



*Empowered lives.  
Resilient nations.*

# **National Human Rights Institutions – models, programs, challenges, solutions**

**A study for the Ministry of Foreign Affairs of the People's Republic of Viet Nam**

*Frauke Lisa Seidensticker  
Anna Wuerth*

### **About the authors:**

Frauke Lisa Seidensticker is the Deputy Director of the German Institute for Human Rights, Berlin, Germany. She serves as a member of the Bureau of the International Coordinating Committee (ICC) of National Human Rights Institutions since 2006 and as a member of Sub-Committee on Accreditation of the ICC since 2009, representing the European Group of NHRIs.

Dr. Anna Wuerth is the head of the human rights and development program at the German Institute for Human Rights, Berlin, Germany. She advised and trained numerous development agencies on human rights-based programming. She has a wide publication record on human rights, including NHRIs, with a particular focus on the Middle East.

## Table of Contents:

1. Introduction .....	1
2. National Human Rights Institutions at the national and international level .....	1
2.1 History and role of the Paris Principles .....	1
2.2 The association of National Human Rights Institutions .....	3
2.3 Cooperation between NHRIs and regional bodies: Example of ASEAN.....	4
2.4 The accreditation of National Human Rights Institutions.....	7
2.5 Types of NHRIs .....	8
3. Models of NHRIs .....	8
3.1 Malaysia.....	9
3.2 South Korea .....	13
3.3 Kenya.....	16
3.4 Uganda .....	19
3.5 Guatemala.....	21
3.6 France.....	25
3.7 Germany .....	26
4. Building and developing an NHRI: Conclusions and recommendations.....	32
Annexes.....	37
Annex 1: The Paris Principles .....	37
Annex 2: Status Chart of NHRIs June 2010 .....	39
Annex 3: Guidelines for the establishment of NHRIs (APF).....	39

## 1. Introduction

The present study aims to inform the government of Viet Nam about National Human Rights Institutions (NHRI) as a key element of human rights protection and promotion at the national level. Seeking the best realization of its citizens' human rights, Viet Nam has over the years been completing legal frameworks as well as mechanisms comprising of various legislative, executive and judicial organs for the promotion and protection of human rights. In addition, Viet Nam ratified five of the key UN human rights treaties<sup>1</sup> and signed the Convention on the Rights of Persons with Disabilities; it also ratified the Genocide Convention and several ILO conventions. The country took part in the Universal Periodic Review (UPR) of the UN Human Rights Council during the 5th session in 2009 and extended invitations to several special mechanisms of the Human Rights Council.

The government of Viet Nam expressed interest in learning about different NHRIs models and experiences of countries in the establishment and operation of an NHRI as an additional pillar in the national human rights system. Therefore the study

- gives an overview of NHRIs as a part of the international, regional and national human rights system;
- presents seven NHRIs in different geographic regions, while analyzing strengths and weaknesses of the different models of NHRIs. The study focuses in particular on NHRIs with a strong research component, those which play a role in the UPR process and in the implementation of human rights treaties and reporting, on NHRIs providing substantial support and input into governments' human rights policies and monitoring these, on institutions with a strong focus on the promotion and protection of women's rights, and those who undertake activities in favour of children's rights,
- outlines some of the challenges met while establishing and building a NHRI and present options to solve these;
- advises on how NHRIs, especially in the ASEAN region, can integrate and link their work to the newly established ASEAN Human Rights Commission.

The study ends with conclusions and recommendations for the establishment of an NHRI.

## 2. National Human Rights Institutions at the national and international level

### 2.1. History and role of the Paris Principles

The second part of the 20th century, and particularly the 1990s, saw the establishment in many parts of the world of a number of national institutions with a mission to promote and protect human rights. Drafted during a conference in Paris in 1991 and laid down in an annex to Resolution 48/134, guiding principles for the so called National Human Rights Institutions (NHRIs) were adopted by the General Assembly of the United Nations on 20 December 1993.<sup>2</sup> While not binding in international law, these principles form the basis of a common understanding and are accepted by NHRIs, governments and civil society actors alike. They provide a vital point of orientation for countries wishing to set up a NHRI or to strengthen an existing structure to enable it to be a NHRI. At the same time, they serve as a benchmark for measuring standards of independence and performance of an NHRI. Among the essential tasks established for NHRIs in early debates was the promotion of international human rights treaties at the national level . by identifying obstacles and weaknesses in the practical implementation at the national level and then suggesting ways to overcome these deficits to their respective governments.

---

<sup>1</sup> *The Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and its two Optional Protocols, the Convention on the Elimination of All Forms of Discrimination Against Women. Some treaties were ratified with reservations.*

<sup>2</sup> *See the Annex to UN General Assembly Resolution 48/134 of 20 December 1993, annex 1.*

The potential role of NHRIs first became evident in relation to the two UN human rights treaties of 1966 . the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.<sup>3</sup> When the General Assembly adopted both Covenants, they considered the establishment of national commissions on human rights or the designation of other appropriate human rights institutions, since those could make a considerable contribution to the observance of the two human rights Covenants.<sup>4</sup>

In 1993, the World Conference for Human Rights further confirmed the important role played by NHRIs in the Vienna Declaration and Programme of Action. States underlined the constructive role played by the national institutions in the past, in particular in their capacity as advisors to the competent authorities and their role in remedying human rights violations, in the dissemination of human rights information and in educating people on human rights issues.<sup>5</sup> The Vienna Declaration referred to the Paris Principles, and these were adopted by the General Assembly in December 1993. From then on, the General Assembly as much as many other UN bodies and international conferences regularly referred to the Paris Principles. In recent years, the treaty bodies monitoring the implementation of the UN human rights treaties frequently refer to the crucial role played by NHRIs at the national level, and encourage states which have not done so yet, to establish an NHRI. More recent human rights treaties, such as the Optional Protocol to the Convention against Torture or the UN Convention on the Rights of Persons with Disabilities explicitly refer to the Paris Principles as guiding principles for the establishment of the national mechanism under those treaties.<sup>6</sup>

In substance, the Paris Principles stipulate certain key requirements for NHRIs. Their mandate should be set forth in a constitutive or legislative text, be as broad as possible and cover the promotion and the protection of human rights. They should cover a series of functions ranging from advisory services to the government, the examination of legislative and administrative provisions against international human rights standards, the publication of reports and opinions on any human rights violation it decides to take up and all sorts of contributions to the implementation of international human rights standards in their respective country. This latter function entails close cooperation with UN human rights mechanisms which is strongly encouraged, as is research, human rights education and activities to combat all forms of discrimination. With the adoption of two more recent human rights treaties two further potential functions came into the picture: The Optional Protocol of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment refers in it Art. 18.4 to the Paris Principles, a stipulation that could be interpreted as a recommendation to entrust the National Preventive Mechanism (NPM) detailed in Arts 17 ff. to the NHRI or at least to consider the substance of the Paris Principles as guiding principles when establishing the NPM. Art. 33.2 of the International Convention on Rights of People with Disabilities is phrased similarly.

---

<sup>3</sup> *General Assembly Resolution 6546 of 13 December 1966, para. 557 et seq.*

<sup>4</sup> *General Assembly Resolution 2200 C (XXI) of 16 December 1966.*

<sup>5</sup> *Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23 of 12 July 1993, part I, para. 36.*

<sup>6</sup> *UN Convention on the Rights of Persons with Disabilities, Article 33 (2).*

---

### **Principles relating to the status of national institutions (Paris Principles): Key Elements**

A National Human Rights Institution (NHRI) should be

- vested with competence to promote and protect human rights.
- 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.

An NHRI should

- have a pluralist composition;
- have an infrastructure which is suited to the smooth conduct and adequate funding;
- enjoy real independence.

An NHRI should submit to the Government, Parliament or other body opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; and be free to publish these. These matters include

- legislative or administrative provisions, the recommendation of the adoption of new legislation, or of amendment of legislation in force
- any situation of violation of human rights which it decides to take up;
- the preparation of reports on the national human rights situation or on specific matters;
- the harmonization of national legislation with international human rights instruments;
- the encouragement of the ratification of international human rights instruments;
- contributions to the State reports to United Nations bodies and to regional institutions;
- the cooperation with the United Nations and other relevant regional or national bodies;
- human rights education.

An NHRI may be authorized to hear complaints and petitions concerning individual situations. For these they may seek amicable settlement or transmit complaints to the competent authorities.

---

Independence from the government is an essential feature of a NHRI. Both the Human Rights Commission and the General Assembly of the United Nations have confirmed the principle of independence in many resolutions.<sup>7</sup> If government officials are members of the advisory or supervisory board of a NHRI, then, according to the Paris Principles, they may not have voting rights. In addition, any attempt by non-governmental forces to unduly influence the decisions of the institution goes against the principle of independence. A pluralist composition, government funding allowing autonomy on projects and programs, and a solid and accessible infrastructure further support autonomous and independent activities of the NHRI. In practical terms, independence implies a separation of tasks and roles within the reporting cycle to treaty bodies: Whereas NHRIs are encouraged to comment on the governments' report or to submit a parallel report; they should not assume the state parties' reporting task.

While the above functions and requirements are at the core of an NHRI, the Paris Principles formulate additional principles concerning the status of commissions with quasi-judicial competence. Being authorized to hear and consider complaints and petitions concerning individual situations of human rights violations, these institutions should normally seek settlement of cases through conciliation, by transmitting them to competent authorities and by advising on potential remedies.

## **2.2. The association of National Human Rights Institutions**

---

<sup>7</sup> See General Assembly Resolutions 54/176 of 17 December 1999; 52/128 of 12 December 1997 and 50/176 of 22 December 1995.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, also known as the ICC, was originally a loose arrangement of NHRIs, formed at the beginning of the 1990s<sup>8</sup>. Since 2008, the ICC has been set up as an association under Swiss law with its statutory seat in Geneva.<sup>9</sup>

According to its Statute, the ICC is an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights. It holds an international conference for its members every two years, allowing them to share their experiences and to discuss new challenges for NHRIs. These and other ICC events are organised in close cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR). The management committee of the ICC is called the ICC Bureau. It is composed of sixteen NHRIs, with four members representing each of the geographical regions of Africa, America, Asia Pacific and Europe. Each of the regional sub-groups has established its own co-operation network under their regional chair, the strongest of which is the Asia-Pacific Forum with a regional secretariat, a rich website and manifold activities.<sup>10</sup>

The functions of the ICC can be summarized under the two headings of coordination and accreditation. The coordination function firstly aims at promoting close interaction and cooperation with the United Nations, including the OHCHR, the Human Rights Council and its mechanisms, UN human rights treaty bodies, as well as with other international organisations. Secondly the ICC seeks to foster cooperation and communication among NHRIs and their regional groups. By hosting meetings or conferences and a website, the ICC finally serves as a promoter of knowledge and best practices but also standards of cooperation by developing guidelines or policies.

The second function, accreditation, was set up in the early nineties. Then the ICC decided to establish an international procedure of quality control, a peer review called the accreditation of NHRIs. Since then, it has developed considerably, comprising now not only the initial accreditation of new NHRIs but also re-accrediting all NHRIs in a five-year rhythm. The ICC even undertakes special reviews . with the perspective to potentially change status . of NHRIs if the ICC has noted concern about an Institution's compliance with the Paris Principles. The latter situation may occur, e.g. in countries in political crisis where an NHRI's independence is challenged. National institutions with full accreditation build the core of the ICC, but those that have not yet received full accreditation (B-Status) are also considered members. In June 2010, the ICC counted 79 institutions as its members.

### 2.3. Cooperation between NHRIs and regional bodies: Example of ASEAN

NHRIs in different world regions are still developing cooperation with regional mechanisms: In Europe, e. g., NHRIs have a tradition of cooperation with the Council of Europe and with the OSCE . but there is still room for improvement. Relations with the European Union are at a young stage, but took some momentum in the last two years with the establishment with the Fundamental Rights Agency of the European Union. For the present study, a short look should be taken at the newly established ASEAN human rights mechanism.

#### *History of the mechanism*

On August 8th, 1967 five Southeast Asian States, Indonesia, Malaysia, Philippines, Singapore and Thailand, founded an Association of Southeast Asian Nations, in short ASEAN, with the signing of the ASEAN or Bangkok Declaration. Since then, five further States joined the association, which today, with Brunei Darussalam, Viet Nam, Lao PDR, Myanmar and Cambodia counts ten member

<sup>8</sup> Report of the Secretary-General, UN Doc. A/50/542 of 20 September 1995.

<sup>9</sup> Statute of the Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, adopted by the members of the International Coordinating Committee at its 15<sup>th</sup> session, held on 14 September 2004, Seoul, Republic of Korea. Amended by the members of the ICC at its 20<sup>th</sup> session, held on 15 April 2008, Geneva, Switzerland.

<sup>10</sup> See their website at <http://www.asiapacificforum.net>

states. The purpose of the association is, among others, to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter.

Inspired by the Vienna Declaration and Program of Action from 1993, encouraging all UN member states to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist<sup>11</sup>, ASEAN Inter-Parliamentary Organization adopted a Declaration on Human Rights, stating that it is the task and responsibility of member states to establish an appropriate regional mechanism on human rights.<sup>12</sup> In the same year still, ASEAN foreign ministers agreed in principle on the establishment of an appropriate regional mechanism on human rights.<sup>13</sup> Since then, a complex process took place between all ASEAN member states to establish such a regional mechanism. The debate was inspired by regional mechanisms in other world regions, including Courts such as the European and Interamerican Courts of Human Rights, and Commissions such as the African Commission on Human and Peoples' Rights.

