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# 21st Century Challenges Faced by National Human Rights Institutions

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BHOOMIKA AHUJA<sup>1</sup>

## ABSTRACT

*National human rights institutions (hereinafter referred as NHRI's) are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State. National human rights institutions—at least those that are in compliance with the Paris Principles—are the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State. They have boosted globally the development of human rights. However, the fact that serious and grave human rights violations occur today also, establishes that NHRI's have not been able to work in an effective and efficient manner and have not been able to achieve fully the goals they seemed to. While we celebrate the successes, we must also recognize the numerous challenges that NHRIs face today. It will be brought forward that the vulnerability of NHRI's in matter of budget, the lack of support of non-governmental institutions towards NHRI's, Governmental control of national media become some of the main challenges that NHRI's have to constantly deal with. Lack of an adequate resources and powers tends to dampen the status of countries on an international front apart from making the working of NHRI's nominal. The research will tend to highlight the challenges faced by NHRIs regarding pluralism and diversity and the fact that they are inseparably connected to the type, functions and tasks of the NHRI.*

**Keywords:** *National human rights institutions, Paris Principles, international human rights, etc.*

## I. INTRODUCTION

National Human Rights Institutions (NHRIs) that comply with the principles relating to the status of national institutions, commonly known as the Paris Principles, are playing a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level, a role which is increasingly recognized by the international community. National human rights institutions (NHRI) can take various forms with the most

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<sup>1</sup> Author is a LLM student at NLIU, Bhopal, India.

common types being human rights commissions or ombudsmen, hybrid institutions, consultative and advisory bodies, and other forms of human rights institutes and centers.<sup>2</sup> Regardless of the form, NHRIs are established to promote and protect human rights.

‘Upholding the rights and dignity of those who are marginalized or forgotten’, this is the role of an effective national human rights institution. National human rights institutions (NHRIs) work to build fair, just and inclusive communities where each person can live with dignity, free from violence and discrimination.

National Human Rights Institutions (NHRIs) are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level.<sup>3</sup> NHRIs address the full range of human rights, including civil, political, economic, social and cultural rights.

NHRIs are unique as they are national institutions with a legal mandate to promote and protect human rights domestically in an independent manner. Contrary to other national institutions, NHRIs are accredited with an internationally accepted quality label, on the basis of their compliance with the UN Paris Principles.

OHCHR, through the National Institutions and Regional Mechanisms Section (NIRMS), supports the establishment and strengthening of NHRIs and works closely with NHRIs to support them in the implementation of their broad mandates to promote and protect human rights.<sup>4</sup> NHRIs perform core protection issues, such as the prevention of torture and degrading treatment, summary executions, arbitrary detention and disappearances, or the protection of human rights defenders. NHRIs also play a role in advancing all aspects of the rule of law, including with regard to the judiciary, law enforcement agencies and the correctional system. NHRIs also contribute to effective Parliaments, strong and dynamic civil society organizations, alert and responsive media, a school system with human rights education programmes at all levels and, generally, a society encouraging the objective of a universal culture of human rights.<sup>5</sup> Specifically, “A” status NHRIs are one of the best relay mechanisms at country level to ensure the application of international human rights norms.<sup>6</sup>

The United Nations General Assembly established the Paris Principles in 1993 as a set of criteria for evaluating both NHRIs’ independence from government interference and their

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<sup>2</sup>National Human Rights Institutions, International Justice Resource Center, Available at <https://ijrcenter.org/national-human-rights-institutions/>.

<sup>3</sup> Id.

<sup>4</sup>United Nations Human Rights Office Of The High Commissioner; Available at <https://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>

<sup>5</sup>Id.

<sup>6</sup>Id.

effectiveness in promoting and protecting human rights.

The Paris Principles require States to give an NHRI “as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.”<sup>7</sup> Their mandate should include a number of responsibilities with the ultimate goal of promoting and protecting human rights, including:

- Submitting of recommendations, opinions, proposals and “reports on any matters concerning the promotion and protection of human rights,” either on their own initiative or at the government’s request;
- Meeting on a regular basis;
- Establishing working groups and regional or local sections, as necessary to achieve their goals;
- Consulting with other entities that are responsible for protecting and promoting human rights, including entities in the UN system; and
- “Develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to promoting particularly vulnerable groups”<sup>8</sup>

Governments may also choose to mandate NHRIs with certain quasi-judicial functions and responsibilities that include informing petitioners of their rights and remedies, hearing individual complaints and petitions and issuing advisory or even binding decisions, and making recommendations on legal reforms to the competent authorities<sup>9</sup>.

## **II. CHALLENGES FACED BY NHRI’S**

NHRIs are a national entity operating within a wider national human rights system that functions across a larger political set-up – a set-up that is often deeply constraining for national (and international) human rights actors. Richard Carver and Alexey Korotaev<sup>10</sup> state that, “Of course, the efficiency of the NHRI’s activities depends significantly on the level of development of democratic institutions and judicial system in the country. NHRI cannot usually be much better than the general level of institutional development and effectiveness in the country. They have to develop and improve together. But there is a complex two-way relationship: active, consistent and efficient NHRIs can greatly contribute to the democratic

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<sup>7</sup>Supra Note 5.

