

**REPORT OF THE  
COMMONWEALTH CONFERENCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS,  
MARLBOROUGH HOUSE, LONDON  
26-28 FEBRUARY 2007**

## **1. Introduction**

The Commonwealth Conference of National Human Rights Institutions was held at Marlborough House, London from 26 to 28 February 2007. The meeting was officially opened by the Commonwealth Secretary General Rt Hon Don McKinnon. It was the first gathering of Commonwealth national human rights institutions since their last meeting in 2000 (in Cambridge), and provided an opportunity to have broad exchange of views on issues and challenges confronting national institutions in carrying out their mandates, and examined ways to further strengthen cooperation and collaboration among Commonwealth national human rights institutions. The meeting also reviewed the *Paris Principles* and *Commonwealth Best Practices* and their continued relevance and implementation. The meeting brought together more than 40 participants from 23 Commonwealth national institutions and ombudspersons offices, as well as partner organisations, including the Office of the UN High Commissioner for Human Rights. The list of participants is appended at Annex 1.

## **2. Conference Objectives**

The stated objectives of the conference were to:

- review activities of all national human rights institutions in the Commonwealth and discuss how such institutions can be strengthened;
- exchange experiences of protecting and promoting human rights in the Commonwealth and examine challenges faced by national human rights institutions;
- provide information on current developments concerning national human rights institutions and encourage exchange of information among national human rights institutions throughout the Commonwealth;
- consider the proposal for the establishment of a Forum for Commonwealth national human rights institutions.

## **3. Workshop Proceedings**

### **3.1 Organisation of Work**

The bureau of the conference was elected by acclamation by the meeting at its first organizational session. Broadly representing the major geographical regions of the Commonwealth, it included Mrs Margaret Sekaggya of Uganda Human Rights Commission as Chair, Justice Bhaskar Rao of India National Human Rights Commission

and Dr Judy McGregor of New Zealand Human Rights Commission as Vice Chairs, and Mr David Langtry of Canadian Human Rights Commission as the Rapporteur. The draft agenda of the meeting, as orally amended during adoption, is attached at Annex 3.

### **3.2 Review of the Commonwealth Best Practice Guidelines**

Summary of Keynote Presentation by Prof. Brian Burdekin and related discussions:

#### **3.2.1 Commonwealth Best Practices and the Paris Principles:**

Professor Brian Burdekin presented the keynote paper on the review of the *Commonwealth Best Practices* which were developed in 2001 from the *Paris Principles*. According to Prof. Burdekin, the Commonwealth Best Practices provided more clarity and further elaborated upon the Paris Principles. For instance, the Paris Principles did not deal with a number of significant issues which are now critical to the work of NHRIs, such as the involvement of the civil society in establishing NHRIs, the place of NHRIs in situations of conflict, internally displaced persons (IDPs), migrant workers, HIV/AIDS, etc. Similarly, there was little elaboration on the different models of national institutions that could evolve taking into account diversity, size and the economic status of member states. The Commonwealth Best Practice Guidelines sought to deal with some of these issues. It was noted that NHRIs have moved towards addressing economic, social and cultural (ESC) rights. NHRIs should consider these issues, which are central to poverty alleviation and development, even if their mandate does not explicitly mention ESC rights, since it is implicit in the protection of all human rights. The conference agreed that if the Commonwealth Best Practice Guidelines are to be reviewed then these issues have to be taken into consideration. In discussing the presentation, delegates focused on the following points:

#### **3.2.2 Differing mandates**

It was noted that it would be most worthwhile as a first step to review or commission a comprehensive review of the variety of mandates in NHRIs across the Commonwealth. The HRU was requested to take on the project by building on the existing work done by Prof. Brian Burdekin on the mandates of NIs in Asia Pacific. However, delegates agreed that the creation of a strong national human rights mechanism is the key to promoting human rights, peace and security as well as economic realisation at national level.

