

Panel 1: What is the relationship between EHRC formal design and political function, with a particular focus on independence?

International Standards and Local Reform Outcomes: Assessing the Equality and Human Rights Commission

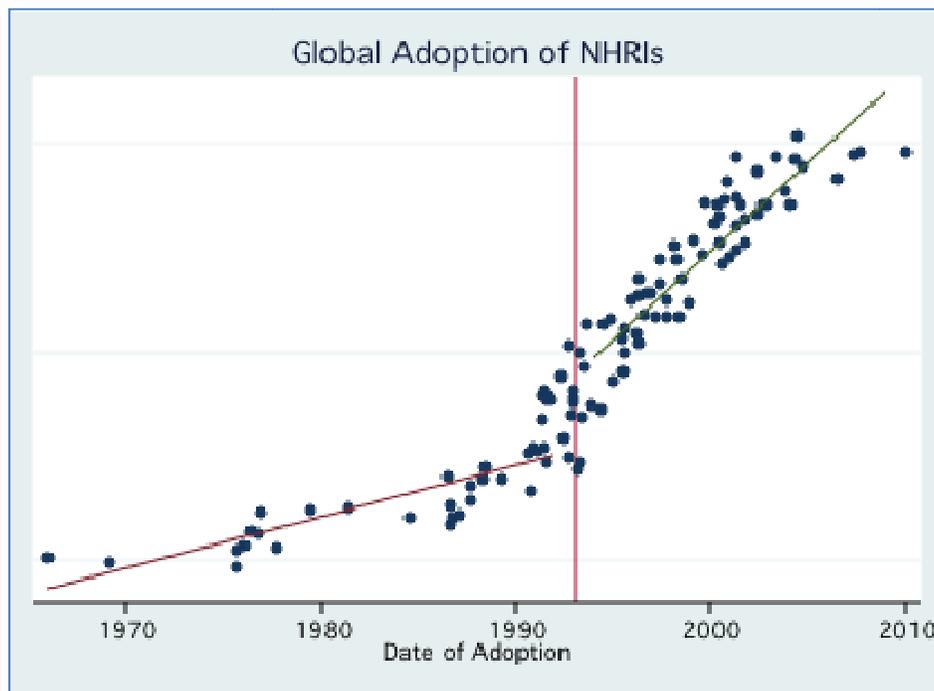
Thomas Pegram
Visiting Fellow in Human Rights, SAS*

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Summary

The Equality and Human Rights Commission (EHRC) forms part of a global surge in institutional innovation. Designated a National Human Rights Institution (NHRIs) by the United Nations in 2009, the EHRC joins a novel tier of national agencies endorsed by the UN as ‘receptor sites’ in the transmission of international human rights norms and their implementation at the domestic level.

Global Adoption of NHRIs and Influence of the Paris Principles



NHRIs are bodies created by government and specifically empowered to protect and promote human rights.¹ They constitute one of the most prolific institutional developments of recent

* Contact: Thomas Pegram, Visiting Fellow | Human Rights Consortium | School of Advanced Study | University of London Malet Street, London WC1E 7HU | +44 (0)7887 923816 | thomas.peggram@nuffield.oxon.org

years, spreading rapidly across diverse political systems from an estimated twenty NHRIs in 1990 to approximately 108 active NHRIs in 2011.

The Paris Principles, endorsed by the General Assembly in 1993, provide a concrete – if imperfect – template for institutional designers with guidelines governing the independence, jurisdiction, mandate and composition of NHRIs.² It is their codification as non-binding standards in Paris, significantly by NHRI practitioners themselves, and subsequent endorsement by the UN General Assembly in 1993, that precipitated a norm cascade on a global scale.

The rapid diffusion of NHRIs is due in large part to the influence of the international human rights community on local processes of institutional reform. Following the promulgation of the Paris Principles in 1993, countries rushed to adopt NHRIs. Indeed, 72% of NHRIs were created in or after 1993. This number goes up to 89% in the Asia-Pacific.

We see adoptions taper off in the early 2000s, as the only countries still considering the innovation are those that faced resistance initially. Prominent outliers include China, Brazil, the US, and, until 2006, Great Britain.

