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ATROPHY AND SUBVERSION: THE HUMAN RIGHTS COMMISSION OF SRI LANKA

DEVELOPMENTS IN ASIA AND WORLDWIDE REGARDING NATIONAL HUMAN RIGHTS INSTITUTIONS

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This Issue of the Review returns to an unfortunately familiar and recurring theme; namely the continuing subordination of constitutional institutions and human rights monitors to the country's executive. In specific issue here is the country's Human Rights Commission, disquietingly pictured in all its considerable dysfunction due to (among other factors) the loss of constitutional legitimacy in recent years.

But the lamentable fate of the Human Rights Commission in Sri Lanka is not peculiar to it alone. Rather, its dilemmas are shared by the rest of the once proudly termed independent commissions. Overall, the violent convulsions that have shaken the country's governance institutions to the core during the past decade in particular, have had their own destabilizing impact. Cherished notions that democratic legacies carry with them, the formulae for building equitable and just societies, have been shown to be fundamentally false. The old belief that the state and the law exists for the common good has been displaced, perhaps irrevocably, fostering a perilous cynicism in the normative power of the Constitution.

Sadly, constitutionalism has become an unabashed weapon of politicians rather than a vehicle of transformative institutional reform. Cynicism is exhibited in regard to the values of the old order, viz; a justiciable bill of rights, an independent judiciary and workable democratic structures.

The 1st paper that the Review publishes in this Issue needs no explanation in its substance matter. It starkly outlines the systematic manner in which the Human Rights Commission has been deprived of basic authority that is completely at odds with its statutory function. Many pertinent points are noted by the author, *B. Skanthakumar* in his scathing review of the functioning of the Human Rights Commission during 2009 and in the early months of 2010.

First and foremost, it is important to stress that even though the Commission may have been nominally functioning since the lapsing of terms of its Commissioners and the non-appointment of new members from mid June as well as the non-appointment of a new Chairman from end 2009, this continuance was highly farcical.

"In the absence of Commissioners, the legality of the HRCSL's operations was a matter of debate over 2009 within the human rights community. All

doubt was removed when the Presidential Secretariat through the Secretary to the President and in a letter dated 26 March 2010, informed the HRCSL that the national human rights institution lacked the lawful authority to exercise its functions in the absence of duly-appointed Commissioners."

This fact underscores the gravity of the plight that the Commission has been placed in for well over a year. This also illustrates the deliberate nature of its subordination to the executive and does not bode well at all for the forthcoming appointments of new members to this body under the 18th Amendment to the Constitution which, in any event, confers virtually unfettered powers on the executive in respect of the constitution of these commissions.

The inconsistency of the responses of the Commission is well seen in its intervention (or lack thereof) in the Prageeth Eknaligoda case as contrasted with its feeble though far more responsive approach in regard to the arrest and detention of Sri Lanka's former Army Commander. Such inconsistencies speak poignantly to the de-legitimizing of the Commission and its eventual reducing to an actor of no account in today's political context where the protection of rights is concerned.

For comparative context, this Issue publishes a paper by *Emerlynne Gill* reflecting on the role of national human rights institutions (NHRIs) in Asia which point to common problems shared by these institutions. Sadly, the success stories that Asian human rights commissions are able to share are not many. One initiative which may well indicate a positive trend is the effort taken by four NHRIs from Southeast Asia, (Thailand, Philippines, Malaysia and Indonesia) to establish an intergovernmental commission on human rights. The impact of this body remains to be seen.

Lastly, we publish suggestions put forward by the Asian NGOs Network on National Human Rights Institutions for reform of discussion processes at the Asia Pacific Forum, a key initiative in deliberating on the role and functioning of NHRIs in the region. These suggestions are accompanied by the publication of extracts from the Annual Report of the United Nations Secretary General presented to the Thirteenth Session of the United Nations Human Rights Council, which are relevant in regard to the general assessment of NHRIs worldwide as well as the main priorities and challenges thereto.

Kishali Pinto-Jayawardena

ATROPHY AND SUBVERSION: THE HUMAN RIGHTS COMMISSION OF SRI LANKA

B. Skanthakumar ♦

Introduction

This report discusses the independence, accountability, effectiveness and transparency of the Human Rights Commission of Sri Lanka (HRCSL) in 2009 and into the first quarter of 2010. However, the dearth of information on and from the HRCSL – in terms of the absence of the annual report for the year under review¹, regular information bulletins or newsletters, periodic data on the number of complaints received and disposed, the non-accessibility of its inquiry reports and recommendations, and non-functional and dynamic website – makes its evaluation difficult.²

Sri Lanka's 26 year long war ended on 17 May 2009 amidst allegations of gross violations of international humanitarian law by both the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE).³ One year later, the island continued to be governed under a state of emergency (albeit partly relaxed from May 2010)⁴, some provisions of which are in breach of international standards⁵, while the draconian Prevention of Terrorism Act⁶ remained in force

* Economic, Social and Cultural Rights programme, Law & Society Trust (LST). This is a slightly revised version of the country paper first published in the Asian NGOs Network on National Human Rights Institutions (ANNI), 2010 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok, 2010, pp. 207-222, http://forum-asia.org/2010/ANNI2010_TEXTONLY.pdf.

- I am grateful to my colleague Ruki Fernando for substantive comments on an earlier draft.
- ¹ The most recent activity report available at time of writing in mid-2010 is the 2008 Annual Report.
 - ² See B. Skanthakumar, "Window-Dressing? The National Human Rights Commission of Sri Lanka", LST Review, Vol. 20 (No. 262), August 2009, pp. 5-26, <http://www.lawandsocietytrust.org/web/images/PDF/HRCSL%20Report%202009.pdf>, to avoid duplication of information and analysis presented in the 2009 ANNI Report on Performance and Establishment of National Human Rights Institutions in Asia; and also Deepika Udagama, "HRC: Looking Back To Move Forward", Peace Monitor, Vol. 6, Issue 1 (May 2010), Centre for Policy Alternatives, Colombo 2010, pp. 16-21.
 - ³ Although no conclusion on culpability is derived, for a catalogue of horrors see, US Department of State, Report to Congress on Incidents During the Recent Conflict in Sri Lanka, Washington D. C., 2009, <http://www.state.gov/documents/organization/131025.pdf>.
 - ⁴ Civil Rights Movement, Changes to Emergency Regulations: CRM examines recent amendments, E 01/05/2010, Colombo, 15 May 2010.
 - ⁵ International Commission of Jurists, Sri Lanka: Emergency Law and International Standards, Briefing Paper, Geneva, March 2009, <http://www.icj.org/IMG/SriLanka-BriefingPaper-Mar09-FINAL.pdf>.
 - ⁶ For critique see, Bertram Bastiampillai, Rohan Edrisinha and N. Kandasamy (eds.), Prevention of Terrorism Act: A Critical Analysis, Centre for Human Rights and Development, Colombo 2009.

despite any clear and present threat to 'national security' (itself a nebulous concept) in the intervening period.

The year 2009 had begun in the context of state military offensives in the Vanni districts of the Northern Province resulting in the consequent displacement of hundreds of thousands of Tamil civilians and their subsequent use as 'human shields' by the LTTE.⁷ Shortages of food, water, shelter and medicine to civilians in LTTE-held areas were reported by relief agencies. By the end of May 2009, almost 280,000 Tamils who had previously lived under LTTE control and hence regarded of suspect affiliation, were interned in so-called 'welfare camps'⁸, and denied freedom of movement as well as unrestricted access to external agencies, family and friends. These restrictions were only lifted in December 2009.

On 8 January 2009, Lasantha Wickrematunge, editor-in-chief of the *Sunday Leader* newspaper was shot dead in broad daylight, and only metres away from the military cordon surrounding an air-force base to the south of Colombo. His assassination underscored the vulnerability of media workers and the severity of threats to freedom of expression and dissent in Sri Lanka. Meanwhile, the failure of state authorities to apprehend his killers, or even unearth leads in the investigation, illustrates the impunity enjoyed in crimes of this nature.⁹

In its inquiry report into the Angulana case involving the torture and subsequent killing of two young men by the local police on 13 August 2009¹⁰, the HRCSL recognised the prevalence of custodial torture and its institutionalisation in Sri Lanka: "Even where there has been a large number of court orders issued in cases of violating fundamental rights and where the Supreme Court had imposed heavy penalties and compensation to be paid by the perpetrator police officers personally, it has not made much of a difference."¹¹

The overall human rights situation in Sri Lanka in 2009 could be summarised as follows: "[t]he government was credibly accused of arbitrary arrests and detentions, poor prison conditions, denial of fair public trial, government corruption and lack of transparency, infringement of

⁷ Human Rights Watch, *War on the Displaced: Sri Lankan Army and LTTE Abuses against Civilians in the Vanni*, New York, 20 February 2009, <http://www.hrw.org/en/reports/2009/02/19/war-displaced-0>.

⁸ UN Office for the Coordination of Humanitarian Affairs, *Sri Lanka – Vanni Emergency Situation Report #24*, Colombo, 2 July 2009, <http://ochaonline.un.org/srilanka/SituationReports/EmergencySituationReport/tabid/5487/language/en-US/Default.aspx>.

⁹ Committee to Protect Journalists, *Sri Lanka: Failure to Investigate*, New York, 23 February 2009, <http://cpj.org/reports/2009/02/failure-to-investigate-sri-lankan-journalists-unde.php>.

¹⁰ Malik Gunatilleke and Damith Wickramasekera, "Double murder: Victims were whipped before being killed", *Sunday Times*, 30 August 2009, http://sundaytimes.lk/090830/News/nws_21.html.

¹¹ Susitha R. Fernando, "HRC says police torture continuing", *Daily Mirror*, 9 February 2010, <http://www.dailymirror.lk/index.php/news/1532-hrc-says-police-torture-continuing.html>.

freedom of movement, harassment of journalists and lawyers critical of the government, and discrimination against minorities.”¹²

The Human Rights Commission of Sri Lanka has been in grave difficulty since the unconstitutional appointment of its members in 2006. Its crisis has since intensified, through the non-appointment of Commissioners, when the three-year term of those members ended on 17 June 2009. Only the Chairman – who had been appointed in December 2006 following the death by natural causes of his predecessor – continued in office until the expiry of his term in December 2009. President Mahinda Rajapakse’s administration has manoeuvred to undermine and debilitate statutory institutions such as the National Police Commission and the Commission to Investigate Allegations of Bribery or Corruption through the stratagem of allowing members’ current terms to run to the end, and thereafter not making fresh appointments.

This subordination of independent institutions to the Executive culminated in the announcement – following the landslide parliamentary victory of the ruling United Peoples Freedom Alliance on 8 April 2010 – of the Government’s intention to amend the Constitution to permit direct appointments by the Executive to oversight bodies including the Human Rights Commission. These assaults on the independence and effectiveness of the HRCSL risk eroding beyond recuperation its legitimacy and relevance to the protection and promotion of the human rights of citizens.

In August 2009, the Asia-Pacific Forum on National Human Rights Institutions (APF) – of which the Sri Lankan Human Rights Commission had been full member – resolved at its 14th Annual Meeting in Amman, Jordan to henceforth follow the accreditation decisions of the International Coordinating Committee of National Institutions (ICC) for its own membership.¹³ In March 2009 the ICC’s Sub-Committee on Accreditation (SCA) had concluded that the Human Rights Commission of Sri Lanka did not fully comply in law and in practice with the Paris Principles and therefore confirmed its previous downgrading in 2007 to ‘B’ status.¹⁴ Accordingly, the

¹² US Department of State, 2009 Country Reports on Human Rights Practices: Sri Lanka, Washington D. C., 11 March 2010, p. 1, <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>.

¹³ The Forum Councillors appear to have accepted the argument that the existence of two parallel accreditation procedures for an overlapping membership, “involves unnecessary and duplicative administrative work, with the possibility of inconsistent decisions” as indeed was the case with the Human Rights Commission of Sri Lanka between 2007 and 2009, see Andrew Byrnes, Andrea Durbach and Catherine Renshaw, “Joining the Club: the Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the advancement of human rights protection in the region”, *Australian Journal of Human Rights*, Vol. 14, No. 1 [2008], pp. 63-98 at p. 87.

¹⁴ Para. 3.2, Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 26-30 March 2009, http://www.nhri.net/2009/SCA_REPORT_March%202009%20Session_%28English%29.pdf.

HRCSL has been relegated to an 'Associate Member' of the APF¹⁵; and consequently lost its voting rights in that regional organisation.

INDEPENDENCE

The Human Rights Commission of Sri Lanka was created in August 1996 and began operations in July of the following year.¹⁶ A landmark amendment¹⁷ to the Constitution of Sri Lanka was enacted in 2001 with the object of safeguarding the independence of statutory institutions from the Executive, through creation of the Constitutional Council that was required to approve the appointment and removal of members of Commissions – a power previously vested in the President. As the Human Rights Commission was among scheduled institutions listed in the 17th Amendment, it consequently attained Constitutional recognition.

However, these constitutional provisions were no obstacle in themselves to their subversion by the Executive.¹⁸ No new appointments were made to the Constitutional Council after March 2005 (during the previous President's term of office), and thereafter the President began making direct appointments to the statutory institutions, including to the Human Rights Commission in June 2006. A Parliamentary Select Committee on reforms to the 17th Amendment had been sitting for years but was perceived as a stalling mechanism on the part of the Government.

