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Editorial

Independent and Effective Institutions

The credibility and value of national human rights institutions are determined by their independence from government, and the extent that their work addresses human rights violations effectively.

Many national human rights institutions in Asia and the Pacific are perceived to be lacking in independence from government and suffering from inability to address human rights violations particularly those involving government officials, and members of the national security forces (including the police). Some institutions have to contend with a variety of demands from numerous sectors of society.

How will these institutions be able to meet the expectations of society? Based on the experiences obtained so far (during the last five years at least), what does it take to make these institutions effective?

Granting that maintaining complete independence from government is a big challenge, they must not be perceived as a tool to cover up the human rights situation of the country. Thus, too, while granting that most institutions in the region do not have the necessary wherewithal to resolve the major human rights issues in the country, they must pursue all possible ways and means to address them.

There is a need to go back to the basic requirements of the Paris Principles (though they are probably incomplete) to assess and learn from the experiences in Asia and the Pacific, and continue the pursuit of having credible and valuable national human rights institutions.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Osamu Shiraishi, Director of HURIGHTS OSAKA.

Ombudsman for Human Rights: The Case of Timor-Leste

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Timor-Leste restored its independence on 20 May 2002. Its 2002 Constitution provides the legal foundation for the establishment of the needed State institutions. Since 1999 until now, the international community has been playing important roles in setting up the country's State institutions in support of good governance and democratic society. But as a young country, Timor-Leste is still in the process of devising and building these institutions. And those that already exist are still weak and fragile, despite international assistance in their establishment.

The 2002 Constitution created the Ombudsman, as part of the chapter on "Fundamental Rights, Duties, Freedoms and Guarantees." A subsequent law established the Office of the Ombudsman for Human Rights and Justice (*Provedor de Direitos Humanos e Justica*) pursuant to this constitutional provision. Other important institutions created by the Constitution do not yet exist.

The one-year journey of the Office of the Ombudsman for Human Rights and Justice so far does not constitute a significant period for a proper evaluation of the implementation of its mandate. The institution itself is in the process of designing its strategic mechanism to achieve its mission.

From a broad perspective, several challenges hinder the Office of the Ombudsman for Human Rights and Justice from achieving its mission. The legacy of colonialism and militaristic regime, lack of human right awareness of government officials, weak judicial system, and the agenda of donor countries are the challenges to overcome.

Nature of the institution

The Office of the Ombudsman for Human Rights and Justice is an independent institution that operates outside the government and reports to the National Parliament. Despite the newness of the concept of ombudsman among the Timorese, they expect it to play an important role on issues relating to human rights, good governance, clean government, and the fight against corruption within public institutions.

Its establishment took a long process. The Law No. 7/2004 "Approving the Statute of the Office of the Ombudsman for Human Rights and Justice" was enacted by the National Parliament in April 2004, and came into force on 26 May 2004. The National Parliament appointed on 16 June 2005 the first holder of the office (known as the Provedor). Subsequently, the Provedor appointed two deputies (one focusing on Human Rights and Justice, and another on Good Governance and Anti- Corruption) in early July 2005. In March 2006, after nine months of preparation, the Office of the Ombudsman for Human Rights and Justice (Office of the Provedor from hereon) started to operate.

The 2002 Constitution provides that the Office of the Provedor shall be an "independent organ in charge to examine and seek to settle citizens' complaints against public bodies, certify the conformity of the acts with the law, prevent and initiate the whole process to remedy injustice."[1] (Article 27.1) The 2001 National Development Plan, on the other hand, states that the raising of awareness of the citizens about their rights is one of its visions.

The Office of the Provedor is mandated to protect the rights, liberties, and legitimate interests of persons affected by acts of government agencies or private contractors operating a public service or managing public assets on behalf of the government. It is also mandated to provide education on human rights and justice, and promote good practices in government entities. It has three specific areas of concern: human rights, good governance, and anti-corruption.

The law empowers the Office of the Provedor to promote, monitor, investigate cases, and provide advice on human rights and good governance; and to

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fight corruption and influence peddling. It also has the power to access facilities and premises; secure documents, equipments, goods or information for inspection; and interrogate any person who is related to the complaints before it.

The three main objectives of the Office of the Provedor are therefore the following:

First, increase the awareness of the people about human rights and justice, principles of good governance (including transparency, fairness, justice, discrimination and compliance with the law), human rights protection, and increase the accountability of the government and its agencies in the exercise of their authority.

Second, improve public ownership of the organs of governmental power; improve government performance in respecting and promoting human rights, in implementing good governance practices, and in fulfilling its human right duties and obligations derived from international treaties.

Third, combat corruption and nepotism, bad practices and human rights violations within the public agencies or by public agencies.

Mandate Implementation

During it first year of operations, the Office of the Provedor was assisted by several international institutions such as the World Bank, Office of the United Nations High Commissioner for Refugees (UNHCR), and Office of the United Nations High Commissioner for Human Rights (OHCHR). The World Bank provided some equipments and funding to support the operations of the office.

Since it started operating in early 2006, the Office of the Provedor received more than one hundred cases related to corruption, human rights violations and good governance. Under the law that created it, the Office of the Provedor recommends (after investigation) to the competent government agencies what measures to take to remedy the problems. But so far the Office of the Provedor has not been able to issue any recommendation on the cases before it. The law also requires the Office of the Provedor to submit a report with recommendations to the National Parliament before the 30th day of June of each year.

