealand

The New Zealand *Human Rights Act 1993* provides that the Human Rights Review Tribunal, a specialist judicial body, can hear complaints of human rights violation and discrimination under the Act. A complainant or the Human Rights Commission can bring civil proceedings before the Tribunal.[298]

The Tribunal was established in 1977 under the Human Rights Commission Act, as the Equal Opportunities Tribunal. It became the Complaints Review Tribunal in 1993 and the Human Rights Review Tribunal in 2002. The Tribunal comprises a Chairperson and a panel of up to 20 members, appointed by the Governor-General on the recommendation of the Minister of Justice. Deputy Chairpersons are sometimes appointed to deal with particular cases.

The Tribunal is a statutory body that deals with matters relating to:

- **some aspects of domestic human rights law, including unlawful discrimination, sexual harassment and racial harassment**
- **the privacy principles in the Privacy Act**
- **the Code of Patients' Rights (the Health and Disability (Code of Health and Disability Services Consumers' Rights) Regulations 1996).**

The Tribunal deals with cases brought under the *Human Rights Act 1993*, the *Privacy Act 1993* and the *Health and Disability Commissioner Act 1994*.

Where a case is referred to the court by the NHRI, or taken to the court by a complainant, the NHRI may be able to play a role in the court proceedings. Some NHRIs are able to assist the complainant to take the case to court. Other NHRIs can seek leave to assist the court itself as a friend of the court.

Former Commissioners with the New Zealand Human Rights Commission discuss issues related to the families of people with disabilities. Photo by the APF.

298 *Human Rights Act 1993*, s 92B.

EXAMPLES FROM NHRI LEGISLATION ON THE ROLE OF THE NHRI IN COMPLAINTS CASES IN COURT

Australia

Australian Human Rights Commission Act 1986, s. 46PV

(1) A special-purpose Commissioner has the function of assisting the Federal Court and the Federal Magistrates Court, as *amicus curiae*, in the following proceedings under this Division [that is, proceedings involving complaints of discrimination made to the AHRC]:

(a) proceedings in which the special-purpose Commissioner thinks that the orders sought, or likely to be sought, may affect to a significant extent the human rights of persons who are not parties to the proceedings;

(b) proceedings that, in the opinion of the special-purpose Commissioner, have significant implications for the administration of the relevant Act or Acts;

(c) proceedings that involve special circumstances that satisfy the special-purpose Commissioner that it would be in the public interest for the special-purpose Commissioner to assist the court concerned as *amicus curiae*.

(2) The function may only be exercised with the leave of the court concerned.

…

New Zealand

Human Rights Act 1993,

s. 5(2)(j)

The Commission has, in order to carry out its primary functions under subsection (1), the following functions:

to … be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations, if, in the Commission's opinion, taking part in the proceedings in that way will facilitate the performance of its functions stated in paragraph (a) of this subsection:

s. 92B(6)

(1) If a complaint … has been made, the complainant, the person aggrieved (if not the complainant), or the Commission may bring civil proceedings before the Human Rights Review Tribunal…

(6) … the Commission may bring proceedings under subsection (1) only if—

(a) the complainant or person aggrieved (if not the complainant) has not brought proceedings; and

(b) the Commission has obtained the agreement of that person before bringing the proceedings; and

(c) it considers that bringing the proceedings will facilitate the performance of its functions stated in section 5(2)(a).

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.

The report has to be tabled in parliament and becomes a public document that can be reported in the media. It may also be debated in parliament or in a parliamentary committee.

EXAMPLE OF PROVISIONS IN NHRI LEGISLATION FOR REPORTING ON COMPLAINTS AND TABLING IN PARLIAMENT

Myanmar
***Myanmar National Human Rights Commission Law* No. 21/2014, s. 39**

At the conclusion of an inquiry, the Commission may report its findings and recommendations to the President and the Pyidaungsu Hluttaw and may publish them for public information.

Australia
Australian Human Rights Commission Act 1986

s. 29 Reports to contain recommendations [on complaints]

(2) Where, after an inquiry into [a complaint of] an act done or practice engaged in by a person, the Commission finds that the act or practice is inconsistent with or contrary to any human right, the Commission:

(a) shall serve notice in writing on the person setting out its findings and the reasons for those findings;

(b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;

(c) may include in the notice any recommendation by the Commission for either or both of the following:

(i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;

(ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;

(d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);

(e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and

...

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(4) In setting out findings and reasons in a notice to be served or a report to be given under this section the Commission may exclude any matter if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 14(5) and to the obligations of the Commission under subsection 14(6).

(5) Where, under subsection (4), the Commission excludes any matter from a report, the Commission shall prepare a report setting out the excluded matter and its reasons for excluding the matter and shall furnish the report to the Minister.

s. 46 Reports to be tabled in Parliament

The Minister shall cause a copy of every report furnished to the Minister by the Commission under this Part other than subsection 29(5) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

This procedure is basically a "name and shame" procedure. It does not involve an enforceable order for a remedy for the victims. It makes findings and so can vindicate the victim and criticise the perpetrator but it has recommendations, not orders. There is an expectation that tabling such a critical report in parliament will shame the perpetrator and, as a result, the perpetrator will accept and implement the recommendations. However, this has not been the experience when this procedure is required. More often the report is tabled and forgotten. It is ignored by parliament and the media and by the perpetrator. The victim is left without a remedy.

Ensuring a remedy for victims of human rights violations, to which they are entitled, requires that victims ultimately have access to the courts to seek a binding, enforceable order. NHRI legislation should provide that, where an NHRI accepts, investigates, conciliates but fails to resolve a complaint, the victim should be able to obtain an order from a court. Further, where conciliation is inappropriate to the nature of the complaint, or when it becomes apparent that conciliation is unlikely to succeed, the victim should be entitled to go straight to the courts without prolonging the process through the NHRI.

Commission staff at the cremation site in Janakpur during the handover of human remains to the families of victims of human rights violations. Photo by the National Human Rights Commission of Nepal.

CASE STUDY

National Human Rights Commission of India: The use of information and communications technology in complaint management

The National Human Rights Commission of India (NHRC) receives approximately 100,000 complaints each year. To deal effectively and efficiently with this number of complaints, soon after the NHRC's establishment it developed a software program called 'COMMONS', an electronic complaints registration system. The software worked well but, as the number of complaints continued to increase, an updated software system, the Complaints Management System (CMS), had to be developed in 1996.

In 2000, the NHRC launched its website and developed a web-based version of the CMS software. Features of the new system include: online lodgement of complaints; an automatic acknowledgement of the complaint registration by SMS and email; automatic reminders to the authorities about the complaint by SMS and email; the ability for authorities to submit their reports about a case online; and the online transfer of cases to appropriate state human rights commissions in India.

The NHRC has now installed this system in four of the state human rights commissions. It has also, in collaboration with the UNDP, installed the CMS and provided training and technical assistance on it to the NHRIs of Jordan, Nepal, Rwanda and Uganda.

15.4. INVESTIGATION OF VIOLATIONS ON THE NHRI's OWN INITIATIVE

Many NHRIs 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.

CASE STUDY

National Human Rights Commission of Nepal: Investigation into Nepalese army killings in Banspani, Bardiya National Park

The National Human Rights Commission (NHRC) of Nepal became aware, through media reports, of an incident in the Bardiya National Park on 10 March 2010, in which two women and a 12 year-old girl were shot dead by a Nepal Army patrol of Jwala Dal Battalion, Thakurdwara. It decided to launch a complaint investigation on its own initiative (*suo motu*) into the incident. A team from the NHRC investigated the case from 12 to 19 March 2010.

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Bardiya National Park issued a press release on 12 March 2010 claiming that on the day in question, a joint team of Bardiya National Park personnel and Nepal Army personnel from Jwala Dal Battalion, Thakurdwara were patrolling the area and heard gunshots near the Puranpur River on two separate occasions, approximately 90 minutes apart. Suspecting poachers, they conducted a search of the area and, 90 minutes later, they claimed to have found five or six armed persons. When the apprehended persons refused to lay down their weapons, the security personnel fired in self-defence. On hearing shouts and cries, the security personnel immediately ceased firing. As they approached the site, it was claimed that a hunting dog attacked them, forcing them to fire again during which time two women were killed and one was injured. A third woman later died while undergoing treatment. One man was arrested and taken into custody. It was claimed that three homemade guns, some bullets, explosives and other such materials were also found at the site.

As part of their investigation, the NHRC team was able to inspect the site as well as speak to Bardiya National Park personnel, those attached to patrol units, the commanding officer, high-ranking officials, eyewitnesses, victims' family members, locals of Hariharpur, Surkhet and doctors of the Bardiya district hospital. The NHRC team also analysed the information gathered from police personnel who examined the incident site and the victims' bodies, civil society representatives and others concerned with the incident. The NHRC employed forensic experts sent from the Tribhuwan University-affiliated Teaching Hospital in Kathmandu to conduct an additional post-mortem of the victims' bodies. At the time, the NHRC communicated with the Office of the Prime Minister and Council of Ministers, the Home Ministry, the Nepal Army, the Bardiya district administration office and Bardiya National Park and asked for information about the incident.

The evidence gathered by the NHRC team indicated that several people, including the victims, were in the Bardiya National Park to collect the bark of the kaulo tree. There was no evidence to suggest that they were armed poachers. A team of 19 security personnel (15 from the Nepal Army and four from the Bardiya National Park) arrived at the site and, disregarding the rules of engagement, opened fire, killing a child and two women. Site inspection, eyewitness accounts, the condition of victims' bodies and autopsy reports provided no evidence that the people involved fired gunshots. Post-mortem reports, photos related to the incident and the victims' bodies revealed that they were shot from behind. There was no evidence of an exchange of fire.

The NHRC investigation team found that excessive force was used resulting in the deaths of three people, including a child. Evidence indicated that the security personnel did not take the victims under their control before the shootings took place. Autopsy reports revealed that the victims were shot from a distance. The evidence also established the army personnel had arranged the dead bodies before the police arrived, suggesting that they destroyed evidence and invented a false claim that they have opened fire in self-defence.

The actions in the incident violated a number of provisions in international and national law, including the right to life enshrined in article 12 of the Interim Constitution of Nepal 2063 BS, the right to life and individual liberty enshrined in Clause 12 of Citizens' Rights Act 2012 BS, the right to life enshrined in article 3 of the Universal Declaration of Human Rights 1948, and article 6 of the International Convention on Civil and Political Rights. Similarly, they breached article 37 of the Convention on the Rights of the Child. The use of excessive force also violated the provisions of clauses 23 and 24 of the National Park and Wildlife Protection Act 2029 BS.

The NHRC made a number of findings and recommendations to the Government of Nepal. It recommended that the Government identify all those involved in the incident, including those who tampered with the evidence, and file criminal cases against them in a regular court; provide compensation to each victim's next of kin; provide free education to the victims' children; implement programs to improve the economic and social condition of people, particularly Dalits, in the region; and, to prevent further incidents, train all national parks personnel in protecting human rights.

15.5. 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. NHRIs need to build a cadre of complaint handling experts. 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.

Investigation and conciliation are different processes and require different skills. Recognising this, some NHRIs separate the investigation and conciliation functions and have specialist investigators and specialist conciliators. Staff are required to have been trained and developed expertise in the area in which they work. Separating the functions has both positive and negative consequences. Positively, it assists in ensuring that conciliators are truly neutral and impartial between the parties. Because they have not undertaken the investigation, the conciliators have not formed a view about the merits of the complaint and they approach the conciliation without having been affected by any prior knowledge. Negatively, conciliation has a greater chance of success where the conciliator is very well informed about the nature of the complaint, the strength of the complainant's case and the situations of the parties. A conciliator has that detailed knowledge and understanding of the complaint where they have also undertaken the investigation.

Regardless of the approach taken by an NHRI, whether or not separating the investigation and conciliation functions, all staff involved in complaint handling have to be properly trained in whatever functions they are required to perform.

15.6. COMPLAINTS DATA AND ANALYSIS

Complaint handling is a resource intensive function. Where NHRIs are required by law to accept and investigate complaints, they have little control over the number of complaints they receive and so little control over the use of their limited resources. Yet complaint handling may be very limited in its effectiveness if it leads only to resolution of individual violations and not to the identification and prevention of systemic patterns of human rights violations. To be as effective as possible, complaint handling should be incorporated into NHRIs' broader functions of monitoring the overall human rights situation in a country.

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.

CASE STUDY

National Human Rights Commission of Mongolia: Investigating violations of children's human rights

A complaint was submitted to a Mongolian NGO in regard to the rights of children living and studying in religious institutions. The complaint was brought to the National Human Rights Commission of Mongolia (NHRC), which jointly settled it. This complaint led to the NHRC initiating further investigations into this issue in 2012.

The NHRC surveyed religious institutions throughout the country. This included 26 Buddhist monasteries in eight districts of the capital Ulaanbaatar, 28 monasteries in 12 provinces, seven Christian institutions and one Islamic institution. In addition, the NHRC heard from 290 children through interviews and focus groups. The discussions covered their living conditions, education and treatment at the institution in question.

Under the Mongolian Law on the Relationship between the State and the Monastery, enacted on 11 November 1993, religious institutions must provide children with a general education, in addition to their religious education.[299] According to article 16.7 of the Mongolian Constitution, on the right to education, "[t]he State shall provide basic general education free of charge; citizens may establish and operate private schools if these meet the requirements of the State." The State is also responsible to provide funding, staff and monitoring of religious institutions, to ensure that all school-aged children receive a general education.

Investigations by the NHRC revealed that many children living and studying in religious institutions were either not receiving a general education at all or were only receiving a sub-standard general education compared to those students who attended non-religious schools. These children were being denied the right to education and, as a result, many were being left behind, unable to fully participate in modern society.

In addition, the investigations uncovered inadequate living conditions for many children in religious institutions. Expert reports condemned some buildings, recommending the demolition of a number of them. Some buildings were found to have no appropriate lighting, water and/or sanitation. There was overcrowding in dormitories, limited outside space for sport and recreation, and inadequate classroom furniture and resources. There was also found to be inadequate healthcare and limited access to professional medical services.

In the course of focus groups and individual interviews, the children told the NHRC that they were often insulted and harassed and were punished, sometimes violently. A number of the children were forced to carry a heavy domestic workload on top of their studies. In many cases, and of significant concern to the NHRCM, were the children who had no regular contact with their families.

The NHRC's investigations culminated in a report detailing the various children's rights that had been violated. It also included a number of recommendations to the State, including that the State should establish schools in each district, teaching a national, standardised general curriculum alongside religious studies.

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299 The Law on the Relationship between the State and the Monastery, 11 November 1993, Article 8.3. See www.legalinfo.mn/law/details/485?lawid=485.

Recommendations from this report were also included in the NHRC's annual report to the Parliament, *12th Report on Human Rights and Freedoms in Mongolia*, which it submitted on 5 April 2013.

As a result of this investigation, the State has begun to pay more attention to those children studying in religious institutions, specifically to those who left the general education schools for religious education. For example, when the Citizens Representatives Council registers the religious institutions or schools, it also looks to the portion of drop-outs who were left behind from the general education schools.

GOOD PRACTICE

NHRIs should have jurisdiction to accept, investigate and attempt to resolve complaints of human rights violation and to refer to the government or the parliament or the courts complaints that they are unable to resolve. They should also have power to reject complaints that are frivolous or trivial so that they are able to give appropriate attention and priority to complaints of serious human rights violations.

The complaint jurisdiction should be broad, covering violations of any of the human rights recognised in domestic or international law. It should not be limited to particular rights or particular categories of complainant or particular categories of alleged violator.

Each NHRI should adopt complaint handling procedures appropriate to its particular legal context and should make the procedures publicly available. It should also have an effective complaints database to enable:

- categories of complaints and patterns of violation to be monitories and analysed
- individual complaints to be tracked to ensure effective and efficient case management.

Young boy, Gobi Desert, Mongolia. Photo by Julie Laurent, reproduced under a CC BY-NC-ND 2.0 license.

KEY POINTS: CHAPTER 15

- The "quasi-judicial responsibilities" of NHRIs concern the ability to deal with complaints of human rights violation in a manner similar to, though different from, the courts.
- NHRIs' power to accept and deal with complaints can be dependent on what human rights issue the complaint raises, who makes the complaint, against whom the complaint is made, and other jurisdictional matters.
- Complaint handling usually follows certain common steps, including receipt, initial assessment, investigation, conciliation and referral or report.
- Many NHRIs can undertake investigations of human rights violations of their own initiative (*suo motu*).
- NHRIs require expert, suitably trained staff, with good knowledge and understanding of human rights law, to handle cases of human rights violation.
- To be as effective as possible, complaint handling should be incorporated into NHRIs' broader functions of monitoring the overall human rights situation in a country, through the collection and careful analysis of the data of complaint handling work.

Chapter 16: NHRI intervention in court proceedings

KEY QUESTIONS

- **What is the NHRI function of intervention in court proceedings?**
- **Why and when should NHRIs seek to intervene in court proceedings?**
- **How does intervention occur?**

16.1. WHAT IT IS

The Paris Principles provide that NHRIs should have advisory and promotional functions by which NHRIs contribute to greater State compliance with human rights obligations and greater harmonisation of national and international laws relating to human rights. Many NHRIs have the power to intervene in court proceedings as one means of undertaking these functions. This function is wider than the intervention power in relation to complaints.[300] It applies whenever a court is considering a matter in which human rights law is relevant.

EXAMPLES OF PROVISIONS IN NHRI LEGISLATION RELATING TO INTERVENTION IN COURT PROCEEDINGS

Australia
Australian Human Rights Commission Act 1986, s. 11(1)(o)

The functions of the Commission are:

…

(o) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve human rights issues …

India
Protection of Human Rights Act 1993, s. 12(b)

intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

Indonesia
Law No. 39 of 1999 Concerning Human Rights, Article 89(3)(h)

To carry out its supervisory function as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:

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300 Complaint related interventions are discussed in chapter 16 of this manual.

…

(h) on approval of the Head of Court, provide input into particular cases currently undergoing judicial process if the case involves violation of human rights of public issue and court investigation, and the input of the National Commission on Human Rights shall be made known to the parties by the judge …

NHRI interventions occur in two contexts:

- where a case arises under the NHRI's own law or under the human rights law
- where a case under the general law gives rise to significant human rights issues.

In an intervention the NHRI acts as a "friend of the court".[301] In some NHRI legislation the intervention power is described as assisting the court as a friend of the court.[302] As an intervener or friend of the court, the NHRI is not itself a full party to the proceedings and does not take the side of one party or the other. Rather, it makes submissions to the court on the human rights dimensions of the case. In most countries, most judges have had little or no training in human rights and are not familiar with human rights law. Through its intervention, the NHRI seeks to assist the court by informing it of the provisions of human rights law that are relevant to the case and describing how those provisions might apply in relation to the facts before the court. The NHRI's role is one of legal argument and analysis.

In some countries, NHRIs must obtain the permission of the court before they can intervene.[303] This is consistent with the principle of the separation of powers that gives the courts full control over their own proceedings. In practice, where the legislation itself gives the NHRI this specific power, the courts are reluctant not to give approval when the NHRI applies to intervene. In other countries, the NHRI has an absolute right to intervene and does not require the permission of the court.[304]

CASE STUDIES

Court proceedings by the National Human Rights Commission of Mongolia

In Mongolia, court proceedings play an important role in preventing human rights violations and in providing remedies for human rights violations through the wrongful acts of duty-bearers, especially of state bodies. According to the law establishing the National Human Rights Commission of Mongolia (NHRC), the Commissioners' complaint handling power includes litigation in the courts on violations of human rights and freedoms by business entities, organisations, officials or individual persons, through a procedure established by the law. The NHRC is also authorised to take public interest litigation that is not complaint-based. It can act to challenge official actions that violate Mongolia's human rights obligations.

Between 2001 and the first half of 2014, the NHRC took 22 cases to court, including public interest litigation. As a result of these cases, 23 persons received compensation totaling MNT 408,015,123 (approximately USD 250,000). Two cases illustrate the NHRC's work using the courts to promote and protect human rights.

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301 In common law systems, this role is often known by the Latin phrase *amicus curiae*, literally "friend of the court".

302 See, for example, *Australian Human Rights Commission Act 1986*, s. 46PV.

303 See the examples above in the legislation of the Australian and Indonesian NHRIs.

304 See the example above in the legislation of the National Human Rights Commission of India.

In the first case, Mr E was charged for a murder. He had been detained for six years and eight months and was then sentenced to death by the Court. A Supreme Court resolution later nullified his conviction sentence and ordered his release. After he lodged a complaint to NHRC, the Commission filed a lawsuit to the Bayanzurkh District Court against the Government of Mongolia for compensation for his violated rights. The District Court ruled on 20 October 2004 that the Government of Mongolia should pay Mr E MNT 18,010,625 in compensation. This was the first case litigated by the NHRC against the Government for violation of human rights by the wrongful acts of government officials. It became a benchmark case in Mongolia for remedying human rights violations.

In the second case, the NHRC filed a lawsuit at the Chingeltei District Court to nullify Resolution 46 of Citizens' Representatives Council of Ulaanbaatar City. The resolution imposed a fee for service on those who migrated from the countryside and applied for urban registration with the local authorities. The fee placed a serious financial burden on many families migrating from the countryside, creating obstacles to their access to social services, such as health and education, that are available to those registered with local authorities. As a result of the NHRC's successful advocacy in court on the basis of the rights to freedom of movement and to access to social services for local migrants in Ulaanbaatar, the municipal decision imposing the registration fee was nullified. This case is regarded as a successful public interest litigation pursued by the NHRC.

"Friend of the court" intervention by the Australian Human Rights Commission[305]

Faced with an increasing number of applications for parenting orders in relation to children born overseas through surrogacy arrangements, the Family Court of Australia requested the Australian Human Rights Commission's assistance in a matter reported as *Ellison and Anor & Karnchanit* [2012] FamCA 602 (1 August 2012).

The Court adopted the Commission's submissions as to whether a declaration of parentage should be made and the relevance of the Convention on the Rights of the Child to this question. This judgment is important in recognising the rights that flow to children as a result of a declaration of parentage. It also represents a departure from previous cases where the Court had placed more emphasis on public policy considerations about enforcing State surrogacy laws, potentially at the expense of children's rights.

The Court also adopted the submissions of the independent children's lawyer and the Commission in formulating "best practice" principles in surrogacy matters. The principles are important in ensuring that the rights of the surrogate mother are adequately considered, including that the Court is provided with evidence that the surrogacy arrangement was made with her informed consent and that there is evidence after the birth of the child about her views of the orders sought and what relationship, if any, she proposes to have with the child.

16.2. WHY INTERVENE?

An NHRI will decide to intervene in a specific case first and foremost because it considers that the case raises an important issue of human rights that might not be properly addressed if it does not intervene. It intervenes to assist the court to come to the right decision, in human rights terms, in the individual case. But intervention generally has consequences far beyond a single case. The NHRI's concern extends more broadly than an individual case and interventions have results more broadly. Although any intervention must deal with the facts and the law applicable in the specific case, the intervention power has both individual and systemic results. It enables the NHRI to make a broader contribution to law reform and to human rights education.

305 Australian Human Rights Commission, *Annual Report 2012–2013*, p. 46.

Through its interventions, the NHRI promotes the development of the law consistently with international human rights standards. In all legal systems, a decision in one case has implications for other cases. In legal systems based on precedent, however, the decisions in individual cases, especially cases decided in superior courts, are even more important. They become the building blocks of the law. In these systems, NHRIs can be particularly active in the superior courts where the most important legal principles and the most definitive legal interpretations are decided. The basis of the decisions – the legal reasoning and the interpretations of the law – of higher courts is itself law that binds lower courts when deciding their cases. A binding decision of a superior court that interprets law and lays down legal principles consistently with human rights is therefore an important means of human rights promotion and protection. Even in systems not based on legal precedent, decisions of higher courts on human rights matters can be of great persuasive influence throughout the legal system, and indeed beyond into society.

Intervention also plays a role in human rights education. It enables the NHRI to raise the awareness of and to educate the judiciary in relation to human rights. It builds the awareness, knowledge and understanding of judges on a case-by-case basis. This is so in all legal systems. The educational impact can move beyond the courts themselves to other parts of the legal profession (prosecutors, defence and other lawyers and law students) and to the law enforcement system (police, prisons officials, other corrections officials and ministry of justice staff). It can also move into the general community. When the media report decisions of courts that uphold human rights, the reports are widely read and discussed and members of the general community become more aware of human rights and come to understand human rights better.

16.3. HOW INTERVENTION OCCURS

NHRI legislation usually does not set a procedure for interventions. The NHRI itself determines how it occurs. An intervention can begin in three ways:

- a party to the case contacts the NHRI, describes the human rights issue in the case, indicates why the NHRI's intervention is required for that human rights issue to be presented properly to the court and requests that the NHRI seek to intervene
- a case comes directly to the attention of the NHRI itself, the NHRI seeks further information on the case from the court and/or the parties, it seeks the views of the parties on whether its intervention is desirable and would be supported, it considers whether there are significant human rights issues and whether those issues will be properly presented to the court by the parties themselves, and then it decides whether it will seek to intervene
- a court hearing a case becomes aware of human rights issues in the case and is concerned that those issues will not be properly addressed by the parties and so it advises the NHRI of the case and requests that the NHRI consider whether to seek to intervene in it.

There is no limit to the number and type of court cases that could raise human rights issues. Certainly human rights issues can arise in criminal cases but they can also arise in civil cases, such as corporate or commercial cases and cases of negligence. NHRIs could potentially intervene in very large numbers of cases every year. They need to take a strategic approach to intervention, identifying those cases where their intervention would have the widest positive effect on human rights compliance and on the domestic recognition and enforcement of human rights standards. The adoption of clear, public criteria for intervention can enable a more strategic approach to be taken by indicating to parties and their lawyers the kinds of circumstances in which the NHRI would give priority to intervention and by providing a framework for NHRI decision making on intervention.

INTERVENTION IN COURT PROCEEDINGS: AUSTRALIAN HUMAN RIGHTS COMMISSION GUIDELINES[306]

1. The purpose of these guidelines

The Australian Human Rights Commission ('the Commission') has a function to intervene, with a Court's leave, in proceedings involving issues of discrimination or human rights (otherwise known as 'intervention issues').

These guidelines outline the nature of the Commission's intervention function and how the Commission will exercise that function.

2. What are intervention issues?

The proceedings must involve intervention issues. These are issues of:

(a) human rights (as defined in the *Australian Human Rights Commission Act 1986* (Cth) ('AHRC Act'));

(b) discrimination in employment (as defined in the AHRC Act and the *Industrial Relations Reform Act 1993* (Cth));

(c) racial discrimination (as defined in the *Racial Discrimination Act 1975* (Cth));

(d) discrimination on the ground of sex, marital status, pregnancy or family responsibilities or discrimination involving sexual harassment (as defined in the Sex *Discrimination Act 1984* (Cth));

(e) discrimination on the ground of disability (as defined in the *Disability Discrimination Act 1992* (Cth)); or

(f) discrimination on the ground of age (as defined in the *Age Discrimination Act 2004* (Cth)).

3. When will the Commission intervene in court proceedings?

The Commission may seek to intervene in court proceedings when:

1. Intervention is permitted, sought or required by the courts;
2. The proceedings involve the rights of one or more persons who are within the jurisdiction of an Australian court (or of a foreign court connected to Australian jurisdiction);
3. The proceedings involve an 'intervention issue', as referred to under heading 2 above;
4. The intervention issue is significant and not peripheral to the proceedings; and
5. The intervention issue/s will not be adequately or fully argued by the parties to the proceedings.

4. Commission process for intervening in court proceedings

Prior to the hearing, the Commission will notify the parties that it intends to seek the court's leave to appear as an intervener in the proceedings. The Commission should also indicate to the parties the issues in relation to which the Commissioner anticipates making submissions. If a party then decides to fully raise the issues that the Commission intends to argue, the Commission may decide not to pursue its application.

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306 Available at www.humanrights.gov.au/intervention-court-proceedings-australian-human-rights-commission-guidelines.

5. Notice to the Attorney-General

Notice of the Commission's intention to seek leave to intervene (and reasons why the Commission considers it reasonable to do so) must be given to the Attorney-General's office and the Manager of the Human Rights Branch of the Attorney-General's Department as soon as practicable after the Commission has decided to apply to intervene in the proceedings.

Depending on the procedures of the particular legal system, an NHRI's intervention can require significant resources but it need not do so. Interventions can take many forms and NHRIs can choose among many alternatives to limit the resource requirements and indeed to limit the level of intervention to a manageable level. Where legal procedures provide some flexibility, the NHRI can decide:

- whether to address all the issues on the case, or only one or two major issues, or one or two issues of particular priority for the NHRI
- whether to produce only written submissions to the court or to appear in court to present the NHRI's views orally or both
- whether to attend the hearing of the case in its entirety or only that part necessary for the presentation of the NHRI's submissions.

The court and the parties to the case should understand what level of intervention the NHRI is making. If they do not, they may have expectations that the NHRI is unable to meet or does not meet. The level of the NHRI's intervention may affect the length of the case and so the cost of the case to the court and the parties. It can affect how the parties decide to conduct the case, leading them to include material that they would otherwise omit or to omit material that they would otherwise include. The NHRI's application for the court's approval to intervene makes the level of intervention proposed clear. The application should be provided to all the parties and to the court.

As discussed, in some countries NHRIs must obtain the permission of the court before they can intervene.[307] In practice, where the legislation itself gives the NHRI this specific power, the courts are reluctant not to give approval when the NHRI applies to intervene. There are no clear criteria by which courts determine whether or not to approve the NHRI's application for intervention. However, among the factors that might be taken into account are:

- whether the court would be assisted by the NHRI
- whether the NHRI would raise issues not otherwise before the court or offer a perspective not raised by the parties
- whether the matters sought to be put before the court by the NHRI would not otherwise be adequately and fully argued
- whether the intervention would detract from the efficient conduct of the litigation
- whether each party supports or opposes the intervention
- whether any other person or organisation is seeking leave to intervene or appear as a "friend of the court" and whether that person or organisation would raise and argue the same issues
- the nature of the intervention proposed by the NHRI
- the resource implications of the intervention for the court and the parties.[308]

The NHRI should consider these issues when considering whether to intervene. It should address them in the application to the court for permission to intervene and provide them to the parties.

307 See the examples above in the legislation of the Australian and Indonesian NHRIs.

308 See, for example, Australian Human Rights Commission, *Commission guidelines for the exercise of the amicus curiae function under the Australian Human Rights Commission Act*, 18 September 2009; at www.humanrights.gov.au/amicus-guidelines.

GOOD PRACTICE

An NHRI should have the function of assisting courts with relevant human rights law in cases before the courts involving human rights issues. It can do so by seeking to intervene, as a "friend of the court" (*amicus curiae*), in appropriate cases. It can also do so when responding to a request from a court for its assistance. Its intervention should be with the approval or leave of the court so that the NHRI respects the court's independence and separation from other State institutions.

MODEL CLAUSE

The Commission may intervene in judicial proceedings that involve human rights issues where it considers it appropriate to do so, with the leave of the court hearing the proceedings or at the request of the court.

KEY POINTS: CHAPTER 16

- Many NHRIs have the function of seeking to intervene in court proceedings as a "friend of the court", usually subject to the court giving consent, where a case arises under the NHRI's own law or under the human rights law or where a case under the general law gives rise to significant human rights issues.
- An NHRI intervenes in specific cases first and foremost because it considers that the case raises an important issue of human rights that might not be properly addressed if it does not intervene.
- Through its court interventions, the NHRI promotes the development of the law consistently with international human rights standards.
- Intervention in court cases plays a role in human rights education.
- NHRIs need to take a strategic approach to intervention, identifying those cases where their intervention would have the widest positive effect on human rights compliance and on the domestic recognition and enforcement of human rights standards and applying clear, public criteria in deciding whether to undertake an intervention.

Chapter 17:
NHRI cooperation and engagment with other national actors

KEY QUESTIONS

- **What do the Paris Principles require of NHRIs in their relationships with other domestic actors?**
- **What are the principal domestic actors with which NHRIs should engage?**
- **What are the natures of those engagements?**

17.1. THE RESPONSIBILITY OF COOPERATION AND ENGAGEMENT

NHRIs cannot promote and protect human rights alone and they are not expected to do so. On the contrary, the Paris Principles require that NHRIs work in cooperation with all elements in a society, including other State institutions and NGOs. They see cooperation and engagement as NHRIs' key method of working. Cooperation and engagement should extend to all national actors. They should provide their advice to "the Government, parliament and any other competent body".[309] They should:

> … 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.[310]

NHRIs should "maintain consultation" with State institutions with responsibility for the promotion and protection of human rights, such as ombudsmen and mediators, sub-national statutory human rights institutions and thematic institutions.[311] They should also relate to judicial bodies, where appropriate, for the promotion and protection of human rights.[312] The Paris Principles do not specify what form these relationships should take.

NHRIs should also:

> … [i]n 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.[313]

They should have "effective cooperation" with:

(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;

309 Paris Principles, 'Competence and responsibilities', para. 3(a).

310 Paris Principles, 'Competence and responsibilities', para. 3(f).

311 Paris Principles, 'Methods of operation', para. (f). See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.4.

312 The Paris Principles include relationships with "jurisdictional" bodies. See Paris Principles, 'Methods of operation', para. (f).

313 Paris Principles, 'Methods of operation', para. (g).

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments …[314]

This cooperation can take many forms, including collaboration in human rights education, assistance in investigations and joint advocacy for law reform. NHRIs must ensure that their independence is apparent and preserved when cooperating with NGOs.

This mandate in the Paris Principles is very broad and is often reflected in the law establishing NHRIs. It could potentially be very demanding. NHRIs need to prioritise their associations and develop appropriate strategies for different partners. They will certainly need to engage with the three principal State institutions: the parliament, the Government and the judiciary. They will need to reach out to potential allies in civil society, including NGOs and community organisations, professionals (especially legal professionals) and their associations, trade unions and academics. NHRI strategic plans should deal specifically with cooperation and engagement so that the priorities and strategies are clear internally and externally. This section of the manual examines some of the most important relationships.

EXAMPLES OF PROVISIONS ON ENGAGEMENT WITH OTHER NATIONAL ACTORS

India
Protection of Human Rights Act 1993, s. 12

The Commission shall perform all or any of the following functions, namely:

…

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights.

New Zealand
Human Rights Act 1993, s 5(2)

The Commission has, in order to carry out its primary functions under subsection (1), the following functions:

…

(g) to consult and co-operate with other persons and bodies concerned with the protection of human rights.

Thailand
National Human Rights Commission Act B.E. 2542 (1999), s. 200

The National Human Rights Commission shall have the powers and duties as follows:

…

(4) to promote co-operation and co-ordination among Government agencies, private organisations, and other organisations in the field of human rights

314 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1.

17.2. RELATIONS WITH THE PARLIAMENT

NHRIs' relationships with their parliaments come first. NHRIs may have various objectives in their engagement with parliaments, including:

- to build and secure parliamentary support for the NHRI, including its law, budget and status
- to ensure that laws, past, present and future, are fully consistent with international human rights standards
- to support the parliament in holding the Government accountable for its policies, programs and the actions of its officials
- to provide a receptive and supportive audience within the parliament for the NHRI's reports and recommendations.

Under the Paris Principles NHRIs are established by law – either through the national constitution or an act of parliament. Even where there is a constitutional base, there will almost always be need for an organic law, passed by the parliament, to provide the detail for the operation of the NHRI that the constitution usually does not provide. In addition, parliaments are responsible for the provisions of funds to NHRIs through the ordinary budgetary processes of States. NHRIs therefore are creatures of parliaments and have particular relationships of accountability to parliaments. Most NHRI laws require them to report annually to parliament on their activities. The laws may also require that all NHRI reports be tabled in parliament.

The Belgrade Principles on the Relations between NHRIs and Parliaments, drafted in February 2012, identify areas in which NHRIs and parliaments should cooperate, including:

- the enactment and amendment of NHRI legislation and ensuring the functioning, independence and funding of the NHRI
- exchange of information and views and provision of advice on human rights issues
- cooperation in relation to legislation that affects human rights
- cooperation in relation to international human rights mechanisms
- cooperation in relation to education, training and awareness raising on human rights
- monitoring the Government's response to court and other judicial and administrative bodies' judgements concerning human rights.[315]

The Belgrade Principles also provide that:

> Parliaments should identify or establish an appropriate parliamentary committee which will be the NHRI's main point of contact within Parliament.[316]

Some parliaments already have specialist human rights committees that are the natural partners with NHRIs in promoting and protecting human rights. These committees have terms of reference that require them to examine proposed laws for their consistency with human rights standards and inquire into situations of human rights concern. They are political bodies, made up of members of parliament and so are representatives of their respective political parties. They are not independent institutions made up of human rights experts. However, they play an important role in raising awareness of human rights within parliaments, including by providing opportunities for members of parliament to learn about human rights concepts and human rights law.

315 See Appendix 7 of this manual. Belgrade Principles on the Relations between NHRIs and Parliaments, annexed to the UN Secretary General's Report on NHRIs to the General Assembly and the Human Rights Council, A/HRC/20/9; 1 May 2012.

316 Belgrade Principles on the Relations between NHRIs and Parliaments, Principle 21.

NHRIs should engage closely with these committees and develop cooperative relationships with them. NHRIs can be of great service to the committees by giving the committees access to their expertise through advice, joint seminars and training programs. They can support the committees by providing good submissions to committee inquiries or legislative reviews and by offering human rights briefings to the committee members and parliamentarians generally. In return, the committees can be great supporters of NHRIs and of the work of NHRIs inside the parliament.

CASE STUDY

Australian Parliamentary Joint Committee on Human Rights

The Australian Parliament established a Joint Committee on Human Rights on 13 March 2012 through the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Committee has functions:

1. **to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;**
2. **to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;**
3. **to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and report to both Houses of the Parliament on that matter.[317]**

The Committee consists of ten members: five members of the Senate appointed by the Senate and five members of the House of Representatives appointed by the House.[318] In keeping with the Committee's bipartisan nature, the Committee elects a Government member as chair and an Opposition member as deputy chair.

At the conclusion of each parliamentary sitting period, the Committee tables a report in the Parliament that provides its assessment of the human rights compatibility of all legislation that was introduced at the beginning of that sitting period. From time to time, the Committee also releases practice notes that provide clarification on key human rights issues that have arisen on a regular basis.

The Australian Human Rights Commission works closely with the Committee, through appearing at committee hearings, making submissions to provide views on particular bills and through regular cooperation. The Commission also provides an "early alert" to the Committee about bills that it is concerned raise issues of human rights compliance.

NHRIs should also engage and cooperate with other parliamentary committees. Most parliaments have a significant number of committees with responsibilities for different areas of public policy and governmental administration. Many of these committees can deal with human rights issues as one dimension of their terms of reference, even where there is a specialist human rights committee. NHRIs can make submissions to these committees when they undertake inquiries or review legislation. They can also provide more general briefings to the committees on the human rights dimensions of each committee's work.

317 *Human Rights (Parliamentary Scrutiny) Act 2011*, s. 7.

318 *Human Rights (Parliamentary Scrutiny) Act 2011*, s. 5(1).

Engaging and cooperating with parliamentary committees is an excellent strategic means of ensuring that, when the Government criticises the NHRI, as governments always do, the parliament will support the NHRI. In the end, parliaments determine the fate of NHRIs, not governments, and so NHRIs should always protect their base in parliaments.

17.3. RELATIONS WITH THE GOVERNMENT AND THE CIVIL SERVICE

The truest indication of an NHRI's independence is whether it exists in a relationship of tension with its Government. Most governments are defensive in their relationships with NHRIs. That is entirely understandable. Governments are the principal focus of the work of NHRIs. The State is the bearer of human rights obligations under international human rights law and governments are the principal State institutions with this responsibility. So governments will receive the majority of the criticism coming from NHRIs for failures to protect and promote human rights, and even for violation of human rights. NHRIs frequently receive complaints against government agencies and officials and they are required to investigate them. When NHRIs conduct human rights inquiries, governments inevitably feature prominently in their reports. Similarly, advising on the policies, programs and activities of governments inevitably requires NHRIs to be critical of present practice and to propose reforms. So governments feel that NHRIs are targeting them for priority treatment and for particular criticism. Governments in this sense mean both the political leadership – Presidents and Prime Ministers, Ministers and Secretaries of State – and also the civil service that executes government policies and priorities. Together, they constitute the executive arm of the State.

The Korean Human Rights Commission hosted a debate on the 'International Trend on North Korean Human Rights and North Korea's Strategy and Response' attended by the government and opposition party. Photo by the National Human Rights Commission of the Republic of Korea.

The challenge is to make the tension in the NHRI-government relationship a positive tension rather than a negative one. Positive tension has a creative result: new ways of thinking and acting, new ideas, new laws, new programs and new and better understanding of what factors underlie human rights violation and how they can be addressed. Regular meetings and exchanges between the leaders of the NHRI and the leaders of the Government are important to ensure that each understands the other. Dialogue enables sensitive issues to be foreshadowed and perhaps even addressed. It reduces the risks of surprise and misunderstanding. It enables consultation so that the views of each are heard, even if not agreed with, and taken into account in the preparation of reports.

Engagement ensures that NHRIs have the cooperation of government that they need to do their work effectively. Governments have resources – staff, funds, information – well beyond anything NHRIs possess. NHRIs need access to those resources to assist them in their work. They need good information and analysis, for example, if their reports are to be accurate and their recommendations properly directed and effective and if their monitoring of government responses to national and international recommendations is to be possible.

Engagement also increases the prospects of NHRI reports being considered carefully and their recommendations accepted and implemented. It enables NHRIs to have the "ear of government" for their advocacy and persuasion.

NHRIs have developed a wide range of mechanisms to promote a fruitful relationship with governments.

- Many presidents and chairpersons of NHRIs attempt to arrange a regular schedule of meetings with the most senior government figures for the exchange of information, including information on any difficulties the NHRI might be having in securing the necessary cooperation from the relevant ministries and departments.
- Some NHRIs and government ministries, departments and agencies develop memorandums of understanding that set out the procedures for communications, information exchange and other forms of cooperation between the two. Having clear and transparent procedures both promotes efficient, effective communications and prevents misunderstandings developing.
- Some NHRIs request every government ministry, department and agency to designate a senior person as contact point or focal point for the NHRI. The contact point ensures NHRI correspondence, reports and requests are directed towards the most appropriate unit or person for response. They also coordinate responses within that ministry, department or agency and, where necessary, across a number of ministries, departments and agencies. They are also responsible for coordinating follow up to NHRI reports and recommendations and for driving implementation of recommendations.
- Most NHRIs would seek the designation of a senior officer in the relevant ministry or department as contact or focal point for each major inquiry. This person would be the bridge between the ministry or department and the inquiry, relaying information and requests and responses.
- NHRIs promote working-level links between NHRI staff and civil servants in sections and units of government ministries, departments and agencies with which the NHRI has need for regular communication. Many issues can be addressed and resolved at the working level if the procedures are clear and contact regular.
- Some governments establish committees with representatives of all the ministries, departments and agencies that relate to the NHRI (an inter-departmental committee) to coordinate the relationship with the NHRI on a whole-of-government basis. NHRI representatives might attend some or even all meetings of the committee to provide information, answer questions and raise matters of concern to the NHRI.

17.4. RELATIONS WITH THE JUDICIARY

The judiciary is the third arm of government, independent from the parliament and the executive. Its independence is essential to the establishment and maintenance of the rule of law. The judiciary tends to be very protective of its rights and privileges, as part of ensuring its independence. NHRIs are not judicial institutions, though some may have powers that are somewhat like courts (quasi-judicial powers in complaint handling).[319] In developing relations with the judiciary and proposing cooperation with it, NHRIs need to be careful to respect, and to show respect for, the independence of the judiciary, collectively and of individual judges. Relationships between NHRIs and the judiciary should take fully into account the particular culture and protocols of each culture and society.

There are many formal mechanisms, usually found in NHRIs' establishing laws, for NHRIs to engage with the judiciary. These mechanisms arise from the procedures by which NHRIs are able to become involved in cases before the courts, including:

- taking court action, either on its own behalf or on behalf of complainants or victims of human rights violations
- defending cases that have been commenced against it
- seeking the court's permission to intervene in a case, or to act as a "friend of the court" to put before the court relevant human rights law and practice
- bringing to the attention of the court breaches of the NHRI legislation, for example, a failure to produce documents when ordered to do so, and seeking court orders to enforce the legislation and, if necessary, to penalise those that refuse to do so.

These are all formal procedures that reflect the proper role of courts and the proper relationship between the independent judiciary and another State institution. In these circumstances, the relationship is clear and governed by clear rules of procedure.

Other aspects of the relationship will be more informal and may not have clear procedures. In these circumstances, NHRIs must move carefully not to give or imply any suggestion of not respecting the independence of the judiciary. NHRIs have much to offer the judiciary outside of the formal case setting and ways need to be found to enable that.

NHRIs have human rights expertise and, in most countries, most judges do not. That is a simple statement of fact. Many judges have not had the opportunity to study human rights law and very few would have had the opportunity to practise in this area of law before their appointments as judges. As a result, there is a knowledge and understanding gap that NHRIs are well equipped to fill. Many judges, however, resent any implication that they do not know the law or that they require training. They may feel offended if an NHRI approaches them with an offer of training in human rights. Other judges may be quite confident and recognise their strengths and weaknesses. They would welcome an NHRI offer of human rights training. NHRIs must approach this with sensitivity and care.

One approach that has been successful in many countries is to work in cooperation with the authority with responsibility for judicial training. Many countries have judicial commissions or judicial training institutes and judges accept the role of these official bodies. They are seen as internal peer support bodies, not as external interference in the judiciary's independence. NHRIs can work with these bodies to make their own expertise in human rights law available in training judges.

A second, and even more difficult, area of sensitivity arises when NHRIs critique judicial decisions. Judges are not infallible and courts do not always arrive at the right decision. Where an NHRI is a party to a case, it can appeal the decision to a higher court and seek to have it reversed if it considers the decision incorrect. Where, however, the NHRI is not a party, it cannot use appeal as an avenue to correct the law. It may want to make public comment on the decision but it must do so in a way that shows respect for the court and the judge and their independence.

319 See chapter 2 of this manual.

Public comment – for example, in the mainstream media – may not be seen as respectful and may lead to difficult relations between the NHRI and the judiciary, especially if the judiciary considers that it undermines its independence. A legal critique in academic circles – for example, in an academic journal or at an academic seminar – is less likely to draw criticism from the judiciary but it could still make relations more difficult. However, it may be too academic or so marginalised from public debate that it fails to enable others to know and understand the NHRI's views on the judgement. The NHRI needs to balance factors carefully. It has an obligation under its law to educate all sectors of the community, including the judiciary, on human rights law, as well as an obligation to speak out when a serious injustice arises that undermines human rights. The challenge is to do that in a way that does not alienate those it seeks to influence, including the judiciary.

17.5. RELATIONS WITH NGOs[320]

NGOs are essential partners of NHRIs. Human rights NGOs long preceded the establishment of NHRIs and many now have more years of experience and expertise in human rights than NHRIs have. They enjoy also more flexibility in their work than NHRIs do because NHRIs are subject to and constrained by the laws that establish them, while NGOs have full control over their own constitutions and their own activities. On the other hand, NHRIs, as official State institutions, can speak and act with greater authority than NGOs can and they have strong legal powers of investigation that NGOs cannot hope to have. NHRIs typically have far more resources, both staff and funds, than most NGOs. NHRIs and NGOs, therefore, have strengths, capacities, expertise and experience that they can share to their mutual advantage and, more importantly, for the better protection and promotion of human rights.