Potentially the most important milestone on the way to the establishment of a regional mechanism was the adoption of the ASEAN Charter which entered into force in December 2008<sup>14</sup>, stating in Art. 1.7 as one of the purposes of the association being to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN. As a fundamental principle of the association, Art. 2.i once again underlines respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice and 2.j refers to upholding the United Nations Charter and international law, subscribed to by ASEAN Member States, thus bringing the UN human rights treaties ratified by Member States into the picture. Finally, in Art. 14 Member States confirm their commitment to the establishment of an ASEAN human rights body, referring to future terms of reference to be established by the ASEAN Foreign Ministers Meeting. On another level, several ASEAN Member States established their own National Human Rights Institutions in the 80s and 90s of the past century (The Philippines 1987, Indonesia 1993, Thailand 1999 and Malaysia 1999). Their respective institutions have been intensely involved with the preparations for the ASEAN commission.

In 1995, a Working Group for an ASEAN Human Rights Mechanism was established and since then, many meetings on working as much as on ministerial level took place to shape the character of this institution. It is composed of representatives of government institutions, parliamentary human rights committees, the academia, and NGOs. The group proposed several options for a mechanism, including a commission with promotional and monitoring functions but also an individual complaint mechanism, or even a court. The informative website of the working group<sup>15</sup> contains numerous reports on meetings on the future mechanism involving broad civil society participation, in many ASEAN Member States, and NHRI participation in countries with a NHRI.

### **Mandate of the Mechanism**

In 2009, Terms of Reference for a mechanism were adopted by ASEAN Foreign Ministers, choosing the model of a consultative, intergovernmental body.<sup>16</sup> The mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) covers the development of human rights strategies for the region, of an ASEAN human rights declaration that could serve as a

<sup>11</sup> *Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, UN Doc A/CONF.157/23, para 37.*

<sup>12</sup> <http://www.aseanhrmech.org/aboutus.html>

<sup>13</sup> *Joint Communiqué of the 26<sup>th</sup> ASEAN Ministerial Meeting, held in Singapore from 23 to 24 July 1993, available at* <http://www.aseanhrmech.org/statements/index.html>.

<sup>14</sup> *The ASEAN Charter, <http://www.aseansec.org/publications/ASEAN-Charter.pdf>*

<sup>15</sup> <http://www.aseanhrmech.org>

<sup>16</sup> *Terms of Reference of ASEAN Intergovernmental Commission on Human Rights, available at* <http://www.aseansec.org/22769.htm>

framework for the commission, awareness raising through education, research and information, capacity building for the implementation of human rights treaties and promotion of treaty ratification. Technical assistance and several networking obligations form part of the mandate as well, and with a strong research mandate and the space to develop common human rights policy in the region, the mechanism potentially could become a player in the region, linking academic high level research with policy debates.

The commission is of entirely different nature than a Paris Principles based NHRI. With Art 5.2 stipulating that *“each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government+; this is a governmental mechanism under the control of ten different governments. While governments are encouraged to chose their representative taking into account gender equality, integrity and competence in the field of human rights,<sup>17</sup> the appointing government is free to withdraw its representative *“at its discretion+any time<sup>18</sup> . a stipulation that would not be compatible with the Paris Principles. Representatives enjoy immunity though. The echo on the establishment of the commission by the media and by civil society was, generally, welcoming and positive, even though some stakeholders regret the incremental approach chosen by the ASEAN postponing stronger protection components to a later stage.<sup>19</sup> In general, observers agree that the fact that all ten ASEAN governments agreed on the establishment of the commission is *“emarkable and is an essential first step toward ASEAN’s stated goal of respecting and protecting human rights+<sup>20</sup>***

The ten positions of governments have been filled by now, many of the representatives being diplomats, most with a legal or even human rights background.<sup>21</sup> One of the first tasks ahead is the development of an *“ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation+according to Art 4.2 of its terms of reference.*

### **Potential for cooperation with NHRIs**

Given the enormous interest in the mechanism shown and input given by the NHRIs within the ASEAN region, there is potential for a very fruitful cooperation and co-ordination between both levels . and the AICHR is certainly under pressure to quickly deliver to meet some of the high expectations of stakeholders in the region.

The unfolding of the mechanism and its potential for cooperation with NHRIs depends on several elements:

- the financial resources of the AICHR granted by ASEAN Member States;
- the size and the quality of the support staff of the commission, especially the academic qualifications, combined with human rights experience, gathered among staff members ;
- its willingness to engage with stakeholders, including the NHRIs in the ASEAN region, at an early stage . to consult with them on priorities but also to inform about initial decisions.

Of course, other factors are equally important such as the qualifications and the degree of engagement of commissioners and the chairperson, and the quality of the work plan which seems

<sup>17</sup> Art 5.4 of the Terms of Reference, see footnote 16

<sup>18</sup> Art 5.6 of the Terms of Reference, see footnote 16

<sup>19</sup> See, for many, the workshop report *“Engaging the ASEAN Intergovernmental Commission on Human Rights (AICHR) – The People’s Views”*, Singapore, 22 August 2009, [http://www.aseanhrmech.org/downloads/Consultation\\_Workshop\\_on\\_Engaging\\_the\\_AICHR-The\\_People’s\\_View.pdf](http://www.aseanhrmech.org/downloads/Consultation_Workshop_on_Engaging_the_AICHR-The_People’s_View.pdf) . The Philippines commission had welcomed the first draft of the terms as well, but also expressed regret about restriction of the mandate to promotional functions and would have preferred a reference to existing NHRIs in the region.

[http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/FirstDraft\\_25Mar09.htm](http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/FirstDraft_25Mar09.htm)

<sup>20</sup> *The New ASEAN Intergovernmental Commission on Human Rights: Toothless Tiger or Tentative First Step?* Michelle Staggs Kelsall, Analysis from the East-West-Center, September 2009,

<http://www.eastwestcenter.org/fileadmin/stored/pdfs/api090.pdf>

<sup>21</sup> CVs are available at <http://www.aseansec.org/22769.htm>

to have been adopted recently<sup>22</sup> but is not yet public. A crucial question is the modus of cooperation developed between the ten representatives . all coming from countries with very different human rights challenges and priorities. The commission is bound to decide in consensus. When a better human rights protection calls for change, high diplomacy may be required to reach a consensus, which, in practical terms, means that the chairperson should be of highest integrity, endowed with mature diplomatic skills. The diversity of the members could lead theoretically to a lively interaction in favour of human rights protection, further promoted by transparent ways of reporting, accessible to the public.

#### 2.4. The accreditation of National Human Rights Institutions

To ensure a qualified accreditation procedure of highest integrity, the ICC set up a Sub-Committee on Accreditation (SCA). This committee convenes twice a year in Geneva to review applications from all over the world or to initiate special reviews of NHRIs which may have fallen short of the standards of the Paris Principles.

The accreditation process starts with the submission of an application. The core document for application is called the Statement of Compliance with the Paris Principles, a detailed self-assessment questionnaire allowing the NHRI to describe its settings and its performance in detail. This statement is accompanied by many other documents, including at the very least a copy of the institution's founding document, the most recent annual reports of the NHRI and a description of its organisational structure, including information on staff and annual budget. The Sub-Committee examines whether the institutional set-up and relevant activities are consistent with the Paris Principles and, as a rule, calls the head of the institution for clarification of any outstanding matters. It then submits its report with recommendations to the ICC Bureau, which takes the final decision on accreditation.

There are three different classifications for accreditation:

- A: In full compliance with the Principles
- B: Not fully in compliance with every Principle or insufficient information provided
- C: Not a member of the ICC and participates as an observer only

Only those institutions with **A** status can serve as one of the 16 accredited members of the ICC Bureau and are entitled to vote. By March 2010, the ICC Bureau had accredited 65 entities with an **A** status.<sup>23</sup> An institution is granted **B** status if it is only partially compliant with the Paris Principles or has submitted insufficient information as a basis for assessment. Institutions with a **B** status can become members of the ICC, however, they cannot be elected ICC Bureau members and have no voting rights. Institutions that are not compliant with the international requirements are designated **C** status.

From a legal point of view, the accreditation granted by the ICC Bureau is of little significance, since the ICC is not an organisation of international law. Its decisions, however, are of increasing importance beyond the entitlement to vote within the association and to become a member of the ICC Bureau. The international rules of procedure for state conferences, the UN Human Rights Council and, to an increasing extent, the relevant treaty bodies grant NHRIs with **A** status the right to observe and participate in discussions and activities. And, as NHRIs have grown in importance in the last decade, A status is about to become a question of reputation of an NHRI, for the NHRI itself but also for government eager to meet international standards in the field of human rights. A fully accredited institution is seen as an indicator of the credibility of that state's human rights policy.

---

<sup>22</sup> E-mail received by the authors from Greg Heesom, legal adviser, Asia-Pacific-Forum of NHRIs, on July 12th, 2010.

<sup>23</sup> Status chart of NHRIs, see annex 2.

## 2.5. Types of NHRIs

NHRIs are characterized by great institutional diversity.<sup>24</sup> This is due to the fact that each institution is embedded in structures that have evolved over time in its particular country, and which, from a political, socio-cultural and from a legal point of view, differ from those of other states. The specific institutional and political needs of the country in which a NHRI is founded greatly influence its functional status.

The Paris Principles do not offer a classification system of NHRIs. They rather allow drawing a distinction between NHRIs and other institutions, be it on government, on academic or on civil society level. This conceptual openness was deliberately chosen by the drafters of the Paris Principles. It ensured, on the one hand, that a considerable number of national bodies could be categorised as NHRIs when the Paris Principles were adopted in 1993. As a result, in some countries, no significant legal changes were necessary in order to adapt existing human rights structures to reflect the newly-developed international standard. On the other hand, countries which envisaged the establishment of a NHRI were given the necessary freedom and flexibility to find an institutional format suiting them.

Since the Paris Principles do not provide a basis for classification, NHRIs can only be analysed through practical stocktaking. In general, there are the following types of institutions:<sup>25</sup>

- the committee or advisory commission type;
- the commission type
- the ombuds type
- the institute type.

The committee or advisory commission type is characterised by its mission to provide advisory services to the government and to government leaders, in particular, as well as human rights education, research and political advocacy. The commission type is largely characterised by its wide range of tasks, including investigations into human rights violations, educational work and public relations, as well as participation in legal proceedings. Major activities of the ombuds type focus on individual legal protection and complaint-handling. Institutes usually have a large research component, leading it to focus on advisory services to the government, members of parliament and civil society. In most cases, the ombuds and commission types have extensive investigatory and information powers, whereas the committee type has only restricted, and the institute type no quasi-judicial powers. All types offer large informational and educational services on human rights not only to government or parliament but also to the population in general.

In June 2010, Asia Pacific had 15 accredited NHRIs, Africa 15, and the Americas had 15. Europe counted 20 accredited NHRIs.<sup>26</sup> The ombuds type is particularly wide-spread in Latin America and Eastern Europe, and the institute type is a typical Western and Northern European model. Seen globally, the commission type is most widespread. Normally, there is but one NHRI in a country, exceptions being accepted by the ICC in countries where different regions are covered by different regional NHRIs.

## 3. Models of NHRIs

There seems to be interest in Viet Nam in NHRI focusing on research and monitoring of and policy advice on the implementation of human rights treaties. This component is frequently called the

<sup>24</sup> See, for example: Office of the High Commissioner for Human Rights (2009): *Survey on National Human Rights Institutions: Report of the findings and recommendations of a questionnaire addressed to NHRIs worldwide*, Geneva; <http://www.nhri.net/2009/Questionnaire%20-%20Complete%20Report%20FINAL-edited.pdf>

<sup>25</sup> See Valentin Aichele (2003): *Nationale Menschenrechtsinstitutionen*, PhD, Frankfurt am Main, pages 102, 110 et seq.

<sup>26</sup> See *Status Chart of NHRIs, June 2010, annex 2*. On the list you find three fully accredited institutions in the United Kingdom, one each in Great Britain, Northern Ireland and Scotland. They count as one institution, though.

promotional component of an NHRI whereas the function dealing with individual complaints of persons who feel their human rights have been violated is called protection component. While the terminology of the promotional and protection component is not necessarily adequate, as there are other - albeit more indirect - means of protection than the handling of individual complaints, it does play a role as common terminology for NHRIs. Quite a few NHRIs do have both a promotional as a protection component; a few though nearly exclusively deal with individual complaints, most of them being ombuds institutions. The authors decided to present only one ombuds institution - one from Latin America, as this is the prevailing model in the region. In contrast, the authors decided to describe three institutions each from both the African continent and the Asia-Pacific region, and two institutions from Europe. The choice was based on considerations of the diversity of models, the performance and the reputation of the institution and the size and character of the nation state where the institution is based. Only A-accredited institutions have been selected, to present inspiring models of highest standards.

### 3.1. Malaysia

#### *Institutional Character*

The Human Rights Commission of Malaysia (SUHAKAM) was established by Act of Parliament in 1999 (Act 597) and has no constitutional basis. Its jurisdiction covers Malaysia as a whole. SUHAKAM is a statutory body and is accountable to the parliament of Malaysia, to which it is required to submit its annual report and any other special reports.<sup>27</sup> SUHAKAM does not receive any instructions from the government and acts on its own motion. Commissioners are appointed by the head of state on the recommendation of the Prime Minister. The head of state determines the commissioners's salaries and allowances. Any member of the Commission may be removed from office by the head of state under the following conditions: ruled insolvent by a court, mental or physical incapability, absenteeism from meetings without obtaining leave, engagement in employment or paid office leading to a conflict of interest, misbehaviour in a manner as to bring disrepute to the Commission or contrary to the provisions of Act 597 (Section 10). Under Act 597, tenure of each commissioner is two years, and can be extended once.

