

# National Human Rights Institutions and Their Role in the Struggle Against Torture in the Asia-Pacific Region

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## Abstract

National human rights institutions (NHRIs) have an important role to play in the fight against torture in the Asia-Pacific region. The Asia-Pacific is the only region without its own mechanism to protect against torture and other human rights violations. In the absence of such a mechanism, the role of NHRIs assumes even more significance. NHRIs in the Asia-Pacific region are equipped with varying levels of quasi-judicial powers that enable these institutions to investigate allegations of torture and other human rights abuses, and, in some instances, even hold inquiries and public hearings and carry out visits to places of detention. These institutions are also empowered to provide advice to their governments on the ratification of the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment and its Optional Protocol on the Prevention of Torture, and to recommend changes to domestic laws and policies that run counter to international torture prevention standards. These institutions also have the capacity to engage with UN mechanisms and processes, thereby bridging the gap between the international and national human rights spheres. These institutions therefore have the potential to be potent weapons in the struggle against torture when they are independent and utilise the powers within their mandates effectively. The paper explores examples of innovative torture prevention practices from Asia-Pacific NHRIs at the national and regional levels, while considering some of the challenges that these institutions continue to face when seeking to fulfil their true potential as important stakeholders in the fight against torture.

## 1. Introduction

National institutions have a central role to play in the combat [sic] against torture. ... National institutions have an obligation to remind their governments of the imperative of undertaking effective measures to prevent all acts of torture or cruel

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inhuman or degrading treatment or punishment. They must remind them every step of the way that the right to live free from torture is non-derogable.<sup>1</sup>

This paper supports the position elucidated by the former United Nations High Commissioner for Human Rights that independent and effective national human rights institutions (NHRIs) are important instruments in the fight against torture.<sup>2</sup> An overview of the nature and characteristics of NHRIs is necessary to enable a fuller appreciation of the true potential of their role in the fight against torture. The article starts with an overview of the evolution of NHRIs from their initial conception by the international community in the 1940s to their current state. The paper then examines the demographics of NHRIs in the Asia-Pacific region, and assesses the contribution that these institutions have collectively made to the development of regional torture prevention standards. In relation to these Asia Pacific NHRIs, key examples of innovative strategies involving the creative use of their mandated powers are also explored. The final part of the paper considers (i) the challenges that NHRIs often face in seeking to bridge the gap between the expectations of victims and the public, and (ii) the results that these institutions have been able to achieve within the context of the diverse socio-political issues prevalent in the Asia-Pacific region.

## 2. NHRIs: origin and characteristics<sup>3</sup>

There were several milestones in the development of international standards relating to NHRIs. Each of these milestones played a role in changing the nature of NHRIs and advancing our understanding of what they can and should accomplish. Economic and Social Council Resolution 2/9 was the first milestone; this resolution foreshadowed the establishment of national ‘information groups or local human rights committees’ to act as channels for furthering the work of the United Nations Commission on Human Rights.<sup>4</sup> The second milestone was Economic and Social Council Resolution 772B (XXX).<sup>5</sup> This resolution fleshed out an advisory role for national institutions focused on providing ‘informed opinion(s) on questions relating to human rights’ to governments.<sup>6</sup> The third milestone was the adoption in 1978 of the first set of

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<sup>1</sup> Louise Arbour, Official Statement during the 10<sup>th</sup> Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, Mongolia, 2005. Quoted in Asia Pacific Forum of National Human Rights Institutions, *Advisory Council of Jurists Reference on Torture: Final Report* (2005), p.5. Available at <http://www.asiapacificforum.net>.

<sup>2</sup> For the purposes of this article, the term ‘torture’ refers collectively to torture, as it is defined under Article 1 of the Convention Against Torture, and also other acts of cruel, inhuman, or degrading treatment or punishment, as described by the Committee Against Torture in General Comment No 2 on the implementation of Article 2, UN Doc. CAT/C/GC/2, 24 January 2008. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/402/62/PDF/G0840262.pdf?OpenElement>. Last accessed 24 June 2009.

<sup>3</sup> For a detailed overview of the evolution of standards relating to NHRIs see Birgit Lindnaes and Lone Lindholt, ‘Standard Setting and Achievements’, in Birgit Lindnaes, Lone Lindholt, and Kristine Yigen (ed.) *National Human Rights Institutions: Articles and Working Papers* (Danish Centre for Human Rights, 2000), pp.1-48.

<sup>4</sup> UN Economic and Social Council, ECOSOC Resolution 2/9, 21 June 1946, Section 5. Cited in Office of the High Commissioner for Human Rights, *NHRIs – A Handbook for Strengthening National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No 4 (United Nations Publication: New York and Geneva, 1995).

<sup>5</sup> UN Economic and Social Council, ECOSOC Resolution 772b (XXX), 25 July 1960. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/NR0/758/40/IMG/NR075840.pdf?OpenElement>. Last accessed 8 June 2009.

<sup>6</sup> UN Economic and Social Council, ECOSOC Resolution 772b (XXX), ‘Preamble’. See fn.5.

international guidelines on national institutions.<sup>7</sup> While reiterating the educational and advisory roles of national institutions, the guidelines also introduced the requirement for pluralism in the composition of these institutions, and the need for them to be accessible to all sections of society.<sup>8</sup> Nonetheless, the nature of the institutions envisaged was still not clearly defined.

The fourth, and arguably the most important, milestone came in 1991, following the convening of an international workshop in Paris to discuss the NHRI question. As a result of this workshop, a document known as the Paris Principles was drafted; these principles were later adopted by the UN General Assembly and became the seminal instrument for NHRIs.<sup>9</sup> The Paris Principles envisage NHRIs as independent institutions with powers that encompass the promotion and protection of human rights. The Paris Principles also require NHRIs to have clearly defined legal mandates,<sup>10</sup> be pluralistic in their composition, be provided with adequate resources to fulfil their responsibilities, and have the competence to work together with other stakeholders, including civil society and the UN.<sup>11</sup>

The Paris Principles outline a number of core responsibilities for NHRIs. First, NHRIs are required to submit recommendations on human rights issues to the executive, parliament, the judiciary, and any other competent authority.<sup>12</sup> Second, NHRIs are responsible for promoting conformity between domestic laws and practices, and international human rights standards.<sup>13</sup> Third, NHRIs have a role in encouraging ratification and implementation of international human rights instruments.<sup>14</sup> Fourth, NHRIs should contribute to treaty reporting processes.<sup>15</sup> Fifth, NHRIs have a duty to educate, and promote awareness of human rights within the government and civil society.<sup>16</sup> Additionally, in maintaining the link with the earliest conception of NHRIs as conduits to the UN framework, the Paris Principles require NHRIs to cooperate with the UN, regional bodies, and NHRIs in other countries.<sup>17</sup> Finally, and of particular relevance to the effective prevention of torture, the Paris Principles also outline a range of optional quasi-judicial functions for NHRIs, including the authority to hear and consider complaints and petitions brought by individuals, NGOs, trade unions, or any other representative organisation.<sup>18</sup>

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<sup>7</sup> National institutions for the protection and promotion of human rights, adopted by the UN General Assembly, A/Res/33/46, 14 December 1978. Available at <http://www.un.org/documents/ga/res/33/ares33r46.pdf>. Last accessed 8 June 2009.