#### **3.2.3 Accountability & independence**

Delegates were of the view that NHRIs should seek out accountability opportunities, rather than shun them, since these provide opportunities for engagement and for education of government ministries, the media and the public about the NHRI. In relation to 'independence', it was pointed out that pressure against independence does not only come from governments: donor agencies too can affect independence by exerting pressure on NHRIs to concentrate on certain priorities or an agenda

determined by the donors. It is important for NHRIs to have their own national objectives. Delegates also discussed the creative strategies that NHRIs can use - within their mandates - to put pressure on government in relation to human rights issues. Some of these can be adapted from the experiences of peer NHRIs. It was also observed that links between NHRIs is important in dealing with cross border issues as well as difficulties which arise due to differences in the systems within which they operate e.g. Francophone vs. Anglophone systems.

#### **3.2.4 Enforcement and implementation of decisions/recommendations of NHRIs**

The issue of a perceived lack of commitment by governments was raised and it was noted that, among other things, governments have not been able to fully respect the mandate of NHRIs by not adequately supporting/funding them and not respecting their authority. The problem of ensuring responsiveness from governments, generally and in relation to orders or recommendations, was another source of frustration for NHRIs. A prescient question was how governments which established NHRIs, might be made to take the NHRIs and their orders or recommendations seriously. It was noted that some NHRIs have powers to require authorities to respond within a specified period of time. However, for such powers to be effective there must be sanctions for non compliance.

#### **3.2.5 Multi-mandate commissions**

Some commissions might be strengthened by having a mixed mandate across a range of issues: anti-corruption, administrative law, human rights, the environment, the ombudsmen's office. This could also seriously handicap the institution in terms of addressing human rights. Another dimension of this issue was the proliferation of separate institutions in a single country, which means none of them was adequately staffed or resourced. It was noted that under the Paris Principles, there was no 'one size fits all' model. The Paris Principles just lay down basic requirements for independent human rights institutions.

#### **3.2.6 Relationship to courts/judiciary**

It was noted that while some NHRIs had strong, quasi-judicial powers, sometimes these were problematic and could lead to institutional tensions e.g. with the judiciary, or duplication of roles, or prevent the emergence of two separate strong institutions: courts (on the one hand) and NHRIs (on the others). Several 'best practice' examples were noted. For example, in India the highest courts were quite comfortable with, and knowledgeable of, the role of the NHRC, and not only received cases referred by the NHRC if the government did not respect its determination, but have also themselves referred cases to the NHRC from the Supreme Court. Uganda was an example of a country whose NHRI has wide powers of a quasi-judicial nature. The significance of the difference between a Francophone system and Commonwealth system was mentioned, e.g. in terms of the independence and power to conduct investigations.

### **3.2.7 NHRIs and access to international forums: the Human Rights Council**

At present, there was a 'de facto' right to appear at the HRC. Ironically, both governments and NGOs enjoy a recognised position in UN forums, but the same thing cannot be said of NHRIs, who have been forced to rely on the past practice of their inclusion.

### **3.2.8 Reports to Treaty Bodies**

It was noted that in some countries, the State expects the NHRI to carry out a reporting function with respect to treaty bodies. However, delegates noted that this was a function of government. NHRIs can be involved in the process, and can educate ministries to assist them, but it was primarily a function for the government. It was agreed however, that NHRIs have a role to influence the government to live by its reporting obligations under various international treaties notwithstanding that NHRIs can also contribute to the reporting processes. The meeting noted that where governments lack awareness of, or are uneducated about rights, then it was difficult for them to respect international human rights instruments.

### **3.2.9 Models**

It was noted that while there exists a plurality of models of institutions, one needs to be careful of the 'model' approach since none of these might be applicable in countries where their size means that viable structural solutions may be unlikely. This was especially true of small states and the point was taken up in relation to Caribbean countries, some of whom have a very small population: how does one formulate viable institutional structure and whether it was economically feasible to establish a human rights commission for a small state?