SUHAKAM first submitted its application for accreditation to the ICC in 2002, and was accredited with A status. Upon re-accreditation in 2008, issues with respect to independence arose, particularly in relation to appointment and dismissal procedure in the above mentioned sections of Act 597. The Subcommittee on Accreditation (SCA) informed SUHAKAM that it had recommended to the ICC to demote SUHAKAM to B Status. Issues of SUHAKAM's independence, but also its efficiency, were also raised during the 2008 Universal Periodic Review of Malaysia.<sup>28</sup> SUHAKAM itself submitted in its stakeholder report that Act 597 regulating the Commission was too restrictive.

In order not to lose A status of the commission, the government amended Act 597 in 2009. Two amendments were passed to bring it in line with the requirements of the Paris Principles on independence as they had evolved over time.<sup>29</sup> The term of office for commissioners was extended to three years, renewable once. The appointment procedure of commissioners was revised: Instead of the Prime Minister nominating Commissioners as in the 1999 Act, now a committee suggests candidates to the Prime Minister. The composition of this committee was debated controversially. It is composed of the Chief Secretary to the Government, the Chairman of

<sup>27</sup> While SUHAKAM has always presented its reports to parliament, none of them was ever debated there, see SUHAKAM, *Annual Report 2009*, p. 2, [http://www.suhakam.org.my/c/document\\_library/get\\_file?p\\_l\\_id=35723&folderId=23964&name=DLFE-7714.pdf](http://www.suhakam.org.my/c/document_library/get_file?p_l_id=35723&folderId=23964&name=DLFE-7714.pdf)

<sup>28</sup> Human Rights Council, *Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (C) Of The Annex To Human Rights Council Resolution 5/1, Malaysia, A/HRC/WG.6/4/MYS/3*, 27 October 2008, para. 15; Human Rights Council, *Report of the Working Group on the Universal Periodic Review Malaysia, A/HRC/11/30*, 5 October 2009.

<sup>29</sup> Act A1353 (2009), *Amendment to Act 597 (1999)* [http://www.suhakam.org.my/c/document\\_library/get\\_file?p\\_l\\_id=35723&folderId=124309&name=DLFE-7003.pdf](http://www.suhakam.org.my/c/document_library/get_file?p_l_id=35723&folderId=124309&name=DLFE-7003.pdf) Act A1357, [http://www.suhakam.org.my/c/document\\_library/get\\_file?p\\_l\\_id=216838&folderId=216872&name=DLFE-7708.pdf](http://www.suhakam.org.my/c/document_library/get_file?p_l_id=216838&folderId=216872&name=DLFE-7708.pdf)

SUHAKAM, and . in the first 2009 amendment - of three members appointed by the Prime Minister from among eminent persons+ (excluding politicians, party members and enforcement officers, i.e. officers with executive functions). The second 2009 amendment changed the composition into three other members of civil society who have knowledge of or practical experience with human rights matters. A third issue related to performance indicators. The first 2009 amendment had introduced the right of the Prime Minister to tie his decision to renew or decline extension of tenure to the fulfilment of performance indicators for Commissioners, and not be bound by the opinions of the Selection Committee.

This latter part of the provision was slashed in the second 2009 amendment, without, however, detailing whether the Prime Minister was bound by the Selection Committees opinion or just had to consult the Committee. The amendments to Act 597 satisfied SCA and the ICC though, and SUHAKAM kept A status.

#### **Research: Social and economic rights: human rights in development**

In 2009, SUHAKAM issued a report on the controversial Murum Hydroelectric Project and its impact towards the Economics, Social and Cultural Rights of the Affected Indigenous Peoples in Sarawak which followed reports on indigenous land rights in this and other areas of Malaysia. It also organized a number of stakeholder meetings, with representatives of indigenous groups, the involved company, and the local and federal government. It thus facilitated dialogue between the stakeholders, an assessment of the situation and claims of each side. It published the findings from the workshop in its Annual Report 2009<sup>30</sup>, and issued its own recommendations. Its main role, however, was . apart from human rights fact finding . to facilitate dialogue and give voice to the persons usually not heard during big infrastructure projects.

SUHAKAMs budget is approx. three million US\$ (2007). The Commission draws up its annual budgetary needs, and submits it to the treasury for approval. SUHAKAM acknowledges it receives adequate funds by the treasury and is in complete control on how its approved budget is to be spent. The Commission may not receive funding from foreign donors. The Commission appoints a secretariat and staff. In 2008, SUHAKAM had 72 staff, and three offices.

#### **Mandate**

Act 597 details SUHAKAMs mandate, powers, and functions. The Commission is tasked to

- promote awareness of and provide education relating to human rights.
- advise and assist the Government in formulating legislation and administrative directives and procedures. It recommends necessary measures to be taken. The Commission is mandated to submit an annual report, containing also its policy recommendations.
- give recommendations to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights;
- inquire into complaints regarding infringements of human rights. The Commission has the powers to receive complaints and conduct suo moto inquiries, enjoying far ranging power to procure and receive evidence, examine witnesses, to summon any person as witness and produce documents.<sup>31</sup> While SUHAKAMs quasi judicial powers are far-ranging, it is barred to investigate any complaint relating to any allegation of infringement of human rights which is the subject matter of any proceeding pending in any court, including any appeal, or which

<sup>30</sup> *Suhakam, Annual Report 2009, p. 70ff.*

<sup>31</sup> *According to SUHAKAMs Annual Report, not all authorities respect those powers. Police in 2009 denied access to one witness among their members, SUHAKAM, Annual Report 2009, p. 30, 45.*

has been finally determined by court.<sup>32</sup> Individual complaints may be lodged either in person, by letter, email, telephone or fax. The webpage also offers an e-complaint tab.<sup>33</sup>

To fulfil its mandate, SUHAKAM is empowered to

- to undertake research by conducting programs, seminars and workshops,
- to disseminate and distribute the results of such research;
- to advise the Government and/or relevant authorities of complaints against them and to recommend appropriate measures to be taken;
- to study and verify any infringement of human rights;
- to visit places of detention in accordance with procedures as prescribed by laws relating to the places of detention and to make necessary recommendations;
- to issue public statements on human rights as and when necessary
- to undertake appropriate activities as are necessary.

### Children's rights in education

The Children's Rights Convention (CRC) is one of the few human rights treaties ratified by Malaysia, albeit with numerous reservations. SUHAKAM worked with the CRC in different forums. For example, in the framework of the Human Rights Council, SUHAKAM organized a roundtable discussion on the CRC to urge the Malaysian government to withdraw its eight reservations to the CRC.<sup>34</sup>

Domestically, it has run a program on the right to education for indigenous children since 2002, drawing particularly on the General Comment by the Committee on Economic, Social and Cultural Rights on the right to education to improve availability, accessibility, adequacy, and adaptability of education for indigenous children. SUHAKAM organized visits to settlements and held workshops, seminars, meetings and outreach programmes, and issued numerous recommendations to government actors.

In 2009, SUHAKAM piloted a best-practice approach with a number of secondary schools. SUHAKAM entered into a continuous dialogue with the schools, aiming to improve the quality of education by supporting human rights education in schools. This aims to shape an environment in which human rights are not only taught and learned, but practiced, respected and promoted. It takes a whole school approach focusing on four main areas . the curriculum; extracurricular activities and the school environment; school governance; and student affairs.<sup>35</sup> SUHAKAM also reached out to religious schools to harmonize human rights values with Islamic teachings and practices by creating a platform for participants to reconcile their religious perspectives with human rights understanding.<sup>36</sup>

SUHAKAM is bound to pay regard to the Universal Declaration of Human Rights 1948 to the extent that is not inconsistent with the Federal Constitution. Malaysia has only ratified the CRC and CEDAW.

<sup>32</sup> *Suo moto investigations are not that easy to conduct. In June – July 2010 SUHAKAM attempted to investigate a construction site run by a private contractor where it was suspected that workers had not been paid. Security did not let SUHAKAM enter, see for a critical report <http://www.thenutgraph.com/how-the-govt-undermines-suhakam/>*

<sup>33</sup> *In 2009, SUHAKAM received a little less than 1.000 complaints. The number of complaints received has been decreasing steadily, from almost 1.400 (2005) to less than 1.000 (2009). Half of the complaints received were not in SUHAKAMs jurisdiction. 10% of all complaints within SUHAKAMs jurisdiction related to police inaction and about one third relate to issues of land rights: see SUHAKAM, Annual Report 2009, p.26 f.*

<sup>34</sup> *Suhakam, Annual Report 2009, p. 48ff.*

<sup>35</sup> *Suhakam, Annual Report 2009, p. 11.*

<sup>36</sup> *Suhakam, Annual Report 2009, p. 13.*

SUHAKAMs assesses in 2009 that despite many successes, % remains, however, a challenge to encourage the Government to implement our recommendations, which by their nature are not generally high on the political agenda.+

### **Organizational structure**

The Commission is currently (2010) comprised of seven commissioners (a maximum of twenty is possible under Act 597), 72 staff (2008) and has three offices, one in Kuala Lumpur, one in Sabah, and one in Sawarak, on Borneo. It has no advisory bodies. Many commissioners are retired civil servants, particularly judges.

The Commission has a number of different working groups (complaints/inquiries, education, ECOSOC, law reform and international treaties, research and policy) and a secretariat with 9 divisions, mirroring the working groups of the Commission, and a legal, an administrative, a publications and press department. The Commission meets at least once a month to discuss human rights issues, special Commission meetings are held whenever the need arises. The working groups hold their meetings at least once a month, and the Commissioners attend the meetings. The working groups report to the Commission.

The research and policy working group is tasked to develop international links and networking among other NHRIs in the region as well as to deal with human rights mechanisms within the UN system. The law reform and international treaties working group reviews and conducts research on existing legislation and makes recommendations where such laws contravene human rights principles. This working group also makes recommendations for the ratification of international treaties and for withdrawal of reservations that are inconsistent with human rights standards. The ECOSOC working group addresses issues on economic, social and cultural rights. In recent years, it has, e.g. conducted field visits and issued reports and recommendations with respect to indigenous land rights or refugees access to social rights.

The working group on human rights education mainly worked in the area of human rights education in schools and the CRC. But it also delivered human rights training to enforcement agencies, offered seminars on land rights of indigenous peoples and road shows in rural areas to make their work more accessible to hard-to-reach population groups.

#### **Dissemination of Concluding Observations CEDAW**

In 2009, SUHAKAM organized a meeting with the Gender focal points (GFPs) in several ministries, to upgrade the capacity of GFPs to understand issues of advancement of women and gender equality. It also equipped them with the knowledge and skills required to implement domestic obligations under CEDAW. The workshop examined the evolution of women's rights and significant principles of CEDAW; and looked at case studies relating to issues such as stereotyping, gender bias and gender socialisation. A dialogue session was held on the significance of the role of GFPs and how it can be enhanced. This was followed by the drafting of a plan of action and a mechanism to implement CEDAW requirements. The content was drawn from the concluding comments of the CEDAW Committee in 2006. SUHAKAM has suggested that a monitoring mechanism be set up to review the progress of the action plan developed from the workshop.

### **Programs**

SUHAKAMs working groups undertake a broad range of programs with respect to human rights education and information, research and investigation, using different formats. For research and policy advice, SUHAKAM often combines research or an investigation with a number of round table meetings.

#### **Regional activities**

Since 2004, the Commission works closely with other NHRIs in the ASEAN region, particularly with the NHRIs of Indonesia, Thailand and Philippines. In June 2007, SUHAKAM signed an official Declaration of Cooperation with the other three NHRIs. By 2008, the cooperation became official as the ASEAN NHRI Forum. SUHAKAM works as a regional actor (attending workshops etc.) and played a pivotal role in supporting the development of the ASEAN Charter and the creation of a human rights body under the Charter. At the same time, SUHAKAM works closely with the Regional Working Group for an ASEAN Human Rights Mechanism. SUHAKAM has been participating in the Asia Pacific Forum (APF) of NHRIs Annual Meetings since 2000, and was admitted with its A-accreditation as full member in 2002.

The Pakistan Parliamentarian Commission on Human Rights, in preparation for a Parliamentary debate on a Bill to establish a NHRI, invited SUHAKAM and the APF to visit Islamabad in December 2007 to offer their experience in meeting the requirements of the Paris Principles in drafting the NHRI Act. SUHAKAM and the APF Secretariat at the invitation of the Sri Lanka Human Rights Commission visited Colombo in 2008 to provide advice to the Sri Lankan Human Rights Commission on aspects of compliance with Paris Principles. Further advice was extended over the first quarter of 2009.

