National Human Rights Institutions

History, Principles, Roles and Responsibilities

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Human Rights

UNITED NATIONS

Professional Training Series No. 4 (Rev.1)

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HIGH COMMISSIONER
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CONTENTS

ABOUT THIS PUBLICATION

This publication introduces the reader to **national human rights institutions** (NHRIs). Its focus is on NHRIs as both cornerstones of national human rights protection and promotion, and links between States and the international human rights system.

Intended audience

Respect for human rights requires the concerted effort of every Government, individual, group and organ in society. With this in mind, the publication is intended for all those who seek a basic understanding of NHRIs, the work they do, how they interact with States, civil society and the international community, and how to support their work.

Overview of learning objectives

Overall goal: provide readers with a basic understanding of NHRIs, what they are and how they work

Objective 1: describe the context and systems in which NHRIs operate, including the national, regional and international human rights systems, and the special importance of NHRIs at all these levels.

Objective 2: clearly explain what an NHRI is and the different models that exist, as well as the roles of NHRIs.

Objective 3: explain the role of NHRIs in promoting human rights.

Objective 4: explain the role of NHRIs in advising Governments and legislatures.

Objective 5: explain the role of NHRIs in protecting human rights (monitoring, investigations, inquiries and alternative dispute resolution), including by ensuring greater respect for the rule of law.

Objective 6: identify key challenges and opportunities for supporting NHRIs in the *pre-establishment, establishment* and *strengthening* phases of their development.

I. THE UNITED NATIONS HUMAN RIGHTS SYSTEM AND NATIONAL HUMAN RIGHTS INSTITUTIONS

Learning objectives

After reviewing this first chapter, readers will understand:

- The basic elements of the human rights system, including:
  - How the United Nations supports the promotion and protection of human rights;
  - A State's responsibility to promote and protect human rights, especially with regard to the international human rights treaties it has ratified;
  - Regional systems; and
  - Situating NHRIs within State responsibilities;
- The basic role of the International Coordinating Committee and the Principles relating to the status of national institutions (the Paris Principles);
- The role of the United Nations, and of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in particular, in supporting NHRIs.

Introduction

Human rights have been a core concern of the United Nations since its inception. The responsibility to respect, protect and fulfil human rights lies with States. They ratify international human rights instruments and are required to create mechanisms to safeguard human rights.

The governance of human rights is complex and diffuse. All parts of government are involved, together with other kinds of national institutions and civil society: an independent judiciary, law enforcement agencies, effective and representative legislative bodies, and education systems with human rights programmes at all levels. Among these, national human rights institutions (NHRIs)[1] occupy a unique position.

The United Nations has been extensively involved in establishing and strengthening NHRIs. This is a priority for OHCHR as well as for other parts of the United Nations system, such as the United Nations Development Programme (UNDP).[2]

In the past 15 years, the number of NHRIs has surged, largely as a result of United Nations support for these institutions "on the ground." While all NHRIs should have a broad mandate to protect and promote human rights, this growth has brought with it substantive and operational challenges.

The first challenge is rapid growth and **institutional diversity**. A 2009 survey by OHCHR shows rapid growth in the number of NHRIs in the Americas in the early 1990s, in Africa in the mid-1990s, and in Asia and the Pacific in the late 1990s, while Europe has seen a steady growth since the mid-1990s.[3] However, this evolution has been neither orderly nor linear.

Depending on the region, the country and its legal system, the mandates and powers of NHRIs vary widely. Some institutions, such as public protection offices and ombudsmen, have human rights mandates, although many do not. Some States have added other

[1] The terms "national human rights institutions" and "national institutions" are commonly used in the literature. "National human rights institutions" (NHRIs) is the term used in this publication, unless citing a particular source or document that uses a different term.

[2] See for example the High Commissioner's Strategic Management Plan 2010-2011 and the UNDP Strategic Plan 2008-2011.

[3] OHCHR, "Survey of national human rights institutions: report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide", 2009, available from www.nhri.net.

types of mandates, such as maladministration or anti-corruption, resulting in "hybrid" institutions. In some countries, States have divided human rights responsibilities among several bodies with different mandates—gender commissions, for example.

The second challenge is **thematic diversity**. NHRIs are expected to be the "key elements" of a strong and effective national human rights protection system, helping to ensure the compliance of national laws and practices with all international human rights norms; supporting Governments to ensure implementation; monitoring and addressing at the national level core human rights concerns such as torture, arbitrary detention, human trafficking and the human rights of migrants; supporting the work of human rights defenders; and contributing to eradicating all forms of discrimination.[4] As new instruments are adopted, NHRIs are frequently called on to play a role. For example, the Convention on the Rights of Persons with Disabilities gives an explicit role to NHRIs under its article 33. National human rights institutions are also expected to interact with an ever-growing group of non-governmental organizations (NGOs), citizens, networks and regional bodies, and to take on new issues: transitional justice, climate change and development, for example.

The third challenge is the need for **minimum standards** so that NHRIs, regardless of their structure or mandate, can be assessed fairly and accredited. The Paris Principles play this role. Accreditation under the Paris Principles is the responsibility of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

The fourth challenge relates to the importance of **core protection activities**. These include general activities relating to the prevention of torture and arbitrary detention, detention monitoring and the protection of human rights defenders. This work cannot be overemphasized: it is the most scrutinized function of NHRIs, especially in countries with serious human rights issues.

In the face of this complexity and rapid change, NHRIs and those who work with them need to understand the broader context in which they operate. Targeted and effective support for NHRIs is more important than ever. Responses from more than 60 NHRIs to the above-mentioned OHCHR survey identified challenges and weaknesses, including inadequate funding, a need for technical assistance related to organizational and resource management, knowledge of the international human rights system, the importance of fostering relationships with public bodies and civil society, and the follow-up to NHRI recommendations by their Governments. In the survey many NHRIs called, among other things, for greater action and support from UNDP and OHCHR on these and other related matters. The General Assembly recognizes these needs and, in its resolution 63/172 (see annex VII below), it encouraged the United Nations High Commissioner for Human Rights, "in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national human rights institutions" and invited Governments "to contribute additional voluntary funds to that end".

[4] A/HRC/13/44, para. 108.

A. Human rights systems

1. The United Nations and human rights

Article 1 of the Charter of the United Nations proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

The United Nations has tried to achieve this purpose, first, by setting international norms. Today these standards cover virtually every sphere of human activity.

The United Nations carries out a wide variety of public information activities, and has launched a technical cooperation programme to provide practical help to States in their efforts to promote and protect human rights.

The position of United Nations High Commissioner for Human Rights was created following the World Conference in 1993.[5] The High Commissioner is responsible, generally, for strengthening United Nations efforts to ensure that all people enjoy all human rights and fundamental freedoms. The creation of OHCHR and the position of High Commissioner brings more intense focus to human rights, both within the United Nations system and outside. The Vienna Declaration and Programme of Action, adopted by the World Conference, confirmed the indivisibility and interdependence of all human rights, and set an ambitious agenda for human rights into the twenty-first century.

Although OHCHR has leadership in human rights, different parts of the United Nations system work together.[6] The 2005 World Summit highlighted the importance of greater United Nations inter-agency cooperation in advancing human rights.[7]

2. Regional human rights mechanisms

Regional human rights mechanisms in Africa, the Americas, Asia and Europe are becoming increasingly active. They develop practices, policies and case law (for those that have a court system) that put international human rights standards in the context of particular social, historical and political traditions and regional realities. Regional human rights mechanisms and NHRIs have a symbiotic relationship in the promotion and protection of human rights.

Regional economic and development institutions, such as the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), are also involved in human rights.

3. Non-governmental bodies

Non-governmental bodies are all those entities that are not part of government, including civil society, the media and business.

Civil society has a special role to play in fostering a universal culture of human rights, especially through the dedicated work of NGOs, which, because of their independence and flexibility, are often able to speak out and act more freely than either Governments or intergovernmental organizations. Religious institutions and community service organizations are also key players.

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5 General Assembly resolution 48/141.

6 See "Strengthening the United Nations: an agenda for further change" (A/57/387).

7 See General Assembly resolution 60/1 on the 2005 World Summit Outcome.

4. The role of the State

The central responsibility for protecting human rights rests with Governments. In recent decades, most countries have become parties to the major human rights treaties. Each instrument imposes legal obligations to implement, nationally, the human rights standards contained in those treaties.

In ratifying an international human rights treaty, a State assumes the responsibility to respect, protect and fulfil the rights it contains. To **respect** means that the State cannot take any action or impose any measure that is contrary to the rights guaranteed by the treaty. To **protect** means that the State must take positive action to ensure that an individual is not denied his or her human rights. Mechanisms through which human rights are protected must be put in place. Adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment and strengthening of democratic institutions—all require State action. The responsibility to **fulfil** requires a State to take positive steps beyond mere prevention. This might, for example, go beyond the enactment of laws to promoting human rights through national education and information campaigns.

When States ratify a human rights instrument, they have to ensure that the rights become part of or are recognized by the national legal system. States are required to take "all appropriate steps", including but not only legislative steps, to ensure that rights are realized at the State level. These steps are what is meant by "effective national implementation" and this has generated much international interest and action. The emergence or re-emergence of democratic rule in many countries has focused attention on the importance of democratic institutions like NHRIs as one of the key factors in implementing international obligations.

5. Regional networks

Regional and subregional networks and associations of NHRIs are an important complement to the international system. Regional networks of NHRIs have the right to participate in the Human Rights Council as observers and to engage with its various mechanisms (see below). They enable institutions from the same region to meet and discuss issues of common concern more frequently. These networks are:

- The Network of African National Human Rights Institutions;
- The Network of National Institutions for the Promotion and Protection of Human Rights in the Americas;
- The Asia-Pacific Forum of National Human Rights Institutions; and
- The European Group of National Institutions for the Promotion and Protection of Human Rights.

In its resolution 63/172, the General Assembly welcomed the strengthening in all regions of regional cooperation among NHRIs and between them and the regional human rights networks (see annex VII below).

Africa

The **Network of African National Human Rights Institutions** was established in 2007.[8] It encourages African NHRIs, in conformity with the Paris Principles, to be more effective and to cooperate. The Network has recognized the significant role that NHRIs can play in elections and in democratic governance more broadly, promoting democracy and development, and supporting judicial independence.

[8] The Network replaced the Coordinating Committee of African NHRIs, set up in 1996. Its Constitution was signed at the sixth Conference of African NHRIs (Kigali, October 2007) and provides for a permanent secretariat in Nairobi with the financial support of OHCHR.

In June 2010, the Network had 15 NHRIs with "A" status (see annex II below).

In 2009, West African NHRIs established a subregional network during a meeting in Banjul and early work has been undertaken to make it operational.

Americas and the Caribbean

The **Network of National Institutions for the Promotion and Protection of Human Rights in the Americas** was created in 2000 with the support of OHCHR. It aims to promote a culture of respect for human rights; strengthen the recognition and implementation of international commitments; contribute to democratic development; strengthen existing NHRIs, and support the development of new and emerging NHRIs in accordance with the Paris Principles. The Network invites as observers NHRIs that have no "A" status accreditation.

In June 2010, the Network had 15 NHRIs with "A" status (see annex II). In 2009, the Network organized a workshop in Geneva on the universal periodic review and the international human rights system with the support of OHCHR. National human rights institutions shared experiences and best practices on their interaction with the international human rights system.

Asia and the Pacific

The **Asia-Pacific Forum of National Human Rights Institutions** (APF) attended the first Regional Workshop of NHRIs in Australia in 1996 as an organization mandated to support the establishment and strengthening of NHRIs in the region. This concept was formally accepted in 1997.

Its annual meeting brings together NHRIs from Asia and the Pacific, the United Nations, Governments and NGOs to improve human rights cooperation in the region through the promotion and strengthening of NHRIs. It is an opportunity for senior representatives of each of the member institutions to review and plan their activities, as well as to discuss human rights issues that are relevant to the region.

It provides practical assistance and support to its members, Governments and NGOs to enable them to undertake their own human rights protection, monitoring, promotion and advocacy more effectively. In June 2010, APF had 15 members with "A" status (see annex II).

Europe

The **European Group of National Institutions for the Promotion and Protection of Human Rights** is composed of European NHRIs, the majority of which have "A" status (see annex II). It regularly holds regional conferences and round-table meetings, and is actively involved in the United Nations human rights mechanisms, such as the Human Rights Council, the universal periodic review, human rights treaty bodies and special procedures. It cooperates with the European Union's Agency for Fundamental Rights, the Organization for Security and Co-operation in Europe (OSCE), the Council of Europe, including the European Court of Human Rights, and others.

European NHRIs have also engaged with the Arab-European Human Rights Dialogue, which is designed to foster productive dialogue among NHRIs in Europe and the Arab world. The Dialogue was initiated in 2005 by the Danish Institute for Human Rights and the Jordanian National Center for Human Rights. It provides NHRIs of both regions with a forum to discuss cross-cutting human rights issues and to strengthen institutional capacities by sharing best practices and experiences, and helps NHRIs in the Arab region to build a regional network.[9]

[9] More information is available from http://aehrd.info/j02/.

B. The United Nations and national human rights institutions

1. A brief history

In 1946, the Economic and Social Council considered the issue of national institutions, two years before the Universal Declaration of Human Rights became the "common standard of achievement for all peoples and all nations". Member States were invited to consider establishing information groups or local human rights committees.

In 1978, the Commission on Human Rights[10] organized a seminar which resulted in draft guidelines for the structure and functioning of institutions. The Commission on Human Rights and the General Assembly subsequently endorsed the guidelines. The General Assembly invited States to take appropriate steps to establish these institutions, where they did not already exist, and requested the Secretary-General to submit a detailed report on NHRIs.

