



Executive Session Papers

Human Rights Commissions and Criminal Justice

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Lessons from National Human Rights Institutions Around the World for State and Local Human Rights Commissions in the United States

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Executive Session on Human Rights Commissions and Criminal Justice
Kennedy School of Government, Harvard University
August 2007

Since the early 1990s, national human rights institutions (NHRIs) have become prominent instruments for enforcement of human rights in various national jurisdictions. NHRIs are independent bodies that promote and monitor states' implementation of and compliance with their obligations to protect human rights. Typical functions include resolving human rights complaints lodged by citizens, making policy recommendations to government, promoting national laws and practices that conform to international standards, conducting inquiries into significant allegations of abuse, and promoting human rights in the community.

In contrast to NHRIs, which have gained global attention as they have proliferated, state and local human rights commissions in the United States have operated with a distinctly low public profile. This paper considers ways in which human rights commissions (HRCs) in the United States might adapt approaches used by NHRIs to improve domestic efforts to promote and protect human rights. Section one discusses the origins and jurisdiction of human rights commissions in the United States. Section two covers similar territory for NHRIs and notes some of the international instruments

that have helped to legitimize these institutions. Section three describes four models of NHRIs that have evolved in different national contexts. Section four presents a case study of the role played by the Indian National Human Rights Commission in the aftermath of riots in the State of Gujarat in 2002, illustrating how principles of independence can work in practice. Finally, section five explores the possibilities for U.S. commissions to build on these international examples and instruments.

I. Origin and Jurisdiction of U.S. Human Rights Commissions

Human rights commissions in the United States, in some form or another, pre-date the establishment of NHRIs by as many as seven decades. The Chicago Commission on Human Rights, established in 1921 in response to race riots in 1919, was one of the first attempts to address the issue of racial discrimination through the use of a governmental commission. Similarly, the Maryland Interracial Commission (1927) and the New Jersey Division on Civil Rights were formed to pursue the "welfare of

colored people within the state.”¹ Less official precursors to U.S. human rights commissions were Race Relations Committees (RRCs), which were created following World War I. These organizations were interracial groups of private citizens whose purpose was to advocate at the local level to dismantle structures of racial discrimination and inequality. RRCs drew attention “to the stark contradiction posed by the nation’s war for democracy abroad and the racial oppression that faced black veterans returning home.”² After World War II, support from identity-based organizations (e.g., the NAACP and the American Jewish Committee) and the enactment of numerous federal antidiscrimination laws (including the 1964 Civil Rights Act and the 1965 Voting Rights Act) led to the reorganization of the committees into human rights commissions with authority to enforce anti-discrimination laws.

Today almost every state and dozens of cities and counties in the United States have a human rights commission which enjoys a formal status in place of the ad hoc quality of the earlier committees. The organizations operate under a variety of names, e.g., the Kansas Commission on Civil Rights, the Ohio Human Relations Commission, the District of Columbia Office of Human Rights and the New York City Commission on Human Rights. Notwithstanding their different labels, generally speaking the commissions perform three primary activities related to eradicating discrimination, namely, enforcement,

prevention and training.³ While the scope of these activities varies across jurisdictions, enforcement usually includes the powers to investigate complaints of discrimination, hold hearings, impose fines and issue reports. Prevention includes campaigns and public action against discrimination while training aims to raise compliance with the law and increase respect for human rights. Beyond this broad assertion, it is difficult to generalize the powers and functions of the HRCs. While the jurisdiction of most commissions is limited to issues of anti-discrimination, there are significant differences in the nature of powers and functions that have been statutorily granted to these commissions.

II. National Human Rights Institutions: Origin and Jurisdiction

The acronym “NHRIs” encompasses human rights commissions and ombudsman offices that have been created to promote and protect human rights in countries around the world. Located in more than 100 countries, these organizations are permanent, independent authorities established by constitutional mandate, legislation, or presidential executive order. They address human rights concerns set out in international human rights law and standards, which in some cases means they enforce rights beyond those specified by their country’s constitution. NHRIs are encouraged to take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties.⁴

¹ See Kenneth L. Saunders & Hyo Eun Bang, A *Historical Perspective on U.S. Human Rights Commissions* (June 2007) (prepared for the Executive Session on Human Rights Commissions and Criminal Justice). This short account of the evolution of the Human Rights Commissions in the U.S. is drawn from Saunders and Bang.

