NORTHERN IRELAND HUMAN RIGHTS COMMISSION

Fairness for All

RESPONSE OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION TO THE CONSULTATION ON A NEW COMMISSION FOR EQUALITY AND HUMAN RIGHTS

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,[1] advising on legislative and other measures which ought to be taken to protect human rights,[2] advising on whether a Bill is compatible with human rights[3] and promoting understanding and awareness of the importance of human rights in Northern Ireland.[4] In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or "soft law" standards developed by the international human rights systems.

2. The Commission welcomes the opportunity to provide these comments to the Department for Trade and Industry (DTI) and through it to the other Departments involved in the *Fairness for All* consultation (DCA, DES, DWP and Home Office). The aim of the consultation is to elicit views on the Government's proposals to create a Commission for Equality and Human Rights (CEHR), including its role, duties and powers, and the steps to be taken towards its establishment.

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[1] Northern Ireland Act 1998, s.69 (1).
[2] *Ibid*, s.69(3).
[3] *Ibid*, s.69(4).
[4] *Ibid*, s.69(6).

3. The two key concepts in the CEHR proposals are the merger of the existing equality agencies in Great Britain (the Commission for Racial Equality, CRE; Equal Opportunities Commission, EOC; and Disability Rights Commission, DRC), and the addition of a human rights function. Our response will concentrate on the second aspect, but will touch on the question of merging the equality bodies.

4. The Commission particularly welcomes the proposal to establish a statutory human rights agency, although it would have preferred that England and Wales, jointly or severally, had adopted the model followed in Northern Ireland, and proposed for Scotland, of a specialist human rights commission. There is no reason why such a body could not stand alongside a combined equality commission or the present range of specialist commissions.

5. Nothing in the White Paper proposals affects the role of the NIHRC in relation to Northern Ireland, so it will continue to concern itself with devolved matters, with non-devolved legislation and policy as they affect Northern Ireland, and with international human rights issues within its statutory competence. Whatever body or bodies may be established as the statutory human rights agency or agencies for Great Britain, and whether or not that body or bodies should also have equality functions, the Northern Ireland Human Rights Commission will seek to work co-operatively on any matters of mutual concern. It should be possible to establish areas of collaboration and lines of demarcation, through memoranda of understanding or similar protocols, to address the problems that might otherwise arise of overlap or gaps in coverage. However there is particular scope for confusion, domestically and internationally, as to the remit of a CEHR endowed with equality functions for all of Great Britain, and as the sole human rights agency in England and Wales, but having human rights functions distinct from those of a Scottish human rights commission. The legislation setting up the new Commission should ensure that there is clarity in this regard.

National human rights institutions

6. The Commission strongly supports the international consensus, reflected in the 1993 Vienna Declaration, that human rights are "universal, indivisible and interdependent and interrelated". It therefore resists any notion that a statutory human rights body needs or ought to deal only with the equality aspects of civil, political, economic, social or cultural rights. Many of the most pressing concerns around human rights in England, Wales and Scotland, as in Northern Ireland, have to do with internment, prison conditions, asylum, migration, education, right-to-life issues, health, policing and other areas where, although equality issues may be quite prominent, other fundamental rights are engaged. In that context it would be very disappointing if the CEHR were limited by law, or chose to limit itself, to addressing human rights only in terms of equalities. Any human rights agency should have as broad a mandate as possible.

7. In particular, an agency with a human rights remit must be empowered to engage actively with the UN, Council of Europe and other international systems, and that is a specialist role quite distinct from equality and anti-discrimination work. In its reliance on international standards, and in its close involvement with the various international human rights systems, the Northern Ireland Human Rights Commission is rather different from the present range of equality agencies in Britain and Northern Ireland, whose primary focus is on domestic legislation (including domesticated European standards). The distinction is one that ought to be prominent during discussions as to whether it is appropriate to append a human rights function to a body formed by merging the British agencies principally concerned with enforcement and promotion of domestic anti-discrimination law. The involvement to date of the equality bodies in international human rights systems has been very limited, even as regards monitoring, promoting or using those international instruments of greatest relevance to their respective areas of competence. The Commission for Racial Equality, for example, appears to have had no real engagement with the UN Convention on the Elimination of Racial Discrimination, to which the state has been party throughout the CRE's 29-year history.

