

COMMONWEALTH MODEL NATIONAL PLAN OF ACTION ON **HUMAN** RIGHTS



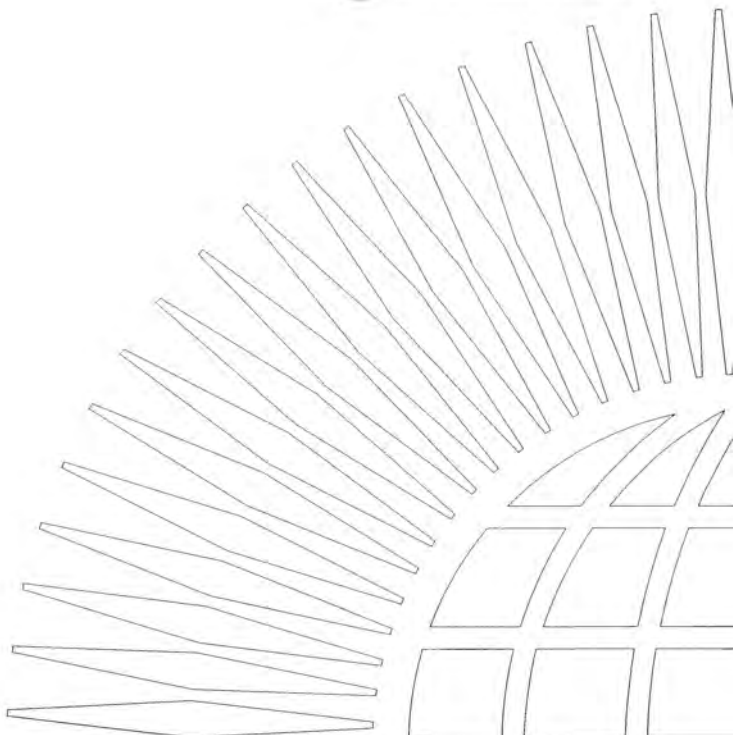
Commonwealth Secretariat



COMMONWEALTH MODEL NATIONAL PLAN OF ACTION ON **HUMAN RIGHTS**



Commonwealth Secretariat



Commonwealth Secretariat
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London SW1Y 5HX
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Published by the Commonwealth Secretariat
Designed by Michael Orton Designs
Printed by The Charlesworth Group

Copies of this publication may be obtained from
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A catalogue record for this publication is available from the British Library.

ISBN: 978-0-85092-869-3

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FOREWORD

Commonwealth Secretary-General Don McKinnon

I welcome the publication of this Commonwealth Model National Plan of Action on Human Rights.

The Commonwealth is a unique organisation in the modern world. Our members belong for the reason that they share a commitment to certain values and principles. Fundamental human rights are part of the cement that binds us. Thus the Commonwealth is united by common values and common experiences, but also by its accommodation of the great diversity of its peoples, cultures and systems. Drawing on this commonality and difference, the Secretariat is an institution with the authority and pedigree to produce 'best practice' guidelines and models for the benefit of member countries. This publication has the benefit of Commonwealth-wide expertise and experience.

While each country will inevitably have different needs and priorities, we hold all human rights to be as indivisible as they are universal: for the Commonwealth, national-level implementation of human rights is as much about social and economic issues such as access to a basic education and to basic healthcare, as it is about civil and political issues such as freedom of expression or the right to a fair trial.

In pursuing the development – and *implementation* – of a National Plan of Action on Human Rights, a country would not simply be giving concrete expression to our shared Commonwealth values, but – just as important – it would be giving practical shape and effect to its own ideals and aspirations for progress.

I assure all our members that the Secretariat stands ready to assist them in their efforts towards a comprehensive and coherent strategy to better promote and protect human rights at the national level. I encourage our member governments to draw on the assistance of the Human Rights Unit in assessing and meeting their national objectives on human rights.

Don McKinnon
Marlborough House, London
September 2007

PREFACE

The Commonwealth Secretariat is the intergovernmental body serving the 53 member countries of the Commonwealth. The Human Rights Unit of the Secretariat has a mandate to assist Commonwealth members in their efforts to better promote and protect human rights, in accordance with the fundamental values of the Commonwealth, including international human rights standards. One core function of the Unit is to ascertain, consolidate, develop and promote 'best practices', from around the Commonwealth, on issues concerned with human rights. This publication is an example of such an approach to best practice.

The Model National Plan of Action on Human Rights has been developed by the Human Rights Unit (HRU), with the advice and assistance of an Expert Group assembled in London in June 2007 for such a purpose. It is intended primarily to assist Commonwealth member countries in the process of developing their own national plan, in accordance with their national and international obligations and imperatives and their own perceived priorities, for the promotion and protection of human rights at the national level.

Three assumptions underlie the production of this Model, and the very idea of national action plans on human rights: firstly, experience shows that authentic and sustainable national development and prosperity is best assured where attention is given to participation, inclusion and the human rights issues that inform these processes. The second assumption is that developing a national plan does not necessarily mean adding yet another bureaucratic layer to what may be already-stretched national

departments: while certain extra efforts are certainly required, the idea is that human rights objectives coincide with the core duties and functions of most areas of government. Thirdly, this publication is a *Model* only and not intended to be prescriptive. It is intended to provide a basis from which to work.

The development of this Commonwealth Model Plan is intended to stimulate national level planning, against the backdrop of work towards a 'Universal Periodic Review' mechanism underway in the Human Rights Council of the United Nations, and the human rights imperatives underlying the Millennium Development Goals (to which national plan objectives would normally be strongly linked). Finally, it is being launched at the outset of 2008 which will mark the 60th anniversary of the *Universal Declaration of Human Rights*, an opportunity to call for renewed focus on national level implementation. This Model is part of the Secretariat's contribution to facilitating that process.

The Human Rights Unit, which has produced this model, would like to thank the following Expert Group members, drawn from a variety of backgrounds and from across of the Commonwealth, for freely giving of their time and expertise in order to contribute to the production of this Model:

● **Dr Clarence Dias**

Director, International Centre for Law & Development

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● **Jody Kollapen**

Chairperson, South African Human Rights Commission

● **Professor Robert McCorquodale**

Professor of International Law and Human Rights & Head, School of Law University of Nottingham

● **Bahame Tom Nyanduga**

Commissioner, African Commission on Human and People's Rights

● **Sir Clare K. Roberts**

Commissioner, Inter-American Commission on Human Rights
Formerly Attorney General of Antigua & Barbuda

Joined by● **Stephanie Aiyagari**

Commonwealth Human Rights Initiative (CHRI)

● **Caroline Harvey**

Office of the United Nations High Commissioner for Human Rights

The Human Rights Unit would also like to acknowledge with appreciation the work of the Office of the High Commissioner for Human Rights, whose comprehensive 2002 publication *Handbook on National Human Rights Action Plans* provided a basis for the deliberations of the Expert Group and for the production of this Model.

The process of formulating and implementing a national action plan is, by definition, not something that can be achieved *for* a country, but only *by* a country, according to its priorities and particularities. Nevertheless the Human Rights Unit stands ready to assist governments in member countries with the process of tailoring a national action plan that meets their own needs while advancing Commonwealth values.

Rabab Fatima

Head of Human Rights

Commonwealth Secretariat

London

September 2007

PART I: COMMONWEALTH VALUES

Values, Principles, Standards

Commonwealth countries are all committed to the fundamental principles, including human rights, outlined in the *Harare Commonwealth Declaration* of 1991. The *Harare Declaration* reaffirms the *Declaration of Commonwealth Principles* agreed in Singapore in 1971. This Commonwealth commitment to human rights has been shaped by the organisation's historical origins, including colonial independence struggles, and the united positions the Commonwealth has adopted on issues of human rights, for example, its leading and principled opposition to racism and *apartheid*.

The commitment has also been consistently and strongly reaffirmed by Commonwealth Heads of Government in their formal statements at various meetings, in which they have committed themselves and their countries to work with renewed vigour for the protection and promotion of the fundamental political values of the Commonwealth.

These fundamental Commonwealth values include commitments to:

- democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; and
- fundamental human rights, including equal rights and opportunities for all citizens, regardless of race, colour, creed, or political belief.

The *Harare Declaration* also includes pledges to work in specific areas of special relevance which are reflected in the *Universal*

Declaration of Human Rights 1948 and other international human rights instruments. These include:

- equality and equal opportunity for women;
- provision of universal access to education;
- promotion of sustainable development and alleviation of poverty;
- extension of the benefits of development within a framework of respect for human rights;
- protection of the environment; and
- combating drug trafficking and abuse and communicable diseases.

Of relevance to a national action plan on human rights, in the *Aso Rock Commonwealth Declaration on Development and Democracy* (December 2003), Heads of Government declared their commitment to establishing in their respective countries a 'machinery to protect human rights':

"[7] We commit ourselves to make democracy work better for pro-poor-development by implementing sustainable development programmes and enhancing democratic institutions and processes in all human endeavours. We recognise that building democracy is a constantly evolving process. It must also be uncomplicated and take into account national circumstances.

