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National Human Rights Institutions (NHRIs) and their role in the Policy Making Process: A Look at the Impact of the Equality and Human Rights Commission (EHRC) in the United Kingdom in the Context of Diminishing Power

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Declaration form

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.



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ABSTRACT

The promotion of human rights is not only about raising public awareness and conducting human rights education and training. The real impact of human rights promotion can be assessed through its incorporation in public policy discourse and in policies themselves. The main objective of this study is to look at the roles that National Human Rights Institutions (NHRIs) can play to encourage the incorporation of human rights principles as guiding values for public policies. This is especially important in economically challenging contexts where human rights principles are thought to be adding red tape and hampering economic growth, instead of assisting holistic socioeconomic and political progress. This study explores the independence, accountability and power relationship between one NHRI the government, civil society and press. Drawing on a case study of the Equality and Human Rights Commission (EHRC) in the United Kingdom, and using interviews with key informants, the effectiveness of this NHRI, in particular its role to safeguard and promote human rights is examined. This study shows how issues of human rights remain a challenging subject matter even for a democratic country like the UK, as political processes and compromises affect the work the EHRC, and discusses how the ideas inherent in the capability approach can be an important tool in enabling NHRIs.

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ABBREVIATIONS

DCMS – Department of Culture, Media and Sport

DPO – Disabled Persons Organization

ECHR – European Convention of Human Rights

ECOSOC – Committee on Economic Social and Cultural Rights

ESCR – Economic, Social, and Cultural Rights

EHRC – Equality and Human Rights Commission

IMF – International Monetary Fund

JCHR – Joint Committee on Human Rights

NHRI – National Human Rights Institution

OHCHR – Office of the High Commissioner for Human Rights

PWD – Person With Disability

UN – United Nations

ICC – UN International Coordinating Committee on National Institutions for the Promotion and Protection of Human Rights

UNCRPD – UN Convention on the Rights of Persons with Disabilities

UNHCR – UN High Commission for Refugees

WB – World Bank

CHAPTER 1: INTRODUCTION

During many years working on human rights issues in Nepal, I came across various challenges in the promotion and implementation of human rights. In particular, the approaches taken to human rights implementation drew my attention. Despite attempts by civil society organizations working on human rights and despite some efforts made by the government on human rights implementation, I came across lapses in public policies, especially on human rights issues. Among various other things, I became particularly interested in the institutionalization of human rights. Although human rights was formally institutionalized, its implementation was problematic and was not part of the policy making process. After joining the course on Human Rights Practice, it helped to widen my thinking and interest in researching the institutionalization of human rights. This thesis, then, is about how National Human Rights Institutions' unique position as the national institution charged with the protection and promotion of human rights can be brought to bear on the policy making process to ensure that human rights obligations are better respected in society.

It is the states' obligation to respect, fulfill, and protect the rights of its citizens. National Human Rights Institutions, hereafter NHRIs, are increasingly being established as a means to ensure respect, promotion, and protection of human rights in the state. The Paris Principles (1993)¹, is an imperfect but concrete document that is considered to be the founding blueprint of modern-day NHRIs. The principles have gone through an improvement process through various declarations such as the Copenhagen Declaration from 2002² and the Edinburgh Declaration from 2010³. NHRIs are increasingly collaborating with regional human rights bodies and the United Nations. They are increasingly considered to be a useful political tool to support democratic principles and practices and as an important partner in the development sector by the international community and international financial institutions like the International Monetary Fund (IMF) and the World Bank (WB). The establishment of NHRIs is no longer limited to liberal democratic states. All kinds of political traditions and systems such as hybrid democracy, dictatorship, and partial democracy have all recognized their role (Pegram 2010).

¹ (UN General Assembly 1993)

² ("The Copenhagen Declaration" 2002)

³ (ICC 2010)

1.1 RESEARCH QUESTION AND OBJECTIVES

The overall objective of this study is to examine the role of NHRIs in the policy making process, drawing on the role and performance of the Equality and Human Rights Commission in the United Kingdom (hereafter EHRC) as an illustrative case study. The main research question is:

- How is the EHRC engaged in the policy making process?

There are two dimensions one needs to consider while addressing this question. First, given that NHRIs operate within the given mandates prescribed in national law, which in turn are shaped by the ideas laid out in the Paris Principles, an essential question when examining the situation of the EHRC in the UK is:

- How was the current mandate for the EHRC shaped?

Then, within the context of understanding the mandate of the EHRC in light of the Paris Principles, it is important to understand:

- How are human rights translated into practice as part of policy making processes?

Because the EHRC is seen as holding an important role in the promotion and protection of human rights, it becomes a focal point for the protection of human rights norms as well as their implementation in policy. Therefore, this research will also consider the normative weight of human rights as community groups interact with the EHRC. NHRIs like the EHRC should not only be considered in the context of their legal framework, but their policy implications need to be examined in the sociopolitical framework as well. It is a guiding assumption that human rights concern both interactions between individuals and between individuals and the state. Additionally, it must be remembered, that almost any policy can have human rights implications.

NHRIs' unique position in a nation's constitution and political arena has itself generated debates—whether NHRIs are constitutional or statutory bodies they are supposed to be independent of the executive and legislative powers. The British government has set out the following mandate for the EHRC:

- carrying out research in human rights and equality issues,
- conducting inquiries into equality issues,
- recommending steps for the improvement of the human rights situation, and

- monitoring commitment to international human rights commitments and whether those frameworks are interpreted as intended.

The EHRC's work in those four areas can have impacts on the policy making process. This thesis will examine the statutory position of the EHRC in its interactions with governmental and civil society organizations. Given the importance of public opinion in any policy formulation, this study also tries to shed light on the EHRC's activities in shaping and reacting to public opinion.

1.2 THEORETICAL FRAMEWORK

Traditionally human rights are categorized in two separate criteria, as reflected in the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Civil and political rights include the rights to privacy, freedom of speech, movement, the right to vote, a fair hearing, and the right to found a family. Economic, social and cultural rights include the rights to food, adequate health care, education and water (Donnelly 2003). Furthermore, human rights are classified on the basis of rights holders. For instance, the rights of the child, rights of minorities, indigenous people's rights, and the rights of women. Other theoretical approaches to human rights are: individual versus collective rights, absolute and relative rights, and on the basis of duty in the formulation of negative and positive obligations. Still many people in Britain believe that the human rights discourse is a subject matter for lawyers only, has nothing to do with the general public, and instead mostly deals with controversial and contentious issues such as the cases of suspected terrorists (Butler 2005).

Human rights do not exist in a vacuum. The respect of human rights requires political will and commitment, and as realizing them also costs money, it is also an economic matter. Various writers and thinkers have attempted to put human rights within the economic framework. Similarly it is also noted that human rights discourses or principles often do not feature in policy discussions (HRSJ 2011). However, recent developments in human rights thinking have accepted that the concept is not only concerned with freedom but also people's living conditions. Will Hutton, in his book *Them and Us*, has discussed fairness as a matter of redistribution of wealth, people became richer by accumulating the "brute share" of good luck, therefore it makes sense to share the wealth for the brute bad luck of other people in

society. Therefore, through redistribution the realization of basic rights such as to health and education can be achieved (Hutton 2011).

Similarly, according to Wilkinson and Pickett, those nations which are able to maintain narrower gulfs between the bottom and top ends of society have been successful in ensuring human rights for all people. In the same vein, the capability approach propounded by Amartya Sen speaks about freedom and opportunity as key to development while at the same time focusing on the conditions or environments that are available to an individual, or what he calls an ‘enabling environment’. For example, consider the situations of starving or fasting by choice—in both cases the person is hungry, but the context is very different. Therefore, an ‘enabling environment’ signifies that opportunities must be available to enjoy, but it is up to each person to choose if they wish to avail themselves of those opportunities. But in an environment where there are no opportunities, there is no choice. Sen notes that the Indian Constitution is full of guarantees for Indian women, but those guarantees are not backed up by effective measures, policies, and programs such that in reality women are not enjoying the guarantees available to them in the constitution. Through this example Amartya Sen draws a clear relationship between human rights and policies, a relationship that will be explored further in this thesis (Sen 1979).

1.3 RESEARCH OUTLINE

This study will examine the engagement of NHRIs in policy making processes, with an example from the UK. The study has borrowed heavily from available critical academic research and practical prognoses on NHRIs from around the world. The focus is on practices at both the grassroots and government level. Chapter 2 discusses the methodological approach of this study and Chapter 3 provides an overview of NHRIs’ historical and socio-political context for development as well as some pros and cons. Chapter 4 discusses the political processes that brought about the mandate for the EHRC in the UK. Chapter 5 presents the views of key informants on the relationship between human rights principles and policy making, and the final chapter presents concluding remarks and analysis.

CHAPTER 2: METHODOLOGY

2.1 RESEARCH MOTIVATION

This thesis builds on observations and reflections during my stay at Roehampton University in the spring of 2012, and subsequent studies of secondary sources supplemented with interviews with key informants. Due to language barriers, I was not able to follow much of the human rights discussion during my first term in Sweden, but after arrival in the UK the language barrier was removed and it was much easier to follow political and human rights discussions. The UK provided fertile ground in other senses as well, with many opportunities to attend seminars and speeches on human rights issues to further my academic interest. I was able to follow issues through the BBC and news and analysis programs, such as the debates over Abu Qatada's deportation, and issues such as benefit and disability rights that were hotly contested by the public.

After leaving London I had access to good facilities and software which made it possible to follow the debates in England, and also to find journal articles and books in an accessible format.

2.2 METHODOLOGICAL CONSIDERATIONS

To answer the research question on the role of the EHRC in the policy making process, the physical position, the given mandates of the EHRC, and its relationship with the government and civil society were considered. To do this, I reviewed relevant literature on NHRIs and the EHRC, examined policy documents and news reports, and interviewed key people in the UK with knowledge of the EHRC. A senior staff member of the EHRC, one member of the British parliament concerned with human rights, and civil society organization representatives working closely with the EHRC were chosen as key respondents for the study. Two areas of special interest, namely policies on disability hate crime and disability benefits were chosen after consultation with the respondents. National security policy was also considered, due to its intermittent relationship with human rights principles and controversies that are generated by the policy.