² *Id.*

³ *Id.*

⁴ These documents include the International Bill of Rights (<http://www.ohchr.org/english/about/publications/doc/s/fs2.htm>) and the core international human rights treaties, of which seven are now in force (<http://www.ohchr.org/english/law/>).

The mandate includes the power to protect and promote economic, social and cultural rights as well as civil and political rights.

The history of these national institutions may be traced back to the 1960 Resolution of the United Nations Economic and Social Council (ECOSOC) that recognized the “distinctive role that national institutions could play in the protection and promotion of human rights” and “invited government to encourage the formation and continuation” of NHRIs.⁵ Throughout the next three decades the United Nations and some of its affiliated organizations (particularly the Commission on Human Rights and the ECOSOC) prepared a series of reports on the feasibility of national institutions as instruments for protection and promotion of human rights. These reports culminated in the UN International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris in 1991. The workshop led to the drafting of guiding principles that were adopted by the UN Commission on Human Rights⁶ in 1991 as the “Principles Relating to the Status of National Institutions,” popularly known as the “Paris Principles.”

This commitment to develop national institutions as instruments for promoting human rights, disseminating human rights information and providing human rights education was reiterated in the 1993 Vienna Declaration and Programme of Action adopted at the conclusion of the Vienna World Conference on Human Rights. The Paris Principles and the Vienna Declaration have since come to be regarded as setting

the minimum standards for NHRIs. The Paris Principles are not legally binding international rules. Although the workshop that drafted and adopted the Principles was convened in response to the request of the UN Commission on Human Rights, the standards originally only represented the view of a handful of national institutions, NGOs and a limited number of governments. With time, however, the Principles have gained widespread acceptance and acquired considerable political and moral weight. The Paris Principles address four aspects of the NHRIs: their (1) competence and responsibilities, (2) composition and guarantee of independence, (3) methods of operations, and (4) principles relating to the status of commissions as quasi-judicial bodies.

Competence and Responsibilities

The Principles insist on “as broad a mandate as possible” for the national commissions, which is to be clearly set forth in a constitutional or legislative text. The mandate must include, among other duties:

- 1) submitting to the government, parliament and any other competent body ... opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights;
- 2) promoting and ensuring the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party;
- 3) contributing to the reports which States are required to submit to United Nations bodies and committees ... pursuant to their treaty obligations; and
- 4) assisting in the formulation of programs for the teaching of, and research into, human rights and to take

⁵ See C. Raj Kumar, *National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights* 19 AM. U. INT’L L. REV. 259, 260 (2003).

⁶ The UN Commission on Human Rights was replaced by the Council on Human Rights in 2006.

part in their execution in schools, universities and professional circles.

Methods of Operation

National commissions are broadly expected to have advisory, educational and internationally participatory roles. In their advisory capacity, commissions are expected to engage with the government and legislature. In their educational capacity, commissions are expected to work with schools, the media and other institutions to expand public awareness. In their participatory role, the commissions are expected to engage with the United Nations and national institutions involved in the promotion of human rights. In particular, commissions are expected to develop relations with NGOs that are devoted to promoting economic and social development, combating racism and protecting particular vulnerable groups (especially children, migrant workers, refugees, and physically and mentally disabled persons). In some sense, therefore, national human rights institutions function both domestically and internationally. They are domestic to the extent that the authority to exercise their mandate is limited by their respective national jurisdictions. They are international to the limited extent that they serve as national extensions of an international order of human rights.

Composition and Independence

The Paris Principles place a premium on the independence of national commissions and emphasize the importance of pluralistic representation. In particular, the Paris Principles call for engagement with non-governmental organizations working on human rights issues, such as associations of lawyers, doctors, journalists and eminent scientists. The Principles do not preclude representatives from government

departments participating with the commissions. The Principles, however, expressly restrict government officials and NGOs to advisory functions. Finally, the Principles highlight the need for a commission's infrastructure, funding and staff to be sufficient to ensure its independence from the government.