Among the objectives we seek to promote are the following:

- i. a participatory democracy characterised by free and fair elections and representative legislatures
- ii. an independent judiciary
- iii. a well-trained public service
- v. machinery to protect human rights
- vi. the right to information
- vii. active participation of civil society, including women and youth..."

Putting Principles into Practice – national plans

These principles, arrived at by international consensus, still require national level implementation. Commitment to shared Commonwealth principles and the organisation's fundamental political values is given firm and tangible expression when countries take specific national-level constitutional, legislative, administrative and other measures to respect and fulfil, promote and protect, for all persons, those rights recognised as fundamental to development, stability and well-being in democratic societies.

By taking deliberate actions to address human rights and to ensure equal participation in national political life and economic development, countries are working towards the ideals of a just, peaceful and prosperous society envisioned by the modern Commonwealth.

The purpose of a National Action Plan on Human Rights is to enable these principles to be translated into practice at a national level, in a systematic and coherent way adapted to the country's circumstances.

The Commonwealth Secretariat

By their statements in the 1995 *Millbrook Commonwealth Action Programme of the Harare Declaration*, Commonwealth Heads of Government requested that the Commonwealth Secretariat work to "provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth's fundamental political values," including assistance in building the capacity of governments and institutions to deliver on human rights objectives.

From the basis of this and other mandates including those arising out of the *Singapore*, *Harare*, and *Aso Rock* Declarations, and the *Latimer House Principles*, the Secretariat acts as a trusted partner for governments, providing advice and assistance. This includes providing support to member countries in the promotion and protection of human rights. The development of this Model National Action Plan on Human Rights is in response to needs expressed by members, in particular smaller states. Its publication is part of the comprehensive assistance available to member governments. For example, provision of support towards tailored national action plans for countries, upon request. In this way the Secretariat helps

member countries to further Commonwealth values by national-level actions: *putting principles into practice.*

Commonwealth Values: Human Rights

"...we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives..."

...we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil...we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality..."

...we recognise the importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world..."

1991 Commonwealth Harare Declaration
Commonwealth Heads of Government

PART II: THE COMMONWEALTH MODEL NATIONAL ACTION PLAN

● Rationale

- Why the need for a National Action Plan on Human Rights?

● Process

- What actions might producing a National Action Plan involve?

● Content

- What issues should a National Action Plan deal with, and how?

● Implementation

- Having a Plan is not enough: implementation is key.

● Monitoring and Evaluation

- Ensuring accurate and effective action.
-

1. Rationale – Why the Need for a National Action Plan on Human Rights?

1.1 Significance of national-level protection of human rights

Universal standards and guarantees for the protection of human rights are mainly elaborated and promulgated at the international or regional level. But it is at the national level where the opportunity occurs to best respect, promote, protect and fulfil human rights, in accordance with the core functions and duties of any State or government. International standards therefore take on meaning and effect in the promotion and protection of human rights at the national level by the State and its agencies.

The international human rights mechanisms coordinated by the United Nations describe the ideal of a 'national protection system' for human rights as: *a coherent deliberately maintained and*

interlocking system of different national agencies and institutions, standards and procedures that provide the means by which human rights violations are prevented or remedied, by which awareness of human rights is spread, and by which the basic entitlements of all persons can be claimed and realised.

Such a 'system' does not necessarily mean adding new features: it involves the existing, core mechanisms of government. Elements of a national system for human rights protection would include:

- protective and enabling laws (consistent with international human rights standards),
- independent and effective institutions and procedures to give effect to one's claim for rights (including courts, the police and law enforcement agencies), and
- strong elements that ensure accountability and an enabling environment, including an independent media and robust civil society.

"The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights."

Part II (para 71) of the Vienna Declaration and Programme of Action of States attending the 1993 Vienna World Conference on Human Rights.

1.2 The need for a NAP

Why is there a need for a National Action Plan on Human Rights (NAP)?

It has become clear that while many member countries may be seeking to improve their capacity to protect and promote human rights, they lack a 'roadmap' to do so in a comprehensive and coherent manner and in coordination with all local and international agencies and actors.

At present, the main barrier to advancing human rights in many Commonwealth countries is lack of capacity and awareness and coordination within and between different government agencies.

For example:

- Often there is no single agency with the 'lead' on coordinating human rights implementation measures, which are often dealt with piecemeal by different departments.
- Often international partners offer capacity building programmes, where the host government is not in a position to coordinate, maximise the effect of, or absorb these initiatives.
- Often, because they cover such a broad spectrum and are not the responsibility of any single department, human rights issues are considered to be issues falling outside of mainstream public affairs and policy. This is despite the fact that they relate to almost all areas of public affairs and national life.

Whether one is speaking of national constitutional or legislative requirements, or adherence to international standards, 'compliance' with human rights standards involves a continuous effort. What many member countries often lack is a coherent and structured national action plan or framework on human rights.

1.3 The purpose of a NAP

Developing and implementing a NAP is intended to meet this need. The purpose of a NAP includes:

- to ensure the national promotion and protection of human rights as protected in national constitutional law and other legislations, and international law,
- to assess and set developmental and political priorities from a human rights perspective,
- to provide a mechanism for national coordination of measures to improve the promotion and protection of human rights generally,
- to sharpen the accuracy of existing national policies and plans (on all relevant subjects) with the benefit of a rights-based analysis,
- to ensure coordination on implementation of and reporting on international human rights treaty obligations,
- to ensure coordination of any donor-driven human rights programmes benefiting the country and so provide a systematic framework for the integration of different activities into a coherent whole,

- to place human rights improvements in the context of public policy, so that governments and communities “can endorse human rights improvements as practical goals, devise programmes to ensure the achievement of these goals, engage all relevant sectors of government and society, and allocate sufficient resources.”¹

1.4 The context for a NAP

Commonwealth countries do share in common a commitment to certain fundamental principles and international standards on human rights, and these will affect the NAP. But the Commonwealth is a diverse group of countries. Each country has its own constitutional and legal systems, international treaty obligations, political cultures, development issues and human rights priorities. These features, priorities and concerns will affect the process of developing a NAP and the structure and content of the NAP itself.

Thus by definition a NAP must be ‘homegrown’ and address national circumstances, and be delivered by national mechanisms. International donor assistance may be available during the process of defining a NAP and implementing it. But the primary responsibility and direction has to be national and local.

1.5 NAPs and existing national plans and policies

Clearly, the NAP on human rights should take into account existing national plans (e.g. on gender equality, or HIV AIDS) as well as other planning and evaluation processes such as treaty obligations, the MDG processes, etc.

A ‘national protection system’ should not necessarily be taken to mean the addition of a further layer of institutions, systems or procedures. It complements and reinforces other government plans and policies, and it may redirect some of these. It may involve new institutions (such as a human rights commission). But it otherwise is addressed to regular existing institutions and what they do. It is not about the imposition of very difficult or unrealistic structures or systems according to some formula – instead, the process of designing a NAP takes existing national plans, problems and possibilities into account.

¹ UN-OHCHR *Handbook on National Human Rights Plans of Action* (Professional Training Series # 10), 2002, para [2.4].

A NAP must seek to bring human rights issues within the core activities of government. It involves the continuous process of ensuring that, as far as possible, existing and future national laws, policies and actions take human rights standards into account and attempt to comply with, and give effect to, applicable human rights principles.

A successful NAP is judged not on what it looks like on paper, but whether its objectives are well considered and then met.

A successful NAP is designed with capacity limits in mind: i.e. *what can be delivered?*

It must be acknowledged that designing and implementing a NAP may create additional workload. Meeting national human rights goals may demand energy and motivation across government agencies and others. Progress will require effort and coordination. However, the benefits are clear (see section 1.6, below). Also, a well designed and managed NAP does not always mean simply “doing more” – it can also mean “doing things differently.” So implementation of a NAP means directing the ongoing everyday efforts of government, to meet national imperatives and priorities on human rights, whatever these might be.

1.6 Why a NAP? The benefits of a NAP

Effective NAPs are intended to be ‘homegrown’ and relevant to national priorities, and practical in orientation: they set achievable targets and propose realistic activities aimed at reaching these objectives, and aim to do so mostly within the existing national machineries and plans.

- The main benefit of a NAP is that it allows a country to be proactive in addressing its own human rights issues: defining its own national human rights agenda and priorities, within the framework of international standards and Commonwealth values.