However, such claims mask a more complex reality. The UN did not invent NHRIs. The emergence of the NHRI concept can be traced back possibly as far as 1947, with significant exemplar models appearing in the 1970s and 1980s throughout Europe. These were a very loosely defined group of national institutions that included classical and ‘hybrid’ ombudsmen, human rights and anti-discrimination commissions, and government advisory or consultative bodies.

Cumulative Enactment of NHRIs in Europe

Country	Enactment	Country	Enactment	Country	Enactment
Portugal	1975	Russia	1993	Czech Republic	1999
Austria	1977	Slovenia	1993	Germany	2000
Spain	1978	Netherlands	1994	Finland	2000 [1919]
France	1984 [1947]	Bosnia and Herzegovina	1995	Azerbaijan	2001
Denmark	1987	Uzbekistan	1995	Slovakia	2001
Poland	1987	Georgia	1996	Kazakhstan	2002

¹ The NHRI has been (loosely) defined as ‘a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights.’ See UN 1995: 4.

² Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted by the UN Human Rights Commission, Res. 1992/54, 3 March 1992 and the UN General Assembly, Res. 48/134, 20 December 1993. UN Doc. A/CONF.157/24 (1993), Part I, para. 36.

Country	Enactment	Country	Enactment	Country	Enactment
Hungary	1989	Ukraine	1996	Kyrgyzstan	2002
Macedonia	1991	Moldova	1997	Norway	2002
Romania	1991	Greece	1998	Armenia	2003
Croatia	1992	Ireland	1998	Serbia	2005
Lithuania	1992	Northern Ireland	1998	Great Britain (and Scotland)	2006
Belgium	1993	Albania	1999	Latvia	2006

Early national commissions, predominant in Commonwealth countries, were initially established as standing commissions to inquire into discrimination and equality. This is true of Canada (created in 1978). Commissions in New Zealand (1978) and Australia (1981) were also established with explicit equality and discrimination provisions within a much broader human rights mandate.

Beginning in 1976, the United Kingdom introduced a set of bodies with very specific, but limited, mandates dealing with gender equality, racial equality and, more recently, disabled rights. These bodies were merged into a single accredited NHRI in 2006.

For many observers, the proliferation of NHRIs is significant because it shows governments across the democratic (and non-democratic) spectrum have committed major institutional resources to the protection of human rights. And even more remarkably, governments around the world have built institutions explicitly designed to monitor and fight *governmental* inefficiencies and abuses.

However, this raises a number of distinct questions when considering the significance of such international developments for highly institutionalised democracies where pre-existing institutional frameworks dedicated to such tasks are already in existence. In relation to Great Britain:

1. To what extent does the outcome of EHRC reform reflect the international standards contained within the Paris Principles?
2. What relevance do the Paris Principles have for EHRC reform in the context of the Public Bodies Bill?
3. In turn, how does the experience of the EHRC reflect current debates among international scholars, practitioners and policy-makers on the relationship between NHRI design and performance?