8. The United Kingdom has probably done as much as any donor country to foster the creation in other parts of the world of statutory agencies for the promotion and protection of human rights. There is no single model for such agencies; depending on national legal and administrative traditions, they sometimes take the form of multi-member commissions, while elsewhere the ombudsman model is preferred. There is, however, an international consensus on the proper attributes of a "national human rights institution" (NHRI), and the UK has repeatedly indicated its endorsement of that consensus by expressing support for the United Nations' Paris Principles (the *Principles relating to the status and functioning of national institutions for protection and promotion of human rights*, adopted by the General Assembly in 1993 – see Appendix). Without reciting the Principles at length, the essential requirements are that the NHRI should be a genuinely independent public agency with the powers, resources and functions needed to enable it to monitor, promote and advise on compliance with international human rights standards, and to intervene to prevent and address any violations.

9. It is somewhat incongruous that while much UK funding and technical support goes (bilaterally or through international organisations) to the creation of Paris Principles-compliant NHRIs elsewhere, there has never been, nor is it now proposed to create, a UK national institution. In fact the NIHRC would oppose the creation of a single UK NHRI, not as a matter of protecting its own "patch" as the sole UK human rights agency to date, but because of the significantly different historical experiences and political, socio-economic, legal and administrative contexts of England and the devolved regions. However well-developed the regional provision for any UK-wide agency might be, it is a political reality that such an entity would find it harder to win credibility in Northern Ireland than the present region-specific arrangements (and that is not even to touch on the

10. This Commission does, however, believe that every part of the UK ought to come within the jurisdiction of an appropriate national human rights institution—here using the term "national" without political connotations to refer to the four administrative regions, and in order to stress that the Paris Principles NHRI model is the one to follow as regards the human rights function of any future agency. Northern Ireland has the NIHRC, which is effectively recognised as an NHRI; Scotland has for some years been discussing the creation of a commission that could in principle have the attributes of an NHRI; and it would be a logical development to create one, or two, for England and Wales. While, in principle, it would be preferable for there to be a specialist stand-alone human rights commission for England and Wales, or one for each jurisdiction, the declared intention of Government to press ahead with the CEHR project offers the option of designating that body as the NHRI for England and Wales, alongside the NIHRC and the prospective Scottish commission.

11. We thus envisage, within the next few years, either three or four human rights commissions across the United Kingdom; the NIHRC has no particular view on whether there should be separate provision for Wales, except to say that one criterion ought to be whether or not a separate institution would be more effective in its dealings with the Welsh institutions and the Welsh public. Whatever the eventual configuration, the various bodies could develop bilateral and multilateral liaison arrangements, but each would be legally and operationally independent of the others. Each would be free to comment on matters specific to its territorial jurisdiction, on matters of central government policy and on international human rights issues. This means, of course, that on occasion they could adopt different lines in the latter areas, but with a spirit of goodwill and co-operation it should be possible to maximise co-operation and to adopt common positions on most matters in the international human rights area, including within the European and global NHRI networks. There would also be scope for East-West linkages with the Irish Human Rights Commission (an organisation not mentioned at all in the consultation document), to complement the North-South co-operation on human rights required by the Northern Ireland Act 1998.

12. Being accredited by the NHRI networks gives a commission certain rights of access and audience within the international systems, which the NIHRC has found invaluable, not least in terms of assisting in the monitoring of compliance in Northern Ireland with the treaty obligations assumed by the United Kingdom. It also ensures that the institution is able to keep up with, and indeed contribute to, the operations and development of those systems. There is no real difficulty in terms of interaction with the international human rights systems in having more

The references to Scotland

13. The document too often refers to "Scotland and Wales" as though the considerations were the same for both jurisdictions, notwithstanding the very different legal and administrative contexts and, above all, the strong likelihood of legislation to establish a human rights institution for Scotland covering very many of the proposed themes of the CEHR. There was very little Scottish involvement in the Taskforce and it is clear that the White Paper does not reflect the views expressed outside the Taskforce discussions by Scottish human rights organisations.