The other obvious benefits of such a well-constructed NAP can be identified as:

- Stronger administration of justice, improved adherence to the rule of law, strengthened independence of the judiciary and improved practices on the part of security authorities, all contributing to social harmony and general national progress and to international recognition and standing;

- Greater understanding of human rights standards and their value to individuals and the community;
- Better awareness and implementation of economic, social and cultural rights, leading to an improved quality of life, particularly for vulnerable groups;
- Because they aim to draw in all departments and agencies, NAPs create a vehicle for keeping all agencies cooperating more constructively;
- The working collaboration on the process of developing a NAP can lead to a more effective relationship between government and civil society institutions;
- The process of devising a NAP should stimulate a more comprehensive assessment of needs in the country concerned and, by making plans explicit both to the government itself and to the general public, generate a commitment that may not otherwise exist;
- A comprehensive NAP can facilitate the mobilization of domestic and international resources, including through the United Nations and other programmes of technical cooperation, for countries that need resources, training and expertise to achieve their human rights goals;
- Overall reduced risk of social tensions and catastrophic unrest and conflict that can have long-lasting adverse impacts on the country and its people.

Ensuring Human Rights is a Vital Part of National Development

The Commonwealth approach is that respect for human rights such as freedom of expression, and fulfilment of human rights such as the right to access basic education, are not only matters of high, universal principle – they are also directly connected to the prospects for a country's inclusive and sustainable national development and prosperity.

Attention to human rights is vital to identifying development needs accurately and responding to these in fulfilment of the duty of government. It is vital to building a tolerant and stable society. It is vital to a country's international image, relating to investor confidence, tourism, etc.

On the other hand, abuse or neglect of human rights hampers development and undermines stability, often leading to conflict.

This is explicitly recognised in the *Universal Declaration of Human Rights 1948*:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

...Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."

1.7 Why is there a need for a Model NAP? Why a Commonwealth Model?

As noted in the discussion on 'context' above, each country is different: although there are common international standards, there is no 'one size fits all' when it comes to what national actions to take on human rights.

However, it is possible to draw on particular useful practices adopted in various countries, and Commonwealth countries in particular share some common basic constitutional, legal and governmental structures. Experience with legislation and institution-building in Commonwealth countries shows that it is likely that

these common features mean that one will be able to apply certain experiences from one Commonwealth country to another (with the necessary caution, already expressed, that each country situation is different). This fact commends the formulation a Commonwealth Model Plan, such as this, drawing on these commonalities.²

The Commonwealth Model Plan draws from best practices around the Commonwealth and expert input and advice. It is also fortunate to be able to draw on the past work of the Office of the UN High Commissioner for Human Rights (OHCHR), including OHCHR's *Handbook on National Human Rights Plans of Action*.

It is intended to be a practical and easy to use resource that any Commonwealth country might use as a basis for national-level consultation, design and implementation of a NAP tailored to what is appropriate and relevant locally. The Model is not prescriptive - it is intended to be a Model only. It should certainly not be thought that "unless a NAP is as full and comprehensive as this Model, it should not be attempted". Some specific elements of the Model can be adopted and pursued, and others may not be appropriate or possible in a given country.

² These are recognisable Commonwealth features, and include some shared historical experiences, the use of the English language, a tendency for parliamentary systems, the common law legal system, similar judicial systems and conventions, the rule of law, separation of powers.

Summary of the Rationale and Features of a NAP

- It provides a vehicle to put Commonwealth **principles into practice**: international standards, but national actions
- It is based on recognition of the **need** for a proactive, coordinated, practical, realistic and comprehensive national plan for addressing human rights
- It results from a conscious official acknowledgment of the many **benefits** of a NAP. It sees possibilities, not just problems
- It is '**homegrown**' – it is locally driven, locally designed, locally delivered (with or without international assistance)
- It takes its shape from its **context** – a NAP takes existing plans and policies into account and does not attempt to duplicate these
- It takes account of **capacity** – it need not try to address every possible human rights issue: some selected elements only of the Model can be taken to ensure that the objectives are **realistic and achievable**.

2. Process – Developing a National Action Plan

A national effort to promote and protect human rights is not a one-off event: it is a matter of continuously adjusting to changing priorities and needs. It should be remembered that merely developing a NAP is only a first step: implementation is what matters.

However, the process of designing and adopting the NAP can be as important as the outcome (the Plan itself). The way in which the process is conducted is significant and can determine:

- Whether the NAP as a whole has overall political support at a high level;
- Whether the NAP and its measures have ‘buy-in’ - the true support, interest and cooperation of government agencies and departments, as well as civil society and even donors;
- How accurate the NAP is in addressing what are actually the human rights issues for any particular country;
- How practical and achievable the measures in the NAP are likely to be.

It should be noted that embarking on the process of developing a NAP should not suspend or postpone implementation of ongoing or new measures to promote and protect human rights. Also, it is not necessary for the NAP to be complete in all respects before some of its action points are followed up.

Developing a NAP: what are some of the suggested features of the process?

Experience in a variety of countries shows that features might need to include:

- Initiation
- Decision and Designation
- Consultation
- Assessment (issues and priorities)
- Design
- Endorsement and Adoption

● **Initiation – high level political support, approval, leadership**

Sometimes, the initiative for a NAP will come from the highest public office. This is ideal, of course, to give the process status and momentum and to be part of the national development vision and strategy.

However, if the NAP idea is instead initiated at a departmental level, it becomes vital to secure high level political approval and recognition of the significance of a NAP to national development. Specific endorsement and direction from the head of government and/or relevant ministers therefore should ideally be obtained at the earliest possible stage. Among other things, this facilitates inter-departmental cooperation.

Of course it is not always the case that the initiative for an NAP will come from government – it may be a something moved by civil society, or a ‘bottom – up’ process.

● **Decision and Designation**

Once the decision to proceed towards a NAP is taken, it will normally be very important that the relevant authority designates a body to coordinate and lead the process. This body needs to conceptualise the NAP and give it shape. It will map out the process towards a NAP, ensure wide consultation, draft the NAP, and report to the leadership. This is the fundamental task of developing both the concept of a NAP, and the practical steps and mechanisms for its implementation.

This can be done:

- By designation of a lead agency or department, and/or
- By establishment of a national coordination committee

Because of the importance of getting support and commitment of all departments and others, a committee may be preferable to a single agency. But if a committee is preferred (e.g. all relevant ministries, civil society, donors), this would still require a lead agency to steer the committee.

The identity of the most suitable agency to coordinate matters will depend on the country. This could be, for example, the Ministry of Justice, or the Ministry of Foreign Affairs, the Prime Minister’s

Office, Ministry for Planning, Parliamentary Committee on Human Rights, etc.

It would not normally be appropriate for a national human rights commission (if one exists) to have this role – the development of national action plans is a governmental function and responsibility. (Of course the national human rights institution should be a part of the process in a consultative, implementation and review capacity: see below).

● Consultation

A key part of the process of formulating a NAP is identifying relevant stakeholders from within and outside of government, and consultation with these. This involves bringing stakeholders 'on board,' receiving their inputs, and ensuring that they feel part of the national effort which is the NAP.

Consultation will be on what issues the NAP should address, how these should be addressed, by whom, in what sequence and priority, on what timeframe, and so on.

Note that:

- i if the coordinating body is a committee and is inclusive (not just a lead agency), a large amount of the consultation will take place within the committee;
- ii consultation is not confined to any one part of the process – it relates to assessing the human rights situation (see below), deciding what the NAP should attempt to deal with, as well as to producing the NAP. It would also continue into implementation of the Plan;
- iii the list below (or who might be involved in the process) may appear long. But these are suggestions only. The need for consultation should not be seen as so daunting that the NAP process itself is postponed: consultation processes do not need to be elaborate in order to be effective.

Who might be a part of the consultative process (and/or the Committee)?

- This will include government ministries and departments (for example dealing with foreign affairs, justice, home affairs or interior, education, health, women, youth, labour, social welfare, uniformed services, planning, finance, etc);

- National Human Rights Commission (if one exists);
- parliamentarians (or relevant parliamentary committees);
- the judiciary and legal profession;
- local human rights NGO's and special interest NGOs such as women's or children's NGOs;
- the media;
- trade unions and professional groups e.g. teachers or health workers;
- academics, research institutes and experts;
- private organisations and business;
- others including traditional leaders or chiefly authorities if any;
- Donor countries and international agencies (and other similar 'external' actors) may or may not be included in the consultation process or the committee. It may be useful to consult them, but this is a considered decision which needs to be made by each country, depending on its needs and relationships.

Determining how much consultation is required, or who should be a part of any coordinating committee, is a balance of the following two factors:

'Inclusiveness' - the consultative process/committee needs to involve (or at least inform) significant government agencies, institutions and organisations, otherwise the NAP will lack accuracy and acceptability and not gain proactive cooperation.

'Efficiency' – the process needs to have momentum and progress. So for example the larger the membership of the committee, the more difficult it will be to convene regular and effective meetings in order to advance the NAP.

Governments are primarily responsible for a NAP and its delivery. But Commonwealth experience and best practice shows that the legitimacy and effectiveness of the Plan process (and its implementation in due course), normally requires that there be consultation with civil society and others, as well as their representation in the Committee.

