IMPLEMENTING INTERNATIONAL HUMAN RIGHTS NORMS IN THE DOMESTIC CONTEXT: THE ROLE OF A NATIONAL INSTITUTION

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I INTRODUCTION

In many areas of New Zealand law, increasingly the law is becoming international,[1] not in the sense that laws directly applicable in New Zealand are formed or laid down elsewhere, but in the sense that standards or rules agreed in international forums must somehow be transformed and incorporated into domestic law. This is so, for example, in the commercial sphere, for New Zealand to be able to operate effectively and competitively; in the laws governing the environment — since we recognise we must act together to survive. It is no less true in the field of human rights. The proliferation of international instruments on human rights outlining universal standards reflects an increasing awareness of and agreement on the universal applicability of the principles contained in those instruments. Indeed, in the period since 1948 much of the focus and attention of the international human rights community has been on the establishment and refinement in the human rights instruments of such a universally agreed set of standards.[2]

With those standards largely set in place[3] the focus of attention, study, theory and effort is now directed to ways of improving the implementation of those standards. One of the main themes in the meetings preparatory to the World Conference on Human Rights held in Vienna in June 1993 and at the Conference itself was the recognition of the need to increase the effectiveness of the implementation of these human rights norms, at international, regional and, particularly, at national level. This is not to suggest that this concern is new. It is the aim of the reporting and monitoring system of the treaty bodies of the United Nations; it is the rationale behind the establishment of national institutions for the promotion and protection of human rights; its relevance to common law judge–made law has been the subject of debate in, for example, a series of colloquia of judges organised by the Commonwealth Secretariat;[4] and it is one of the incentives to much domestic rights legislation.

As I have envisaged it, this is the theme of the plenary session of which this paper is a part. The subject of this paper then is to be seen as one of a number of approaches necessary to advance that general goal. As this session makes clear, human rights standards can be introduced into the

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1 See eg Keith, "The Legal Profession by the Year 2000" presented to the tenth Commonwealth Law Conference, Nicosia, Cyprus May 1993.

2 I have for the purposes of this paper assumed the universality and general applicability of internationally agreed human rights standards, although I am of course aware of the debate surrounding that question.

3 With the exception of the Draft Declaration on the Rights of Indigenous Peoples, human rights instruments now being developed are refinements of rights already outlined, either for a specific group or in a specific context.

4 Bangalore (1988); Harare (1989); Balliol (1992); South Africa (1993).

domestic legal system in a number of ways, for example, by constitutional entrenchment, by legislation, particularly through Bills of Rights and Charters, by interpretation in the courts and by the activities of various institutions which have a role or responsibility in the promotion and protection of human rights such as, for example, Ombudsman's offices, Law Commissions and some specialised units of state departments. Human rights are also often actively advanced, domestically as well as internationally, by non–governmental organisations. Indeed, in a sense, all the organs of the State and all sectors of society have a role and a responsibility in the promotion and protection of human rights. This paper is concerned, however, with those institutions whose specific mandate is defined in terms of the promotion and protection of human rights at the domestic level (most commonly called human rights commissions) and with the interaction of those institutions with the other institutions and contexts just mentioned.

II National Institutions for the Promotion and Protection of Human Rights: Underlying Principles

The oldest established Human Rights Commissions date from the 1970s[5] but in recent years the number of such national institutions has increased dramatically, and they are being established in widely varying jurisdictions.[6] While acknowledging the principle of the universality and general applicability of human rights norms, it is clear that such national institutions for the promotion and protection of human rights will, and must, take different forms in different states. Much will depend on the constitutional situation (whether or not there exists a written constitution, a Bill of Rights, a Charter), whether the State is unitary or federal, on the legal system, particularly its approach to the incorporation of treaties into domestic law, and on the court system and methods of adjudicating disputes. Much depends also on the social setting, particularly, in this context, the strength and standing of Non-Governmental Organisations (NGOs) concerned with human rights.