Advancements in information and communication technologies have brought some positive developments in social science research. The advent of communication networks such as

Skype, audio recordings, and online petitions have added dynamics to social science research. For visually impaired people, electronic books and information available through electronic media are more accessible than standard books and papers. PDFs and other available formats are not always compatible with assistive software for the visually impaired, but they are significantly more accessible than paper books or articles.

2.3 INTERVIEW PROCESS

I chose unstructured interviews which allowed me to ask open-ended questions and also provided opportunities to cross-check the responses from the informants. I did not rule out complexities that arose during the analysis of the collected data. I decided to use the purposive sampling technique for data collection. The goal of purposive sampling is to sample cases or participants in a strategic way, so that those sampled are relevant to the research questions that are being posed. The selection shall capture as much as possible the daily life conditions, opinions, values, attitudes and knowledge base of those we study as expressed in their natural habitat (Bryman 2008). The length of interviews averaged from 45 minutes to an hour. All of the interviews were recorded and written notes were also prepared with the help of an assistant. Most interviews were conducted face to face, but the interview with a representative from the EHRC was conducted over the telephone. The interview guide, which includes the questionnaire is included in Appendix A. The questionnaire is divided into two parts: opinions on the policy making process, and policy implications.

2.4 RESEARCH SAMPLE - INTERVIEWS

Given the research topic I prepared a list of potential people to interview, and given constraints on time and access I ultimately interviewed five people. The people interviewed were:

- Virendra Sharma, MP for Ealing Southall, Member of the Joint Committee on Human Rights (JCHR)
- Sue Bott, Development Director for Disability Rights UK
- Francesca Klug, Former Commissioner of the EHRC
- Adrian Cruden, Human Resource Manager, VoiceAbility
- Nony Ardill, Senior Legal Advisor to the EHRC

Given that the Disability Rights Committee has been an integral part of the EHRC, VoiceAbility and Disability Rights UK were chosen to represent NGOs partly due to ease of access, and also as being relevant to my background and history of interest in issues of disability rights. I have been following discussions of benefit and disability issues in the UK over the years. Disability Rights UK and VoiceAbility both had close interactions with the EHRC and were frequently consulted by the EHRC on issues of disability rights. One of the respondents from civil society and the senior member of the EHRC spoke in a personal capacity while the member of the British parliament and an additional civil society representative spoke in an official capacity. The former member of the EHRC spoke in an academic and expert capacity. Recorded interviews were played back multiple times while analyzing the data.

2.5 DOCUMENT ANALYSIS

For the document analysis I relied on JCHR communiques, my notes from meetings, parliamentary publications, news reports, legislation, and various publications published by the EHRC, such as Human Rights Review Report, Human Rights Inquiry, and the agreement between the EHRC and the Government Equality Office available in the public domain. Additionally, I got information from The Guardian, along with The Daily Mail, the BBC, as well as from books and journal articles accessed through university library databases. Also, recordings of seminars posted on YouTube allowed me to listen to academic discussions on these issues.

2.6 RESEARCH CHALLENGES

There were some complications in arranging interviews. The presence of multiple advisors in the process created some issues and confusion leading to delay in the development and approval of the research proposal. There were some logistical problems around arranging an assistant to help go around to conduct interviews given that two universities were involved. Assistants helped with traveling around, taking notes, editing, and the layout and formatting of papers. New software presented a challenge by requiring time to get used to different systems and setups across universities. Common programs for navigating a computer are JAWS and VoiceOver, while programs for reading documents are Dolphin EasyReader and

Daisy BookReader. Additionally, software with OCR⁴ allowed the conversion of printed text into audio. However, as the setup in each university was different, it required time to get familiar with the tools available to establish a good workflow.

2.7 LIMITATIONS OF THE RESEARCH

This small scale study is not able to draw on a wide variety of NHRIs and their effectiveness in promoting and protecting human rights. However, the strong democratic and constitutional traditions, active participation of civil society, and general engagement of scholars in the human rights sector, make the EHRC in the UK an interesting case study to research. This study is focused on the EHRC's activities and functioning based on its mandate, and does not go into details on internal organizational structures. The main interest is its relationship with civil society, government, and parliament, especially its mandate and its effect on the policy making process. Given the limited representation of EHRC members, concerned parliamentarians, and civil society representatives interviewed, this study does not attempt to present a comprehensive picture of the views of all individuals concerned with the EHRC. Time constraints were also a factor as the research was conducted over a short period, and as legislation is constantly changing, there are always new developments.

⁴ Optical Character Recognition (OCR) – Is a technology that allows computers to recognize printed characters, turning them into editable text or speaking them aloud.

CHAPTER 3: LITERATURE REVIEW

3.1 THE PARIS PRINCIPLES

There are three types of NHRIs that can be found around the world, namely: ombudsmen, hybrid human rights commissions and specialized institutions (OHCHR 1993). The Paris Principles stipulate that NHRIs can monitor, audit law, handle complaints, make recommendations, propose bills, hold inquiries and investigate (Smith 2006). Likewise, NHRIs are also mandated to promote correctional measures regarding administrative procedures. The Paris Principles also emphasize that NHRIs can and should work to facilitate non-governmental organizations (NGOs) and civil society organizations working on human rights issues. Environmental rights, employment related issues, and inalienable rights such as the right to be free from torture and the right to life all fall under the purview of NHRIs' work.

Independence, impartiality, and fairness are the main pillars set out in the Paris Principles for NHRIs' operations. To be able to achieve this, financial independence, operational independence, and independence in appointment procedures are emphasized. The Paris Principles clearly mandate that terms should be secure and the appointment of commissioners should reflect societal plurality. Members of professional associations such as doctors, lawyers and journalists as well as bureaucrats and parliamentarians can be involved in NHRIs but their deliberations should be limited to an advisory capacity (OHCHR 1993; Smith 2006; Kumar 2003). However, the appointment of commissioners from civil society organizations dedicated to human rights issues is defined as an integral part of ensuring independence (OHCHR 1993). Sufficient resource allocation and investigative power, including access to sensitive places such as high security prisons and documents are pivotal in the effectiveness of NHRIs. Additionally, confidentiality of the deliberations for the sake of the victims is important so that NHRIs can enforce binding decisions or recommend actions to the concerned departments (OHCHR 1993).

In seeking reconciliation NHRIs can work independently or through intermediaries. It is however critical to highlight that not all NHRIs have all of the mentioned powers and duties—this depends on a country's political and cultural context. These principles are the basic benchmarks which are used to measure the independence and effectiveness of the

NHRIs. According to the United Nations International Coordinating Committee on National Institutions for the Promotion and Protection of Human Rights (ICC), there are 103 NHRIs across the globe as of February 2013 (ICC 2013). The body accredits NHRIs according to the Paris Principles. NHRIs are categorized as A, B or C according to their level of compliance with the Paris Principles. Fully compliant, not fully compliant, and not compliant are the basis for categorization. Prior to 2008 some of the NHRIs were given “accreditation with reserve” but this categorization is no longer used (ICC 2013).

The thrust for this development was paved by the World Conference on Human Rights in Vienna in 1993 where more than 170 nations reaffirmed their support for human rights and the importance of human rights in their countries. Human rights education/learning, monitoring of the implementation of human rights policies and compliance with treaties, recommending standardization and congruity in national legislation and regulations in line with international human rights norms, are the most applied areas of operation set out in the Paris Principles for NHRIs (Kumar 2003; ICHRP 2004). Various publicly funded bodies can gain status as NHRIs if such institutions have some role regarding human rights issues, for instance, the Equality Treatment Ombudsman in Sweden (ICC 2013; OHCHR 1993).

Generally NHRIs do not have an explicit role in policy making. There are various forms and shapes of NHRIs and their responsibilities and authority also vary. Some have enforcing power and others only have recommending and investigating roles. Despite this, basically all NHRIs are believed to serve the same purpose—to *promote, protect, and ensure respect for human rights* (Kumar 2003). For many critics, the human rights concept is nothing but merely a political philosophical matter, while for some it is a pillar to enhance democracy. In one way or another NHRIs have been affecting governments’ activities either in the nuance of government policy or in its substance (ICHRP 2004).

3.1.1 THE HISTORICAL CONTEXT FOR THE NHRIS

NHRIs have been on the agenda of UN agencies since its establishment in 1946 when ECOSOC expressed the desirability of the establishment of a local committee for information sharing and collaboration on human rights issues at the international level. However, ECOSOC’s proposal did not gain the expected momentum in the post-war period. In 1960, ECOSOC expressed the desire for the establishment of such institutions in countries where

they were not currently present and took stock of existing institutions. The Geneva Conference in 1978 deliberated on the actual role and function of the NHRIs (OHCHR 1993; Pegram 2010). The establishment of NHRIs increased after the end of the Cold War. The World Conference on Human Rights in Vienna in 1993 expressed its support for the important role human rights have in the development of a nation. The growth of NHRIs would not have been possible without the support of the UN. The UN support came via the ICC and came in the shape of technical assistance, expert advice, and in some cases financial support for new NHRIs to share their experiences and build networks among themselves.

There has been a significant growth in the number of NHRIs over the last two decades. There are three main reasons contributing to the rise in the number of NHRIs. Firstly, the processes of conflict transformation, democratic transition, and international pressure are leading states to establish their own NHRIs. Secondly, nations such as Uganda and Cameroon established NHRIs in the 1990s as a cost effective way to deal with a massive rise of rights violations, and to show the international community that they have an appropriate mechanism to address these issues and are taking action (Smith 2006; Reif 2000). Thirdly, some of the growth of NHRIs is also due to their imposition by the international community, known as “Bosnification” (imposed by treaties such as the Dayton peace agreement). Finally, organizations like the UN promote the establishment of NHRIs without prescribing the specific form, although encouraging compliance with the Paris Principles. The United States has been promoting the establishment of NHRIs in countries like Iraq, yet does not have one itself. Therefore, the establishment of NHRIs may be seen by some as being tools more of the spread of Western influence than institutions dedicated to human rights (ICHRP 2004; Monshipouri 2009; Pegram 2010).

This momentum also coincided with democratic transitions of various countries across the globe. Former High Commissioner for the Office of Human Rights (OHCHR) Mary Robinson (1997-2002) has spoken about her belief in the role and contributions NHRIs can make as a preventative structure at a national level (Reif 2000; Pegram 2010). In particular the role of NHRIs as an independent government structure which can hold the government to account and deter human rights violations within the national borders.

