



Civil Society and National Human Rights Institutions: Issues and Intricacies

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Abstract: Many of the people of contemporary Commonwealth live in environments that do not reflect the Association's most fundamental values. Twenty years after the Harare Declaration put human rights promotion and protection at the center of the Commonwealth agenda, its vision is actively pursued in some corners of the Commonwealth and actively ignored in others. There are now more than thirty NHRIs in the Commonwealth and innumerable civil society organizations and actors. Both NHRIs and civil society have their own separate operations which must be respected, but too often they work in parallel tracks or at cross purposes. While there will always be points of divergence, it is increasing the points of intersection that CHRI extols. With the following recommendations, CHRI offers means through which that end can be achieved.

Key words: human rights, discrimination, punishment, violation

Introduction: The potential of the Commonwealth to champion human rights exists in stark contrast to the reality lived out by the majority of its people. In this context, when governments falter in the promotion, protection, and realization of human rights, national human rights institutions and civil society can, when working together, be a formidable force in moving the Commonwealth and its member states towards compliance with the organization's fundamental political principles, which include human rights and democracy.

The Harare Declaration: The Harare Declaration frequently referred to as the Commonwealth's "mission statement," was laid down by the Commonwealth Heads of Government at the conclusion

of their biennial meeting in 1991. The Declaration defines the core values of the Commonwealth and espouses protection and promotion of "democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; [and] fundamental human rights, including equal rights and opportunities for all citizens regardless of race, color, creed or political belief." As the Commonwealth marks the twentieth anniversary of the Harare Declaration, it is no secret that many Commonwealth governments have been unsuccessful in carrying out its mission. Across the Commonwealth, examples of violations of basic human rights can be found at the domestic and international level.



Commonwealth jurisdictions with National Human Rights Commissions:

Australia (1986), Bangladesh (2008), Cameroon (1990), Canada (1977), Cyprus (1991), Fiji (1999), Ghana (1993), Great Britain (2007), India (1993), Kenya (2003), Malawi (1996), Malaysia (2000), Maldives (2003), Mauritius (2001), New Zealand (1977), Nigeria (1996), Northern Ireland (1999), Rwanda (1999), Scotland (2008), Seychelles (2009), Sierra Leone (2006), South Africa (1995), Sri Lanka (1997), Swaziland (2009), Tanzania (2001), Uganda (1997) and Zambia (1997).

There are several models of NHRIs among those that have been surveyed in this report. Most are multi-member commissions with mandates that allow them to deal with a broad swath of human rights issues and violations, as is the case in India. Others are one-person ombudsman institutions which have evolved from focusing solely on the fairness and transparency of public administration to include a human rights mandate, as in Jamaica. Still other models are mixed, like the Ghanaian Commission on Human Rights and Administrative Justice, which is a multi-member institution vested with the power to protect and promote human rights and to address the misuse of power by public officials. Elsewhere, institutions concentrate on specific themes, such as equality and discrimination, as in Canada.

A Nehru's mandate and powers may vary according to the model on which it is based. Typically, however, an NHRI will monitor state institutions for compliance with human rights norms; report on patterns of violation; educate officials and

the public at large about human rights; urge and advise its government to ratify international human rights treaties; and report to international human rights bodies on the human rights situation in-country. NHRIs with broader mandates will accept and investigate complaints of human rights violations and discrimination; protect human rights defenders; and recommend punishment for perpetrators and compensation for victims of human rights abuse.

The rapid expansion of NHRIs in the Commonwealth during the 1990s was a welcome development for civil society actors, many of whom had campaigned for the promotion and protection of human rights as their most central undertaking and saw themselves as natural allies of the new institutions. While civil society actors in the Commonwealth vary in form – ranging from huge trade unions to tiny community groups – a large segment of them, and those that are the focus of this report, are involved in holding the government to account, fighting impunity, educating the public, training public officials, promoting adherence to international best practices, monitoring and publicizing human rights violations, shaping legislation, and campaigning internationally for the creation and ratification of international human rights treaties.