### 3.2. South Korea

#### *Institutional character*

The National Human Rights Commission of the Republic of Korea (NHRCK) became operational in November 2001, based on a legislative act in April 2001.<sup>37</sup> The commission was established as an independent body apart from the legislative, judicial or administrative structure of the Korean government. It is not a constitutional body, though. Its jurisdiction covers not only all citizens of the Republic of Korea but also foreign residents. While the commission submits an extensive annual report to the National Assembly and to the President of the Republic, it does not receive any instruction by the government. Independence is further ensured by Art. 10 of the NHRCK Act providing that a commissioner shall neither be member of the National Assembly or any local parliament, nor belong to the government, nor to a political party. Nevertheless, the degree of independence of the Commission remains to be an issue. In 2008, the Presidential Transition Committee, established to reform the organisation of the government organization, announced its policy to put the Commission under the Office of the President. The Commission expressed its opinion against the policy, referring to its founding act and to the Paris Principles. The NHRCK received support by the political community, civil society, and the international community including the ICC and OHCHR. The topic was discussed in the National Assembly as well. As a result, all political parties agreed on not to put the Commission under the Office of the President.<sup>38</sup> The Commission is comprised of eleven commissioners, one of them being the Chairperson. Among the three standing commissioners, two are appointed by the President of the Republic of Korea, who appoints another two commissioners. Other bodies selecting commissioners are the National Assembly and the Chief Justice of the Supreme Court. All are expected to bring professional knowledge of and experience with human rights matters and have been recognized to be capable of fairly and independently performing duties for the protection and promotion of human rights. At least four commissioners have to be a woman.

The budget of the NHRCK amounted to 21.9 billion Korean Won (about 21 million US\$) in 2007, to 23.4 billion Korean Won (about 23 million US\$) in 2008. It is considered a central government institution under the National Fiscal Act and as such, on the financial level, does not enjoy complete independence from the government. Less than half of the annual budget flows into the payroll, nearly a quarter of the annual budget goes into projects.

<sup>37</sup> *National Human Rights Commission Act, 2001, amended several times and revised in 2007.*  
[http://www.humanrights.go.kr/english/information/legal\\_materials\\_02.jsp](http://www.humanrights.go.kr/english/information/legal_materials_02.jsp)

<sup>38</sup> *National Human Rights Commission of the Republic of Korea, Annual Report 2008, p. 13.*  
[http://www.humanrights.go.kr/english/publications/publications\\_view.jsp](http://www.humanrights.go.kr/english/publications/publications_view.jsp)

### **Human rights reporting and UPR**

In relation to review of the human rights reports of the Korean government, the Commission participated in the UPR of the UN Human Rights Council, which was first introduced in 2008. It also participated in the UN session in relation to the Optional Protocol to the Convention on the Rights of Child and the working group sessions on the UN International Covenant on Economic, Social, and Cultural Rights. In addition, it invited government agencies and human right organizations to discuss the UPR recommendations, and plan and explore how to implement such recommendations.

### **Mandate**

The mandate of the NHRCK is outlined in the NHRCK Act. The commission performs the following functions:<sup>39</sup>

- Developing human rights policies through conducting human rights research and issuing policy recommendations and analyzing laws, policies and practices from a human rights perspective. The commission is mandated to review and conduct research on legislation, policy and practices from a human rights perspective and to submit its opinions and recommendations on various human rights issues including Korea's accession to and implementation of international human rights treaties. The heads of authorities who receive recommendations are called on to respect and implement the Commission's recommendations. In the event of non-implementation, the relevant authorities should provide the Commission with reasonable explanations. Furthermore, the NHRCK has the authority to submit opinions to the court either upon request or on its own initiative when the pending case is related to the promotion and the protection of human rights.
- Investigating discrimination and human rights violation cases and providing access to remedies. This includes investigations, even on-site investigations, into human rights violations perpetrated by central and local governments or detention and protection centres and the provision of remedies to the victims. The Commission also has jurisdiction over discrimination by private entities and organizations on the basis of sex, religion, disability, age, social status, nationality, race, region of orientation, appearance, marital status, pregnancy, family status, skin colour, idea, political orientation, sexual orientation, medical history, etc.
- Promoting human rights education and raising public awareness of human rights. The Commission contributes to the integration of human rights principles into the curricula of every educational institution including primary and secondary schools and universities. Furthermore, the Commission arranges a variety of educational activities to make human rights important criteria for selections and evaluations including civil service exams. Also, the Commission has cultivated a culture of human rights in society through publications and the development of cultural contents. It also operates a human rights library to provide a better access to human rights information.
- Promoting and monitoring national implementation of international human rights treaties
- Cooperating with government agencies, civil society organizations, UN human rights bodies and national human rights institutions (APF, ICC)
- Other matters deemed necessary to protect and promote human rights

### **Employment discrimination against those who take maternity and childcare leave**

Kim, who had worked for XX Company as a Public Relations Manager for three years, filed a complaint against her boss and executives of XX Company. The complainant tried to go back to her work after a six-month maternity and childcare leave. However, the respondents said, "You have been away for too long. We need a male manager," and ordered Kim to quit her job. When

<sup>39</sup> See their website [http://www.humanrights.go.kr/english/about\\_nhrck/mandate\\_01.jsp](http://www.humanrights.go.kr/english/about_nhrck/mandate_01.jsp)

the complainant did not quit her job, they demoted her to a clerk and forced her to sign an agreement to limit her scope of work. The respondents claimed that they had to ask the complainant to quit her job and sign the agreement, because she was not capable of fulfilling her duty as a manager. They also insisted that they demoted the complainant to a clerk as part of the company-wide restructuring plan and denied saying that they needed a male manager.

After investigation, the Commission ruled that the incident occurred due to prejudices against female PR managers interacting with mostly male reporters, as well as disapproval of married women with children working. Before her leave there had been no concerns regarding the complainant's performance at work, and only afterwards the complainant had been demoted during the company's restructuring plan. Additionally, respondents repeatedly requested the complainant to resign and stated that she would be demoted even if she returned, and made the complainant sign an agreement to limit the scope of her work. The Commission ruled that the complainant was unfairly pressured to quit her job and that the incident constituted a discriminatory act. Also, it pointed out that because the respondents had not acted on their personal beliefs but were acting for the company, the President of XX Company should be held accountable for the incident.

The Commission recommended that the President of XX Company provide damages of 5 million won to the complainant, take disciplinary action against the respondents, and come up with measures to prevent discrimination against those who take a maternity or childcare leave.

### **Organisational structure**

The Commission is comprised of eleven commissioners, the Chairperson, three Standing Commissioners and seven Non-Standing Commissioners. The term of the Commissioners is 3 years and they can serve for up to 2 terms. Four of the Commissioners need to be women. The Commissioners unite in a Plenary Committee and run different Sub-Committees. The Secretariat is run by a Secretary General and comprised of five departments: Administration and Planning, Human Rights Policy, Anti-Discrimination Bureau, Human Rights Education, and Investigation and Remedy. The Secretariat executes the Commission's decisions and policies, and is responsible for all of the NHRCK's administrative duties. Apart from its main offices in Seoul, the NHRCK has three regional offices and more than 200 full time employees.

Among the 11 commissioners, 4 shall be elected by the National Assembly, 4 shall be nominated by the President of Korea, and 3 shall be nominated by the Chief Justice of the Supreme Court and then approved by the President of Korea.

### **Review and Monitoring of the 39th UN Committee on Elimination of Discrimination against Women**

The Commission participated in the 39th session of the UN Committee on Elimination of Discrimination against Women at United Nations Headquarters in New York from July to August in 2007 to monitor the review of the 5th and 6th Korean government reports.

The CEDAW Committee welcomed establishment of the NHRCK and Ministry of Gender Equality, and abolishment of the male-family-head system. However, it expressed concerns over female marriage-based immigrants, violence against women including sexual abuses, and the disproportionately high ratio of female irregular workers. Seeking a constructive dialogue between the Korean government and the CEDAW Committee, the Commission made an oral presentation on human rights conditions of Korean women as a national human rights protection agency.

### **Programs**

The NHRCK, with its staff of more than 200 employees, runs an impressive amount of programs and project. Mirrored by the organizational structure, activities unfold within the four main branches of the commission: Human Rights Policy, Anti-Discrimination Bureau, Human Rights Education,

and Investigation and Remedy. From the perspective of the Commission, complaints handling is to be matched by measures by more pro-active and preventive measures, such as fact-finding investigations resulting in recommendations, but also opinions and recommendations on human rights laws, institutions, policies, and practices.

Working methods include broad consultations with legal and political bodies or civil society but also international cooperation, e.g. with fellow NHRIs and with UN bodies. The substantial amount of contributions by the commission to end any form of discrimination in South Korea goes back to changes in the presidential decree on its organization in 2007.<sup>40</sup>

#### **Gender discrimination in promotion**

Eleven female employees YY Company including Kang filed a complaint on gender discrimination regarding promotions. They claimed that male workers who had joined the company in the same year with them were promoted to a manager or deputy manager, while female workers were still a clerk or chief clerk.

The Commission found that since its foundation in the 1970s, YY Company had assigned assistant duties such as typewriting, document preparation, and office cleaning to female workers and main duties including sales, negotiation, and contracting to male workers. In fact, YY Company has separately recruited employees according to the division of duties from the beginning. In addition, promotion was made based on education, military service record, and years of service. As a result, female workers who had no chance to serve in the military or began to work right after high school graduation were unfavourably treated in promotion.

Therefore, the Commission recommended that YY Company develop fair and objective performance evaluation standards and an equal promotion system.

Furthermore, many activities are undertaken in the field of human rights education, addressing a range of target groups far beyond traditional educational institutions such as schools and universities, covering Ministries, police and military institutions, or business and welfare organizations.<sup>41</sup> The commission engages in up to 30 legal reviews per year and submits opinions to the court. The average caseload per year, between 2005 and 2007, added up to 33.000 to 40.000 cases, including complaints, counselling and inquiries and civil applications. With the implementation of the Disability Discrimination Act in 2008, the caseload and other activities of the commission increased by 30%, now amounts to more than 52.000 cases. Within its case work, the commission especially focuses on civil rights violations and on discrimination issues.

### **3.3. Kenya**

#### ***Institutional Character***

The Kenya National Commission on Human Rights (KNCHR) is a statutory body established under an Act of Parliament, the KNCHR Act of 2002, and not entrenched in the Constitution as yet.<sup>42</sup> The KNCHR succeeded the Standing Committee on Human Rights that had been established under a Presidential notice. The KNCHR has jurisdiction over the whole of Kenya. It became operational in 2003. The Commission has functional and operational independence, and does not take instructions from anybody. The Commission is administratively placed under the Ministry of Justice and Constitutional Affairs, and the KNCHR report has to be tabled in parliament by the Ministry. But KNCHR does not report to this Ministry but to Parliament, the role of the Ministry is merely functional. However, the budgetary allocations for the KNCHR are through the Ministry of Justice. The budget has to be approved by the Minister, and while not authorized by law, the Ministry of Justice has once requested a change of the annual plan before approving the budget. The KNCHR

<sup>40</sup> Organization of the National Human Rights Commission of Korea, Art. 14, [http://www.humanrights.go.kr/english/information/legal\\_materials\\_04.jsp](http://www.humanrights.go.kr/english/information/legal_materials_04.jsp)

<sup>41</sup> All activities referred to and the project examples in boxes from NHRCK, Annual Report 2008, see footnote 38.

<sup>42</sup> Kenya has been going through a constitution making process; the consolidated draft of 2010 includes a constitutionally based Human Rights and Gender Commission, see [http://www.kenyansabroad.org/documents/harmonized\\_draft.pdf](http://www.kenyansabroad.org/documents/harmonized_draft.pdf).

has attempted to shift the budget approval to parliament but to no avail as yet. The largest part of the budget goes into the payroll and recurrent expenditures. Supplementary programs are often funded by foreign donors but the KNCHR is not under the direction or control of any body, whether government of Kenya or donors, regarding how it allocates and spends its budgetary resources.

Commissioner vacancies are advertised, and applications from interested candidates or nominations of interesting candidates are submitted to the National Assembly. Shortlisted candidates are interviewed by the Parliamentary Committee on Administration of Justice and Legal Affairs. Parliament then nominates suitable candidates, who are appointed by the President. Commissioners hold office for five years and are eligible for another term. Each Commissioner represents one of the provinces of Kenya. The Commission has a gender balance of six women to three men. Two Commission members live with a disability. Three are Muslims, six Christians. Staff composition is similarly diverse. Members of Parliament, members of local authorities, members of the executive bodies of political parties are excluded from appointment.

Commissioners enjoy the status of a High Court judge or higher, and salaries are paid accordingly (average annual salary for a commissioner was US \$ 80.000 in 2008). Removal of commissioners under certain conditions (insolvency, absenteeism, moral turpitude etc.) is possible through an appointed tribunal but has never occurred.

### **Mandate**

The KNCHR's mandate is to promote and protect human rights. It covers the fundamental rights and freedoms of any individual protected under the constitution and any human rights provided for in any international instrument to which Kenya is signatory.+(KNCHR Act). It has the following functions

- to investigate, on its own initiative or upon a complaint<sup>43</sup> made, the violation of any human right;
- to visit prisons and other places of detention or related facilities to assess and inspect the conditions under which inmates are held;
- to inform and educate the public about human rights for the purposes of enhancing respect for human rights;
- to recommend to Parliament effective measures to promote human rights;
- to formulate, implement and oversee programs intended to inculcate citizens' awareness of their civic responsibilities and appreciation of their rights and obligations;
- to act as the Chief Government agent in ensuring the Government's compliance with its obligations under international and regional treaties and conventions on human rights;
- to encourage the efforts of, and cooperate with other institutions working in the field of human rights for the purposes of promoting and protecting human rights; and
- to perform such other functions as the Commission may consider necessary for the promotion and protection of human rights.

#### **Engagement with Special Rapporteurs**

In 2004, the Commission invited the UN Special Rapporteur on housing to assess and advise on the process of evictions in Kenya. In 2007, KNCHR facilitated the visit of the UN Special Rapporteur on the rights of indigenous person to monitor the rights of and advise on the situation of indigenous person in Kenya.