While analyzing the history of governments around the world, research suggests that institutions such as the ombudsman have taken up human rights issues. Ombudsmen have not

traditionally had an explicit role related to human rights. Their roles were mainly focused on mal-administrative practices and procedures. Similarly, ombudsmen played a huge role in ensuring financial accountability and eliminating corruption in government agencies. The history of the ombudsman can be traced back to 1809 in Sweden. The Swedish ombudsman had prosecutorial power and was mainly delegated the task to deal with legality and fairness in administrative affairs (Pegram 2010). In 1974 after the amendment of the Swedish Constitution, the role of the ombudsman was expanded to include human rights violations committed by the public administration only (Pegram 2010). Denmark and New Zealand established their ombudsman in 1960 which was different from the Swedish model. The Danish ombudsman model does not have prosecutorial power, but has investigative powers to look into issues of fairness (Pegram 2010).

In other countries there have been other interesting evolutions and innovations regarding the role and structure of agencies protecting human and other rights. France developed a human rights commission in 1948 which had an advisory role and the authority to conduct inquiries into human rights issues (Carver 2010; Pegram 2010). In the 1970s Portugal established its first NHRI with the power explicitly delegated to look into human rights issues including administrative mal-practices and procedures (Reif 2000). Spain established its NHRI after the restoration of democracy in the 1980s (Reif 2000). Meanwhile, according to Pegram “The UK, primarily due to its constitutional tradition of favoring political accountability and political control of power and the principle of ministerial responsibility to Parliament, deviated from the Danish model” (2010, 734) in that it created a restricted position to which the public did not have easy access. By the 1990s the UK established its own Equal Opportunity Commission (EOC) to ensure equality and fairness in the wider society. While many countries were establishing their NHRIs, the UK government was hesitant to establish an NHRI citing that there was a problem of an adjustment of existing institutions such as the EOC (Cardenas 2003).

Beginning in 1990 the ombudsman in the Netherlands had a specific role which was to look into cases of human rights violations by the police force, particularly the use of excessive force and other unjust actions (Reif 2000). It was important given that the many malpractices, injustices, and other violations carried out by the police force were not incorporated in the jurisdiction of the Netherlands’ civil court. Reif further states that the ombudsman in Finland was particularly powerful and had the broadest possible authority. According to which even

the Finish judiciary could be held accountable to their actions, although this power was never exercised (2000). The Norwegian parliamentary ombudsman was found to refer to various international human rights precedents especially regarding treatment of children and immigrants in Norway (Reif 2000).

While analyzing the records of ombudsmen in these countries, human rights have been found to be protected and promoted despite a lack of an explicit authority and human rights responsibility. Lack of clarity in human rights mandates to these ombudsmen contributed to inconsistencies regarding human rights concerns. Further, human rights were left at the discretion and interest of the incumbent leaders of relevant institutions. This gave rise to the need for a clear mandate on safeguarding human rights at local and national levels in all institutions (Kumar 2003; Reif 2000). The Paris Principles regarding the status of National Institutions for the Protection and Promotion of Human Rights is the result of situations directly arising from such needs. NHRIs across the globe are partners as well as vehicles to realize the universality of human rights. NHRIs refer to international standards and human rights principles and precedents in their work at the local level.

3.1.2 LIMITATIONS IN THE PARIS PRINCIPLES

NHRIs' works are divided into regulative, judicial and independent criteria (Cardenas 2003). Under the regulatory function, NHRIs can monitor the compliance of international standards and make recommendations on laws that are inconsistent with international human rights conventions. Under the judicial role, NHRIs can refer cases to relevant courts, take part in hearings, intervene as third parties, and issue binding decisions (Carver 2010). They can also handle individual complaints and investigate cases of human rights violations. As an independent human rights body, NHRIs can conduct human rights education, training for the public authorities including security forces, propose laws, and hold inquiries (Cardenas 2003). Even though the Paris Principles are considered to be a founding document for the establishment of NHRIs, this document is not free of flaws. The effectiveness of NHRIs depends upon various factors including legal, political, social, cultural and financial contexts. The Paris Principles detail independence, fairness and the operations of NHRIs. Similarly, the Paris Principles highlighted that the mandates for NHRIs be broad and that NHRIs be granted powers to implement their mandates as much as possible. However, it is silent on the matter

of strategies to achieve these goals.⁵ It has not prescribed any particular shape or position within the nation but has envisaged that the institutions should be free of government influence. Similarly, the document has envisaged one of its roles as offering advice to governments regarding inconsistencies in national laws and the international conventions, but it has not spoken about its roles in encouraging the government to adopt relevant conventions (Kumar 2003). Later the Copenhagen Conference (2002) on NHRIs addressed this issue and included the role of encouraging the adoption of relevant conventions. Notably, there are some overlaps in duties and responsibilities stipulated in the Paris Principles.

For example NHRIs' powers to advise the government on inconsistencies in laws; usually the Ministry of Justice or similar ministries can also advise the government regarding inconsistencies and flawed laws in the country. Judiciaries around the world have been and are playing an important part in ensuring human rights for citizens, but the Paris Principles are also unclear about the relationship between NHRIs and the judiciary (Kumar 2003; Smith 2006; ICHRP 2004). The Paris Principles have also failed to address an increasing role played by the private sector around the globe. The private sector could play a positive role in protecting human rights through corporate social responsibility; sadly in some cases private sector actors are grave violators of human rights. The Edinburgh Conference (2010)⁶ on NHRIs has tried to address this loop-hole in the principles.

3.2 A COMPARATIVE PERSPECTIVE: FACTORS CURBING NHRIS

People deciding on the remit and power of an NHRI should take the legal, political and cultural contexts into consideration (Smith 2006). The impact of a common law or civil law system; whether it is a constitutional or statutory body, the given mandates defines the role of NHRIs. NHRIs can influence policy through proposals, comments on regulations, recommendations and reports. But their existence as an independent state body⁷ poses numerous challenges, as the space occupied by NHRIs creates multiple layers of accountability. There are various challenges to maintain independence. NHRIs in some countries are seen as an extended hand of the government and could be rightly so. This

⁵ However, in most cases the ICC will assess the degree of independence.

⁶ See (ICC 2010)

⁷ In the UK, the EHRC is referred to as an arms-length body (ALB) reflecting its connection to the state as well as its independence.

section reviews some governmental actions that can undermine the activities and effectiveness of NHRIs

According to a report on Performance and Legitimacy of NHRIs by ICHRP (2004), the Indian government established its National Human Rights Commission, but the government has tied its hands by not allowing it to investigate into allegations of human rights violations made against public servants and the state army (Smith 2006; Kumar 2003). Similarly, the Northern Ireland human rights commission is deemed weaker because it lacks sufficient access to classified information while carrying out investigations. The report further states that the NHRC in Zambia was forced to give up its offices when the government retaliated against the NHRC's criticism regarding the condition of prisoners in the country (ICHRP 2004). After these incidents, several reports have argued that budget allocations for NHRIs should be carried out by the parliament rather than the executive (Smith 2006). Every NHRI works in different socio-economic, political and cultural environment. But independence or freedom from any kind of control from the government is mandatory. Maintaining independence is also important to obtain public legitimacy. Whether it is an ombudsman type organization or otherwise, NHRIs are always standing between the government and civil societies. The space that NHRIs have could be useful in fulfilling human rights responsibilities. In Kenya, the KNCHR⁸ submits its report to the President and it is not publicized, eroding the public legitimacy and trust of the body (Smith 2006; ICHRP 2004).

Reports on NHRIs from across the globe show that most of the recommendations made by NHRIs were shelved despite repeated follow ups (ICHRP and UNHCR 2005). In Nepal, since the establishment of the NHRC in 1999, only 8.8% of recommendations made by the NHRC were executed (Nepal NHRI 2013). An example from Indonesia shows us that a lack of adequate funding has caused a lack of compelling authority for the NHRI. For example, the Indonesian NHRI's use of a military helicopter on a fact-finding mission jeopardized the quality of information collected by associating their work with the military, potentially skewing the data they collected (ICHRP 2004). Parliamentarians and politicians have often tried to manipulate and interpret human rights debates in their favor as a means of gaining political mileage.

⁸ Kenya National Commission on Human Rights (KNCHR)

NHRIs have both upward and downward accountabilities. Downwardly accountable NHRIs are accountable to their staff, beneficiaries, and civil societies. By comparison, they are upwardly accountable to the government and the parliament (Smith 2006). Impartiality is a very important factor to gain public legitimacy. If civil society organizations and the wider public do not have faith in NHRIs then the NHRIs' reputation is at stake. For example, the legitimacy of appointments to the NHRIs can be very important. In Thailand, an open and transparent process produced appointments that had public support, while in India, the appointment of a former police official eroded popular trust (ICHRP 2004; Kumar 2003). Operational independence is another factor affecting their public legitimacy. In Mexico, the National Commission for Human Rights responded to questions from the UN Human Rights Council on behalf of the government, which is against NHRI principles, violating their operational independence from the government (ICHRP 2004).

The 'Holy Cross' dispute in Northern Ireland illustrates a challenge that many NHRIs meet in terms of exercising impartiality. This dispute was concerned with a conflict between Catholic and Protestant communities in Northern Ireland where a street leading to the Holy Cross school runs through a Protestant pocket and the children studying in the school were prevented from taking the easiest route to their school, which was through the Protestant community. The Northern Ireland HRC did not find that the Catholic children were exposed to human rights violations. As a result the Catholic community did not perceive the HRC's action to be impartial (Smith 2006). Despite this, the Northern Ireland HRC can take test cases without an individual complainant and address a wide range of issues within the framework of the EHRC. However, there remains the concern that the "Northern Ireland HRC is in danger of becoming consumed in the larger struggle over the unresolved political problems at the core of the conflict" (Monshipouri 2009, 831).

3.3 THE CAPABILITY APPROACH

So far we discussed about NHRIs' position and their relationship with governments; noting that even though NHRIs are established under the Paris Principles, there are, examples that show us how government employs various tactics to make their work ineffective. In this context, ensuring respect for human rights is really questionable (Reif 2000). Given the nature of "cooperative accountability" they don't have the power to force anything on the

government, so the tactics that these NHRIs can employ is more along the lines of advice and persuasion (Reif 2000, 19).

