

National Human Rights Institutions

Best Practice



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Introduction

The Commonwealth Commitment to the Promotion and Protection of Human Rights

Commonwealth countries are committed to the principles outlined in the 1991 Harare Commonwealth Declaration. Drawing on the International Bill of Rights, Commonwealth Heads of Government have committed themselves and their countries to work with renewed vigour for the protection and promotion of the fundamental political values of the Commonwealth. These are:

- ◆ democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; and
- ◆ fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed, or political belief.

The commitments to the Harare Principles also include pledges to work in specific areas of special relevance which are reflected in the universal human rights instruments. These include:

- ◆ equality for women;
- ◆ provision of universal access to education;
- ◆ promotion of sustainable development and alleviation of poverty;
- ◆ extension of the benefits of development within a framework of respect for human rights;
- ◆ protection of the environment; and
- ◆ combating drug trafficking and abuse and communicable diseases.

The Harare Declaration reaffirms the Declaration of Commonwealth Principles agreed in Singapore in 1971. Accordingly, it reiterates:

- ◆ belief in liberty under the law;
- ◆ recognition that racial prejudice and intolerance is a dangerous sickness;
- ◆ awareness that racial discrimination is an unmitigated evil;

- ◆ opposition to all forms of racial oppression; and
- ◆ commitment to the principles of human dignity and equality.

Commitment to the Commonwealth principles and the organisation's fundamental political values is given firm expression when countries create national institutions to promote and protect the rights of citizens and others within their jurisdiction, in particular, those rights recognised as fundamental to development and well-being in democratic societies.

As recorded in the 1995 Millbrook Commonwealth Action Programme of the Harare Declaration, Commonwealth Heads of Government requested that the Commonwealth Secretariat work to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's fundamental political values, including assistance in creating and building the capacity of requisite institutions. National Human Rights Institutions (NHRIs) fall clearly within this remit.

National Human Rights Institutions as an Integral Part of a Democratic Society

When governments ratify or accede to an international human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained in the instrument. Often, however, the existence of a law that protects certain rights is not enough if that law does not also provide all the legal powers and institutions necessary to ensure the effective realisation of those rights. It is therefore important for a state committed to human rights to establish a national infrastructure, including relevant institutions, which can promote and protect human rights.

The 1993 World Conference on Human Rights (the World Conference) encouraged the establishment and strengthening of NHRIs, while recognising both the rationale and requirements of the Paris Principles¹ and that each state chooses the framework which best suits its particular needs. The World Conference also reaffirmed the importance of the role played by NHRIs for the promotion and

¹ See Annex

protection of human rights, in particular, in advising the competent authorities, in remedying human rights violations, in disseminating human rights information, and in educating the public about human rights.

Since the World Conference, NHRIs have become more prominent actors in the national, regional and international human rights arenas. They support the basic institutions of democracy which include a pluralist and accountable parliament, an executive which is ultimately subject to the authority of elected representatives and an independent judiciary.

NHRIs have the capacity to make a substantial contribution to the realisation of human rights by transforming the rhetoric of international instruments into reality. Their ability to understand national circumstances and local challenges often means that NHRIs are better placed than external evaluators to monitor the human rights performance of governments.

There are many ways in which NHRIs can effectively contribute to the development of pluralistic and healthy democracies. Their most important contributions arise from the exercise of powers to:

- ◆ undertake investigations of alleged violations of rights;
- ◆ provide advice to government on legislation, policies and programmes;
- ◆ promote rights and educate the public;
- ◆ conduct public inquiries; and
- ◆ build bridges between government and civil society and between groups within civil society.

Their success depends on them being truly independent, qualified and diverse in their membership, adequately staffed and resourced, and accessible to the public.

National Human Rights Institutions in the Commonwealth

Many of the Commonwealth's member countries are small island states with limited human and financial resources. Many others are least developed or

developing countries. Indeed, over 90% of the countries of the Commonwealth are small and/or developing. However, differences in size and level of development does not preclude the ability to share common values as evidenced by the near complete sharing of a system of law which facilitates the development of common standards of legal behaviour, common definitions of the relations between the courts and other national institutions and a common understanding of the importance of laws which are in harmony with fundamental rights and freedoms.

Throughout the Commonwealth NHRIs take many forms. Some deal only with human rights issues, often narrowly defined so as not to include the full range of issues covered by the international human rights instruments or the Harare Declaration. Others have wide mandates to address all issues covered in the international instruments. Some combine a number of functions relating to the international instruments with the traditional role of the Ombudsman who has oversight over operations in the public sector, others subsume an administrative law function, and yet others have few powers beyond those of a traditional Ombudsman. In other cases, the mandate is conferred as the result of domestic upheaval and reflects only the current preoccupations of a particular society. In many cases, the size and resource base of the country dictates the characteristics of NHRIs.

However, for whatever reason NHRIs are formed, the ideal is for each of them to have the capacity to deal with the protection and promotion of **all** rights recognised by international law as human rights.

Small and Developing Countries

In small and developing states or states with very limited resources, it may be more practicable to confer the mandates of both an NHRI and an Ombudsman upon a single institution. Where this is done it is important that the institution, whatever it may be called, has the charter and commensurate power to carry out the functions of an NHRI.