Soon after the April 2010 general elections, the government emboldened by its near two-third majority in Parliament, announced a string of regressive constitutional changes, including the abolition of the Constitutional Council. A Cabinet Minister (and former Professor of Law) announced that the reform of the 17th Amendment would allow for the President to make direct appointments to scheduled statutory institutions (including the Human Rights Commission), in consultation with the Prime Minister and the Speaker of the House.¹⁹ Under the current constitutional and electoral system in Sri Lanka, all three office-holders will invariably be from the same governing political party.

¹⁵ Para. 9, Asia Pacific Forum of National Human Rights Institutions Concluding Statement, August 2009, LST Review, Vol. 20 (Issue 262) August 2009, pp.1-4 at p. 2, <http://www.asiapacificforum.net/about/annual-meetings/14th-jordan-2009>.

¹⁶ Mario Gomez, "Sri Lanka's New Human Rights Commission", Human Rights Quarterly, Vol. 20, No. 2 [1998], pp. 281-302; Abul Hasnat Monjurul Kabir, "Establishing National Human Rights Commissions in South Asia: A Critical Analysis of the Processes and the Prospects", Asia-Pacific Journal on Human Rights and the Law, Vol. 2, No. 1 [2001], pp. 1-53 at pp. 27-31.

¹⁷ Seventeenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka, 2001, http://hrli.alrc.net/pdf/17th_amendment.pdf.

¹⁸ Cyrene Siriwardhana, "Public Institutions and De-Politicisation: Rise and Fall of the 17th Amendment", Sri Lanka: State of Human Rights 2007, Law & Society Trust, Colombo 2008, pp. 237-261.

¹⁹ Political Editor, "After the show, a show-down with India", Sunday Times, 6 June 2010, <http://sundaytimes.lk/100606/Columns/political.html>.

Whereas the end of war and the quelling of armed separatism could have been an opportune moment to roll back the crippling of democratic institutions and evacuation of democratic values over the past few decades, what we have instead, as one human rights lawyer despaired, "...constitutional reforms entrenching authoritarianism in the dark. Core to this is the throwing out of the Constitutional Council (CC) and the return to unfettered Presidential appointments with only a vague duty to 'consult' others before making the appointments to key offices as well as the constitutional commissions".²⁰

The enabling legislation that created the Human Rights Commission provided that until the establishment of the Constitutional Council, the prescribed procedure for selection of its members is appointment by the President "... on the recommendation of the Prime Minister in consultation with the Speaker *and the Leader of the Opposition*"²¹ (emphasis added). The excision of the last-named removes the requirement for endorsement across the political divide. Hereafter, Commissioners and Chairpersons will be perceived as political appointees tied to the party in power; and the institution they lead, will lack credibility as an independent body able and willing to secure accountability for citizens – especially known critics of the government – from those in power.

Aside from the appointment process, there is no prospect of transparency and consultation in the selection and composition of members.²² The members chosen by the President for the 2006-2009 Commission comprised of three former judges and two lawyers, none of whom had a human rights background and all of whom served part-time. It is unlikely under the present dispensation that the new members will reflect the pluralism of civil society, and comprise recognised human rights defenders. Most likely, those individuals appointed will be in the mould of the 2006-9 Commission, and will comprise retired judicial officers, ex-bureaucrats, academics and professionals regarded as accommodative of, and deferential to, the Executive.

EFFECTIVENESS

Despite the non-appointment of members to the HRCSL, its staff continued to receive and record complaints from members of the public. Outwardly, all appears to be as before. The 10 regional offices and head office operate with 208 staff. The fact of existence of the HRCSL and its routine, even mechanical, functioning may partly explain the lack of outcry over its tragic fate. It is also a sign of the times: to aspire to no better and to anticipate even worse. People turn to the Human

²⁰ Kishali Pinto-Jayawardena, "Focus on Rights: Bringing the moon down to earth", Sunday Times, 20 June 2010, <http://sundaytimes.lk/100620/Columns/focus.html>.

²¹ S. 3 (2), Human Rights Commission of Sri Lanka Act, No. 21 of 1996, http://www.idpsrilanka.lk/Doc/Related%20Articles/ArrestandDetRelatedLaws/1996_No_21_HRC_Act.pdf.

²² See ICC Sub-Committee on Accreditation, General Observations 2.1 and 2.2 (June 2009), <http://www.nhri.net/2009/General%20observations%20June%202009%20%28English%29.pdf>.

Rights Commission because they have nowhere else to go, outside of the labyrinthine and costly formal legal system, not because of confidence in it.

As of August 2009, some 3,557 complaints²³ were recorded, although it is unclear whether these are only those received at the Colombo head office, and how many were accepted for inquiry. Most complaints relate, as since the inception of the HRCSL, to school admissions, promotions of public servants, and police conduct (no details are available on the specific nature of violations allegedly committed by the last). The number of complaints received within the first eight months of 2009 may be contrasted with the figure of 6,574 complaints received in 2008.²⁴

In the first quarter of 2010, some 1,492 complaints were recorded at the head office alone.²⁵ Seven months after the end of the war, between 1 January and 23 February 2010, the HRCSL received 17 complaints of disappearances mainly from the conflict-affected and Tamil-majority Northern and Eastern provinces.²⁶

Its chronic financial and infrastructural under-resourcing, under-staffing in particular grades and regional offices, and the indifference or obstruction of governmental authorities contributes to the large number of pending and unresolved complaints each year. For example, it is reported that between January to September 2009, 116 complaints were received by the Jaffna regional office. However, as of October 2009, only 11 cases had been disposed of while the remaining 105 were awaiting resolution.²⁷

The lethargic approach of some staff towards complainants and their grievances, and the reluctance of their superiors to use the full range of powers and authority vested in the Commission, is the other part of the problem.

In public consultations on the Human Rights Commission organised by the Law & Society Trust in several provinces in 2009, a common refrain of participants was the lack of timely action on complaints.²⁸ One teacher from the Southern province railed against an eight month delay in the issue of a recommendation on a school admission complaint, thereby adversely affecting the first year of education of the child concerned. Another participant from the Central province recounted

²³ HRCSL Secretary Chandra Ellawala as quoted in Sandun A. Jayasekera, "HR Commission Paralyzed", Daily Mirror, 22 August 2009.

²⁴ Human Rights Commission of Sri Lanka, Annual Report 2008, Colombo, p. 9, http://hrsl.lk/PFF/HRCSL_2008_Annual_Report.pdf.

²⁵ Mandana Ismail Abeywickrema, "HRC unable to make recommendations on current investigations", 2 May 2010, Sunday Leader, <http://www.thesundayleader.lk/2010/05/02/hrc-unable-to-make-recommendations-on-current-investigations/>.

²⁶ Anuradha Nimini, "17 complaints of Disappearances", Ravaya, 28 February 2010 (in Sinhala).

²⁷ US Department of State, 2009 Country Reports on Human Rights Practices: Sri Lanka, Washington D. C., 11 March 2010, p. 14, <http://www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm>.

²⁸ Chandralal Majuwana, "Sri Lanka's Constitutional Institutions: Perspectives from the Provinces", LST Review, Vol. 20 (No. 266), December 2009, pp. 14-15.

his experience of the HRCSL's inaction in his complaint over non-promotion within the public service, apparently because the necessary documents were unavailable. The HRCSL had allegedly abandoned its inquiries without informing the complainant and without, in his belief, having taken efforts to obtain the requisite documentation.

While these accounts are anecdotal and could not be cross-checked with the HRCSL, the repetitiveness with which similar experiences are shared by unrelated respondents from different backgrounds and in different parts of the island, indicate that at least the issues are genuine and the problems are systemic. If complaints of an administrative nature are managed in this manner by the HRCSL, then unsurprisingly citizens lose confidence in its capacity to respond to more serious human rights violations whose investigation necessarily involves confronting powerful state actors.

In the absence of Commissioners, the legality of the HRCSL's operations was a matter of debate over 2009 within the human rights community. All doubt was removed when the Presidential Secretariat through the Secretary to the President and in a letter dated 26 March 2010²⁹, informed the HRCSL that the national human rights institution lacked the lawful authority to exercise its functions in the absence of duly-appointed Commissioners.

This intervention followed the refusal of the Examinations Department of the Ministry of Education to submit itself to inquiry by the HRCSL following complaints lodged by aggrieved students. It is also significant that the clarification was received from within the Executive – that is from a member of the President's inner circle, rather than from the Attorney-General whose role includes being legal counsel to Government. Subsequently, HRCSL Secretary Chandra Ellawala was to confirm to one newspaper that the "HRC is not in a position now to make recommendations to the authorities concerned to take action against rights abuses."³⁰

A case study of the HRCSL's handling of a serious human rights violation may serve to illustrate several problematic aspects of its functioning, ranging from deficiencies in its enabling law to the bureaucratic interpretation and performance of their duties of some of its staff.

On 2 February 2010, Sandya Eknaligoda visited the HRCSL's head office in Colombo to lodge a complaint regarding the 'disappearance' of her husband. Prageeth Eknaligoda is a political cartoonist and media worker, who had been abducted on 24 January 2010 (two days prior to the presidential election) en-route from his workplace to his home. A senior investigating officer was

²⁹ Lalith Weeratunga, "Response to the Query of the Human Rights Commission", Ref No: CA/1/10, 26 March 2010 (in Sinhala). This is not a public document and is on file at the Law & Society Trust.

³⁰ Kelum Bandara, "HRC in precarious state: UNP", Daily Mirror, 23 June 2010, <http://www.dailymirror.lk/print/index.php/news/news/13724.html>.

initially reluctant to accept the complaint explaining that it falls outside of the HRCSL's mandate³¹, as the right to life is not expressly protected in the Sri Lankan Constitution.

The HRCSL's enabling law restricts its scope to 'fundamental rights'³² alone, that is, those human rights that are entrenched in the Constitution and therefore justiciable, and not all human rights which Sri Lanka has undertaken to respect, protect and fulfil through international law.³³ Following argument by a lawyer accompanying Mrs Eknaligoda that the right to life has been judicially recognised³⁴ by the Supreme Court of Sri Lanka as an implied Constitutional right – the officer relented.³⁵

Although finally the complaint was recorded under Reference Number HRC/369/2010, the investigating officer pronounced the HRCSL unable to conduct an inquiry into the circumstances of his abduction. According to him the case fell squarely within the remit of the Criminal Investigation Department of the Police. Mrs Eknaligoda had, of course, made a police complaint soon after her husband's 'disappearance' and it was police inaction and her lack of confidence in

³¹ Nadia Fazlulhaq and Damith Wickramasekera, "State media personnel allege harassment", Sunday Times, 7 February 2010, http://sundaytimes.lk/100207/News/nws_75.html; and personal communication from Mrs Eknaligoda.

³² These rights are freedom of thought, conscience and religion; freedom from torture; right to equality; freedom from arbitrary arrest, detention and punishment, and prohibition of retroactive penal legislation; and freedom of speech, assembly, association, occupation and movement, Chapter III, Constitution of the Democratic Socialist Republic of Sri Lanka 1978, <http://www.priu.gov.lk/Cons/1978Constitution/1978ConstitutionWithoutAmendments.pdf>.

³³ For instance, the UN Human Rights Committee has commented of Sri Lanka's adherence to the International Covenant on Civil and Political Rights: "... the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the Covenant, or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in chapter III of the Constitution of Sri Lanka...", Para. 7, Concluding Observations of the Human Rights Committee: Sri Lanka, CCPR/CO/79/LKA, 12 January 2003, <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CCPR.CO.79.LKA.En?Opendocument>.

³⁴ "Although the right to life is not expressly recognised as a fundamental right, that right is impliedly recognised in some of the provisions of Chapter III of the Constitution. In particular, Article 13 (4) provides that no person shall be punished with death or imprisonment except by order of a competent court ... Thus Article 13 (4), by necessary implication, recognises that a person has a right to life – at least in the sense of mere existence, as distinct from the quality of life – which he can be deprived of only under a court order" and "... Article 11 (read with Article 13(4)), recognises a right not to deprive of life – whether by way of punishment or otherwise – and, by necessary implication, a right to life. That right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively ... ", per Fernando, J. in *Sriyani Silva v. Iddamalgoda, Officer-In-Charge, Police Station Paiyagala and Others* [2003] 2 Sri L. R. 63 at 75 and 77 respectively (emphasis in the original), http://www.lawnet.lk/docs/case_law/slr/HTML/2003SLR2V63.htm.

³⁵ Incidentally, the complaint form assumed that the complainant was herself or himself the victim of the alleged or imminent fundamental rights violation, rather than a bona fide representative; and it made no provision for the record of serious human rights violations such as enforced disappearances or killings despite their prevalence in Sri Lanka since the early 1970s (personal communication from the lawyer accompanying Mrs Eknaligoda).

the law enforcement agencies that had driven her to the Human Rights Commission.³⁶ The scope of the HRCSL's intervention was confined to ascertain whether Prageeth Eknaligoda is being held in a registered place of detention and his welfare in such a place. Subsequently, the only action being taken by the HRCSL appears to be the monitoring of police investigations. Prageeth Eknaligoda's whereabouts and safety remain unknown.

Another case study highlights a more responsive approach by the HRCSL. The main opposition presidential candidate and former army commander, Retired General Sarath Fonseka was forcibly removed from his office and taken into military custody on 8 February 2010.³⁷ Acting on a complaint from a human rights defender, the HRCSL visited Fonseka later that month at the naval camp where he was incarcerated to inspect the conditions at the place of detention and his treatment in custody.