Over time, civil society's early optimism on the potential of NHRIs has, in many cases, turned to disappointment. While some Commonwealth NHRIs are accused of acting as mere window dressing for rights-violating states, others face criticism for operating hesitantly, bowing to government influence, pulling their punches on serious issues, and failing to



take measurable steps to realize their mandates.¹³ On the other hand, NHRIs have questioned the capacity, commitment, and politics of CSOs. The result is a loss of opportunity for collaboration to embed a genuine culture of human rights within the member states of the Commonwealth. Both NHRI mandates and civil society goals would be better served if the two would mend fences and work together.

International Standards: A Bridge Too Far?

Global, regional, and Commonwealth standards, guidelines, and recommendations on NHRIs recognize that human rights are furthered when civil society and NHRIs work in tandem. The most important international standards relating to NHRIs are the Principles Relating to the Status of National Human Rights Institutions, known as the Paris Principles. Adopted by the UN General Assembly in 1993, the Principles provide a normative framework to steer the creation and functioning of NHRIs. In laying out minimum standards for the status role, mandate, composition, and functions of NHRIs, the Principles deter governments that are intent on establishing ineffective mechanisms for the sake of international acclaim and emphasize the inherent value of NHRI-civil society engagement.

Asian NGO Network on NHRIs:

The APF has a civil society counterpart – the Asian NGO Network on NHRIs (ANNI). ANNI is a unique regional civil society network that aims at the establishment and development of “accountable, independent, effective, and transparent” NHRIs in Asia. It organizes a parallel NGO event in the shadows of the APF’s annual meetings and biennial

conferences, to which representatives of the APF and its member institutions are invited to speak and observe. The outcomes of ANNI’s shadow event are published online by the APF. Further, because civil society organizations, like governments, are accorded observer status and speaking rights, the outcomes are presented during APF’s meeting. This regular and synergistic pattern of working is respectful of the individual processes of both civil society and NHRIs and is valuable in enriching each, because points of convergence, rather than parallel tracks, are built into it.

The APF’s Kandy Programme of Action (1999) lays out practical methods through which NHRIs can improve cooperation with civil society. To date, its recommendations remain the most comprehensive best practice guidelines specifically on mutual engagement between the two actors. The recommendations detail multiple entry points for an NHRI to formally engage with civil society beginning from its establishment to nearly every one of its core operations, including human rights education, complaints and investigation, public inquiries, relations with legislatures, and advising on proposed legislation.

Separate APF guidelines developed specifically for the creation of a new NHRI urge that representatives of civil society be present on the steering committee, which “oversees the process leading towards the establishment of the national institution.” Furthermore, broad-based consultations should address cooperation between the proposed NHRI and non-governmental organizations.

The APF’s Secretariat is also deeply involved in urging governments to



establish Paris Principles-compliant NHRIs and assisting with the establishment process by holding consultations with government and civil society throughout.⁴⁴ The APF undertakes extensive critiques of draft legislation on new NHRIs to ensure compliance with the Paris Principles. For example, it critiqued Pakistan's National Commission on Human Rights Bill against the standard of the Paris Principles and the ICC's accreditation criteria, and, *inter alia*, called for amendments that would ensure a transparent and participatory process for the selection of members, including the involvement of all stakeholders.

National Human Rights Action Plans:

National Human Rights Action Plans (national plans) are a set of practical goals designed to guide the national human rights policies of a country. Governments are encouraged to develop national plans with the participation of all relevant stakeholders, including NHRIs and CSOs. The central role of these two actors in the creation, implementation, and monitoring of a national plan is strongly advocated by the Commonwealth and the UN180 as a means to ensure its comprehensiveness, effectiveness, and credibility.