The Commission has the powers of a Court under section 19 (1):

<sup>43</sup> In 2007/2008, the KNCHR received 1,852 complaints. One case was referred to alternative dispute resolution, three to court. The KNCHR has elaborated a network of referral partners from among government and non-governmental bodies.

- to issue summons or other orders requiring the attendance of any person before it, and the production of any document or record relevant to any investigation by the Commission;
- to question any person in respect of any subject matter under investigation by the Commission; and
- to require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

The Commission has powers under Section 19 (2) of the Act to provide remedies where there is a human rights violation, including the release of any unlawfully detained or restricted person; the payment of compensation; and any other lawful remedy or redress.

When carrying out investigations, the Commission can summon and enforce the attendance of any person for examination, require the production of any document; and, subject to the Official Secrets Act, requisition any public records or copy from any public servant. Looking back at how the KNCHR fulfilled its mandate during the first period of its existence, it self-critically assesses that it had made less use of its quasi-judicial powers than it could have.<sup>44</sup>

### Organizational structure

The Commission has nine commissioners and a secretariat, of currently 45 staff members. Commissioners provide policy leadership and oversight. The Secretary to the Commission is appointed by the Commission and responsible for carrying out the policy decisions of the Commission and the day to day administration, finances and management of the affairs of the Commission and control of the staff. The Commission appoints its own staff, 40% of whom are women, and is drawn from diverse professional backgrounds. The Commission may request for secondment of staff from the Public Service Commission. Staff is hired on the government grant to the commission. The commission considers itself understaffed.

The Commission has the main office located in Nairobi and two regional offices in North-East and North-West Kenya. It meets at least once a month, with a quorum of five commissioners. The secretary is always present. Minutes are maintained of each meeting, confirmed and signed at the next meeting.

### Programs

The KNCHR works in seven core programs:

- Complaints and investigations
- Complaints hearings panels/tribunals
- Research, policy, and legislation
- Campaigns and advocacy
- Human rights education and capacity building
- Economic, social and cultural rights
- Media and communications

#### Cooperation with Treaty Bodies

The Commission actively lobbies for ratification of human rights treaties, implementation of ratified treaties and regular reporting. In the reporting process, the KNCHR is regularly invited by the inter-ministerial coordinating committees to provide additional information, e.g. relating to CRC and ICESCR implementation. It also provided additional information to submit to the CAT Committee before consideration of Kenya's CAT report in November 2008.<sup>45</sup> At a later stage in the reporting

<sup>44</sup> KNCHR, *Strategic Plan 2009-2013*, p. 12,

[http://www.knchr.org/index.php?option=com\\_docman&Itemid=&task=doc\\_download&qid=41](http://www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&qid=41)

<sup>45</sup> KNCHR, *Presentation to the Committee Against Torture to Inform Its Review of Kenya's Initial Country Report on the Implementation of the Convention Against Torture And Other Cruel, Inhuman And Degrading Punishment Or Treatment*, 2008, <http://www2.ohchr.org/english/bodies/cat/docs/ngos/KNCHR.pdf>

cycle, the KNCHR works with civil society organizations in disseminating the Concluding Observations from the treaty bodies and follows up on government implementation of the recommendations.

The Commission's work is based on a strategic plan setting out goals, objectives, key areas of results etc. The second strategic plan is accompanied by the lessons learned from the first plan. Among the lessons learned are the necessity to have a monitoring framework, in order not to end up with unsustainable one-off interventions, the necessity to recruit staff of adequate level to be able to fulfil the ambitious work plan and the need to also focus on institution building and not only relations with external actors. The KNCHR has started to put their objectives into a log-frame, with measurable indicators for outputs and outcomes.

#### **Research: Economic, Social and Cultural Rights**

On the basis of its analysis that poverty and increasing inequalities and regional disparities constitute one of the major human rights challenges, the KNCHR has developed numerous activities in the realm of esc-rights, with the aim to advise and monitor the government in its national development strategies (Medium Term Plan 2008-2012, Vision 2030). Furthermore, the KNCHR succeeded . using investigations, research and highly publicized reports - to profile corruption as a human rights issue in Kenya. It argued on the basis of Art. 2(2) of the ICESCR which obliges states to use the maximum of available resources to progressively realize esc-rights. The KNCHR argued that not fighting corruption effectively is in direct violation of this article.

### **3.4. Uganda**

#### ***Institutional Character***

The Ugandan Human Rights Commission (UHRC) is entrenched in the 1995 Constitution of Uganda (Art. 51 (1)). In addition, there is the Uganda National Human Rights Commission Act 4 (1997) and the Uganda Human Rights Procedure Rules of 1998. The Commission has jurisdiction over the whole territory, but is barred by the constitution to investigate matters involving the relations between the Government and foreign governments or international organizations. The Constitution guarantees the independence of the Commission stating that %the commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority.+The Commission is required to publish periodic reports on its findings and submit annual reports to parliament on the state of human rights in the country. Budget allocation is done through parliament, the body the UHRC is accountable to. The government pays the entire wage bill, and provides about 75% of the budget, but despite increases to about 2 million US\$, core funding remains inadequate.<sup>46</sup> Funding from foreign donors is accepted, and comes from a basket fund. All funding drawn from the basket fund go into operational programs, and are raised through a donor conference held every six months. The Commission may request for secondment of staff from the Public Service Commission.

#### **Human Rights Education in Conflict**

The UHRC coordinates Civil-Military Cooperation Centres (CMCC) in the conflict-ridden Northern parts of Uganda. These centres have been supported by the OHCHR. Joint monitoring, investigations, training, human rights sensitization and public outreach activities were carried out. These activities contributed to raising awareness of the population and to mediate minor offences committed by the army or the police. The program developed in consolidated efforts of capacity building for national human rights actors, such as the army, police, sectoral government focal points and local government officials.

The Commission is composed of a chairperson, as the chief executive, and not less than three other persons (currently six) all of them appointed by the President with the approval of parliament.

<sup>46</sup> UHRC, Annual Report 2008, p. 136, [http://www.uhrc.ug/index.php?option=com\\_docman&Itemid=111](http://www.uhrc.ug/index.php?option=com_docman&Itemid=111)

The chairperson shall be a judge of the High Court or a person qualified to hold that office. Commissioners serve for six years, and are eligible for reappointment.

Commissioners come from all regions of Uganda; the gender balance currently is 3 men to 4 women. At the management level, it is 10 women to 9 men managing 130 staff. Members of Parliament, members of local government councils, members of the executive of a political party or organisation and public officers may not become commissioners.

As one of the oldest NHRIs in Africa, the UHRC has provided advice to other NHRIs in the region, e.g. to the Kenyan NHRI which is modelled on the UHCR in many aspects.

### **Mandate**

The Commission has the following functions (Constitution, Article 52):

- Investigate, at its own initiative or on a complaint<sup>47</sup> made by any person or group of persons against the violation of any human right;
- Visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;
- Establish a continuing program of research, education and information to enhance respect of human rights;
- Recommend to Parliament effective measures to promote human rights, including provisions of compensation to victims of violations of human rights or their families;
- Create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda;
- Educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;
- Formulate, implement and oversee programs intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- Monitor the Government's compliance with international treaty and convention obligations on human rights; and
- Perform such other functions as may be provided by law.

#### **Advise to government on human rights policies**

The UHRC annual report is on the human rights situation in Uganda, with a set of recommendations to the government on each issue flagged in the report. The annual report also contains a chapter in which the UHRC breaks down to what extent the government has complied with its recommendations. For example, in 2008, 14% of UHRC recommendations have been fully complied with, 63% have been partially complied with, and 23% have not been complied with at all. Recommendations that the Government did not comply with at all include the enactment of various laws that have an impact on human rights. These include laws prohibiting torture, governing domestic relations, fixing a minimum wage, establishing a Victims Compensation Fund, ratifying the Optional Protocol to the UN Convention Against Torture (OPCAT), and reporting to the UN Committee on Economic, Social and Cultural Rights, to mention but a few.<sup>48</sup> Further, UHRC uses the format of the Annual Report to report in detail on how the government responded to previous recommendations, and notices progress and failure.

### **Organizational Structure**

The UHRC is comprised of the chairperson and six commissioners, and a staff of 130 persons (2008). Its secretary was appointed by the UHRC in consultation with the Public Service

<sup>47</sup> The UHRC received a little over 1.000 complaints in 2008. Almost 30% of those complaints related to the right to be free from torture or other cruel, inhumane treatment. More than 20% related to children rights. The highest number of complaints was lodged against private individuals.

<sup>48</sup> UHRC, Annual Report 2008, p. 134 ff.

Commissions. The secretary is responsible for implementing the Commissions policies, and runs the day-to-day business, including staff control. The secretariat has five directorates,

- monitoring and inspections,
- complaints, investigations and legal services,
- finance and administration,
- regional services,
- research, education and documentation.

The head of these directorates and the heads of units constitute the management team. The UHRC entertains eight offices.

## Programs

The UCHR has a strong focus on complaint handling, adjudication, monitoring and human rights education. Due to its fairly decentralized structure with eight offices and the focus of its mandate it is less oriented towards programs and projects.

### **Economic, Social, and Cultural Rights: The right to health**

The Ugandan Human Rights Commission established a right to health unit, following the recommendation of the UN-Special Rapporteur on the Right to Health who had visited the country in March 2005. This unit advises the Ministry of Health on implementing a human rights-based policy in the health sector. It elaborated training materials and carried out workshops for health personnel in order to support them in further orienting their work towards human rights. In addition, it conducts research on the epidemiology of neglected diseases, state policies and jurisprudence on the right to health.

## 3.5. Guatemala

### *Institutional Character*

The Procuraduria de los Derechos Humanos de Guatemala (PDHG) was established in 1987, as the first institution of its kind in Latin America. It was granted B status in 1999, and A (R) status<sup>49</sup> in 2000, and holds A status since 2002. The Procurador is established by article 274 of the Constitution of 1985 which states that the Procurador is a commissioner of the Congress of the Republic (parliament) to defend human rights. The Procuraduria is thus an Ombuds institution, created to monitor, investigate, and reprimand or even punish the performance of civil servants vis-à-vis citizens.

The Procurador is appointed for a non-renewable period of five years by the plenary of the Congress, with two thirds of the total votes in a special session. Candidates are proposed by the Human Rights Commission of the Congress (see below). Candidates must have the same qualities as the judges of the Supreme Court of Justice and the same privileges and prerogatives as Members of Parliament. The law regulates that the position of the Procurador is incompatible with any other public, managerial or political position, or belonging to any trade union, entrepreneur union, or the position of being minister of any religion or cult.

The Procurador may nominate two deputies. He or she may be dismissed by two thirds of the votes of the Congress on the basis of a request undertaken by the Human Rights Commission of the Congress and if in accordance with the conditions states in the constitution (non-fulfilment of the obligations, absenteeism, etc.)

<sup>49</sup> Prior to reorganisation in March 2008, the ICC also accredited institutions with A (Reserve) status indicating that the institution was subject of regular reviews due to special country circumstances (e.g. countries in political turmoil). The A (R) status was abolished in 2008.

The Human Rights Commission of the Congress (established by Art. 273 of the constitution)<sup>50</sup> is the link between the Procurador and the Congress plenary: the Commission nominates candidates for the Procurador, may comment on the Procurador's annual report to Congress, and the Procurador sends the PDHG's budget to Congress via the Commission. The PDHG may also propose review of legislation, but has to use the Human Rights Commission at Congress as its entry point into parliamentary debate. Both institutions are regulated by the same law.<sup>51</sup> The Procurador is financially independent, it controls and manages its own budget of approx. 15 million US\$ per year (2008). The PDHG had 900 staff in 2008, and 48 offices. In addition to its financial autonomy, the Procurador is not subject to any body, institution or civil servant and shall act in absolute independence.

#### **Human Rights Education: Human Rights Training for Local Administration<sup>52</sup>**

Within its human rights education mandate and its mandate to supervise the administration, the local offices of the PDHG in several districts teamed up with the Programme of Municipalities for Local Development (PROMUDEL)+supported by the German Agency for Technical Cooperation (GTZ) to offer human rights training for the municipal employees. The program was inter alia based on complaints by citizens to the PDGH, criticizing the local administration as being irresponsible to their needs. The core of the training was to address public service from a human rights perspective and its underlying notions of human dignity, non-discrimination and sustainable development. This first course was followed by a second course for civil society representatives and a third one for members of the development councils at community and municipal level in 2008. Before the launch of the first course the PDGH and PROMUDEL liaised with the mayors to convince them to release their staff from work and compensate for their travel costs and in general support the training and its outcome.

Course contents for municipal employees focused on public service delivery from the perspective of marginalised groups such as the elderly, persons with disabilities, the indigenous population as well as young people. The course offered practical solutions for improving service delivery like alternative dispute resolution mechanisms and public management tools. At the end of the course, municipal employees developed an action plan with scheduled and resourced actions for improving human rights within their municipality.

#### **Mandate**

The PDHG is an ombuds-institution, i.e. it is mandated to monitor and hold accountable violations by civil servants.<sup>53</sup> Next to its annual reporting duties, it may publish reports on human rights violations, when the result of an investigation concludes so. The yearly report also contains the list of civil servants that have been considered as human rights violators and those who have failed to answer to the request from the Procuraduria.<sup>54</sup> In addition, the PDHG may compile situation reports, thematic reports, case reports and extraordinary reports. In order to fulfil its function to supervise the administration, the PDHG may exercise the following functions:

- Promote the good functioning and management of the government with regard to human rights;
- Investigate and denounce administrative behaviours that jeopardize the interests of people;

<sup>50</sup> The Human Rights Commission in Congress is composed of one member of Congress per each political party elected to Congress. The mandate of the Commission is to promote studies and update the legislation on human rights in the country.