Following inspection and interview, the HRCSL prepared an 'Observation Report' which was submitted to the Defence Secretary, under whose authority the arrest and military law proceedings took place at the end of February.³⁸ Based on complaints from Fonseka, the HRCSL apparently recommended that the ventilation be improved; that he be granted access to his personal physician and enhanced medical care; and that visitation rights be extended to family members. It also made at least one more visit two weeks later to verify whether corrective action had been taken.³⁹

Fonseka's conditions of detention did indeed improve, but political calculations over public unhappiness at the treatment of a "war hero" in the run-up to parliamentary elections in April, and the local and international media interest may have been given greater weight than the HRCSL's report. Nevertheless, knowing the extreme hostility of the government to Fonseka, the HRCSL did not evade its responsibility towards his well-being. It even went one step further by endorsing Fonseka's belief that the military investigation into the charges against him is unlikely to be impartial and fair. However, the government continues to pursue both military and civilian law proceedings on several counts against Fonseka. The measures taken by the HRCSL, while unexceptional for a national human rights institution, are noteworthy in view of its current dysfunction.

³⁶ Reporters Without Borders, Cartoonist kidnapped two months ago still missing, 23 March 2010, <http://en.rsf.org/sri-lanka-cartoonist-kidnapped-two-months-23-03-2010.36823.html>.

³⁷ Amnesty International, Arrest of Sri Lankan Opposition Leader Escalates Post-Election Repression, PRE01/039/2010, 8 February 2010, <http://www.amnesty.org/en/for-media/press-releases/arrest-sri-lankan-opposition-leader-escalates-post-election-repression-2>.

³⁸ Sumaiya Rizvi, "HRCSL urges Ind. team to probe against Fonseka", Daily Mirror, 1 March 2010, <http://www.dailymirror.lk/print/index.php/business/127-local/4844.html>.

³⁹ Jamila Najmuddin, "HRC to review recommendations", Daily Mirror, 4 March 2010, <http://www.dailymirror.lk/index.php/news/2007-hrc-submits-report-on-fonseka.html>.

CONSULTATION AND COOPERATION WITH NGOS

The Human Rights Commission has continued to struggle in its relations with human rights non-governmental organisations (NGOs). In 2009, the HRCSL's head office resumed dialogue with NGOs, and conducted meetings in Colombo on 22 January and 30 March, and once again on 9 June. Invitations to the discussions in January and March were made on the basis of personal contacts and not by public announcement. The meeting in June was with a smaller group of NGOs who had been nominated at the previous meeting to represent civil society organisations. Thereafter, there was no further structured interaction with civil society organisations in 2009. Prominent human rights defenders and long-standing advocacy organisations have been unrepresented at all these meetings.

Some human rights defenders have refused to engage with the 2006-9 Commission on the basis that to do otherwise would amount to condoning the unconstitutional appointment of its members. Others have expressed their apprehension that the HRCSL chooses to meet with NGOs only in advance of meetings and deliberations of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC) and the Asia-Pacific Forum of National Human Rights Institutions (APF); or alternatively in deference to donor organisations who press for it to abide by the injunction in the Paris Principles that “[i]n view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, to develop relations with the non-governmental organisations devoted to protecting and promoting human rights ...”⁴⁰.

On 26 March 2010, the Human Rights Commission organised a ‘civil society forum’ in Colombo, with groups representing various districts.⁴¹ This was a larger, broader, and more plural gathering than the meetings in the previous year, and included the Law & Society Trust. However, once again some human rights defenders stayed away, critical of the HRCSL's lack of structured dialogue with civil society organisations, and lack of follow-up to issues raised in the previous meetings in 2009. For instance, the creation of a focal point for human rights defenders within the Commission last year is an important development. However, it has not been accompanied by statements and acts of solidarity with human rights defenders, media workers and dissenters under persecution, including their protection.

The theme of the meeting was “Developing a practical action plan on how the civil society organisations can work together with Human Rights Commission”. The premise appeared to be

⁴⁰ Para. 3(g), Methods of Operation, Principles relating to the Status of National Institutions (‘Paris Principles’), UN GAR 48/134 of 20 December 1993, <http://www2.ohchr.org/english/law/parisprinciples.htm>.

⁴¹ Networking civil society with the HRCSL is one of several planks of the United Nations Development Programme's current phase of capacity-building support (August 2009 – December 2011) to the Human Rights Commission that also includes technical assistance to regional offices to strengthen their complaints-handling, investigation process, monitoring or inspection visits, and report-writing.

that it was necessary to identify thematic issues and areas for collaboration as a means of fostering closer relationships between the HRCSL and human rights non-governmental organisations. Consequently the format of the discussion took the form of small group discussions tasked with presenting their respective action plans. More useful was the opportunity to hear updates on the activities of the HRCSL's departments of Inquiries and Investigations, Monitoring and Review, and Education and Special Programmes, from their respective directors; as well as for dialogue with them and other HRC head office staff who were present.

Since then, and as of time of writing in June 2010, there have been no further meetings in Colombo, although similar forums have been conducted with regional offices of the HRCSL in some provinces.

In fact, there is no mystery to connecting civil society organisations with the HRCSL and *vice-versa*. If the national human rights institution is perceived as independent and effective, and if it acts as part of the human rights community and not as a cog in the state machinery, then civil society will naturally develop a bond of trust in it; and human rights defenders will turn to, and work with it.

CONCLUSION

The Secretary to the Human Rights Commission recently shared her ideas and plans for the institution in Sri Lanka's post-war context. Chandra Ellawala affirmed the HRCSL's intention to step up its monitoring of police stations and other places of detention, with a focus on preventing torture and ill-treatment. "We think it is very important to work with army personnel and police, in particular, to change the mentality of officers in these institutions... It is crucial that they understand human rights and also respect them in practice."⁴² One priority in 2010 will be monitoring the care and protection of children in state-run orphanages and juvenile centres; another will be the rights of migrant workers. Ellawala also proposes to reach people in areas distant from its head and regional offices through mobile clinics and out-reach programmes.

These are important objectives. Meeting some of them requires more than human rights awareness-raising and re-education of law enforcement agents. In many cases, it also demands the accountability of public officials through legal prosecution for serious human rights violations including torture, enforced disappearance, and extra-judicial killings. It is unclear that the HRCSL recognises this; or that some of its staff are willing to discard their over-friendly relationship with police and prison officers and stand squarely with the victims of human rights abuse. In these and other respects, the HRCSL is an accomplice in its own subversion by the State; while its atrophy is symptomatic of the larger crisis of democratic institutions and values in Sri Lanka.

⁴² "Chandra Ellawala, Sri Lanka HRC", APF Bulletin (Sydney), April 2010, <http://www.asiapacificforum.net/news/chandra-ellawala-sri-lanka-hrc.html>.

RECOMMENDATIONS TO THE GOVERNMENT OF SRI LANKA

- Ensure reactivation of the Constitutional Council and speedy appointment of members to the Human Rights Commission in accordance with the Paris Principles;
- Ensure that a minimum of three from the five members are full-time, and that women's representation is guaranteed;
- Ensure the financial independence of the Human Rights Commission from the Executive, and its adequate resourcing through doubling of its current level of funding to at least LKR200 million (US\$1.76 million);
- Ensure respect for the Human Rights Commission through non-obstruction of its inquiries and investigations and speedy implementation of its recommendations;
- Ensure that the mandate of the Human Rights Commission encompasses all human rights through amendment of its enabling legislation.

RECOMMENDATIONS TO THE HUMAN RIGHTS COMMISSION

- Be pro-active through inquiries into imminent human rights violations and *suo moto* ('own motion') actions;
- Be assertive in gaining access to all places in which detainees may be held, and enhance unannounced visits;
- Be victim-centred in the complaints-handling process;
- Be consistent in relationships with, and cooperate with human rights defenders including through sharing of information and joint actions;
- Be transparent and accountable through public dissemination of the number, nature and region of origin of complaints; publicise inquiry findings and recommendations; issue regular policy statements and reports on critical human rights concerns; and ensure timely release of the annual report in Sinhala, Tamil and English

AN UNWAVERING STRUGGLE FOR INDEPENDENT AND EFFECTIVE NHRIs¹

Emerlynne Gil

I. The Year in Context

In 2009, the role of national human rights institutions (NHRIs) in fostering a culture of human rights promotion and protection in Asia appeared to become clearer to human rights movements across the region. There are also indications that Asian NHRIs are starting to recognize this role, as clearly illustrated in the steps taken by the four NHRIs from Southeast Asia (Thailand, Philippines, Malaysia, and Indonesia) in the process of the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR). These NHRIs took on a proactive role of trying to ensure that international human rights principles are reflected in the AICHR's terms of reference. Moreover, the International Coordinating Committee (ICC), the international grouping of NHRIs, also vigorously called on ASEAN member states to ensure the independence of this newly-established regional human rights body so that it may be able to effectively discharge its mandate of promoting and protecting human rights in the region.

The year under review was also significant as this was when the Asian NGOs Network on National Human Rights Institutions (ANNI) focused on encouraging fellow human rights defenders on the ground and various human rights movements at the national level to work for the development and establishment of independent, effective, transparent, and accountable NHRIs. In India, for instance, People's Watch (PW) held a series of consultations and discussion groups among local and grassroots human rights defenders, spreading the word about the importance of assessing and monitoring the work of the NHRI. In Thailand, the Working Group for Justice and Peace (WGJP) translated their report on the National Human Rights Commission (NHRC) of Thailand from the previous year into the local language so that more human rights defenders on the ground are able to access it and use it in their work. The WGJP also co-sponsored a launch of this translation where it the Chairperson of the NHRC of Thailand to speak to local groups about her plans for the Commission.

There were several key events in 2009 that made significant impact on NHRIs in Asia and non-governmental organizations (NGOs) that are engaged in the work of developing and establishing NHRIs. One of these events is the victory of the Democratic Party of Japan (DPJ) in August 2009, marking the end of more than 50 years of almost uninterrupted rule by the Liberal Democratic Party (LDP). Under the DPJ administration, it is expected that there would be rapid

¹ First published by The Asian NGOs Network on National Human Rights Institutions (ANNI), 2010 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA, Bangkok 2010, pp. 9-16, http://forum-asia.org/2010/ANNI2010_TEXTONLY.pdf and reprinted with permission. The author is the ANNI coordinator

developments on the establishment of an NHRI in Japan, after years of slow progress under the LDP.

The continued downward spiral of South Korea in terms of respect for human rights also had a significant impact in the region. Since President Lee Myung-bak assumed power in 2008, there has been an increase on reports of allegations of President Lee Myung-bak's implementation of questionable policies that disregard any impact on the human rights situation in the country. On 30 June 2009, the then-Chairperson of the National Human Rights Commission of Korea (NHRCK), Professor Ahn Kyong-Whan, resigned from his post due to policies by the government compromising the independence and effectiveness of the NHRCK. The resignation of the then-Chairperson of the NHRCK and the measures taken by the government of Korea to compromise the independence of the NHRCK could potentially impact negatively on the region, considering that it has always been viewed as one of Asia's leading NHRIs. It was held up as a model in the region for its independence and effectiveness for promoting and protecting human rights at the national level. The NHRCK's decline left a vacuum of leadership among NHRIs in Asia.

In Sri Lanka, since the escalation of fighting between the military and the Liberation Tigers of Tamil Eelam (LTTE) in early 2009, human rights defenders grappled with an NHRI that stood silent as the government clearly expressed how it views voices that are critical of its policies. Sri Lanka's Secretary of Defense, Mr. Gotabaya Rajapaksa, in an interview with BBC News in early April 2009, clearly stated that he believes it is an act of treason to express dissent or criticism during a time of war. On 08 January 2009, Mr. Lasantha Wickrematunga, the editor of the Sunday Leader newspaper, was murdered on his way to work. He was one of Sri Lanka's most prominent journalists and a strong critic of the government, frequently exposing issues such as government corruption and racism.

In May 2009, the Sri Lankan government announced that it had won the war against the LTTE, after the army had taken control over the entire island and killed Tamil leader, Mr. Velupillai Prabhakaran. Still, in the aftermath of the war, defenders in the country continue to be persecuted. Those who persist on speaking in public against the repressive policies of the government are labeled as "LTTE supporters" or "terrorists". Enforced disappearances and extrajudicial killings of human rights defenders in Sri Lanka continued until the end of 2009, while others were charged with harassment suits by the government. Many defenders had to flee the country because of this environment. In the midst of all this, the Human Rights Commission of Sri Lanka (HRCSL) stood silent and powerless. By 17 June 2009, the terms of all of the HRCSL's members ended and only the Chairperson continued sitting in the Commission until the end of the year.

The rising prominence of fundamentalist groups in the previous year also brought in a dangerous trend in the region. These groups push forward an agenda that justifies violations of human rights in the name of tradition, culture, or religion. In the Maldives, because of the disappointment largely felt by the people with the country's fledgling democracy, groups proposing as alternatives an ultra-conservative version of Islam and a throwback to the past non-democratic

system are gaining the sympathy of the people. Meanwhile, in the Philippines, morals were used as basis by the Commission on Elections (COMELEC) to justify denying the petition of the LGBT group, *Ang Ladlad*, to participate as a party-list candidate in the 2010 national elections.