If respect of human rights lies solely in these institutions with soft power, then it is harder to see their full realization in any national boundary. In this context one might ask why NHRIs should exist if they do not deliver what they are supposed to. However, this is the wrong question to be asking—rather the question should be one of how we can make them more effective. For the purpose of betterment of human rights situation and ensuring respect of human rights, there has been various approaches both in policy development and policy implementation. Popular examples are the rights-based approach and rights framed approach. Recently, academics are pursuing the capability approach to development and full realization of human rights, as the most useful theoretical framework which combines both human rights principles and practices necessary for making human rights real (Fukuda-Parr 2003; Boggio 2006). The relationship between human rights and governance has been discussed by various UN committees. One such document notes, “It has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources, and guarantee the realization of human rights” (OHCHR 2013, n.p.).

The concept of good governance has been clarified by the work of the former Commission on Human Rights.⁹ In its resolution 2000/64, the Commission emphasized the relationship between human rights and good governance as one of mutually reinforcing the principles of good governance (transparency, responsibility, accountability, participation, and responsiveness to the needs of the people) in promoting human rights (OHCHR 2013). Similarly, for example the Declaration on the Right to Development proclaims that every human person and all peoples “are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development “ (OHCHR 2013, n.p.). In the same manner, the UN Economic Social and Cultural Rights Committee makes the case on the right to food, and the UN Committee on Child Rights on several occasions has recognized that good governance is essential to eliminate poverty, ensure human rights, and protect the rights of all people in the society (CESCR 1999).

⁹ The Human Rights Commission was disbanded by the UN and was replaced by the Human Rights Council

According to Wilkinson and Pickett (2011) those nations which are able to maintain a smaller gap between the bottom and top ends of the society have been successful in ensuring human rights in both fronts. Albie Sachs sums this up well in his book the *Strange Alchemy of Life and Law* when he comments that, "It would have been ironical indeed if the struggle (against Apartheid) had ended up doing little more than to guarantee to people dying of hunger the inalienable right to use their last breath freely to curse the government" (Sachs 2009, 173).

A capabilities approach allows governments to assess their policies in a cost-benefit matter, but one that also incorporates human rights and an understanding of "what is required to accord them the freedom to flourish as human beings, ensuring they have genuine autonomy to shape a life worth living" (Crowther 2011, n.p.).

If government has some human rights program, then this approach would give them a cost-benefit analysis which would tell them not only about the present status but also about what they can gain in the future investment in human rights issues, for the larger economic benefit.

For example, investments in education now, while perhaps costly for the state in the short-term, may have large economic and societal benefits in the long-run. Therefore, the capabilities approach, looks at the capacity for human development in the context of rights and growth, beyond a simple focus on short-terms costs. Additionally, a capabilities approach should also examine the larger environment within which people are operating, ensuring that there is a safe and secure situation in which they can operate to their full potential. Simple freedom may not actually provide the agency to achieve desired ends, and also if you have opportunity and freedom but no control, one's development may similarly be hindered (Nussbaum 1997; Sen 2005).

Because of their existence as the national organization charged with the duty of promoting and protecting human rights, NHRIs are in a unique position to examine and address the human rights and human development needs of the country as a whole. As such, they are particularly well positioned to propose and advocate for policies which build upon the universal and long-term ideas inherent in the capability approach. NHRIs with prosecutorial power are in an even better position than those without because of their more direct ability to influence policy.

As we have discussed the political and historical context of NHRIs and modern legal implementation, further chapters will discuss how public policy making process can benefit

from the capability approach. I have tried in the following chapters to examine EHRC's contribution from this perspective in the context of the mandate they have been given.

CHAPTER 4: THE EHRC

4.1 THE EQUALITY AND HUMAN RIGHTS COMMISSION (EHRC) IN BRITAIN

The Human Rights Act came into effect in 2000 after its promulgation in 1998. Before this enactment, British citizens were forced to knock at the door of the European Court of Human Rights for any matter related to human rights (Ewing 1999). The Equality and Human Rights Commission was established in 2006 under the Equality Act 2006-10. The EHRC was seen as a replacement for the earlier commissions working on issues such as racial discrimination, disability discrimination and equal opportunity. The EHRC is an accredited National Human Rights Institution and currently has an ‘A’ rating (EHRC 2013a).

4.1.1 THE EHRC AS AN NHRI

At present the EHRC has been delegated the role of regulator, promoter of good practices, authoritative center of intelligence regarding human rights, and trusted partner for the voluntary and civil sectors. The EHRC is accountable to the parliament for its actions and is subject to scrutiny by the Office of the Auditor General in its financial matters. The International Coordinating Committee on the Status of National Institutions for the Protection and Promotion of Human Rights in the UN (ICC) regularly evaluates NHRIs and accredits them in line with their success in abiding with the Paris Principles, as discussed earlier. The EHRC has an enforcing authority on equality issues, but not on human rights. This in itself is a unique arrangement. Most of its enforcement provisions are prescribed in the Equality Act 2010. Inquiry, investigation, assessment and agreement are some of the provisions to carry out enforcement duty (“EHRC - Enforcement” 2013; Equality Act 2010).

4.1.2 THE EHRC AS A REGULATOR

The UK government in its effort to ensure equality and fairness has established various independent regulators and ombudsmen. There are regulators looking at energy issues, consumers’ rights to education and housing, and care quality in health services. In its present form, the EHRC is the regulator of regulators in terms of equality and human rights. Definitely, the EHRC is unique in its role—it is a statutory body with unprecedented

authority and power. Most of its efforts are focused on implementation. In other words, the EHRC has been trying to get human rights and equality implemented in all sectors. The EHRC has published different types of guidance to help realize equality in the workplace, at home, in hospitals, and in other public and private spaces. Similarly, the EHRC has identified some main thematic areas for its actions. Age, gender, disability, sexual orientation, gender reassignment, and religion and belief are the main thematic areas (“EHRC - Home” 2013).

4.2 THE POLICY MAKING PROCESS AND THE EHRC

Policies are either formulated by the legislative bodies through the enactment processes or by politicians through political decisions. Given the country’s political system, some nations value opinions of their public while some do not find space for their voice. Laws on their own are not enough to ensure equality and fairness. Over the years, the EHRC has submitted various advisories and recommendations regarding various acts tabled before parliament. For example in 2011 the EHRC submitted an assessment report on Her Majesty’s treasury spending cut plan, and argued that vulnerable groups in society must be protected (EHRC 2012b). Similarly, the EHRC has been involved as an integral part of many policy consultations. However, the question remains as to whether consultation is sufficient involvement in the policy making process or whether the EHRC should be playing a larger role. There are certain instances where the EHRC’s interventions have resulted in policy changes, including sometimes considerable changes in the government’s position, not only through their own action but through their ability to rally other organizations and foment action on an issue. For instance, the government’s proposal to increase the detention period for alleged terrorist suspects from 14 to 42 days was dropped after intervention by the EHRC in conjunction with other organizations (EHRC 2012a, 15–16). The government has tended to be more responsive to actions from multiple groups in society rather than to the EHRC acting alone.

However such policy changes as above are not proactive. There has been significant progress in human rights implementation after the establishment of the EHRC but still there are various instances of human rights violations. Certain types of violations are declining in

number while other types of violations are on the rise. For instance, disability hate crimes¹⁰ seem to be rising, whereas acceptance of LGBT (Lesbian, Gay, Bisexual and Transgender) people is increasing (EHRC 2013b).

4.3 THE EHRC STRUCTURE

The EHRC is an independent, non-departmental public body, sponsored by the Department of Culture, Media, and Sport (EHRC and DCMS 2013) and accountable to Parliament. The EHRC board consists of ten commissioners including one chair, one deputy chair, and one commissioner for disability, as well as one commissioner each for Scotland and Wales. The chair of the commission is backed by the Parliament's Disability Rights Committee and the Chief Executive. The commission can establish an expert group or advisory panel as is necessary (EDF 2011).

The EHRC has been under constant scrutiny by the government since its establishment in 2007. There has been wide criticism regarding its size and expenses. The Public Accounts Committee of the British Parliament had issues in accepting its financial report for some years following its inception (JCHR 2010). Significantly, a large number of small businesses and enterprises have criticized the EHRC's role as a hindering rather than a facilitating one. According to the critics, the equality guidelines published by the organization are complicated and confusing to understand and are not suitable for small businesses. Human rights and equality for small businesses has become a burden rather than a tool to foster equality in their organizations (May and Featherstone 2012). Since its inception in 2007, the EHRC was delegated various roles including encouraging good relations among individuals and organizations through its enforcing power. The current government has amended this mandate, citing that it is unnecessary and does not fall under its core activities. For instance, grants that the EHRC was handing out to the voluntary and civil sector have been phased out, and reconciliation services, which were active in the field of disability hate crime and racial discrimination arising out of workplaces, have also been shut down. EHRC no longer has an enforcement power to address these issues. A helpline, which among other things used to deal with complaints from disabled air passengers, was also closed (Holloway 2012). The

¹⁰ There is no legal definition, but a common working definition is: "Any criminal offence, which is perceived, by the victim or any other person, to be motivated by hostility or prejudice based on a person's disability or perceived disability" (CPS 2010, 2).

government has transferred the responsibility of handling complaints from disabled air passengers to the civil aviation authority and the helpline is replaced by an Equality Advisory Support Service run in collaboration with civil sector organizations (“EHRC - Equality Advisory Support Service” 2013). Furthermore, the government has criticized the EHRC for its failure to produce necessary guidelines within a stipulated time (May and Featherstone 2012).

More generally, the Commission has been criticized for not being able to deliver value for the taxpayers’ money. The lack of strong leadership and management was seen as the biggest problem. The government organized a review of the EHRC in 2011 and has decided to bring about some changes to enhance the performance of the organization. According to the consultation organized by the government, an overwhelming majority of participants who agreed to retain the organization have agreed that legislative changes are not necessary, which might further weaken the EHRC (May and Featherstone 2012, 21). Specifically, sections 3, 10 and 19 of the Equality Act have had amendments proposed. The EHRC’s role mentioned in section 12 was adjusted in line with other amendments (May and Featherstone 2012, 11). These sections refer to the general legal responsibility of the EHRC to make society fairer (section 3), progress towards a fairer society (section 12), issues relating to equality and diversity (section 8), human rights (section 9), and good relations (sections 10 and 19). Four operational priorities set out by the government are as follows:

- carrying out research in human rights and equality issues,
- conducting inquiry into equality issues,
- recommending steps for the improvement of the human rights situation, and
- monitoring commitment to international human rights commitments and whether those frameworks are interpreted as intended (May and Featherstone 2012, 4–5).