### **3.2.10 Human Rights and customary law**

An important factor to be considered when assessing the models of NHRIs is that of the 'cultural question' especially in the Pacific, in order to reassure and accommodate all elements of society. Unless the dialogue with individuals, bodies or groups which espouse cultural values was resolved, progress on the acceptance of human rights models and the advancement of human rights would be seriously curtailed. On the other hand, universality was identified as a core principle, and there was a danger of distraction by reference to cultural values: the international legal framework can already accommodate cultural practices. Thus, it was a challenge to NHRIs not to 'pander' unnecessarily to 'the cultural aspect', NHRIs should seek to articulate what universal values mean in a local cultural setting, consistent with universality. However, it was clear that the point was made as a matter of strategy and methods of engagement, and not as a familiar 'cultural relativism' issue.

### 3.2.11 Victims

It was pointed out that as a matter mainly of perception (rather than lack of mandate); the credibility and public legitimacy of NHRIs can depend on the extent to which NHRIs are perceived to focus on the rights of victims of human rights abuses and crime.

### 3.2. 12 Relationship with parliament

Questions were raised as to what extent NHRIs have established partnerships with parliament and national legislative bodies. Alliances and partnerships do exist, but one must acknowledge the risks for NHRIs here - in particular the need for NHRIs to maintain an appearance of political independence. To what extent was there sufficient popular legitimacy for NHRIs? Should an NHRI seek popular support, or was that inappropriate?

### 3.3.0 Application of Paris Principles and Contribution of International and Regional Organisations and Forums

#### 3.3.1 Summary of Keynote Presentation by Mr Gianni Magazzeni, Coordinator of NIs Unit, UN Office of the High Commissioner of Human Rights, and related discussions:

The meeting was informed that the OHCHR provides tailored advice on appropriate constitutional or legislative frameworks regarding the establishment of NHRIs and on the nature, functions, powers and responsibilities of such institutions. The OHCHR supports increased participation of NHRIs in appropriate United Nations human rights and other international fora, encourages the sharing of best practices among NHRIs, and supports the strengthening of their regional networks. Despite not being legally-binding, the Paris Principles, which constitute the existing normative framework for setting standards and assessing the independence of NHRIs, achieved international consensus and endorsement as the minimum standards for the establishment and operation of independent NHRIs.

With an increase in country engagement and technical cooperation towards NHRIs, OHCHR was looking towards regional and international NI networks as strategic partners for enhanced effectiveness at country level and closer OHCHR-NI engagement. To this end, OHCHR encouraged the establishment of a Commonwealth Forum of NHRIs. NHRIs with resource and capacity constraints are advised to actively seek national and international partnerships and to continue to use the Paris Principles as the springboard for human rights advancement and protection.

Delegates noted that the OHCHR played a very important role in strengthening NHRIs in the Commonwealth and called for the increased support of the UN to these institutions. Questions were raised regarding access to the Human Rights Council by NHRIs and the strengthening of strategic partnership on human rights concerns at

national level. The meeting welcomed the commitment by the OHCHR to ensure that NHRIs would continue to have speaking rights at the Human Rights Council.

Mr. Gianni informed that plans were mooted for the UN to establish country human rights offices since, at present, there was lack of understanding at UNDP regarding the work and role of NHRIs. Having human rights experts at national level will promote the strategic partnerships with NHRIs at national level.

### **3.3.2 Summary of Presentation by Ms Pip Dargan, Deputy Director, Asia Pacific Forum of National Human Rights Institutions, and related discussions:**

APF was established, in the wake of a lack of a regional human rights treaty, court or commission on human rights in the Asia Pacific region, primarily to strengthen and promote the development of NHRIs in accordance with the Paris Principles. Fifty percent of its members belonged to the Commonwealth.