At the end of the year, the region was rocked by the shocking news of the brutal massacre in the town of Ampatuan in Maguindanao, Philippines. Fifty-seven (57) people were murdered allegedly by the private army of the town mayor, Andal Ampatuan, Jr. Among those murdered were members of the family of a rival political clan, lawyers, motorists, witnesses, and at least 34 journalists. According to the Committee to Protect Journalists (CPJ), the massacre was the “single deadliest event for journalists in history.” The Commission on Human Rights of the Philippines (CHRP), known in the past as a “toothless tiger”, flexed its muscles and conducted an investigation into the massacre. The proactive steps taken by the CHRP to address this issue underlined the fact that an NHRI, with strong political will and effective leadership, can turn itself around and prove that it can significantly contribute to respect for human rights in the country.

II. The Continuous Call of NGOs for Transparency and Pluralism

Issues surrounding the selection and appointment processes of members and the very composition of NHRIs remain a very pressing concern in the region. None of the processes for the selection and appointment of members of NHRIs in Asia can be touted as a best example in the region. The selection and appointment process of the NHRC of Thailand, which had long been held as a good example in the region, was thrown out recently by the abolition of the country’s 1997 Constitution. Thus, as it stands in Asia right now, members of NHRIs in most countries are chosen either only by the President or Prime Minister, or by a select group of like-minded people, which would often result to appointments based on reasons other than human rights expertise.

Transparency in its selection and appointment process was one of the key recommendations given by the ICC Sub-Committee on Accreditation (SCA) to the Human Rights Commission of Malaysia (SUHAKAM) during its accreditation review in 2008. In 2009, things came to a head in the Malaysian parliament between members from the ruling and opposition parties when the government bulldozed amendments to the enabling law of the SUHAKAM. These amendments still do not reflect the recommendations given by the ICC SCA and the government proceeded with a selection and appointment process heavily criticized by civil society organizations as being “flawed” and “not inclusive and transparent”. Civil society groups were largely kept in the dark from the very start in the selection of the new members of the SUHAKAM. In the Philippines, transparency is also a major concern since only the President can select and appoint members of the CHRP.

Pluralism in the composition of the NHRI is also a principle largely ignored in the region. At the beginning of 2009, the ANNI called the attention of the Senate of the Philippines to a particular

provision in the draft law which was then pending before it that required the Chairman and the members of the CHRP to be members of the Philippine Bar and to have been engaged in the practice of law for at least ten (10) years. In India, the NHRC of India went without a Chairperson for quite some time since it is provided under the law that only former Chief Justices of the Supreme Court of India may be appointed to the post of Chairperson of the NHRC. It was only in 3 June 2010 that the government of India appointed Mr. Justice KG Balakrishnan as Chairperson of the NHRC of India, shortly after he retired as Chief Justice of the Supreme Court. The abovementioned provision in the enabling law of the NHRC of India also means that for the next few years, there will be no women members sitting in the Commission.

Transparency in the selection and appointment process of members of the NHRI and pluralism in the NHRI's composition are two pivotal elements in ensuring the independence and effectiveness of NHRIs. There should be a widespread call for people or groups of people representing different segments of society and human rights fields to recommend candidates for membership to the NHRI. This would ensure the appointment of members coming from a variety of backgrounds and human rights expertise. In this scenario, inputs from different sectors of society will have more chances to be figured into the work and programmes of the NHRI. Thus, the NHRI would have more opportunities to identify and address all possible human rights violations, minimizing the danger of neglecting other "less mainstream" issues which may be affecting groups considered to be minorities in the country.

III. The Role of Governments in Maintaining Independent and Effective NHRIs

In addition to the delayed appointment of the Chairperson of the NHRC of India, as of the June 2010, at least three (3) NHRIs in the region, namely in Sri Lanka, Bangladesh, and Malaysia, operated without Commissioners for a significant period of time due to the failure of the respective governments to appoint members of NHRIs in a timely manner.

In Sri Lanka, four (4) commissioners of Human Rights Commission (HRC) ended their terms in May 2009, while the commission's chairman also ended his term in December 2009. Since then up to the time of publication of this report, no commissioners and chairperson have been appointed.

In Bangladesh, the NHRC was without a Chairperson and members for several months. It was only in June 2010 that the government appointed members to the Commission under the NHRC Act of 2009. The same is the case in Malaysia where the SUHAKAM was left without commissioners for more than one month (from 26 April 2010 to 7 June 2010), after the previous batch of commissioners ended their respective terms on 23 April 2010.

The absence of commissioners in the NHRIs in Sri Lanka and Bangladesh posed a particularly critical problem for human rights defenders in both countries who operate in the context of tough

restrictions on freedom of speech and expression, and thus continuously face numerous forms of threats and challenges in their work there. In Malaysia, on the other hand, during that period of more than one month, because of the absence of commissioners, no investigation could be carried out on allegations of human rights violations.

The failure to appoint members of NHRIs by governments in due time, as exemplified in the cases of Sri Lanka, Bangladesh and Malaysia, clearly shows their lack of political will to maintain strong, independent, and effective NHRIs.

IV. Strengthening ties between NGOs and NHRIs

In the past reports of the ANNI, many NGOs lamented the lack of cooperation and collaboration between NGOs and NHRIs. This was indeed a major concern since both groups should theoretically be inevitable partners of each other, considering that both have dedicated mandates to promote and protect human rights.

Only a few NHRIs in Asia have enabling laws formalizing their relationships with NGOs in their countries. In Mongolia, for instance, the National Human Rights Commission (NHRC) of Mongolia is required under the law to work with an ex officio council consisting of nine (9) NGO representatives. However, this ex officio council has not been successful in significantly influencing the policies of the NHRC of Mongolia on key issues. The same goes in Nepal, where the Interim Constitution and the draft NHRC Act provides specifically that the NHRC of Nepal should work in a coordinated manner with civil society groups. However, the NHRC of Nepal initiates very limited activities with NGOs.

There are efforts though by some NHRIs to develop a mechanism for cooperation with NGOs. In the Maldives, the HRC of Maldives recently took steps to formalize constructive ties with NGOs by establishing an NGO Network, although the impact of this on the working relationship between the two has yet to be determined. The HRC of Sri Lanka organized a 'civil society forum' in March 2010, in an attempt to draw in NGOs from various districts. However, many human rights defenders declined the invitation to the forum as they continue to be critical of the Commission's lack of a formal mechanism to effectively cooperate with NGOs and the absence of tangible outcomes from similar forums initiated by the Commission in 2009.

In those countries where the relationship of the NHRI and NGOs is not formalized under the law, the interaction and collaboration would be largely determined by the kind of personal relationships built and maintained by individuals from the two groups, as well as the type of issues at hand. The NHRC of Bangladesh, for instance, included members of civil society in its independent inquiry mission on allegations of extrajudicial killings in the country. The current CHR of the Philippines is reported to have a better working relationship than the past Commission. This is largely attributed to a leadership that reaches out to and has strong support

from the wide range of human rights groups in the country, as well as from the academe and professional organizations.

V. A Resolute Pursuit

Asia may arguably be a region in the world where many human rights groups vibrantly and actively pursue the discourse on the development and establishment of NHRIs. It may also be arguably the only region in the world where human rights groups, such as members of the ANNI, resolutely work on monitoring and assessing the performance of NHRIs.

It is interesting to note that the key issue that emerged this year, as in the previous year, directly relates to the principle of independence. The lack of transparency and pluralism, whether it be in the selection and appointment of the NHRI's members or in the institution's working processes, is often a clear sign that the NHRI does not stand independent from the government. In turn, an NHRI perceived by civil society as lacking independence would not be able to build strong and constructive relationships with human rights defenders on the ground. As a consequence, the NHRI, more often than not, would have huge difficulties working to effectively address human rights violations without the cooperation and support of these defenders in the country.

The importance of developing and establishing effective and independent NHRIs cannot be emphasized enough, especially in this region. While the debate rages on whether or not the newly-established AICHR can be an effective human rights body, Asia remains as the only region in the world without a working regional human rights mechanism. It is for this reason that human rights defenders and organizations, particularly the members of the ANNI, will continue to soldier on with their work in the hope that one day, these NHRIs would become pillars in a regional community where there is respect for human rights.

**EIGHT POINTS FOR THE ASIA PACIFIC FORUM - ANNI STATEMENT
OF 4 AUGUST 2010 TO THE 15TH MEETING OF THE ASIA-PACIFIC
FORUM IN BALI, INDONESIA**

Asian NGOs Network on National Human Rights Institutions (ANNI)

We the members of the Asian NGOs Network on National Human Rights Institutions (ANNI), thank the Asia Pacific Forum (APF) for the opportunity to speak in this forum. We note the changes to the usual format of the APF meeting, and we sincerely hope that these changes were not meant to preclude meaningful participation of civil society groups in the discussions of the APF.

From 1-2 August 2010, the ANNI and defenders from groups working on sexual orientation and gender identity (SOGI) issues, met to discuss emerging topics relevant to national human rights institutions (NHRIs) in Asia, as well as to dialogue with the NHRIs from the region. During this meeting, after extensive discussions, the participants came to agree on eight (8) points which we are now putting forward for the APF to consider during its strategy-planning process.

First, we note that many reports from the NHRIs this year reflect the issues raised by the ANNI in its previous reports. We appreciate this as a sign that NHRIs are listening to the voices of civil society and placing value on civil society's views with respect to their work. To further enrich these reports, we propose that the APF develops a template for reporting for its members, which would include information on how the NHRI protects human rights defenders and women human rights defenders on the ground. This is important since we see a rising trend of violence against defenders, particularly against those working on the issues of freedom of expression and sexual orientation and gender identity (SOGI). The ANNI extends its offer to assist the APF in developing this template for reporting for its member institutions.

Second, we note that the APF invests huge amounts of time and resources towards the development of the references of the Advisory Council of Jurists (ACJ). We welcome the APF's efforts to work with NGOs in helping develop these references. Hence, we feel that it would be important that there should be a commitment from the member institutions of the APF to seriously consider and take clear steps to implement these recommendations. For instance, we appreciate the practical steps issued by the APF with respect to its 5 member institutions (Australia, Philippines, Mongolia, New Zealand, and Indonesia) to help them implement the reference of the ACJ on SOGI issues.

Third, we welcome the recommendation from the APF donor review on developing a mechanism for civil society participation in the APF annual meetings. We would like to inquire however what are the steps being taken to develop this mechanism. The ANNI also offers its assistance in developing such a mechanism.

Fourth, we note the importance of training programmes for the purpose of improving the work of NHRIs. On this point, we call upon the APF to ensure that such training programmes are given to its member institutions. It is important for the APF to emphasize that these training programmes are not only for the staff of NHRIs, but also for its members, including chairpersons. We also believe that members and staff of specialized NHRIs (e.g. women's commissions and Dalit commissions) should be included in these programmes. Moreover, in conducting these trainings for NHRIs, the APF must ensure that the participants are given the opportunity to study past and present references of the ACJ so that they can be fully utilized by NHRIs in their work. We further encourage the APF to utilize the existing expertise from civil society in these trainings by inviting civil society representatives as resource persons to speak to the members and staff of NHRIs and to share with them their work. This may also pave the way towards better understanding between civil society groups and NHRIs for better collaboration and cooperation.

Fifth, we strongly urge the APF to be mindful of its members' vital role of engaging with international human rights mechanisms. We propose that the APF assists its member institutions in developing their expertise and capacity on submitting substantial reports to UN treaty bodies and in ensuring that the recommendations of these bodies are implemented by their governments. We also propose that the APF encourages its member institutions to proactively engage with the UN Special Procedures, particularly on advocating their governments to extend invitations to mandate holders for official country visits.

Sixth, we welcome the proposed establishment of sub-regional offices by the APF. We trust that these sub-regional offices will be established in countries accessible to human rights defenders from nearby areas, and that the APF ensures that there will be an entrenched mechanism for working with civil society in these sub-regional offices.

Seventh, we urge the APF to play an active role in the workshops on the regional cooperation in the protection and promotion of human rights. We emphasize this since the Tehran Framework identifies NHRIs as one of the four pillars in the promotion and protection of human rights in the region. The APF should also build the capacity of its members in promoting the adoption of national human rights action plans (NHRAPs) by governments and monitoring the implementation of these plans.

Eighth, we urge the APF to work with parliaments and governments in countries where there are no NHRIs and assist them in the establishment of Paris Principles-compliant institutions in their countries. We also urge the APF to include these parliaments and governments in the meetings of the APF so that they would be exposed to other models in the region and learn to appreciate the value of establishing an NHRI for the promotion and protection of human rights in their country.

With these eight points, the ANNI reiterates its commitment to engage with the APF and its member institutions in promoting and protecting human rights in Asia.

**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE
HIGH COMMISSIONER AND THE SECRETARY GENERAL**

Human Rights Council

Thirteenth session

Agenda item 2

15 January 2010, UN Doc Ref: A/HRC/13/44

**NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS**

Report of the Secretary-General* **

Summary

The present report is submitted pursuant to Human Rights Council decision 2/102, in which the Council requested the United Nations High Commissioner for Human Rights to continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies.

The report, which covers the period from January to December 2009, contains information on the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to establish and strengthen national human rights institutions (NHRIs), measures taken by Governments and NHRIs in this regard, and cooperation between NHRIs and international human rights mechanisms. Specifically, the report highlights the main achievements, challenges and priorities at the national level regarding the establishment and strengthening of NHRIs.* The activities of NHRIs on thematic issues, such as peace and justice, human rights defenders, migration, business and human rights, rights of persons with disabilities and climate change, are also discussed.#

* Late submission.

