

The Equality and Human Rights Commission

Protecting freedom of
expression, assembly
and association

Good practice from National Human
Rights Institutions around the
Commonwealth

Produced by John Wadham and the Equality and Human
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of National Human Rights Institutions

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The views expressed in this report are those of the authors and do not necessarily represent the views of the Commission.

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Foreword

Rebecca Hilsenrath, Chief Executive of the Equality and Human Rights Commission

The ability to participate freely in dialogue and debate, and freely associate with others and enjoy peaceful assembly, are fundamental tenets of democracy. This includes situations where challenging or controversial views are exchanged. These rights are of particular importance during elections, where the right to freely debate ideas and issues is critical.

At the Equality and Human Rights Commission we have taken action over recent years to uphold these rights in Great Britain. In response to increased public dialogue about the nature of free speech, we published [guidance on the legal framework protecting freedom of expression in Britain](#) (2015), and the circumstances in which that freedom may be restricted in order to prevent violence, abuse or discrimination. Recognising that political parties and their representatives have an important role to play in ensuring there is constructive and engaging public debate, we also produced [guidance for local authorities, candidates and political parties](#) (2015) on freedom of expression and the restrictions prescribed by law.

We are not alone in working on these issues. Our colleagues in National Human Rights Institutions (NHRIs) across the globe are taking action to support the conditions that enable our democracies to thrive. In our role as Chair of the Commonwealth Forum of National Human Rights Institutions and as the Forum's Focal Point for Freedom of Expression, Association and Peaceful Assembly, we have funded research into the important role of Commonwealth NHRIs in promoting these rights in the context of elections. This Compendium of Good Practice summarises the findings of this research.

The Commonwealth is a large and diverse community, containing a wealth of expertise and innovative practice for tackling shared challenges. Thank you to everyone who has contributed to this report and shared their expertise with us. Such partnership working provides us with the opportunity to learn from each other, which

will only strengthen our ambition for everyone around the world to enjoy the rights and freedoms to which they are entitled.

Introduction

This compendium of good practice has been produced by John Wadham for the Equality and Human Rights Commission (EHRC) on behalf of the Commonwealth Forum of National Human Rights Institutions.

It explores the challenges that Commonwealth countries face in relation to elections. It provides case studies of how National Human Rights Institutions (NHRIs) have undertaken action to address these challenges. We hope that NHRIs will use this to support them in fulfilling their mandates to promote and protect freedom of expression, association and peaceful assembly during elections.

The EHRC is the Focal Point for Freedom of Expression, Association and Peaceful Assembly for the Commonwealth Forum of National Human Rights Institutions (CFNHRI). The CFNHRI is a body consisting of National Institutions for the Promotion and Protection of Human Rights and other national accountability mechanisms with a human rights mandate within the Commonwealth.

The EHRC is grateful all those who helped to provide the information for this Compendium and to John Wadham who collected data and drafted the report.

Tackling media bias

Ghana: The Commission on Human Rights and Administrative Justice

The [Commission on Human Rights and Administrative Justice \(CHRAJ\)](#) monitors human rights issues during elections. It monitored the December 2016 presidential and parliamentary elections in Ghana.

Challenge

CHRAJ was concerned that the 2016 election would suffer from media bias. Their concern was that there might be bias favouring the party in government, and that this would undermine a fair election process. They were also concerned about how the media would report violent incidents and the police response.

Action

To tackle any possible media bias staff at CHRAJ consistently monitored media outlets, analysing the content for political bias, incitement and hate speech. It was fortunate that CHRAJ had sufficient staff to monitor the different channels and media outlets and could therefore assess both individual pieces and the overall approach taken by particular TV channels or newspapers. The CHRAJ had the benefit of having 800 staff and was able to appoint 500 to monitor the election.

They produced immediate, interim and final reports based on their research. They concluded that their role monitoring media channels had been effective, seeing a reduction in excesses in media and reports of abuse by the police. The findings of CHRAJ were also used by stakeholders to push for reform and changes to procedures and laws. Their reports allowed them to quickly expose any bias and suggest immediate action, as well as to make longer-term recommendations for reform.

