

A Comparative look at Implementing Human Rights Commission Laws

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Executive Summary

In 1993, the United Nations General Assembly endorsed the Paris Principles relating to the status of national human rights institutions. This marked a movement towards the establishment of national human rights commissions in many countries throughout the world. These commissions have adopted different models, and possess varying degrees of power. However, they share the common goal of seeking to address human rights violations and educating the public about human rights.

The Parliamentary Council of Representatives in Iraq passed a law in 2008 establishing a High Commission for Human Rights. This memorandum examines comparative models of human rights institutions and suggests a number of best practices to be applied to ensure the independence and effectiveness of the High Commission for Human Rights.

A commission should ideally be independent of the government. This means that it should be financially independent to the greatest extent possible, and that the government should have little or no control over the functioning of the commission. Members of the commission should be accountable to and responsive to the public, and should be diverse so as to reflect the plurality of society. A commission should also have a broad mandate and meaningful powers to monitor human rights compliance by the government effectively.

While there are a number of provisions in the Iraqi Law that secure in legal terms the independence of the Commission, it is crucial that the Commission *operates* independently as well. We hope that the issues highlighted in the comparative examples will assist the Commission to do so.

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Statement of Purpose

The objective of this Memorandum is to offer recommendations for the implementation of the Law of the High Commission for Human Rights. Specifically, the memorandum presents comparative findings on national human rights institutions in other countries, and provides a list of best practices and common obstacles presented by these models.

Introduction

The Law of the High Commission for Human Rights was passed by the Parliamentary Council of Representatives on 16 November 2008. Now that the Law has been passed, the next step is to implement it and to provide for the operation of the Human Rights Commission in Iraq.

This Memorandum includes findings related to two relatively comparable institutions – specifically, national human rights commissions and human rights ombudsmen – in order to help Iraqi legislators to establish and implement the Iraqi Human Rights Commission.

Human rights commissions are independent organizations designed to guarantee the fair and effective application of national human rights laws. These organizations are created to receive, process and investigate allegations of human rights abuses, and, where appropriate, to provide arbitration and conciliation services. Commissions may also provide education or training to increase awareness of pressing human rights issues. Finally, commissions often perform the task of reviewing and critiquing national human rights legislation and policy. The laws establishing the commissions make provision for their independence, and commissions are frequently limited in their choice of officers and their sources of funding in order to guarantee that independence.

Like commissions, ombudsmen are generally fully independent of the government, and have the power to receive complaints and investigate abuses of human rights. However, ombudsmen tend to focus on preventing and investigating abuses committed by public or official persons against citizens, while commissions tend to pursue acts committed by both private individuals and public / official persons. In this sense, a human rights ombudsman is more specifically a watchdog of the government than is a commission. Also, unlike

commissions, ombudsmen are generally empowered to investigate possible human rights abuses even absent the filing of a specific complaint.

The Paris Principles

Since its establishment, the United Nations has adopted an approach that emphasizes the responsibility of its member states in the promotion and protection of human rights of their citizens. The United Nations Economic and Social Council suggested that the most effective way of ensuring this would be to establish national human rights institutions to assist the United Nations Human Rights Commission in its functions at a national level.

In furtherance of this objective, a seminar was held in 1978 to draft guidelines to inform the development and functioning of these institutions. The General Assembly endorsed these guidelines in its Resolution on National Institutions for the Promotion and Protection of Human Rights (UN Doc. A/RES/33/46, 14 December 1978). This Resolution did not, however, contain any substantive recommendations or requirements as to how national institutions should be structured, nor did they make any suggestions as to their operation.

Substantive guidelines were only introduced in October 1991, when the United Nations Center for Human Rights convened another workshop to update and review existing information regarding international human rights institutions. The purpose of the workshop was to discuss and compare various models in existence at the time and to encourage the development of new institutions in countries where they had not yet been established.

Information was shared between state actors and non-state actors and national and international organizations, and the workshop provided an opportunity to discuss the efficacies and challenges of the arrangements in place at the time. In addition, the participants¹ put together a set of recommendations regarding the composition, role, status and functions of national human rights institutions

¹ The countries participating in the workshop included Australia, Belarus, Costa Rica, Cyprus, France, the Gambia, Guatemala, India, Mongolia, Morocco, New Zealand, Nigeria, Peru, the Russian Federation, Ukraine and the United Kingdom of Great Britain and Northern Ireland. Subsequently, Cameroon, Colombia, Guyana, the Philippines and Senegal joined in sponsoring the draft Resolution. See Report of the Third Committee, UN Doc A/48/632/Add.2 (17 December 1993), *available at* <http://daccessdds.un.org/doc/UNDOC/GEN/N93/713/56/PDF/N9371356.pdf?OpenElement> .

around the world. This set of recommendations, the Paris Principles relating to the status of national institutions, was endorsed by the United Nations Human Rights Commission in March 1992 (Official Records of the Economic and Social Council, 1991, Supplement No. 2, E/1992/22, Chap II, Sect A) and received unanimous support from the U.N. General Assembly in December 1993 (UN Doc. A/RES/48/134, 4 March 1994).