** As the present report greatly exceeds word limitations currently allowed under relevant General Assembly resolutions, the annexes are reproduced in the language of submission only.

* Additional information on initiatives and assistance provided to NHRIs may be found in the report of the Secretary-General to the General Assembly (A/64/320).

Relevant documents are posted on www.nhri.net.

I. Introduction

1. The present report outlines progress achieved since the last report of the Secretary-General submitted to the Human Rights Council (A/HRC/10/54).

II. Office of the United Nations High Commissioner for Human Rights and national human rights institutions

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) accords priority to the establishment and strengthening of national human rights institutions (NHRIs) with due regard for the Principles Relating to the Status of National Institutions (the Paris Principles) adopted by the General Assembly (resolution 48/134, annex). OHCHR is also engaged in improving United Nations system-wide coordination on NHRIs, and supports their increased participation in the United Nations and regional human rights mechanisms. OHCHR encourages the sharing of good practices among NHRIs, supports the strengthening of their regional networks, and facilitates their access to United Nations country teams and other relevant partners.

3. During the reporting period, OHCHR continued to support the building of strong NHRIs and to increase the effectiveness of their regional coordinating bodies. Since 2008, the NHRI fellowship programme has hosted staff from A-status NHRIs from States such as Australia, El Salvador, the Republic of Korea and Togo. This programme has enabled the fellows to gain knowledge of and experience with the United Nations human rights system. It has also been beneficial for OHCHR, in terms of both substantive expertise and the consolidation of contacts with staff from national institutions. OHCHR has issued a new call for candidates for 2010. Through this programme, up to four staff members from NHRIs will be selected to work in the National Institutions and Regional Mechanisms Section of OHCHR for a period up to 12 months.

4. NHRIs compliant with the Paris Principles are essential to national human rights protection systems and are important counterparts for OHCHR. They can play 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. This role was highlighted by the United Nations High Commissioner for Human Rights at the opening of the Ninth International Ombudsman Institute World Conference in Stockholm in June 2009. The High Commissioner noted that NHRIs are central elements of a strong national human rights protection framework that also requires an independent judiciary, effective parliamentary oversight mechanisms, fair administration of justice, a dynamic civil society and free and responsible media.

5. Since 2003, OHCHR has maintained the National Human Rights Institutions Forum website (www.nhri.net). In June 2009, following cooperation with the Danish NHRI, OHCHR renewed a grant agreement with the Indian NHRI, responsible for the management of the website in cooperation with OHCHR since 2008. Efforts are being carried out in order to restyle and make it a more user-friendly and

accessible tool. The website is linked to the web pages of OHCHR and NHRIs and includes information on the United Nations human rights system, on country and thematic issues and on the activities of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (International Coordinating Committee).

6. In July 2009, OHCHR released an outcome of the Survey on National Human Rights Institutions, which includes a report on the findings of a questionnaire launched with the aim of taking stock of the current state of such institutions. The analysis of responses identified challenges and weaknesses experienced by NHRIs, a lack of adequate funding and a need for technical assistance related to organizational and resource management, knowledge of the international human rights system, relationships with public bodies and civil society, and the follow-up of NHRI recommendations by their respective Governments. The Survey provides a diagnostic of gaps and areas of assistance for action by OHCHR, the United Nations Development Programme (UNDP), donors and the regional coordinating bodies of NHRIs (for a summary of the recommendations, see annex IV).

A. Advisory services provided by the Office

7. OHCHR activities to strengthen the role of NHRIs at the country, regional and international level are carried out mainly through the National Institutions and Regional Mechanisms Section, which works in consultation with other parts of OHCHR, including field presences. OHCHR has continued to provide advice and assistance in the establishment and strengthening of institutions through its country and regional offices, human rights advisers and human rights components of United Nations peace missions, as well as through collaboration with other United Nations partners (including UNDP) and the regional coordinating bodies of NHRIs.

8. Technical cooperation programmes and agreements with a view to strengthening the capacity of NHRIs were conducted by OHCHR through its regional offices for Central Africa, Central Asia, East Africa, Latin America, the Middle East, Southern Africa, South-East Asia, the Pacific and West Africa as well as through country offices, i.e. those of Nepal and Uganda. Cooperation has included training on monitoring, investigation and human rights reporting.

9. Tailored advice is provided on constitutional or legislative frameworks regarding the establishment of NHRIs, as well as on their nature, functions, powers and responsibilities. Comparative analysis, technical cooperation needs assessments, project formulation and evaluation missions are also undertaken to establish and strengthen the institutions' compliance with the Paris Principles.

10. During the reporting period, OHCHR provided advice to Afghanistan, Bahrain, Belize, Brazil, Burundi, Cambodia, Cameroon, Cape Verde, the Central African Republic, Chile, the Comoros, the Congo, Côte d'Ivoire, the Democratic Republic of the Congo, Djibouti, Ethiopia, Finland, Georgia, Guinea, Guinea-Bissau, Indonesia, Iraq, Italy, Jordan, Kyrgyzstan, Lesotho, Liberia, Lithuania, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mongolia, Nauru, Nepal, the Netherlands, the Niger, Nigeria,

Papua New Guinea, Pakistan, the Philippines, the Republic of Moldova, the Russian Federation, Rwanda, Samoa, Sierra Leone, Sri Lanka, Sudan, Sudan (Southern Sudan), Tajikistan, Timor-Leste, Togo, Tunisia, Turkey, Uganda and Zimbabwe.

1. The Americas and the Caribbean

11. In 2008, a draft legislation to establish a national ombudsman office was received from the Government of Haiti. OHCHR and the United Nations Stabilization Mission in Haiti provided comments on this draft. OHCHR has offered technical assistance to the Protectrice du Citoyen, who was appointed on 6 October 2009.

12. OHCHR has provided Belize and Chile with technical support in establishing NHRIs in accordance with the Paris Principles, following the recommendations formulated for both countries through the universal periodic review in May 2009.

13. The National Institutions and Regional Mechanisms Section and the OHCHR Regional Office for South America provided legal advice on the law establishing an NHRI in Chile. The law was approved by the Chamber of Deputies on 29 July 2009. The President of Chile introduced some amendments to the law and OHCHR provided comments to ensure compliance with the Paris Principles. The law was promulgated on 24 November 2009 and OHCHR has provided technical assistance to establish the institution.

14. OHCHR provided support to the NHRIs of the Plurinational State of Bolivia, Costa Rica, El Salvador, Nicaragua and Peru to participate in the fourteenth Congress and Annual Assembly of the Ibero-American Federation of the Ombudsman and the eighth General Assembly of the Network of National Institutions for the Promotion and Protection of Human Rights of the Americas in Madrid in October 2009. The meeting was attended by representatives from A-status NHRIs of the Plurinational State of Bolivia, Canada, Colombia, Costa Rica, Ecuador, El Salvador, Nicaragua, Panama, Paraguay, Peru and Venezuela.

2. Africa

15. OHCHR, in cooperation with the United Nations Integrated Office in Burundi (BINUB), organized a round table, held on 29 and 30 January 2009, to encourage parliamentarians to adopt a draft law to establish an NHRI. Participants included 60 parliamentarians, Government representatives and representatives of civil society, as well as the NHRIs of Kenya, Rwanda, Senegal, Togo and Uganda. BINUB and OHCHR have commented on the draft law, addressing shortcomings such as the lack of guarantee for independence.

16. On 3 February 2009, following legal advice provided by OHCHR and the United Nations Mission in the Sudan (UNMIS) on the strengthening of the human rights institution, the Southern Sudan Legislative

Assembly passed the Southern Sudan Human Rights Commission Act. Under this Act, the Commission is entrusted with a monitoring, investigation, advisory and promotional mandate.

17. OHCHR provides advice to NHRIs with regard to the International Coordinating Committee accreditation process. In February and April 2009, letters were sent to the NHRIs of Cape Verde, Chad, the Congo, Côte d'Ivoire, Djibouti, Ethiopia, Mali, Mauritania, Sierra Leone, Sudan (Southern Sudan) and Tunisia, inviting them to submit their application to the Subcommittee on Accreditation of the International Coordinating Committee. Chad, Mauritania and Tunisia replied positively and were reviewed at the November 2009 session of the Subcommittee.

18. In March 2009, OHCHR and the United Nations Integrated Peacebuilding Office in Sierra Leone supported the Human Rights Commission of Sierra Leone in developing a capacity-development project proposal for fund-raising with a view to implementing the Commission's three-year action plan.

19. The establishment of an NHRI in the Comoros was discussed in the context of the training on a human rights-based approach that the OHCHR Regional Office for Southern Africa conducted from 23 to 25 March 2009. OHCHR provided comments on the draft law on the establishment of an NHRI and, together with UNDP, is following discussions on the adoption of this legislation.

20. On 21 April 2009, the National Assembly of Sudan passed legislation to establish an NHRI. OHCHR provided advice and assistance together with UNMIS on the draft law and during the appointment process.

21. From 21 to 23 April 2009, OHCHR conducted a joint evaluation mission with the Association francophone des commissions nationales des droits de l'homme to assist the Government of Mali in implementing the universal periodic review recommendation regarding strengthening its NHRI. OHCHR supported the organization of a workshop in Bamako from 16 to 17 October 2009 to brief parliamentarians on how to mainstream the Paris Principles in the legislative process. The Parliament passed the law in November 2009.

22. Discussions on establishing an NHRI in Guinea were held with the authorities and civil society in Conakry in April 2009. OHCHR provided comparative information.

23. In the United Republic of Tanzania, OHCHR conducted a training session from 22 to 25 June 2009 on human rights standards and human rights monitoring for 29 Commission officers.

24. In Liberia, OHCHR and the United Nations Mission in Liberia continued to encourage the Government to establish an NHRI and provided advice on the enabling legislation that was enacted on 11 March 2005. On 17 August 2009 the commissioners were appointed by the President.

25. In Nigeria, OHCHR continued to provide support to the NHRI and encouraged the Government to revise the law to make it compliant with the Paris Principles.

26. In Uganda, OHCHR conducted training for NHRIs on human rights monitoring and investigations. OHCHR and the NHRI have conducted joint research on, inter alia, HIV/AIDS-related activities and discrimination, and provided support to the Government with regard to its reporting obligations under international human rights instruments.

27. Following the establishment of an NHRI in Djibouti in 2008, the OHCHR Regional Office for East Africa (EARO) and the NHRI conducted a training workshop on reporting to the United Nations human rights mechanisms, focusing on the universal periodic review and the Convention on the Elimination of All Forms of Discrimination against Women. A two-year technical cooperation programme was developed by EARO, UNDP, the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA), together with the Government and the NHRI, in order to enhance the human rights-related knowledge of national stakeholders and strengthen their capacity in the area of treaty body and universal periodic review reporting.

28. In Ethiopia, training was provided to staff of the NHRI and a website was developed. EARO assisted the institute in carrying out human rights awareness-raising activities and to enhance the Government's capacity in the area of treaty body reporting.

3. Asia and the Pacific

29. In Pakistan, OHCHR has followed up on its efforts undertaken together with the Asia-Pacific Forum of National Human Rights Institutions and UNDP to establish NHRIs in line with the Paris Principles. On 18 and 19 December 2008, representatives from the Asia-Pacific Forum and OHCHR visited Pakistan to participate in consultations with civil society and parliamentarians on draft legislation to establish an institution. Following those consultations, OHCHR provided comments on the draft legislation.

30. From 12 to 20 January 2009, OHCHR and UNDP undertook a midterm evaluation of the capacity-building project of the Office of the Provedor for Human Rights and Justice of Timor-Leste (2007–2009). The evaluation concluded that the institution had made important progress, and that the project had been crucial in providing support during its inception phase. The recommendations of the evaluation have been reflected in the project. In October 2009, the Office of the Provedor, OHCHR and UNDP started to develop a new technical assistance project.

31. In February 2009, OHCHR signed guidelines for cooperation with the NHRI of Nepal. Support has been provided to the institution and other stakeholders to establish credible transitional justice mechanisms. In July 2009, OHCHR and the institution developed a project on activities on the rights of detainees.

32. In February 2009, OHCHR, with the Indonesian NHRI (Komnas HAM) and the National Commission on Violence against Women (Komnas Perempuan), organized a national dialogue on the implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, aimed at formulating a strategy for monitoring detention centres in Indonesia.
33. In March 2009, following a capacity needs assessment of the Human Rights Commission of Malaysia (SUHAKAM), OHCHR, UNDP and the Asia-Pacific Forum issued a report on capacity needs, including a strategy and recommendations. The report was endorsed by SUHAKAM.
34. From 21 to 26 September 2009, OHCHR and the Asia-Pacific Forum provided advice to the authorities in Papua New Guinea in the drafting of the law for the establishment of an NHRI.
35. In October 2009, OHCHR, UNDP, the Asia-Pacific Forum and SUHAKAM assisted the NHRI of Maldives to undertake a capacity needs assessment.
36. From 20 to 30 November 2009, OHCHR, the Asia-Pacific Forum and the Australian Human Rights Commission conducted a mission to Nauru with a view to consulting the Government on options regarding the establishment of an NHRI in compliance with the Paris Principles.
37. On 1 and 2 December 2009, in Jakarta, OHCHR and UNFPA supported KOMNAS Perempuan in convening a consultation with other specialized national commissions in the region, along with several NHRIs, in order to explore ways of collaboration regarding the promotion and protection of women's rights.