14. In particular, the paper has very little to say on how the proposed Scottish commission would work alongside a CEHR. At paragraph 9.11 (one of only two paragraphs that actually refer to the pre-existing Scottish proposals for a commission) it is suggested that the Scottish commission might concern itself with devolved matters and the CEHR with non-devolved matters, yet elsewhere (9.8) it is suggested that it will be for the CEHR to provide advice to the Scottish executive on devolved legislation. Even if that CEHR role is restricted (as the text seems to suggest) to equality proofing, the proposals appear seriously to circumscribe the role of the Scottish commission before the Scottish Parliament has created it. If, on the contrary, the reference is also to proofing on human rights matters, it is difficult to see what the point of a Scottish commission would be if the CEHR or its Scottish committee does the job already. The NIHRC is not averse to the notion of a legislature receiving plenty of human rights advice, but it would seem excessive to have two bodies supplying it at public expense, one

15. On the other hand, if by human rights we are to understand all those rights defined in the international instruments, the devolved/non-devolved distinction should not preclude any Scottish commission from working and commenting on the UK's international human rights obligations within Scotland (see Scotland Act 1998, s.30 and Sch.5, para.7(2)), notwithstanding the fact that treaty obligations are not a devolved matter. There is so much within the scope of devolved powers that engages those human rights standards that it would be absurd to say that an eventual Scottish human rights commission could not engage with the international human rights systems, such as the UN and the Council of Europe, in the same way as does the Northern Ireland Human Rights Commission. The Scottish commission should not have to rely on a GB-wide, presumably England-based, CEHR drawing the attention of the treaty bodies to treaty compliance issues that are peculiar to Scotland. It would be bizarre indeed if a Scottish commission were obliged to count on a London-based organisation commenting internationally on the human rights impact in Scotland of Scottish law and practice.

16. The Northern Ireland Human Rights Commission therefore strongly recommends that nothing in the legislation flowing from the present consultation should restrict the capacity of an eventual Scottish human rights commission in commenting or otherwise acting, domestically (with regard to the Scottish *or* UK authorities) or internationally, on any issue concerning human rights in Scotland, whether the relevant policy area is devolved or non-devolved. If the CEHR is created first, the most straightforward way of achieving this might be to provide that any human rights functions of the CEHR in respect of both devolved and non-devolved matters in Scotland would be transferred by order to a Scottish human rights commission.

The references to Northern Ireland

17. From our perspective, perhaps the most startling omission from the consultation document is the complete absence of any reference to the Northern Ireland Human Rights Commission, with references to the Equality Commission for Northern Ireland (ECNI) only in one footnote on page 78, and no other mention of Northern Ireland. The first body is the UK's only statutory human rights institution; the second is the UK's only combined equality body. Both have been around for long enough to serve as very useful models of how such bodies operate, how effective they can be, what problems they may encounter and what can be done to design out some of the potential pitfalls. It seems to us to be a very serious flaw in the consultation process not to provide consultees in Great Britain with at least factual information, if not a considered analysis, of the experience of this UK jurisdiction in addressing equality and human rights issues through new institutional arrangements that emerged from the 1998 Belfast (Good Friday) Agreement.

18. There are in fact very clear lessons to be learned from the experience in Northern Ireland. The provisions of the Northern Ireland Act 1998 establishing this Commission included a requirement (s.69(2)) that the Commission should,

> "before the end of the period of two years beginning with the commencement of this section, make to the Secretary of State such recommendations as it thinks fit for improving-
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> (a) its effectiveness;
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> (b) the adequacy and effectiveness of the functions conferred on it by this Part; and
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> (c) the adequacy and effectiveness of the provisions of this Part relating to it."

19. The Commission faithfully complied with that requirement and made the relevant recommendations to the Secretary of State in 2001. There has not yet been any substantive response from Government, so a further set of recommendations was made in April 2004. It is most peculiar that a White Paper dealing with the powers and functions that should be given to a statutory human rights body established by an Act of Parliament should completely ignore the facts that Parliament has already established such a body, and required the body to advise on the adequacy and effectiveness of its powers and functions; that the body produced such advice on the basis of its first two years' work, and provided further advice after five years' experience; and that Parliament itself has (through the Joint Committee on Human Rights) examined the work of the body, and commented on the adequacy of its powers, functions and resources.