APF had adopted a mixed exclusive and inclusive approach towards its membership criteria. It had a three tiered membership arrangement which include 'full', 'candidate' and 'associate' categories, each corresponding to the ICC 'A', 'B', and 'C' classification respectively. The categories differed according to the extent to which the institutions complied with the Paris Principles. The APF Constitution provides for two review processes on compliance with Paris Principles for full members.

The meeting commended the work of APF in the Asia Pacific region and noted that there were lessons to be learnt from their experience particularly with regard to the proposed Commonwealth Forum for National Human Rights Institutions. In the context of APF's membership criteria, some delegates observed that the proposed Commonwealth Forum of NHRIs should not just be established for the sake of it but there must be clear and strict criteria determining membership. Others observed that if there were certain NHRIs which did not comply with Paris Principles, the Forum should work with those institutions as members of the Forum to help them operate as required by the Paris Principles. The discussion as to whether the Forum should adopt an inclusive or exclusive approach was deferred to the last day.

### **3.3.3 Summary of Presentation by Mr Said Adejumobi, Political Governance Adviser, Economic Community of West African States (ECOWAS) and related discussions:**

ECOWAS recently established a network of NHRIs in West Africa the objectives of which are to serve as a platform for the exchange of ideas and experiences, encourage harmonisation of legislation and policy framework pertaining to national human rights institutions and their work, identify capacity needs and gaps, with a view to addressing them and facilitate the creation of Independent National Human Rights Institutions in West African countries where such do not exist and to strengthen the capacity of NHRIs in the sub-region. The network has adopted a more inclusive approach on membership.

ECOWAS welcomed the initiative by the Commonwealth on the 'Forum of Commonwealth NHRIs' as human rights issues must resonate in all platforms, institutions and agencies in both developing and developed countries, noted Mr. Adejumobi.

#### **3.4.0 Sharing of Experiences in Fulfilling Mandates of National Human Rights Institutions in the Commonwealth**

The NHRIs shared experiences lessons and good practices in monitoring, protecting and advocating human rights including the use of the international, regional and national systems. These varied from country to country due to differences in mandates, independence from government, resources, appointment procedures and security of tenure, and the circumstances in which they operate. A few NHRIs from each region were selected to make presentations. India NHRC, HRC of Malaysia, HRC of Maldives, HRC of Sri Lanka represented Asia while Ghana CHRAJ, NHRC of Mauritius, Uganda HRC, Nigeria HRC and Zambia HRC represented Africa. HREC of Australia, Canadian HRC and EEO of New Zealand represented the Pacific region and Canada represented the Americas. There was robust discussion following the presentations from all present.

##### **3.4.1 Asian Experience**

In India the HRC has the power of a civil court to grant relief in the form of compensation and disciplinary action against public servants found responsible for violation of human rights. The Commission can also intervene in any proceedings involving alleged human rights violations before any court, provided the latter approves - this may result in orders of the High Court being set aside, fresh investigation and re-trial might also be ordered by the Supreme Court resulting in conviction of accused.

In Malaysia, the HRC can only visit places of detention upon advance notice to the authorities but can conduct public inquiries although it was time consuming and costly. Another major area of concern was the level of education and training on human rights. It was noted that those tasked with interpreting legislation require more exposure to human rights principles through education and training.

The experience of Maldives indicates that there was a lot of work that needs to be done for the HRC, especially in raising awareness of rights in the public and other stakeholders, considering that the country was facing transition from an imperfect democratic system to multiparty democracy.

The HRC of Sri Lanka's dual focus was the protection of human rights and the abolition of discrimination but this must be carried out within the framework of an ongoing ethnic conflict and derogation of human rights. The Commission had wide investigative powers and received a high proportion of complaints regarding employment and

harassment. Priority was afforded to complaints regarding torture and death in custody and the incidence of such complaints had decreased.