4.4 DISCUSSION

“It may be true that morality cannot be legislated but behaviour can be regulated. It may be true that the law cannot change the heart but it can restrain the heartless” - Martin Luther King (1967)

Before embarking on a substantial discussion about the policy making process, there are significant concepts that need to be defined for the purpose of this study. Public policies are anything that is dear to the public. Whether it is about taxation or social welfare, public policy is discussed widely, lobbied, and debated in the parliament. Legislation becomes a part of public policy. Programs of action, plans, and detailed administrative procedures are other integral parts of public policies. Legislation itself cannot ensure implementation without due existence of the aforementioned elements.

Various interest groups, think tanks and advocates debate relevant policies in the public fora. Finally, legislators discuss policy in the parliament and promulgate it in effect. Some legislation addresses financial arrangements as its integral part and some acts have separate sections governing the financial aspect of the concerned policy. Political ideologies, public opinion, research findings on the concerned matters and situation on the ground or context of the particular issue are some of the factors that affect public policy making (Ho 2001). For example, all British citizens were forced to take their human rights related cases to the European Court of Human Rights prior to the enactment of Human Rights Act 1998 which came into effect in 2000. In this case the UK government made a decision to bring human rights home by enacting the HRA. This case signifies the importance of the political decisions by the then incumbent government in the UK. This was a prerequisite public debate on human rights and enactment. The same pattern could be found over the past decade and up to today. Whether it is the recently enforced benefit cuts¹¹ or spare bedroom subsidy¹², all these issues were hotly contested and debated in and out of the parliament. Laws are there to give legitimacy to any concept, institution, and program of action. These codify the purview or jurisdiction for any matter and set criminal and civil liability.

¹¹ The former Disability Living Allowances have been replaced with Personal Independent Payments (PIP) which is seen by some as a move to cut benefits and reduce eligibility.

¹² The “spare bedroom subsidy” or “bedroom tax” is a change in policy where individuals receiving government benefits will experience a cut to those benefits if their home possesses more bedrooms than deemed necessary by the government. See (National Housing Federation 2013) for details on the proposal.

Political parties express their ideas and programs through their party manifesto and they put it before the public to decide. The public takes part in this process and have their say through the ballot box. The public also engages in consultation organized by the government and various other groups and express their dissent if they have any.

Civil society organizations, politicians, think tanks, and experts all can play a role from policy generating, implementation, and assessment of its impact. The contribution by the individual and the organization may differ. Individuals and organizations both contribute to the policy process, but they do not have equal influence. An organized effort is more likely to result in policy than individual efforts. Apart from civil society organizations, parliamentarians, and government, NHRIs occupy a position which is not occupied by any of the other actors. So far the experiences from across the globe have shown that NHRIs do not enjoy the same freedom and independence that civil society organizations have, and neither do they enjoy the enforcement power of government and parliament. NHRIs do enjoy advising, recommending, and proposing new law, regulations, and policies. But it is dependent on governments whether those recommendations will be followed or not. The EHRC in the UK probes policies and regulations, and has offered guidance for their improvement, they lack authority to enforce or direct priorities, and have no grip on implementation. Notwithstanding this, NHRIs create valuable space for civil society organizations to advocate for human rights and make a link between government and the community. In the next chapter we shall discuss the impact of the EHRC in the policy making process especially from the point of their relationship with civil society organizations and their interaction with government organs.

CHAPTER 5: POLICIES IN THE CONTEXT OF DIMINISHING POWER—INTERVIEWS AND FINDINGS

This chapter discusses the relationship of the commission with the government, parliament, press and wider public in terms of its mandate and its strategy. EHRC's mandate is research, monitoring, recommending, and inquiry. Their strategy is to be an authoritative center for equality and human rights issues, a trusted partner to the voluntary sector, regulator, and promoter of good practices. This chapter will examine the roles played and contributions made by the EHRC in the policy making process, drawing on discussions in previous chapters and the interviews with key informants. To do that this section will examine some of the policy changes that have taken place in contemporary Britain and their impact on human rights in general. Policies on issues such as benefits, legal aid, elderly care, and national security are discussed.

5.1 AUSTERITY POLICIES AND THEIR IMPACT ON HUMAN RIGHTS

Financial consolidation and austerity have been high on the agenda of the UK government for some time now. In order to increase savings and reduce the budget deficit, the government is focusing heavily on spending cuts in the country. The social welfare budget has been the major target. In its effort to find savings, the government is extending cuts to various sectors, although some services such as health have been ring-fenced from the budget cuts.

5.1.1 POLICY AND DISABILITY BENEFITS

Whether it is the spare bedroom subsidy or bedroom tax, stringent measures have been implemented. To claim benefits there are new rules being enforced. There have been many cases where people with disabilities are wrongfully deprived of their benefits and deemed able to work, garnering lots of criticism from Disabled Peoples' Organizations (DPOs). DPOs are worried particularly with the arguments and narratives that the government has employed to justify its spending cuts.

Sue Bott, the Development Director of Disability Rights UK believes that such narratives and the press have contributed to the rise of disability hate crime. Most often people with a

disability and people living on benefits, such as job seekers allowance or disability living allowance¹³ are portrayed as scroungers and lazy beggars. She further said that according to the government the official number of people living on benefits has risen by 30 %, but in actual fact there has only been a 13% rise (Bott 2013). A general rise in population and children with disability living longer than in the past, are some of the factors contributing to this rise. It is a positive indicator for the government that the health service delivery has improved. But manipulation of the statistics and pre-fabricated justifications are a problem. Responding to the pressure exerted by the DPOs the government has apologized to the people with disabilities, but the worrying thing here is that this apology did not appear in the press which was used earlier to publicize the justification of their case. The apology was mentioned in hand-outs that were limited to parliamentarians, while the general public and readers of those newspapers did not see that apology issued by the government. As a result, in the public eye the perceptions of people with disabilities remain unchanged (Bott 2013). Bott believes that it is harder to break the nexus between the government and the press. Similarly, another area affecting efforts to respect, protect and promote human rights is the cuts to legal aid covering a wide variety of cases (Bott 2013).

5.1.2 POLICY ON LEGAL AID CUTS

Adrian Cruden who works for the organization known as VoiceAbility, active in the mental health field, states that people with benefits suffering discrimination in the workplace are bearing the brunt of the cuts in the health services. “This cut is appalling because the cut also includes cases of social welfare. People subjected to wrong treatment or deprivation of their rights will find it harder to take their cases to the courts. The additional provision, whereby an applicant is required to deposit £1000 to lodge their case means an individual must be quite brave and well to do” (Cruden 2013). In his words this measure is counterproductive. Many people are hesitant to take their legitimate cases and claims because of the fear of losing the assistance they are receiving at present (Cruden 2013).

A member of the British parliament Mr. Virendra Sharma also believes that people with disability are subjected to unfair treatment. For him the arrangement of enabling environment falls under the basic duty of the government. People with disability must not only be trained

¹³ This program is now referred to as the Personal Independent Payment (PIP).

but should also be given an enabling environment which will allow them to take part in work life (Sharma 2013).

5.1.3 DEBATES ON NATIONAL SECURITY POLICY AND HUMAN RIGHTS

The recently adopted 'stop and search' campaign, the Justice and Security Bill which is also known as Secret Court Bill and frequent controversy with the European Court of Human Rights are major concerns. Cruden stated that many people are spied on and their civil liberty has been curtailed (2013). Likewise, the press is not committed to promoting human rights. British politicians will soon discuss a motion on repealing the HRA because of a perception that it primarily benefits terrorists and criminals rather than all people. This has been tabled by the Conservatives (Cruden 2013).

National security has been used as a guise to curb and violate rights of individuals. Many individuals have been detained for an indefinite time without charges. Many people were subjected to varying unfair treatment because of their color and ethnic background. Ardill reiterated that there should be a balancing act between the right of the state to protect itself from harm and the right to freedom of speech and expression (Ardill 2013). Klug also highlighted that the European Convention clearly stipulated the state's role in preventing crime and protecting its citizens and sovereignty from harm. But the measures taken by the states must be proportional. Preventing crime and protecting citizens are not barred by the European Convention (Klug 2013).

The states' security apparatus and intelligence agencies have no doubt played a significant role in protecting nations from possible harm and risk, but the question is whether those actions taken by the agencies were proportional (Klug 2013). Sharma said that national security and human rights are mixed and argued in a manner which sounds incompatible to each other. Human rights are not only about the right to protect one's self but also guarantee protection of others. He further said no human rights professional is arguing that persons implicated in grave violations and security threats must not be tried, they are saying that perpetrators should be tried in a fair manner like anyone else in the society (Sharma 2013).

5.1.4 ROLE OF THE PRESS IN PROMOTING HUMAN RIGHTS

Sue Bott and Adrian Cruden both spoke on their experiences with the press. While the press is hardly monolithic, many tabloids in the UK have been particularly critical of human rights issues (Holloway 2012).

Cruden expressed his frustration that the press is not playing a constructive role in the promotion of disability rights. For example, the press would take up cases where an individual was handed out a lump sum as a result of their legitimate claim, and the press specially aligned with the right wing would present it as unfair arguing that an individual can effectively bankrupt their own employer (Cruden 2013).

The behavior and role of the press has recently been an important topic of discussion in the UK. As part of that, Sue Bott also stated that her organization took part in the Leveson Inquiry¹⁴ on press freedom and expressed their concern to hold the press accountable. In her words there is an urgent need of some agency to hold press accountable (Bott 2013). She especially believed that the press has played the role in rising levels of disability hate crime.

Both were concerned that the press has played a huge role in how the public thinks about issues of human rights. Ensuring that impartial and fair reporting is conducted can be important for effective democracy (Heinze and Freedman 2010). In Britain, the negative attitude of several major news outlets towards issues of human rights has tended to color how people in Britain see these issues and diminished their importance in society, making the work of human rights organizations even more challenging.