Nevertheless, it has been increasingly recognised that there *are* certain features which are necessary for the effective functioning of a domestic human rights monitoring body. The first international meeting of national institutions convened by the UN Centre for Human Rights[7] in Paris in 1991 formulated a set of principles (the Paris Principles) which were intended to establish a blueprint or framework of reference for such a body, whatever its constitutional, legal or social setting. These principles have since been adopted by the Commission for Human Rights, reaffirmed by national institutions meeting during the World Conference, in the light of reports from regional meetings in the intervening period, and adopted by the General Assembly.[8] The Principles are appended to this paper (see Appendix). The following sections of this paper will consider the role and functions of national institutions in the light of those principles, but with particular reference, by way of example, to the experience of the New Zealand Human Rights Commission.

Before, however, beginning the discussion on a national Human Rights Commission, it is perhaps helpful to indicate briefly how such a Commis-

5 Eg Australia, Canada, New Zealand, France.
6 Eg Mexico, Philippines, Cameroon, Tunisia, India, Indonesia.
7 See CHR: E/CN.4/1992/43 and 43 Add.1.
8 See CHR 1992/54 and 1994/54 and GA 48/134 (20 Dec 1993).

sion differs from the role and function of the Ombudsman, for while there are a number of similarities, and in some jurisdictions one office fulfils both functions, the two nevertheless have distinct functions.[9] The Ombudsman is appointed by Parliament (this may or may not be true of Human Rights Commissions) and investigates complaints of perceived injustices within the public sector. By comparison, a Human Rights Commission focuses on human rights issues and often includes an anti–discrimination component. If it has a complaints based jurisdiction, a Human Rights Commission can often intervene in matters other than Government actions, for example, private sector employment situations. Further, Human Rights Commissions are not limited solely to a complaints based jurisdiction, having as their main focus a wider role which allows them to address systemic issues, to educate about and promote human rights, and to review legislation to ensure compliance with human rights standards. In addition, the jurisdiction of many Human Rights Commissions derives from the international human rights instruments, whereas that of the Ombudsman is founded in domestic legislation focussing on administrative law and practice.

Independence and Representativity: Establishment, Membership, Funding

To be effective as a monitor of human rights observance in a role which is often that of a critic of government, it is essential that a national institution be clearly independent of governmental control. Thus, it is preferable that it be established in the constitution, where applicable, or by legislation with a clear mandate, preferably based on those international standards to which its government has acceded, and with its role, functions and responsibilities in relation to state agencies and to individuals clearly defined. It may also be preferable that the Commission report directly to Parliament, as is the case with the Ombudsman, rather than through the executive arm of government or to the head of state.

The independent status of the members of the national institution should also be protected, for example by their appointment for a fixed term and at a salary determined independent of government. It is also advantageous for the members of the Commission to be as representative as possible, that is that they be drawn from a range of different groups and interests within society, not only to represent the interests of those groups and sectors but also to draw support from these diverse groups. The funding of such an institution ought also to be guaranteed in some way so that the institution is not susceptible to political pressure by threat of attack on its resources.

In New Zealand, for example, the Commission is established by Act of Parliament.[10] The Commissioners are appointed by the Governor–General on the recommendation of the Minister of Justice for a fixed term (five years) and are removable only for specified reasons by the Governor–General.[11] Their salaries are determined by the Higher Salaries Commission.[12] The Commission is required to report annually through the Minister to Parliament[13] and is also subject to the requirements of the Public Finance Act 1989 which ensures the accountability of government departments and agencies. The Commission is a government funded body, a Crown Entity receiving an annual grant from Vote: Justice. The position of such Crown Entities at the present time, particularly as it relates to their independence

9 See documents above n 7; and A/Conf 157/PC/92/Add 3.
10 Human Rights Act 1993 (formerly Human Rights Commission Act 1977).
11 Ibid ss 7, 17, 18.
12 Ibid First Schedule s 4.
13 Ibid s 141.

in setting priorities where the Minister is seen as "purchasing" their services as "outputs" requires some clarification.