### 3.4.2 African Experience

The Ghana CHRAJ was a model of a hybrid institution which combined human rights functions with public administration and anti-corruption mandates. The latter was a particular challenge and there have been numerous investigations mounted as to the wrongful use of state funds - which have also led to criticism of the CHRAJ. The human rights mandate included investigation, monitoring, education, visits of prisons and detention centres *unannounced*.

The NHRC of Mauritius does not have a direct reporting function to international treaty bodies but does publish "parallel" reports. An interesting feature of the Commission's mandate was to encourage incorporation of international treaties within the dualist regime in order to address the government's perception of the Constitution as an adequate safeguard for rights when these Constitutional definitions of human rights do not reflect those found in international treaties.

The Uganda HRC also noted that public hearings were very expensive. The Commission relates with Parliament largely through reporting function to Parliament and finds that networking with other government institutions, the media and NGOs was crucial to the work of the Commission.

The Zambia HRC can initiate investigations into human rights violations and public mal-administration and have fairly strong enforcement powers. The Zambia HRC has also established a programme of research and education of human rights abuse.

The Nigeria HRC is proposing amendments to the law to provide for funding to be moved from general budget to federal fund, the entrenchment of the commission in the constitution, and the establishment of a human rights fund to support research on thematic human rights matters.

### 3.4.3 Pacific Experience

In Australia, the Commission has the power to intervene, with leave of the Court, in proceedings that involve issues of race, sex and disability discrimination, human rights issues and equal opportunity in employment. The Commission also had the power to act as *amicus curiae* ('friend of the court') in certain matters before the Federal Court and the Federal Magistrates Court.

The New Zealand Human Rights Commission has been conducting research on what might be viable national mechanisms for the promotion and protection of human rights in smaller island countries. However, the main challenges of the Commission are the need to build an evidential base to benchmark human rights in New Zealand and to develop a Human Rights Framework to influence legislation, policy and practice.

#### **3.4.4 Canadian Human Rights Commission Experience**

The Canadian HRC has a complaints management system which focuses on complaints of discrimination in the provision of services within federal jurisdiction, but additionally, it also carries out a broad human rights mandate. In both respects of the mandate, the C-HRC can appear before courts and tribunals - in respect of human rights, it is often granted public interest standing. However, the focus was on mediation rather than litigation in the resolution of human rights and discrimination complaints.

In discussing the country presentations, delegates highlighted the following key areas:

#### **3.4.5 Adequate resources**

The meeting acknowledged that adequate resources were an issue for NHRIs in both developed and developing countries. It was queried how much attention had been given not just to 'lack of resources' but also to the proper priority of spending actual amounts, in the context of resource shortages. The Paris Principles had left the term 'adequate resources' ill-defined. It was noted that governments can under resource or may discontinue funding of NHRIs totally. Prof. Burdekin suggested 4 ways to ensure adequate funding: (i) Ensuring that a funding structure or arrangement was reflected in the Constitution; (ii) As most Commissions fall within the purview of a Ministry/agency and which was responsible for the NHRIs' budget - appropriate separation was required; (iii) Stipulate in law that the budget be drafted by the Commission itself and not only subject to executive but also to parliament (iv) Commission to be entitled to address parliament on budget. Prof. Burdekin also stressed the importance of national inquiries as an effective outreach effort to engender support but also an alternative operational means to make up for the short fall in resources.

#### **3.4.6 Independence and Accountability**

Delegates agreed that Commonwealth NHRIs should always strive to be as independent as possible. The meeting was informed that in Nigeria, a bill has been prepared to sever the institutional link between the Nigeria HRC from the Ministry of Justice and there was a call for thorough broad based consultations on the proposed bill. Security of tenure of office for Commissioners also assured accountability although 'life tenure' must always be avoided.