The Paris Principles make specific provision for NHRI engagement and cooperation with NGOs. They give NGOs a privileged status in this way. These provisions are reflected in many of the laws establishing NHRIs that also provide specifically for engagement and cooperation with NGOs.

In 1999, the APF convened a regional meeting of NHRIs and NGOs in Kandy, Sri Lanka, to discuss the partnership relationship between NHRIs and NGOs. The meeting produced the Kandy Program of Action as a guide for both NHRIs and NGOs to encourage their cooperation.[321] NHRIs and NGOs recognised that:

> … national human rights institutions and NGOs have different roles in the promotion and protection of human rights and that the independence and autonomy of civil society and NGOs and of national human rights institutions must be respected and upheld.[322]

They agreed that "there should be mutual consultation and cooperation in human rights projects and education".[323] Consultation between NHRIs and NGOs should be "regular, transparent, inclusive and substantive".[324] The Kandy Program of Action went on to describe areas for cooperation between NHRIs and NGOs in:

- education
- complaints and investigations
- national human rights inquiries undertaken by NHRIs
- relations with parliaments
- advising on legislation

320 This section uses the expression 'non-government organisations' (NGOs), reflecting the usage of the expression in the Paris Principles. Increasingly the expression 'civil society organisations' (CSOs) is used internationally. 'CSOs' is seen as a wider and more inclusive expression, taking in community-based organisations, indigenous organisations, coalitions and networks, labor unions, social movements, non-profit organisations, service agencies, media, residents' associations, churches and religious groups, professional associations and so on. NHRIs' engagement can and should extend broadly to CSOs.

321 See Appendix 8 of this manual for the full text.

322 APF, *Kandy Program of Action: Cooperation between National Institutions and Non Governmental Organisations*, 1999, para. 1.5.

323 Ibid, para. 1.6.

324 Ibid, para 2.1.

- establishing new NHRIs
- engaging with the international human rights system.

For NHRIs, managing relationships with NGOs can be challenging and difficult. Each country has only one NHRI but there are generally hundreds, perhaps thousands, of NGOs. No NHRI can work with them all. Every NHRI will certainly want to develop very close relationships with the principal generalist human rights NGOs in its country – those that share its broad mandate for the promotion and protection of human rights. It will also want to identify:

- those NGOs whose work is closest to its own
- those that are particularly relevant for the specific projects it is undertaking
- those with which it has had and can have the most productive relationship.

However, the NHRI must be inclusive, providing opportunities for cooperation with all NGOs that wish to cooperate with it. It may deal with different NGOs at different times, depending on its priorities in relation to particular human rights issues and particular activities.

NHRIs have used a variety of mechanisms to respond to the challenge of dealing with large numbers of NGOs, including:

- appointing an NGO focal point, either at the commissioner level or at the staff level, who would have responsibility for developing and implementing a strategy for NGO engagement, including consultation and coordination[325]
- conducting a major annual consultation with NGOs, inviting large numbers of NGOs to meet with commissioners and staff to discuss issues, priorities and strategies
- conducting issue-specific forums and inviting those NGOs relevant to the issue
- convening meetings with NGOs around specific NHRI projects, to seek their views and cooperation
- inviting NGOs to NHRI conferences, seminars and meetings so that there are many frequent opportunities, of different natures and scales, for exchange.

Celebrating the rights of New Zealand's indigenous peoples on International Human Rights Day.
Photo by the New Zealand Human Rights Commission.

325 Ibid, para 2.1.

Since its establishment in 1996, the APF has invited key regional NGOs to participate in its annual meetings and its conferences. In addition, national NGOs in the country in which the meetings and conferences are held are also invited to attend. NGOs have been provided with opportunities to contribute to the proceedings of the meetings and conferences, but not to participate in decision making. This engagement at the regional level has encouraged all APF members and NGOs to engage at the national level as well.

CASE STUDY

National Human Rights Commission of Nepal and human rights defenders

Human rights defenders (HRDs) work either individually or in groups to promote and protect universally recognised human rights and fundamental freedoms. They often come under attack, both verbally and physically, by those that oppose their work. As a result, NHRIs provide support, training and resources for HRDs to assist them in their work and seek to provide protection for them when they are at risk.

The National Human Rights Commission of Nepal (NHRC) has put into place a number of programs for HRDs. It regularly holds workshops and seminars for HRDs. In March 2012 it hosted a three-day training program for HRDs, with participation from a wide spectrum of the Nepalese HRD community, including Samjhuta Nepal, Human Rights Alliance, INSEC, Focus Nepal, HURON, Hetuda F.M., HUREDEK, Rasuwa Khabar, Sindhu Saptahik, CAHUARST, PPR Nepal and the Nepal Federation of Indigenous Nationalities. In total there were 26 participants from 11 districts of Nepal.

In October 2012, the NHRC organised a national conference of HRDs to strengthen the Nepalese HRD network. The conference was attended by the chief of police, representatives from the constitutional bodies, secretaries from different government ministries and political party leaders. There were also 200 HRDs from 75 districts of Nepal present.

The NHRC regularly runs orientation programs for HRDs and, in 2012, prepared a course of instructions for HRDs – the Human Rights Training Curriculum – which will be posted on its website. It has also recently established an investigation department to handle complaints of violation of the rights of HRDs.

17.6. RELATIONS WITH THE MEDIA[326]

NHRIs can only communicate effectively with the broad community through the public media. They do not have the resources to match the extent of the public media in all their forms – print, radio and television. Their own publications, such as brochures and reports and even DVDs, do not reach a fraction of the numbers of people that the public media reach every day. NHRIs must develop close collaborative relationships with the media, therefore, to ensure that they are able to communicate with the population as a whole and with specific population groups. The Paris Principles recognise this when they require NHRIs 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[327]

326 See APF, *Media Handbook for National Human Rights*, 2014; available at www.asiapacificforum.net/support/professional-resources/.

327 Paris Principles, 'Competence and responsibilities', para 3(g).

and to:

> … [a]ddress public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations.[328]

As a result, some NHRI laws contain provisions on relating with the media and using the media.

EXAMPLES OF PROVISIONS IN NHRI LAWS RELATING TO THE MEDIA

Mongolia
National Human Rights Commission of Mongolia Act, Article 19.6

Commissioners shall have a right to publish and report his/her issued demands or recommendations through the mass media.

Jordan
National Center for Human Rights Law, Law No. 51/2006, Article 17

Exploiting the different communication media to acquaint citizens with their rights, guaranteed by the Constitution and valid laws, as well as by international charters and covenants...

India
Protection of Human Rights Act 1993, s. 12

The Commission shall perform all or any of the following functions, namely:

(g) spread human rights literacy 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.

The media are interested in newsworthy issues and events and NHRIs are newsworthy. So the media have an interest in the work of NHRIs. They look to NHRIs for "good stories" – personal experiences, new insights into issues of public or political concern, revelations of governmental failure or scandal, whatever may interest readers of newspapers, listeners of radio programs and viewers of television and so attract them to the media. NHRIs need the media to tell their stories but they may also be victims of the media if their work is misreported or distorted or if they are subjected to media attacks. The media are key stakeholders but they require careful handling.

Good media relations have several dimensions.[329]

- **The relationships should be strategic.** Communications is a large, complex area in which NHRIs can easily become lost. Before engaging with the media, the NHRI needs to decide what it is seeking to achieve and how best to achieve it in the media context. Many NHRIs have developed strategic plans specifically for relations with media. These plans assist in directing and prioritising an NHRI's media relations as effectively as possible.
- **The relationships should be targeted.** Modern communications media are everywhere and in very large numbers. NHRIs cannot hope to relate with all of them individually. They need to identify which types of media and which particular media outlets are most relevant for which population sectors and which purposes. They may relate to different media outlets at different times.

328 Paris Principles, 'Methods of operation', para. (c).

329 The APF has access to high-level expertise in media relations and can provide assistance to its members in media strategising and media training.

If a particular newspaper has a large audience of migrant workers, then the NHRI would want to engage with that newspaper when it is working on migrant workers' rights. If a particular radio station broadcasts to large numbers of indigenous people, then the NHRI would want to engage with that radio station when it is working on indigenous peoples' rights. There are particular media that are directed towards children and young people; they should be used when the NHRI wishes to speak to and with children and young people.

- **The messages should be clearly defined.** NHRIs have many messages they want to communicate to the public but messages become confused in the media and may be lost unless they are clear and well defined. Messages should relate closely to the NHRI's own priorities, views and work and not simply be reactive, responding to whatever issues are attracting attention in the media. NHRIs should be agenda-setters, not simply reactors.
- **NHRI spokespersons should be good communicators through the media.** Not everyone is a good communicator and not everyone is a good communicator in every form of media. NHRIs should identify and build on their strengths in this area. NHRI members and, where appropriate, staff should be trained in using the media. They should be made aware of the possibilities and pitfalls of media relations. Those who are strong in certain forms of media should be used as the spokespersons in those forms of media. Whoever speaks for the NHRI in the media should be a good communicator, as well as an expert on the particular issue of interest. A good interview is one where the spokesperson knows the facts, is correct on everything that is said (however insignificant it may be), appears confident, speaks in simple language, can be understood by the audience and is a clear, articulate speaker. The whole NHRI suffers if a spokesperson gives a bad interview.

In developing and implementing media strategies, NHRIs are increasingly including websites and social media. Virtually all NHRIs have websites, although the amount of material on the site varies greatly. Many NHRIs ensure that their websites contain not only all the basic information about the NHRI, including information about goals and objectives, history, members and staff, functions and activities but also their legislation, all their annual reports and research and investigation reports, strategic and activity plans, educational and training materials, and all other relevant documents. Many NHRIs now have Facebook, YouTube and Twitter accounts so that people generally, and especially young people who are the greatest users of social media, can follow and contribute to the NHRI's work on a regular basis. For NHRIs, the internet and social media have opened up extraordinary opportunities for communicating their messages, seeking feedback and contribution, and engaging with individuals and communities that were previously unimaginable.

A young man in Dili, Timor-Leste, reads the local newspaper, the Suara Timor Lorosae. UN Photo by Martine Perret.

CASE STUDY

National Human Rights Commission of India: Media policy and activities

The National Human Rights Commission of India (NHRC) has established an Information and Public Relations Division with the sole task of working with the media and communications. The Division provides press releases and organises interviews for the media. It also organises and provides awareness-raising workshops for people in the media to educate them about human rights issues, as well as the functioning and jurisdiction of the NHRC. For example, the Division has published a set of guidelines for the media in addressing the issue of child sexual abuse.

In 2011, the NHRC developed and adopted a media and outreach policy and set up an advisory group on the media and human rights. This advisory group consists of 12 senior media persons from the country's major print and electronic media and news agencies. It advises the NHRC on ways it can work with the nation's media to best promote human rights within the country and how the NHRC can actively engage with the media in raising awareness of human rights issues among the general public. Current activities include holding press conferences; issuing press releases on major human rights investigations by the NHRC; providing regular sectoral media briefings on relevant human rights themes; publishing a monthly newsletter in both English and Hindi reporting on the NHRC's activities; inviting media persons to NHRC workshops, conferences and seminars; and making press briefings an essential component of open hearings and Commission sittings in different parts of the country.

The NHRC also makes use of all means available to disseminate information to the media. When issuing a press release, as well as uploading it to its own website, it also sends the press release by e-mail, fax and SMS to media agencies. If a press release has a targeted audience, it follows up the press release issuance with a phone conversation with the appropriate media agencies.

17.7. RELATIONS WITH LEGAL PROFESSIONAL ASSOCIATIONS

Lawyers and their professional associations should be among the strongest supporters of NHRIs. They are also among the supporters who have the most to contribute to the work of NHRIs.

NHRIs are pluralistic, multi-disciplinary institutions but they are founded by the law, grounded in law and perform a legal mandate. Human rights constitute a legal system and their enforcement is a legal question. Lawyers should know and practise human rights law and they should understand the importance of an independent human rights institution. They should be actively engaged with NHRIs and their work for the promotion and protection of human rights. Unfortunately, not all lawyers share this commitment to human rights.

NHRIs should ensure that they engage with legal professional associations so that the associations support NHRIs and their work. Legal professional associations should advocate for NHRIs with parliaments and governments, in the community and through the media. They should defend NHRIs when NHRIs are subjected to attack. In return, NHRIs should contribute to the professional development of lawyers by providing or encouraging human rights education and training in law schools and through the professional associations.

Many legal professional associations have human rights committees. These committees are the obvious point of connection between the legal profession and NHRIs. NHRIs should foster good relationships with these committees, perhaps having NHRI staff attend meetings of the committees in an observer capacity to provide information and to explore ways in which cooperation can be expanded.

17.8. RELATIONS WITH ACADEMICS AND EDUCATIONAL INSTITUTIONS

NHRIs should foster good relationships with academic institutions and with those academics who have an interest in and commitment to human rights. The Paris Principles specifically mention "universities and qualified experts" as partners in cooperation with NHRIs.[330] Academic institutions have excellent research and educational capacities that NHRIs can call on to supplement their own work. The resources of most NHRIs are too limited for NHRIs to be able to undertake all the research and educational work that they would like or even all that they need to undertake. Academic institutions can supplement those resources and give NHRIs a strong research and education base.

GOOD PRACTICE

NHRIs should have explicit functions to consult and cooperate with all key national institutions and organisations, governmental and non-governmental, in the promotion and protection of human rights.

MODEL CLAUSE

The Commission should consult and cooperate with other persons and bodies concerned with the promotion and protection of human rights, including the parliament, the judiciary, government agencies, private organisations, trade unions, the media, professional associations, academics and civil society and other organisations.

KEY POINTS: CHAPTER 17

- **The Paris Principles require NHRIs to cooperate and engage with all elements in a society, governmental and non-governmental, as a key method of working.**
- **Cooperation and engagement should extend to all national actors, including the parliament, the Government and civil servants, the judiciary, NGOs, the media, legal professional associations and academics and educational institutions.**
- **The nature of the cooperation and engagement will vary according to the actor, the issue and the context.**
- **NHRI strategic plans should deal specifically with cooperation and engagement so that the priorities and strategies are clear internally and externally.**

330 Paris Principles, 'Composition and guarantees of independence and pluralism', para. 1(c).

Chapter 18: Accountability

KEY QUESTIONS

- **What accountability do the Paris Principles require of NHRIs?**
- **What is legal accountability?**
- **What is moral accountability?**

18.1. THE PARIS PRINCIPLES

The Paris Principles do not have a specific provision on accountability but every organisation and individual needs to be accountable for performance. For NHRIs, there are legal accountability consequences of being State institutions established by law and moral accountability consequences of being human rights organisations.

18.2. LEGAL ACCOUNTABILITY

As State institutions under the national constitution or legislation, NHRIs have reporting and accountability obligations to parliaments. They are established under the law and so parliaments are their founders. The Paris Principles contain general provisions by which NHRIs should report to parliaments but they do not make specific provision for annual accountability reports.[331] Most establishing laws, however, require NHRIs to report annually to the parliament on their activities and achievements. According to the SCA, NHRI reports "provide a public account, and therefore public scrutiny, of the effectiveness of a National Human Rights Institution".[332] Some laws also require annual reports on the state of human rights in the particular country.

These formal reporting obligations are important recognition of the centrality of parliaments in democratic systems and of the position of NHRIs as State institutions. They should not be taken lightly by NHRIs or by parliaments. NHRIs should prepare honest and frank reports on the difficulties and challenges they experienced and their achievements during the year under review. Parliaments should receive and give serious consideration to the reports, debating them at least in a parliamentary committee to which the NHRI is invited or in a plenary session of parliament. Unfortunately, too often NHRIs allocate considerable time, attention and resources to preparing reports to parliament only to have the parliament give the reports no consideration at all. NHRIs have legal obligations to be accountable to parliaments and parliaments have obligations to consider the reports of NHRIs with the seriousness warranted by the subject matter.

The SCA has commented on the importance of formal state consideration of NHRI reports:

> 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.[333]

331 Paris Principles 'Competence and responsibilities' para 3(a).

332 *ICC SCA General Observations as adopted in Geneva in May 2013*, GO 1.11.

333 *ICC SCA General Observations as adopted in Geneva in May 2013*, GO 1.11.

EXAMPLES OF NHRI REPORTING OBLIGATIONS IN NHRI LAWS

Mongolia
National Human Rights Commission of Mongolia Act 2000, Article 20.1

The Commission shall submit to the State Great Hural [Parliament] a report on the human rights situation in Mongolia within the 1st (first) quarter of every year.[334]

Jordan
National Center for Human Rights Law, Law No. 51/2006, Article 12

The Center shall compile an annual report on the situation of human rights and public freedoms in the Kingdom and shall submit said report to the House of Notables, the House of Deputies and the Council of Ministers.

Indonesia
Law No. 39 of 1999 Concerning Human Rights, Article 97

The National Commission on Human Rights is required to submit annual reports on concerning the execution of its functions, tasks and authority, and on the condition of human rights and on cases handled to the House of Representatives and the President, and submit carbon copies to the Supreme Court.

18.3. MORAL ACCOUNTABILITY

NHRIs also have moral accountability obligations to the community, especially to those who are victims of or at risk of human rights violations. The mandate to promote and protect human rights is a mandate of leadership on behalf of actual and potential victims of violations, as well as one of service to actual and potential victims. NHRIs owe the community generally, and victims particularly, reports on their work, including their effectiveness and their failings. This is not a legal obligation but a moral and ethical one. It certainly requires NHRIs to release publicly and promote their reports to parliaments and to make them generally available. However, it also requires a variety of less formal reporting mechanisms, including briefings, consultation meetings, regular statements, news reports and so on. Accountability to the community is not an annual activity but a continuing process of reporting and seeking feedback, of consulting and listening.

334 The State Great Hural is the Mongolian parliament.

GOOD PRACTICE

NHRI legislation should:

- require the completion of an annual report at a specific time each year
- permit the production of special and thematic reports on specific human rights issues within the State, as and when determined by the NHRI
- require the tabling of the report in parliament within a specified period of time
- require the debate of the report in parliament within a specified period of time
- require a response from the Government within a specified period of time
- require the publication and broad circulation of reports at the time of tabling in parliament.

MODEL CLAUSE

The Commission shall submit to the Head of State and the parliament an annual report on its operations and activities, including its research, investigations and complaint handling, and other reports as it considers appropriate. Its reports shall be tabled in parliament within 14 days of receipt by the responsible parliamentary official and shall be scheduled for discussion by the parliament at the next parliamentary session after tabling. Those to whom recommendations are made in a report shall respond to the recommendations within one month of receipt of the report and the response shall be tabled in parliament within 14 days of receipt by the responsible parliamentary officer.

KEY POINTS: CHAPTER 18

- The Paris Principles do not impose specific accountability requirements on NHRIs but accountability is a necessary obligation of any State institution.
- NHRIs are typically legally accountable to parliaments under their establishing laws, with specific obligations on them to make annual reports to parliament on their operations.
- Parliaments should have a corresponding obligation to discuss NHRIs' annual reports.
- NHRIs also bear moral accountability to the community, especially to victims of human rights violations and those at risk of violations, for whom they have a priority concern.

Part III:
NHRIs' approach to human rights challenges

Chapter 19:
National inquiries into systemic patterns of human rights violation[335]

KEY QUESTIONS

- **What is a national human rights inquiry?**
- **Why conduct a national inquiry?**
- **What factors should be considered in deciding whether to conduct a national inquiry?**
- **What are the steps in conducting a national inquiry?**

19.1. 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.

EXAMPLE OF A STATUTORY PROVISION CONCERNING UNDERTAKING A SYSTEMIC HUMAN RIGHTS INQUIRY

Samoa
Ombudsman Komesina o Sulufaiga Act 2013

34. Initiating inquiries

If the Ombudsman becomes aware of widespread, systemic or entrenched situations or practices that violate human rights, the Ombudsman may initiate an inquiry.

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335 The APF and the Raoul Wallenberg Institute have jointly published a manual for NHRIs on conducting national inquiries. See *Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation*, 2012; available at www.asiapacificforum.net/support/professional-resources/.

36. Inquiry reports

(1) If an inquiry finds evidence of human rights violations, the report may include any or all of the following:

(a) a determination that a violation of human rights has occurred and should not be repeated or continued;

(b) a recommendation that a person should perform reasonable acts to redress the violation of human rights; and

(c) a recommendation that victims of violations are entitled to compensation for any loss or damage suffered;

(d) a recommendation for action to any person and require the person to report to the Ombudsman on the steps that the person has taken to give effect to the recommendations.

(2) The Ombudsman shall:

(a) make public the report, findings and recommendations; and

(b) provide Parliament with a copy of the report, findings and recommendations.

(3) The Speaker shall cause the report to be tabled in Parliament pursuant to its Standing Orders for debate or referral to the relevant parliamentary committee.

37. Parliamentary scrutiny

(1) The parliamentary committee must scrutinise the report referred to it under section 36(3) under the Standing Orders and may require the Government or other persons to make formal responses to the report.

(2) The parliamentary committee must table its report, including any formal response, in Parliament for debate at its current or next meeting pursuant to its Standing Orders.

19.2. 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.

According to the Afghanistan Independent Human Rights Commission, the national inquiry process is:

> … a very effective tool and method to address important issues of human rights. This program includes various aspects, including case study, data analysis, fact finding, presenting consultation and recommendations. Similarly, training and awareness are the most important aspects of this program and sensitizing public opinion against the cases of human rights violation is one of its main objectives. This program will be widely implemented at the national level to address the larger problems of human rights, rather than individual cases to be handled routinely.[336]

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.

CASE STUDY

National Human Rights Commission of Malaysia: National inquiry into human rights and indigenous land

Since its inception, the Human Rights Commission of Malaysia (SUHAKAM) has received numerous complaints and memoranda from indigenous communities alleging that their customary rights to land have been violated by various actors, including the Government and private land concessionaires. During most of the period between 2006 and 2011, land right issues topped the annual list of complaints received by SUHAKAM.

Realising that the overwhelming and systemic native land issues in Malaysia cannot be effectively dealt with by way of piecemeal approaches, SUHAKAM decided in 2011 to conduct its first national inquiry to address the land rights of indigenous peoples in Malaysia.

In summary, the terms of reference of the national inquiry were:

i. **to ascertain the extent to which the existing Malaysian constitutional, legal, administrative and political provisions/positions recognise indigenous peoples' land rights and their effectiveness in promoting and protecting native land rights**

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336 Afghanistan Independent Human Rights Commission, *National Inquiry on Rape and Honor Killing in Afghanistan Report Summary*, 2013; available at www.aihrc.org.af/home/research_report/1571.

ii. to identify the constraints that impede the full enjoyment of indigenous peoples' right to land and their spillover effect on the enjoyment to other rights

iii. to promote awareness and understanding of indigenous peoples' land rights and way of life, and

iv. based on the facts and findings of the national inquiry, to recommend, *inter alia*:

   a. the review of domestic land laws and policies in order to address the persisting native land dilemma in Malaysia and ensure their respect towards human rights, and

   b. the formulation of strategies and a plan of action in which indigenous peoples' land rights are integral to the general promotion and protection of human rights.

The national inquiry sought wide public participation from the beginning of the process, including the involvement of indigenous communities, the Government, NGOs, academics and other experts in the field.

Early in the national inquiry, a series of introductory sessions and intensified engagements with the media were conducted to create public awareness about the intention and objectives of SUHAKAM's national inquiry. The ensuing public consultations and call for public submissions received an overwhelming response, with a total of 892 statements being recorded from indigenous peoples. The statements covered a wide range of issues, including allegations of delay in processing of native land titles; encroachment by logging, plantation and commercial development projects; problems with indigenous land development schemes; and inclusion of native land into forest reserves and other national or state-protected areas. From the total statements received, 132 cases were selected – on the basis that valid supporting documents were made available during the consultations and submissions – to be examined further during the public hearings before a three-member panel of SUHAKAM Commissioners. Apart from the indigenous witnesses, relevant government officials, private concessionaire personnel and experts on native land studies were called before the panel to give evidence in connection to each case. A literature review was also conducted on the background of the indigenous peoples of Malaysia, as well as existing domestic laws and international standards with respect to the indigenous peoples' land rights.

The report of SUHAKAM's national inquiry was released on 5 August 2013. It contained extensive analysis of the information and data gathered through the national inquiry process. Based on its findings, the national inquiry made major recommendations to address the following areas:

- recognising indigenous customary right to land
- recognising native land as integral to the identity of indigenous peoples
- providing remedies for the loss of native land
- overcoming land development imbalances
- preventing future loss of native land
- addressing land administration issues.

In response, the Malaysian Government established a national task force and is currently assessing the findings and recommendations of the national inquiry report.

19.3. WHY HOLD A NATIONAL INQUIRY?

Professor Brian Burdekin, who pioneered the national inquiry process when he was Human Rights Commissioner in Australia, lists nine reasons to conduct 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.[337]

337 B. Burdekin with J. Naum, "National Inquiries" in *National Human Rights Institutions in the Asia Pacific Region*, 2007.

19.4. 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.

CASE STUDY

New Zealand Human Rights Commission: The report of the inquiry into aged care workers

Introduction

In 2011–12, the New Zealand Human Rights Commission held an inquiry into equal employment opportunity in the aged care sector. This arose instead out of two key concerns. The first related to the low pay and an undervaluing of work in the aged care sector, mostly carried out by women. The second was the link between the value that society places on the aged care workforce and the respect and dignity of older New Zealanders.

The Human Rights Commission used its inquiry powers to examine equal employment opportunities in the aged care sector and has gathered evidence from 886 participants over a 12-month period in 2011–12.

Process of the inquiry

The Commission determined to engage with all the key stakeholders, including carers, older people receiving care and their families, residential and home support care providers, funders, politicians, unions and civil society, in accordance with the human rights approach which values participation, empowerment and accountability. A marked feature of the inquiry was the high degree of participation by all major stakeholders.

Engagement included meeting people in workplaces, in community settings and in their homes, as well as through electronic engagement and written submissions. The Equal Employment Opportunities Commissioner also undertook action research by working as an unpaid carer in an aged residential care facility for a week. Meetings were organised in a range of geographical regions, which were selected to represent a wide variety of circumstances. Rural/urban, provincial towns/cities and places with different demographic and ethnic populations were all included. Public meetings were held from Invercargill (in the south of the South Island) to the most northern region of New Zealand.

Response to the inquiry

The account of the Equal Employment Opportunities Commissioner's experience in a rest home proved to be a compelling story and the report, *Caring Counts*, received nation-wide media attention over an extended period. There was particular public interest in the fact that carers were paid so poorly for very demanding and skilled work. The report was seen as speaking on behalf of groups who are often marginalised and therefore without voice, rather than as an academic or policy piece (with a higher likelihood of being ignored).

A summit was held to bring together representatives of the various stakeholders who participated in the inquiry. It considered how the sector might implement the recommendations. During the summit, the consensus that had emerged during the course of the inquiry about the inadequacy of pay was transformed into a shared commitment to address the issue.

In the Commission's experience, the methodology and manner of reporting was as important as the findings of the investigation in creating a climate for change. The inclusion of a wide range of stakeholders and emphasising the voice of the participants (plus the headlining "action research" of the Equal Employment Opportunities Commissioner) caught public attention and created a community of interest among participants.

19.5. OTHER FACTORS IN DECIDING WHETHER TO CONDUCT A NATIONAL INQUIRY

A national inquiry is a large undertaking and should not be commenced without serious consideration of all the issues and a clear decision to proceed. There are many factors to be considered.

19.5.1. The nature of the human rights issue

The first factor is the nature of the human rights issue. A national inquiry is a good way to examine a situation that is recognised as serious, whether or not it is recognised as a human rights problem. Where there is broad consensus about an issue that needs to be addressed but a lack of understanding of the issue itself or political hostility towards resolving it, the national inquiry process assists in developing broad consensus on the nature of the problem, its human rights dimensions, the urgency in addressing it and the best ways to do so. It is a process that promotes a political response because it builds community consensus, and therefore political pressure, for a solution. The capacity of the inquiry to attract media and public attention is therefore a critical issue in deciding whether to undertake one. Without media and public attention, it will not be possible to build the necessary community support for addressing the issue and, as a result, the necessary political will to do so. However, if it is to attract media attention, it must be able to be conducted in public. Many human rights issues are sensitive and evidence has to be collected confidentially. An issue that primarily requires confidential evidence is not well suited to being addressed through a national inquiry process.

19.5.2. 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, including gender 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.

19.5.3. The likelihood of effectiveness

The NHRI must also look, in a realistic way, at the prospects of a national inquiry leading to recommendations that can be implemented and will be implemented. Those most affected by human rights violations – the victims and their families and communities – are entitled to remedies for past violations and action to prevent future violations. They should not have their hopes and expectations raised when there is no prospect of either remedy or prevention. If a situation is inherently incapable of resolution, then a national inquiry has nothing to contribute. In making this assessment, however, it is necessary to look long-term. There may be no national resources or no political will to address a human rights situation immediately but it may be possible to find resources or build will over time. It is also necessary to look broadly at solutions. It is usually impossible to undo a violation that has been committed and so, if undoing the violation is the only criterion for deciding whether to undertake a national inquiry, then there is no point in doing so. However, there are other results that are equally valid, such as acknowledging victims, finding ways to give them redress and identifying preventive measures for the future. The assessment of possible results has to be long-term and broad.

19.5.4. 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.

Criteria for deciding whether to conduct a national human rights inquiry[338]

Developed by the Australian Human Rights and Equal Opportunity Commission and the Uganda Human Rights Commission in 2000 and expanded at a workshop in Kampala, Uganda, in 2003.

Criteria related to the Commission as an institution
• Whether the Commission has the necessary public credibility (including independence) • Whether the Commission is the appropriate body or the only body responsible for the subject matter • Whether the Commission is able to manage public expectations • Whether the Commission can accommodate a variety of interests and views on a topic
Criteria related to the significance of the topic
• Whether there are strong community stakeholders for the topic • Whether requests have been received for the inquiry from the relevant sector • Whether the topic is ground-breaking or has already been well-covered • Whether the public agrees generally that the topic is a relevant one • Whether the subject can sustain public interest • Whether the topic would attract widespread public empathy or, alternatively, would be controversial

338 Commonwealth Secretariat, *Public Inquiry Planning Model Guidelines for Commonwealth Human Rights Commissions*, Workshop for Commonwealth Human Rights Commissions, Kampala, Uganda, 25-27 February 2003.

Criteria related to the Commission's resources
• Whether any previous inquiries were successful or, if unsuccessful, whether the problems can be overcome • Whether Commission resources are adequate (includes financial and human resources) • Whether the Commission has the expertise or can obtain it • Whether resources can be committed to evaluation and follow-up • Whether the Commission could work in partnership with another body
Criteria relating to the potential effectiveness of an inquiry on this topic
• Whether other strategies would be as effective • Whether the Commission will be able to come up with implementable recommendations – the report should not be a mere academic treatise • Whether it is likely that the inquiry's recommendations will be implemented
Criteria related to the suitability of the topic for an inquiry
• Whether the core evidence can be given in public • Whether witnesses can be identified and will be available • Whether the basic data are available. • Whether the Commission can protect and support vulnerable witnesses and their families • Whether the topic may open the Commission to a risk of retaliation

19.6. 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.

CASE STUDY

Afghanistan Independent Human Rights Commission: National inquiry into violence against women[339]

In 2012–13, the Afghanistan Independent Human Rights Commission (AIHRC) conducted a national inquiry into violence against women, focusing in particular on so-called "honour killings" and rape. The inquiry was launched on 4 August 2012 and reported in 2013.

Violence against women occurs frequently in all countries, arising from unequal power relationships between women and men that result in women being treated as property, subject to the control of men. In Afghanistan, traditional customs and practices – for example, women's seclusion, their domination by fathers and husbands, judicial recognition and enforcement of moral crimes, early and forced marriage and sexual assault – keep women under men's control and at risk of violence. These issues have come regularly to the attention of the AIHRC through its complaints and case work and investigations.

The AIHRC had five main goals in the implementation of the national inquiry on honour killings and rape:

1. to address and investigate about the cases of honour killings and rape against women
2. to assess the situation of victims and those at risk
3. to collect and analyse the relevant data
4. to raise public awareness and sensitivity against these practices and hold the Government accountable to implement a program of prevention and protection
5. to bring change in the laws and policies and present specific recommendations to improve the situation through providing reports on the issue.

During the last months of 2012 and the first month of 2013, the AIHRC documented 127 cases of violence against women, 43 cases of killings and 84 cases of rape. It collected other evidence and heard the views of many of those involved with the issues, including victims and their families, government officials, community leaders, NGOs and others.

The AIHRC has specialist women's rights units and staff and seeks to protect and promote women's human rights through all its regional and provincial offices and nationally. It has investigated violations of women's rights since its establishment and reported regularly on the situation of women in Afghanistan. In undertaking its work, it became convinced of the need for a more systemic investigation of violence against women, with a view to drawing public and political attention to women's experience of these grave human rights violations and to developing recommendations for governmental and community action to address and eliminate the violence.

Work on the inquiry began in the second half of 2012 with internal planning and preparation. A special inquiry team of a Commissioner and staff was appointed. Internal workshops were conducted to explain the inquiry and its methodology to staff – eight workshops in six weeks in which 250 staff participated.

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339 The summary report is available at www.aihrc.org.af/home/research_report/1571.

The AIHRC sought broad public involvement in the national inquiry. It particularly sought the participation of women affected by violence. It adopted a number of complementary strategies to enable this. Inquiry Commissioners and staff:

- interviewed victims and victims' families, using standard form questionnaires
- conducted interviews in detention centres and prisons
- organised 61 focus group discussions
- held public hearings, with 470 speakers and over 1,000 participants, in 14 provinces and three more at the national level in Kabul.

In different phases of the national inquiry, more than 2,000 people from different groups in the society, including representatives of government and civil society organisations, justice and judicial organs, media associations, NGOs, provincial councils, those in charges of safe shelters, elders and influential figures in the society, participated in consultative sessions, joint focus group meetings and public hearings to discuss cases of sexual assault, honor killings and their causes in the society. Interviews were conducted with 136 accused persons, offenders, victims, eyewitnesses and family members of victims.

Each public hearing involved the provincial governor or deputy governor; the head of the provincial judiciary; the chief prosecutor; the provincial police commander; relevant ministries, including Islamic affairs, education and social security; psychologists and health experts; and civil society representatives. Victims and victims' families were also provided with opportunities to speak.

The AIHRC released its national inquiry report at a major public event on 8 March 2013, International Women's Day. The report contained its findings and recommendations, in eight chapters. It provided extensive analysis of the data concerning these violations, addressing issues related to the victims, the perpetrators, the circumstances, the nature of the crimes, the police response and so on. It identified the causes and factors contributing to the crimes and the many patterns and cultural and traditional norms that continue the violence and are claimed to justify it, including legal-political, socio-cultural, economic and psychological factors.

The inquiry report made 23 significant recommendations to address the pattern of violations, including recommendations relating to:

- remedies, including compensation, rehabilitation and support, for victims
- the criminal law and the criminal justice system
- the family law and system, including changing customary law and practice relating to forced and early marriage and the rights of women
- building public awareness of honour killings and rapes
- more effective protection for women and children, including through education, health programs and employment
- better knowledge and understanding of women's rights and women's situations among judges, political and community leaders, civil servants and other public officials.

Importantly, the AIHRC based its recommendations on the requirements of international human rights law, in accordance with its mandate.

The national inquiry has had significant impacts, quite apart from the recommendations it made. Most importantly, it has broken down taboos. Afghanistan is a traditional society moving toward modernity and becoming a society based on the rule of law. However, some aspects of life remain "unspeakable" within the territory of family and tribal pride and are therefore taboo topics. With the AIHRC undertaking a national inquiry into the very sensitive and controversial issues of honour killing and rape, this taboo was broken. Now cases of honour killing and rape are reported increasingly. ▶▶

The national inquiry has raised awareness and changed mindsets. Throughout the national inquiry process, during public hearings and in focus groups, through calls for submissions and training provided to judges, prosecutors and other officials, public awareness of honour killings and rapes has increased, along with the sensitivity of judges and officials. In every public hearing, for example, judges and prosecutors referred to many cases, sometimes citing numbers and said that they would look at the issues afresh, from a human rights perspective. In cases of the killing of a female family member, they have increasingly used criminal charges of murder instead of Criminal Code article 398, which provides a very mild penalty of up to two years of imprisonment.

The national inquiry provided a new definition for the killing of women and girls and improved the penal code. It set new criteria for the identification of honour killings and rapes and defined these crimes clearly. Past definitions and understandings had confused and been misused by judges, prosecutors and police and resulted in charges of killing a female member of a family not being seriously pressed because of family pride. Rape was often portrayed as adultery. The criminal process has changed greatly.

GOOD PRACTICE

NHRIs should have specific powers to undertake public inquiries into systemic patterns of human rights violation.

MODEL CLAUSE

Where the Commission becomes aware of widespread, systemic or entrenched situations or practices that violate human rights, the Commission may initiate an inquiry. In conducting an inquiry, the Commission may use any of its powers under this law as it considers appropriate. It shall act in conformity with principles of natural justice.

KEY POINTS: CHAPTER 19

- A national inquiry is an investigation into a systemic human rights problem in which the public in general is invited to participate through providing public evidence and written submissions, which has investigative and educational objectives and which results in a report with findings and recommendations.
- A national inquiry is a good means to address complex human rights situations that are historical and systemic in nature and that require comprehensive examination and reporting.
- 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 national inquiries and the most important goal of NHRIs.
- A national inquiry is a very effective mechanism but a demanding one. It should be undertaken only after careful consideration of the appropriateness of the issue for the national inquiry approach and the capacity of the NHRI to undertake the inquiry successfully.
- NHRIs have continuing responsibilities to follow up work they have done and to advocate for, monitor and report on implementation of the recommendations of national inquiries.

Chapter 20: NHRIs and groups at particular risk of human rights violation

KEY QUESTIONS

- **To which groups of people should NHRIs give priority?**
- **What groups experience or are at risk of human rights violations?**
- **What mechanisms have NHRIs developed to respond to these groups?**

20.1. PRIORITY CONCERN FOR VICTIMS AND THOSE AT PARTICULAR RISK OF HUMAN RIGHTS VIOLATION

The mandates of NHRIs under the Paris Principles are very broad, extending to all the community. Human rights are universal, the rights of every human being. Every person is entitled to enjoy all human rights and to have all human rights promoted and protected. National institutions with human rights responsibilities have responsibilities towards every person in a country.

Within this broad, comprehensive responsibility for every person, NHRIs have a priority concern for those whose rights have been violated and those whose rights are at particular risk of violation. While everyone has human rights, not everyone has equal experience of human rights and not everyone is at equal risk of human rights violation. Indeed some have particular responsibilities for the promotion and protection of the human rights of others in their role as duty bearers. Others may be perpetrators of human rights violations. NHRIs have responsibilities towards them all, even protecting the human rights of alleged perpetrators when they are charged and brought before the courts. However, the priorities of NHRIs are victims and those at risk.

Victims have the right to a remedy to which they have "equal and effective access".[340]

> [V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.[341]

In working with groups at risk, NHRIs can offer their services as educators and mediators, to build an alternative basis for community well-being and inter-communal peace.

340 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 11. See also International Covenant on Civil and Political Rights, Article 2(3).

341 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 8.

CASE STUDY

Myanmar:
Working with communities in conflict

Following outbreaks of violence between the Muslim and Buddhist communities in townships in Myanmar states, the Myanmar National Human Rights Commission (NHRC) organised talks on human rights as a means of bringing the communities together and building a common basis of mutual respect for rights. The Commissioners visited 15 townships in four regions or states.[342] During these visits, the Commissioners, together with local authorities, met separately with Muslim leaders and Buddhist monks and exchanged views on the peaceful coexistence between the two communities and listened to their concerns. After these meetings, the NHRC provided talks on the Universal Declaration of Human Rights, the UN human rights mechanisms and the work of NHRC for the residents, with the assistance of local authorities. Findings during these visits were conveyed to the authorities, along with the NHRC's recommendations for necessary measures in response to the concerns raised during the meetings. In the view of the Commissioners, these visits provided an opportunity for both communities to express their concerns regarding issues of safety. The communities were encouraged that the NHRC was able to visit them and listen to their concerns.

Victims are entitled to "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition".[343] NHRIs should give attention to each aspect of remedy identified in international law.

20.2. GROUPS AT RISK

In giving priority to victims and those at particular risk of human rights violation, NHRIs recognise that in every country members of some groups are over-represented among both victims and those at risk. These groups are especially vulnerable to human rights violation. NHRIs should identify these groups and ensure that their work in promoting and protecting human rights is targeted specifically to them.

Some groups are identified internationally as particularly at risk. These are groups for which specific international human rights instruments have been adopted. They include:

- children
- women[344]
- racial, ethnic, religious, linguistic and cultural minorities
- indigenous peoples[345]
- migrants and migrant workers[346]
- people with disabilities[347]

342 Okkan, Ok Pho, Gyobingauk, Zigon, Nattalin in Bago Region, Mandalay, Wandwin, Pyawbwe and Meikhtila in Mandalay Region and Lashio in Shan State, Sittwe, Punnakyun, Kyauktaw, Mrauk Oo and Thandwe in Rakhine State.

343 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Article 18.

344 See APF, *Promoting and Protecting the Rights of Women and Girls: A Manual for National Human Rights Institutions*, 2014; available at www.asiapacificforum.net/support/professional-resources/.

345 See APF, *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, 2013; available at www.asiapacificforum.net/support/professional-resources/.

346 See APF, *Promoting and Protecting the Rights of Migrant Workers: A Manual for National Human Rights Institutions*, 2012; available at www.asiapacificforum.net/support/professional-resources/.

347 See APF, *Human Rights and Disability: A Manual for National Human Rights Institutions*, 2017; available at www.asiapacificforum.net/resources/human-rights-and-disability-manual-nhris/.

- older persons
- refugees, asylum seekers and stateless persons.

The groups at risk will vary from country to country. Part of each NHRI's analytical work is to identify those groups present in its country that are at risk. It will generally find them among the poorest, the most marginalised and the least powerful people in the country.

CASE STUDY

Maldives: 15 year old girl sentenced to be flogged

The Human Rights Commission of the Maldives (HRCM) launched an investigation on its own initiative into the sentencing of a 15 year old girl to flogging. The girl's case had been reported in the media and the HRCM responded immediately. The girl had been sexually abused by her stepfather since the age of nine. She had been under the care of the Ministry of Gender, which had been aware of her situation, but the abuse had continued. She had become pregnant and had given birth to the stepfather's child, whom the stepfather had killed. The girl was charged and convicted of having sexual relations outside marriage and sentenced to be flogged.

The HRCM commenced an investigation when the girl's situation came to its attention. It met with all relevant State institutions – including the Ministry of Gender, Police, Juvenile Justice Unit and Prosecutor General's Office – except the Ministry of Islamic Affairs, which refused the HRCM's request for a meeting.

During its investigation, the HRCM learned that the girl had been questioned, without any consideration to her psychological status, about the sexual acts. The Police claimed that she had admitted having had sex with someone other than her stepfather. This constituted the offence of fornication and the Prosecutor General had decided to prosecute her for that offence. The girl had no understanding of what was happening. The Juvenile Court convicted her and sentenced her to be flogged.

The case was appealed to the High Court. The HRCM sought leave to appear as a "friend of the court" (*amicus curiae*) and to submit its investigation report highlighting the many State violations. The Court granted the HRCM leave to appear and the HRCM was able to present human rights arguments. After hearing from the State, the HRCM and the girl's defence lawyer, the High Court overturned the decision of the Juvenile Court.

Young girl, Maldives. Photo by Hani Amir, reproduced under a CC BY-NC-ND license.

20.3. WHY THE RIGHTS OF WOMEN AND GIRLS NEED SPECIAL ATTENTION[348]

20.3.1. International human rights law and the rights of women and girls

International human rights law 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.[349] 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 all people to the equal enjoyment of those rights, regardless of sex.[350]

However, from the earliest days of the human rights movement, it was apparent that forces within society – forces of culture and tradition, as well as the dominant economic, social and political interests – operate to prevent human rights from applying equally to women and girls. Those same forces have also had a direct impact on how human rights were conceived and how the international human rights system itself has evolved over time.

The main challenges relating to the recognition of "women's human rights" are summarised below.

- The process by which human rights were conceptualised and defined did not involve significant participation by women or consideration of violations of human dignity that particularly affect women. This exclusion, at such a crucial stage, at least partly explains the general failure to consider gender as a factor in defining the substantive content of human rights.
- A widespread belief in and commitment to the underlying objectivity and "gender neutrality" of core human rights prevented recognition of the fact that equal treatment of persons in unequal situations will invariably perpetuate, rather than eradicate, injustices.
- Many issues of urgent concern to women – such as underdevelopment, extreme poverty, illiteracy, gender segregation, lack of reproductive choice and systemic violence – were either not defined as human rights issues at all or were not made the subject of legally binding norms. This has contributed to a failure of the main international human rights mechanisms to address these issues.
- The structure of international human rights law has traditionally excluded actions that occur in the private sphere and violations caused by non-State actors. This approach disadvantages women, who more often live outside the public domain, by rendering invisible many of the violations committed against them.
- Discrimination against women and other violations of their rights – in areas such as family law, nationality, property, health, bodily integrity, movement and expression – have often been justified by governments on the basis of culture, religion or ethnicity. This approach has helped to obscure violations committed against women, to perpetuate an ideological resistance to the notion of women's human rights and to inhibit a unified response from the international community.

348 This section of the manual is drawn from APF, *Promoting and Protecting the Rights of Women and Girls: A Manual for National Human Rights Institutions*, 2014; pp 14-23; available at www.asiapacificforum.net/support/professional-resources/.

349 UDHR Article 2.

350 Articles 2(2) and 2(2) respectively.

- For much of its history, the international human rights system has dealt with women as a "special" category, occasionally identifying areas where women's interests are particularly affected but not integrating women into mainstream human rights activities and concerns. The situation has been somewhat different for girls, where the category of "children's rights" has been relatively more open to recognising the distinct needs and vulnerabilities of girls. However, within the broader human rights system, there has been a marginalisation of the rights of girls, as well as the rights of women.

20.3.2. Human rights issues of special concern for women

There is little disagreement today with the notion that "human rights are women's rights". Few would openly challenge the idea that core human rights – from political participation, to education, to criminal justice – apply equally to men, women and others identifying across the gender spectrum, without discrimination on the basis of sex.

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

TERMINOLOGY[351]

Language describing a person's identity or characteristics carries personal and societal significance. Everyone has the right to choose what terms best describe them. This language differs among societies and cultures and is continually evolving. For the purposes of this section on the specific rights of women and girls, terminology refers to those who identify as female whether or not this was the sex they were assigned with at birth.

"Sex characteristics" refers to a person's physical characteristics relating to sex, including genitalia, chromosomes or hormones and also secondary sex characteristics that emerge at puberty.

"Assigned sex" refers to the sex recorded when a child's birth is registered. Usually the sex assigned at birth is also used in social interactions.

"Gender" refers to socially constructed identities, attributes and roles for females and males and society's social and cultural meaning for these biological differences.[352] The understanding of "gender" varies from society to society and can be changed. Most people are born male or female and are taught appropriate norms and behaviours. When individuals or groups do not "fit" established gender norms they often face stigma, discriminatory practices or social exclusion. Gender identities do not necessarily fit into binary male or female sex categories.[353]

"Gender identity" refers to a person's internal sense of being a man or a woman or a third or alternative gender, or a combination of genders or having no gender.