Other methods of ensuring independence and plurality of membership would include, for example, that funding for the institution be guaranteed at a particular level for a fixed period and inflation–proofed, and that the membership might be extended to include representatives from government departments and/or NGOs.

The international standards mandate

The jurisdiction of a national institution is generally focused on human rights matters in the domestic context.[14] But, as discussed above, that domestic jurisdiction is exercised in the light of the international standards set down in United Nations human rights instruments. Although not referred to directly in the Paris principles, it is, in my view, highly desirable that such a link exist and that the jurisdiction of the national institution be clearly recognised as exercised within that context. It is that link which makes explicit the role of a national institution for the promotion and protection of human rights, by giving some content to the "human rights" mandate and by establishing the institution's *primary* role as overseeing the implementation of universal standards.

The connection with the international human rights standards may be implied by the charter or legislation establishing the institution or, preferably, the link may be made explicitly. The New Zealand Human Rights Commission provides a good example of such a direct mandate. The Long Title to the Human Rights Act 1993 reads

> "An Act to consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights."[15]

The functions of the Commission include making public statements, receiving representations and advising and reporting on "any matter affecting human rights", including the desirability of legislative, administrative, or other action to give better protection to human rights and *"to ensure better compliance with standards laid down in international instruments on human rights"*.[16] In its work on wider human rights matters the Commission has therefore hitherto interpreted its mandate as allowing it to refer at least for guidance to human rights instruments such as those concerned with the rights of persons with disabilities or detained in mental health institutions, instruments which New Zealand has not or cannot yet ratify.[17]

Another approach to establishing the link to international instruments is provided by the Federal Australian Human Rights and Equal Opportunity Commission. The legislation establishing that Commission incorporates by reference a number of international human rights instruments on which its jurisdiction is based.[18] Apart from providing a sound basis for its domestic jurisdiction, the link to international instruments has some additional advantages which are discussed below.[19]

14 There are some institutions which also have jurisdiction in extra-territorial human rights matters eg the French National Advisory Commission for Human Rights. And there are some international aspects to the domestic jurisdiction — on these, see below section V.

15 Cf the Long Titles to the Human Rights Commission Act 1977 and the Race Relations Act 1971.

16 Human Rights Act 1993, s 5 (reproduced below p 239).

17 Because for example they take the form of a declaration or are still in draft form.

18 Human Rights and Equal Opportunity Commission Act 1986.

19 See section V and UN World Conf DOC A/Conf.1157/PC/92/Add 3, 10–13.

III National Institutions: Functions and Responsibilities

Advisory

National institutions, as a domestic national human rights watchdog, ideally have a primary and important advisory role both to governments, government departments and agencies, and also to NGO groups, on a wide variety of human rights matters. Again the focus of much advice will be within the domestic jurisdiction, but always against some international standard. This advisory role may include advising on legislation,[20] on government policy and practice, and where applicable, on conformity with Charters and Bill of Rights. They may act either on request or on their own initiative and the function may include a power to issue guidelines or to undertake public enquiries.[21] They may also, in appropriate cases, act as a channel for the concerns of NG groups on human rights matters. The national institution has the advantage of a statutory obligation, or right, and therefore access to governmental forums of debate which NGOs may often lack.

Some aspects of this advisory role may have an international dimension. For example, a national institution may be required, or invited, to comment on the advisability of the government's entering into or ratifying international agreements or treaties, usually those with a human rights focus.