It is difficult to imagine an effective NAP that is drawn up without

consultation with local NGOs (and others) working in the relevant areas of human rights or service delivery.

● **Assessment (issues and priorities)**

A very important part of the process of developing a NAP is to conduct a national assessment (survey, review, audit, or 'baseline' study) of what the human rights situation is in the country: what is the national human rights context? What issues should the NAP deal with, in what order of priority? What are the legislative and other considerations? Who is already working on human rights issues? Who should be working on human rights issues? And so on.

A very thorough and honest review of the existing structures, processes, problems and challenges is a core part of the process. An effective NAP is one which is practically directed towards specific issues, which need to be identified.

Before a complete NAP can be drawn up, with objectives and priorities and allocation of responsibilities, it is crucial to know what the present situation is.

How to assess?

The process of conducting a national assessment of human rights issues is precisely where broad consultation becomes very important:

- A plan drawn up after deliberately seeking accurate information is more likely to actually address human rights concerns in the community.
- If government ministries are to be allocated tasks under the NAP and are expected to be proactive, enthusiastic and cooperative about the NAP tasks, it is right and sensible that they should first be consulted on what they perceive to be the human rights priorities in their respective field.
- Local NGOs and human rights defenders are often an excellent source of information and opinion. If they are to back the NAP and become active partners in delivery (and not just critics), their views on what the NAP should deal with should be sought.
- If further governmental or external (donor) funding is sought for some of the NAP tasks, showing the conduct of a review or assessment will give confidence to a decision-maker that the process will bring results.

- The mere action of conducting such a survey can send a positive message in the community, about responsive government, and can help keep open channels of communication.
- The assessment provides something against which targets can be set in the NAP, and by reference to which the NAP can be evaluated and adapted in future.

This survey would normally be the responsibility of the lead agency (or committee), or their designate.

What are some of the sources of information?

Government data and information (e.g. compiled for MDG reporting purposes), reports of the national human rights institution (if one exists), feedback from civil society, media reports, reports to and responses from the monitoring bodies of the treaties that the country has ratified (e.g. national CEDAW report), Special Rapporteurs' reports, and reports by international organisations or donors are all probable sources.

It is important to keep in mind that expert, objective and discreet technical assistance and analysis, including for example from the Commonwealth Secretariat, is available to conduct these assessments.

What is to be assessed?

What follows is a list of some of the possible primary questions and avenues for enquiry in establishing a more complete national human rights 'picture' to base the NAP on:

- a) What are seen as the most significant human rights issues in the country?
- b) What are seen as the priorities as between these issues?
- c) Which groups in society can be identified as particularly vulnerable and in need of protection?
- d) What are seen as the obstacles to better protection of human rights or awareness of human rights?
- e) What is the national legal framework: what does the national constitution specify or require in relation to human rights?
What does national legislation specify or require in relation to human rights?

- f) What is the international framework shaping the NAP: what international obligations on human rights does the country have? What human rights conventions is the country a party to? What is the status of implementation or reporting on those? What are seen as the obstacles to ratification or reporting or implementation?
- g) What activities to promote and protect human rights explicitly are underway or completed?
- h) Which are the departments, organisations, individuals presently involved in these activities?
- i) What 'regular activities are presently being done which have a human rights element that has not been made explicit? For example, access to primary education.
- j) Are there departments that should be dealing with human rights issues that do not yet consider this part of their role?
- k) What activities under the national programme to address MDG targets relate to human rights and can be listed in the NAP?
- l) What other national plans of action are in place that relate to human rights (e.g. national gender equality plans), so that the NAP accounts for those?

● Design

The process would then involve the lead agency (or other process as agreed during consultation) formulating or drafting the actual national action plan, by reference to:

- (i) the issues, priorities and relevant agencies identified in the assessment;
- (ii) the various possible elements set out in the Model (see 'Content' below), including priority actions and other activities, tasks, targets and timeframes, and the identity of the responsible department or agency;
- (iii) in relation to timeframes, it is recommended that a NAP should be for a maximum of 5 years. It should therefore set achievable objectives and milestones against the backdrop of a clear time limit.

● Endorsement and Adoption

Once the NAP is agreed, it is important (since it will involve a number of agencies and departments) to secure highest level **government endorsement**.

Note that it is usually not necessary or appropriate that the NAP be incorporated into legislation. Thought should be given, however, to how MPs and Parliaments, as elected representatives, might be involved in the process at various stages, not limited to presenting the NAP to Parliament or through Cabinet for endorsement. This is ideal, but if considered unworkable the Plan may simply be promulgated in the manner of other public policy initiatives. The approval of the committee itself, if one was set up, may have sufficient weight.

It might be considered useful and correct to make a **public announcement** of the publication of the NAP (the NAP process may even be publicised from the start to ensure transparency and participation). It will also usually be necessary to disseminate the adopted national action plan, or relevant parts of it, to all concerned as part of the process of implementation and integration into their respective policies and plans of action.

Once the NAP is produced, in most cases there will still be a **role for the lead agency and/or the committee**, since the most significant phase now arises – *ensuring that the NAP goals and items are implemented*. Of course, elements of a NAP can be started on before the plan is finalised: *starting a process towards a NAP does not justify or require suspending all other human rights activities*.

Summary: the process of producing a NAP

- This requires **leadership** and approval at a high level: for initiation, for endorsement (once NAP finalised), and to call implementation to account
- A **lead agency or committee** is usually needed to steer and coordinate the process – it can decide the best methodology
- **Consultation** with all stakeholders (government and other) is vital to accurately identify issues for the NAP, and ensure 'buy-in' and cooperation in implementing it
- An effective and legitimate NAP is normally based on a thorough **assessment** of the human rights situation in the country

The process certainly does not end with the production of the NAP. Production of the NAP is not something done only for its own sake – it is implementation of the NAP that is the important thing.

VISION and ENERGY



The Process

- Ensuring highest level support
- A focal agency leading
- A national coordinating committee
- Wide consultation and involvement
- Assessing the human rights priorities
- Accounting for existing planning



Implementation

- High Level Endorsement & Adoption Committee / Focal Agency oversees
- Follows Plan & Priorities & Timing
- Consultation and feedback welcomed
- Feeds into core government activity
- Reconciled to any treaty process



The Plan's Content

- Done by consultation or Committee
- Based on international standards
- Applying constitutional standards
- Accounts for existing activities
- Include timeframes and targets
- Allocation of responsibility for tasks



3. Content – Model Issues for a National Action Plan

This Model is a resource or toolkit intended to provide the elements of a framework for a coherent, comprehensive, coordinated national plan – one that is designed according to national needs and priorities (while taking account of international standards). A NAP is intended to complement existing national plans and actions, and enhance them. The whole point is to bring human rights within the normal range of government activity.

The content of a NAP – what human rights issues it chooses to deal with, and how it does that - must be 'tailored to the circumstances of each country'.

Other than this, there are really **two main points** about the Content of a NAP:

- 1) The content of the NAP is to be decided by reference to the priorities, issues and existing obligations identified, after consultation, in the assessment/survey/baseline study.
- 2) The NAP contains tasks, actions and activities or programmes: these may be new under the NAP, or they might be the continuation or modification of existing programmes.

"All countries share a common ultimate goal – broadly, 'all human rights for all' – but the path to that goal, in practical terms, will be different for each country...different NAPs will contain common elements...but each will differ in terms of specifics. A national action plan must be tailored to the circumstances of each country."

UN OHCHR Handbook on National Action Plans (2002), para 9.2, p 72.

● **The Model below deals with four elements:**

- A) norms and standards that a NAP could or should address;
- B) international and regional instruments and mechanism that a NAP may need to address or provide for;
- C) national mechanisms and procedures for ensuring protection of human rights, and enabling people to access these;

D) human rights education and awareness – an important part of any effective NAP.

● In general, the Model does not aim to give detailed or step-by-step suggestions on the content of a NAP. Where it does so (see ‘prisons’ below), this is to indicate the sorts of issues that a NAP might cover in depth. So the Model also does not attempt to include what a NAP would need to include, namely detail on specific actions:

- i) **what** must be done
- ii) **by whom**, and with whose cooperation / input / agreement
- iii) taking account of **what other plans** or programmes
- iv) with **what resources** or facilities
- v) **by when**.

A. **NORMS & STANDARDS**

● The issues and items for action in the NAP can be most accurately identified and categorised by reference to the applicable fundamental rights. Normal government services and actions will be enhanced by the NAP giving attention to what is required by the rights themselves (i.e. the duties they create on government and others).

● While categorised separately below, the NAP should be based firmly on the principle, which is also a Commonwealth principle, that all fundamental rights are indivisible – our civil, political, social, cultural and economic needs and aspirations are mutually dependent, and the rights which protect these cannot be played off against each other. Positive economic development and material wellbeing (economic and social rights) is empty without the freedom to express oneself socially and culturally as a person (civil and political rights).