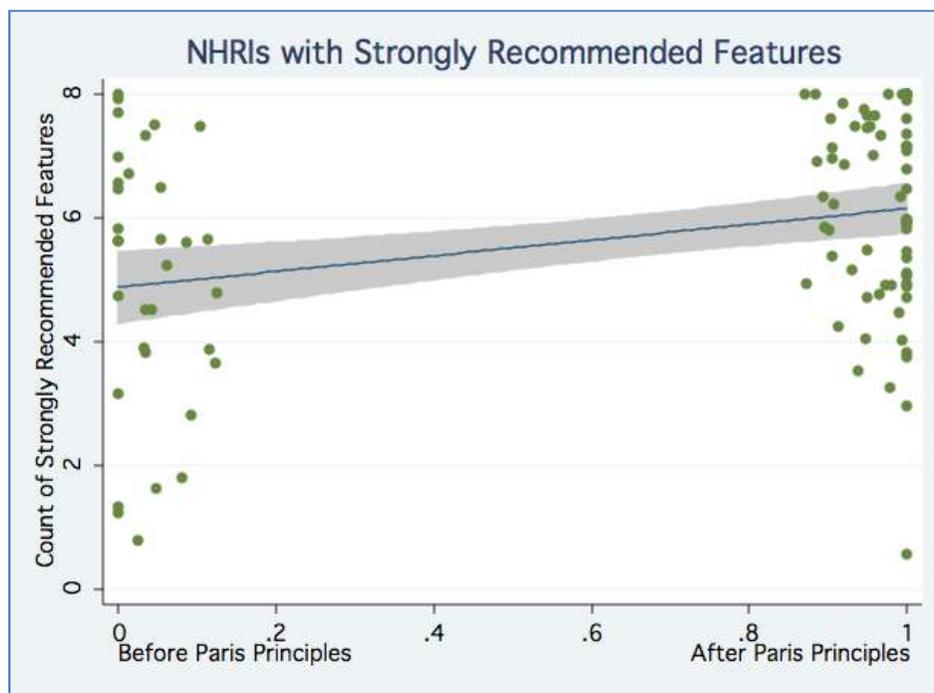
EHRC Reform and the Paris Principles

Certainly, the evidence confirms that EHRC designers drew on design precedents at the domestic rather than international level. Notwithstanding formal designation as an ‘A status’ NHRI by the UN-affiliated International Coordinating Committee of NHRIs in 2009,³ EHRC formal structure varies markedly from the Paris Principles – particularly in terms of safeguards of independence.

The Principles provide an important baseline standard to be observed – potentially guarding against negative reform outcomes. However, they constitute *only* a baseline that many observers regard as sub-optimal. One risk is a ‘race to the middle’; the idea that states you would expect to create more robust NHRIs actually adopt the standardized Paris Principles model. EHRC design features suggest, however, indifference rather than strict adherence or resistance to international standards.

This is at variance with global trends displaying a sharp decrease in the variance of strongly recommended features after Paris – that is, NHRIs adopted after the Paris Principles were not only more likely to have more of the strongly recommended features, but were far more uniform.

NHRIs with Strongly Recommended Features in the Paris Principles



The Paris Principles were not absent from the discussion. Indeed, the Joint Committee on Human Rights (JCHR) and various non-governmental stakeholders made frequent references to

³ A status signifies compliance with the Paris Principles; B status partial compliance; and C status non-compliance. Significantly, only NHRIs with A status have full participation rights within the reformed UN Human Rights Council.

the Principles when articulating their concerns with the government's reform proposals. One notable example was Lord Lester's successful lobbying for additional safeguards of independence. This amendment to the original version of the Equality Bill in 2005 was framed in terms of obligations arising under the Principles.⁴ Nevertheless, their conspicuous absence in the green paper was an early indication of government disregard for these international standards.⁵

Notwithstanding reference to NHRI experience elsewhere, in particular Australia and Northern Ireland, the EHRC reform process was primarily inward-looking. This was perhaps inevitable given the principal intention of the act was to not create a new institution (as occurred in Northern Ireland) but rather to merge three existing equality bodies. The Australian Human Rights Commission offered some insights – both positive and negative – in terms of combining an equality and human rights mandate.⁶

However, such parallels ended there. The key challenge and opportunity for EHRC reformers was how to manage a transition from, and legacy effects of, the three prior equality commissions, while also incorporating a new identity as a human rights commission. There was precious little international precedent in this regard.⁷

In a context of institutional transformation rather than creation, EHRC designers within government drew on domestic precedent and modelled the new Commission in the image of its predecessors – indicative of this was its designation as an executive Non-Departmental Public Body (NDPB). NDPBs are independent bodies but sponsored by individual departments and answerable to a Minister as opposed to Parliament.

Imposition of a generic NDPB template on the reform process may have been seen as 'appropriate' in Whitehall but denied the EHRC the special status and constitutional role commonly afforded to NHRIs. Above all, this arrangement has important implications for organisational lines of accountability and EHRC independence.

Interestingly, such an outcome was far from inevitable. The Joint Committee on Human Rights and various other stakeholders strongly advocated that the EHRC be assigned special status within the UK constitutional system. They referred to a class of public bodies that exist outside the category of NDPB and are afforded greater statutory guarantees of independence: the

⁴ The original version of the Equality Bill in 2005/06 allowed the Secretary of State to direct the EHRC to undertake particular formal inquiries and did not impose a duty on the government to protect its independence.