NHRIs as Quasi-Judicial Bodies

The Paris Principles leave open the possibility of conferring judicial or quasi-judicial power on these commissions. Under the Principles, a national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before an NHRI by "individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations." When a case is brought before a commission, it may:

- 1) seek an amicable settlement through conciliation, through binding decisions or on the basis of confidentiality;
- 2) inform parties about the particular remedies available to them;
- 3) hear complaints or transmit them to other competent authorities; or
- 4) recommend to authorities proposals for amendments to laws, regulations or administrative practices.

The quasi-judicial authority has been structured less to provide particular substantive remedies, and more to provide a forum that is distinct from the judicial process. This extra-judicial jurisdiction, as we shall see later in the case of India, may be an effective instrument for addressing issues of systemic violations of human rights.

The mandate of the Paris Principles has been reinforced on numerous occasions. The

International Parliamentary Union (IPU) has repeatedly called upon states to honor the Paris Principles since its 1994 resolution. Similarly, in 1997, the Council of Europe Committee of Ministers recommended that governments “draw, as appropriate, on the experience acquired by existing national human rights commissions and other national human rights institutions, having regard to [...] the Paris Principles [...]”⁷ The role of the Paris Principles was also acknowledged by the African and Latin American regional organizations in the 1990s, although neither included an explicit reference to them. In less than 10 years, the idea of a national institution, distinct from the judicial branch, committed to the protection of human rights, has significantly globalized.

III. Working Off the Paris Model: Forms and Variations of NHRIs

Primary Models of NHRIs

Just as there is significant heterogeneity among human rights commissions in the United States, there are considerable differences in the legal basis and jurisdiction, the functions and powers and the structure and composition of national institutions. To illustrate the salient differences among them, the institutions can be categorized as following one or another of four models: the human rights commission, the advisory committee, the ombudsman, or the human rights institute.⁸

The *human rights commission model*, predominant in Commonwealth countries, is

the classic type of NHRI. It corresponds most closely to the model articulated in the Paris Principles. Indeed, the predominance of this model in Commonwealth countries greatly influenced the drafting of the Paris Principles. Australia (1981), Canada (1977), New Zealand (1977) and the United Kingdom (1976) each had a human rights commission more than a decade before the Paris Principles were drawn up, however, the Principles influenced an interesting change in these pre-existing commissions. Prior to the Paris Principles the jurisdiction of the commissions, as in the case of many human rights commissions in the U.S., was limited to the implementation of anti-discrimination or equality legislation. The Principles persuaded some Commonwealth countries to broaden their jurisdiction to confer a general mandate on human rights going far beyond enforcing anti-discrimination laws, addressing conditions in both the public and private sectors. Today, the commissions carry out a wide range of functions including advising the government on human rights issues, monitoring implementation of human rights laws, and carrying out awareness-raising and training activities in the area of human rights. Often these organizations are granted quasi-judicial investigatory authority.

States following the *advisory committee model* emphasize the role of national institutions as a “link;” their primary mandate is to build bridges between civil society and the government. This model is based on the example of the National Consultative Commission of Human Rights of France (1984) and is, therefore, sometimes referred to as “the French model.” Typically, institutions following this model emphasize consultation more than investigation and monitoring typical of commissions following the Commonwealth model. Under the French model, institutions concentrate on assisting the government

⁷ See Anna-Elina Pohjolainen, *The Evolution of National Human Rights Institutions: The Role of the United Nations*, THE DANISH INSTITUTE FOR HUMAN RIGHTS (January 2006).

⁸ *Id.* Much of the information in this section is drawn from Pohjolainen, pp. 16-20.

with human rights issues through the provision of expert advice and conducting studies on human rights issues. In other words, while institutions developed under the human rights commission model act as quasi-judicial watchdogs on the activities of the state in human rights matters, the French emphasis is on *supplementing* the activities of the state in pursuing research and awareness. But there are similarities as well, particularly in the nature of composition and representation, under both models. Like the commissions, the advisory committees are multi-member bodies with pluralistic representation ranging from governmental officials and NGOs to academics and other human rights experts.