Fulfilment of economic, social and cultural rights

Organising NAP content by reference to ESC rights

The NAP may include positive and protective actions and measures (see below) that the government should take in order to progressively ensure, without any form of

discrimination, the access to the enjoyment of, and fulfilment of, economic, social and cultural rights, with particular attention to vulnerable groups and persons.

Since these rights (such as a right to adequate shelter) relate to core duties of any government, it is likely that there exist some national plans dealing with the issues (e.g. national housing policy). Attention to these as a matter of rights may reveal patterns of deprivation or discrimination.

If party to the ICESCR

If the country is already a party to the *International Covenant on Economic, Social and Cultural Rights*:

- a) The NAP would normally need to set out clear and achievable measures (see below) to implement progressively and systematically the provisions of the Covenant and to ensure compliance with these.
- b) The NAP should include attention to whether country reports on the ICESCR are up to date, the status of implementation of past report recommendations.
- c) The NAP may include action to review any Reservations to the ICESCR made by the country, with a view to withdrawing or modifying these.

If not party to ICESCR

If the country is not yet a party to the ICESCR:

- d) The NAP may include initiating the political and legal process of ratification of (accession to) the *International Covenant on Economic, Social and Cultural Rights*, or at least reviewing the reasons why ratification has not yet occurred.

General steps

Whether or not a party to ICESCR, the NAP might include the following actions to protect, respect and fulfil ESC rights (these are examples and not the only steps that might be taken):

- e) Legislative measures & law reform – *for example*, review laws to ensure that national employment law does not discriminate against people who are HIV+.

- f) Legal or administrative measures to enable public access to information concerning policies and decisions affecting ESC rights.
- g) Administrative measures providing an effective means of access to government decision-making and redress for alleged violations of ESC rights – *for example*, an ombudsman to represent elderly persons.
- h) Elaboration of benchmarks for the realization of economic, social and cultural rights in line with the country's human rights obligations and development of specific programmes to achieve associated targets in areas such as:
 - the right to an adequate standard of living, including nutrition and housing;
 - the right to health;
 - the right to education;
 - the right to social security;
 - the right to take part in cultural life;
 - the right to just and favourable conditions of work and to form and join trade unions.
- i) Initiation of public inquiries into vulnerable groups or systemic problems in the areas of economic, social and cultural rights.
- j) Educative measures - programmes of awareness of economic, social and cultural rights both for relevant officials and workers and for the general public.
- k) Ratification of instruments other than ICESCR that relate to ESC rights, including the special conventions on the rights of migrant workers, women, children.

Realising the right to development

Access and Equal Enjoyment

One of the intended benefits of a NAP is to reduce marginalisation, exclusion and discrimination in access to basic resources, and the social and inter-group tension that may result. It is also true that development which does not account for this right is less likely to be sustainable and efficient.

To ensure effective and full realization of the right to development,³ it is imperative to ensure that development is human-centred and contributes to human well-being. There should be active and meaningful participation, especially by vulnerable groups, in national development processes, and fulfilment of their right to enjoy the benefits of national development.

The right to development can be addressed in a NAP through (by example):

- a) Policy, legislative, and other measures (including consultative forums) to ensure participation and representation of affected groups in government planning and other decisions affecting their livelihood;
- b) Legal or administrative measures to enable public access to information about such issues;
- c) Initiation of public enquiries about such issues, with particular reference to vulnerable and marginalised groups;
- d) Educative measures about this right, including through commission and publication of expert studies/reports, follow up actions, and awareness programmes;
- e) Establishment of effective monitoring mechanisms to assess the benefits of, or lack in the progress of effective realization towards, this right.

Respecting and protecting civil and political rights

Organising NAP content by reference to Civil and Political rights

Any country's NAP is likely to deal in a number of ways with the duty to protect, respect and fulfil civil and political rights.

International law as expounded by various authoritative bodies shows that it is necessary that there be positive action by government to ensure the full protection and enjoyment of these rights, including having in place laws, systems or procedures that can ensure these rights, or remedy violations.

³ See *Declaration on the Right to Development*, UN General Assembly Resolution 41/133 (4 December 1986).

If a party to ICCPR

If already party to the *International Covenant on Civil and Political Rights*:

- a) A significant part of the NAP should be devoted to setting out clear and achievable measures (see below) to implement the provisions of the Covenant systematically and to ensure compliance with these.
- b) The NAP should include attention to whether country reports on the ICCPR are up to date and the status of implementation of past report recommendations.
- c) The NAP may include an action to review any reservations to the ICCPR made by the country, with a view to withdrawing or modifying these.

If not yet a party to ICCPR

Where not a party to ICCPR:

- d) A significant item of the NAP could be review of the status of ratification of or accession to the International Covenant on Civil and Political Rights, or at least reviewing the reasons why ratification has not yet occurred.

General steps

Whether or not a party to ICCPR, there are a range of measures the NAP can include to implement civil and political rights and fulfil the governmental duty to protect these and to afford a remedy for any violation:

- e) Legislative measures & law reform of criminal procedure code and other key legislative acts – *for example*, review public order laws to ensure that freedom of assembly is not unreasonably curtailed and all rights and duties are balanced.
- f) Legal and administrative measures aimed at the eradication of impunity, providing an effective means of access to courts and tribunals and legal assistance, as redress for alleged violations.
- g) Establishment/strengthening of provisions for legal aid.
- h) Establishment of standing monitoring mechanisms or bodies on specific issues *for example* an external civilian

mechanism for complaints against the police.

- i) Initiation of public inquiries to investigate and formulate recommendations on vulnerable groups or systemic problems concerning civil and political rights, *for example* prison conditions and detention of persons before trial.
- j) Review of standard operating procedures and setting operational policies and guidelines for police, correctional service and security authorities to ensure accordance with human rights standards, *for example* review police rules on arrest, search and seizure, detention of suspects, crowd control, etc.
- k) Educative measures – curriculum development and special publicised programmes of training and awareness on civil and political rights for relevant officials (parliamentarians, officials, judiciary, magistrates, police and prisons officers, etc).
- l) Steps towards review of status on, and ratification of (accession to), instruments other than ICCPR that relate to civil & political rights, including *Convention Against Torture, the Optional Protocols (1 and 2) to the ICCPR*, and specialised conventions on racial discrimination, women's rights, etc.
- m) As revealed in the national human rights survey and consultations, other measures (legislative, policy, administrative) on issues arising from civil and political rights: freedom of expression, association and assembly, access to information, electoral reform, freedom of religion, etc.

B. INTERNATIONAL & REGIONAL INSTRUMENTS & SYSTEMS

- Certain clear universal principles have been reached by international consensus. All Commonwealth member countries are committed to these. They set the broader normative framework for all governmental action at a national level. They are international duties that create obligations at a national level.

While a NAP should be 'homegrown' and take account of national features such as constitutional imperatives, and while a NAP can

deal with human rights without including ratification as an item, there would still need to be some level of treatment in a NAP with the international framework on human rights.

This means the web of international human rights instruments (conventions and treaties),⁴ and their procedures are imperative for national implementation and reporting.

- By conventions or through the UN or regional systems, entire frameworks now exist for evaluation, monitoring and protection of human rights. ‘Human rights’ has become a language of political and development interaction, in addition to the significance of human rights issues themselves. In the modern Commonwealth, no country can ultimately afford to neglect the legitimate concern of its peers in the human rights situation in the country.

Experience shows that it is by engaging in good faith in the global system for the protection and promotion of human rights that countries can access assistance, appreciate the practical measures taken by other countries, and show to other countries the measures taken nationally.

For these reasons, a NAP might seek to provide for increased national engagement in the international and regional human rights systems.

International Instruments: Ratification / Implementation/Reporting NAP coverage of human rights treaties depends on level of ratification

The manner in which the NAP content deals with international instruments will depend on the level of ratification by the country of the core universal and regional international human rights conventions.

⁴ The primary instruments are the *International Covenant on Civil and Political Rights* 1966, and the *International Covenant on Economic, Social and Cultural Rights* 1966, which convert the rights recognised in the *Universal Declaration of Human Rights* into international law. As at mid 2007, 19 Commonwealth countries had not ratified one or both of these. Other significant conventions are the *Convention on the Elimination of All Forms of Racial Discrimination*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Rights of the Child*, the *Convention Against Torture*, the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, and the *Convention on the Rights of Persons with Disabilities*. Many of these include in addition one or more Optional Protocols. Regional instruments include the *African Charter on Human and People's Rights*, the *American Convention on Human Rights*, and the *European Convention on Human Rights*.

The consultation / survey process when formulating the NAP should reveal the universal and country-specific obligations of a country and its current status of ratification of the main international conventions, including whether reports on these are due, and the reservations (if any) made to those that have been ratified.

It is for each country to decide whether the NAP measures are heavily based on engagement with the system of conventions – either by pursuing ratification (where largely not ratified), or by focussing on implementation and reporting (where already largely ratified).