⁵ Spencer (2008: 14) writes, 'Officials at the LCD cited the UN Paris Principles (1993) on the remit, powers and independence of such bodies, but quickly realised that this carried no weight within government.'

⁶ Notably, the name of the Australian Human Rights and Equal Opportunity Commission was shortened by legislative reform in 2003 to the Australian Human Rights Commission. The Commission supported this name change on the grounds that '[a]nti-discrimination or equal opportunity is a sub-set of human rights. The words add nothing to the concept of human rights and so are unnecessary.' See <http://www.hrca.org.au/hreoc%20sub.htm>

⁷ The Australian Commission was established in 1986 as the replacement both of the first Human Rights Commission established in 1981 and the various committees established to undertake functions in relation to International Labour Organisation Convention 111 on discrimination in employment and occupation. However, these prior agencies bear minimal resemblance to the three UK equality commissions in terms of structure, substance and longevity.

Parliamentary Commissioner for Administration, the National Audit Office and the Electoral Commission.⁸ However, this recommendation did not sway the government's position.

Why is this discussion important? First, it provides insight into the circumstances of the EHRC's creation; the powerful legacy effects of the three prior equality commissions as well as the domestic constitutional discourse which informed discussion of EHRC design.

Secondly, the compliance pull of the Paris Principles is growing stronger and the cost of non-compliance rising. This is evident along two tracks: (1) the evolving precision of the Paris Principles as developed by the ICC Sub-Committee for Accreditation (SCA) General Comments and Observations released in 2009;⁹ and (2) the enhanced profile and activity of A status NHRIs within the UN human rights machinery.

It is against this international backdrop that the UK government is increasingly exercised to maintain a 'UN-accredited National Human Rights Institution'.¹⁰ Concerns arising from the JCHR report on the EHRC issued in March 2010 resulted in the Commission's A status being placed under special review for October 2010. While maintaining A status, the SCA noted 'with regret the adverse impact on the Institution arising from the matters noted in the House of Lords/House of Commons JCHR report.'¹¹

Finally, it matters to the extent that formal rules can be said to map onto outcomes. What have been the consequences of design choices at point of origin on the future performance of the EHRC?

EHRC Design Compliance with the Paris Principles with a particular emphasis on independence

EHRC accreditation as an A status NHRI indicates broad compliance with the Paris Principles. It is important to reflect on ambiguities built into the Principles, with some design features more strongly (or explicitly) endorsed than others. The EHRC is, indeed, in compliance with most strongly recommended features. Variance is more notable in relation to weakly recommended design principles or those omitted from the Principles but subsequently regarded as desirable by the SCA. The following discussion is restricted primarily to the EHRC and safeguards of independence.

Strongly Recommended Features in the Paris Principles

This category includes design principles that are clearly specified through binding language in the Paris Principles as essential to NHRI formal design. A lack of compliance with any one of these design principles may constitute grounds for denying an NHRI A status accreditation by

⁸ See Joint Committee on Human Rights Sixteenth Report Session, 2003-2004, *Commission for Equality and Human Rights: The Government's White Paper*, HL Paper 156, HC 998, p. 18-19.

⁹ ICC Sub-Committee on Accreditation General Observations, adopted by the ICC, Geneva, June 2009

¹⁰ See Government Equalities Office, *Building a fairer Britain: Reform of the Equality and Human Rights Commission*, Consultation Paper, March 2011.

¹¹ Report and Recommendations of the Session of the SCA, Geneva 11-15 October 2010, p. 9.

the SCA. The EHRC broadly complies with this set of criteria. However, concerns have been raised regarding the legal basis of the Commission and, in particular its funding arrangement.

