

HUMAN RIGHTS COMMISSIONS

INTRODUCTION

This chapter identifies the core elements of human rights commissions through comparative state practice. This chapter also outlines the provisions of the Darfur Peace Agreement related to the establishment and activities of a human rights commission and provides sample language parties may wish to consider when drafting human rights commission provisions in a future agreement.

According to the 1948 Universal Declaration of Human Rights, the promotion and protection of human rights is a key responsibility of governments.¹ Many states establish human rights commissions in recognition of this responsibility to promote and protect human rights. The United Nations defines a national human rights institution as a government institution established under the constitution or by law designed to promote and protect human rights.² In practice, national human rights institutions adopt a variety of forms and functions depending on the national context in which they operate.³ Human rights commissions often complement the efforts of a state's judiciary to protect and promote human rights.

The 2006 Darfur Peace Agreement (DPA) does not itself establish a human rights commission, but mandates that the Human Rights Commission established in the Sudan Interim Constitution, shall enjoy full independence, and “shall monitor the application of the rights and freedoms provided herein.”⁴ The Human Rights Commission established in the Interim National Constitution is responsible for ensuring the protection of human rights established in the Constitution's Bill of rights and receiving complaints of violations of those rights.⁵

¹ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc A/810 (Dec. 12, 1948).

² HUMAN RIGHTS WATCH, PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSION IN AFRICA, 2001, *available at* <http://www.hrw.org/reports/2001/africa/> (last accessed Oct. 2, 2007).

³ Anna-Elina Pohjolainen, THE DANISH INSTITUTE FOR HUMAN RIGHTS, THE EVOLUTION OF NATIONAL HUMAN RIGHTS INSTITUTIONS (2006), *available at* http://www.nhri.net/pdf/Evolution_of_NHRIs.pdf (last accessed Oct. 2, 2007).

⁴ Darfur Peace Agreement, art. 3, para. 41, May 5, 2006, *available at* http://www.unmis.org/english/2006Docs/DPA_ABUJA-5-05-06-withSignatures.pdf (last accessed Sept. 20, 2007).

⁵ SUDANESE INTERIM NATIONAL CONST part 8, art. 142 (2005), *available at* http://www.mpil.de/shared/data/pdf/inc_official_electronic_version.pdf (last accessed Sept. 23, 2007).

CORE ELEMENTS

International Guidelines

International institutions provide principles that guide states in developing national human rights commissions. These principles promote the independent and effective functioning of national human rights commissions.

Paris Principles

In 1992, the UN Commission on Human Rights endorsed a set of internationally recognized principles concerning the status, power, and function of national human rights commissions.⁶ These UN-endorsed principles, now known as the Paris Principles, provided the basic guidelines for the establishment of a state's human rights commission.⁷ The Paris Principles also provided states with model mandates that can be used to define the status and functioning of human rights institutions. The UN General Assembly adopted the Paris Principles in 1993,⁸ and they now represent the primary source of normative standards for establishing national human rights institutions in states worldwide.⁹

Amnesty International Recommendations

The international non-governmental organization, Amnesty International, developed its own set of recommendations based on its observations of the work of

⁶ National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, U.N. Doc. A/RES/48/134 (March 4, 1994), *available at* <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/48/134&Lang=E> (last accessed March 2, 2007).

⁷ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (March 4, 1994), *available at* <http://www.ohchr.org/english/law/parisprinciples.htm> (last accessed Sept. 15, 2007).

⁸ National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 48/134, U.N. Doc. A/RES/48/134 (March 4, 1994).

⁹ OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, *ASSESSING THE EFFECTIVENESS OF HUMAN RIGHTS INSTITUTIONS (2005)*, *available at* http://huachen.org/english/about/publications/docs/nhri_en.pdf (last accessed March 2, 2007); HUMAN RIGHTS WATCH, *PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSION IN AFRICA*, 2001.

national human rights institutions.¹⁰ Amnesty International formulated its recommendations as a supplement to other guidelines such as the Paris Principles.¹¹ Amnesty International's recommendations address ten broad subjects: (1) Independence of the institution; (2) Membership; (3) Mandate and Powers of the institution; (4) Investigations and inquiries; (5) Recommendations and judicial remedies; (6) Human rights education; (7) Modalities of visits to places of detention; (8) Publicity; (9) Accessibility; and (10) Budget.¹²

Independence of the Human Rights Commission

Many states consider the independence and impartiality of a state's human rights commission essential to its successful operation.¹³ To ensure independence for a commission and its members, the Paris Principles provide that "an official act" should codify the appointment of commissioners.¹⁴ Amnesty International's recommendations likewise suggest that a founding charter reflect a commission's independence.¹⁵ Amnesty International further recommends independence from the executive functions of government.¹⁶

States often establish national human rights commissions through national legislation. In most such states, this legislation mandates the institution's

¹⁰ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS (Oct. 1, 2001), *available at* <http://web.amnesty.org/library/index/ENGIOR400072001> (last accessed Mar. 2, 2007).

¹¹ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

¹² AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

¹³ OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, ASSESSING THE EFFECTIVENESS OF HUMAN RIGHTS INSTITUTIONS (2005).

¹⁴ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994).

¹⁵ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

¹⁶ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS. National human rights institutions "must be independent from the executive functions of government and its founding charter should reflect this."

independence and may reference international standards or norms. Other states establish a human rights commission in their constitution. These constitutional provisions typically also provide a strong guarantee for the independence of the commission. Most legislation and constitutional mandates provide for both executive and legislative involvement in the nomination and appointment of commission members to ensure political influences do not co-opt the commission.

India established its National Human Rights Commission in the Protection of Human Rights Act 1993.¹⁷ In New Zealand, the Human Rights Commission Act 1977 established the Human Rights Commission. The legislation empowers the commission to protect human rights in general accordance with United Nations Covenants and Conventions. Similarly, in Malaysia the founding legislation of the human rights commission states that the Paris Principles shall guide the commissions' work,¹⁸ while in Fiji the commission's work is consistent with the Universal Declaration of Human Rights.¹⁹

Establishing a human rights commission in a state's constitution adds legitimacy to the commission's work and a mandate to protect the human rights of all of a state's citizens. In addition, providing for a commission's independence in a constitution means that in most states, only constitutional amendment may alter the existence and independence of the human rights commission.