Part of the rationale behind the Paris Principles was to respond to the growing interest in a number of countries in establishing human rights commissions. The Paris Principles provide a foundation for the establishment of national human rights institutions. However, they allow sufficient flexibility for states to design the institution for their particular context. Indeed, the Preamble to the General Assembly Resolution notes

the diverse approaches adopted throughout the world for the promotion and protection of human rights at the national level, emphasize the universality, indivisibility and interdependence of all human rights, and emphasize and recognize the value of such approaches to promoting universal respect for and observance of human rights and fundamental freedoms.

The Paris Principles emphasize that a human rights institution should have the competence to promote and protect human rights, and that its mandate should be as broad as possible. Its mandate should also be stable. A human rights institution should have the following responsibilities (compiled from UN Doc. A/RES/48/134, 4 March 1994, Annex, Competence and Responsibilities):

- Submission to the government, Parliament, or any other competent authority of recommendations, proposals and reports on any matter involving the promotion and protection of human rights, for example (Para 3(a)):
 - Proposed legislative and administrative provisions relating to human rights, as well as amendments to existing laws. These suggestions may be submitted to Parliament, Congress or the Executive.
 - Any case of human rights violations.
 - The national position with regard to human rights in general, as well as on specific matters.

- Proposals for how to address human rights violations in particular parts of the country. This may include assessments of the government's response to the violations. (Para 3(a)(iv))
- Promotion of harmonization between national legislation and practices with international human rights instruments and norms. (Para 3(b))
- Encouragement of ratification of international human rights instruments, as well as their implementation. Para 3(c))
- Contribution to reports submitted by the State to United Nations bodies on human rights issues. (Para 3(d))
- Co-operation with the United Nations as well as other international, regional and national institutions that are competent in the areas of protection and promotion of human rights. (Para 3(e))
- Assistance in the formulation of research and education programs and execution of these programs in educational institutions. (Para 3(f))
- Increasing public awareness of human rights by publication of the efforts of the human rights institution. (Para 3(g))

In order to gain public confidence and trust, human rights institutions should reflect in their composition the pluralism in society. A commission should communicate and co-operate with a broad range of social and political groups and institutions, including NGOs, judicial institutions, professional bodies, government departments and human rights academics and practitioners. It should further take account of different trends of philosophical and religious thought.

A fundamental precondition for a commission's ability to act independently of the government is that the commission's funding should not be controlled by the government. Indeed, a number of national human rights institutions face a challenge in getting adequate funds to be able to carry out their functions without becoming subject to government control.

Another important means of ensuring the accountability of human rights commissions is that they address public opinion, and in particular publish their

opinions and recommendations. They should also, where possible, consult with other institutions involved in the performance of similar functions to facilitate collaborative efforts in the protection and promotion of human rights. In particular, the Paris Principles provide for consultation with non-governmental organizations devoted to areas that fall within the commission's jurisdiction.

The Paris Principles further suggest that human rights institutions have the mandate to hear individual complaints regarding alleged human rights violations. Efforts to resolve matters amicably, such as through conciliation, or by issuing binding decisions, are constructive processes. If the institution is not mandated to receive individual complaints, it may refer them to the relevant competent authority. This is the approach that has been adopted for the Human Rights Commission in Iraq. As discussed below, Article 5 of the Law establishing the Human Rights Commission requires the Commission to forward complaints to the Public Attorney to take appropriate legal action. If there are questions about the independence of the Public Attorney, these should be addressed so as not to undermine the work of the Commission.

Best Practices of Human Rights Commissions

A number of factors contribute to greater effectiveness of national human rights commissions (International Council on Human Rights Policy 7). Some of these factors are set out below. We have referred to examples from comparative models of national human rights institutions. For a full overview of these comparative models, please see the Annex.

First, national human rights commissions must **be independent of the government** in order to work effectively. For example, the Moroccan Conseil Consultatif des Droits de l'Homme carried out extensive internal reforms in 2003, aimed at increasing its autonomy and reducing its dependence on the Moroccan government. Without meaningful structural independence, the work of human rights commissions can be compromised. The work of Kazakhstan's Human Rights Commission was made difficult because many of its members were loyal to the government and thus had a vested interest in preserving its reputation. Similarly, in the Russian Federation, pluralism among members of the President's Human Right Commission has been hampered because almost all of its Commissioners are government officials. (Pinheiro 25) In Colombia, efforts by the Office of the Ombudsman to investigate past human rights violations related to the civil war have frequently been frustrated by excessive use of force and harassment of the Ombudsman Office by the Colombian government and security

forces (at one point security forces attacked a boat that the Ombudsman's Office was using to monitor ongoing fighting). (Pinheiro 24).

National human rights commissions are more likely to be successful when they have a **diverse membership**. When commissioners come from different backgrounds, they may draw on a variety of expertise. (Commonwealth Human Rights Initiative 41) More specifically, when **members are drawn from civil society** or when commissions **consult regularly with civil society**, their relationships can be stronger and their interactions more consistent with individuals or groups who are marginalized or threatened. Two examples of sound selection practices for commissioners are the Human Rights Commissions of Kenya and Sierra Leone. Both of these Commissions select commissioners through a public nominations process, during which candidates are screened by a gender-balanced selection panel comprising one representative from the Government, one from the opposition and one from civil society.