Human rights ombudsmen include national bodies that combine features of the classic ombudsman and the human rights commission models. The classic ombudsman is a mechanism that monitors the conduct of public administration to ensure that it is carried out legally and fairly. Usually a single individual appointed by the legislature, the ombudsman investigates the activities of the executive branch and its agencies; the conduct of the legislature and the courts is usually not under the ombudsman's scrutiny.⁹

While some states instituted a human rights ombudsman as early as the 1970s, the idea flourished through the 1980s and 1990s as a number of Latin American and Central and Eastern European states started to strengthen their human rights structures. Many adopted what is referred to as a "hybrid" ombudsman/commission approach, under which the ombudsman is mandated not just to monitor the legality and fairness of public

administration but also to promote and protect human rights in the public sector. Like human rights commissions, the ombudsman/commissions often have strong investigative powers and the authority to monitor compliance. Some of these institutions are also authorized to make recommendations and proposals on matters relating to human rights. But in terms of composition and representation, the ombudsman model differs from the commission model as the offices are usually single-member bodies, thus do not fulfill the pluralistic composition favored by the Paris Principles.

The fourth and final model, the *human rights institute*, is particularly attractive for states that already have some effective monitoring agency, such as an ombudsman, in place and a relatively well functioning culture of human rights. Rather than focusing on investigation of complaints or compliance monitoring, these institutes emphasize human rights education, information, research and documentation. In this sense, the institutes share many of the characteristics of the French model. The structure of human rights institutes reflects their principal function: the practical work is usually carried out by professionals with multi-disciplinary expertise in different fields of activity, supervised by a governing board. Today, the Danish Institute for Human Rights, established in 2002, remains the sole example of such a model accredited as an NHRI. Much of its research and work is undertaken to benefit other countries.

While these four models group NHRIs according to their structures and mandates, there are significant differences among the NHRIs in each group. Regardless of the model they follow, NHRIs differ in how they exercise their powers, in the strength of their commitment to the Paris Principles,

⁹ Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, Vol. 13 HARVARD HUMAN RIGHTS JOURNAL Spring 2000, p. 8.

and in their genuine commitment to human rights.

Limitations of the Paris Principles

The Paris Principles were originally conceived of as minimum standards, “the essential basis” for the establishment of national commissions. In reality they have come to constitute a maximum program that is fully met by few national institutions.¹⁰ This transformation of the minimum standards to a maximum program was partly abetted by the recognition of the right of each state to choose the framework that is best suited to its particular needs. The liberal exercise of this right has given rise to a variety of national commissions with mandates and jurisdictions that are strikingly different from each other.

The transformation has also given rise to serious problems in assessing the quality of national institutions. Many countries in transition from dictatorship to democracy have established NHRIs in the genuine hope that they will prevent the recurrence of abuses of the past. They enjoy formal guarantees and sufficient independence to actively pursue their mandates. Other governments, however, have created national commissions merely as a low-cost way of bolstering their international reputations. Such “sham” commissions, even though apparently well structured, seek only to improve the international stature of their respective governments. Some observers contend that NHRIs cannot fulfill their functions effectively in states that do not have some minimal level of democratic governance.¹¹ In this context, formal adoption of the Paris Principles cannot always be an effective test for judging the

independence and efficacy of national commissions.

Still, the global standards provided by the Paris Principles permit some comparative assessment of quality. For example, a special United Nations committee, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), conducts an accreditation process to assess whether individual institutions operate in compliance with the Paris Principles. Regardless of which model they follow, institutions deemed to be in full compliance with the Paris Principles receive an “A” classification. If there is not full compliance or insufficient information is provided, they receive a “B,” or “Observer,” status classification. Organizations deemed non-compliant are awarded a “C” classification. An A classification enables an NHRI to become a member of the ICC and participate in various activities, such as the sessions of the Human Rights Council.

Another body, the International Council on Human Rights and Policy, suggests its own eleven indices for measuring the effectiveness of NHRIs. National institutes are effective, the Council suggests in a recent paper, if they:

- 1) enjoy public legitimacy,
- 2) are accessible,
- 3) have an open organizational culture,
- 4) ensure the integrity and quality of their members,
- 5) consult with civil society,
- 6) have a broad mandate,
- 7) have an all-encompassing jurisdiction,
- 8) have power to monitor compliance with their recommendations,
- 9) treat human rights issues systematically,
- 10) have adequate budgetary resources, and

¹⁰ Pohjola, *supra* note 7.

¹¹ Reif, *supra* note 9 at 24.

11) develop effective international links.

In addition, those NHRIs authorized to handle individual complaints should, as a twelfth measure of effectiveness, handle complaints speedily and effectively.¹² Though the list is not exhaustive, it captures the essence of an effective commission.