<sup>8</sup> Office of the High Commissioner for Human Rights, *NHRIs*, p.4. See fn.4.

<sup>9</sup> Principles relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted by the UN General Assembly, Resolution A/RES/48/134, 20 December 1993.

<sup>10</sup> The mandates of NHRIs should be enshrined in the relevant country's constitution or, at the very least, in legislation. Executive decrees are not considered sufficient to meet the requirements of the Paris Principles.

<sup>11</sup> Paris Principles. See fn.9.

<sup>12</sup> Paris Principles. See fn.9.

<sup>13</sup> Paris Principles. See fn.9.

<sup>14</sup> Paris Principles. See fn.9.

<sup>15</sup> Paris Principles. See fn.9.

<sup>16</sup> Paris Principles. See fn.9.

<sup>17</sup> Paris Principles. See fn.9.

<sup>18</sup> Paris Principles. See fn.9. However, note that the Paris Principles use the term 'quasi-judicial', which most commentators have since agreed was the result of an error in translation: the intended term was quasi-judicial. According to Lindholt and Kerrigan within the context of NHRIs the term 'quasi-judicial' refers to 'something which resembles a judicial function or act, but is distinct from this insofar as it rests with an administrative body.' Lone Lindholt and Fergus Kerrigan, 'General Aspects of Quasi-Judicial Competence of National Human Rights Institutions', in Birgit Lindnaes, Lone Lindholt, and Kristine Yigen (ed.) *National Human Rights: Articles and Working Papers* (Danish Centre for Human Rights, 2000), p.92.

Nonetheless, the Paris Principles do not specify a structure for NHRIs; thus, NHRIs come in different shapes and forms, ranging from multi-member human rights commissions to ombudsman-like institutions. Sidoti summarises the main characteristics of generic Paris Principles-compliant NHRIs:

[They] are official but independent institutions, enjoying a status somewhat like that of an independent court system. They are established by law, either through the constitution or through an act of parliament, that guarantees their independence and defines their structure, functions and powers. They are resourced by the State out of the ordinary annual budget. They have complete operational freedom, in relation to policy, program, priorities and activities, subject only to the law.<sup>19</sup>

The importance of the Paris Principles was affirmed by the international community in the 1993 Vienna Declaration and Programme of Action.<sup>20</sup> The Paris Principles are still the ‘minimum normative standard’<sup>21</sup> that NHRIs need to comply with in order to be able to participate fully within the international human rights machinery. For instance, only NHRIs that are deemed to be in full compliance with the Paris Principles are able to address the Human Rights Council.<sup>22</sup> In the area of international treaties, Paris Principles-compliant NHRIs are increasingly seen as important partners in the process of translating international human rights obligations into actions at the national level.<sup>23</sup> The Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (OPCAT) specifically requires its States Parties to ‘give due consideration’ to the Paris Principles when designating national preventive mechanisms (NPMs).<sup>24</sup>

It should be emphasised that compliance with the Paris Principles is often not static. The level of an institution’s compliance with the Paris Principles can ebb and flow between full and lesser levels of compliance, depending on a variety of factors, including the prevailing socio-political circumstances in the country. Within the Asia-Pacific region, there have been some success stories of NHRIs moving to full compliance, due largely (i) to their own advocacy for change, (ii) to support from civil society stakeholders, and, most importantly, (iii) to the willingness of

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<sup>19</sup> Chris Sidoti, *The Importance of a National Human Rights Institution for Palestine*. Available at <http://www.ichr.ps/etemplate.php?id=99>. Last accessed 29 July 2009.

<sup>20</sup> *Vienna Declaration and Programme of Action*, adopted by the UN General Assembly, UN General Assembly Resolution A/CONF.157/23, 12 July 1993, para. 36 (Declaration).

<sup>21</sup> Brian Burdekin, *NHRIs in the Asia-Pacific Region*, Raoul Wallenberg Institute Human Rights Library Volume 27 (Martinus Nijhoff Publishers: Boston, 2007). Burdekin states (p.81) that ‘the Paris Principles were intended to be, and indeed still are, only minimum normative standards for NHRIs.’

<sup>22</sup> Office of the High Commissioner for Human Rights, Information for NHRIs’ Participation in the Human Rights Council. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/nhri.htm>. Last accessed 19 July 2009. The formal assessment of compliance with the Paris Principles (i.e. accreditation) is carried out by the International Coordinating Committee of National Human Rights Institutions.

<sup>23</sup> Treaty bodies, such as the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, and the Committee Against Torture, have called for the establishment of Paris Principles-compliant NHRIs to assist in the implementation of treaty obligations. See Office of the High Commissioner for Human Rights, Table of Treaty Body Recommendations Relating to NIs (January 2000 – October 2006). Available at <http://www.nhri.net>. Last accessed 30 March 2009.

<sup>24</sup> OPCAT, adopted by the UN General Assembly, UN Doc. A/RES/57/199, 18 December 2002, entered into force 22 June 2006. Available at <http://www2.ohchr.org/english/law/cat-one.htm>. Last accessed 3 December 2009, Article 18(4).

governments to embrace change.<sup>25</sup> Conversely, there have been instances of backsliding in Paris Principles compliance, too.<sup>26</sup>

In almost all cases, lack of compliance with the Paris Principles is undesirable and a cause for concern; in the Asia Pacific region, there is currently only one NHRI that is not in full compliance with the Paris Principles and yet is internationally recognised as able to function in a generally effective manner.<sup>27</sup> In situations in which the institution has sincerely attempted to move towards full compliance, but is being thwarted in its efforts by lack of political will (or, in some instances, by active political ill-will), other stakeholders, particularly civil society, can play an important role in working closely with the NHRI to pressure the government to make the changes necessary to bring the institution into full compliance. In situations where the institution appears to be compromising its own independence and compliance with the Paris Principles,<sup>28</sup> criticism from civil society can help to focus attention on the actions (or omissions) of the institution, thereby increasing the likelihood of eventual positive change.<sup>29</sup>

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<sup>25</sup> The Provedor for Human Rights and Justice of Timor Leste, the Afghanistan Independent Human Rights Commission, and the Jordanian National Centre for Human Rights are recent examples of NHRIs that have moved to full compliance with the Paris Principles.

