

*Human rights commissions in Northern Ireland,  
Australia, South Korea, and India*

*22 April 2008*

Prepared by

**CHAU Pak-kwan**

**Research and Library Services Division  
Legislative Council Secretariat**

**5th Floor, Citibank Tower, 3 Garden Road, Central, Hong Kong**

**Telephone : (852) 2869 9593**

**Facsimile : (852) 2509 9268**

**Website : <http://www.legco.gov.hk>**

**E-mail : [library@legco.gov.hk](mailto:library@legco.gov.hk)**

# Contents

	<i>Page</i>
<b>Executive summary</b>	
<b>Chapter 1 – Introduction</b>	<b>1</b>
Background	1
Scope of Research	1
Methodology	1
<b>Chapter 2 – Northern Ireland</b>	<b>2</b>
Background	2
Regulatory framework	3
<i>Legal basis</i>	3
<i>Jurisdiction</i>	3
<i>Mandate and functions</i>	4
Organisational design and operational arrangements	5
<i>Composition and organisational structure</i>	5
<i>Financial and human resources</i>	6
<i>Operational autonomy and accountability</i>	9
Functions and powers	9
<i>Providing advice on legislation and government policies</i>	9
<i>Investigation and prosecution of complaints</i>	10
<i>Involvement in legal proceedings</i>	12
<i>Education and enhancement of public awareness</i>	12
Review and evaluation conducted	14
<b>Chapter 3 – Australia</b>	<b>16</b>
Background	16
Regulatory framework	17
<i>Legal basis</i>	17
<i>Jurisdiction</i>	18
<i>Mandate and functions</i>	19
Organisational design and operational arrangements	21
<i>Composition and organisational structure</i>	21
<i>Financial and human resources</i>	21
<i>Operational autonomy and accountability</i>	22
Functions and powers	25
<i>Providing advice on legislation and government policies</i>	25
<i>Investigation and prosecution of complaints</i>	26
<i>Involvement in legal proceedings</i>	29
<i>Education and enhancement of public awareness</i>	31
Review and evaluation conducted	32

<b>Chapter 4 – South Korea</b>	<b>34</b>
Background	34
Regulatory framework	35
<i>Legal basis</i>	35
<i>Jurisdiction</i>	35
<i>Mandate and functions</i>	36
Organisational design and operational arrangements	37
<i>Composition and organisational structure</i>	37
<i>Financial and human resources</i>	40
<i>Operational autonomy and accountability</i>	40
Functions and powers	41
<i>Providing advice on legislation and government policies</i>	41
<i>Investigation and prosecution of complaints</i>	42
<i>Involvement in legal proceedings</i>	44
<i>Education and enhancement of public awareness</i>	45
Review and evaluation conducted	45
<b>Chapter 5 – India</b>	<b>47</b>
Background	47
Regulatory framework	48
<i>Legal basis</i>	48
<i>Jurisdiction</i>	49
<i>Mandate and functions</i>	49
Organisational design and operational arrangements	50
<i>Composition and organisational structure</i>	50
<i>Financial and human resources</i>	52
<i>Operational autonomy and accountability</i>	53
Functions and powers	54
<i>Providing advice on legislation and government policies</i>	54
<i>Investigation and prosecution of complaints</i>	55
<i>Involvement in legal proceedings</i>	57
<i>Education and enhancement of public awareness</i>	59
Review and evaluation conducted	59
<b>Chapter 6 –Analysis</b>	<b>61</b>
Introduction	61
Establishment of human rights commissions	61
Composition and appointment	62
Organisational design and operational arrangements	63
Functions and powers	65
<b>Appendix</b>	<b>70</b>
<i>Principles Relating to the Status of National Institutions</i>	70
<b>References</b>	<b>75</b>

---

*Research reports are compiled for Members and Committees of the Legislative Council. They are not legal or other professional advice and shall not be relied on as such. Research reports are subject to copyright owned by the Legislative Council Commission (the Commission). The Commission permits accurate reproduction of the research reports for non-commercial use in a manner not adversely affecting the Legislative Council, provided that acknowledgement is made stating the Research and Library Services Division of the Legislative Council Secretariat as the source and one copy of the reproduction is sent to the Legislative Council Library.*

## **Executive summary**

1. All the places studied in this research (Northern Ireland, Australia, South Korea and India) established a human rights commission within the last 20 years, with the newest commission being set up in South Korea in 2001. Australia's human rights commission has the longest history, as the first Australian human rights commission was established in 1981.
2. While the places studied all have a democratically elected legislature, an independent judiciary and other institutions such as the Ombudsman and NGOs dealing with certain aspects of human rights protection, they recognise a need to establish an independent dedicated institution to promote and protect human rights.
3. The human rights commissions studied in this research, i.e. the Northern Ireland Human Rights Commissions (NIHRC), the Human Rights and Equal Opportunity Commission of Australia (HREOCA), the National Human Rights Commission of Korea (NHRCK) and the National Human Rights Commission of India (NHRCI), were all established by formal legislation.
4. Among the human rights commissions studied, the definition of "human rights" in their enabling legislation varies. In practice, human rights are defined to include rights containing in the international or regional human rights treaties ratified by the respective government; rights protected by international customary law; as well as some of the rights incorporated in the national constitution and in specified national laws.
5. Among the places studied, there are wide variations in terms of the composition of the human rights commissions and the appointment of their members. Except NIHRC of Northern Ireland, the number of members in the other three commissions is clearly stipulated in their enabling legislation.
6. HREOCA of Australia comprises a President and five special-purpose Human Rights Commissioners, while NHRCK of South Korea consists of a Chairman and 10 other commissioners. In India, NHRCI is made up of two types of members, including five permanent members and four ex-officio members. With the number of NIHRC commissioners not being specified in its enabling legislation, NIHRC currently comprises one full-time Chief Commissioner and nine part-time commissioners.
7. In Northern Ireland and Australia, the selection procedure of their commission members is not regulated by law. In Northern Ireland, the law only requires that the commissioners of NIHRC, as a group, be representative of the community in Northern Ireland. In Australia, there is no criterion for appointment specified in law.

8. In South Korea, the law clearly specifies the selection process of NHRCK's commissioners and criteria for appointment. The legislature, the executive and the judicial branches are all involved in the selection process, with each branch nominating a certain number of candidates for appointment. In India, the Chairman and other permanent members of NHRCI are appointed after obtaining recommendations from a committee consisting of Members of Parliament and the Speaker of the House of People.
9. Although all the human rights commissions studied were assessed by the International Co-ordinating Committee of National Human Rights Institutions to be in compliance with the Paris Principles, their degree of operation and financial autonomy is not the same.
10. Among the places studied, the organisational structure of the human rights commissions ranges from simple, i.e. NIHRC, to more complex, i.e. NHRCK. NIHRC has a relatively small staff size of around 20, while HREOCA, NHRCK and NHRCI have a staff size of around 100, 200 and 340 respectively.
11. As far as the employment of staff is concerned, all the human rights commissions studied are subjected to stringent government control. In terms of financial autonomy, none of the enabling legislation of the human rights commissions studied contains provisions ensuring that the commission receives adequate funding to enable it to carry out its mandate.
12. All the human rights commissions studied have similar general functions and powers, including the power to provide advice on legislation and policies, the power to investigate individual complaints and systematic patterns of human rights violations, the power to provide/recommend compensation/remedies, the power to intervene or assist in court proceedings relating to human rights and the mandate to educate and enhance public awareness regarding human rights.

# **Human rights commissions in Northern Ireland, Australia, South Korea, and India**

## **Chapter 1 – Introduction**

### **1.1 Background**

1.1.1 At its meeting on 22 June 2007, the Subcommittee on Human Rights Protection Mechanisms of the Panel on Home Affairs requested the Research and Library Services Division (RLSD) to conduct a research on the functions, powers, and operation of human rights commissions in selected places.

### **1.2 Scope of Research**

1.2.1 This research studies the operation of human rights commissions in selected places, focusing on the following aspects:

- (a) regulatory framework of human rights commissions;
- (b) organisational design and operational arrangements; and
- (c) functions and powers.

1.2.2 RLSD published a research report, "Monitoring Mechanisms for the Implementation of International Human Rights Treaties in the United Kingdom, New Zealand and Canada" in 2004. At its meeting on 22 June 2007, the Subcommittee on Human Rights Protection Mechanisms suggested that RLSD should further study the human rights commissions in Northern Ireland, Australia, South Korea, and India. The research on these places is expected to offer more experiences for comparison purpose, especially in the Asia Pacific region.

### **1.3 Methodology**

1.3.1 Information for preparing this report was obtained from the Internet, government documents and relevant materials. Enquiries were also sent to the relevant authorities in the selected places.

## Chapter 2 – Northern Ireland

### 2.1 Background

2.1.1 The Northern Ireland Human Rights Commission (NIHRC) was established in 1999 as a result of the *Belfast Agreement*, i.e. the Peace Agreement reached in Belfast in 1988 between the United Kingdom (UK) and Irish governments and some of the local political parties. NIHRC is the first human rights commission established in the UK.

2.1.2 NIHRC is accountable, through the Secretary of State for Northern Ireland, to the UK Parliament. The Northern Ireland Office (NIO) is the UK government agency supporting the Secretary of State for Northern Ireland in taking forward the UK government policies in Northern Ireland. NIO has the overall responsibility for upholding law, order and security, including the provision of criminal justice services.

2.1.3 Northern Ireland's legal system is similar to that of England and Wales. Jury trials have the same place in the system, except in the case of offences involving acts of terrorism. The Northern Ireland courts consist of superior courts and inferior courts, the former comprising the Court of Appeal, the High Court, and the Crown Court, and the latter comprising county courts and magistrates' courts. All matters relating to the Court of Appeal, the High Court and the Crown Court are under the jurisdiction of the UK Parliament. Administration of the courts is the responsibility of the Northern Ireland Court Service.

2.1.4 Besides NIHRC, there are a number of other institutions that contribute to the protection of human rights in Northern Ireland, including the Equality Commission for Northern Ireland, the Police Ombudsman for Northern Ireland, the Sentence Review Commissioners, the Life Sentence Review Commissioners, the Parades Commission and the Northern Ireland Ombudsman.

2.1.5 NIHRC has agreed to various Memoranda of Understanding (Protocols) with some of the public bodies with whom it has significant contact during the course of its work. Such Memoranda of Understanding include the respective Memoranda of Understanding between NIHRC and NIO, the Prisoner Ombudsman for Northern Ireland, the Northern Ireland Court Service, the Equality Commission for Northern Ireland, and the Police Ombudsman for Northern Ireland.<sup>1</sup>

---

<sup>1</sup> For texts of these Memoranda of Understanding, see [http://www.nihrc.org/index.php?option=com\\_content&task=view&id=27&Itemid=32](http://www.nihrc.org/index.php?option=com_content&task=view&id=27&Itemid=32).

---

---

---

---

## 2.2 Regulatory framework

### Legal basis

2.2.1 There is a Human Rights section in the *Belfast Agreement*. NIHRC was one of the two institutions<sup>2</sup> provided by the Agreement and given an overall function to promote and protect human rights.<sup>3</sup>

2.2.2 NIHRC was established as a non-departmental public body (an independent public agency) by the UK Parliament through the *Northern Ireland Act 1998 (NI Act)*, and commenced its work on 1 March 1999. *NI Act* is the statute for the implementation of most of the *Belfast Agreement*. Sections 68-72 of *NI Act* provides for the establishment and functions of NIHRC. Schedule 7 of *NI Act* deals with matters relating to tenure and salary of NIHRC's commissioners, financial resources, and staff arrangement of NIHRC.

2.2.3 The *Justice and Security (Northern Ireland) Act 2007 (JSNI Act)*, which received Royal Assent on 24 May 2007, extends the power of NIHRC when performing investigations and bringing legal proceedings. Sections 14-20 of *JSNI Act* amend *NI Act* by granting three new powers to NIHRC – powers to require the provision of information or a document, or for a person to give oral evidence; to access places of detention; and to institute judicial proceedings in NIHRC's own right, and when doing so to rely upon the *European Convention on Human Rights (ECHR)*.

### Jurisdiction

2.2.4 The term "human rights" is undefined in legislation. Section 11 of *NI Act* states that "human rights" include the Convention rights, which has the same meaning as in the *Human Rights Act 1998*<sup>4</sup>.

---

<sup>2</sup> The other institution is the Equality Commission for Northern Ireland.

<sup>3</sup> Paragraph 5 of the Human Rights section of the *Belfast Agreement* states that "[n]ew Northern Ireland Human Rights Commission, with membership from Northern Ireland reflecting the community balance, will be established by Westminster legislation, independent of Government, with an extended and enhanced role beyond that currently exercised by the Standing Advisory Commission on Human Rights, to include keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the new Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so."

<sup>4</sup> Section 71(5), *NI Act*.



2.2.5 Section 69(5)(a) of *NI Act* clearly indicates that NIHRC may give assistance to any individuals. Where a person applies to NIHRC for assistance, NIHRC may grant the application on any of the following grounds:

- (a) that the case raises a question of principle;
- (b) that it would be unreasonable to expect the person to deal with the case without assistance because of its complexity, or because of the person's position in relation to another person involved, or for some other reason; and
- (c) that there are other special circumstances which make it appropriate for NIHRC to provide assistance.<sup>5</sup>

2.2.6 Section 70(3) of *NI Act* further indicates that where NIHRC grants an application for assistance, it may:

- (a) provide, or arrange for the provision of, legal advice;
- (b) arrange for the provision of legal representation; and
- (c) provide any other assistance which it thinks appropriate.

### Mandate and functions

2.2.7 Under Section 69 of *NI Act*, NIHRC has the following functions:

- (a) to keep under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights;
- (b) to advise the Secretary of State<sup>6</sup> and the Executive Committee of the Northern Ireland Assembly of legislative and other measures which ought to be taken to protect human rights;
- (c) to advise the Northern Ireland Assembly whether a bill is compatible with human rights;
- (d) to promote understanding and awareness of the importance of human rights in Northern Ireland by, for example, undertaking or commissioning or otherwise assisting in research and educational activities;

---

<sup>5</sup> Section 70(2), *NI Act*.

<sup>6</sup> Unless stated otherwise, the Secretary of State in this chapter means the responsible Secretary of State of NIHRC.

---

---

- (e) to provide advice to the Secretary of State on the scope for defining, in Westminster legislation, rights supplementary to those in *ECHR*;
- (f) to provide to the Secretary of State within two years such recommendations as it thinks fit for improving NIHRC's effectiveness; and
- (g) to do all that it can to ensure the establishment of a Joint Committee with the proposed Human Rights Commission in the Republic of Ireland.

2.2.8 To a large extent, the above listed functions mirror the requirements of the *Paris Principles*.<sup>7</sup> In addition, under the same section, NIHRC has the following powers:

- (a) to give assistance to individuals who seek its help in relation to proceedings involving law or practice concerning the protection of human rights;
- (b) to bring proceedings involving law or practice concerning the protection of human rights;
- (c) to conduct such investigations as it considers necessary or expedient for the purpose of exercising its functions; and
- (d) to publish its advice and the outcome of its research and investigations.

## 2.3 Organisational design and operational arrangements

### Composition and organisational structure

2.3.1 NIHRC consists of a Chief Commissioner and several commissioners who are appointed by the Secretary of State in accordance with guidance issued by the Office of the Commissioner for Public Appointments (OCPA).<sup>8</sup> In making these appointments, the law requires that the commissioners, as a group, are "*representative of the community in Northern Ireland*."<sup>9</sup> At present, NIHRC comprises one full-time Chief Commissioner with an academic and political background and nine part-time commissioners<sup>10</sup> drawn from individuals of different backgrounds such as school teachers, social workers, and people working in NGOs.

---

<sup>7</sup> Dickson (2005) p.135.

<sup>8</sup> OCPA's guidance requires that appointments should be governed by the overriding principles of selection based on merit.

<sup>9</sup> Section 68(3), *NI Act*.

<sup>10</sup> They work approximately one day per week.

---

2.3.2 The term of appointments cannot be more than five years in the case of the Chief Commissioner, and not more than three years for the other commissioners. There is an option for a second term of appointment subject to the Secretary of State's discretion. The Secretary of State may dismiss a person from his office as Chief Commissioner or commissioner if it is satisfied:

- "(a) that he has without reasonable excuse failed to discharge his functions for a continuous period of three months beginning not earlier than six months before the day of dismissal;*
- (b) that he has been convicted of a criminal offence;*
- (c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or*
- (d) that he is unable or unfit to carry out his functions."*<sup>11</sup>

2.3.3 NIHRC has a relatively simple organisational structure, which is shown in diagram 1 below. In determining its own procedure, NIHRC is allowed to make provision for the discharge of its functions by committees (which may include persons who are not commissioners).<sup>12</sup> Various committees are set up accordingly, including the Audit and Risk Management Committee, the Legal Committee and the Policy Committee.<sup>13</sup>

2.3.4 Under the *Belfast Agreement*, it was proposed that a Joint Committee should be established between NIHRC and the Republic of Ireland's Human Rights Commission as a forum for consideration of human rights issues on the island of Ireland. The Joint Committee of the two Commissions was formally established in late 2001. The Joint Committee meets on a bi-monthly basis with alternate meetings taking place in Belfast and Dublin.

#### Financial and human resources

2.3.5 NIHRC is funded by NIO, with the Secretary of State making grants to NIHRC out of money provided by the UK Parliament. NIO's Permanent Secretary, who is the Principal Accounting Officer of NIO, designates the Chief Executive of NIHRC as the Accounting Officer of NIHRC.