An example of these advisory powers is provided, in the NZ Human Rights Commission, by s 5 of the Human Rights Act 1993 (which substantially reproduces ss 5 and 6 of Human Rights Commission Act 1977).[22]

5. Functions and powers of Commission

(1) The functions of the Commission shall be —

(a) To promote, by education and publicity, respect for and observance of human rights:

(b) To encourage and coordinate programmes and activities in the field of human rights:

(c) To make public statements in relation to any matter affecting human rights, including statements promoting an understanding of, and compliance with, this Act:

(d) To prepare and publish, as the Commission considers appropriate, guidelines for the avoidance of acts or practices that may be inconsistent with, or contrary to, the provisions of this Act:

(e) To receive and invite representations from members of the public on any matter affecting human rights:

(f) To consult and cooperate with other persons and bodies concerned with the protection of human rights:

(g) To inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non–governmental, if it appears to the Commission that human rights are, or may be, infringed thereby:

20 See below p 242.
21 The Australian Federal HREOC provides a good example.
22 For the relevance of (1)(a) and (b) see (2) below, for (1)(i) — (k) see below p 242.

(h) To report to the Prime Minister from time to time on

(i) Any matter affecting human rights, including the desirability of legislative, administrative, or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights:

(ii) The desirability of New Zealand becoming bound by an international instrument on human rights:

(iii) The implications of any proposed legislation (including subordinate legislation) or proposed policy of the Government that the Commission considers may affect human rights:

(i) To examine, before the 31st day of December 1998, the Acts and regulations that are in force in New Zealand, and any policy or administrative practice of the Government of New Zealand:

(j) To determine, before the 31st day of December 1998, whether any of the Acts, regulations, policies, and practices examined under paragraph (i) of this subsection conflict with the provisions of Part ll of this Act or infringe the spirit or intention of this Act:

(k) To report to the Minister, before the close of the 31st day of December 1998, the results of the examination carried out under paragraph (i) of this subsection and the details of any determination made under paragraph (j) of this subsection:

(l) To make public statements in relation to any group of persons in, or who may be coming to, New Zealand, who are or may be subject to hostility, or who have been or may be brought into contempt, on the basis that that group consists of persons against whom discrimination is unlawful by virtue of section 61 of this Act:

(m) To do anything incidental or conducive to the performance of any of the functions set out in paragraphs (a) to (l) of this subsection:

(n) To exercise and perform such functions, powers, and duties as are conferred or imposed on the Commission by or under this Act or any other enactment.

(2) The Commission may from time to time, in the public interest or in the interests of any person or department or organisation, publish reports relating generally to the exercise of its functions under this Act or to any particular case or cases investigated under this Act, whether or not the matters to be dealt with in any such report have been the subject of a report to the Minister or the Prime Minister.

This section, in (c)–(h), confers on the New Zealand Commission most of the advisory functions referred to generally above.

It should be noted that in all these functions the Commission's role is essentially and appropriately an advisory one only. The Commission is established as a public watchdog, with a particular focus on seeing that human rights norms and standards are observed. It is there to act as a

protector of those standards. It is independent in the way that a government department is not, although it proffers advice in a similar way, since the government department is there to advise on the implementation of government determined policy whereas, in the case of the Commission, the policy decision has been the initial one of establishing a monitoring body with reference to an agreed set of standards which the government is not free to change.

But the government is, of course, free to decline to act on the Commission's advice. How far that advice is heeded will depend on a number of factors, including, for example, how far the government is committed to its own policy and for what reasons, as measured against its commitment to the human rights issue concerned; the time of the election cycle; the popularity, or otherwise, of the human rights stance; the current status of the Commission, both with the government and with the people and other influential bodies. In New Zealand in recent times, for example, the government's willingness to follow the Commission's advice in relation to such issues as corporal punishment in schools, the reintroduction of the death penalty and the treatment of mental health patients might be contrasted with its reaction to the Commission's recommendations on the treatment of refugees under the emergency procedures instituted during the Gulf War.

That the role is an advisory one is as it should be. The Commissioners are, and need to be, protected from arbitrary removal.[23] But, on the other hand, they are unelected officials. Ultimately matters of policy, including human rights matters, must be decided by those who are answerable and accountable to the people they represent for those decisions.