Learning

Monitoring media

Monitoring media is an effective way to challenge possible bias and promote free and fair elections. It is necessary to be consistent and follow the media in real time order to produce authoritative and comprehensive reports which have the ability to influence the future action of the media and politicians.

Resourcing

However, such an approach requires significant staff resources over several weeks including in the months leading up to the election itself. Some staff members had to be on duty through the night and at weekends to ensure that all of the media was monitored at all times and that required shift work and complicated rotas for staff. This created a significant extra burden on staff and Commissioners. NHRIs looking to replicate this approach must effectively build the resources required into their business plans to ensure monitoring is both robust and comprehensive.

Monitoring events

Monitoring the response of both the media and the police to violent incidents, and any possible bias in how the media reported incidents, is difficult without your own account of events. Collecting evidence may require visiting the scene, identifying witnesses, taking statements, or trying to resolve conflicting accounts – this is a resource intensive process and that few NHRIs would have the capacity for.

Investigating violence and deaths

The Kenya National Commission on Human Rights

The [Kenya Commission on Human Rights \(KNCHR\)](#) has a history of monitoring elections, since at least 2007. It monitored the two presidential elections in Kenya, in August and October 2017. The August election was annulled by the Kenyan Supreme Court and run again.

Challenge

The election process in 2017 faced many challenges. Not least the considerable violence during rallies – which resulted in 57 deaths – and the failure of the police effectively to investigate these violent incidents. Furthermore, the KNCHR believed it had evidence to suggest the response of police to the violence during previous elections was sometimes disproportionate and politically biased.

Action

Given the inadequate response of police at previous elections, KNCHR chose to take responsibility for investigating the violent incidents which occurred during the 2017 election. This was a huge undertaking and required KNCHR to collect evidence on each incident to a standard that would allow the prosecution authorities to make decisions about whether anyone should be prosecuted.

Learning

Duty of Care to Staff

The work involved in investigating violence and deaths can be traumatic for the staff involved. This was made even more difficult for staff of KNCHR in 2017 because the first election was annulled and a second election occurred only a few months later. Given the difficult nature of this work, it is necessary for NHRIs to ensure that staff receive adequate support, including personal counselling services where appropriate.

Training for staff

Investigating violence and deaths requires specialist preparation to ensure that the evidence provided is of sufficient quality and is good enough for a successful prosecution. This requires the NHRI to ensure staff involved undertake specialist training in evidence gathering and statement taking and have the resources available to recruit extra staff with the knowledge and experience of the processes and procedures involved.

Commission neutrality

It is essential for any NHRI undertaking monitoring and investigating election violence to be robust in ensuring its own political neutrality, particularly if there are accusations of political bias within the police or media. Acknowledging that Commissioners and staff will have their own political affiliations will help NHRIs to manage conflicts of interest, promoting a culture where issues can be discussed and where steps can be taken to address them.

Public inquiries

Malaysia: Human Rights Commission

The [Human Rights Commission of Malaysia \(SUHAKAM\)](#) has a long tradition of campaigning for the protection and promotion of freedom of assembly, association and expression and the importance of fair elections.

Challenge

SUHAKAM believed that the freedom of assembly and association of opposition parties had been violated during previous elections. It believed that permits to hold political assemblies were wrongly denied by authorities, in the name of public order and national security.

In this particular case, the police obtained injunctions against Bersih, a non-governmental organisation (NGO) alliance, who were holding conferences about fair elections. The police blocked the roads, preventing people attending the events, which, ironically, were due to discuss how elections could be made fairer.¹

Action

SUHAKAM used its public inquiry powers to investigate the actions of the government and police in relation to the Bersih event in 2011 and the wider use of the police to restrict assemblies. Thirty-one witnesses were called for the public inquiry and 42 exhibits were received. The resulting report contained many recommendations, including the recommendation to change the law on assemblies and to ensure participants are given proper opportunities to assemble peacefully and express their opinions during elections.

¹ For more details see: 'Public Inquiry into the Infringement of Human Rights Including the Use of Excessive Force Prior to and During the Assembly' on 9 July 2011.

Learning

Sustaining the objectives over time

Formal inquiries with detailed evidence gathering procedures, including public hearings, can lead to authoritative recommendations and positive changes. However, NHRIs may need to sustain this effort over a long period of time before seeing results.