5.2 THE EHRC AND DISABLED PEOPLES ORGANIZATIONS

As one of the important strategies of the EHRC being defined as ‘a trusted partner for the voluntary and community sectors’ this section will deal with the fulfillment of that role of the EHRC through the eyes of DPOs. DPOs have criticized the EHRC on two issues in particular: firstly, DPOs are concerned that the EHRC only take cases that are related to

¹⁴ The Leveson Inquiry on Culture, Practice, and Ethics of the Press followed incidents of phone hacking and other unethical practices on the part of the press in the UK. See (“An Inquiry into the Culture, Practices and Ethics of the Press” 2013)

principles and of strategic importance, and does not take individual cases. Secondly, the merger of the former Disability Rights Commission with the EHRC has diluted the impact of the Disability Rights Commission. Furthermore, the Parliament's Disability Rights Committee is under review organized by the government. Bott expressed her concerns that either removal of any remit available to it or dismantling would be a setback in efforts to ensure disability rights. The EHRC has submitted its Legal Assessment on Her Majesty's Treasury Cuts¹⁵ cut plan where it has given due emphasis on ensuring protection of vulnerable groups such as people with disabilities, older people, and children (Bott 2013). Nony Ardill, a Senior Legal Advisor in the Commission confirmed that the EHRC cannot take every case and the Commission analyzes its litigation approach on a yearly basis (Ardill 2013). In the same interview, Ardill further highlighted that the EHRC has widened its scope by taking other groups in its purview. Age, gender equality, sexual orientation, gender re-assignment and religious beliefs are some of the extended jurisdiction of the Commission. However, she conceded that it would not be feasible and practical to take every single case. The EHRC is also obliged to make best use of available resources and time (Ardill 2013).

5.2.1 DPOs AND THE POLICY MAKING EXERCISE

The DPOs are part of the bigger voluntary sector. In the words of Prime Minister David Cameron, they are part of the Big Society. The DPOs are contributing to bridge the gaps in services to people with disabilities, and to advocate and pressure to protect their rights. Bott emphasized that her organization is frequently invited to take part in various consultations on policy decision and evaluation organized by the government. But in her words, these tend to be just a box ticking exercise. The government would pursue what they want despite the disapproval of stakeholders. The worrying thing for her is that people are not informed to the fullest extent while giving their say in policy decisions. She gave the following example that has caused considerable concern: recently the government organized consultations to decide on measures to assess eligibility for a new policy for disabled people called "personal, independent payment for living". When the policy was presented, a condition for getting this assistance was that the person should be unable to walk a distance of 50m without any support. This requirement was not mentioned in the consultation paper and according to the DPOs this measure would exclude many disabled people. Here she says the government is

¹⁵ A set of budget cuts proposed by the Conservative government. See (EHRC 2012c) for its assessment of the impact of those cuts.

again trying to manipulate and persuade the public through measures that were not originally part of the policy proposal. In her words, it is harder at present for her organization to voice their concern with the government. Disability Rights UK along with other DPOs have formed alliances in all parties represented in the parliament in their efforts to have their say. Despite this, DPOs find it harder to get their issues discussed in the parliament (Bott 2013).

5.3 POLITICAL AND LEGAL POWERS AVAILABLE TO AND RESTRAINTS ON THE EHRC: DIFFERENCE BETWEEN EQUALITY AND HUMAN RIGHTS ISSUES

The EHRC existed in a fractured form prior to the Human Rights Act 2000. The Commission was a merger between the Commission on Racial Equality, the Disability Rights Commission and the Equal Opportunity Commission active in gender equality. The Equality Act along with the Human Rights Act (HRA) and the Disability Discrimination Act became the main relevant legal documents for the EHRC. Most of the powers and duties of the EHRC are stipulated in the Equality Act. According to section 16 of the Equality Act the Commission is able to launch a formal inquiry, follow up on its inquiry and produce guidelines and codes of practice. Similarly, the commission is also able to conduct judicial reviews. The EHRC can support an individual in equality cases.

No such power is enshrined in the HRA. An individual experiencing a rights violation should take his or her case in their own name to court. The EHRC could apply to be a third party intervener if the commission deems the case to be of strategic importance from a rights perspective (Ardill 2013). Section 6 of the Human Rights Act allows the Commission to promote human rights among public authorities and public bodies. Section 30 of the Equality Act allows the commission to provide support to the cases brought forward by an individual. As Ardill pointed out a case must have equality and human rights dimensions. The EHRC produces guidelines and documents relevant to human rights which do not have a statutory mandate. Ardill clarifies that the court would not like to take hypothetical cases and abstract arguments therefore it is difficult for the Commission to take human rights cases.

5.4 THE EHRC AS AN NHRI

This section briefly discusses the core mandates of the EHRC: research, monitoring, recommendations, and inquiry. The EHRC is a non-departmental public body which means it

is independent from the government. It has a wide range of powers, duties and authority to work with the wider society, government and the parliament. Human rights reviews, human rights inquiry and shadow reports to UN bodies in relation to the conventions that Britain is party to are other examples of policy vetting carried out by the EHRC.

Ardill stated that the EHRC is a regulator in terms of equality and human rights of other regulators and ombudsmen existing in the UK (Ardill 2013). Francesca Klug, the former Commissioner of the EHRC noted that the EHRC is the first NHRI to be established in the UK (Klug 2013). It plays a major role in promoting human rights implementation and ensuring respect of rights by encouraging public authorities and public bodies to adopt the human rights approach in their daily work. Commissioners are appointed by the government for a fixed period of time and the commission is accountable to the parliament for its activities and financial matters, but it is also accountable to the public. Over the years, monitoring of legislation has been seen as the most important job carried out by the Commission. Regarding the process, the Commission can make a recommendation in relation to any case, legislation, or policy that is deemed to be against the Equality Act. The EHRC also works closely with voluntary and civil sector in its efforts to promote human rights. Sometimes the EHRC invites comments and advice from experts and NGOs, and after consultation, the EHRC puts forward a recommendation before parliament for approval, then it becomes a statutory entity. For example, the EHRC took advice from the Senior Council, an NGO working with the elderly, during the home care inquiry. The EHRC does not only take part in the consultation process and there are other regular forums, meetings and interactions where the EHRC contributes as an NHRI.

The EHRC has also been found to be playing a constructive role regarding the consultative process in relation to new policies both at pre-legislative and legislative phases. It provides the legislative with invaluable expertise and advice through consultation after the government has issued the White Paper, Green Paper and in other phases of policy making. The EHRC itself has proposed to be a regulator but as the HRA currently stands it is not given enough power as a regulator for human rights.

5.4.1 POLICY IMPACT OF THE EHRC

Klug states that all available powers and remits to the EHRC can be seen as a gateway to initiate and bring about changes in policy, but during her tenure in the commission there were not many examples which resulted in policy changes (Klug 2013). She recalled one case which concerned prisoners. There was a verdict by the court that a child should accompany her mother in prison. The EHRC got involved in the case and its intervention resulted in policy change. After that it was established that a child's best interest should be taken into consideration when the mother is to be imprisoned. In the Commission's view that was a policy based verdict rather than fact based. Apart from this there were no other examples she could think of where the Commission's involvement resulted in policy changes.

In a separate interview, Ardill gave another example regarding policy influence. The Human Rights Act envisaged that all public authorities should respect the rights of every individual. The EHRC found many anecdotes of bad treatment of elderly people receiving residential care in care homes. There was also little analysis of experiences of elderly people using those services in care homes. Ardill particularly remembered the YL¹⁶ case 2007 which was heard in the court and gave a very narrow definition of public function¹⁷ (Ardill 2013). The HRA envisaged that all functions, including functions carried out by the charity and private organization funded by the state fell under public duty (Butler 2005). But there was a loophole in the HRA that meant that private providers of eldercare were not covered. The EHRC launched a formal inquiry according to their power and spoke to The Senior Council and agreed that any functions that are public by nature should be covered by the HRA. Therefore, the EHRC makes recommendations to the British Parliament. But still the amendment does not cover care provided within the home paid for by the state but provided by private or charitable organizations. These are some of the examples of how the EHRC has influenced the human rights approach in policy discourse.

¹⁶ The YL case involved an elderly woman with Alzheimer who was receiving care in a private facility but funded by the local authority. In the final decision it was determined that the facility was not executing a "public function" and was thus allowed to evict her from the home. See (House of Lords 2007).

¹⁷ The HRA only applies in the case that a "public function" is being performed. The British government has failed to define what constitutes a "public function." The significance of the YL case therefore is that "public function" in that instance was defined very narrowly such that it did not include services provided by a private company directly at the behest of a local authority. See (Justice 2007) for a more detailed description of what constitutes "public authority" and "public function".

After the publication of the inquiry on elderly care, the Care Quality Commission (CQC) changed its approach. The CQC is the regulator of social and health care. There was lots of media coverage of the inquiry report produced by the EHRC regarding the CQC. The CQC report and related policy documents took account of the recommendations made in that inquiry. In Ardill's words, these are examples of policy influence and encouragement of the human rights approach. The EHRC is currently tracking changes after the recommendation and conducting research on the matter in those services. Similarly, Ardill stated that the EHRC completed its inquiry on disability harassment in 2011¹⁸ and also devoted time and resources to explain ways to implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and who can benefit from it.

5.5 GENERAL CONCERNS ON HUMAN RIGHTS

Every respondent expressed that human rights in contemporary Britain are not given due importance and in many circumstances they have been downgraded. Positions on human rights changed after the terrorist attacks of September 11th, 2001. Many who favored and were enthusiastic about implementing it have changed their thinking. Worryingly so, in Britain, human rights do not have a very good reputation.