Under its human rights education program, the Office of the Provedor held several human rights training activities for the members of the police. These activities are important in raising the human rights awareness of the members of the police, and improve the credibility of the police as an institution. These concerns are significant in the context of the public fear of the police, which cause human right problems.

As part of its public awareness-raising activities, the Office of the Provedor collaborates with the National Radio Station in disseminating across the country its mandate and functions.

During the Crisis that started in 28 April 2006, the Office of the Provedor played the important role of monitoring human rights violations. It also called on the President of the Republic, the Prime Minister, and others officials to issue their respective statements that would help resolve the crisis.

This monitoring work uncovered human rights violations. However, the Office of the Provedor has not issued any report on the over-all human rights situation until now. In March 2007, with the support of non-governmental organizations (NGOs), the Office of the Provedor issued a statement asking other State institutions to follow up on the recommendations of the Independent Special Commission of Inquiry for Timor-Leste[2] that investigated the 2006 Crisis.

The Office of the Provedor also monitored since May 2006 the plight of the internally displaced people (IDPs) during the Crisis. It collaborated with NGOs on this monitoring work. It subsequently issued a set of recommendations on how to improve the condition of the IDPs. Several of these recommendations were very helpful in improving the condition IDPs regarding shelter, security, sanitation, and other issues.

The Challenges

The Office of the Provedor faces several challenges that affect its capacity to fulfill its mandate as a

human rights institution.

Legacy of colonialism and militarism

As a society that has suffered from massive human right violations and corrupted public institutions, Timor-Leste commits to avoid having these experiences again under the era of independence. With assistance from donors, Timor-Leste commits to build a democratic country that respects human rights and supports clean government. Being a new nation, Timor-Leste faces a lot of problems ranging from the public administration legacy of the Portuguese colonization and military occupation, weak judicial system, and other institutional problems. These are the problems that exist in the current situation.

While good objectives and adequate authority accompany the establishment of public administration in the country, human rights protection, good governance, governance free of corruption and nepotism are difficult to realize within the context of Timor-Leste.

The Portuguese legacy of inefficient public administration system along with the corrupt civil service legacy of Indonesia affect the current Timor-Leste public administration. This dire situation further worsened with the destruction of ninety percent of the public infrastructures promoted by the Indonesian military after the 1999 referendum.

At present, public officials in Timor-Leste do not have adequate knowledge or sensitivity to human rights. This provides an opportunity for state-sanctioned human rights violations.

With its history of state-sanctioned human right violations, building a human right culture in Timor-Leste society is a big challenge.

Weak judicial system

The judicial system of Timor-Leste is another big challenge for the Office of the Provedor. The Timorese public knows that limited human resources, language difficulties and other problems result in weak judicial system. This makes the process very slow and sometimes frustrated people who seek justice. It is claimed also that although the judicial system is constitutionally independent, in reality, it suffers from interventions from political leaders. The situation has not improved despite assistance from the international community since 1999. The failure of the international community to help provide justice for the victims of human rights violations during the past twenty-four years also contributed to the problem on rule of law and law enforcement in Timor-Leste.

The Office of the Provedor can only submit recommendations regarding measures to protect human rights. Their recommendations relating to crimes have to be implemented by the General Prosecutor. However, under the current law, the General Prosecutor does not have the legal obligation to execute the recommendations of the Office of the Provedor. The law establishing the Office of the Provedor does not obligate the General Prosecutor to undertake investigation on crimes allegedly committed by officials of public institutions, as may have been recommended by the Office of the Provedor.

And even if the Office of the Provedor establishes sufficient factual and legal bases to charge public institutions with commission of human rights violations, it is skeptical that the legal process will provide justice to the victims with the current judicial system.

Financial Dependence

Although the 2002 Constitution of Timor-Leste and the law establishing it guarantee the independence of the Office of the Provedor, it is not financially independent. The Office of the Provedor depends on the Government, particularly the Ministry of Planning and Finance,[3] for its financial needs.

As an independent institution, with the mandate to oversee public institutions, the Office of the Provedor should be independent structurally, legally and financially. In view of the centralized financial system of the government, the Ministry of Planning and Finance acts as the micro-finance manager of all public institutions including the Office of the Provedor. While the National Parliament approves the national budget, the Ministry of Planning and Finance controls its disbursement, including that of the Office of the

Provedor. It has to submit to the Ministry of Planning and Finance the financial requirements for each planned activity in requesting for budget allocation. This system creates difficulties for the work of the Office of the Provedor and raises questions about its independence.

International Assistance

The donor community has been playing important roles in setting up and assisting the State institutions of Timor-Leste either in terms of technical and financial support or provision of human resources. Theoretically, the objective of these forms of assistance is to strengthen the rule of law, democracy and the sovereignty of the country. However, as experienced by other Third World countries or post-conflict countries, the donors have their own agenda behind the assistance.

Timor-Leste, since 1999, has been receiving assistace in establishing state institutions from the United Nations Development Programme, World Bank and other bilateral assistance agencies. From 2002, many international advisors were placed within the State institutions to strengthen them. International advisors also play important roles in setting up State institutions. While their presence aims to capacitate the State institutions, problems such as language and cultural barriers, and the communication mechanism are challenges to overcome. As a result, most of the State institutions are still fragile and that contributed to the 2006 Crisis.