---

<sup>11</sup> Paragraph 2(4), Schedule 7, *NI Act*.

<sup>12</sup> Paragraph 8(1)(a), Schedule 7, *NI Act*.

<sup>13</sup> See NIHRC Annual Report (2007) pp. 83-4.

2.3.6 NIHRC operates under a Management Statement and Financial Memorandum agreed with NIO and financed by grant-in-aid from NIO. In 2007-2008, NIHRC has a budget of £1.561 million (HK\$23.42 million) funded by grant-in-aid. On the expenditure side, staff costs account for 54% of its total budget (or £0.995 million (HK\$14.93 million)) in the same year.

2.3.7 *NI Act* specifically provides that NIHRC may employ staff subject to the approval of the Secretary of State as to their number, remuneration and other terms and conditions of employment.<sup>14</sup> NIHRC has a relatively small staff size of around 20 and is headed by the Chief Executive. The Chief Executive is appointed by NIHRC following an open recruitment exercise.

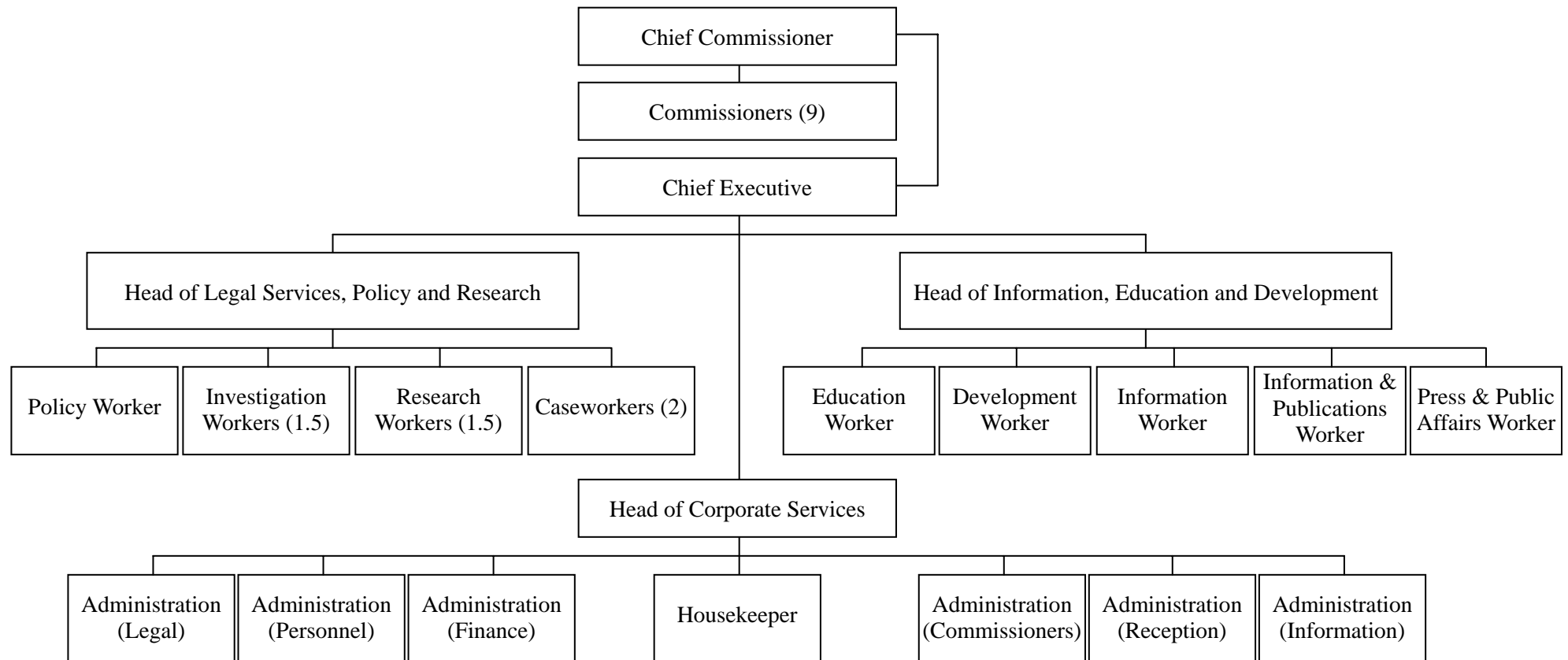
---

<sup>14</sup> Paragraph 4(1), Schedule 7, *NI Act*.

---

---

**Diagram 1 – Organisational chart of the Northern Ireland Human Rights Commission**



Source: NIHRC Annual Report (2007).

---

---

### Operational autonomy and accountability

2.3.8 In end-2006, NIHRC attained full accreditation as a United Nations recognised national human rights institution, meaning that NIHRC had been assessed to be in compliance with the *Paris Principles*<sup>15</sup>.

2.3.9 As mentioned in paragraph 2.3.7, the UK government plays a dominant role in setting up NIHRC's overall budget and maintains control over the employment of staff. NIHRC has repeatedly requested that sufficient resources should be provided to NIHRC to carry out its functions effectively and NIHRC should be in control of its own resources as far as the employment of staff is concerned.<sup>16</sup>

2.3.10 With regards to accountability, NIHRC is accountable to the UK Parliament and is subject to oversight by the UK Parliamentary Commissioner for Administration. *JSNI Act* imposes a duty for NIHRC to publish a report of its findings on an investigation.<sup>17</sup>

2.3.11 NIHRC is required, as soon as reasonably practicable after the end of each year, to make a report to the Secretary of State on the performance of its functions during the year. In addition, NIHRC maintains a Register of Commissioner's Interests which is available for public review.

## **2.4 Functions and powers**

### Providing advice on legislation and government policies

2.4.1 NIHRC's functions include reviewing the adequacy and effectiveness of Northern Ireland laws and practices relating to the protection of human rights. Throughout the years, NIHRC has made numerous consultation responses and other submissions to the government, public authorities and international bodies on the human rights implications of current or proposed legislation, policies and practices, and the compliance issues of Northern Ireland with the UK's international human rights obligations.<sup>18</sup>

2.4.2 In 2006-2007, a primary focus of NIHRC's work concerned justice and security. It made some 50 consultation responses and submissions, including submissions on issues relating to legal reforms, policing, prisons, juvenile justice, immigration, health and the rights of victims.

---

<sup>15</sup> These principles were adopted at a United Nations-sponsored meeting of representatives of national human rights institutions held in Paris in 1991, and later endorsed by the United Nations Commission on Human Rights and the United Nations General Assembly. They have become the foundation and reference point of the establishment and operation of national human rights institutions. The *Paris Principles* are presented in the Appendix of this research report.

<sup>16</sup> See section 4.5 of this report.

<sup>17</sup> Section 18, *JSNI Act*.

<sup>18</sup> See [http://www.nihrc.org/index.php?page=res\\_details&category\\_id=26&Itemid=61](http://www.nihrc.org/index.php?page=res_details&category_id=26&Itemid=61).

---

2.4.3 Both the *Belfast Agreement* and *NI Act* require NIHRC to "consult and advise on the scope for defining, in Westminster legislation, rights supplementary to those in the *European Convention on Human Rights*, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience."<sup>19</sup>

2.4.4 NIHRC launched its Bill of Rights project in March 2000. Since then, NIHRC has engaged in an extensive range of related consultations with various sectors via different channels. Examples include the establishment of different working groups; the engagement with political parties, NGOs, and other sectors; the education and training works on the proposed Bill; and a parallel consultation with children and young people. In addition, NIHRC has published two consultation documents and received advice from hundreds of local contributors, international organisations as well as senior judicial figures in other jurisdictions.

### Investigation and prosecution of complaints

#### *Casework*

2.4.5 In respect of human rights violations, NIHRC can:

- (a) provide advice to individuals;
- (b) investigate complaints;
- (c) assist individuals to bring legal proceedings;
- (d) bring proceedings in the name of NIHRC; and
- (e) intervene as a third party or *amicus curiae*<sup>20</sup> in legal proceedings.

2.4.6 The assistance relating to items (d) and (e) of paragraph 2.4.5 will be discussed in paragraphs 2.4.12-2.4.14 of this report. NIHRC receives in excess of 1 000 new legal inquiries every year. The vast majority of these inquiries do not proceed to a formal application for legal assistance because they are either resolved or dropped after the provision of initial advice and (in most cases) some correspondence and informal negotiation.

---

<sup>19</sup> Paragraph 4 of the Human Rights section, the *Belfast Agreement*.

<sup>20</sup> An *amicus curiae* is a "friend to the court" who assists the court on points of law in a particular case.

2.4.7 The Legal Committee (formerly the Casework Committee) usually meets monthly to consider applications for legal assistance from individuals, and receives reports on other casework matters. The Committee, comprising three to five Commissioners as members, is the only sub-committee of NIHRC with delegated decision-making and spending powers.

2.4.8 The strategic priorities for NIHRC in deciding whether or not to assist a particular individual, for the years 2003-2006, were framed in terms of certain Articles of *ECHR*. They were Article 2 (right to life), Article 3 (freedom from torture and inhuman or degrading treatment) and Article 6 (fair trial), together with the education right found at Article 3 of the First Protocol. In NIHRC's informal works which deal with cases short of applications for legal assistance, the most common areas of concern to individuals involve issues of family law, planning law and employment law.

2.4.9 Over the past three years, the Legal Committee considered 150 applications, and granted assistance in 36 cases. Examples included a challenge against the decision of the Secretary of State to refuse protection under the Key Person Protection Scheme. Another case challenged the lack of availability of legal aid at inquest proceedings. A third case concerned employment discrimination against ex-prisoners.

#### *Research and investigations*

2.4.10 Under *NI Act*, NIHRC has the power to conduct research<sup>21</sup> and carry out investigations<sup>22</sup>. NIHRC has conducted investigations on a range of issues relating to children and young people in detention, immigration enforcement, use of lethal force by the security forces, deaths in the health care system and prison conditions for women.

2.4.11 Under the original *NI Act*, while NIHRC had a general power to conduct investigations, it had no concurrent powers of enforcement, such as the power to compel oral testimony from witnesses or the disclosure of documents. However, with the passage of *JSNI Act*, NIHRC is granted the powers to require the provision of information or a document, or for a person to give oral evidence and to access places of detention. These new investigation powers are circumscribed by national security restrictions and apply only to events occurring after August 2007.<sup>23</sup>

---

<sup>21</sup> Section 69(6), *NI Act*.

<sup>22</sup> Section 69(8), *NI Act*.

<sup>23</sup> Sections 15 and 20, *JSNI Act*. NIHRC is required to report to the Secretary of State on the effectiveness of these new powers, within two years of their commencement.



---

---

### Involvement in legal proceedings

2.4.12 Section 69(5)(b) of *NI Act* specifically allows NIHRC to bring proceedings involving laws or practices relating to the protection of human rights. Ever since its establishment, NIHRC has decided to exercise this power only on four occasions. The first occasion was in October 2000 dealing with a decision by the British Broadcasting Corporation to broadcast a programme in which it was alleged that certain individuals had been guilty of planting the 1998 bomb attack in Omagh, Northern Ireland. The second occasion concerned the power of NIHRC to make interventions in court cases. The two other occasions related to denials of access by a public authority to important information.<sup>24</sup>

2.4.13 *NI Act* does not expressly confer NIHRC on the power to act as an *amicus curiae*. However, in *Re Northern Ireland Human Rights Commission*<sup>25</sup>, the House of Lords held that NIHRC could intervene in legal proceedings to make submissions where human rights principles needed to be raised, if permitted or invited to do so by the courts.

2.4.14 NIHRC has intervened as a third party or friend of the court in over a dozen cases since its right to apply to do so was clarified at the House of Lords in June 2002. Examples included (in the House of Lords) the Amin case, where NIHRC set out views on the obligations imposed by Article 2 of *ECHR* in the context of deaths in custody; the McKerr case where NIHRC expounded its position that the government was under a continuing obligation to comply with a decision of *ECHR*, and *McClellan v. Sentence Review Commissioners* where NIHRC addressed the applicability of Article 6 of *ECHR* to matters before the Sentence Review Commissioners.<sup>26</sup>

### Education and enhancement of public awareness

2.4.15 NIHRC has the legal responsibility to promote understanding and awareness of the importance of human rights in Northern Ireland. Human rights education and training works have been one of NIHRC's top priorities. In March 2004, NIHRC commissioned an independent review of human rights education and training in Northern Ireland.<sup>27</sup>

---

<sup>24</sup> See Dickson (2005) pp. 147-50.

<sup>25</sup> *R. (on the application of Northern Ireland Human Rights Commission) v Greater Belfast Coroner* [2002] UKHL 25. For discussion, see Smith (2003).

<sup>26</sup> See Dickson (2005).

<sup>27</sup> Reilly & Niens (2005).

---

2.4.16 The findings of the independent review were used by NIHRC to develop a specific education and training strategic plan for the period of 2007-2010 – the NIHRC Education Strategy 2007.<sup>28</sup> The Strategy proposes that NIHRC should concentrate on:

- (a) developing a synergy between the range of activities currently delivered in this programme area;
- (b) expanding its education and training activities in collaboration with a range of providers;
- (c) delivering an accredited education and training programme to a wider range of stakeholders;
- (d) reviewing human rights training provided by public sector bodies; and
- (e) producing a wider range of information, training and education materials.

2.4.17 Some of NIHRC's typical education and training works are detailed below:

- (a) The Bill of Rights in Schools Project was set up in September 2002 to produce human rights educational materials on the proposed Bill of Rights for Northern Ireland.
- (b) Since 2000, monitoring work has been carrying out on the human rights training of police officers in Northern Ireland, resulting in the production of five study reports.
- (c) The production of various human rights guides, including the guides to Articles 2 and 3 of *ECHR*, summaries of European Court cases and a guide to the *Human Rights Act*.
- (d) NIHRC has been working to develop the relationships with academic groups at the two main local universities. Collaborative activities include the provision of student internships, the sponsorship of dissertation awards, and the hosting of lectures concerning human rights issues.

---

<sup>28</sup> NIHRC (2007).

## 2.5 Review and evaluation conducted

2.5.1 Northern Ireland has been for many years a place under political violence and ethno-conflicts. Ever since its establishment, NIHRC has been under close scrutiny by many interested parties. Section 69(2) of *NI Act* provides that NIHRC must, after two years of its existence, make recommendation to the Secretary of State on ways in which its effectiveness could be improved, including in relation to the powers and duties conferred on it by Part VII of the Act.

2.5.2 Accordingly, NIHRC submitted an evaluation report to the Secretary of State for Northern Ireland in February 2001.<sup>29</sup> The report put forward a number of recommendations in regard to NIHRC's independence and financial resources as well as various functions conferred upon NIHRC by *NI Act*. In particular, the report recommended that special provisions should be enacted to guarantee the impartiality and independence of NIHRC and to broaden NIHRC's investigation powers. The report also recommended that NIHRC should be provided sufficient resources to carry out its functions effectively and should be in control of its own resources as far as the employment of staff was concerned.

2.5.3 In May 2002, NIO published a consultation paper, containing the UK government's draft response to NIHRC's recommendations.<sup>30</sup> In the consultation paper, the UK government considered that there was no need to legislate again to safeguard the independence of the Commissioners' appointment process. However, the UK government was content to remove the need for NIHRC to seek Ministerial approval for the number of staff they employed.

2.5.4 In 2003, with the purpose of investigating the UK's institutional experience to protect human rights, the Joint Committee on Human Rights of the UK Parliament published a report entitled – *Work of the Northern Ireland Human Rights Commission*.<sup>31</sup> The report agreed that, amongst other things, NIHRC's independence could be strengthened by giving it a specific statutory duty to act with independence and impartiality as well as establishing clear criteria for the appointment of commissioners. The report also recommended that NIHRC should be allowed to compel the production of evidence, and to have access to places of detention for the purposes of its investigation functions.

2.5.5 In November 2005, NIO published another consultation paper concerning the powers of NIHRC.<sup>32</sup> In the paper, the UK government finally agreed to provide NIHRC the power to obtain information and to access places of detention for investigation purposes.

---

<sup>29</sup> Northern Ireland Human Rights Commission (2001).

<sup>30</sup> Northern Ireland Office (2002).

<sup>31</sup> Joint Committee on Human Rights (2003).

<sup>32</sup> Northern Ireland Office (2005).

2.5.6 In 2005, a report evaluating the effectiveness of NIHRC was published by two academics.<sup>33</sup> The report concluded that while NIHRC had clearly achieved a number of positive things in its short history, the effectiveness of NIHRC in several areas was disputed. The report placed responsibility for these failings partly on the UK government – in particular NIO – for not providing adequate support to NIHRC, and partly on NIHRC itself, which failed to develop a collective vision for the organisation. The report recommended, amongst other things, that the UK government should provide NIHRC with adequate power and resources, and that NIHRC should work towards developing a collective strategic vision.

---

<sup>33</sup> Livingstone & Murray (2005).

---

---

## Chapter 3 – Australia

### 3.1 Background

3.1.1 In Australia, the original Human Rights Commission was established in 1981 under the *Human Rights Commission Act* and ceased operation on 9 December 1986. A new Human Rights and Equal Opportunity Commission of Australia (HREOCA) was created by the *Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act)*, which came into effect on 10 December 1986.

3.1.2 The Attorney-General is the Minister responsible for HREOCA. The Human Rights Branch of the Attorney-General's Department provides legal and policy advice to the Australian government on domestic human rights matters, anti-discrimination legislation, and the implementation of international human rights obligations. The Human Rights Branch also has a policy-advising role and administrative responsibilities for HREOCA. The Department of Foreign Affairs & Trade is the government department on human rights issues in the international arena.