IV. Independence of NHRIs: An Indian Case Study

The importance of institutional independence is stressed in all scholarly literature about NHRIs, but is best illustrated in actual practice. A prime example is found in India's National Human Rights Commission, which played a pivotal role in the aftermath of communal riots in the State of Gujarat in 2002. The case illustrates the ways in which a commission's broad-based jurisdiction can supplement and hold accountable the formal criminal justice system.

India's National Human Rights Commission was established by the Indian Parliament as part of the Protection of Human Rights Act, 1993 (hereinafter Human Rights Act).¹³ The Act defined "human rights" as those rights "relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India" and specified that "International Covenants" meant the International Covenant on Civil and Political Rights and the International Covenant on

¹² International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, p. 7 (2005).

¹³ Act 10 of 1994. ("An Act to provide for the constitution of a National Human Rights Commission. State Human Rights Commission in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental thereto.")

Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations in 1966.

The composition of the National Commission under the Human Rights Act reinforces its independence. It is composed of five members including a Chairperson who must be a former Chief Justice of India. The remaining four members must include a current or former judge of the Supreme Court, a current or former Chief Justice of a State High Court and two other persons having knowledge of, or practical experience in, matters relating to human rights. These appointments are made by the President based on recommendations from a committee consisting of the Prime Minister, the Minister of Home Affairs and both the speakers and the opposition leaders in both Houses of Parliament. The involvement of leaders from across the political spectrum reduces the possibility that the committee will recommend merely "political" appointees who lack the commitment to carry out the mandate of the Act.

The members, including the Chairperson, may hold office for a period of five years or until the age of 70, whichever is earlier. Members (but not the Chairperson) who have completed a term of five years and have not attained the age of 70 are eligible for a second term. However, on ceasing to hold office, a chairperson or a member becomes ineligible for further employment under the government of India or under the government of any State. Finally, the Chairperson or any other member of the Commission may be removed from office only by an order of the President on the ground of proved misbehavior or incapacity. The provisions relating to appointment, tenure and removal are clearly intended to ensure independence by isolating members from the machinations of the political process. The independence of the

Commission has been further enhanced by an express prohibition on reducing the compensation of members during their term of office.

The National Commission has been given a broad mandate under the Human Rights Act. The Commission has the jurisdiction to inquire into petitions concerning “violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant.”¹⁴ Among other powers, the Commission may:

- 1) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- 2) visit any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- 3) review the safeguards provided by or under the Constitution or any other law for the protection of human rights and recommend measures for their effective implementation;
- 4) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights;
- 5) study treaties and other international instruments on human rights and make recommendations for their effective implementation; and
- 6) undertake and promote research in the field of human rights.

As this catalogue of functions suggests, the Human Rights Act confers on the Commission the entire range of powers contemplated by the Paris Principles. The National Commission has also been given

the powers of a civil court trying a suit, including the powers relating to “summoning and enforcing attendance of witnesses,” discovery and production of any document, receiving evidence on affidavits and requisitioning any public record or copy thereof from any court or office.¹⁵

These powers were actively employed by the Commission in the aftermath of the communal riots in the State of Gujarat in 2002. On February 6, 2002, 59 Hindu pilgrims were burned alive inside a train in Godhra while returning from a pilgrimage. While the cause of the fire remains disputed, by many accounts it was a well planned attack conducted by fanatical Muslims. Provoked by this heinous act, some Hindu groups retaliated brutally, leaving as many as 800 Muslims dead. Many critics charged the State Government with inaction and apathy that allowed these mob killings to occur.

Following the violence the National Human Rights Commission immediately sent a fact-finding team to Gujarat. The team’s report not only confirmed the charges that the state government had failed to act to stop the riots but also concluded that the government had deliberately obstructed police officers from carrying out their duties of maintaining law and order. The report called upon the state government to pursue the prosecution of those charged with murder and destruction of property in a fair manner.

Although many cases of violence were not even investigated, some were prosecuted as the Commission suggested. Nevertheless, witnesses in those cases who had earlier named and identified some of the rioters now refused to stand by their depositions, allegedly threatened by the rioters and organizations supporting them. In at least

¹⁴ § 12(a) (i) Human Rights Act, 1993

¹⁵ § 13(1) Human Rights Act, 1993

one such case, known as the Best Bakery incident, the Commission again became involved.

