

# UNIT 10: ESTABLISHING NATIONAL HUMAN RIGHTS BODIES

## Learning Objectives

### Organizing a Nation for Human Rights

After studying this unit, you should be able to:

- Understand the types of bodies outside of parliament that can be set up by the parliament to protect and promote human rights;
- Be aware of examples of these bodies in other jurisdictions that could be replicated.

## **Introduction and Overview**

This unit examines the significance of national human rights bodies in protecting and promoting human rights. Through diverse examples it illustrates the various bodies that can be set up by parliament or government to safeguard individual and group rights. It explains National Human Rights Institutions and the internationally recognized set of principles used as the basis for their establishment. It also talks about other special commissions including commissions of inquiry that may be set up to address specific human rights violations.

## **Commentary**

Parliament has the power to create agencies outside of parliament that are tasked with promoting and protecting human rights. These include National Human Rights Institutions, Ombudsmen and specific sectoral commissions and law commissions that constantly review and recommend legislative changes.

Regrettably, once established many are under-resourced financially and in terms of staff. Often reports and recommendations are not tabled or disregarded and the independence from political power curbed. Nevertheless ensuring strong, autonomous, well-resourced bodies with 'teeth', mandated to promote and protect human rights and monitor compliance is another means by which parliamentarians can bring human rights home and ensure a culture of human rights becomes embedded in governance and society.

## **National Human Rights Institutions**

Commonwealth Jurisdictions have established National Human Rights Institutions (NHRI). These vary in name, role, structure and effectiveness, but what they have in common is their power as a statutory body, mandated to not only promote human rights, but also to investigate alleged violations of human rights. An effective NHRI is the chief body a state can provide to its citizens for seeking recourse, should their rights be violated.

A basic set of internationally recognize standards, known as the Paris Principles, provides the bare minimum for the establishment and operation of NHRIs. The key criteria of the Paris Principles are that the NHRI:

- is independent, and that this is guaranteed by statute or constitution;
- is autonomous from government;
- is plural and diverse, including in membership;
- has a broad mandate which is based on universal human rights standards;
- has adequate powers of investigation; and
- Has sufficient resources to carry out their functions.

The Commonwealth has also developed a set of Best Practice Principles; and the Abuja Guidelines on the Relationship Between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions outlines the important relationship

between these bodies and suggestions for further developing this relationship in a Commonwealth context.

Some constitutions specifically provide for the creation of the NHRI, for instance, South Africa. Elsewhere, parliament has the power to create an NHRI through legislation. NHRI mandates go beyond examining individual cases to looking at conditions that create human rights violations, to research and training, and importantly to public education on human rights. NHRIs can usually only make recommendations on cases, rather than enforce its own orders or force the government into action this means that parliament has a particular responsibility to closely monitor the NHRI's reports to parliament and take action to prevent further such abuses.

Importantly, broad mandates allow NHRIs to examine not just narrow areas such as equality and discrimination but the whole gamut of rights. However, sometimes specific situations or themes require special attention. Australia, for instance, appointed an Aboriginal and Torres Strait Islander Social Justice Commissioner in response to the findings of the Royal Commission into Aboriginal Deaths in Custody and the National Inquiry into Racist Violence, and in response to the social and economic disadvantage faced by Indigenous Australians. The Commissioner who is a member of Australia's NHRI, the Human Rights and Equal Opportunity Commission, puts indigenous issues before the Federal Government and the Australian community to promote understanding and respect for the rights of Indigenous Australians.

Parliamentary responsibility includes ensuring that the NHRIs' reports are received promptly, debated and discussed at length and that recommendations are acted upon including enacting policies and laws to ensure their implementation. In some countries, this is done through a specific committee. In Sri Lanka a Select Committee on Human Rights reviews the functioning of the Human Rights Commission.