3.1.3 In December 2004, the Australian government published the most recent *National Framework for Human Rights – National Action Plan*.<sup>34</sup> The Action Plan sets out the priority areas in which the government aims to enhance the enjoyment of human rights in Australia over the coming decade, and also describes the human rights protection already in place in Australia. State and territory governments, HREOCA, and non-governmental organisations (NGOs) were consulted in the preparation of the Plan.

3.1.4 Under the *Australian Constitution*, judicial power is vested in the High Court of Australia and other courts created by federal and regional legislation.<sup>35</sup> Australia has a two-stream court system, the federal stream and the state and territory stream. The High Court is the ultimate court of appeal in the Australian court system.

3.1.5 The independence of federal judges is guaranteed by the *Australian Constitution*, which gives them security of tenure and provides that their remuneration cannot be reduced. Federal judges may only be removed at the request of both houses of the Australian Commonwealth<sup>36</sup> Parliament on the ground of proved misbehaviour or incapacity. In the states and territories, legislation provides security of tenure for judges to ensure judicial independence.

---

<sup>34</sup> See Commonwealth of Australia (2005). In 1993, Australia proposed the creation of National Action Plans on Human Rights and became the first country to produce such a plan in 1994.

<sup>35</sup> Section 71, the *Australian Constitution*.

<sup>36</sup> In this report, the Commonwealth means the Commonwealth of Australia.

3.1.6 Only the human rights commission at the federal level will be discussed in this research despite the fact that each of the states and territories in Australia has established an anti-discrimination or equal opportunity commission. Although the functions of these regional commissions vary according to the respective legislation under which they are established, they share some common functions, including determining or conciliating complaints of discrimination, and developing and conducting human rights education and awareness initiatives.

3.1.7 Besides the human rights commissions, there are a number of other institutions that contribute to the protection of human rights in Australia, including the Office of the Federal Privacy Commissioner, the Commonwealth Ombudsman<sup>37</sup>, and the privacy commissioners and ombudsmen at the state and territory level.

## 3.2 Regulatory framework

### Legal basis

3.2.1 The *Australian Constitution* does not contain provisions in the nature of a bill of rights. As the highest law in Australia, the Constitution specifically protects certain rights and freedoms, including trial by jury (Section 80), freedom of religious association (Section 116), and just terms for acquisition of property (Section 51(xxxi)), as well as an implied right to political communication.

3.2.2 HREOCA was established by *HREOC Act* in 1986. *HREOC Act* provides for the organisation and operation of HREOCA, the duties, functions and powers of HREOCA, and the investigation procedures for alleged breaches of human rights or unlawful discrimination.

3.2.3 Many of HREOCA's legal responsibilities are derived from anti-discrimination laws, namely the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, and the *Age Discrimination Act 2004*. These laws protect people from discrimination or harassment in the workplace and various parts of public life, based on their age, race, colour, descent or national or ethnic origin, gender, pregnancy, marital status or disability.

---

<sup>37</sup> For details, see Legislative Council Secretariat (2006).

---

---

## Jurisdiction

3.2.4 In Australia, human rights are strictly defined, and only relate to the international instruments scheduled to, or declared under, *HREOC Act*. *HREOC Act* gives HREOCA responsibility in relation to the following international human rights instruments ratified by Australia:

- (a) the *International Covenant on Civil and Political Rights* (ICCPR);
- (b) the *Convention Concerning Discrimination in Respect of Employment and Occupation* (ILO 111);
- (c) the *Convention on the Rights of the Child*;
- (d) the *Declaration of the Rights of the Child*;
- (e) the *Declaration on the Rights of Disabled Persons*;
- (f) the *Declaration on the Rights of Mentally Retarded Persons*; and
- (g) the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.

3.2.5 The anti-discrimination Acts administered by HREOCA are all based on international human rights treaties and conventions ratified by Australia. The *Racial Discrimination Act 1975* implements domestically obligations under the *International Convention on the Elimination of all Forms of Racial Discrimination*. The *Sex Discrimination Act 1984* implements domestically obligations under the *Convention on the Elimination of All Forms of Discrimination against Women* and certain aspects of the *International Labour Organisation (ILO) Convention 156*. The *Disability Discrimination Act 1992* makes it unlawful to discriminate against people with a disability in areas of public life. The *Age Discrimination Act 2004* makes it unlawful to discriminate against people on the basis of age in areas of public life.

3.2.6 HREOCA also has specific responsibilities under:

- (a) the *Native Title Act 1993*, to report on the exercise and enjoyment of human rights of indigenous people with regards to native title (performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner<sup>38</sup>); and
- (b) the *Workplace Relations Act 1996*, in relation to federal awards and equal pay (performed by the Sex Discrimination Commissioner<sup>39</sup>).

---

<sup>38</sup> They are special-purpose Human Rights Commissioners. For details, see paragraph 2.3.1 below.

<sup>39</sup> Ibid.

### Mandate and functions

3.2.7 Under section 10A of *HREOC Act*, HREOCA has the duty to ensure that its statutory functions are performed:

- "(a) with regard for:
- (i) *the indivisibility and universality of human rights; and*
  - (ii) *the principle that every person is free and equal in dignity and rights; and*
- (b) *efficiency and with the greatest possible benefit to the people of Australia."*

3.2.8 HREOCA's powers and functions are contained in *HREOC Act* and those Acts administered by HREOCA. *HREOC Act* outlines HREOCA's powers and functions, which include:

- (a) promoting public awareness of human rights through education;
- (b) inquiring into anti-discrimination and human rights complaints;
- (c) encouraging human rights compliance; and
- (d) assisting the Australian government to develop policies on anti-discrimination and human rights matters.

3.2.9 In order to fulfil its obligations, HREOCA:

- (a) fosters public discussion, and undertakes and coordinates research and educational programmes to promote human rights and eliminate discrimination in relation to all Acts;
- (b) investigates complaints of alleged unlawful discrimination pursuant to the *Racial Discrimination Act*, the *Sex Discrimination Act*, the *Disability Discrimination Act* and the *Age Discrimination Act*, and attempts to resolve these matters through conciliation where appropriate;
- (c) investigates acts or practices that may be contrary to human rights or that may be discriminatory pursuant to *HREOC Act*;



- (d) may advise on legislation relating to human rights and monitor its implementation; and may review existing and proposed legislation for any inconsistency with human rights or for any discriminatory provisions which impair equality of opportunity or treatment in employment or occupation;
- (e) may examine any new international instruments relevant to human rights and advise the federal government on their consistency with other international treaties or existing Australian laws; and
- (f) may propose laws or suggest actions that the government may take on matters relating to human rights and discrimination.

3.2.10 In carrying out the above functions, HREOCA is empowered under all its administered Acts (unless otherwise specified) to:

- (a) refer individual complaints to the President of HREOCA for investigation and conciliation;
- (b) report to the government on any matters arising in the course of its functions;
- (c) establish advisory committees;
- (d) formulate guidelines to assist in the compliance by organisations and individuals of the requirements of human rights and anti-discrimination legislation and conventions;
- (e) intervene in court proceedings involving human rights matters with the permission of the Courts;
- (f) act as *amicus curiae* in alleged unlawful discrimination cases that are before the Courts;
- (g) grant exemptions under certain conditions (Age, Sex and Disability Discrimination Acts);
- (h) conduct inquiries into issues of major importance, either on its own initiative, or at the request of the Attorney-General; and
- (i) examine enactments.

3.2.11 In addition, HREOCA "has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions."<sup>40</sup>

### 3.3 Organisational design and operational arrangements

#### Composition and organisational structure

3.3.1 HREOCA, as a national independent statutory body, is a collegiate body made up of a President and five special-purpose Human Rights Commissioners. The five special-purpose Human Rights Commissioners are the Human Rights Commissioner, the Race Discrimination Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Sex Discrimination Commissioner and the Disability Discrimination Commissioner. The five positions are currently held by three persons. The President is also the chief executive officer of HREOCA.

3.3.2 The President is appointed by the Governor-General of Australia as either a full-time or a part-time member. The current President of HREOCA was appointed in May 2003 for a five-year term. At the time of his appointment, he was a Judge of the Federal Court of Australia. The other five Commissioners are appointed by the Governor-General as a full-time member. If a holder of a judicial office is appointed as a member of HREOCA, the law requires that his/her tenure of that judicial office or his/her rank, title, status, precedence and salary as the holder of that judicial office shall not be affected.<sup>41</sup>

3.3.3 Under section 41 of *HREOC Act*, the Governor-General shall terminate the appointment of a member of HREOCA if he/she becomes bankrupt, engages in unapproved paid employment, or is absent from duty for a prescribed period of time. Additionally, a member's appointment may be terminated by the Governor-General by reasons of misbehaviour or physical or mental incapacity.

3.3.4 Diagram 2 shows the organisational structure of HREOCA. The Secretariat of HREOCA is headed by the Executive Director, who is a senior executive appointed by the Prime Minister. Each Commissioner has his/her own policy unit.

#### Financial and human resources

3.3.5 HREOCA has a budget of AUS\$19 million (HK\$ 192 million) in 2007-2008, an increase of 5.6 % from 2006-2007. Although HREOCA controls the expenditure of its own budget, the HREOCA budget is prepared by the Attorney-General's Department.

---

<sup>40</sup> Section 13(1), *HREOC Act*.

<sup>41</sup> Section 10, *HREOC Act*.

---

---

3.3.6 HREOCA has a staff size of around 100. HREOCA staff are public servants employed under section 22 of the *Public Service Act 1999*.

#### Operational autonomy and accountability

3.3.7 HREOCA was officially accredited by the International Co-ordinating Committee of National Human Rights Institutions (ICC) in 1999 and again in 2006, which means that HREOCA had been assessed by ICC to be in compliance with the *Paris Principles*.

3.3.8 The positions of the special-purpose Commissioners established under HREOCA are unique among human rights institutions around the world. It has been argued that the explicit pluralist composition of HREOCA is consistent with the need of a pluralist representation of the social forces in Australia.<sup>42</sup>

3.3.9 As mentioned in paragraph 3.2.10, HREOCA has legal power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions. *HREOC Act* also allows HREOCA to make an examination or hold an inquiry in such manner as it thinks fit.<sup>43</sup>

---

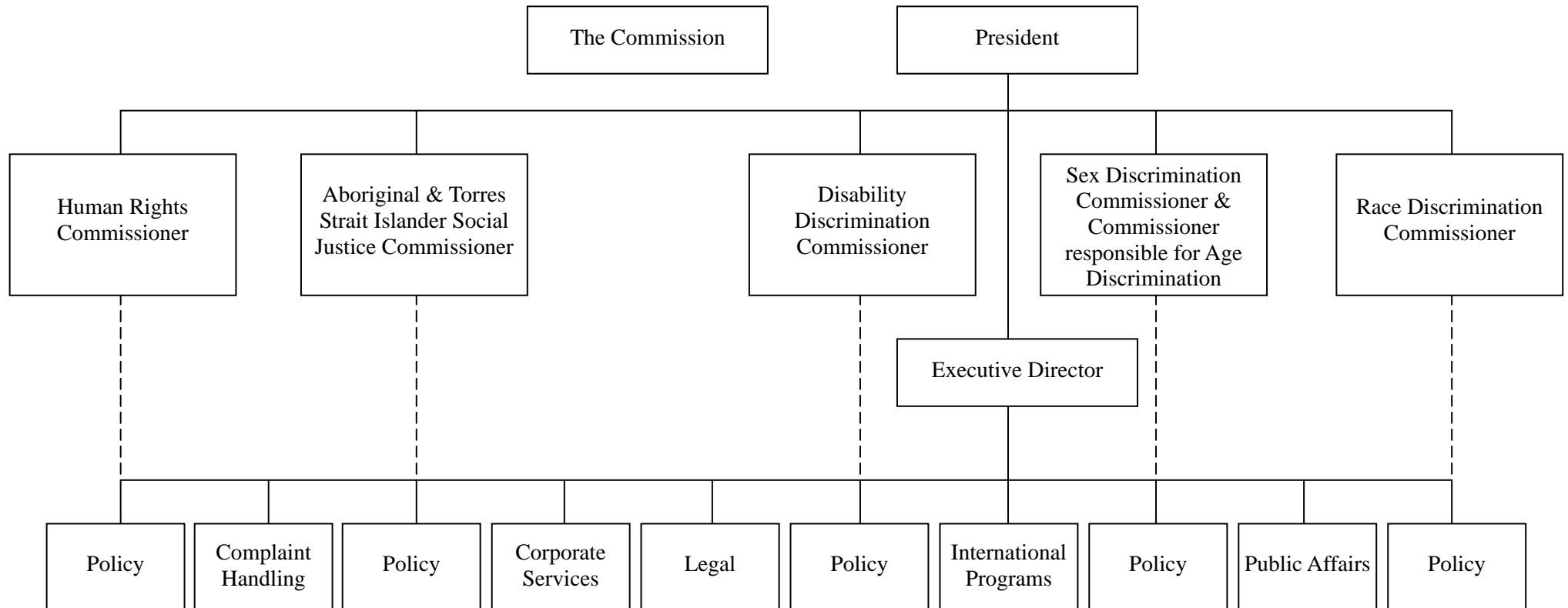
<sup>42</sup> See Legal and Constitutional Legislation Committee (2003) pp. 13-4.

<sup>43</sup> Section 14 (1), *HREOC Act*.

---

---

**Diagram 2 –Organisational Chart of Human Rights and Equal Opportunity Commission**



Source: HREOCA Annual Report 2006-2007, p.12.

3.3.10 In terms of accountability, the Attorney-General is the Minister responsible for HREOCA. He/she has some specified powers under *HREOC Act*. The most significant ones are:

- (a) to make, vary or revoke an arrangement with the states and territories for the performance of functions relating to human rights or discrimination in employment or occupation;
- (b) to declare, after consultation with the states, an international instrument to be one relating to human rights and freedoms for the purposes of the Act; and
- (c) to establish an advisory committee (or committees) to advise HREOCA in relation to the performance of its functions. HREOCA will, at his/her request, report to him/her on Australia's compliance with the *International Labour Organisation Convention III* and advise him/her on national policies relating to equality of opportunity and treatment in employment and occupation.

3.3.11 HREOCA may at any time report to the Minister<sup>44</sup> on any matter arising in the course of the performance of its functions and shall report to the Minister on such a matter if requested by the Minister to do so.

3.3.12 HREOCA is required to submit an annual report to the Minister. The Minister shall table a copy of every report furnished to the Minister by HREOCA before each House of Parliament within 15 sitting days of that House after the report is received by the Minister.

3.3.13 The law also requires HREOCA to prepare a three-year corporate plan each year. Each corporate plan, to be submitted to the Minister, sets out HREOCA's general policies and strategies to perform its duties and functions; and include such performance indicators and targets as HREOCA considers appropriate.

---

<sup>44</sup> Unless stated otherwise, "Minister" in this chapter means the responsible Minister of HREOCA.

---

---

---

### 3.4 Functions and powers

#### Providing advice on legislation and government policies

3.4.1 Under section 11 of *HREOC Act*, HREOCA is empowered:

"(e) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination;

....

(j) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights."

3.4.2 HREOCA has a role to review legislation and make recommendations about laws and government policies and programmes that involve human rights issues. Submissions presented to government agencies, parliamentary committees and other inquiry bodies are prepared by HREOCA's Legal Section, Policy Units and the Complaint Handling Section.

3.4.3 Examples of HREOCA's submissions in 2006-2007 include<sup>45</sup>:

- (a) submission to the Senate Legal and Constitutional Affairs Committee's inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006. The submission expressed concern that the Bill did not provide enough non-discriminatory protection to a customer when financial institutions determined money laundering/terrorism financing risks;
- (b) submission to the House of Representatives Legal and Constitutional Affairs Committee's inquiry into the adequacy of current legislative regimes in addressing the legal needs of elderly. The submission provided a range of background material, including statistics about age discrimination complaints; and
- (c) submission to the Tasmania Law Reform Institute in response to its discussion paper titled *A Charter of Rights for Tasmania?* The submission stated that a statutory Charter of Rights could, depending on its form and content, significantly improve human rights protection in Tasmania.

---

<sup>45</sup> For other HREOCA's submissions, see <http://www.hreoc.gov.au/legal/submissions.html>.

---

---

## Investigation and prosecution of complaints

### *Complaints*

3.4.4 The President of HREOCA is responsible for its complaint handling function. HREOCA is empowered to investigate complaints under federal human rights and anti-discrimination laws and to attempt to resolve complaints by conciliation where appropriate. There are some variations in the complaint handling process for complaints alleging unlawful discrimination and complaints alleging breaches of human rights and discrimination under *HREOC Act*.

3.4.5 Prior to 2000, complaints of unlawful discrimination that could not be resolved by conciliation were heard and determined by HREOCA.<sup>46</sup> Since 13 April 2000, complaints of unlawful discrimination that cannot be resolved by conciliation or are considered inappropriate for conciliation are terminated with complainants, who then have the option of applying for the allegations to be heard and determined by the Federal Court of Australia or the Federal Magistrates Court. Employment is usually the main area of complaint under federal anti-discrimination legislation.

3.4.6 Complaints alleging breaches of human rights and discrimination under *HREOC Act* that cannot be resolved by conciliation do not have the option of proceeding for court determination. Instead, these complaints may be subject to a report to the Attorney-General and subsequent tabling of the report in the Australian Parliament.<sup>47</sup> This process has not been changed by the introduction of the *Human Rights Legislation Amendment Act*. Overall, the majority of complaints received under *HREOC Act* are related to discrimination in employment on the ground of criminal record and alleged breaches of *ICCPR*.