The experience of the Office of the Provedor reflects this donor-agenda-driven assistance program. Within the Office of the Provedor, there are assistance programs from the World Bank, United Nations Integrated Mission in Timor-Leste, UNHCR, OHCHR, USAID and others. The different assistance programs fragment the Office of the Provedor because most donors prefer to support the Human Rights Section and leave out the Governance Section.

Structurally the Office of the Provedor has two deputies for the Human Rights and Good Governance Sections respectively. But these two sections are integrated, as underlined by the first holder of the Office. It is important that some donors pay attention to human rights. But since the mandate of the Office of the Provedor is a combination of human rights and good governance concerns, the imbalance in the support they respectively receive undermines the institution as a whole.

Conclusion

The Ombudsman is very important as an oversight institution. However, under the current context, to achieve its mission, the collaboration and coordination among stakeholders are important. The judiciary system needs to be strengthened, the human right awareness for the public needs to be increased, and the donor community should review their financial and technical assistance programs.

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Endnotes

1. See www.timor-leste.gov.tl/constitution/constitution.htm for the whole text of the 2002 Constitution.
2. The Independent Special Commission of Inquiry for Timor-Leste was established in mid-2006 under the auspices of the United Nations High Commissioner for Human Rights following an invitation from the Timor-Leste government. See report of the Commission in www.ohchr.org/english/docs/ColReport-English.pdf
3. The full name of this ministry is Ministry of Planning & Finance Revenue/Custom/Treasury/Procurement/Budget & Statistics.

The National Human Rights Commission - The Maldives

Shahindha Ismail*

The first National Human Rights Institution in the Maldives was established on 10 December 2003 following the custodial deaths of five prisoners and the consequent outburst of public frustration. A large number of people went out on the streets of the capital Male' on 20 September 2003 to protest the custodial deaths, which eventually led to stone throwing on some government buildings and the burning of the High Court premises.

Establishing the Human Rights Commission

A special decree issued by President Maumoon Abdul Gayoom in 2003 established the first Human Rights Commission (Commission) of the Maldives. Under this decree, the Commission has "the right to charge and receive charges/allegations."[1] The President subsequently appointed the nine Members of the newly-established Commission.

By February 2004, a bill was filed before the People's *Majlis* (Parliament) to become the law creating the Commission. The bill was passed in 2005 as the Human Rights Commission Act (Law No. 1/2005). But the appointment of the members of the Commission was not completed due to questions about the law's compliance with the Paris Principles. Thus the new law had to be amended.

In mid-2006 the Parliament passed a law (Law No: 1/2006)[2] amending the Human Rights Commission Act of 2005.

The 2006 law provides that the Human Rights Commission has the power to inquire on cases that occurred subsequent to the enactment of the law, and cases that occurred prior to the enactment of the law but not before 1 January 2000 (with exception).[3] Such cases may involve government officials or private persons. In undertaking investigation, the Commission has the power to summon witnesses and persons related to complaints filed and obtain their statements; instruct persons being questioned in an ongoing inquiry not to leave Maldives except upon its permission, among others.

The Commission, after investigation, may seek amicable settlement of cases, or refer them to courts if no amicable settlement is possible, or send a report of the inquiry on the cases with recommendations to appropriate government agencies.

The new law provides that it is the duty of Maldivian citizens and persons within the jurisdiction of the Maldives to obey the summons issued by the Commission, provide information or submit documents as well as to act or refrain from doing any act as may be required by the Commission. Failure to follow the orders of the Commission may either result in house arrest or dismissal from office in case of public officials.

The Commission also has the power to inspect without prior notice any premises where persons are detained under a judicial decision or a court order.

The 2006 law provides for a Commission with five-members, who are appointed by the People's Majlis (Parliament) based on a list of nominees submitted by the President. In October 2006, the Parliament confirmed the Members of the new Human Rights Commission of the Maldives. In November 2006, it confirmed Mr. Ahmed Saleem as the Chair of the Commission.

It also requires the state treasury to provide the Commission with funds, from the annual budget approved by the People's Majlis, "essential to undertake the responsibilities of the Commission."

Responding to complaints

Following its formation, the first Commission received a number of complaints of human rights violations. However, the general view was that nothing came out of the complaints. Many people claimed that letters to the Commission were never answered.

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The case of the detention of protesters in 2004 indicates how far the Commission would go. In August 2004 the police severely beat and arrested over three hundred protesters having a peaceful gathering at the Republic Square in Male'. Among the victims of police brutality were children and women. Some people were in critical medical condition due to the beating.

Those arrested were detained without charge, and without proper medical assistance, in cells on another island where the detention facility was located. Although a few detainees were released within days, many supporters and activists of the political opposition, including members of the Parliament, were detained for up to five months.

During the more than five months of detention of the protesters, the Commission did not issue any statement regarding the August 2004 incident. However, representatives of the Commission visited the detention facility and met with a number of detainees. No statement or publication followed this visit. Many families were denied access to the detainees and waited desperately for news about their dear ones in detention.

Complaints filed with the Commission by many family members on police brutality to their kin did not receive a reply.

Upon release, many of the detainees filed complaints with the Commission with regard to police brutality and torture. Many of them claimed they did not hear anything from the Commission about their complaints.