I(2) Legal basis (constitutional or legislative text)	✓
I(1) Adequate funding to enable it to be ‘independent’ and ‘not subject to financial control’	X
I(1) Explicit rights mandate to promote and protect human rights	✓
III(a) Power to investigate freely any questions falling within its competence	✓
II(1) Civil society representation (‘pluralist representation’)	✓
I(3)(b) International human rights law mandate	✓
I(1) and I(3)(f) Education and promotion mandate	✓
I(3)(d) Engagement with international organizations	✓

With regard to the EHRC’s legal basis, the *sui generis* nature of the UK Constitution system is acknowledged by the SCA. In its application for A status accreditation, the EHRC emphasised that ‘its statutory foundation is strengthened by a substantial body of earlier parliamentary enactments on human rights, anti-discrimination, race relation and the application of the European Convention on Human Rights in the domestic jurisdiction.’¹²

Constitutional status is desirable to the extent that the elevated cost of repealing or modifying constitutional reform enhances independence. The Public Bodies Bill reform process is problematic in this regard with the EHRC potentially subject to reform by ‘Henry VIII powers’ (amending primary legislation by secondary legislation) with parliamentary prerogative to amend or repeal primary legislation effectively bypassed.

Interference with the activity of NHRIs through inadequate initial resourcing or subsequent resource cuts is not uncommon, often under the guise of public sector austerity measures.¹³ Leaving aside what constitutes ‘adequate funding,’ the Paris Principles are explicit that funding arrangements must not compromise the NHRI’s ability to perform its role independently. The JCHR recommended statutory involvement of a parliamentary body as ‘the best safeguard that can be devised to ensure that manipulation of funding is not used to undermine the independence of the new Commission.’¹⁴

¹² Application for new accreditation of the Equality and Human Rights Commission (Great Britain) to the ICC, November 2008, p. 3.

¹³ The Australian and Irish NHRIs are two notable cases where NHRI performance has been significantly affected by severe budget cuts. In 2010 the Irish government cut the budgets of the Irish NHRI and the Equality Authority by 32 per cent and 43 per cent, respectively.

¹⁴ Joint Committee on Human Rights, Sixteenth Report Session, p. 21.

Nevertheless, the outcome of reform stipulated that the administration and expenditure of EHRC funds would be regulated by government. As the Minister of Justice, Kenneth Clarke MP, recently put it, “I think it belongs to the Government Equalities Office for its pay and rations.”¹⁵

It would be hard to argue that the EHRC has not been the recipient of ‘adequate funding’. When the EHRC was formed in 2007 its budget was £70 million. However, the trend has been towards steady budgetary reductions to £60 million, then £53 million by the new government in 2010. The government is now reported to have proposed a budget cut of 68% (from £70 million in 2007 to £22.5 million by 2015) by March 2012. Such extensive budgetary reduction is likely to have a heavy toll on the EHRC’s ability to perform its promotion and protection functions effectively.

In turn, current government proposals for EHRC reform appear to advocate increasing Ministerial control over EHRC finances.¹⁶ As the ICC Chairperson has indicated to the responsible Minister, ‘any reform in this area should be cognisant of the impact on the real and/or perceived independence of the EHRC.’¹⁷ In recognition of the threat posed by unclear financial arrangements, the SCA General Observations state in no uncertain terms that ‘[f]inancial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.’¹⁸

Weakly Recommended Features in the Paris Principles

This category refers to those design principles that the Paris Principles specify in broad terms, as well as those features which the Paris Principles list as optional. Most controversial is the Principles’ vague reference to complaint-handling powers. Such ambiguity is a key area of contention for critics of the Paris Principles who advocate renegotiating the Principles. Aware of such criticism, the SCA has begun to refine the Paris Principles, most notably in its General Observations. The EHRC is generally in compliance with these weakly recommended features, with the exception of two criteria of independence: designation by the executive and accountability to Parliament.

The power to appoint the 10 to 15 Commissioners, the Chairman of the Commission and the Chief Executive is held by the Minister of State. The Paris Principles are not explicit in proscribing executive appointment, instead placing emphasis on ‘pluralist representation.’ The position formulated in Paris in 1993 reflects a compromise between promoting the integrity of NHRIs and attempting to formulate a universal standard in an institutional landscape where public sector appointments by the Executive and even monarchical authority are common.