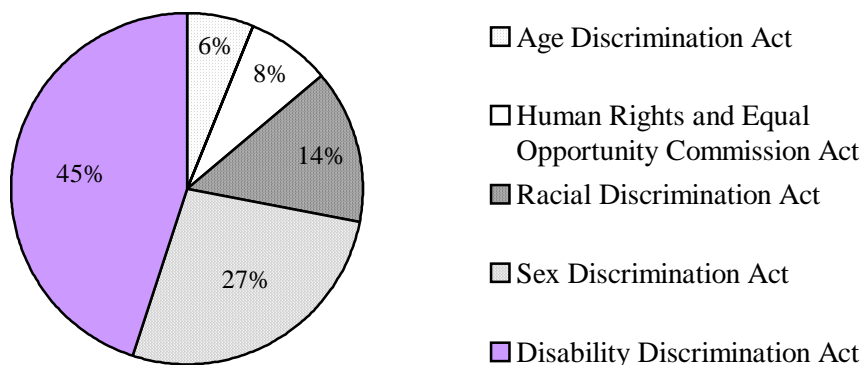
3.4.7 From 2003 to 2006, HREOCA received an average of approximately 1 250 complaints each year. In 2006-2007, HREOC received 1 779 complaints, among which 1 656 were finalised. Ninety-four percent of complaints were finalised within 12 months of lodgement. Thirty-eight percent of the finalised complaints were conciliated. The average time to handle a complaint was six months. Details of complaints received under each Act are shown in the following chart.

---

<sup>46</sup> The 1995 High Court decision of *Brandy v HREOC* held that HREOCA did not have power to make enforceable decisions in relation to unlawful discrimination with respondents other than the Commonwealth. This decision led to the introduction of the *Human Rights Legislation Amendment Act (No.1) 1999* in April 2000 which ensured the enforceability of unlawful discrimination decisions by the introduction of a court-based determination process

<sup>47</sup> For a list of reports to the Minister under *HREOC Act*, see [http://www.humanrights.gov.au/legal/HREOCA\\_reports/index.html](http://www.humanrights.gov.au/legal/HREOCA_reports/index.html).

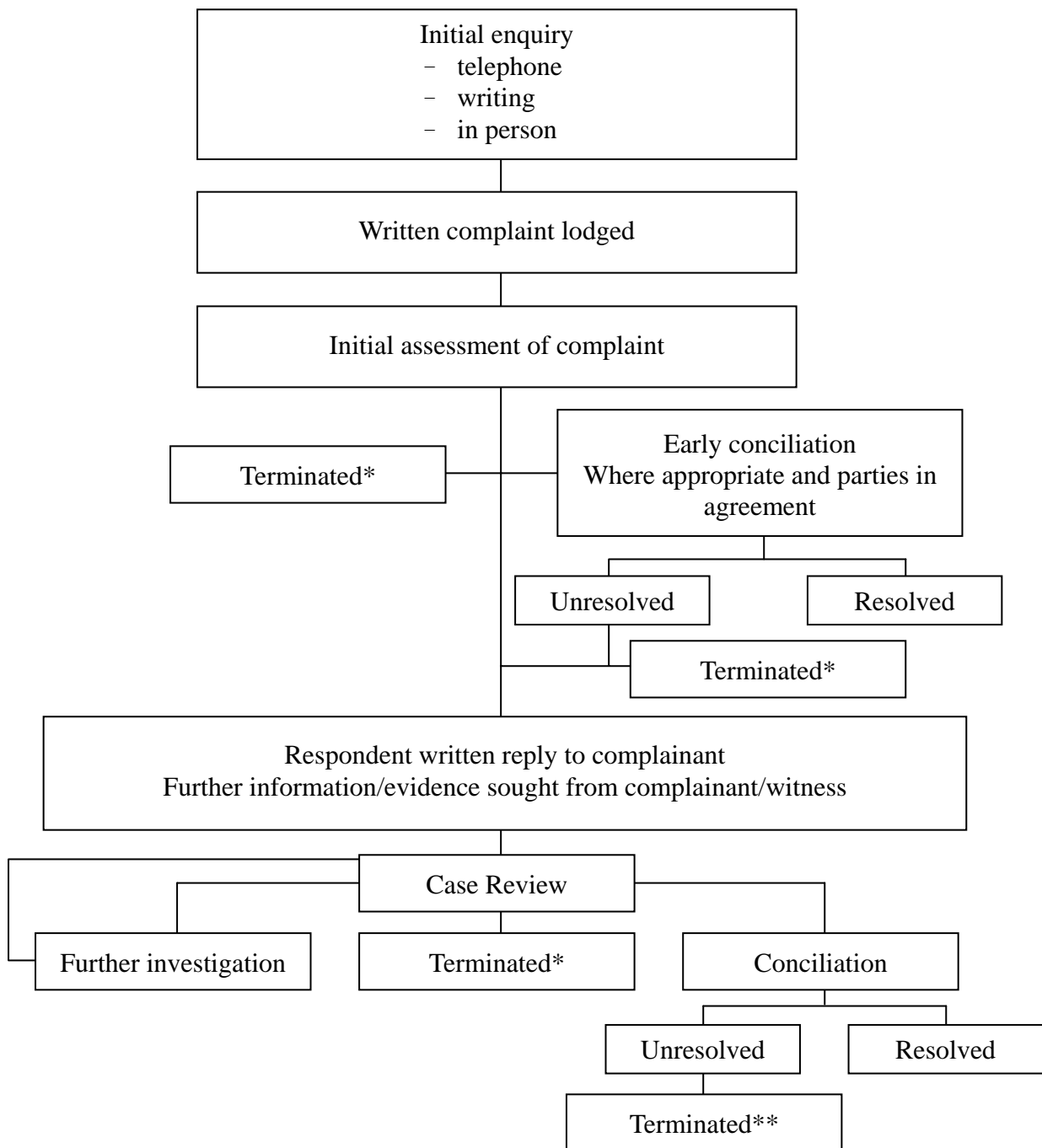
**Chart 1 – Complaints received by Act**



3.4.8 The President of HREOCA is responsible for the investigation and conciliation of complaints lodged under federal anti-discrimination and human rights laws. In practice, staff of HREOCA's Complaint Handling Section (CHS) assist the President to investigate and resolve complaints. A diagram of the complaint handling process is provided below.



**Diagram 3 – The Complaint Handling Process**



\* When complaints under the *Age, Racial, Sex and Disability Discrimination Acts* are terminated, the complainant may apply to have the allegations heard and determined by the Federal Court of Australia or the Federal Magistrates Court.

\*\* A complaint under *HREOC Act* concerning discrimination in employment or a breach of human rights, which cannot be conciliated, cannot be taken to court. If the President is satisfied that the subject matter of the complaint constitutes discrimination or a breach of human rights, these findings are reported to the Attorney-General for tabling in Parliament.

Source: HREOCA.

---

---

*National inquiries*

3.4.9 HREOCA is authorized to "*inquire into any act or practice that may be inconsistent with or contrary to any human right, and:*

- (i) *where the Commission considers it appropriate to do so — to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and*
- (ii) *where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement — to report to the Minister in relation to the inquiry."*<sup>48</sup>

3.4.10 A national inquiry involves conducting public and private hearings with people relevant to the issue of the inquiry. Not only can a national inquiry be used to address systemic violations of human rights – based on the evidence from individual cases, but it can also lead to an examination of the laws, policies and practices which have given rise to the violations in question.

3.4.11 HREOCA has conducted national inquiries on a range of issues involving mental illness, homelessness, rural and remote education, racist violence and pregnancy.<sup>49</sup> The effectiveness of these national inquiries has been widely recognized by the local and international communities, generating extensive publicity and resulting in significant policy changes.<sup>50</sup>

#### Involvement in legal proceedings

3.4.12 HREOCA has the power to send submissions to courts as an intervener and *amicus curiae*. HREOCA has guidelines that must be satisfied before it will seek to become involved in a case before the court.<sup>51</sup>

---

<sup>48</sup> Section 11(1)(f), *HREOC Act*.

<sup>49</sup> See [http://www.hreoc.gov.au/legal/HREOCA\\_reports/](http://www.hreoc.gov.au/legal/HREOCA_reports/).

<sup>50</sup> See Burdekin (2007) pp. 112-6.

<sup>51</sup> See

[http://www.hreoc.gov.au/legal/submissions\\_court/intervention/interventions\\_in\\_court\\_proc.html](http://www.hreoc.gov.au/legal/submissions_court/intervention/interventions_in_court_proc.html)  
and [http://www.hreoc.gov.au/legal/submissions\\_court/amicus/amicus\\_guidelines.html](http://www.hreoc.gov.au/legal/submissions_court/amicus/amicus_guidelines.html).

---

---

*Intervention function of HREOCA*

3.4.13 Under section 11(1)(o) of *HREOC Act*, HREOCA may, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, intervene in proceedings that involve human rights issues. In particular, they are issues of:

- (a) human rights (as defined in *HREOC Act*);
- (b) discrimination in employment (as defined in *HREOC Act* and the *Industrial Relations Reform Act 1993*);
- (c) racial discrimination (as defined in the *Racial Discrimination Act 1975*);
- (d) discrimination on the ground of sex, marital status, pregnancy or family responsibilities or discrimination involving sexual harassment (as defined in the *Sex Discrimination Act 1984*); or
- (e) discrimination on the ground of disability (as defined in the *Disability Discrimination Act 1992*).

3.4.14 HREOCA may intervene in court proceedings in either the criminal or civil jurisdiction, although the majority of the interventions have been in the civil jurisdiction. HREOCA has sought and been granted leave to appear as an intervener in 50 some cases, including proceedings involving issues of consent to surgical treatment by children, child abduction cases, and applications for refugee status as the result of the one-child policy of the People's Republic of China.<sup>52</sup>

*Amicus curiae function of the special-purpose Commissioners*

3.4.15 Section 46PV(1) of *HREOC Act* empowers a special-purpose Commissioner to assist the Federal Court and Federal Magistrates Court as an *amicus curiae* in the following proceedings:

- "(a) proceedings in which the special purpose Commissioner thinks that the orders sought, or likely to be sought, may affect to a significant extent the human rights of persons who are not parties to the proceedings;
- (b) proceedings that, in the opinion of the special purpose Commissioner, have significant implications for the administration of the relevant Act or Acts; and

---

<sup>52</sup> See [http://www.hreoc.gov.au/legal/submissions\\_court/index.html](http://www.hreoc.gov.au/legal/submissions_court/index.html).

- 
- 
- (c) *proceedings that involve special circumstances that satisfy the special purpose Commissioner that it would be in the public interest for the special purpose Commissioner to assist the court concerned as amicus curiae.*"

3.4.16 The *amicus curiae* function may only be exercised with the leave of the court concerned.<sup>53</sup> The function has been carried out in cases involving underpayment of aboriginal wages, pre-employment medical testing, marital status discrimination and part-time work and family responsibilities.<sup>54</sup>

#### Education and enhancement of public awareness

3.4.17 In relation to human rights education and promotion, HREOCA's legislative responsibilities are:

- "(g) *to promote an understanding and acceptance, and the public discussion, of human rights in Australia; and*
- (h) *to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth.*"<sup>55</sup>

3.4.18 In addition, HREOCA has the legal responsibilities to undertake research and education programmes for the purpose of promoting the objects of the relevant Act administered by HREOCA.

3.4.19 HREOCA uses a range of strategies to communicate its key human rights messages to the community, including:

- (a) regular media engagement by the President and Commissioners with metropolitan, regional and specialist press, radio and television outlets;
- (b) Commissioners and staff holding consultations with a range of NGOs, community groups, parliamentarians, business and industry groups, academics and government officers;

---

<sup>53</sup> See Fougere (2001).

<sup>54</sup> See [http://www.hreoc.gov.au/legal/submissions\\_court/index.html](http://www.hreoc.gov.au/legal/submissions_court/index.html).

<sup>55</sup> Section 11(1), *HREOC Act*.

- (c) development of a website which contains human rights education materials for students, teachers, employers, the government, community groups and interested individuals;
- (d) development of curriculum-linked human rights education materials for teachers and students;
- (e) preparation and distribution of plain English publications on human rights and discrimination, and translation of essential HREOCA information into 14 other languages; and
- (f) organisation of promotional events such as the annual Human Rights Awards.

### **3.5 Review and evaluation conducted**

3.5.1 In 2003, the Australian government introduced into Parliament the *Australian Human Rights Commission Legislation Bill 2003 (AHRCL Bill)*. *AHRCL Bill* was designed to implement the government's 2001 "Better Law More Options" commitment to continue to reform the structure of HREOCA to ensure that it was efficient and focused in educating the broader Australian community about human rights issues. When *AHRCL Bill* was introduced, the government arranged for it to be referred to the Senate Legal and Constitutional Legislation Committee (Senate Committee) for inquiry and report. The Senate Committee released its report on 29 May 2003, which was a comprehensive review of HREOCA's powers and functions.<sup>56</sup> *AHRCL Bill* lapsed when the 2004 election was called.

3.5.2 The key aspects of *AHRCL Bill*, among other things, were:

- (a) replacing HREOCA's composition, comprising a President and five special-purpose Commissioners, with a new structure of a President and three generalist Human Rights Commissioners;
- (b) making education, dissemination of information and provision of assistance central functions of the new Commission; and
- (c) requiring HREOCA to obtain the Attorney-General's consent before exercising its power to seek leave to intervene in court proceedings (unless the President was a federal Judge immediately before appointment, in which case the Attorney-General had to be notified).

---

<sup>56</sup> Legal and Constitutional Legislation Committee (2003).

---

---

3.5.3 In relation to changing HREOCA's composition, the Senate Committee found that there were a strong support from a wide range of organisations and individuals for retaining the concept of special-purpose Commissioners rather than replacing them with generalist Human Rights Commissioners. Therefore, HREOCA's composition had remained unchanged. The community has maintained a high regard for the easily identifiable titles and high-profile advocacy, in-depth knowledge, experience and skills of the special-purpose Commissioners over the years.

3.5.4 Regarding HREOCA's intervention role in court proceedings, the Senate Committee found that almost all of the non-Commonwealth government organisations and individuals who addressed this issue were opposed to the proposal laid down by *AHRCL Bill*. The major concerns were that the proposed provisions posed a threat to the independence of HREOCA and its capacity to be and be seen as a guardian of human rights of Australians.<sup>57</sup> The Senate Committee finally recommended that the proposed provisions concerning the requirement for HREOCA seeking the Attorney-General's approval before exercising its power to seek leave to intervene in court proceedings should not to be agreed to.

---

<sup>57</sup> Legal and Constitutional Legislation Committee (2003) Chapter 3.

---

---

## Chapter 4 – South Korea

### 4.1 Background

4.1.1 The National Human Rights Commission of Korea (NHRCK) was established as an independent government body in 2001. Discussions for the establishment of a national human rights institution in South Korea dated back to the early 1990s, when a group of South Korea NGOs participated in the World Conference on Human Rights held in Vienna in June 1993.

4.1.2 The Korean government began to draft a human rights commission bill in 1998, proposing to establish a new commission which would be an affiliate agency of the Ministry of Justice. NGOs protested fiercely against the government's idea. The revised national human rights commission bill passed in 2001 defined NHRCK as an independent national institution unaffiliated with the legislative, executive and judicial branches.<sup>58</sup>

4.1.3 In South Korea, the Ministry of Justice is responsible for formulating national policies and strategies concerning the implementation of international human rights treaties. The Human Rights Division of the Ministry of Justice works towards promoting the spirit of observing of law and order and maintains a cooperative relationship with NGOs. In May 2007, the Ministry of Justice finalized and published the National Action Plan for the Promotion and Protection of Human Rights, a blueprint of the government's human rights policies from 2007 to 2011.

4.1.4 The *Korean Constitution* provides for an independent judiciary. Article 103 of the Constitution states that "[j]udges shall rule independently according to their conscience and in conformity with the Constitution and Act." The judiciary of South Korea consists of the Constitutional Court, the Supreme Court, the High Courts and other local courts. Judicial review of the constitutionality of a law is a function performed by the Constitutional Court.

4.1.5 South Korea established its ombudsman service in 1994. The Ombudsman of Korea provides a broad range of services for those members of the public who have filed complaints of being subjected to the public administration's unlawful and unreasonable practices.

---

<sup>58</sup> For details, see NHRCK Annual Report (2002) pp. 3-7.

## 4.2 Regulatory framework

### Legal basis

4.2.1 The human rights guaranteed under the *Korean Constitution* include integrity and dignity and the right to pursue happiness (Article 10), equality before the law (Article 11), personal liberty (Article 12), protection from wrongful prosecution (Article 13), freedom of residence and the right to move at will (Article 14), freedom of choice of occupation (Article 15), freedom of residence (Article 16), freedom of privacy (Article 17), freedom of correspondence (Article 18), freedom of conscience (Article 19), freedom of religion (Article 20), freedom of speech and the press and freedom of assembly and association (Article 21), and freedom of science and the arts (Article 22).

4.2.2 NHRCK was established under the *National Human Rights Commission Act (NHRC Act)* in 2001. *NHRC Act* provides for the organisation and operation of NHRCK, the duties and authorities of NHRCK, and the investigation procedures for alleged breaches of human rights or discrimination. *NHRC Act* was amended in 2005, with one of the purposes being the strengthening of the independence and functions of NHRCK.<sup>59</sup>

4.2.3 NHRCK are charged with the responsibility of investigating and settling complaints of discrimination against persons with disabilities under the *Prohibition of Discrimination Against People with Disabilities Act (PDAPD Act)*.