Each of the best practices outlined in this work is applicable to an NHRI in any country. Every effort has been made to include in the commentaries suggestions relevant to the particular challenges and constraints confronting small states.

Independence

Independence characterises all NHRIs designed to effectively monitor good governance and human rights in Commonwealth countries. NHRIs in many states operate alongside electoral and anti-corruption commissions and similar institutions. The requirement of independence is so fundamental that it is, therefore, a theme reflected throughout the booklet.

Evolving Changes

Recognition of the World Conference in 1993 that all human rights were universal, indivisible, interdependent and interrelated, has accompanied a rapidly growing recognition that human rights institutions at the national and international level must more effectively address and protect the rights of the most vulnerable in every society. NHRIs, therefore, should interpret their mandates creatively to address major challenges such as the AIDS pandemic and the marginalisation and discrimination of particularly vulnerable groups.

The 2000 Commonwealth Conference of National Human Rights Institutions

Meeting in Cambridge (UK) in July 2000, representatives from 41 Commonwealth countries and NHRIs recognised that NHRIs play a critical role in the entrenchment of the universality, interdependence, interrelatedness, and indivisibility of human rights and the maintenance of good governance.

The Cambridge Conference was convened to develop a consensus on progress based on the Paris Principles (Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights), adopted by the United Nations General Assembly in 1993, and to encourage the move towards a new era of human rights thinking.

The Conference reaffirmed the Paris Principles. Delegates sought, in their deliberations, to build on those principles and to articulate detailed and updated standards for the creation and operation of NHRIs in member countries.

At the conclusion of the Conference, the Commonwealth Secretariat was asked to bring together an expert group, representative of the diversity of the Commonwealth, to identify best practice in the establishment and operation of NHRIs.

The Development of Best Practice for National Human Rights Institutions

In March 2001 an expert group was convened by the Secretariat to consider the establishment and operation of national human rights institutions. Designed to represent all regions of the Commonwealth and to include developed and developing countries and large and small countries, the Group's work was assisted by senior representatives of the Office of the United Nations High Commissioner for Human Rights and the Asia Pacific Forum of National Human Rights Institutions.

All aspects of the processes involved in creating, appointing and administering national bodies to promote and protect human rights were considered. The group was conscious of the human and financial resource constraints of many member countries and sought to address these constraints in the proposals it made. What remained at the forefront at all times was the need for NHRIs to be accepted by the public and to be in a position to form part of the daily lives of citizens of all Commonwealth countries.

The following people who gave freely of their time, expertise and extensive experience wrote this guide, which brings together the experience of NHRIs across the Commonwealth:

Justice Emile Short	Chairman, Commission on Human Rights and Administrative Justice, Ghana
Professor Mohd. Hamdan Adnan	Member, Human Rights Commission, Malaysia
Mrs Lawrence Laurent	Secretary/Treasurer, Caribbean Ombudsman Association, St Lucia
Mr Chris Lawrence	Commissioner, Human Rights Commission, New Zealand
Mrs Shirley Mabusela	Deputy Chairperson, Human Rights Commission, South Africa
Mr Brian Burdekin	Special Adviser on National Institutions to the United Nations High Commissioner for Human Rights, United Nations
Mr Kieren Fitzpatrick	Director, Asia Pacific Forum of National Human Rights Institutions

They were assisted by officers of the Legal and Constitutional Affairs Division of the Commonwealth Secretariat.

Chapter I

Mode of Establishment

1.1 A National Project

- The process of establishing an NHRI should be seen, in itself, as critical to the success of the project.
- The establishment of an NHRI should be seen as a national project of the highest priority.
- The process should also:
 - be consultative, inclusive and transparent;
 - be led and supported at the highest level of government; and
 - involve and mobilise all relevant elements of the State and civil society.

The process of establishing an NHRI is as important as the actual creation of the institution. The establishment process, whether initiated by government or by civil society, must be transparent and include all relevant actors. It is essential that all stakeholders “buy-in” to the establishment process if the NHRI is to have the trust and confidence of both government and the people.

It is important that a wide variety of participants be included in the establishment process. One successful method of including the various interested groups has been to form a steering committee to guide the establishment process, comprised of, for example, ministers, members of parliament, officials of government departments, members of major political parties, relevant government agencies, human rights non-governmental organisations (NGOs), judges and jurists, trade unions and professional groups, human rights experts and academics. Including a diverse group of representatives in the establishment process will marshal many different sectors of society and promote transparency. A designated government agency can assist the steering committee by arranging consultations and generating essential publicity about the intention to create an NHRI.

It is likely that including civil society will make the establishment process more lengthy, but consultations and input from members of the public are essential for attaining public legitimacy. It will be hard to build trust if government creates an NHRI in a climate of secrecy.

Public consultations can be very useful for creating an NHRI, particularly if they address:

- ◆ the national human rights situation;
- ◆ the legal basis for the institution;
- ◆ the mandate and powers of the institution;
- ◆ measures to ensure independence, pluralism and adequate resources;
- ◆ the structure, staffing and geographical location of the institution; and
- ◆ the method of appointment of commissioners.