Additionally, commissioners should have **fixed terms of service** and **rotate out on a regular basis**. The United Nations, for example, suggests a fixed term of at least five years, with a possibility of re-appointment for one additional term of the same length.

Effective commissions should **enjoy widespread public legitimacy, have open organizational structures** and **be accessible to the general public**. (International Council on Human Rights Policy 7-8) To this end, national human rights commissions should publish monthly, quarterly and/or annual reports, including their results, their future plans, statistics and findings on cases, etc. A good example is the Ugandan Human Rights Commission, whose mandate requires it to monitor and report on compliance with international treaties. The Ugandan Commission published an annual report, including an update on governmental compliance and noncompliance with international treaties, as well as a list indicating on which treaties the Government had failed to report.

Moreover, it is vital that a national human rights commission have a **broad mandate** and **broad jurisdiction**. Such breadth enables a commission to deal effectively with all human rights, including civil, cultural, economic, political and social rights. (International Council on Human Rights Policy 8) In the case of Liberia, a narrow mandate and lack of monitoring authority frustrated the work of a national human rights institution. The Liberian Government in 1997 established a Human Rights Commission whose mandate was limited only to *future* violations of human rights. This severely inhibited the scope of the Commission's work. (Pinheiro 27) In contrast, the Human Rights Ombudsman of El Salvador enjoys a

broad constitutional mandate, which assists its performance. The Ombudsman is responsible for numerous duties, including the promotion and protection of human rights, the initiation of investigations on its own initiative or at the request of a third party, and the promotion of reforms before Government bodies.

Of equal importance is a commission's **power to monitor compliance** with national and international human rights law. A good example is the Danish Institute for Human Rights, which is empowered to hear and deal with complaints of discrimination on grounds of race or ethnic origin, as well as those in which a person has been victimized because they have made such complaints.

A state should also set forth a long-term **national human rights action plan** for its commission – for example, a ten or twenty year plan for future progress. Such plans should include a future timeline of actions to implement human rights obligations, as well as steps to **develop relationships with international and regional human rights organizations**.

Adequate budgetary resources and the ability to draw funding from multiple sources are vital to a commission's viability. Moreover, control over the institution's budget should be as removed as possible from the control of the current legislature. In the case of national human rights institutions in Malawi, for example, lack of sufficient government funding cast doubt on the government's sincerity in creating the institutions. The Malawi Constitution provides for a National Compensation Tribunal (NCT) in charge of judging claims of criminal liability filed against the former government. The Tribunal estimated that by the end of 1998, only 15% of claims filed with the Tribunal had been resolved due to a severe lack of funding. (Pinheiro 26).

Moreover, it is important that institutions have the explicit power to ensure funding, and to accept funding (subject to certain key guidelines, set forth in the institution's charter, designed to ensure the institution's independence) from private donors or international agencies. (Of equal importance, however, are a provision in the commission's enacting legislation **ensuring that funding does not compromise the commission's impartiality and independence**.)

Finally, internal and external **mechanisms for review** are critical to the legitimacy of human rights commissions. Human rights commissions should be externally evaluated not only on the basis of their legal and institutional framework, but also on how effectively they implement their goals and fulfill their mandate.

Placing Best Practices in the Iraqi Context

An Iraqi Human Rights Commission whose creation and performance is consistent with the Paris Principles and with general “best practices” for human rights institutions can be a valuable force for human rights in Iraq for years to come. However, it may be difficult to institutionalize some of the best practices noted above in light of the obstacles presented by the Iraqi context. At the outset, it must be stressed that putting an Iraqi Human Rights Commission into operation will be quite challenging. Specifically, the importance of local and tribal councils (such as the *asha'er majlis*) to Iraqi citizens will necessitate a unique strategy on the part of the Commission. As a result, regional offices and branches of an Iraqi Human Rights Commission should do more than receive and transmit local complaints to the national office. Rather, it will be important for regional offices and branches of the Commission to become active in local communities. For example, regional offices should seek out and form partnerships with local leaders in order to better handle human rights complaints and provide conflict resolution services. They might offer educational programs.

The still incomplete evolution of freedom of the press and freedom of information in Iraq may complicate the efforts of a Human Rights Commission to effect public outreach through the media. The fact that the Iraqi Government is so new may call for extra effort to institutionalize a process by which a national human rights institution offers legal advice to Government officials. A rigorous recruitment process may be necessary in order to insure the diversity and expertise of the staff of an Iraqi Human Rights Commission, given both the dominance of prevailing political groups and the relative paucity of civil society groups in Iraq.

Moreover, the ongoing conflict in Iraq may make it difficult to establish local offices of an Iraqi Human Rights Commission. Local offices are beneficial because they increase accessibility to the Commission for marginalized groups. Local offices are also helpful because they can enable an otherwise centralized Human Rights Commission to have greater access to decentralized matters. This is particularly important in a federal state such as Iraq, where ethnic, tribal or religious divisions can necessitate different approaches to the work of a human rights institution. Indeed, it is important to stress that the Iraqi Human Rights Commission will be most effective if it works closely with and demonstrates sensitivity to the goals and practices of tribal councils and other local bodies.