¹⁵ Joint Committee on Human Rights, ‘The Government’s human rights policy,’ 16 November 2010, at 11m55s, available at: <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=6981>

¹⁶ The government proposes ‘to introduce a statutory requirement for EHRC to lay its Annual Business Plan before Parliament, and to give the secretary of state a power over its form and timing.’ Also, ‘[t]o make explicit that the secretary of state may impose a financial sanction, where EHRC can be shown to have misspent taxpayers’ money.’ See Government Equalities Office, *Building a fairer Britain: Reform of the Equality and Human Rights Commission*, Consultation Paper, March 2011, p. 25.

¹⁷ Letter from Rosslyn Noonan, ICC Chairperson to Rt. Hon. Theresa May MP, 15 December 2010.

¹⁸ ICC Sub-Committee on Accreditation General Observations, adopted by the ICC, Geneva, June 2009, para. 2.6.

II(1)(d) Designation not by the executive ('pluralist representation...particularly by [a procedure] which will enable effective cooperation with...Parliament')	X
I(3)(a) Report to parliament ('to submit to...Parliament...reports on any matters')	X
III(b) Subpoena powers ('hear any person and obtain any information') ¹⁹	✓
II(1)(e) No governmental representation (or 'only in an advisory capacity')	✓
II(3) Term limits ('specific duration' to be established by official act)	✓
IV Explicit mandate to receive complaints (A national institution may be authorized to hear and consider complaints and petitions...)	✓
IV(a) Enforcement powers (including 'settlement through conciliation' and 'binding decisions')	✓
IV(c) Legal referral powers ('transmitting [any complaints] to any other competent authority')	✓

Nevertheless, many NHRI observers regard executive appointment as inferior to parliamentary designation and potentially incompatible with the function and corporate identity of an NHRI.²⁰ The SCA would appear to increasingly agree. Recent directives emphasise the need to establish 'clear, transparent and participatory selection processes' and are critical of selection processes that are the exclusive preserve of the executive.²¹

The EHRC would appear to fall down on both counts. The appointment of the Chairman is made by the Minister in accordance with the ethics framework of the 'Nolan Principles of Public Life.' It is nominally by open competition. However, this is not a statutory requirement. The reappointment of the current Chair in 2009 by the Minister without consultation or open competition provoked considerable debate. Although automatic reappointment may be deemed consistent with accepted local practices within the Westminster system, it is not in the spirit of the Paris Principles.²² Further concern surrounds the role of the executive in the appointment of internal staff, especially the Chief Executive. The Principles state that NHRIs should have the power to appoint their own staff. The EHRC was repeatedly prevented from appointing a Chief Executive from March 2009 until June 2011 due to government directives.

A number of proposals during the drafting of the EHRC legislation proposed a role for parliament in appointment proceedings. It is worth briefly reviewing these here:

¹⁹ 'As with existing commissions, there will be a power to compel evidence from third parties, but only on authorisation from the Secretary of State. As the JCHR highlights, most general inquiries are likely to concern or implicate government departments or other public authorities, rendering ministerial control of this power inappropriate, and potentially breaching the Paris Principles.' See www2.lse.ac.uk/humanRights/articlesAndTranscripts/Fairness_for_all.pdf

²⁰ See Association For the Prevention of Torture 2006, p. 40.

²¹ See Report and Recommendations of the Session of the Sub-Committee on Accreditation, Geneva, 11-15 October 2010, p. 10.

²² Even offices outside the NDPB category enjoying enhanced independence nevertheless have sub-optimal appointment procedures. For instance, the Parliamentary Ombudsman is appointed by the Queen on the advice of the Prime Minister after consultation with the Leader of the Opposition and the chairman of the Select Committee.

- The Commission should be defined in statute as an officer of Parliament and greater clarity should be given to the independent status of its staff acting not as agents of the Crown or as civil servants
- Commissioners should be recommended for appointment by a statutory committee including parliamentary representatives, and
- Appointments of the Chairman should be subject to approval by the JCHR as part of a pre-appointment process – something similar to a confirmation hearing in the US.

A lack of parliamentary involvement in appointment procedures contrasts markedly to the Scottish model where the Chair is appointed by and reports to the Scottish Parliament and is accountable to parliament, not government. The Paris Principles must cater to both presidential and parliamentary political systems and opposing symmetries of power. Irrespective, the relationship of the NHRI to the executive and legislative branches of state are of key concern and, in this regard, the Principles prescribe that the NHRI be able to report directly to parliament.