1.2 Legal Foundation

- The legal provisions which establish the NHRI and which guarantee its independence and funding should be entrenched in the constitution or clearly stipulated in the enabling legislation.
- The preferred method of establishing an NHRI is through incorporation in the constitution of a State.
- The less preferable, but acceptable, alternative is establishment by an act of parliament.
- Establishment other than by the constitution or an act of parliament, e.g. by a presidential decree, is undesirable.

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 establishment 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 courts.

Where the constitution of a country does not provide for the creation of a national human rights body and the process of constitutional amendment is rarely reverted to or so difficult as to be impractical, it is appropriate for the parliament to create an NHRI through statute. To guarantee the continued existence of an NHRI established by statute, the statute should have fixed provisions, amendable only by a special majority vote of the parliament, guaranteeing the existence and political, operational and financial independence of the national institution.

In some countries, NHRIs are created by an executive order such as a presidential decree. Executive orders are easily repealed or amended and thus afford no real guarantee for the continued existence or independence of an NHRI. The establishment of an NHRI through executive order is, therefore, not an acceptable alternative.

Chapter II

Composition of National Institutions

2.1 Members and Staff

Members

- Members should have integrity, moral courage and competence, and be able to exercise sound judgment and fairness. They must also possess public credibility and be independent from executive influence. They should be sensitive to issues relating to gender, ethnicity, and the rights of indigenous peoples, people with disabilities and other vulnerable groups.
- NHRI should consist of at least three leading members who should generally serve on a full-time basis.
- Members should be accorded a rank and salary comparable to that of senior judicial officers. If a sitting judicial officer is appointed to the NHRI, his or her tenure should not be affected.
- Once appointed, members must act independently and impartially of any person, authority or organisation. Members should avoid any conflict of interest and should one arise, declare it immediately.
- Members and the NHRI staff should have the power to determine how to allocate NHRI resources and, in general, should be accountable to the legislature for their budgetary decisions.

Staff of national institutions

- Members should have the autonomy to select and appoint the NHRI staff but may, in appropriate cases, consult with the public service commission.
- Staff should be suitably qualified and sensitive to the NHRI's mandate.
- Staffing levels should be sufficient to adequately support the group of members in discharging the full mandate of the NHRI.

- An NHRI should ensure that its employment processes promote professionalism and equal employment opportunities.
- An NHRI should have its own legal unit that is qualified to undertake the tasks needed to address effectively individual complaints.

Members of National Human Rights Institutions

There are two absolutely necessary features for an NHRI to function effectively: (i) high-quality members and staff; and (ii) independence. Individual members should possess the requisite expertise, integrity, experience and sensitivity to adequately protect and promote human rights. NHRIs must be free to perform their mandates and functions without outside restraint or improper influence.

The quality of the appointed members and staff of an NHRI will determine its effectiveness. Members should be afforded the titles and remuneration necessary to attract quality candidates. In addition to the strong personal and professional qualifications of the individual members, successful NHRIs are characterised by the plurality of their composition. The Paris Principles stress the importance of ensuring wide representation of civil society groupings in the membership of NHRIs. The interests of representation and plurality are best promoted by multi-member NHRIs. In those micro-states for which multi-member bodies may not be sustainable, a balance may be achieved by ensuring that the senior staff of the NHRI are appropriately representative of society.

Every effort should be made to decide issues of policy and NHRI priorities by consensus among members. When consensus among members is not feasible, a vote should be taken and the chairperson should cast the deciding vote when necessary.

Independence and the public perception of independence are essential to a well-functioning NHRI. To enable members of NHRIs to undertake their duties as independent professionals they should be appointed to full-time positions. The salaries of members of NHRIs should be linked to, and, reviewed in line with the salaries of members of the judiciary.

Similarly, independence is promoted if members have the financial autonomy to direct the spending of NHRI resources. Members should be able to rely on a specific allocation from Parliament at a level sufficient to ensure an active and professional NHRI. Nothing in the enabling law or in rules relating to fiscal autonomy should inhibit the power of an NHRI to collaborate with NHRIs in other countries, whether individually or collectively, on a global or regional basis. Similarly, nothing in the enabling law or in rules relating to fiscal autonomy should require the institution to act in accordance with the directives of the national government or any of its departments or agencies.

Staff

Most of an NHRI's work is performed by its staff. Members must be granted the right to appoint their own staff and, in appropriate cases, may consult with the relevant statutory authority having responsibility for public sector staffing. The level of professional staffing of NHRIs should be adequate to support the work of the commissioners and to conduct the functions of the commission.

2.2 Appointment of Members of an NHRI

- The appointment process should be designed to secure the best possible members.
- The executive should not exclusively determine the selection of members of an NHRI. It should be a transparent process that also involves both the legislature and civil society.
- A transparent process of selection and appointment should be characterised by wide consultation and include a process for public nomination of candidates.
- Collectively, the members should reflect gender balance, the ethnic diversity of society and the range of vulnerable groups in their respective society.
- Appointees should possess the qualifications necessary to undertake the role and should meet the advertised selection criteria.