20. It is not necessary to reiterate here everything that this Commission said to Government in those submissions, or that was said in the Parliamentary examination of our workings, since the documents are readily available elsewhere.[5] We would only say that the very areas where we identified inadequacies of provision in Northern Ireland are precisely those where attention needs to be paid in the CEHR legislation if it is not to face the same difficulties as has the Northern Ireland Human Rights Commission since 1999. The two main issues in this regard are resources and powers of investigation. It is absolutely vital that the human rights functions of the proposed new Commission be properly resourced. Our own experience in Northern Ireland has been that human rights work receives a great deal fewer resources from the Government than equality work, even though the former is arguably more challenging and certainly more wide-ranging. Care would need to be taken that the merger of the existing equality bodies in Great Britain does not lead to undue pressure being brought to bear by vested interests to limit the budget available for "pure" human rights work in the new body. Estimates will need to be made of how much it will cost the new CEHR to be effective in its promotional work in the human rights field. As regards powers, the single most debilitating feature of the legislation establishing the NIHRC is the lack of any power to compel the production of information.

[5] The NIHRC's own two submissions (dated March 2001 and April 2004) are available on *www.nihrc.org*.

This has seriously undermined our effectiveness as an investigative institution, the more so as powers of compulsion *have* been conferred on the ECNI. We would very strongly argue that all arms of the proposed new body in Great Britain should have the same extensive powers of compulsion in this respect. Otherwise there is a risk that the general public will not take the work of the CEHR seriously.

21. Northern Ireland also provides lessons on the experience of running a single equality body, the Equality Commission (ECNI). It may be that in terms of its core business the CEHR, rather than being directly comparable with the Northern Ireland Human Rights Commission, will more closely resemble that body, which emerged from the combination of the Northern Ireland equivalents of the CRE, EOC and DRC with a Northern Ireland agency dealing with religious and political discrimination. While the NIHRC mainly leaves to the ECNI the wide range of equality matters that fall to it under the various equality laws, it works with the ECNI—and sometimes independently of it—on some equality-related human rights issues. For example, we comment on equality issues as they arise in compliance with international human rights treaty obligations, and we are involved in the debates around the Government's apparent reluctance to develop a UK National Action Plan Against Racism. Just as we sometimes rely on information and expertise from our sister Commission, and offer our own to it, by means of a Memorandum of Understanding, we could envisage the human rights element of the CEHR working alongside, but sometimes without reference to, those elements of it charged with enforcing and promoting equality law. The experience in Northern Ireland has certainly been that enough non-equality issues arise to justify the existence of a specialist human rights agency, and that applies as much to the legal as to the policy and promotional aspects of our work.

Litigation powers

22. The CEHR must be provided with a wide array of what the White Paper calls the "tools to promote change" (Chapter 4). We have followed the discussion around whether the proposed Commission on Equality and Human Rights (CEHR) should have the ability to litigate, either at all or on matters falling outside the remits of the present equality bodies. We see a need for broadly-drawn powers of litigation and offer the following points for consideration. We do not seek to be overly prescriptive, especially given that the CEHR will have no jurisdiction in Northern Ireland, and we should also emphasise our willingness to co-operate appropriately in areas of common concern, but given the close relationship between attitudes to human rights in Great Britain, and their effective enjoyment in Northern Ireland, it would be desirable that the evolution of the new body's human rights functions should be informed by the experience to date of the United Kingdom's first statutory human rights institution.