Based on the 2003 Presidential Decree, which empowers the Commission to hold independent public enquiry, the Commission decided to hold a public enquiry on the August 2004 protests and arrests. The Commission decided that, since such an enquiry was to be held in the Maldives for the first time, they would consult experts in the field. But on 4 November 2004 the Commission received a letter from the President's Office stating that it could not yet conduct a public enquiry for lack of legal framework to do so since the relevant laws were not yet passed by the Parliament. As a result, the Commission cancelled its planned public enquiry.

The official website of the Commission states that it sent reports and recommendations on prisons and detention facilities to President Gayoom following their visits to these facilities. The website also states that the President's Office merely replied that it sent the recommendations to the Ministry of Home Affairs.[4]

Problems encountered

During its first year of existence, the first Commission was obstructed from finalizing its first annual report and stopped from holding a meeting in 2004 on the International Human Rights Day.

The Chair of the first Commission resigned in less than two years out of a five-year term, followed by more resignations until two Commissioners were left. The Commission was literally defunct by this time and could not carry out any of the activities on their mandate due to lack of capacity to do so.

The Maldivian Detainee Network (Network) met with the remaining two Members of the first Commission in September 2006 and inquired about its prison and detention facility visitation function. The Network asked whether or not the Commission could engage the Network staff to assist in the visitations in view of its (Commission's) lack of human resources. The Network also explained the importance of these visits by a non-governmental organization (NGO) in order to verify maltreatment reports sent by families of detainees and the detainees themselves. The Members replied that since the first Commission was at a "stand still" situation they had to wait until a full Commission was again established before taking action on the issue.

With the new Commission, the Network requested in January 2007 the present Chair of the Commission, Mr. Ahmed Saleem, to allow the representatives of the Network to join prison and detention facility visits by the NHRC Maldives. The Network has not yet received a response to the request.

Some issues

It is noteworthy that out of over forty individuals who expressed interest on the government's open invitation to apply to become members of the Commission, President Gayoom proposed five names for confirmation to the Parliament. The law allows more than five nominees to be considered for appointment to the Commission if the President wishes to do so. And then out of the five nominees, only two subsequently expressed willingness to serve in the Commission.

All nominees, except Mr. Ahmed Saleem, are known for their quiet disposition and for not being critical of the government. It remains to be seen whether or not they will maintain strong objectivity during their term.

Some of the present Members were members of the ruling party (Dhivehi Rayyithunge Party) at the time they were appointed to the Commission. Hence, with due respect to these Members, the sincerity of the Commission's work remains in doubt.

Although there was never any negative aspect to it, there has been extremely little or no cooperation between the Commission and local NGOs from the time the first human rights commission came into being in the Maldives. Representatives of two local human rights NGOs met with a Commission Member in January 2007 and exchanged views on possible cooperation and joint efforts between the existing informal civil society network in the Maldives and the Commission. But the Commission did not initiate any further meetings or convey any indication of possible work with the existing informal civil society.

A major issue that recently arose was the government proposal for the amendment of the Human Rights Commission Act of 2006 that subjects to dismissal from employment any government official who withholds or distorts information requested by the Commission. The government proposed that the law be changed from terminating the employment of such individuals to simply punishing them with a fine.

This amendment was formally adopted into law after much debate, with Member of Parliament Mr. Ibrahim Ismail opposing it. He argued that, "the main reason we fought so hard to have the law [Human Rights Commission Act of 2006] endorsed in the first place was to prevent people in authority to hide information from the National Human Rights Commission and human rights NGOs". He said that he could not find a justifiable reason for the government desire to amend the law other than to hide information from the National Human Rights Commission. Mr. Ismail has raised many human rights violations issues in Parliament, and continues to propose laws on human rights.

The future and the success of the present Human Rights Commission of the Maldives remains to be seen. It is up to it to show results. Public confidence and trust do not come by default. It has to be obtained, before it gets too late.

For further information, please visit the website of Maldivian Detainee Network: www.maldiviande - tainees.net

Endnotes

1. See UNDP, *Support to the Human Rights Commission of Maldives Project Document* (Male: UNDP, 2004) page 3.
2. The complete text of the law is available in this webpage: http://www.hrcm.org.mv/downloads/HRCM Act English translation.pdf
3. Under paragraph c of Article 33, Human Rights Commission Act of 2006, the Commission is not restricted from inquiring on a complaint involving events that occurred prior to 1 January 2000, or on events that occurred after the law was enacted but more than one-year having lapsed before the filing of the complaint, if it "deems such as a complaint is necessary to be investigated based on its nature and severity."
4. See www.hrcm.org.mv

The Qatari National Human Rights Committee: A Search for Evaluation

Mohamed Saeed M. Eltayeb*

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suit - ed to its particular needs at the national level.