At present, most Commonwealth countries are in the process of adopting national plans. However, very few national plans to date incorporate civil society participation sufficiently or effectively. The failure of the governments of Malawi and Australia – the first countries in the world to adopt national plans – to engage with civil society during the development of their plans is held to be one of the main

contributors to their disappointing results. New Zealand's national plan, on the other hand, stands as an example of worldwide best practice. It was developed, partially implemented, monitored, and reviewed with continuous cooperation between the New Zealand Human Rights Commission and civil society. Kenya appears to have taken notice of this success and is on the verge of adopting an extremely valuable national plan. Led by the government and the NHRI, it will be the result of two years of nationwide consultations and intensive civil society participation, including a civil society working group. Additionally, a National Steering Committee composed of government and NGO representatives is coordinating and managing the process.

Human Rights Education – Need of the Hour:

In its role as a promoter of human rights, an NHRI is responsible for spreading awareness through advocacy, research and human rights education. Human rights education can inculcate a culture of human rights and empower people to bring about social change. Additionally, when one lacks awareness of one's rights – and of mechanisms available to enforce them – the ability to claim or defend these rights is weakened. For these reasons, the Paris Principles see human rights education as one of an NHRI's core functions and most domestic mandates include an educational role as part of the institution's promotional capacity.

Civil society actors are usually prominent players in the spread of human rights education and public awareness. Their approach, however, may be fragmented, stemming from their varied interests and specializations. Collaborating with the NHRI adds



strategic value to their programs, since the NHRI may provide a more comprehensive approach to human rights initiatives.

Following decades of sectarian turbulence, the Northern Ireland Human Rights Commission, in collaboration with Amnesty International (Northern Ireland), co-developed an educational resource on citizenship for Northern Ireland's school curriculum. The material includes information on human rights, social responsibility, democracy, the proposed Bill of Rights, and the UN Convention on the Rights of the Child. The curriculum guide Making Rights Real was successfully piloted through several local schools by the statutory bodies that oversee the education system and is now part of the secondary school curriculum.

Similarly, the Ugandan Human Rights Commission (UHRC) piloted and actively initiated its National Civic Education Programme (NCEP). The program is targeted at educating citizens about their rights and providing knowledge on how to fully participate in the decision-making of the country's policies. Using the wide civic networks that may be accessed through collaborations with civil society, UHRC partnered with five CSOs during the implementation of NCEP – the Uganda Project Implementation and Management Centre (UPIMAC), the International Federation for Women Lawyers (FIDA), the National Association of Women Organizations in Uganda (NAWOU), the Uganda Joint Christian Council (UJCC), and MS Uganda.

The Human Rights Commission of Sierra Leone signed an MoU with the Soweii¹⁸⁸ Council of Sierra Leone, the

Council of Tribal Heads, the District Councils, and the Advocacy Movement Network (AMNET), a human rights NGO, to abolish the practice of female genital mutilation (FGM), which has contributed to the rise in early marriage, HIV/AIDS transmission, and other negative social factors.¹⁸⁹ In this regard, the Sierra Leone Commission and civil society worked together with local communities to successfully counter this practice in two districts in the northern region of the country.

Joint advocacy efforts may extend to raising awareness on the implementation and usage of ratified treaties. In December 2008, the Australian government ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The treaty created a communication and inquiry procedure through which the government can be held to account when failing to promote and protect rights that safeguard against gender discrimination and equality. In the following year, the Australian Human Rights Commission along with the Public Interest Law Clearing House (PILCH), a leading human rights CSO, held a joint advocacy seminar promoting the usage of the Protocol to ensure access to justice.¹⁹⁰ Through this effort, they provided detailed information on key jurisprudence under the Protocol and explained its potential uses to promote and protect women's rights.

Facilitated by the New Zealand Human Rights Commission, the New Zealand Diversity Action Programme (NZDAP) was set up to encourage community action on race relations. Its objectives are to celebrate diversity;



promote equal enjoyment of civil, political, social, economic and cultural rights; foster harmonious relationships between diverse sections of society; and give effect to the Treaty of Waitangi – to preserve the culture of the Maori community. In the last six years, NZDAP has grown to include around 250 CSOs, taking practical initiatives to recognize and celebrate the cultural diversity of New Zealand.