### **Subject Specific Commissions**

The work of National Human Rights Institutions can be supported by additional subject-specific commissions that give prominence to a particularly important human rights

issue. They are also a practical way of drawing in quality expertise, and ensuring that sufficient funds are dedicated to dealing with human rights issues that may be particularly challenged in the national context.

Examples of these in the Commonwealth include Pakistan's National Commission on the Status of Women with the mandate to review all laws, rules and regulations affecting the rights of women and make recommendations towards ending discrimination and achieving gender equality. The South African Commission on Gender Equality is a constitutional body that monitors all sectors of society to ensure that they are promoting gender equality. The Commission carries out research into all existing legislation from a gender perspective and also scrutinizes all impending laws with the same purpose.

The mandate of the United Kingdom's Commission for Racial Equality extends beyond examining government human rights violations and includes the activities of private sector bodies too. The Commission gives advice to people who think they have suffered discrimination or harassment and promotes policies and practices to help ensure equal treatment for all in both private businesses and public organizations. In 2004 the CRE started a formal investigation into the police service of England and Wales, and in its interim report noted that more than 90 % of race equality schemes it had investigated failed to meet minimum standards by law. While the final report is still pending, it has begun enforcement action against fourteen police forces and eight police authorities – if they fail to produce a lawful scheme within 90 days, they could face an enforcement order from the High Court.

## **The Ombudsman**

Historically, the Offices of the Ombudsman have dealt mainly with individual cases of maladministration. In recent years however, as human rights have increasingly been recognized as being central to effective democracy and good governance, the mandates have broadened to encompass the government's performance in protecting human rights. This is particularly significant because the Ombudsman is an independent and impartial body, and usually has powers to make recommendations directly to parliament

and/or to mediate disputes. A recognition of the importance of following up on these recommendations is seen in Namibia where the 1990 Ombudsman Act of 1990 set up a Standing Committee on the Reports of the Ombudsman to consider the reports.

Even where a human rights mandate is not explicitly mentioned in many of the Ombudsman Acts, human rights issues are often dealt, for example, when complaints are made against the police and/or prison authorities. Ombudsmen are also increasingly assuming responsibilities in the area of promoting human rights, through educational activities and information programs. In Lesotho, one of the objectives of the office of the Ombudsmen is to develop and implement "a client driven public awareness program on fundamental human rights".

In some countries in Eastern Europe specific Human Rights Ombudsman has been established. While not specific to human rights, many countries have established Ombudsmen – some with a specific sectoral mandate, while others have more general oversight powers. In Fiji, the link between the Ombudsman and human rights protection is very clear – the Ombudsman is also the constitutionally mandated Chairperson of the Fiji Human Rights Commission. Ghana's Commission on Human Rights and Administration of Justice is actually a combination of a national human rights institution and an ombudsman. It not only looks at violations of human rights by serving public officers but also examines complaints about unequal access to recruitment or services by state agencies, corruption and misappropriation of public money by officials, in addition to looking at practices and actions by private persons and enterprises that violate constitutional rights and freedoms.

In Papua New Guinea, the Ombudsman Commission has recently set up a specific Human Rights Unit to manage the increasing number of human rights cases the Office has been receiving. In Malawi, the Ombudsman is mandated to investigate and take legal action against government officials responsible for human rights violations and other abuses. In South Africa, the National Public Protector, as the office of the Ombudsman is called, can among other things investigate 'improper prejudice suffered' as a result of 'violations of human rights'.

Notably, Ombudsmen are particularly significant as human rights protectors in small states, where financial and human resources may militate against setting up both an NHRI and an Ombudsman. Where Ombudsmen's offices already exist, urgent consideration should be given to specifically including human rights in their mandate, along with additional financial resources to enable the Ombudsman to properly fulfil this. Ombudsman's recommendations on human rights issues can be seriously considered by parliament and regarded as a priority.