In Ghana, the Constitution established the Commission on Human Rights and Administrative Justice as an independent body, not "subject to the direction or control of any person or authority."²⁰ The establishment of the commission under the Constitution significantly contributes to the independence and strength of the body. Likewise, the South African Human Rights Commission derives its powers from the state's constitution. The Fiji constitution also establishes the powers and functions of the Human Rights Commission.²¹

¹⁷ Protection of Human Rights Act (India, 1993), *available at* <http://nhrc.nic.in/> (last accessed Mar. 2, 2007).

¹⁸ Human Rights Commission of Malaysia Act (1999), *available at* http://www.suhakam.org.my/en/act_597.asp (last accessed Mar. 2, 2007).

¹⁹ Fiji Human Rights Commission Act pt. II (Membership of the Commission) (1999) part II, *available at* http://www.humanrights.org.fj/about_us/hrc_act_part02.html#08 (last accessed Mar. 2, 2007);

²⁰ GHANA CONST. art. 225 (1996), *available at* http://www.parliament.gh/const_constitution.php (last accessed Oct. 2, 2007).

²¹ FIJI CONST. art. 42 (1970), *available at* <http://www.ccf.org.fj/publications/constitutions/1970/> (last accessed Oct. 2, 2007).

State practice also illustrates that the independence of a human rights commission is largely a function of its separation from the state's executive branch of government. Although a state's executive usually has ultimate authority to appoint members to a state's commission, most states also require some form of legislative involvement – through consultation or nomination – in the appointment of a commission's members.

According to the Fiji Human Rights Commission Act 1999, the president appoints commissioners in consultation with the prime minister.²² In South Africa, the president appoints members of the Commission on the recommendation of the National Assembly. Thus, although the commission members in these states are officially nominally executive appointments, the legislative branch plays a major role in choosing appointees.²³ Likewise, the founding legislation of India's commission requires that a special committee recommend all members of the commission for presidential appointment. This committee includes the Prime Minister, the Speaker of the House, and the leaders of opposition parties in the legislature.²⁴

Functions and Powers of the Human Rights Commission

The United Nations defines a national human rights institution as a government body established under the constitution or by law that promotes and protects human rights.²⁵ In practice, national human rights institutions adopt a variety of forms and functions depending on the national context in which they operate.²⁶ State practice demonstrates that human rights commissions often complement the efforts of a state's judiciary to protect and promote human rights.

Mandate of a Human Rights Commission

²² Fiji Human Rights Commission Act (1999) pt. II (Membership of the Commission) (1999).

²³ Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. 2000, available at <http://www.law.harvard.edu/students/orgs/hrj/iss13/reif.shtml#Heading545> (last accessed Oct. 2, 2007).

²⁴ Protection of Human Rights Act, art. 4 (India, 1993).

²⁵ HUMAN RIGHTS WATCH, PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSION IN AFRICA, 2001.

²⁶ Anna-Elina Pohjola, THE DANISH INSTITUTE FOR HUMAN RIGHTS, THE EVOLUTION OF NATIONAL HUMAN RIGHTS INSTITUTIONS (2006).

State practice illustrates that a human rights commission with an extensive and specific mandate has more tools and greater authority to ensure the protection of rights, effectively redress violations, and complement similar judicial efforts. International recommendations and norms support this linkage between commissions' mandates and effectiveness.

The Paris Principles recommend that a national human rights institution have "as broad a mandate as possible."²⁷ The principles suggest that human rights institutions undertake various activities related to human rights monitoring, advice, education, and awareness raising. In addition to these "minimum tasks," the Paris Principles propose that human rights institutions also investigate and settle human rights complaints.²⁸

Amnesty International also recommends that national human rights commissions receive a broad mandate. Amnesty International proposes that a state not define a mandate solely in terms of the human rights specifically provided for in a state's constitution. Rather, according to Amnesty International, a human rights commission should base its definitions of human rights on international human rights instruments and standards, even if the state has not ratified the relevant treaties.²⁹

Many states grant broad mandates to their human rights commissions and specify mechanisms to fulfill these mandates. Such mechanisms include actively investigating and redressing human rights violations; disseminating information to government and private entities, as well as individual citizens; and advisory powers related to legislation; and authority to examine practices within detention centers or prisons.

South Africa's human rights commission, one of the most respected, has wide-ranging powers, including the power to investigate and report on the observance of human rights, to secure appropriate redress in the event of a human

²⁷ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994).

²⁸ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994).

²⁹ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

rights violation, to carry out research, and to educate the population.³⁰ Each year, the South African commission requires relevant state agencies to provide information on measures taken to protect and promote the rights under the state's Bill of Rights.³¹ These rights include provisions related to housing, health care, food, water, social security, education, and the environment.³² Additionally, the South African commission maintains jurisdiction over human rights matters in both the public and private sectors.³³

Malaysia and Ghana are two of many states that empower their human rights commissions with a number of complementary powers to enhance the ability to identify and address violations. Ghana accomplishes this through a broad grant of authority. The commission's broad mandate includes the ability to investigate a wide range of complaints including alleged human rights violations, other forms of injustice, corruption, abuse of power, and unfair treatment of any person by a government official.³⁴

While a broad mandate such as in Ghana is helpful, it is also important to define the specific issues over which a commission has powers, as is done in Malaysia. The Human Rights Commission of Malaysia Act 1999 provides the national commission with powers to advise the Government and the relevant authorities of complaints against these entities, and to recommend appropriate remedial measures.³⁵ The commission may also undertake research by conducting programs and workshops, and disseminate and distribute results of such.³⁶ Furthermore, the commission may visit detention centers, make recommendations concerning these centers, and issue public statements on general issues of human rights when necessary.³⁷

³⁰ SOUTH AFRICAN HUMAN RIGHTS COMMISSION, ABOUT THE SAHRC: FUNCTIONS, *available at* http://www.sahrc.org.za/sahrc/cms/publish/cat_index_36.shtml (last accessed March 2, 2007).