The appointment process provides a clear signal to the public about an institution’s independence. An appointment process that includes the legislature and the public is likely to be independent, and to be perceived as such. Appointments made purely by the executive in a State have the potential to undermine efforts to establish an independent “watch-dog”. NHRI members need to be able to monitor impartially the actions of government.²

The appointment process should be as transparent as possible with the involvement of various groups of society. Among the groups identified in the Paris Principles are human rights NGOs, professions, religious groups and educational institutions. In addition, the membership of institutions should reflect national ethnic diversity and a proper gender balance.

2.3 Terms of Appointment

Terms of appointment should include: duration of appointment, whether members can be re-appointed, who may dismiss members, for what reasons and in what manner, and privileges and immunities enjoyed.

- Commissioners should not be removed except for reasons specified in the enabling law. These reasons, and the method of removal, should parallel those applicable to members of the judiciary.
- Generally, it is preferable that members be appointed for a fixed term of at least five years. There should be the possibility of re-appointment for one additional term of the same length.
- A vacancy in the position of commissioner should be filled expeditiously.

2 An appointment process could, for example, involve the establishment of a special and fully representative parliamentary committee to handle the selection process. This process would include the following elements:

- public advertisement of vacancies;
- short-listing of candidates for interview;
- interview of short-listed candidates;
- the making of a recommendation to Parliament; and
- consideration by Parliament and vote (by simple majority) on the name or names to be recommended to the head of state or head of government for appointment.

- Where the term of a commissioner expires and it is not immediately possible to appoint a new commissioner, the term of a serving commissioner should continue for such period, not exceeding 12 months, until a new appointment is made.
- It is desirable that there be continuity in the membership of NHRIs and, accordingly, it may be appropriate that the first commissioners appointed to a new NHRI be appointed for varying periods to ensure that not all Commissioners' terms of office expire at the same time.

An independent NHRI requires that members be protected from employment related reprisals for work performed in the line of duty. Members should be appointed on standardised terms that are publicly known. Members should serve a term long enough to permit them to hone their expertise and use that expertise for the benefit of the public. Also, it is preferable that when acting bona fide in the course of their official duty as established by law, members and staff of NHRIs should enjoy immunity from suit, subject only to laws relating to judicial review.

Chapter III

Mandate and Powers

3.1 Overview

- An NHRI should have a broad mandate covering the full range of human rights issues and recognising the universality, interdependence, interrelatedness, and indivisibility of human rights.
- “Human rights” should be defined not only by reference to domestic law, but also by reference to all international human rights instruments, whether or not acceded to by the relevant State.
- The mandate of an NHRI should, in addition to providing for the protection and promotion of human rights:
 - cover both the private and the public sector; and
 - cover the promotion of accession to international human rights instruments and the harmonisation of domestic law with international human rights instruments.
- The legislative base of NHRIs should confer a power to take such action as is necessary and convenient to enable the institution to discharge its mandate. The specific powers of NHRIs should be clearly and expressly prescribed in the legislation governing the institution and should include the power to:
 - independently initiate investigations of individual and systemic human rights violations and other related issues;
 - encourage and promote human rights through education;
 - advise government and legislators on draft and existing legislation and submit recommendations to the Parliament to resolve human rights violations resulting from legislation, regulations or any other cause;
 - work with and consult appropriate persons, governmental organisations, international organisations and NGOs;
 - monitor government compliance with human rights treaty obligations and promote the ratification of human rights treaties;

- establish advisory committees to advise the NHRI in relation to the performance of its functions;
 - submit recommendations to the Executive for the resolution of human rights violations relating to administrative action or inaction or any other cause;
 - provide remedies for human rights violations and when relevant, seek and facilitate the provision of remedies by the courts;
 - conduct quasi-judicial hearings. These hearings should generally be held in public. However, an NHRI should have the power to determine that hearings be held in private in appropriate circumstances;
 - compel attendance of witnesses before it, order production of documents and secure access to locations;
 - require co-operation from other government agencies and public actors;
 - administer an oath or affirmation;
 - inspect custodial facilities and places of detention;
 - co-operate as appropriate with NHRIs in other countries, the UN and other relevant international organisations; and
 - do all things that are necessary or convenient to be done in connection with the performance of its functions.
- Where in a particular country it is considered necessary and desirable that an NHRI should have search and seizure powers then these should only be exercised by obtaining a judicially approved warrant and implemented in co-operation with law enforcement authorities.

NHRIs should possess the mandate and power to promote, protect and secure human rights. Broad mandates afford the possibility of greater rights protection and thus are preferable. This is especially relevant for those countries with constitutions that define rights or human rights so narrowly as to afford limited, if any protection against attempts by the government or other actors to impinge on the human rights of citizens. In order to ensure that the NHRI is an effective

and credible protector of rights, the NHRI's mandate should include jurisdiction over all categories of human rights and all public and private actors.

An NHRI must have a general and unlimited power to inquire fully into any matter concerning human rights. Specifically, NHRIs should have the power to: hear and investigate individual complaints, raise awareness about human rights and promote human rights education, and provide advice to government officials and legislators regarding draft legislation and its compliance with the State's human rights treaty obligations. In the exercise of these powers, the NHRI should ensure that it strategically strikes a balance in addressing both systemic human rights issues and the resolution of individual complaints. NHRIs must have the power to provide effective remedies for violations of human rights.