In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights took place in Paris. A key outcome was the Principles relating to the status of national institutions (the **Paris Principles**, see annex I below). Today the Paris Principles are broadly accepted as the test of an institution's legitimacy and credibility, and have become part of the human rights lexicon.

The 1993 World Conference on Human Rights in Vienna was a watershed for NHRIs. For the first time NHRIs compliant with the Paris Principles were formally recognized as important and constructive actors in the promotion and protection of human rights, and their establishment and strengthening formally encouraged (A/CONF.157/23, Part I, para. 36). The 1993 World Conference also consolidated the Network of National Institutions, established in Paris in 1991, and laid the groundwork for its successor, the **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**.

In 2005 the Commission on Human Rights, in its resolution 2005/74 (see annex IX below), reaffirmed the importance of establishing and strengthening independent, pluralistic NHRIs consistent with the Paris Principles and of strengthening cooperation among them. It accorded:

- Speaking rights to "A" status NHRIs under all its agenda items;
- Dedicated seating to NHRIs; and
- The right to NHRIs to issue documents under their own symbol number.

Moreover, it requested the Secretary-General to continue to provide assistance for meetings of the International Coordinating Committee, and international and regional meetings of NHRIs.[11]

[10] The Handbook refers at times to the "Commission on Human Rights" in relation to the period before April 2006. The Human Rights Council replaced the Commission on Human Rights that month (see General Assembly resolution 60/251). The Human Rights Council, while different in membership and in its responsibilities, also assumed "all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights" with the requirement to "improve and rationalize" them where necessary.

[11] These arrangements were later integrated in Human Rights Council resolution 5/1.

The work that is done by OHCHR each year for NHRIs is set out in annual reports of the Secretary-General to the Human Rights Council on national institutions for the promotion and protection of human rights.[12]

2. International conferences of the International Coordinating Committee

Since the 1993 World Conference, the United Nations has supported regular international meetings and conferences of NHRIs.[13] Each meeting has featured exchanges of information and discussions on special concerns, sometimes tied to specific themes. For a complete list of international conferences, themes and results, see www.nhri.net.

3. National human rights institutions, OHCHR and the international human rights system

OHCHR is part of the United Nations Secretariat and leads the United Nations human rights programme. Since 1993, it has been headed by the High Commissioner for Human Rights and works with an ever-growing range of actors, not only Governments and NHRIs, but also civil society and business, to instil a broad commitment to human rights.

OHCHR promotes and protects human rights established under the Charter of the United Nations and international human rights law. The High Commissioner works to mainstream human rights standards throughout all United Nations programmes to ensure that peace and security, development, and human rights—the three essential pillars of the United Nations system—are interlinked and mutually reinforcing, and that human rights underpin all United Nations activities.

Activities regarding NHRIs are carried out mainly through the **National Institutions and Regional Mechanisms Section**. The Section works with other parts of OHCHR, providing advice and assistance to establish and strengthen NHRIs through country and regional offices, human rights advisers and human rights components of United Nations peace missions, as well as through other United Nations partners (including UNDP) and the regional coordinating bodies of NHRIs.[14] OHCHR offers technical cooperation programmes and tailored advice on constitutional or legislative frameworks regarding the establishment of NHRIs, as well as on their nature, functions, powers and responsibilities. In particular, it:

- Reviews draft legislation to establish NHRIs;
- Advises on compliance with the Paris Principles;
- Establishes guidance notes, methodological tools, best practices and lessons learned on NHRI-related issues;
- Provides secretariat support to the International Coordinating Committee, including its Sub-Committee on Accreditation;
- Facilitates partnerships between NHRIs and United Nations country teams (UNCTs) and country engagement by OHCHR;
- Supports effective interaction with the judiciary, parliament and NGOs;
- Supports partnerships of NHRIs with the international human rights system, including treaty bodies, special procedures and the Human Rights Council;

[12] See, for instance, the latest reports A/HRC/13/44 and A/HRC/13/45 on the International Coordinating Committee's accreditation process and methods.

[13] Tunis in December 1993; Manila in April 1995; Mexico City in November 1997; Rabat in April 2000; Copenhagen and Lund, Sweden, in April 2002; Seoul in September 2004; Santa Cruz, Bolivia (Plurinational State of), in October 2006; Nairobi in October 2008; Edinburgh, United Kingdom, in October 2010.

[14] A/HRC/13/44.

- Shares information with NHRIs on specific themes, such as the administration of justice, the rule of law, transitional justice and the prevention of torture; and
- Can provide comparative analysis, technical cooperation needs assessments, project formulation and evaluation missions.

Quick facts about NHRIs, OHCHR and the United Nations system

By June 2010, 67 NHRIs were accredited with "A" status by the International Coordinating Committee, in compliance with the Paris Principles (see annex II).

UNDP and OHCHR work with 80+ NHRIs worldwide.

Regular NHRI information notes are prepared by the National Institutions and Regional Mechanisms Section of OHCHR, with highlights of national, regional and international developments. See www.ohchr.org.

Cooperation: OHCHR works with the Agence intergouvernementale de la Francophonie, the Association francophone des Commissions nationales des droits de l'homme, the Inter-Parliamentary Union, the Council of Europe, the OSCE Office for Democratic Institutions and Human Rights, the Federación Iberoamericana del Ombudsman, the Special Fund for Ombudsmen and National Human Rights Institutions of Latin America and the Caribbean, the African Union, the African Commission on Human and Peoples' Rights, and ECOWAS. In 2007, OHCHR participated in meetings to establish the Commonwealth Forum of National Human Rights Institutions, which now serves to strengthen the capacity of NHRIs to protect and promote human rights in the Commonwealth in cooperation with existing regional NHRI coordinating bodies. The Forum facilitates networking and exchanges between national human rights institutions in different States. For more information, see www.commonwealthnhri.org.

The Office of the United Nations High Commissioner for Human Rights has regional offices in Southern Africa (Pretoria), Eastern Africa (Addis Ababa) and Western Africa (Dakar); Latin America (Santiago and Panama City); the Middle East (Beirut); the Pacific (Suva); South-East Asia (Bangkok); Central Asia (Bishkek); and Europe (Brussels). OHCHR is also responsible for the Sub-regional Centre for Human Rights and Democracy in Central Africa (Yaoundé). These offices continue to provide advice and assistance for the establishment and strengthening of NHRIs.

The United Nations Development Programme and OHCHR have been increasingly involved in the establishment and/or strengthening of NHRIs, and engagement with NHRIs has become a priority for both. Some key initiatives include:

- The United Nations Human Rights Policy Network (HuriTalk), an electronic discussion board on human rights initiated by UNDP. The electronic discussion also focuses on the roles and shared responsibilities of OHCHR and UNDP.
- Interaction with UNCTs: United Nations country teams operate in States marked by human rights problems and NHRIs can play a crucial role in improving the human rights situation. In April 2007, OHCHR issued an information note on how United Nations Resident Coordinators can facilitate the establishment or strengthening of NHRIs.[15] Several positive responses from different regions of the world have led to a number of joint activities being discussed.

[15] Available from http://www.osce.org/documents/odihr/2007/07/25616_en.pdf (accessed 6 October 2010).

In 2010, UNDP and OHCHR launched a Toolkit for UNCTs on how to support NHRIs. The Toolkit was developed by two international experts under the auspices of a steering committee with OHCHR and UNDP representatives, as well as NHRI representatives from Denmark, India, South Africa and Uganda. It is an unusual and valuable resource because it was developed with NHRIs, and with United Nations staff from country offices, regional centres and headquarters in order to anchor the document in recent and practical experience. The Toolkit brings conceptual consistency and methodological coherence to the assistance that the United Nations and human rights practitioners worldwide bring to NHRIs. It provides guidance and tools to strengthen the cooperation between OHCHR and UNDP in their support to NHRIs, based on a common understanding of the policy and approach to follow in supporting independent and effective NHRIs in line with the Paris Principles. National human rights institutions can also support United Nations agencies in addressing issues of inclusion and participation of minorities in the socio-economic and political life of the country.

Conclusion

Human rights are a core concern for the United Nations and NHRIs are key mechanisms through which human rights are achieved. The United Nations has increased its activities in the establishment and strengthening of NHRIs in conformity with the Paris Principles as an important element in securing human rights at the national level. As part of its 2008-2009 Strategic Management Plan, OHCHR developed indicators of success that include the number of NHRIs accredited with "A" status, or the number that improve their accreditation status, and the number and proportion of countries where NHRIs and civil society submit information to treaty bodies, special procedures and the Human Rights Council in the context of the universal periodic review.

The increased United Nations focus on NHRIs has been matched by the growing international involvement of NHRIs themselves, as well as by their more effective efforts to organize themselves internationally and regionally.

II. INTRODUCING NATIONAL HUMAN RIGHTS INSTITUTIONS

Introduction

This chapter provides an overview of what NHRIs are, the various types or models that exist, and their main roles. It also looks at the important advantages NHRIs bring to the implementation of human rights on the ground.

Learning objectives

After reviewing this chapter, the reader will be able to:

- Describe in general terms what an NHRI is and what the implications are for a State's commitment to human rights;
- Identify and characterize the various models of NHRIs that currently exist;
- Identify the most important roles an NHRI can play nationally;
- Explain why a properly constituted NHRI has the ability to improve a country's human rights situation.

A. What is a national human rights institution?

National human rights institutions are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They are part of the State apparatus and are funded by the State.

National human rights institutions—at least those that are in compliance with the Paris Principles—are the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State.[16]

National human rights institutions are unique and do not resemble other parts of government: they are not under the direct authority of the executive, legislature or judiciary although they are, as a rule, accountable to the legislature either directly or indirectly. They are at arm's length from the Government and yet funded exclusively or primarily by the Government. Their members are not elected, although they are sometimes appointed by elected representatives. The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding and reporting arrangements. If the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise its ability to perform its role independently and effectively.[17]

National human rights institutions are not NGOs. National human rights institutions have a statutory legal basis and particular legal responsibilities as part of the State apparatus. The differences between NGOs and NHRIs are perhaps most pronounced with regard to the investigation of complaints. National human rights institutions are neutral fact finders, not advocates for one side or another. An NHRI must be, and be seen to be, independent of the NGO sector, just as it must be independent of the Government. In investigation, an NHRI may operate within a legally defined framework and must comply with the general principles of justice and the rule of law.

National human rights institutions are not only central elements of a strong national human rights system: they also "bridge" civil society and Governments; they link the responsibilities of the State to the rights of citizens and they connect national laws to regional and international human rights systems. At the same time, NHRIs often find themselves criticizing the actions of the very Governments that created and fund them, which is not surprising since States are frequently the targets of human rights complaints.

1. Enabling laws

National human rights institutions are part of the State structure and are creatures of law: they depend on a statutory basis for their existence and their actions. The Paris Principles require NHRIs to have a constitutional or legislative basis, or both. Executive instruments do not quality.[18]

2. Naming national human rights institutions

There is no standard nomenclature for NHRIs, just as there is no standard model. National human rights institutions have different names, depending on the region, legal tradition and common usage, for instance:

[16] See, generally, Morten Kjærum, "What is a national human rights institution?", available from www.humanrights.dk/about+us/what+is+a+nhri (accessed 6 October 2010).

[17] See also International Coordinating Committee's Sub-Committee on Accreditation, general observations, para. 2.10 (annex IV below).

[18] Ibid., para. 1.1.

- Civil rights protector
- Commissioner
- Human rights commission
- Human rights institute or centre
- Ombudsman
- Parliamentary ombudsman or commissioner for human rights
- Public defender / protector
- Parliamentary advocate

The name itself is of little consequence, provided that it clearly communicates to the public (a) what the NHRI does and (b) that it is a public institution and not an NGO. It is, of course, critical that the NHRI should comply with the Paris Principles.

3. Geographic jurisdiction and extraterritorial effect

National human rights institutions generally have a geographic reach across the national territory. According to the recent OHCHR survey mentioned above, most NHRIs respondents (58) cover the whole country.

The general standard is for one NHRI per country, but in very exceptional circumstances, should more than one national institution seek accreditation from the International Coordinating Committee, article 39 of its Statute provides that the State shall have one speaking right, one voting right and, if elected, only one Bureau member.[19] This is discussed in more detail in section B below.

In a small number of cases (14), NHRIs have extraterritorial jurisdiction.

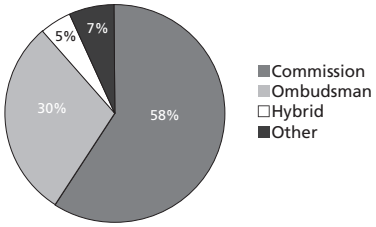
[19] Ibid., para. 6.6.

B. Models of national human rights institutions

According to the Vienna Declaration and Programme of Action, States have the right to choose the framework that best suits them, subject to international human rights standards. Although the **Paris Principles** set out the minimum standards for the roles and responsibilities of NHRIs, they do not dictate NHRI models or structures. Different institutional structures are evolving rapidly, and there are as many variations as there are geographic regions and legal traditions.[20]

There are many different kinds of "national institutions" in the broad sense of that term. Auditors-general and "classic" ombudsmen with no human rights mandates in their enabling laws are autonomous, national institutions that may touch on human rights issues in their work, but are not NHRIs. On the other hand, ombudsman institutions often have specific responsibility for human rights.