³¹ SOUTH AFRICAN HUMAN RIGHTS COMMISSION, ABOUT THE SAHRC: FUNCTIONS.

³² SOUTH AFRICAN HUMAN RIGHTS COMMISSION, ABOUT THE SAHRC: FUNCTIONS.

³³ Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS J. 2000.

³⁴ HUMAN RIGHTS WATCH, PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSION IN AFRICA, 2001.

³⁵ Human Rights Commission of Malaysia Act (1999), Act 597, pt. II, art. 4, *available at* http://www.suhakam.org.my/en/act_597.asp (last accessed March 2, 2007).

³⁶ Human Rights Commission of Malaysia Act (1999), Act 597, pt. II, art. 4.

³⁷ Human Rights Commission of Malaysia Act (1999), Act 597, pt. II, art. 4.

Powers of Investigation

International standards focus on the breadth and specificity of a commission's investigative authority. The Paris Principles suggest that a human rights commission have a wide range of investigative powers to promote effectiveness.³⁸ Amnesty International recommends precisely defined powers for national human rights institutions to investigate situations and follow up on alleged human rights violations on its own initiative.³⁹ States generally endow their human rights commissions with investigative powers. While some human rights commissions have broad investigatory powers, these powers are often somewhat limited with regard to ongoing judicial procedures.

Many states allow their human rights commissions to begin an investigation on both the commission's own initiative and because of a complaint. According to its founding legislation, the Malaysian Commission may, on its own initiative or on a complaint made to it by an aggrieved person or group of persons, inquire into allegation of human rights violations.⁴⁰ Similarly, the Zambian human rights commission has a mandate to investigate alleged violations and can investigate any allegation of rights abuses on its own initiative or on receipt of a complaint.⁴¹

In addition to investigating allegations of human rights abuses, some commissions have the authority to investigate alleged violations of related but separate rights. Fiji's human rights commission investigates claims of unfair discrimination as well as allegations of human rights abuses. Similar to its Malaysian and Zambian counterparts, the Fiji commission may investigate such allegations of its own initiative or on complaint by individuals, groups, or institutions.⁴²

³⁸ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (March 4, 1994).

³⁹ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

⁴⁰ Human Rights Commission of Malaysia Act (1999), Act 597, pt. III, art. 12.

⁴¹ HUMAN RIGHTS WATCH, PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSION IN AFRICA, 2001.

⁴² Fiji Human Rights Commission Act (1999) pt. II (Powers and Duties of the Commission) (1999).

Some states' human rights commissions may also utilize the resources of other governmental agencies or access government documents to assist in the commissions' investigations. In India, for instance, the human rights commission may utilize the services of any officer or investigation agency of the central government or a provincial government for the purposes of its investigation.⁴³ Mongolia's commission has relatively broad investigatory powers and may access the confidential information of the state, an organization, or individual in accordance with procedure established by the relevant law.⁴⁴

Some states, including Uganda and Fiji, limit the investigatory powers of their commissions on certain matters. Uganda's human rights commission cannot investigate a matter pending before a court or judicial tribunal, or a matter involving relations between the Government of Uganda and another state or international organization.⁴⁵ Fiji's commission may not investigate any decision pending before a court of law.⁴⁶

Powers to Compel Attendance of Witnesses and Production of Evidence

Amnesty International recommends that states legally oblige their officials to cooperate with a human rights commission investigation, and suggests that a commission have full powers to compel the attendance of witnesses.⁴⁷ Some states impose sanctions on those who obstruct or interfere with the work of the national human rights commission through government agencies.⁴⁸ A review of state practice reveals, however, that many states endow their commissions with powers to compel parties to produce evidence.

⁴³ Protection of Human Rights Act (India, 1993) ch. III, art. 14.1 (India, 1993).

⁴⁴ The National Human Rights Commission of Mongolia Act (2000), ch. IV, art. 16.1.8, (2000), available at http://www.hurights.or.jp/database/E/nhri_law/mongolia.html, (last accessed Sep. 20, 2007).

⁴⁵ UGANDA HUMAN RIGHTS COMMISSION WEBSITE, ABOUT UHRC, available at <http://www.uhrc.org/aboutus.php> (last accessed Oct. 2, 2007).

⁴⁶ Fiji Human Rights Commission Act (1999) pt. II (Powers and Duties of the Commission) (1999).

⁴⁷ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

⁴⁸ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

Some commissions may issue subpoenas and initiate judicial proceedings for non-cooperation. The Ghana commission has strong enforcement powers, including the power to issue subpoenas for witnesses and other relevant information or evidence. The Ghana commission also has the ability to prosecute a person in contempt of a subpoena in court.⁴⁹

Similarly, in states such as Ireland and South Africa, human rights commissions have powers to compel the production of evidence, including the power to procure and receive all evidence, and to summon any person to the commission.⁵⁰ In Ireland, the commission may petition the state's circuit court if an individual fails to produce the required evidence.⁵¹ The Malaysian Human Rights Commission may procure and receive all evidence, written or oral, and examine all such persons as witnesses, as the commission thinks necessary.⁵² The Mongolia commission may obtain, without specific authorization or permission from a separate government entity, any necessary evidence, official documents, or information from any organization or governmental official.⁵³

Powers of Mediation, Conciliation, or Negotiation

International standards endorse the use of mediation and conciliation by human rights commissions, although within specific limits. The Paris Principles state that the functions of a commission may include mediation and conciliation to resolve human rights-related disputes as long as they do not prejudice other powers of the commission.⁵⁴ Likewise, Amnesty International cautions against extra-

49 Sam K. Asibuo, AFRICAN TRAINING AND RESEARCH CENTRE IN ADMINISTRATION AND RESEARCH, *THE ROLE OF THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ) IN PROMOTING PUBLIC SERVICE ACCOUNTABILITY UNDER GHANA'S FOURTH REPUBLIC*, AFRICAN TRAINING AND RESEARCH CENTRE IN ADMINISTRATION AND RESEARCH, available at <http://unpan1.un.org/intradoc/groups/public/documents/CAFRAD/UNPAN017693.pdf> (last accessed Oct. 2, 2007).