<sup>8</sup>Id.

<sup>9</sup> The Asia Pacific Forum of National Human Rights Institutions, Available at: <https://www.asiapacificforum.net/support/what-are-nhris/>

<sup>10</sup> Supra Note 3.

development of their country.” There are many challenges that NHRIs have to face in the 21<sup>st</sup> century. They are enumerated below:-

#### **A. BALANCING THE ADVISER AND ADVERSARIAL ROLES**

One challenge is to strike the balance between being an adviser to the government while at the same time scrutinizing and sometimes criticizing it:

- If the NHRIs move too much into the adviser role and becomes too close to the government, they will lose their legitimacy, especially in the eyes of human rights victims and other actors.
- If the NHRIs becomes too loud and too much of an adversary to the government, they may appear strong, but in reality it may not have a lot of influence as the government may stop listening.

This challenge is related to one of the other challenges that most NHRIs face, namely independence.

#### **B. INDEPENDENCE FROM AND DEPENDENCE ON THE STATE**

As stated in the Paris Principles, NHRIs should be independent from the state in terms of policies, administration, how it spends its funds etc. At the same time, most NHRIs are more or less fully funded by the state, which means that they are in reality financially dependent on the state.<sup>11</sup> This means that NHRIs need to act independently of the state while at the same time recognizing that the survival of the NHRI is dependent on the state.

The independence of the national institution is, however, much more defined by the necessity to repel external interference. Internally, heads of the institution in cooperation with experts and researcher, will wrestle with a coherent position of the entire institution on any issue.<sup>12</sup> The development of a strong, coherent human rights based position of an NHRI is very different from the independent academic point of view of a researcher – the NHRI, in the end, will develop a position of political nature – even if our politics are human rights politics only. Thus, a NHRI cannot guarantee academic independence of the individual researcher but needs, quite the contrary, to shape strong and coherent positions to influence public debate and government policy in favor of human rights.<sup>13</sup>

In addition, ombudsman institutions are increasingly engaged in promoting human rights,

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<sup>11</sup> <https://www.humanrights.dk/learning-hub/challenges-nhri-effectiveness>.

<sup>12</sup> [https://www.humanrights.dk/files/media/documenter/udgivelser/nhris\\_independence\\_and\\_accountability\\_publication.docx.pdf](https://www.humanrights.dk/files/media/documenter/udgivelser/nhris_independence_and_accountability_publication.docx.pdf).

<sup>13</sup> Supra Note 14.

particularly through educational activities and developing information programs. Understandings from around the world show, however, that ombudsman institutions continue to face challenges in ensuring the independence on which their authority and effectiveness depend.

### **C. CHALLENGE OF ACCREDITATION**

Another challenge that keeps on rising is the process of accreditation, and its transparency and openness. It has been seen that some of those who raised such questions are those whose NHRIs happened to have lost their “A” Status. The Global Network of NHRIs’ strategy of strengthening the capacities of NHRIs on the one hand and also seeking more recognition for NHRIs within the international and regional human rights within the UN system has been a big challenge.<sup>14</sup>

### **D. FUNDING**

Another challenge most NHRIs around the globe face today is the dearth of funds and resources. The problem of funding revolves around various other contributing factors like, from where do NHRIs get their funding, if it’s from the government, is it directly transmitted or does it involve some other ministry/body that regulates the finances. Apart from this, all NHRIs though have an obligation to handle their financial resources correctly according to the regulations for public funds – the challenge here lies in the distinction between financial accountability to the tax payer and the independence from the government. The purpose of an NHRI itself is to serve as an institution of accountability. NHRIs hold their respective governments accountable for their human rights obligations. So, it is obvious that NHRIs themselves have a similar obligation toward the public to perform in a transparent and accountable way.

### **E. COMPLAINT MECHANISM**

The NHRIs are institutions whose role is to realign State behavior by constantly criticizing the government’s wrongful acts that trample on human rights, offering inside perspective to it.<sup>15</sup> It is vital for the legitimacy of particular NHRI not to yield to pressure, direct or indirectly, from a government agency in carrying out its role even if it pits it against the government.<sup>16</sup> Indeed, tackling controversial issues even if it brings the institution in conflict

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<sup>14</sup>Supra Note 15.

<sup>15</sup>Mohammed Abdo, “The Human Rights Commission of Ethiopia and Issues of Forced Evictions- A Caseoriented Study of its Practice”, (2015), Available at <https://biblio.ugent.be/publication/5826348/file/5847861.pdf>

<sup>16</sup> Id.

with the government or its agencies is the litmus test for a NHRI. Usually the NHRIs abstain themselves on entertaining any complaint against the government or its agencies involving important questions of human rights violations. Its failure to handle such matters has seriously destabilizes its standing, giving rise to perception of lack of independence.