An appropriate exercise of the above powers includes the power to visit and inspect places such as detention centres, immigration camps, refugee camps, correctional institutions and prisons. A wide definition of the term "place of detention" is desirable to facilitate entry into, and, inspection of, any place where a person can be detained against his or her will.

3.2 General Complaint Procedures

- All NHRIs should have the power to investigate alleged human rights violations on their own initiative. This power should be used actively to investigate human rights concerns of people who may have difficulty accessing the NHRI on their own.
- The complaint mechanism of an NHRI should be simple, accessible, inexpensive and expeditious. Where necessary for the protection of witnesses or victims, confidentiality should be guaranteed.
- The enabling legislation of an NHRI should specify the subject matter of admissible complaints. In general, this should include civil, political, economic, social and cultural rights and the rights of women, children, minorities, indigenous persons, the disabled, the aged, and other particularly vulnerable groups. The enabling legislation should also specify who is entitled to lodge a

complaint. The enabling legislation should specify that a representative of the complainant may file complaints.

- It must be possible to file complaints regarding governmental and non-governmental acts or omissions.
- NHRI should develop methods to encourage complaints from groups particularly vulnerable to human rights violations.
- Procedures for submitting complaints, including the time period for laying complaints, should be published and disseminated widely. Complainants should be regularly informed of the status of their complaints.
- Complaints by illiterate people must be facilitated.

An important power of an NHRI is its ability to protect the human rights of individuals by investigating violations and seeking remedies or redress for victims. The efforts of NHRIs to provide advice, to promote adherence to standards and to educate are very important and should not be undervalued, but NHRIs must also demonstrate that there are effective mechanisms for protecting human rights that have been abridged or threatened.

3.3 Investigation of Complaints

- Each NHRI should establish its own guidelines and rules of procedure for the investigation of complaints. Its procedures should reflect the principles of natural justice and procedural fairness.
- Investigations should accord the right of reply to the person or body whose acts or omissions are investigated.
- NHRIs should have the power to effectively address non-co-operation, obstruction, or victimisation in an investigation, e.g. a refusal to produce evidence.

- An NHRI should not be strictly bound by the rules of evidence, but its evidentiary requirements should reflect the principles of natural justice and procedural fairness.
- People compelled to give evidence should have the right against self-incrimination. In addition, professional privilege should be respected.

NHRIs should develop fair and standardised procedures for investigating complaints. The rules and procedures of an NHRI should demonstrate that it will, in good faith, make efforts both to ascertain the truth and protect the rights of both complainants and respondents.

While some discretion on the part of NHRIs is necessary to protect victims, the practices should guarantee procedural fairness. For example, it is generally true that an NHRI should not consider complaints relating to incidents that took place more than one year before the complaint was lodged due to the difficulty of obtaining reliable evidence. However, an NHRI should have the discretion to accept complaints that fall outside this time period under well-defined circumstances.

The power to compel co-operation is essential to the fact-finding function of the NHRI. If an NHRI needs the judicial system to enforce co-operation, the effectiveness of NHRI investigations and hence the public perception of the NHRI, will be dependent upon the speed and independence of the judiciary.

3.4 Promotion of Rights

- NHRIs should have the power to provide information, education, strategic advice and training on human rights issues including:
 - training for government and other public officials about applicable norms and human rights standards. Specific training should be designed for members of the police, military forces, judiciary, legal profession and other members of society that have particular powers or responsibility relevant to human rights;

- targeted education for vulnerable groups;
 - building the capacity of human rights advocates and NGOs to perform their work;
 - training NHRI staff to build the capacity of the NHRI to perform its work;
 - public awareness campaigns; and
 - developing and supporting human rights clubs – particularly in schools and other formal educational institutions.
- NHRIs should widely disseminate information on their complaints process, the remedies available and the contact details of the NHRI.
 - NHRIs should have the power to use mass media as appropriate and available to communicate with the public. For example, in developing countries, radio may be very effective. In other countries, toll-free phone systems and websites may be useful.
 - NHRIs should collaborate with other public and private institutions to maximise the provision of human rights education.

The powers possessed by NHRIs to educate victims and perpetrators of human rights abuses should be extensive and cover a broad range of activities. NHRIs should consider it their duty to educate the public about human rights and what mechanisms exist to protect them. Great care should be taken to target vulnerable groups because they are unlikely to be reached through traditional education campaigns.

NHRIs can change the culture of government and its employees, the judiciary and the legal profession, the security forces and those in positions of power through training. This training, which should be designed to impart the message that sensitivity to human rights issues is required for effective job performance, should form part of all personnel development programmes. NHRIs should work with trainers and educators to ensure that the importance of human rights is recognised in other training programmes.

3.5 Review of Laws

- NHRIs should have the power to analyse all existing and proposed legislation and make recommendations regarding consistency with international human rights norms.
- Governments should consult with NHRIs on legislative proposals and introduce the practice of including a human rights impact assessment in the explanatory documents and second reading speeches produced for all bills submitted to parliament.

The power of NHRIs to analyse legislation and make recommendations is important for the promotion of human rights for two reasons. The first is that it may lead to the codification of human rights principles into the laws of the land. The second is that it raises the awareness of law-makers about international treaty obligations and human rights norms.