They will also be answerable for those decisions internationally in the context of the UN monitoring and reporting mechanisms. Each of the major UN human rights treaties has its own reporting system to a UN treaty body.[24] States which have ratified the relevant treaty are required to comply with the reporting system and timetable prescribed. There is not space in this paper to do more than mention the current difficulties caused in this context by the proliferation of bodies, the difference in methods and resources and the general lack of funding both for the treaty bodies themselves and for states who require assistance for the increasingly complex and burdensome requirements of the reporting process and the efforts being undertaken to simplify and rationalise the process.[25] However the reporting process develops, national institutions can have an important role in its operation in a number of ways. They can be available to the government agency and its consultants to advise on and assist with the content of the report to the treaty body and with subsequent questions at its presentation; there may indeed be a role for national institutions to be present at that presentation. They may also take responsibility for raising public awareness of the reporting process, including to NGOs, both prior to the report's presentation and in disseminating the recommendations and requests from the treaty bodies. As the reporting process is being reconsidered and improved, it is essential that the role of national institutions within it be considered and defined. In New Zealand, for example, the Commission is now regularly consulted over the preparation of reports to the treaty bodies.

23 See above section II.
24 See "Manual on HR Reporting" (UN HR/Pub/91/1).
25 See Report submitted to the CHR (50th session Feb 1994) by P Alston (interim report, A Conf, 157/DC/62/Add 11/Rev.1).

Education

Closely linked with this advisory role and of equal importance is the national institution's function of education in the field of human rights.[26] The ultimate intention is to raise awareness of human rights standards and issues so that they become part of common general discourse with politicians, decision–makers, lawyers, and the general public, in much the same way as for example, "democracy" or the "rule of law".

The education function of a national institution may involve a number of approaches: for example, the use of the media, the training of trainers on human rights matters in order to reach as many groups and networks as possible, the targeting of particular groups such as the police or the military, programmes for schools and other educational establishments, publications, including guide-lines and videos, and the provision of library facilities. The education role is also evident in the conducting of public inquiries and in relation to the United Nations treaty reporting system (as outlined above) and in conjunction with a complaints procedure, since an education programme can often be linked to settlement of an individual complaint.

In the carrying out of its advisory and educative functions, the national institution's links with local NGOs are very important. The Vienna Declaration recognises the crucial role that NGOs play in the safeguarding of human rights world wide, and in the domestic context their advocacy and expertise contribute to a mutually advantageous partnership.[27] Thus NGOs may have access to information and networks which are of use to the Commission, whereas the Commission may well have an easier entrée to government and government departments. The national institution will ideally develop such a relationship with NGOs across a wide spectrum of human rights activities.

The New Zealand Commission, for example, in recent years, has worked with NG groups in the preparation of its mental health report,[28] in its present study on housing issues, on human rights issues in connection with refugees and prison matters and in the preparation of material on the additional grounds included in the Human Rights Act 1993. The Human Rights Act, in s 5(1)(f), explicitly recognises the value of consultation and co-operation with other bodies concerned with the protection of human rights.

Legislation

A function of many national institutions is to recommend new legislation, to suggest amendments to existing legislation to ensure the protection of human rights, and to report on the human rights implications of proposed legislation. The reason for giving this role to such bodies is that institutions whose focus is human rights laws are likely to have a better overall view of the relevant issues which require improvement or are not addressed by the legislation. This knowledge may derive from familiarity with the international instruments, the administration of a complaints driven process, as a result of a power of general inquiry or from the receipt of enquiries and representations from the public.

Since its inception the New Zealand Human Rights Commission has had the role of monitoring domestic legislation to ensure compliance with human rights standards. The Commission carries out its monitoring func-

26 In NZ see Human Rights Act 1993, s 5(1)(a) and (b).
27 See A/Conf. 1 57–DC/1 /Add. 1 Para 25.
28 "Patient Rights and the Public Interest" Human Rights Commission 1991.

tion by making submissions to Select Committees, by liaising with, and providing advice to, government departments which have specific roles in advising the Government on the effect that legislation will have on particular groups, such as the Ministry of Womens' Affairs, and by overseeing the implementation of legislation. In the event that a particular law does not reach the standards outlined in the international instruments, the Commission has a variety of ways of seeking that the legislation be amended, for example by reporting to the Prime Minister, making public statements or consulting with other agencies such as the Law Commission and the Law Reform Division of the Department of Justice.