Limitations on funding may also interfere with an Iraqi commission’s attempts to provide human rights training and education programs, both to civilians and to government officials.

It is also necessary that whatever institutions the Commission relies on for assistance act with as much independence and accountability as the Commission itself. Where this is not the case, this should be addressed immediately.

However, while some of the best practices listed above may be difficult to implement in Iraq, the outcome is well worth the effort. Ultimately, proper formation and best practices on the part of an Iraqi Human Rights Commission can lead to four major types of positive change in Iraq at the local level. (Dickson 280) First, a properly formed and empowered Iraqi Human Rights Commission can positively assist Iraqi parliamentarians in the creation of future legislation. Second, such a Commission can act as a positive and versatile supplement to the existing Iraqi judicial system (as the Iraqi judiciary may not have sufficient time and resources to focus exclusively on matters of human rights). Third, such a Commission can investigate allegations of human rights abuses within Iraq. And fourth, such a Commission can appeal to and inform a “broad spectrum of society” in Iraq. (Dickson, 279-280)

Evaluating the Text of the Law of the High Commission for Human Rights

In considering the Act that establishes a Human Rights Commission for Iraq, we have identified the following points which may be helpful in ensuring the effective operation of the Commission:

- Article 2 of the Law specifically provides that the Commission be “formed . . . with financial and administrative independence”. It is fundamental to ensure that this legal requirement is put into practice. The Commission’s full independence may be jeopardized insofar as it is directly linked to and overseen by the Parliamentary Council of Representatives. This type of link may threaten its ability, for example, to review existing and proposed legislation for compliance with human rights standards.
- The fact that the Commission is required in Article 4 to submit an annual report to the Council of Representatives, detailing “a general assessment of the status of human rights in Iraq”, and that such a

report will be open to the public, is important in ensuring the accountability of the Commission.

- While the Commission does not have its own dispute resolution functions, Article 5 empowers it to investigate complaints of human rights violations. It may refer these complaints to the Public Attorney to take legal action. This mechanism may work to insulate the Commission from government influence. It is crucial, however, that the Public Attorney dealing with the complaint, and the courts adjudicating the complaint, possess the necessary independence so that they may reinforce the functioning of the Commission. Any questions about independence should be addressed immediately.
- Article 5 further directs the Commission to be pro-active in seeking evidence of human rights violations. To this end, Commissioners are directed to visit “prisons, social correction centers [and] other places, without prior permission from the concerned entities, meet with convicted and detained individuals, document cases of human rights violations and notify competent entities to take appropriate legal action”. This provision gives the Commission a meaningful and active role in the promotion and protection of human rights, and extends its work to individuals who, for whatever reason, may not refer a complaint to the Commission.
- The functions of the Commission relate primarily to fact-finding and education. While there is a possibility of extending these functions at a later stage, it is important to keep in mind the recommendation in the Paris Principles that the mandate of a Human Rights Commission be as broad as possible. The Commission’s neutrality will be enhanced by broadening its mandate at the outset, rather than leaving it to a later stage, when doing so could be more dependent on political support for the Commission, would enhance the independence of the Commission.
- The procedure for the appointment of the Council of Commissioners, set out in Article 7, may well ensure that the Council is diverse and reflects the pluralism in society. This is an advantage in respect of the accountability and legitimacy of the Commission. Article 8 strengthens this diversity and legitimacy, by

securing requirements for female and minority membership of the Council of Commissioners.

- Article 11 provides that “[t]he Council divisions, tasks, formation and organizational structure shall be specified by COR by-laws approved by a two-thirds majority”. The fact that the Commission cannot determine its own procedures may be a threat to its operational independence.
- The provision in Article 11 for an Office of the Inspector General within the Commission is another important measure to ensure the Commission’s legitimacy and accountability.
- In terms of Article 14, the financial resources of the Commission are drawn primarily from general state budget allocations. Any funds from outside sources are subject to majority approval by the Council of Representatives. Giving the Council of Representatives such control over the Commission’s funding may threaten the independence of the Commission.
- Article 15 provides for expiration of a term of membership for, among other reasons, incompetence. This decision is made by the President of the Commission, and removal of a Commissioner only occurs after an absolute majority vote. The Council of Representatives also has the power to question the President’s recommendation of removal. The President’s discretion is thus sufficiently limited to ensure that Commissioners will only be removed where good cause exists, and “incompetence” cannot be used as grounds for removal for personal differences or political reasons. This is important in ensuring the independence of the Commission.
- Article 16 states that the President of the Council of Commissioners is on the same level as a Minister in Iraq, the Vice-President on the same level as a Deputy Minister and the other Commissioners on the level of Heads of Department. This strengthens the independence of the Commission in that the Commissioners are not subject to the authority or control of members of the executive branch.

- Article 16 further grants to the Council of Commissioners “immunity while performing their responsibilities”. This is crucial to ensure that the Commissioners perform their functions independently and without fear of retribution from the government.

Conclusion

The comparative commissions briefly discussed have all adopted different models to ensure the effective functioning of their national human rights institutions. However, there are certain characteristics common to these institutions that ensure that they operate with the necessary independence and competence. These characteristics supplement and reinforce any legal provisions dealing with independence and competence. They therefore ensure that these legal provisions are effective in practice as well.