Institutional type



Source: **OHCHR, NHRI survey, 2009.**

Only by carefully reading the enabling law and the mandate can it be determined if an institution is an NHRI. That said, some ombudsman offices take the position that they can handle human rights matters in practice, even if the country has a separate NHRI. In such cases, the institutions should be encouraged to work together to avoid duplication or confusion.

It should be noted that some NGOs also have the word "commission" in their name, but an NGO is not an NHRI.

Survey results from 2009 show that while NHRIs vary considerably, there are dominant models. Human rights commissions account for more than half of NHRIs. Ombudsman institutions are the next largest group, especially in the Americas, accounting for about a third.

The ombudsman model is common in Eastern Europe, Central and South America and in the Commonwealth of Independent States. There has been growing recognition of the role of national human rights commissions and ombudsman institutions in the promotion and protection of human rights at the national, regional and international levels, and increased cooperation among regional and international associations of ombudsmen and NHRIs in the context of the Paris Principles, as well as between these organizations and the United Nations system as a whole, has been encouraged. Reference should be made to the results of meetings of the Human Rights Council in September 2009, on the role of the ombudsman, the mediator and national human rights institutions in the United Nations system of promotion and protection of human rights, as framed by General Assembly resolutions 63/169 and 63/172.[21]

Hybrid, consultative and research bodies make up a small number of NHRIs.

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[20] Particular models do tend to be found in certain regions and are the product of the legal tradition of that particular area. For example, NHRIs have been described as being in the Hispanic, francophone or Commonwealth tradition, while in most of Africa and Asia there are multi-member institutions that receive complaints, in Latin America single-member *defensores del pueblo*, in European Nordic countries ombudsmen, and in Europe generally advisory institutions. See International Council on Human Rights Policy and OHCHR, *Assessing the Effectiveness of National Human Rights Institutions* (2005).

[21] A/HRC/13/44, para. 109.

Finally, some countries have more than one national institution with human rights responsibilities. In some, the constitutional structure may dictate different commissions for different regions. In others, institutions have a different thematic responsibility (e.g., women's rights, racial equality or children's rights). Where this is the case, the sum total of the "coverage" provided by all the institutions may come close to that afforded by a single institution with wide powers.

However, it should be noted that a consolidated NHRI with broad promotion and protection powers represents the most effective model and the one to recommend when considering setting up an NHRI in line with the Paris Principles or working with a country to consolidate different institutions.

1. Human rights commissions

"Commission-style" models share the following attributes:[22]

- They are State institutions with an explicit mandate to protect and promote human rights. While many have broad mandates, others have a specific focus, such as women's rights;
- They are typically headed by a number of full-time and/or part-time members, who are decision makers;
- Investigation is a core function;
- Many can receive individual complaints (this is referred to as "quasi-jurisdictional competence" in the Paris Principles);
- Many have the authority to make recommendations only, following investigation (the more typical model).

Human rights commissions generally have several members. This ensures pluralism or diversity of membership, a basic standard in the Paris Principles. Members may be full-time or part-time, although the chief commissioner is a full-time position. While pluralism is a plus, a diffuse leadership may slow down decision-making and increase cost.

The power to investigate human rights issues and/or individual complaints is obviously central to addressing human rights concerns in a meaningful manner. At the same time, commissions whose decisions or investigations are subject to judicial review in the courts tend to be very cautious in their investigations, which can lead to delays and formalistic approaches. This undermines the relative advantages that a commission is supposed to offer. It is also true that the costs of commissions with such authority may be quite high, especially if they offer free legal services to complainants in cases that go to court or a specialized tribunal.

A number of human rights commissions focus only on **equality rights and anti-discrimination work**. Examples are found in the United States and in many Commonwealth countries, including Australia, Canada, New Zealand and the United Kingdom. In most cases, however, NHRIs have a broad mandate to promote all human rights.

2. Human rights ombudsman institutions

The long ombudsman tradition significantly pre-dates NHRIs. Ombudsmen have existed for centuries in Nordic countries such as Sweden. They focus on mediation, use "good offices" to investigate and resolve complaints, and they prize confidentiality. They favour quick resolution and so generally are not as focused on formal legal investigations.

[22] It should be noted that some institutions use the term "commission" even though they are not commissions in the sense used here.

National human rights institutions that are ombudsmen (*defensor del pueblo* in Spanish-speaking countries or public defenders in parts of Central and Eastern Europe) are generally structured around a single head of the institution, similar to its counterpart in "classic" ombudsman offices. However, these institutions specifically promote and protect human rights, and are not principally focused on promoting good governance in public administration.

This model is heavily dependent on the reputation, integrity and leadership of the ombudsman herself or himself, as well as on the authority that the position exercises in society.

"Ombudsman-like" NHRIs generally have the following features:

- They are State institutions, with a mandate to protect and promote human rights;
- They are usually headed by a single member, who is the decision maker (although some have deputies);
- They have a mandate to deal principally with human rights, although they may be specialized in single human rights issues such as women's rights.
- They investigate human rights and can often receive individual complaints;
- They are generally limited to making recommendations. More recently, however, some have been given authority to go to court or to a specialized tribunal in specific instances where their recommendations have been ignored or rejected. So this distinction does not always hold.

Ombudsman institutions with powers to make recommendation—the majority—may be more flexible and faster in handling complaints. While their decisions must be reasoned and supported by evidence, they are not generally binding.

Having a single member at the helm complicates the requirement for pluralism; a single member from the majority or dominant group may diminish the institution's credibility among other parts of society. There are ways to get around this, for instance with advisory boards or councils. Their importance was emphasized in General Assembly resolution 63/169 on the role of the Ombudsman, mediator and other NHRIs in the promotion and protection of human rights. In it, the General Assembly underlined the importance of the autonomy and independence of the ombudsman, mediator and other national human rights institutions. It also encouraged Member States to consider the creation or the strengthening of independent and autonomous ombudsman, mediator and other national human rights institutions, and to develop, where appropriate, mechanisms of cooperation between these institutions in order to coordinate their actions, strengthen their achievements and exchange lessons learned.

More recently, the General Assembly, in its resolution 64/161, encouraged increased cooperation between national human rights institutions and regional and international associations of ombudsmen. It also encouraged ombudsman institutions to actively draw on the standards enumerated in international instruments and the Paris Principles to strengthen their independence and increase their capacity to act as national human rights protection mechanisms.

3. Hybrid institutions

"Hybrid" NHRIs are single State institutions with multiple mandates. They deal with human rights, but may also address maladministration, corruption or environmental matters. In Spain and some Latin American jurisdictions, for instance, the practice has

been to create a single institution that combines human rights and traditional ombudsman functions.[23]

They usually share certain attributes of "ombudsman-like" NHRIs, that is, they are headed by a single person, they have recommendatory powers only, etc.[24]

They also share relative advantages and disadvantages.

Hybrid institutions have the additional advantage of an integrated mandate: they provide a "one-stop" service across a range of issues. They offer economies of scale and avoid additional infrastructure costs. Finally, hybrid NHRIs leverage synergies and can work more cooperatively on complaints that straddle several issues.

Their disadvantages stem from the difficulty of handling a multiple mandate effectively, and placing human rights on the same institutional footing as, say, maladministration or corruption. Human rights are fundamental and inalienable. This cannot be said about efforts to combat either maladministration or corruption, regardless of how serious these may be. Integrated mandates may diminish the weight and value given to human rights.

4. Consultative and advisory bodies

Consultative commissions tend to have a very broad membership, with participation from many segments of society. While they have the authority to both protect and promote human rights, not all may investigate individual complaints. Consultative commissions tend to focus on advising the Government on major human rights issues and reporting on particularly significant problems. They can make recommendations only and tend to have broad research and advisory mandates across the full range of human rights recognized by the State, but do not generally have authority to entertain or investigate individual complaints.

Some operate on a cost-recovery basis (i.e., they sell services), while others extend their work internationally. Other features are:

- They are drawn from a plurality of social forces and tend to have a large membership;
- They are usually not mandated to investigate cases, but may advise or consult broadly on a wide range of human rights issues;
- They focus on advising the State on human rights issues and/or conducting human rights research.

These NHRIs are highly pluralistic, which can lend them credibility with both the population and the Government, with the latter because their opinions will carry the weight of these social forces. A large membership may, however, be expensive and inhibit swift decision-making.

The focus that such institutions put on advising and human rights research encourages in-depth analysis and makes for better results. While their research may be more academic in focus, the main concern with such institutions is that they have no direct experience of individual complaints, which distances their work from direct protection of human rights. The absence of a mandate to investigate individual complaints, which is true of many (but not all) such institutions, may be seen as limiting their effectiveness. On the other hand, the institution will have the time and resources to devote to examining broader, systemic human rights issues. As with most other models, these institutions

[23] Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System* (Leiden, Netherlands, Martinus Nijhoff Publishers, 2004).

[24] Many of these institutions are also members of both the International Coordinating Committee and the International Ombudsman Institute, although not necessarily full members of the latter.

can only provide advice or make recommendations. If their advice is not followed or routinely ignored, their credibility will suffer.

These kinds of institutions are found mainly in Europe, but also in Africa, especially in countries where French is spoken.

5. Institutes and centres

A few institutions fall into the category of human rights institutes or centres. Like consultative commissions, human rights institutes or centres tend to have a very broad membership that brings diverse representatives of society together. They have not traditionally had the power to deal with individual complaints. They differ from consultative commissions in that the broad membership does not usually participate directly in decision-making, which is left to a professional staff, but rather sets the general policy framework within which the centre operates. Centres also tend to focus more on human rights research.

6. Multiple institutions

An increasingly common phenomenon is multiple institutions in the same country with responsibility for promoting and protecting specific rights (e.g., rights related to gender, children or indigenous peoples).

Coordination among such NHRIs is recommended so that their functions and powers are used in a way that ensures the protection and promotion of human rights. The International Coordinating Committee and its Sub-Committee on Accreditation have acknowledged this development, which occurs in several regions of the world, and noted that when dealing with multiple national institutions, there are demonstrated strategies for improving collaboration, including memorandums of understanding or other agreements to address overlaps of competences and handle complaints or issues, and informal arrangements in which institutions transfer individual cases to the most relevant mechanism. This is the case in some countries where ombudsman institutions and NHRIs coexist (although care should be taken to ensure that complainants are not sent from pillar to post).

Speaking at the Ninth International Ombudsman Institute World Conference in June 2009, the United Nations High Commissioner for Human Rights affirmed that:

> OHCHR also recognizes the important contribution that ombudsman institutions can make as another element in the national human rights protection system—even without an explicit mandate of human rights protection—given their role in ensuring Government accountability and strengthening the rule of law. Many human rights abuses are indeed connected with maladministration, administrative malfeasance, or a lack of Government accountability. The essential notion of procedural fairness, which underpins the administrative law that ombudsman institutions are mandated to uphold, is thus key to protecting the rights of individuals in their interactions with public authorities.

For NHRIs that have full mandates but are divided territorially, formal networks can enable them to speak with one voice at the national level.

C. Advantages of national human rights institutions

National human rights institutions enable States to meet their international responsibility "to take all appropriate action" to ensure that international obligations are implemented at the national level.

National human rights institutions receive their authority from the State: this official capacity lends them legitimacy and powers that are particular to statutory institutions, although legitimacy can be squandered through ineffectiveness and failure to meet international standards. National human rights institutions may have access to the Government and policymakers, and their recommendations are usually heard, even if they are not always acted upon.

Clearly, Governments bear the prime responsibility for human rights, but they cannot always find a neutral space in which to interact and exchange ideas with other actors, especially civil society. In fact, the two are, regrettably, often seen at opposing sides of the human rights debate. As independent entities, but established by the Government, NHRIs occupy a unique terrain, one that can link civil society to the Government. Providing a neutral meeting point and focal point for human rights encourages dialogue and facilitates cooperation. Because NHRIs do not have a defined constituency or vested interest other than the public interest, they are ideally placed to provide a balanced message on the rights people should enjoy.

D. The role of national human rights institutions

This section will offer a brief overview of the key roles of NHRIs, which are set out in detail in subsequent chapters.

NHRI functions or activities are described in the Paris Principles as "responsibilities", suggesting that these are things that institutions are obliged to do.[25] The Paris Principles require NHRIs to have as wide a role as possible, with two main responsibilities, in particular:

> **Human rights promotion**, i.e., creating a national culture of human rights where tolerance, equality and mutual respect thrive. The legal roles of NHRIs will always come from the enabling statutes or constitutional mandate, or both.
>
> **Human rights protection**, i.e., helping to identify and investigate human rights abuses, to bring those responsible for human rights violations to justice, and to provide a remedy and redress for victims. National human rights institutions should have a legally defined mandate to undertake these functions and to issue views, recommendations or even seek remedies before the courts. In all cases, reference should be made to the enabling law.

From these two central roles—promotion and protection—flow a number of cross-cutting responsibilities and functions with elements from both:

- Advising the Government and parliament;
- Cooperating with:
  - National stakeholders, civil society, NHRIs from other countries, and with regional bodies;
  - The international human rights system, e.g., presenting independent reports and documentation to human rights treaty bodies, special procedures mandate holders and to the Human Rights Council and its processes, notably the universal periodic review;
- Protecting and promoting the rights of specific groups, including those who are vulnerable because of their gender, age, disability, sexual orientation, migrant or other minority status. These rights are often controversial and NHRIs are frequently the only ones that can speak out in defence of those who have no voice;
- Linking human rights to development initiatives through human rights-based approaches and especially through economic, social and cultural rights.

National human rights institutions are frequently given the additional responsibility of supporting or managing peacebuilding and transitional justice issues in conflict and post-conflict situations.