Vienna Declaration and Programme of Action (Part 1, para. 36)

The formation of the Qatari National Human Rights Committee (QNHRC) should be considered in light of the comprehensive reform policy including constitutional, political, economic, educational, social and cultural reforms, which the State of Qatar has embarked upon under the leadership of His Highness the Emir Sheikh Hamad Ben Khalifa Al-Thani as well as in light of the gradual approach that characterizes this reform process. The question of the promotion and protection of human rights is very central to the policy of the comprehensive reform. Thus, unlike national human rights institutions in the Arab world which have been established in the last two decades either in response to internal human rights crises or in response to external pressures,[1] the establishment of the QNHRC in 2002 came mainly as an integral part of a national comprehensive reform policy adopted in the country since 1995. Consequently the establishment of the QNHRC paved the way for further developments both at the legislative and institutional levels, which in turn contributed to the strengthening of the human rights infrastructure in the country.[2]

Law establishing the QNHRC

The QNHRC was established in 2002 by the *Amiri* Decree Law No. 38,[3] which provides for its role and objectives. Thus, in accordance with the Paris Principles,[4] the law established the QNHRC as a permanent body with a separate legal personality and an independent budget.[5] Under Article 2 of Law No. 38, the QNHRC aims to:

* Achieve the objectives embodied in international conventions and treaties on human rights to which the State of Qatar is party.
* Advise concerned bodies in the State on matters related to human rights and freedoms.
* Investigate violations of human rights and freedoms, if any, and suggest suitable means to deal with such violations and avoid their occurrence.
* Monitor reports by international organizations and NGOs on human rights situation in the State, and coordinate with concerned bodies to address them.
* Take part in the preparation of reports submitted by the State on human rights and freedoms.
* Cooperate with international and regional organizations concerned with human rights and freedoms.
* Raise awareness and enrich education on human rights and freedoms.

Article 2 of Law No. 38 provides also for the broad mandate and responsibility of the QNHRC to promote and protect human rights that comprise, *inter alia*, of advisory, investigative and promotional powers. These powers generally subscribe to the Paris Principles.

While Article 2 empowers the QNHRC to take part in the preparation of the State reports to treaty bodies, it does not elaborate on how it can contribute to the reporting process.[6]

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The views expressed in this article are a strictly of personal nature and are not necessarily shared by the Qatari Ministry of Foreign Affairs. The author wishes to thank the Secretary-General and the Head of Legal Department of the Qatari National Human Rights Committee for their valuable information and materials and Abdullatif A.O. Elhag and Mekki Abbass Medani for their valuable comments on earlier drafts.

The most noticeable omissions in Article 2 include:

* The power to examine and report on the legislation and administrative provisions in force, draft laws and proposals and make such recommendations as it deems appropriate to ensure that these provisions conform to the fundamental principles of human rights;
* The power to recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
* The power to promote and ensure harmonization of national legislation, regulations and practices with international human rights instruments to which the State is a party, and their effective implementation;
* The mandate to encourage ratification of international human rights instruments or accession to those instruments, and to ensure their effective implementation;
* The power to prepare reports on the national situation with regard to human rights in general, and on more specific matters.

However, the QNHRC addressed most of these shortcomings through its work and institutional development.

Article 3 of Law No. 38 concerning the composition of QNHRC manifests the most obvious deviation from the Paris Principles. Article 3 provides that the composition of QNHRC includes five members representing the civil society and seven members representing seven governmental entities, including the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Civil Service Affairs and Housing, Ministry of Justice, Ministry of Public Health, Ministry of *Wakfs* and Islamic Affairs, and the Supreme Council for Family Affairs. Following the Paris Principles provision that "appointment shall be effected by an official act which shall establish the specific duration of the mandate", the *Amiri* Decree No. 15 of 2003 named the members of QNHRC.[7] Article 4 of Law No. 38 provides for a renewable three-year appointment for QNHRC members.

This composition of the QNHRC clearly indicates the dominance of the government representatives. The Paris Principles provides that the composition of the members of a human rights institution should "ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights". Moreover, the Paris Principles expressly provides that representatives of government departments if they are included in the composition of the QNHRC should participate in the deliberations only in an advisory capacity. While recognizing the deviation from Paris Principles, the founders of QNHRC thought that it would be more practical and viable to have such composition considering the fact that the country at that time was lacking the basic human rights infrastructure and had no strong and organized civil society because it was only beginning to emerge. Moreover, it was thought that a gradual approach would suit the political, social and cultural contexts existing at the time of the establishment of the QNHRC. In light of this gradual approach, which in fact characterizes the comprehensive reform process that the State of Qatar has embarked on since 1995, the Law No. 25 of 2006 amended Article 3 of Law No. 38 of 2002 and the new article provides that the QNHRC "is to be formed with at least seven members representing the civil society to be selected from among human rights activists, and a representative from the following bodies - Ministry of Foreign Affairs, Ministry of Interior, Ministry of Civil Service Affairs and Housing, Ministry of Justice, and the Supreme Council for Family Affairs".[8] The impact of the new composition on the QNHRC's work and activities is still to be seen, since the Royal Decree stating the names of the members of the QNHRC with its new composition has not yet been issued. It must be noted, however, that the article is silent with regard to the procedures for appointment and dismissal. The article only indicates that an *Amiri* Decree should determine the composition of the QNHRC.

According to Article 10 of Law No. 38, the QNHRC's resources include subsidies, donations, grants and wills. It seems, however, that the government provides most of the QNHRC's funding. Article 10 is silent with regard to the source and nature of funding and does not specify the role of the QNHRC and its responsibility for drafting its own annual budget, which should be submitted to the *Shura* Council and the Council of Ministers for approval. Although it seems that the QNHRC has adequate funding, the

inclusion of such provision would indeed secure the financial autonomy of the QNHRC in conformity with the Paris Principles.[9]

In addition to the explicit powers of the QNHRC and its Members under Law No. 38, its Article 11 obligates ministries, governmental bodies, institutions, and public corporations to co-ordinate with the QNHRC and to provide it with information and data necessary to perform its task.