### **Openness and Transparency: Key to Human Rights and Good Governance**

Statutory commissions of inquiry are meant to examine, clarify and inform on matters of public concern. Their value rests on the confidence they enjoy with the public and their ability to provide well-founded recommendations that will be acted upon by the executive. However, in many countries, legislation and the terms of reference of a commission may require that its report be handed over to the executive and may not ever be laid before parliament. The National Human Rights Institution of one country, for instance, has been prevented from releasing its annual report on the state of human rights and the summary of its activities to the public, and was only permitted to submit the report to the Head of State. Such refusal to share findings may be because findings ostensibly affect national security or could significantly embarrass the government – whatever the reason, the refusal to share with elected representatives and the public at large inevitably casts a shadow over the credibility of the Commission and the government's functioning.

The tendency toward secrecy is diminishing in countries with right to information laws. Access to inquiry documents highlights areas ripe for reform and correction and, after the initial general condemnation, leads to much greater public knowledge of government functioning, greater willingness to engage in their democracy and a better understanding of the challenges faced by ruling regimes.

### **Ad Hoc Commissions of Inquiry**

Ad hoc committees and commissions are sometimes set up outside parliament to examine issues of current or on-going concern. They may sit in closed or open session and examine an issue in minutiae, call for evidence from government bodies and civil society and take expert and lay opinion. Ad hoc commissions can examine particular cases or patterns of human rights violations, such as ethnic and race riots, regime violence or systematic government failure to protect the rights of citizens. For instance,

the Ugandan Government established a Commission of Inquiry in 1986 to investigate the human rights abuses committed by past governments from independence till the date it seized power. This culminated in a 720 page final report, including recommendations to incorporate human rights education in schools, universities, and army training. In the Maldives in 2003, a Presidential Commission was appointed to look into the death of Hassan Evan Naseem, which sparked off prison riots that later spilled into the streets.

### **Unit 10 Questions**

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. What is the role of a National Human Rights Institution?
2. What are the Paris Principles and what do they contain?
3. How can the establishment of an Ombudsman support human rights?
4. What should happen with the reports of commissions and other such bodies?

### **Relevant Internet Resources**

The Abuja Guidelines on the Relationship Between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions:

<http://www.britishcouncil.org/governance-national-human-rights-institutions-and-legislatures.doc>

Commonwealth NHRI Best Practice:

[http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/{BF05153F-7565-4A2F-8F2A-F002F05594EC}\\_HumanRightsBestPractice.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{BF05153F-7565-4A2F-8F2A-F002F05594EC}_HumanRightsBestPractice.pdf)

International Ombudsmen Institute:

[www.law.ualberta.ca/centres/ioi/eng/resources.html](http://www.law.ualberta.ca/centres/ioi/eng/resources.html)

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## **National Human Rights Institutions in Commonwealth countries**

While there are 20 National Human Rights Institutions in Commonwealth countries, not all of these fully abide by the Paris Principles. It should also be noted that some countries also have State-level Human Rights Commissions.

AUSTRALIA

<http://www.hreoc.gov.au>

BERMUDA

No website

CAMEROON

No website

CANADA

<http://www.chrc-ccdp.ca>

FIJI ISLANDS

<http://www.humanrights.org.fj>

GHANA

<http://www.chrajghana.org>

INDIA

<http://www.nhrc.nic.in>

KENYA

<http://www.knchr.org/>

MALAWI

<http://www.malawihumanrightscommission.org>

MALAYSIA

<http://www.suhakam.org.my>

MALDIVES

<http://www.hrcm.org.mv>

MAURITIUS

<http://nhrc.gov.mu/english/index.htm>

NEW ZEALAND

<http://www.hrc.co.nz>

NIGERIA

<http://www.nigeriarights.org>

NORTHERN IRELAND

<http://www.nihrc.org>

SOUTH AFRICA

<http://www.sahrc.org.za>

SRI LANKA

<http://www.hrc-srilanka.org>

TANZANIA

No website

UGANDA

<http://www.uhrc.org>

ZAMBIA

No website