Finally, NHRIs have an emerging and growing role in working with and monitoring business, recognizing the crucial and relevant role of the private sector in national, regional and multinational contexts.

1. Promotion

The Paris Principles provide that all NHRIs should promote human rights. They refer directly to the obligation to:

- Assist in the formulation and delivery of education initiatives;
- Publicize human rights; and
- Increase public awareness, including through the media.

National human rights institutions inform people of their human rights, and foster understanding and respect for the rights of others. The range and scope of their pro-

[25] International Council on Human Rights Policy and OHCHR, *Assessing the Effectiveness*.

motional activities are limited only by their resources and their creativity. Generally, however, most NHRIs will undertake:

– Public education through awareness campaigns;
– Training, both generally and for key groups such as NGOs, police, prison officials, the armed forces, journalists and the judiciary;
– Publications, e.g., annual and special reports;
– Seminars and workshops;
– Community-based initiatives (sports, theatre, film, public art,…);
– The development of curricula for schools, from primary through to secondary and post-secondary studies, in partnership with the education authorities;
– Media events, press releases and press conferences.

National human rights institutions can also serve as a national repository or archive for human rights documentation and other documents that have major implications for human rights. This can be supported by internal archives or documentation centres that systematically collect and classify data on human rights, not only for internal purposes, but also for students, lawyers, NGOs and the public at large.

2. Protection

The protection mandate centres on the rule of law, the administration of justice and fighting impunity.[26] National human rights institutions are instrumental in promoting law reform and strengthening judicial and security institutions, including the police and prison systems. They are products of and accountable to the legislative branch of government, but operate autonomously. They are not part of the judicial branch of government although, in some countries, human rights tribunals or boards function as part of the court system.

National human rights institutions can support compliance with international standards as well as the existence of internal accountability systems, and can also help to ensure that the administration of justice conforms to human rights standards and provides effective remedies, particularly to minorities and to the most vulnerable in society.

Investigating human rights abuses is central to this role. While there are differences in how NHRIs approach their protection responsibilities, some typical roles and responsibilities are:

- Investigations;
- Alternative dispute resolution;
- Seeking redress or remedies through the courts or specialized tribunals, including by addressing courts as amicus curiae where warranted;
- Receiving individual complaints (for NHRIs with quasi-jurisdictional powers);
- Public inquiries;
- Monitoring.

Core protection activities should focus primarily on the prevention of torture, arbitrary detention, disappearances and the protection of human rights defenders. Linked to this is the role of NHRIs as watchdogs, reviewing conditions in detention facilities, visiting facilities unannounced and requesting private interviews with detainees.

[26] See, generally, "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1) and Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex).

The Nairobi Declaration on the Administration of Justice, adopted at the Ninth International Conference of National Human Rights Institutions (Nairobi, 21-24 October 2008), addresses the role of NHRIs in the administration of justice and encourages their involvement in torture prevention. Several provisions of the Nairobi Declaration are directly relevant to torture prevention, such as providing training for law enforcement and prison staff; conducting unannounced visits to police stations and places of detention; reviewing standards and procedures; and promoting ratification of the United Nations Convention against Torture and its Optional Protocol. The annual review of the implementation of the Nairobi Declaration during meetings of the International Coordinating Committee provides an additional opportunity for NHRIs to be more actively involved in the prevention of torture.[27]

Protecting human rights defenders is one of the weaker areas of engagement for NHRIs. According to the above-mentioned OHCHR survey among NHRIs, few respondents (62.2 per cent) carry out activities aimed at protecting human rights defenders. This percentage was the highest in the Asia-Pacific region (11 respondents), followed by the Americas (7), Africa (11) and Europe (9). Only two thirds had activities specifically for human rights defenders. It is, therefore, important for the future to establish and strengthen capacity in this area.

In all the core protection areas mentioned here, NHRIs have particular responsibility for considering gender when carrying out their mandate, and to ensure that States take urgent action on violence against women. Internationally, a range of sexual violence offences is now included in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals. Moreover, the United Nations Security Council, in its resolution 1820 (2008), noted that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.

3. Advising Governments and parliaments

According to the Paris Principles, NHRIs have a general responsibility to advise Government, parliament and other authorities by giving "opinions, recommendations, proposals and reports". Some States do not use the term "parliament", but it is used here to refer to the national legislature.

The Paris Principles state that NHRIs may give advice either on request or on their own initiative "without higher referral". They must be free to publicize their advice without restraint and with appropriate immunities. This advice provides a vital and current source of policy and legal information on a range of human rights issues. National human rights institutions can foster dialogue and facilitate cooperation with Governments and parliament: these are all important in creating a strong culture of human rights in the country.

A specific and important part of this advice concerns the ratification of international instruments, the removal of reservations and the incorporation of rights into domestic legislation.[28]

4. Cooperation and coordination

Cooperation and coordination are requirements of the Paris Principles as well as practical necessities. According to the International Coordinating Committee's Sub-Committee

[27] See, e.g., Association for the Prevention of Torture, APF, OHCHR, *Preventing Torture: An Operational Guide for National Human Rights Institutions* (2010).

[28] E.g., Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

on Accreditation, NHRIs should cooperate and share information with other institutions that promote and protect human rights. This extends to Governments, NGOs and others. National human rights institutions should demonstrate such cooperation in their application to the Sub-Committee.[29]

Civil society

A strong and effective civil society is vital to a vibrant human rights system. The Paris Principles require NHRIs to ensure pluralism. Pluralism is not only about internal make-up, but also about how outreach and programming are conducted. The Paris Principles require NHRIs to maintain ties with civil society, which includes:

- Human rights organizations (NGOs, associations, victim groups);
- Related issue-based organizations;
- Coalitions and networks (women's rights, children's rights, etc.);
- Persons with disabilities and their representative organizations;
- Community-based groups (indigenous peoples, minorities);
- Faith-based groups (churches, religious groups);
- Unions (trade unions as well as professional associations such as journalist associations, bar associations, magistrate associations, student unions);
- Social movements (peace movements, students, pro-democracy groups);
- Professionals such as humanitarian workers, lawyers, doctors and medical workers;
- Relatives of victims; and
- Public or para-public institutions (schools, universities, research bodies, etc.).[30]

An NHRI may be a country's focal point for human rights, but it must respect the major role played by civil society in supporting the promotion and protection of human rights. Civil society is not its junior partner.

In developing relationships with civil society, an NHRI must, therefore, not seek to dominate or control. Not only would this be rejected as inappropriate by representatives of civil society, it would not be conducive to improving the country's human rights situation either.

Other national authorities

National human rights institutions should consult with other bodies responsible for human rights protection and promotion.[31] This may include "classic" ombudsman offices dealing with maladministration, special mediators, or government entities responsible for specific rights, like women's or children's rights. The proliferation of other institutions—children's ombudsmen, gender commissions, anti-corruption bodies, etc.—can be bewildering and may result in their jurisdictions overlapping with that of NHRIs.

Despite the preference, from a human rights perspective, for one, single institution, other institutions provide opportunities for dealing comprehensively with complex problems. National human rights institutions can encourage other institutions to take a human rights-based approach to their mandates, while benefiting from their thematic expertise.

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[29] Sub-Committee on Accreditation, general observations, para. 1.5.

[30] OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008).

[31] The Paris Principles, methods of operation, para. (*f*).

National human rights institutions should cooperate closely with national authorities and stakeholders in the administration of justice, especially in access to justice, the judiciary, law enforcement and detention facilities (see the Nairobi Declaration on the Administration of Justice).

Cooperation with the international human rights system

The Paris Principles state that NHRIs should cooperate with the United Nations and with organizations in the United Nations system, in particular the Human Rights Council and its mechanisms (special procedures mandate holders) and universal periodic review.[32] This generally means that NHRIs participate in these mechanisms and reviews, and follow up the recommendations at the national level. In addition, NHRIs should actively engage with the International Coordinating Committee.

National human rights institutions also perform an important role in the treaty body process by ensuring that the comments and recommendations of treaty bodies are considered and implemented. Because of their practical expertise, they are useful partners in international efforts to define new human rights standards.

Cooperation with other NHRIs and regional bodies

The Paris Principles require NHRIs to cooperate with the national institutions of other countries.[33] Events, conferences and meetings dealing with NHRIs, and the creation of regional associations of NHRIs, are excellent strategies for strengthening cooperation across institutions on specific issues.

As noted in chapter I, there are regional networks of NHRIs that operate in all regions of the world. These mechanisms are becoming increasingly active.

There are, of course, regional European, American and African human rights systems, too. In July 2009 it was moreover announced that the Association of Southeast Asian Nations (ASEAN) would create a regional human rights body called the ASEAN Intergovernmental Commission on Human Rights. In addition, regional economic and development institutions, such as ECOWAS and SADC, are also becoming involved in human rights.

5. Protecting and promoting the rights of specific groups

While human rights are interdependent and indivisible, NHRIs have special responsibilities to help those least able to help themselves. The rights of specific groups are often contested and controversial. National human rights institutions are often the only ones that can and do speak out in defence of:

- Human rights defenders
- Indigenous peoples
- Lesbian, gay, bisexual and transgendered persons
- Migrant workers

[32] See general guidelines in Human Rights Council decision 6/102 on the follow-up to its resolution 5/1, which makes three core references to NHRIs.

[33] The Paris Principles, competence and responsibilities, para. 3 (*e*).

- Persons with disabilities[34]
- Persons living with HIV/AIDS
- Racial and national minorities
- Refugees and internally displaced persons[35]
- Women.[36]

With the coming into force of the Convention on the Rights of Persons with Disabilities, NHRIs are actively encouraging Governments to ratify and implement it, and are playing a monitoring role. Article 33 (2) more particularly calls on States parties to:

> maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to **promote, protect and monitor** implementation of the present Convention. When designating or establishing such a mechanism, **States Parties shall take into account the Principles relating to the status and functioning of national human rights institutions for protection and promotion of human rights**. (Emphasis added).

6. National human rights institutions and economic, social and cultural rights

Not all NHRIs mandates cover economic, social and cultural rights. Those NHRIs that do have such a mandate have a responsibility that spans both promotion and protection, unless the enabling law says otherwise.

Economic, social and cultural rights present particular difficulties, because they tend to be eclipsed by the shorter-term and more urgent demands of civil and political rights violations, especially when it comes to protection. Moreover, it is not always easy to tackle such complex rights that require long-term approaches and "positive" Government action, usually programme development and spending.

Many of the legal standards are set out in the International Covenant on Economic, Social and Cultural Rights, and in other relevant human rights instruments. The Committee on Economic, Social and Cultural Rights, in its general comment No. 10 (1998), details the roles that NHRIs play in protecting and promoting these rights:

– Promoting educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both among the public at large and among particular groups, such as the public service, the judiciary, the private sector and the labour movement;

– Scrutinizing existing laws, administrative acts, draft bills and other proposals to ensure that they are consistent with the requirements of the Covenant;

– Providing technical advice or undertaking surveys in relation to economic, social and cultural rights;

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[34] For a discussion on the role played by NHRIs in the Convention on the Rights of Persons with Disabilities, see Michael Ashley Stein and Janet E. Lord, "The United Nations Convention on the Rights of Persons with Disabilities as a vehicle for social transformation", in *National Monitoring Mechanisms of the Convention on the Rights of Persons with Disabilities* (Mexico City, Comisión Nacional de los Derechos Humanos de México, 2008). Trilingual publication available from www.nhri.net.

[35] National human rights institutions can play both promotion and protection roles: (a) by supporting the right to humanitarian assistance and (b) through human rights monitoring, which can help in needs assessments and strategic planning as a basis for effective assistance programmes (for example, monitoring of the right to food, shelter, health care and education of vulnerable groups, and identifying crucial protection gaps).

[36] See Committee on the Elimination of Discrimination against Women, general recommendation No. 6 (1988) on effective national machinery and publicity. See also Montréal Principles on Women's Economic, Social and Cultural Rights (2002).

– Setting national benchmarks for measuring the realization of economic, social and cultural rights;

– Conducting research and inquiries to ascertain the extent to which particular economic, social and cultural rights are realized, nationwide or in relation to specific communities.

7. National human rights institutions in conflict and post-conflict situations

National human rights institutions have more directly helped to address the human rights aspects of conflict and post-conflict societies. Some play an active role in promoting peace, encouraging efforts to establish peace processes and supporting peace accords. They may also suggest and support transitional and restorative justice processes following conflict.[37]

The International Coordinating Committee's Sub-Committee on Accreditation has noted that, during a coup d'état or a state of emergency, NHRIs will exercise their mandate with a heightened level of vigilance and independence.[38]

Accountability can be ensured and impunity combated by documenting and investigating violations, and monitoring and recording abuses both during conflict and during transitional periods. These efforts can support future prosecution initiatives, truth-seeking and truth-telling bodies, reparations measures and vetting processes. National human rights institutions can assist victims by ensuring that they have equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information. They can also support the reintegration in society of demobilized forces, displaced persons and returning refugees, and support special initiatives for child soldiers and child abductees; and gender-sensitive approaches to transitional justice.[39] They can also assist victims and witnesses with measures such as relocation and resettlement.

Mechanisms will vary: truth-seeking/truth-telling mechanisms; reparation processes; institutional reform (including vetting); reconciliation commissions and commissions of inquiry are all possibilities.

Whether an NHRI has responsibility for any of these roles will depend at least in part on its enabling statute or on other legislation that may confer additional powers. Some NHRIs have the power to deal only with matters that arise from the time that they were created; others have a broader mandate to address past abuses. A number of NHRIs have themselves been established as part of institutional reform in the transitional justice process.