Currently, the EHRC is directed to send its annual report to the Minister who will then lay a copy of the report before parliament (32(4)). The relationship with parliament would be enhanced by the EHRC reporting directly to the appropriate parliamentary committee, such as the JCHR (with the addition of an equality remit). The SCA General Observations directs that NHRI reports should be discussed ‘within a reasonable amount of time’ by ‘the relevant government ministries as well as the competent parliamentary committees.’²³

More broadly, the relationship between the EHRC and government currently lacks clarity. The sponsoring department, the Government Equalities Office (GEO), to which the EHRC is formally accountable, does not have responsibility for human rights. Human rights falls within the remit of the Ministry of Justice which, in practice, liaises but does not exercise ministerial responsibility over the EHRC. Confusion over the division of ministerial labour persists with the Minister of Justice recently stating: “Well, I think it belongs to the GEO doesn’t it? But it liaises with us because we are responsible for human rights...Unless there is some responsibility I have not discovered. But I don’t think it is our department’s quango strictly speaking.”²⁴

Notably, the Human Rights Minister at the Ministry of Justice had no formal role in the reappointment of the current Chairman. As such, there is a clear accountability gap in terms of evaluating the EHRC’s performance as an equality *and* human rights institution. This could be resolved by merging the two mandates under a Minister for Equality and Human Rights.

Recommended Features Not Mentioned in the Paris Principles

In this category is included design features many NHRI experts consider important to robust NHRI design, but which were not referenced in the Paris Principles. The selection of features corresponds to a survey of actually existing NHRI structures, the literature and identification of those factors that recur in discussions on basic structural standards.

²³ ICC Sub-Committee on Accreditation General Observations, adopted by the ICC, Geneva, June 2009, para. 1.6.

²⁴ Joint Committee on Human Rights, ‘The Government’s human rights policy,’ 16 November 2010, at 12m30s., available at: <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=6981>

Immunity of appointees from prosecution in the carrying out of official duties	X
No dismissal without cause (‘for serious reasons and according to a procedure prescribed by law’)	X
Powers of access (without prior authorisation)	X
Amicus curiae powers before national and international courts in matters of human rights	✓
Single appointee institutions the ability of single appointee institutions to satisfy the criterion of ‘pluralist representation’	n/a

Without entering into detail, as acknowledged by the EHRC in its submission for ICC accreditation, EHRC appointees are not immune from prosecution under the doctrine of vicarious liability. Statute provides the Minister with broad discretion to dismiss ‘a Commissioner who is, in the opinion of the [Minister], unable, unfit or unwilling to perform his functions.’²⁵ This contravenes SCA General Observation 2.9 which states that dismissal ‘should not be allowed based solely on the discretion of appointing authorities.’ The EHRC also lacks powers of access without prior authorisation which is a significant restriction on its ability to undertake *ex officio* investigative actions.

Beyond the Paris Principles

One assumption underlying this presentation and much of the literature on NHRI effectiveness is that formal design matters. That it can have important consequences on the performance of organisations. The degree to which the performance of individual NHRIs can or *should* be assessed with regard to formal design indicators is a subject that provokes animated debate within the ICC and among a host of NHRI observers. Formal design can provide, at best, only a very partial insight into the actual functionings of these organisations.

Nevertheless, assessments of NHRI performance should not be decoupled entirely from the Paris Principles. They offer a valuable yardstick for NHRI designers, a baseline for initial evaluation by NHRI stakeholders, as well as a useful point of departure for meaningful discussion around questions of independence and powers.

As this discussion has highlighted, the Paris Principles are not static but rather in a constant and possibly accelerating state of evolution. Wary of opening up the Principles for renegotiation and potential cooption by third parties, the ICC through the SCA has embarked on injecting more precision into the Paris Principles through its General Observations and Reports and Recommendations. This has been spurred on by the embedding of NHRIs within UN human rights structures and the implicit expectation that such access is contingent on the ICC enhancing its accreditation procedures.²⁶

²⁵ Schedule 1, Part 1(3)(5) of the Equality Act 2006.