<sup>51</sup> Ley de la Comisión de Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos.

<sup>52</sup> GTZ, *Local Governance: Responsiveness of local administration in Guatemala, 2009*, [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/prom-practice\\_local\\_gov\\_responsiveness\\_of\\_local\\_admin\\_in\\_guatemala.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/prom-practice_local_gov_responsiveness_of_local_admin_in_guatemala.pdf)

<sup>53</sup> For the character of ombuds-institutions, see Linda Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, in: *Harvard Human Rights Journal* 13, 2000, pp. 1-69.

<sup>54</sup> See, e.g. PDHG, *Informe anual Circunstanciado, Tomo II, memoria de labores 2007* [http://www.pdh.org.gt/images/files/Informes\\_anuales/INFORME07\\_TOMO\\_II.pdf](http://www.pdh.org.gt/images/files/Informes_anuales/INFORME07_TOMO_II.pdf)

- Investigate all types of complaints submitted by any person regarding human rights violations;
- Make confidential or public recommendations to civil servants to modify misbehaviour;
- Make public acts or behaviour that are against human rights;
- Promote judicial or administrative actions or make public appeals for better human rights observance.

The mandate covers all rights enshrined in the constitution and in the international instruments ratified by Guatemala; the jurisdiction covers all of Guatemala.

The PDHG has the power to investigate any premise in search for proof, with the prior authorization from a judge but without the need to alert the civil servants responsible directly or indirectly of the premises. It may also request individuals and civil servants of any level to be present at any premises under investigation and to produce any information.

If the PDHG receives a complaint which constitutes a felony, be it by action or omission that falls under the jurisdiction of a tribunal it must forward the complaint to that court immediately. If PDHG has jurisdiction over the complaint, it needs to contact the concerned authority, which has five days to answer. If it fails to do so, the PDHG treats the complaint as representing the truth of the matter, and the PDHG shall issue a resolution within eight days, either closing the case if there is not enough reason to assume a human rights violation or continuing the investigation for the next 30 days, or ordering the immediate cessation of the violation, and the restitution of the human rights of the victim. It may promote disciplinary proceedings including dismissal or any other punitive measure. If the act constitutes a felony committed by a civil servant, the complaint has to be transferred to court. The PDHG is barred from investigations if an issue is pending in court but it is not prevented from investigating the general problems contained in the complaint filed. The PDHG has the right to file an amparo<sup>55</sup> to protect the rights that are under their mandate.

In 2009, the PDGH conducted approx. 3.200 investigations. 800 investigations were related to physical security, and one half of all specific actions undertaken by the PDGH were likewise related to this topic. A similar number of specific actions (appeals, communications etc.) were undertaken with respect to the rights of children and youth.<sup>56</sup>

### Organizational Structure

The Procurador is free to select its own staff. Guatemala being a multi-ethnic and multi-cultural society, staff regulations explicitly forbid discrimination on the basis of race, sex, marital condition, religion and socio-economical or ideological position. 40% of the staff of the Procuraduria are women, and the two deputies of the Procurador are likewise women.

The PDHG has 900 staff members in 48 offices, among them 21 mobile offices, to facilitate access to the Procuraduria. Maya and Garifuna, two of the main local languages, are spoken in the regional offices but many of the publications are also translated. Staffing policy in the regional offices considers geographical, cultural and social aspects, e.g. regions; the selection of regional representatives of the Procurador is sometimes done from among candidates proposed by local civil society.

The Procurador has a consultative council composed by two former procuradores with the objective to advise on the goals, policies, plans and actions of the PDHG. The council meets every two weeks. In addition, there is a technical support committee composed by directors and chiefs of different departments of the PDHG (see below) to discuss human rights issues. This committee

---

<sup>55</sup> Amparo is a legal remedy to protect constitutional rights of individuals and to protect the constitution from being breached with impunity. It is a wide-spread legal instrument in the region and also in the Philippines.

<sup>56</sup> PDHG, Informe Anual Circunstanciado. Tomo I Situacion de los derechos humanos en Guatemala. 2009, p. 277. [http://www.pdh.org.gt/images/files/Informes\\_anuales/Informe09-Tomo-I-Situacion%20DDHH.pdf](http://www.pdh.org.gt/images/files/Informes_anuales/Informe09-Tomo-I-Situacion%20DDHH.pdf)

meets once a week. The PDHG may establish ad hoc working groups according to its needs, e.g. it established a working group on monitoring elections, and one on enforced disappearances.

The PDHG is headed by the Procurador and two deputies. It has five departments (defence of human rights; promotion of human rights and human rights education, both required by law, communication and press, external relations, planning and institutional development. Its work is organized along the following thematic lines: human rights research and analysis, complaints, individual rights, economic social and cultural rights, peace agreements, supervision of public administration and investigations, specific human rights, follow up and notifications, international treaties. In addition, there are specialized sections on the rights of women, children and youth, migrant and unsettled population, persons with disabilities, elderly, indigenous people, due process and detainees, environment, consumers, and workers.

### 3.6. France

#### *Institutional character*

The French National Consultative Commission on Human Rights was, exceptionally, not established during the 90es of the past century, as so many other NHRIs, but was one of the first institutions to be created after the Second World War. The commission set up in France in 1947 goes back to the initiative of René Cassin, one of the drafters of the Universal Declaration of Human Rights. The mandate of the Commission at that time exclusively focused on international human rights law. In its early days the Commission was involved in the drafting process of Universal Declaration of Human Rights. But not earlier than in 1984 a fully-fledged institution was established, shaped in greater detail by three decrees from 1984, 1986 and 1989.

While the Commission was mentioned in a law in the topic of racism in 1990, it was only in 2007 that the Commission was finally based on a law. The law itself just confirms the role of the commission as an advisory one, to the government and to Parliament, underlines its independence and details some aspects of its composition. A decree from the same year contains further elements: With regard to the composition, according to the law several important sectors of society should be represented: human rights non-governmental organisations, qualified personalities and experts seating in international human rights organisations, trade unions, the Ombudsman office, two members of Parliament and one member of the Social and Economic Council . The idea behind this composition is broad representation of civil society on the one hand, constructive dialogue with the ministries on the other hand: Ministries take part in the work of the Commission, but they do not enjoy voting rights. The mandate's duration is 3 years and non removable. Commissioners are nominated by the Prime Minister but the decision is made in consultation with the vice-president of supreme administrative court and presidents of supreme judicial court and budgetary court. Both non revocability of the mandate and the nomination process ensure the independence of the members. The decree sets the number of members to 64.

#### *Mandate*

The Commission's mandate covers civil, political, economic, social and cultural rights, as well as humanitarian laws and actions and even new technologies, bioethics and the right to a healthy environment. The Commission should adopt studies and opinions . containing recommendations to the authorities - on its own initiative or on request by the government. These are to be published and to be sent to the Prime Minister and relevant ministries. The mandate also includes human rights education activities, and the release of an annual report on the state of racism in France.

#### *Organisational structure*

The commission is headed by a President and two vice-presidents, elected by the members of the Commission. The highest decision making body is the Plenary Assembly, uniting all members of the Commission. This body meets around six times a year to debate and adopt draft opinions and studies. The agenda of the meetings is decided upon by the Bureau, made up of the President and the two vice-presidents.

#### **Human Rights and Diplomacy**

In 2008, the CNCDH published a study on human rights in diplomacy. The study aimed at providing recommendations for human rights to become an operational results-driven objective of diplomacy. These recommendations are structured around eight focuses which should guide diplomatic action and are intended not only for French diplomacy but also for EU diplomacy. In summary, the Commission proposes a series of avenues to be explored in French Diplomacy: consistency between foreign policy and national policy, the integration of human rights as a cross-cutting dimension of foreign policy, strengthening the role of civil society and victim support, strengthening France's influence as human rights actor, increased human rights training and

exchange between diplomats and human rights experts, the definition of a strategy setting out a frame of reference for a French human rights policy, an annual report on French foreign policy and human rights and the establishment of a French think tank on human rights and foreign policy.

The main work of the Commission is undertaken by sub-commissions, meeting once a month to discuss topics of concern, to listen to experts and representatives from ministries, and to select issues which will need to be examined further. The preparation work for drafting opinions takes place either within the sub commission framework or in a ad hoc working group specifically set up to work on specific issues. Members of the Commission participate in one or the other sub commission depending on their expertise. The sub commissions are grouped under different topics: Human rights and changes in society; International issues; National issues; Human rights education, women, children and family rights; Humanitarian law and humanitarian action; Fight against racism and xenophobia; and a Group on European issues.

Another body still, the Coordination Committee, is composed by the members of the Bureau, presidents and vice presidents of sub commissions and takes charge of the coordination of the work of the Commission as well as giving directions and making strategic choices for the Commission.

The General Secretariat is run by a Secretary General, further employs three legal advisers and two administrative assistants, and coordinates the overall work, organises the meetings of the sub commissions and the plenary and drafts the opinions in cooperation with the members.

### **Programs**

The activities of the French Commission take place on the national and on the international level, but the Commission considers both levels as closely interlinked.

At the national level, the main focus of the French Commission is the examination of draft laws and administrative provisions, at the request of the Government or on its own initiative, and the assessment of their conformity with international and national human rights standards. This is done through hearings and consultations with ministries, experts and civil society representatives. On occasions, the Commission is, in turn, invited to hearings in the Parliament.

#### **Study on Polygamy in France**

Having adopted a report on female genital mutilation already in 2004 and published recommendations on forced marriages in 2005, in 2006, the French Consultative Commission published a report on polygamy in France on request of the Minister on social cohesion and equality. The report concerned, as did the two former ones, young women of foreign origin in particularly vulnerable situations. The research for the study relied heavily on hearings with representatives of associations of foreign communities in France and on intense study of literature on the subject. It came up with a series of recommendations for administrative, legal or socio-political measures to be taken to ensure security for women concerned and to enable them a safe transition to an independent, self-determined life in France or in their home country. Recommendations were practical and down-to-earth, proposing essential arrangements such as a bank account, the speedy issuing of papers, priority treatment to obtain a day care space for children to enable them to attend formal education, and a special training for single parenthood.

At the international level, the French Commission closely cooperates with all main international and European human rights organisations and participates in different networks. This includes networking activities with the ICC and the European Group of National Human Rights Institutions. In addition, the Commission plays an active role in the Association of Francophone NHRIs. Regarding the United Nations, the main focus of the French Commission regarding the UN is related to the work of UN treaty bodies. The Commission is deeply involved in the reporting cycle

of France, commenting the draft report, publishing own opinions on gaps in the report and participating at the examination in private meetings with the respective Committees. Once the Committees issued recommendations to France, the Commission closely monitors their implementation. Finally, the French Commission closely follows activities of the UN Human Rights Council where NHRIs have gained an observer status.

### 3.7 Germany

#### *Institutional character*

Based on a unanimous decision of the German Federal Parliament of 7 December 2000 the German Institute for Human Rights (GIHR) was founded as a Registered Association on 7 March 2001. This legal form is predominant in Germany and allows a high degree of autonomy.

Its institutional operation started in October 2001. The German Federal Parliament's decision also defined the Institute's character as the NHRI in Germany and its general mandate. The Institute was not founded by a formal act of legislation, though. Following the Parliamentary Decision, GIHR's purpose, mandate, composition of bodies, competences and obligations were laid down in the Statutes of the GIHR Association (henceforth: GIHR Statutes), adopted on 8 March 2001 by the Founding Assembly. Later, the Statutes were amended several times, mainly due to inner-organisational needs. GIHR's jurisdiction covers the whole of Germany. It includes foreign residents, and irregular residents. The Institute also makes recommendations concerning aspects of German policies that affect persons living outside of Germany (e.g. foreign policy, defence policy, development cooperation, EU refugee directives, etc.)

The unanimous decision of the German Federal Parliament on the basis of which the GIHR was founded emphasizes the Institute's independence: "The German Institute for Human Rights shall be politically independent and founded as an association. In the majority, committees will be constituted from representatives of non-state, civil society areas. In these, the plurality of world and political views among state and non-state offices involved in human rights questions shall be reflected." In an explanatory note attached to the Federal Parliament's Decision, as well as in the Statutes, reference is made to the Paris Principles. The GHRI Statutes state in § 3: "The Association is politically independent. It acts on its own initiative and independently of any requirements and instructions from the German Federal Government or other public and private agencies. The majority of members of its governing bodies will be representatives of civil society."

#### **Follow-up meetings on the Concluding Observations of Treaty Bodies**

By chance, the CEDAW, the CRC, the CAT and the HRC Committee examined German state reports all in the same year (2004). The GIHR organized follow-up meetings in 2004 on the implementation of the Concluding Observations of each of these committees. By hosting these conferences, the GIHR wanted to contribute to a continuous dialogue between the German government, civil society and international human rights bodies. When choosing the issues to be discussed at these conferences, the GIHR selected concluding observations that were of high political relevance, touched on topics of public interest, or referred to serious human rights issues in Germany. Discussions took place between representatives from relevant ministries, civil society, academia, members of parliament and GIHR staff. Treaty Body members also participated in the discussions. The meeting adopted conclusions and recommendations that were sent to the ministries responsible for implementation of the concluding observations and to all other relevant actors, including the relevant UN treaty bodies. GIHR also engaged in follow up activities on the implementation of the conclusions and recommendations, by contacting relevant ministries in writing or through personal meetings. From 2008, for most treaty bodies the reporting cycle continued. The institute decided as a next step to host meetings informing civil society on their possibilities to submit alternative reports to the respective body. In the meantime, the second cycle of follow-up meetings began . with higher participation from all sides, and starting from a much higher level of knowledge.