The list of best practices set out above is not necessarily exhaustive. In addition, the best practices may need to be adjusted so that they are appropriate for application in the Iraqi context. It is crucial, however, that measures to ensure the effectiveness and independence of the Commission be put in place from the start of its operations.

Should you require any further information on any of the principles discussed above, including the comparative models, we would be glad to provide that information to you.

ANNEX 1 – OVERVIEW OF COMPARATIVE MODELS

This section sets out a broad range of examples with brief descriptions of commissions and ombudsmen from a variety of countries. We categorized them according to what we highlighted as the best practices associated with national human rights institutions. The discussion is not intended to be exhaustive. It is rather a guide setting out issues we believe to be relevant in putting the Law establishing the Iraqi Human Rights Commission into operation.

General information and some legislation can be found through the Ombudsman Information Network (<http://www.anticorruption.bg/ombudsman/eng/about.htm>), a project of the Promoting European Standards in Human Rights: Establishment of Ombudsman Institution in Bulgaria implemented by the [Center for the Study of Democracy](#) with the support of the [European Commission](#). (See also: http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=2831&lang=en&t_style=tex&l_style=default).

BROAD VERSUS NARROW MANDATES

The Canadian Human Rights Commission [Canada]

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

The Canadian Human Rights Commission was established in 1977, pursuant to the Canadian Human Rights Act and Employment Equity Act. The Commission was initially established with an extremely narrow mandate, focusing primarily on claims arising out of employment discrimination and the provision of services in the federal jurisdiction. The Commission realized its functions through discrimination prevention initiatives, dispute resolution approaches to complaints and disputes and regulatory, policy and knowledge development.

A number of changes have been made to the Commission since 2002 to strengthen it and to improve its service delivery. This arose out of reports that the complaints process was slow and ineffective. Apart from the effects on existing matters before the Commission, this also affected the ability of the Commission to focus on issues broader than employment discrimination. One of the major changes is that the Commission now tries to engage in early intervention of disputes through alternative dispute resolution before they rise to the level of complaints. This shifted the focus of the Commission to broader issues such as systemic human rights violations and prevention of discrimination in all contexts.

This broadening of its mandate has improved the effectiveness of the Commission.

Mediation is encouraged and the Commission may at any stage of its investigations require mandatory conciliation or a hearing by a Tribunal. Attempts are also made to resolve employment-related disputes through collective bargaining and collective agreements rather than through the procedures applicable to the Commission. It therefore tries to prevent discrimination and other human rights violations rather than dealing with them after the fact.

The Independent Commission for Human Rights [Palestine]

<http://www.ichr.ps/etemplate.php?id=2&lid=2>

The Commission (formerly known as the Palestinian Independent Commission for Citizens' Rights (PICCR), seeks to ensure that all laws and regulations contain sufficient measures to safeguard human rights and that this is reflected in the work of government departments, agencies and institutions.

In terms of the Presidential Decree which established the Commission in 1993, the mandate of the Commission is "to follow-up and ensure that different Palestinian laws, by-laws and regulations, and the work of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organization meet the requirements for safeguarding human rights". The Palestinian Basic Law (2002, modified 2003) provides for an independent commission for human rights (Art. 31).

The Commission was empowered to draft its own law in a manner that would ensure its independence and effectiveness. The draft law creates a broad mandate for the Commission, giving it the authority to deal with human rights violations, complaints regarding the abuse of power, education and promotion, monitoring, and general integration of human rights into Palestinian laws and practices.

While this law has not yet been passed, the Commission has begun to perform these functions in seeking to protect the fundamental freedoms guaranteed by the Basic Law.

The Timor-Leste Office of the Provedor (Ombudsman) for Human Rights and Justice [Timor-Leste]

For further information, please contact Guteriano Nicolau in La'o Hamutuk (The Timor-Leste Institute for Development Monitoring and Analysis), P.O. Box 340, Dili, Timor-Leste, mobile: +61(408)811373, 670-7234330; ph: 670-3325013; e-mail: info@laohamutuk.org; www.laohamutuk.org
La'o Hamutuk (*Walking Together* in English) is an independent Timor-Leste non-governmental organization that monitors, analyzes, and reports on the principal international institutions present in Timor-Leste as they relate to the physical, economic, and social reconstruction and development of the country. La'o Hamutuk believes that the people of Timor-Leste must be the ultimate decision-makers in this process and that this process should be democratic and transparent.

The Timor-Leste Office of the Provedor (Ombudsman) for Human Rights and Justice was established following the country's independence in 2002 by the Timor Leste Constitution. Law No. 7/2004 Approving the Statute of the Office of the Ombudsman for Human Rights and Justice came into force on 26 May 2004. The Office of the Provedor is mandated to protect the rights, liberties, and legitimate interests of persons against government agencies or private contractors operating a public service or managing public assets on behalf of the government. It is also mandated to provide education on human rights and justice, and promote good practices in government entities. It has three specific areas of concern: human rights, good governance, and anti-corruption. It has been given broad functions by the Constitution to enable it to pursue these concerns.