<sup>26</sup> The Fiji Human Rights Commission and the Sri Lankan Human Rights Commission have moved respectively from ‘A’ status to suspension in the case of Fiji and ‘B’ status in the case of Sri Lanka.

<sup>27</sup> For instance, even though the ICC accredited the Maldives Human Rights Commission with ‘B’ status, the ICC nonetheless recognised that the institution has been ‘generally effective in fulfilling its mandate of promoting and protecting human rights.’ The institution did not receive ‘A’ accreditation status because of one requirement within its enabling legislation that negatively impacts upon the pluralism of the institution. See International Coordinating Committee of National Human Rights Institutions, Report and Recommendations of the Sub-Accreditation Committee, Geneva, 21-23 April 2008, p.8. Available at <http://www.nhri.net>.

<sup>28</sup> For instance, Renshaw, Burnes, and Durbach note that ‘In the period from 2000 – 2007, the Fiji Human Rights Commission (FHRC) appears to have been an engaged and active member of its regional network and to have participated fully in the ICC. ... But by 2007, this situation had changed dramatically and the Commission was widely perceived by domestic and international aid organisations and the foreign media to have compromised its independence by giving overt support to what most legal commentators have described as the *coup d’état* of Military Commander Bainimarama in December 2006. Although both the APF [Asia Pacific Forum] and ICC commenced reviews of the FHRC, the FHRC resigned from APF and withdrew from the ICC before both of these bodies could reach a conclusion on whether the FHRC still complied with the Paris Principles requirement of independence from the government.’ See Catherine Renshaw, Andrew Byrnes, and Andrea Durbach, *Implementing human rights in the Pacific through the Work of National Human Rights Institutions: the Experience of the Fiji Human Rights Commission*, (2008) UNSW Law Faculty Research Series 66. Available at <http://www.austlii.edu.au/au/journals/UNSWLRS/2008/66.html>. Last accessed 15 July 2009.

<sup>29</sup> In Asia, a group of NGOs have banded together to form a network known as the Asian NGOs Network on National Human Rights Institutions (ANNI). The ANNI network has been particularly vigilant in monitoring the NHRIs in Asia, and produces an annual report that critically assesses the performance and independence of the NHRIs, based on the NGOs’ interactions, perceptions and experiences with these NHRIs. The ANNI sends its reports to the regional and international coordinating committees of NHRIs to promote discussion and dialogue on the extent of compliance with the Paris Principles. Internationally, a Geneva-based NGO called the International Council for Human Rights Policy has produced two very thorough studies regarding the performance, legitimacy, and effectiveness of NHRIs; these reports were developed with the combined input of NHRI and NGO practitioners and the UN, with the aim of identifying NHRI best practice. See International Council for Human Rights Policy, *National Human Rights Institutions: Performance and Legitimacy*. Available at <http://www.ichrp.org>. See also International Council for Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions* (Versiox, 2005).

### 3. The Role of Asia-Pacific NHRIs in the Development of Regional Torture Prevention Standards

Currently, the Asia-Pacific region does not have its own mechanism to protect against torture and other human rights violations.<sup>30</sup> Various reasons have been put forward to explain this absence; most of these explanations focus on the supposed ethno-cultural diversity within the region. The region contains the most populous Muslim-majority country (Indonesia), the ‘Western’ nations of Australia and New Zealand, the regime in Burma, as well as the largest democracy in the world (India). A myriad of faiths, political systems, and beliefs exist and coexist in varying degrees of tolerance within this geographic region. Cultural relativists are quick to point to such differences as being factors that minimise the likelihood of the establishment of a region-wide human rights mechanism.<sup>31</sup> Although some intergovernmental human rights developments have been taking place, particularly at the Southeast Asian sub-regional level and specifically in the form of the recently established ASEAN Intergovernmental Human Rights Commission,<sup>32</sup> to date the larger Asia Pacific region has failed to progress beyond fragmented, sub-regional approaches.

The proliferation of NHRIs in the Asia-Pacific region, and the increasingly strong connections between them, has to some extent filled the gap resulting from the lack of a region-wide mechanism.<sup>33</sup> The first NHRI in the Asia-Pacific region was established in 1977.<sup>34</sup> Since then, the number of NHRIs in the region has increased exponentially. Currently, there are seventeen NHRIs in the Asia-Pacific region that have been accredited by the International Coordinating Committee of National Human Rights Institutions (ICC).<sup>35</sup> Other NHRIs are currently in the process of being established in a number of countries in the region.<sup>36</sup> Fitzpatrick observes that

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<sup>30</sup> For the purposes of this article, the Asia-Pacific region is defined in accordance with the UN operational categorisation of the Asia-Pacific region.

<sup>31</sup> Former Prime Minister Mahathir Mohammad of Malaysia and former President Lee Kwan Yew were particularly strong advocates for this insular, cultural relativist attack on universal human rights norms. See Mohd Azizuddin Mohd Sani, ‘Mahathir Mohamad as a Cultural Relativist: Mahathirism on Human Rights’, *17<sup>th</sup> Biennial Conference of Asian Studies Association of Australia*, Melbourne, 1-3 July 2008. Available at <http://arts.monash.edu.au/mai/asaa/mohdazizuddinmohdsani.pdf>. Last accessed 16 July 2009.

<sup>32</sup> Further information is available on the Commission’s website: <http://www.aseansec.org/PR-Another-Step-Forward-for-Regional-HR-Cooperation.pdf>. Last accessed 23 January 2010.

<sup>33</sup> Durbach, Renshaw, and Byrnes are of the view that regional cooperation among NHRIs can be described as a ‘transnational horizontal network’ that executes an effective form of human rights diplomacy and may, arguably, present an interim alternative and/or aid to the development of a regional human rights body. See Andrea Durbach, Catherine Renshaw, and Andrew Byrnes, (2009) “‘A tongue but no teeth?’ The Emergence of a Regional Human Rights Mechanism in Asia”, *31(2) Sydney Law Review*, p.229.

<sup>34</sup> The New Zealand Human Rights Commission.