23. Under ss.69-70 of the Northern Ireland Act 1998, the NIHRC has the power (a) to give assistance to individuals; and (b) to bring proceedings in its own name involving law or practice relating to the protection of human rights. Under (a) it

24. To give a clearer idea of the volume of non-equality matters that would fall by the wayside, it should be noted that in Northern Ireland, with a population in the region of 1.7 million, the NIHRC receives 500-600 legal inquiries per year. Of these only a small minority are equality rights cases capable of referral to the ECNI. It may not be possible to extrapolate reliably from our experience, given the different institutional context (e.g. no prisons ombudsman service), the differing equality issues here and in British jurisdictions, and the particularly conflicted nature of human rights discourse in this region. However it must be the case that England and Wales, with a population many times greater, will have a very much greater demand for expert legal advice and representation on non-equality human rights issues, of a kind that the private and voluntary sectors may not be best equipped to meet. The NIHRC, however, has *not* been overwhelmed by casework. We first acquired the power to assist individuals on 1 June 1999. By 1 August 2004 (after 62 months of operations) we had assisted just 47 applicants, representing some 17% of all applications for assistance considered. While we encountered financial difficulties in the first two years, this was largely because the particular cases chosen for assistance cost a lot more than anticipated. Since putting in place tighter control mechanisms on expenditure, and since having it clarified that we have the legal power to apply to intervene in cases as an alternative litigation strategy – see paras.26-28 below), we have found that we can manage the cost of our casework load much more easily.

25. The NIHRC also has power to bring proceedings to court in its own name. This too is an extremely important provision. It means that the Commission can take cases over and above those in which it would already have a sufficient interest for the purposes of the law of standing in judicial review. Some would argue that

26. Although the Commission had to go all the way to the House of Lords to overturn a challenge to its capacity to do so, the NIHRC also has the ability to intervene as a third party, or (subject to the court's invitation) as *amicus curiae*, to assist the courts in addressing human rights issues. This helps us fulfil another of our s.69 functions, to "promote understanding and awareness of the importance of human rights". By 1 August 2004 the total number of Commission interventions made since 1999 amounted to 16.

27. The NIHRC's case in the House of Lords in fact established that all such statutory bodies have the ability at least to act as *amicus* with no need for that to be provided by the founding legislation. This means that the CEHR will have that ability unless the legislation specifically forbids it, and an attempt to restrain it other than by the primary legislation might be open to challenge under the Human Rights Act 1998. (The CEHR will have a legal personality and an expertise in human rights, so to restrict the circumstances in which it could appear in court could interfere with its own Article 6 rights or with the Article 6 rights of those who sought its appearance.)

28. The NIHRC has used its right to apply to intervene in three House of Lords cases, two of which were English cases. One of these (*Amin*) involved a racist murder in an English prison and the NIHRC's experience in dealing with Article 2 issues was felt to be of potential value to the court. The other (*Middleton*) was a case where there had been a suicide in prison and again the views of the NIHRC were deemed to be worth receiving. In *McKerr*, a case from Northern Ireland involving a death caused by the security forces, the House of Lords again allowed us to intervene. It has the right to become involved in future such cases. To deny the CEHR such a capacity could lead to the absurd situation of the Northern Ireland statutory body closest in functions to the CEHR being able to speak in English cases from which the CEHR, a statutory body based in England, was excluded. .

29. It is not necessarily the case that a restriction on litigation powers would of itself contravene the Paris Principles; for example, the French National Consultative Commission on the Rights of Man has no such powers. The Principles say (para.1) that an NHRI shall be "vested with competence to protect and promote

30. The Principles say (para.3) that an NHRI shall have the responsibility to "submit [opinions] to the government, parliament and *any other competent body*" (italics added); the courts are unquestionably competent bodies in relation to human rights. The matters on which it may speak include "[a]ny situation of violation of human rights which it decides to take up"; that is, it should not be constrained to comment only on, for example, equality matters as opposed to the right to life or property rights. These latter may in many situations be very difficult to separate out from the "pure" equality matters.

Other matters in the White Paper

31. The above points are intended to draw attention to certain matters on which the Northern Ireland Human Rights Commission feels particularly able to comment from its five years' experience of working as a human rights commission alongside a combined equality commission. Conscious of the fact that this Commission's very existence appeared to have eluded the authors of the White Paper, and also of the greater weight that will, quite reasonably, be given to views within the British jurisdictions directly affected by the proposals, the Commission will confine the remainder of its remarks to brief observations on various aspects of the proposals in the order that they arise in the White Paper. We are aware that the Equality Commission for Northern Ireland will contribute its own views and we hope that these will be particularly influential in relation to the equality aspects of the proposals, just as we hope that the NIHRC's views on the human rights aspects will be accorded some weight.