Following the Godhra train deaths, rioters retaliated and killed 14 people on the premises of the Best Bakery in Vadodara. Zaheera Sheikh, daughter of the bakery's founder, was the state government's star witness in proceedings against 21 people charged with the killings. At the trial, Sheikh repudiated her statements to investigators, weakening the case substantially and leading to the acquittal of all 21 defendants for want of evidence. After the trial, Sheikh made a public statement alleging that she had been coerced into changing her previous statement implicating the 21 people in the murders. Sheikh brought her claim before the National Commission.

The Commission, invoking its power to approach any court of law on matters of violations of human rights, filed a Special Leave Petition before the Supreme Court of India. Offering Zaheera Sheikh's testimony as evidence of obstruction of justice during the trial, the National Commission pleaded that the Supreme Court order re-trial of the cases. The Supreme Court accepted the petition, heard the matter in full, and ultimately ordered the re-trial of the 21 acquitted persons in a court outside the State of Gujarat. The Supreme Court relied upon the general credibility that the National Commission had earned, largely through the independence with which it had functioned for more than a decade.¹⁶ As a government

¹⁶ The Sheikh case became even more bizarre, as Zaheera later recanted her testimony again and ultimately was ordered to serve one year in jail for perjury. She accused her lawyer, activist Teesta Setalvad, of encouraging her to lie in order to benefit personally and because she was a Pakistani spy trying to smear India's reputation abroad. Zaheera was released from jail in March 2007. Eight of the

institution, the National Commission has shown remarkable determination in opposing state-sponsored violations of human rights in a non-partisan manner. The successful working of the Commission in India highlights in part the value of the Paris Principles, especially those related to independence and mandate.

V. U.S. Human Rights Commissions: Importing NHRI Principles And Practice

What might state and local human rights commissions (HRCs) in the United States draw from this fairly recent set of global experiences? Can we identify lessons that HRCs, despite their differences from NHRIs, may learn from the Paris Principles and the experience of the commissions that comply with them?

Most HRCs in the United States are jurisdictionally in the same position as NHRIs in Commonwealth countries prior to the drafting of the Paris Principles. Originally, commissions in the United Kingdom, Australia, New Zealand and Canada were limited to enforcing anti-discrimination legislation, but they began to exploit more general language in their mandates to make recommendations to executive and legislative bodies about how to strengthen the protection of human rights in proposed legislation. Perhaps state and local HRCs in the U.S. might similarly begin submitting such recommendations on pending legislation.

Similarly, HRCs might participate more fully in the harmonization of U.S., state and local laws with international human rights law and contribute to reports submitted to national and international bodies examining

original Best Bakery defendants were convicted and sentenced to life imprisonment at their new trial.

compliance with human rights obligations of the states and federal government.

The only U.S. counterpart to the Paris Principles is a publication of the U.S. Department of Justice Community Relations Service, *Guidelines for Effective Human Relations Commissions*. Like the Paris Principles, the Guidelines do not have the force of law, but they encourage local officials to establish a “commission as a component of a local government.”¹⁷ The Guidelines emphasize that commissions must respond to local needs, not merely the ambition of government architects. Consider the following:

Illustrating the need for a commission is a crucial first step. The need can be shown through studies of discrimination complaints, the impact of demographic changes, and incidences of hate crime, public controversies, and disturbances. These factors are available from community organizations, governmental agencies, and local colleges and universities. Studies such as surveys and polls are good ways to demonstrate the need for a commission. Another important approach is to talk with key individuals in key organizations, public and private agencies, and schools to collect opinions and views regarding the need for a human relations commission.¹⁸

This emphasis on local initiative for the establishment of a commission contrasts with the approach adopted by the Paris Principles, which assume the need for national and local human rights commissions as essential elements of democratic government.

¹⁷ See *Guidelines for Effective Human Relations Commissions*, U.S. Dept. of Justice Community Relations Service, at

<http://www.usdoj.gov/crs/pubs/gehrc.htm>.

¹⁸ *Id.*

Despite such differences, the Department of Justice (DOJ) Guidelines and the Paris Principles have striking similarities in two areas: appointment and jurisdiction. As for appointment, both documents emphasize plural representation: membership of the commission should include representation from the entire community, and have the respect, confidence, and trust of its citizens. Explaining the rationale for plurality, the DOJ Guidelines assert that commissioners with ties to local government, civic organizations, and educational and religious institutions can help give their commission visibility and public support.