Financially, the Office of the Provedor is not yet completely independent, though the 2002 Constitution of Timor-Leste its enacting laws does guarantee the independence of the Office of the Provedor. The Office of the Provedor receives the majority of its funding from the government, particularly the Ministry of Planning and Finance.

The Provedor is authorized to review acts committed by government and public entities (not acts committed by private individuals). Article 24 of its enabling statute refers to the role of the Ombudsman as including the powers to:

- (a) oversee the functioning of public authorities, notably the government, its agencies and private entities fulfilling public functions and services and may conduct inquiries into systematic or widespread violations of human rights, maladministration or corruption;
- (b) submit to the government, the National Parliament or any other competent body, on an advisory basis, opinions, recommendations,

proposals and reports on any matters concerning the promotion and protection of human rights and good governance.

The Conseil Consultatif des Droits de l'Homme [Morocco]

<http://www.ccdh.org.ma/> (information available in Arabic)

The Conseil Consultatif des Droits de l'Homme was established in 1990 as an advisory body to the king on human rights issues. It boasts representatives from all categories of Moroccan society – civil, political, professional and governmental. Members are recommended for appointment by a number of interest groups in Morocco. Its reflection of pluralism is a strong factor in favor of its independence.

The Council often looks into allegations of disappearance, actively protects the rights of detainees, holds symposia and seminars on human rights topics, and monitors the legislative activity of the Moroccan government to ensure compliance with international human rights treaties. If the Council has the necessary 2/3 majority, it may submit any matter it sees fit to the king for consideration. Its mandate is therefore very broad. According to the Paris Principles, this is a significant factor in favor of the Commission's effective protection of human rights.

INDEPENDENCE FROM GOVERNMENT CONTROL

The Malaysian Human Rights Commission [Malaysia]

<http://www.suhakam.org.my/en/index.asp>

The Malaysian Human Rights Commission, also known as Suhakam, was established in 1999 pursuant to the Human Rights Commission of Malaysia Act 1999, Act 597. The Commission has both educational and investigative functions, and also advises the Government in respect of its national human rights obligations.

The Commission consists of up to 20 Commissioners, who are appointed by the Yang di-Pertuan Agong (the Head of State) on the advice of the Prime Minister. The allowances to be paid to the members of the Commission are determined entirely by the Yang di-Pertuan Agong. The Yang di-Pertuan Agong also has considerable discretion in removing Commissioners from office (although the exercise of this discretion is circumscribed to some extent by the Act). Despite this, Commissioners enjoy immunity during the time that they are in office.

The Russian Human Rights Ombudsman [Russian Federation]

<http://www.ombudsman.gov.ru/> (Russian language site) *see also:* http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=6081&lang=en&t_style=tex&l_style=default

The Russian Human Rights Ombudsman was established by the State Duma on December 25, 1996 pursuant to a Presidential Decree titled “On Certain Measures of State Support for the Human Rights Movement in the Russian Federation.” (Pinheiro 21) The Ombudsman was then approved by the Russian Federation Council on February 12, 1997.

Ombudsmen are elected by a two-stage election process. First, a candidate for the Ombudsman’s office must win a two-thirds’ vote in the Duma to be considered. Second, a simple majority of the Duma (a vote taken by secret ballot) is required to elect the Ombudsman. In recent years, this intense control of the Ombudsman by the Duma has restricted the Ombudsman’s independence.

The Ombudsman reports annually to the President of the Russian Federation, the Federation Council of the Federal Assembly, the State Duma of the Federal Assembly, the Government, the Constitutional Court, the Supreme Court, the Supreme Arbitration Court and the Prosecutor General of the Russian Federation. These annual reports are published officially in the newspaper “Rossiyskaya Gazeta”. The Commissioner may also send special reports to the State Duma of the Federal Assembly on specific issues of safeguarding human rights and freedoms.

The Kenyan National Commission on Human Rights [Kenya]

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

The Kenyan National Commission on Human Rights was established in 2002, pursuant to an Act of Parliament. Its aim is to protect human rights in Kenya and to contribute to a society that respects human dignity, social justice and equal opportunity. The core values according to which the Commission operates are independence, accessibility, humility, professionalism, gender equity, accountability, participation, equality and “people-centeredness”.

The Act establishing the Commission contains a number of provisions ensuring institutional independence. Commissioners may be removed from office for

misbehavior or misconduct, but only after this has been investigated by a tribunal appointed by the Chief Justice of the High Court of Kenya and the findings communicated to the President. This limitation of removal power is an important factor securing the independence of the Commission.

The Commission is further required to report to the President and National Assembly annually. The report includes an assessment by the Commission of the Government's compliance with its human rights obligations. It therefore is required by law to scrutinize the Government's actions.

The Commission is funded by appropriations from Parliament, but may also receive grants and donations from other sources as long as they do not influence the decisions of the Commission, and are disclosed in the Commission's annual report. The Commission therefore also enjoys some degree of financial independence from the Government.

Human Rights Watch has criticized the Commission for lacking courage and integrity and doing nothing concrete to denounce human rights abusers, either from fear of retribution or in hopes of Government favor. This is a significant sign of a lack of practical independence, despite legal provisions mandating the independence of the Commission.