The Institute receives non-earmarked funding from three ministries. The core budget of roughly 1.5 million " is provided by three Federal ministries, the Ministry of Justice (40%), the Ministry for Foreign Affairs (30%) and the Ministry for Development Cooperation (30%). A fourth ministry, the Ministry for Labour and Social Affairs, will contribute to the core funding as soon as negotiations on the National Monitoring Mechanism for the International Covenant on Rights of People with Disabilities (ICRPD) are finalized. In addition the GIHR receives third party money which is project based and earmarked. In 2010, the all-over turnover of the institute will amount to 2.8 million " .

The Institute is free to decide, within the framework of public budget regulations, how to allocate the money. The financing ministries of the GIHR, represented in the Board of Trustees, as well as the representative of the Federal Council of States do not have voting right though. The exclusion from voting rights of the 4 government representatives, a statutory requirement, is a means of safeguarding the Institute's independence. All bodies of the Institute see it as their duty to continuously observe the de facto independence of the institute. The Institute does not take any instructions from the Government or any other agency. To this day, the Institute has not faced a situation of attempt of interference by a government agency or a political party.

### **Mandate**

The GIHR has a broad mandate that covers civil and political as well as economic, social and cultural rights. The Federal Parliament, in its Decision of 7 December 2000, states: "The Human Rights Institute shall work with an emphasis on application and complement existing state and non-state institutions, working in a supporting role and in close connection with them. It shall inform about the domestic and foreign human rights situation and contribute to the prevention of human rights abuses, as well as to the promotion and protection of human rights. In doing this, it shall act on its own initiative and independent of any guidelines and instructions of the Federal Government and other public and private actors." The Federal Parliament decision subsequently lists six basic tasks which have been enshrined into the Statute:

- Information and documentation,
- Research (with an emphasis on practice related research),
- Policy advice,
- Human rights education,
- International cooperation,
- Supporting dialogue and cooperation of stakeholders in Germany.

The institute does not have a mandate to respond to individual complaints. However, since 2009, the GIHR serves as the National Monitoring Mechanism according to Art. 33.2 of the International Convention on Rights of People with Disabilities. To be able to run this mechanism, it was given additional resources.

### **Organizational structure**

The Statute of the GIHR Association provides for four different bodies, the Board of Directors, the Board of Trustees, the General Assembly, and Advisory Boards. Advisory Boards were never established, the option remains open though. The accountability line among these bodies is as follows:

The Board of Directors is represents the Association judicially and extrajudicially. It conducts the Institute's business and is accountable to the Board of Trustees.

The duties and competences of the Board of Trustees, in summary, are:

- Admission of members and expulsion of a member,
- Appointment and Dismissal of the Board of Directors, supervision of their work,
- Representation of the Association to the Board of Directors,

- Adoption of guidelines for the Institute's work, of medium- and long-term plans, of business, financial, staffing and investment plans, and of the financial statements and the annual report . all documents to be drafted by the Board of Directors,
- Approval of decisions of the Board of Directors on actions of fundamental significance for the institute,
- Issuing of Standing Orders for the Board of Trustees and the Board of Directors,
- Appointment of members of advisory boards set up for specific subjects or projects.

### **Research based human rights training**

The Institute offers trainings and human rights education for the general public as well as specific target groups. In 2004 the Institute established its annual "Autumn Academy", i.e. a one week intensive introduction to the international human rights systems. The Academy is open to all those interested in the topic. The entire teaching staff stems from the Institute which thus uses the opportunity to present some of its basic areas of expertise.

Trainings for the police play an outstanding role among the target group specific programmes. The Institute has been committed to human rights education for the police for more than 5 years. Some of the trainings were jointly organized with police academies or other agencies. In 2007, the Institute published a study on "Human Rights Education for the Police" which is widely used in police academies and training programs. Findings from this study and lessons learned from the trainings conducted were transferred into the Institute's activities with respect to human rights education for the police in third countries (e.g. Iraq).

Human rights trainings are also offered within a special programme financed by "Technical Cooperation Agency" (Gesellschaft für Technische Zusammenarbeit, GTZ), the state-owned agency for development cooperation in Germany. The program aims at the establishment of the human rights-based approach in development cooperation and programming. It started in 2005 and has produced a large number of policy briefs on the human rights-based approach, promising practices or country situations.

Another target group yet are journalists. For them, specific instruments and programs were developed such as workshops, a research tool and a research stipend.

The Board of Trustees is accountable to the General Assembly, formed by the membership of the GIHR Association. The General Assembly has the following duties:

- Issuing of recommendations on principles of the Association's work,
- Deciding on amendments to the statutes,
- Approval of the financial statements and annual report,
- Admission of new members, decisions on appeals against expulsion of members,
- Election of the six additional members of the Board of Trustees,
- Establishment of membership fee rates and due dates for payment,
- Appointment of the treasurer.

The General Assembly meets . as a rule . once a year, the Board of Trustees twice a year and the Board of Directors (constituted collectively by the Director and the Deputy Director) assume full-time positions in the institute and run the daily business.

### **Appointment and composition of the institute's bodies**

The Director and the Deputy Director are appointed by the Board of Trustees, on the basis of public job advertisements. According to the GIHR Statutes, only one of the Directors should be a

lawyer and one of the two positions should be filled by a woman. The appointment is for a period of four years; re-appointment is possible. The Board of Trustees can also dismiss the Director and/or the Deputy Director by a vote of the absolute majority of its members.

According to the Statute, among the 18 positions of the Board of Trustees, eleven are filled by external bodies ex officio. These bodies are the Forum Human Rights, the umbrella association of human rights organisations in Germany (three positions), the Federal Parliament's committee on human rights and humanitarian aid (two positions), the biggest German association for the disabled (one position), and representatives of the funding ministries and the Federal Council of State. Further six members are elected by the General Assembly, representing academia, UN treaty bodies and the media. The term of office for members of the Board of Trustees is four years. They do not receive any remuneration; travel and accommodation expenses for attending Board meetings are reimbursed.

#### **Encouraging ratification and implementation on international standards**

GIHR is of the opinion that encouraging ratification and implementation of international human rights standards naturally belongs to the competences and tasks of a National Human Rights Institute and it acts accordingly. GIHR was heavily involved in the process of ratification of the Convention on the Rights of Persons with Disabilities. Germany signed the Convention in March 2007 and has indicated the intention of ratifying soon (perhaps by the end of 2008). Among the initiatives taken by the Institute are publications on the nature of the convention and its legal implications for Germany, public statements and workshops. The Institute criticized the official German translation of the Convention and pointed to the need of facilitation an active participation of civil society (in particular NGOs of persons with disabilities) in the process of ratification. Civil society organisations and the Ministry of Labour and Social Affairs were the drivers in the process which resulted in the transferring/establishing the National Monitoring Mechanism (Art. 33.2 ICRPD) to or at the GIHR in 2009.

The General Assembly is composed of the nine founding members, three of them again representing the Forum Human Rights, two members of the Federal Parliament's committee on human rights and humanitarian aid, three independent persons with links to international organisations, the academia and the media and one person nominated by the Federal Government. Persons or institutions can become a member provided they have demonstrated long standing and broad human rights commitment. Currently, the GIHR Association has 21 members, among them 18 are natural persons and 3 are legal persons. Members include civil society representatives, retired civil servants who had a key responsibility for human rights within a ministry, and representatives of academia, political parties or the legal profession. The legal persons are NGOs active in the field of human rights. Members do not receive any remuneration or reimbursement of travel and accommodation expenses when attending the General Assembly or any other GIHR event.

The Board of Directors is free to hire its own staff. Vacancies are broadly advertised. The staff of the GIHR covers a range of academic and professional fields. Staff members hold academic degrees in law, philosophy, political science, history, pedagogy, economy, or Islamic sciences, and represent professions such as university teachers, lawyers, librarians, managers, economists, secretaries or journalists. 8 of the positions are established on a permanent basis, all other contracts are time limited, many of them renewable, though. In July 2010, the institute offers around 40 work places, with a perspective of further growth in 2011.

As for the organisational structure of the institute, the two directors divide the supervision of 7 departments among themselves, each department being composed of 3 to 9 team members supervised by a head of department. The institute is based in a central location in the German capital, Berlin, and open to the public. It hosts a specialized library open to the public five days a week and is easily accessible for persons with disabilities.

## Programs

GIHR exercises its mandate

- by holding conferences, expert meetings, and workshops of different formats, including press conferences;
- by issuing publications, ranging in size from short policy papers to comprehensive studies, and training material ;
- by giving political advice and opinions (orally and in writing) to parliamentary committees, ministries, or political bodies etc;
- by organizing seminars, trainings and human rights education for the police, teachers, social workers, NGOs, members of parliament, civil servants and others;
- by offering a public library and a range of (also electronic) library services;
- by hosting a large and informative website.

The average annual output of the institute, always produced according to the priorities set in the strategic plan, is 90 seminars, conferences or workshops, 15 publications, 20 press releases and 30 mid- or high-ranking political interventions.

Over the last years, GIHR has developed its work around nine thematic lines:

- Human Rights Education,
- Strengthening Human Rights Institutions in Europe and Internationally,
- Protection from Discrimination,
- Economic, Social and Cultural Human Rights,
- Human Rights in Security Policy,
- Contemporary Forms of Slavery,
- Human Rights of Refugees and Migrants,
- Human Rights and Development Cooperation,
- National Monitoring Mechanism according to the ICRPD.

The Institute sees itself responsible for commenting on national legislation (and more and more also EU legislation) from a human rights perspective. It issues statements and recommendations addressed both to the general public as well as specific stakeholders. The Institute repeatedly participated in public or non-public hearings of the Federal parliament (or State parliaments) on issues, such as anti-discrimination legislation, asylum regulations, guaranteeing de facto access to health care institutions for irregular migrants, national plans of action concerning human rights, evaluation of human rights infringements following from security legislations, appropriate ways of combating forced marriages, legislation on religious symbols, etc. Given the increasing impact that EU norms have on the national level, GIHR took the initiative to establish a working group of European NHRIs with the purpose of influencing EU legislation.

The research activities of the institute are manifold. Research is the main source of the positions the institute takes on various human rights topics. Studies take any time between three months up to a year of in-depth research, but even policy papers are based on a profound analysis of the matter at hand. However, contrary to university based research, the GIHR does not have the resources to do quantitative research generating primary data, e.g. for statistical purposes. Where good quantitative data are important and available from reliable sources, the GIHR uses those and combines it with innovative human rights analysis.

For the past years, activities of the institution have been coined, in addition, by its active role in the ICC and the European Coordinating Committee of NHRIs: This did not only include substantive input of both directors into activities of the ICC Bureau and the ECC, especially the strategic plans developed on both levels, but also representation of the European Group of NHRIs in the Sub-Committee on Accreditation.

#### 4. Building and developing an NHRI: Conclusions and recommendations

Seven portraits of NHRIs show: While all of the NHRI presented here are capable and strong, each has particular strength and one or the other weakness. To name a few weaknesses, the French Commission only recently was re-established on a legal basis, the German Institute still is only based on a parliament decision. Malaysia, South Korea and Kenya had a problem regarding their (financial) independence. On the other hand, there is much to learn from each of these institutions: There is the impressive overall performance of the South Korean or the Guatemala NHRIs, the strong interaction with the UN system and the research capacity of the French or the German institutions, or the services to a regional human rights structure by the Malaysia commission. The Kenyan commission has a remarkably pluralist composition; the Uganda NHRI is accessible even in more remote parts of the country due to its many regional offices. Each of them may serve as inspiration, and each of them underwent a review by the Sub-Committee on Accreditation, resulting in recommendations for further improvements.

There is no research detailing and analyzing the challenges in the preparation and set-up of an NHRI. While, the short deadline for the production of this study given, the authors did not have the time to undertake any in-depth research on the subject themselves, the authors look back on eight years of conversations with heads of institutions within the ICC, 2 years membership in the Sub-Committee on Accreditation, several public, international debates on the subject of NHRIs, a number of interviews undertaken for this study, and experience in advising NHRIs in the making in neighbouring countries. In addition, the authors draw on the in-depth survey on NHRIs<sup>57</sup>, on the paper *Guidelines for the process of establishing National Institutions in accordance with the Paris Principles* by the Asia Pacific Forum and, last but not least, their knowledge on and experience with the preparations in Germany. The picture resulting from these sources is, as provisional as it may be, rather coherent though.

##### *The establishment of a NHRI is a process*

The foundation of the German Institute for Human Rights was the result of a ten year process. As early as 1991, the German NGOs association Forum Human Rights developed the concept of a human rights institute with a focus on strategic human rights work. Later, they joined forces with some members of the Federal Parliament (the Bundestag) to achieve the establishment of a German NHRI according to the Paris Principles. Supported by human rights experts in several Federal ministries, the advocates of the foundation of the Institute patiently worked to convince all political parties of the necessity of the foundation of the GIHR and eventually achieved the unanimous Bundestag decision of December 7, 2000.

This kind of history can be found in many countries on their way to the foundation of a NHRI. The drivers of such a process are often working from different angles: university institutes may be involved as much as members of parliaments, as NGOs and government departments. Often one or several government departments or one or several political parties consider the foundation of such an institution with some reservation.