The Commission's jurisdiction was limited under the Human Rights Commission Act 1977 by a provision which made that Act subordinate to other Acts, unless those Acts were specifically referred to in the human rights legislation.[29] As the number of legislative provisions incompatible with the human rights standards increased, with changing attitudes, without revision of the main statute base, the Commission sought to prevent the inclusion of a similar provision in the Human Rights Act. Although a section which will have a similar effect has been included (s 151), that section will cease to have effect in 1999 (s 152). The Commission now has an obligation to review all existing legislation, policy and administrative practices to clarify potential conflict with the anti-discrimination provisions of the Human Rights Act and to determine whether they infringe the "spirit and intent" of the Act, with a view to recommending either that the relevant practices or laws be repealed or identified by way of schedule by the time that the sunset provision takes effect.[30]

The Commission also has the function to recommend the enactment of legislation to give better protection to human rights. This was most evident in the recent amendment to the 1977 Act, resulting in the Human Rights Act 1993 which considerably extends the jurisdiction of the Commission by the addition of six new grounds.

Section 7 of the New Zealand Bill of Rights Act 1990 requires the Attorney–General to report to the House of Representatives any provision of a Bill which may be inconsistent with any of the rights and freedoms (which mirror those in the International Covenant on Civil and Political Rights) contained in the Bill. As a result, members of the executive and legislature proposing legislation are constantly required to consider whether the legislation is compatible with the standards in that covenant. It is arguable that this role would be more appropriately performed by the Human Rights Commission, at least in relation to human rights matters, as the Commission may well be in a better position to recognise the relevant human rights issues.

Courts

A Commission's main role in relation to the implementation of human rights standards in the courts is in advising and providing expert evidence on the interpretation and application of human rights provisions and issues.[31] It could also advise on the application of charters and Bills of Rights and some Commissions have an express function to intervene in court proceedings.[32] An institution may also have access to the court

29 Human Rights Commission Act 1977, s 92(2).
30 Human Rights Act 1993, s 5(1)(i)–(k).
31 The New Zealand Human Rights Commission has, for example, provided expert evidence in cases involving mental health issues and housing policy.

procedure for the clarification of legal issues relating to human rights, for example, the New Zealand Commission has a power to seek a declaratory judgment for guidance on hypothetical issues on the interpretation of its statute or indeed of other statutes with human rights implications.[33] The Commission recently sought to avail itself of this power to determine the extent of the term "marital status" in the 1977 Act.

Complaints function

Some, but not all, Human Rights Commissions function as anti-discrimination boards empowered to receive and process to settlement or some quasi judicial resolution individual complaints of discrimination on specified grounds in a number of areas of public life which may vary from state to state. There may also be provision for group complaints (a class action) or for addressing systemic discrimination. In some countries there is both a national institution and a judicially enforceable Bill of Rights. When this occurs complainants have to elect which is the most appropriate route to pursue, although this may in practice be determined by accessibility to the Courts. Redress through a national commission may be the only pragmatic course to follow.