<sup>35</sup> The institutions currently accredited with ICC ‘A’ status (full compliance with the Paris Principles) are the NHRIs of Afghanistan, Australia, India, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, Palestine, Qatar, the Philippines, Republic of Korea, Timor Leste, and Thailand. The NHRIs of the Maldives and Sri Lanka are currently accredited with ‘B’ status, meaning that these institutions are not currently considered to be in full compliance with the Paris Principles. There are other institutions in the region, but these institutions have either been deemed by the ICC not to comply with the Paris Principles (the Iranian Islamic Human Rights Commission, and the Hong Kong Equal Opportunities Commission), or they have had their accreditation suspended (the Fiji Human Rights Commission). Information as of July 2009.

<sup>36</sup> In West Asia, NHRIs are believed to be in the final stages of establishment in Bahrain and also Lebanon. In South Asia, there may soon be new NHRIs in Pakistan and Bangladesh. In East Asia, China may also join the ranks of countries with NHRIs, as may the Pacific island State of Samoa.

‘the development of NHRIs throughout the region has created a framework for cooperation on human rights which is focused on practical measures that achieve effective outcomes.’<sup>37</sup>

Within the context of preventing torture, NHRIs in the region have collectively been instrumental in driving forwards the development of regional torture prevention standards through the Asia Pacific Forum of National Human Rights Institutions (APF).<sup>38</sup> In 2004, APF member NHRIs requested their legal advisory committee, the Advisory Council of Jurists (ACJ), to consider the issue of torture.<sup>39</sup> The ACJ analysed applicable international law, and national law, policies, and practices in fifteen Asian and Pacific States, based on information submitted by the NHRIs about the relevant laws and practices in their respective countries. In their final report,<sup>40</sup> the ACJ called on the NHRIs to continue to encourage the ratification of all international instruments relating to torture, and to stress the importance of the individual complaints processes under both Article 22 of UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) and also the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).<sup>41</sup> The ACJ advised the NHRIs to urge their governments to ensure thorough implementation of the international obligations in domestic law and practice.<sup>42</sup> The ACJ also recommended that NHRIs ‘work with their governments to improve the current infrastructure of detention facilities ... while stressing the need for NHRIs to be proactive in undertaking their detention monitoring roles.’<sup>43</sup> Furthermore, the ACJ emphasised the importance of providing training on international torture prevention standards to a wide range of sectors, particularly law enforcement officials.<sup>44</sup> Additionally, the ACJ called on NHRIs to heed their role as conduits between the national and international spheres of human rights protection by recommending that they encourage their governments to issue standing invitations to UN Special Procedures and to comply with treaty reporting requirements; the ACJ also exhorted the NHRIs to directly contribute to these activities by submitting their own reports to treaty bodies.<sup>45</sup>

Finally, the ACJ developed a set of Minimum Interrogation Standards (MIS), with the aim of providing practical guidelines to protect persons under interrogation from falling prey to torture.<sup>46</sup> The MIS comprise twenty-seven separate provisions. Broadly speaking, these provisions can be grouped into three generic categories relating to methods of interrogation,

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<sup>37</sup> Kieren Fitzpatrick, ‘The Asia Pacific Forum: A Partnership for Regional Human Rights Cooperation’, in Birgit Lindnaes, Lone Lindholt and Kristine Yigen (ed.) *National Human Rights Institutions: Articles and Working Papers* (Danish Centre for Human Rights, 2000), p.141.

<sup>38</sup> The APF was established in 1996 during a meeting of the NHRIs of Australia, India, Indonesia, and New Zealand. The APF’s membership scheme is based on assessment of applicant NHRIs’ compliance with the Paris Principles, although this system may soon be suspended in favour of the ICC’s accreditation. The APF’s core activities focus on the establishment of new NHRIs in the Asia-Pacific region, the provision of training to strengthen the capacity of existing NHRIs, and the provision of a platform for regional human rights cooperation.

<sup>39</sup> The APF established the Advisory Council of Jurists with the aim of providing jurisprudential advice on specific human rights issues to APF member NHRIs and governments in the region. Jurists are nominated by NHRIs that are deemed, by the APF, to be fully compliant with the Paris Principles. Concluding Statement of the 8<sup>th</sup> Annual Meeting of the APF, para. 7. Available at <http://www.asiapacificforum.net>. For the full terms of reference of the study, see *Advisory Council of Jurists Reference on Torture*, pp.3-4. See fn.1.

<sup>40</sup> *Advisory Council of Jurists Reference on Torture*, pp.67-290. See fn.1.

<sup>41</sup> *Advisory Council of Jurists Reference on Torture*, p.14. See fn.1.

<sup>42</sup> *Advisory Council of Jurists Reference on Torture*. See fn.1.

<sup>43</sup> *Advisory Council of Jurists Reference on Torture*. See fn.1.

<sup>44</sup> *Advisory Council of Jurists Reference on Torture*. See fn.1.

<sup>45</sup> *Advisory Council of Jurists Reference on Torture*. See fn.1.

<sup>46</sup> *Advisory Council of Jurists Reference on Torture*, pp.20-23. See fn.1.

rights of interrogated persons, and safeguards to ensure the integrity of the documentation and other information arising from interrogations. The ACJ referred to a variety of international human rights standards, including commentaries from the ICCPR Human Rights Committee, jurisprudence from the European Court of Human Rights, the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and reports from the UN Special Rapporteur on Torture, when formulating the MIS.<sup>47</sup> The MIS are, to date, the most notable contribution that Asia-Pacific NHRIs have collectively made to the development of torture prevention standards within the region.

There is evidence to indicate that at least some Asia-Pacific NHRIs have undertaken actions at the national level that are in line with the ACJ torture recommendations. For instance, in line with the ACJ's recommendation for NHRIs to encourage ratification and full implementation of the UNCAT and OPCAT, the Australian Human Rights Commission reported to the APF that it had developed position papers concerning Australia's compliance with the UNCAT and OPCAT.<sup>48</sup> The Commission on Human Rights of the Philippines, and the National Human Rights Commission of Mongolia, are also known to have undertaken activities that have referred to the ACJ's recommendations; these activities are discussed in detail below.<sup>49</sup>

Admittedly, however, the extent of implementation of the ACJ's recommendations is difficult to discern, largely due to the lack of complete reports from all the Asia-Pacific NHRIs outlining the extent to which they have disseminated the MIS and implemented the other ACJ recommendations in their respective countries. To encourage more thorough implementation, the APF, as the main regional network of Asia-Pacific NHRIs, has been providing training to familiarise NHRIs with the MIS and other ACJ recommendations.<sup>50</sup>

#### 4. Examples of Innovative Torture Prevention Initiatives

NHRIs in the Asia-Pacific region share some general similarities in terms of their structures and powers.<sup>51</sup> The overwhelming majority of these institutions are structured according to the multi-member 'human rights commission/centre' model. The Provedor for Human Rights and Justice of Timor Leste is currently the sole exception: this institution is structured largely in conformity with the 'Defensor del Pueblo model'<sup>52</sup> in that it has features of the classical ombudsman, albeit with a tripartite human rights, good governance and anti-corruption mandate. All of the existing

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<sup>47</sup> *Advisory Council of Jurists Reference on Torture: Final Report*. See fn.1. The commentary to the MIS refers to the standards and principles that inspired provisions in the MIS.