►►

351 The notes on terminology is informed by the APF and UNDP manual, *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics*, 2016 Available at www.asiapacificforum.net/resources/manual-sogi-and-sex-charactersitics/; pp vii & viii and Chapter 1.

352 Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, 2010, para. 5.

353 World Health Organisation at www.who.int/gender-equity-rights/understanding/gender-definition/en/.

"Gender equality" refers to the equal rights, responsibilities and opportunities of all persons of all genders. Equality does not mean that people should be the same but that rights, responsibilities and opportunities ascribed to persons will not depend on gender identities. Gender equality implies that the interests, needs and priorities of all persons of all genders are taken into consideration – recognising the diversity among and within different groups. Gender equality is not a one-gender issue but concerns and fully engages all genders. Gender equality is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development.

Violence against women: The United Nations General Assembly and the Committee on the Elimination of Discrimination against Women (CEDAW Committee) have both defined violence against women as violence that is perpetrated against women because they are women or that affects women disproportionately. Women are subjected to different forms of violence, including physical, sexual, psychological and economic violence. Perpetrators of this violence are often intimate partners and, in many regions, cultures and traditions, inadequate laws prevent women from seeking or receiving protection from domestic violence. Women are also subjected to targeted violence in war, armed conflict and post-conflict situations. As noted by the United Nations Secretary-General, "[t]he use of rape as a tool of war and atrocities targeting women are the most systematic expression of violence against women in armed conflict".[354]

Discrimination in employment: In most countries, formal discrimination in employment on the basis of sex is not lawful. However, on almost every indicator, women continue to suffer the effects of discrimination. 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. In some countries, access to justice is rendered impossible as women are explicitly denied equality before the law. More commonly, it is a combination of institutional and procedural obstacles, as well as discriminatory practices and attitudes that deny women access to justice.

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. Many aspects of reproductive rights remain unsettled and controversial. As a result, reproductive rights have tended to occupy a marginalised position in international human rights law and practice.

354 In-depth study on all forms of violence against women: Report of the Secretary-General, A/61/122/Add.1, para. 94.

Women and children, Herat, Afghanistan. Photo by Marius Arnesen, reproduced under a CC BY-SA 2.0 license.

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 (23 per cent). Similarly, women comprise more than 30 per cent in the lower or single house of their national parliament in only a handful of countries. A 2017 report by the Inter-Parliamentary Union and UN Women found that, globally, women hold less than 25 per cent of seats in parliament. The figure in Asia is 19.3 per cent and in the Pacific it is 17.4 per cent. This makes women's representation in Asia third lowest in the world, followed by the Arab States and the Pacific region. A number of countries in the Asia Pacific are recorded as having the lowest percentage of women in ministerial positions.[355]

Links, overlaps and multiple discrimination: Many women and girls experience multiple forms of discrimination through the intersection of gender and other bases of discrimination, often resulting in deprivations across multiple measures of wellbeing.[356]

These intersections, which reflect the indivisibility and interrelatedness of all human rights, were recognised in the Amman Declaration in the specific context of economic and social rights:

355 Inter-Parliamentary Union and UN Women, *Women in Politics Map: 2017*, available at www.unwomen.org/en/digital-library/publications/2017/4/women-in-politics-2017-map.

356 UN Women, *Turning Promises into Action: Gender equality in the 2030 Agenda for Sustainable Development*, 2018. Available at www.unwomen.org/en/digital-library/publications/2018/2/gender-equality-in-the-2030-agenda-for-sustainable-development-2018#view p. 136.

> Poverty and inequality are significant factors that increase vulnerability to discrimination, hunger and gender-based violence. Patriarchal structures, systems and macro-economic choices devalue the lives and the contributions of women, who also suffer disproportionately from the ensuing militarization, war, violence, unemployment and precarious employment. These choices impact negatively on women's and girls' time, health and safety and women and girls bear the brunt of austerity measures including through budget cuts on public services, such as health, education and social security. The worst impacts of the global and national financial crises are felt by those who are poor, the majority of whom are women and girls.[357]

Women and girls with disabilities experience "double discrimination", which places them at higher risk of gender-based violence, sexual abuse, neglect, maltreatment and exploitation.[358] Women with disabilities face greater difficulties in securing access to adequate housing, health, education, vocational training and employment. They are also more likely than men to be institutionalised. In addition, they experience inequality in hiring, promotion rates, pay for equal work and access to training, retraining, credit and other productive resources.[359]

I*ndigenous women* experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses influenced by patriarchal power structures; multiple forms of discrimination, marginalization and violation based on gender, class, ethnic origin and socio-economic circumstances; and historical and current violations of the right to self-determination and control of resources. Indigenous peoples account for 5 per cent of the world's population, while representing 15 per cent of those living in poverty. Indigenous peoples' life expectancy is up to 20 years lower than their non-indigenous counterparts. In Fiji, India, Myanmar, Nepal, the Philippines, Thailand and Timor-Leste, the militarization of conflict over indigenous land has led to gang-rape, sexual enslavement and killing of tribal women and girls.[360]

Women migrant workers are particularly vulnerable to human rights violations. They also face multiple levels of discrimination, abuse, and a general lack of protection in the jobs available to them, such as domestic work.[361] South Asia and Sub-Saharan Africa, two regions with high rates of female informal employment and decent work deficits, are among the top sending regions for domestic workers.[362]

The majority of people killed because of their gender identity are *transgender women*.[363] Measures to address violence and discrimination faced by transgender people are lagging. Most States do not recognise transgender people's gender identity; the majority of those that do continue to impose abusive preconditions that violate international human rights standards. National and international medical classifications continue to pathologise transgender persons and identities.[364]

Between January and June 2017, the world refugee population reported by UNHCR increased by 1.3 million, or 7 per cent, as compared with the 2016 year-end total. Although reliable sex and age-disaggregated data are hard to collect in a refugee crisis, an estimated 49 per cent of *refugees were women and girls*.[365]

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357 Preamble, available at www.asiapacificforum.net/resources/amman-declaration/.

358 UN Department for Economic and Social Affairs Division for Inclusive Social Development, *Factsheet on Persons with Disabilities*; available at www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html.

359 Report of the Secretary General to the UN General Assembly (July 2017). Situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. Available at www.un.org/development/desa/disabilities/news/dspd/women-and-girls-with-disabilities-crpd.html.

360 Victoria Tauli Corpuz, *Report of the Special Rapporteur on the rights of indigenous peoples, to the Human Rights Council*, A/HRC/30/41 (2015). Available at https://undocs.org/A/HRC/30/41; paras 5, 18, 53 (d).

361 APF, *Manual on Promoting and Protecting the Rights of Migrant Workers*, 2012; Available at www.asiapacificforum.net/resources/manual-on-migrant-workers/, p 2.

362 ADB, OECD, and ILO, *Safeguarding the rights of Asia migrant workers from home to the workplace*, 2017. Available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_548390.pdf; pp 63 & 64.

363 APF and UNDP, *Manual on Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics*, 2016. Available at www.asiapacificforum.net/resources/manual-sogi-and-sex-charactersitics/; pp 64, bp 4.

364 UN, *Living Free and Equal: What States are doing to tackle violence and discrimination against LGBTI*, 2016. Available at www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf, p 11.

365 UNHCR, *Mid-year trends 2017*, at www.unhcr.org/5aaa4fd27.pdf.

20.3.3. Human rights issues of special concern to girls

Within the larger movement for the realisation of women's rights, history has clearly shown that it is essential to focus on the girl child to break down the cycle of harmful traditions and prejudices against women. Only through a comprehensive strategy to promote and protect the rights of girls, starting with the younger generation, will it be possible to build a shared and lasting approach and a wide movement of advocacy and awareness aimed at promoting the self-esteem of women and allowing for the acquisition of skills which will prepare them to participate actively in decisions and activities affecting them. Such an approach must be based on the recognition of human rights as a universal and unquestionable reality, free from gender bias.

There is a need to ensure that a woman's life-cycle does not become a vicious cycle where the evolution from childhood to adulthood is blighted by fatalism and a sense of inferiority. Only through the active involvement of girls, who are at the root of the life-cycle, is it possible to initiate a movement for change and betterment.[366] The human rights issues set out above are, of course, also relevant to girls. The structural discrimination and inequality that underlines and perpetuates a lifetime of poverty and disadvantage for many millions of women begins in childhood. Laws, policies and practices that discriminate against women will inevitably include and affect girls. However, it is important to recognise that girls are subject to special vulnerabilities that reflect their sex and gender, as well as vulnerabilities associated with childhood.

Child marriage: Child marriage (defined as marriage before the age of 18 years) is widespread and affects tens of millions of girls. In some African and South Asian countries, half of all girls are married by the time they are 18.[367] Child marriage often has a devastating effect on girls, as well as on their families and communities. Girls who marry early are usually forced to leave school and move away from family and friends. Once married, they are at risk of domestic violence, sexual abuse and health complications associated with early sexual activity and childbearing. This in turn leads to high rates of maternal and child mortality. Conflict and post-conflict situations may impact marriage practices by exacerbating the factors that increase girls' vulnerability to child marriage (for example, girls displaced by war and girl refugees being married early to "protect" them from sexual violence in conflict situations or refugee camps).

Discrimination in education: Over the past decade, there have been significant improvements in literacy and school attendance rates for girls in most regions and most countries. However, almost two thirds of the world's illiterate adults are women and this reflects continuing problems of discrimination.[368] In many developing countries, girls are still more likely than boys to not attend school or to drop out early. Globally, 15 million girls of primary-school age will never get the chance to learn to read or write in primary school compared to 10 million boys.[369] For those girls who are at school, discrimination can result in a lack of access to opportunities, failure to progress and early withdrawal.

366 See Committee on the Rights of the Child, *Report of the 8th Session*, CRC/C/38, paras. 284-285.

367 United Nations Population Fund (UNFPA), *Marrying Too Young: End Child Marriage*, 2012. See also International Center for Research on Women, "Child Marriage Facts and Figures". Available at www.icrw.org/child-marriage-facts-and-figures.

368 Global Campaign for Education, *Gender Discrimination in Education: The violation of the rights of women and girls*, 2012, p. 6. See also United Nations Department of Economic and Social Affairs, *The World's Women 2010: Trends and Statistics*, 2010, Chapter 3.

369 United Nations Department of Economic and Social Affairs, *The World's Women 2015*. See also the UN Women report, *Turning Promises into Action: Gender equality in the 2030 Agenda for Sustainable Development*, 2018, pp 21.

ASSESSING DISCRIMINATION IN EDUCATION: KEY QUESTIONS[370]

- **Is education *available* to girls and women, throughout the cycle, and not simply in terms of primary level enrolments?**
- **Is education *accessible*, in terms of the absence of financial, physical, geographical and other barriers?**
- **Is education *acceptable* for girls and women, as well as boys and men, in terms of its content, form and structure – both what is being taught and learned, and how that teaching and learning happens?**
- **Is education *adaptable*, in terms of being responsive to girls' and boys' different needs and lives, taking into account phenomena such as girls' and women's labour, early marriage and pregnancy?**

Violence and harmful traditional practices: Gender-based violence against girls is widespread and can take place in many different contexts: in their homes, at school, at the workplace or in the community. For example, the United Nations estimates that, worldwide, up to 50 per cent of all sexual assaults are committed against girls under 16 years.[371] Girls are also vulnerable to a number of harmful practices based on tradition, culture, religion and superstition. For example, according to the World Health Organization, about 140 million girls and women worldwide currently live with the consequences of female genital mutilation, a violation of their human rights that reflects deep-rooted inequality between the sexes and constitutes an extreme form of discrimination against women.[372]

Mother and child, Mulliyavalai, Sri Lanka. UN Photo by Evan Schneider.

370 Global Campaign for Education, *Gender Discrimination in Education: The violation of the rights of women and girls*, 2012, p. 6.

371 UN Women, "Statistics on violence against women and girls", at www.endvawnow.org/en/articles/299-fast-facts-statistics-on-violence-against-women-and-girls-.html. See also United Nations Department of Economic and Social Affairs, *The World's Women 2010: Trends and Statistics*, 2010, Chapter 6.

372 World Health Organization, "Female genital mutilation: Fact sheet No. 241", February 2013, and *Understanding and addressing violence against women: Female genital mutilation*, 2012.

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.

States parties 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.[373]

20.3.4. Gender mainstreaming

> Gender equality is the goal. Gender mainstreaming is the strategy.[374]

The protection and promotion of the rights of women and girls can be institutionalised within NHRIs through two distinct approaches. These two approaches are complementary as NHRIs have found that a single approach is not sufficient to ensure that issues related to the rights of women and girls receive the attention and support they require to be comprehensively addressed.

The first approach, discussed below, is the use of specialised mechanisms. The second approach is to mainstream a gender perspective throughout the work of the NHRI.

Gender mainstreaming was established as a major global strategy for achieving gender equality in the Beijing Platform for Action in 1995.[375] The 2030 Agenda and SDG 5, "Achieve gender equality and empower all women and girls," follow this approach. It calls for a gender mainstreaming strategy in all policies and programmes to ensure concrete gender equality outcomes. Integrating a gender perspective into the implementation and monitoring of all the SDGs is a fundamental strategy for delivering on the promise of the Agenda as a whole.

Mainstreaming a gender perspective means more than simply adding a number of women to existing structures and activities. The accepted understanding is much broader, as expressed by the United Nations Economic and Social Council in 1997:

373 Committee on the Rights of the Child, *General Comment No. 13*, 2011, paras. 3(a)-(c) and 72(b).

374 Slogan of the United Nations Office of the Special Adviser to the Secretary General on Gender Issues and Advancement of Women (OSAGI). Available at www.un.org/womenwatch/osaginew/gendermainstreaming.htm.

375 Fourth World Conference on Women, Beijing September 1995. Available at www.un.org/womenwatch/daw/beijing/platform/.

> Mainstreaming a gender perspective is the process of assessing implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.[376]

Achieving equality can often require treating people differently, in such a way that the result can be the same. Equal, or the same, treatment of people in unequal situations tends to perpetuate discrimination and inequality. A gender mainstreaming strategy therefore involves addressing the experiences, issues and solutions for women and men in different ways.

The APF incorporates an inclusive understanding of gender into its gender mainstreaming policies and processes and defines it as a process that

- assesses gender considerations, putting into effect strategies to achieve formal and substantive equality between women and men and monitoring the outcomes
- incorporates an understanding of gender as i) non-binary and ii) inclusive of cis and trans women and girls
- requires an intersectional analysis to highlight and address the discrimination and disadvantage women and girls can face as a result of their race, disability, age, class, caste, sexual orientation, gender identity or sex characteristics, or as a result of being an indigenous woman/girl or a migrant or refugee woman/girl, or a female migrant worker or other status.[377]

The APF has produced a set of guidelines for facilitators of human rights education and training and the development of education and training materials. The guidelines provide advice on undertaking a gender analysis and applying that to planning, implementing and evaluating an education programme and related materials.[378]

Gender mainstreaming the work of an NHRI: Checklist

NHRIs will develop gender mainstreaming processes that are most suitable for their own contexts. However, the following questions may be useful. They focus on gender equality and inclusion as a way of combatting marginalisation of and discrimination against women and girls.

Refer to section 20.3.2 for definitions of sex characteristics, assigned sex, gender, gender identity and gender equality.

Area	Questions/checklist
Governance	☐ Are all genders equitably represented in the NHRI governance body? ☐ Do governance processes enable the full participation of women across multiple and intersecting diversities? ☐ Has the NHRI made a clear statement regarding its commitment to gender equality? Is gender equality implicit (and explicit where appropriate) in the NHRI's vision, values, goals and objectives? ☐ Does the NHRI monitor and report on its progress toward gender equality?

376 ECOSOC A/52/3/Rev.1, p. 23.

377 As noted in the *APF Performance Report* (Nov 2017), s11.5, pp 51-58, and *APF Gender Strategy 2015–2020*. Available at www.asiapacificforum.net/media/resource_file/APF_22_AGM_Papers_v2.pdf.

378 APF, *Gender Mainstreaming Guidelines for Trainers and Developers of APF Training Material*, July 2017. Available at www.asiapacificforum.net/media/resource_file/APF_Gender_Mainstreaming_Guidelines_Trainers.pdf.

Area	Questions/checklist
Policy and procedures	☐ Does the NHRI have policies and procedures that explicitly refer to gender equality? ☐ Are women able to participate fully and openly in the work environment? ☐ Do other relevant and related policies include gender considerations?
Awareness, attitudes and behaviours of staff and Commissioners	☐ Do Commissioners and staff understand the concept of gender mainstreaming and have the skills required to implement gender mainstreaming in their work? ☐ If not, have Commissioners and staff received gender equality, gender awareness and gender mainstreaming capacity building? ☐ Do Commissioners and staff understand the added discrimination and disadvantage experienced by women and girls as a result of multiple and intersectional identities? ☐ Does the culture of the organisation celebrate gender inclusion and diversity?
Human resource management	☐ Are human resource management policies and practices gender inclusive? For example recruitment, job descriptions, staff data, induction programmes, performance assessments, professional development, internal support systems, complaints processes, staff acknowledgement, remuneration levels, promotion and retention? ☐ Does the NHRI offer affirmative action practices where women are not equitably represented in all levels of the organisation?
Language	☐ Is the formal and informal language, signage, and iconography of the NHRI gender neutral and inclusive?
Functional or portfolio divisions/units	☐ Does the NHRI gender mainstream its strategies, priorities and practice throughout all functional and portfolio areas? ☐ Does the NHRI have a designated division, unit or work programme focused on the human rights of women and girls? ☐ Have all divisions/units of the NHRI analysed gender issues in their particular fields of activity, operationalised gender equality objectives and developed approaches for addressing gender issues?
Data gathering and monitoring	☐ Does the NHRI record and disaggregate its data across all genders? For example, does it record and disaggregate its activities related to the human rights of women and girls? Does it use other categories such as type of discrimination, category of the alleged violation or broader human rights matter? ☐ Does it undertake research that is specifically aimed at developing an evidence base for its work on gender and the human rights of women? Are women appropriately involved in the planning and conduct of such research?
Communications, branding, marketing	☐ Do external communications, branding material and marketing tools make it clear to the public that the NHRI is gender inclusive across multiple and intersecting diversities?

Area	Questions/checklist
External cooperation and engagement	☐ Does the NHRI use processes that enable the full and genuine participation of women and girls, including those most marginalised, in external engagement, including consultations, monitoring and reporting? ☐ Does the NHRI have partnerships with key government agencies and civil society organisations that work with issues for women and girls? ☐ Can all women report human rights violations without experiencing barriers?
Procurement and contracting	☐ Can all women and their organisations bid for tenders and carry out contracts for the NHRI without experiencing barriers or disadvantages? ☐ Does the NHRI promote gender equity through its procurement and contracting activities? ☐ Does the NHRI ensure that women and girls are not harmed through its procurement practices and supply chains? For example, women and girls working in global supply chains are most at risk of being victims of human rights abuses such as unfair employment practices, violence, child labour and slavery.
Reporting	☐ Are gender considerations included in the NHRI reporting? For example, does it allocate a separate section to the rights of women and girls in its annual report? Are there sections on issues of particular concern to women of diverse backgrounds and identities?

Photo by Fasoha Aishath.

GENDER MAINSTREAMING AND THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The CEDAW Committee regularly includes a gender mainstreaming requirement in its concluding observations.[379] For example, in March 2018 the Committee recommended that Malaysia:

> **"16. (c) Ensure that gender mainstreaming is applied consistently in the development and implementation of all laws, policies and programmes in all ministries and legislative structures, including by strengthening training programmes and the gender focal point system and establishing a coordinating committee across agencies;**
>
> **(e) Develop a comprehensive system to collect, analyse and publish data on all areas covered by the Convention, disaggregated by sex, age, disability, ethnic origin, religion and other relevant factors, so that such data and analyses can be used for the formulation of laws, policies and plans, as well as for the monitoring and evaluation of their implementation and that of the Sustainable Development Goals."**

The Committee recommended that Fiji

> **18. (c) "Allocate the necessary human and financial resources and implement a gender mainstreaming strategy throughout all government agencies."**

The Committee recommended that the Marshall Islands

> **"19. (b) Appoint, without delay, gender focal points to monitor the implementation of the gender mainstreaming policy across ministries and government departments and ensure that they have clear mandates to effectively coordinate policies and programmes on women's rights."**

20.4. NHRI MECHANISMS FOR GROUPS AT RISK

Having made the commitment to groups at risk as a priority concern and then identified those groups, NHRIs must next determine how best to respond to the groups' experiences of human rights violation and to their need for protection. NHRIs have developed various mechanisms to do this.

20.4.1. Designated members of NHRIs

In some NHRIs, individual members are designated with specific responsibility for a particular group or groups. This can be done formally, through the NHRI's legislation, or informally, as an internal administrative arrangement. This approach can be very effective in drawing public and political attention to the situations of the specific groups but there are always more groups that will seek the addition of a specialist member for their group. Groups without designated members will feel that their concerns are not recognised by the legislature or the government and that they too should have designated members.

379 CEDAW Committee Concluding Observations, March 2018. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5.

CASE STUDIES

Australian Human Rights Commission

When it was established in 1986, the Australian Human Rights Commission's founding legislation structured the Commission to consist of a President and three full-time Commissioners with specific responsibilities for particular groups:

- **the Race Discrimination Commissioner, who had responsibility for groups experiencing discrimination based on race, colour, descent, national or ethnic origin**
- **the Sex Discrimination Commissioner, who had responsibility for groups experiencing discrimination based on sex, pregnancy or marital status**
- **the Human Rights Commissioner, who had responsibility for children, people with disabilities, refugees and asylum seekers.**

Since 1986, other full-time Commissioner positions have been established:

- **the Disability Discrimination Commissioner**
- **the Aboriginal and Torres Strait Islander Social Justice Commissioner**
- **the Age Discrimination Commissioner**
- **the National Children's Commissioner.**[380]

The President and the Commissioners collectively constitute the Commission and determine policies, programs and priorities for the Commission as a whole.

New Zealand Human Rights Commission

The founding legislation of the New Zealand Human Rights Commission stated that the Commission would consist of three full-time Human Rights Commissioners, including two with responsibility for specific groups (a Chief Commissioner, a commissioner for race relations, a commissioner for equal employment opportunities, including pay equity) and up to five other part-time commissioners, with designated portfolio areas.

The *Human Rights Amendment Act 2016* changed the composition of the Commission to remove part-time Commissioners and add a commissioner responsible for disability rights (the Disability Rights Commissioner).[381]

20.4.2. Sub-commissions

Some NHRIs will work through a series of sub-commissions or sub-committees, some of which are directed to human rights issues affecting a specific group. Sub-commissions are senior committees appointed by the NHRI itself or by a senior official within the NHRI and consisting of NHRI members and outside persons with acknowledged expertise in the area. They are delegated by the NHRI to act on its behalf in relation to the specific group. Sub-commissions expand the numbers of experts engaged in the NHRI's work but they can be very resource intensive to manage and service. They can give rise to political sensitivities.

380 A Privacy Commissioner was also added to the Australian Commission in 1989 but was moved into a separate agency in 2000.

381 *Human Rights Amendment Act 2016*, s. 7.

CASE STUDIES

Indonesia National Commission on Human Rights (Komnas HAM)

Komnas HAM conducted a national inquiry to explore conflicts affecting indigenous people in forest areas. According to AMAN, the Indigenous Peoples Alliance of the Archipelago, neglect and violation of indigenous human rights in Indonesia was severe with 2,230 indigenous communities asking for investigations. During 2013 alone, the group recorded 150 new cases of rights violations.

Komnas HAM travelled throughout Indonesia to provide concerned parties with an opportunity to meet and discuss land disputes, before submitting the results of their findings to the President of Indonesia.

To ensure that women and girls were able to participate in the hearings and to have their voices heard, Komnas HAM partnered with Komnas Perempuan, the National Commission on Violence Against Women, through a formalised MoU. It published both within the national inquiry report and separately a full account of its consultations with women and an analysis of the perspectives of indigenous women in relation to land.

National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand (NHRC) has taken a unique approach to the delegation of its work. Both the first and the second Commissions have used a number of standing sub-commissions to promote and protect particular rights or areas that the Commission identified as needing specific attention. The first Commission had more than 30 sub-commissions working in five thematic areas relating to:

- the work of the Commission
- civil and political rights
- economic, social and cultural rights
- laws and the administration of justice
- other areas, such as the strategic plan and NGO accreditation.

The second Commission has reduced the number of sub-commissions and focused them more on functional aspects of the NHRC's work relating to:

- the NHRC's constitutional functions
- the strategic plan
- the works of the NHRC.

It has also appointed limited-term sub-commissions or working groups for specific projects or investigations.

Members of these sub-commissions include members of the Commission; persons outside the NHRC, including both civil society (NGOs, academia and the private sector) representatives and governmental officials; and NHRC staff. They are not full-time sub-commission members. The composition of the sub-commissions assists in expanding and strengthening the network of the NHRC.

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National Human Rights Commission of Korea

The National Human Rights Commission of Korea (NHRCK) works through the Plenary Committee, the Standing Commissioners' Committee and various sub-committees. Currently the sub-committees comprise:

- **the Violation Rectification Subcommittee 1**
- **the Violation Rectification Subcommittee 2**
- **the Discrimination Remedy Subcommittee**
- **the Disability Discrimination Remedy Subcommittee.**

These sub-committees deal with a wide variety of human rights violation cases and discrimination problems. There also appears to have been a number of other sub-committees established through the NHRCK's history. For example, in 2008, a Disability Discrimination Remedy Subcommittee was established for the investigation and resolution of cases of disability discrimination. Members of this sub-committee were all NHRCK standing commissioners. In 2011, the NHRCK established a Special Committee on North Korean Human Rights to strengthen capabilities in dealing with North Korean human rights.

20.4.3. Designated units

Some NHRIs establish specialist units among the staff, sometimes headed by a member of the NHRI, to take responsibility for the human rights of particular groups. The units will generally include experts in that area of human rights work, including those who have lived experience of a particular risk group. Each unit will be responsible for policy and human rights education work relating to the particular group and sometimes will also have responsibility for handling complaints from members of that group. Larger units can make good use of being designated as expert units for particular groups, as they have sufficient staff available to take on the broad brief. However, where too many units are designated and staff are distributed very shallowly, the NHRI may miss the opportunity to increase its own expertise.

CASE STUDIES

Afghanistan Independent Human Rights Commission (AIHRC)

The AIHRC has formed the Women Rights Unit (WRU) in its structure as a mechanism for gender equality and women's rights promotion and protection in Afghanistan.

In the area of protection, the WRU undertakes the functions of

1. **Receiving, verifying and addressing the complaints of women**
2. **Mediating, counselling and resolving family conflicts**
3. **Providing the complainants with legal aid**
4. **Referring the legal cases of women's rights violations to the relevant governmental institutions and safe houses**[382]
5. **Following up and advocating for redressing women's rights violation in the special attorney fighting violence against women and in the court.**

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382 The WRU has a specific form for registration of women's rights violation cases, the "Form for Registration of Violence Against Women (FRVAW)".

The AIHRC's national Database Management Unit collects and records women's human rights violation cases.

In the area of promotion of women rights, the AIHRC WRU undertakes the functions of

1. Conducting vocational capacity enhancement training program for its staff;
2. Holding gender equality training and seminars as well as researching;
3. Raising public awareness on prevention of harmful socio-cultural practices such as early marriage, forced marriage, *baadal* (exchange of girls between families for marriage), *baad* (giving away a girl or woman in marriage as blood price to settle a conflict over murder or a perceived affront to honor), *toyana* (paying a sum of money or property requested by the bride's family from the groom's, in addition to dowry), honor killing and so on.

The WRU has been established as a separate unit in the structure of AIHRC due to the importance of gender equality issues.

Since 2011, the AIHRC, has had an internal Gender Policy Agenda. The policy emphasises:

1. a gender balance in employment, promotion and decision-making processes within the AIHRC
2. the provision of development, capacity building and travelling opportunities for women inside and outside of the country
3. a safe working environment inside the AIHRC.

National Human Rights Commission of Nepal (NHRC)

The NHRC established the Office of the National Rapporteur on Trafficking within the NHRC under a Memorandum of Understanding with the Ministry of Women, Children and Social Welfare in 2002. The Office was renamed the Office of the Special Rapporteur on Trafficking (OSRT) in 2009. The OSRT is mandated to:

- monitor the incidence of trafficking
- coordinate national, regional and international efforts to combat the crime of trafficking
- generate high level commitment to efforts aimed at improving the human rights situation of women and children
- develop indicators and checklist for monitoring the situation of trafficking in persons
- determine focal persons in every district to collect the information on trafficking
- develop and maintain a comprehensive and up-to-date national database system on trafficking in persons, especially of women and children
- prepare and publish annual reports on the situation of trafficking in persons.

Commission on Human Rights of the Philippines

The Commission on the Human Rights of the Philippines (CHRP) established the Barangay Human Rights Action Center Program (BHRAC) to give the ordinary citizens the central role in the implementation of human rights promotion and protection services at the grassroots and to bring the services of the CHRP closer to the people, especially in those areas not strategically within the reach of its central, regional and sub-regional offices.

Each BHRAC is overseen by the Barangay Human Rights Action Officer, who must not be an elective/appointive official of the government and must not engage in partisan political activities. The Centers have four functions:

- complaints processing
- coordination and referral of complaints that do not constitute human rights violations ▶▶

- mobilization
- information and education.

More than 14,000 Centers have been established throughout the Philippines.

Since 2009, the CHRP has also acted as the Philippines Gender Ombud under the Magna Carta of Women (MCW, RA 9710). The law sets out its specific mandates for the Commission which the Commission must faithfully and fully implement, among them, promoting and protecting women's rights through creative approaches in education while honing investigation of rights violations committed by persons not only from the public but equally from the private sectors and related laws of the Philippines.

In 2016 a set of guidelines were developed in close coordination with the Philippine Commission on Women and in consultation with national government agencies and civil society organisations. The CHRP defines three major Protocols in the implementation of the MCW and related women's rights laws, specifically on the investigation of cases to protect women's rights. Protocol 1 involves cases on women that cut across the broad spectrum of society: Indigenous women, Moro women, elderly women, women with disabilities and so on. Protocol 2 involves specific cases on the girl-child and general cases on children and Protocol 3 involves cases of persons with diverse sexual orientation and gender identity and expression.[383]

Garment factory workers in Dhaka, Bangladesh. Photo by Abir Abdullah/Asian Development Bank, reproduced under a CC BY-NC-ND license.

383 Commission on Human Rights of the Philippines, *CHR Ombud Gender Guidelines, Promoting Gender Equality and Women's Empowerment under the MCW (RA 9710) and Related Laws*, 2016. Available at http://library.pcw.gov.ph/sites/default/files/CHR%20Gender%20Ombud%20Guidelines.pdf.

20.4.4. Focal points

NHRIs may not have the resources or the priority to designate a group of staff to act on behalf of a specific group. Instead they may decide on a less resource intensive approach, appointing one staff person to be a focal point for a particular group. Focal points do not usually work only on issues affecting the group in question. They usually have other responsibilities. However, as focal points, the persons develop expertise in relation to the particular groups, may often have lived experience and act as principal advisers to the NHRI on the human rights issues facing those groups. They are also the principal contact between the NHRI and those groups. Focal points are drawn from existing staff and so come without a significant additional cost. But they have existing workloads as part of their main jobs and so may attach a lower priority to their focal point responsibilities.

CASE STUDIES

APF Gender Focal Point

In 2011 APF adopted the APF Gender Policy. It has a Gender Focal point within the APF secretariat, the position currently being held by the APF Deputy Director. APF has developed a robust monitoring and evaluation framework to chart progress on an annual basis. It also has an APF gender strategy that includes a two-prong approach of gender mainstreaming and specialisation services for its members and secretariat.

APF members have made promoting and protecting the human rights of women and girls a priority in their respective countries, as part of the APF Regional Action Plan on the Human Rights of Women and Girls. This complements similar commitments made by NHRIs globally under the Amman Declaration and Programme of Action, adopted in 2012 at the 11th International Conference of National Human Rights Institutions. The Gender Focal Point encourages implementation of these commitments.

APF members are invited to report annually on their work to promote and protect the rights of women and girls. The Gender Focal Point collects and analyses this information as part of the APF-wide evaluation programme.

APF Migrant Workers Focal Group

At its 15th Annual Meeting in 2010, the APF agreed to request member NHRIs to establish "focal points" on the rights of migrant workers. A number of NHRIs subsequently designated one or more staff members to act as focal points to implement a program of action to promote and protect the rights of migrant workers. Others have also assigned one or more staff members as focal points on the rights of migrant workers with clear duties in relation to monitoring and outreach activities. For example, the National Human Rights Committee of Qatar undertakes a number of inspection visits each month to places of employment of migrant workers and workers' residences "to observe their situations or to play an intermediary role between them and [their] employer".[384] Through the coordination of the APF secretariat, these focal points have contributed information and expertise on good practices of NHRIs in protecting and promoting the rights of migrant workers.

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384 National Human Rights Committee of Qatar, *Report to the 15th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions*, Bali, Indonesia, 3-5 August 2010, p. 4.

Human Rights Commission of Sri Lanka

In 2012, in response to its major concerns over migrant issues, the Human Rights Commission of Sri Lanka established a new focal point. It also adopted guidelines on the protection and promotion of the rights of Sri Lankan working migrants for the attention of Sri Lankan diplomatic missions, embassies, consular and labour welfare officers, as well as the Ministries of External Affairs and of Foreign Employment Promotion and Welfare and the Bureau of Foreign Employment. The focal point has been charged with monitoring the implementation of the guidelines.

20.4.5. Advisory committees

NHRIs may choose a less formal mechanism that brings expert groups to the NHRI to provide advice to members and staff on their areas of expertise. Advisory committee members are usually appointed for their individual expertise or perhaps in a representative capacity in relation to a particular sector or organisation with widespread public support. They are used mainly for information exchange and the expression of opinion, not as decision makers or to undertake activities beyond consultations.[385]

CASE STUDIES

National Human Rights Commission of India

The National Human Rights Commission of India (NHRC) has established eight core groups of experts that focus on specific human rights areas.[385] They include:

- **Core Group of NGOs**
- **Core Advisory Group on Bonded Labour**
- **Core Advisory Group on Health**
- **Core Group on Disability**
- **Core Group on Mental Health**
- **Core Group on the Protection and Welfare of Elderly Persons**
- **Core Group on the Right to Food**
- **Core Group on Lawyers.**

Each group has a written constitution and is generally made up of NGO directors, academics, government officials and representatives of the private sector. Each group provides the NHRC with advice and opinion in its specific area of expertise. Some groups have a wider remit. For example, the terms of reference of the Core Group on the Right to Food are:

i) **To advise the Commission on issues relating to right to food in the context of India. These issues may include both references made by the Commission to the Core Group and any other issues, which the members of the Core Group consider it appropriate to suggest to the Commission in the light of the relevant provisions of the *Protection of Human Rights Act, 1993*.**

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385 See www.nhrc.nic.in.

ii) To review existing government policies, laws/rules/orders etc. and other material from human rights perspective and make an assessment of current status of enforcement of the right to food in different States/UTs in India.

iii) To identify voids and gaps in the policy framework relating to right to food and suggest measures to fill the same.

iv) To suggest plan of action for enforcement of right to food in different States/Union Territories.

v) To examine best practices of institutions in India and abroad dealing with the right to food and recommend their replication in other areas.

vi) Any other issue which is considered relevant to the subject by the Group.[386]

The groups are self-governing and meet regularly, as and when they deem necessary.

Australia: Developing a new national indigenous representative body

In December 2008, the Australian Government requested the Aboriginal and Torres Strait Islander Social Justice Commissioner within the Australian Human Rights Commission to convene an independent Steering Committee to develop a preferred model for a national representative body for Aboriginal and Torres Strait Islander peoples.[387] The Steering Committee was required to:

- develop a preferred model for a new national indigenous representative body for presentation to the Australian Government in July 2009
- make recommendations in regards to the establishment of an interim body from July 2009, which would operate until the finalised body was to take effect
- ensure strong community support for such a representative model.

The Steering Committee prepared a report recommending the establishment of the National Congress of Australia's First Peoples.[388] The Government agreed to support the establishment of the National Congress in 2009 as an independent NGO under the control of Indigenous Australians. It provided seed funding to the Commission to establish an interim board of Indigenous Australians to develop the constitution of the organisation, conduct elections for the board and begin operations. The National Congress commenced operating independently in 2010.[389]

20.4.6. Conferences and seminars

NHRIs may decide to use very informal processes to obtain advice. Conferences and seminars provide structured opportunities for experts to present their views and the results of their research, as well for discussion and exchange. Conferences and seminars can be arranged for discussion of a single theme or issue or they can be broader and incorporate discussion of several issues.

386 See www.nhrc.nic.in/Documents/cg_food.pdf.

387 See www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/national-congress-australia-s.

388 See www.humanrights.gov.au/publications/our-future-our-hands-2009.

389 See http://nationalcongress.com.au.

CASE STUDIES

The APF works with NHRIs in West Asia to tackle issues that place women at risk of violence, discrimination and abuse[390]

Strengthening measures to protect women and girls against violence is an important priority for NHRIs in West Asia.

In February 2018 representatives from the NHRIs of Bahrain, Iraq, Jordan, Oman, Palestine and Qatar took part in a two-day roundtable discussion in Amman, Jordan. They explained that women and girls can face violence in situations of conflict, in refugee camps and in the home.

While some countries in the region now have laws in relation to domestic violence, there is a lack of services to provide support for victims. The laws also fail to make domestic violence a criminal offence.

Other issues raised during the workshop included:

- the many legal rights denied to women in the region, including passing on nationality to children, equal rights in marriage and the right to political participation
- limited access to information on reproductive rights and little autonomy for women to make decisions about when they want to start a family or the number and spacing of their children
- challenges women face to secure their economic independence, including a lack opportunities for employment or being denied employment opportunities.

The workshop encouraged NHRIs to consider practical projects they could establish, or the strategic partnerships they could build, to counter the discrimination and human rights violations that women and girls face.

Some of the proposals discussed in the workshop included:

- collaborating with CSOs, including through training programs, to draw attention to the issue of gender-based violence and to develop country-specific responses
- engaging with women in refugee camps to help counter radicalisation and extremism
- working with women in poor, rural areas to identify the barriers and opportunities for economic development
- responding to situations where women are incarcerated for being unable to pay small fines
- advocating for changes in laws and regulations that discriminate against women and girls.

Following the workshop, participating NHRIs were invited to finalise their project proposals. The APF provided a grant of AUD 5,000 for one proposal.

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390 See www.asiapacificforum.net/news/nhris-develop-plans-tackle-gender-based-challenges/.

Human Rights Commission of the Maldives

In October 2010, the Human Rights Commission of the Maldives (HRCM) organised a half-day workshop on child rights for HRCM staff with experts and people working in the sector. The 31 participants included senior officials of government ministries, offices and the courts who worked or had worked with children, senior officials of civil society organisations working in the children's sector, and experts who worked or had worked with an interest in the children's sector. The focus of the workshop was to identify which of the mandatory child rights the State was currently providing, what was not being provided, which rights needed improvements in provision and what the steps the State needed to undertake to improve the provision of these services. The workshop covered all rights: civil, cultural, economic, political and social. Information gathered at the workshop was incorporated into the HRCM's study, *Baseline Assessment of Activities Relating to Rights of Disadvantaged Groups*.

New Zealand Human Rights Commission

In 2017 the indigenous rights team of the NZHRC held a speakers' forum about Indigenous Women and Leadership. The forum was part of a series that focused on the United Nations Declaration on the Rights of Indigenous People.[391]

The Commission on Human Rights of the Philippines

In 2016 the CHRP undertook a national inquiry into reproductive health rights with sectoral representatives and marginalised groups – persons with disabilities, LGBTQI people and indigenous peoples.[392] The Inquiry found that there was an inadequate response to the intersectional vulnerabilities of women from these groups. The CHRP called for the Philippine State to report on its strategies in implementing the Responsible Parenting and Reproductive Health Law and the realisation of women's right to reproductive health.

The APF facilitated a course on promoting and protecting the human rights of women and girls with the CHRP. The course included gender experts with lived and working experience of intersectional inequalities.[393] As a result of this course the CHRP has facilitated a set of programs across the country to address the challenges facing women and girls of diverse backgrounds.

National Human Rights Commission of Bangladesh

In 2010 the National Human Rights Commission of Bangladesh (NHRC) drafted a five-year strategic plan. To ensure that the NHRC was addressing issues relevant to the Bangladeshi people, and to ensure transparency and accountability, the NHRC conducted a thorough consultation process throughout the end of 2010 and the beginning of 2011. It held ten consultation workshops in Dhaka and in divisional towns to receive feedback from concerned groups and individuals. The workshops were attended by relevant stakeholder groups, including both State and civil society actors.

Each workshop was on a specific issue, including:

- State violence and the role of the NHRC
- climate change

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391 Videos of the Indigenous Women and Leadership speakers are available at:
- Sacha McMeeking: www.youtube.com/watch?v=qd_50Uqus_g&list=PLUMvdMvwOaml9wnt-pxppdEOixqIksrdR (16.52 min).
- Hana Skerrett: www.youtube.com/watch?v=Y4AdTLnlEww&list=PLUMvdMvwOaml9wnt-pxppdEOixqIksrdR&index=2 (18.31 min).
- Arihia Bennett: www.youtube.com/watch?v=m5ZAv8lzMJQ&list=PLUMvdMvwOaml9wnt-pxppdEOixqIksrdR&index=3 (18.45 min).

392 Commission on Human Rights of the Philippines, *National Inquiry on Reproductive Heath Rights*, 2016. Available at www.asiapacificforum.net/resources/national-inquiry-report-reproductive-health-rights/.

393 Philippines national blended learning course on women's and girls' human rights (2016–2017). Available at www.asiapacificforum.net/news/philippines-nhri-strengthens-its-work-womens-rights/.

- economic, social and cultural rights
- access to justice and remedies
- rights of migrant workers
- human trafficking and the role of the NHRC
- human rights of indigenous peoples.

Each workshop made recommendations to the NHRC on the role it could play in relation to the human rights issue discussed. Following the completion of the workshops, and the consideration and consolidation of their recommendations, the NHRC organised a sharing meeting at the Bangladesh Institute of Administration and Management in Dhaka where a summary of the recommendations where presented to a broad range of participants. These further comments were then incorporated into the May 2011 revised draft of the NHRC's 2010–2015 Strategic Plan.

On 2 November 2016 the NHRC of Bangladesh organised a seminar on the Sustainable Development Goals (SDGs): Gender Equality, involving representatives from government departments, NGOs and UN agencies.

Commissioner Nurun Naher Osmani, Chairperson of the Commission's Thematic Committee, delivered the welcome address.

In his keynote presentation, Commissioner Akhter Hossain noted that major changes need to be made to the inheritance law in order to promote gender equality.

NHRC Chairperson Kazi Reazul Hoque told the gathering that the NHRC, the Government and CSOs were "very active and working hard for the empowerment of women in the country". However, he also said that Bangladesh needs to do more to promote gender equality.

Discussing the Government's reservations on article 2 and article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Chairperson said it was "high time" to fully comply with all provisions of CEDAW.

Mizanur Rahman, Additional Secretary, Ministry of Women and Children Affairs; Sudipto Mukherjee, Country Director, UNDP-Bangladesh; Christine Hunter, Country Representative, UN WOMEN-Bangladesh; and His Excellency Johan Frisell, Ambassador, Embassy of Sweden addressed the seminar as distinguished guests.

In seeking to promote and protect the rights of groups of persons at particular risk of human rights violations, NHRIs call on the full range of functions and powers available to them. Comprehensive, integrated strategies are required, not piecemeal approaches. Working with other organisations, both governmental and non-governmental, will increase the capacity of the NHRI to have an impact.

Each NHRI should identify the mechanism most appropriate to its situation and incorporate it within the structure of the institution.

CASE STUDY

Karama program to improve the treatment and conditions of persons deprived of their liberty

In 2008, the Jordan National Centre for Human Rights (NCHR) joined the Ministry of Justice, the Office of Public Prosecution and Mizan Law Group for Human Rights, a Jordanian human rights NGO, in launching the Karama (Dignity) program to improve the treatment and conditions of persons deprived of their liberty. The program was sponsored by the Jordanian Government and the Danish Ministry of Foreign Affairs, in cooperation with the Danish prosecution authorities and the Danish human rights NGO Dignity (Danish Institute against Torture). Karama has completed two phases (2008–2010 and 2010–2013) and has now begun the third phase until 2016.

Karama is inspired by the co-responsibility approach, by which State institutions and civil society organisations cooperate to achieve a common goal. The goal in this case is to fulfil Jordan's international obligations to prevent and eliminate torture and cruel, inhuman and degrading treatment and punishment, as required by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Jordan ratified in 2006.

The program has four key objectives:

- independent systems undertake regular monitoring of places of detention
- criminal justice institutions (prosecution and prison services) take preliminary steps to prevent and investigate acts of torture and ill-treatment
- victims of torture have their cases documented and referred for rehabilitation and redress
- rehabilitation services improve the situation of victims of torture.

The program is directed towards the rights of:

- persons arrested by the police or by other authorities under the Crime Prevention Law (1954)
- persons whom the public prosecutors or courts have decided to detain prior to trial
- convicted inmates in prisons or juvenile justice centres.

There is a special focus on groups otherwise considered at risk, including women and children.

In its contribution to the program, the NCHR has undertaken functions of education, awareness raising, advising government and providing a complaints process. Karama has, among other things:

- contributed to generating debate in Jordan about the prohibition of torture and ill-treatment
- enhanced awareness of the need for legislation and policy reforms for the criminal justice system to function in line with international human rights law obligations
- promoted constitutional and legislative reform to prohibit torture and punish those who inflict it
- enabled the NCHR to establish the National Coalition to Combat Torture, composed of organisations from all the governorates, to raise awareness of the rights under the Convention against Torture

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- established, under the NHRC umbrella, a national monitoring team of independent members from civil society organisations and relevant professional groups to undertake monitoring visits to places of detention
- enhanced the ability of the NGOs to participate in the national monitoring team
- trained hundreds of professionals (lawyers, prosecutors, judges, law enforcement officials and health professionals) on torture prevention and investigation
- developed guidelines for public prosecutors to investigate torture and reduce the use of pre-trial detention
- supported Mizan to establish a network of lawyers to litigate cases of torture and ill-treatment and seek justice and compensation for the victims.

Karama has contributed to better understanding of Jordan's obligations under the Convention against Torture. During the last UPR review, Jordan accepted specific recommendations:

- to amend the penal code and relevant legislation to end impunity for torture perpetrators and ensure victims' right to justice and to compensation
- to continue to strengthen efforts to prevent torture and ill-treatment in detention facilities and ensure that all allegations of torture are promptly, thoroughly and independently investigated.

GOOD PRACTICE

An NHRI should be aware of the particular groups within its society that are especially vulnerable to human rights violations, either through their experiences of human rights violations or their particular risks of human rights violation. It should then consciously give priority to those groups in its work and plan strategically to address the human rights issues that most affect those groups. It should develop specific mechanisms through which the needs and concerns of those groups will be made visible within the NHRI itself.