The New Zealand Human Rights Commission has a complaints jurisidiction under the Human Rights Act 1993 on a number of grounds specified in that Act.[34] The areas in which these grounds apply are also specified, namely, employment, partnerships, qualifying bodies, the provision of goods and services, access to public places and facilities, the provision of land, housing and other accommodation and access to educational establishments. A complaint is first handled by a complaints officer who presents a report to the Complaints Division. The Complaints Division may deal with the matter itself or refer the complaint to the full Commission. If at either level the complaint is found to have substance the complaints officer will attempt a settlement between complainant and respondent and over 90 per cent of complaints are settled in this way. The 1993 Act also contains provision for an earlier attempt at mediation if that seems a preferable option.[35] If the complaint cannot be settled the Commission itself on the advice of the Proceedings Commissioner can take the case to the Complaints Review Tribunal, a separate judicial body.[36]

Quasi judicial and judicial powers

National commissions will commonly be subject to supervision by the courts, particularly in respect to their interpretation of legislation, although the principles of statutory interpretation generally allow commissions to adopt a wider liberal interpretation of law than the Courts which are bound to observe more strictly the domestic rules of legal interpretation and, in common law countries, are bound by precedent. A commission may also have the power to grant exemptions to the provisions of the Act, provided the exemption is consistent with the underlying philosophy of the Act, while in some cases a Commission is able to certify that a programme is permissible because it benefits a group which has been disadvantaged in some way.[37]

32 Eg the Australian H R EOC: H R EOC Act 1986 s 1 1 (1)(d).
33 Human Rights Act 1993, s 6.
34 Human Rights Act 1993, s 21.
35 See Human Rights Act 1993 Part III, ss 75–81.
36 See Human Rights Act 1993, ss 83–92 and for the Complaints Review Tribunal Part IV.
37 Eg NZ Human Rights Commission Act 1977, s 28 cf now Human Rights Act 1993 s 73.

IV Specific or General Jurisdiction

One of the issues debated in the establishment of a national institution is whether there should be one institution charged with a general human rights jurisdiction or several institutions whose role and function is issue–specific: either a separate office for complaints on a particular ground such as race or sex, as in the United Kingdom; or a broadly–based Human Rights Commission and a separate anti-discrimination body.[38] The resolution of this question will often turn on the national constitutional and legal arrangements or be conditioned by the historical development in a particular state.[39]

There are, in the Commission's experience, a number of advantages in there being one body with a general jurisdiction in human rights matters, even if that body be partly an "umbrella" one. Issues of discrimination have certain similarities and connections, even where the grounds of discrimination are different. Expertise and experience in legal and practical matters gained in one area can usefully be shared and be found relevant in other areas of discrimination. Moreover, issues of discrimination are best viewed within the context of wider human rights issues[40] and the existence of one human rights body can help to reinforce the viewpoint that anti–discrimination law does not give special extra rights to particular groups but ensures the equal access of all groups to rights that all are entitled to enjoy.[41]

An integrated body also provides a focus for different disadvantaged sections of society, counteracting the tendency of such groups to see only their own as deserving protection. Apart from the underlying ethical advantages in this approach, there are also advantages in terms of lobbying on particular issues and in support for the national institution. These arguments have been borne out in New Zealand in the recent passage of the Human Rights Act 1993. First, the Commission was in a position to recommend changes to New Zealand human rights law, and particularly an increase in the grounds of discrimination, against a broad background of experience in wider human rights issues which had provided it with the knowledge and data to identify disadvantaged groups in need of protection, knowledge which it might not have acquired had it been, for example, only a sex discrimination board. Secondly, during the years in the lead up to the Bill's passage the Commission received the support of organisations which represent a number of diverse client groups, for example, the aged, gays and lesbians, and persons with disabilities. At the same time all these groups were engaged in lobbying politicians and other decision makers to effect a change in the law.