<sup>48</sup> Australian Human Rights Commission, *APF Members – ACJ Implementation Report, 2008*, available at [www.asiapacificforum.net](http://www.asiapacificforum.net). Last accessed 24 July 2009.

<sup>49</sup> The Mongolian and Philippines experiences are discussed below.

<sup>50</sup> Thus far such training has been provided to the NHRIs of Indonesia, Thailand, the Philippines, the Maldives, and South Korea. These torture prevention training programmes are run in partnership with the Association for the Prevention of Torture in Geneva. The APF is currently working in partnership with the Association for the Prevention of Torture, and the UN Office of the High Commissioner for Human Rights, to develop an integrated CD-ROM training manual for NHRIs, focusing on torture prevention and detention monitoring techniques.

<sup>51</sup> See Burdekin, *NHRIs in the Asia-Pacific Region*, pp.27-42 (see fn.21) for a comparison of the mandates, powers, and functions of the NHRIs of Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, the Republic of Korea, Sri Lanka, and Thailand.

<sup>52</sup> International Council for Human Rights Policy, *National Human Rights Institutions*. See fn.29.

Asia-Pacific NHRIs are equipped with some quasi-judicial powers,<sup>53</sup> including the power to receive complaints and the power to conduct *suo moto* (own motion) investigations. Some are even empowered to subpoena witnesses, enter and inspect premises, conduct detention monitoring visits, conduct public hearings, and engage in mediation and conciliation activities.

There are a number of other ways in which individual Asia-Pacific NHRIs have been using their mandates to prevent torture. Some NHRIs have been using their advisory powers to issue policy recommendations aimed at promoting ratification of the UNCAT and the OPCAT<sup>54</sup> and recommending conformity between national laws and international human rights obligations.<sup>55</sup> Other NHRIs have been bridging the gap between the national and international human rights spheres by submitting alternative reports to treaty bodies,<sup>56</sup> and participating in the Universal Periodic Review Process of the Human Rights Council.<sup>57</sup> Most Asia-Pacific NHRIs have been using their quasi-judicial powers to investigate torture-related complaints. Some NHRIs have been using their educational role to provide training to law enforcement officials and other national stakeholders.<sup>58</sup> There are also examples of NHRIs that have officially been designated as a national preventive mechanism (NPM) under the OPCAT. While a complete catalogue of all NHRI torture prevention activities within the region is beyond the scope of this paper, some particularly interesting examples of innovative practice and strategy are scrutinised below.<sup>59</sup>

The National Human Rights Commission of India (NHRC India) is an example of an NHRI in the Asia-Pacific region that confronts a proportionally high number of torture cases.<sup>60</sup> In 2004, the NHRC India announced that ‘torture in custody flouts the basic rights of citizens and is an affront to human dignity.’<sup>61</sup> The NHRC India has adopted two novel strategies to combat torture. The first strategy relates to special directives that have been issued by the NHRC to all state governments and law enforcement authorities in India. These directives require that all rapes and deaths in police and judicial custody be reported to NHRC India within 24 hours, that all

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<sup>53</sup> Burdekin, *NHRIs in the Asia-Pacific Region*, pp.27.42. See fn.21.

<sup>54</sup> For example, see Human Rights Commission of Malaysia, Annual Reports. Available at <http://www.suhakam.org.my/>.

<sup>55</sup> For instance, the Australian Human Rights Commission. See fn.48.

<sup>56</sup> Alternative reports, sometimes also referred to as ‘shadow reports’ or parallel reports, are often submitted by NGOs and NHRIs to provide independent perspectives on a state’s implementation of treaty obligations. For example, see Indonesian National Human Rights Commission, Indonesia’s Compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, April 2008. Available at <http://www.komnasham.go.id/portal/en>. Last accessed April 2009. See also New Zealand Human Rights Commission, Comments of the New Zealand Human Rights Commission on New Zealand’s Implementation of the UNCAT. Available at [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/19-May-2009\\_14-32-51\\_UN\\_Convention\\_against\\_torture\\_report\\_on\\_NZ.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/19-May-2009_14-32-51_UN_Convention_against_torture_report_on_NZ.pdf). Last accessed 26 July 2009.

<sup>57</sup> Several NHRIs have been involved in the Universal Periodic Review Process of the Human Rights Council processes in their respective countries, including India, Malaysia, Philippines, and South Korea.

<sup>58</sup> The Malaysian Human Rights Commission provides training to police and prison department officials. For example, see Human Rights Commission of Malaysia, Report to the 14<sup>th</sup> Annual Meeting of the Asia Pacific Forum. Available at [http://www.asiapacificforum.net/about/annual-meetings/14th-jordan-2009/downloads/apf-member-reports/Malaysia\\_APF\\_Report.doc](http://www.asiapacificforum.net/about/annual-meetings/14th-jordan-2009/downloads/apf-member-reports/Malaysia_APF_Report.doc). Last accessed 29 July 2009.

<sup>59</sup> Note that the forthcoming examples should not be construed as assessments of the overall performance of the institutions discussed. Instead, these examples are only intended to highlight examples of innovative torture prevention practices and strategies.

<sup>60</sup> See Lindholt, Yigen, and Lindnaes (ed.), *National Human Rights Institutions: Articles and Working Papers*, p.223. See fn.1.