KEY POINTS: CHAPTER 20

- Within their broad, comprehensive responsibility for every person, NHRIs have a priority concern for those whose rights have been violated and those whose rights are at particular risk of violation.
- Part of each NHRI's analytical work is to identify those groups present in its country that are at particular risk of human rights violation. It will generally find them among the poorest, the most marginalised and the least powerful people in the country.
- NHRIs have developed many different mechanisms to respond to groups at particular risk of human rights violation, including designated NHRI members, sub-commissions and sub-committees, designated staff units within the NHRIs, focal points, advisory and consultative groups, and conferences and seminars.
- Gender mainstreaming is a critical global strategy for the achievement of gender equality.

Chapter 21:
NHRIs in conflict situations

KEY QUESTIONS

- **How do NHRIs manage to work in situations of violent conflict?**
- **What are the principal concerns of NHRIs working in conflict situations?**
- **What issues arise for NHRIs in working during a violent conflict?**
- **What issues arise for NHRIs working after the conflict has ended?**

21.1. THE CONTEXTS OF NHRIs

NHRIs work in many different contexts. Some work in economically developed countries with long democratic traditions. Others work in societies in transition. Some work in very poor countries. The most difficult contexts in which NHRIs can work are situations of violent conflict, whether due to international or internal war or foreign military occupation or coup d'etat. Most NHRIs in the Asia Pacific have been confronted by violent conflict of one kind or another at some period since their establishment or in some parts of their countries.

The SCA has been aware of the difficulty for NHRIs in conflict situations. It has issued two General Observations directed towards specific conflict situations. The first deals with a situation of a coup d'état or 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.[394]

The second deals with national security contexts generally.

> 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.[395]

394 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.6.

395 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 2.7.

21.2. SAFETY

The first concern of an NHRI should be the safety of those who deal with it or are involved in its work. This is especially important in situations of violent conflict. The obligation extends to:

- victims of human rights violation and those at risk of human rights violation, who approach the NHRI for protection or to make a complaint
- advocates with or for victims
- witnesses and others who assist the NHRI's inquiries
- the NHRI's own members and staff.

NHRI legislation typically contains provisions that criminalise and punish all actions that victimise or harm those involved in the work of NHRIs. Legal protection is necessary but it is not enough to ensure effective protection. Most NHRIs know of complainants and witnesses being victimised. In conflict situations, this victimisation can extend to murder, serious assault, torture and kidnapping and threats of these, not only towards those involved in the NHRI's work but also to family members, including children and associates. NHRIs are human rights duty bearers in these circumstances and have a responsibility to protect, in so far as they are able to do so.

Governments have an especially high responsibility to ensure the safety of all those engaged in or involved with the NHRI. Ensuring that that responsibility is exercised, however, can be a difficult challenge for NHRIs. Sometimes those with the ultimate responsibility to protect – the police, the security services and the armed forces – are themselves under suspicion for serious human rights violations. NHRIs in some countries have to employ their own security guards to ensure that protection is in fact provided. Nonetheless, they should never ignore any opportunity to remind the Government and its officials, including those in the police and the military, of their obligations and responsibilities. Where the State itself cannot provide the protection required by NHRI members and staff and those assisting the NHRI, then the State is obliged to ensure that the NHRI is funded adequately to employ its own staff for that purpose.

Elderly Kazakhstan woman. Photo by Steve Evans, reproduced under a CC BY-NC 2.0 license.

CASE STUDIES

Afghanistan Independent Human Rights Commission

The security situation in Afghanistan has presented serious obstacles to implementation of activities and field missions by the Afghanistan Independent Human Rights Commission (AIHRC). The AIHRC has had to revise or cancel many of its programs and fields missions. However, efforts are always made to shift such programs from insecure locations to more secure ones.

In 2004, the AIHRC's regional office in Herat province was set on fire by a group of people covertly led by one of the former warlords.

In a very sad and tragic incident in 2008, one of the AIHRC's senior staff members, the Provincial Program Manager of Ghor province, was kidnapped and brutally beheaded, apparently by anti-government elements. His body was found seven months later. There have been indications of intimidation and threats against AIHRC staff in other provinces too.[396]

In 2010, the security situation deteriorated significantly, which had a negative impact on the AIHRC's programs and activities, as well as inflicting great harm to the staff and leadership of AIHRC. During that year, the AIHRC lost its Child's Rights Commissioner Hamida Barmaki, her children and husband as a result of a suicide attack.[397]

In spite of the dangers, the AIHRC has pursued its responsibilities courageously and has achieved results. For example, Afghanistan has now ratified seven of the nine core international human rights treaties.

National Human Rights Commission of Nepal

Dayaram Pariyar, aged 23, a staff member of the National Human Rights Commission (NHRC) of Nepal at the NHRC's Janakpur office, was shot by police at Janakichowk in Janakpur on 25 March 2006. He died on 28 March 2006 at the Teaching Hospital in Kathmandu. He had only joined the staff of the NHRC on 15 January 2006.

While expressing his condolences in a memorial service at the Commission, NHRC Chairperson Nayan Bahadur Khatri promised that no stone would be left unturned to find out the full facts of the incident and to seek punishment for the perpetrators. Representatives of civil society and various human rights organisations, the OHCHR Mission in Nepal and NHRC staff paid their heartfelt condolences during the memorial service. The Commission's condolence notice stated that Mr Pariyar was not only a staff of the NHRC but a committed human rights activist. The NHRC closed all its offices on 28 March 2006 to mark Mr Pariyar's death.[398]

After investigating the death, the NHRC recommended the prosecution of four police officers and compensation for Mr Patiyar's family. Neither recommendation has been accepted by the Government of Nepal.[399]

396 Afghanistan Independent Human Rights Commission, *Annual Report 1 January to 31 December 2008*, p. 9; available at www.aihrc.org.af/media/files/Reports/Annual%20Reports/Annual2008.pdf.

397 Afghanistan Independent Human Rights Commission, *Annual Report 1389* (2011), p. 3; available at www.aihrc.org.af/home/annual_report/521. The Afghanistan year 1389 is the year March 2010 – March 2011. The murders occurred early in 2011.

398 National Human Rights Commission of Nepal, Newsletter Vol. 4, No. 4; previously available at http://nhrcnepal.org/nhrc_new/doc/newsletter/EBulletin-Vol4-4.mht.

399 See www.nhrcnepal.org/nhrc_new/doc/newsletter/Sum-Report-NHRC-Recommendation.pdf. See also the reference to the Government's continuing failure to accept the recommendations in National Human Rights Commission of Nepal, Newsletter Vol. 10, No. 3; available at www.nhrcnepal.org/nhrc_new/doc/newsletter/e-NewsletterVol10-Iss3.pdf.

The responsibility to ensure the safety of staff extends to the provision of adequate psychological and other support to staff who have to deal with traumatic situations, including murder, torture and disappearance. NHRI staff are professional and resilient but anyone confronted by the most grave human rights violations will be traumatised. This is not the result of weakness but of human compassion. NHRI leadership is particularly responsible for staff in these circumstances. NHRIs should provide proper preparation, including training, on recruitment and at regular intervals during employment, as well as adequate guidance and support during and after traumatic investigations.

21.3. INDEPENDENCE

Ensuring the independence of NHRIs contributes towards ensuring the safety of those involved with NHRIs. It encourages all parties in a conflict to see NHRIs as working for their benefit and not merely the benefit of their opponents. The effectiveness of NHRIs will then be recognised as being in the interests of each party to the conflict. NHRI staff and those who approach NHRIs will be seen not as threats to one side or the other but as offering protection for the rights of all.

NHRIs in conflict situations bear an especially onerous burden of ensuring that their independence is preserved and recognised by all parties to the conflict and by the general community. Indeed, because the risks are so high and the actual and potential damage is so great, there is no time in which independence is more important. NHRIs are advocates for human rights, not for any particular party to a conflict. Human rights are the rights of all people, regardless of the side in a conflict that they are on. NHRIs must be seen to advocate the universality of human rights and to protect the human rights of all people equally, without favour or bias. They should also argue for all parties to be held accountable for all human rights violations perpetrated by their combatants.

The independence of NHRIs can add to their effectiveness during conflict. If all parties see them as independent and as upholding the human rights of all, they will be able to work constructively with all parties, perhaps one of the few institutions in the country that can do so. NHRIs can cross divides, offering remedies to victims and protection to those at risk of human rights violation. By advocating universal standards of human rights, they can contribute towards building a new national consensus of values, responsibilities and commitments that can assist to end the violence and to develop a post-conflict society and political culture. Where they are independent and are seen to be independent, NHRIs can assist in bringing the conflict to a just end by:

- promoting dialogue among the parties to the conflict
- advocating the establishment and growth of peace-building mechanisms in the State structure and in communities
- encouraging acceptable and necessary measures and mechanisms to deal with human rights issues that may in part have caused the conflict.[400]

21.4. DURING THE CONFLICT

Violent conflicts seem to result inevitably and relentlessly in gross human rights violations. NHRIs need to redirect their work during violent conflicts towards preventing violations wherever possible and addressing those violations that occur. Their role will be built not only on international human rights law but also on international humanitarian law.[401]

400 OHCHR, *National Human Rights Institutions: History, Principles, Roles and Responsibilities*, Professional Training Series No. 4 (Rev. 1), 2010, p. 139.

401 International humanitarian law, also known as the law of war, developed independently of international human rights law, through different international processes and largely before the development of international human rights law. Nevertheless, the two systems of international law are very closely related. In fact, international humanitarian law can now be seen as a subset of international human rights law. International humanitarian law deals with the protection of civilians in times of violent conflict, the treatment of prisoners of war and the well-being of injured and sick combatants. For further discussion, see APF, *International Human Rights Law and the International Human Rights System*, 2012.

The human rights issues that they are likely to confront include:

- the killing, torture, disappearance and arbitrary detention of civilians
- the recruitment and use of child soldiers
- the use of sexual violence against women as a weapon of war
- the conditions of detention of actual and suspected opponents.

NHRIs will be required to undertake difficult investigations during violent conflicts. Subject to ensuring the safety of victims, witnesses and staff, however, they should not avoid investigating allegations of human rights violations on the basis that violations are best investigated after the conflict ends. On the contrary, conducting investigations while the conflict is still underway has a number of advantages, including that:

- forensic evidence gathering is far more effective if done as soon as possible after the events occur
- witnesses are easier to locate and provide better evidence when the events are fresh in their minds
- conducting the investigation and releasing the findings publicly encourage combatants to respect human rights for fear of being exposed and punished.

CASE STUDY

Palestine Independent Commission for Human Rights: Operating under Israeli occupation

The Palestine Independent Commission for Human Rights (ICHR) works in very complicated conditions as a result of the Israeli occupation of Palestine. The ICHR documents and monitors human rights violations in a State under military occupation. This makes its work very challenging and complicates its role of monitoring the performance of the Palestinian Authority (PA) and its mission to protect and promote human rights.

Despite these challenges, the ICHR continues to monitor the performance of the PA and its capacity to fulfill its obligations to respect, protect and fulfil human rights, including the right to life, the right to physical safety and economic, social and cultural rights.

The Israeli occupation not only complicates ICHR's role. It also negatively affects the performance of the PA and undermines its ability to protect human rights in Palestine at all levels. For example, during the Israeli military campaigns in the Gaza Strip in 2008, 2012 and 2014, most of the Palestinian detention centres and police stations were attacked and destroyed. As a result, the security system was destroyed, causing an increase in the number of physical assaults and torture against detainees and prisoners. In addition, Israeli military forces committed grave human rights violations against Palestinian civilians, with the PA unable to play its role in protecting the human rights of Palestinians.

The latest Israeli military campaign, "Operation Protective Edge", started on 7 July 2014 and lasted for 52 days. According to the ICHR, the Israeli forces indiscriminately and disproportionately targeted Palestinian civilians and their properties, causing the death of 2,120 civilians and injuring 10,700.[402]

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402 See http://ichr.ps/en/1/17/1558/Reports-on-War-Crimes-of-the-Israeli-Military-Operations-in-the-Gaza-Strip.htm.

The ICHR also found that 475,000 civilians were forcibly displaced after their homes were bombed and 10,000 families became homeless. Massive destruction of infrastructure and living resources resulted in a serious humanitarian, economic and environmental crisis in the Gaza Strip. The Israeli occupation resulted in violations of all human rights of Palestinians, including their right to rights to life, security, health, education and adequate housing. It also severely undermined the capacity of the PA to improve the human rights situation and living conditions in Palestine.

Despite these challenges, the ICHR continued its human rights work during the Israeli military campaigns in the Gaza Strip. During the 52 day war in 2014, the ICHR systematically produced reports documenting Israeli human rights violations and war crimes against Palestinian civilians and their properties. It widely distributed these reports, locally and internationally. It sent letters to the international community, the PA and the Palestinian President, urging the international community to take serious actions to end the Israeli military campaign and urging the President to ratify the Rome Statute to pursue and prosecute alleged Israeli war crimes. In addition, the ICHR sent letters to various NHRIs to put pressure on their governments to intervene to stop the Israeli military attacks on civilians in the Gaza Strip. Many NHRIs responded to the ICHR's letter and took action.

Indonesian National Commission on Human Rights: Protecting human rights in conflict regions in Indonesia

Indonesia has experience periods of conflict at different times, in different parts of its enormous country. In some parts – for example Aceh – the conflict has been resolved but in others – for example Papua – it persists. The Indonesian National Commission on Human Rights (Komnas HAM) has been active in conflict zones, establishing and staffing representative offices in them.

The Aceh representative office was established in 1999 following a request from the Provincial Governor. In 2012, the office received and investigated complaints and undertook investigations. It also undertook an extensive human rights education program. It has a specific focus on economic and social rights. During 2012, for example, as part of its monitoring of economic and social rights, Komnas HAM examined the realisation of the right to education and the right to health in remote areas. Office staff visited health and education facilities in the Terangun Sub-district, an isolated area that is difficult to access by road.[403]

The Papua representative office was established in 2003 at the request of the Provincial Governor. The Papua autonomy law places specific responsibility on the provincial government to promote and protect human rights and the request was made in accordance with this obligation.[404] The Komnas HAM representative office both monitors the human rights situation in Papua and receives and deals with complaints of human rights violations in Papua. In 2012, it reported on the nearly 100 complaints it received and also on 268 published cases of alleged human rights violation. In that year, its human rights activities included monitoring

- the service system at a general hospital
- the aftermath of a military and police raid
- the rights of employees of a timber company
- suspicious disappearances
- shootings
- detentions.[405]

Each year, Komnas HAM produces special reports on the human rights situation in Aceh and Papua as part of its annual report.[406]

403 Komnas HAM, *Annual Report 2012*, pp. 225-238.

404 *Law No. 21 of 2001 Concerning Papua Special Autonomy*, Article 45.

405 Komnas HAM, *Annual Report 2012*, pp. 289-296.

406 See, for example Komnas HAM, *Annual Report 2012*, pp 225-238 and pp. 289-296.

NHRIs should seek from all parties unrestricted access without notice to all places of detention under the control of those parties so that they can monitor the safety and well-being of detainees.

NHRIs will often encounter particular difficulties in promoting human rights generally and their own work during periods of violent conflict. The media will usually be subject to censorship restrictions and NHRIs themselves may be restricted in what they can say publicly. Nevertheless, they should strive to continue their human rights education and awareness raising activities, to bring human rights concerns and human rights violations to public attention as a means of encouraging greater compliance with international human rights standards by all parties to the conflict.

CASE STUDY

Palestine: Regular monitoring and reporting of human rights violations

The Palestine Independent Commission for Human Rights (ICHR) reports monthly on the results of its monitoring and investigations, including its inspections of prisons and places of detention.[407] In May 2014, it reported:

- **21 cases of unnatural death, 12 in the West Bank and 9 in the Gaza Strip, some due to family disputes, negligence of public safety procedures and execution, and other cases in mysterious circumstances, including three cases of women murdered in the West Bank**
- **62 complaints of torture and ill-treatment in detention centres, 54 in the Gaza Strip and eight in the West Bank**
- **complaints of the violation of the right to due process of law and fair trial guarantees and complaints of detention of persons upon governors' decisions (administrative detention)**
- **complaints of confiscation of citizens' assets by the security agencies in the West Bank without court's order**
- **complaints of violation of the right to freedom of opinion and expression and freedom of press and peaceful assembly**
- **courts issuing death sentences in the Gaza Strip.**

Spent ammunition casings collected from Palestine's West Bank. Photo by APF/Benjamin Lee.

407 The ICHR's monthly reports are available at http://ichr.ps/en/1/5.

21.5. AFTER THE CONFLICT

The end of violent conflict is accompanied by other challenges for NHRIs. A conflict can end with peace, the restoration of order and the strengthening of democracy, with increased respect for human rights. Or it can end with the entrenchment of an authoritarian regime, led or at least supported by the military, with continuing human rights violations. The end of violent conflict does not necessarily bring increased peace, justice and respect for human rights. Wars, states of emergency and coups d'état can all result in authoritarian rule and widespread human rights violations. NHRIs need to see the end of armed conflict as no more than the beginning of a new period of challenging work for human rights.

NHRIs' attention must turn first to the future, to building peace generally and the institutions of democratic governance and the rule of law in particular. Some NHRIs have their origins in post-conflict reconstruction. They then have the task of establishing and building the institution at the same time as meeting the enormous expectations and needs of the broader community. Other NHRIs were established before or during the conflict. They must ensure that their credibility, integrity and independence have not been damaged during the conflict and, if they have been, that they are restored as a priority.

NHRIs in the post-conflict period should be vocal advocates for the incorporation of human rights standards into new constitutions, laws and policies and practices of the State. They should seek the repeal of restrictive national security laws enacted to deal with war and emergencies. They should seek the release of those imprisoned or detained due to the conflict who have not been convicted of a criminal offence and the trial of those not released in an independent court, in accordance with human rights standards and the rule of law. NHRIs will seek restoration of the full enjoyment of human rights for all people in the country.

After the end of conflict, NHRIs will also need to address issues arising from the past. Victims of human rights violations are entitled to recognition and acknowledgement and to reparations.[408] NHRIs can investigate individual cases and complaints of human rights violation according to their usual procedures, under their establishing law. Alternatively, or in addition, they can undertake a broad inquiry into human rights during the period of the conflict. This broader approach, sometimes known as a truth and reconciliation inquiry, has been undertaken by a number of NHRIs in post-conflict situations. In other States, separate independent commissions have been established for the truth and reconciliation process. These separate commissions have been able to look beyond human rights issues to other issues that arise in relation to the conflict. They have developed their own expertise. Establishing separate commissions to deal with the past has enabled NHRIs to focus on the present and the future.

An Indonesian woman shows a photo of her husband who disappeared during the Aceh conflict. Photo by Henri Ismail, reproduced under a CC BY-NC-ND license.

408 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

CASE STUDY

Indonesia: Komnas HAM inquiry into 1965 massacres[409]

Internal conflict in Indonesia in 1965, following an alleged coup attempt by the Indonesian Communist Party (PKI) and the takeover by the Indonesian military, led to the deaths of hundreds of thousands of people – perhaps half a million – in a campaign of massacres and persecution that lasted several years. Many more were imprisoned for years without charge. The massacres and the persecutions were not investigated during the Suharto New Order regime that emerged from the conflict. They remained largely suppressed for over four decades until the Indonesian National Commission on Human Rights (Komnas HAM) decided in 2008 to conduct an investigation. Komnas HAM gathered testimony from 349 witnesses during more than three years of investigation.

In its 850-page report submitted to the Attorney General's Office and released publicly in July 2012, Komnas HAM found that the campaign of systematic murder and persecution constituted a gross human rights violation. It concluded that military officials had deliberately targeted innocent civilians during the operations, which occurred nationwide. Although the campaign was targeted at Communists, the victims included many who had had nothing to do with the PKI or its affiliates. They became victims because of their ethnicity (many were of Chinese descent) or personal vendettas or random violence. According to the report, the military officials made it look like those people were linked to the PKI.

The discrimination against people actually or allegedly associated with the PKI in the 1960s continued for decades, with the government barring them from roles as civil servants, military officers, teachers or clerics. Former political prisoners of the period found it hard to get jobs due to their status being shown on their identity cards.

Komnas HAM demanded that the Government issue a formal apology to victims and their families and provide rehabilitation, reparation and compensation. It urged that military officials who were responsible for various crimes, including mass rape, torture and killings, be brought to trial.

The Murder Victim's Research Foundation said that the late former President Suharto was the person most responsible for the crimes. However, the fact that he had died should not deter the Attorney General's Office from investigating the case. The Foundation said that several other perpetrators remained alive.

GOOD PRACTICE

NHRIs working in war and conflict situations face grave difficulties in undertaking their responsibilities. They must uphold human rights and fundamental freedoms, including the rule of law and accountability for violations, and also ensure the safety of their staff and of those who approach them for assistance. They must protect their own independence and their commitment to their mandate.

409 See www.asiapacificforum.net/news/komnas-ham-declares-1965-purge-gross-human-rights-violation.

KEY POINTS: CHAPTER 21

- The first concern of an NHRI should be the safety of those who deal with it or are involved in its work, including victims of human rights violation and those at risk of human rights violation, advocates with or for victims, witnesses and others who assist the NHRI's inquiries, and the NHRI's own members and staff.
- NHRIs in conflict situations bear an especially onerous burden of ensuring that their independence is preserved and recognised by all parties to the conflict and by the general community.
- NHRIs need to redirect their work during violent conflicts towards preventing violations wherever possible and addressing those violations that occur.
- NHRIs should see the end of armed conflict as no more than the beginning of a new period of challenging work for human rights. They must address both the future, to building peace generally and the institutions of democratic governance and the rule of law in particular, and the past, ensuring that victims of human rights violations receive recognition, acknowledgement and reparations.

Part IV: NHRIs and the international community

Chapter 22: The international engagement of NHRIs[410]

KEY QUESTIONS

- **What international engagement do the Paris Principles require?**
- **How can NHRIs engage with the UN Charter-based system, particularly the Human Rights Council and its Universal Periodic Review and special procedures mechanisms?**
- **How can NHRIs engage with the treaty monitoring bodies?**

22.1. INTRODUCTION

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 organizations 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.[411]

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 procedures, as well as the treaty monitoring bodies.[412] According to the 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.[413]

410 The APF has produced a manual on NHRI engagement with the international human rights system. This chapter is based on that manual. See *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions*, 2012; available at www.asiapacificforum.net/support/professional-resources/.

411 Paris Principles, 'Competence and responsibilities', para. 3(e). See also *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.4.

412 See APF, *International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions*, 2012.

413 *GANHRI SCA General Observations as adopted in Geneva in May 2013*, GO 1.4.

EXAMPLES OF PROVISIONS IN NHRI LAWS RELATING TO THE STATE'S REPORTING OBLIGATIONS TO THE INTERNATIONAL SYSTEM

Myanmar

Myanmar National Human Rights Commission Law, No. 21/2014, s. 22(b)

To carry out the following to monitor and promote compliance with international and domestic human rights laws:

i. to recommend to the Government international human rights instruments to which Myanmar should become a party;

ii. to review existing legislation and proposed bills for consistency with the international human rights laws to which Myanmar is a party and to recommend the additional legislation and measures to promote and protect human rights to the Pyidaungsu Hluttaw through the Government;

iii. to assist the Government as appropriate on its preparation of reports to be submitted in accordance with the international human rights instruments to which Myanmar is a party and on the contents of those reports.

Nepal

Interim Constitution 2012, Article 132(g)

If it is necessary that Nepal should become a party to any international treaty or agreement on human rights, to make recommendation, accompanied by the reasons therefor, to the Government of Nepal; and monitor whether any such treaty or agreement to which Nepal is already a party has been implemented, and if it is found not to have been implemented, to make recommendation to the Government of Nepal for its implementation.

National Human Rights Commission Act 2012, s. 6

(1) The Government of Nepal, regarding the matters in which it is obliged to submit a report to the concerned authority under the International Treaty related to Human Rights, shall have to write to the Commission for Opinion before forwarding the report.

(2) If the request for Opinion in writing is received pursuant to Sub-section (1), the Commission shall have to provide Opinion to the Government of Nepal on the matter as soon as possible.

Afghanistan

Decree on Enforcement of the Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, Decree No. 16 (2005), Article 21

17. Providing advice and necessary information to the government to prepare Afghanistan's reports which fulfill its treaty obligations

Mongolia

National Human Rights Commission of Mongolia Act 2000, s. 13

13.1.3 To put forward proposals on the implementation of international human rights treaties and/or drafting of Government reports thereon.

Reporting obligations under various human rights instruments are the responsibility of the State. While an NHRI can play an important role in assisting the State to fulfil these obligations, any legislative provision must recognise the distinct roles of the State and the NHRI.[414]

In addition to monitoring and assisting the State, NHRIs should be empowered 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 fulfilling 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.

An NHRI can assist the Government to engage with the international human rights system. One function may be to advise on ratification of human rights treaties. 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 Paris Principles provide that NHRIs should:

> … cooperate with the United Nations and any other organizations 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.[415]

NHRIs then can assist States in their international engagement and engage directly internationally themselves. Their legislation can reflect both these roles.

Human Rights Council chamber at the opening of the Council's twenty-sixth session. UN Photo by Jean-Marc Ferré.

414 Paris Principles, 'Competence and responsibilities', para. 3(d).

415 Paris Principles, 'Competence and responsibilities', para. 3(e).

EXAMPLES FROM NHRI LEGISLATION OF PROVISIONS RELATING TO ENGAGEMENT WITH THE INTERNATIONAL SYSTEM

Mongolia
National Human Rights Commission of Mongolia Act 2000, Article 13

13.1.3. To put forward proposals on the implementation of international human rights treaties and/
or drafting of Government reports thereon;

13.2.2. To collaborate with the international, regional and other national human rights institutions;

Myanmar
Myanmar National Human Rights Commission Law, No. 21/2014, s. 22(g)

To consult, engage and cooperate with other national, regional and international human rights mechanisms, including the Universal Periodic Review, as appropriate.

Korea
National Human Rights Commission Act

Article 19

The Commission shall perform duties falling under the following subparagraphs:

7. Research and recommendation or presentation of opinions with respect to the accession of any international treaty on human rights and the implementation of the treaty;

9. Exchanges and cooperation with international organizations related to human rights and human rights institutions of other countries;

Article 21

If a relevant state administrative institution prepares a state party's report under any international treaty on human rights, it shall hear opinions of the Commission.

Australia
Australian Human Rights Commission Act 1986, s. 46C

(3) In the performance of functions under this section, the Commissioner may consult any of the following:

(c) international organisations and agencies;

Jordan
National Centre for Human Rights Law, Law No. 51/2006, Article 5

The Center shall employ the following means and methods in its quest to achieve its objectives:

(l) Exchanging information and experiences with similar national, Arab, and Islamic associations and organizations, as well as regional and international institutions.

The international human rights system is generally described in terms of its two branches.

The **Charter-based system** has 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.

22.2. THE UN CHARTER-BASED SYSTEM

The UN Charter accords human rights a central place within the UN system. It provides 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.

22.2.1. General Assembly

The General Assembly is the principal political organ of the UN. It has universal membership; that is, all 193 UN Member States are members of the UNGA. It also has equality of membership; that is, every member of the UNGA has one vote regardless of population, geographical size, military might, economic wealth or any other factor.

The UNGA can consider any matter related to the UN Charter and its implementation, except situations that are on the agenda of the UNSC. 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. The UNGA is the UN organ that gives approval to new treaties and declarations relating to human rights and that will deal with country situations where the UNSC is unwilling or unable to act. The UNGA also elects the 47 members of the UNHRC.[416] It receives the UNHRC's annual report and, through its Third Committee, considers UNHRC resolutions that require UNGA endorsement.

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 its meeting in June 2012, the UNHRC recommended that "the Assembly explore the feasibility of enabling national human rights institutions compliant with the Paris Principles to participate in the Assembly".[417] At this stage, however, the UNGA has not acted on or responded to this recommendation.

416 Information about the UNHRC, including its membership, elections, agendas for meetings and resolutions is at http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx. A Geneva-based NGO, the International Service for Human Rights, publishes reports of all HRC activities, alerts on developing issues and events, and regular updates, with an email list for those wishing to be advised as new material becomes available; see www.ishr.ch.

417 Human Rights Council resolution 20/14, adopted 5 July 2012, A/HRC/20/14; para. 16.

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 influence that process.

22.2.2. 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. It is said that, 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.

22.2.3. 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.

22.2.4. 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".[418] It also has a mandate to "promote the effective coordination and the mainstreaming of human rights within the United Nations system".[419]

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 specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, 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 …[420]

418 General Assembly resolution 60/251, OP 3.

419 General Assembly resolution 60/251, OP 3.

420 General Assembly resolution 60/251, OP 11.

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.[421]

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

- 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.[422]
- 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 Work 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 and so directly influencing the content of resolutions.
- organise **parallel events** during the period of the UNHRC session. 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.

As noted previously, NHRIs can make their statements in person or by video. Video statements have the potential to be a very time-effective and cost-effective way for NHRIs to share their unique perspectives and present recommendations to the UNHRC. They can use a video statement to participate in plenary debates under any agenda item. Video statements are required to follow the same rules as oral statements delivered in person. They are also subject to the same time limits.

421 Human Rights Council resolution 5/1.

422 The exception is during debate in the UNHRC plenary of the UPR report on a State, when the NHRI of that State has a guaranteed opportunity to speak and a special place in the debate to do so, immediately after the State representative.

CASE STUDY

Oral and video statements to Human Rights Council[423]

NHRIs from the Asia Pacific and other regions of the world add their voices frequently to discussions at the UNHRC sessions. They speak in their own individual right and jointly as groups of NHRIs.

In March 2012, 12 NHRIs – including those of Australia, New Zealand, Mongolia and Thailand from the Asia Pacific region – made a joint statement to the UNHRC welcoming the "the commitment of the Human Rights Council, the Office of the High Commissioner for Human Rights, Special Procedures, Treaty Bodies, non-governmental organisations and human rights defenders worldwide to addressing the issue of violence and discrimination based on sexual orientation and gender identity".

While "working in a diversity of societies and cultures", the NHRIs expressed their "unanimity in condemning human rights violations whenever and wherever they occur and on whatever basis that they occur." They drew attention to the November 2011 report of the UN High Commissioner for Human Rights and welcomed "the acknowledgement in the report of the important role of that NHRIs can play in addressing violence and discrimination on the basis of sexual orientation and gender identity".

The NHRIs went on to state that "where possible and appropriate, we will work towards increasing our understanding and capacity in this area to enable us to speak out against discrimination and violations, and welcome the sharing – including through international and regional networks – of experiences and best practice in addressing legal, social, cultural and religious barriers for realising the rights of LGBTI individuals.

"Where appropriate and possible, we commit ourselves to work with relevant authorities and the community to monitor and inform on incidents of discrimination and violence linked to sexual orientation and gender identity, and to commit to continuing to engage with the Human Rights Council and Member States to ensure that these human rights violations are adequately addressed."

At the same session in March 2012, the Timor Leste Provedor for Human Rights became the first NHRI to address the UNHRC by video. The Provedor, Dr Sebastiao Dias Ximenes, presented the three-minute statement as part of the NHRI's follow-up activities to the February 2011 visit to Timor Leste by the UN Working Group on Enforced or Involuntary Disappearances. "The use of IT at the Human Rights Council will greatly assist national stakeholders in effectively engaging with the Council," Dr Ximenes noted at the start of his statement.

The Provedor acknowledged that Timor Leste "still has a long way to go to fulfil the right to truth, justice and reparation to those who disappeared and their families", which some groups have numbered in the tens of thousands. Endorsing several of the recommendations made by the Working Group, Dr Ximenes called for "immediate and effective steps [to be] taken to bring justice to victims, including by investigating all unresolved cases of enforced disappearances and making alleged perpetrators accountable."

►►

423 See www.asiapacificforum.net/news/nhris-join-global-human-rights-discussions/.

He also said that Timor Leste should ratify the International Convention for the Protection of All Persons from Enforced Disappearance, amend national criminal law to remove the possibility of granting amnesty for serious crimes of international law and that victims should be included more closely in the process of seeking justice and reparation. "The Provedoria and civil society will further strengthen their efforts so that the recommendations of the Working Group will be implemented, timely and effectively," he told the UNHRC.[397]

Other NHRIs have followed the lead of the Timor Leste Provedor in making video statements to the UNHRC, including those of Palestine[425] **and Malaysia. The Human Rights Commission of Malaysia (SUHAKAM) presented two video statements at the September 2013 session on:**

- **the Summary Report of the Consultation on the Promotion and Protection of the Human Rights of Older Persons (16 September 2013)**
- **the Report of the Special Rapporteur on the Rights of Indigenous Peoples: Extractive Industries and Indigenous Peoples (19 September 2013).**[426]

The participation rights of NHRIs in the UNHRC extend to their **international and regional associations**.[427] 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. GANHRI 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 NHRIs. 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.

22.2.5. Universal Periodic Review

The Universal Periodic Review (UPR) is the most significant development in the transition from the Commission on Human Rights to the UNHRC. In resolving to establish the UNHRC, the UNGA decided that the new body:

> … should undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.[428]

424 The video statement can viewed at http://webtv.un.org/meetings-events/human-rights-council/regular-sessions/19th-session/watch/item-3-cont.-id-17th-meeting-19th-session-human-rights-council/5293505178001#full-text. Starts at 48:40.

425 See http://youtu.be/VTma1Wc37MU.

426 See www.youtube.com/watch?v=UDG22zK7iJ4 and www.youtube.com/watch?v=Rj-g7L2h_yU respectively.

427 See chapter 23 of this manual for discussion of the international and regional associations of NHRIs.

428 General Assembly resolution 60/251, OP 5(e).

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.[429]

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
- providing information for the UPR to the UNHRC and proposing recommendations
- 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 status" 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"[430]
- 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.

"B status" NHRIs can also contribute through the provision of information to the State report and the UNHRC working group but they cannot attend sessions of the working group or participate in the plenary discussion of the working group report. They can and should be involved, of course, in all the in-country preparation and in follow up and monitoring activities.

The Paris Principles make it clear that NHRIs should "contribute to" State reports, not write them for the State. They 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.[431]

429 See APF, *UPR Good Practice Compilation*, A/HRC/14/NI/10; available at www.asiapacificforum.net/resources/upr-good-practice-compilation/.

430 Human Rights Council resolution 16/21, para. 13.

431 Paris Principles 'Competence and responsibilities', para 3(d).

This requirement applies both to reporting to the UNHRC under the UPR process and to reporting to treaty monitoring bodies under the human rights treaties.

CASE STUDY

The Philippines UPR 2012[432]

The second Universal Periodic Review (UPR) of the Philippines' performance of its international human rights obligations was undertaken in 2012. The Philippines Commission on Human Rights (CHR) acted as a catalyst in bringing together the Government, civil society organisations and international partners to engage with each other to ensure balanced reporting on the human rights situation in the Philippines.

The CHR made a submission to the UPR. It also published *A Road in Search of a Map: The Philippines' Human Rights Compliance*, a compilation of its own submission and those of civil society organisations (CSOs). The report covered the efforts made by the Government to address the economic and social needs of the citizens, as violations of civil and political rights are derived substantially from unmet economic and social needs. It noted the Government's sincerity in addressing the social and economic rights of the citizens but emphasised that these efforts should be clearly spelled out with baselines, indicators and timelines, through integrated, holistic and strategic programs that are well-defined and which set out concrete and practical goals.

Before the UPR working group examined the Philippines, the CHR and UNDP conducted a "mock review" involving the Philippines Technical Working Group on the UPR, the UN Country Team and OHCHR.

During the UPR Working Group examination in May 2012, the CHR and its CSO partners observed and monitored the proceedings through webcast at the CHR multi-purpose hall. It was noted during the discussion that there was a need for the Government to formulate a concrete program of action for the investigation and successful prosecution and punishment of perpetrators of extrajudicial killings and enforced disappearances. The eradication of torture, addressing the state of detainees in detention centres and delays in the judicial process were among other concerns discussed. The need to strengthen the CHR as an institution was also raised, along with questions on reproductive health, gender equality and protection of the human rights of lesbian, gay, bisexual, transsexual persons. Mainstreaming of human rights in the State agenda was recommended for consideration by the Government of the Philippines.

The CHR Chairperson made a statement in the Philippines on the UPR working group's discussions, dealing with both the major issues raised and the tone of the discussion.[433] She was also present at the UNHRC plenary session on 20 September 2012 when it considered the UPR working group report and made a statement on the report.[434] After the UNHRC's adoption of the UPR report, the CHR convened two meetings with the Presidential Human Rights Committee, the Philippines Technical Working Group and CSOs to discuss the report, its recommendations and the institutionalisation of CHR-Government-CSO collaboration on their implementation.

432 Philippines Commission on Human Rights, *Annual Report 2012*, pp 47-48; available at www.chr.gov.ph/MAIN%20PAGES/about%20us/PDF/2012_chr_annual_report.pdf.

433 See www.chr.gov.ph/MAIN%20PAGES/news/State_31May2012_UPR.htm.

434 See http://webtv.un.org/search/nhri-philipines-item6-philippines-upr-report-consideration-24th-meeting-human-rights-council/1852496375001?term=philippines%20consideration.

22.2.6. Special procedures

The special procedures are independent human rights experts appointed to undertake certain mandates on behalf of the UNHRC.[435] They provide a centralised point for:

- studying and increasing understanding of a particular human rights matter or situation
- receiving information and reporting on particular human rights violations.

NHRIs can propose and advocate the establishment of new mandates for special procedures and the renewal of existing mandates. Because of their knowledge and experience in the implementation of international human rights law, NHRIs are aware of gaps in the international protection mechanisms and so are well placed to identify a need for a mandate and to advise on the required scope of a mandate.

NHRIs have been specifically identified as organisations entitled to nominate candidates for appointment to special procedure mandates.[436] They can also comment on or support particular candidates who are under consideration for appointment during the consultations undertaken by the Consultative Group and the UNHRC President.

In accordance with the UNHRC's Rules of Procedure, "A status" NHRIs are able to participate in the annual dialogue between each special procedure and the UNHRC, commenting and questioning the special procedure.

The studies prepared by the special procedures can be of great value to NHRIs as they assist in understanding and developing international law and so are relevant to the work NHRIs do in their own countries. NHRIs should monitor the subjects dealt with in these studies so that they are aware of contributions that the special procedures can make to their work.

NHRIs can also contribute to the studies of the special procedures. They can identify gaps in law or understanding of law and draw that to the attention of the relevant special procedures with proposals for studies. They can provide comments and experiences to the special procedures to assist them with the studies. "A status" NHRIs can participate in UNHRC interactive dialogues arising from the studies.

In supporting the special procedures in relation to country visits, an NHRI can:

- encourage its Government to issue a standing invitation to all special procedures to visit
- propose that its Government invite and encourage a visit by a particular special procedure whose mandate is relevant to the country situation
- propose a country visit to a particular special procedure whose mandate is relevant to the country situation
- brief the special procedure and staff, both before the visit and during it
- brief government officials, NGOs, other experts, legal authorities and victims about the purpose, nature and the arrangements for the visit
- advise the special procedure on the program for the visit, including who should be met during the visit
- make a submission to the special procedure on findings and recommendations
- participate in the interactive dialogue in the UNHRC plenary session on the special procedures' report, speaking immediately after the State in responding to the report's findings and recommendations
- ensure that the report of the visit, including its findings and recommendations, receives wide circulation in the country

435 For more information, see www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

436 Human Rights Council resolution 16/21, Part II.A, para. 22(a).

- monitor and report on the safety and well-being of those human rights defenders, victims of violation and others who cooperated with the special procedure
- promote, monitor and report publicly, including to the special procedure and the UNHRC, on the implementation of the report's recommendations.

CASE STUDY

Qatar National Human Rights Committee[437]

The National Human Rights Committee (NHRC) of Qatar has developed a close engagement with the special procedures of the UNHRC.

The NHRC is working with the Special Rapporteur on the human rights of migrants to address the problems of workers in Qatar. The Special Rapporteur refers complaints to the NHRC to take necessary action to help workers. This cooperation was initiated through the Special Rapporteur's visit to Qatar in October 2013. The Special Rapporteur issued a report on the situation of migrant workers in which the NHRC was referred to as a body that protects and promotes human rights. The NHRC also met with the Special Rapporteur on the Independence of Judges and Lawyers during her visit to Qatar in January 2014.

The NHRC also cooperates with special procedures by completing questionnaires and surveys they send seeking information about the human rights situation in Qatar, including:

- **the Special Rapporteur on the situation of human rights defenders**
- **the Special Rapporteur against torture and other cruel, inhuman or degrading treatment or punishment**
- **the Special Rapporteur on the right to peaceful assembly and association**
- **the Special Rapporteur on the independence of judges and lawyers.**

Young girls, Doha, Qatar. Photo by Nick Leonard, reproduced under a CC BY-NC-SA 2.0 license.

437 See www.nhrc-qa.org/en/international-cooperation/cooperation-with-human-rights-councils/.

22.2.7. Other mechanisms of the UNHRC

The other principal permanent mechanisms of the UNHRC are the Human Rights Advisory Committee, the Expert Mechanism on the Rights of Indigenous Peoples, the Social Forum, the Forum on Minority Issues and the Working Group of Experts on People of African Descent. These mechanisms undertake their work through studies, as requested by the UNHRC. They meet in Geneva during the course of each year. All NHRIs, regardless of their accreditation status, can participate in the meetings of these mechanisms and contribute to their studies.

The UNHRC also establishes commissions of inquiry into specific situations of extremely grave human rights concern, such as Syria, North Korea and Palestine. NHRIs can play a very important role in these circumstances, as NHRIs often have vital information obtained from their own staff and from victims and witnesses. The NHRI of the country concerned, and other NHRIs with relevant knowledge, can assist these special inquiries by providing information, proposing persons and organisations that may be able to assist, arranging meetings and interviews, and so on. "A status" NHRIs can participate in the UNHRC debates on the inquiry and the situation, at both regular and special sessions. They can also support the inquiry's report when it is submitted, commenting on the findings and recommendations, supporting implementation and monitoring and reporting on developments.

The UNHRC is responsible for the development of new human rights treaties and declarations, establishing an inter-governmental working group for this purpose from time to time. The work of these working groups is very important to NHRIs because international human rights law is developed through this mechanism. The results of the working groups, when adopted through the UN system, will lead to new international law that NHRIs will apply in their work. The working groups provide them with opportunities to influence the content of the law being developed, to ensure that new instruments are comprehensive, relevant and meet local needs. NHRIs can make written submissions on the content of instruments and drafts as they evolve. Although inter-governmental, the working group is open to participation by "A status" NHRIs and ECOSOC-accredited NGOs. They can usually be fully involved in the meetings, commenting on drafts, identifying gaps, proposing or opposing text, and so on.

22.2.8. The UN Commission on the Status of Women

The UN Commission on the Status of Women (CSW) is a "functional commission" of ECOSOC. It is the UN body responsible for women's rights, although it does not have a direct relationship with the UNHRC. Its mandate has been expanded on several occasions since its establishment in 1946. The present mandate, adopted by ECOSOC in 1996, is to:

(a) assist ECOSOC in monitoring, reviewing and appraising progress achieved and problems encountered in the implementation of the Beijing Declaration and Platform for Action at all levels, and advise ECOSOC on it

(b) continue to ensure support for mainstreaming a gender perspective in UN activities and develop further its catalytic role in that regard in other areas

(c) identify issues where UN system-wide coordination needed to be improved in order to assist ECOSOC in its coordination function

(d) identify emerging issues, trends and new approaches to issues affecting the situation of women or equality between women and men that required consideration and make substantive recommendations

(e) maintain and enhance public awareness and support for the implementation of the Platform for Action.[438]

438 ECOSOC resolution 1996/6.

CSW is a State-based body. Its membership consists of 45 UN Member States elected by ECOSOC for three-year terms, with one third of the members being elected each year. It meets for ten days each year at the UN headquarters in New York.

Unlike the former Commission on Human Rights and now the UNHRC, CSW has not developed procedures for the independent participation of NHRIs, even though it has had very broad NGO participation in its sessions for many years. NHRIs are placed in the very difficult and compromising situation of participating in CSW either as NGOs or as members of official State delegations, if invited. Both are inappropriate as NHRIs are not NGOs and are independent of their governments.

In 2008, the APF Annual Meeting decided that APF and its member institutions should engage with CSW to promote opportunities for NHRIs to contribute to CSW and for CSW to support the work of NHRIs. This five-year project was subsequently endorsed and supported by the GANHRI. In 2009, five APF members and the APF secretariat attended the annual CSW session for the first time.[439] Their attendance was welcomed by many States and CSW was encouraged to develop rules of procedure to enable the regular participation of NHRIs in compliance with the Paris Principles. For the first time, the Agreed Conclusions of the CSW session referred to the role of NHRIs. APF members and the APF secretariat continued to attend the annual sessions each year until 2013 and were successful in having reference to the role of NHRIs inserted in the Agreed Conclusions. There was a three-year hiatus, from 2013 to 2015, in the CSW campaign due to lack of movement by the General Assembly or CSW on NHRI participation in New York based UN bodies.

A turning point for CSW advocacy came in December 2015 with the GA resolution on national institutions for the promotion and protection of human rights.[440] The resolution not only welcomed the increasingly important role NHRIs play in the promotion and protection of human rights but called on all UN mechanisms to take action to facilitate their independent participation. It singled out four specific mechanisms, the CSW, the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, the Open-ended Working Group on Ageing and High-Level Political Forum under the 2030 Agenda for Sustainable Development. This GA resolution presented the APF and GANHRI with a new opportunity in 2016 to reinvigorate its campaign at CSW.[441] In 2017, the GA adopted a similar resolution as in 2015, repeating the call for action on NHRI participation rights.[442]

There has been some progress among the UN bodies referred to in the 2015 and 2017 GA resolutions. In December 2016 the Open-ended Working Group on Ageing agreed to enable NHRIs to participate independently in its work.[443] CSW could adopt a similar arrangement. However, and importantly, unlike the Open-ended Working Group on Ageing, CSW is a functional commission of the UN Economic and Social Council (ECOSOC) and ECOSOC is resistant to change.[444]

The project is continuing and has yet to achieve one of its principal objectives – having CSW adopt rules for the independent participation of NHRIs – but it has already been very successful in having CSW recognise the significant role of NHRIs in advancing women's rights and promoting gender equality. In addition, the project has led to:

- significantly greater understanding of the role and functions of NHRIs among the government delegations that make up the CSW
- the role of NHRIs being recognised by the CSW on each occasion it has adopted Agreed Conclusions at the end of its annual sessions

439 The five APF member institutions were Australia, Indonesia, Korea, the Philippines and Thailand.

440 GA resolution A/RES/70/163.

441 See www.asiapacificforum.net/news/un-resolution-urges-greater-participation-nhris/.

442 GA resolution A/RES/72/181.

443 UN Open-ended Working Group on Ageing "Modalities of participation of NHRIs in the work of the Open-ended Working Group on Ageing", Decision 7/1 in UN document number A/AC.278/2016/L.1.