Concerns are expressed that appropriate attention may not be given to particular areas of discrimination in a general human rights body; that some issues will simply be "swamped" and not given sufficient priority or dealt with with expertise or sensitivity. Such concerns can, however, easily be met either by allocating particular responsibilities to particular sections and ensuring adequate resourcing and priority to each,[42] or by the creation of separate offices linked under one umbrella organisation, particularly if the historical setting and/or the wishes of a particular client group make that a

38 See eg the recommendations in the 1987 paper prepared for the Minister of Justice by the NZ Human Rights Commission.
39 For example, in New Zealand, the early establishment of the Race Relations Office.
40 See eg the NZ Human Rights Commission's study on recent housing policy.
41 See (1993) Employment LB, July editorial.
42 As, for example, in the Federal HREOC in Australia.

preferable option. In New Zealand, for example, the Human Rights Commission has general jurisdiction over human rights matters and anti–discrimination jurisdiction on a number of grounds.[43] Race discrimination issues are the province of the office of the Race Relations Conciliator.[44] The Conciliator is, however, a member of the Human Rights Commission. Similarly, the Privacy Commissioner has a separate statutory jurisdiction and office but is also a member of the Human Rights Commission.[45] The Commission has consistently maintained its support for such collegial involvement and expressed a preference that the appointment of the Children's Commissioner be on the same model[46] and would recommend that model also for the proposed Health Commissioner.

V INTERNATIONAL PERSPECTIVES

This paper has been concerned with the domestic role of the national institution, although reference has been made earlier to one international aspect in particular, the basis of international norms on which the jurisdiction of the human rights institution is predicated and from which it draws its mandate.[47] There are, however, a number of other international or extra–territorial aspects to a national institution which will be considered in this section.

As mentioned above[48] some national institutions combine domestic with direct international human rights jurisdiction. More commonly, advice on "foreign" human rights matters is provided as part of foreign policy, for example, in New Zealand this is the province of the human rights unit within the Ministry of Foreign Affairs and Trade. As discussed earlier, there is, however, an international component to the advisory role of many national institutions: the New Zealand Human Rights Commission has a statutory obligation to advise on "the desirability of New Zealand becoming bound by any international instruments on human rights" and increasingly is involved in assisting with the reporting process to the UN treaty bodies.[49]

Members of national institutions may also usefully be included as expert advisers to national delegations in human rights forums or to, for example, United Nations sponsored workshops on human rights. They also have a role to play in developing regional links and the promotion of regional institutions and instruments for the protection of human rights. As indicated above, there is now a well established network of national institutions recognised by the United Nations and supported and serviced by the UN Centre for Human Rights. Such a network provides an invaluable forum for the exchange of information, expertise, advice and support, on a wide range of human rights matters.[50]

National institutions are beginning to take initiatives together which can be advanced both domestically and across international borders.

43 See above n 34.
44 Human Rights Act 1993, s 11.
45 Privacy Act 1993, Human Rights Act 1993, s 7(1)(c).
46 The Children's Commissioner is established under the Children and Young Persons and their Families Act 1989 s 410 and has no direct formal link with the Human Rights Commission.
47 See above section II.
48 See above section III(1).
49 Ibid.
50 For UN support for the developing network of national institutions see above n 8.

VI CONCLUSION

The increasing internationalisation of law is nowhere more evident than in the development and implementation of human rights standards. By definition, such standards transcend national concerns and boundaries. As domestic legal systems increasingly recognise and move to implement human rights norms,[51] national institutions for the promotion and protection of human rights have a potentially important role within that domestic system. It is therefore desirable that those in more established branches of law, that is, those who make, enforce and educate about the law and, not least, those who require access to the law are aware of the existence and the potential of such national institutions.

APPENDIX

PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect 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 promotion and protection of human rights; the national institution may decide to publicise 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;

51 In New Zealand see, for example, the growing jurisprudence surrounding the Bill of Rights Act 1990 and the direction now being taken by the courts, exemplified by the Court of Appeal in the recent *Tavita* decision [1994] NZAR 116.

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(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 co-operate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection 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 publicise 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.

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 promotion and protection of human rights, particularly by powers which will enable effective co-operation to be established with, or through the presence of, representatives of:

(a) Non–governmental organizations responsible for human rights and efforts to combat racial discrimination, professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) 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 its 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.

Methods of operation

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

(a) 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;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

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

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

(g) 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 promoting and protecting 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.

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 organisations, 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:

(a) 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;

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

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

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