⁵⁰ Irish Human Rights Commission Act (2000) art. 9 (2000), available at http://www.ihrc.ie/_fileupload/publications/Human-Rights-Commission-Act-2000-English.pdf (last accessed Oct. 2, 2007); *South Africa Human Rights Commission Act 1994*, available at http://www.sahrc.org.za/human_rights_act.pdf (last accessed Oct. 2, 2007).

⁵¹ Irish Human Rights Commission Act, art. 9 (2000).

⁵² Human Rights Commission of Malaysia Act, Act 597 (1999) part., pt. III, art. 14 (1999).

⁵³ The National Human Rights Commission of Mongolia Act (2000) ch. IV, art. 16.1.4 (2000).

⁵⁴ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994). Additional principles concerning the status of commissions with quasi-judicial competence state that "without

judicial resolution of a complaint by the human rights institution hampering prosecutions for crimes under international law, such as torture, war crimes, or crimes against humanity.⁵⁵

Although most national human rights commissions can encourage parties to resolve a matter, many also have the authority to use other means to try to reach an amicable settlement.⁵⁶ These methods include mediation and conciliation processes and public hearings. As a last recourse, most states' commissions have the right to refer the case to the judiciary, and some have the right to bring a court action.

Legislation often includes a provision that specifically addresses the use of mediation and conciliation. The legislation establishing the South African commission includes a specific provision on mediation and conciliation.⁵⁷ The legislation provides for resolution of complaints through negotiation, mediation, or conciliation. Similarly, the Fiji Human Rights Commission Act 1999⁵⁸ and the National Human Rights Commission of Mongolia Act provide that the respective states' commissions can resolve complaints through conciliation.⁵⁹

State practice illustrates that a number of states also allow human rights commissions to resort to litigation to address a violation of rights. The South African commission may bring a court action in its own name or on behalf of a victimized person, group, or class of persons.⁶⁰ Likewise, the commission in Fiji

prejudice to the principles concerning the other powers of the commission, the functions of the Commission may include, 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.” South Africa Human Rights Commission Act (1994) art. 8.

⁵⁵ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

⁵⁶ Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. 2000.

⁵⁷ South Africa Human Rights Commission Act (1994) art. 8.

⁵⁸ Fiji Human Rights Commission Act (1999) pt. II (Powers and Duties of the Commission) (1999).

⁵⁹ The National Human Rights Commission of Mongolia Act (2000) art. 17.1.4. (2000).

⁶⁰ South Africa Human Rights Commission Act (1994) art. 7.1.

may resolve complaints by conciliation or refer unresolved complaints to the courts for decision.⁶¹

Structure of the Commission

The structure of states' human rights commissions vary based on the specific powers of the respective commission and the unique political, historical, cultural, and economic environment of each state.

Number of Members

International standards regarding the membership of human rights commissions focus on the breadth and diversity of members, especially for states whose citizenry includes members from a variety of religious, ethnic, cultural, or political groups. For instance, in his 2004 report, the UN High Commissioner for Human Rights recommended that a Commission operating in a large and diverse state have between seven and eleven members.⁶²

State practice illustrates human rights commissions vary in size from state to state. Some states have larger commissions or may include options to increase the number of commission members. For instance, the Irish Human Rights Commission has 15 members.⁶³ In Malaysia, the Human Rights Commission of Malaysia Act 1999 allows for the appointment of up to 20 members.⁶⁴ The Malaysian Human Rights Commission initially had thirteen commissioners and now has seventeen commissioners.⁶⁵

⁶¹ Fiji Human Rights Commission Act (1999) pt. II (Powers and Duties of the Commission) (1999).

⁶² THE HIGH COMMISSIONER FOR HUMAN RIGHTS, REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS, THE PRESENT SITUATION OF HUMAN RIGHTS IN IRAQ, U.N. Doc. E/CN.4/2005/4 (Jun. 9, June 2004), *available at* <http://www.unhchr.ch/html/hchr/docs/iraq1.doc> (last accessed Oct. 2, 2007). This reference, made with regards to the importance of establishing a human rights commission in Iraq, noted that a commission operating in a large and diverse country like Iraq would ideally have between seven and eleven members.”

⁶³ IRISH HUMAN RIGHTS COMMISSION WEBSITE, COMMISSIONERS, *available at* http://www.ihrc.ie/about_us/commissioners.asp (last accessed Oct. 2, 2007).

⁶⁴ Human Rights Commission of Malaysia Act (1999), Act 597, pt. II, art. 5 (1999).

⁶⁵ HUMAN RIGHTS COMMISSION OF MALAYSIA WEBSITE, COMMISSION MEMBERS, *available at* http://www.suhakam.org.my/en/about_com_member.asp (last accessed Oct. 2, 2007).

In other states, such as India, the number of members is more limited. According to the India Human Rights Act 1993, the human rights commission consists of four members, one Chairperson, and a Secretary-General.⁶⁶ The National Human Rights Commission of Nepal is also relatively small. The Nepalese and Ugandan commissions consist of four members and one chairperson.⁶⁷

Appointment of Members

Amnesty International suggests that the commission's founding legislation clearly articulate the selection and appointment process for commission members and staff. Both the Paris Principles and Amnesty International recommend that the executive branch of government not have exclusive authority over the appointment procedures, and Amnesty International suggests that the appointment process involve representatives of civil society.