Following SUHAKAM's first inquiry in 2011, a parliamentary inquiry also examined the issue and changes to the law were introduced which were much more closely aligned to human rights principles. Unfortunately, these new provisions – which were intended to protect the right to peaceful assembly – were not fully in place by the second Bersih NGO conference in 2012. The police took similar action to prevent people attending. SUHAKAM initiated a second public inquiry.

Bersih events continued to be organised by NGOs. By 2015, the Bersih NGO conference went ahead without being banned. SUHAKAM commended the authorities, particularly the police, for allowing the event to go ahead and for not preventing people from attending it. This demonstrates that the inquiry approach is effective – but it may have to be used more than once. NHRIs must be prepared for setbacks before its actions can deliver change.

Guidelines and monitoring to encourage good practice

Sri Lanka: The Human Rights Commission of Sri Lanka

The [Human Rights Commission of Sri Lanka \(HRCSL\)](#) has been involved in promoting and protecting the freedoms of assembly, association and expression since its inception in 1997 and has been working to ensure free and fair elections since at least 2004.

Challenge

The HRCSL had evidence that public officials such as police officers were not exercising their discretion neutrally during elections, and when making decisions about political rallies and public assemblies.

Action

The HRCSL produced guidelines to assist public officials with their roles during elections. This included guidance on making impartial decisions around the local elections in February 2018. They also produced guidelines for police officers and set up a hotline during the election to deal with complaints about breaches of these guidelines.

Learning

Ensuring guidelines have impact

Guidelines and codes can make a real difference to practice on the ground and can improve human rights compliance.

However, it is important to monitor how guidelines are used and to enable people to complain about breaches of the guidelines, with the assurance that their complaint will be investigated and dealt with properly. Complaints are an important source of information about how guidelines work in practice and can be used to help measure

their impact. Breaches of guidelines must be investigated and action must be taken to ensure guidelines become effective in changing behaviour.

There are different ways to identify breaches, such as setting up hotlines or complaints procedures.

Systems for collecting data on incidents of violence and live time reporting

Uganda: Uganda Human Rights Commission

Since its establishment in 1997, the [Uganda Human Rights Commission \(UHRC\)](#) has monitored the situation of human rights during elections, focusing on the period before, during and after elections. It last monitored an election in February 2016 (the presidential election).

Challenges

The UHRC was concerned that hate speech may be used by politicians and their supporters in the 2016 election. They were also concerned that the police may act arbitrarily and use excessive violence when dealing with political assemblies.

The UHRC's own internal challenge was to monitor the election as effectively and as comprehensively as possible, and to produce authoritative reports that would be widely accepted.

Action

The UHRC monitored the use of hate speech and the approach of the police in dealing with political rallies during the election. They submitted their report to parliament and to the separate Electoral Commission.

Preparation for monitoring started in April 2015 for the election in February 2016. Ten regional offices supplied information to a central monitoring office, where reports and data relating to assembly during the election were analysed electronically using an online system. The system enabled UHRC to generate reports quickly in real time.

Interim reports and press releases were produced throughout the election period and a final report was published a few months after the election.

The system was designed to establish early warning/early response framework, which would alert UHRC to incidents of violence or disruption during the election and allow them to intervene and take action to prevent escalation and mitigate the effect of the violence on the election. The system also served as a way to administer complaints relating to the election process.

Learning

Learning from other NHRIs

The approach of UHRC was based on the pioneering work of Kenya's National Human Rights Commission, meaning they did not need to spend a great deal of time creating ways of working that already existed.

Resources

Any NHRI will need considerable resources and a long period of advance planning to undertake a similar exercise. The NHRI in Uganda observed elections in 1,903 polling stations spread over 93 of the 112 districts. This impressive project was delivered during the election by 220 staff and 6 members of the Commission.

Further development

The UHRC developed their own 'early warning and early response' project and took a significant step in developing an election monitoring process – a system now available for others to use. Other NHRIs contemplating this type of project during an election could gain a great deal of useful strategic advice and practical tips from the work of the UHRC and Kenya's National Human Rights Commission

Contacts

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