3.6 Remedies

- An NHRI should have the power to use conciliation, mediation and other alternative dispute resolution mechanisms, when appropriate, to resolve complaints.
- NHRIs should be empowered to refer matters for prosecution.
- An NHRI should have the power to seek effective remedies including, where appropriate, through the courts.
- The respective statutes of limitations should not be so narrow as to limit the ability of NHRIs to examine allegations of abuse or maladministration.
- Legislation should not exclude agencies within the state apparatus from NHRI investigations.

NHRIs must be able to provide effective remedies for violations of human rights. The means that are available to NHRIs to resolve complaints will affect both public perception and the ability of an NHRI to successfully foster a culture of respect for human rights. Human rights breaches may be resolved in various ways ranging from alternative dispute resolution to action in the courts. The power to conciliate and mediate between disputants is important as a means of resolving complaints expeditiously. Delays in the provision of remedies will diminish public confidence in the NHRI and deter victims from looking to the NHRI for redress. NHRI decisions should, where appropriate, be enforceable through the courts. In addition, complainants should have access to the courts should they be dissatisfied with the findings of an NHRI.

Perhaps not always seen as a remedy but of major importance in the armoury of an NHRI is work aimed at prevention of abuses. It is therefore important that national human rights institutions should have powers to issue guidelines to encourage the protection of human rights.

Chapter IV

Accountability and Relationships with Other Institutions

4.1 Accountability to the Public

- An NHRI should actively evaluate the effectiveness of its activities, including through the engagement of independent consultants, and it should incorporate the results of such evaluations in its annual reports.
- Evaluations should examine the quality of the NHRI's programmes and the extent to which existing programmes sufficiently address the human rights issues in the country. The evaluations should include both qualitative and quantitative analysis.
- NHRIs should undertake an annual strategic planning exercise to establish programmatic targets and goals. Some targets and goals should be measurable, for example, number of complaints resolved, number of detention centres visited, etc. The strategic plan should be included in the annual report.

NHRIs exist to serve the public, and accordingly, the public should have a mechanism for assessing how effectively an NHRI is performing its mandate. Public assessment requires that NHRIs evaluate their own programmes regularly and include the results of such evaluations in their annual reports. The evaluations undertaken by NHRIs should analyse all of their functions, including the resolution of complaints, the prevention of human rights abuses, as well as the promotional and educational aspects of their work.

4.2 Relations with Parliament

- NHRIs should report to parliament. Parliaments should have an opportunity to discuss the reports of the NHRI and to debate its budget proposals. The use of parliamentary committees to provide an opportunity for in-depth consideration of such reports should be encouraged.
- The annual report of the NHRI should be provided to the Minister responsible for Human Rights and tabled in parliament in a timely manner.

NHRIs should report to their respective parliaments because parliaments are the most important venues for the interests of the public to be aired and discussed. As annual reports can serve the function of an audit of the performance of both the government and the NHRI in promoting human rights, there should be an established method of ensuring that parliament has a real opportunity to debate the annual report findings. Once a report has been presented to parliament, it should be released to the public and the media for further consideration. It is equally important that the parliament debate the budget of the NHRI in order to ensure input from various constituencies regarding the level of resources appropriated for the NHRI.

4.3 Relations with the Executive

- The executive has the responsibility to ensure that NHRIs are adequately resourced and that all agencies of the executive respect the independence of the NHRI.
- NHRIs should provide copies of their annual and other reports to the Minister responsible for Human Rights.
- The executive arm of government should respond in a timely manner to recommendations made by the NHRI.
- The executive should facilitate efforts of the NHRI to build contacts with other national institutions, NHRIs, and multilateral and regional bodies.

Ministers and government officials should consider supporting the activities and endeavours of NHRIs to be an essential part of their duties. They should use their offices to increase the opportunities of the NHRI to build relationships with other relevant institutions.

4.4 Relations with the Courts

- NHRIs should play a role complementary to that of the courts.
- There should be an expressly established mechanism for the enforcement of appropriate NHRI decisions by the courts.
- Individuals should be able to access the court system directly to seek a remedy for a human rights violation and should not be required to first file a complaint with the NHRI.
- NHRIs should be more accessible and offer a more cost-effective and less formal means of conflict resolution than the courts.
- NHRI staff and members should try to establish a co-operative working relationship with the courts.
- NHRIs should refer matters for prosecution before the courts when appropriate.
- NHRIs should not commence investigations into matters already pending before the courts unless required as part of the duty of NHRIs to investigate systemic issues relating to equal protection under the law and access to justice.
- Courts should permit NHRIs to provide assistance to individuals seeking to redress grievances through the courts.
- NHRIs should be accorded standing to bring complaints to court in their own right.
- Courts should accord NHRIs official status as a friend of the court.
- Courts should grant to NHRIs the rights to join as a party in relevant cases.
- The decisions of NHRIs should be subject to judicial review.