4.2.4 Under Article 18 of *NHRC Act*, matters relating to the organisational structure of NHRCK shall be prescribed by Presidential Decrees<sup>60</sup>. There are other decrees promulgated to enforce and implement *NHRC Act* and *PDAPD Act*.

### Jurisdiction

4.2.5 Under *NHRC Act*, the term "human rights" means any rights and freedoms, including human dignity and worth, guaranteed by the *Korean Constitution* and laws, recognized by the international human rights treaties ratified by South Korea, or protected under international customary law.

---

<sup>59</sup> See NHRCK Annual Report (2004) pp. 209-13.

<sup>60</sup> Presidential Decrees are delegated rules or enforcement regulations of an Act issued by the President of South Korea after consultation with the State Council.

---

---



---

4.2.6 Article 2(4) of *NHRC Act* lists 19 prohibited grounds of discrimination, i.e. gender, religion, disability, age, social status, place of origin, country of origin, ethnicity, physical conditions, marital status, pregnancy or childbirth, family type or conditions, race, colour, ideology or political opinions, criminal records, sexual orientation, education and medical history. Discrimination means the favorable or unfavorable treatment, exclusion, or differentiation based on the prohibited grounds of discrimination without justification. Article 2(4) was added in the 2005 amendment to *NHRC Act*.

4.2.7 The 2005 amendment also further specifies discrimination to include any acts of sexual harassment. Sexual harassment is defined as sexual comments or acts made in employment settings that cause feelings of sexual humiliation or degradation or that result in unfair employment treatment for refusing to respond to such sexual comments, acts or demands.<sup>61</sup>

4.2.8 NHRCK can investigate primarily complaints alleging violations of Articles 10 to 20 of the *Korean Constitution*. Besides, NHRCK can also investigate alleged violations involving discrimination as defined by *NHRC Act*.

4.2.9 Passed in March 2007, *PDAPD Act* will come into force in April 2008. In order to protect and promote the human rights of people with disabilities, *PDAPD Act* incorporates both direct and indirect discrimination in the definition of discrimination and expands the scope of discrimination to include refusal to provide reasonable accommodation. Under *PDAPD Act*, NHRCK is responsible for determining unlawful discrimination and issuing recommendations to redress them.

#### Mandate and functions

4.2.10 *NHRC Act* mandates NHRCK to protect and promote the human rights of every individual residing in South Korea.<sup>62</sup> Article 19 of *NHRC Act* stipulates that NHRCK is responsible for:

- (a) reviewing and examining legislation relating to human rights;
- (b) conducting investigations and providing remedy of complaints of human rights violations;
- (c) conducting investigations and providing remedy of complaints of discriminatory practices;
- (d) performing surveys on human rights issues and their conditions;

---

<sup>61</sup> Article 5, *NHRC Act*.

<sup>62</sup> Articles 3 and 4, *NHRC Act*.

- (e) providing education and public awareness programmes on human rights;
- (f) proposing and recommending guidelines regarding problem identification and preventive measures;
- (g) undertaking research and providing advice with respect to the ratification and/or implementation of international human rights treaties;
- (h) cooperating with domestic and overseas organisations for protection and promotion of human rights; and
- (i) performing other activities deemed necessary to protect and promote human rights.

### **4.3 Organisational design and operational arrangements**

#### Composition and organisational structure

4.3.1 NHRCK consists of 11 commissioners, including the chairperson of NHRCK and three standing commissioners<sup>63</sup>. All commissioners are appointed by the President of South Korea (President) for a three-year term, with four commissioners being nominated by the National Assembly, four by the President, and the remaining three by the Chief Justice of the Supreme Court. The President appoints the chairperson of NHRCK from among the commissioners. The commissioners may be reappointed for one more term.

4.3.2 *NHRC Act* requires that at least four of the commissioners must be women.<sup>64</sup> The law also requires that the candidates for the commissioner post should possess professional knowledge and experience with human rights matters and be recognized to be capable of acting fairly and independently when performing duties relating to the protection and promotion of human rights.<sup>65</sup>

4.3.3 The appointment of a commissioner may be terminated if he/she is "*sentenced to imprisonment without labor or a heavier punishment*".<sup>66</sup> A commissioner may also be dismissed for physical or mental grounds, providing that two-thirds or more of all the commissioners pass a resolution to that effect.

---

<sup>63</sup> *NHRC Act* is silent on the roles and power of the standing commissioners.

<sup>64</sup> Article 5(5), *NHRC Act*.

<sup>65</sup> Article 5(1), *NHRC Act*.

<sup>66</sup> Article 8, *NHRC Act*.

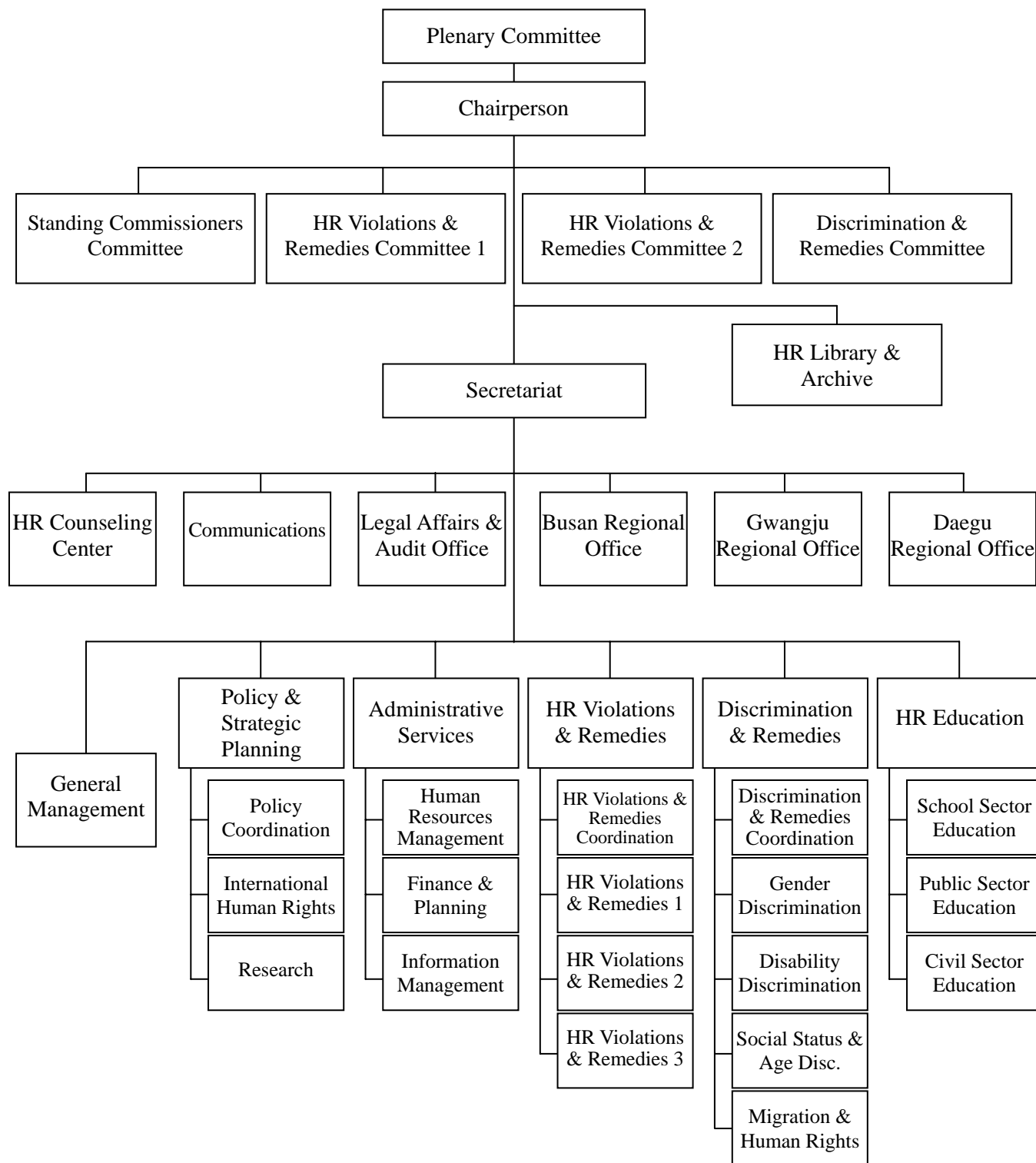
---

---

4.3.4 The commissioners are not allowed to be a member of a political party, participate in political activities, and hold other public office at the same time. Article 11 of the original *NHRC Act* also prohibited a retired commissioner, for two years after his/her retirement, from being appointed to be a public official other than a public official for education or a candidate running for public office. However, in 2005, this Article was ruled unconstitutional by the Constitutional Court.

4.3.5 NHRCK may establish subcommittees to perform its functions. There are currently four subcommittees, comprising the Standing Commissioners Committee, two Rectification Human Rights Violation Committees and the Discrimination Remedy Committee. The Standing Commissioners Committee consists of the chairperson and the standing commissioners, while other subcommittees are made up of three to five commissioners. The Standing Commissioners Committee and the other subcommittees have the power to establish special committees for conducting research and deliberation of human rights issues concerning gender and disability. The following diagram shows the organisational structure of NHRCK.

**Diagram 4 – Organisational chart of NHRCK**



Remarks: HR – Human Rights.  
 Source: NHRCK Annual Report (2007) p. 103.

---

---

### Financial and human resources

4.3.6 NHRCK has an annual budget of around 20 billion Korean Won (HK\$164 million) in recent years. About 40% of the budget is used for payroll expense. Although *NHRC Act* specifies that the chairperson of NHRCK is the controlling officer of NHRCK,<sup>67</sup> there is no provision ensuring that NHRCK has the authority to compile its own budget. Instead, NHRCK's budget is prepared by the Ministry of Justice.

4.3.7 *NHRC Act* provides that a Secretariat shall be established to address the general affairs of NHRCK. The current Secretariat of NHRCK has a staff size of about 200, dividing into five departments, 22 teams and three subsidiaries (see diagram 4). The Secretary-General of NHRCK is appointed by the President on the recommendation of the chairperson of NHRCK after due deliberation of NHRCK. Senior staff members of NHRCK are also appointed by the President on the recommendation of the chairperson of NHRCK.

### Operational autonomy and accountability

4.3.8 NHRCK was officially accredited by ICC in April 2004. There are provisions in *NHRC Act* that recognize the autonomy of NHRCK's operation. Article 3 provides that NHRCK shall independently deal with the matters which fall within the purview of its authority. Article 18 states that matters necessary for its operation shall be prescribed by NHRCK's own rule.<sup>68</sup> In addition, Article 17 allows NHRCK to establish its own staff disciplinary committee and formulate relevant disciplinary rules.

4.3.9 Nevertheless, *NHRC Act* specifies that matters necessary for the organisation of NHRCK, except provided by the Act, shall be prescribed by Presidential Decrees.<sup>69</sup> When NHRCK was first established, the Korean government was actively involved in the process of setting up its Secretariat.<sup>70</sup>

4.3.10 In terms of accountability, Article 14 of *NHRC Act* requires that the proceedings of NHRCK shall be made public, except when NHRCK, the Standing Committees and other subcommittees consider that it is not necessary for them to be made public. NHRCK is also required to prepare an annual report to the President and the National Assembly, describing its activities for the preceding year, the human rights situation and related improvement measures.

---

<sup>67</sup> Article 6(5), *NHRC Act*.

<sup>68</sup> Article 18, *NHRC Act*.

<sup>69</sup> Ibid.

<sup>70</sup> See NHRCK Annual Report (2002) p. 9 and Cho (2002) pp. 234-5.

4.3.11 NHRCK may, if deemed necessary, make any other report to the President and the National Assembly.<sup>71</sup> NHRCK is required to release to the public all the reports submitted to the President and the National Assembly, except for those matters relating to national security or personal privacy, or when the release of such matter is prohibited by other laws.

4.3.12 The chairperson of NHRCK may attend the National Assembly and state opinions on affairs falling under the jurisdiction of NHRCK, and shall, if required by the National Assembly, attend thereupon and make a report or reply.

#### **4.4 Functions and powers**

##### Providing advice on legislation and government policies

4.4.1 As mentioned above, NHRCK has the legal responsibilities to:

- (a) investigate and research on statutes, policies and practices related to human rights, and to make recommendations and opinions for their improvement;
- (b) survey on human rights conditions; and
- (c) research and provide advice regarding the ratification of any international human rights treaty and its implementation.

4.4.2 In both 2004 and 2005, NHRCK presented some 20 submissions regarding human rights laws and government policies to the relevant Ministries and the National Assembly. One of the recommendations contained in these submissions is to abolish the *Social Protection Act* and the *National Security Act*, which have been regularly blamed for gross violation of human rights in South Korea.<sup>72</sup>

4.4.3 NHRCK had been actively pressed for the enactment of a comprehensive anti-discrimination legislation, and had taken more than three years to draft an anti-discrimination bill since 2003. Consequently, the *Disability Discrimination Act* passed by the National Assembly in March 2007 empowers NHRCK to determine unlawful discriminations and issue recommendations to redress them.

---

<sup>71</sup> Article 29(2), *NHRC Act*.

<sup>72</sup> See NHRCK Annual Report (2004) pp. 201-4.

---

---

4.4.4 NHRCK has used its expertise to comment on the Korean government's reports to the international human rights treaty bodies and monitor the local implementation of those human rights treaties. NHRCK has also recommended the Korean government to accede to several Optional Protocols<sup>73</sup>, including the *Optional Protocol to the Convention on the Elimination of Discrimination against Women* and the *Optional Protocol to the Convention on the rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.

#### Investigation and prosecution of complaints

4.4.5 NHRCK are authorised to investigate matters concerning:

- (a) human rights violations committed by state organs, local governments or detention or correctional facilities; and
- (b) discriminatory acts or any violation of the right of equality committed by a legal corporate body, organisation or private individual.<sup>74</sup>

4.4.6 NHRCK accepts complaints through telephone, fax and e-mail. On-site human rights counselling and petition filing services may be provided for inmates in detention facilities, socially disadvantaged groups and special regional communities<sup>75</sup>. The number of complaints received by NHRCK increased steadily from 803 cases in 2001 to 5 617 cases in 2005. In 2005, about 75 % of the complaints related to human rights violations. The rest were discrimination cases, of which about 45 % were related to employment.

4.4.7 Diagram 5 gives a detailed account of the complaint handling process of NHRCK. During the investigation of a complaint, NHRCK is empowered to call any person to give evidence, produce documents and conduct on-site investigations. NHRCK may submit the complaint to the Conciliation Committee for conciliation upon request by the persons concerned. Otherwise, NHRCK will deliberate on the findings of the investigation and render its decision.

4.4.8 *NHRC Act* allows NHRCK to dismiss a complaint for a wide range of reasons<sup>76</sup>, such as when the incident leading to a complaint happened more than one year ago, when the incident is under criminal investigation or court trial, in case other legal procedures for redress are in process or completed, or when NHRCK considers that it is inappropriate to investigate a complaint.

---

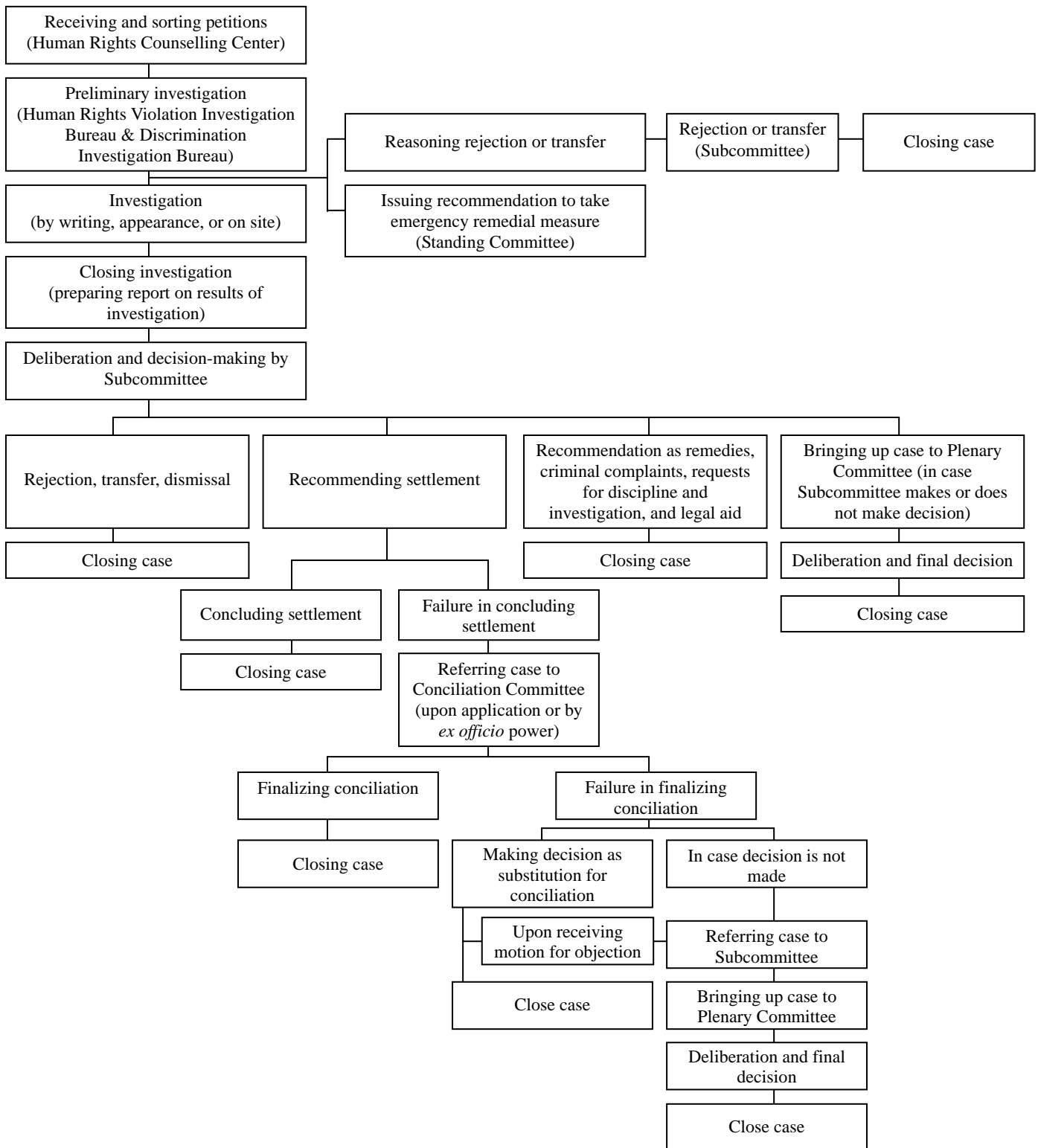
<sup>73</sup> Some human rights treaties are followed by optional protocols which may either provide for procedures with regard to the treaties or address a substantive area related to the treaties. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are a party to the main treaties.