There have been lots of discussions on promulgating a Bill of Rights in the UK. Both Klug and Ardill are skeptical about the motive behind it. They expressed their concern that no one really knows what it will look like. The available proposal put forth by the Conservatives tells us that the repealing of the HRA is most likely. Withdrawing from the European Court of Human Rights or to be a party to it with some reservation are frequent discussions. The HRA was meant to bring human rights home but repealing it means regression from the current position and a return to a pre-2000 situation. All respondents concurred that the HRA has facilitated the redress process and is very useful to save time and resources. Sue Bott cites the issue of elderly disabled couples as a case in which the Human Rights Act was been highly beneficial. When couples were forced to live separately, they were able to sue the service provider, and it was the HRA which allowed them to stay together

¹⁸ Report available (EHRC 2012d)

5.5.1 HUMAN RIGHTS AND POLICY DECISION PROCESSES

The need to put human rights at the core of the work of the government is increasing. Promotion of rights culture can help to ensure an effective realization of human rights but has proven to be a challenging task. Nowadays government is giving up many of its responsibilities and carrying out many activities through private contractors, but the question remains as to whether they are being held accountable. It is the government's responsibility to promote human rights culture but it is by no mean solely limited just to the government (CESCR 1998). Similarly, The UN Committee on Rights of the Child has also articulated that corruption and failure to coordinate policies and ineffective decentralization can lead to the violation of child rights (CRC 2013).

Whatever was brought into being by the last parliament could be effectively dissolved and repealed by the incumbent parliament (Ardill 2013). Ardill said if Britain pulls out of the European Court of Human Rights, this effectively means repealing the HRA and will pave the way for the EHRC's exit without doubt. In this context, advocacy or lobbying by the commission for their existence might be presented as an effort to safeguard jobs for the staff members. This is where the Joint Committee on Human Rights of the British Parliament comes into play. The JCHR, as Sharma pointed out during the interview, discusses a wide range of human rights issues which are not only limited to Britain but the whole world (Sharma 2013). On another level, the JCHR scrutinizes policies tabled by the government and questions the motive, and rationale behind such policies. In his words, their suggestions are incorporated in the law of the land and policies (Sharma 2013). Sue Bott put it a bit differently, suggesting that the JCHR has proved to be a thorn in the side for the government (Bott 2013). Sharma further said that mandates of the EHRC are being curtailed and narrowed over the years and this in his view reflects ideological differences. It shows a diminishing commitment by the current ruling coalition on the incorporation of human rights in their actions and program (Sharma 2013).

Interpretation of human rights has always been important for its implementation. Universality, indivisibility and interdependence are the main features of human rights. Klug states that this is the first time that authorities in Britain have been held accountable. In the past human rights have been something Britain has exported and advocated. In her words it would have been constructive to see human rights flourish without the current general

hostility towards rights. However, after September 11th many of those who introduced human rights find their hands tied and have become more ambivalent about whether human rights can benefit everyone in the society. Klug noted that prior to September 11th, many people thought existing British common law provided protection to only certain sectors, although in truth the protections extended to all people. The HRA was intended to address the skeptics in society who did not see existing law as extending to all sectors. Therefore, the HRA brought universality, indivisibility and interdependence to rights in Britain and a clear extension of rights to all people (Klug 2013).

The previous Commission on Racial Equality which worked on the basis of universalism was subjected to significant hostility in ways the former Disability Rights Commission and the Equal Opportunity Commission were not. This kind of hostility towards human rights is launched by some sections of the press and politicians. As we move further from the HRA, it is the states' duty and obligation to comply and ensure that all rights to an individual are guaranteed. The traditional British libertarian view is that one is free to do something as long as the law says one is not. This particular view has benefitted general public who do not come into contact with the public authority so often. It is interesting regarding the hostility from the press; it was self-interest and conflict about the right to privacy which came to light during the Leveson Inquiry.

The British Member of Parliament Mr. Virendra Sharma believes that the EHRC should be given enough resources and remit so that they can execute their role in an effective manner and there should be no interference from the government's side (Sharma 2013).

The promotion of the human rights culture is an essential part to encourage human rights approach in policy discourse. Klug recalls a statement made by the incumbent Prime Minister that human rights culture is counterproductive and distracts public authorities (Klug 2013). Why human rights have got this name and shape should be explored more. Statements like the one above indicate that human rights are going to get more criticism. Regardless of one's role in promoting human rights, be it as litigation preventer or as a policy changer, the more effective human rights become the more it is criticized.

Klug finds political polarization to be detrimental for the promotion of human rights. Controversy between the judiciary and the executive, and frequent tabling of a motion to repeal the HRA all reflect a general mood towards human rights in the UK. The existence of

both the EHRC and the JCHR has proven to be beneficial for furthering human rights in the UK. Although some people are concerned that adding a greater policy role to the work of the EHRC would cause conflicts of interest in the organization, Klug believes that this combination of roles is doable, although would require the creation of a “Chinese wall” within the organization that would clearly separate its legal functions from its policy-oriented ones (Klug 2013). Adrian Cruden also believes that there should be some role regarding policy audit similar to that of equality assessments (Cruden 2013).

Further Klug observes that the EHRC has a more promotional and enforcing power than a regulating power. Some would argue that advising and enforcement done by one single body does not match the prerequisite of democracy, especially on the question of accountability. The human rights principle should be made one of the guiding principles for public policy development, as fairness and anti-discrimination have been accepted as basic principles and benchmarks for any policy.

5.5.2 THE POLICY MAKING PROCESS AND HUMAN RIGHTS IN THE UK

The Joint Committee on Human Rights (JCHR) in the British parliament has the major responsibility for legislative scrutiny of human rights compatibility of policies. According to the recent communication of the JCHR to the government, the Committee expressed its dissatisfaction with the Government’s practice of fast tracking the legislations which does not allow the JCHR to scrutinize policies for human rights compatibility (JCHR 2013). Similarly, the JCHR has also urged the government to include a memorandum of human rights compatibility with proposed policies, explaining the reasons why in cases where it thinks the proposed policies and bills won’t have human rights implications. Finally, the legislative scrutiny process is limited to the European Convention on Human Rights or only for convention rights. Unlike human rights issues, the government is already required to conduct an equality assessment for any policy before proposing it.

5.5.3 THE ROLE OF THE NATIONAL HUMAN RIGHTS INSTITUTION IN THE POLICY MAKING PROCESS?

The EHRC in the UK did not have a smooth start. After its turbulent initial period the EHRC has seemed stable for the past few years. Firstly there was criticism regarding appointments

made to the EHRC. The JCHR commented in 2009 that someone close to the Conservative party should be appointed as most of the commissioners were found to be closer to the Labour party (JCHR 2010). The reappointment of the chair of the EHRC in 2009 after several resignations by commissioners was another criticism, as the Parliamentary Committee was not consulted in the process. While hiring commissioners in 2012, the parliament and committees were reasonably involved and consulted (JCHR 2012). Practices have showed that both the EHRC and the JCHR collaborate very closely. As the EHRC is an established authoritative center for human rights related matters, the JCHR consults with the EHRC time and again for concerned matters.

Even though the EHRC does not have sufficient powers to enforce human rights in its current form, the changes proposed in the 2011 review would erode that power further. Among the sections up for review are section 3 which refers to the general duty and is important in relation to sections 8 and 9 which articulate the specific duties and powers of the EHRC in terms of equality and human rights respectively (Crowther 2013). If the proposed change is implemented then EHRC's duties such as presenting shadow reports are likely to be affected. Similarly, changes in duties regarding good relations and reconciliation might jeopardize its relationship with civil society human rights organizations. A former Program Director of the EHRC wrote in his blog that without section 3 the EHRC might be evaluating its own impact in the society rather than the achieved progress of the society by the state (Crowther 2013).¹⁹

5.6 ANALYSIS

The EHRC as an NHRI is fulfilling monitoring, advisory, and reporting roles. Apart from these activities the EHRC is also delegated to promote and organize compliance and respect of human rights by public authorities. But it does not have any investigative or enforcing power in terms of human rights issues. Enactment of the HRA was considered to be an argument between the maximalist and minimalist positions in the UK (Ewing 1999). But there was a lot of debate regarding the embedded power of the HRA. Especially parliamentarians and politicians in the House of Lords were questioning whether the HRA is infringing upon sovereignty and supremacy of Parliament—political traditions to which the British system is dearly attached. The HRA is silent on whether or not EHRC can issue a

¹⁹ See section 4.4 for greater detail on the proposed changes to the EHRC

declaration of incompatibility, but even if the court issues a declaration of incompatibility, Parliament can refuse it, leaving the protection of human rights weaker than one would like to see (Ewing 1999).

Similarly there were misgivings from the press, particularly they were scared about the introduction of a right to privacy that could hinder them in their work. In this case the press was in “an awkward position as an institution prepared to exploit human rights considerations for corporate commercial purposes, while simultaneously appearing unwilling to respect the human rights of others” (Ewing 1999, 93). After the HRA came into force, there were serious criticisms regarding human rights implementation and enforcement in Britain from some quarters according to which the HRA is being used to offer protection to convicted criminals (EDF 2011). The EHRC in its triennial report, *Human Rights Review*, has featured various aspects of implications of security policies on the human rights of individuals, immigrant and migrant populations, regarding techniques to restrain and deport. Cuts to legal aid funding and its impact on the human rights of its citizens is another feature of the *Human Rights Review*. As an NHRI, the EHRC has conducted only one human rights inquiry as of 2009. The EHRC has researched on issues of elderly care and, disability harassment. The publication of the *Human Rights Review* is an essential part of their monitoring duty and forms an essential evaluation of the progress of the state as measured by their Equality and Human Rights Measurement Framework.

The EHRC has contributed a lot in terms of equality. Under equality duty, the EHRC has enforcement power as has been mentioned several times in this thesis. EHRC can take legal action if an individual or organization fails to comply with its directives, and can file lawsuits as an ultimate resort. But according to the strategy for 2012-15 the EHRC would try to achieve equality through nudges and persuasion before resorting to legal action. Lack of stability in EHRC’s duty, functions, and structure has contributed to its partial success as an NHRI. Recently proposed changes in statutes under which the EHRC is established are likely to affect its role in many ways, especially the proposed amendment on the general duty of the EHRC as mentioned in Section 3 of the Equality Act (Crowther 2012). The problem is that the government is trying to change section 3 of the Equality Act through the Enterprise and Regulatory Reform Bill, in an effort to remove what is seen as creating “red tape” hampering economic growth. This is likely to impact substantively on the EHRC’s performance. The

implication of proposed amendment is that it could render equality and human rights as two separate entities under the same roof.