If country has a low degree of ratification

If there is a low level of ratification of the core conventions:

- a) The NAP might give some priority to reviewing this status, including the reasons why ratification has not proceeded, and initiating political approval, so as to move towards ratification/accession. (Of course, other aspects of the NAP or existing obligations do not have to be put on hold until ratification of core conventions is achieved; and the NAP should not stop at ratification but include implementation).
- b) The NAP may need to provide for awareness-raising about the impact of ratification, for relevant agencies and officials, judiciary, etc, in order to obtain support for ratification.
- c) International technical expertise may assist a country with this process.

If country has a high degree of ratification

If the country has ratified some or all of the major conventions, perhaps one of the most significant elements of the NAP would be the process of harmonising national laws with the obligations and standards. The NAP might include:

- d) Implementation measures – the incorporation of international human rights standards in national law and practice, by legislation, law reform and other methods. This will overlap with other NAP action items.
- e) Reporting on implementation, including any backlogs in country reports.

- f) Withdrawal of any reservations made to conventions in the past.
- g) International technical expertise, including legislative draftspersons, may assist a country with this process.

Ratification: 3 points to consider⁵

1. There is no requirement that a country's legal system be reviewed for compliance with international standards before it is possible to ratify.
2. It is accepted that the treaty obligation to implement rights nationally, arising from ratification, come into force within a 'reasonable time'. However, some rights by their nature are applicable immediately.
3. Some countries' constitutions contain certain rights and freedoms, and it may be thought that ratification does not add greatly to the existing human rights protections. But every country can always improve its human rights performance. The UN treaty bodies that examine country reports on the implementation of ratified conventions take a constructive approach – their recommendations are intended to point out where and how States might better realize their national programmes of promotion and protection of human rights.

The following explanation (from UN-OHCHR) indicates how the process of ratification, implementation and reporting might be seen as a central part of a NAP strategy:

"...States parties are encouraged to see the process of preparing their reports for the treaty bodies, not only as the fulfilment of an international obligation, but also as an opportunity to take stock of the state of human rights protection within their jurisdiction for the purpose of policy planning and implementation.

The report preparation process offers an occasion for each State party to:

(continued)

⁵ For complete guidance on the issue of ratification, contact HRU or see the *Commonwealth Handbook on Ratification of Human Rights Instruments*.

a) Conduct a comprehensive review of the measures it has taken to harmonize national law and policy with the provisions of the relevant international human rights treaties to which it is a party;

(b) Monitor progress made in promoting the enjoyment of the rights set forth in the treaties in the context of the promotion of human rights in general;

(c) Identify problems and shortcomings in its approach to the implementation of the treaties;

(d) Assess future needs and goals for more effective implementation of the treaties; and

(e) Plan and develop appropriate policies to achieve these goals.

Seen in this way, the reporting system is an important tool for a State in assessing what has been achieved, and what more needs to be done, to promote and protect human rights in the country..."

Engagement in the international and regional human rights systems

NAP covers national interaction with the UN and regional systems

Apart from ratification, the NAP might include measures for the country to engage constructively in the UN and regional human rights systems, including:

- a)** Attending meetings of the UN Human Rights Council, or seeking election as a Member.
- b)** Extending invitations to UN Special Rapporteurs (with mandates on specific themes such as Freedom of Religion, or Judiciary and the Legal Profession), so as to benefit from their constructive advice.
- c)** Developing a clear strategy for engaging with the local (country) or regional representative of the Office of the High Commissioner for Human Rights (OHCHR) and/or the United Nations Development Programme (UNDP). This is to ensure access to the capacity building assistance of the UN, relating to implementing the NAP and treaty obligations. Such contact may have been part of the initial consultation on the NAP.

- d) Participation in the meetings and workings of regional human rights systems.
- e) Proposed measures to strengthen cooperation with regional and international human rights organizations.
- f) Proposed measures of cooperation with other countries on human rights matters, including comparing experience in the implementation of national action plans.
- g) Where appropriate, drawing on international funding and technical assistance for the implementation of national action plan components (including from the Commonwealth Secretariat).
- h) Where appropriate and requested, national provision of funding and technical assistance for the promotion and protection of human rights in other countries.

C. NATIONAL MECHANISMS & AN ENABLING ENVIRONMENT

- In practical terms, the national level protection and advancement of human rights, which is at the heart of a NAP, requires attention to the ability of line ministries, government departments, uniformed services and courts (as well as other national institutions and mechanisms) to fulfil rights, prevent situations where violations occur, deliver on human rights objectives and provide appropriate remedies.

- It also requires proactively working to provide an enabling environment and protective legal framework for the non-governmental and civic activity which is an inherent part of a national human rights system.

By focussing on these issues, a government is acknowledging its duty as a matter of principle to provide a forum to deal with violations of human rights. It also reflects an understanding that where people are unable to articulate or remedy their grievances, respect for law and order can be undermined, leading to self-help and social conflict.

- As discussed in 1.5 (above), a NAP must seek to bring human rights issues within the range of the core activities of government. New institutions may be part of a NAP, but a 'national protection

system' should not be taken to mean, necessarily, the addition of a further layer of institutions, systems or procedures. It is more concerned with enhancing, refining and coordinating what these bodies do – this is what this aspect of a NAP should deal with.

Protection, Justice and Remedies – strong institutions and access to them

Part of general national planning

There will no doubt be existing national policies for strengthening the court and justice systems, police, etc and improving their efficiency and the ease of public access to them.

Human rights as a focus for review and reform of justice systems

Other motives often drive these policies (e.g., better courts reassure investors and the local economy) but a NAP would normally pay especial attention for reasons of human rights to perceived areas for improvement in access to, and delivery of, justice. This will give a different emphasis and importance to these policies.

The NAP should normally seek to adapt, adjust, reform or strengthen the justice system (substantive and procedural issues) by reference in particular to civil and political rights and economic and social rights protected in international law and/or the constitution.

Strengthening

Whether one is dealing with courts, ministries, police or uniformed services or other institutions, a NAP that looks at 'strengthening' justice systems might include measures such as the following (which are only examples):

- a) providing adequate resources, staffing, and physical facilities;
- b) ensuring independent and transparent processes for selection and promotion (e.g. of judges);
- c) ensuring simple record systems to prevent inefficiency and administrative errors and injustices;

- d) 'Strengthening' can also mean law reform and revision of procedures, according to the issues identified in the human rights assessment already undertaken;
- e) ensuring initial and in-service training and sensitisation on human rights;
- f) conducting public education programmes (*for example* via poster, pamphlet, radio, etc) concerning where and how to access justice and complaints systems.

An example: Prisons

This Model is not intended to be detailed. However, as an example of 'measures' which a NAP should detail on each topic, here are some practical actions that a detailed NAP might set out in relation to prisons (and by analogy other institutions):

- Review of budgets for prisons and soliciting advice on better allocation of resources (staff, premises, prisoners welfare and prison conditions);
- Where pre-trial persons are kept in prisons, review and reform of legislation on bail provisions to allow for bail for less serious offences;
- Review and reform sentencing policy and law to allow for conditional release and service of sentence in the community for less serious offenders;
- Establishment or enhancement of parole systems for eligible prisoners;
- Revamping prisons records and auditing prisoners to avoid persons overstaying their sentence or being wrongly categorised;
- Ensure categorisation that is compliant with human rights (separation of men and women, children; separation of convicted and non-convicted persons, etc);
- Human rights education for judges and magistrates, prisons officials, parole officers, and prisoners;

- Review of treatment of prisoner and of prisons conditions, in accordance with UN *Standard Minimum Rules* and other guidelines;
- Enhanced education, training, counselling and rehabilitation programmes to prepare prisoners to re-join the community;
- Enlisting the support of local churches, NGOs, community and family support groups and others to improve prison conditions and rehabilitation programmes;
- Enlisting the support of local and international groups and donors to assist with these measures (in addition to but not in place of government budget and activities).

An Independent Human Rights Commission or other accountability body

A key part of national protection

A key part of a comprehensive national protection system (and therefore a key part of a NAP) is an independent, accessible, viable and empowered national human rights institution (NHRI) or other mechanism, having either an educational role, or a protective role (with a variety of monitoring, reporting, and referral roles), or a combination of both kinds of role.

Where an NHRI already exists

In countries where a national human rights commission already exists:

- a) It should have had a significant consultative role in the process of formulating the NAP;⁶
- b) The NAP should clearly indicate the role of the NHRI in implementing and evaluating the NAP itself;
- c) The NAP may include commitment to (or concrete measures for) expanding or strengthening the mandate, staff, resources and abilities of the NHRI. This is particularly in those cases where it is given additional functions relating to implementation of the NAP;

⁶ Note however that it would be unusual for the NHRI to have primary responsibility for the NAP – this is a governmental function.