444 See APF CSW reports at www.asiapacificforum.net/support/international-regional-advocacy/united-nations/csw/.

- the UNHRC adopting a resolution in 2012 that recognised the contribution of NHRIs at the CSW and encouraged their ongoing advocacy for independent participation
- the rights of women and girls gaining greater prominence within NHRIs around the globe, including through the decision of the GANHRI to dedicate its biennial conference in 2012 to the issue of women's and girls' human rights and gender equality. It also ensured that women's and girls' human rights will be a standing annual agenda item at GANHRI general meetings.[445]

The 62nd Session of Commission on the Status of Women (CSW 62), which ran from 12-23 March 2018, focused on the **challenges and opportunities in achieving gender equality and the empowerment of rural women and girls**. A special side-event, organised by the APF and GANHRI and hosted by the Australian Permanent Mission, focused on the work of NHRIs to monitor and advocate for the human rights of women and girls living in rural areas. It noted the vital role of NHRIs to address these issues, especially through their regional offices, by meeting with different communities of women, taking up their complaints, supporting them with information and resources, and advocating for their rights.

GANHRI submitted a report highlighting five areas where NHRIs, in partnership with others, can press for genuine change in the lives of women and girls living in rural areas.[446]

This advocacy resulted in stand-alone paragraph in the Agreed Conclusions, adopted at the conclusion of CSW 62, that "encourages the [CSW] secretariat to continue its consideration of how to enhance the participation, including at the sixty-third session of the Commission, of national human rights institutions that are fully compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), where they exist, in compliance with the rules of procedure of the Economic and Social Council".

Girls in rural Philippines walk home from school. Photo by Brian Evans, reproduced under a CC BY-ND 2.0 license.

445 See www.asiapacificforum.net/news/nhri-advocacy-delivers-tangible-results-womens-rights/.

446 GANHRI. *The role of NHRIs in promoting gender equality and the empowerment of women and girls living in rural areas* (March 2018). Available at www.asiapacificforum.net/resources/role-nhris-promoting-gender-equality-rural-areas/.

22.3. 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 States 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 it 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).[447]

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. Membership varies from 10 to 23 members.

NHRIs can be of great assistance to the treaty monitoring bodies.[448] 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[449]
- the Committee on Economic, Social and Cultural Rights[450]
- the Committee on the Elimination of Racial Discrimination.[451]

The Committee on the Elimination of Racial Discrimination has also incorporated NHRIs into its working methods and rules of procedure,[452] while the Committee on the Elimination of Discrimination against Women has issued a statement on NHRIs.[453]

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447 The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the ICESCR.

448 For an overview of NHRIs' interaction with the treaty monitoring bodies, see OHCHR National Institutions and Regional Mechanisms Unit, *Information note: NHRIs interaction with the UN Treaty Body System*, 4 April 2011; available at http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx.

449 General Comment 2; see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2002%2f2&Lang=en.

450 General Comment 10; see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1998%2f25&Lang=en.

451 General Comment 17; see: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7489&Lang=en.

452 See www.ohjfchr.org/EN/HRBodies/CERD/Pages/WorkingMethods.aspx and http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=65.

453 See E/CN.6/2008/CRP.1, Annex II.

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 the treaty monitoring bodies' complaints 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.

Table 3: The roles of NHRIs in relation to the treaty monitoring bodies

Function of treaty monitoring bodies	NHRI role
Promotion of ratification of the treaty	• Advocacy with the Government for ratification and implementation • Community education and promotion of the treaty
Examination of the State report	• Contribution to the development of the State report • Contribution to the list of issues • Participation in pre-sessional meetings • Shadow or parallel reports • Participation in the session • Promotion of the Concluding Observations and the recommendations
Interpretation of the treaty	• Propose General Comment or General Recommendation • Participation in days of general discussion • Submissions on draft texts
Individual complaints	• Assistance to complainant
Inquiries	• Submission of information
Early warning or urgent action	• Submission of information
Follow-up	• Monitoring • Submission of information

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.[454]

454 Paris Principles, 'Competence and responsibilities', para. 3(d).

CASE STUDIES

New Zealand Human Rights Commission

With regard to New Zealand's CEDAW examination in July 2018, the NZHRC identified that it was important to meet with and consult as many women and women's organisations as possible to:

- inform the NZHRC shadow report
- encourage as many women as possible to submit to the CEDAW Committee about what they saw as the most egregious human rights issues for women and girls in New Zealand.

Meetings coincided with natural groupings of women and alongside other events including those with a focus on indigenous (Māori) women, Pasifika women, other ethnic minorities, people with disabilities and those working with specific issues affecting women, such as family violence, prostitution, female genital mutilation and trafficking.

The NZHRC set up a consultation hub on its website, with information about the CEDAW treaty, how to make a submission to the CEDAW Committee and dates of the consultations the Commission was holding. People could respond through the hub. The NZHRC also did event invitations to the consultations on its Facebook page.

At the consultations, participants were asked to fill out feedback forms which were collated into a report after each event by a member of the NZHRC Advisory and Research Team. Notes of each event were emailed then to participants along with templates they could use to do their own submissions. They were also sent a copy of the NZHRC's CEDAW shadow report.

Maldives:
Contributing to the work of the Human Rights Committee

The Maldives is a State Party to the International Covenant on Civil and Political Rights (ICCPR), having ratified the ICCPR on 19 September 2006. The Maldives presented its first report to the Human Rights Committee, the treaty monitoring body for the ICCHR, on 17 February 2010, relying on its Common Core Document submitted on 16 February 2010.[455] It was examined by the Human Rights Committee on 12 and 13 July 2012 at its 102nd session.

The Human Rights Commission of the Maldives (HRCM) presented its 84-page parallel report to the Human Rights Committee in June 2012. It undertook a review of the Maldives' compliance with the ICCPR on an article-by-article basis. The Maldives is a relatively remote country with a small population. It does not have a large number of domestic NGOs and it receives little attention from international NGOs. Only three NGOs and one individual made written submissions to the Human Rights Committee.[456] The HRCM therefore is one of the few sources of reliable information, independent of the Government. Its comprehensive parallel report was very important to the Human Rights Committee's examination of the Maldives' compliance with its ICCPR obligations. Committee members referred to it many times in asking questions of the State representatives and in responding to the State's submissions.[457]

►►

455 See CCPR/C/MDV/1 and HRI/CORE/MDV/2010.

456 See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDV&Lang=EN.

457 See CCPR/C/SR.2900, CCPR/C/SR.2901 and CCPR/C/SR.2902.

The HRCM's parallel report also referred to the legal basis of the HRCM in the Constitution of the Maldives and an act of the parliament. It indicated that the HRCM had "B status" as an NHRI but it did not elaborate on the reason why it did not have "A status". At the oral examination of the State report, the members of the Human Rights Committee pursued this issue. They expressed concern that the HRCM's law required all of its members to be Muslims, resulting in the HRCM's ineligibility for "A status".

In its Concluding Observations the Human Rights Committee said:

> **"The Committee is concerned at legislation which provides that all members of the national human rights institution, the Human Rights Commission of the Maldives, must be Muslim. The Committee is also concerned at the narrow mandate of the Commission which prevents it from promoting all fundamental human rights and freedoms (art.2).**
>
> **"The State party should remove the legal requirement which prevents non-Muslims from being appointed as members of the Human Rights Commission of the Maldives and consider expanding its mandate to promote all human rights and freedoms, in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles)."[426]**

22.4. THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT AND THE SUSTAINABLE DEVELOPMENT GOALS

22.4.1. The 2030 Agenda and human rights

In 2015 the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development to make sustainability, equality, peace and human progress a reality for all countries and all people.[459] The 2030 Agenda has a strong basis in international human rights law. It contains a collective promise to 'leave no one behind', to eliminate discrimination, reduce inequalities and ensure that its 17 goals (the SDGs) and 169 targets to be achieved by 2030 are met for all with a special focus on those furthest behind. Its implementation opens up important new avenues to mainstream all human rights in global development policies and national policies in both developed and developing countries.

The 2030 Agenda and the SDGs have a strong basis in human rights law and their ultimate objective is the full realisation of all human rights by all people, without discrimination of any kind.

> The 17 Sustainable Development Goals and 169 targets … seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.[460]

Human rights feature prominently throughout the 2030 Agenda and in the SDGs themselves. Each goal is related to key elements of international human rights law and many goals explicitly incorporate fundamental human rights principles: empowerment, equality, inclusion, accessibility and accountability. Some examples are SDG 5, on gender equality and empowerment, SDG 10, on equality between and within States, and SDG 16, "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". In addition, the SDGs are accompanied by specific human rights targets.

458 Human Rights Committee, *Concluding Observations on the Maldives*, CCPR/C/MDV/C, para. 7.

459 Resolution A/RES/70/1 25 September 2015 at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1. The UN now maintains a specialist website (called a 'knowledge platform') on sustainable development through the 2030 Agenda and the SDGs, at https://sustainabledevelopment.un.org/.

460 Resolution A/RES/70/1 25 September 2015 PP 3 at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1.

22.4.2. The SDGs and NHRIs

National human rights institutions (NHRIs), as the pre-eminent human rights experts at the national level, have important roles to play in promoting, implementing and monitoring the 2030 Agenda and the SDGs. Soon after the adoption of the 2030 Agenda and the SDGs by the General Assembly, the 12th international conference of NHRIs took place in Merida, Mexico. The conference focused on the role of NHRIs in implementing the SDGs. The conference adopted the Merida Declaration.[461] The Declaration states

> Human rights instruments and mechanisms will provide an important framework for the implementation of the SDGs, and the implementation of the SDGs will contribute to the realization of human rights.[462]

It notes that

> NHRIs in all regions are already addressing issues of crucial importance to the Agenda in their regular work… NHRIs are uniquely placed to play a bridging role between stakeholders and promote transparent, participatory and inclusive national processes of implementation and monitoring.[463]

It calls on NHRIs to be active on implementation and monitoring the SDGs. It encourages

> … individual NHRIs, in line with their mandates under the Paris Principles, to collaborate in mutual capacity building and sharing of experiences, and to consider the practical functions they can assume to contribute to a human rights-based approach to implementation of the Agenda.[464]

It lists eight relevant 'practical functions' of individual NHRIs.

1. Provide advice to national and local governments, rights-holders and other actors, to promote a human rights-based approach to implementation and measurement of the Agenda, including by assessing the impact of laws, policies, programmes, national development plans, administrative practices and budgets on the realization of all human rights for all.
2. Develop and strengthen partnerships for implementation by promoting transparent and inclusive processes for participation and consultation with rights-holders and civil society at all stages of the implementation of the Agenda, such as the development of national and sub-national strategies to achieve the SDGs, including reaching out to those who are furthest behind.
3. Engage with duty-bearers, rights-holders and other key actors, including government agencies, parliaments, the judiciary, local authorities, national statistical offices, civil society, major groups, marginalised groups, mainstream and social media, the UN and other international and regional institutions, to raise awareness and build trust and promote dialogue and concerted efforts for a human rights-based approach to implementation and monitoring of the Agenda, and safeguarding space for engagement of rightsholders and civil society.

461 *Merida Declaration on the role of national human rights institution in implementing the 2030 Agenda*, 10 October 2015. Available at http://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf.

462 *Merida Declaration on the role of national human rights institution in implementing the 2030 Agenda*, 10 October 2015, para 12. Available at http://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf.

463 *Merida Declaration on the role of national human rights institution in implementing the 2030 Agenda*, 10 October 2015, para 15. Available at http://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf.

464 *Merida Declaration on the role of national human rights institution in implementing the 2030 Agenda*, 10 October 2015, para 17. Available at http://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf.

4. Assist in the shaping of global national indicators and sound data collection systems to ensure the protection and promotion of human rights in the measurement of the Agenda, including through seeking collaboration with national statistical offices, where appropriate, and other relevant national institutions, and by building on existing international and regional human rights mechanisms.
5. Monitor progress in the implementation of the Agenda at the local, national, regional and international levels, to disclose inequality and discrimination in this regard, including through innovative approaches to data-collection and partnerships with rights-holders, vulnerable and marginalized groups for participatory and inclusive monitoring, and by identifying obstacles as well as actions for accelerated progress.
6. Engage with, and hold governments to account for poor or uneven progress in the implementation of the Agenda, including by taking implementation progress and obstacles into consideration when reporting to parliaments, the general public and national, regional and international mechanisms, such as the Human Rights Council and its mechanisms, including the Universal Periodic Review, the Special Procedures, treaty bodies, as well as the International Labour Organization´s supervisory bodies, UN regional commissions and the High-level Political Forum.
7. Respond to, conduct inquiries into, and investigate allegations of rights violations in the context of development and SDG implementation, including in relation to discrimination and inequality that can erode the trust between the State and the people.
8. Facilitate access to justice, redress and remedy for those who experience abuse and violation of their rights in the process of development, including by receiving and processing complaints, where NHRIs have such functions.[465]

These functions can be classified broadly into two areas: NHRI participation in the implementation of the SDGs ('doing') and NHRI monitoring and accountability functions in relation to SDG implementation generally ('reporting'). They relate to the broad functional areas identified in the Paris Principles.

NHRIs have long histories of promoting and protecting all human rights, not only civil and political rights but also economic, social and cultural rights. The SDGs predominantly deal with economic and social rights, although the goals dealing with equality (SDGs 5 and 10) and inclusive and peaceful societies (SDG 16) are more closely aligned with civil and political rights. NHRIs are well experienced and well equipped to work in relation to all rights and so all SDGs. They are especially well equipped to work for the human rights the most disadvantaged and marginalised people, expressed in the 2030 Agenda and the SDGs as the 'no one left behind' commitment. Their experience in working with minorities enables them to ensure a comprehensive approach to inclusion in implementing the SDGs.

NHRIs can also cooperate and engage with the High Level Political Forum (HLPF) established by the GA in 2013 to

> provide political leadership, guidance and recommendations for sustainable development, follow up and review progress in the implementation of sustainable development commitments, enhance the integration of the three dimensions of sustainable development in a holistic and cross-sectoral manner at all levels and have a focused, dynamic and action-oriented agenda, ensuring the appropriate consideration of new and emerging sustainable development challenges.[466]

It is convened every four years under the auspices of the General Assembly and annually under the auspices of the Economic and Social Council.[467]

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465 *Merida Declaration on the role of national human rights institution in implementing the 2030 Agenda*, 10 October 2015, para 17. Available at http://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf.

466 Resolution A/RES/67/290 9 July 2013 OP 2 at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/290.

467 Resolution A/RES/67/290 9 July 2013 OP 6 and 7 respectively at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/290.

Under the 2030 Agenda the HLPF will "have the central role in overseeing follow-up and review at the global level".[468]

> The high-level political forum will have a central role in overseeing a network of follow-up and review processes at the global level, working coherently with the General Assembly, the Economic and Social Council and other relevant organs and forums, in accordance with existing mandates. It will facilitate sharing of experiences, including successes, challenges and lessons learned, and provide political leadership, guidance and recommendations for follow-up. It will promote system-wide coherence and coordination of sustainable development policies. It should ensure that the Agenda remains relevant and ambitious and should focus on the assessment of progress, achievements and challenges faced by developed and developing countries as well as new and emerging issues.[469]

The General Assembly itself has called for the participation of NHRIs in the work of the HLPF.[470] NHRIs should provide the HLPF with reports of the results of their monitoring and also seek to participate fully in meetings of the HLPF, including providing oral and written statements in addition to their written reports.

22.4.3. SDGs and women's and girls' rights

Integrating a gender perspective into the implementation and monitoring of all the SDGs is a fundamental strategy for delivering on the promise of the 2030 Agenda as a whole.[471] SDG 5 on gender equality is a fundamental goal in itself with its own targets and indicators.[472] Target 17.18 aims at significantly increasing the availability of disaggregated data by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other relevant characteristics.

In 2018 UN Women produced its first monitoring report into gender equality since the adoption of the 2030 Agenda and will continue to monitor the progress toward gender equality. This first report explains the SDGs from a gender perspective, reviews trends, proposes a strategy for identifying women and girls who experience multiple forms of deprivation and discrimination, and offers strategies on how to achieve and finance two areas under SDG 5 – eliminating violence, and unpaid care and domestic work.

Future editions will build on this framework by providing updates on global and regional progress on key indicators, extending policy guidance to other areas and analysing the dynamics of national implementation through in-depth country case studies.[473]

The CEDAW Committee is also requiring States to report against their commitment to the SDGs and is making concluding observations to States that relate to the SDGs.[474]

468 Resolution A/RES/70/1 25 September 2015 OP 47 at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1.

469 Resolution A/RES/70/1 25 September 2015 OP 82 at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1

470 Resolution A/RES/70/163 17 December 2015 OP 16. Available at www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/163.

471 UN Secretary General in the UN Women report, *Turning Promises into Action: Gender equality in the 2030 Agenda for Sustainable Development*, 2018, p 2. Available at www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/sdg-report-gender-equality-in-the-2030-agenda-for-sustainable-development-2018-en.pdf?la=en&vs=5653.

472 UN Women, *Sustainable Development Goal 5: Achieve Gender Equality and empower all women and girls*. Available at www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality.

473 Ibid; p 18.

474 For example: March 2018, Fiji – CEDAW/C/FIJ/CO/5; Malaysia – CEDAW/C/MYS/CO/3-5; Marshall Islands – CEDAW/C/MHL/CO/1-3. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=5.

WOMEN'S HUMAN RIGHTS: A LONG WAY TO GO

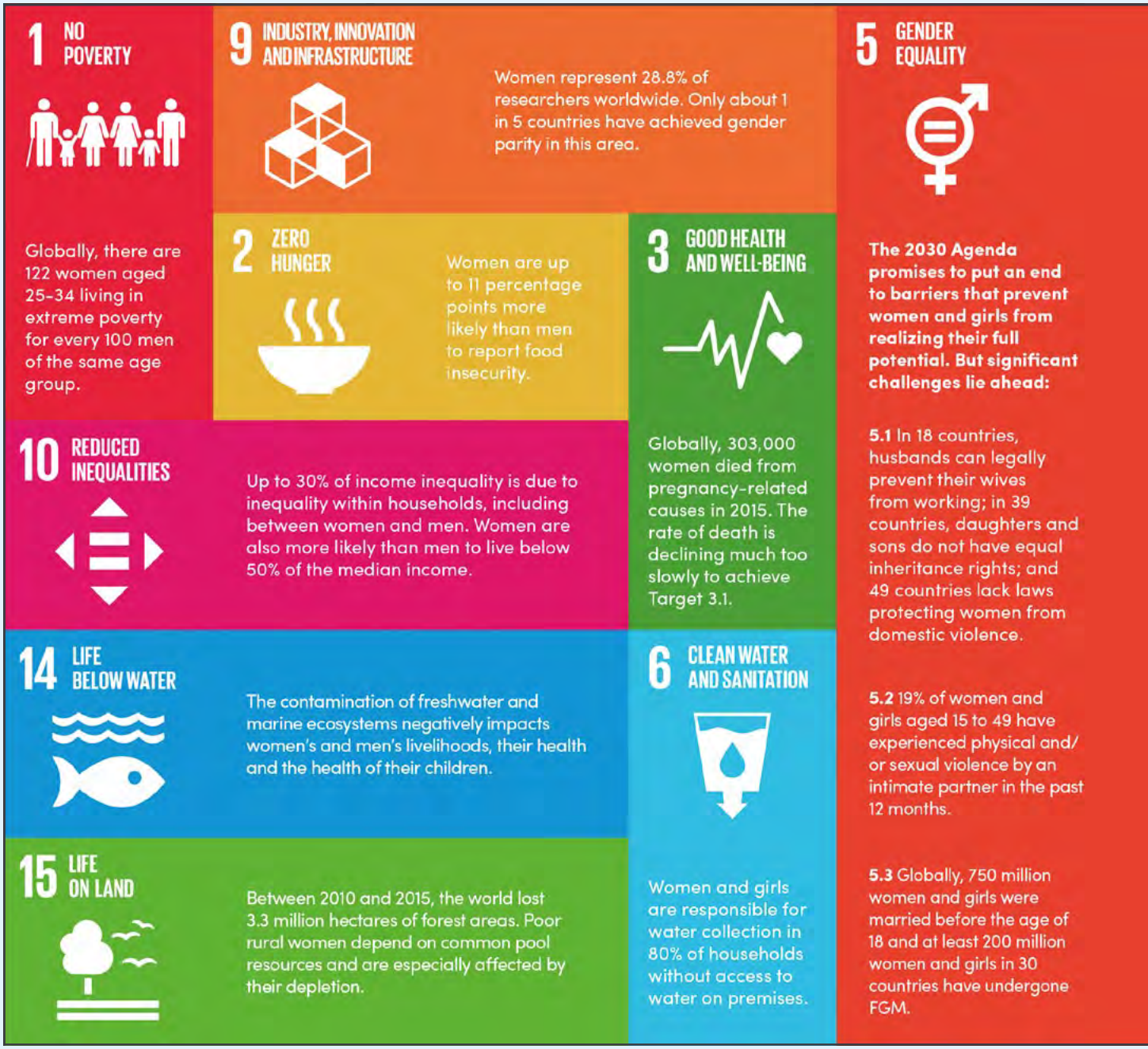
The UN Women's first monitoring report into gender equality since the adoption of the 2030 Agenda for Sustainable Development identified that progress for women and girls is slow.[475]

- **Women account for two-thirds of the world's 781 million illiterate adults.**
- **Women hold just 23.7 per cent of parliamentary seats.**
- **Of the 500 largest corporations in the world, only 13 had a female Chief Executive Officer in 2009.**
- **The global gender pay gap is 23 per cent. Women's labour force participation rate is 63 per cent while that of men is 94 per cent. The gender gap in labour force participation remains especially large in Northern Africa, Western Asia and Southern Asia.**
- **Climate change has a disproportionate impact on women and children, who are 14 times as likely as men to die during a disaster.**
- **In about half the countries in Asia, women are disadvantaged by discriminatory statutory and customary laws regarding inheritance and property rights.**
- **Customary laws restrict women's access to land or other property in about half the countries of Asia. Discriminatory inheritance laws are also widespread in the region.**
- **Globally, 750 million women and girls were married before the age of 18 and at least 200 million women and girls in 30 countries have undergone female genital mutilation.**
- **19 per cent of women and girls aged 15 to 49 have experienced physical and/or sexual violence by an intimate partner in the past 12 months.**
- **Between 2010 and 2015, the world lost 3.3 million hectares of forest areas. Poor rural women depend on common pool resources and are especially affected by their depletion.**
- **Each year, around 80 million women have unintended pregnancies (45 million of which end in abortion). Globally, 303,000 women died from pregnancy-related causes in 2015.[476]**

475 Ibid; p 14.

476 United Nations Department of Economic and Social Affairs, *The World's Women 2015*. See also the UN Women report, *Turning Promises into Action: Gender equality in the 2030 Agenda for Sustainable Development*, 2018, pp 20-21.

AT A GLANCE: GENDER EQUALITY IN THE 2030 AGENDA



Note: Shorthand versions of the official SDGs are used for ease of communication.

Source: UN Women, *Turning Promises into Action: Gender equality in the 2030 Agenda for Sustainable Development*, 2018, pp 20-21.


5.4 Women do 2.6 times the unpaid care and domestic work that men do.
5.5 Women hold just 23.7% of parliamentary seats, an increase of 10 percentage points compared to 2000 – but still way below parity.
5.6 Only 52% of women married or in a union freely make their own decisions about sexual relations, contraceptive use and health care.
5.a Globally, women are just 13% of agricultural land holders.
5.b Women are less likely than men to own a mobile phone, and their internet usage is 5.9 percentage points lower than that of men.
5.c More than 100 countries have taken action to track budget allocations for gender equality.
7 AFFORDABLE AND CLEAN ENERGY
Indoor air pollution from using combustible fuels for household energy caused 4.3 million deaths in 2012, with women and girls accounting for 6 out of every 10 of these.
4 QUALITY EDUCATION
15 million girls of primary-school age will never get the chance to learn to read or write in primary school compared to 10 million boys.
11 SUSTAINABLE CITIES AND COMMUNITIES
Women living in urban slums endure many hardships, with basic needs such as access to clean water and improved sanitation facilities often going unmet.
12 RESPONSIBLE CONSUMPTION AND PRODUCTION
Investment in public transportation yields large benefits for women, who tend to rely on public transport more than men do.
13 CLIMATE ACTION
Climate change has a disproportionate impact on women and children, who are 14 times as likely as men to die during a disaster.
16 PEACE, JUSTICE AND STRONG INSTITUTIONS
In times of conflict, rates of homicide and other forms of violent crime increase significantly. While men are more likely to be killed on the battlefield, women are subjected during conflict to sexual violence and abducted, tortured and forced to leave their homes.
17 PARTNERSHIPS FOR THE GOALS
In 2012, finances flowing out of developing countries were 2.5 times the amount of aid flowing in, and gender allocations paled in comparison.
8 DECENT WORK AND ECONOMIC GROWTH
The global gender pay gap is 23%. Women's labour force participation rate is 63% while that of men is 94%.

GOOD PRACTICE

NHRIs should engage as fully as possible with the international human rights system, including the Human Rights Council and its Universal Periodic Review and special procedures, as well as the treaty monitoring bodies. Engagement should be directed towards both strengthening the effectiveness of the international human rights system and supporting the work of the NHRI in its own country.

MODEL CLAUSE

The Commission shall cooperate and engage effectively with the international human rights system and mechanisms, including by:

(a) reviewing and making recommendations to the State on ratification of or accession to human rights treaties

(b) contributing to State reports to treaty monitoring bodies and submitting its own parallel reports to those bodies

(c) contributing to State reports to the Universal Periodic Review and submitting its own information to that mechanism

(d) cooperating generally with international human rights mechanisms and the High Commissioner for Human Rights.

KEY POINTS: CHAPTER 22

- The Paris Principles provide that NHRIs should cooperate with the United Nations and other organisations in the United Nations system, as well as the regional institutions and the national institutions of other countries that are competent in the promotion and protection of human rights. The engagement is for the benefit both of the international mechanisms and NHRIs.
- Within the UN Charter-based system, the Human Rights Council is the body with the most comprehensive scope for engagement by NHRIs, enabling "A status" NHRIs to participate in all sessions, make oral and written statements, attend working groups and consultations and organise parallel events.
- "A status" NHRIs can contribute to the UPR process and participate at every stage, except the interactive dialogue in the UPR working group. They have special status in the consideration of the working group report on their own State.
- All NHRIs can assist the special procedures in all their activities and are especially helpful to special procedures making country visits.
- All NHRIs can also engage with all aspects of the work of the treaty monitoring bodies. They make especially helpful contributions to the examination of State reports of compliance with treaty obligations.
- The international human rights system supports the work of NHRIs by drawing attention to human rights situations of concern and making recommendations for improved performance of human rights obligations and responsibilities.

Chapter 23: International and regional cooperation among NHRIs[477]

KEY QUESTIONS

- **What is the mechanism for cooperation among NHRIs at the international level?**
- **What is the mechanism for cooperation among NHRIs in the Asia Pacific?**
- **How do NHRIs become members of these mechanisms?**
- **What is the process of accreditation for NHRIs?**

23.1. INTRODUCTION

The Paris Principles provide that NHRIs should "cooperate with … the national institutions of other countries that are competent in the areas of the protection and promotion of human rights".[478] The Paris Principles were the first fruit of exactly that cooperation, having been drafted by NHRIs themselves at their inaugural meeting in Paris in October 1991.[479] Since that first meeting, NHRIs have formed a number of associations at the international and regional levels as vehicles for their cooperation. There is now a well-developed and highly effective structure for international cooperation among NHRIs.

23.2. THE GLOBAL ALLIANCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

23.2.1. History

Soon after the 1991 workshop of NHRIs that developed the Paris Principles, the UN convened the Second World Conference on Human Rights, in Vienna, Austria, in June 1993. NHRIs attended the World Conference in significant numbers, marking their emergence in the international human rights system as independent human rights institutions with their own views and perspectives and many common policies. The NHRIs met in the margins of the World Conference and decided to form their own standing committee to coordinate their work and to liaise with the UN system on their behalf. They organised the first international conference of NHRIs, in Tunisia in December 1993, at which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was formed.

The status, structure and procedures of the ICC have been developing since then, including the development of its initial rules of procedures in 1998 and a process for accrediting member institutions. In 2000, at the ICC meeting during the international conference in Rabat, Morocco, the Sub-Committee on Accreditation (SCA) was formed and the first accreditations occurred. In 2008, to address governance issues, including the role of NHRIs in the international human rights system, the

477 This section first appeared in APF *International Human Rights and the International Human Rights System*, 2012, chapter 16. It has been updated for this manual.

478 Paris Principles, 'Competence and responsibilities', para. 3(e).

479 See chapter 3 of this manual.

ICC decided to incorporate itself as a legal entity under Swiss law, to streamline its rules of procedures and to define clearly its membership and the role and governance of its annual meeting and international conferences.[480] The ICC achieved Swiss incorporation in March 2009 as the *Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights*. On 22 March 2016 the ICC was re-named the *Global Alliance of National Human Rights Institutions* (GANHRI).

23.2.2. Statute

GANHRI's Statute describes its objective to be "an international association of NHRIs which promotes and strengthens NHRIs to operate with the Paris Principles and provides leadership in the promotion and protection of human rights".[481]

The Statute provides that GANHRI's functions and principles are:

a) To coordinate at an international level the activities of NHRIs established in conformity with the Paris Principles, including such activities as:

- interaction and cooperation with the United Nations, including the OHCHR, the Human Rights Council, its mechanisms, United Nations human rights treaty bodies, as well as with other international organisations;
- collaboration and coordination amongst NHRIs and the regional groups and Regional Coordinating Committees;
- communication amongst members, and with stakeholders including, where appropriate, the general public;
- development of knowledge;
- management of knowledge;
- development of guidelines, policies, statements;
- implementation of initiatives;
- organisation of conferences.

b) To promote the establishment and strengthening of NHRIs in conformity with the Paris Principles, including such activities as:

- accreditation of new members;
- periodic renewal of accreditation;
- special review of accreditation;
- assistance of NHRIs under threat;
- encouraging the provision of technical assistance;
- fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs.

c) To undertake such other functions as are referred to it by its voting members.

480 See www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx.

481 Article 5. The Statute was adopted in 2008 and has been amended a number of times since then, most recently on 22 February 2018.

It further provides that, in fulfilling these functions, GANHRI will work in ways that emphasise the following principles:

> a) fair, transparent, and credible accreditation processes; b) timely information and guidance to NHRIs on engagement with the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies; c) the dissemination of information and directives concerning the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies to NHRIs; d) mandated representation of NHRIs; e) strong relationships with the OHCHR and the Regional Coordinating Committees that reflect the complementarity of roles; f) flexibility, transparency and active participation in all processes; g) inclusive decision-making processes based on consensus to the greatest extent possible; h) the maintenance of its independence and financial autonomy.[482]

23.2.3. Membership and management

Full voting membership of GANHRI is open to all NHRIs that are accredited as fully compliant with the Paris Principles, that is, those that have "A status".[483] NHRIs that are only partially compliant – "B status" – are eligible for non-voting membership.[484] GANHRI members are organised regionally, according to the regional NHRI networks to which they belong:

- Asia Pacific Forum of National Human Rights Institutions
- European Coordinating Committee of National Human Rights Institutions
- Network of African National Human Rights Institutions
- Network of National Human Rights Institutions of the Americas.[485]

GANHRI is managed by a Bureau of 16 members, being the representatives of four "A status" NHRIs chosen by each of the four regional networks.[486] The Bureau exercises the usual management functions and powers of boards.[487]

23.2.4. Accreditation

GANHRI has accredited NHRIs for their compliance with the Paris Principles since 2000. Accreditation is fundamental for membership of GANHRI. Since 2007, accreditation has also been essential for full recognition and participation in the international human rights system. Only NHRIs accredited by GANHRI with "A status" are entitled to full participation in the Human Rights Council.[488] Other NHRIs can participate in other international human rights mechanisms, such as the treaty monitoring bodies, but only institutions accredited with "A status" can address the Human Rights Council and receive full international recognition. Accreditation is undertaken by GANHRI's Sub-Committee on Accreditation (SCA) and granted by the GANHRI Bureau. The SCA consists of four members, being a representative of one "A status" NHRI chosen by each of the regional networks.[489]

An NHRI seeking accreditation for the first time applies to the SCA, through the GANHRI Chairperson, providing:

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482 ICC, *Statute*, Article 7.

483 Ibid, Article 24.1.

484 Ibid, Article 24.2. NHRIs that do not comply with the Paris Principles sufficiently to be accredited with "B status" have no status in GANHRI. GANHRI no longer makes reference to "C status" institutions, as it once did.

485 ICC, *Statute*, Articles 1.1 and 31.1.

486 Ibid, Article 31.4.

487 Ibid, Article 46.

488 This was decided by the then Commission on Human Rights at its last full session in resolution 2005/74 of 20 April 2005 but that resolution was not implemented by the Commission before its abolition. The new HRC affirmed the decision in its resolution 5/1 'VII. Rules of Procedure' Rule 7(b).

489 GANHRI, 'Rules of procedure for the GANHRI SCA', Rule 3. See https://nhri.ohchr.org/EN/AboutUs/Governance/Status/ENG_GANHRI_SCA_RulesOfProcedure_adopted_21.02.2018_vf.pdf.

- a copy of the legislation or other instrument by which it is established and empowered in its official or published format
- an outline of its organisational structure including staff complement and annual budget
- a copy of its most recent annual report or equivalent document in its official or published format
- a detailed statement showing how it complies with the Paris Principles, as well as any respects in which it does not so comply and any proposals to ensure compliance.[490]

The SCA considers the application and provides a report, with recommendations, to the GANHRI Bureau.[491] The Bureau decides the application, granting "A" or "B" status, according to the definitions in the Rules of Procedure:

Table 4: Accreditation classifications[492]

Accreditation category	GANHRI status[493]	Compliance with Paris Principles[494]
A	Voting member	Fully compliant with the Paris Principles
B	Non-voting member	Partially compliant with the Paris Principles

The accreditation of NHRIs with "A status" is reviewed every five years.[495] In addition, an NHRI can have its accreditation status reviewed when "circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles".[496] GANHRI has downgraded the accreditation status of a number of NHRIs as a result of these reviews, following significant changes of circumstances.

23.2.5. Activities

GANHRI itself does not undertake many activities for NHRIs. Its principal roles are:

- liaison with the OHCHR and other UN agencies
- coordinating meetings and exchanges among NHRIs.

It has a permanent representative in Geneva, located within the National Institutions, Regional Mechanisms and Civil Society Section (NIRMCS) of OHCHR, to support its engagement with the UN system and to prepare meetings of the GANHRI Bureau.

The key activity it undertakes for GANHRI members is to coordinate a regular international conference of NHRIs. Since 2012 these conferences are held every three years. The conferences bring together large numbers of representatives from NHRIs, both those with accreditation and those without, to discuss a theme of general significance to NHRIs.

490 GANHRI, *Statute*, Article 10.
491 Ibid, Article 12.
492 Ibid, Annex 1 'Rules of Procedure of the ICC SCA', Rule 5.
493 Ibid, Article 24.
494 Ibid, Annex 1 'Rules of Procedure of the ICC SCA', Rule 5.
495 Ibid, Article 15.
496 Ibid, Article 16.2.

GANHRI has also established thematic working groups, such as the working group on business and human rights that:

- promotes integration of human rights and business issues into NHRI strategies and programs, nationally, regionally and internationally
- builds the capacity of NHRIs on business and human rights, through skills development and the sharing of tools and best practices
- facilitates NHRI participation in the development of relevant legal and policy frameworks
- supports NHRI outreach to business and human rights stakeholders.[497]

GANHRI continues to increase its project activities around thematic areas and NHRI functions, such as education and training.

23.3. THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

23.3.1. Origins and vision

The APF is the oldest and most developed of the four regional networks. It was established by the Larrakia Declaration, adopted at the first regional meeting of Asia Pacific NHRIs in Darwin, Australia, in July 1996.[498] Its Strategic Plan for 2015–2020 defines its visions, mission and objectives, as well as its operational program for the period.[499]

Vision

An Asia Pacific region where everyone enjoys human rights.

Mission

The APF is a network of national human rights institutions in the Asia and Pacific region. We provide advisory, networking and capacity-building services to our members to support them in their efforts to comply with international standards and to promote and protect human rights.

Objectives

- *Objective 1: Building capacity*
  The APF strengthens the capacity of our members through training, capacity self-assessments and high level dialogues.
- *Objective 2: Advising*
  The APF provides expert advice on NHRIs to our members, governments and civil society in the region.
- *Objective 3: Networking*
  The APF exchanges information and experiences, builds cooperation and develops professional human rights networks to encourage peer to peer learning.
- *Objective 4: Engaging regionally and internationally*
  The APF engages regionally and internationally to promote our members participation and views and to share their expertise with others.
- *Objective 5: Gender equality*
  The APF promotes gender equality and mainstreams gender across all our work.

Members of the APF collaborate and cooperate at the regional and sub-regional levels and bilaterally.

497 See http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx.

498 See www.asiapacificforum.net/events/apf-1/.

499 See www.asiapacificforum.net/about/governance.

CASE STUDIES

Promoting and protecting human rights in relation to sexual orientation, gender identity and sex characteristics[500]

Equality and freedom from discrimination are fundamental human rights that belong to all people, whatever their sexual orientation, gender identity or sex characteristics. However, lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the Asia Pacific region can experience shocking levels of violence, harassment and discrimination.

NHRIs in the Asia Pacific region are strong advocates for human rights, including the human rights of LGBTI people. Importantly, they do this work by establishing strong partnerships with LGBTI organisations. Their work involves research, recommendations for law and policy reform, investigating and resolving complaints, and education and awareness raising activities.

To support its members in their efforts, the APF has partnered with UNDP Bangkok Regional Hub in a series of projects and activities since 2015.

One component of the partnership has been a blended learning training programme that builds knowledge and strengthens cooperation between NHRIs and CSOs in the Asia Pacific region. Representatives from APF members and CSOs actively working on human rights issues for LGBTI communities took part in the training programme designed to support participants to:

- improve their understanding of concepts and terminology related to sexual orientation, gender identity and sex characteristics
- understand the international human rights system in relation to issues of sexual orientation, gender identity and sex characteristics
- deepen their understanding of the role of NHRIs in this area of work
- identify and share opportunities for participating NHRIs and CSOs to promote and protect the rights LGBTI people
- connect with other NHRI colleagues and CSOs working on similar issues.

As part of the training programme, participants developed “action plans” to promote and protect the rights of LGBTI people. The APF followed up with NHRIs to document responses to the proposed action plans and the progress made in promoting and protecting human rights for LGBTI people.

Blended learning training programs were held with APF members and CSOs in South Asia (from October 2016), South East Asia (from November 2016) and the Pacific (from March 2017).

The APF and UNDP also hosted a global conference in April 2017 to mark the 10th anniversary of the adoption of the Yogyakarta Principles. The Yogyakarta Principles provide a framework for the work of APF members in this area.

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500 See www.asiapacificforum.net/support/training/sogisc/.

APF investigations training for NHRIs

An APF blended learning course has provided human rights investigators from across the Asia Pacific region with a comprehensive overview of the skills needed to conduct thorough and impartial investigations.

The five-week online course – which ran from 24 March to 25 April 2014 – examined the following topics:

- fundamental investigative principles
- how to plan an investigation
- how to conduct interviews (run over two weeks)
- collecting and using digital and documentary evidence.

Course participants, drawn from all APF member institutions, completed set readings and weekly quizzes, contributed to online discussions and submitted assignments related to the key themes.

The training drew heavily on the principles and methodology set out in the APF manual, *Undertaking Effective Investigations: A Manual for National Human Rights Institutions*.

Those participants who successfully completed the online course took part in a week-long, face-to-face workshop hosted by the Human Rights Commission of Malaysia (SUHAKAM) in May 2014.

"Whether the focus is on resolving individual complaints or uncovering systemic failings, effective human rights investigations uncover the facts of a case and provide a pathway to justice, redress and restitution for victims," said Kieren Fitzpatrick, Director of the APF secretariat.

"This course aims to help NHRI investigators in their important and challenging work," he said.

The blended learning course was led by Gareth Jones, a former Director of Major Investigations at the Canadian Military Ombudsman's Office. He was assisted by Dr Nazia Latif and APF Master Trainer Abdul Rahman Abdullah from SUHAKAM.[501]

Joint communiqué of meeting between Australian and Indonesian NHRIs

The Australian Human Rights Commission and Komnas HAM (Human Rights Commission of Indonesia) met in Sydney on 18 February 2014. The Commissions are "A status" accredited national human rights institutions under the Paris Principles.

As founding members of the Asia Pacific Forum of National Human Rights Institutions, the Australian Human Rights Commission and Komnas HAM have a long-standing relationship dating back to 1996. The meeting provided an opportunity to renew the close relationship and deepen mutual respect and cooperation.

The Australian Human Rights Commission and Komnas HAM exchanged views on a number of human rights issues and discussed opportunities for bilateral cooperation. In particular, the Commissions made a commitment to strengthen collaboration on issues related to asylum seekers and refugees.

Mutual concern was expressed for the treatment of asylum seekers and refugees who travel between Australia and Indonesia by boat.

The Australian Human Rights Commission and Komnas HAM recognised the complexity of this issue and acknowledged that saving lives at sea is crucial. It was further emphasised that their respective governments must comply with their obligations under international human rights law and ensure that those seeking asylum are treated with dignity and respect.

►►

501 See www.asiapacificforum.net/support/training/investigations/.

The Commissions affirmed the human rights principles enshrined in a number of instruments including the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention Relating to the Status of Refugees.

The Australian Human Rights Commission and Komnas HAM mutually agreed to promote and protect the human rights of asylum seekers, refugees, and people in immigration detention in a manner that emphasises the following principles:

1. **Everyone has the right to seek and to enjoy in other countries asylum from persecution**
2. **People should not be returned to a country where their life or freedom would be threatened (referred to as 'refoulement')**
3. **Everyone is entitled to respect for their human rights without discrimination**
4. **Asylum seekers should not be penalised for arriving in a country without authorisation**
5. **Everyone has the right not to be subjected to arbitrary detention**
6. **All persons who are detained should be treated with humanity and respect for their inherent dignity**
7. **No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment**
8. **Children should only be detained as a measure of last resort, and for the shortest appropriate period of time**
9. **Anyone who is detained has the right to challenge the legality of their detention in court**
10. **Everyone has the right to work, and to an adequate standard of living, including food, clothing and housing**
11. **Everyone is entitled to enjoy the highest attainable standard of mental and physical health**

The Australian Human Rights Commission and Komnas HAM encourage the governments of Australia and Indonesia to engage in a dialogue that reflects these human rights principles.

The Commissions reaffirmed the role of national human rights institutions to monitor, promote and protect human rights at the national and regional level. They pledged to sustain ongoing communication and proposed a face-to-face meeting later in the year in Jakarta.[502]

23.3.2. Membership[503]

Membership is open to all NHRIs in the region accredited by GANHRI with "A status" (full members) or "B status" (associate members). The APF has suspended its own accreditation process and currently relies on GANHRI accreditation.

When the APF was founded, there were only five NHRIs in the region. In June 2018, the APF had 15 full members, the NHRIs of:

- Afghanistan
- Australia
- India
- Indonesia
- Jordan

502 See www.humanrights.gov.au/news/media-releases/joint-communiqu-australian-human-rights-commission-and-komnas-ham.

503 See www.asiapacificforum.net/members/.

- Malaysia
- Mongolia
- Nepal
- New Zealand
- Palestine
- Philippines
- Qatar
- Republic of Korea
- Samoa
- Timor Leste.

It also had nine associate members, the NHRIs of:

- Bahrain
- Bangladesh
- Iraq
- Kazakhstan
- Maldives
- Myanmar
- Oman
- Sri Lanka
- Thailand.

Member NHRI delegates attend APF 16. Photo by the APF.

23.3.3. Governance

The APF was founded as an informal forum under its 'Larrakia Declaration' in 1996. In 2002, it was incorporated as an independent non-profit organisation under Australian law.[504]

The APF is managed by the Forum Council, consisting of one representative of each full member institution. The Council meets annually in conjunction with the APF's Annual Meeting. Each full member of the APF is able to nominate one person as its representative on the Forum Council.

The work of the APF is performed by a secretariat located in Sydney, Australia. From the APF's foundation in 1996 until 2001, the secretariat was provided by the Australian Human Rights Commission. Since 2002, it has been an independent, separate entity incorporated under Australian law, reporting only to the Forum Council.

23.3.4. Activities

The APF has an extensive program of activities that:

- promote the establishment of new NHRIs in the region that meet the requirements of the Paris Principles
- strengthen established NHRIs in the region by undertaking capacity assessment and capacity building projects for them and their members and staff
- aim to develop regional human rights cooperation.

Among the projects undertaken by the APF are:

- a training program for NHRI staff, with both online and face-to face-courses, with accompanying resource materials, including:
  - engagement with the international human rights system
  - the prevention of torture
  - conducting national human rights inquiries
  - migrant workers' rights
  - training of trainers
  - media and communications skills
  - support for human rights defenders
  - foundation course for NHRI staff
  - human rights education
  - human rights investigations
  - rights of women and girls
  - human rights relating to sexual orientation, gender identity and sex characteristics
  - rights of indigenous peoples (forthcoming)[505]
- high-level dialogues for NHRI members
- legal advice on legislative development[506]
- strategic advice on handling crisis situations
- assistance with strategic planning
- capacity assessments.[507]

504 See www.asiapacificforum.net/about/.

505 See www.asiapacificforum.net/support/training.

506 See www.asiapacificforum.net/support/establishment-of-nhris/.

507 See www.asiapacificforum.net/support/capacity-assessments/.

The APF also assists member NHRIs with advice and support in their engagement with the international human rights system, both in Geneva and New York. It is an active advocate with UN bodies and agencies to recognise NHRIs and their distinctive natures and roles.

Every two years, in conjunction with the Forum Council's annual meeting, the APF holds a major regional conference that brings together representatives of its members, UN officials, NGOs, government officials and academics to discuss human rights issues of common concern. These conferences are the largest regular human rights gatherings in the Asia Pacific and the only ones that permit exchange on human rights issues across sectors.[508]

23.3.5. Advisory Council of Jurists

The APF has an Advisory Council of Jurists (ACJ) to advise it on the application of universal human rights standards in the Asia Pacific region.[509] The ACJ consists of one person nominated by each "A status" APF member institution and elected by the Forum Council. The ACJ members are all eminent jurists in their own countries who bring to the deliberations of the ACJ their expertise and experience, both of international human rights law and of the Asia Pacific context.

The ACJ deliberates and provides advice on references from the Forum Council. The references deal with human rights issues of wide concern in the region, addressing both contemporary challenges and emerging human rights concerns. Since its establishment in 1998, the ACJ has offered advice on:

- child pornography
- the death penalty
- trafficking
- terrorism and the rule of law
- torture
- the right to education
- the right to environment
- corporate accountability
- human rights and sexual orientation and gender identity.

The background papers, preliminary views and final advice of the ACJ on each reference are available on the APF website.[510]

In the absence of a regional human rights treaty and mechanisms in the Asia Pacific, the ACJ has offered the most authoritative legal discussion and interpretation of the application of international human rights law in the region.

508 See www.asiapacificforum.net/about/annual-meeting/.

509 See www.asiapacificforum.net/support/advice-and-expertise/acj/.

510 See www.asiapacificforum.net/support/advice-and-expertise/acj/.

GOOD PRACTICE

NHRIs should engage and cooperate with international and regional associations of NHRIs and with individual NHRIs to encourage the further development of NHRIs in compliance with the Paris Principles and, through cooperation, to increase their mutual learning.

MODEL CLAUSE

The Commission shall cooperate and engage effectively with international and regional associations of NHRIs and with individual NHRIs, including through accreditation by GANHRI and membership of the appropriate regional association.