In order to discharge their investigative functions, NHRIs enjoy certain quasi-judicial powers. This does not mean, however, that NHRIs share all powers enjoyed by the courts. For example, the power to make judicially binding determinations or to impose penalties for violations is generally reserved to the courts. The distinction between the courts, which exercise the judicial power of the state, and NHRIs, which are obliged to monitor and protect human rights, should be maintained. While NHRIs are not courts, it is nevertheless critical that there be appropriate sanctions for failure to co-operate with the NHRI in the conduct of its investigations and inquiries. Accordingly, a mechanism for the enforcement of NHRI decisions by the courts should be provided.

4.5 Relations with the International Treaty Machinery

- NHRIs should co-operate with the efforts of international treaty bodies to monitor states' compliance with their international human rights treaty obligations.
- NHRIs should make recommendations to the executive and the parliament regarding efforts needed to achieve compliance with international human rights treaty obligations.
- NHRIs should contribute as appropriate to the preparation of state reports regarding state responses to the recommendations of treaty bodies.

One essential function performed by NHRIs is to monitor state compliance with international treaties. A co-operative relationship with the international treaty machinery will facilitate efforts to perform this function.

National reports provided pursuant to human rights treaties should be prepared by the executive and should take into account the comments made by the NHRI.

Chapter V

Accessibility

- NHRIs must proactively reach out to vulnerable and disadvantaged persons. Unconventional channels of communication should be used as needed to ensure that all groups in society are reached.
- NHRIs should be geographically and physically accessible by constituents, including people with disabilities.
- States should provide adequate resources to ensure that the services of an NHRI are widely accessible, including through processes such as decentralised field offices or other appropriate mechanisms.
- An NHRI should, where appropriate, form alliances with NGOs to enhance its accessibility and effectiveness.
- NHRIs should carefully monitor and supervise local offices or ‘out-post’ representatives to ensure that high-quality services are provided.
- NHRIs should aim to provide, as far as practicable, information and documentation not only in the dominant language spoken in the country, but in other relevant languages.
- An NHRI should ensure that complaints can be accepted in any language.
- The offices of an NHRI should, wherever possible, be located away from other government and military offices.

An NHRI must be readily accessible to its clients - those individuals and groups whose rights it has been established to promote and protect. In this respect, it is essential to recognise that many of the most important clients – those who are most in need of help – will often be difficult to reach through standard channels of communication. It is important that the location of offices does not deter

clients from filing complaints. Hence, offices should be physically accessible by clients, including clients with disabilities and those reliant on public transportation. To protect complainants from retaliation and dispel the impression that an NHRI is simply an organ of government, NHRIs should not be located in close proximity to other government offices.

Chapter VI

Significant Issues

6.1 Role of NHRIS in Conflict Situations (including War and Civil Strife)

- NHRIs should continue to work in conflict situations to protect and promote human rights and the peace process.
- An NHRI should do whatever lies within its powers to assist particularly vulnerable groups.
- An NHRI should work with other organisations, i.e. the UNHCR, NGOs and other relief organisations, to address the needs of refugees and internally displaced persons.
- An NHRI should assist in the implementation of the UN Guidelines on Internally Displaced Persons.

In a time of a war or civil strife, the functions performed by NHRIs become even more necessary. NHRIs find it extremely difficult to protect human rights in conflict situations and thus should work in co-operation with other actors, for example, NGOs and other relief organisations, to fortify their position as a protector of human rights.

6.2 Economic, Social and Cultural Rights

- An NHRI should employ all available means to respond to inquiries related to the advancement of economic, social and cultural rights, whether or not its enabling statute or national constitution recognise economic, social and cultural rights as justiciable.
- An NHRI should advise the government on the development and implementation of economic policies to ensure that the economic, social and cultural rights of people are not adversely affected by

economic policies, e.g. structural adjustment programmes and other aspects of economic management.

- An NHRI should work towards facilitating public awareness of government policies relating to economic, social and cultural rights and encourage the involvement of various sectors of society in the formulation, implementation and review of relevant policies.

Regardless of a country's formal recognition of economic, social and cultural rights, NHRIs should be well versed with those rights. NHRIs should develop and conduct educational programmes to promote rights awareness in this category of rights.

6.3 Racism

- NHRIs should work in conjunction with the education sector to promote respect and understanding of racial, ethnic and cultural diversity among all groups in society, including schoolchildren.
- NHRIs should monitor and report the number of complaints filed against the military, the police and other government agencies for acts of racism.
- NHRIs should recommend appropriate training for government agencies that may be under-performing in this area.
- An NHRI should promote legislation to appropriately deter and punish criminal activities motivated by racism, xenophobia and other forms of related intolerance.

An NHRI should accord a high priority to addressing and preventing racism, xenophobia, and other forms of related intolerance by all available means. NHRIs, should, in the execution of their mandate, conduct the necessary education and training to prevent and eradicate the manifestation of intolerance.

6.4 Environment

- NHRIs should investigate, monitor and report instances in which human rights violations and environmental degradation appear to be related.
- NHRIs should work in collaboration with NGOs and other relief organisations to mitigate the human rights consequences of environmental degradation.

An NHRI should recognise the importance of a clean and sustainable environment to the right to life, health and sustainable development. This recognition requires that NHRIs be mindful of situations in which environmental degradation is the functional equivalent of human rights abuses.