Similarly, recent changes are also likely to affect the Commission's independence. For instance, the EHRC has been subjected to having a huge chunk of its budget cut, and the government has capped the amount it can spend in coming years. This might render EHRC less effective and as a result the EHRC might be forced to take fewer cases and conduct less research and inquiry than it would otherwise be able to do. Similarly, the minister has been made accountable to the EHRC, rather than the Parliament, however, JCHR is engaged in the appointment of commissioners (EHRC and DCMS 2013). The Equality and Diversity Forum has voiced its concern regarding ministerial power and roles towards the EHRC, in particular a concern that proposed changes would lead to an embarrassing downgrading of the EHRC's status as an NHRI. Therefore, they have advocated that the EHRC should remain free from fear of ministerial interference (EDF 2011). Additionally, the Forum expressed concern that ministers could modify or move the functions of the EHRC, as well as eliminate it altogether without prior consultation or legislative scrutiny through affirmative or 'super-affirmative' procedures (EDF 2011). Given this strangulation of the EHRC, the EHRC cannot be expected to achieve the goal of promotion of human rights culture in a holistic manner in society. The EHRC has been recognized as a regulatory body in terms of enforcing equality, whereas it has only promotional roles in human rights. Given diverse and inconsistent favoring and opposing views of political parties towards the concept of human rights, the general environment in the UK for human rights looks bleak. Similarly, the hostility that human rights arguments have encountered especially from the conservative party and press suggests realization of human rights culture seems far from reality.

5.7 A POSSIBLE WAY FORWARD FOR HUMAN RIGHTS

As this chapter shows changes in policies can limit individual's freedom and their opportunities and choices. Additionally, how the actors in society such as civil society, the press and the general public, interact with changes has an impact on human rights. Therefore, the opportunities available to an individual are impacted by both environmental and policy changes.

Martha Nussbaum, in her article, “Capabilities and Human Rights” acknowledges that the language of human rights is widely used across the globe, especially in the area of development and for the protection of particular vulnerable and minority groups (Nussbaum 1997). Even then, both pioneers of the capability approach, Martha Nussbaum and Amartya Sen, have casted some doubts over the meaning and substance of human rights, citing various philosophers. Both of them agree that capabilities and human rights can be the central goal of public policy making. Similarly, Fukuda-Parr, writing on the human development paradigm, emphasizes that the capability approach which is simultaneously known as the human development approach, speaks about the significance that this approach can have in ensuring rights for vulnerable groups in society (Fukuda-Parr 2003). It is compelling that the capability approach is so similar to the rights language. In some cases, basic capabilities could be interpreted as basic rights. However, as Amartya Sen in his article “Human Rights and Capabilities” tried to clarify, saying that human rights and capabilities can only go hand in hand if one does not subsume the one under the other (Sen 2005). Both capabilities and human rights strongly promote the freedom of individuals, where they differ is on what would be the best or most effective process rather than on freedom of opportunity and freedoms themselves. Further, the capability approach also gives high priority to the people’s political participation. Amartya Sen also says that political rights are necessary not only to fulfill the needs, but also in the formulation of needs (Sen 2005). Hence, this approach offers an effective tool for policy makers and politicians alike to move towards a better society where human rights are respected and where people have choice over their lives. For example, Nussbaum states:

“The aim of public policy is the production of combined capabilities. This idea means promoting the states of the person by providing the necessary education and care, as well as preparing the environment so that it is favorable for the exercise of practical reason and the other major functions” (Nussbaum 1997, 290).

The EHRC drew heavily from this approach while preparing the Human Rights and Equality Measurement Frameworks which enables the EHRC to monitor progress made by the state in an objective manner. It is desirable for policy makers and parliamentarians take this approach into account while generating and setting new public policies. The government sees human rights and equality as something that adds red tape and hampers economic growth, and thinking of human rights this way is the heart of the problem. A number of people interviewed noted that the approach taken by the government to manipulate statistics to make

way for their proposed policies indicates where policies are actually generated (Sharma 2013; Bott 2013). One can therefore assume that policy is either formed under the influence of lobbying groups and business interests or comes from strong ideological positions. In both of those assumptions it is harder for campaign groups and non-governmental organizations and charities working on behalf of people, for example disabled people's organizations like VoiceAbility and Disability Rights UK to influence policies.

CHAPTER 6: CONCLUSION

Even though there is general agreement that human rights serve as guiding values to policy makers and the government alike, and minimum performance standards can be used to make social and political actors more accountable, this study finds that the UK government does not give much priority to human rights in the policy making process. As we have seen in JCHR's comments and discussions from various interviews, the government disregards human rights standards and human rights norms through its selective use of statistics and how it presents information. The human rights approach means empowerment of the right holders to claim and increase the ability of the individual, institution, and authority to be more responsible and accountable to human rights.

The EHRC was established as an NHRI, but has been put in a difficult position and has become a victim of games between political parties. This has resulted in EHRC's mandate being narrowed. Despite this, the EHRC's interventions have resulted in some policy changes, that have been discussed in this thesis. Similarly, the EHRC's monitoring effort has been effective in producing an assessment of the fairness of British society and review of the human rights situation. Notably among those are a human rights inquiry into elderly care and research into disability harassment.

The proposed changes to the EHRC signal overall thinking towards human rights by the political parties. General arguments to pursue the policy which many times disregards human rights values, especially in the case of disability benefits allowance and legal aid cuts has been shocking. Proposed efforts to strip the EHRC of its essential mandate would render it largely lifeless in its pursuit of defending and promoting issues of human rights in the UK. Civil society organizations are more visible in the promotion of human rights in the UK. The EHRC has also been fighting an uphill battle to address adverse public opinion towards human rights. The EHRC will have to work harder to become more visible in society, especially given the backdrop of a barrage of negative coverage of human rights issues in the media. Similarly, the EHRC will have to expend more effort to reach out to organizations and the public.

Currently the powers given to NHRIs do not allow them to be sufficiently involved in the policy making process to contribute to the realization of human rights in new policies. Every

government policy, whether it is about housing, welfare, health, or education can affect the rights of citizens. The priority given to certain rights over other rights has posed significant challenges to the effective realization of human rights (Nussbaum 1997). Human rights as a policy making principle has been gaining ground for some years although it is an evolving idea. Lack of consensus regarding issues of human rights and a dearth of stability and respect are some other challenges to the realization of human rights (Sen 1979; Nussbaum 1997). Human rights are about liberties, freedoms, dignity and worth of human life and respect that each of us deserve and are so important to humankind. Disrespect to the interdependence, indivisibility and universality of the whole human rights framework is a concern for everyone, because holistic development would not be possible without the respect for human rights. The states operate through laws, institutions and policies. It is needless to say that all states' organs such as legislature, judiciary and executive all have a significant role in promoting, protecting and ensuring human rights. Similarly, civil society, the press, think tanks and each individual have a role to play. Developed and developing societies both have equal obligations and duties towards meeting human rights goals. No country has a perfect record regarding human rights, and developed countries frequently face issues with social and economic inequality, which go unaddressed as they focus their efforts largely on anti-discrimination efforts. In the words of the former Chief Commissioner of the New Zealand Human Rights Commission,

“The ignoring of child poverty, youth suicide, low participation in elections and democratic processes, and the failure to deliver equal social and economic rights is a blight on nations who profess to be leaders in human rights” (ICHRP 2004, 75).

6.1 RECOMMENDING THOUGHTS

Based on the research conducted for this study about both the effectiveness and shortcomings of the EHRC's involvement in the policy making process, it seems desirable to consider changes and models which would allow NHRIs to more effectively include human rights in public policy:

- Firstly, the Swedish ombudsmen model which can deal with human rights violations carried out by the public administration body and which also has prosecutorial power may help to promote human rights culture among public authorities more effectively than the English model.

- Secondly, the establishment of a statutory organ such as a national policy forum under the auspices of the EHRC could be tasked with providing guidance to policy makers, and with a view to assessing the impact of certain policies in relation to human rights. It would be important that this body's advice was enforceable.
- Finally, giving NHRIs like the EHRC investigative power would allow NHRIs to be more aggressive in identifying issues of inequality and human rights violations and playing a more proactive role in locating problem areas in society.

Additionally, one problem that has been pervasive in the British context is the animosity of the press towards human rights issues. The way the portrayal of human rights issues in the press has contributed to an adverse public opinion against human rights, the role of the press should be a subject for further studies.

NHRIs, albeit many being institutions of long standing, only gained momentum after the Paris Principles of 1993. As we have highlighted, the Paris Principles are essential to guiding the promotion of human rights through NHRIs. Institutionalization of human rights should not be limited to the establishment of NHRIs but should also engage policy makers in the policy making process, so that human rights implementation could be more effective.

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APPENDIX A

Interview Guide

The main objective of this study is to investigate the different roles played and contributions made by the Equality and Human Rights commission (EHRC) in the policy making process. This study will include legislators, human rights NGOs and professionals. Given the political debates around repealing the Human Rights Act and enactment of the Bill of Rights and responsibilities, the researcher hopes that this study will contribute to ongoing debates.

Policy Implications

- How much of the recommended policy changes and advice have been implemented?
- What is the role of the parliament in case of failure of the EHRC?
- What are the existing steps for noncompliance of policy recommendations?
- How does the EHRC ensure the government's policies are compatible with human rights principles and commitments?
- How does the EHRC produce guidelines and benchmarks?
- How do you find the on-going controversies regarding the European Court of Human rights and the British government's policies?
- What is the impact of the human rights monitoring in policies?

Given that the EHRC is focusing its efforts on implementing the human rights approach in service delivery, how does the EHRC oversee the implementation of its various guidance in the day to day decision making process?

- Have there been any positive changes after the enactment of the HRA?
- Why are there negative perceptions regarding HR in general?
- Why should the Bill of Rights replace the HRA?
- Given the failure of the British government to deport Abu Qatada, are human rights at an individual level and national security incompatible with each other?

Policy making process

- Do you see more roles for the EHRC in the policy making process, beyond advisories and consultations? If yes, what are they?
- Do you see the commission's role as hindering or facilitating in the policy making process?
- How has the HRA been facilitating the policy making process?

- What are possible strategies for the EHRC to get involved in the policy making process?
- Can the EHRC produce guidelines, advisories, statements, policy papers assisting the Parliament?
- Can policy vetting for a human rights component be a mandatory aspect?
- What can the EHRC do to encourage the human rights approach in policy discourse?