<sup>61</sup> National Human Rights Commission of India, Annual Report 2004 – 2005. See also ‘Case Concerning the Death of Sher Mohammad in Police Custody by Torture: Uttar Pradesh’, Case No 8924/95-96/NHRC. Available at <http://nhrc.nic.in/>. Last Accessed 27 July 2009.

autopsies of death-in-custody victims be videotaped, and that copies of the videotapes be submitted to the NHRC, together with the written autopsy report.<sup>62</sup> States and union territories were further requested to adopt a model autopsy form and additional inquest procedures prescribed by the NHRC. These forms include detailed diagrams and an appendix outlining the specific types of injuries that could be expected to result from different torture techniques.<sup>63</sup> In a balanced and, at times, critical overall assessment of the NHRC, Sripati observes that these directives (when entrenched) serve as a ‘powerful disincentive for violative behaviour’.<sup>64</sup> Sripati noted a subsequent increase in the number of reported death-in-custody cases and in the number of post-mortem videotapes received by the NHRC in the years immediately following the issue of the directives.<sup>65</sup>

The second NHRC India strategy is not intended exclusively for torture prevention, but is, nonetheless, a useful tool for the management of complaints of human rights violations, which inevitably includes complaints of torture and other ill-treatment. The NHRC India has been receiving an average of more than 80,000 complaints annually, with the number of cases increasing incrementally each year.<sup>66</sup> To handle this large number of cases, the NHRC India has established an online complaints management system.<sup>67</sup> The online strategy has dramatically increased the accessibility of the institution’s complaints mechanism. The NHRC India recently reported an increase in its rate of disposal of cases, which may indicate that this mechanism has, at the very least, improved the institution’s ability to manage complaints efficiently.<sup>68</sup>

The National Human Rights Commission of Mongolia’s decision to conduct a national inquiry into torture, which was made in response to the ACJ’s recommendation for NHRIs to monitor the implementation of torture prohibition legislation, represents another exciting and innovative strategy. The National Human Rights Commission of Mongolia (NHRCM) reported that

According to the recommendations of the Advisory Council of Jurists (ACJ) in order to monitor implementation of legislation prohibiting torture, cruel, inhumane and other degrading treatment the NHRM had conducted a year long public inquiry on the subject throughout the year 2005. During the course of the public inquiry, the NHRCM organized meetings with around 600 law enforcement officers, conducted surveys among 1400 detainees, had interviews with 100 individuals and received more than 50 complaints related to the subject. Also under this campaign, eight detention centres in the provinces and the Central Detention Centre in the capital Ulaanbaatar were inspected to find out if they operate according to the laws and whether conditions in those centres meet the

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<sup>62</sup> NHRC India, Important Directives regarding Deaths and Rapes in Custody. Available at <http://nhrc.nic.in/>. Last accessed 27 July 2009.

<sup>63</sup> NHRC India, Important Directives regarding Deaths and Rapes in Custody, See fn.62.

<sup>64</sup> Vijayashri Sripati, ‘India’s National Human Rights Commission: Strengths and Weaknesses’, in Lindnaes, Lindholt, and Yigen (ed.), *National Human Rights Institutions: Articles and Working Papers*, (Danish Centre for Human Rights, 2000), p.161.

<sup>65</sup> Sripati, ‘India’s National Human Rights Commission’. See fn.64.

<sup>66</sup> NHRC India, Report to the 12<sup>th</sup> Annual Meeting of the Asia Pacific Forum. Available at <http://www.asiapacificforum.net>. Last accessed 24 July 2009.

<sup>67</sup> The complaints mechanism can be viewed at <http://nhrc.nic.in/>. Note that only those with valid complainants (i.e. with case numbers) are able to log into the system. Last viewed 27 July 2009.

<sup>68</sup> Sripati, ‘India’s National Human Rights Commission’. See fn.64.

international standards. The NHRCM also has made an inspection into how the rights of the detainees there are respected and implemented.<sup>69</sup>

National inquiries are widely considered by NHRI practitioners as highly cost-effective and efficient ways to address systemic human rights issues on a larger scale.<sup>70</sup> While there are other NHRIs in the region which have conducted national inquiries, to date the Mongolian Commission remains the only NHRI to have conducted one focusing specifically on torture.<sup>71</sup> However, not all NHRIs have the necessary resources, or the capacity, to conduct full-scale national inquiries. Furthermore, some NHRIs must work around armed conflicts and other difficult situations, which make it difficult to carry out the kind of nationwide, consultative public hearings that are involved in national inquiries. For NHRIs that cannot conduct such inquiries, there are alternatives, as the following example illustrates.

The Afghan Independent Human Rights Commission (AIHRC) recently carried out groundbreaking research to investigate the causal factors behind torture in law enforcement institutions in Afghanistan.<sup>72</sup> The research involved a sample focus group of ‘398 victims of torture in prisons and other detention centres.’<sup>73</sup> Questionnaires were also sent out to the families of the victims, experts, and the relevant authorities.<sup>74</sup> Close to 100 law enforcement officials were also interviewed.<sup>75</sup> The interviews and questionnaires covered 28 provinces in Afghanistan, and involved all the main ethnic groups in the country.<sup>76</sup> The research found that a staggering 98.5% of the sample group alleged that they had been tortured.<sup>77</sup> Over 65% of the sample group stated that the perpetrators were the police (as opposed to other law enforcement authorities).<sup>78</sup> Moreover, 84.2% of the sample claimed that they had been tortured for refusing to provide confessions.<sup>79</sup> The most remarkable aspects of this research project are its nationwide scope and its attempt to identify the specific flashpoints for torture in the country. Nationwide research studies may be effective alternatives for NHRIs that cannot conduct a complete national inquiry on torture. By pin-pointing the causal factors involved in torture, the AIHRC has taken an important step towards improving its capacity to plan its strategic activities in a manner that will enable the NHRI to target torture at its source.

The NPM mandate offers another way for NHRIs to contribute to the struggle against torture, and also to fulfil their role as bridges between the national and international spheres. As noted above, the OPCAT specifically calls on States Parties to ‘give due consideration’ to the Paris

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<sup>69</sup> NHRCM, Report to the 11<sup>th</sup> Annual Meeting of the Asia Pacific Forum. Available at <http://www.asiapacificforum.net>. Last accessed 12 June 2009.

<sup>70</sup> For instance, see Burdekin, *NHRIs in the Asia-Pacific Region*, pp.116-120, for a thorough discussion of the benefits of national inquiries. See fn.21.

<sup>71</sup> The Australian Human Rights Commission, the New Zealand Human Rights Commission, and the Indian National Human Rights Commission also use the national inquiry strategy, albeit without (to date) focusing such an inquiry specifically on torture. For further information on national inquiries, see APF, *Going Public: Strategies for an Effective National Inquiry* (DVD format), 2006.

<sup>72</sup> AIHRC, *Causes of torture in law enforcement institutions, 2008/2009*. Available at [http://www.aihrc.org.af/english/Eng\\_pages/Researches\\_eng/Research\\_cause\\_of\\_Torture\\_2009\\_April.pdf](http://www.aihrc.org.af/english/Eng_pages/Researches_eng/Research_cause_of_Torture_2009_April.pdf). Last accessed 12 June 2009.