State practice reveals most commissions' founding legislation provides procedures for appointing the members of a human rights commission. Many states' legislation requires that the legislative branch advise the executive on the appointment of membership. For instance, the founding legislation of India's commission requires that the President appoint all members of the commission on the recommendation of a legislative committee.⁶⁸

Alternately, a state's President and Prime Minister may coordinate on the nomination and appointment of members. According to the Human Rights Commission of Malaysia Act, the Malay king appoints members of the Human Rights Commission on the recommendation of the Prime Minister.⁶⁹ The king also designates one of the members as Chairman of the commission and the members of the commission elect the Vice-Chairman.⁷⁰ Likewise, the President of Fiji

⁶⁶ The Protection of Human Rights Act (India, 1993), sec. 3, art. 2.

⁶⁷ NATIONAL HUMAN RIGHTS COMMISSION, NEPAL WEBSITE, NHRC: ABOUT US, *available at* http://www.nhrenepal.org/about_us.php (last accessed Mar. 2, 2007); Uganda Human Rights Commission Act (1997) art. 3(2), *available at* <http://www.uhrc.org/legal%20instruments/%5B1014103146%5DUHRC%20ACT%201997.pdf> (last accessed Oct. 2, 2007).

⁶⁸ Protection of Human Rights Act (India, 1993) ch. II, art. 4.1. (India, 1993).

⁶⁹ Human Rights Commission of Malaysia Act (1999) pt. II, art. 5(2) (1999).

⁷⁰ Human Rights Commission of Malaysia Act (1999) pt. II, arts. 6(1) and 6(3) (1999).

appoints commissioners to the state's commission in consultation with the prime minister.⁷¹

Qualification of Members

International recommendations about the qualifications of members focus on diversity and practical expertise in the fields of human rights protection and prevention. The Paris Principles provide that a procedure ensuring the representation of a wide cross-section of civil society should establish the appointment of commission members, whether by election or otherwise.⁷² Amnesty International recommends that states choose commission members based on proven expertise, knowledge, and experience in the promotion and protection of human rights.⁷³

The founding legislation of many human rights commissions stipulate qualifications for the appointment of members. For instance, according to the Irish Human Rights Commission Act 2000, the government cannot appoint a person to the human rights commission unless that person possesses relevant experience, qualifications, training, or expertise, to fulfill the functions of the Commission.⁷⁴ The National Human Rights Commission of Mongolia Act requires that a commissioner be a Mongolian citizen of high legal and political qualification, have appropriate knowledge and experience in human rights, have no criminal record, and be at least 35 years old.⁷⁵

Other states, such as Fiji, place conditions on the appointment of commissioners. According to Fiji's Human Rights Commission Act, individuals who at the time of their appointment actively engage in politics or in the management of a private for-profit enterprise are not qualified to become commissioners.⁷⁶

⁷¹ Fiji Human Rights Commission Act (1999) pt. II. (Membership of the Commission) (1999).

⁷² Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994).

⁷³ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS.

⁷⁴ Irish Human Rights Commission Act (2000) art. 5.

⁷⁵ The National Human Rights Commission of Mongolia Act (2000) ch. 2, art. 4.1 (2000).

⁷⁶ Fiji Human Rights Commission Act (1999) pt. II (Conditions of Appointment) (1999).

Diversity of Members

International standards also support broad diversity among commission members and representation of minority groups. The Paris Principles encourage the selection of commission members with high status and integrity, appropriate human rights expertise, and be representative of the diversity of the society. The Principles provide that human rights commissions reflect in its composition a wide cross-section of the state, drawing all elements of the population into the decision-making process.⁷⁷

Amnesty International recommends that members and staff should include representation of all sections of society, including women, ethnic minorities, and people with disabilities, and who “would have particular relevant experience of the needs of those sectors of society.”⁷⁸

State practice reveals that states with mixed ethnic, religious, or racial compositions require their respective human rights commissions to represent all sectors of society. For instance, Malaysia requires that “members of the Commission shall be appointed from amongst prominent personalities including those from various religious and racial backgrounds.”⁷⁹ Other states require adequate representation of women on their commissions. The Irish Human Rights Commission Act requires that not less than four of the Commission members be female and not less than four shall be male.⁸⁰

Term of Office

⁷⁷ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994).

⁷⁸ AMNESTY INTERNATIONAL, NATIONAL HUMAN RIGHTS INSTITUTIONS: AMNESTY INTERNATIONAL'S RECOMMENDATIONS FOR EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS. “The [National Human Rights Institution (] NHRI) members and staff should as far as possible include representation of all sections of society, including women, ethnic minorities, and people with disabilities, who may be under-represented in other official bodies and would have particular relevant experience of the needs of those sectors of society. Non-nationals should not be deterred or specifically prohibited from taking up a post at the NHRI.”

⁷⁹ Human Rights Commission of Malaysia Act (1999) pt. II, art. 5(2).) (1999).

⁸⁰ Irish Human Rights Commission Act (2000), *available at* http://www.ihrcc.ie/_fileupload/publications/Human-Rights-Commission-Act-2000-English.pdf (last accessed Oct. 2, 2007).

The Paris Principles recommend that an official act establish the specific duration of the members' mandate, and permit its renewal upon assuring the maintenance of the institution's pluralism. A review of state practice reveals that states typically grant commissioners renewable appointments. These cases, however, are generally limited to a single reappointment.

The Irish Human Rights Commission Act provides that members of the commission are eligible for reappointment for a second term not to exceed five years. Commissioners in Mongolia are eligible for a single reappointment following their six-year term.⁸¹ While India permits a single five-year reappointment, a commissioner is ineligible for a second term if he has turned 70 years old while in office.⁸² Other states, such as Mongolia, allow unlimited reappointment of members. Members of Malaysia's commission hold office for a period of two years and are eligible for reappointment.⁸³

Commission Vacancies

States often prescribe the situations that can lead to a vacancy on the commission and resulting procedures for filling the vacancy. Malaysia's Human Rights Commission Act, for instance, stipulates that the office of a member becomes vacant upon (1) the death of the member; (2) the resignation of the member; (3) the expiration of his term of office; or (4) the member's removal from office on any of the grounds that the enabling legislation specifies.⁸⁴ South Africa's Human Rights Commission Act provides that a "vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission; and [shall] be filled as soon as practicable."⁸⁵

The legislation may also provide specific procedures for the vacancy of a commission's Chairman. This may ensure continuity in the administration and functioning of a commission. India's National Human Rights Act provides that in the event of a vacancy in the office of the Chairperson of the commission, the President may authorize one of the members to act as the Chairperson until the appointment of a new Chairperson.⁸⁶

⁸¹ The National Human Rights Commission of Mongolia Act (2000) ch. 2, arts. 6.1 and 6.3.