#### **3.4.7 Relationship with government**

It was noted that NHRIs established under the Paris Principles enjoy an important degree of independence from both government and NGO's. They are in the privileged position of being able to provide independent feedback and advice to ensure that the government's laws, policies and practices reflect accepted human rights standards. It

was their independence and accountability that created public legitimacy and credibility. It was normal that there would be times when a national human rights institution will be required to be critical of government laws and policies. However, in reality, national human rights institutions were often dependent upon the government for funding, and practical considerations dictate that they should strive for good relationships with government.

#### **3.4.8 Public Inquiries**

There was a consensus that public inquiries should only be held in cases of systematic abuse. Whilst conducting a public inquiry was a costly process, it was pointed out that the process itself was 'empowering' and that merits should not be based on evaluation of outcomes alone.

#### **3.4.9 Awareness and Education**

A core role of NHRIs was to educate officials and the general public about all aspects of human rights. In particular, the NHRI must educate government officials about international obligations applicable to them and to ensure that community understanding and respect for human rights remains high. It is vital to raise the awareness of human rights in schools and the general public and train actors involved in specific sectors dealing with human rights. To this end, NHRIs should forge both domestic and international partnerships to enhance information exchange and technical capacity building.

#### **3.4.10 Inspection powers**

It was noted that the powers of inspection are fundamental to the way NHRIs operate but there was wide divergence as to the powers actually granted. Of particular mention was the question whether NHRIs have the capacity to carry out unannounced inspections. Delegates questioned the rationale for NHRIs to provide advance notice for visits as was the case with some NHRIs in the Commonwealth. Furthermore there was an uncertain position as to where NHRIs stand in terms of their relationship with the courts although some NHRIs in the Commonwealth do have quasi judicial powers. Prof. Burdekin suggested that the Commonwealth Secretariat could facilitate an analysis along the lines of: who has the power of inspection; to which institutions and kind of detentions they relate; and to what kind of detention this relates.

#### **3.4.11 Separating human rights and anti-corruption mandate**

Corruption is a problem of significant magnitude and therefore warrants a commission of its own with enforcement powers rather than being comprised within an NHRI (although there might be an exception for small states). It was felt that combining the two mandates also lead to a cutting-back of resources for the human rights agenda for e.g. resources invested in complaint management would lead to a cut back on resources on education.

### 3.4.12 Role of the media and relationship with NHRIs

The role of the media in promoting human rights and providing access to NHRIs as a means of raising awareness of human rights was considered beneficial to many NHRIs. Where the press played a particularly active role, it was considered that the most effective means of disseminating reliable information about the work of NHRIs would be to issue statements to the press. The relationship between NHRIs and the press presents a critical interface in a healthy democracy.

### 3.5 Presentations on Different National Institutions with Human Rights Mandates: the Ombudsman Model and related discussions

Under this segment the meeting discussed the role of Ombudsmen in protecting human rights in the Commonwealth especially in small jurisdictions where they do not have human rights commissions. Mr Peter Pursglove made a key-note presentation followed by Ombudsmen or their representatives from Antigua and Barbuda, Belize and Jamaica.

It was noted that small island developing states, after committing to international human rights instruments, are usually more likely to be faced with challenges in resources and capacity to give domestic effect to international instruments i.e. establish a national infrastructure, including relevant institutions, which can promote and protect human rights at the domestic level.

The ombudsman must consider, when contemplating involvement in a case concerning human rights issues, whether the matter falls within the jurisdiction of his office. There are of course a number of ombudsman models but the *classical* ombudsman is usually concerned with the investigation of maladministration according to legal standards and has no express jurisdiction over human rights. However, in other models, where the human rights jurisdiction of the Ombudsman is determined, this may encompass domestic human rights laws and may also extend to international human rights law insofar as this forms an obligation on the part of the State applicable at the domestic level. The ombudsman can use these human rights provisions of the domestic law in an investigation to determine whether the administrative conduct in question is contrary to law and/or wrong and unfair. In situations where customary international law is considered to be automatically part of the common law domestic legal system, then provided there is no conflict with statute, the ombudsman can also apply relevant customary international law. In situations where the State has become bound by a human rights instrument in international law but the instrument has not been implemented in domestic law the ombudsman may still have recourse to the human rights instrument when conducting an investigation. It is important for those Ombudsmen who do not have explicit human rights functions to consider seeking the appropriate mandate to enable them deal with human rights issues appropriately.