The Afghan Independent Human Rights Commission [Afghanistan]

<http://www.aihrc.org.af/>

The Afghan Independent Human Rights Commission (AIHRC) was established in 2002, pursuant to the Bonn Agreement (December 5, 2001), the Decree of the President of the Interim Administration (June 6, 2002), United Nations General Assembly Resolution 134/48 (1993) and Article 58 of the Constitution of the Islamic Republic of Afghanistan.

According to Article 2 of the Law on the Structure, Duties and Mandate of the AIHRC, the AIHRC is “an independent body, within the framework of the State of the Islamic Republic of Afghanistan, and it shall function independently.” In theory, this allows the AIHRC to monitor the activities of government agencies and other institutions.

The other provisions of the Law, however, do not support such a high degree of independence. Article 7 of the Law empowers the Afghan President to appoint the Chairperson of the Commission, as well as all of the Commissioners. Article 13

further gives the President the power to “reassign” a Commissioner to another duty for a period of more than six months, in which case the Commissioner will no longer hold office. The President therefore has extensive control over the composition of the Commission as well as the performance of its functions. This threatens the independence of the Commission.

The Bosnian Office of the Human Rights Ombudsman [Bosnia and Herzegovina]
<http://www.ohro.ba>

The Office of the Human Rights Ombudsman for Bosnia and Herzegovina was established in 1995 pursuant to the Dayton Peace Accords. This office, together with the Human Rights Chamber, forms the Human Rights Commission. It is set up as an independent institution to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons.

With respect to its independence, Article 15 of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina provides the following:

An Ombudsman shall be under no orders. Within the framework of his or her constitutional and legal competencies, each Ombudsman shall not be given instructions by any authority. Each Ombudsman shall act independently, on the basis of the Institution’s own criteria and in accordance with Article 8.

In addition, in terms of article 16(1) of the Law, “[a]n Ombudsman shall not be prosecuted, subjected to investigation, arrested, detained or tried for the opinions expressed or for the decisions taken in the exercise of powers associated with his or her duties.”

The Ombudsman may not hold any representative office, political office, position of government service, membership of any political party, trade union, association, foundation or religious organization, or office of a judge. The Ombudsman may not engage in any other occupation or profession. But, an Ombudsman who was a civil servant prior to his or her appointment will be reintegrated into the civil service at the end of their term of office.

The Ombudsman is required to complete an annual report regarding its activities for the year. Importantly, Article 31 requires any information regarding government hostility towards an investigation by the Ombudsman to be included

in the report. If a government official interferes with the investigation, for example by refusing to produce requested documents, the Ombudsman may refer the issue to the officer's superior or to the prosecuting authority for appropriate disciplinary action. The Ombudsman also has the authority on its own to institute disciplinary proceedings or to bring the matter before the criminal court.

The South African Human Rights Commission [South Africa]

http://www.sahrc.org.za/sahrc/cms/publish/cat_index_26.shtml

The South African Human Rights Commission was established in October 1995, pursuant to the South African Human Rights Commission Act of 1995. In terms of the South African Constitution, the South African Human Rights Commission is a “Chapter 9 Institution” and as such has no legal connection to the executive, legislative or judicial branches of government.

Commissioners may be removed by the President only if the strict legislative requirements in the Act are satisfied (these requirements relate to the adoption of resolutions for the removal of Commissioners by the national legislative branch).

Organs of state are required to submit regular reports to the Commission detailing the measures that they have taken towards the realization of fundamental rights, particularly socio-economic rights.

The Commission receives its core funding from government sources, but a trust has also been set up to enable funding from donations. This reduces the dependence of the Commission on government funds and therefore adds to its independence.

Human Rights Watch has criticized human rights commissions across Africa as mere efforts by states to “deflect international criticism of human rights abuses” rather than deal with these abuses themselves. But, South Africa has been specifically excluded from this, and has been praised for speaking out strongly against human rights abuses.

INDEPENDENCE IN RESPECT OF FUNDING

The Malaysian Human Rights Commission [Malaysia]

<http://www.suhakam.org.my/en/index.asp>

Under the terms of the Human Rights Commission of Malaysia Act, the Government of Malaysia is required to provide the Commission with "adequate funds" for the performance of its duties. The Commission is prohibited from receiving funds from foreign sources. It may, however, receive funds from non-governmental sources to be used for educational and awareness promotion purposes. For the bulk of its duties, however, the Commission receives only what is believed in the discretion of the Government to be "adequate". This means that a lot of the work of the Commission is subject to the approval of those controlling its funds.

The Argentine Permanent Assembly for Human Rights [Argentina]

<http://www.apdh-argentina.org.ar/>

The Argentine Permanent Assembly for Human Rights (APDH) was established on December 18, 1975. The Assembly is headquartered in Buenos Aires. Most of the work of the Assembly is carried out by volunteers, in Buenos Aires and at 28 branches or "delegations" around the country. Each of the APDH's fifteen Commissioners is assigned a particular topic involving human rights. Much of the APDH's work focuses on restoring justice in the aftermath of Argentina's former authoritarian government.

According to the APDH's website, the Assembly's finances come "exclusively from personal donations from members and sympathizers of the APDH, and from international organizations with shared goals." This means that the APDH does not have to depend at all on the government for funding to be able to perform its functions. The Government therefore has no way of controlling how effectively the APDH operates, whether through the budget or through the need for approval of any donations it receives.