⁸² Protection of Human Rights Act (India, 1993) ch. III, art. 6.2..

⁸³ Human Rights Commission of Malaysia Act (1999) pt. II, art. 5.4.

⁸⁴ Human Rights Commission of Malaysia Act (1999) pt. II, art. 9.

⁸⁵ South Africa Human Rights Commission Act (1994) art. 11.2.

⁸⁶ Protection of Human Rights Act (India, 1993) ch. III, art. 7.1.

Removal Procedures

States may define procedures for the removal of members of a human rights commission, and procedures to ensure the reasons for removal are legitimate. Establishing specific removal procedures can help protect the independence and transparency of the commission. This codification ensures that commission members cannot be removed from office without due cause.

Some states limit the government entity or office that has the authority to remove a member of the human rights commission. In South Africa, the national legislature must approve the removal of commissioners from the human rights commission by a large majority.⁸⁷

Other states specify the reasons for which they can remove a member from the commission. For instance, the removal of a member of the Irish human rights commission may only occur if he is unfit to hold office because of offensive or criminal behavior or if found unfit to perform his duties.⁸⁸ The Human Rights Commission of Malaysia Act also outlines a specific removal process.⁸⁹ A majority vote of the Council of Representative must confirm a commissioner's proposed removal.⁹⁰

Some states have implemented procedures to protect members of their respective human rights commission from unfounded removal. Mongolia requires legislative review for a period of fourteen days of any proposed removal of a commissioner based on ineligibility to continue his term.⁹¹ Following this time,

⁸⁷ South Africa Human Rights Commission Act (1994) art. 3(1)(b).

⁸⁸ Irish Human Rights Commission Act (2000) art. 5.7.

⁸⁹ Human Rights Commission of Malaysia Act (1999) part II, art.10. The Malaysian President may remove a commissioner if the commissioner (1) is determined to be insolvent by a court; (2) is diagnosed to be mentally or physically incapable of fulfilling the duties of his office; (3) has missed three consecutive meetings of the Commission without obtaining leave from the Commission. The president, on the recommendation of the prime minister, may also remove a commissioner if the president believes that the commissioner "(1) has engaged in any paid office or employment which conflicts with his duties as a member of the Commission; (2) has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or (3) has acted in contravention of the Human Rights Commission of Malaysia Act and in conflict with his duties as a member of the Commission."

⁹⁰ Human Rights Commission of Malaysia Act (1999) pt. II, art. 10 (1999).

⁹¹ The National Human Rights Commission of Mongolia Act (2000) ch. 2, art. 8.2 (2000).

the legislature must either restore the commissioner's powers or dismiss him from office.⁹²

Funding and Reporting of Commission

Funding

International recommendations regarding funding national human rights commissions focus on providing adequate financial resources and ensuring a commission's independence. According to the Paris Principles, a Human Rights Commission shall be funded so as "to enable it to have its own staff and premises, in order to be independent of government and not be subject to financial control which might affect its independence."⁹³ It can also be important to establish a commission's funding in national legislation so that only legislative action may remove or reduce funding.

In some states, such as Malaysia and Fiji, the commissions can receive funding from both the government and other parties. The Fiji Human Rights Commission receives monetary support from Parliamentary-appropriated funds.⁹⁴ In addition, the Fiji commission may also receive support from "all other moneys lawfully received by the commission for its purposes."⁹⁵

The Malaysian commission's ability to receive funds is subject to limitations to protect the commission's independence. Malaysia requires that the commission receive adequate funding to function effectively. The Government is to provide the commission with the necessary funding, and the commission cannot receive funds from foreign sources.⁹⁶ Nevertheless, the commission may receive funds unconditionally from any individual or organization that is solely for promoting human rights awareness and education.⁹⁷

Review of a commission's funding sources can be important for increasing transparency and reducing potential allegations of bias. While financial support

⁹² The National Human Rights Commission of Mongolia Act (2000) ch. 2, art. 8.2.

⁹³ Principles Relating to the Status of National Institutions, (The Paris Principles), G.A. Res. 48/134, Annex, U.N. Doc. A/RES/48/134/Annex (Mar. 4, 1994).

⁹⁴ Fiji Human Rights Commission Act (1999) pt. II (Funds of the Commission).

⁹⁵ Fiji Human Rights Commission Act (1999) part II. pt. II (Funds of the Commission).

⁹⁶ Human Rights Commission of Malaysia Act (1999) pt. V, art. 19.

⁹⁷ Human Rights Commission of Malaysia Act (1999) pt. V, art. 19.

for the Fiji Human Rights Commission may potentially come from any source, legislation also requires the Auditor General to review the accounts of the commission.⁹⁸ Similarly, according to the National Human Rights Commission of Mongolia Act, the state budget finances the Mongolia commission's expenses.⁹⁹ Accordingly, the legislature approves and monitors the budget of the commission.¹⁰⁰

Reporting Requirements

Many states require human rights commissions to report to the state's legislature. These reports take various forms including annual reports, research findings, and recommendations. This accountability can help to ensure the independence of the commission by reducing the ability of a commission to serve the interests of only one group or political party.

The Irish Human Rights Commission is required to prepare and submit an annual report on its activities to the Minister for Justice, Equality, and Law Reform, and to the legislature. The Malaysian commission is likewise required to submit an annual report to the Malay Parliament concerning all its activities. The commission may also prepare and submit other special reports concerning human rights matters it deems pertinent.¹⁰¹ South Africa requires its commission to submit quarterly reports to the President and Parliament.¹⁰² The purpose of these reports is to submit the findings, conclusions, activities, and recommendations of the Commission.¹⁰³ India also requires its commission to submit an annual report to the central government and to any relevant state government implicated in the report.¹⁰⁴ The Indian commission may also submit a report at any time to the central government on important matters.¹⁰⁵

DARFUR PEACE AGREEMENT

⁹⁸ Fiji Human Rights Commission Act (1999) pt. II. (Funds of the Commission).