6.5 Migrant Workers and Refugee Claimants

- NHRIs should monitor a country's compliance with treaty obligations related to migrant workers and refugees.
- NHRI procedures should not require that a complainant have a permanent address.

Best practice requires that NHRIs endeavour to ensure that migrant workers and refugees be accorded due process and be treated with dignity, despite their potentially transient status. NHRIs should actively build their capacity to provide for the needs of such transient individuals.

6.6 Indigenous Peoples

- NHRI should develop and execute special outreach programmes directed towards indigenous peoples.
- Where appropriate, NHRI staff should include indigenous persons.
- NHRI staff should be specially trained to respond to the specific issues faced by indigenous peoples.
- NHRI should include specific questions related to the provision of services to indigenous peoples as part of their evaluation efforts.

An NHRI should recognise the experiences of indigenous peoples and work to prevent their social, political and economic marginalisation. This can be accomplished by ensuring that indigenous persons feel comfortable filing complaints with NHRIs, that NHRI staff are adequately trained to address the needs of indigenous persons, and that a component of the NHRI's overall performance of these two tasks be the subject of the evaluation included in its annual report.

6.7 Sex and Gender

- NHRI should assume special responsibility in responding to human rights violations suffered on account of sex or gender.
- NHRI staff should be properly trained so as to respond sensitively to human rights issues or violations related to sex or gender.
- NHRI staff should refer complainants to other human services agencies as necessary for assistance or treatment.

NHRIs must be prepared to address human rights violations committed because of a victim's gender or sex. As some violations will not be remedied solely through the complaints process, NHRI staff should refer complainants to those agencies which can provide the required services.

6.8 Youth

- The staff of NHRIs should include specialists in service provision to children and adolescents.
- NHRIs should regularly collect and publicise information relating to the number of complainants, types of complaints and results.
- NHRIs should ensure that their services are accessible by children and young people in rural and remote areas.
- NHRIs should specifically direct age-appropriate information toward young people.
- If communication with a child is necessary, that communication should be in person when possible. Children should be allowed to have a support person of their choice whenever interviewed or requested to produce evidence by NHRI members or staff.
- NHRIs should not compromise a child's anonymity or safety.
- NHRI staff should refer children that come before it to other human services agencies as necessary for assistance or treatment.

NHRIs should undertake their mandates with the skills and sensitivity required to appropriately address the special needs of children. When a child is a complainant or has had a complaint filed on his or her behalf, staff should conduct their investigation in an age-appropriate manner. Remedies should be similarly age-appropriate.

6.9 Persons with Special Needs

- NHRI should ensure that they are accessible to people with special needs, such as people with disabilities (including HIV+ or other conditions). Accessibility relates not only to the physical premises of an NHRI, but also to the services it provides.
- NHRI should be equipped to communicate adequately with persons with special needs.

NHRIs must have the capacity to serve persons with special needs. This includes making the physical premises accessible to all. It is appropriate to reasonably adapt procedures and processes to accommodate a person with special needs, provided that this accommodation does not impose an unjustifiable hardship on other parties involved.

Chapter VII

Factors which Affect the Operation of National Human Rights Institutions

- NHRIs should provide technical training and expertise to help build the capacity of other democratic institutions.
- NHRIs should work with other democratic institutions and bodies to conduct continuing human rights education campaigns.
- NHRIs should proactively and reactively respond to new challenges as and when they arise, e.g. the human rights implications of the AIDS pandemic, scientific and technological advances and privacy considerations.

NHRIs thrive best in an environment where other national democratic institutions are robust and there is a high degree of human rights literacy. NHRIs are most effective when the nation's democratic institutions operate with a clear understanding of their own roles and functions, when the nation's institutions understand the roles and functions of other democratic national institutions and when the public can command and demand respect for human rights.

The roles of NHRIs will need to evolve as the nature of human rights challenges evolves. New problems will emerge and old challenges will require fresh approaches. This booklet outlines many of the features that will ensure that NHRIs can meet these challenges and are best equipped to protect effectively human rights in view of the challenges ahead.

Annex

Principles relating to the Status of National Institutions¹ (The Paris Principles)

Competence and Responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organisation, 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;

1 Commission on Human Rights resolution 1992/54 of 3 March 1992, annex: General Assembly resolution 48/134 of 20 December 1993, annex.

- (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- (b) To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - (e) To co-operate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
 - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - (g) To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness; especially through information and education and by making use of all press organs.

Composition and Guarantees of Independence and Pluralism

1. The composition of the national institution and the appointment of its members; whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:
 - (a) Non-governmental organisations 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;
 - (b) Trends in philosophical or religious thought;
 - (c) Universities and qualified experts;
 - (d) Parliament; and
 - (e) Governmental departments (if they are included, these 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 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/or any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictions or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions); and
- (g) In view of the fundamental role played by non-governmental organisations in expanding the work of national institutions, develop relations with non-governmental organisations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialised areas.

Additional Principles concerning the Status of Commissions with Quasi-Jurisdictional Competence

A national institution may be authorised to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organisations, associations of trade unions or any other representative organisations. 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:

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;

Informing the party who filed the petition of his or her rights, in particular the remedies available to him or her, and promoting his or her access to them;

Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law; and

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.