In 2009, the Rabat Declaration, adopted at the Seventh Conference of African Human Rights Institutions, highlighted the role of NHRIs in transitional justice in general as well as in facilitating and supporting transitional justice mechanisms and processes, in order to ensure accountability, serve justice and achieve reconciliation and peace. African NHRIs were encouraged to give due attention to the practical recommendations of the Rabat Declaration with respect to monitoring and establishing transitional justice mechanisms.

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37 See, generally, "Round Table Proceedings Report" of the International Round Table on the role of national institutions in conflict and post-conflict situations (2006), available from http://www.nhri.net/pdf/Final_report_RT_Belfast.pdf (accessed on 12 October 2010).

38 Sub-Committee on Accreditation, general observations, para. 5.1.

39 Transitional justice is a "range of processes and mechanisms associated with society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (S/2004/616, para. 8).

8. National human rights institutions and business

States have a duty to protect against human rights abuses by third parties, including business. In resolution 8/7, adopted in June 2008, the Human Rights Council recognized the need to protect all human rights from abuses by, or involving, transnational corporations or other business enterprises. It also extended the mandate of the Special Representative of the Secretary-General on the issue of human rights, transnational corporations and other business enterprises to 2011.

A survey conducted by OHCHR on behalf of the Special Representative shows that many NHRIs engage in business and human rights issues, though most only to a limited extent. Commissions tend to focus on non-discrimination and related labour rights, while others have a broad protection mandate. In a survey on business and human rights, 13 out of 43 NHRIs reported that they lacked legal mechanisms for handling complaints against companies.[40] In some cases, this stems from the—mistaken—notion that human rights are limited to the relationship between the individual and the State. In such cases, both the State and the institution should assess the need for similar protection in the private sector.

In 2009, the International Coordinating Committee established the Working Group on Human Rights and Business, whose mandate includes:

– Strategic planning (for business and human rights issues, and joint NHRI programming);

– Capacity-building and resource sharing (staff development and providing a platform for NHRIs to share best practices and tools);

– Agenda setting and outreach (facilitating the participation of the International Coordinating Committee and NHRIs in key international, regional and domestic debates on business and human rights).

Two resources are available for NHRIs:

- BASESwiki is an online portal (www.baseswiki.org). It is an initiative of the Special Representative, with the Corporate Social Responsibility Initiative at Harvard Kennedy School, the International Bar Association and the Compliance Adviser/Ombudsman of the World Bank Group. It aims to help business and society explore solutions to grievances and disputes, including resources for grievance resolution, accountability mechanisms and access to experts in amicable dispute resolution.
- The portal of the United Nations Special Representative of the Secretary-General on business and human rights (www.business-humanrights.org/SpecialRepPortal/Home).

Conclusion

National human rights institutions are State-sponsored and State-funded organizations that nonetheless act independently of the Government to promote and protect human rights at the national level. If they are established in conformity with the Paris Principles, they can have an important and positive impact on their countries' human rights situation. While all institutions should share basic characteristics with regard to their mandate, responsibilities and authority, there are different models. Increasingly, however, the distinctions between these models are becoming blurred. What is more relevant than the label attached to an institution is the fact that its mandate, functions and powers accord with the letter and the spirit of the Paris Principles.

[40] OHCHR, "Business and human rights: a survey of NHRI practices–results from a survey distributed by the Office of the United Nations High Commissioner for Human Rights" (2009).

III. THE INTERNATIONAL COORDINATING COMMITTEE AND THE PARIS PRINCIPLES

Introduction

The Paris Principles are international standards and serve as minimum conditions that an NHRI must meet to be considered credible by its peers and within the United Nations system.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights is an international, independent body that promotes the establishment and strengthening of NHRIs in conformity with the Paris Principles.

Learning objectives

After reviewing this chapter, the reader will be able to:

- Identify each substantive issue that is set out in the Paris Principles;
- Identify in general terms the requirements imposed by the Paris Principles with respect to each of these issues;
- Describe in general terms the limitations that may apply to an institution's jurisdiction (subject matter, object matter and timeliness) and determine the degree to which those limitations may be acceptable;
- Explain why pluralism is important and how it may be achieved;
- Identify the mechanisms through which independence may be promoted and describe how they should operate;
- Define the powers that an institution should have with regard to examining any matter, including through investigation; and
- Describe the accreditation process.

A. The Paris Principles

The Principles relating to the status of national institutions (the Paris Principles) were adopted by NHRIs in 1991. They provide benchmarks against which proposed, new and existing NHRIs can be assessed or "accredited" by the International Coordinating Committee's Sub-Committee on Accreditation. Gaps or shortcomings identified during the accreditation process can serve as a road map or template to improve NHRIs. The Paris Principles are standards that *all* NHRIs should meet and also contain additional principles that apply only to institutions with "quasi-jurisdictional" competence.

Under the Paris Principles, NHRIs are required to:

- **Protect** human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- **Promote** human rights, through education, outreach, the media, publications, training and capacity-building, as well as by advising and assisting Governments.[41]

The additional principles that apply only to institutions with "quasi-jurisdictional" competence are discussed later on.

The Paris Principles set out what a fully functioning NHRI is and identify six main criteria that these institutions should meet to be successful:

- **Mandate and competence**: a broad mandate based on universal human rights standards;
- **Autonomy from Government**;
- **Independence** guaranteed by statute or constitution;
- **Pluralism**, including through membership and/or effective cooperation;
- **Adequate resources**;
- **Adequate powers of investigation**.

This chapter outlines all the requirements set out in the Paris Principles with regard to each principle and then discusses why the standard is important and, where relevant, how it may be achieved. A compliance checklist is provided at the end of the chapter.

1. Mandate and competence

The Paris Principles provide that "a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence."

Competence to "promote and protect"

If human rights are to be fully secured, comprehensive action is needed *both to* promote and to protect them. Institutions whose mandates are limited to one or the other do not comply. This recognizes that promotion is needed to change attitudes and behaviours. Finally, this inclusive approach to human rights underscores the universal and interdependent nature of human rights, a factor that is linked to the broadness of the NHRI mandate.

As broad a mandate as possible

The requirement that an NHRI should have "as broad a mandate as possible" reflects the diversity of institutional models that exist.

[41] See also Sub-Committee on Accreditation, general observations, para. 1.2.

National human rights institutions that draw their mandate directly from international treaties and deal with all human rights are the most consistent with the indivisible, interdependent and universal nature of human rights and are considered the "best model". Nonetheless, some institutions' mandates are limited to civil and political rights, thus excluding economic, social and cultural rights. However, the limitation often applies to their investigative mandate, with the institutions having full authority to promote all rights.

It is true, as noted earlier, that some NHRIs deal only with specific groups, women or children, for example. Others are limited, at least in their investigative role, to cases of discrimination. It is possible to have such a more limited mandate and still comply with the Paris Principles.

Mandate set out in constitution or legislation

The Paris Principles provide that the NHRI mandate "shall be clearly set forth in a constitutional or legislative text". According to the Sub-Committee on Accreditation, this is a requirement: executive instruments such as decrees and orders do not comply with the Paris Principles.[42]

A constitutional or legislative base ensures greater permanence (since the mandate cannot be changed or withdrawn merely by executive order), greater independence (since the mandate is less likely to be changed or withdrawn if the NHRI does something the Government disagrees with) and greater transparency.

According to a recent OHCHR survey, roughly a third of NHRIs are created by constitution, a third by legislation, and a further 15 per cent have both a constitutional and a legislative base.[43]

Where there is a constitutional base, it is advisable to have separate implementing legislation, since the level of detail required to establish and authorize the functioning of an NHRI is not usually appropriate for a constitution. For example, it may be more appropriate to define the nature, purpose and operational powers of an institution in legislation than in a constitution. Additional powers may be provided more readily through a legislative process.

National human rights institutions that have only a legislative base still comply with the Paris Principles. However, legislative processes can be used to weaken an institution more readily than had it been protected constitutionally.

In some cases, the enabling legislation of a national human rights institution has quasi-constitutional status. This means simply that if laws or Government policies violate human rights, they are considered inoperative to the extent of the inconsistency with the human rights law. In countries that have such a provision (Canada, for example), the institution has a powerful tool to seek adjudication of the issue before a human rights tribunal and to render the impugned law of no force or effect.

Jurisdiction

The Paris Principles require merely a "sphere of competence", as set out in a constitutional provision or legislation. Obviously, the breadth of the NHRI mandate is a function of both its competence and its jurisdiction, and these are interlinked concepts. It follows that the NHRI jurisdiction should be as broad as possible, following the standards set out for the mandate. The Paris Principles also state that an institution may examine any matter that is "within its competence". (There have been instances where the courts have been called upon to interpret the jurisdiction of the institution where it was not explicit.)

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[42] Sub-Committee on Accreditation, general observations, para. 1.1.

[43] This section is drawn from OHCHR, "Survey of national human rights institutions".

Limitations in the type of issue. The determination of jurisdiction and its extent is a matter of statutory interpretation. In practice, many enabling laws restrict the types of issues that NHRIs can address.

These limitations rarely extend to promotional activities such as public education. But an institution may have limitations placed on the types of rights it can enforce, for example. Some institutions may deal only with civil and political rights; some protect only the rights of a particular group (e.g., minorities or women); some deal only with discrimination. These and similar limitations are common and do not, in and of themselves, prevent an institution from complying with the Paris Principles.

In certain cases, if the NHRI believes that its own legislative mandate is too narrow, and if it has standing before the courts, it may be able to seek a judicial review of its enabling legislation so that this can be brought into line with the constitution, where circumstances permit. And, of course, an institution can use its capacity to review and comment on legislation or advise the Government to argue for the removal of the limitations that it considers excessive.

Limitations with regard to parliament. National human rights institutions generally have no authority over parliament, nor can they in any way affect the traditional immunities and privileges enjoyed by members of the legislative assembly. These immunities are meant to protect freedom of political discourse and are generally staunchly defended in democratic societies.

This does not, however, insulate the work of legislative assemblies from NHRI scrutiny. National human rights institutions can comment on bills to ensure laws meet human rights standards; some may be able to initiate proceedings or to intervene before the courts to question the constitutionality of certain laws. In addition, parliamentarians are not immune from liability for human rights actions arising from the employment of staff in their offices, or from actions outside the conduct of official business or of parliament. The scope of immunities will vary from State to State and an institution would be guided by applicable law and parliamentary procedure.

Courts and the judiciary are generally exempt from oversight by NHRIs. Courts, and the judges that serve on them, have an independence that is essential for ensuring full respect of the rule of law. Respect for the rule of law demands that administrative bodies should not sit in appeal or review of the courts. This does not, however, prevent monitoring and reporting on court activities, and making independent recommendations meant to improve the application of human rights principles in the court setting or to remove undue delay in judicial proceedings.

Many NHRIs cannot deal with human rights matters involving **the private sector** (companies and corporations). (For further discussion, see chapter II.)

National human rights institutions cannot generally enquire into matters concerning the armed forces, **the security services and/or Government decisions on international relations**. These restrictions do not contradict the letter of the Paris Principles, but they do go against their spirit. The Sub-Committee on Accreditation's general observations provide that:

> the scope of the mandate of many national institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process (para. 5.2).

It may be reasonable to place restrictions on who may access sensitive documents in cases where national security is demonstrably at stake, and where a judicial authority has proclaimed such to be the case, but wholesale exclusion of jurisdiction should be

avoided. Broad restrictions of this kind can in fact lead to impunity and the acceptance of gross violations of human rights. Institutions that are restricted in these ways should try to minimize the impact, including by proposing legislative change or seeking court orders to broaden their mandate, depending on the country's constitution.

Time limits. Most NHRIs can address only matters that arose after their establishment. This restriction is relatively common. It allows the institution to focus on the future and helps ensure that it is not paralysed by a rash of old complaints.

For institutions whose mandate extends to human rights violations that also constitute criminal acts, prospective operation also avoids the issue of retroactivity.

Many enabling laws set a time limitation of six months, a year or two years, after which the claim is time-barred, although, in some cases, NHRIs may retain jurisdiction to hear out-of-time cases, but, again, this depends on the statute. The rationale for the limitation is twofold. First, it helps to ensure that parties are not dealing with cases where evidence has disappeared or memories have faded. The preferred approach is to leave it up to the institution to decide which cases it will investigate and when. This gives it a margin of discretion, since there may have been legitimate reasons for the delay. Second, in post-conflict situations, NHRIs may be given a mandate to inquire into past abuses in order to prevent impunity. However, consideration should be given to creating special bodies to deal with past abuses or to ensure that a transitional justice mandate is legally conferred on the NHRI.

Responsibilities and methods of operation

The Paris Principles describe the range of responsibilities that should be within the operational mandate of an institution. National human rights institutions can consider *any question* falling within their competence, regardless of the source of the question. They should not need the approval of a higher authority before deciding to consider a question.

An NHRI should have the following responsibilities:

- Providing opinions, recommendations, proposals and reports to the Government, parliament or other responsible organs on:
  - Legislative or administrative provisions, as well as provisions relating to judicial organizations;
  - The general situation of human rights or more specific human rights issues;
  - Situations of violations in any part of the country.
- Encouraging the harmonization of national legislation and practices with international human rights instruments, as well as their effective implementation;
- Encouraging the ratification and implementation of international human rights instruments;
- Contributing to national human rights reports, including, where necessary, by expressing an independent opinion on matters discussed in them;
- Cooperating with international and regional human rights organs, and other NHRIs;
- Assisting and taking part in the development of human rights education and research programmes;
- Raising public awareness about human rights and efforts to combat discrimination, especially racial discrimination, through publicity, information, education and the use of press organs.