With regard to the question of transparency in the work of QNHRC, Article 6 of Law No. 38 mandates it to submit every three months or whenever required to the Council of Ministers a report on its activities together with its suggestions. As will be indicated below, the QNHRC has interpreted this mandate in broad terms and made its annual reports public, including its recommendations.

QNHRC at work

Since its establishment, the QNHRC has published the 2005 and 2006 annual reports respectively covering the situation of human rights in Qatar, the activities and findings undertaken by it during the years 2004 and 2005, together with proposals and recommendations deemed appropriate by it for enhancing human rights in the country. These reports offer appropriate materials for evaluating the QNHRC on the basis of its performance and impact.

The two annual reports were divided into four parts. The first part deals with the latest developments in law and legislation. The second part concerns human rights and freedoms in Qatar. The third part specifies the QNHRC's activities. The fourth part contains recommendations and proposals made by the QNHRC to improve the human rights conditions in Qatar. The 2005 report,[10] after stating the positive developments achieved by the government to improve and strengthen the human rights situation in the country, noted however that several laws were not in conformity with *Shari'a* and international human rights standards. These laws include: Law No. 17 of 2002 on the Protection of the Community, Law No. 3 of 2004 on Combating Terrorism, Law No. 14 of 2004 on Labour Law, Law No. 21 of 1989 for the Regulation of Marriage to Foreigners, Law No. 3 of 1963 on the Entry and Residence of Foreigners and Law No. 3 of 1984 on Sponsorship of Foreign Workers. Furthermore, the report enumerated several violations, including, *inter alia*, revocation of nationality (citizenship), violation of workers' rights (this include the continuation of the sponsorship system for foreign workers and mandatory exit permit to depart the country or to change sponsorship, and restriction on the right to choose or change a job), large number of detainees both men and women at the deportation center, long delay in the investigation of some cases by local authorities, and preventive custody.

In fact, the major part of the activities of the QNHRC has been devoted to complaints handling. During the year 2005, the QNHRC received five hundred eighty-five complaints/referrals. The table below classifies these complaints as follows:

Number of Complaints	Subject of the Complaint
84	Deportation orders/decisions
162	Transfer of sponsorship
116	Disputes between sponsors and laborers
10	Arrest
29	Residence permit (issuance, renewal and change of visit visa to a resident permit)
6	Right to housing
21	Right to work
2	Torture
4	Detention at State Security Facility
3	Right to education
2	Right to health
3	Lengthy periods of investigation
3	Delay in the execution of courts' judgments
14	Conditional release and release for medical reasons
2	Visitation rights for prisoners
13	Women's rights
2	Right to marry
2	Rights of persons with disability
2	Violence against children

Additionally, the QNHRC has received many complaints regarding revocation of nationality (citizenship), which it has documented separately. The actions undertaken by the QNHRC ranged from seeking amicable settlements, to addressing/referring complaints to the competent authorities, and to providing legal advice. It should be noted in this regard that the QNHRC has developed its own strategy on complaints handling, which is basically derived from the United Nations Handbook on National Human

Rights Institutions.[11]

At the promotional level, the QNHRC organized several conferences, seminars, lectures and training courses throughout the year 2005 addressing different human rights themes such as spreading human rights culture, incorporation of human rights norms in school curriculum, norms and mechanisms of international human rights law, and its mandate and responsibilities. These lectures and training courses covered different segments of the society including members of law enforcement agencies, teachers, journalists, medical personnel and students. Moreover, QNHRC made several visits to the Deportation Centre, the Qatari House for Shelter and Human Care, Capital Police and Central Prison.

In the final part of the 2005 report, the QNHRC provides its recommendations and proposals for improving the human rights situation in the State of Qatar. These recommendations and proposals include, *inter alia*, ratification of principal human rights treaties to which the State is not a party, review of the general reservations made by the State to human rights conventions, review of the laws identified by QNHRC as not in conformity with international human rights standards, improvement in the condition of State prisons, encouragement on the establishment of civil society human rights organizations, and encouragement on the adoption of a national comprehensive plan for the promotion and protection of human rights.

Assessing the effectiveness of the QNHRC

Taking into account the formative phase that the QNHRC has gone through, one might indicate the following points that bear on the assessment of its effectiveness:

* There exists a conducive environment for the QNHRC to effectively carry out its broad mandate regarding the promotion and protection of human rights. This is manifested in the overall commitment of the Government to the question of the promotion and protection of human rights; the Government's moral and financial support to the QNHRC; and the co-ordination of different governmental bodies with the QNHRC.
* Despite the progressive and broad interpretation by the QNHRC of its mandate during the formative phase, the necessity for making the QNHRC's mandate conform to the Paris Principles is recognized.
* For the purpose of strengthening the institutional structure of the QNHRC, there is utmost importance for it to adopt its own internal rules and regulations.
* The best practices adopted by QNHRC during its formative phase including, *inter alia,* reinforcing the indivisibility and interdependence of human rights, public outreach through media, enrooting and strengthening the human rights culture, and incorporation of human rights norms into school curriculum, should be continued.
* The QNHRC recognizes the need to develop performance and impact indicators that can clarify planning processes and help set targets for future work.