<sup>73</sup> *NHRIs in the Asia-Pacific Region*, p.5. See fn.72.

<sup>74</sup> *NHRIs in the Asia-Pacific Region*. See fn.72.

<sup>75</sup> *NHRIs in the Asia-Pacific Region*. See fn.72.

<sup>76</sup> *NHRIs in the Asia-Pacific Region*. See fn.72.

<sup>77</sup> *NHRIs in the Asia-Pacific Region*, p.12. See fn.72.

<sup>78</sup> *NHRIs in the Asia-Pacific Region*, p.13. See fn.72.

<sup>79</sup> *NHRIs in the Asia-Pacific Region*, p.16. See fn.72.

Principles when designating their NPM.<sup>80</sup> While this reference to the Paris Principles does not necessarily mean that a country's NHRI should automatically be designated as the NPM, there is often a presumption that the NHRI will be involved in some way, particularly if the institution already has a detention monitoring mandate. In the Asia-Pacific region, there are currently only two States Parties to the OPCAT with existing NHRIs; in both instances, the NHRIs have been designated as the NPMs of their respective countries. These institutions are the New Zealand Human Rights Commission (NZHRC) and the Maldives Human Rights Commission (MHRC).<sup>81</sup>

The NZHRC has been designated as the central NPM in a multi-entity NPM.<sup>82</sup> As the central NPM, the NZHRC has been mandated with the role of coordinating all of the New Zealand NPMs, and acting as the primary focal point for contact with the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment (SPT), established by the OPCAT.<sup>83</sup> In its first year, the NZHRC drafted standards and indicators to guide the other NPMs, organised meetings with the other NPMs, and made contact with the SPT.<sup>84</sup> On the other hand, the MHRC has been designated as the sole NPM for the Maldives. The SPT met with the MHRC during its visit to the Maldives. The SPT report on this visit made a number of recommendations aimed at strengthening the institution, and guiding it to better fulfil its responsibilities.<sup>85</sup> One such recommendation was for the institution to provide training to its staff on procedures and good practice in carrying out visits to places of detention, including on interviewing and information gathering methods.<sup>86</sup> Since then, the MHRC has entered into a year-long capacity-building project with an international torture prevention specialist NGO as a means of strengthening the institution's ability to fulfil its NPM mandate.<sup>87</sup> Both the NZHRC and the MHRC are still relatively new NPMs, so it is not yet possible to identify specific best practice in the fulfilment of their NPM mandates. Nonetheless, their activities as NPMs should increase their ability to be effective in preventing torture in their respective countries.

Even without being designated as an NPM, NHRIs can still use their existing mandates to launch a creative, multi-dimensional attack on torture, as seen from the example of the Commission on Human Rights of the Philippines (CHRP). The CHRP has established an in-house forensic facility to enable it to independently investigate and analyse evidence relating to cases of torture and extra-judicial killings.<sup>88</sup> The CHRP has also been using its recommendatory powers. In 2008, the CHRP submitted a position paper regarding a draft anti-torture law that was being

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<sup>80</sup> OPCAT, Article 18(4). See fn.24.

<sup>81</sup> Office of the High Commissioner for Human Rights, Compilation of Information on NPMs based on State Party Submissions. Available at <http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>. Last accessed 28 July 2009.

<sup>82</sup> New Zealand Human Rights Commission, Monitoring of Places of Detention: First Annual Report of Activities under the OPCAT – 1 July 2007 – 30 June 2008. Available at [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/13-Feb-2009\\_17-25-58\\_OPCAT\\_2008\\_Report.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/13-Feb-2009_17-25-58_OPCAT_2008_Report.pdf). Last accessed 30 June 2009.

<sup>83</sup> New Zealand Human Rights Commission, Monitoring of Places of Detention, p.7. See fn.82.

<sup>84</sup> New Zealand Human Rights Commission, Monitoring of Places of Detention, p.9. See fn.82.

<sup>85</sup> SPT, Report on the Visit of the SPT to the Maldives, UN Doc. CAT/OP/MDV/1, 26 February 2009. Available at <http://www2.ohchr.org/english/bodies/cat/opcat/docs/visit/FinalMaldivesReport.doc>. Last accessed 6 July 2009.

<sup>86</sup> SPT, Report on the Visit of the SPT to the Maldives, p.19. See fn.85.

<sup>87</sup> Maldives Human Rights Commission, News 14 July 2009: HRCM Concludes its 2<sup>nd</sup> training for NPM. Available at <http://www.hrcm.org.mv/>. Last accessed 6 July 2009.

<sup>88</sup> Further information is available at

[http://www.chr.gov.ph/MAIN%20PAGES/speeches/lmdl\\_spch09May09\\_forensic.htm](http://www.chr.gov.ph/MAIN%20PAGES/speeches/lmdl_spch09May09_forensic.htm). Last accessed 12 June 2009.

developed by the Philippines legislature.<sup>89</sup> The CHRP proposal contained a number of different recommendations to bring the draft law into line with the UNCAT and other torture prevention standards, including the ACJ's MIS.<sup>90</sup>

Later in the same year, the CHRP partnered with local NGOs and other stakeholders to organise a workshop focusing on the OPCAT and on the potential shape of the NPM for the Philippines.<sup>91</sup> The event brought together a variety of civilian and governmental stakeholders, simultaneously facilitating the exchange of perspectives, while generating publicity for the case for finalising the OPCAT ratification process in the Philippines, and laying the groundwork for the development of the future NPM.<sup>92</sup> At this event, the Government policy-makers and law enforcement officials also had the opportunity to hear from victims about the impact of torture, and to learn more about international laws and standards relating to torture.

Following further delays from the Philippine Government in the implementation of its treaty obligations, in April 2009, the CHRP took the struggle against torture to Geneva, to the session at which the UN Committee against Torture (CAT) considered the State Report of the Philippine Government.<sup>93</sup> By convention, the CAT meets privately with NHRIs. This time, however, the CHRP was able to directly address the CAT during the actual session, and took the opportunity to openly raise its concerns regarding delays in the finalising of the anti-torture law and ratification of the OPCAT.<sup>94</sup>

In Geneva, the CHRP also took the opportunity to address the Human Rights Council; although the purpose of the address was to comment on the follow-up country report of the UN Special Rapporteur on Extra-Judicial, Summary, and Arbitrary Executions, the CHRP also took the opportunity to raise specific incidences of torture that had been investigated by the Commission.<sup>95</sup> The previous year, the CHRP also used the Universal Periodic Review process to raise concerns, including some relating to torture.<sup>96</sup>

Seen from a macro perspective, the multi-pronged strategy of the CHRP is particularly impressive as it combines a range of different actions at the national and international levels, including in-house forensic investigations, policy recommendations, consultations with NGOs and the Government, advocacy, education of law enforcement officials, and engagement with international mechanisms. The CHRP's creativity and persistence has already been rewarded with some success, as seen from the passage of the Anti Torture Bill in late 2009, which ended

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<sup>89</sup> CHRP, Position Paper on the Anti-Torture Act. Available at [http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/about\\_hr-position.htm](http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/position%20papers/about_hr-position.htm). Last accessed 14 July 2009.