⁹⁹ The National Human Rights Commission of Mongolia Act (2000) ch. 5, art. 22.1.

¹⁰⁰ The National Human Rights Commission of Mongolia Act (2000) ch. 5, art. 22.2.

¹⁰¹ Human Rights Commission of Malaysia Act (1999) pt. V, art. 21.

¹⁰² South Africa Human Rights Commission Act (1994) art. 14.2.

¹⁰³ South Africa Human Rights Commission Act (1994) art. 14.2.

¹⁰⁴ Protection of Human Rights Act (India, 1993) ch. IV, art. 20.1.

¹⁰⁵ Protection of Human Rights Act (India, 1993) ch. IV, art. 20.1.

The Darfur Peace Agreement (DPA) mandates that the Human Rights Commission established in the Sudan Interim Constitution, shall enjoy full independence, and “shall monitor the application of the rights and freedoms provided herein.”¹⁰⁶ The Interim National Constitution provides that the President, in consultation with the Presidency, shall establish “an independent Human Rights Commission consisting of fifteen independent, competent, non-partisan and impartial members. Their appointment shall be representative. It shall be independent in decision-making.” The Commission shall “monitor the application of the rights and freedoms provided for in the Bill of Rights and shall receive complaints on violations thereof.”¹⁰⁷

SAMPLE LANGUAGE

Article XXX

Guarantees of Independence and Pluralism

- (1) The composition of the Human Rights Commission and the appointment of its members shall be established in accordance with a procedure which affords all necessary guarantees to ensure pluralist representation, 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;
 - (b) Trends in philosophical or religious thought;
 - (c) Universities and qualified experts;
 - (d) The national legislature;
 - (e) Government departments [if these are included, their representatives may be granted an advisory capacity].

- (2) To ensure a stable mandate for the members of the Human Rights Commission, 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, if the pluralism of the Commission’s membership is ensured.¹⁰⁸

¹⁰⁶ Darfur Peace Agreement, art. 3, para. 41.

¹⁰⁷ SUDANESE INTERIM NATIONAL CONST. part 8, art. 142.

¹⁰⁸ This language is from the United Nations Principles Relating to the Status of National Institutions, The Paris Principles; Human Rights Commission Act (Nepal, 1997)), Preamble.

OR

Article XXX

Governing Principles on Independence

- (1) The Human Rights Commission is independent and subject only to the Constitution and the law, and it must be impartial and it must exercise its powers and perform its functions without fear, favor, or prejudice.
- (2) Other organs of state, through legislative and other measures, must assist and protect the Human Rights Commission to ensure its independence, impartiality, dignity, and effectiveness.
- (3) No person or organ of state may interfere with the functioning of the Human Rights Commission.
- (4) The Human Rights Commission is accountable to the national legislature, and must report on its activities and the performance of its functions to the national legislature at least once a year.¹⁰⁹

Article XXX

Competence and Responsibilities

- (1) The Human Rights Commission shall be vested with competence to promote and protect human rights.¹¹⁰
- (2) The Human Rights Commission shall have a broad mandate to:
 - (a) Promote respect for human rights and a culture of human rights;
 - (b) Promote the protection, development and attainment of human rights; and
 - (c) Monitor and assess the observance of human rights in Sudan.¹¹¹

The guarantee of independence is reflected in the Darfur Peace Agreement and the Interim National Constitution of Sudan.

¹⁰⁹ This language is drawn from the SOUTH AFRICA CONST. sec. 181 (1996).

¹¹⁰ This language is from the United Nations Principles Relating to the Status of National Institutions. *See also*; Human Rights Commission Act, (Nepal, 1997), Preamble.

¹¹¹ This language is from the SOUTH AFRICA CONST. sec. 184 (1) (1996).

- (3) The Human Rights Commission shall have the following responsibilities:
- (a) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which Sudan is a party, and their effective implementation;
 - (b) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (c) To contribute to the reports that States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to treaty obligations;
 - (d) 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 is competent in the areas of the protection and promotion of human rights;
 - (e) To assist in the formulation of programs for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - (f) 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.¹¹²
- (4) The Human Rights Commission has the additional powers and functions prescribed by national legislation.¹¹³

OR

- (4) The Human Rights Commission may also carry out such activities, as it may deem necessary and appropriate for the enforcement, promotion, and protection of human rights.¹¹⁴

Article XXX

Powers of Investigation, Powers to Compel Attendance of Witnesses and Production of Evidence

¹¹² This language is from the United Nations Principles Relating to the Status of National Institutions; Human Rights Commission Act (Nepal, 1997), ch. 3, art. 9, para. 2(i)

¹¹³ This language is from the SOUTH AFRICA CONST. sec. 184 (4) (1996).

¹¹⁴ This language is drawn from the Human Rights Commission Act (Nepal, 1997), ch. 3, art. 9, para. 2(m).

The Human Rights Commission may require relevant state authorities to provide the Commission with information on the measures that they have taken towards the realization of the rights concerning housing, health care, food, water, social security, education, and the environment.¹¹⁵

OR

The Human Rights Commission shall, while inquiring into complaints or reports within its jurisdiction have the same powers as a court may have under the prevailing laws of Sudan in respect of the following matters:

- (a) Requiring any person to appear before the Commission;
- (b) Summoning witnesses and examining them;
- (c) Ordering the production of any document;
- (d) Requesting any document or copy thereof from any government or public office or the court;
- (e) Examining evidence;
- (f) Carrying on or causing to be done an on-the-spot inspection, ordering the production of any physical evidence;¹¹⁶
- (g) Any other matter that may be prescribed.¹¹⁷

Article XXX

Powers of Mediation, Conciliation, or Negotiation

The Human Rights Commission may, by mediation, conciliation, or negotiation endeavor:

- (a) To resolve any dispute; or
- (b) To rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right.