4. Europe

38. In January 2009, OHCHR provided technical advice on amendments to the law relating to the Office of the Public Defender of Georgia, to increase its compliance with the Paris Principles and the Optional Protocol to the Convention against Torture requirements in assuming the functions of a national preventive mechanism.
39. In April 2009, OHCHR provided legal advice on strengthening the enabling law of the Centre for Human Rights of Moldova and ensuring an assessment of the compliance of the Commission with the Paris Principles through the International Coordinating Committee accreditation process.
40. Following the evaluation of the Kyrgyz NHRI in 2008, OHCHR held a workshop from 24 to 26 July 2009 on the national preventative mechanism under the Optional Protocol to the Convention against Torture. It helped the institution to develop its strategic planning and provided a consultant to support the institution during its restructuring phase. From 10 to 14 November 2009, the Action 2 Global Programme and UNDP organized a workshop for the NHRI on complaints procedures. The United Nations and the

Ombudsman have developed a technical cooperation project (2009–2011) to strengthen the capacity of the institution.

41. In Tajikistan, OHCHR provided support to the Ombudsman in setting up the institution, including by developing its strategic plan and internal regulations.

42. OHCHR is following the efforts under way in European countries, including Finland, Italy, the Netherlands and Turkey, to establish NHRIs in line with the Paris Principles.

43. OHCHR held a meeting with the Ombudsperson of Kosovo to provide advice on staff capacity-building and the redrafting of its enabling legislation as well as to share the requirements for International Coordinating Committee accreditation.

5. Middle East and North Africa

44. In December 2008, the Parliament of Iraq approved a law establishing the High Commission for Human Rights of Iraq. This was the outcome of a process started in 2006. OHCHR, in cooperation with the United Nations Assistance Mission in Iraq, has supported efforts to set up the institution, including through the selection process of commissioners.

B. Support of the Office for regional initiatives

1. The Americas and the Caribbean

45. In October 2008, the NHRI of Venezuela was elected as the new secretariat of the Network of National Institutions for the Promotion and Protection of Human Rights of the Americas. OHCHR has been working closely with the secretariat with a view to strengthening its capacity and the role it plays within the region and in relation to the international human rights system.

46. OHCHR, together with the secretariat of the Network of Rights and Democracy organized a workshop for the NHRIs of the Americas on the universal periodic review and the international human rights system, held on 26 and 27 March 2009. The workshop was attended by NHRI representatives from Canada, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua and Peru. It was aimed at sharing best practices of NHRI interaction with the international human rights system and was an opportunity for the institutions to learn more about their involvement in the universal periodic review process and treaty bodies, and their collaboration with special procedures mandate holders.

47. OHCHR provided technical and financial support to the eighth General Assembly of the Network of National Institutions for the Promotion and Protection of Human Rights of the Americas that took place in Madrid on 29 October 2009. The meeting brought together the presidents of 12 NHRIs. The work

programme of the Network for 2008–2010, which focuses on economic, social and cultural rights; women’s rights; and displaced persons, was discussed. Cooperation with OHCHR was also highlighted.

2. Africa

48. The OHCHR Regional Office for West Africa attended a workshop for Central and Western Africa, held in Lomé on 19 and 20 January 2009. The workshop highlighted legal and institutional weaknesses common to the majority of NHRIs from the two subregions and discussed ways to strengthen those institutions to comply with the Paris Principles, including through OHCHR assistance.

49. The OHCHR Regional Office for West Africa is engaged in a process of developing the subregional network of NHRIs. Although formally created in 2006 in Banjul, the Gambia, the network is not yet operational. From 12 to 14 February 2009, OHCHR participated in a meeting organized by the Economic Community of West African States in Cotonou, Benin, and assisted in drafting the statute of the network. The statute was adopted in Banjul in October 2009, which resulted in the establishment of the network and the designation of its governing bodies.

50. In September 2009, OHCHR participated in a training organized by the Raoul Wallenberg Institute in Nairobi for new human rights commissioners in East Africa, including those from Ethiopia, Kenya, Rwanda, Uganda and the United Republic of Tanzania. The training focused on the core functions and mandate of a Paris Principle compliant NHRI and the international human rights system.

51. The seventh Conference of African National Human Rights Institutions on “Peace and Justice: the Role of NHRIs” was held in Rabat from 3 to 5 November 2009. This Conference was organized by OHCHR, the Advisory Council on Human Rights of Morocco, the Network of African National Human Rights Institutions and the Organisation Internationale de la Francophonie. The Conference adopted the Rabat Declaration, in which participants recognized the role of NHRIs in facilitating justice and peace and resolved to, among other things: (a) promote the interdependency of peace and justice; (b) raise awareness about international instruments on transitional justice; (c) facilitate national consultations for the establishment of transitional justice mechanisms; (d) ensure that such mechanisms are in compliance with international human rights standards and practices; (e) gather information on human rights abuses; and (f) promote the provision of assistance to victims and witnesses (see annex I). NHRIs also received training on investigation techniques, facilitated by OHCHR and the Ombudsman of Ontario.

52. The meetings of the General Assembly and the Steering Committee of the Network of African National Human Rights Institutions were also held at the Conference in Rabat. The Moroccan NHRI was elected as the new Chairperson for the Network and the South African NHRI as the Vice-Chairperson. OHCHR will continue to provide technical and financial support to the secretariat of the Network. The Conference will be held in South Africa in 2011.

53. From 9 to 12 November 2009, OHCHR organized a conference in Bamako, Mali, on the preparation of reports to the treaty bodies and the role of NHRIs regarding migration in West Africa. A total of 50 representatives from Governments, NHRIs and nongovernmental organizations (NGOs) attended the conference. It focused on following up on the commitments of the Santa Cruz Declaration,¹ and on adopting a road map to promote and protect the rights of migrants. On 13 November, NHRIs and representatives of civil society discussed the drafting of rules and procedures and the workplan for 2010–2012 of the West African Network of National Human Rights Institutions.

3. Asia and the Pacific

54. On 2 and 3 March 2009, OHCHR participated in a consultation on the regional initiative in support of the capacity development of NHRIs in Asia and the Pacific, organized by the UNDP Regional Centre in Bangkok and the Asia-Pacific Forum of National Human Rights Institutions. The consultation discussed lessons learned from the pilot capacity needs assessment of the NHRI of Malaysia and explored capacity and development approaches employed to support other NHRIs. Following the second capacity needs assessment with the NHRI of Maldives, in December 2009, the Asia-Pacific Forum, OHCHR and UNDP held a consultation to discuss lessons learned and best practice of the capacity assessments carried out so far and further develop a methodology to conduct capacity needs assessments of NHRIs.

55. OHCHR, in partnership with the Asia-Pacific Forum and with the support of the Government of Samoa and the Pacific Islands Forum, organized a workshop on the “Establishment of national human rights mechanisms in the Pacific” (Apia, Samoa, 27–29 April 2009) aimed at enhancing the capacity of Pacific States to establish national human rights mechanisms in line with the Paris Principles. Representatives from the Marshall Islands, Nauru, Niue, Palau, Samoa, Solomon Islands and Vanuatu attended the workshop and adopted the Samoa Declaration, in which they recognized the importance of taking necessary measures to establish NHRIs compliant with the Paris Principles. “Making it happen”, a document incorporating practical steps to establish an NHRI tailored to the needs of the Pacific Island States, was elaborated.

56. The Fourteenth Annual Meeting of the Asia-Pacific Forum was held in Amman from 3 to 6 August 2009, hosted by the National Centre for Human Rights of Jordan with technical and financial co-sponsorship from OHCHR. The key themes of the meeting were the impact of corruption on the realization of human rights as well as religious beliefs. The Forum’s Councillors also discussed suspending the Forum accreditation process and using the International Coordinating Committee decisions as evidence of compliance with the Paris Principles for the purpose of membership in the Asia-Pacific Forum.

¹ Adopted during the Eighth International Conference of National Human Rights Institutions for the Promotion and Protection of Human Rights of the Americas, held in Santa Cruz, Plurinational State of Bolivia, 24–26 October 2006.

4. Europe

57. OHCHR participated in the 2nd meeting between the European Union Agency for Fundamental Rights and the European Group of National Institutions for the Promotion and Protection of Human Rights, in Vienna, on 29 June 2009. The meeting focused on the Agency's annual work programme, the European Group's strategic plan for 2009–2010, follow-up on discrimination on the grounds of sexual orientation and homophobia, and on the Agency study on the capacity and powers of NHRIs in the European Union.

58. OHCHR participated in the meeting of the Coordinating Committee of the European Group, in Vienna, on 30 June 2009. The meeting focused on International Coordinating Committee developments, the follow-up to the Durban Review Conference, and NHRI engagement with the Agency for Fundamental Rights and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

59. OHCHR and the UNDP Bratislava Regional Centre organized a workshop in Geneva, held from 24 to 26 November 2009, on the role of NHRIs and cooperation with the United Nations human rights machinery, in order to strengthen the capacity of NHRIs from the Commonwealth of Independent States and Croatia to interact with the international human rights system, namely, in following up on the implementation of the universal periodic review, treaty bodies and special procedures' recommendations. OHCHR and the UNDP Bratislava Regional Centre will continue their joint efforts to strengthen the capacity of NHRIs, through subregional workshops.

5. Middle East and North Africa

60. OHCHR assisted in the organization of the fifth Conference of the Arab National Human Rights Institutions, held in Amman on 8 and 9 March 2009, on "Elections in the Arab World and Their Impact on Human Rights". A total of 80 participants, including representatives of the NHRIs of Algeria, Egypt, Jordan, Morocco, Qatar, Saudi Arabia and Tunisia, as well as of the Occupied Palestinian Territory. NGOs, international organizations and United Nations agencies attended and adopted a document to assist NHRIs in implementing a human rights-based approach during elections.

61. The United Nations Human Rights Training and Documentation Centre for South- West Asia and the Arab Region, in Qatar, held an inaugural workshop on the international human rights system in Doha on 27 and 28 May 2009. A total of 60 participants, including representatives of the NHRIs of Afghanistan, Algeria, the Islamic Republic of Iran, Jordan, Mauritania, Morocco, Qatar, Saudi Arabia, Tunisia and the Occupied Palestinian Territory attended the workshop.

62. On 11 November 2009, Bahrain issued a Royal Order to establish an NHRI. OHCHR provided technical assistance to the Government in 2008, and is following developments in this regard. OHCHR

stands ready to assist in ensuring that the NHRI is established according to international standards. OHCHR is also following efforts regarding the establishment of NHRIs in Lebanon and Oman.

63. OHCHR is supporting the NHRIs of Morocco and Jordan in effectively delivering their mandates as regional chairs of the coordinating groups of Africa and Asia, respectively.

64. In Jordan, OHCHR is working with UNDP to develop joint technical cooperation activities to support the National Centre for Human Rights. Means of ensuring further cooperation with the recently established NHRIs in the Middle East, namely, those in Saudi Arabia and the Libyan Arab Jamahiriya, have been explored.

C. Support of the Office for international initiatives

1. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

(a) Twenty-second session

65. As secretariat of the International Coordinating Committee, OHCHR provided substantive support to and facilitated the twenty-second session of the Committee, held in Geneva from 23 to 27 March 2009. NHRIs from the four regions reported on their activities and key challenges encountered. A finance committee was established to oversee fundraising and financial management. Participants were informed that a bank account was opened and that Committee members had started to pay annual fees. The Committee representative in Geneva gave an update on NHRI participation in the Human Rights Council. The Working Group on the Durban Review Conference of the International Coordinating Committee informed the NHRIs on how to strategize to make an impact during the Conference.

66. OHCHR informed participants about its priorities, including: increasing the knowledge of NHRIs about new United Nations human rights treaties and optional protocols; encouraging institutions to play a greater role in encouraging the ratification of new treaties; strengthening treaty body procedures for interaction with NHRIs; compiling examples of good practices of interaction between NHRIs and United Nations human rights mechanisms; disseminating the concluding observations of treaty bodies and recommendations resulting from the universal periodic review process; publicizing the use of the International Coordinating Committee representative in Geneva; encouraging greater NHRI involvement in drafting the general comments of treaty bodies; and supporting the involvement of NHRI complaints-handling and the use of jurisprudence with respect to the treaty body system.

(b) Bureau meeting

67. OHCHR provided support to the International Coordinating Committee Bureau meeting held in Rabat on 1 and 2 November 2009. The Bureau discussed possible items for the next International Coordinating

Committee Conference in March 2010, and prioritized the follow-up to the Durban Review Conference, the draft United Nations declaration on human rights education and training, NHRI engagement with international human rights mechanisms. Regarding the importance of NHRIs paying annual subscription fees to enable the operations of the International Coordinating Committee, it was agreed that NHRIs should be given the opportunity to pay their fees before the next Committee meeting. The possibility of having Arabic as a working language of the Committee was considered. The need to strengthen regional secretariats of NHRIs to promote interaction between regions was also discussed. Participants underwent a strategic planning session and agreed to elaborate region-specific prioritized plans to be merged into one International Coordinating Committee Plan.

(c) Side events

68. In March 2009, the International Coordinating Committee established a nine-member working group on business and human rights, comprising two NHRIs per region and the International Coordinating Committee Chairperson's representative. The working group's mandate includes strategic planning, capacity-building, resource-sharing, agenda setting and outreach.