KEY POINTS: CHAPTER 23

- At the international level, NHRIs relate through GANHRI, an association now registered under Swiss law.
- GANHRI is responsible for liaison between NHRIs and the UN human rights system, promoting and supporting participation of NHRIs in the international human rights system and facilitating cooperation among NHRIs at the global level.
- Accreditation of NHRIs for compliance with the Paris Principles is undertaken by GANHRI, through its Sub-Committee on Accreditation. All NHRIs accredited with "A status" are eligible for full voting membership of GANHRI.
- The UN system recognises and accepts GANHRI's accreditation procedures and the status of NHRIs as accredited by GANHRI.
- The APF is the regional association of NHRIs in the Asia Pacific. The APF accepts GANHRI accreditation as the basis for full and associate membership of the APF.
- The APF undertakes an extensive program of activities for NHRIs in the Asia Pacific, including providing advisory services, institutional support and capacity building, capacity assessment, high-level dialogues and training.

Summary

Part I: NHRIs and the Paris Principles

Chapter 1: The origins and development of NHRIs

- The implementation of international human rights obligations is the responsibility of each State.
- NHRIs are one of the most significant and most effective means by which States meet that responsibility.
- Since the late 1940s, the UN system has encouraged the establishment of NHRIs, leading to strong endorsement by the Second World Conference on Human Rights in 1993 in its Vienna Declaration and Programme of Action.
- NHRIs themselves are subject to international standards set out in the Paris Principles.

Chapter 2: The nature and concept of NHRIs

- NHRIs are defined as official independent legal institutions established by the State by law for the promotion and protection of human rights. They are established by the constitution or an act of the legislature that guarantees their independence from political direction and political interference, both governmental and non-governmental. They comply with the international minimum standards for NHRIs, the Paris Principles.
- NHRIs are not NGOs.
- NHRIs are unique State institutions.
- NHRIs are different from courts, complementing courts and the roles of courts in the promotion and protection of human rights.

Chapter 3: The Paris Principles

- The Paris Principles are the international minimum standards for effective, credible NHRIs.
- The Paris Principles were developed in 1991 by NHRIs themselves, based on their experiences.
- The Paris Principles require that NHRIs have independence in law, membership, operations, policy and control of resources.
- True independence requires independent thinking, in addition to the formal requirements of the Paris Principles.
- The Paris Principles also require that NHRIs have broad mandates for the promotion and protection of human rights, with pluralism in membership, broad functions, adequate powers, adequate resources, cooperative methods and international engagement.
- The Paris Principles imply requirements of accessibility and accountability.
- Full compliance with the Paris Principles leads to international recognition of NHRIs.
- Broad public consultation is an essential component in the process of establishing an NHRI in accordance with the Paris Principles.
- The APF and the UN, in particular OHCHR, provide support and advice to States interested in establishing an NHRI or in strengthening an existing NHRI.

Chapter 4: Models of NHRIs

- The Paris Principles do not prescribe a single model of NHRI.
- There are four principal models of NHRI: commission model, ombudsman model, consultative council model and research institute model.
- Certain models are more likely to be considered Paris Principles compliant due to the breadth of their mandate and functions.
- Other human rights institutions have been established to deal with specific categories of human rights, the human rights of specific groups of people or human rights in specific parts of a country.

Chapter 5: Legal independence

- Legal independence is an essential component of independence under the Paris Principles.
- The Paris Principles require that NHRIs be established by the constitution of the State or by an act of parliament.
- NHRIs established by the constitution will still usually require implementing legislation that contains detailed provisions governing the NHRI, including its mandate, functions, responsibilities and powers.

Chapter 6: The independence of NHRI members

- The Paris Principles do not prescribe any particular process for the appointment of NHRI members.
- The process of appointment should be transparent and consultative, with applicants sought broadly, including by advertising, from a wide range of social groups.
- There should be clear, publicly available criteria for NHRI members and those being considered for appointment should be assessed against those criteria.
- Processes for the appointment of members vary from country to country and include executive appointment, parliamentary election and appointment by particular sectors or groups.
- NHRI members should be appointed to office for the term specified in the legislation.
- NHRI members should only be able to be dismissed prior to the expiry of their terms on serious grounds specified in the legislation and by a special procedure set out in the legislation.

Chapter 7: Pluralism

- The Paris Principles require that NHRIs reflect the pluralist nature of their societies in their members and staff.
- Legislation establishing NHRIs can specify pluralist factors to be taken into account in the appointment of members and staff.
- Pluralism can be promoted through open selection procedures by which vacancies are broadly advertised and candidates are independently assessed against those criteria.
- Pluralism can also be promoted through procedures for consultation and cooperation with diverse elements of society.

Chapter 8: Adequate funding and resources

- The Paris Principles require that NHRIs have financial independence and adequate resources.
- States have an obligation to fund NHRIs for their core operations, to enable them to carry out their statutory responsibilities.

- The process by which NHRIs are funded should not undermine their independence.
- NHRIs can accept supplementary funds from donors.
- NHRIs should be subject to the usual financial accountability requirements common to all State institutions of a similar nature.

Part II: The responsibilities and functions of NHRIs

Chapter 9: Broad mandate – the promotion and protection of human rights

- According to the Paris Principles, the core competence of NHRIs is the promotion and protection of human rights.
- The promotion of human rights relates to the full enjoyment, the fulfilment, of all the human rights to which people are entitled under international and domestic law.
- The protection of human rights relates to the prevention of human rights violation or of the continuation of human rights violation.
- Limits or exclusions to the jurisdiction of NHRIs should be strictly defined and as narrow as possible.

Chapter 10: Broad functions

- The Paris Principles require that NHRIs have broad responsibilities or functions.
- Legislation establishing NHRIs should set out their functions specifically.
- Legislation should ensure the operational independence of NHRIs, permitting them to undertake their functions on their own decision, without having to obtain approval from any outside authority, organisation or individual.

Chapter 11: Adequate powers

- NHRIs require powers to undertake their functions effectively, to enable them to promote and protect human rights.
- Powers vary from one NHRI to another but generally include power to take evidence, to compel the attendance of a witness for questioning, to obtain documents and information and to enter premises.

Chapter 12: The advisory function of NHRIs

- According to the Paris Principles, NHRIs should provide advice on the more effective promotion and protection of human rights.
- NHRIs initiate their advisory function at the request of an institution or agency, as a result of a complaint of human rights violation and on its own initiative.
- NHRIs can provide advice to any institution, agency or person, governmental or non-governmental, relevant to the particular human rights issue being considered.
- Advice should be developed through processes of research and consultation.
- NHRIs can provide advice on any matter that relates to the promotion and protection of human rights, including law, government policies and programs, and the acts and practices of private and civil society organisations and persons.
- NHRIs are entitled to expect that their advice will be carefully considered by those to whom it is addressed and that recipients will make a formal, public response.

- NHRIs, as permanent institutions, should follow up on their advice, advocating for it and monitoring and reporting on implementation.

Chapter 13: The human rights education function of NHRIs

- Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms.
- 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.
- Human rights education has three dimensions: increasing knowledge; changing values, beliefs and attitudes; leading to action.
- Effective human rights education requires strategic approaches that take account of target groups, forms of education, means of education (formal, informal and non-formal) and educational methodologies.
- Human rights education is a specialist professional role. It requires expert, trained, skilled trainers and educators.

Chapter 14: The monitoring function of NHRIs

- Monitoring is a process of continuing oversight and review. It has been defined as "the activity of observing, collecting, cataloguing and analysing data and reporting on a situation or event".
- One form of monitoring is oversight of the human rights situation within the State, either generally or in relation to a particular category of rights, for example, under a specific human rights treaty. Follow up of implementation of recommendations is a key component of monitoring.
- The second major form of monitoring is on-site inspection of places where the risk of human rights violation is high or at least relatively higher than elsewhere, for example, places where persons are detained or forced to reside.
- Monitoring the general human rights situation or specific human rights situations within a State can take many forms, including preparing annual reports on the "state of human rights" generally or on a specific human rights issue and observing events as they occur.
- Monitoring prisons and other places of detention seeks to prevent violations of the human rights of some of the most vulnerable people in any community. It should be undertaken as a planned program of inspections that is also responsive to situations as they arise. It should include both inspections of which notice has been given and "surprise" inspections.
- Monitoring activities should enable the assessment of improvement or deterioration in human rights compliance over time, based on a baseline study, indicators, benchmarks and targets.

Chapter 15: Complaint handling

- The "quasi-judicial responsibilities" of NHRIs concern the ability to deal with complaints of human rights violation in a manner similar to, though different from, the courts.
- NHRIs' power to accept and deal with complaints can be dependent on what human rights issue the complaint raises, who makes the complaint, against whom the complaint is made, and other jurisdictional matters.
- Complaint handling usually follows certain common steps, including receipt, initial assessment, investigation, conciliation and referral or report.

- Many NHRIs can undertake investigations of human rights violations of their own initiative (*suo motu*).
- NHRIs require expert, suitably trained staff, with good knowledge and understanding of human rights law, to handle cases of human rights violation.
- To be as effective as possible, complaint handling should be incorporated into NHRIs' broader functions of monitoring the overall human rights situation in a country, through the collection and careful analysis of the data of complaint handling work.

Chapter 16: NHRI intervention in court proceedings

- Many NHRIs have the function of seeking to intervene in court proceedings as a "friend of the court", usually subject to the court giving consent, where a case arises under the NHRI's own law or under the human rights law or where a case under the general law gives rise to significant human rights issues.
- An NHRI intervenes in specific cases first and foremost because it considers that the case raises an important issue of human rights that might not be properly addressed if it does not intervene.
- Through its court interventions, the NHRI promotes the development of the law consistently with international human rights standards.
- Intervention in court cases plays a role in human rights education.
- NHRIs need to take a strategic approach to intervention, identifying those cases where their intervention would have the widest positive effect on human rights compliance and on the domestic recognition and enforcement of human rights standards and applying clear, public criteria in deciding whether to undertake an intervention.

Chapter 17: NHRI cooperation and engagement with other national actors

- The Paris Principles require NHRIs to cooperate and engage with all elements in a society, governmental and non-governmental, as a key method of working.
- Cooperation and engagement should extend to all national actors, including the parliament, the Government and civil servants, the judiciary, NGOs, the media, legal professional associations, and academics and educational institutions.
- The nature of the cooperation and engagement will vary according to the actor, the issue and the context.
- NHRI strategic plans should deal specifically with cooperation and engagement so that the priorities and strategies are clear internally and externally.

Chapter 18: Accountability

- The Paris Principles do not impose specific accountability requirements on NHRIs but accountability is a necessary obligation of any State institution.
- NHRIs are typically legally accountable to parliaments under their establishing laws, with specific obligations on them to make annual reports to parliament on their operations.
- Parliaments should have a corresponding obligation to discuss NHRIs' annual reports.
- NHRIs also bear moral accountability to the community, especially to victims of human rights violations and those at risk of violations, for whom they have a priority concern.

Part III: NHRIs' approach to human rights challenges

Chapter 19: National inquiries into systemic patterns of human rights violation

- A national inquiry is an investigation into a systemic human rights problem in which the public in general is invited to participate through providing public evidence and written submissions, which has investigative and educational objectives and which results in a report with findings and recommendations.
- A national inquiry is a good means to address complex human rights situations that are historical and systemic in nature and that require comprehensive examination and reporting.
- 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 national inquiries and the most important goals of NHRIs.
- A national inquiry is a very effective mechanism but a demanding one. It should be undertaken only after careful consideration of the appropriateness of the issue for the national inquiry approach and the capacity of the NHRI to undertake the inquiry successfully.
- NHRIs have continuing responsibilities to follow up work they have done and to advocate for, monitor and report on implementation of the recommendations of national inquiries.

Chapter 20: NHRIs and groups at particular risk of human rights violation

- Within their broad, comprehensive responsibility for every person, NHRIs have a priority concern for those whose rights have been violated and those whose rights are at particular risk of violation.
- Part of each NHRI's analytical work is to identify those groups present in its country that are at particular risk of human rights violation. It will generally find them among the poorest, the most marginalised and the least powerful people in the country.
- NHRIs have developed many different mechanisms to respond to groups at particular risk of human rights violation, including designated NHRI members, sub-commissions and sub-committees, designated staff units within the NHRIs, focal points, advisory and consultative groups, and conferences and seminars.
- Gender mainstreaming is a critical global strategy for the achievement of gender equality.

Chapter 21: NHRIs in conflict situations

- The first concern of an NHRI should be the safety of those who deal with it or are involved in its work, including victims of human rights violation and those at risk of human rights violation, advocates with or for victims, witnesses and others who assist the NHRI's inquiries, and the NHRI's own members and staff.
- NHRIs in conflict situations bear an especially onerous burden of ensuring that their independence is preserved and recognised by all parties to the conflict and by the general community.
- NHRIs need to redirect their work during violent conflicts towards preventing violations wherever possible and addressing those violations that occur.
- NHRIs should see the end of armed conflict as no more than the beginning of a new period of challenging work for human rights. They must address both the future, to building peace generally and the institutions of democratic governance and the rule of law in particular, and the past, ensuring that victims of human rights violations receive recognition, acknowledgement and reparations.

Part IV: NHRIs and the international community

Chapter 22: The international engagement of NHRIs

- The Paris Principles provide that NHRIs should cooperate with the United Nations and any other organisations in the United Nations system, as well as the regional institutions and the national institutions of other countries that are competent in the promotion and protection of human rights. The engagement is for the benefit both of the international mechanisms and NHRIs.
- Within the UN Charter-based system, the Human Rights Council is the body with the most comprehensive scope for engagement by NHRIs, enabling "A status" NHRIs to participate in all sessions, make oral and written statements, attend working groups and consultations and organise parallel events.
- "A status" NHRIs can contribute to the UPR process and participate at every stage, except the interactive dialogue in the UPR working group. They have special status in the consideration of the working group report on their own State.
- All NHRIs can assist the special procedures in all their activities and are especially helpful to special procedures making country visits.
- All NHRIs can engage with all aspects of the work of the treaty monitoring bodies. They make especially helpful contributions to the examination of State reports of compliance with treaty obligations.
- The international human rights system supports the work of NHRIs by drawing attention to human rights situations of concern and making recommendations for improved performance of human rights obligations and responsibilities.

Chapter 23: International and regional cooperation among NHRIs

- At the international level, NHRIs relate through GANHRI, an association now registered under Swiss law.
- GANHRI is responsible for liaison between NHRIs and the UN human rights system, promoting and supporting participation of NHRIs in the international human rights system and facilitating cooperation among NHRIs at the global level.
- Accreditation of NHRIs for compliance with the Paris Principles is undertaken by GANHRI, through its Sub-Committee on Accreditation. All NHRIs accredited with "A status" are eligible for full voting membership of GANHRI.
- The UN system recognises and accepts GANHRI's accreditation procedures and the status of NHRIs as accredited by GANHRI.
- The APF is the regional association of NHRIs in the Asia Pacific. The APF accepts GANHRI accreditation as the basis for full and associate membership of the APF.
- The APF undertakes an extensive program of activities for NHRIs in the Asia Pacific, including providing advisory services, institutional support and capacity building, capacity assessment, high-level dialogues and training.

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APPENDICES

Contact details of SHRIs including its Chair and Members

Tamil Nadu State Human Rights Commission, 143, P.S. Kumarasamy Raja Salai, (Greenways Road), Raja Annamalai Puram, Chennai-600 028.	**Chairperson**: Hon'ble Justice Mr. S. Baskaran SHRC: shrc@tn.nic.in shrc@tn.gov.in **Members:** Hon'ble Justice Mr. Raja Ilango Mr. V. Kannadasan
Tamil Nadu State Commission for Women, Kalasa Mahal, 1st Floor, Chepauk, Chennai- 600008	**Chairperson:** Mrs. A.S. Kumari: chairscwtn@yahoo.co.in **Members:** Dr. Malathi Narayanasamy: Tmt. P. Geetha Natarajan: geethanatarajanllb@gmail.com Tmt. P. Seethapathy: Tmt. M. S. K. Bhavani Rajenthiran: Tmt. R. Rani: Tmt. K. Sivagamasundari, MLA - mlakrishnarayapuram@tn.gov.in Tmt. M. Varalakshmi: – mvaralakshmidmk@gmail.com
Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes No 735, Second Floor, Devaneya Pavanar District Central Library Building, Anna Salai, Chennai-600002. tnscstcommission@gmail.com	**Chairperson** - Hon'ble Justice Mr. P.R. Sivakumar (Retd) Madras HC chair.tnscstcommission@gmail.com
	Vice Chairperson Mr. M. Punitha Pandian vicechair.tnscstcommission@gmail.com dalitmurasu@gmail.com
	Members Advocate Mr. S. Kumara Devan: member1.tnscstcommission@gmail.com Mrs. K.M. Leelavathi Thanaraj: member2.tnscstcommission@gmail.com Advocate Mr. P. Ilanchezhiyan: member3.tnscstcommission@gmail.com Dr. K. Ragupathi: member4.tnscstcommission@gmail.com
	Member Secretary Mr. K. Vivekanandan, I.A.S, Managing Director, TAHDCO ms.tnscstcommission@gmail.com

State Minorities Commission No. 735, LLA Building 3rd Floor Anna Salai, Chennai-600 002	**Chairman:** Mr. S. Peter Alphonse: smcchairman@gmail.com secretary55@ymail.com **Vice Chairman:** **Members:** Mr. Bikku Mouriyar Buddha Al.Haaji.A.B.Thameem Hansari: nagorehaj@gmail.com (9578958647, 9003457647) Mr. L. Don Bosco: (98840 45674, 99629 43456) Mr. Harbhajan singh Suri: (9840498097) Mr. Manjit singh Nayar: manjit_nayar@yahoo.in (99403 42727) Mr. Praveen Kumar Tatia: (98400 950505) Bro. Irudayam: (94431 67971) Thiru.P.Pyarelal Jain: 98410 36262
The State Commissioner, Commissioner for Person with Disabilities, Govt. of Tamil Nadu, No. 5, Kamarajar Salai, Lady Wellington College Campus, Chennai-600005	**Land Line:** 044-28444948 scd.tn@nic.in scdatn@gmail.com **Help Line:** 18004250111 **Whatsapp & Video call Helpline for Speech And Hearing impaired:** 9700799993
Tamil Nadu State Information Commission, Tamil Nadu Slum Clearance Board at No.2, Theagaraya Road, Teynampet, Chennai – 600 018	Thiru. R.Rajagopal, I.A.S., - State Chief Information Commissioner of Tamil Nadu. (Tel: 044-29515499) Mr. S. Selvaraj, MA, Ph.D., - TN State Information Commissioner (Tel: 044-29515569) Mr. S.D.Tamilkumar, B.A., B.L., - TN State Information Commissioner. (Tel: 044-29515548) Dr.R.Pratapkumar, M.A., M.L., M.B.A., M.Sc., Ph.D., - TN State Information Commissioner. (Tel: 044-29515537) Mr. S.Muthuraj, B.A., B.L., - TN State Information Commissioner. (Tel: 044-29515499) Mr. B. Thanasekaran, BA, LL.B., - TN SIC. (Tel: 044-29515579) Mr. M. Sreedhar, B. Tech., - TN SIC Commissioner. (Tel: 044-29515582)

The Protection of Human Rights Act, 1993

(NO. 10 of 1994)

As amended by

The Protection of Human Rights (Amendment) Act, 2019

(No. 19 of 2019 w.e.f. 2-8-2019)

[vide Notification No. S.O. 2756 (E) dt. 1-8-2019]

National Human Rights Commission
India

Contents

The Protection of Human Rights Act, 1993

No. 10 of 1994*

[8th January, 1994]

An Act to provide for the constitution of National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:-

CHAPTER-I

Preliminary

1. ***Short title, extent and commencement.***- (1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India:

[1][* * *]

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. ***Definitions.***-(1) In this Act, unless the context otherwise requires,-

(a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;

(b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;

[2][(ba) "Chief Commissioner" means the Chief Commissioner for Persons with Disabilities referred to in sub-section (1) of section 74 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016);]

(c) "Commission" means the National Human Rights Commission constituted under Section 3;

(d) "human rights'' means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India;

(e) "Human Rights Court'' means the Human Rights Court specified under Section 30;

[3][(f) "International Covenants'' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;]

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* Received the assent of the President on the 8th January, 1994 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 10-1-1994.

1. Proviso omitted by the Jammu & Kashmir Reorganization Act, 2019 (34 of 2019), Section 95, 96 and Fifth Schedule, Table-1. Proviso before omission, stood as under :
"Provided that it shall apply to the State of Jammu and Kashmir only insofar as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State."
2. Inserted by Act No. 19 of 2019, Section 2(i).
3. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.

[1][(g) "Member" means a Member of the Commission or of the State Commission, as the case may be;]

[2][(ga) "National Commission for Backward Classes" means the National Commission for Backward Classes constituted under section 3 of the National Commission for Backward Classes Act, 1993 (27 of 1993);]

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under Section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);

[2][(ha) "National Commission for Protection of Child Rights" means the National Commission for Protection of Child Rights constituted under section 3 of the Commission for Protection of Child Rights Act, 2005 (4 of 2006);]

[1][(i) "National Commission for the Scheduled Castes" means the National Commission for the Scheduled Castes referred to in article 338 of the Constitution;

[1](ia) "National Commission for the Scheduled Tribes" means the National Commission for the Scheduled Tribes referred to in article 338A of the Constitution;]

(j) "National Commission for Women" means the National Commission for Women constituted under Section 3 of the National Commission for Women Act, 1990 (20 of 1990);

(k) "notification" means a notification published in the Official Gazette;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "public servant" shall have the meaning assigned to it in section 21of the Indian Penal Code (45 of 1860);

(n) "State Commission" means a State Human Rights Commission constituted under Section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

CHAPTER-II

The National Human Rights Commission

3. Constitution of National Human Rights Commission.- (1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of—

(a) a Chairperson who has been a [3][Chief Justice of India or a Judge] of the Supreme Court;

(b) one Member who is, or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been the Chief Justice of a High Court;

(d) [4][three Members, out of which at least one shall be a woman,] to be

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
2. Inserted by Act No. 19 of 2019.
3. Substituted by Act No. 19 of 2019, for the words "Chief Justice"
4. Substituted by Act No. 19 of 2019, for the words "two Members"

appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairperson of [1][the National Commission for Backward Classes, the National Commission for Minorities, the National Commission for Protection of Child Rights], [2][the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes], [3][the National Commission for Women and the Chief Commissioner for Persons with Disabilities] shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and [4][shall, subject to control of the Chairperson, exercise all administrative and financial powers (except judicial functions and the power to make regulations under section 40B)].

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. ***Appointment of Chairperson and other Members.-***(1) The Chairperson and [2][the Members] shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

(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 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:

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any [5][vacancy of any member in the Committee referred to in the first proviso to sub-section (1)].

[5]***[5. Resignation and removal of Chairperson and Members.-*** (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

1. Substituted by Act No. 19 of 2019, for the words "the National Commission for Minorities".
2. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
3. Substituted by Act No. 19 of 2019, for the words "and the National Commission for Women".
4. Substituted by Act No. 19 of 2019, for the words "shall exercise such powers and discharge such functions of the Commission (except judicial functions and the power to make regulations under section 40B) as may be delegated to him by the Commission or the Chairperson, as the case may be."
5. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.

(2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

(3) Notwithstanding anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be,-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court;

(e) is convicted and sentenced to imprisonment of an offence which in the opinion of the President involves moral turpitude.]

[1][**6.** ***Term of office of Chairperson and Members.-*** (1) A person appointed as Chairperson shall hold office for a term of [2][three years] from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier [3][and shall be eligible for re-appointment].

(2) A person appointed as Member shall hold office for a term of [4][three years] from the date on which he enters upon his office and shall be eligible for re-appointment [5][* * *]:

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.]

7. Member to act as Chairperson or to discharge his functions in certain circumstances. - (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorize one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence or leave or otherwise, such one of the Members as the President may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

[6][**8.** ***Terms and conditions of service of Chairperson and Members***.- The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed:

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
2. Substituted by Act No. 19 of 2019, for the words "five years".
3. Inserted by Act No. 19 of 2019.
4. Substituted by Act No. 19 of 2019, sec. 4(ii) (a), for "five years".
5. The words "for another term of five years" omitted by Act No. 19 of 2019, sec. 4(ii) (b).
6. Substituted by Act 43 of 2006, sec. 7, for sections (w.e.f. 23-11-2006).

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

9. ***Vacancies, etc., not to invalidate the proceedings of the Commission.-*** No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

10. ***Procedure to be regulated by the Commission.-*****(**1) The Commission shall meet at such time and place as the Chairperson may think fit.

[1][(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down by regulations its own procedure.]

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

11. Officers and other staff of the Commission.-(1) The Central Government shall make available to the Commission-

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

CHAPTER-III

Functions and Powers of the Commission

12. ***Functions of the Commission.-***The Commission shall perform all or any of the following functions, namely:-

(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf [2][or on a direction or order of any court], into complaint of-

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;

[3][(c) visit, notwithstanding anything contained in any other law for the time being in force, 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 conditions of the inmates thereof and make recommendations thereon to the Government;]

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
2. Inserted by Act No. 43 of 2006, w.e.f. 23-11-2006.
3. Substituted by Act No. 43 of 2006, for clause (c) (w.e.f. 23-11-2006).

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
(g) undertake and promote research in the field of human rights;
(h) spread human rights literacy 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;
(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
(j) such other functions as it may consider necessary for the promotion of human rights.

13. ***Powers relating to inquiries*****.-**(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of witnesses and examining them on oath;
(b) discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any Court or office;
(e) issuing commissions for the examination of witnesses or documents;
(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject-matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

(4) The Commission shall be deemed to be a Civil Court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against

the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

[1][(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act:

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.]

14. ***Investigation.***-(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilized under sub-section (1) may, subject to the direction and control of the Commission,-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilized under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. ***Statement made by persons to the Commission.***-No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement-

1. Inserted by Act No. 43 of 2006, w.e.f. 23-11-2006.

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

16. ***Persons likely to be prejudicially affected to be heard.***-If, at any stage of the inquiry, the Commission-

(a) consider it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

CHAPTER-IV

Procedure

17. ***Inquiry into complaints.***-The Commission while inquiring into the complaints of violations of human rights may-

(i) call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it:

Provided that-

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

[1]**[18.** ***Steps during and after inquiry.***-The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority-

(i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

(ii) to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

(iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.]

19. ***Procedure with respect to armed forces.***-(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely:-

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. ***Annual and special reports of the Commission.***-(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, alongwith a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

CHAPTER-V

State Human Rights Commissions

21. ***Constitution of State Human Rights Commissions.***-(1) A State Government may constitute a body to be known as the ……(Name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.

[1][(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of-

(a) a Chairperson who has been a [2][Chief Justice or a Judge] of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.]

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and [3][shall, subject to control of the Chairperson, exercise all administrative and financial powers of the State Commission].

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule of the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

[4][(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section (1) of section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.]

[5][(7) Subject to the provisions of section 12, the Central Government may, by order, confer upon the State Commission the functions relating to human rights being discharged by the Union territories, other than the Union territory of Delhi.]

[5][(8) The functions relating to human rights in case of Union territory of Delhi shall be dealt with by the Commission.]

22. ***Appointment of Chairperson and [6][Members] of State Commission.-***

(1) The Chairperson and [6][Members] shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
2. Substituted by Act No. 19 of 2019, for the words "Chief Justice".
3. Substituted by Act No. 19 of 2019, for the words "shall exercise such powers and discharge such functions of the State Commission as it may delegate to him".
4. Inserted by Act No. 43 of 2006, w.e.f. 23-11-2006.
5. Inserted by Act No. 19 of 2019.
6. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006

obtaining the recommendation of a Committee consisting of,-

(a) the Chief Minister -Chairperson;
(b) Speaker of the Legislative Assembly -Member;
(c) Minister in-charge of the Department of Home in that State -Member;
(d) Leader of the Opposition in the Legislative Assembly -Member:

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of [1][any vacancy of any Member in the Committee referred to in sub-section (1)].

23. [1][***Resignation and Removal of Chairperson or a Member of the State Commission***].-[2][(1) The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office.

(1A) Subject to the provisions of sub-section (2), the Chairperson or any Member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with procedure prescribed in that behalf by the Supreme Court, reported that the Chairpersons or such Member, as the case may be, ought on any such ground to be removed.]

(2) Notwithstanding anything in [3][sub-section (1A)], the President may by order remove from office of the Chairperson or any [4][Member], if the Chairperson or such [5][Member], as the case may be,-

(a) is adjudged an insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office; or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands so declared by a competent Court; or
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

[6]**[24.** ***Term of office of Chairperson and Members of the State Commission.***-(1) A person appointed as Chairperson shall hold office for a term of [7][three years] from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier [8][and shall be eligible for re-appointment].

(2) A person appointed as a Member shall hold office for a term of [9][three years] from the date on which he enters upon his office and shall be eligible for re-appointment [10][* * *]:

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
2. Substituted by Act No. 43 of 2006, sec. 14, for "sub-section (1)" (w.e.f. 23-11-2006).
3. Substituted by Act No. 43 of 2006, sec. 14, for "sub-section (1)" (w.e.f. 23-11-2006).
4. Substituted by Act No. 43 of 2006, sec. 14, for "other Members" (w.e.f. 23-11-2006).
5. Substituted by Act No. 43 of 2006, sec. 14, for "other Member" (w.e.f. 23-11-2006).
6. Substituted by Act No. 43 of 2006, sec. 15, for section 24 (w.e.f. 23-11-2006).
7. Substituted by Act No. 19 of 2019, sec. 6(i) (a), for "five years".
8. Inserted by Act No. 19 of 2019, sec. 6(i) (b).
9. Substituted by Act No. 19 of 2019, sec. 6(ii) (a) for "five years".
10. The words "for another term of five years" omitted by Act No. 19 of 2019.

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.**]**

25. ***Member to act as Chairperson or to discharge his functions in certain circumstances.-***(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorize one of the Members to act as the Chairperson until the appointment of new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

[1]**[26.** ***Terms and conditions of service of Chairperson and Members of the State Commissions.-***The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.]

27. ***Officers and other staff of the State Commission.-***(1) The State Government shall make available to the Commission-

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. ***Annual and special reports of State Commission.-***(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House alongwith a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

29. ***Application of certain provisions relating to National Human Rights Commission to State Commissions.-***The provisions of Sections 9, 10, 12, 13, 14,

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.

15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to "Commission" shall be construed as references to "State Commission";

(b) in section 10, in sub-section (3), for the word "Secretary-General", the word "Secretary" shall be substituted;

(c) in Section 12, clause (f) shall be omitted;

(d) in section 17, in clause (i), the words "Central Government or any" shall be omitted.

CHAPTER-VI
Human Rights Courts

30. ***Human Rights Courts.*** **-** For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences:

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a Special Court; or

(b) a Special Court is already constituted, for such offences under any other law for the time being in force.

31. ***Special Public Prosecutor.***-For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER-VII
Finance, Accounts and Audit

32. ***Grants by the Central Government.***-(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and as such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. ***Grants by the State Government.***-(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. ***Accounts and audit.***-(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure

incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be, after it is received, before each House of Parliament.

35. ***Accounts and audit of State Commission.-***(1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and paper and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER-VIII

Miscellaneous

36. ***Matters not subject to jurisdiction of the Commission.-***(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. ***Constitution of special investigation teams.-***Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violation of human rights.

38. ***Protection of action taken in good faith.***-No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report, paper or proceedings.

39. ***Members and officers to be public servants.***-Every member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of Section 21of the Indian Penal Code (45 of 1860).

40. ***Power of Central Government to make rules.***-(1) The Central Government may, by notification, make rules to carry out the provision of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances and other terms and conditions of service of the [1][Chairperson and Members] under Section 8;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 11;

(c) any other power of a Civil Court required to be prescribed under clause (f) of sub-section (1) of Section 13;

(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of Section 34; and

(e) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

[2][**40A.** ***Power to make rules retrospectively.*** **-** The power to make rules under clause (b) of sub-section (2) of Section 40 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.]

[3][**40B.** ***Power of Commission to make regulations.***-(1) Subject to the provisions

1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006.
2. Inserted by Act No. 49 of 2000, w.e.f. 11-12-2000.
3. Inserted by Act No. 43 of 2006, w.e.f. 23-11-2006.

of this Act and the rules made thereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the procedure to be followed by the Commission under sub-section (2) of section 10;

(b) the returns and statistics to be furnished by the State Commissions;

(c) any other matter which has to be, or may be, specified by regulations.

(3) Every regulation made by the Commission under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

41. ***Power of State Government to make rules.-***(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the salaries and allowances and other terms and conditions of service of [1][the Chairperson and Members] under Section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of Section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House before that House.

42. ***Power to remove difficulties.-***(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

43. ***Repeal and Savings.-***(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

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1. Substituted by Act No. 43 of 2006, w.e.f. 23-11-2006

National Human Rights Commission
Manav Adhikar Bhawan, C-Block, GPO Complex
INA, New Delhi - 110023, India
E-mail : covdnhrc@nic.in Web : www.nhrc.nic.in

The Commissions for Protection of Child Rights Act, 2005

No. 4 of 2006

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2006—08 REGISTERED NO. DL—(N)04/0007/2006—08

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 20*th January,* 2006/*Pausa* 30, 1927 *(Saka)*

The following Act of Parliament received the assent of the President on the 20th January, 2006 and is hereby published for general information:—

THE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005

No. 4 of 2006

[20*th January,* 2006.]

An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

WHEREAS India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children;

AND WHEREAS India has also acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1992;

AND WHEREAS CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's rights enumerated in the Convention;

AND WHEREAS in order to ensure protection of rights of children one of the recent initiatives that the Government have taken for Children is the adoption of National Charter for Children, 2003;

AND WHEREAS the UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade;

AND WHEREAS it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in this regard, standards prescribed in the CRC, and all other relevant international instruments;

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Commissions for Protection of Child Rights Act, 2005.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;

(*b*) "child rights" includes the children's rights adopted in the United Nations convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992;

(*c*) "Commission" means the National Commission for Protection of Child Rights constituted under section 3;

(*d*) "Member" means a Member of the Commission or of the State Commission, as the case may be, and includes the Chairperson;

(*e*) "notification" means a notification published in the Official Gazette;

(*f*) "prescribed" means prescribed by rules made under this Act;

(*g*) "State Commission" means a State Commission for Protection of Child Rights constituted under section 17.

CHAPTER II

THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

Constitution of National Commission for Protection of Child Rights.

3. (*1*) The Central Government shall, by notification, constitute a body to be known as the National Commission for Protection of Child Rights to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(*2*) The Commission shall consist of the following Members, namely :—

(*a*) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(*b*) six Members, out of which at least two shall be women, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in, —

(*i*) education;

(*ii*) child health, care, welfare or child development;

(*iii*) juvenile justice or care of neglected or marginalized children or children with disabilities;

(*iv*) elimination of child labour or children in distress;

(*v*) child psychology or sociology; and

(*vi*) laws relating to children.

(*3*) The office of the Commission shall be at Delhi.

Appointment of Chairperson and Members.

4. The Central Government shall, by notification, appoint the Chairperson and other Members:

Provided that the Chairperson shall be appointed on the recommendation of a three member Selection Committee constituted by the Central Government under the Chairmanship of the Minister in-charge of the Ministry of Human Resource Development.

Term of office and conditions of service of Chairperson and Members.

5. (*1*) The Chairperson and every Member shall hold office as such for a term of three years from the date on which he assumes office:

Provided that no Chairperson or a Member shall hold the office for more than two terms:

Provided further that no Chairperson or any other Member shall hold office as such after he has attained—

(*a*) in the case of the Chairperson, the age of sixty-five years; and

(*b*) in the case of a Member, the age of sixty years.

(*2*) The Chairperson or a Member may, by writing under his hand addressed to the Central Government, resign his office at any time.

Salary and allowances of Chairperson and Members.

6. The salary and allowances payable to, and other terms and conditions of service of, the Chairperson and Members, shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member, as the case may be, shall be varied to his disadvantage after his appointment.

Removal from office.

7. (*1*) Subject to the provisions of sub-section (*2*), the Chairperson may be removed from his office by an order of the Central Government on the ground of proved misbehaviour or incapacity.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Central Government may by order remove from office the Chairperson or any other Member, if the Chairperson or, as the case may be, such other Member, —

(*a*) is adjudged an insolvent; or

(*b*) engages during his term of office in any paid employment outside the duties of his office; or

(*c*) refuses to act or becomes incapable of acting; or

(*d*) is of unsound mind and stands so declared by a competent court; or

(*e*) has so abused his office as to render his continuance in office detrimental to the public interest; or

(*f*) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude; or

(*g*) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.

(*3*) No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.

Vacation of office by Chairperson or Member.

8. (*1*) If the Chairperson or, as the case may be, a Member, —

(*a*) becomes subject to any of the disqualifications mentioned in section 7; or

(*b*) tenders his resignation under sub-section (*2*) of section 5,

his seat shall thereupon become vacant.

(*2*) If a casual vacancy occurs in the office of the Chairperson or a Member, whether by reason of his death, resignation or otherwise, such vacancy shall be filled within a period of ninety days by making afresh appointment in accordance with the provisions of section 4 and the person so appointed shall hold office for the remainder of the term of office for which the Chairperson, or a Member, as the case may be, in whose place he is so appointed would have held that office.

Vacancies, etc., not to invalidate proceedings of Commission.

9. No act or proceeding of the Commission shall be invalid merely by reason of—

(*a*) any vacancy in, or any defect in the constitution of, the Commission; or

(*b*) any defect in the appointment of a person as the Chairperson or a Member; or

(*c*) any irregularity in the procedure of the Commission not affecting the merits of the case.

Procedure for transaction of business.

10. (*1*) The Commission shall meet regularly at its office at such time as the Chairperson thinks fit, but three months shall not intervene between its last and the next meeting.

(*2*) All decisions at a meeting shall be taken by majority:

Provided that in the case of equality of votes, the Chairperson, or in his absence the person presiding, shall have and exercise a second or casting vote.

(*3*) If for any reason, the Chairperson, is unable to attend the meeting of the Commission, any Member chosen by the Members present from amongst themselves at the meeting, shall preside.

(*4*) The Commission shall observe such rules of procedure in the transaction of its business at a meeting, including the quorum at such meeting, as may be prescribed by the Central Government.

(*5*) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorised by Member-Secretary in this behalf.

Member-Secretary, officers and other employees of Commission.

11. (*1*) The Central Government shall, by notification, appoint an officer not below the rank of the Joint Secretary or the Additional Secretary to the Government of India as a Member-Secretary of the Commission and shall make available to the Commission such other officers and employees as may be necessary for the efficient performance of its functions.

(*2*) The Member-Secretary shall be responsible for the proper administration of the affairs of the Commission and its day-to-day management and shall exercise and discharge such other powers and perform such other duties as may be prescribed by the Central Government.

(*3*) The salary and allowances payable to, and the other terms and conditions of service of the Member-Secretary, other officers and employees, appointed for the purpose of the Commission shall be such as may be prescribed by the Central Government.

Salaries and allowances to be paid out of grants.

12. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Member-Secretary, other officers and employees referred to in section 11, shall be paid out of the grants referred to in sub-section (*1*) of section 27.

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

Functions of Commission.

13. (*1*) The Commission shall perform all or any of the following functions, namely:—

(*a*) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(*b*) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(*c*) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(*d*) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(*e*) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(*f*) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(*g*) undertake and promote research in the field of child rights;

(*h*) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;

(*i*) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(*j*) inquire into complaints and take *suo motu* notice of matters relating to,—

(*i*) deprivation and violation of child rights;

(*ii*) non-implementation of laws providing for protection and development of children;

(*iii*) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children,

or take up the issues arising out of such matters with appropriate authorities; and

(*k*) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

(*2*) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

Powers relating to inquiries.

14. (*1*) The Commission shall, while inquiring into any matter referred to in clause (*j*) of sub-section (*1*) of section 13 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) discovery and production of any document;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copy thereof from any court or office; and

(*e*) issuing commissions for the examination of witnesses or documents.

(*2*) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973. 2 of 1974.

Steps after inquiry.

15. The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely :—

(*i*) where the inquiry discloses, the Commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

(*ii*) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(*iii*) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

Annual and special reports of Commission.

16. (*1*) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(*2*) The Central Government and the State Government concerned, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any, within a period of one year from the date of receipt of such report.

(*3*) The annual report shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.

CHAPTER IV

STATE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS

Constitution of State Commission for Protection of Child Rights.

17. (*1*) A State Government may constitute a body to be known as the .....(name of the State) Commission for Protection of Child Rights to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.

(*2*) The State Commission shall consist of the following Members, namely: —

(*a*) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(*b*) six Members, out of which at least two shall be women, from the following fields, to be appointed by the State Government from amongst persons of eminence, ability, integrity, standing and experience in,—

(*i*) education;

(*ii*) child health, care, welfare or child development;

(*iii*) juvenile justice or care of neglected or marginalized children or children with disabilities;

(*iv*) elimination of child labour or children in distress;

(*v*) child psychology or sociology; and

(*vi*) laws relating to children.

(*3*) The headquarter of the State Commission shall be at such place as the State Government may, by notification, specify.

Appointment of Chairperson and other Members.

18. The State Government shall, by notification, appoint the Chairperson and other Members:

Provided that the Chairperson shall be appointed on the recommendation of a three Member Selection Committee constituted by the State Government under the Chairmanship of the Minister in-charge of the Department dealing with children.

Term of office and conditions of service of Chairperson and Members.

19. (*1*) The Chairperson and every Member shall hold office as such for a term of three years from the date on which he assumes office:

Provided that no Chairperson or a Member shall hold the office for more than two terms:

Provided further that no Chairperson or any other Member shall hold office as such after he has attained—

(*a*) in the case of Chairperson, the age of sixty-five years; and

(*b*) in the case of a Member, the age of sixty years.

(*2*) The Chairperson or a Member may, by writing under his hand addressed to the State Government, resign his office at any time.

Salary and allowances of Chairperson and Members.

20. The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member, as the case may be, shall be varied to his disadvantage after his appointment.

Secretary, officers and other employees of the State Commission.

21. (*1*) The State Government shall, by notification, appoint an officer not below the rank of the Secretary to the State Government as the Secretary of the State Commission and shall make available to the State Commission such other officers and employees as may be necessary for the efficient performance of its functions.

(*2*) The Secretary shall be responsible for the proper administration of the affairs of the State Commission and its day-to-day management and shall exercise and discharge such other powers and perform such other duties as may be prescribed by the State Government.

(*3*) The salary and allowances payable to, and the other terms and conditions of service of the Secretary, other officers and employees, appointed for the purpose of the State Commission shall be such as may be prescribed by the State Government.

Salaries and allowances to be paid out of grants.

22. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, other officers and employees referred to in section 21, shall be paid out of the grants referred to in sub-section (*1*) of section 28.

Annual and special reports of State Commission.

23. (*1*) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(*2*) The State Government shall cause all the reports referred to in sub-section (*1*) to be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(*3*) The annual report shall be prepared in such form, manner and contain such details as may be prescribed by the State Government.

Application of certain provisions relating to National Commission for Protection of Child Rights to State Commissions.

24. The provisions of sections 7, 8, 9, 10, sub-section (*1*) of section 13 and sections 14 and 15 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:—

(*a*) references to "Commission" shall be construed as references to "State Commission";

(*b*) references to "Central Government" shall be construed as references to "State Government"; and

(*c*) references to "Member-Secretary" shall be construed as references to "Secretary".

CHAPTER V

CHILDREN'S COURTS

Children's Courts.

25. For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:

Provided that nothing in this section shall apply if —

(*a*) a Court of Session is already specified as a special court; or

(*b*) a special court is already constituted,

for such offences under any other law for the time being in force.

Special Public Prosecutor.

26. For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government.

27. (*1*) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(*2*) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (*1*).

Grants by State Governments.

28. (*1*) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(*2*) The State Commission may spend such sums of money as it thinks fit for performing the functions under Chapter III of this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (*1*).

Accounts and audit of Commission.

29. (*1*) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(*3*) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(*4*) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

Accounts and audit of State Commission.

30. (*1*) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(*3*) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall, have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(*4*) The accounts of the State Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VII

MISCELLANEOUS

Protection of action taken in good faith.

31. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Commission, the State Commission, or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission, or the State Commission of any report or paper.

Chairperson, Members and other officers to be public servant.

32. Every Member of the Commission, State Commission and every officer appointed in the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Directions by Central Government.

33. (*1*) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy relating to national purposes, as may be given to it by the Central Government.

(*2*) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government thereon shall be final.

Returns or information.

34. The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

Power of Central Government to make rules.

35. (*1*) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) terms and conditions of service of the Chairperson and Members of the Commission and their salaries and allowances under section 6;

(b) the procedure to be followed by the Commission in the transaction of its business at a meeting under sub-section (*4*) of section 10;

(c) the powers and duties which may be exercised and performed by the Member-Secretary of the Commission under sub-section (*2*) of section 11;

(d) the salary and allowances and other terms and conditions of service of officers and other employees of the Commission under sub-section (*3*) of section 11; and

(e) form of the statement of accounts and other records to be prepared by the Commission under sub-section (*1*) of section 29.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Government to make rules.

36. (*1*) The State Government may, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) terms and conditions of service of the Chairperson and Members of the State Commission and their salaries and allowances under section 20;

(b) the procedure to be followed by the State Commission in the transaction of its business at a meeting under sub-section (*4*) of section 10 read with section 24;

(c) the powers and duties which may be exercised and performed by the Secretary of the State Commission under sub-section (*2*) of section 21;

(d) the salary and allowances and other terms and conditions of service of officers and other employees of the State Commission under sub-section (*3*) of section 21; and

(e) form of the statement of accounts and other records to be prepared by the State Commission under sub-section (*1*) of section 30.

(*3*) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

Power to remove difficulties.

37. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

T.K. VISWANATHAN,
Secy. to the Govt. of India.

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The Tamil Nadu State Commission for Women Act, 2008

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Part IV –Section 2

Tamil Nadu Acts and Ordinances

ACT No.31 OF 2008 Tamil Nadu State Commission for Women Act,

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 26 th May 2008 and is hereby published for general information: -

ACT No.31 OF 2008

An Act to constitute a Commission for Women in the State of Tamil Nadu and to provide for matters connected therewith or incidental thereto.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-ninth Year of the Republic of India as follows: -

CHAPTER-I

PRELIMINARY.

short title, extent and commenc e-ment

1. (1) This Act may be called the Tamil Nadu State Commission for Women Act, 2008

(2) It extends to the whole of the State of Tamil Nadu

(3) It shall come into force on such date as the Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires:- Definitions

(a) “Commission” means the Tamil Nadu State Commission for Women constituted under section 3;

(b) “Government” means the State Government;

(c) “member” means a member of the Commission and includes the Chairperson and the Member-Secretary;

(d) “person” includes a firm, company, corporation or any public undertaking, association of persons, or the Government and its agencies including agencies receiving aid from the Government;

(e) “prescribed” means prescribed by rules;

(f) “Women” denotes a female human being of any age.

CHAPTER-II

THE TAMIL NADU STATE COMMISSION FOR WOMEN

3. (1) The Government shall, by notification, constitute a body to be known as the Tamil Nadu State Commission for Women to exercise the powers conferred on, and to perform the functions assigned to it, under this Act. Constitution of Commission.

(2) The Commission shall consist of—

(a) a Chairperson, who shall be an eminent woman committed to the cause of women to be nominated by the Government.