Apart from this, due to the authoritarian political pressures imbedded in the systems, the failure of the Commission to hold the government accountable is something that is seen very often. When such authoritative political pressures are deeply-embedded, NHRIs are left with a limited role in constraining government powers. Be that as it may, the Commission, as an independent institution, was set up for the purpose of protecting human rights. The real test of its independence lies in its ability to challenge the government by investigating human rights violations appearing before it. The Commission should not thus shy away from probing politically sensitive matters.

Through the processes such as the Universal Periodic Review, NHRIs must monitor the implementation of particular human rights norms and standards and indeed the implementation of resolutions of UN bodies including the implementation of previous UPR recommendations.

Thus, we can say that all these challenges faced by NHRIs become difficult to overcome when NHRIs are expected to meet high hopes of complying with regional and international mechanisms as well as fulfill their function at domestic level. There is still a need to continue engaging with Member States to ensure that the role that NHRIs can play in promoting and protecting human rights is fully appreciated and realized. In conclusion, NHRIs have a lot to celebrate, but they also have a lot of challenges that they have to overcome in order to work in an efficient manner.

### **III. COPING WITH CHALLENGES**

National human rights institutions perform a wide range of roles and come across various obstacles. However, if the following measures are taken into account, the challenges can be met or at the least be an attempt can be made to ensure better functioning. The measures are as follows:-

1. Workshops must be conducted to give the representatives of national human rights institutions, an opportunity to engage in a dialogue with representatives of various governmental and non-governmental agencies, in order to enhance their capacity to undertake the important roles.

2. National human rights institutions must undertake education and awareness programs, as well as engage in a constructive relationship with the governments about issues related to funding.
3. Since, NHRIs investigate and adjudicate on complaints, provide reparations for victims of human rights violations, evaluate the actions of governments, disseminate information about human rights and advise on their implementation, educate the public about their human rights, etc. They need to be multi-skilled, in the approaches that they choose to deploy on particular issues in order to work in the most effective or efficient way with optimum utilization of funds and strategic in resource allocation.
4. While, imparting Educational and awareness raising activities can be an expensive affair, NHRIs must target limited resources to make the widest impact.
5. The Global Network of NHRIs should continue to be rigorous in its accreditation and review procedures and ensure to uphold NHRIs to standards of independence and accountability.
6. Pluralism and diversity are indispensable to independence and should be ensured in the law, composition of and the methods of appointment of boards, governing bodies and other key structures of NHRIs.
7. . NHRIs should have the full mandate to promote and protect all human rights, and the ability to discharge this mandate, set priorities and pursue them, without political interference. They should be able to investigate cases of human rights violations and freely publicize all their findings, opinions and critical statements without fear of repercussions.
8. Sufficient funding and infrastructure should be provided for NHRIs to ensure their independence and effective functioning. Allocation of budgets should be regulated by law and measures of financial control should not affect the independence of NHRIs.
9. Maintaining their independence from both government and other actors, NHRIs should closely cooperate with civil society and open up to the public to ensure the broadest possible inclusion of their priorities and in their discharge of activities.
10. With a view to furthering promotion and protection of human rights, NHRIs should hold themselves accountable to the parliament and the public, while planning and implementing their activities, in particular to victims of human rights violations and to those groups and individuals in the society who are most vulnerable.

11. NHRIs should establish and facilitate transparent accountability arrangements through periodic communication with all stakeholders.

#### **IV. CONCLUSION**

Human rights have been a core concern of the United Nations since its inception. The responsibility to respect, protect and fulfill human rights lies with States. When they ratify international human rights instruments and they are required to create mechanisms to safeguard human rights.

The governance of human rights is complex and intricate. All parts of government are involved, together with other kinds of national institutions and civil society: an independent judiciary, law enforcement agencies, effective and representative legislative bodies, and education systems with human rights programmes at all levels. Among these, national human rights institutions NHRIs occupy a unique position. The United Nations has been extensively involved in establishing and strengthening NHRIs. This is a priority for OHCHR as well as for other parts of the United Nations system, such as the United Nations Development Programme (UNDP).

In the face of this complexity and rapid change, NHRIs and those who work with them need to understand the challenges they face and the conditions in which they operate. Effective support for NHRIs is very important in order to enable them to overcome the problems, including the challenge of inadequate funding, a need for technical assistance related to organizational and resource management, knowledge of the international human rights system, complaint mechanism, autonomy and independence and balancing the adviser and adversarial roles, the importance of fostering relationships with public bodies and civil society, and the follow-up to NHRIs recommendations by their governments along with the challenge of accreditation etc. In the survey many NHRIs called, among other things, for greater action and support from UNDP and OHCHR on these and other related matters.

Even though, the General Assembly recognizes these needs and, in its resolution<sup>17</sup> encourages the United Nations High Commissioner for Human Rights, "in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national human rights institutions" and invited Governments "to contribute additional voluntary funds to that end", there is a long way for NHRIs to go.

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<sup>17</sup> General Assembly resolution 63/172, *The National institutions for the promotion and protection of human rights*, A/RES/63/172 (20 March, 2009), available at <https://undocs.org/en/A/RES/63/172>.

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