<sup>74</sup> Article 30, *NHRC Act*.

<sup>75</sup> In 2005, NHRCK visited villages where Hansen's disease patients were located, and provided counselling services to and received petitions from the villagers.

<sup>76</sup> Article 32 of *NHRC Act* stipulates 10 reasons for dismissal of a petition.

**Diagram 5 – Complaint Handling Process**



Source: NHRCK.



---

4.4.9 If both parties to a dispute or complaint willingly submit to the conciliation process provided for in *NHRC Act*, but do not reach a compromise with respect to the issue in question, NHRCK may make a decision on any of the following:

- (a) *Stoppage of the human rights violation or discriminatory act subject to the investigation;*
- (b) *Restitution or compensation for damages, or other necessary remedies; or*
- (c) *Measures necessary for the prevention of recurrence of the same or similar human rights violation or discriminatory act.*"<sup>77</sup>

4.4.10 If the parties concerned do not object, within two weeks, to a decision, the decision will have the same effect as a settlement at court.

4.4.11 Depending on the result of the investigation of a complaint, NHRCK can propose appropriate remedial actions, and recommend suitable disciplinary actions and urgent relief measures.<sup>78</sup> Disciplinary action may involve filing an accusation to the Prosecutor General, if the circumstances of a complaint correspond to an act of crime requiring criminal punishment.

#### *Direct investigation*

4.4.12 Under Article 30(2) of *NHRC Act*, NHRCK may initiate an *ex officio* investigation if there is a reasonable cause to believe that a serious human rights violation or discriminatory act has occurred.<sup>79</sup> In recent years, NHRCK has conducted *ex officio* investigations on matters such as the handling procedures for military personnel who died on duty, the use of personal information at public libraries, and the protection measures for victims of sexual violence.

#### Involvement in legal proceedings

4.4.13 In relation to a court trial which significantly affects the protection and promotion of human rights, Article 28 of *NHRC Act* empowers NHRCK, either after being requested by the court or on its own initiative, to "*present its opinions on de jure [based on law] matters to the competent division of the court or the Constitutional Court.*"

---

<sup>77</sup> Article 42(4), *NHRC Act*.

<sup>78</sup> Articles 44, 45 and 48, *NHRC Act*.

<sup>79</sup> The relevant section in the 2001 *NHRC Act* did not include discriminatory acts.

---

4.4.14 With respect to a court trial involving a case investigated or handled by NHRCK under *NHRC Act*, NHRCK may not only present its opinions on *de jure* matters, but also *de facto [in fact]* ones.

#### Education and enhancement of public awareness

4.4.15 One of NHRCK's functions is to raise public awareness regarding human rights. NHRCK has used a wide range of methods to communicate its key human rights messages to the community, including:

- (a) use of audio-visual media such as television advertisements and the production of films and cartoons. Starting from 2002, a series of films with the theme of human rights and discrimination issues has been produced by NHRCK;<sup>80</sup>
- (b) provision of human rights workshops and trainings for government employees, especially prosecutors, the police, correctional officers and the military;
- (c) provision of training programmes for teachers and school administrators and development of human rights education programmes for elementary, middle and high schools;
- (d) establishment of an on-line Human Rights Learning Center in 2005 to provide easy access to human rights educational materials; and
- (e) as an advocate for a separate piece of legislation for human rights education. The *Human Rights Education Act Bill* was passed by the State Council in October 2007, waiting to be enacted by the National Assembly.<sup>81</sup>

## **4.5 Review and evaluation conducted**

4.5.1 Information about review and evaluation on NHRCK is scarce. Some evaluative essays were published in the early years of NHRCK's establishment.<sup>82</sup> NHRCK was deprecated in these essays for (a) suffering from a high degree of political interference, (b) lacking the financial independence and autonomy regarding employment matters, (c) insufficient investigation powers and having a broad range of powers to reject a complaint and (d) failing to develop strategic visions.

---

<sup>80</sup> NHRCK Annual Report (2004) pp. 166-8.

<sup>81</sup> See [http://www.humanrights.go.kr/english/download.jsp?board\\_id=Press%20Releases&filename=PR%20-%20HR%20Edu%20Bill.doc](http://www.humanrights.go.kr/english/download.jsp?board_id=Press%20Releases&filename=PR%20-%20HR%20Edu%20Bill.doc).

<sup>82</sup> See Cho (2002) and Kwok (2002).

4.5.2 In January 2008, the Presidential Transition Committee<sup>83</sup> proposed to place NHRCK under the control of the Presidential Office. One of the arguments of the Committee was that the current position of NHRCK was in violation of the principle of separation of powers. Both NHRCK<sup>84</sup> and the United Nations High Commissioner for Human Rights<sup>85</sup> expressed serious concern over the proposed rearrangement plan, and the proposal change was not implemented.

---

<sup>83</sup> A committee set up for managing the transition between two presidential terms.

<sup>84</sup> NHRCK's press release, January 21 2008.

<sup>85</sup> *The Korean Times*, January 20 2008.

## Chapter 5 – India

### 5.1 Background

5.1.1 The National Human Rights Commission of India (NHRCI) was established in October 1993.<sup>86</sup> Its statute is contained in the *Protection of Human Rights Act 1993 (PHR Act)*. One of the primary functions of NHRCI is to receive complaints on and to initiate investigations into violations of human rights by public servants via acts of commission and omission through negligence on their part, and to prevent violation of human rights when brought to its notice.

5.1.2 The Human Rights Division of the Ministry of Home Affairs deals with matters relating to *PHR Act* and also matters relating to national integration and communal harmony. The government of India has adopted *A National Action Plan for Human Rights Education*, which envisages promotion and awareness of human rights to all sections of the society.

5.1.3 *PHR Act* also makes provisions for the establishment of state human rights commissions, with 17 states having set up such bodies accordingly. Where NHRCI considers it necessary or expedient, it may transfer any complaint filed or pending before it to the human rights commission of a state where the complaint arises. Nevertheless, only NHRCI will be discussed below.

5.1.4 The Indian judiciary consists of the Supreme Court, the High Courts at the state level, and the District and Session Courts at the district level. The Supreme Court is the highest court in India. Extensive constitutional provisions are in existence to safeguard the independence of judges, including articles regarding selection, conditions of tenure and removal of judges at both the Supreme Court and the High Courts.

5.1.5 Although the proceedings in the Supreme Court of India arise out of the judgments or orders made by the subordinate courts including the High Courts, the Supreme Court also entertains litigation, for the protection of public interest, introduced not by the aggrieved party but by the court itself or by any other private party. This is called Public Interest Litigation.

5.1.6 Besides NHRCI, there are other institutions set up to strengthen and safeguard the exercise of basic human rights of the vulnerable sections of the Indian society. These institutions include the National Commission for Women, the National Commission for Minorities, the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes. These commissions are charged with the responsibility of safeguarding the rights guaranteed to specified target groups under the *Indian Constitution* as well as under the various laws passed by the legislature.

---

<sup>86</sup> For a detailed discussion of the formation of NHRCI, see Ray (2002).

5.1.7 In India, there are ombudsman schemes in the banking, insurance and telecommunications sectors dealing with their respective customer complaints.

## 5.2 Regulatory framework

### Legal basis

5.2.1 The Fundamental Rights in India are enshrined in Part III of the *India Constitution* (Articles 12 to 35). They include individual rights such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus. Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of the Fundamental Rights.

5.2.2 NHRCI was originally established under the *Protection of Human Rights Ordinance* of 28 September 1993, which was later replaced by *PHR Act*. The *Protection of Human Rights Ordinance* was promulgated by the President of India under Article 123 of the *Indian Constitution*<sup>87</sup>. Subsequently, in November 1993, a new bill was submitted to the Indian Parliament to replace the Ordinance. *PHR Act* received Presidential assent in January 1994. The Act provides for the constitution of a national human rights commission, human rights commissions in states and the Human Rights Courts<sup>88</sup> for better protection of human rights.

5.2.3 *PHR Act* was revised by the *Protection of Human Rights (Amendment) Act 2006*. The main amendments on *PHR Act*, other than making changes to the appointment of members of the state human rights commissions, relate to issues such as: strengthening the investigative machinery available to human rights commissions; empowering the commissions to recommend award of compensation, even during the course of enquiry; empowering NHRCI to undertake visits to jails without intimation to the state governments; and strengthening the procedure for recording of evidence of witnesses.

---

<sup>87</sup> The usual parliamentary committee procedure for debating the contents of the Ordinance was skirted. See Sripati (2001).

<sup>88</sup> The Human Rights Courts are special courts set up in a state for speedy trial of offences arising out of violation of human rights.

---

---

---

---

## Jurisdiction

5.2.4 *PHR Act* defines "human rights" to include "*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.*"<sup>89</sup> The "International Covenants" refer to the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and other United Nations conventions or covenants specified by the central government of India.<sup>90</sup>

5.2.5 Section 36 of *PHR Act* specifies matters not subject to the jurisdiction of NHRCI. For instance, NHRCI shall not inquire into any matter which is pending before a state human rights commission or any other commission duly constituted under any law for the time being in force. Additionally, NHRCI or a state human rights commission is not allowed to inquire into any human rights violation committed longer than one year ago.

## Mandate and functions

5.2.6 The preamble of *PHR Act* states that the establishment of a human rights commission at the national and state levels is for better protection of human rights. Under section 12 of *PHR Act*, NHRCI performs all or any of the following functions:

- (a) inquire, on its own initiative or on a petition presented to it by a victim or any person on his/her behalf or on a direction or order of any court, into a complaint of:
  - (i) violation of human rights or abetment thereof; or
  - (ii) negligence in the prevention of such violation, by a public servant;
- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) visit any jail or any other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living condition of the inmates and make recommendations thereon;<sup>91</sup>

---

<sup>89</sup> Section 2(1)(d), *PHR Act*.

<sup>90</sup> Section 2(1)(f), *PHR Act*.

<sup>91</sup> The original provision in *PHR Act* required visits to these institutions with intimation to the state government.

- (d) review the safeguards by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- (g) undertake and promote research in the field of human rights;
- (h) spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- (i) encourage the efforts of NGOs and institutions working in the field of human rights; and
- (j) such other functions as it may consider necessary for the promotion of human rights.

### **5.3 Organisational design and operational arrangements**

#### Composition and organisational structure

5.3.1 Under Section(2) of *PHR Act*, NHRCI consists of:

- (a) a Chairperson who has been a Chief Justice of the Supreme Court;
- (b) one member who is or has been, a Judge of the Supreme Court;
- (c) one member who is, or has been, the Chief Justice of a High Court; and
- (d) two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

5.3.2 In addition to the above five permanent members, there are four ex-officio members who perform less functions (functions (b) to (j) of paragraph 5.2.6). They are:

- (a) the Chairperson of the National Commission for Minorities;
- (b) the Chairperson of the National Commission for the Scheduled Castes;
- (c) the Chairperson of the National Commission for the Scheduled Tribes;  
and
- (d) the Chairperson of the National Commission for Women.

5.3.3 All five permanent members of NHRCI are appointed by the President of India (President) on the recommendation of a committee consisting of:

- (a) the Prime Minister as the chairperson of the committee;
- (b) the Speaker of the House of the People<sup>92</sup>;
- (c) the Minister in charge of the Ministry of Home Affairs;
- (d) the Leader of the Opposition in the House of People;
- (e) the Leader of the Opposition in the Council of States<sup>93</sup>; and
- (f) the Deputy Chairman of the Council of States.

5.3.4 Section 6 of *PHR Act* provides that on being appointed, the Chairperson and other members of NHRCI shall hold office for a term of five years or until he/she attains the age of 70 years, whichever is earlier. A member is eligible for re-appointment for another term of five years. On ceasing to hold office, the Chairperson and the Members are not eligible for further employment under the central or any state governments.<sup>94</sup>

---

<sup>92</sup> The lower house of the Parliament of India.

<sup>93</sup> The upper house of the Parliament of India.

<sup>94</sup> Section 6(3), *PHR Act*.

---

---



5.3.5 The Chairperson or any members of NHRCI can be removed from his/her office by the President for proved misbehaviour or incapacity after a Supreme Court inquiry and subsequent recommendation. The President can also remove the Chairperson or any member of NHRCI from office if he/she:

- (a) is adjudged an insolvent;
- (b) engages during his/her term of office in any paid employment outside the duties of his/her office;
- (c) is unfit to continue in office by reason of infirmity of mind or body;
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

5.3.6 The Chief Executive Office of NHRCI is the Secretary-General, an officer of the rank of Secretary to the Indian government. There are six divisions in NHRCI, namely the Administration Division; the Law Division; the Training Division; the Policy Research, Projects and Programmes Division; the Investigation Division and the Information and Public Relations Division. The Law Division services NHRCI in the receipt and disposal of complaints relating to human rights violations.

5.3.7 NHRCI has a scheme for engaging eminent persons as Special Rapporteurs to enhance its work. Special Rapporteurs are drawn from among persons who have had a meritorious record of service and have retired from senior positions, either in the Indian Administrative Services or in the Indian Police Service with a commitment for human rights concerns. They either are given a subject or a group of subjects to deal with, such as child labour, custodial justice and disability, or have territorial jurisdictions.

#### Financial and human resources

5.3.8 NHRCI prepares its own budget which will be forwarded to the central government. The central government, after considering the funding request, formulates and places the funding request before Parliament. The central government's funding to NHRCI is by way of grants after due appropriation made by Parliament. NHRCI is guaranteed by law to spend the amount as it thinks fit for the performance of its functions.<sup>95</sup> In 2005-2006, NHRCI had a budget of 1,574 lakh rupees (HK\$31.3 million), with about 34% being used in staff pay and allowances.

---

<sup>95</sup> Section 32(2), *PHR Act*.

---

5.3.9 Section 11 of *PHR Act* requires the central government to make available to NHRCI an officer of the rank of Secretary to the Indian government to be the Secretary-General of NHRCI, police investigative staff with an officer not below the rank of Director General of Police and other officers and staff as may be necessary for the efficient performance of the functions of NHRCI.

5.3.10 NHRCI has a staff size of around 340. The central government has the power to make rules regarding the salaries and allowances as well as other terms and conditions of service of the Chairperson, members, officers and other staff of NHRCI. Subject to these rules, NHRCI may appoint other administrative, technical and scientific staff as it considers necessary. As far as the increase in the number of staff is concerned, it needs the concurrence of the central government.

#### Operational autonomy and accountability

5.3.11 NHRCI was assessed by ICC in 1999 and again in 2006 to be in compliance with the *Paris Principles*. The autonomy of NHRCI derives, *inter alia*, from the method of appointing its Chairperson and members, their fixity of tenure and statutory guarantees, and the status they have been accorded. NHRCI also has its own investigation staff. The financial autonomy NHRCI is spelt out in section 32 of *PHR Act* (see paragraph 5.3.8 of this report).

5.3.12 According to section 40 of *PHR Act*, the central government may make rules to carry out the provisions of *PHR Act* regarding the employment of staff<sup>96</sup>, the form in which the annual statement of accounts is to be prepared and any other matter which has to be, or may be, prescribed. However, any rule made by the central government in this regard shall be laid before Parliament, which has the power to modify or reject the rule.

5.3.13 NHRCI has the power to regulate its own procedure and meet at such time and place as the Chairperson may think fit.<sup>97</sup> All the orders and decisions of NHRCI are authenticated by the Secretary-General or any other officer of NHRCI who is duly authorized by the Chairperson.

5.3.14 With regard to the accountability, NHRCI is required to maintain proper accounts and other relevant records and prepare an annual statement of accounts. NHRCI accounts shall be audited and certified by the Comptroller and Auditor-General together with the audit report, and these documents will be laid before each House of Parliament.

---

<sup>96</sup> See paragraph 5.3.10.

<sup>97</sup> Section 10, *PHR Act*.

5.3.15 In addition, NHRCI is required to submit an annual report to both the central government and the state government concerned. It may, at any time, submit special reports on any matters which, in its opinion, are of such urgency or importance that they should not be deferred until the submission of the annual report. These reports should also be laid before each House of Parliament or the state legislature.

## 5.4 Functions and powers

### Providing advice on legislation and government policies

5.4.1 NHRCI has the legal responsibility to review the safeguards provided by or under any law that could have a bearing on the protection of human rights, as well as to study treaties and other international instruments on human rights and make recommendations for their effective implementation.