(b) five members to be nominated by the Government from amongst persons of ability and integrity, who have served the cause of women or have had sufficient knowledge and experience of law and legislation, administration of matters concerning advancement of women or voluntary organization for women, or who have sufficient experience in working in the field of economic development. health or education of women:

Provided that not less than three of the nominated members shall be women:

Provided further that at least one member shall be from amongst persons belonging to the Scheduled Castes and one member shall be

from among persons belonging to the Scheduled Tribes;

(c) two members to be nominated by the Government form among the members of the Tamil Nadu Legislative Assembly:

Provided that a member of the Tamil Nadu Legislative Assembly shall cease to be a member of the Commission from the date on which he ceases to be member of the Tamil Nadu Legislative Assembly;

(d) The Secretary to Government in -charge of Social Welfare and Nutritious Meal Programme Department to be an Ex-Officio member.

(e) a Member -Secretary to be appointed by the Government, who shall be an officer of the All India Service, not lower in rank than that of a Joint secretary to Government.

Term of Office and conditions of service of Chairperson and Member

4. (1) The Chairperson and every member shall hold office for such period, no exceeding three years, as may be specified by the Government in this behalf.

(2) The honorarium and allowances payable to , and the other terms and conditions of service of, the Chairperson and members shall be such as may be prescribed.

(3) The Chairperson or a member may, at any time, by writing and addresses to the Government resign from the office of Chairperson or as the case may be, from the office of the member.

(4) Notwithstanding anything contained in sub -section (1), the Government shall remove a person from the office of Chairperson or any 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 Government, involves moral turpitude;

(c) becomes of unsound mind and stands so declared by a competent court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission, or

(f) in the opinion of the Government, has so abused the position of Chairperson or member, as the case may be, as to render that person's continuance in office is detrimental to the public interest;

Provided that no person shall be removed from office under this sub-section until that person has been given a reasonable opportunity of being heard in the matter.

(5) A vacancy caused under sub -section (3) or (4) or otherwise shall be filled by fresh nomination by the Government and the person so nominated shall hold office for the remainder of the term of office of the person in whose vacancy such person has been nominated would have office, if the vacancy had not occurred;

Provided that if a vacancy of a member, other than that of the Chairperson, occurs within six months preceding the date on which the term of office of the Member expires, such vacancy shall not be filled in.

Explanation.- For the purpose of this section, "member" does not include "Member-Secretary" and an Ex-Officio member.

Vacancies, etc., not to invalidate proceedings of the Officers and other employees of the Commission

5. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy in, or defect in the constitution of the Commission, or any defect in the nomination of a person acting as the Chairperson or a member or any irregularity in the procedure of the Commission, including in issuing of notice for holding of a meeting, not affecting merits of the matter.

6. (1) The Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to and other terms and conditions of service of , the officers and other employees of the Commission shall be such as may be prescribed.

(3) The officers and employees referred to in sub -section (1) shall be under the administrative control of the Chairperson.

CHAPTER –III

FUNCTIONS OF THE COMMISSION

Central Act 20 of 1990

Functions of the Commission

7. (1) Subject to the performance of the functions of the National Commission for Women under section 10 of the National Commission for Women Act, 1990, the Commission shall perform all or any of the following functions, namely:-

(a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;

(b) present to the Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(c) make it such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Government;

(d) review, from time to time, the existing provisions of laws affecting women and recommend amendments thereto so as to provide for remedial legislative measures to meet any lacuna, inadequacies or shortcomings in such legislations;

(e) take up the cases of violation of the provisions of the Constitution and other laws relating to women with the concerned authorities;

(f) look into complaints and take suo-motu notice of matters relating to-

(i) non-implementation of any laws to provide protection of women's right and also to achieve the objective of equality and development;

(ii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with concerned authorities;

(g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic service s, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity.

(i) participate and advise on the planning process of socio -economic development of women;

(j) evaluate the progress of the development of women;

(k) inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and wherever necessary take up the matter with the concerned authorities for remedial action;

(l) implicate and fund litigation involving issues affecting women;

(m) make reports to the Government on any matter pertaining to women and in particular the difficulties under which women toil, from time to time;

(n) any other matter which may be referred to it by the Government.

(2) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on 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.

(3) If the Commission, after investigating any matter, is satisfied that there is a prima-facie case, the Commission may refer the matter to the authority concerned, including the police, and such authority shall take appropriate action as per law.

(4) The Commission may, for the purpose of making recommendations under sub-section (1), consider or adopt any suggestion or recommendation made by any Committee or any other body or organisation, which was formed by the Government before the date of commencement of this Act.

(5) The Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before the Legislative Assembly along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

Committees of the Commission

8. (1) The Commission may appoint such Committees as may be necessary for dealing with such special issues as may be taken up by the Commission, from time to time.

(2) The Commission shall have the power to co-opt, as

members of any Committee appointed under sub -section (1) such number of persons, who are not members of the Commission, as it may think fit and the persons so co -opted shall have the right to attend the meetings of the Committee and take part in its proceedings but shall not have the right to vote.

(3) The persons so co -opted shall be entitled to receive such allowances for attending the meetings of the committee as may be prescribed.

Procedure to be regulated by Commission

9. (1) The Commission or a committee thereof shall meet as and when necessary at least once in three months and shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure and the procedure of the committee thereof.

(3) All orders and decisions of the Commission shall be authenticated by the Member -Secretary or any other officer of the Commission duly authorised by the Member-Secretary in this behalf.

Power of the commission to utilise the service of certain officers and investigating agencies for conducting investiga - tion Grants by the Govern - ment.

10. (1) The Commission may, for the purpose of conducting investigation under this Act, utilize the services of. -

a) any other officer or investigating agency of the State Government; or

b) any other person

(2) Any officer or agency or person referred to in sub -section (1) shall investigate into the matter as directed by the Commission and submit a report thereon to the Commission within such period as may be specified by the Commission.

CHAPTER-IV

FINANCE, ACCOUNTS AND AUDIT.

Grants by the Government

11. (1) The Government shall, pay to the Commission by way of grants such sums of money as the Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act.

(3) The honorarium and allowances payable to the Chairperson and members and the administrative expenses, including salaries, allowances and pensions payable to the Member -Secretary and to the officers and other employees referred to in section 6 and allowances to persons referred to in sub-section (3) of section 8, shall be paid out of the grants referred to in sub- section(1)

Annual accounts and audit.

12. (1) The accounts of the Commission shall be maintained in such manner and in such form as may be prescribed. The Commission shall prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited annually by such auditor as the Government may appoint in this behalf.

(3) The auditor appointed under sub -section (2) shall, for purposes of audit have such rights, privileges and authority as may be prescribed.

(4) The Member -Secretary shall cause the audit report to be printed and forward a printed copy thereof, to each member and shall place such report before the Commission for consideration at its next meeting.

(5) The Commission shall take appropriate action forthwith to remedy any defect or irregularity that may be pointed out in the audit report.

(6) The accounts of the Commission as certified by the auditor together with the audit report along with the remarks of the Commission thereon shall be forwarded to the Government within such time as may be prescribed.

(7) The Government may, by order in writing, direct the Commission to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects. if any, disclosed in the audit report, and the Commission shall comply with such direction.

Annual report.

13. The Commission shall prepare in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy therof to the Government.

Annual report and audit report to be laid before the Legislative assembly

14. The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein in so far as they relate to the Government and the audit report to be laid as soon as may be after the reports are received before the Legislative Assembly.

CHAPTER-V

MISCELLANEOUS

Central Act XLV of 1860

Chairperson, members and staff of the Commission to be public servants.

15. The Chairperson, members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or order or direction made or issued under this Act, to the public servants within the meaning of section 21 of the Indian Penal Code.

Statements made by persons to Commissions

16. No statement made by a person in the course of giving evidence before the Commission or any officer or agency or the person referred to in sub -section (1) of section 10, shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement;

Provided that the statement—

(a) is made in reply to a question which is required by the Commission or such officer or agency or such person to answer. or

(b) is relevant to the subject matter under investigation.

Application of other laws not barred.

17. Save as otherwise provided, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Protection of act done in good faith.

18. No suit, persecution or other legal proceeding shall lie against any member of the Commission or any officer or other employee of the Commission or any person acting under the direction either of the Government or of the Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule, order or direction made or issued thereunder.

power to remove difficulties

19. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order, published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty;

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

power to make rules

20. (1) The Government may make rules for carrying out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the honorarium and allowances payable to, and other terms and conditions of service of the Chairperson and members under sub-section (2) of section 4 and the salaries and allowances of officers and other employees under sub-section (2) of section 6;

(b) the allowances for attending the meetings of the committee by the co-opted persons under sub-section (3) of section 8;

(c) the form and the manner in which the accounts, and the form in which the annual statement of accounts, shall be prepared under sub-section (1) of section 12;

(d) the form in which and the time at which the annual report shall be prepared under section 13;

(e) any other matter which is required to be. or may be, prescribed under this Act.

(3) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on particular day, shall come into force on the date on which they are published.

(4) Every rule made or notification issued under this Act and every order made under section 19 shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly and

if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly makes any modification in any such rule, notification, or order or the Legislative Assembly decides that the rule, notification, or order should not be made or issued, the rule, notification, or order shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification, or order.

(By order of the Governor)

The Tamil Nadu State Minorities Commission Act, 2010

Act 21 of 2010

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 26th May 2010 and is hereby published for general information:—

ACT No. 21 OF 2010.

An Act to constitute a State Commission for Minorities and to provide for matters connected therewith or incidental thereto.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-first Year of the Republic of India as follows:—

CHAPTER-I.

PRELIMINARY.

Short title, extent and commence-ment.

1. (1) This Act may be called the Tamil Nadu State Minorities Commission Act, 2010.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "Commission" means the Tamil Nadu State Minorities Commission constituted under section 3;

(*b*) "Government" means the State Government;

(*c*) "member" means a member of the Commission and includes the Chairperson and the Member-Secretary;

(*d*) "minorities" mean the persons belonging to minority communities residing in the State of Tamil Nadu whom the Government have recognized as minorities;

(*e*) "prescribed" means prescribed by rules.

CHAPTER-II.

TAMIL NADU STATE MINORITIES COMMISSION.

Constitution of the Commission.

3. (1) The Government shall, by notification, constitute a body to be known as the Tamil Nadu State Minorities Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of,—

(*a*) a Chairperson and six other members to be nominated by the Government, from amongst persons of eminence, ability and integrity:

Provided that the members including the Chairperson shall be from amongst the minority communities; and

(*b*) the Commissioner of Minorities Welfare – Member-Secretary.

(3) The head quarters of the Commission shall be at Chennai and the Government may establish one or more offices of the Commission at any other place in the State.

Term of office and conditions of service of the Chairperson and members.

4. (1) The Chairperson and every member of the Commission shall hold office for such period, not exceeding three years, as may be specified by the Government in this behalf.

(2) The Chairperson or a member may, at any time, by writing and addressed to the Government, resign from the office of Chairperson or member, as the case may be, but shall continue in office until his resignation is accepted.

(3) The honorarium and allowances payable to, and the other terms and conditions of service of, the Chairperson and members shall be such as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1), the Government shall remove a person from the office of Chairperson or any 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 Government, involves moral turpitude;

(*c*) becomes of unsound mind and stands so declared by a competent court;

(*d*) refuses to act or becomes incapable of acting;

(*e*) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission;

(*f*) in the opinion of the Government, has so abused the position of Chairperson or member, as the case may be, as to render that person's continuance in office detrimental to the public interest:

Provided that no member shall be removed from office under this sub-section until that member has been given a reasonable opportunity of being heard in the matter.

(5) A vacancy caused under sub-section (2) or sub-section (4) or otherwise shall be filled by fresh nomination by the Government and the person so nominated shall hold office for the remainder of the term of office of the person in whose vacancy such person has been nominated would have held office, if the vacancy had not occurred:

Provided that if a vacancy of a member, other than that of the Chairperson, occurs within six months preceding the date on which the term of office of the member expires, such vacancy shall not be filled in.

Explanation.— For the purpose of this section, "member" does not include "Member-Secretary".

Procedure to be regulated by the Commission.

5. (1) The Commission shall meet as and when necessary atleast once in a month and shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other Officer of the Commission duly authorised by the Member-Secretary in this behalf.

Vacancies, etc. not to invalidate proceedings of the Commission.

6. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Commission, or any defect in the nomination of a person acting as the Chairperson or a member or any irregularity in the procedure of the Commission, including in issuing of notice for holding of a meeting, not affecting merits of the matter.

Officers and other employees of the Commission.

7. (1) The Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission shall be such as may be prescribed.

(3) The officers and employees referred to in sub-section (1) shall be under the administrative control of the Chairperson.

CHAPTER-III.

FUNCTIONS OF THE COMMISSION.

Functions of the Commission.

8. (1) Subject to the performance of the functions of the National Commission for Minorities under section 9 of the National Commission for Minorities Act, 1992, the functions of the Commission shall be as follows:— Central Act 19 of 1992.

(*a*) to examine the working of various safeguards provided in the Constitution and in the laws made by the State Legislature for the protection of minorities;

(*b*) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards;

(*c*) to monitor the working of the safeguards provided in the Constitution, laws enacted by the State Legislature and policies and schemes of the Government for minorities;

(*d*) to conduct studies, research and analysis on the questions of avoidance of discriminations against minorities;

(*e*) to make a factual assessment of the representation on minorities in the services of the Government undertakings, Government and quasi-Government bodies and in case the representation is inadequate, to suggest ways and means to achieve the desired level;

(*f*) to make recommendations for ensuring, maintaining and promoting communal harmony in the State;

(*g*) to make periodical reports at prescribed intervals to the Government;

(*h*) to study any other matter which in the opinion of the Commission is important from the point of view of the welfare and development of minorities and to make appropriate recommendation;

(*i*) to consider the grievances of the minorities and to suggest appropriate solution, from time to time;

(*j*) to look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matter with the appropriate authorities; and

(*k*) any other matter which may be referred to it by the Government.

(2) The Commission shall, while performing any of these functions, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:—

Central Act V of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of any document;

(*c*) receiving evidence on 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.

(3) The Government shall cause the recommendations of the Commission to be laid before the Legislative Assembly along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of any of such recommendations.

CHAPTER–IV.

FINANCE, ACCOUNTS AND AUDIT.

Grants by the Government.

9. (1) The Government shall pay to the Commission by way of grants such sums of money as the Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act.

(3) The honorarium and allowances payable to the Chairperson and members and the administrative expenses, including salaries, allowances and pensions payable to the Member-Secretary and to the officers and other employees referred to in section 7 shall be paid out of the grants referred to in sub-section (1).

Annual accounts and audit.

10. (1) The accounts of the Commission shall be maintained in such manner and in such form as may be prescribed. The Commission shall prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited annually by such auditor as the Government may appoint in this behalf.

(3) The auditor appointed under sub-section (2) shall, for the purposes of audit, have such rights, privileges and authority as may be prescribed.

(4) The Member-Secretary shall cause the audit report to be printed and forward a printed copy thereof, to each member and shall place such report before the Commission for consideration at its next meeting.

(5) The Commission shall take appropriate action forthwith to remedy any defect or irregularity that may be pointed out in the audit report.

(6) The accounts of the Commission as certified by the auditor together with the audit report along with the remarks of the Commission thereon shall be forwarded to the Government within such time as may be prescribed.

(7) The Government may, by order in writing, direct the Commission to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed in the audit report, and the Commission shall comply with such direction.

Annual report.

11. The Commission shall prepare in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Government.

Annual report and audit report to be laid before the Legislative Assembly.

12. The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein in so far as they relate to the Government and the audit report to be laid as soon as may be after the reports are received, before the Legislative Assembly.

CHAPTER – V.

MISCELLANEOUS.

Chairperson, members and staff of the Commission to be public servants.

13. The Chairperson, members, officers and other employees of the Commission, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or order or direction made or issued under this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Central Act XLV of 1860.

Protection of action taken in good faith.

14. No suit, prosecution or other legal proceeding shall lie against any member of the Commission or any officer or other employee of the Commission or any person acting under the direction either of the Government or of the Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule, order or direction made or issued thereunder.

Power to remove difficulties.

15. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order, published in the *Tamil Nadu Government Gazette*, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

Power to make rules.

16. (1) The Government may make rules for carrying out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the honorarium and allowances payable to, and other terms and conditions of service of, the Chairperson and members under sub-section (3) of section 4 and the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees under sub-section (2) of section 7;

(*b*) the form and the manner in which the accounts, and the form in which the annual statement of accounts, shall be prepared under sub-section (1) of section 10;

(*c*) the form in which, and the time at which the annual report shall be prepared under section 11;

(*d*) any other matter which is required to be, or may be, prescribed under this Act.

(3) (*a*) All rules made under this Act shall be published in the *Tamil Nadu Government Gazette* and, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.

(*b*) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.

(4) Every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly makes any modification in any such rule, notification, or order, or the Legislative Assembly decides that the rule, notification, or order should not be made or issued, the rule, notification, or order shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification or order.

(By order of the Governor)

S. DHEENADHAYALAN,
Secretary to Government,
Law Department.

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 30th July 2019 and is hereby published for general information:—

ACT No. 30 OF 2019.

An Act to amend the Tamil Nadu State Minorities Commission Act, 2010.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventieth Year of the Republic of India as follows:-

Short title and commencement.

1. (1) This Act may be called the Tamil Nadu State Minorities Commission (Amendment) Act, 2019.

(2) It shall be deemed to have come into force on the 8th day of March 2019.

Amendment of section 3.

Tamil Nadu Act 21 of 2010.

2. In section 3 of the Tamil Nadu State Minorities Commission Act, 2010, in sub-section (2), in clause (a), for the expression "a Chairperson and six other members", the expression "a Chairperson and nine other members" shall be substituted.

Validation.

3. Any meeting of the Tamil Nadu State Minorities Commission held during the period commencing on the 8th day of March 2019 and ending with the date of publication of this Act in the *Tamil Nadu Government Gazette*, shall for all purposes be deemed to be and to have always been validly held in accordance with law as if the principal Act, as amended by this Act, had been in force at all material times and any act done or decision taken or proceeding conducted in such meeting shall not be liable to be questioned in any court of law.

(By order of the Governor)

C. GOPI RAVIKUMAR,
Secretary to Government (FAC),
Law Department.

PRINTED AND PUBLISHED BY THE DIRECTOR OF STATIONERY AND PRINTING, CHENNAI
ON BEHALF OF THE GOVERNMENT OF TAMIL NADU

The Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021

Act No. 17 of 2021

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 22nd September 2021 and is hereby published for general information:—

ACT No. 17 OF 2021.

An Act to constitute a Commission for the Scheduled Castes and Scheduled Tribes in the State of Tamil Nadu and to provide for matters connected therewith or incidental thereto.

WHEREAS, it is expedient to constitute a Commission for the Scheduled Castes and Scheduled Tribes and to provide for matters connected therewith or incidental thereto;

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Seventy-second Year of the Republic of India as follows:—

CHAPTER – I.

PRELIMINARY.

1. (1) This Act may be called the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes Act, 2021. Short title, extent and commencement.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) "Chairperson" means the Chairperson of the Commission nominated under section 3;

(b) "civil rights" means any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution of India;

(c) "Commission" means the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes constituted under section 3;

(d) "Government" means the State Government;

(e) "Member" means a Member of the Commission and includes the Chairperson, the Vice-Chairperson and the Member-Secretary;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "Scheduled Castes and Scheduled Tribes" shall have the meanings, respectively, assigned to them in clauses (24) and (25) of Article 366 of the Constitution of India;

(h) "State" means the State of Tamil Nadu.

CHAPTER – II.

TAMIL NADU STATE COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES.

3. (1) The Government shall, by notification, constitute a body to be known as the Tamil Nadu State Commission for the Scheduled Castes and Scheduled Tribes to exercise the powers conferred on and to perform the functions assigned to it under this Act. Constitution of Commission.

(2) The Commission shall consist of,—

(i) the following Members to be nominated by the Government, namely:—

(a) the Chairperson, who shall be a retired Judge of the High Court belonging to any of the Scheduled Castes or Scheduled Tribes and has special knowledge in matters relating to the Scheduled Castes and Scheduled Tribes;

(b) the Vice-Chairperson, who shall be a prominent person belonging to any of the Scheduled Castes or Scheduled Tribes, who has worked for the welfare of the Scheduled Castes and Scheduled Tribes;

(c) five Members, of which three Members shall belong to any of the Scheduled Castes, one shall belong to any of the Scheduled Tribes and one shall be a prominent person having special knowledge in matters relating to Scheduled Castes and Scheduled Tribes:

Provided that one of the Members shall be a woman; and

(ii) a Member–Secretary, to be appointed by the Government from amongst the officers of the Indian Administrative Service, not below the rank of Additional Secretary to Government.

Term of office and conditions of service of Chairperson, Vice-Chairperson and Members.

4. (1) Subject to the pleasure of the Government, the Chairperson, the Vice-Chairperson and every Member of the Commission shall hold office for such period, not exceeding three years and shall be eligible for re-nomination for a second term:

Provided that the Chairperson shall hold office as such till the date on which he attains the age of seventy years and the Vice-Chairperson and the other Members shall hold office as such till the date on which they attain the age of sixty-five years:

Provided further that if the Chairperson is by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until a Chairperson has been nominated under section 3 and entered on the duties thereof or until the Chairperson has assumed his duties, as the case may be, be performed by the Vice-Chairperson, or such other Member, as directed by the Government:

Provided also that the successor so nominated shall hold office only for the remainder of the term of the Member in whose place he has been nominated.

(2) The Chairperson, the Vice-Chairperson or a Member may, at any time, by writing under his hand addressed to the Government, resign from the office of the Chairperson, the Vice-Chairperson or Member, as the case may be, but shall continue in office until his resignation is accepted by the Government.

(3) Notwithstanding anything contained in sub-section (1), the Government shall remove a person from office of the Chairperson, the Vice-Chairperson or any Member, if that person,—

(a) becomes an undischarged insolvent; or

(b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or

(c) becomes of unsound mind and stands so declared by a competent court; or

(d) refuses to act or becomes incapable of acting; or

(e) without obtaining leave of absence from the Commission, absent for three consecutive meetings of the Commission; or

(f) has, in the opinion of the Government, so abused the position of the Chairperson, the Vice-Chairperson or Member, as the case may be, as to render that person's continuance in office detrimental to the interest of the Scheduled Castes and Scheduled Tribes:

Provided that no Member shall be removed from his office until that Member has been given a reasonable opportunity of being heard.

(4) The honorarium and allowances payable to, and the other terms and conditions of service of, the Chairperson, the Vice-Chairperson and Members shall be such as may be prescribed.

Procedure to be regulated by Commission.

5. (1) The Commission shall meet as and when necessary at least once in three months, and shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other Officer of the Commission duly authorised by the Member-Secretary in this behalf.

Vacancies, etc., not to invalidate proceedings of Commission.

6. No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Commission, or any defect in the nomination of a person acting as the Chairperson or the Vice-Chairperson or a Member or any irregularity in the procedure of the Commission, including in issuing of notice for holding of a meeting, not affecting the merits of the matter.

Officers and other employees of Commission.

7. (1) The Government shall provide the Commission with such number of officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Commission shall be such as may be prescribed.

(3) The officers and employees referred to in sub-section (1) shall be under the administrative control of the Chairperson.

CHAPTER – III.

FUNCTIONS OF THE COMMISSION.

Functions of Commission.

8. The functions of the Commission shall be as follows,—

(a) inquire, suo moto or on a petition presented to it by a victim or by any person on his behalf, into complaint of,—

Central Act 22 of 1955.
Central Act 33 of 1989.

(i) violation of any rights provided in the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the rules made thereunder or abetment thereof;

(ii) negligence in the prevention of such violation, by a public servant;

(b) inquire and recommend to the Government to initiate disciplinary action in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in the discharge of his duties in regard to the protection of the interests of the Scheduled Castes and Scheduled Tribes;

(c) evaluate the working of various safeguards and civil rights accruing to a person as stipulated, in the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 or in any other law, regulation or order passed by the Union and the State Governments and to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force; Central Act 22 of 1955. Central Act 33 of 1989.

(d) make recommendations with a view to ensure effective implementation and enforcement of all safeguards under the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 or any other law for the time being in force; Central Act 22 of 1955. Central Act 33 of 1989.

(e) undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the Scheduled Castes and Scheduled Tribes;

(f) inquire into specific complaints of deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(g) spread literacy among various sections of the society regarding the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means; Central Act 22 of 1955. Central Act 33 of 1989.

(h) conduct studies, research and analysis on the question of avoidance of discrimination against the Scheduled Castes and Scheduled Tribes;

(i) suggest appropriate legal and welfare measures in respect of the Scheduled Castes and Scheduled Tribes to be undertaken by the Government;

(j) monitor the working of laws in force concerning the Scheduled Castes and Scheduled Tribes Women with a view to identify the areas where the enforcement of laws is not effective or has not been streamlined and recommend executive or legislative measures to be undertaken;

(k) encourage the efforts of non-governmental organizations and institutions working, in the field of human rights or for the upliftment and betterment of the Scheduled Castes and Scheduled Tribes;

(l) send periodical reports in such manner and at such intervals, as may be prescribed, to the Government; and

(m) exercise such other functions as may be conferred or enjoined upon it by this Act or the rules made thereunder:

Provided that if the National Commission for Scheduled Castes established under Article 338 of the Constitution or the National Commission for Scheduled Tribes established under Article 338-A of the Constitution is seized of any matter, the Commission shall cease to have jurisdiction on such matter and in case of conflicting recommendations, the recommendation of the National Commission for Scheduled Castes or the National Commission of Scheduled Tribes, as the case may be, shall prevail over the recommendation of the Commission.

Powers of Commission.

9. The Commission shall, while discharging any of the functions under section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely:—

Central Act V of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on 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.

Government to consult Commission.

10. The Government may consult the Commission on major policy matters affecting the Scheduled Castes and Scheduled Tribes.

CHAPTER – IV.

FINANCE, ACCOUNTS AND AUDIT.

Grants by the Government.

11. (1) The Government shall, after due appropriation made by the State Legislature by law in this behalf, pay to the Commission by way of grants such sums of money as the Government may think fit, for being utilised for the purposes of this Act.

(2) The Commission may spend such sums out of the grants as it thinks fit for discharging its functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

(3) The honorarium and allowances payable to the Chairperson, the Vice-Chairperson, Members and the administrative expenses, including salaries and allowances payable to the Member-Secretary, officers and other employees of the Commission, shall be paid out of the grants referred to in sub-section (1).

Accounts and audit.

12. (1) The accounts of the Commission shall be maintained in such manner and in such form as may be prescribed. The Commission shall prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited annually by such auditor as the Government may appoint in this behalf.

(3) The auditor appointed under sub-section (2) shall, for the purposes of audit, have such rights, privileges and authority as may be prescribed.

(4) The Member-Secretary shall cause the audit report to be printed and forward a printed copy thereof, to each Member and shall place such report before the Commission for consideration at its next meeting.

(5) The Commission shall take appropriate action forthwith to remedy any defect or irregularity that may be pointed out in the audit report.

(6) The accounts of the Commission as certified by the auditor together with the audit report along with the remarks of the Commission thereon shall be forwarded to the Government and shall cause to be published in such manner, as may be prescribed.

(7) The Government may, by order in writing, direct the Commission to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed in the audit report, and the Commission shall comply with such direction.

Annual report.

13. The Commission shall prepare in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Government.

Annual report and audit report to be laid before the Legislative Assembly.

14. The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein in so far as they relate to the Government and the audit report to be laid, as soon as may be, after the reports are received, before the Legislative Assembly.

CHAPTER – V.

MISCELLANEOUS.

Chairperson, Vice-Chairperson, Members, Officers and employees of Commission to be public servants.

15. The Chairperson, the Vice-Chairperson, Members, officers and employees of the Commission, when acting or purporting to act in pursuance of any of the provisions of this Act, or any rule or order or direction made or issued under this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Central Act XLV of 1860.

Protection of action taken in good faith.

16. No suit, prosecution or other legal proceeding shall lie against any Member of the Commission or any officer or other employee of the Commission or any person acting under the direction either of the Government or of the Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule, order or direction made or issued thereunder.

Power to make rules.

17. (1) The Government may make rules for carrying out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the honorarium and allowances payable to, and other terms and conditions of service of, the Chairperson, the Vice-Chairperson and Members under sub-section (4) of section 4 and the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees under sub-section (2) of section 7;

(b) the form and the manner in which the accounts and the form in which the annual statement of accounts, shall be prepared under sub-section (1) of section 12;

(c) the form in which, and the time at which the annual report shall be prepared under section 13;

(d) in such manner and the intervals at which periodical reports are to be sent by the Commission to the Government;

(e) any other matter which is required to be, or may be, prescribed under this Act.

(3) (a) All rules made under this Act shall be published in the *Tamil Nadu Government Gazette* and, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.

(b) All rules, notifications or orders issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the date on which they are so published.

(4) Every rule made or notification or order issued under this Act shall, as soon as possible, after it is made or issued, be placed on the table of the Legislative Assembly and if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly makes any modification in any such rule, notification, or order, or the Legislative Assembly decides that the rule, notification, or order should not be made or issued, the rule, notification, or order shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification or order.

Statements made by persons to Commission.

18. No statement made by a person in the course of giving evidence before the Commission or any officer or agency or the person referred to in section 9, shall subject him to, or be used against him, in any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(a) is made in reply to a question which is required by the Commission or such officer or agency or such person to answer, or

(b) is relevant to the subject matter under investigation.

Application of other laws not barred.

19. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Power to remove difficulties.

20. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order, published in the T*amil Nadu Government Gazette*, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(By order of the Governor)

C. GOPI RAVIKUMAR,
Secretary to Government (Legislation),
Law Department.

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THE RIGHT TO INFORMATION ACT, 2005

ARRANGEMENT OF SECTIONS

Last Updated: 17-5-2021

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MISCELLANEOUS

THE RIGHT TO INFORMATION ACT, 2005

ACT NO. 22 OF 2005

[*15th June*, 2005.]

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments are their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now, THEREFORE, it is expendient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Right to Information Act, 2005.

(*2*) It extends to the whole of India[1]***.

(*3*) The provisions of sub-section (*1*) of section 4, sub-sections (*1*) and (*2*) of section 5, sections 12, 13, 15,16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—

(*i*) by the Central Government or the Union territory administration, the Central Government;

(*ii*) by the State Government, the State Government;

(*b*) "Central Information Commission" means the Central Information Commission constituted under sub-section (*1*) of section 12;

(*c*) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (*1*) and includes a Central Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(*d*) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (*3*) of section 12;

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1. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

(*e*) "competent authority" means—

(*i*) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(*ii*) the Chief Justice of India in the case of the Supreme Court;

(*iii*) the Chief Justice of the High Court in the case of a High Court;

(*iv*) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(*v*) the administrator appointed under article 239 of the Constitution;

(*f*) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

(*g*) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

(*h*) "public authority" means any authority or body or institution of self- government established or constituted—

(*a*) by or under the Constitution;

(*b*) by any other law made by Parliament;

(*c*) by any other law made by State Legislature;

(*d*) by notification issued or order made by the appropriate Government,

and includes any—

(*i*) body owned, controlled or substantially financed;

(*ii*) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

(*i*) "record" includes—

(*a*) any document, manuscript and file;

(*b*) any microfilm, microfiche and facsimile copy of a document;

(*c*) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(*d*) any other material produced by a computer or any other device;

(*j*) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(*i*) inspection of work, documents, records;

(*ii*) taking notes, extracts or certified copies of documents or records;

(*iii*) taking certified samples of material;

(*iv*) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(*k*) "State Information Commission" means the State Information Commission constituted under sub-section (*1*) of section 15;

(*l*) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (*3*) of section 15;

(*m*) "State Public Information Officer" means the State Public Information Officer designated under sub-section (*1*) and includes a State Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(*n*) "third party" means a person other than the citizen making a request for information and includes a public authority.

CHAPTER II

RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

3. Right to information.—Subject to the provisions of this Act, all citizens shall have the right to information.

4. Obligations of public authorities.—(*1*) Every public authority shall—

(*a*) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(*b*) publish within one hundred and twenty days from the enactment of this Act,—

(*i*) the particulars of its organisation, functions and duties;

(*ii*) the powers and duties of its officers and employees;

(*iii*) the procedure followed in the decision making process, including channels of supervision and accountability;

(*iv*) the norms set by it for the discharge of its functions;

(*v*) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(*vi*) a statement of the categories of documents that are held by it or under its control;

(*vii*) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(*viii*) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(*ix*) a directory of its officers and employees;

(*x*) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(*xi*) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(*xii*) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(*xiii*) particulars of recipients of concessions, permits or authorisations granted by it;

(*xiv*) details in respect of the information, available to or held by it, reduced in an electronic form;

(*xv*) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(*xvi*) the names, designations and other particulars of the Public Information Officers;

(*xvii*) such other information as may be prescribed;

and thereafter update these publications every year;

(*c*) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(*d*) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(*2*) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (*b*) of sub-section (*1*) to provide as much information *suomotu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(*3*) For the purposes of sub-section (*1*), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(*4*) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (*3*) and (*4*), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

5. Designation of Public Information Officers.—(*1*) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(*2*) Without prejudice to the provisions of sub-section (*1*), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (*1*) of section 7.

(*3*) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(*4*) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(*5*) Any officer, whose assistance has been sought under sub-section (*4*), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

6. Request for obtaining information.—(*1*) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(*a*) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(*b*) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(*2*) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(*3*) Where an application is made to a public authority requesting for an information,—

(*i*) which is held by another public authority; or

(*ii*) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. Disposal of request.—(*1*) Subject to the proviso to sub-section (*2*) of section 5 or the proviso to sub-section (*3*) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(*2*) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(*3*) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—

(*a*) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (*1*), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(*b*) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(*4*) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(*5*) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (*6*), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (*1*) of section 6 and sub-sections (*1*) and (*5*) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(*6*) Notwithstanding anything contained in sub-section (*5*), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (*1*).

(*7*) Before taking any decision under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(*8*) Where a request has been rejected under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—

(*i*) the reasons for such rejection;

(*ii*) the period within which an appeal against such rejection may be preferred; and

(*iii*) the particulars of the appellate authority.

(*9*)An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

8. Exemption from disclosure of information.—(*1*) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(*a*) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(*b*) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(*c*) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(*d*) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(*e*) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(*f*) information received in confidence from foreign Government;

(*g*) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(*h*) information which would impede the process of investigation or apprehension or prosecution of offenders;

(*i*) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(*j*) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(*2*) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (*1*), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(*3*) Subject to the provisions of clauses (*a*), (*c*) and (*i*) of sub-section (*1*), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9. Grounds for rejection to access in certain cases.—Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

10. Severability.—(*1*) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

(*2*) Where access is granted to a part of the record under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—

(*a*) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(*b*) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(*c*) the name and designation of the person giving the decision;

(*d*) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(*e*) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

11. Third party information.—(*1*) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a

request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(*2*) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (*1*) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(*3*) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (*2*), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(*4*) A notice given under sub-section (*3*) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

CHAPTER III

THE CENTRAL INFORMATION COMMISSION

12. Constitution of Central Information Commission.—(*1*) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(*2*) The Central Information Commission shall consist of—

(*a*) the Chief Information Commissioner; and

(*b*) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(*3*) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(*i*) the Prime Minister, who shall be the Chairperson of the committee;

(*ii*) the Leader of Opposition in the LokSabha; and

(*iii*) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(*4*) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(*5*) The Chief Information Commissioner and Information Commissioners shall be 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.

(*6*) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(*7*) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

13. Term of office and conditions of service.—(*1*) The Chief Information Commissioner shall hold office [1][for such term as may be prescribed by the Central Government] and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(*2*) Every Information Commissioner shall hold office [1][for such term as may be prescribed by the Central Government] or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (*3*) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(*3*) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(*4*) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

[2][(5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.]

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1. Subs. by Act 24 of 2019, s. 2, for "for a term of five years from the date on which he enters upon his office" (w.e.f. 24-10-2019).
2. Subs. by, s. 2, *ibid.*, for sub-section (*5*) (w.e.f. 24-10-2019).

(6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

14. Removal of Chief Information Commissioner or Information Commissioner.—(*1*) Subject to the provisions of sub-section (*3*), 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.

(*2*) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (*1*) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(*3*) Notwithstanding anything contained in sub-section (*1*), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,—

(*a*) is adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(*c*) engages during his term of office in any paid employment outside the duties of his office; or

(*d*) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(*e*) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(*4*) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (*1*), be deemed to be guilty of misbehaviour.

CHAPTER IV

THE STATE INFORMATION COMMISSION

15. Constitution of State Information Commission.—(*1*) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the ..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(*2*) The State Information Commission shall consist of—

(*a*) the State Chief Information Commissioner, and

(*b*) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(*3*) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(*i*) the Chief Minister, who shall be the Chairperson of the committee;

(*ii*) the Leader of Opposition in the Legislative Assembly; and

(*iii*) a Cabinet Minister to be nominated by the Chief Minister.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(*4*) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(*5*) The State Chief Information Commissioner and the State Information Commissioners shall be 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.

(*6*) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(*7*) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

16. Term of office and conditions of service.—(*1*) The State Chief Information Commissioner shall hold office [1][for such term as may be prescribed by the Central Government] and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(*2*) Every State Information Commissioner shall hold office [1][for such term as may be prescribed by the Central Government] or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (*3*) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(*3*) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(*4*) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.

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1. Subs. by Act 24 of 2019, s. 3, for. "for a term of five years from the date on which he enters upon his office"(w.e.f. 24-10-2019).

[1][(5) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made there under as if the Right to Information (Amendment) Act, 2019 had not come into force.]

(*6*) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

17. Removal of State Chief Information Commissioner or State Information Commissioner.—(*1*) Subject to the provisions of sub-section (*3*), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(*2*) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (*1*) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(*3*) Notwithstanding anything contained in sub-section (*1*), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,—

(*a*) is adjudged an insolvent; or

(*b*) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(*c*) engages during his term of office in any paid employment outside the duties of his office; or

(*d*) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(*e*) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(*4*) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (*1*), be deemed to be guilty of misbehaviour.

CHAPTER V

POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

18. Powers and functions of Information Commissions.—(*1*) 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 and inquire into a complaint from any person,—

1. Subs. by Act 24 of 2019, s. 3, for sub-section (5), (w.e.f. 24-10-2019).

(*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 Officer or State Public Information Officer or senior officer specified in sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(*b*) who has been refused access to any information requested under this Act;

(*c*) 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

(*f*) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(*2*) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(*3*) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(*a*) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(*b*) requiring the discovery and inspection of documents;

(*c*) receiving evidence on affidavit;

(*d*) requisitioning any public record or copies thereof from any court or office;

(*e*) issuing summons for examination of witnesses or documents; and

(*f*) any other matter which may be prescribed.

(*4*) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19. Appeal.—(*1*) Any person who, does not receive a decision within the time specified in sub-section (*1*) or clause (*a*) of sub-section (*3*) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(*2*) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(*3*) A second appeal against the decision under sub-section (*1*) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(*4*) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(*5*) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(*6*) An appeal under sub-section (*1*) or sub-section (*2*) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(*7*) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(*8*) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(*a*) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(*i*) by providing access to information, if so requested, in a particular form;

(*ii*) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(*iii*) by publishing certain information or categories of information;

(*iv*) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(*v*) by enhancing the provision of training on the right to information for its officials;

(*vi*) by providing it with an annual report in compliance with clause (*b*) of sub-section (*1*) of section 4;

(*b*) require the public authority to compensate the complainant for any loss or other detriment suffered;

(*c*) impose any of the penalties provided under this Act;

(*d*) reject the application.

(*9*) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(*10*) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

20. Penalties.—(*1*)Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (*1*) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall

impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(*2*) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (*1*) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

CHAPTER VI

MISCELLANEOUS

21. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

23. Bar of jurisdiction of courts.—No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

24. Act not to apply in certain organisations.—(*1*) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(*2*) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(*3*) Every notification issued under sub-section (*2*) shall be laid before each House of Parliament.

(*4*) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(*5*) Every notification issued under sub-section (*4*) shall be laid before the State Legislature.

25. Monitoring and reporting.—(*1*) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.

(*2*) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(*3*) Each report shall state in respect of the year to which the report relates,—

(*a*) the number of requests made to each public authority;

(*b*) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(*c*) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;

(*d*) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(*e*) the amount of charges collected by each public authority under this Act;

(*f*) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(*g*) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(*4*) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (*1*) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(*5*) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

26. Appropriate Government to prepare programmes.—(*1*) The appropriate Government may, to the extent of availability of financial and other resources,—

(*a*) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

(*b*) encourage public authorities to participate in the development and organisation of programmes referred to in clause (*a*) and to undertake such programmes themselves;

(*c*) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(*d*) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

(*2*) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(*3*) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (*2*) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (*2*), include—

(*a*) the objects of this Act;

(*b*) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (*1*) of section 5;

(*c*) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;

(*d*) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;

(*e*) the assistance available from the Central Information Commission or State Information Commission, as the case may be;

(*f*) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

(*g*) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;

(*h*) the notices regarding fees to be paid in relation to requests for access to an information; and

(*i*) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(*4*) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

27. Power to make rules by appropriate Government.—(*1*) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the cost of the medium or print cost price of the materials to be disseminated under sub-section (*4*) of section 4;

(*b*) the fee payable under sub-section (*1*) of section 6;

(*c*) the fee payable under sub-sections (*1*) and (*5*) of section 7;

[1][(*ca*) the term of office of the Chief Information Commissioner and Information Commissioners under sub-sections (*1*) and (*2*) of section 13 and the State Chief Information Commissioner and State Information Commissioners under sub-sections (*1*) and (*2*) of section 16;

(*cb*) the salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners under sub-section (*5*) of section 13 and the State Chief Information Commissioner and the State Information Commissioners under sub-section (*5*) of section 16;]

1. Ins. by Act 24 of 2019, s. 4, (w.e.f. 24-10-2019).

(*d*) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (*6*) of section 13 and sub-section (*6*) of section 16;

(*e*) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (*10*) of section 19; and

(*f*) any other matter which is required to be, or may be, prescribed.

28. Power to make rules by competent authority.—(*1*) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*i*) the cost of the medium or print cost price of the materials to be disseminated under sub-section (*4*) of section 4;

(*ii*) the fee payable under sub-section (*1*) of section 6;

(*iii*) the fee payable under sub-section (*1*) of section 7; and

(*iv*) any other matter which is required to be, or may be, prescribed.

29. Laying of rules.—(*1*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(*2*) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

30. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

31. Repeal.—The Freedom of Information Act, 2002 (5 of 2003) is hereby repealed.

THE FIRST SCHEDULE

[*See* sections 13 (*3*) and 16(*3*)]

FORM OF OATH OR AFFIRMATION TO BE MADE BY THE CHIEF INFORMATION COMMISSIONER THE INFORMATION COMMISSIONER/THE STATE CHIEF INFORMATION COMMISSIONER/THE STATE INFORMATION COMMISSIONER

"I, ... having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner swear in the name of God that I will bear true faith and allegiance to the

solemnly affirm

Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.".

THE SECOND SCHEDULE

(*See* section 24)

INTELLIGENCE AND SECURITY ORGANISATION ESTABLISHED BY THE CENTRAL GOVERNMENT

1. Intelligence Bureau.

[8][2. Research and Analysis Wing including its technical wing namely, the Aviation Research Centre of the Cabinet Secretariat.]

3. Directorate of Revenue Intelligence.

4. Central Economic Intelligence Bureau.

5. Directorate of Enforcement.

6. Narcotics Control Bureau.

[9][7.* * * * *]

[8][8. Special Frontier Force.]

9. Border Security Force.

10. Central Reserve Police Force.

11. Indo-Tibetan Border Police.

12. Central Industrial Security Force.

13. National Security Guards.

14. Assam Rifles.

[1][15.Sashtra Seema Bal.]

[2][16. Directorate General of Income-tax (Investigation).]

[2][17. National Technical Research Organisation.]

[2][18. Financial Intelligence Unit, India.]

[3][19. Special Protection Group.

20. Defence Research and Development Organisation.

21. Border Road Development Board.

[4]* * * * *]

[5][22. National Security Council Secretariat.]

[6][23. Central Bureau of Investigation.]

[6][24. National investigation Agency.]

[6][25. National Intelligence Grid.]

[7][26. Strategic Forces Command.]

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1. Subs. by notification No. G.S.R. 347, dated 28-9-2005
2. Subs. by notification No. G.S.R. 235(E) dated 27-3-2008
3. Ins. by notification No. G.S.R. 347, dated 28-9-2005
4. Omitted by G.S.R. 235(E) dated 27-3-2008
5. Added by notification No.G.S.R. 726(E), dated 8-10-2008
6. Added by notification No. G.S.R. 442(E), dated 9-6-2011
7. Added by notification No. G.S.R. 673(E), dated 8-7-2016
8. Subs. by notification No. G.S.R. 253, dated 4-5-2021
9. Omitted by notification No. G.S.R. 253, dated 4-5-2021

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

ARRANGEMENT OF SECTIONS

SECTIONS

CHAPTER XVI

OFFENCES AND PENALTIES

SECTIONS

CHAPTER XVII

MISCELLANEOUS

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

ACT NO. 49 OF 2016

[27*th December*, 2016]

An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

WHEREAS the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006.

AND WHEREAS the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,—

(*a*) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(*b*) non-discrimination;

(*c*) full and effective participation and inclusion in society;

(*d*) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(*e*) equality of opportunity;

(*f*) accessibility;

(*g*) equality between men and women;

(*h*) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

AND WHEREAS India is a signatory to the said Convention;

AND WHEREAS India ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is considered necessary to implement the Convention aforesaid.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Rights of Persons with Disabilities Act, 2016.

(*2*) It shall come into force on such [1]date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appellate authority" means an authority notified under sub-section (*3*) of section 14 or sub-section (*1*) of section 53 or designated under sub-section (*1*) of section 59, as the case may be;

(*b*) "appropriate Government" means,—

(*i*) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006), the Central Government;

(*ii*) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.

(*c*) "barrier" means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;

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1. 19th April, 2017 *vide* notification no. S.O. 1215 (E) dated 19th April, 2017 see Gazette of India, Extraordinary, Part II, Section 3 (ii).