The two documents differ on the manner of appointment of commissioners. The DOJ Guidelines do not seek to guarantee the independence of the commission. The Guidelines, unlike the Paris Principles, do not insist on bipartisan appointments and leave open the possibility of political appointees who lack the commitment to carry out the functions and mandate of the commission. While the Guidelines insist on the qualification of prospective commissioners, they do not specify the character and composition of the appointing authority, apparently willing to see the executive singly decide whom to appoint to these positions. Commissioners, under the DOJ Guidelines, have no meaningful security of tenure, often serving at the pleasure of the appointing executive. This is no formula for independence.

As for jurisdiction, the Department of Justice Guidelines emphasize the possibility of a broad mandate, similar to the Paris Principles. The Guidelines recommend, for example, that commissions work in criminal justice, hate crimes, education, business, and economic development, and they recommend that commissions undertake their own programs of communication, research, and data collection. The

Guidelines call upon local commissions to engage with authorities in each of these activities. This catalogue goes far beyond a narrow anti-discrimination focus and is in some ways similar to the jurisdiction of commissions contemplated by the Paris Principles.

Unlike the Paris Principles, the DOJ Guidelines do not recognize any international role for these local commissions. Finally, and perhaps more importantly, the Guidelines recommend adequate resources, but not independence of financing and resources. The Guidelines state: “A competent, paid staff should direct the day-to-day planning and the operations of the commission. The size of the staff should be based on the challenges and work demands of the community. Salaries should be comparable to those in other governmental agencies and sufficient enough to recruit and retain qualified personnel.”¹⁹

VI. Conclusion

This broad comparison of NHRIs with HRCs may inspire a more expansive future for human rights commissions in the United States. In particular, HRCs may find it worthwhile to explore the possibility of a jurisdiction wider than merely issues pertaining to anti-discrimination laws. State and local human rights commissions might consider leveraging international human rights instruments to promote rights awareness in the U.S. Further, they might be more proactive in approaching government officials to comment on policy pertaining to human rights. Beyond these substantive areas, the Paris Principles may also act as a model for discussing structural issues of appointment, composition and financial independence. Finally, U.S. human rights

officials might give consideration to introducing some sort of basic principles or standards that spell out minimum ingredients for effectiveness.

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¹⁹ *Id.*

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About the Series

Executive Session Papers: Human Rights Commissions and the Criminal Justice System is a series of papers and case studies examining ways to expand the role of human rights and human relations commissions in addressing issues of discrimination in U.S. criminal justice systems.

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About the Project

The Kennedy School of Government's **Executive Session on Human Rights Commissions and Criminal Justice** convenes human rights, civil rights and police leaders from across the United States in a series of discussions about how to expand the role of human rights and human relations commissions in addressing issues of discrimination in U.S. criminal justice systems. In addition, the project aims to strengthen the ways that state and local governments respond to violations of the rights of people involved with the criminal justice system by documenting innovative work of individual commissions and conducting research on emerging practices.

Human rights commissions—in some cases known as human relations or community relations commissions—have various levels of authority to enforce civil rights laws and human rights standards, particularly those prohibiting discrimination and promising equal justice. Many also actively work to reduce and defuse inter-group conflict.

Human rights violations in the criminal justice context can take many forms. Bias crimes, and failure of law enforcement to investigate them; police mistreatment of minority groups, including racial profiling or the use of excessive force; and systematic failure to recruit minorities into law enforcement agencies: all of these forms of discrimination not only harm individuals directly involved but also victimize whole groups of people, straining communities sometimes to the breaking point.

The Executive Session, which runs from January 2006 through August 2008, employs a combination of rigorous discussion, empirical research, practical innovation and professional mobilization to expand the work of the commissions. Harvard faculty and staff facilitate the group's discussion and research. The project draws inspiration from the work of human rights commissions and ombudsmen around the globe. However, the focus of the program remains domestic, filling a peculiarly American gap in the available institutional mechanisms for redressing human rights violations related to crime and justice.

Conceived and administered by the Kennedy School's Program in Criminal Justice Policy and Management, the project is funded by the JEHT Foundation.

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