<sup>90</sup> CHRP, Position Paper on the Anti-Torture Act. See fn.89.

<sup>91</sup> Further information on the event is available at [http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/speeches/18Sept08\\_prevTorture.htm](http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/speeches/18Sept08_prevTorture.htm). Last accessed 14 July 2009.

<sup>92</sup> See fn.91. Note that in the Philippines some other entities also have detention monitoring mandates.

<sup>93</sup> CHRP Presents Views on Government Compliance to UN Anti-Torture Body. Available at [http://www.chr.gov.ph/MAIN%20PAGES/news/press\\_rel\\_UNantitor\\_22May09.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/press_rel_UNantitor_22May09.htm). Last accessed 24 July 2009.

<sup>94</sup> CHRP Presents Views on Government Compliance to UN Anti-Torture Body. See fn.93.

<sup>95</sup> Further information available at

[http://www.chr.gov.ph/MAIN%20PAGES/news/press\\_rel\\_CHRcomUN\\_3June09.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/press_rel_CHRcomUN_3June09.htm). Last accessed 24 July 2009.

<sup>96</sup> Office of the High Commissioner for Human Rights, Summary of Stakeholder Information for the Universal Periodic Review of the Philippines. Available at <http://www.ohchr.org/EN/HRBODIES/UPR/Pages/PHSession1.aspx>.

the twenty-three year wait for the enactment of legislation to implement the UNCAT in the Philippines.<sup>97</sup>

Thus, there are many ways in which Asian and Pacific NHRIs have been using, and can continue to creatively use, their mandates to combat torture.

## 5. Conclusion

To be all hype and to be toothless, there lies the gap between expectation that comes with our Constitutional mandate or our brave wager to be designated the National Preventive Mechanism or a part thereof, as opposed to what we really are. There lies the gap between law and practice, principle and habit, imperative and execution, expectation and result. ... I must confess to all of you, that while there are nights that I am left sleepless and troubled, contemplating this gap of what is and what should be done, I wake up inspired at the thought that everyday, there is something else, something more that we can do to shut this gap.<sup>98</sup>

De Lima's words encapsulate the conundrum that many Asia-Pacific NHRIs face. By virtue of their legal mandates, much is often expected of these institutions. In the Asia-Pacific region, where no region-wide human rights mechanism currently exists, expectations may be even higher than elsewhere; in some instances, the NHRI is the only place victims of torture can turn for some hope of justice or protection. Such expectations are justified. Both the public, and torture victims, deserve NHRIs that are independent, effective, proactive, and capable of inspiring their confidence and protecting their rights. As the former UN High Commissioner Arbour argued (see discussion and quotation above), NHRIs have a central role to play in combating torture; they need to fulfil that role by reminding their governments of governmental obligations to take effective measures to prevent torture.<sup>99</sup> NHRIs also need to use all the other powers available within their mandates to advocate for, investigate, monitor, document, educate about, and bring attention to the consequences of lack of compliance with international obligations.

However, it is important to acknowledge that there are situations in which NHRIs are not able to meet all that is expected of them. This may be due to factors beyond the control of the NHRI: for instance, some NHRIs operate in a climate of political impunity. Their reminders, advice, and recommendations to the government may thus fall on deaf ears. In other instances, the NHRI's mandate may be limited, or the NHRI may not have the necessary capacity and resources to function to the level that is expected.<sup>100</sup> Hence, the difficulty in closing 'the gap' between 'expectation and result.' As Burdekin noted,

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<sup>97</sup> Press Statement from Leila de Lima, Anti Torture Law in the Philippines... finally!, 18 August 2009. Available at [http://www.chr.gov.ph/MAIN%20PAGES/news/State\\_18Aug2009\\_TorLawFin.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/State_18Aug2009_TorLawFin.htm).

<sup>98</sup> Leila de Lima, Chairperson of the Commission on Human Rights of the Philippines. See fn.89.

<sup>99</sup> Louise Arbour, Official Statement during the 10<sup>th</sup> Annual Meeting of the APF. See fn.1.

<sup>100</sup> An interesting example of an NHRI that has acknowledged the limitations of its mandate, and taken action to correct these limitations, is the Human Rights Commission of Malaysia. In 2002, the Malaysian Commission submitted a detailed review of its enabling legislation to the government, recommending amendments to strengthen the independence, pluralism, and effectiveness of the Commission. Recently, when the Malaysian Commission was put under review by the ICC, the Commission used its Universal Periodic Review submission and formal Universal Periodic Review statement to the Human Rights Council as an opportunity to press the case for its enabling law to

All the institutions in the Asia Pacific region have made significant contributions to promoting and protecting human rights in their respective countries; but all still confront substantial challenges. Many of these relate to the political, economic and social factors which are largely beyond their control as independent statutory bodies. There is, however, a growing recognition that human rights, good governance, democratization, the rule of law and sustainable development are closely inter-related – and that institutions such as NHRIs can only function effectively to the extent that other essential elements of a democratic society – a representative and accountable parliament, an executive which is ultimately subject to the authority of the elected representatives and an independent, impartial judiciary – are fulfilling their legitimate roles.<sup>101</sup>

Nonetheless, this paper has attempted to illustrate that some progress has been made: Asia-Pacific NHRIs have been contributing to the prevention of torture collectively in the region and individually in their respective countries. Through the use of innovative strategies, and by making the most of the powers within their mandates, independent NHRIs have the potential to be a powerful force in the struggle against torture in the Asia-Pacific region. It is vital that - NHRIs continue to strive to overcome the barriers, internal or external, that prevent them from fulfilling their potential.

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be amended. Further information available at <http://www.suhakam.org.my/en> and <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/MYSession4.aspx>. Last accessed 26 July 2009.

<sup>101</sup> Burdekin, *NHRIs in the Asia-Pacific Region*, p.10. See fn.21 .