Chapter 1: Vision

32. The Northern Ireland Human Rights Commission could be better persuaded of the benefits of combining the existing equality commissions if the plan were accompanied by proposals for a Single Equality Act along the lines of that being considered in Northern Ireland. Such legislation would seek to harmonise the various pieces of legislation on discrimination, always with a view to improving protections and eliminating unjustifiable exceptions. If there were a single piece of legislation, the case for a single equality commission becomes very attractive. While the definitions of discrimination, the scope of legislation and the variety of exceptions in relation to employment and goods, facilities and services differs as between race, gender, sexual orientation, disability and other grounds, there is a concomitant need for specialist advice and support to those seeking remedies for

Chapter 3: The functions of the CEHR

33. The duty to review legislation should extend (as in the case of the Northern Ireland Human Rights Commission) to providing advice to Government about the adequacy and effectiveness of the founding statute (see above at para.18).

Chapter 4: Tools to promote change

34. The CEHR should of course have the power to compel witnesses and the production of papers (see also para.20 above). This should not require application to the Secretary of State (para.4.6), given that the functions of the Commission are to include holding the executive to account. The experience in many such bodies has been that the mere existence of such powers is enough to secure co-operation, such that it is very rare for a body to have to deploy them.

35. We cannot wholly agree with the statement on p.43 of the White Paper that HRA cases should not be conciliated. In general we are in favour of human rights issues being solved without resort to litigation, since that can often be an expensive, slow and unnecessarily confrontational approach to solving a dispute. Conciliation and mediation can be appropriate ways of addressing human rights abuses provided that the terms of the settlement are consistent with the state's obligation under international law to secure those rights which it has recognised in treaties.

Chapter 5: The governance of the CEHR

36. The genuine independence of the CEHR from Government, and from other important sectoral interests, can be best secured by compliance with Part B of the Paris Principles (see Appendix). In this connection the NIHRC is impressed and persuaded by the relevant section in the recent report by the Joint Committee on Human Rights,[6] where a case is made for making the proposed Commission (or Chief Commissioner) into an "officer of Parliament". We would associate ourselves closely with the recommendations of the Joint Committee set out in paras.127 to 141. Our own experience has been that it is difficult to wholly persuade people of the independence of the Commission once they know that our funding is totally at the Government's discretion, that a government minister appoints our members and that our annual reports are submitted to the Secretary of State.

[6] 11th Report of 2003-04 (HL Paper 78; HC 536), pp.40-48.

Conclusion

37. The NIHRC very much hopes that its experience and expertise will be called on appropriately as discussions progress on this whole issue, and it reiterates its desire to see effective institutional protection of human rights across all parts of the United Kingdom.

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA
Tel: 028 9024 3987
Fax: 028 90247844
Email: information@nihrc.org
Website: www.nihrc.org

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APPENDIX: THE PARIS PRINCIPLES

Principles relating to the status and functioning of national institutions for protection and promotion of human rights

Note: In October, 1991, the Center for Human Rights convened an international workshop to review and update information on existing national human rights institutions. Participants included representatives of national institutions, States, the United Nations, its specialized agencies, intergovernmental and non-governmental organizations.

In addition to exchanging views on existing arrangements, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments. These recommendations, which were endorsed by the Commission on Human Rights in March 1992 (resolution 1992/54) and by the General Assembly in its resolution A/RES/48/134 of 20 December 1993, are summarized below.

A. Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

> (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
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> (ii) Any situation of violation of human rights which it decides to take up;
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> (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
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> (iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;

b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;

e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

B. Composition and guarantees of independence and pluralism

1**.** The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

Trends in philosophical or religious thought;

Universities and qualified experts;

Parliament;

Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's

membership is ensured.

C. Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

D. Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Note:

1. A/36/440 (1981), A/38/416 (1983), E/CN.4/1987/37 (1987), E/CN.4/1989/47 and Add. 1(1989), E/CN.4/1991/23 and Add. 1(1991).