69. In June 2009, some 30 representatives from NHRIs, NGOs and Governments met at a side event to the eleventh session of the Human Rights Council, organized by the International Coordinating Committee and OHCHR. The discussion was on the role of NHRIs in the area of business and human rights, focusing on the issues canvassed by the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises. The next international conference of the International Coordinating Committee, in Edinburgh, United Kingdom of Great Britain and Northern Ireland, in 2010, will focus on human rights and business: the role of NHRIs. OHCHR is preparing it in cooperation with the Scottish Human Rights Commission.

70. In August 2009, the International Coordinating Committee and OHCHR organized a side event to the third session of the Human Rights Council Advisory Committee entitled "Draft Declaration on Human Rights Education and Training: Experiences and Contributions of NHRIs". The event provided a forum to discuss and share NHRI experiences and best practices in the field of human rights education and training.

2. Subcommittee on Accreditation

71. OHCHR provided secretarial support to the meetings of the Subcommittee on Accreditation, held in April and November 2009. A report of the Secretary-General (A/HRC/13/45) provides more information on those sessions.

3. Ibero-American Federation of the Ombudsman

72. OHCHR participated in the fourteenth Congress and Annual Assembly of the Ibero- American Federation of the Ombudsman held in Madrid on 28 and 29 October 2009. The meeting, hosted by the Spanish Defensor del Pueblo, was attended by about 150 NHRI representatives.

4. Commonwealth Forum of National Human Rights Institutions

73. OHCHR participated in the Commonwealth Forum of National Human Rights Institutions in Port of Spain on 23 and 24 November 2009. The work of the Forum focuses on the role of NHRIs in climate change and human rights. OHCHR, together with the NHRI of Canada, Chair of the Forum, will organize a workshop in 2010 to promote the establishment of Paris Principles-compliant NHRIs in the Caribbean countries.

III. Cooperation between United Nations human rights mechanisms and national human rights institutions

A. Human Rights Council

74. OHCHR has been supporting NHRI engagement with the Human Rights Council, in accordance with Commission on Human Rights resolution 2005/74. Human Rights Council resolution 5/1 provides opportunities for institutions and their regional coordinating mechanisms to participate in the Human Rights Council and to engage with its various mechanisms. Institutions accredited with A status by the International Coordinating Committee, the Committee itself, and regional coordinating bodies speaking on behalf of A-status accredited institutions may participate and address the Council on all agenda items. They can also submit written statements, issue documentation (with a United Nations document symbol) and have separate seating arrangements at the Council sessions.

75. With regard to Council mechanisms, institutions have been given a clear and significant role by resolution 5/1, for example with regard to the universal periodic review, where their input is included in the stakeholders' report. OHCHR is assisting in the implementation of universal periodic review recommendations concerning the establishment or strengthening of NHRIs, including supporting institutions in applying for International Coordinating Committee accreditation.

76. In 2009, 48 countries were reviewed under the universal periodic review. Of these, 22 have an NHRI, 11 of which submitted information for the stakeholder's report. Among them, nine hold A status and two, B status. The Network of National Institutions for the Promotion and Protection of Human Rights of the Americas submitted two contributions regarding the universal periodic review of Chile and Uruguay.

77. In 2009, an average of 20 NHRIs participated in each of the Human Rights Council sessions. They were very active before and during the sessions, presenting statements, submitting written documentation, participating in general debates and interacting with the Special Rapporteurs.

B. Treaty bodies

78. In 2009, 69 of the countries examined by treaty bodies had an NHRI. Of those institutions, 37 participated in the treaty body process, including by submitting alternative reports or attending the sessions. As an ongoing activity, OHCHR has systematically engaged with treaty bodies by providing expert analysis on NHRIs and their related activities. It also regularly updates a compilation of all treaty body concluding observations and recommendations that mention NHRIs (www.nhri.net), and sends the concluding observations to the institutions concerned.

79. On 26 October 2009, the International Coordinating Committee, with the International Disability Alliance and OHCHR, held a parallel event on cooperation between NHRIs and organizations of persons with disabilities in monitoring the Convention on the Rights of Persons with Disabilities. It was organized on the sidelines of the OHCHR consultations on national frameworks under the Convention.

80. The reports to the General Assembly of the Committee against Torture and the Committee on the Rights of the Child have recognized the important role of NHRIs in their processes. The Human Rights Committee has a dedicated focal point for such institutions. In 2009, the secretariat of the Committee against Torture launched a website for NHRIs, with information on how to interact with it.

C. Special procedures

81. During the reporting period, a large number of NHRIs interacted with special procedures mandate holders and submitted to the Human Rights Council written contributions to complement the reports of special procedures mandate holders on country missions.

82. On 30 June 2009, as part of their 16th annual meeting, special procedures mandate holders, along with NHRIs and NGOs, held an interactive dialogue. The International Coordinating Committee representative in Geneva presented a statement on enhancing cooperation between NHRIs and such mandate holders, as part of the follow-up mechanisms developed by some special procedures mandate holders.

83. OHCHR regularly provides special procedures mandate holders with information concerning the work of NHRIs in the preparation of their country missions. Increasingly, such mandate holders look to institutions for assistance in ensuring that their recommendations are followed up at the national level. This is an important area of work for NHRIs and should be further encouraged.

D. Durban Review Conference

84. OHCHR supported NHRIs in participating actively in the Durban Review Conference, including by providing financial assistance to A-status institutions (with priority accorded to those from the least developed countries), developing an NHRI webpage on the official conference website, and working with the International Coordinating Committee working group on the Durban process. Representatives of 39 NHRIs from all regions participated in the Conference. During a side event co-organized by OHCHR and the International Coordinating Committee to share best practices and key challenges, participants identified 14 priorities aimed at increasing their engagement against racism and related intolerance at the national, regional and international levels.

85. NHRIs also identified a number of relevant follow-up activities: the establishment of focal points within institutions; the establishment of a network among focal points; and the sharing of good practices on the website www.nhri.net. OHCHR has allocated funding for specific follow-up activities, including supporting the South African Human Rights Commission.

IV. Cooperation among the Office of the High Commissioner, United Nations agencies and programmes, and international and regional organizations on national human rights institutions United Nations Development Programme

86. OHCHR and UNDP have increased the degree of cooperation on establishing and strengthening NHRIs, leading to an increasing range of activities, including an e-discussion on the United Nations Human Rights Policy Network (HuriTalk), joint technical cooperation projects, joint advocacy for the establishment of NHRIs, following up and building on universal periodic review and Subcommittee recommendations regarding institutions, joint capacity needs assessment and evaluation missions. In 2009, this range of activities has continued (see references throughout the present report).

87. With UNDP and the NHRIs of Denmark, India, South Africa and Uganda, OHCHR developed a toolkit for United Nations country teams on how to support the establishment and consolidation of an NHRI. The toolkit was validated in Johannesburg in May 2009 by representatives of about 40 UNDP regional and country offices. It is expected that the toolkit will be officially launched by the High Commissioner and UNDP Administrator in 2010.

88. UNDP and OHCHR continued to cooperate on joint initiatives, such as supporting the capacity development of NHRIs in Asia and the Pacific, supporting the adoption of a document to assist institutions to implement a human rights-based approach to elections in the Arab region, and reinforcing the capacity of NHRIs from the Commonwealth of Independent States and Croatia to interact with the international human rights system.

United Nations Educational, Scientific and Cultural Organization

89. OHCHR attended the meeting of the Steering Committee of the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights in Paris on 25 and 26 May 2009. The meeting, organized by UNESCO and the NHRI of Egypt, was attended by 24 representatives of Governments, NHRIs, NGOs and regional and international organizations.

International Ombudsman Institute

90. OHCHR attended the Ninth International Ombudsman Institute World Conference, held in Stockholm from 9 to 12 June 2009. In addressing the meeting, the High Commissioner focused on current challenges to the protection and promotion of human rights, stressed the growing importance of the role of national human rights commissions and ombudsman institutions in the promotion and protection of human rights at the national, regional and international levels, and encouraged increased cooperation among regional and international associations of ombudsmen and NHRIs in the context of the Paris Principles, as well as between these organizations and the United Nations system as a whole.

United Nations Children's Fund

91. On 22 and 23 June 2009, OHCHR participated in the regional seminar on the creation of independent human rights institutions for the promotion and protection of the rights of the child: effective approaches for African French-speaking countries, organized by the UNICEF Regional Office for West and Central Africa, the Innocenti Research Centre and the Organisation Internationale de la Francophonie in Bamako. OHCHR stressed the importance for NHRIs to have a broad mandate and for specialized institutions to be in compliance with international standards.

Association of Mediterranean Ombudsmen

92. OHCHR attended the inauguration of the headquarters of the Association of Mediterranean Ombudsmen in Tangier, Morocco, on 4 November 2009. The meeting focused on the role of ombudsman associations and networks in the development of such institutions. OHCHR also participated in the 3rd meeting of the Association in Athens on 14 and 15 December 2009, where the main topic was: Transparency and public services: what role for the ombudsman?

Council of Europe

93. The 3rd coordination meeting between OHCHR and the Council of Europe was held in Strasbourg, France, on 16 and 17 November 2009. OHCHR held bilateral working meetings on the procedure of accreditation by the International Coordinating Committee with staff from the Council of Europe.

Non-governmental organizations

94. OHCHR continued its cooperation with Rights and Democracy in organizing workshops on the universal periodic review and the international human rights system for NHRIs. OHCHR maintains cooperation with the Association for the Prevention of Torture and Amnesty International and regularly calls on NGOs for greater interaction with NHRIs.

Academic institutions

95. In 2009, OHCHR strengthened its partnership with the Bristol University research programme team on the Optional Protocol to the Convention against Torture. OHCHR participated in the University's two round tables on the Optional Protocol and the Convention on the Rights of Persons with Disabilities, organized in May 2009. In September 2009, OHCHR participated in a workshop on implementation of treaty body decisions, through a presentation on the role of NHRIs in such implementation.

Regional mechanisms for the promotion and protection of human rights

96. OHCHR convened regional consultations on enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights. These consultations were held in November and December 2009 in Africa (Addis Ababa), in cooperation with the African Union; in the Americas (Washington, D.C.), in cooperation with the Organization of American States (OAS); and in Europe (Strasbourg, France), in cooperation with the Council of Europe. The purpose of the consultations was to share information on ways to strengthen cooperation between the United Nations and regional human rights arrangements. Representatives of NHRIs participated in these consultations, where modalities of cooperation between the institutions and the regional arrangements were discussed.

97. On 4 June 2009, the General Assembly of the OAS adopted resolution AG/RES. 2448 (XXXIX-O/09), in which it referred to the role of the International Coordinating Committee in accrediting national human rights institutions in conformity with the Paris Principles and resolved to use the list of institutions accredited by the Committee with "A" status as criteria to allow those institutions participation in OAS political bodies dealing with human rights-related issues. It provides for the modalities of NHRI participation, including the allocation of dedicated seats, the issuance of institution documents under their own classification and the possibility to make oral interventions.

V. Round tables on thematic issues

Transitional justice

98. In January 2009, OHCHR issued a guidance note on NHRIs and transitional justice, developed in consultation with experts and national institutions. It is to assist NHRIs in their engagement on

transitional justice issues, describes challenges and opportunities, highlights applicable international standards, and makes recommendations.

Economic, social and cultural rights

99. A side event to the twenty-second session of the International Coordinating Committee focused on NHRIs and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Panellists discussed the justiciability of economic, social and cultural rights and the role of NHRIs in implementing the Optional Protocol.

Detention

100. NHRIs participated in a side event held during the twenty-second session of the International Coordinating Committee in March 2009, to share experience and initiatives on detention monitoring and contribute directly to a joint publication by Harvard University and OHCHR. The discussions focused on structural and policy issues in relation to detention monitoring.

Torture prevention and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

101. NHRIs participated in a side event during the twenty-second session of the International Coordinating Committee to share experience in the implementation of the Optional Protocol to the Convention against Torture. The discussions showed that, while there is no set model for the creation of a national preventative mechanism, institutions have a significant role to play in relation to the implementation of the Optional Protocol, either by acting as national preventative mechanisms, coordinating the work of such mechanisms or interacting with the designated mechanism. The role of NHRIs at the international level (e.g., interactions with the Subcommittee on Prevention) was also noted.

102. In cooperation with the Association for the Prevention of Torture and the Asia- Pacific Forum, OHCHR is currently finalizing the handbook for NHRIs on the prevention of torture, which will provide guidance, including through best practice from institutions acting as national preventative mechanisms.

Human rights inquiry

103. In 2008 the Equality and Human Rights Commission of Great Britain launched a human rights inquiry aimed at assessing the progress in raising the awareness of human rights culture in the country. A parallel event was organized by OHCHR and the institution at the twelfth session of the Human Rights Council on 23 September 2009, to share the experience in conducting this inquiry.

The role of ombudsmen, mediators and national human rights institutions in the United Nations system of promotion and protection of human rights

104. With the support of their respective permanent missions in Geneva and OHCHR, the ombudsmen of Morocco and Sweden organized a parallel event during the twelfth session of the Human Rights Council in September 2009, on the role of the ombudsman, the mediator and national human rights institutions in the United Nations system of promotion and protection of human rights, as framed by General Assembly resolutions 63/169 and 63/172.

Business and human rights

105. On 6 October 2009, 30 representatives from NHRIs, NGOs and Member States met at a side event during the OHCHR consultation by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The side event, organized by the International Coordinating Committee in collaboration with OHCHR, was aimed at ensuring respect for international human rights standards at the corporate and business level.