5.4.2 Over the years, NHRCI has commented on bills or legislation relating to anti-terrorism, the special powers of armed forces, the rights of women and children, issues relating to health and education, refugees, and the right to information. In 2000, NHRCI forwarded to the Indian government its own proposals for amending various provisions of its enabling Act.<sup>98</sup>

5.4.3 NHRCI has constituted an advisory body and a working group comprising representatives of various government departments, NGOs and lawyers to prepare a national action plan for human rights. A draft action plan is being prepared after extensive discussion with the Ministries and government departments concerned.

5.4.4 Regarding the implementation of international treaties, in a number of instances, notably in respect of torture, the rights of women and children, and refugees, NHRCI has called for an examination of the existing position and the taking of specific steps that would ensure the better protection of human rights. In recent years, NHRCI has urged the Indian government to ratify the Optional Protocols to the *Convention on the Rights of the Child* and the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment*.<sup>99</sup>

---

<sup>98</sup> For further discussion, see part 5.5 of this research report.

<sup>99</sup> NHRCI succeeded in persuading the Indian government to sign the Optional Protocols to the *Convention on the Rights of the Child* in November 2004.

---

---

---

---

## Investigation and prosecution of complaints

### *Complaints*

5.4.5 One of the primary functions of NHRCI is to receive complaints and initiate investigations into the violation of human rights by public servants by acts of commission or omission or through negligence on their parts to prevent violation when brought to its notice within one year of the commission of such violation.

5.4.6 NHRCI has to deal with a substantial number of human rights violation complaints each year. During 2006-2007, NHRCI received 82 233 complaints, an increase of 10.5% from 2005-2006. During 2004-2005, the total number of cases received was 74 401, among which 72 775 cases were complaints of alleged human rights violations, 1 500 cases related to intimations of custodial deaths, four cases of custodial rapes and 122 related to police encounters.<sup>100</sup>

5.4.7 Human rights complaints are processed by the Law Division of NHRCI. If any complaint requires an investigation, it will be performed by NHRCI's own Investigation Division. The Investigation Division is headed by an officer of the rank of Director General of Police, who is assisted by a Deputy Inspector General of Police, Senior Superintendents of Police, Deputy Superintendents of Police, Inspectors of Police and Constables.

5.4.8 While inquiring into complaints, NHRCI shall have all the powers of a civil court trying a suit under the *Code of Civil Procedure 1908*. In particular, it has the following powers:

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed.<sup>101</sup>

---

<sup>100</sup> NHRCI Annual Report (2005) p. 23.

<sup>101</sup> Section 13, *PHR Act*.

---

5.4.9 While inquiring into complaints of violations of human rights, NHRCI may, under section 17 of *PHR Act*:

- (a) call for information or reports from the central or state governments, or any other authority or organisation subordinate thereto, within such time as specified by it;
- (b) if the information or reports are not received within the time period stipulated by NHRCI, proceed to inquire into the complaints; and
- (c) if, on the receipt of information or reports, NHRCI is satisfied that no further inquiry is required, or that the required action has been initiated or taken by the government or authority concerned, decide not to proceed with the complaint, and inform the complainant accordingly.

5.4.10 NHRCI may take any of the following steps upon the completion of an inquiry:

- (a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, recommending to the government or authority concerned the initiation of proceedings for prosecution or such other action as NHRCI may deem fit against the relevant person or persons;
- (b) approaching the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; or
- (c) recommending to the government or authority concerned for the grant of such immediate interim relief to the victim or the members of his/her family as NHRCI may consider necessary.

#### *Complaints with respect to armed forces*

5.4.11 NHRCI may, on its own motion or on the basis of petitions made to it on allegations of human rights violations by armed forces, seek a report from the central government. On receipt of the report, it may either not proceed with the complaint or, as the case may be, make its recommendations to the government. According to *PHR Act*, the central government shall inform NHRCI of the action taken on the recommendations within three months or such further time as NHRCI may allow. It is further stipulated that NHRCI shall publish its report together with its recommendations made to the central government and the action taken by the government on such recommendations. A copy of the report so published will also be given to the petitioner.

---

---

### Research and investigations

5.4.12 Based on reports in the print as well as electronic media regarding violations of human rights of individual or groups, NHRCI may, on its own initiative, seek factual reports from the agency concerned, and, wherever necessary, proceed to inquire in the same manner as in a complaint of violation of human rights.

5.4.13 *PHR Act* also requires NHRCI to undertake and promote research in the field of human rights. The main purpose of the research is to evolve mechanisms that can be used to promote and protect human rights and combat violations of such rights. NHRCI may provide assistance to an outside institution for undertaking relevant research studies.

5.4.14 Examples of such research studies are<sup>102</sup>:

- (a) The Action Research on Trafficking in Woman and Children – carried out by the Institute of Social Sciences, New Delhi. The main aim of the research was to study the trends, dimensions and magnitude of the problem of trafficking in women and children and to assess the types of existing responses to issues arising from trafficking.
- (b) The Study of the Implementation of the *Juvenile Justice (Care and Protection of Children) Act* – conducted by the Socio-Legal Information Centre, New Delhi. The study tried to examine the existing status of the Act so far as its implementation was concerned.
- (c) A Study to Assess the Promotion of Economic, Social and Cultural Rights (ESCR) in India – conducted by the National Centre for Advocacy Studies (NCAS), a Pune-based NGO. The main aim of the study is to analyse the government's resource allocation for the realization of ESCR, especially the rights to food, health and education with particular reference to some marginalized groups, and to explore civil society initiatives in helping people to claim ESCR.

### Involvement in legal proceedings

5.4.15 Section 12(b) of *PHR Act* empowers NHRCI to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. Furthermore, Section 18(2) of *PHR Act*, under the heading "Steps after inquiry", enables NHRCI to "*approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary.*"

---

<sup>102</sup> For details, see <http://nhrc.nic.in/ResearchStudies&Project.htm>.

5.4.16 NHRCI has been intervening, from time to time, in the matters concerning human rights in the proceedings pending in the Supreme Court or the High Courts in India with a view to putting forth its point of view before the court and also assisting the court's consideration.

5.4.17 One of the latest notable cases in which the Supreme Court was approached by NHRCI was a case commonly known as the "Best Bakery case". The Best Bakery case took place on 1 March 2002 in Vadodara, during the 2002 Gujarat violence, in which 14 people were murdered, with many of them being burned to death. The case came into prominence after all the 21 accused were acquitted in June 2003 by a "fast-track court" for lack of evidence, after many witnesses had turned hostile.

5.4.18 NHRCI, in July 2003, filed a special leave petition in the Supreme Court with a prayer to set aside the judgement of the trial court, and sought directions for further investigation by an independent agency and retrial of the Best Bakery case. In April 2004, the Supreme Court ordered retrial of the case outside Gujarat, in Maharashtra. At the end, a special court conducting a retrial sentenced nine people, who had been acquitted in an earlier trial, to life imprisonment for killing 14 people during the attack on the bakery.

5.4.19 A rather unique arrangement in India is that NHRCI maintains a complementary relationship with the Supreme Court and the High Courts. These Courts have been remitting matters relating to perseverance and promotion of human rights to NHRCI for inquiry or investigation and for submitting reports as well as recommendations.

5.4.20 The Supreme Court has, in a number of cases under its consideration, particularly involving group rights, remitted matters to NHRCI. On the directions of the Supreme Court, these matters are monitored by NHRCI as programmes. They include:

- (a) the abolition of bonded labour. NHRCI has been involved in the monitoring of the implementation of the *Bonded Labour System (Abolition) Act*;
- (b) the proper management of mental hospitals. NHRCI has been involved in the supervision of the functioning of three mental hospitals in pursuance of an Order of the Supreme Court; and
- (c) the Right to Food programme. NHRCI has been involved in the monitoring of the implementation of relief measures dealing with starvation deaths in certain districts of Orissa State. Owing to such involvement, NHRCI has formulated a programme of action for making Right to Food a reality in the country.

### Education and enhancement of public awareness

5.4.21 One of NHRCI's function is to spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.

5.4.22 Over the years, NHRCI has taken the following steps to promote human rights education:

- (a) working with the relevant education Ministries to prepare materials for education at all levels of schooling;
- (b) working with the University Grants Commission for the development of courses at the university level;
- (c) encouraging the development of courses on human rights in the training institutes for public servants, the police, para-military and army;
- (d) producing human rights training and promotion materials, including booklets, films, a monthly newsletter, a website and the publication of the Journal of National Human Rights Commission;
- (e) establishing an expert committee for formulating long-term and short-term human rights promotion plans and the implementing the government's action plan for human rights education; and
- (f) encouraging and supporting the efforts of NGOs.

## **5.5 Review and evaluation conducted**

5.5.1 Because of the country's large size and tremendous diversity, the situation of human rights in India is a complex one. Most human rights violations occur in areas marked by internal armed conflict or result from religious and racial discrimination and violence. NHRCI has been under close scrutiny by various parties concerned. Some parties have criticised NHRCI for its restrictive appointment criteria (focusing only on judicial personnel), its inability to deal with human rights violations by the armed forces and the delay in handling complaints.<sup>103</sup>

---

<sup>103</sup> See the Commonwealth Human Rights Initiative (1998), the Asian Centre for Human Rights (2004) and the Asian Forum for Human Rights and Development (2006) pp. 10-6.

---

---



5.5.2 In 1998, NHRCI requested a former Chief Justice of India (Justice A.M. Ahmadi) to head an advisory committee to assess the need for structural changes and amendments to *PHR Act*. The advisory committee submitted its report to NHRCI in October 1999. The important changes proposed by the advisory committee included financial autonomy for NHRCI; power for NHRCI to visit detention institutions without prior intimation to the state governments; power and freedom for NHRCI to select its own staff; change in the composition of NHRCI with two judicial and three non-judicial members, of whom one should be a woman; and bringing the human rights violations committed by para-military forces within the scope of NHRCI's investigation powers.<sup>104</sup>

5.5.3 Based on the recommendations of the advisory committee, NHRCI formulated its own views on the amendments that were required to be made to *PHR Act* and transmitted the proposal to the Indian government in March 2000. The detailed amendments to *PHR Act* recommended by NHRCI were annexed in full to its Annual Report for 2001-2002.<sup>105</sup> NHRCI specially called for, among other things, to expand the scope of the meaning of "International Covenants" in *PHR Act* to include subsequent covenants after 1966, to exclude the para-military forces from the definition of armed forces and to extend NHRCI's investigation powers to matters after the expiry of one year if there are good and sufficient reasons.

5.5.4 As mentioned in paragraph 5.2.3, *PHR Act* had not been amended until 2006. Some of the amendments were based on the recommendations of the advisory committee set up by NHRCI and others had been recommended by the Inter-Ministerial Committee comprising the Ministries of Home Affairs, Defence, External Affairs and Law. Nonetheless, NHRCI's appointment criteria and investigation procedure with respect to human rights violations by the armed forces were not changed.

---

<sup>104</sup> See *Hindu*, 20 October 1999 at p.10 and Sripati (2001).

<sup>105</sup> Annexure 1, NHRCI Annual Report 2001-2002.

## Chapter 6 – Analysis

### 6.1 Introduction

6.1.1 All the places studied in this research established a human rights commission within the last 20 years, with the newest commission being set up in South Korea in 2001. Tables 1-4 (on pages 66-69) summarise the major features of the human rights commission in the selected places of Northern Ireland, Australia, South Korea and India.

### 6.2 Establishment of human rights commissions

6.2.1 While the places studied all have a democratically elected legislature, an independent judiciary and other institutions such as the Ombudsman and NGOs dealing with certain aspects of human rights protection, they recognise a need to establish an independent dedicated institution to promote and protect human rights.

6.2.2 Among the places studied, Australia's human rights commission has the longest history. The first Australian human rights commission was established in 1981, which was one of the few human rights commission established before 1990 in the Asia-Pacific region.<sup>106</sup>

6.2.3 At a United Nations-sponsored conference convened in Paris 1991, a set of "*Principles Relating to the Status of National Institutions*" – now commonly referred to as the "*Paris Principles*" – was developed, and later adopted by the Commission on Human Rights in 1992 and the United Nations General Assembly in 1993. The principles have become the foundation and reference point of the establishment and operation of national human rights institutions. Accordingly, many national human rights institutions have been established in compliance with these principles.<sup>107</sup>

6.2.4 India and South Korea established their human rights commissions in 1993 and 2001 respectively. In North Ireland, its human rights commission was established in 1999 as the result of a regional peace agreement.

---

<sup>106</sup> The New Zealand Human Rights Commission was established in 1981 and the Philippines Human Rights Commissions was established in 1987.

<sup>107</sup> For a list of national human rights commissions that had been assessed by the International Co-ordinating Committee of National Human Rights Institutions to be in compliance with the *Paris Principles*, see [http://www.nhri.net/2007/List\\_Accredited\\_NIs\\_Nov\\_2007.pdf](http://www.nhri.net/2007/List_Accredited_NIs_Nov_2007.pdf).

6.2.5 All the human rights commissions studied in this research, the Northern Ireland Human Rights Commissions (NIHRC), the Human Rights and Equal Opportunity Commission of Australia (HREOCA), the National Human Rights Commission of Korea (NHRCK) and the National Human Rights Commission of India (NHRCI), were established by formal legislation.

6.2.6 Among the human rights commissions studied, the definition of "human rights" in their enabling legislation varies. While both India and South Korea define human rights to include rights containing in the international human rights treaties ratified by the respective government and some of the rights incorporated in the national constitution, South Korea goes further to include rights protected by international customary law.

6.2.7 In Australia, HREOCA's enabling legislation defines human rights to include rights in selected international human rights instruments and rights containing in specified national laws. In Northern Ireland, human rights are undefined in NIHRC's enabling legislation but are specified to include rights in the *European Convention on Human Rights*.

### **6.3 Composition and appointment**

6.3.1 According to the *Paris Principles*, the composition of a human rights commission and the appointment of its members shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces involved in the promotion and protection of human rights.<sup>108</sup>

6.3.2 Among the places studied, there are wide variations in terms of the composition of the human rights commissions and the appointment of their members. Except NIHRC of Northern Ireland, the number of members in the other three commissions is clearly stipulated in their enabling legislation. HREOCA of Australia comprises a President and five special-purpose Human Rights Commissioners, while NHRCK of South Korea consists of a Chairman and 10 other commissioners. In India, NHRCI is made up of two types of members, including five permanent members and four ex-officio members. With the number of NIHRC commissioners not being specified in its enabling legislation, NIHRC currently comprises one full-time Chief Commissioner and nine part-time commissioners.

---

<sup>108</sup> Article 3(1), the *Paris Principles*.

---

---

6.3.3 In Northern Ireland and Australia, the selection procedure of their commission members is not regulated by law. All the commissioners of NIHRC, including the Chief Commissioner, are appointed by the Secretary of State of Northern Ireland in accordance with guidance issued by the Office of the Commissioner for Public Appointments. The law only requires that the commissioners of NIHRC, as a group, to be representative of the community in Northern Ireland. In Australia, there is no criterion for appointment specified in law. The President and the other five commissioners of HREOCA are appointed by the Governor-General.

6.3.4 In South Korea, all commissioners are appointed by the President of South Korea. The law clearly specifies the selection process of NHRCK's commissioners and criteria for appointment. The legislature, the executive and the judicial branches are all involved in the selection process, with each branch nominating a certain number of candidates for appointment. Candidates for the commissioner post are required to possess professional knowledge and experience with human rights matters and be recognized to be capable of acting fairly and independently when performing duties relating to the protection and promotion of human rights. In addition, the law requires that at least four of NHRCK's commissioners must be women, which is a unique requirement among all the places studied.

6.3.5 In India, the President of India appoints the Chairman and other permanent members of NHRCI after obtaining recommendations from a committee consisting of Members of Parliament and the Speaker of the House of People. The law requires that the Chairman and two permanent members of NHRCI must be from the judiciary; the other two permanent members must have knowledge of, or practical experience in, matters relating to human rights.

6.3.6 Except NIHRC, the enabling legislation of the three other human rights commissions clearly prescribes the grounds on which commission members may be dismissed. These grounds include reasons of misbehaviour, physical or mental incapacity, insolvency, imprisonment and engagement in outside paid employment.

## **6.4 Organisational design and operational arrangements**

6.4.1 According to the *Paris Principles*, the national institution for the protection of human rights shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should 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.<sup>109</sup> Although all the human rights commissions studied had been assessed by the International Co-ordinating Committee of National Human Rights Institutions to be in compliance with the *Paris Principles*, their degree of operation and financial autonomy are not the same.

---

<sup>109</sup> Article 3(2), the *Paris Principles*.

6.4.2 Among the places studied, the organisational structure of the human rights commissions ranges from simple, i.e. NIHRC, to more complex, i.e. NHRCK. NIHRC has a relatively small staff size of around 20, while HREOCA, NHRCK and NHRCI have a staff size of around 100, 200 and 340 respectively.

6.4.3 In terms of operational autonomy, not all the enabling legislation of the human rights commissions studied contains provisions ensuring that the commission is independent and accord it sufficient resources to enable it to function independently and effectively.<sup>110</sup> Only the enabling legislation of NHRCK stipulates that it can independently deal with matters that necessarily fall within the purview of its authority. NHRCK is also allowed to make its own rules for matters necessary for its operation.

6.4.4 In Australia, HREOCA has the legal power to do all things that are necessary or convenient to be done for or in connection with the performance of its function. In India, NHRCI has the power to regulate its own procedure and meet at such time and place as the Chairperson may think fit.