Concluding remarks

Considering the experience of QNHRC, there are two lessons that should be considered. First, the formal structure of a national human rights commission does not necessarily determine its performance on the ground.[12] It has rightly been pointed out that "many national human rights institutions (NHRIs) that formally respected the Paris Principles were not particularly effective in guaranteeing human rights. Others, less numerous, failed to comply with the Paris Principles but still achieved reasonable results".[13] Secondly, the creation of a national human rights commission does not automatically lead to a greater respect for human rights. Whether the national human rights commission is the most effective means to promote human rights should be considered and analyzed against the background of the specific political and cultural contexts of each country. [14]

The full version of this article is available at www.hurights.or.jp

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Endnotes

1. See Muhsin Awad and Abdalla Khalil (eds.), *The Development of National Human Rights Institutions in the Arab World* (in Arabic), Egyptian National Human Rights Council and UNDP, 2005.

2. These developments both at the legislative and institutional levels include, *inter alia*, the adoption of the new Constitution, which was approved by a popular referendum in 2003 and ratified by His Highness the Emir in 2004, and entered into force in June 2005. The new Constitution puts a great emphasis on the promotion and protection of human rights and fundamental freedoms and hence Part Three (Articles 34 - 58) of the new Constitution guarantees most of the internationally acknowledged fundamental rights and freedoms.

3. For the text of the law, see The State of Qatar *Official Gazette, issue No. 2 (30th January 2003*), pages 305-307.

4. United Nations General Assembly Resolution 48/134 (20 December 1993). For a general discussion of the Paris Principles see Anna-Elina Pohjolainen, *The Evolution of National Human Rights Institutions: The Role of the United Nations* (Danish Centre for Human Rights, 2006) and Brigit Lindsnaes, Lone Lindholt and Kristine Yigen, editors, *National Human Rights Institutions: Articles and Working Papers* (Danish Centre for Human Rights, 2000).

5. See Article 1 of Law No. 38.

6. According to the *Handbook on the Establishment and Strengthening of National Institutions* the contribution of a national human rights commission to the reporting process may take any of the following:

* Providing information to the government department charged with preparing the report.
* Review draft reports to ensure that they are accurate, detailed and properly drafted.
* Preparing the draft country report.

(See *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Centre for Human Rights, Geneva, 1995, pages 26-27).

It has to be noted that in light of the human rights treaty bodies' general comments/recommendations on national human rights institutions, it is advisable that a National Human Rights Commission is not directly involved in the preparation of the State' reports to treaty bodies, nor included in the government delegation discussing the reports before treaty bodies. However, the committee entrusted with the task of preparing the report can seek the assistance of the Commission either by requesting the Commission to provide information or to review the draft report to ensure that it is accurate, detailed and properly drafted. (See General Recommendations No. 17 on the Establishment of National Institutions to Facilitate Implementation of the Convention, adopted by CERD (contained in document A/48/18, 25 March 1993), General Comment No. 10 on the role of national human rights institutions in the protection of economic, social and cultural rights [E/C.12/1998/25, CESCR General comment 10, 14 December 1998], General Comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights ofthe child [CRC/GC/2002/2, 15, November 2002], and Report on the Implementation of Recommendations of the Fifteenth Meeting of Chairpersons and of the Second Inter-Committee Meeting [HRI/MC/2004/2/4 June 2004, para. 29, page 9].

7. In accordance with Article 3 of Law No. 38, Decree No. 15 (2003) was issued by the Emir on 5 May 2005 constituting the QNHRC and stating the names of its members, which includes ten men and three women.

8. For the amendment of Article 3, see Law No. 25 *(2006), The State of Qatar Official Gazette, issue No. 9 (October 10th, 2006*), pages 38-39.

9. See *The Handbook on National Human Rights Institutions, Supra note no. 6*, pages 11 and 15.

10. For the text of the 2005 Report, see the WebPages of the Qatari National Human Rights Committee at: www.nhrc-qa.org

11. See *The Handbook on National Human Rights Institutions Supra note no. 6*, pages 28-35.

12. See *Assessing the Effectiveness of National Human Rights Institutions*, The International Council on Human Rights Policy and the Office of the United Nations High Commissioner for Human Rights (Geneva, 2005), page 7.

13. Ibid.

14. See Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (New York, 2001).

Promoting and Protecting the Economic, Social and Cultural Rights of Women: the NHRI Mandate

Sneh Aurora*

As independent institutions with a mandate to combat discrimination and promote and protect universal human rights, national human rights institutions (NHRIs) have great potential to address challenges to the full realization of economic, social and cultural rights by women.

The *Beijing Platform for Action (1995)*, referring to the *World Conference on Human Rights*, called for the creation or strengthening of national institutions, the strengthening of human rights of women, as well as for the development of programs to protect the human rights of women by such institutions.

The United Nations' Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 10 (December 1998) noted that "national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights" and that "it is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions."

A number of other international and regional documents and statements address specifically the role of NHRIs as it relates both to economic, social and cultural rights and to the rights of women.

The development of a normative framework in regard to economic, social and cultural rights through international conventions, as well as decisions, declarations and statements from global, regional and national bodies, contributes to the general recognition of the role that NHRIs must play in the protection and promotion of economic, social and cultural rights as well as the rights of women. This means that NHRIs should have as part of their mandate, explicitly or implicitly, the protection and promotion of these rights.

Interpreting and Implementing the Mandate of NHRIs

Although the Paris Principles, which provide international minimum standards on the status and role of NHRIs, have no specific reference to economic, social and cultural rights, the Principles do state that an "NHRI shall be vested with competence to promote and protect human rights". It goes on to say that the NHRI shall be given "as broad a mandate possible" and this should be "clearly set forth in a constitutional or legislative text", which shall specify "its sphere of competence".