Joint advocacy can lead to significant results, ranging from compensatory redress and addressing immediate concerns of victims of human rights violations, to high-level policy changes. In an effort to lobby and advocate for the rights of refugees and asylum seekers to education, the Coordinating Body of Refugee Communities in South Africa partnered with the South African Human Rights Commission to urge the Department of Education to accept refugee children into public schools. Access to the schools was previously denied as the refugee documents of these children were not accepted. The success of this endeavor led to several refugee children entering schools, with some even being provided financial assistance. Following this joint intervention, refugee documents are no longer a determining factor in school admission processes.

NHRIs in Australia, India, Kenya, Nigeria, and several other Commonwealth countries have included civil society as a key actor in very successful large-scale inquiries. The 2010 Public Tribunal on Police Abuses held by the Nigerian Human Rights Commission in collaboration with the National Committee on Torture (NCOT) and the Network on Police Reforms (NOPRIN) – a network comprising forty-six CSOs

dedicated to promoting police reforms – have been viewed as “an effective and popular strategy of public advocacy against police violations and of naming and shaming of perpetrators.”¹⁹⁸ The tribunals were intended to give a voice to survivors and relatives of victims of police abuses – extrajudicial killings, torture, rape, sexual abuse, and other inhumane and degrading treatment. They led to dismissals and prosecutions of the perpetrators; reopened investigations into cases of extrajudicial killings and crimes; recovered bribes extorted by police personnel from victims during investigations; and inspired law enforcement policy changes.

The expertise of civil society actors has been a feature in many national inquiries as independent experts drawn from civil society frequently constitute the panel of inquiry. As this report went to press, SUHAKAM, the Malaysian human rights commission, was conducting an inquiry into the land rights of indigenous peoples in Malaysia. The Inquiry sought to comprehensively examine the root of the problems relating to native customary rights to land and recommend appropriate actions to address this issue. It was due to have held both public consultations and public hearings as part of the inquiry in Sabah, Sarawak, and peninsular Malaysia. SUHAKAM intended to bring out an in-depth report, making recommendations to the Government on short- and long-term practical solutions. The panel of inquiry was to consist of SUHAKAM members and independent experts in the field of indigenous rights. Following the consultations, a public hearing was to be held where invitations to appear before the panel were to be extended to key witnesses, including indigenous people,



government officials, community-based organizations, corporate personnel, and the media.

Recommendations:

Many of the people of the contemporary Commonwealth live in environments that do not reflect the Association's most fundamental values. Twenty years after the Harare Declaration put human rights promotion and protection at the center of the Commonwealth agenda, its vision is actively pursued in some corners of the Commonwealth and actively ignored in others.

Well-functioning national human rights institutions are essential for the promotion and protection of human rights within the Commonwealth. However, the potential of an NHRI to implement its mandate to the fullest is underpinned by meaningful civil society engagement. International and Commonwealth standards demand such engagement and, beyond the domestic and international legitimacy that comes with meeting these standards, NHRIs have much to gain from their realization. Despite the obvious benefits of cooperation, the sometimes inimical environments in which both these actors work – not to mention misconceptions each harbors about the other's role and nature – can keep engagement superficial or stifle it completely. With potentially thousands of civil society groups, engagement can be a complex and time-consuming process, and while NHRIs must be judicious in deciding with which organizations to engage, many are bound to feel excluded. Overcoming these challenges is a vitally important endeavor as human rights are protected more

effectively when NHRIs and civil society work together.

There are now more than thirty NHRIs in the Commonwealth and innumerable civil society organizations and actors. Both NHRIs and civil society have their own separate operations which must be respected, but too often they work in parallel tracks or at cross purposes. While there will always be points of divergence, it is increasing the points of intersection that CHRI extols. With the following recommendations, CHRI offers means through which that end can be achieved.

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