STABLE MANDATE AND FUNCTIONS

The Bosnian Office of the Human Rights Ombudsman [Bosnia and Herzegovina]

<http://www.ohro.ba>

Article 7 of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina is fundamental to the stability of the Ombudsman. This Article provides that:

1. The activity of the Institution shall not be interrupted while the legislature is not in session, either because the legislature has been dissolved or because the term of the legislature has expired.
2. Emergency situations shall not interrupt an Ombudsman's term of office.

STRONG DOMESTIC LEGISLATION TO SUPPORT THE COMMISSION

The Australian Human Rights Commission [Australia]

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

The Australian Human Rights Commission was established under the Human Rights and Equal Opportunity Commission Act of 1986. The mandate of the Commission is broad, and includes: education and public awareness, discrimination and human rights complaints, human rights compliance and policy and legislative development. One major exception to the otherwise broad mandate is the fact that the Commission does not have jurisdiction over complaints of unfair discrimination.

The Commissioners each have a specific mandate arising out of a particular area of the law. For example, there is one Commissioner dealing specifically with race discrimination, and another Commissioner dealing only with privacy. The Commission has, however, been met with strong criticism from the United Nations. This criticism does not relate to the structure of the Commission, but rather to the absence of strong domestic legislation to support the Commission's functions. Australia, further, does not have a Bill of Rights entrenching any fundamental guarantees. It is imperative that any institution responsible for the promotion and protection of human rights has effective legislation in place delineating and supporting its duties.

Another complicating factor is that the Commission does not have exclusive jurisdiction over the issues that it deals with. For example, an independent office of the Federal Privacy Commissioner has the mandate to deal with issues arising out of the Privacy Act. This diffusion of responsibility may weaken the Commission's initiative in performing its functions, as well as possibly undermining the outcome of those functions.

FLEXIBILITY TO ALLOW EXPERT ASSISTANCE IN PARTICULAR MATTERS

Egyptian National Council for Human Rights [Egypt]

<http://www.nchr.org.eg/En/home.asp>

The Egyptian National Council for Human Rights was established on June 19, 2003 under Law No. 94 (2003). This Law defines the duties of the Council in satisfying its responsibilities with regard to the promotion and protection of human rights. However, recognizing that the Council may not necessarily have the expertise and the resources to perform all of these duties all of the time, the Law provides for the assistance of state agencies in the performance of the Council's duties. This is particularly useful to the Council in respect of provision of data and information. Representatives of state agencies may also be invited to meetings of the Council, but will not be entitled to vote.

The Council's membership is large. To ensure maximum efficiency, the Council is divided into a number of sub-committees, dealing with civil and political rights, social rights, economic rights, cultural rights, legislative affairs and international relations. These Committees are entitled to seek expert assistance from outside the Council, but any person who gives such assistance will not be entitled to vote in the Committee. The Council Members may therefore benefit from the experience and expertise of others, without compromising any of the Committee's functions.

TRANSPARENCY AND REPORTING / INTERNATIONAL COOPERATION

The Ugandan Human Rights Commission [Uganda]

<http://www.uhrc.org>

The Ugandan Human Rights Commission was established in 1997 according to Chapter 4, Article 51 of the 1995 Ugandan Constitution. Article 52 (1) of the Uganda Constitution sets forth the following functions of the Commission:

- To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;
- To visit jails, prisons, and places of detention or related facilities with a view of assessing and inspecting conditions of the inmates and make recommendations;

- To establish a continuing program of research, education and information to enhance respect of human rights;
- To recommend to Parliament effective measures to promote human rights including provision of compensation to victims of violations of human rights, or their families;
- To create and sustain within society the awareness of the provisions of the Constitution as the fundamental law of the people of Uganda;
- To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;
- To 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;
- To monitor the Government's compliance with international treaty and convention obligations on human rights; and
- To perform such other functions as may be provided by law.

Article 52(2) also requires the Commission to publish periodic reports and submit annual reports to Parliament on the state of human rights and freedoms in the country.

The Commission works closely with the United Nations Development Program (UNDP). The relationship between the Ugandan Commission and the UNDP began in May 1999, with the implementation of a two-year Capacity Development Project.

POWERS TO MONITOR COMPLIANCE

Danish Institute for Human Rights

<http://www.humanrights.dk/>

The Danish Institute for Human Rights was established by statute in 2002 pursuant to a May 5, 1987 mandate from the Danish Parliament. The Institute handles complaints of human rights violations, carries out human rights research, offers human rights education, and promotes human rights at a national level. The Institute also cooperates with other national and international organizations, such as the Council of Europe, the European Union, the Organization for Security and Cooperation in Europe, the United Nations and the World Bank. The Institute employs 80-100 persons and in 2006 had an annual budget of €12 million.

One of the primary features of the Danish Institute for Human Rights is its Complaints Committee for Ethnic Equal Treatment, which the government

established as part of The Danish Institute through Act no. 374 of 28 May 2003 on Ethnic Equal Treatment. The Complaints Committee handles employment discrimination complaints and policy related to employment discrimination generally.

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