6.4.5 As far as the employment of staff is concerned, all the human rights commissions studied are subjected to stringent government control. NIHRC may employ staff subject to the approval of the Secretary of State as to their number, remuneration and other terms and conditions of employment. In India, the central government has the power to make rules regarding the salaries and allowances as well as other terms and conditions of service of the Chairperson, members, officers and other staff of NHRCI. In South Korea, matters necessary for the organisation of NHRCK are prescribed by Presidential Decrees.

6.4.6 As regard financial autonomy, none of the enabling legislation of the human rights commissions studied contains provisions ensuring that the commission will receive adequate funding to enable it to carry out its mandate. Among the places studied, only NHRCI is allowed to prepare its own budget. All the human rights commissions studied are financed as part of a departmental budget (together with the Ministry of Justice or its equivalent). None of their budgets is organised as a separate budget item in the budget appropriation process.

---

<sup>110</sup> How to maintain the autonomy of public organisations that are sometimes in conflict with their funding governments is a contentious issue. One of the suggestions is to turn these organisations into agents of the legislature, carrying the status of "Officer of Parliament". For details, see Wettenhall (2006).

---

## **6.5 Functions and powers**

6.5.1 The *Paris Principles* require that the national commissions should be given as broad a mandate as possible, including both promotional and protective powers. All the human rights commissions studied enjoy a broad mandate authorised by their enabling legislation to address human rights concerns.

6.5.2 All the human rights commissions studied have similar general functions and powers, including the power to provide advice on legislation and policies, the power to investigate individual complaints and systematic patterns of human rights violations, the power to provide/recommend compensation/remedies, the power to intervene or assist in court proceedings relating to human rights and the mandate to educate and enhance public awareness regarding human rights.

6.5.3 In regard to the power of investigation, NIHRC has recently been granted the powers to require the provision of information or a document, or for a person to give oral evidence and to access places of detention. However, these new investigation powers are circumscribed by national security restrictions and apply only to events occurring after August 2007.

6.5.4 Comparing to the courts, human rights commissions are a more cost-effective and accessible method of resolving conflicts relating to human rights. Some human rights commissions, including those studied in this report, equip with the power to seek leave to intervene in judicial proceedings. HREOCA and NHRCI have been actively involved in judicial proceedings relating to human rights.

Table 1 – Establishment of the human rights commissions

Places	Human rights commission	Year of establishment	Enabling legislation	Definition of "human rights"
Northern Ireland	The Northern Ireland Human Rights Commission (NIHRC)	1998	The <i>Northern Ireland Act 1998</i> .	Undefined. Included rights in the <i>European Convention on Human Rights</i> .
Australia	The Human Rights and Equal Opportunity Commission of Australia (HREOCA)	1986	The <i>Human Rights and Equal Opportunity Commission Act 1986</i> and various anti-discrimination acts administered by HREOCA.	Only relate to the international instruments scheduled to, or declared under, the <i>Human Rights and Equal Opportunity Commission Act</i> and rights containing in various anti-discrimination acts.
South Korea	The National Human Rights Commission of Korea (NHRCK)	2001	The <i>National Human Rights Commission Act</i> .	Any rights and freedoms, including human dignity and worth, guaranteed by the Korean Constitution and laws, recognized by the international human rights treaties ratified by South Korea, or protected under international customary law.
India	The National Human Rights Commission of India (NHRCI)	1993	The <i>Protection of Human Rights Act 1993</i> .	Rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

**Table 2 – Composition and appointment procedure**

Places	Number of members	Appointment methods	Criteria for appointment
Northern Ireland	One full-time Chief Commissioner and nine part-time commissioners.	Appointed by the Secretary of State of Northern Ireland in accordance with guidance issued by the Office of the Commissioner for Public Appointments.	The commissioners, as a group, are required to be " <i>representative of the community in Northern Ireland.</i> "
Australia	A President and five special-purpose Human Rights Commissioners.	The President and the other five commissioners are appointed by the Governor-General.	Non-specific.
South Korea	A Chairman and 10 other commissioners.	All commissioners are appointed by the President of South Korea, with four commissioners being nominated by the National Assembly, four by the President, and the remaining three by the Chief Justice of the Supreme Court. The President appoints the chairperson of NHRCK from among the commissioners.	At least four of the commissioners must be women and the candidates for the commissioner post should possess professional knowledge and experience with human rights matters and be recognized to be capable of acting fairly and independently when performing duties relating to the protection and promotion of human rights.
India	Five permanent members (including a Chairman and four other members) and four ex-officio members.	The President of India appoints the Chairman and other permanent members after obtaining recommendations from a committee consisting of Members of Parliament and the Speaker of the House of People.	The Chairman and two permanent members must be from the judiciary; the other two permanent members must have knowledge of, or practical experience in, matters relating to human rights.



**Table 3 – Organisational design and operational arrangements**

Places	Organisational structure	Manpower resources	Financial autonomy
Northern Ireland	Dividing into three divisions – the Legal Services, Policy and Research Division, the Information, Education and Development Division and the Corporate Services Division.	Staff size: 20. NIHRC may employ staff subject to the approval of the Secretary of State as to their number, remuneration and other terms and conditions of employment.	NIHRC's budget is prepared by the Northern Ireland Office.
Australia	Dividing into sections responsible for complaint handling, corporate services, international programmes and public affairs. Each Commissioner has his/her own policy unit.	Staff size: 100. HREOCA staff are civil servants.	HREOCA controls the expenditure of its own budget. However, HREOCA's budget is prepared by the Attorney-General's Department.
South Korea	Dividing into five departments (Policy & Strategic Planning, Administrative Services, Human Rights Violations & Remedies, Discrimination & Remedies and Human Rights Education), 22 teams and three subsidiaries.	Staff size: 200. Matters necessary for the organisation of NHRCK are prescribed by Presidential Decrees.	NHRCK's budget is prepared by the Ministry of Justice.
India	Dividing into six divisions: the Administration Division; the Law Division; the Training Division; the Policy Research, the Projects and Programmes Division; the Investigation Division and the Information and Public Relations Division.	Staff size: 340. The central government has the power to make rules regarding the salaries and allowances as well as other terms and conditions of service of the Chairperson, members, officers and other staff of NHRCI.	NHRCI prepares its own budget. The central government scrutinizes the budget and submits it to Parliament for approval.

**Table 4 – Functions and powers**

Functions and powers	Northern Ireland	Australia	South Korea	India
<b>Providing advice on legislation and policies</b>				
Power to provide advice to the government/Parliament on laws, policies or international treaties	Yes	Yes	Yes	Yes
<b>Investigation and prosecution of complaints</b>				
Power to receive and investigate complaints	Yes	Yes	Yes	Yes <sup>a</sup>
Power to obtain evidence and examine witnesses	Yes <sup>b</sup>	Yes	Yes	Yes
Power to enter and inspect premises (including detention facilities)	Yes	Yes	Yes	Yes
Power to resolve complaints by conciliation	***	Yes	Yes	***
Power to provide and recommend compensation/remedies	No	Yes <sup>c</sup>	Yes <sup>d</sup>	Yes <sup>c</sup>
Power to report to the government/Parliament	Yes	Yes	Yes	Yes
Power to conduct investigation on its own initiative	Yes	Yes	Yes	Yes
<b>Involving in legal proceedings</b>				
Power to intervene or assist in court proceedings relating to human rights	Yes	Yes <sup>e</sup>	Yes	Yes <sup>f</sup>
<b>Education and enhancement of public awareness</b>				
Mandate to educate/conduct research on human rights	Yes	Yes	Yes	Yes

Remarks: (a) not allowed to inquire into any human rights violation committed longer than one year ago.  
 (b) these powers being circumscribed by national security restrictions and applying only to events occurring after August 2007.  
 (c) power to recommend only.  
 (d) power to provide compensation.  
 (e) acting as an intervener and *amicus curiae*.  
 (f) maintaining a complementary relationship with the Supreme Court and the High Courts.  
 \*\*\* not specifically provided by law.

## Appendix

### **Principles relating to the status and functioning of national institutions for protection and promotion of human rights (The Paris Principles)**

Note: In October, 1991, the Center for Human Rights convened an international workshop to review and update information on existing national human rights institutions. Participants included representatives of national institutions, States, the United Nations, its specialized agencies, intergovernmental and non-governmental organizations.

In addition to exchanging views on existing arrangements, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments. These recommendations, which were endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993, are summarized below.

#### **A. Competence and responsibilities**

I. A national institution shall be vested with competence to protect and promote 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 protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

**Appendix (cont'd)**

- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (ii) Any situation of violation of human rights which it decides to take up;
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;
- (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;
- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

## Appendix (cont'd)

### **B. Composition and guarantees of independence and pluralism**

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

Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

Trends in philosophical or religious thought;

Universities and qualified experts;

Parliament;

Government 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 this 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.

## Appendix (cont'd)

### **C. Methods of operation**

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

1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;
5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);
7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

### **D. Additional principles concerning the status of commissions with quasi-jurisdictional competence**

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

**Appendix (cont'd)**

1. 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;
2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Note: (1) A/36/440 (1981), A/38/416 (1983), E/CN.4/1987/37 (1987), E/CN.4/1989/47 and Add. 1(1989), E/CN.4/1991/23 and Add. 1(1991).

---

---

## References

### Northern Ireland

1. Dickson, B. (2002) The protection of human rights – lessons from Northern Ireland. In: Butler, F. (ed.) *Human Rights Protection: Methods and Effectiveness*. London, Kluwer Law International.
2. Dickson, B. (2005) The protection role of the Northern Ireland Human Rights Commission. In: Ramcharan, B. G. (ed.) *The Protection Role of National Human Rights Institutions*. Leiden, Martinus Nijhoff Publishers.
3. Harvey, C. J. (2001) Building a human rights culture in a political democracy: the role of the Northern Ireland Human Rights Commission. In: Harvey, C. J. (ed.) *Human Rights Equality and Democratic Renewal in Northern Ireland*. Oxford, Hart Publishing.
4. Hucker, J. (2002) Bringing rights home: the role of national human rights institutions. In: Butler, F. (ed.) *Human Rights Protection: Methods and Effectiveness*. London, Kluwer Law International.
5. Joint Committee on Human Rights. (2003) Work of the Northern Ireland Human Rights Commission. Fourteenth Report of Session 2002-2003.
6. Livingstone, S. & Murray, R. (2005) *Evaluating the Effectiveness of National Human Rights Institutions: the Northern Ireland Human Rights Commission with Comparisons from South Africa*. University of Bristol.
7. NIHRC *Annual Reports* (various years).
8. NIHRC. (2007) NIHRC Education Strategy 2007. Available from: [http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/11/NIHRC\\_Education\\_strategy\\_2007\\_-\\_web\\_version.doc](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/11/NIHRC_Education_strategy_2007_-_web_version.doc) [Accessed 15 January 2008].
9. Northern Ireland Human Rights Commission. (2001) Report to the Secretary of State required by section 69(2) of the Northern Ireland Act 1998.
10. Northern Ireland Office. (2002) The Government's response to the Northern Ireland Human Rights Commission's review of powers recommendations: a paper for consultation.
11. Northern Ireland Office. (2005) The powers of the Northern Ireland Human Rights Commission.



- 
12. Reilly, J. & Niens, U. (2005) Review of human rights education and training. NIHRC. Available from: [http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/11/Review\\_of\\_Human\\_Rights\\_Education\\_and\\_Training,\\_UNESCO\\_Centre,\\_UU\\_2005.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/11/Review_of_Human_Rights_Education_and_Training,_UNESCO_Centre,_UU_2005.pdf) [Accessed 15 January 2008].
  13. Smith, A. (2003) Access to intervene: the Northern Ireland Human Rights Commission and the Northern Ireland Act 1998. *European Human Rights Law Review*, No. 4, pp. 423-36.

### Australia

14. Campbell, T. et al. (2006) *Protecting Rights Without a Bill of Rights: Institutional Performance and Reform in Australia*. Hampshire [England], Ashgate Publishing.
15. Charlesworth, H. (2002) *Writing in Rights: Australia and the Protection of Human Rights*. University of New South Wales Press.
16. Commonwealth of Australia. (2005) Australia's National Framework for Human Rights – National Action Plan. Available from: [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%28CFD7369FCAE9B8F32F341DBE097801FF%29%7E218NAP17FEB.pdf/\\$file/218NAP17FEB.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/%28CFD7369FCAE9B8F32F341DBE097801FF%29%7E218NAP17FEB.pdf/$file/218NAP17FEB.pdf) [Accessed 15 January 2008].
17. Fougere, C. (2001) The intervention and amicus curiae functions of the Human Rights and Equal Opportunity Commission and its commissioners. Available from: [http://www.hreoc.gov.au/legal/submissions\\_court/amicus/amicus\\_discussion.html#1](http://www.hreoc.gov.au/legal/submissions_court/amicus/amicus_discussion.html#1) [Accessed 15 January 2008].
18. HREOCA *Annual Reports*. (various years)
19. Legal and Constitutional Legislation Committee. (2003) Provisions of the Australian Human Rights Commission Legislation Bill 2003.
20. Legislative Council Secretariat. (2006) The jurisdiction of ombudsman systems in selected places. Available from: <http://www.legco.gov.hk/yr05-06/english/sec/library/0506rp05e.pdf> [Accessed 15 January 2008].
21. von Doussa, J. (2005) The protection role of the Australian Human Rights Commission. In: Ramcharan, B. G. (ed.) *The Protection Role of National Human Rights Institutions*. Leiden, Martinus Nijhoff Publishers.

South Korea

22. Chaihark, H. (2006) Human rights in Korea. In: Peerenboom, R. *Human Rights in Asia*. London, Routledge.
23. Cho, Y. W. (2002) The National Human Rights Commission: law, reality, and its future tasks. *Korea Journal*, Vol.42, No.1, pp. 228-62.
24. Kwok, N. (2002) National Human Rights Commission at work: a critical reflection. *Korea Journal*, Vol. 42, No. 3, pp. 194-218.
25. Kwok, N. (2003) The National Human Rights Commission of Korea: an assessment after one year. Available from: <http://korea.ahrchk.net/english/mainfile.php/solitary/2/> [Accessed 15 January 2008].
26. NHRCK *Annual Reports*. (various years).

India

27. Annand, A. S. (2005) The protection role of the Indian Human Rights Commission. In: Ramcharan, B. G. (ed.) *The Protection Role of National Human Rights Institutions*. Leiden, Martinus Nijhoff Publishers.
28. Asian Centre for Human Rights. (2004) Commissions and conflicts: briefing papers on the role of national human rights institutions in conflict situations.
29. Commonwealth Human Rights Initiative. (1998) Submission to the Advisory Committee of the National Human Rights Commission created to review the Protection of Human Rights Act. Available from: [http://www.humanrightsinitiative.org/publications/hrc/submission\\_adv\\_comm\\_nhr\\_c\\_hr\\_protect\\_act.pdf](http://www.humanrightsinitiative.org/publications/hrc/submission_adv_comm_nhr_c_hr_protect_act.pdf) [Accessed 28 January 2008].
30. Dayal, V. (2002) Evolution of the National Human Rights Commission, 1993-2002: a decennial review. *Journal of the NHRC*, Vol. 1, pp. 40-71.
31. Malimath, V. S. (2000) Report of the National Human Rights Commission of India. In: Hossain, K. et al. *Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World*. The Hague [The Netherlands], Kluwer Law International.
32. NHRCI *Annual Reports*. (various years).

- 
33. Parliament of India. (2006) *Report on the Protection of Human Rights (Amendment) Bill 2005*. Available from: [http://rajyasabha.gov.in/book2/reports/home\\_aff/118threport.htm](http://rajyasabha.gov.in/book2/reports/home_aff/118threport.htm) [Accessed 28 January 2008].
  34. Ray, A. (2002) *National Human Rights Commission of India: Formation, Functioning and Future Prospects*. New Delhi, Radha Publications.
  35. Shivananda, J. (2006) *Human Rights: Concept and Issues*. New Delhi, Alfa Publications.
  36. Sripati, V. (2001) India's National Human Rights Commission: strengths and weaknesses. In: Lindsnaes, B. et al. *National Human Rights Institutions*. The Danish Centre for Human Rights.

#### Others

37. Asian Forum for Human Rights and Development. (2006) *Performance of National Human Rights Institutions in Asia 2006: Cooperation with NGOs and Relationship with Governments*.
38. Burdekin, B. (2007) *National Human Rights Institutions in the Asia-Pacific Region*. Leiden, Martinus Nijhoff Publishers.
39. Dickson, B. (2003) The contribution of human rights commissions to the protection of human rights. *Public Law*, pp. 272-85.
40. Legislative Council Secretariat. (2004) Monitoring mechanisms for the implementation of international human rights treaties in the United Kingdom, New Zealand and Canada. Available from: <http://www.legco.gov.hk/yr03-04/english/sec/library/0304rp03e.pdf> [Accessed 15 January 2008].
41. Pohjola, A. (2006) *The Evolution of National Human Rights Institutions – The Role of the United Nations*. The Danish Institute for Human Rights.
42. The International Council on Human Rights Policy. (2005) *Assessing the Effectiveness of National Human Rights Institutions*.
43. Wettenhall, R. (2006) The problem of defending agencies for public accountability that are sometimes in conflict with their funding governments. Address to the IIAS 3<sup>rd</sup> International Conferences of Administrative Sciences, Monterrey, Mexico, 16-20 July 2006. Available from: <http://www.publicmanagement-cobra.org/pub/paper/Mexico%20paper%203.pdf> [Accessed 28 January 2008].