In terms of locating these comments within a practical perspective, it was observed firstly that the Ombudsman of Antigua and Barbuda does not have an express human rights mandate. Thus its primary role was to conduct investigations into government or statutory bodies whose actions result in injustice, however, this frequently encompasses a human rights element (which is then resolved by reference to domestic and international human rights law).

In Belize, the Ombudsman has a distinct focus on the abuse meted out to citizens by the Police Authority. It has worked hard to improve human rights by raising the public perception of the Ombudsman and working towards good governance within their democratic society.

The office of Public Defender in Jamaica has replaced the Ombudsman and is mandated to enforce and protect the rights of citizens which frequently involved the investigation of public authorities which have acted contrary to Constitutional rights.

### **3.6.0 Presentation on “British Council’s Commonwealth National Human Rights Commissions Project” by Nina Jacob and Ms Helena Sharpe, British Council**

The British’s CNHRI project, which focused on information exchange, training and network, took place from 2002 - 2006. The project involved workshops, publications, staff exchange and information service. The information service, which reached out to NHRIs, contributed to the coherence of the concept of an identifiable network of CNHRIs.

The meeting was also informed that HRU will take on, on an interim basis, the e-newsletter, to provide continuity to the work of the British Council in this area. The e-newsletter which will be called the *Human Rights Update* will continue to provide information to CNHRIs in relation to forthcoming events, publications, speeches, links to papers contributed during this conference and others. It will also contain information on HRU activities and raise awareness of the Commonwealth Secretariat. CNHRIs are encouraged to make use of and contribute to the e-newsletter to disseminate information about their work and events.

### **3.7.0 The Proposed Commonwealth Forum for National Human Rights Institutions and CHOGM related matters - Rabab Fatima, Head of Human Rights**

#### **3.7.1 Rationale for the Forum**

The Secretariat presented a scoping paper outlining the rationale, objectives and suggested options for a Commonwealth Forum of NHRIs.

The last two meetings of the CNHRIs (in Ottawa 1992 and Cambridge 2000) and the British Council project has led to CNHRIs emerging as an ascertainable group. The rationale to establish a forum is based on the following:

(i) There exists no single and effective formal forum to represent CNHRIs and allow for collective expressions of support, encouragement or concern in relation to particular events and developments in individual Commonwealth NHRIs when necessary to better defend and promote human rights

(ii) The Forum could promote interaction and dialogue within other NHRI gatherings and within the UN human rights mechanisms and provide a systematic way to share information and best practices. There are many commonalities in the commonwealth from which expertise could be tapped.

(iii) To institutionalise a framework allowing interaction with Commonwealth Heads of Government (CHOGM) and with members of the civil society. The value of the strategic engagement of CHOGM is key as the CNHRI platform gives a collective political profile [particularly beneficial to small states] that could serve as pressure points on the leadership in CHOGM as regards the national protection of human rights.

It was pointed out that the existing good work of other regional organisations such as the APF and the African Forum should always be recognised and duplication of work should be avoided. Unlike other bodies, CNHRI has its own unique entrée to CHOGM.

### 3.7.2 Structure

There was a general debate on whether membership should be exclusive or inclusive. It was said that one weakness of the ICC has been its relatively 'open door' system, and that the proposed CNHRI Forum should not have an 'open door' policy for its own credibility and utility. On the other hand, the significance of a forum whereby fledgling institutions can gain experience and support was mentioned by a number of participants: a recognition of NHRIs as 'work in progress'. Graduated membership categories would be useful as the 'C' equivalent category could provide the necessary leverage to influence the need for countries without an NHRI or a credible NHRI to establish one. Other delegates perceived the Forum as a reservoir of information but cautioned against duplicity in terms of the Forum's mandate.