National human rights institutions as human rights defenders

106. On 6 and 7 November 2009, OHCHR, in collaboration with the NHRI of Morocco and the Network of African National Human Rights Institutions, organized a workshop aimed at strengthening the role of NHRIs as human rights defenders and protectors as well as at increasing participants' knowledge and understanding of international human rights standards protecting human rights defenders. The workshop, held in Rabat, was attended by representatives from institutions in Africa and the Special Rapporteur on human rights defenders. NHRIs shared best practices and highlighted challenges in conducting their mandates, including death threats, inadequate witness protection systems and the need to have more training in investigation techniques and monitoring.

HIV/AIDS

107. OHCHR provided support to regional workshops on HIV/AIDS, in cooperation with the Joint United Nations Programme on HIV/AIDS and the NHRIs of Denmark and Uganda. Regional workshops for NHRIs were held in Senegal (October 2009) and Peru (December 2009). Institutions were encouraged to ensure their greater involvement in national responses to HIV/AIDS, and the *Handbook on HIV and Human Rights for National Human Rights Institutions* was used as a tool.

VI. Conclusions

108. National human rights institutions compliant with the Paris Principles are key elements of a strong and effective national human rights protection system. They can help ensure the compliance of national laws and practices with international human rights norms; support governments to ensure their implementation; monitor and address at the national level core human rights concerns such as torture, arbitrary detention, human trafficking and human rights of migrants; support the work of human rights defenders; and contribute to eradicate all forms of discrimination.

109. The Secretary-General encourages NHRIs to be strong pillars in the fight against impunity by ensuring the functioning of an effective justice system. They have a key role to play in relation to the administration of justice, including monitoring places of detention and working with law enforcement officers to promote the rule of law. NHRIs should strive to become an effective first port of call for victims of human rights violations, nationally.

110. The Secretary-General welcomes the adoption of the Rabat Declaration at the seventh Conference of African National Human Rights Institutions. The text is a testimony of the role of NHRIs in transitional justice in general as well as in facilitating and supporting the functioning of transitional justice mechanisms and processes, in order to ensure accountability, serve justice and achieve reconciliation and peace. NHRIs are encouraged to give due attention to the practical recommendations of the Declaration with respect to monitoring and establishing transitional justice mechanisms.

111. The Secretary-General notes with appreciation the continuing work of the regional networks of NHRIs and encourages greater cooperation between the regional networks and the Office of the High Commissioner for Human Rights. He calls for NHRI cooperation with regional human rights mechanisms such as organs of the African Union, the Inter-American System and the European human rights mechanisms, and the development of regional human rights norms and jurisprudence. He recalls that regional human rights commissions and courts and NHRIs have a symbiotic relationship in the promotion and protection of human rights.

112. The Secretary-General encourages NHRIs to continue to interact and cooperate with the United Nations human rights system and to advocate for the ratification and effective implementation of international human rights instruments. Since several new international human rights instruments, such as the Optional Protocol to the Convention against Torture and the Convention on the Rights of Persons with Disabilities, give NHRIs a potential monitoring and implementation role, the Secretary-General encourages States parties to strengthen the mandate and capacity of NHRIs to enable them to fulfil this role effectively.

113. The Secretary-General underlines the importance of the autonomy and independence of the ombudsmen, mediators and other NHRIs. The Secretary-General reiterates the call of the High Commissioner for Human Rights for greater cooperation between NHRIs and ombudsman institutions for

the improvement of national human rights frameworks. He further encourages ombudsman institutions to comply with the Paris Principles, to strengthen their independence and increase their capacity to act as national protection mechanisms.

114. The Secretary-General recognizes the active participation of NHRIs in the Durban Review Conference and welcomes the NHRI commitments to continue to support the implementation of the Durban Declaration and Programme of Action. The Secretary-General calls on States parties to continue to support NHRIs and other national stakeholders in the implementation of the outcome document of the Durban Review Conference and action plans, including through legal reform at the national level.

115. The Secretary-General reiterates the importance of the financial independence of NHRIs and autonomy for their effective performance, especially in times of financial crisis.

Annex I - Seventh Conference of African National Human Rights Institutions, Rabat, 3–5 November 2009

Rabat Declaration

Participants at the Seventh Conference of African National Human Rights Institutions, convening in Rabat, Morocco, from 3 to 5 November 2009 under the theme: “Peace and Justice: Role of National Human Rights Institutions”, under the auspices of the Advisory Council for Human Rights of Morocco in cooperation with the Network of African National Human Rights Institutions and with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organisation Internationale de la Francophonie (OIF), and the Commonwealth Secretariat,

Acknowledging with appreciation the welcome and hospitality of the Government and people of Morocco in the hosting of the Seventh Conference,

Expressing their warm gratitude to the Advisory Council for Human Rights of Morocco for its notable organization and hosting of the Conference,

Expressing their appreciation for the presence at the Conference of the Registrar of the International Criminal Tribunal for Rwanda, the representative of the Office of the High Commissioner for Human Rights (OHCHR), and the Chair of the International Coordinating Committee of National Human Rights Institutions,

Noting with gratitude the continued support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) towards the strengthening of the Permanent Secretariat of the Network, and welcoming the assistance given by the Kenya National Commission on Human Rights in hosting it,

Reaffirming their commitment to the Kigali Declaration of 10 October 2007 and its attachment to the values enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political

Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the United Nations Declaration on the Right of Peoples to Peace (1984), the African Charter on Democracy, Elections and Governance (2007), and various other international instruments concerning human rights to which their States have subscribed and ratified,

Recalling the need for all the African national human rights institutions to function independently and in full conformity with the Paris Principles as adopted by the United Nations General Assembly in its resolution 48/134 of 20 December 1993,

Recalling also that the effective promotion of and respect for human rights and fundamental freedoms require that States ratify United Nations instruments concerning human rights, reinforce them and forward periodically, in conformity with these instruments, reports to the respective monitoring committees,

Noting that the Nairobi Declaration on the role of NHRIs in the Administration of Justice adopted by NHRIs in 2008 underlined the crucial role of NHRIs in relation to access to justice, the judiciary, law enforcement and correctional and detention facilities as part of their contribution to a peaceful and human rights respectful society,

Convinced that justice, peace and democracy are mutually reinforcing imperatives and that accountability is an important aspect for preventing future violations,

Concerned by the recurrence of armed conflict in many African countries, and the crackdowns on democracy resulting from the lack of accountability and existence of impunity which further represent threats against peace,

Recognizing the need for a comprehensive approach when addressing the legacy of large-scale abuses, comprising of investigations and prosecutions, truth-seeking processes, reparations programmes, and vetting processes; and that any such combination must be in conformity with international legal standards and obligations, and take into account national context,

Recognizing the important role NHRIs, especially those in line with the Paris Principles, have been playing in transitional justice processes, in order to ensure accountability, serve justice and achieve reconciliation, and considering that this role could be further strengthened,

Recognizing the need to address the root-causes of conflict, and to ensure the protection and fulfilment of all rights, including economic, social and cultural rights,

Recognizing the need to promote political and economic good governance as the basis of a peaceful democratic society,

Aware of all the above issues concerning human rights,

1. Resolved:

(a) To promote the interdependency of peace and justice,

(b) To promote and disseminate relevant international and regional human rights instruments and standards, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the African Charter on Democracy, Elections and Governance; and to promote their wide implementation,

(c) To raise awareness about international instruments and standards as well as best practices relating to transitional justice and combating impunity,

(d) To raise awareness of transitional justice mechanisms and lessons learned, to engage relevant stakeholders, including civil society and institutional actors in transitional justice discourse, and to mobilize the society's action in this area,

(e) To facilitate the national consultations for the establishment of transitional justice mechanisms in close cooperation with other national and international stakeholders, and ensure participation of victims, and other vulnerable or marginalized groups, and make appropriate recommendations to ensure an open and transparent process,

(f) To engage in information gathering and documenting of human rights abuses, and cooperate with transitional justice mechanisms in investigation of human rights violations,

(g) To ensure preservation and protection of information on human rights abuses, including through appropriate archiving,

(h) To interact with and reinforce the justice mechanisms and ensure that cases of human rights violations are submitted to the justice system and adequately addressed,

(i) To cooperate in the design and, as appropriate, in implementation of transitional justice mechanisms, and to ensure the centrality of victims in such processes,

(j) To ensure that the establishment and operation of any transitional justice mechanism is in compliance with international human rights standards and practices,

(k) To ensure that the rights of those facing transitional justice mechanisms, including alleged perpetrators and victims, are respected,

(l) To promote provision of assistance to victims and witnesses participating in transitional justice processes, so they are informed of their rights and responsibilities and have access to medical and psychosocial care; and to promote provision of victims and witness protection,

(m) To monitor and report on the implementation of the recommendation of transitional justice mechanisms,

(n) To recommend to the relevant authorities legislative and administrative reforms to ensure their compliance with international standards, and to prevent recurrence of human rights abuses and to restore respect for the rule of law and trust in government institutions,

(o) To engage and interact with international and regional human rights mechanisms, including by submitting reports, and making statements, and following up of recommendations related to transitional justice and human rights in general,

(p) To participate in the development and revision of education programmes to include aspects on culture of peace, conflicts prevention, tolerance and fight against discrimination and human rights.

Participants at the Conference

2. *Call* for direct contributions from African NHRIs and continued assistance, substantive and financial, by international and regional intergovernmental organizations, including OHCHR and OIF, UNDP and other partners to the Permanent Secretariat of NHRIs in Nairobi, Kenya,

3. *Note* that a number of national human rights institutions in Africa have affiliate status with the African Commission on Human and Peoples' Rights and call on others that have not attained such status to do so, and urges the African Commission to expedite the establishment of the Unit on NHRIs as recommended in its meeting in May 2009,

4. *Reaffirm* their commitment to cooperate with the African Commission on Human and Peoples' Rights in the area of the promotion, protection and enforcement of human rights,

5. *Resolve* to work with international and regional organizations, including the African Union through the Peace and Security Council, in the promotion, protection and enforcement of democracy, rule of law and human rights, Agree to hold their next biannual conference in South Africa in 2011.

Adopted in Rabat, 5 November 2009.

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Sri Lanka: State of Human Rights 2008

Chapters

Integrity of the Person

Integrity of the person in the context of this chapter encompasses bodily integrity, liberty and security of the person. The writer documents the human rights violations relating to the physical integrity of the person, namely attacks on civilians and non-combatants committed by state and non-state actors, while critically examining the domestic legal regime and Sri Lanka's obligations under international human rights law during the year 2007, the period under review.

Judicial Protection of Human Rights

The writer focuses on the relevant developments in the context of the year 2007 relating to the judicial protection of human rights and the manner and extent to which these rights have been afforded judicial protection, both by the Supreme Court and the Court of Appeal. It analyzes judicial decisions on the right to equality, due process, freedom from torture & inhuman and degrading treatment and also defines the scope and ambit of writ applications against public authorities, while examining the judicial interpretation of legal doctrines such as legitimate expectations, public trust, estoppel and natural justice.

Enforced Disappearances: The Crime of Grave Human Rights Violations

This chapter examines the failure of Sri Lanka's legal, judicial and prosecutorial processes in securing accountability for grave human rights violations. It also discusses the crime of enforced disappearances in international law, and Sri Lanka's obligations in terms of international law standards relating to the crime enforced disappearances. It analyses specific judgments of the High Court relating to prosecutions on enforced disappearances, so far not discussed in legal writings in Sri Lanka, and uses this analysis to illustrate overall deficiencies in the relevant legal framework as well as prosecutorial policy.

Internal Displacement And Humanitarian Concerns: Human Rights In The Context Of The Conflict

This paper concentrates on defining the nexus between the conflict, displacement and humanitarian assistance on the understanding that this is most crucial in terms of a human rights perspective on displacement in Sri Lanka in the year 2007. It also looks at the/examines the Institutional and legal framework for the protection of the rights of the internally displaced persons, key issues regarding the situation of IDPs and human rights violations suffered by the IDPs in 2007.

Constitutional Reform in the Midst of Violent Conflict

In this chapter, the writer discusses the processes of constitutional reform that took place under the auspices of the All Party Conference (APC) and the All Party Representative Committee (APRC) in 2006 and discusses the Majority and Minority reports presented in December 2006. He also takes a look at the report released by the chair of the APRC in December 2007 Tissa Vitharana claimed as a synthesis of the Majority and Minority reports which he puts forward as a tool for power sharing and constitutional reform.

Corruption and Good Governance

This chapter focuses on incidents of corruption and the development of and drawbacks in the anti-corruption movement in Sri Lanka in 2007 and the years immediately prior to it together with governance issues that surround them. It also briefly looks at the legal and institutional framework relating to the curbing of corruption and promoting good governance while highlighting major corruption scandals for the period under review, the release of the COPE reports in 2007 together with the role of right to information in curbing corruption and the impact of corruption on poverty and economic growth.

Workers' Rights

This chapter surveys issues of workers' rights in Sri Lanka with attention to labour relations, disputes, legal reform and government policy and developments therein from 2005 up to the end of 2007. It also highlights certain negative trends in labour rights like the judicial intervention in labour disputes resulting in the curtailing of workers rights. Recommendations and proposals for the improvement and empowerment of workers' rights are also discussed.

Right to Education

Traces the evolution of the education system from the colonial period to post 1977 developments and also surveys the international covenants and declarations protecting and promoting the right to education. The chapter analyses the crisis ridden education system paying particular attention to the perennial issue of grade one admissions and the high failure rates in examinations and the Supreme Court's attempt at resolve the chaos and corruption rampant in grade one admissions.

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