²⁶ See Report of the Secretary-General, ‘Process currently utilized by the [ICC] to accredit national institutions in compliance with the Paris Principles’, UN Doc. A/HRC/16/77, 3 February 2011.

As the currency of having an A status NHRI appreciates, so does the compliance pull of the Paris Principles on individual states.²⁷ This may have significant implications for present and future EHRC modification. However, the Public Bodies Bill does not look likely to lead to the kind of positive structural reforms that might be suggested here. The government is primarily focused on enhancing control of the EHRC through vertical cost-efficiency and financial oversight mechanisms.²⁸

The second assumption which motivates this presentation is that while formal design is important to understanding the experience of NHRIs, it is relations with actors within and outside the state, as well as rules of access to domains of power and decision-making that are the decisive factors to explaining NHRI reform outcomes. Such a claim opens up a series of questions that go beyond the purview of the Paris Principles.

In particular, it spotlights the elusive and highly idiosyncratic quality shared by many successful NHRIs: good leadership. This raises a sub-set of questions concerning how we might institutionalise good leadership – both at the ‘front’ and ‘back-end.’ Front-end procedures are directed at the selection of good leaders in the first place; how do you ensure a candidate pool of good leadership potential? A back-end focus would look at their institutionalisation once appointed; how do you institutionalise a good individual?

Without offering any conclusive answers to these questions, the experience of the EHRC does raise a number of insights and clues as to the importance of good leadership and its potential effects on the internal functionings and the external reputation of the institution. Issues that merit further interrogation include:

- *The profile of EHRC senior personnel*, most crucially the Chairman, and their ability to effectively manage the particular challenges presented by a process of institutional transformation characterised by both continuity and rupture with the pre-existing order. In this regard, it may be instructive to contrast the varied professional backgrounds, expertise and qualities of leadership across the three NHRIs within the United Kingdom.
- It is important to identify the opportunities and challenges presented to EHRC leadership at sequential phases of EHRC institutional development. The capability of leadership to manage a distinct, if overlapping, *first phase* of transition and establishment and a *second phase* of strategic development and outward projection is crucial to understanding the trajectory of the organisation and its ability to define itself independent of the circumstances of its creation.
- *The internal impact of external influence*, in particular, the destabilising effects of departmental sponsorship on the independence and effectiveness of the EHRC. The central issue of the relationship of such bodies with government is nothing new; similar concerns were raised in relation to the ‘peripatetic’ departmental sponsorship of the

²⁷ The French Commission was finally given a statutory basis in 2007 shortly before it was subject to the ICC’s reaccreditation process.

²⁸ See Government Equalities Office, *Building a fairer Britain: Reform of the Equality and Human Rights Commission*, Consultation Paper, March 2011, p. 25-6.

former Equality and Opportunities Commission (Niven 2008: 22). The negative impact on the EHRC of current governing arrangements has been a recurring theme in this discussion.

- *The composition of diffused leadership within the EHRC*, particularly the formal and informal representational roles of individual Commissioners. The JCHR recommendation contained in its 2010 report that the Commission include ‘at least one commissioner with links to the Conservative Party’ points to the complex interaction of partisan political forces within the Westminster model and an ostensibly independent equality and human rights body. It also suggests a rather narrow interpretation of the Principles’ call for ‘pluralist representation of the social forces...involved in the promotion and protection of human rights’.
- It is also crucial to think through *the second-order effects of leadership* on organisational stability and effectiveness, including the ability to negotiate effectively on budgetary allocation. This factor is especially acute in the current context of public sector austerity measures and the notable lack of continuity in financial provision to the EHRC since activation.²⁹
- More broadly, leadership has had a decisive impact on the actual and perceived strategy, direction and public credibility of the EHRC. Tying these two strands together, the negotiating position of the EHRC vis-à-vis government is likely to be strengthened considerably if it can rely on the vocal support of plural coalitions within British society. In this regard, EHRC leadership must play a crucial role in building alliances with those organisations, civic groups and individual citizens able to effectively lobby government on behalf of the EHRC in times of uncertainty.

²⁹ For instance, Maurice Manning, the Chief Commissioner of the Irish NHRI is widely credited with having dented the full impact of public sector austerity measures on the Commission through astute political maneuvering.