The point was also made that the debate need not be about inclusiveness and exclusiveness as the UN for instance engages institutions that have not met internationally endorsed standards through technical cooperation. Inclusiveness should involve assistance but not a lowering of standards.

It was noted that further discussion should also address whether Ombudsmen and other models of NIs would be included as members.

The Secretariat agreed to undertake a review of the comparative models, structures and mandates of the NHRIs and other relevant institutions in the Commonwealth with a view to presenting that study to the Forum's first meeting in Kampala in November.

### **3.7.3 Resources**

The funding quantum would depend on the institutional structure of the Forum. Funding was a shared concern and it was hoped that there should be enough good will demonstrated in order to attract sponsorship from other bodies. However, the issue was left to the Steering Committee to discuss in greater detail and make appropriate recommendations.

### **3.7.4 Process of representation and participation in CHOGM process**

The CHOGM is preceded by a host of activities such as the People's Forum, the Business Forum and the Youth Forum with each forum providing a report to CHOGM. There was discussion on whether it would be appropriate to subsume CNHRIs under the Peoples' Forum or to establish CNHRIs as a stand alone forum within the broader umbrella. Agreement from governments and foreign ministers would have to be sought for the CNHRIs to be recognized as a separate entity from the People's Forum at the CHOGM. It was imperative that participants lobby their individual governments for CNHRIs' representation in CHOGM and HRU to facilitate the lobbying process. The conference was, however, informed that the Uganda Human Rights Commission had managed to secure a day specifically for national human rights institutions to meet. It was not made clear whether this meeting will be held under the umbrella of the People's Forum.

## **4.0 Conclusions and Way Forward**

The 3-day Conference concluded with the adoption of the Concluding Statement presented by the Chairperson (Annex 2). The Statement reaffirmed the need for all national human rights institutions in the Commonwealth to respect and function in conformity with the Paris Principles and called for the strengthening of co-operation between NIs in the Commonwealth, and between NIs and international partners such as the Office of the UN High Commissioner for Human Rights to promote and protect human rights at national level.

The Conference agreed to the proposal made by the Commonwealth Secretariat Human Rights Unit for the establishment of a Commonwealth Forum of National Human Rights Institutions, the primary purpose of which would be to serve as a platform for strengthening the capacity of national human rights institutions to protect and promote human rights in the Commonwealth.

Delegates agreed that the comparative advantage of the Forum would be its strategic engagement with CHOGM. The meeting achieved consensus on establishing a CNHRI Forum and agreed that a Steering Committee be set up to clearly define the objectives and modalities of establishing the Forum and to define its structure, mandate, and scope of activity. Members of the bureau of the Conference, representing the four regions of Africa, Americas, Asia and Pacific, and the Human Rights Unit of the Commonwealth Secretariat, would be members of the Steering Committee. This

however did not preclude the larger membership giving views on the eventual structure and membership. The Commonwealth Secretariat will drive the process in gathering views from participants. The Steering Committee is due to meet on the sidelines of the ICC meeting in March 2007 and will convene again in London in May. It will submit its final report to the Forum in Kampala in November.

The HRU agreed to the meeting's request to continue to support and facilitate the work of the Steering Committee and the Forum. It agreed to convene a meeting of the Steering Committee in London in May and to work in close concert with the Ugandan HRC to organize the first meeting of the Forum on the sidelines of the Kampala CHOGM in November.

The concluding session was chaired by the Deputy Secretary General of the Commonwealth Mr. Ransford Smith who reiterated the Secretariat's commitment to continue to support Commonwealth NHRIs in defending and advancing human rights in the Commonwealth. He also took note of the meeting's request for enhanced resources to HRU to carry out its additional responsibilities in facilitating and supporting the work of the NHRI Forum and more generally to Commonwealth NHRIs.