With regard to the responsibility to provide "opinions, recommendations, proposals and reports", the Paris Principles make clear that an institution must, first, have the power to advise on its own initiative and not merely at the request of the authorities. Second,

an institution must be free to publicize its advice without restraint and without requiring prior approval. It should also be understood that the first responsibility listed (to advise on legislation and human rights violations and situation) generally includes:

– Receiving, investigating and issuing opinions and recommendations regarding alleged human rights violations (although it may not include the specific power to receive individual human rights complaints); and
– Monitoring and reporting on human rights issues in general and on the situation of detained individuals in particular.

The Paris Principles do not say that the above-listed requirements are a definitive list of NHRI responsibilities; rather they constitute the **minimum or basic level of responsibilities**. That said, the Paris Principles have not been interpreted as requiring an institution to actually carry out all of the listed responsibilities, but rather as requiring there to be no statutory or constitutional limitations that would prevent an institution from engaging in them if it chooses to do so. An institution may, for strategic or financial reasons, decide to prioritize some responsibilities over others.

An institution operating in conformity with the Paris Principles will also have the authority to "hear any person and obtain any information and any documents necessary" for examining the questions it takes up. National human rights institutions should have the power to inquire into or investigate any question. This reinforces the principle of independence: it is the institution itself that will set the agenda for inquiries.

National human rights institutions should also have the capacity to compel a person to give evidence or testimony and to protect individuals from retaliation for having done so. The authority to obtain any information or document also implies that the institution will have the authority to compel the production of documents and to use—or cause the responsible authorities to use—search and seizure powers. As with the authority to hear any witness, it also presupposes that there will be some penalty for refusing to produce, destroying or falsifying information and documents.

Regular meetings. The Paris Principles require that NHRIs should hold regular meetings and convene all their members to these meetings. The requirement to meet regularly and whenever necessary is meant to ensure that the institution is active and responsive to need. Institutions whose members do not meet regularly or that fail to meet when critical situations arise will be open to accusations of ineffectiveness or even irrelevance. The authority to meet either regularly or as the need arises presupposes that the institution has a fixed venue as well as the capacity to set its own agenda. Both are central to its independence.

Establishing working groups. Many institutions create working groups to take responsibility for certain core functions. These groups usually report back to the full membership so that all members remain aware of what is happening and can have a say in the process. Some issues, like establishing corporate policy, for example, should be carried out by the members themselves or a subset of members. The full membership need not be involved in all programme activities and decision-making, especially when these activities are either highly specialized or routine.

As with the requirement to meet regularly, the authority to create working groups also underscores that the institution is master of its own procedures and therefore independent.

Regional and local offices. In many countries, it is necessary to establish a presence that is close to the people, because of the sheer size of the country, the complexity of the issues it faces at local levels or the difficulty, financial or otherwise, of requiring individuals to come to the centre to receive services. Whatever the reason, many NHRIs decentralize their services to bring them closer to the people.

Decentralizing may apply to the full range of services and, while this is arguably the most effective approach, it does create management challenges and can be expensive. Some institutions choose other approaches, like setting up smaller local offices that act as a "post office". In this scenario, the local office does not offer services directly—this is still done through headquarters—but it does assist by receiving complaints, for example, or obtaining information at the request of headquarters investigators. Alternatively, the local office might carry out some services. Another option is for the institution to set up itinerant offices which headquarters staff visit at regular intervals to provide a local service.

Freedom to consult. The Paris Principles impose an obligation on institutions to consult with other organizations that promote and protect human rights, in particular "ombudsmen, mediators and similar institutions". Ombudsmen and mediators, in particular, share a responsibility that is closely associated with that of an NHRI, and they usually enjoy an equivalent status as an independent body. (In fact, a number of members of the International Network of NHRIs are also members of the International Ombudsman Institute.) It is particularly important that institutions that share human rights responsibilities should develop mechanisms to coordinate their activities to promote easy access for the public, to ensure that work is not duplicated and to prevent working towards different ends.

The Paris Principles also require NHRIs to "develop relations with the non-governmental organizations devoted to promoting and protecting human rights". It should also be noted that they indicate that an institution's pluralism and composition should serve to "enable effective cooperation" with the social forces "involved in the promotion and protection of human rights".

Reporting and accountability. National human rights institutions have two levels of accountability, one to the State and one to the public. Being accountable to the public also strengthens their independence. National human rights institutions can submit reports to the Government, parliament or any other competent bodies. The Paris Principles also require NHRIs "to publicize human rights… [and increase]… public awareness… by making use of all press organs". The "methods of operation" section of the Paris Principles provides that institutions must address public opinion, either directly or through the media, especially to publicize their opinions or recommendations.

Most institutions discharge their reporting and accountability responsibilities to the State by preparing and presenting annual reports and special reports to the appropriate State authority. Financial accountability is generally addressed through a financial statement in the context of the annual report. If the NHRI reports to parliament, it will present its annual report directly to it. The reporting obligations imposed on an institution should be set out in its founding law and should specify the frequency of reports, the possibility of submitting ad hoc, special reports, the issues to be reported on and the procedure for examining reports.

The Paris Principles require that the methods an institution uses to report to the State should not impede independence. For example, they repeatedly state or imply that recommendations, advice and/or opinions can be made without pre-approval. Similarly, they indicate that an institution is free to use the media to inform the public of its opinions without requiring prior approval.

Nevertheless, an institution is obliged to be rigorous in its own fact-gathering and analysis when forming a recommendation, opinion or report. Ultimately, its credibility will be assessed by the quality and pertinence of its recommendations and opinions. If these are too often ill-founded or flawed, the institution will find that all sides easily dismiss them and its subsequent recommendations will not be taken seriously.

The Paris Principles also require institutions to keep the public informed of their work, in particular of their recommendations and opinions, and promote the use of the media to this end.

In addition to reporting on specific areas of work, an institution should also conduct formal performance evaluations by measuring achievements against specific, ascertainable goals. For reasons of transparency and accountability performance evaluations should be public. Clearly, the results of such evaluations as well as the performance goals that were established should be made public. By doing so, an institution can both motivate internal excellence and ensure that the public is aware of the institution and of the standards of achievement it has set. This level of transparency will inevitably enhance an institution's external credibility.

2. Composition and pluralism

The Paris Principles require that

> the composition of the national institution..., whether by means of an election or otherwise, shall be established... to ensure the pluralist representation of the social forces (of civilian society)..., particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (*a*) non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (*b*) trends in philosophical or religious thought; (*c*) universities and qualified experts; (*d*) parliament; (*e*) government departments.

The Sub-Committee, in its general observations (para. 2.1), has noted that pluralism can be achieved through the composition of the NHRI, for instance by ensuring:

(a) That members of the governing body represent different segments of society as referred to in the Paris Principles;

(b) Pluralism through the appointment procedures of the governing body of the national institution, for example, where diverse societal groups suggest or recommend candidates;

(c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or

(d) Pluralism through diverse staff representing the different societal groups within the society.

The Sub-Committee further emphasizes that the principle of pluralism includes ensuring the meaningful participation of women in the national institution.

The requirement of pluralism through the presence of social forces can be difficult to achieve. When there are many ethnic or religious minorities, for example, it is often not feasible. There are also practical considerations: at what point does the sheer size of membership inhibit effective functioning and decision-making? What is the financial impact of wide membership?

There are some strategies that balance pluralism in membership with effectiveness and cost. First, since membership is not static, full pluralism can be achieved over time. Not all groups must be represented at any one point in time. Second, social forces could develop umbrella organizations and be represented by one or other member. Third, members could be part-time only. This would allow for wider membership but at lower cost. A number of institutions, especially those in developing countries, have in fact recorded practical difficulties when membership is too wide. If full-time

membership is too large, the sheer cost of running an institution may be too high and diminish the possibility of establishing a full-time cadre of professional staff. The possibility of engaging part-time members on a pro bono or equivalent basis, which may be available to institutions in the developed world, may not be a realistic option elsewhere.

Members from Government should participate in an advisory capacity only, so as to remove any suggestion that the institution is not completely independent. The Paris Principles also address the renewal of members' terms (see sect. 3 below) by stating that renewal should not diminish the possibility of achieving pluralism.

Pluralism can also be reflected in the work of the NHRI, for example: in the choice of facilitators and participants for workshops, etc., and in the subjects chosen for research projects, seminars and in public education materials.

Appointments. Parliament should be part of the formal selection process to make it more credible and transparent. It can develop a shortlist of candidates which is then submitted to the executive for consideration and final selection, or it could consider and select from a shortlist of candidates prepared by the executive.

The Sub-Committee, in its general observations (para. 2.2), notes the critical importance of the following factors in selection and appointment:

- A transparent process;
- Broad consultation throughout;
- Advertising vacancies broadly;
- Maximizing the number of potential candidates from a wide range of societal groups;
- Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

Pluralism is enhanced if social forces are involved in the selection. Responsibility for conducting the nomination and selection process can be delegated to a representative committee of experts, or the Government or parliament can consult with social forces to obtain their input. An expert committee could develop the shortlist from which either parliament or the executive would make the final selections.

National human rights institutions usually have one member chosen to head the organization on a day-to-day basis, as well as one or more deputies. The head is usually called chief commissioner, president, chief ombudsman or chairperson. In some cases, this person may also be the chief executive officer. In other cases, the operational head of the organization may have this role, as executive director or secretary-general. The method by which these positions are chosen is also relevant to pluralism and transparency. Parliament or the executive can name these positions on the basis of a recommendation from the executive or through a parliamentary committee. Another option used in some institutions is to have the members themselves select their leaders. Again, this will generally depend on the enabling law, which should clearly set out who the operational as opposed to titular head of the NHRI is.

Whatever method is adopted, it must be remembered that the principle of pluralism should apply. The chairperson and vice-chairs of an institution are usually given wide executive powers and have the capacity to shape its character. Moreover, they are typically its main spokespersons. They should be representative of the people they serve. Obviously, for all the reasons set out earlier, this may not be possible at any one point in time, but it should be demonstrably true over time. Women, who are always half the population, should always be represented among the senior membership of NHRIs.

While pluralism is best demonstrated when an institution's membership visibly reflects the social forces at play in the State, this does not mean that all groups must be represented at any one time, but it should mean that, over time, groups feel that they are included. Remember:

– Pluralism is easiest to achieve if an institution has a number of members;
– Institutions that have only one head or senior member, or very few members, can achieve pluralism through the use of advisory councils or an equivalent mechanism;
– Women are *always* represented within the membership of an institution, including in senior positions;
– Where the structure of the organization provides for only one member, consideration should be given to appointing women on an alternating basis;
– In all circumstances, NHRIs should collaborate and cooperate with other stakeholders, and doing so is itself a test of their commitment to pluralism.

Pluralism and staff composition. Pluralism and diversity will be enhanced if staff composition also reflects societal realities. This means that diversity is reflected across all parts of the organization and all levels of seniority. Diversity is not achieved, for example, if women hold 50 per cent of jobs but these are all at the secretarial and support level.

Pluralism at the staff level can serve to strengthen the visibility of an institution's commitment to full participation, as well as positively influence programme credibility and effectiveness. Such diversity is not formally part of the Paris Principles, but can make an institution's commitment to it more visible. It should be noted that the Sub-Committee, in its general observations (para. 2.4), places limits on the extent of secondments that are possible from the Government to the NHRI.

3. Autonomy and independence

The Paris Principles require NHRIs to have sufficient funding to have their own premises and staff "in order to be independent of the Government". Independence is perhaps the most important principle: it is also arguably the most difficult and controversial. True independence is fundamental to the success of an institution. An institution that cannot operate independently cannot be effective. It does not matter how well an institution measures up against other aspects of the Paris Principles. If it is not independent, or is not seen to be independent, it is highly unlikely that it will be able to achieve much of lasting worth. Several elements are involved:

- The mandate of members should be established by "an official act which shall establish the specific duration of the mandate" since a stable mandate is a precondition for independence;
- Membership should be renewable, subject to the need for pluralism;
- Many of the principles set out under "methods of operation", which are discussed later in this chapter, serve to reinforce independence.

The very fact that an NHRI is a State body funded by the State raises difficulties. Some may ask how such an institution can ever be independent and this question is especially relevant in countries where the Government is not entirely human rights-friendly. The most direct answer is that the Government also funds other important independent institutions, most notably the courts and auditors general. The fact that this is so does not in itself mean that courts can never be independent. Experience shows that courts, by and large, can and do act with independence of the Government of the day.

Nevertheless, independence is a relative concept. An institution is by definition established by the State and is mandated through a constitutional provision or legislation. That founding legislation will define its operational parameters and its reporting relationship to the State, and it may impose limits on the degree of independence enjoyed by the institution. For this reason, independence must be considered in the light of a number of structural and procedural factors that should be in place to ensure a high degree of operational independence for an institution. These are discussed in the following paragraphs. In the final analysis, however, while these factors are fundamental, the key to, and proof of, independence lie in the institution's actions and its members' commitment. Whatever structural guarantees exist, an institution will quickly become known, both nationally and internationally, for what it does.

Legal autonomy

The constitutional provision or law that establishes an institution should give it a distinct legal personality to allow it to make decisions independently and act independently. An institution that is a department of a government ministry, for example, is not independent. Institutions that report to or through a ministry are in a less independent position than those reporting directly to parliament or to the Head of State.

Operational autonomy

Institutions should have the ability to conduct day-to-day affairs independently of any outside influence. This means that they have the power to draft their own rules of procedure, which cannot be modified by an external authority. An institution's recommendations, reports or decisions should not be subject to an external authority's approval or require its prior review. The same applies to programme activities.