Sceptics or opponents of the establishment of an NHRI often refer to

- the well-functioning judicial system in the country,
- the danger of a proliferation of institutions,
- financial constraints in the state budget,
- or the absurdity of a fourth power to be established . a monitoring body supervising legislative, executive and jurisdiction alike.
- 

Those in favour, on the contrary, argue that

---

<sup>57</sup> *Survey on National Human Rights Institutions, Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide, OHCHR, July 2009*

- an NHRI settling complaints in an amicable way cannot possibly double but potentially relieve overburdened judiciaries and facilitate access to justice for citizens and residents;
- a new institution would be a gain in academic and well-founded advice on human rights matters, supporting the government, members of parliament and civil society actors with profound advice on the implementation of international human rights norms, tailor-made to the needs of the individual country in a degree of detail that can never be achieved by a UN treaty body (handling reports and complaints from all UN member states);
- an NHRI observes and provides advice . monitoring does not imply supervision of legislative, executive and jurisdiction powers;<sup>58</sup>
- an NHRI backs the legitimacy of the country as a human rights actor in regional and international bodies;
- an NHRI would take a systematic approach to human rights issues no other institution can offer.

Important is: To a certain extent, the debate needs to take place and should not be suppressed. A sceptic carefully listened to may become a big supporter in the end, and to counter his or her arguments may not only improve the quality of the institution but also enlarge its legitimacy in the country. On the other hands, sceptics may also be challenged with the question which other institutional setting offers comparable impact on the human rights policy and reality in a country.

### ***Stakeholders in the establishment claim ownership in the result***

The involvement of key stakeholders from the judiciary, ministries, civil society, parliament etc is crucial for the legitimacy the institution will gain. Their involvement will also lead to a natural ownership of the respective level: Chances are high that the NHRI may become %their+institution. This has many advantages, in particular a willingness to respect views of the NHRI, to defend the institution in cases of conflict or to forgive beginner's mistakes. As all NHRIs should be based on a law or even the constitution, strong relationships to parliament and establishment by parliament are particularly helpful for the legitimacy.

On a more practical level, the Asia-Pacific Forum of NHRIs recommends the establishment of a Steering Committee of all stakeholders<sup>59</sup>. Such a committee might hold consultations on several aspects of the future institution such as its mandate or the institutional model to be chosen.

### ***Many different models serve as a basis for a strong, fully accredited NHRI***

The models presented in chapter 3 clearly show: There is room for many different models of NHRIs. A systematic study on the reasons behind the choices in individual countries has not yet been undertaken . but in many cases there is an obvious link between the legal or institutional traditions in the country or even the region and the kind of NHRI established. Latin American countries are inclined to adapt an ombudsman model, Northern Europeans tend to be interested in the think tank, and Commonwealth members tend to choose the commission model. All of these, in the end, achieved the establishment of fine institutions doing tremendously important and unique work in their respective countries.

### ***Broad Mandate***

It is interesting to note that very few A-accredited institutions express concern about their mandate which is deemed sufficiently broad . covering civil, political, social, economic and cultural rights - by most NHRI . and the Sub-Committee of Accreditation SCA. Discussion on the mandate, thus, mainly focuses on the protection and promotion components. Complaint mechanisms are, by many, considered the %teeth+of an NHRI and seen as their only means to really intervene in favour

---

<sup>58</sup> The only model that somehow corresponds with this concern is an ombuds institution such the NHRI in Guatemala. But even such a commission only intervenes, as a rule, on request of a complainant.

<sup>59</sup> See annex 3

of disempowered parts of the population. This may be the case in some countries. On the other hand, there is a real danger that complaint mechanisms use all resources and the NHRI neglects its work on legislation, policy etc. Quite a few strong and impressive ombudsman institutions complain themselves about their weaknesses with regard to policy advice to their government or to activities related to UN bodies such as treaty bodies or the Human Rights Council. An interesting solution may be endowment of the NHRI with other more powerful functions such as an amicus curiae role or the power to undertake targeted investigations.

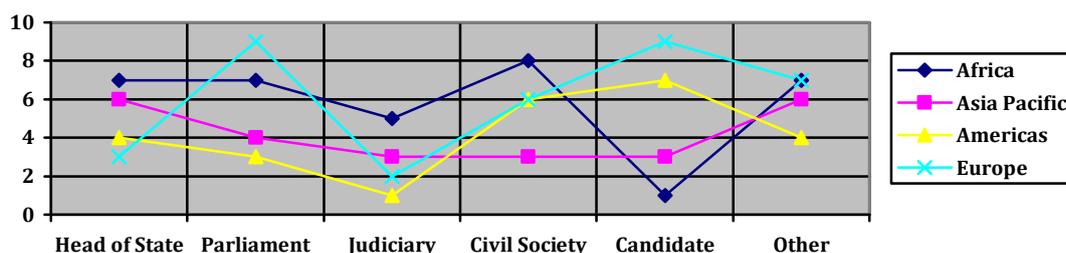
**The accreditation is a supportive process to a continuously improving NHRI**

Once established, an NHRI is not set in stone. The status chart in annex 2 shows that all NHRIs have been through at least one review by the SCA and the ICC, and quite a few have been reviewed several times. Each review ends with a series of recommendations to improve an aspect or several aspects of the institution: The appointment procedure, the budgetary independence, the performance, the degree of consultation with civil society, to name a few. The recommendations can and may be occasionally challenged, but most of them are welcome by the NHRI because they show support and concern for the institution by peers. Regional balance in the SCA significantly contributes to the adequacy of recommendations. Ideally, the achievement of B-Status should serve as incentive to go for A-Status.<sup>60</sup>

**Parliament, government, judiciary, civil society: The nomination process includes multiple actors**

There is no pertinent research on the details of the process and the key actors during the period of establishment of NHRIs. The nature of NHRIs suggests, however, that relations are coined by those bodies that are invited to nominate candidates for the NHRI. The survey amongst NHRIs conducted by the OHCHR in 2009 breaks down the relationship to parliaments and other bodies with regard to the appointment process.<sup>61</sup> The results (see graph 1, below) reveal that parliaments involvement in the nomination and appointment procedures are particularly pronounced among the European NHRIs, but likewise in Africa, whereas in Asia Pacific parliaments play a less prominent role compared to the Head of State and other mechanisms.

**Graph 1: Nomination and appointment process**



A pluralist composition has manifold advantages: It increases the legitimacy of the institution, strengthens the influence and credibility in different sectors of society and compensates the weaknesses of a one-sided composition. Retired judges or diplomats may enormously increase the image and the credibility of an NHRI, and at the same time not be sufficiently knowledgeable in current human rights debates at the UN level or not accessible enough for a n NGO working on economic and social rights.

**Leadership**

<sup>60</sup> Northern Ireland and Russia could serve as examples here. They went from B to A status.

<sup>61</sup> OHCHR, Survey on NHRIs, p. 13.

The image of an NHRI is coined by its leadership. Once key stakeholders managed to get an NHRI established, expectations are high. The recruitment procedure must meet highest standards here. Transparency and accountability in the recruitment process is one aspect, a broad range of qualifications comes into play for a commission with several (or many) members, outstanding leadership and human rights expertise is the requirement for a small leading body or a president, director, or secretary general. Whoever runs the institution has to be an exceptional communicator, given that he or she runs the NHRI, its bodies, and its secretariat, and represents the NHRI in parliament, ministries and civil society, and in the ICC, regional and UN fora.

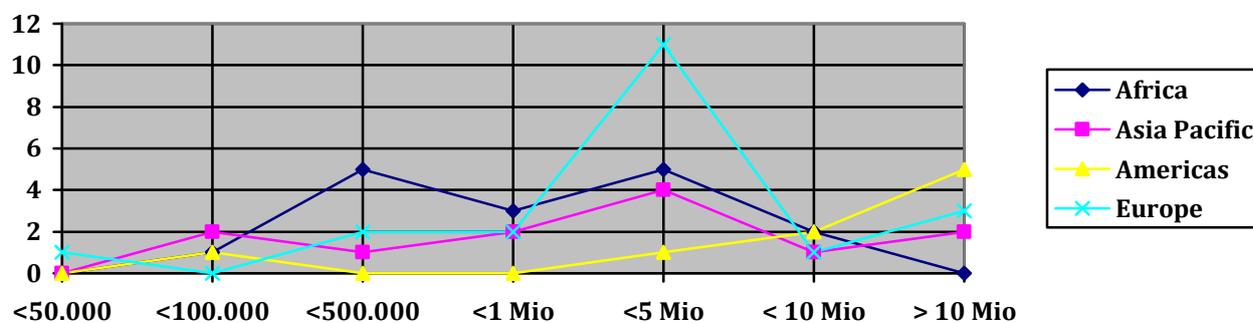
### Professional institution building and management

One of the findings of the Survey on NHRIs undertaken by the OHCHR was the weakness of many NHRIs with regard to organisational structure and effectiveness, with less than 60% of institutions in Asia Pacific and Africa ranking their own institution as effective, and 30% of all institutions ranking their own effectiveness even as moderate or lower. This is a notorious gap in human rights institutions of all kinds. The German Institute for Human Rights was built with a team of leaders with high expertise *and* professional management skills. The Board of Trustees still attributes the institute's early success to this combination. All principles for professional institution building apply to a NHRI as well, and many weaknesses in their bodies, structures and performances could be avoided and prevented if this aspect was taken serious.

### The Budget should allow leeway for important and qualified activities

Budget allocations are very different across NHRIs. In its survey among NHRIs in 2009, the OHCHR<sup>62</sup> brought the following result:

Graph 2: Current Budget of NHRIs in US \$



Almost half of all NHRIs taking part in the survey, considered their budget to be insufficient, a little more than 30% thought it sufficient.<sup>63</sup> Since in most NHRIs, most of the budget is related to staff costs, staff size has considerable budget implications. Among the NHRIs surveyed by the OHCHR, the range of staff was between 2 (one NHRI in Europe) to more than a 1.000 (one in the Americas). Half of all institutions, however, had less than 100 staff. Less than 20% of the institutions surveyed indicated that the staff they had was sufficient.<sup>64</sup>

### No NHRI without qualified staff

<sup>62</sup> OHCHR, *Survey on NHRIs*, p. 17.

<sup>63</sup> OHCHR, *Survey on NHRIs*, p. 17.

<sup>64</sup> OHCHR, *Survey on NHRIs*, p. 19.

Staffing of an NHRI requires qualifications which, seriously, need to be built in a country. The qualification of human rights expertise on academic level, combined with in depth knowledge of the political, social and legal system in any country is rare and may, ultimately, only be built by the NHRI. In addition, a NHRI wants its own staff to behave and present firm but diplomatic, qualified but humble and knowledgeable but comprehensible. Only a highly qualified assessment will lead to the recruitment of such staff, only qualified leaders will be able to build and retain them.

### **Cooperation between AICHR and NHRIs in the region**

As mentioned in chapter 2.3, there is potential for a very fruitful cooperation and co-ordination between the AICHR and NHRIs in the ASEAN countries. The fact that not all countries in the ASEAN region have established an NHRI should not prevent the AICHR to cooperate with those who are there and with stakeholders of future NHRIs.

The cooperation could draw inspiration from other regional bodies' cooperation with NHRIs in their own region as well as from experiences in the cooperation between NHRIs and the UN. Some of these are

- NHRIs in the region could serve as an important source of information for the AICHR.
- NHRIs may serve as a helpful sounding board for new projects on the agenda of the AICHR.
- The AICHR could grow into a role of an important place for exchange of ideas and concepts among NHRIs in the ASEAN region.
- NHRIs in the region as key human rights stakeholders should definitely be involved in one or the other way in the process of formulating the ASEAN Human Rights Declaration.
- AICHR could greatly contribute to its own legitimacy if the commission would engage in a dialogue process involving governments, the legislative, NHRIs and civil society representatives . respecting the different roles of these stakeholders - on human rights topics of interest for the region. This could be an alternative or an additional procedure to conference and dialogue projects only involving NHRIs.

One of the first undertakings of the Commission will be the development of an ASEAN Human Rights Declaration. The development of a regional charter for human rights can be a worthwhile endeavour to set into motion the creation of a regional identity with respect to human rights. However, certain issues should be considered:

- Regional documents should be firmly based in the international conventions ratified by the states in the region and grant more rather than less rights;
- Regional documents are a possibility to ascertain regional identities and priorities . however, they should only be developed if there is a chance that member states also ratify them;<sup>65</sup>
- Given that the opportunity to protect human rights is higher on the national than on the international level, a regional document should preferably contain mechanisms for enforcement (e.g. a regional court).

---

<sup>65</sup> The experience of the OIC Children's Rights Convention of 2004 may be telling here. Open for ratification since 2004, and drafted 14 years after the OIC Cairo Declaration on Human Rights in Islam, only one OIC member state has ratified it, while all OIC members have ratified the CRC.

## Annexes

### Annex 1: The Paris Principles

#### Principles relating to the status of national institutions Competence and responsibilities<sup>66</sup>

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, 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 organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
  - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
  - (g) To 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.

<sup>66</sup> \*Paris Principles defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

## Composition and guarantees of independence and pluralism

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

- (a) 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;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate.

This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

## Methods of operation

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

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) 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 promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

## Additional principles concerning the status of commissions with quasi-judicial 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:

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

**Annex 2: Status Chart of NHRIs June 2010**

See separate enclosure

**Annex 3: Guidelines for the establishment of NHRIs (APF)**

See separate enclosure