- d) The NAP may request the NHRI (or another actor) to report on what steps are needed to bring the NHRI further into conformity with the UN *Paris Principles* and the *Commonwealth Best Practice Guidelines on National Human Rights Institutions* – and then to take those steps;
- e) The NAP can recommend that the NHRI engage in the Commonwealth Forum of NHRIs, the International Coordinating Committee of NHRIs, and regional groupings of NHRIs.

Where an NHRI does not yet exist

Where an NHRI does not yet exist, the NAP may indicate as an action item that the process towards establishing a NHRI be commenced.

This may include:

- a) Securing real political will for such an institution in compliance with the UN *Paris Principles* as also explained in the Commonwealth's *Guidelines on National Human Rights Institutions*;
- b) Research and consideration of the presentation of the various options or models for its structure (all NHRIs have their own unique country features and legislation);
- c) Observing and seeking advice from peer NHRIs in other Commonwealth countries, the Commonwealth Forum of NHRIs and from international partners, as to the most appropriate form of NHRI for the country;
- d) Costing, staffing and resource forecasting;
- e) Information sharing and consultation with affected government agencies, the judiciary, legal profession and ombudsmen to gain their support and cooperation;
- f) Community education about the role of an NHRI, the services it offers, and how to access these;

Where a full NHRI not a viable option

In smaller Commonwealth countries, another form of national mechanism (other than a human rights commission) may be more viable. This might be because of concerns at institutional proliferation, or shortage of resources and suitable staff.

In these situations, the NAP can prescribe creation of an ombudsman's office, or similar office, with a human rights mandate including promotion, receiving complaints, and monitoring violations, and reporting. In some small states, an interim step could be by establishing a 'human rights desk' within a ministry (but with a supervisory role).

Ombudsman with mandate

If there already exists an Ombudsman's Office with a human rights mandate (or some other similar accountability body), the NAP can focus on how to strengthen this office.

This might include a longer-term strategy to convert eventually the Ombudsman's office into a full NHRI.

Ombudsman without mandate

If there already exists an Ombudsman's Office (or similar) but it lacks a human rights promotion or protection mandate, the NAP might include a review of this mandate, and reform to it, to ensure that there is an independent, non-judicial national body capable of receiving and processing allegations of human rights abuse.

An enabling environment for Rights Defenders, Civil Society, Media

Legal reform for an enabling environment

- a) The NAP might include proposed legislative, law reform and administrative measures aimed at facilitating the activities of journalists and the media, non-governmental organizations (advocacy and service delivery), professional bodies, and charities. This can include reform aimed at establishing a legal regime that balances the legitimate interest of the State in regulating some of the activities of any organisation, with the freedom of these organisations to carry out their work lawfully.
- b) These may include measures to encourage enhanced self-regulation on the part of civil society, for example on matters of financial transparency.

Inclusion

- c) The process of formulating the NAP should normally have included consultation with civil society representatives – this inclusive and participatory approach should remain a feature of implementation and monitoring of the plan.

Standing Forum for NGO/Govt Consultation

- d) Building on consultations during the NAP process, the NAP might include as a specific action item the establishment of a standing consultative forum for civil society with the government, to improve communication and ensure constructive working relationships as far as possible. This includes in relation to meeting the agreed NAP objectives.

The Media and its vital role

The media has a vital role to play in the promotion and protection of human rights. It is also a resource in national effort for accountability on human rights, and education about rights. A healthy and open national debate is vital to identifying and dealing with problems in society before they manifest into violence or disorder.

- e) The review of human rights issues may have revealed concerns with laws and regulations that unjustifiably limit the media (access to information, and freedom of expression), for example outdated criminal libel laws. These can be subject of review and law reform in the NAP.
- f) The NAP may contemplate a role for a proactive relationship with the media in the promotion of public understanding about human rights issues (*for example* on specific issues such as child abuse or domestic violence).
- g) The NAP should also include consideration of whether the media has a role in assisting government in publicising and evaluating the NAP itself.

D. HUMAN RIGHTS EDUCATION and AWARENESS

- It is often said that 'it is not enough to have human rights, if one is not aware of these rights, or how to ensure they are protected'. Awareness of and sensitivity to human rights issues helps to promote respect and understanding within and between communities, preventing damaging behaviour and conflict.
- Therefore, a key aspect of any national human rights agenda should be provision, in the NAP, for systematic civic education and awareness about human rights (including the *Universal Declaration on Human Rights* 1948), how are they realised, who bears the duty to respect them, what are legitimate limitations on rights. This should be planned to utilise a range of mediums and organisations, and to reach different groups in society.

Significant element of any NAP

While this is mentioned as a specific, stand-alone element in this Model, education and awareness-raising is an inherent element of measures throughout a NAP, whatever issue is being dealt with: 'strengthening' human rights capacity inevitably involves education and training.

There may need to be educational actions in the NAP concerning awareness of the NAP itself, especially among concerned agencies. Ideally of course, they would have been consulted during the process of drafting the NAP,

National Curriculum Development**– primary, – secondary, – tertiary, – other**

The NAP might include a component on national curriculum development:

- a) For primary and secondary schooling, map out a comprehensive (national) programme of human rights and civic values education for young people. The NAP can incorporate or refer to guidance provided in the United Nations *Guidelines for National Plans of Action for Human Rights Education*. Assistance could be sought, in this case, from the OHCHR and other organisations.
- b) For tertiary levels, the NAP can seek to improve the number and quality of human rights courses available.

The Commonwealth Secretariat has also produced model resources on tertiary level education.⁷

c) Curriculum development for other audiences, to include human rights principles into wider training, can be planned. *For example*, including human rights training in police recruit and continuation training.

Short training courses in human rights

d) The NAP might include plans for systematic or even compulsory courses or sensitization on human rights for target groups and institutions, including:

- civil service,
- police & prisons and the other uniformed services and security sector,
- legal profession, including judges and magistrates,
- NGO's and other civil society organizations or professional organizations,
- the media,
- health workers, social workers and counsellors
- trade unions,
- traditional authorities.

Public information campaigns about human rights

For the reasons indicated, the NAP can include public information and awareness campaigns:

- e) The NAP can provide for general public campaigns, *for example* posters on the *Universal Declaration of Human Rights* and/or the constitutional rights.
- f) The NAP can provide for campaigns in relation to raising awareness of specific issues or vulnerable groups (such as against racial discrimination, on respect for women, on domestic violence, on discrimination against HIV+ persons, etc).
- g) The NAP can identify world days that mark issues of groups (*for example* International Human Rights Day, International Women's Day, World Press Freedom Day, etc) and include a proactive, highly public and imaginative campaign to highlight issues and educate the public.

⁷ See Part III (links).

The media and corporations or foundations could be approached as part of the NAP strategy on this issue.

Vulnerable groups and individuals – the NAP response

A very important part of any NAP is to identify and prescribe particular action in relation to ensuring that the most vulnerable groups in society are empowered to enjoy their rights meaningfully, and able to participate in national life on an equal footing.

In preparing a NAP, a national survey of the human rights situation, and consultation, would normally reveal the particular areas of concern and priority, as well as identifying the vulnerable groups themselves. Persons in one group often belong to another (e.g. women living with HIV).

The NAP can be designed especially in its coordination function to ensure specifically that ordinary national plans such as education and health pay particular attention to vulnerable groups.

Consider the following possible vulnerable groups in a country:

- Women
- Children
- Youth
- Physically and Mentally Disabled persons
- Indigenous peoples
- Racial, ethnic, religious, linguistic and other minorities
- Persons living in poverty
- Persons living with HIV/AIDS
- Older persons
- Refugees and asylum-seekers
- Internally displaced persons
- Migrant workers

The Model NAP lists the sort of actions that might be included addressed to vulnerable groups and individuals: legislation or administrative action aimed at outlawing discrimination, or educational components highlighting the need for understanding, protection and inclusion of these groups and the social consequences of neglect and marginalisation. The NAP can include high visibility outreach activities to highlight the plight of vulnerable groups.

4. Implementation

The true significance of a NAP comes not in merely drawing up the Plan, but in implementing it. Moreover, 'implementation' is not a one-off event but an ongoing process, that leads back to review of the NAP in due course, and the setting of new priorities and actions to promote and protect human rights.

The practical aim of a NAP is that through coordinated and directed implementation measures, issues identified for action in the NAP or specific objectives set out in the NAP are reached (or there is progress on these).

While in indicating the model content this Model NAP points to general actions ('law reform', 'training or educational programmes', 'ratification', etc), it does not attempt to prescribe detailed measures to implement items of a NAP. Instead what follows are some general points (and some particular steps) to be borne in mind about implementing a NAP:

- **'Linked to Content'** – overall, the particular actions and activities to implement the NAP items take their form from the 'content' of the NAP itself (the issues selected to be addressed, and their context). The content of the NAP would normally have taken shape, in turn, from the assessment or survey of national human rights issues and priorities.
- **'Targets'** – a NAP will have set out not only topics to be addressed (for example 'ratification status on human rights conventions') but also set out specific targets or objectives (for example, 'reviewing and withdrawing any existing reservations to human rights conventions.')
- **'Prioritised'** - The NAP should have accorded priorities for items. The decision on according priority would normally be based on the human rights priorities identified in the process of developing the plan, capacity to deliver, and other issues.
- **'Timeframes'** - The NAP may accord a timeframe for the tasks or features set out in the plan. It is difficult to imagine an effective NAP which does not indicate timeframes when setting down objectives.