All NHRI staff should ultimately report to and be accountable to the head of the NHRI, although day-to-day responsibilities may be delegated. It should not be possible for senior staff to be appointed or dismissed except by a decision of the head, preferably in consultation with all members. Doing otherwise would seriously compromise the independence of the institution.

The Paris Principles state that an institution should have the right to hear any person and obtain any information necessary for an examination it is undertaking. The founding or enabling law should provide the legal authority for this. In fact, this legal authority is a prerequisite for institutions with the power to investigate. (This issue is examined in greater detail in chapter V.)

Financial autonomy

The Paris Principles require the State to ensure that an institution has the resources to have its own staff and premises. Financial autonomy is crucial. An institution with no control over its finances or how they may be used cannot be independent. The Sub-Committee's general observations (para. 2.6) specify:

> Provision of adequate funding by the State should, as a minimum, include:
>
> (a) The allocation of funds for adequate accommodation, at least its head office;
>
> (b) Salaries and benefits awarded to its staff, comparable to public service salaries and conditions;
>
> (c) Remuneration of commissioners (where appropriate); and
>
> (d) The establishment of communications systems, including telephone and Internet.
>
> Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the institution's operations and the fulfilment of its mandate.

Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the State to ensure a minimum activity budget in order to allow it to operate towards fulfilling its mandate.

Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

The source and nature of funding for an institution should be identified in the founding law and it should, at a minimum, cover basic functions. Some NHRIs can draw up their own budgets, which are then submitted directly to parliament or the national legislative body and defended before that body. Parliament is then responsible for reviewing and approving the budgetary allotment as well as reviewing and evaluating financial reports submitted to justify the use of those funds.

It is less advisable to link an institution's budget to the budget of a government ministry. Even if there is no actual interference, it may give the impression of a lack of independence. This is especially so if the institution may hear complaints, as the financial connection may give rise to a real or apparent conflict of interest.

The funding should also be *secure*, that is, protected against arbitrary reduction for the period it covers. This will prevent the institution's decisions or actions being used to justify cuts. Obviously, parliament is the final authority on spending matters and, when faced with difficult financial circumstances, has both the duty and the responsibility to oversee spending and to limit State spending if necessary. In such circumstances, at a minimum, a budget reduction should not be disproportionate to that of other core functions, especially in the area of rule of law.

Independence through appointment and dismissal procedures

Institutions are only as independent as their members. The appointment and dismissal procedures are thus crucial. The terms and conditions that govern appointments and dismissals should, therefore, be set out in the constitutional provision and/or founding law.[44]

Method of appointment: see the previous section.

Criteria for appointment: members should have the professional qualifications and experience to perform their jobs. The criteria for appointment should be clear and well known. There should be recognized competence and experience in human rights and a personal history that demonstrates integrity, competence and independence. The terms and conditions that govern the appointment of members should be transparent, i.e., set out in the constitutional provision or law (or both) that establishes the NHRI. They should include:

– Method of appointment;

– Criteria for appointment (professional qualifications, recognized competencies, personal history of integrity and independence, etc.);

– Duration or term and possibility of reappointment (guaranteed, fixed-term appointments, which may be renewable).

Duration of appointment and possibility of reappointment: members of NHRIs should be granted guaranteed, fixed-term appointments. The length of the term may vary, but it should be sufficient to ensure that the institution can function effectively. In some cases, the term is longer than the normal term of Government (five to seven years) and this creates secure, long-term and stable leadership. Where there are a number of

[44] See also the Sub-Committee's general observations (para. 2.9).

members, consideration should be given to staggering the end of the terms so as to guarantee continuity. The Paris Principles provide that terms should be renewable.

Terms that are too short—two years, for example—may limit independence or be seen as limiting it. Members may feel that their reappointment is dependent on how acceptable they have been to the Government of the day. Moreover, short terms of two years or less do not give members the time to both enunciate a vision and put it into effect and therefore may impact negatively on the institution's potential effectiveness.

Who may dismiss members and on what grounds? Freedom from arbitrary dismissal is crucial to independence. Since institutions have authority to comment on governmental action, they should be shielded from retaliation. For this reason, the founding legislation should specify, in detail, the circumstances under which a member may be dismissed. Dismissals should be limited to serious wrongdoing, clearly inappropriate conduct or serious incapacity. Mechanisms for dismissal should be independent of the executive, such as a committee of senior judges, a court or a vote of parliament. When parliament is entrusted with this authority, a majority vote is often insufficient to cause dismissal. This is to minimize the possibility of a governing party acting arbitrarily. In its general observations, the Sub-Committee on Accreditation has further noted that:

(a) The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;

(b) Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;

(c) Dismissal should not be allowed based on solely the discretion of appointing authorities.

Quick facts about independence, terms of office and dismissal
In an OHCHR survey almost 80 per cent of respondents indicated that the terms of their members were between three and five years, which is reasonable to ensure tenure of membership. Nevertheless, barely 70 per cent of respondents' founding laws state the grounds on which members may be dismissed and even fewer (just under 60 per cent) included a procedure for the dismissal of members.

Independence through privileges and immunities
NHRI members should enjoy immunity from civil and criminal proceedings for acts performed in an official capacity. Such privileges and immunities help secure independence by giving members a legal guarantee that they will not face retaliation from disgruntled parties, for example. Hence, privileges and immunities may be especially important for institutions which are granted the authority to receive and act on complaints of human rights violations. The Sub-Committee has strongly recommended provisions to be included in national law to protect against legal liability for actions undertaken in the official capacity of the NHRI (general observations, para. 2.5).

Moreover, members and staff should be held inviolable and immune from search, seizure, requisition, confiscation or any other form of interference in their archives, files, documents, communications, property, funds and assets of the office or in their possession. This immunity is important to protect the ability of the NHRI to gather and maintain evidence and documents, and is vital to ensuring the safety of complainants and witnesses. This, in turn, is a requisite for the NHRI to undertake its responsibilities, which will often involve dealing with allegations of violations concerning individuals in positions of power, including the police, the armed forces and the security services.

4. Principles that apply to national human rights institutions with quasi-jurisdictional competence

All NHRIs should have the general authority to protect human rights and the specific authority to take up "any situation of violation of human rights", as well as to consider "any questions falling within [their] competence". Some institutions may, in addition, consider "complaints and petitions concerning individual situations". This authority is referred to as "quasi-jurisdictional competence".

In this regard, the Paris Principles are not as clear as they could be. For the purposes of this discussion, a "quasi-jurisdictional institution" is an NHRI that performs an administrative or quasi-judicial function that has an adjudicative component related to an individual complaint. Institutions that receive individual complaints are bound by general principles of administrative law: these may differ from jurisdiction to jurisdiction, but they generally include concepts like procedural fairness, due process, and proper delegation of authority and appropriate exercise of discretion. These should be reflected in their enabling legislation and internal processes. The NHRI should also have the legal powers associated with an investigation and be able to exercise these directly. These may include the power to compel witnesses to appear and to require the production of evidence.

There are two main types of institutions with complaint-handling functions. The first are NHRIs that can themselves impose a binding decision on the parties following an investigation. The second—more common than the first—can make a finding and refer the matter to a specialized board or tribunal that is independent of the institution or to the courts in order to obtain a binding decision. National human rights institutions may act on behalf of the complainant during the process or on behalf of the public interest, depending on their legal mandate. In some instances, complainants are required to obtain their own representation.

Institutions with quasi-jurisdictional competence offer a faster, less expensive and more accessible venue for dealing with human rights violations than traditional court systems. Those institutions that reach their own decisions can resolve matters without reference to the courts. This raises concern about bias however, since the same organization that undertakes investigations should not, generally, render decisions on the same cases. This is why, in many jurisdictions, Governments have created separate boards or tribunals to separate the adjudication from the investigation.

Institutions' processes tend to be more accessible because they are generally free, do not require a lawyer and are more informal. National human rights institutions and specialized tribunals in particular offer a higher degree of expertise and seek to provide remedies that are based on restorative justice rather than punishment, although certain types of behaviours may result in penal sanctions and other orders to ensure compliance.

Quasi-jurisdictional NHRIs have the authority to make findings, usually in the form of a final report, after the investigation. They can make recommendations to the authorities proposing amendments or law reform. The parties may choose to comply with the finding or the NHRI can refer the matter to a specialized tribunal or board or to the courts. In many jurisdictions, the case then undergoes a full hearing.

B. The International Coordinating Committee and its accreditation system

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights was originally established by NHRIs at their International Conference in Tunis in 1993.

It coordinates the activities of Paris Principle-compliant NHRIs internationally, including:

- Interaction and cooperation with the United Nations system;
- Collaboration and coordination among NHRIs and the regional groups and regional coordinating committees;
- Communication among members and with stakeholders, including, where appropriate, the general public;
- Knowledge development and management;
- Development of guidelines, policies, statements;
- Implementation of initiatives;
- Organization of conferences.

The International Coordinating Committee also accredits members, assists those NHRIs that are under threat and encourages the provision of technical assistance, such as education and training opportunities to develop and reinforce the capacities of NHRIs.

In 2008, the International Coordinating Committee was incorporated under Swiss law, with a bureau of 16 voting members representing its four regions.

The Office of the United Nations High Commissioner for Human Rights is a permanent observer on the Sub-Committee on Accreditation and serves as the secretariat of the International Coordinating Committee.

In December 2008, the General Assembly, in its resolution 63/172 (see annex VII below), encouraged NHRIs to seek accreditation status through the International Coordinating Committee and noted with satisfaction the strengthening of the accreditation procedure and the continued assistance of OHCHR in this regard. It also noted the continuing work of the regional human rights network in Europe, the Network of NHRIs in the Americas, the Asia-Pacific Forum of NHRIs and the Network of African NHRIs.

1. What is accreditation?

"Accreditation" is the official recognition that NHRIs meet or continue to comply fully with the Paris Principles. Accreditation takes place under the rules of procedure of the International Coordinating Committee's Sub-Committee on Accreditation (see annex III).

These rules of procedure provide that the Sub-Committee on Accreditation has a mandate to review and analyse accreditation applications forwarded by the International Coordinating Committee's Chair and to make recommendations to the Committee on the compliance of applicants with the Paris Principles. There are currently three levels of accreditation:

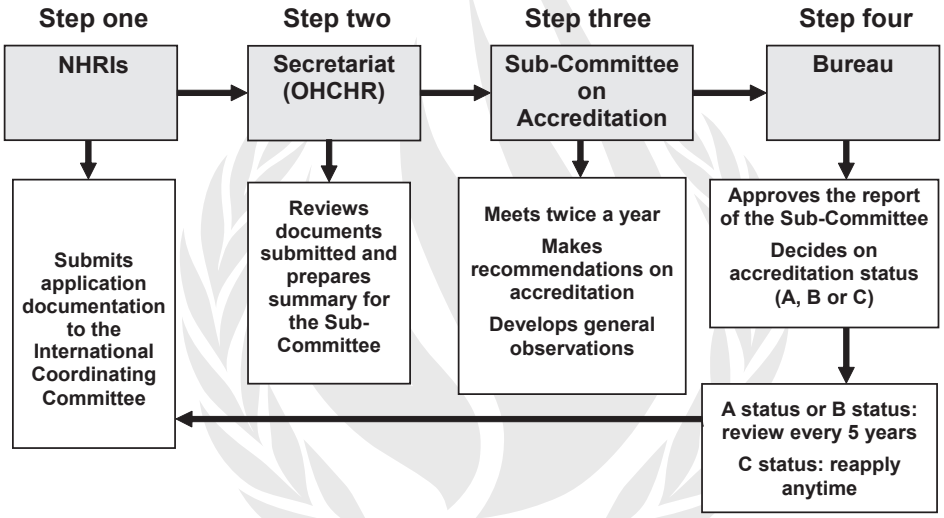
- **"A"** Voting member: complies fully with the Paris Principles
- **"B"** Observer member: does not fully comply with the Paris Principles or has not yet submitted sufficient documentation to make that determination
- **"C"** Non-member: does not comply with the Paris Principles

"A" status institutions demonstrate compliance with the Paris Principles. They can participate fully in the international and regional work and meetings of national institutions, as voting members, and they can hold office in the Bureau of the International Coordinating Committee or any sub-committee the Bureau establishes. They are also able to participate in sessions of the Human Rights Council and take the floor under any agenda item, submit documentation and take up separate seating.

"B" status institutions may participate as observers in the international and regional work and meetings of national institutions. They cannot vote or hold office within the Bureau or its sub-committees. They are not given NHRIs badges, nor may they take the floor under agenda items and submit documentation to the Human Rights Council.

"C" status institutions have no rights or privileges with the International Coordinating Committee or in United Nations rights forums. They may, at the invitation of the Chair of the Bureau, attend meetings of the International Coordinating Committee.

The International Coordinating Committee and its accreditation process



NHRIs are accredited by the Sub-Committee on Accreditation, under the auspices of OHCHR (Commission on Human Rights resolution 2005/74)

2. Why is accreditation important?

Accreditation confers international acceptance of the NHRI and its compliance with the Paris Principles as well as its *bona fides*, which opens the door to participation in the work and decision-making of the International Coordinating Committee, as well as the work of the Human Rights Council and other United Nations bodies. For example,

> NHRIs accredited by the International Coordinating Committee as being in compliance with the Paris Principles may participate and address the Council in an independent capacity… It is important that the principle that only those national institutions deemed to be in compliance with the Paris Principles are able to address the Council be upheld.[45]

Failure to be accredited lets the world community know that a national institution is not fully independent or effective and, therefore, not entirely credible. An immediate benefit of the **accreditation process** is the issuance of recommendations by the Sub-Committee on Accreditation, which in turn provide a solid basis for future efforts to strengthen the institution and engage the national authorities in this.