(*d*) "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;

(*e*) "certifying authority" means an authority designated under sub-section (*1*) of section 57;

(*f*) "communication" includes means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology;

(*g*) "competent authority" means an authority appointed under section 49;

(*h*) "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

(*i*) "establishment" includes a Government establishment and private establishment;

(*j*) "Fund" means the National Fund constituted under section 86;

(*k*) "Government establishment" means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 (18 of 2013) and includes a Department of the Government;

(*l*) "high support" means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;

(*m*) "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;

(*n*) "information and communication technology" includes all services and innovations relating to information and communication, including telecom services, web based services, electronic and print services, digital and virtual services;

(*o*) "institution" means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities;

(*p*) "local authority" means a Municipality or a Panchayat, as defined in clause (*e*) and clause (*f*) of article 243P of the Constitution; a Cantonment Board constituted under the Cantonments Act, 2006 (41 of 2006); and any other authority established under an Act of Parliament or a State Legislature to administer the civic affairs;

(*q*) "notification" means a notification published in the Official Gazette and the expression "notify" or "notified" shall be construed accordingly;

(*r*) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(*s*) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

(*t*) "person with disability having high support needs" means a person with benchmark disability certified under clause (*a*) of sub-section (*2*) of section 58 who needs high support;

(*u*) "prescribed" means prescribed by rules made under this Act;

(*v*) "private establishment" means a company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify;

(*w*) "public building" means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways;

(*x*) "public facilities and services" includes all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation;

(*y*) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

(*z*) "registered organisation" means an association of persons with disabilities or a disabled person organisation, association of parents of persons with disabilities, association of persons with disabilities and family members, or a voluntary or non-governmental or charitable organisation or trust, society, or non-profit company working for the welfare of the persons with disabilities, duly registered under an Act of Parliament or a State Legislature;

(*za*) "rehabilitation" refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environmental or social function levels;

(*zb*) "Special Employment Exchange" means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, regarding—

(*i*) persons who seek to engage employees from amongst the persons with disabilities;

(*ii*) persons with benchmark disability who seek employment;

(*iii*) vacancies to which persons with benchmark disabilities seeking employment may be appointed;

(*zc*) "specified disability" means the disabilities as specified in the Schedule;

(*zd*) "transportation systems" includes road transport, rail transport, air transport, water transport, para transit systems for the last mile connectivity, road and street infrastructure, etc;

(*ze*) "universal design" means the design of products, environments, programmes and services to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities.

CHAPTER II
RIGHTS AND ENTITLEMENTS

3. Equality and non-discrimination.—(*1*) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(*2*) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(*3*) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(*4*) No person shall be deprived of his or her personal liberty only on the ground of disability.

(*5*) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

4. Women and children with disabilities.—(*1*) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

(*2*) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.".

5. Community life.—(*1*) The persons with disabilities shall have the right to live in the community.

(*2*) The appropriate Government shall endeavour that the persons with disabilities are,—

(*a*) not obliged to live in any particular living arrangement; and

(*b*) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

6. Protection from cruelty and inhuman treatment.—(*1*) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

(*2*) No person with disability shall be a subject of any research without,—

(*i*) his or her free and informed consent obtained through accessible modes, means and formats of communication; and

(*ii*) prior permission of a Committee for Research on Disability constituted in the prescribed manner for the purpose by the appropriate Government in which not less than half of the Members shall themselves be either persons with disabilities or Members of the registered organisation as defined under clause (*z*) of section 2.

7. Protection from abuse, violence and exploitation.—(*1*) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall—

(*a*) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;

(*b*) take steps for avoiding such incidents and prescribe the procedure for its reporting;

(*c*) take steps to rescue, protect and rehabilitate victims of such incidents; and

(*d*) create awareness and make available information among the public.

(*2*) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.

(*3*) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—

(*a*) to rescue the victim of such act, authorising the police or any organisation working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;

(*b*) for providing protective custody to the person with disability, if such person so desires;

(*c*) to provide maintenance to such person with disability.

(*4*) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—

(*a*) his or her right to apply for protection under sub-section (*2*) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;

(*b*) the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;

(*c*) the right to free legal aid; and

(*d*) the right to file a complaint under the provisions of this Act or any other law dealing with such offence:

Provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

(*5*) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code (45 of 1860), or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter.

8. Protection and safety.—(*1*) The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.

(*2*) The National Disaster Management Authority and the State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities as defined under clause (*e*) of section 2 of the Disaster Management Act, 2005 (53 of 2005) for the safety and protection of persons with disabilities.

(*3*) The District Disaster Management Authority constituted under section 25 of the Disaster Management Act, 2005 (53 of 2005) shall maintain record of details of persons with disabilities in the district and take suitable measures to inform such persons of any situations of risk so as to enhance disaster preparedness.

(*4*) The authorities engaged in reconstruction activities subsequent to any situation of risk, armed conflict or natural disasters shall undertake such activities, in consultation with the concerned State Commissioner, in accordance with the accessibility requirements of persons with disabilities.

9. Home and family.—(*1*) No child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child.

(*2*) Where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organisation, as may be required.

10. Reproductive rights.—(*1*) The appropriate Government shall ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning.

(*2*) No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent.

11. Accessibility in voting.—The Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

12. Access to justice.—(*1*) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(*2*) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

(*3*) The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987) shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.

(*4*) The appropriate Government shall take steps to—

(*a*) ensure that all their public documents are in accessible formats;

(*b*) ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

(*c*) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.

13. Legal capacity.—(*1*) The appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit.

(*2*) The appropriate Government shall ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

(*3*) When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such supporting person shall abstain from providing support to the person with disability in that transaction:

Provided that there shall not be a presumption of conflict of interest just on the basis that the supporting person is related to the person with disability by blood, affinity or adoption.

(*4*) A person with disability may alter, modify or dismantle any support arrangement and seek the support of another:

Provided that such alteration, modification or dismantling shall be prospective in nature and shall not nullify any third party transaction entered into by the person with disability with the aforesaid support arrangement.

(*5*) Any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy, dignity and privacy.

14. Provision for guardianship.—(*1*) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

Explanation.—For the purposes of this sub-section, "limited guardianship" means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(*2*) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(*3*) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.

15. Designation of authorities to support.—(*1*) The appropriate Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity.

(*2*) The authority designated under sub-section (*1*) shall take measures for setting up suitable support arrangements to exercise legal capacity by persons with disabilities living in institutions and those with high support needs and any other measures as may be required.

CHAPTER III
EDUCATION

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(*i*) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;

(*ii*) make building, campus and various facilities accessible;

(*iii*) provide reasonable accommodation according to the individual's requirements;

(*iv*) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(*v*) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;

(*vi*) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(*vii*) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;

(*viii*) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

17. Specific measures to promote and facilitate inclusive education.—The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:—

(*a*) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(*b*) to establish adequate number of teacher training institutions;

(*c*) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(*d*) to train professionals and staff to support inclusive education at all levels of school education;

(*e*) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(*f*) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one’s own speech to

fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(*g*) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(*h*) to provide scholarships in appropriate cases to students with benchmark disability;

(*i*) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(*j*) to promote research to improve learning; and

(*k*) any other measures, as may be required.

18. Adult education.—The appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

CHAPTER IV
SKILL DEVELOPMENT AND EMPLOYMENT

19. Vocational training and self-employment.—(*1*) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

(*2*) The schemes and programmes referred to in sub-section (*1*) shall provide for—

(*a*) inclusion of person with disability in all mainstream formal and non-formal vocational and skill training schemes and programmes;

(*b*) to ensure that a person with disability has adequate support and facilities to avail specific training;

(*c*) exclusive skill training programmes for persons with disabilities with active links with the market, for those with developmental, intellectual, multiple disabilities and autism;

(*d*) loans at concessional rates including that of microcredit;

(*e*) marketing the products made by persons with disabilities; and

(*f*) maintenance of disaggregated data on the progress made in the skill training and self-employment, including persons with disabilities.

20. Non-discrimination in employment.—(*1*) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(*2*) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(*3*) No promotion shall be denied to a person merely on the ground of disability.

(*4*) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(*5*) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

21. Equal opportunity policy.—(*1*) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(*2*) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

22. Maintenance of records.—(*1*) Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government.

(*2*) Every employment exchange shall maintain records of persons with disabilities seeking employment.

(*3*) The records maintained under sub-section (*1*) shall be open to inspection at all reasonable hours by such persons as may be authorised in their behalf by the appropriate Government.

23. Appointment of Grievance Redressal Officer.—(*1*) Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.

(*2*) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.

(*3*) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.

(*4*) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

CHAPTER V

SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

24. Social security.—(*1*) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:

Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

(*2*) The appropriate Government while devising these schemes and programmes shall give due consideration to the diversity of disability, gender, age, and socio-economic status.

(*3*) The schemes under sub-section (*1*) shall provide for,—

(*a*) community centres with good living conditions in terms of safety, sanitation, health care and counselling;

(*b*) facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;

(*c*) support during natural or man-made disasters and in areas of conflict;

(*d*) support to women with disability for livelihood and for upbringing of their children;

(*e*) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;

(*f*) provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities with such income ceiling as may be notified;

(*g*) disability pension to persons with disabilities subject to such income ceiling as may be notified;

(*h*) unemployment allowance to persons with disabilities registered with Special Employment Exchange for more than two years and who could not be placed in any gainful occupation;

(*i*) care-giver allowance to persons with disabilities with high support needs;

(*j*) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes;

(*k*) any other matter which the appropriate Government may think fit.

25. Healthcare.—(*1*) The appropriate Government and the local authorities shall take necessary measures for the persons with disabilities to provide**,**—

(*a*) free healthcare in the vicinity specially in rural area subject to such family income as may be notified;

(*b*) barrier-free access in all parts of Government and private hospitals and other healthcare institutions and centres;

(*c*) priority in attendance and treatment.

(*2*) The appropriate Government and the local authorities shall take measures and make schemes or programmes to promote healthcare and prevent the occurrence of disabilities and for the said purpose shall—

(*a*) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities;

(*b*) promote various methods for preventing disabilities;

(*c*) screen all the children at least once in a year for the purpose of identifying "at-risk" cases;

(*d*) provide facilities for training to the staff at the primary health centres;

(*e*) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;

(*f*) take measures for pre-natal, perinatal and post-natal care of mother and child;

(*g*) educate the public through the pre-schools, schools, primary health centres, village level workers and *anganwadi* workers;

(*h*) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;

(*i*) healthcare during the time of natural disasters and other situations of risk;

(*j*) essential medical facilities for life saving emergency treatment and procedures; and

(*k*) sexual and reproductive healthcare especially for women with disability.

26. Insurance schemes.—The appropriate Government shall, by notification, make insurance schemes for their employees with disabilities.

27. Rehabilitation.—(*1*) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

(*2*) For the purposes of sub-section (*1*), the appropriate Government and the local authorities may grant financial assistance to non-Governmental Organisations.

(*3*) The appropriate Government and the local authorities, while formulating rehabilitation policies shall consult the non-Governmental Organisations working for the cause of persons with disabilities.

28. Research and development.—The appropriate Government shall initiate or cause to be initiated research and development through individuals and institutions on issues which shall enhance habilitation and rehabilitation and on such other issues which are necessary for the empowerment of persons with disabilities.

29. Culture and recreation.—The appropriate Government and the local authorities shall take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others which include,—

(*a*) facilities, support and sponsorships to artists and writers with disability to pursue their interests and talents;

(*b*) establishment of a disability history museum which chronicles and interprets the historical experiences of persons with disabilities;

(*c*) making art accessible to persons with disabilities;

(*d*) promoting recreation centres, and other associational activities;

(*e*) facilitating participation in scouting, dancing, art classes, outdoor camps and adventure activities;

(*f*) redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities;

(*g*) developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities; and

(*h*) ensuring that persons with hearing impairment can have access to television programmes with sign language interpretation or sub-titles.

30. Sporting activities.—(*1*) The appropriate Government shall take measures to ensure effective participation in sporting activities of the persons with disabilities.

(*2*) The sports authorities shall accord due recognition to the right of persons with disabilities to participate in sports and shall make due provisions for the inclusion of persons with disabilities in their schemes and programmes for the promotion and development of sporting talents.

(*3*) Without prejudice to the provisions contained in sub-sections (*1*) and (*2*), the appropriate Government and the sports authorities shall take measures to,—

(*a*) restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities;

(*b*) redesign and support infrastructure facilities of all sporting activities for persons with disabilities;

(*c*) develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities;

(*d*) provide multi-sensory essentials and features in all sporting activities to ensure effective participation of all persons with disabilities;

(*e*) allocate funds for development of state of art sport facilities for training of persons with disabilities;

(*f*) promote and organise disability specific sporting events for persons with disabilities and also facilitate awards to the winners and other participants of such sporting events.

CHAPTER VI

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITES

31. Free education for children with benchmark disabilities.—(*1*) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009 (35 of 2009), every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

(*2*) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.

32. Reservation in higher educational institutions.—(*1*) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(*2*) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

33. Identification of posts for reservation.—The appropriate Government shall—

(*i*) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(*ii*) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(*iii*) undertake periodic review of the identified posts at an interval not exceeding three years.

34. Reservation.—(*1*) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (*a*), (*b*) and (*c*) and one per cent. for persons with benchmark disabilities under clauses (*d*) and (*e*), namely:—

(*a*) blindness and low vision;

(*b*) deaf and hard of hearing;

(*c*) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(*d*) autism, intellectual disability, specific learning disability and mental illness;

(*e*) multiple disabilities from amongst persons under clauses (*a*) to (*d*) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(*2*) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(*3*) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

35. Incentives to employers in private sector.—The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability.

36. Special employment exchange.—The appropriate Government may, by notification, require that from such date, the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur in that establishment to such special employment exchange as may be notified by the Central Government and the establishment shall thereupon comply with such requisition.

37. Special schemes and development programmes.—The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

(*a*) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(*b*) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(*c*) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

CHAPTER VII

SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

38. Special provisions for persons with disabilities with high support.—(*1*) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(*2*) On receipt of an application under sub-section (*1*), the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

(*3*) The Assessment Board shall assess the case referred to it under sub-section (*1*) in such manner as may be prescribed by the Central Government, and shall send a report to the authority certifying the need of high support and its nature.

(*4*) On receipt of a report under sub-section (*3*), the authority shall take steps to provide support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf.

CHAPTER VIII

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

39. Awareness campaigns.—(*1*) The appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, shall conduct, encourage, support or promote awareness campaigns and sensitisation programmes to ensure that the rights of the persons with disabilities provided under this Act are protected.

(*2*) The programmes and campaigns specified under sub-section (*1*) shall also,—

(*a*) promote values of inclusion, tolerance, empathy and respect for diversity;

(*b*) advance recognition of the skills, merits and abilities of persons with disabilities and of their contributions to the workforce, labour market and professional fee;

(*c*) foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children;

(*d*) provide orientation and sensitisation at the school, college, University and professional training level on the human condition of disability and the rights of persons with disabilities;

(*e*) provide orientation and sensitisation on disabling conditions and rights of persons with disabilities to employers, administrators and co-workers;

(*f*) ensure that the rights of persons with disabilities are included in the curriculum in Universities, colleges and schools.

40. Accessibility.—The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

41. Access to transport.—(*1*) The appropriate Government shall take suitable measures to provide,—

(*a*) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;

(*b*) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(*c*) accessible roads to address mobility necessary for persons with disabilities.

(*2*) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,—

(*a*) incentives and concessions;

(*b*) retrofitting of vehicles; and

(*c*) personal mobility assistance.

42. Access to information and communication technology.—The appropriate Government shall take measures to ensure that,—

(*i*) all contents available in audio, print and electronic media are in accessible format;

(*ii*) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(*iii*) electronic goods and equipment which are meant for every day use are available in universal design.

43. Consumer goods.—The appropriate Government shall take measures to promote development, production and distribution of universally designed consumer products and accessories for general use for persons with disabilities.

44. Mandatory observance of accessibility norms.—(*1*) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(*2*) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government.

45. Time limit for making existing infrastructure and premises accessible and action for that purpose.—(*1*) All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

(*2*) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

46. Time limit for accessibility by service providers.—The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules.

47. Human resource development.—(*1*) Without prejudice to any function and power of Rehabilitation Council of India constituted under the Rehabilitation Council of India Act, 1992 (34 of 1992), the appropriate Government shall endeavour to develop human resource for the purposes of this Act and to that end shall,—

(*a*) mandate training on disability rights in all courses for the training of Panchayati Raj Members, legislators, administrators, police officials, judges and lawyers;

(*b*) induct disability as a component for all education courses for schools, colleges and University teachers, doctors, nurses, para-medical personnel, social welfare officers, rural development officers, asha workers, *anganwadi* workers, engineers, architects, other professionals and community workers;

(*c*) initiate capacity building programmes including training in independent living and community relationships for families, members of community and other stakeholders and care providers on care giving and support;

(*d*) ensure independence training for persons with disabilities to build community relationships on mutual contribution and respect;

(*e*) conduct training programmes for sports teachers with focus on sports, games, adventure activities;

(*f*) any other capacity development measures as may be required.

(*2*) All Universities shall promote teaching and research in disability studies including establishment of study centres for such studies.

(*3*) In order to fulfil the obligation stated in sub-section (*1*), the appropriate Government shall in every five years undertake a need based analysis and formulate plans for the recruitment, induction, sensitisation, orientation and training of suitable personnel to undertake the various responsibilities under this Act.

48. Social audit.—The appropriate Government shall undertake social audit of all general schemes and programmes involving the persons with disabilities to ensure that the scheme and programmes do not have an adverse impact upon the persons with disabilities and need the requirements and concerns of persons with disabilities.

CHAPTER IX

REGISTRATION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES AND GRANTS TO SUCH INSTITUTIONS

49. Competent authority.—The State Government shall appoint an authority as it deems fit to be a competent authority for the purposes of this Chapter.

50. Registration.—Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except in accordance with a certificate of registration issued in this behalf by the competent authority:

Provided that an institution for care of mentally ill persons, which holds a valid licence under section 8 of the Mental Health Act, 1987 (14 of 1987) or any other Act for the time being in force, shall not be required to be registered under this Act.

51. Application and grant of certificate of registration.—(*1*) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.

(*2*) On receipt of an application under sub-section (*1*), the competent authority shall make such enquiries as it may deem fit and on being satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder, it shall grant a certificate of registration to the applicant within a period of ninety days of receipt of application and if not satisfied, the competent authority shall, by order, refuse to grant the certificate applied for:

Provided that before making any order refusing to grant a certificate, the competent authority shall give the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in writing.

(*3*) No certificate of registration shall be granted under sub-section (*2*) unless the institution with respect to which an application has been made is in a position to provide such facilities and meet such standards as may be prescribed by the State Government.

(*4*) The certificate of registration granted under sub-section (*2*),—

(*a*) shall, unless revoked under section 52 remain in force for such period as may be prescribed by the State Government;

(*b*) may be renewed from time to time for a like period; and

(*c*) shall be in such form and shall be subject to such conditions as may be prescribed by the State Government.

(*5*) An application for renewal of a certificate of registration shall be made not less than sixty days before the expiry of the period of validity.

(*6*) A copy of the certificate of registration shall be displayed by the institution in a conspicuous place.

(*7*) Every application made under sub-section (*1*) or sub-section (*5*) shall be disposed of by the competent authority within such period as may be prescribed by the State Government.

52. Revocation of registration.—(*1*) The competent authority may, if it has reason to believe that the holder of a certificate of registration granted under sub-section (*2*) of section 51 has,—

(*a*) made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars; or

(*b*) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted,

it may, after making such inquiry, as it deems fit, by order, revoke the certificate:

Provided that no such order shall be made until an opportunity is given to the holder of the certificate to show cause as to why the certificate of registration shall not be revoked.

(*2*) Where a certificate of registration in respect of an institution has been revoked under sub-section (*1*), such institution shall cease to function from the date of such revocation:

Provided that where an appeal lies under section 53 against the order of revocation, such institution shall cease to function,—

(*a*) where no appeal has been preferred immediately on the expiry of the period prescribed for the filing of such appeal; or

(*b*) where such appeal has been preferred, but the order of revocation has been upheld, from the date of the order of appeal.

(*3*) On the revocation of a certificate of registration in respect of an institution, the competent authority may direct that any person with disability who is an inmate of such institution on the date of such revocation, shall be—

(*a*) restored to the custody of his or her parent, spouse or lawful guardian, as the case may be; or

(*b*) transferred to any other institution specified by the competent authority.

(*4*) Every institution which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the competent authority.

53. Appeal.—(*1*) Any person aggrieved by the order of the competent authority refusing to grant a certificate of registration or revoking a certificate of registration may, within such period as may be prescribed by the State Government, prefer an appeal to such appellate authority, as may be notified by the State Government against such refusal or revocation.

(*2*) The order of the appellate authority on such appeal shall be final.

54. Act not to apply to institutions established or maintained by Central or State Government.—Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by the Central Government or a State Government.

55. Assistance to registered institutions.—The appropriate Government may within the limits of their economic capacity and development, grant financial assistance to registered institutions to provide services and to implement the schemes and programmes in pursuance of the provisions of this Act.

CHAPTER X

CERTIFICATION OF SPECIFIED DISABILITIES

56. Guidelines for assessment of specified disabilities.—The Central Government shall notify guidelines for the purpose of assessing the extent of specified disability in a person.

57. Designation of certifying authorities.—(*1*) The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(*2*) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.

58. Procedure for certification.—(*1*) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(*2*) On receipt of an application under sub-section (*1*), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,—

(*a*) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;

(*b*) inform him in writing that he has no specified disability.

(*3*) The certificate of disability issued under this section shall be valid across the country.

59. Appeal against a decision of certifying authority.—(*1*) Any person aggrieved with decision of the certifying authority, may appeal against such decision, within such time and in such manner as may be prescribed by the State Government, to such appellate authority as the State Government may designate for the purpose.

(*2*) On receipt of an appeal, the appellate authority shall decide the appeal in such manner as may be prescribed by the State Government.

CHAPTER XI

CENTRAL AND STATE ADVISORY BOARDS ON DISABILITY AND DISTRICT LEVEL COMMITTEE

60. Constitution of Central Advisory Board on Disability.—(*1*) The Central Government shall, by notification, constitute a body to be known as the Central Advisory Board on Disability to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(*2*) The Central Advisory Board shall consist of,—

(*a*) the Minister in charge of Department of Disability Affairs in the Central Government, Chairperson, *ex officio*;

(*b*) the Minister of State in charge dealing with Department of Disability Affairs in the Ministry in the Central Government, Vice Chairperson, *ex officio*;

(*c*) three Members of Parliament, of whom two shall be elected by Lok Sabha and one by the Rajya Sabha, Members, *ex officio*;

(*d*) the Ministers in charge of Disability Affairs of all States and Administrators or Lieutenant Governors of the Union territories, Members, *ex officio*;

(*e*) Secretaries to the Government of India in charge of the Ministries or Departments of Disability Affairs, Social Justice and Empowerment, School Education and Literacy, and Higher Education, Women and Child Development, Expenditure, Personnel and Training, Administrative Reforms and Public Grievances, Health and Family Welfare, Rural Development, Panchayati Raj, Industrial Policy and Promotion, Urban Development, Housing and Urban Poverty Alleviation, Science and Technology, Communications and Information Technology, Legal Affairs, Public Enterprises, Youth Affairs and Sports, Road Transport and Highways and Civil Aviation, Members, *ex officio*;

(*f*) Secretary, National Institute of Transforming India (NITI) Aayog, Member, *ex officio*;

(*g*) Chairperson, Rehabilitation Council of India, Member, *ex officio*;

(*h*) Chairperson, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, Member, *ex officio*;

(*i*) Chairman-cum-Managing Director, National Handicapped Finance Development Corporation, Member, *ex officio*;

(*j*) Chairman-cum-Managing Director, Artificial Limbs Manufacturing Corporation, Member, *ex officio*;

(*k*) Chairman, Railway Board, Member, *ex officio*;

(*l*) Director-General, Employment and Training, Ministry of Labour and Employment, Member, *ex officio*;

(*m*) Director, National Council for Educational Research and Training, Member, *ex officio*;

(*n*) Chairperson, National Council of Teacher Education, Member, *ex officio*;

(*o*) Chairperson, University Grants Commission, Member, *ex officio*;

(*p*) Chairperson, Medical Council of India, Member, *ex officio*;

(*q*) Directors of the following Institutes:—

(*i*) National Institute for the Visually Handicapped, Dehradun;

(*ii*) National Institute for the Mentally Handicapped, Secunderabad;

(*iii*) Pandit Deen Dayal Upadhyay Institute for the Physically Handicapped, New Delhi;

(*iv*) Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai;

(*v*) National Institute for the Orthopaedically Handicapped, Kolkata;

(*vi*) National Institute of Rehabilitation Training and Research, Cuttack;

(*vii*) National Institute for Empowerment of Persons with Multiple Disabilities, Chennai;

(*viii*) National Institute for Mental Health and Sciences, Bangalore;

(*ix*) Indian Sign Language Research and Training Centre, New Delhi, Members, *ex officio*;

(*r*) Members to be nominated by the Central Government,—

(*i*) five Members who are experts in the field of disability and rehabilitation;

(*ii*) ten Members, as far as practicable, being persons with disabilities, to represent non-Governmental Organisations concerned with disabilities or disabled persons organisations:

Provided that out of the ten Members nominated, at least, five Members shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes;

(*iii*) up to three representatives of national level chambers of commerce and industry;

(*s*) Joint Secretary to the Government of India dealing with the subject of disability policy, Member-Secretary, *ex officio*.

61. Terms and conditions of Service of members.—(*1*) Save as otherwise provided under this Act, a Member of the Central Advisory Board nominated under clause (*r*) of sub-section (*2*) of section 60 shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(*2*) The Central Government may, if it thinks fit, remove any Member nominated under clause (*r*) of sub-section (*2*) of section 60, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(*3*) A Member nominated under clause (*r*) of sub-section (*2*) of section 60 may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon becomes vacant.

(*4*) A casual vacancy in the Central Advisory Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(*5*) A Member nominated under sub-clause (*i*) or sub-clause (*iii*) of clause (*r*) of sub-section (*2*) of section 60 shall be eligible for renomination.

(*6*) The Members nominated under sub-clause (*i*) and sub-clause (*ii*) of clause (*r*) of sub-section (*2*) of section 60 shall receive such allowances as may be prescribed by the Central Government.

62. Disqualifications.—(*1*) No person shall be a Member of the Central Advisory Board, who—

(*a*) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(*b*) is of unsound mind and stands so declared by a competent court, or

(*c*) is, or has been, convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or

(*d*) is, or at any time has been, convicted of an offence under this Act, or

(*e*) has so abused his position in the opinion of the Central Government as a Member so as to render his continuance in the office is prejudicial interests of the general public.

(*2*) No order of removal shall be made by the Central Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(*3*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*5*) of section 61, a Member who has been removed under this section shall not be eligible for renomination as a Member.

63. Vacation of seats by Members.—If a Member of the Central Advisory Board becomes subject to any of the disqualifications specified in section 62, his seat shall become vacant.

64. Meetings of the Central Advisory Board on disability.—The Central Advisory Board shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

65. Functions of Central Advisory Board on disability.—(*1*) Subject to the provisions of this Act, the Central Advisory Board on disability shall be the national-level consultative and advisory body on disability matters, and shall facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

(*2*) In particular and without prejudice to the generality of the foregoing provisions, the Central Advisory Board on disability shall perform the following functions, namely:—

(*a*) advise the Central Government and the State Governments on policies, programmes, legislation and projects with respect to disability;

(*b*) develop a national policy to address issues concerning persons with disabilities;

(*c*) review and coordinate the activities of all Departments of the Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;

(*d*) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the national plans;

(*e*) recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities *vis-a-vis* information, services and the built environment and their participation in social life;

(*f*) monitor and evaluate the impact of laws, policies and programmes to achieve full participation of persons with disabilities; and

(*g*) such other functions as may be assigned from time to time by the Central Government.

66. State Advisory Board on disability.—(*1*) Every State Government shall, by notification, constitute a body to be known as the State Advisory Board on disability to exercise the powers conferred on, and to perform the function assigned to it, under this Act.

(*2*) The State Advisory Board shall consist of—

(*a*) the Minister in charge of the Department in the State Government dealing with disability matters, Chairperson, *ex officio*;

(*b*) the Minister of State or the Deputy Minister in charge of the Department in the State Government dealing with disability matters, if any, Vice-Chairperson, *ex officio*;

(*c*) secretaries to the State Government in charge of the Departments of Disability Affairs, School Education, Literacy and Higher Education, Women and Child Development, Finance, Personnel and Training, Health and Family Welfare, Rural Development, Panchayati Raj, Industrial Policy and Promotion, Labour and Employment, Urban Development, Housing and Urban Poverty Alleviation, Science and Technology, Information Technology, Public Enterprises, Youth Affairs and Sports, Road Transport and any other Department, which the State Government considers necessary, Members, *ex officio*;

(*d*) three Members of the State Legislature of whom two shall be elected by the Legislative Assembly and one by the Legislative Council, if any, and where there is no Legislative Council, three Members shall be elected by the Legislative Assembly, Members, *ex officio*;

(*e*) Members to be nominated by the State Government:—

(*i*) five Members who are experts in the field of disability and rehabilitation;

(*ii*) five Members to be nominated by the State Government by rotation to represent the districts in such manner as may be prescribed:

Provided that no nomination under this sub-clause shall be made except on the recommendation of the district administration concerned;

(*iii*) ten persons as far as practicable, being persons with disabilities, to represent non-Governmental Organisations or associations which are concerned with disabilities:

Provided that out of the ten persons nominated under this clause, at least, five shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes;

(*iv*) not more than three representatives of the State Chamber of Commerce and Industry;

(*f*) officer not below the rank of Joint Secretary in the Department dealing with disability matters in the State Government, Member-Secretary, *ex officio*.

67. Terms and conditions of service of Members.—(*1*) Save as otherwise provided under this Act, a Member of the State Advisory Board nominated under clause (*e*) of sub-section (*2*) of section 66, shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(*2*) The State Government may, if it thinks fit, remove any Member nominated under clause (*e*) of sub-section (*2*) of section 66, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(*3*) A Member nominated under clause (*e*) of sub-section (*2*) of section 66 may at any time resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

(*4*) A casual vacancy in the State Advisory Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(*5*) A Member nominated under sub-clause (*i*) or sub-clause (*iii*) of clause (*e*) of sub-section (*2*) of section 66 shall be eligible for renomination.

(*6*) The Members nominated under sub-clause (*i*) and sub-clause (*ii*) of clause (*e*) of sub-section (*2*) of section 66 shall receive such allowances as may be prescribed by the State Government.

68. Disqualification.—(*1*) No person shall be a Member of the State Advisory Board, who—

(*a*) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(*b*) is of unsound mind and stands so declared by a competent court, or

(*c*) is, or has been, convicted of an offence which, in the opinion of the State Government, involves moral turpitude, or

(*d*) is, or at any time has been, convicted of an offence under this Act, or

(*e*) has so abused in the opinion of the State Government his position as a Member as to render his continuance in the State Advisory Board detrimental to the interests of the general public.

(*2*) No order of removal shall be made by the State Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(*3*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*5*) of section 67, a Member who has been removed under this section shall not be eligible for renomination as a Member.

69. Vacation of seats.—If a Member of the State Advisory Board becomes subject to any of the disqualifications specified in section 68 his seat shall become vacant.

70. Meetings of State Advisory Board on disability.—The State Advisory Board shall meet at least once in every six months and shall observe such rules or procedure in regard to the transaction of business at its meetings as may be prescribed by the State Government.

71. Functions of State Advisory Board on disability.—(*1*) Subject to the provisions of this Act, the State Advisory Board shall be the State-level consultative and advisory body on disability matters, and shall facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

(*2*) In particular and without prejudice to the generality of the foregoing provisions, the State Advisory Board on disability shall perform the following functions, namely:—

(*a*) advise the State Government on policies, programmes, legislation and projects with respect to disability;

(*b*) develop a State policy to address issues concerning persons with disabilities;

(*c*) review and coordinate the activities of all Departments of the State Government and other Governmental and non-Governmental Organisations in the State which are dealing with matters relating to persons with disabilities;

(*d*) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the State plans;

(*e*) recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities, services and the built environment and their participation in social life on an equal basis with others;

(*f*) monitor and evaluate the impact of laws, policies and programmes designed to achieve full participation of persons with disabilities; and

(*g*) such other functions as may be assigned from time to time by the State Government.

72. District-level Committee on disability.—The State Government shall constitute District-level Committee on disability to perform such functions as may be prescribed by it.

73. Vacancies not to invalidate proceedings.—No act or proceeding of the Central Advisory Board on disability, a State Advisory Board on disability, or a District-level Committee on disability shall be called in question on the ground merely of the existence of any vacancy in or any defect in the constitution of such Board or Committee, as the case may be.

CHAPTER XII

CHIEF COMMISSIONER AND STATE COMMISSIONER FOR PERSONS WITH DISABILITIES

74. Appointment of Chief Commissioner and Commissioners.—(*1*) The Central Government may, by notification, appoint a Chief Commissioner for Persons with Disabilities (hereinafter referred to as the "Chief Commissioner") for the purposes of this Act.

(*2*) The Central Government may, by notification appoint two Commissioners to assist the Chief Commissioner, of which one Commissioner shall be a persons with disability.

(*3*) A person shall not be qualified for appointment as the Chief Commissioner or Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(*4*) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chief Commissioner and Commissioners shall be such as may be prescribed by the Central Government.

(*5*) The Central Government shall determine the nature and categories of officers and other employees required to assist the Chief Commissioner in the discharge of his functions and provide the Chief Commissioner with such officers and other employees as it thinks fit.

(*6*) The officers and employees provided to the Chief Commissioner shall discharge their functions under the general superintendence and control of the Chief Commissioner.

(*7*) The salaries and allowances and other conditions of service of officers and employees shall be such as may be prescribed by the Central Government.

(*8*) The Chief Commissioner shall be assisted by an advisory committee comprising of not more than eleven members drawn from the experts from different disabilities in such manner as may be prescribed by the Central Government.

75. Functions of Chief Commissioner.—(*1*) The Chief Commissioner shall—

(*a*) identify, *suo motu* or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;

(*b*) inquire, *suo motu* or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(*c*) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(*d*) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(*e*) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

(*f*) undertake and promote research in the field of the rights of persons with disabilities;

(*g*) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(*h*) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(*i*) monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities; and

(*j*) perform such other functions as the Central Government may assign.

(*2*) The Chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act.

76. Action of appropriate authorities on recommendation of Chief Commissioner.—Whenever the Chief Commissioner makes a recommendation to an authority in pursuance of clause (*b*) of section 75, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Chief Commissioner within a period of three months, and shall also inform the aggrieved person.

77. Powers of Chief Commissioner.—(*1*) The Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 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.

(*2*) Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

78. Annual and special reports by Chief Commissioner.—(*1*) The Chief Commissioner shall submit an annual report to the Central Government and may at any time submit special reports on any matter, which, in his opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

(*2*) The Central Government shall cause the annual and the special reports of the Chief Commissioner to be laid before each House of Parliament, along with a memorandum of action taken or proposed to be taken on his recommendations and the reasons for non-acceptance the recommendations, if any.

(*3*) The annual and special reports shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.

79. Appointment of State Commissioner in States.—(*1*) The State Government may, by notification, appoint a State Commissioner for Persons with Disabilities (hereinafter referred to as the "State Commissioner") for the purposes of this Act.

(*2*) A person shall not be qualified for appointment as the State Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(*3*) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the State Commissioner shall be such as may be prescribed by the State Government.

(*4*) The State Government shall determine the nature and categories of officers and other employees required to assist the State Commissioner in the discharge of his functions and provide the State Commissioner with such officers and other employees as it thinks fit.

(*5*) The officers and employees provided to the State Commissioner shall discharge his functions under the general superintendence and control of the State Commissioner.

(*6*) The salaries and allowances and other conditions of service of officers and employees shall be such as may be prescribed by the State Government.

(*7*) The State Commissioner shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the State Government.

80. Functions of State Commissioner.—The State Commissioner shall—

(*a*) identify, *suo motu* or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;

(*b*) inquire, *suo motu* or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(*c*) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(*d*) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(*e*) undertake and promote research in the field of the rights of persons with disabilities;

(*f*) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(*g*) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(*h*) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and

(*i*) perform such other functions as the State Government may assign.

81. Action by appropriate authorities on recommendation of State Commissioner.—Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (*b*) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person.

82. Powers of State Commissioner.—(*1*) The State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 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.

(*2*) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the State Commissioners shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

83. Annual and special reports by State Commissioner.—(*1*) The State Commissioner shall submit an annual report to the State Government and may at any time submit special reports on any matter, which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

(*2*) The State Government shall cause the annual and the special reports of the State Commissioner for persons with disabilities to be laid before each House of State Legislature where it consists of two Houses or where such Legislature consist of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendation of the State Commissioner and the reasons for non-acceptance the recommendations, if any.

(*3*) The annual and special reports shall be prepared in such form, manner and contain such details as may be prescribed by the State Government.

CHAPTER XIII
SPECIAL COURT

84. Special Court.—For the purpose of providing speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district, a Court of Session to be a Special Court to try the offences under this Act.

85. Special Public Prosecutor.—(*1*) For every Special Court, the State Government may, by notification, specify a Public Prosecutor or appoint an advocate, who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(*2*) The Special Public Prosecutor appointed under sub-section (*1*) shall be entitled to receive such fees or remuneration as may be prescribed by the State Government.

CHAPTER XIV

NATIONAL FUND FOR PERSONS WITH DISABILITIES

86. National Fund for persons with disabilities.—(*1*) There shall be constituted a Fund to be called the National Fund for persons with disabilities and there shall be credited thereto—

(*a*) all sums available under the Fund for people with disabilities, constituted *vide* notification No. S.O. 573 (*E*), dated the 11th August, 1983 and the Trust Fund for Empowerment of Persons with Disabilities, constituted *vide* notification No. 30-03/2004-DDII, dated the 21st November, 2006, under the Charitable Endowment Act, 1890 (6 of 1890).

(*b*) all sums payable by banks, corporations, financial institutions in pursuance of judgment dated the 16th April, 2004 of the Hon'ble Supreme Court in Civil Appeal Nos. 4655 and 5218 of 2000;

(*c*) all sums received by way of grant, gifts, donations, benefactions, bequests or transfers;

(*d*) all sums received from the Central Government including grants-in-aid;

(*e*) all sums from such other sources as may be decided by the Central Government.

(*2*) The Fund for persons with disabilities shall be utilised and managed in such manner as may be prescribed.

87. Accounts and audit.—(*1*) The Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts of the Fund including the income and expenditure accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(*2*) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred by him in connection with such audit shall be payable from the Fund to the Comptroller and Auditor-General of India.

(*3*) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Fund shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Fund.

(*4*) The accounts of the Fund as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be laid before each House of Parliament by the Central Government.

CHAPTER XV

STATE FUND FOR PERSONS WITH DISABILITIES

88. State Fund for persons with disabilities.—(*1*) There shall be constituted a Fund to be called the State Fund for persons with disabilities by a State Government in such manner as may be prescribed by the State Government.

(*2*) The State Fund for persons with disabilities shall be utilised and managed in such manner as may be prescribed by the State Government.

(*3*) Every State Government shall maintain proper accounts and other relevant records of the State Fund for persons with disabilities including the income and expenditure accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(*4*) The accounts of the State Fund for persons with disabilities shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred by him in connection with such audit shall be payable from the State Fund to the Comptroller and Auditor-General of India.

(*5*) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the State Fund for persons with disabilities shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts, and in particular, shall have right to demand production of books of accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Fund.

(*6*) The accounts of the State Fund for persons with disabilities as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of the State Legislature where it consists of two Houses or where such Legislature consists of one House before that House.

CHAPTER XVI
OFFENCES AND PENALTIES

89. Punishment for contravention of provisions of Act or rules or regulations made thereunder.—Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

90. Offences by companies.—(*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation***.**—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

91. Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities.—Whoever, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

92. Punishment for offences of atrocities.—Whoever,—

(*a*) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;

(*b*) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability;

(*c*) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;

(*d*) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;

(*e*) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;

(*f*) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

93. Punishment for failure to furnish information.—Whoever, fails to produce any book, account or other documents or to furnish any statement, information or particulars which, under this Act or any order, or direction made or given there under, is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, or direction made or given thereunder, shall be punishable with fine which may extend to twenty-five thousand rupees in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to one thousand rupees for each day, of continued failure or refusal after the date of original order imposing punishment of fine.

94. Previous sanction of appropriate Government.—No Court shall take cognizance of an offence alleged to have been committed by an employee of the appropriate Government under this Chapter, except with the previous sanction of the appropriate Government or a complaint is filed by an officer authorised by it in this behalf.

95. Alternative punishments.—Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

CHAPTER XVII
MISCELLANEOUS

96. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

97. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any officer of the appropriate Government or any officer or employee of the Chief Commissioner or the State Commissioner for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

98. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(*2*) Every order made under this section shall be laid as soon as may be, after it is made, before each House of Parliament.

99. Power to amend Schedule.—(*1*) On the recommendations made by the appropriate Government or otherwise, if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Schedule and any such notification being issued, the Schedule shall be deemed to have been amended accordingly.

(*2*) Every such notification shall, as soon as possible after it is issued, shall be laid before each House of Parliament.

100. Power of Central Government to make rules.—(*1*) The Central Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner of constituting the Committee for Research on Disability under sub-section (*2*) of section 6;

(*b*) the manner of notifying the equal opportunity policy under sub-section (*1*) of section 21;

(*c*) the form and manner of maintaining records by every establishment under sub-section (*1*) of section 22;

(*d*) the manner of maintenance of register of complaints by grievance redressal officer under sub-section (*3*) of section 23;

(*e*) the manner of furnishing information and return by establishment to the Special Employment Exchange under section 36;

(*f*) the composition of the Assessment Board under sub-section (*2*) and manner of assessment to be made by the Assessment Board under sub-section (*3*) of section 38;

(*g*) rules for person with disabilities laying down the standards of accessibility under section 40;

(*h*) the manner of application for issuance of certificate of disability under sub-section (*1*) and form of certificate of disability under sub-section (*2*) of section 58;

(*i*) the allowances to be paid to nominated Members of the Central Advisory Board under sub-section (*6*) of section 61;

(*j*) the rules of procedure for transaction of business in the meetings of the Central Advisory Board under section 64;

(*k*) the salaries and allowances and other conditions of services of Chief Commissioner and Commissioners under sub-section (*4*) of section 74;

(*l*) the salaries and allowances and conditions of services of officers and staff of the Chief Commissioner under sub-section (*7*) of section 74;

(*m*) the composition and manner of appointment of experts in the advisory committee under sub-section (*8*) of section 74;

(*n*) the form, manner and content of annual report to be prepared and submitted by the Chief Commissioner under sub-section (*3*) of section 78;

(*o*) the procedure, manner of utilisation and management of the Fund under sub-section (*2*) of section 86; and

(*p*) the form for preparation of accounts of Fund under sub-section (*1*) of section 87.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

101. Power of State Government to make rules.—(*1*) The State Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act, not later than six months from the date of commencement of this Act.

(*2*) In particular, and without prejudice to the generality of foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) the manner of constituting the Committee for Research on Disability under sub-section (*2*) of section 5;

(*b*) the manner of providing support of a limited guardian under sub-section (*1*) of section 14;

(*c*) the form and manner of making an application for certificate of registration under sub-section (*1*) of section 51;

(*d*) the facilities to be provided and standards to be met by institutions for grant of certificate of registration under sub-section (*3*) of section 51;

(*e*) the validity of certificate of registration, the form of, and conditions attached to, certificate of registration under sub-section (*4*) of section 51;

(*f*) the period of disposal of application for certificate of registration under sub-section (*7*) of section 51;

(*g*) the period within which an appeal to be made under sub-section (*1*) of section 53;

(*h*) the time and manner of appealing against the order of certifying authority under sub-section (*1*) and manner of disposal of such appeal under sub-section (*2*) of section 59;

(*i*) the allowances to be paid to nominated Members of the State Advisory Board under sub-section (*6*) of section 67;

(*j*) the rules of procedure for transaction of business in the meetings of the State Advisory Board under section 70;

(*k*) the composition and functions of District Level Committee under section 72;

(*l*) salaries, allowances and other conditions of services of the State Commissioner under sub-section (*3*) of section 79;

(*m*) the salaries, allowances and conditions of services of officers and staff of the State Commissioner under sub-section (*3*) of section 79;

(*n*) the composition and manner of appointment of experts in the advisory committee under sub-section (*7*) of section 79;

(*o*) the form, manner and content of annual and special reports to be prepared and submitted by the State Commissioner under sub-section (*3*) of section 83;

(*p*) the fee or remuneration to be paid to the Special Public Prosecutor under sub-section (*2*) of section 85;

(*q*) the manner of constitution of State Fund for persons with disabilities under sub-section (*1*), and the manner of utilisation and management of State Fund under sub-section (*2*) of section 88;

(*r*) the form for preparation of accounts of the State Fund for persons with disabilities under sub-section (*3*) of section 88.

(*3*) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

102. Repeal and savings.—(*1*) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (1 of 1996) is hereby repealed.

(*2*) Notwithstanding the repeal of the said Act, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[*See* clause (*zc*) of section 2]

SPECIFIED DISABILITY

1. Physical disability.—

A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including—

(*a*) "leprosy cured person" means a person who has been cured of leprosy but is suffering from—

(*i*) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(*ii*) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(*iii*) extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression "leprosy cured" shall construed accordingly;

(*b*) "cerebral palsy" means a Group of non-progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth;

(*c*) "dwarfism" means a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 centimeters) or less;

(*d*) "muscular dystrophy" means a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterised by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue;

(*e*) "acid attack victims" means a person disfigured due to violent assaults by throwing of acid or similar corrosive substance.

B. Visual impairment—

(*a*) "blindness" means a condition where a person has any of the following conditions, after best correction—

(*i*) total absence of sight; or

(*ii*) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or

(*iii*) limitation of the field of vision subtending an angle of less than 10 degree.

(*b*) "low-vision" means a condition where a person has any of the following conditons, namely:—

(*i*) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or

(*ii*) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.

C. Hearing impairment—

(*a*) "deaf" means persons having 70 DB hearing loss in speech frequencies in both ears;

(*b*) “hard of hearing” means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears;

D. “speech and language disability” means a permanent disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or neurological causes.

2. Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (rasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including—

(*a*) “specific learning disabilities” means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;

(*b*) “autism spectrum disorder” means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusal or stereotypical rituals or behaviours.

3. Mental behaviour,—

“mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a conditon of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.

4. Disability caused due to—

(*a*) chronic neurological conditions, such as—

(*i*) “multiple sclerosis” means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other;

(*ii*) “parkinson's disease” means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine.

(*b*) Blood disorder—

(*i*) “haemophilia” means an inheritable disease, usually affecting only male but transmitted by women to their male children, characterised by loss or impairment of the normal clotting ability of blood so that a minor would may result in fatal bleeding;

(*ii*) “thalassemia” means a group of inherited disorders characterised by reduced or absent amounts of haemoglobin.

(*iii*) “sickle cell disease” means a hemolytic disorder characterised by chronic anemia, painful events, and various complications due to associated tissue and organ damage; “hemolytic” refers to the destruction of the cell membrane of red blood cells resulting in the release of hemoglobin.

5. Multiple Disabilities (more than one of the above specified disabilities) including deaf blindness which means a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental, and educational problems.

6. Any other category as may be notified by the Central Government.

An NHRI is autonomous. As such, it operates independently from governments and provides an independent expert perspective. In its independent role, the NHRIs constitute an essential link between government and civil society. This involves helping to 'bridge the 'protection gap' between the rights of individuals and the responsibilities of the State'.

Morten Kjærum
Director, Raoul Wallenberg Institute of Human Rights and Humanitarian Law

National Human Rights Institutions (NHRIs) are a vital part of the country level human rights protection system. By raising awareness, providing advice, monitoring and holding authorities to account, they have a central role in navigating the great human rights challenges of our day – tackling both persistent concerns like discrimination and inequality, and novel issues such as the rights implications of artificial intelligence and of the COVID-19 pandemic.

Michael O'Flaherty
Director, European Agency for Fundamental Rights

NHRIs are defenders of human rights whose mandate the state and its apparatus should undoubtedly need to protect and comply with, even in the event the state or its apparatus are violators themselves.

Raj Kumar Chockalingam
Founding Vice-Chancellor, OP Jindal Global University