OR

Commissioners shall exercise the following with respect to making a decision on complaints:

¹¹⁵ This language is from the SOUTH AFRICA CONST. sec. 184 (3) (1996).

¹¹⁶ This language is drawn from the Human Rights Commission Act (Nepal, 1997), ch. 3, art. 11, para. 1.

¹¹⁷ This language is from the National Human Rights Commission Act (India, 1993), ch. 3, art. 13, para. 1.

- (a) [A list of the powers and responsibilities enumerated in the Human Rights Commission mandate above]; and
- (b) To decide the issues by way of conciliation of the parties.¹¹⁸

Article XXX

Members of the Human Rights Commission

- (1) The Human Rights Commission shall consist of not less than [four]¹¹⁹ members and not more than [twenty]¹²⁰ members.
- (2) Members of the Commission shall be appointed by the [President or national legislature] of Sudan.¹²¹
- (3) Members of the Commission shall be Sudanese citizens of legal and political qualification, with appropriate knowledge and experience in human rights including those from various religious and racial backgrounds.¹²²
- (4) The members of the Commission may be appointed as full-time or part-time members and shall hold office for such fixed term as the [President or

¹¹⁸ This language is from The National Human Rights Commission of Mongolia Act (2000), art. 17.1.4.

¹¹⁹ The Protection of Human Rights Act (India, 1993) sec 3, art. 2; Human Rights Commission Act (Nepal, 1997) ch. 2, art. 3. This number is drawn from the smallest Human Rights Commissions, in India and Nepal. *The Protection of Human Rights Act* (India 1993), sec 3, art. 2; *Human Rights Commission Act* (Nepal 1997), ch. 2, art. 3.

¹²⁰ Human Rights Commission of Malaysia Act (1999) sec. 5.1. This number is drawn from the largest Human Rights Commission, in Malaysia. *Human Rights Commission of Malaysia Act 1999*, Sec. 5.1.

¹²¹ The National Human Rights Commission of Mongolia Act (2000) art 5.1. This language is drawn from various Human Rights Commission Acts in which the President, Prime Minister, or National Legislature appoint the members of the Commission. In most cases, the members are appointed after being recommended by a different government entity. For instance, in Mongolia, the National Legislature appoints candidates based on proposals from the President, the Parliamentary Standing Committee on Legal Affairs and the Supreme Court. South Africa Human Rights Commission Act of 1994, sec 2.1, 3.1; Human Rights Commission of Malaysia Act 1999, sec. 5.2.

¹²² This language is drawn from the National Human Rights Commission of Mongolia Act (2000), art 4.1 and the Human Rights Commission of Malaysia Act (1999), sec 5.3.

national legislature] may determine at the time of such appointment, but not exceeding [seven] years.¹²³

OR

- (4) A single term of office for members of the Commission shall be [between two and six years] and members are eligible for reappointment [only once or indefinitely].¹²⁴

Article XXX

Vacancy of Office and Removal from Office

- (1) A vacancy in the Human Rights Commission shall occur:
- (a) When a member's term of office expires;
 - (b) When a member dies;
 - (c) When a member's resignation takes effect;
 - (d) When a member is removed from office on any of the mandated grounds.¹²⁵
- (2) A removal from the Human Rights Commission shall occur if:
- (a) A member is appointed or elected to another official position;
 - (b) A member is judged insolvent by a court of competent jurisdiction;
 - (c) After consulting a registered medical practitioner, the [President or national legislature] is of the opinion that the member is physically or mentally incapable of continuing his office;
 - (d) The member absents himself from three consecutive meetings without obtaining leave of the Commission;
 - (e) The [President or national legislature] on the recommendation of the [President or national legislature], is of the opinion that the member:
 - (i) Has engaged in any paid office or employment which conflicts with his duties as a member of the Commission;
 - (ii) Has misbehaved or has conducted himself in such a manner as to bring disrepute to the Commission; or

¹²³ This language is drawn from the South Africa Human Rights Commission Act of 1994, sec. 3.1.

¹²⁴ This language is drawn from the National Human Rights Commission of Mongolia Act (2000), sec. 6.1, 6.3, and the Human Rights Commission of Malaysia Act (1999), sec. 5.4.

¹²⁵ This language is drawn from the South Africa Human Rights Commission Act of 1994, sec. 11. *See also*; Human Rights Commission of Malaysia Act (1999), sec. 9.

- (iii) Has acted in contravention of this Act and in conflict with his duties as a member of the Commission.¹²⁶

Article XXX

Funding

The Human Rights Commission shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of the 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.¹²⁷

Article XXX

Reporting Requirements

- (1) The Human Rights Commission shall submit to the Government of Sudan and the national legislature, 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 opinions, recommendations, proposals and reports of the Human Rights Commission shall relate to the following areas:
- (a) any legislative or administrative provisions intended to preserve and extend the protection of human rights; the Human Rights Commission shall examine these provisions and if necessary make recommendations on the adoption of new legislation, the amendment of legislation in force, and the adoption or amendment of administrative measures, to ensure that these provisions conform to fundamental principles of human rights;
 - (b) Any situation of violation of human rights, which it decides to take up;
 - (c) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (d) Drawing the attention of the Government of Sudan to situations in any part of the country where human rights are violated and making

¹²⁶ This language is drawn from the National Human Rights Commission of Mongolia Act (2000), sec. 8.1.2; Human Rights Commission of Malaysia Act (1999), sec. 10.

¹²⁷ This language is from the United Nations Principles Relating to the Status of National Institutions.

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.¹²⁸

OR

The Human Rights Commission shall submit an annual report to the Government of Sudan and to the regional government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred until submission of the annual report.¹²⁹

¹²⁸ This language is from the United Nations Principles Relating to the Status of National Institutions.

¹²⁹ This language is from the National Human Rights Commission Act (India, 1993), ch. 4, art. 20, para.1.