
Contents

List of Abbreviations	vii
Foreword	ix
1 Preface	11
2 Introduction	14
3 The Protection and Promotion of Human Rights	16
3.1 Protection of Human Rights – a World View	16
3.2 The Framework for the Promotion and Protection of Human Rights in the Commonwealth	19
3.3 The Paris Principles	23
3.4 Commonwealth Secretariat Best Practice Guidelines for NHRIs	26
3.5 National Human Rights Institutions	29
3.6 International, Regional and Sub-Regional Groupings of NHRIs	31
3.7 Contemporary Challenges facing NHRIs	33
4 Key Criteria for NHRIs	35
4.1 Independence	35
4.2 Mandates, Functions and Powers	36
4.3 Membership and Composition	37
5 Schedules of Commonwealth NHRIs	39
5.1 Asia Pacific	41
5.2 Africa	53
5.3 Canada and Europe	67
6 Commentary on the NHRI and Ombudsman Schedules	72
6.1 Asia Pacific	72
6.2 Africa	76
6.3 Canada and Europe	80

7	Ombudsman Offices	85
7.1	Role and Function	85
7.2	Legal Framework of the Commonwealth Ombudsman	87
	7.3 Schedules of Ombudsman Offices	88
	7.4 Commentary on Individual Ombudsman Offices	91
8	Conclusions	94
9	Annexes	95
9.1	Normative Framework	95
9.1.1	Principles relating to the status and functioning of national institutions for protection and promotion of human rights – the ‘Paris Principles’	95
9.1.2	National Human Rights Institutions: Amnesty International’s recommendations for effective protection and promotion of human rights	98
9.1.3	Best Practice Guide of the Commonwealth Secretariat	115
9.2	UN Treaty Bodies: Recommendations and General Comments	116
9.2.1	General Assembly Resolution: National institutions for the promotion and protection of human rights A/RES/48/134	116
9.2.2	Committee on Economic, Social and Cultural Rights (CESCR) General Comment No.10: The role of national human rights institutions in the protection of economic, social and cultural rights (14/12/98.E/C.12/1998/25)	121
9.2.3	Committee on the Elimination of Racial Discrimination (CERD) General Recommendation No. XVII: Establishment of national institutions to facilitate implementation of the Convention (25/03/93.Gen.Rec.No.17)	122
9.2.4	Convention on the Rights of the Child (CRC) General Comment No.2: The role of independent national human rights institutions in the protection and promotion of the rights of the child (15/11/2002. CRC/GC/2002/2)	123
9.3	Co-operation Machinery for NHRIs	129
9.4	Enabling Legislation	130
9.5	Enabling Legislation: Ombudsman Offices of the Americas	132
10	Bibliography	134



Foreword by Mrs. Florence Mugasha, Commonwealth Deputy Secretary General

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

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

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

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

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

Florence Mugasha
Commonwealth Deputy Secretary General
London, November 2007

1 Preface

The significance of national human rights institutions

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

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

The Commonwealth Secretariat, Human Rights Unit

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

The genesis of this report

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

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

The international normative context

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

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

Purpose of the report

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

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

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

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

Note on methodology

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

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

Author

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

Editor

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

Jarvis Matiya

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

2 Introduction

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

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

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

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

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

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

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

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