- **'A designated agency':**

- i) The lead agency or department responsible for drawing up the NAP would normally need to continue to supervise and coordinate implementation and monitor progress. Its role should not be limited to developing the Plan. If the NAP was settled by a committee, this committee could retain a supervisory role – but it may be more efficient for a single agency to coordinate implementation measures.

- ii) Implementation measures themselves are likely to be the responsibility of a number of different departments and agencies, each with particular responsibilities. These lines of responsibility would normally be clearly identified in the NAP, and might have been reached by agreement during the consultation process. The lead agency might well have implementation responsibilities in addition to coordinating overall.

- **'A government task'** – as with drawing up the NAP, at all times implementation remains the prerogative and responsibility of government. It is not normally something left to a national human rights commission (although it may have a role). However, there might be specific items on which the NAP called for partnerships, or for international or donor assistance.

- **'New and existing programmes'** – some of the measures identified in the NAP will require new programmes of activity in order for implementation. Other measures will involve modifying or redirecting existing programmes. Many will be activities that relate to core government activities, whether they are in the law and justice sector, policing and prisons, women and children's issues, health, education, etc. This is because one objective of a NAP is to bring human rights within the normal range of national development and planning processes.

- **'Implementation of convention obligations'** – the NAP design process would normally have taken into account and built into the NAP the existing obligations for treaty implementation arising from any human rights convention that the country is a party to.

- **'Continuous: refining and shaping'** – as implementation proceeds, the emphasis or even the overall objectives of the NAP

might change. An NAP can of course be modified and adjusted to suit the circumstances as they evolve.

- **'Publicised'** – An obvious 'implementation' step is publication and dissemination of the NAP itself to all relevant recipients. This may or may not include a 'launch' of the national plan: a 'launch' can help provide momentum to implementation and attract support within and outside of government.

As noted, the NAP would therefore normally need to specify in relation to each item set down as an element of the NAP:

- **what** must be done,
- with what sequence or **priority**: immediate, ongoing, deferred, etc.,
- by **whom**, and with whose cooperation / input / agreement, taking account of what other plans or programmes,
- with **what** resources or facilities,
- by **when**: the timeframe,

and the implementation of the NAP would need to follow this structure: this raises the final issue inherently linked with implementation: monitoring and evaluating the progress of implementation.

How might a NAP deal with the 'resource' issue?

The issue of human, financial and other resources that may be necessary for the process of consultation, design, and implementation of a NAP on human rights cannot be ignored. For example, an initial reaction of line ministries to assuming responsibilities under a NAP might be a concern at whether an extra funding burden may be created. Some considerations are:

- 1.** It may be inevitable that a commitment to a robust NAP carries resource implications. This is why obtaining highest-level support is vital (see 'The Process' above). So it is unavoidable that some actions to remedy some of the gaps in human rights protection or awareness, identified in the national assessment, will need to be costed as part of the NAP process. It would be for the government to find resources within its existing budget, budget for the NAP, or try to find external funding (item 4, below) as part of its development agenda.
- 2.** On the other hand, some of the activities involved in designing or implementing a NAP are simply core functions of departments or involve information and consultation actions that require only effort and coordination, and not necessarily resources. It should be remembered that many features of a NAP do not envisage that more be done, but that things be done differently. So, some parts of the NAP process and implementation will not necessarily involve resources; it may simply involve reallocation and/or regrouping of some existing budgetary activities under the NAP.
- 3.** Depending on the nature of the NAP, and its level of detail, the NAP content may address budget issues for particular or general tasks or action items. Since a large part of the implementation would normally involve the core activities of departments, the issue of budget may also be left to departments and not covered in the NAP.
- 4.** Note that while this is an area of governmental responsibility, it is also probably the case that many donors would, with certain commitments from government, give positive consideration to providing funding to certain elements of NAP implementation. Note that international technical assistance (such as from HRU, OHCHR and others) is also usually available, upon request, in terms of initial assessment or formulating the national plan, or particular implementation measures.

5. Monitoring and Evaluation

An effective NAP would normally have provision for enabling progress on the NAP objectives and action items to be measured and analysed so that recommendations for refining or adjusting it can be made and followed up. In this sense, the NAP process is a dynamic and cyclical one.

The wider question is a difficult one: how does one measure an increase in the level or quality of human rights compliance or an improved human rights situation? Clearly with some NAP targets, it will be possible to categorically declare progress or otherwise on such things (for example, ratification of a convention, redrafting of legislation, or the establishment of a national human rights commission). On whether the NAP components are effectively addressing overall wider structural issues of poverty or patterns of discrimination, it becomes more difficult to ascertain progress.

This issue aside, some general points may be made in relation to building monitoring and evaluation (M & E) mechanisms into a NAP:

- Monitoring and evaluation (M & E) is intended to be periodic or even ongoing – this is to enable implementation measures to be adjusted while they run, for maximum effect.
- M & E is of both the overall goals and objectives, and in relation to specific actions mentioned in the NAP. The baseline study or survey preceding the NAP would normally provide the reference point for any M & E.
- A new study or assessment may be necessary, including where it is needed in relation to particular vulnerable groups.
- This can be carried out by the lead agency, another designated agency or even the national human rights commission or an external actor. It may be appropriate and more useful for part or all of the evaluation to be done by an independent body such as the national human rights commission (if it exists).
- M & E should not be portrayed or perceived in the NAP in a manner that is threatening: it is intended as a means of obtaining constructive feedback to enable the Plan's overall success.

- A NAP with a strong M & E component is more effective, seen as more credible, and enables approaches for more funding or support to be made and to be based on data from implementation so far.
- Where a country has ratified a number of human rights instruments, and where possible, the process of evaluating and reporting on the status of implementation of the NAP should be related to any national reporting channels and mechanisms for any conventions (or for reports on MDG goals, for example). The same lines of enquiry and data might be used, so as to not to overload the ministries with reporting duties.

The National Human Rights Action Plan Process⁶



⁶ This diagram, and the contents of the section on 'Process: the Steps' and 'National Coordinating Committee: Functions', above, are largely based on or draw from the UN-OHCHR 'Handbook on National Human Rights Action Plans' (Geneva, 2002), p 6, p 45, p 48.

PART III: OTHER INFORMATION & LINKS

The Human Rights Unit of the Commonwealth Secretariat.

In keeping with the ideals and values of the modern Commonwealth, outlined in Part 1, the Human Rights Unit of the Secretariat is mandated to assist member governments to promote and protect human rights at the national level, including through support institutional and capacity development efforts.

The Model National Action Plan is partly intended to provide a basis from which the HRU can, upon request, help countries to assess and devise a comprehensive, realistic, coherent and tailored national plan based around the Model. The HRU is at the service of member countries and invites expressions of interest in providing this support.

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Selected links and other resources**● Commonwealth Declarations:**

1971 *Declaration of Commonwealth Principles*
(The *Singapore Declaration*)

1991 *Declaration of Commonwealth Principles*
(The *Harare Declaration*)

1993 *Commonwealth (Latimer House) Principles on the Relationship between the Three Arms of Government*

1995 *Millbrook Commonwealth Action Programme on the Harare Declaration*

2003 *Aso Rock Commonwealth Declaration on Development and Democracy*

www.thecommonwealth.org/document/34293/35468/declarations/

● The UN Handbook on National Action Plans for Human Rights can be obtained from OHCHR (above) or obtained from the internet as follows:

www.ohchr.org/english/about/publications/docs/nhrap.pdf

● The UN Handbook on National Action Plans for Human Rights Education can be obtained from OHCHR (above) or:

www.unhchr.ch/education/main.htm

● The Commonwealth Handbook on Ratification of Human Rights Instruments:

www.thecommonwealth.org/humanrights

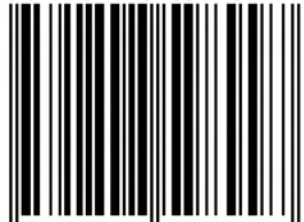
- Text of the ICCPR, ICESCR and other universal instruments:
www.ohchr.org/english/law/

- The texts of relevant regional human rights instruments relevant to Commonwealth countries:
 - Africa – www.achpr.org
 - Caribbean – www.iachr.org
 - European – www.echr.coe.int

- Vienna Declaration and Programme of Action (World Conference on Human Rights 1993)
www.unhchr.ch/html/menu5/wchr.htm

- Copenhagen Declaration (World Summit on Social Development 1995):
www.un.org/esa/socdev/wssd/agreements/index.html

ISBN 978-1-84859-899-7



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