The mandate of a national human rights institution is typically expressed in very general terms. The constitution, legislation, or other source of an NHRI's mandate may, however, refer specifically to certain rights or certain groups of rights that fall within the institution's jurisdiction.

For example, the functions of the Fiji Human Rights Commission are outlined in the country's Constitution and the *Human Rights Act 1999* and include:

* educating the public about the nature and content of the Bill of Rights, including its origins in international conventions and other international instruments, and
* making recommendations to the Government about matters affecting compliance with human rights.

Fiji's constitutional Bill of Rights contains provisions that address economic, social and cultural rights, among them labor rights, the right to be free from discrimination on several enumerated grounds, including gender and economic status, and the right to education. Under the *Human Rights Commission Act 1999*, the Fiji Commission also has the mandate to address issues involving unfair discrimination based on the ground of gender as it relates to employment, housing, education, and access to goods, services and facilities.

The Human Rights Commission of Mongolia is a statutory body established to increase public awareness about laws and/or international human rights treaties, and to promote human rights education activities. The functions of the Commission are outlined in the country's Constitution and *The National Human Rights Commission of Mongolia Act* of 2000, which includes issues relating to discrimination based on grounds of sex. The Constitution of Mongolia includes as guaranteed rights and freedoms, economic, social and cultural rights, including those relating to property, employment, social security (including for childbirth), health and medical care, education, engagement in creative

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and artistic fields, and participation in Government.

However its mandate is expressed, an NHRI must interpret its mandate as it undertakes its work. Interpreting its mandate gives the national institution the opportunity to elaborate its jurisdiction and responsibilities and its understanding of its role and functions.

The National Human Rights Commission of India was created under *The Protection of Human Rights Act 1993*. Its mandate is to protect and promote rights guaranteed by the Indian Constitution or embodied in the International Covenant on Civil and Political Rights and the ICESCR and enforceable in Indian courts. The Indian Constitution includes as fundamental rights, the prohibition of discrimination on the ground of sex, as well as prohibitions against trafficking in human beings and forced labor. The enumerated fundamental rights also go beyond conventional civil liberties in protecting cultural and educational rights of minorities by ensuring that minorities may preserve their distinctive languages and establish and administer their own education institutions. The Indian Commission has undertaken many inquiries into issues of economic, social and cultural rights, including those relating to degrading labor, education and mental health facilities. In April 2000, the Commission held a *Regional Consultation on Public Health and Human Rights* in New Delhi.

An NHRI should interpret its mandate as widely and comprehensively as possible, subject to its governing legal framework, as well as to domestic and international law. In some instances, an NHRI must creatively interpret its mandate in order to ensure the inclusion of economic, social and cultural rights of women. To the extent that the words of the establishing law permit, references to 'human rights' should be interpreted as including all human rights-civil, cultural, economic, political and social.

Economic, social and cultural rights may also fall within the mandate of an NHRI through the principle of indivisibility and interdependence of all rights. Human rights law is integrated and holistic. Rights relate to each other. The right to life, for example, has implications for the right to health and the right to education, and the right to freedom of movement has implications for the right to livelihood. Even though the mandate of an NHRI may refer only to civil and political rights, it will have jurisdiction to deal with many issues of economic, social and cultural rights through the rights to life, equality and non-discrimination.

The Philippine Commission on Human Rights has been able to broadly (and creatively) interpret its mandate in order to ensure that investigations of violations of economic, social and cultural rights are within its jurisdiction. The Philippines Constitution of 1987 stipulates that the Philippine Commission shall function "to investigate ... all forms of human rights violations involving civil and political rights" and shall "monitor the Philippine Government's compliance with international treaty obligations on human rights". In a 1994 ruling, the Supreme Court confirmed that the Philippine Commission could only investigate violations of civil and political rights. This decision led the Commission to look for other ways to include economic, social and cultural rights within the framework and limits of its jurisdiction. To address the large number of complaints received by the Commission concerning alleged violations of economic, social and cultural rights, the Commission developed a system of "investigative monitoring" of economic, social and cultural rights based on the constitutional requirement that it monitor government compliance with international treaty obligations. The Philippines had ratified the ICESCR in 1974 and therefore obligations under that treaty were included in the Commission's constitutional mandate. The Commission has implemented its investigative monitoring function in the area of forced evictions and the violations of human rights resulting from that practice.

The explicit mandate of NHRIs can vary. Some NHRIs are limited to dealing with only specific human rights issues; while others have mandates that are wide in scope to address all issues covered in international human rights instruments. The ideal is for each NHRI to have the mandate and the capacity to deal with the protection and promotion of all rights recognized by international law as human rights. NHRIs should interpret their mandates broadly to ensure that they are able to effectively address the major issues and challenges to the realization of economic, social and cultural rights by women.

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HURIGHTS OSAKA ACTIVITIES

HURIGHTS OSAKA held the second meeting of partners on the development of a South Asian teacher training material on human rights education on 21-22 March 2007 in Bangkok.

Human Rights Education in Indian Schools (Arjun Dev, Dinesh Sharma, D. Lahiry) and Human Rights Education in Philippine Schools (Philippine Normal University) are now available in print. They are reports that came out of HURIGHTS OSAKA's research project.

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HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

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