By June 2010, 67 NHRIs were accredited by the International Coordinating Committee as being in compliance with the Paris Principles.

3. Who confers accreditation?

According to the International Coordinating Committee's Statute, its Sub-Committee on Accreditation is responsible for reviewing NHRI compliance with the Paris Principles, through an accreditation process (art. 1.1, see annex III below).

The Sub-Committee on Accreditation reviews and analyses applications for accreditation and makes recommendations to the International Coordinating Committee's Bureau on the applicant's compliance with the Paris Principles.

The Sub-Committee on Accreditation comprises one "A" status institution from each of the four regional groupings: Africa, the Americas, Asia and the Pacific, and Europe. Its members are appointed by the regional groupings for a renewable term of three years.

The National Institutions and Regional Mechanisms Section of OHCHR supports the work of the Bureau and the Sub-Committee. Specifically, it produces summaries of the key issues concerning an applicant institution's compliance with the Paris Principles that the Sub-Committee uses to arrive at its accreditation recommendations. These summaries are posted on the NHRI website[46] when the decision on accreditation is taken. The Secretary-General's annual reports to the Human Rights Council on the accreditation process are a further source of information.

The Sub-Committee also develops general observations, as an ongoing task, on common or important interpretative issues regarding the Paris Principles. They are intended to constitute guidance for NHRIs on accreditation and on the implementation of the Paris Principles. They are also useful for NHRIs to press for the institutional changes necessary to comply with the Paris Principles (see annex IV).

4. How is accreditation decided?

Articles 10 and 11 of the International Coordinating Committee's statute cover accreditation, in particular (see annex III below). They provide that:

Any NHRI seeking accreditation shall apply to the Committee's Chair and provide the following supporting documentation:

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45 A/HRC/4/91, para. 15.

46 www.nhri.net.

- A copy of the legislation or other instrument by which it is established and empowered in its official or published format;
- An outline of its organizational structure, including staff complement and annual budget;
- A copy of its most recent annual report or equivalent document in its official or published format;
- A detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance.

On the basis of this documentation, the Sub-Committee drafts a report, which the Bureau then considers to decide, under the auspices of and in cooperation with OHCHR, on the application. The Bureau and the Sub-Committee adopt processes that facilitate dialogue and the exchange of information between them and the applicant NHRI to come to a fair decision.

In practice, the National Institutions and Regional Mechanisms Section of OHCHR reviews the documentation and prepares a critical summary, highlighting any problematic areas. This summary tests both the applicant institution's compliance on paper with the Paris Principles as well as the degree to which it has demonstrated its independence and effectiveness substantively. The applicant institution receives a copy and may provide additional information, documentation or written commentary on the problems noted in it.

The accreditation process has become more rigorous and, as suggested above, includes not only a "paper review" but also seeks input from United Nations field presences, NGOs and other stakeholders on the merit of an application. Any such input is also shared with the applicant institution, which may comment on it. Finally, the applicant institution is contacted by telephone if the Sub-Committee believes that it needs to clarify any matter relevant to the application. Where necessary, it will be asked to provide further written submissions.

The resulting recommendation is based on these inputs, as well as on the Sub-Committee's own general observations, which have been developed over time. The recommendation is specific and in some cases time-bound, focusing on remedial action so as to ensure compliance with the Paris Principles. It is sent to the applicant institution, which has 28 days to challenge it. Thereafter, it is sent to the Bureau, whose decision is final.

The recommendation will be forwarded to the Bureau for decision, together with any challenge and any material received in connection with either the application or the challenge. Any member of the Bureau who disagrees with the recommendation should, within 20 days of its receipt, notify the Chair of the Sub-Committee and the Secretariat. The Secretariat will promptly notify the Bureau of the objection raised and provide all necessary information to clarify that objection. If, within 20 days of receipt of this information, at least four members of the Bureau representing different regional groups notify the Secretariat that they also object, the recommendation is referred to the next meeting of the Bureau for decision. If at least four members from different regional groups do not object to the recommendation within 20 days of its receipt, the recommendation shall be deemed to be approved by the Bureau. The decision is final.

5. When are decisions on accreditation taken?

Initial accreditation. This decision is taken when an NHRI first applies for membership of the International Coordinating Committee. Based on the documentation it is required to provide (see above), it must also demonstrate that it is functioning effectively.

Initial accreditation cannot be awarded unless the institution has existed for one year or more.

Institutions that are denied full accreditation ("A" status) may reapply at any time. The procedure is the same. However, particular attention will be paid to the areas of non-compliance noted during the initial process. While no institution has yet withdrawn its application for initial accreditation, the current position is that the applicant would be treated as if it had never applied for accreditation and would have no status within the International Coordinating Committee.

Periodic reaccreditation. All "A" status NHRIs, as well as all "B" status NHRIs that have not applied for a review of their status, are subject to reaccreditation every five years (see art. 13) to ensure that they maintain and improve their compliance with the Paris Principles. An NHRI that fails to demonstrate its ongoing compliance with the Paris Principles may have its status downgraded (unless it provides evidence to the contrary within 12 months).

Institutions must provide documents to support their reaccreditation applications. Unless there are compelling and exceptional circumstances, an NHRI that fails to provide these will be suspended until it does so. A suspended NHRI loses all membership privileges during that period. The membership of an NHRI that does not apply for reaccreditation within one year of being suspended will lapse completely. An NHRI whose membership has lapsed or been downgraded can reapply for membership.

Delayed reaccreditation. In exceptional, justifiable circumstances, reaccreditation can be delayed at the request of the applicant institution. For example, the Consultative Commission of France was scheduled for reaccreditation at the time when its enabling legislation was being amended. The process was delayed until the amendments were enacted.

Withdrawal of reaccreditation application. While the situation has not yet come up, if an "A" status NHRI were to withdraw its reaccreditation application without justification, it would likely be treated as if it had failed to apply and be suspended. A "B" status NHRI in the same circumstances would likely retain its status.

Review. The Chair of the International Coordinating Committee or a member of the Sub-Committee on Accreditation may initiate a review of any "A" status NHRI, if they consider that changed circumstances may affect its compliance with the Paris Principles (e.g., if its enabling legislation has been amended). "A" status NHRIs are required to notify the Chair of any such changes, although a review may also be prompted by information from other sources. A review of an institution's compliance with the Paris Principles must be completed within 18 months. During the review the NHRI retains its accreditation status. If the NHRI under review fails to provide sufficient documentary evidence within the 18-month period to satisfy the Bureau that it continues to comply with the Paris Principles, its membership will lapse. An NHRI whose membership has lapsed can reapply for membership.

6. Early warning

Some of the threats NHRIs may face are:

- Financial cuts;
- Restrictions on their mandates;
- The creation of additional/competing institutions that are more Government-oriented;
- Intimidation and/or threats of death or violence against their members of staff;

- The removal of commissioners,

all of which would undermine their ability to function effectively.

In the NHRI context, "early warning" means that there is a threat to its viability based on good field intelligence. It is possible that outsiders may be aware of potential problems before the institution itself.

Sometimes, "early warning" will involve actions that the Government is contemplating, such as:

- Suggesting that the enabling legislation should be amended in a way that might impact on a national institution's compliance with the Paris Principles;
- Suggesting that the nominating process for commissioners should be less transparent or should otherwise be carried out in ways that might lead to suspicions about their independence (it is possible that these concerns come to light during the nomination process itself);
- Suggesting that commissioners or key officials should be removed from the institution because of actions taken that might be viewed as contrary to Government policy.

The International Coordinating Committee has developed guidelines on the action it should take in the event of such threats to remove them.[47] The early warning mechanism can, therefore, be seen as a step to prevent "changed circumstances" that might lead to a review of accreditation.

7. A checklist for assessing compliance with the Paris Principles

The following checklist may be helpful in assessing an institution's compliance with the Paris Principles. It identifies the Paris Principles and the minimum requirements to satisfy them. If the principle or requirement, or any part of it, is not directly taken from the Paris Principles, it is italicized.

Compliance cannot be assessed by a simple "yes" or "no" response. The principle requiring an institution to have "a broad mandate" is one such example. The checklist attempts to develop a hierarchy of possibilities in such cases so that the degree to which an institution meets the standard can be assessed, which in no way implies that a relatively low degree of compliance will be non-conforming.

This checklist is not exhaustive: an examination of an institution's responsibilities should not end with whether it *can* carry out a given function. Much more important than the capacity to do something is actually carrying out the work in a way that demonstrates the institution's fundamental independence and professional competence. The checklist includes activities that are central to its responsibilities. For the same reason, the responsibilities of NHRIs with quasi-jurisdictional competence are formulated to ask whether these institutions actually carry out the activities as opposed to whether they have the authority to do so.

[47] "National institutions in need: guidelines for early warning", available from www.nhri.net.

Checklist for assessing conformity with the Paris Principles

Principle	Requirements	Y	N
COMPETENCE (mandate)	Mandate is set out in constitution or legislation		
	Mandate gives authority to promote and protect human rights		
COMPETENCE (general jurisdiction)	Competence is defined in legislation		
COMPETENCE (subject-matter jurisdiction)	Competence is as broad as possible (*from most to least broad*)		
	■ *Includes both civil and political and economic, social and cultural rights*		
	■ *Includes most civil and political and economic, social and cultural rights*		
	■ *Includes only civil and political rights*		
	■ *Includes a subset of civil and political rights*		
	■ *Is limited to a single rights issue (e.g., race or discrimination)*		
COMPETENCE (object-matter jurisdiction)	Competence is as broad as possible (*from most to least broad*)		
	■ *Over State and private sector (with public function), without restriction*[48]		
	■ *Over State, without restriction*		
	■ *Partial*[49] *restriction with regard to sensitive State organs*[50]		
	■ *Total restriction with regard to sensitive State organs*		
COMPETENCE (time jurisdiction)	Competence is as broad as possible *(from most to least broad)*		
	■ *Can examine matter even if it pre-dates institution*		
	■ *No limits providing matter occurred since set-up of institution*		
	■ *Discretionary power to limit examination of "old" cases*		
	■ *Limits on capacity to examine matters that are "old" set in law*		
RESPONSIBILITY (to provide advice)	Can provide advice on own initiative		
	■ On legislative or administrative provisions		
	■ On any violation the institution takes up		
	■ On the national situation generally or on specific situations		
	■ On situations of violations and Government reactions to them		
	Can provide advice directly without referral		
	Can publicize the advice without referral or prior approval		

[48] "Without restriction" in this context means no restriction except as regards the courts and parliament.

[49] "Partial" in this context means either that the restriction does not apply to all sensitive State organs or that the restriction is not absolute.

[50] "Sensitive State organ" in this context means the army, the police, the security forces or equivalent organs.

Principle	Requirements	Y	N
RESPONSIBILITIES (other)	To encourage the harmonization of national legislation and practices with international human rights instruments, as well as their effective implementation, *including by*		
	■ *Participating in reviews of legislation and policy at time of ratification*		
	■ *Regularly reviewing and providing formal comments on draft legislation and policy*		
	■ *Regularly reviewing and formally commenting on the human rights situation generally or on key issues*		
	To encourage the ratification of international human rights instruments		
	To contribute to the State's human rights reports (*from most to least broad*)		
	■ *Directly participates in drafting of complete report*		
	■ *Drafts section(s) on its own work and reviews report*		
	■ *Drafts section(s) on its own work*		
	■ *Reviews report in whole or in part*		
	To cooperate with international and regional human rights organs and other national institutions		
	To develop and take part in education and research programmes in human rights, *including by*		
	■ *Assisting in developing/reviewing curricula for schools*		
	■ *Assisting in training of prison guards, police, army and security forces*		
	To raise public awareness about human rights through publicity, education, information and the use of press organs, *including by*		
	■ *Publishing an annual report*		
	■ *Regularly reporting on important cases through the media*		
	■ *Developing basic brochures on the institution*		
COMPOSITION (general pluralism)	Member composition demonstrates pluralism (*high to lower*)		
	■ Includes representatives of most social forces, including NGOs, trade unions or professional associations		
	■ *Includes representatives of most vulnerable groups (ethnic, religious minorities, persons with disabilities, etc.)*		
	■ *Single member, with representative consultative boards or committees, or similar structural mechanisms to facilitate and ensure pluralistic engagement*		
	■ *Single member*		
	Member composition demonstrates gender balance		
	Staff composition is broadly representative and gender-balanced		

Principle	Requirements	Y	N
COMPOSITION (appointment process)	Appointment effected by official act		
	Appointment is for a specific duration (but not too short—e.g., two years—as to potentially affect independence and effectiveness)		
	Appointment may be renewable so long as pluralism is ensured		
	Appointment process, duration, renewability and criteria set out in legislation		
	Appointment process supports pluralism and independence		
	■ *Nominations include input from civil society*		
	■ *Selection process involves parliament*		
	■ *Criteria for selection include demonstrated experience in human rights*		
COMPOSITION (dismissal process)	Conditions for which a member may be dismissed are set out in legislation		
	Conditions relate to serious misconduct, inappropriate conduct, conflict of interest or incapacity only		
	Decision to dismiss requires approval preferably by an autonomous body such as a panel of high court judges or, at a minimum, by a two-thirds majority of parliament		
INDEPENDENCE	If Government officials in membership, they have advisory capacity only		
	Institution reports directly to parliament		
	Members have immunity for official acts		
	State funding is sufficient to allow for independent staff and separate premises		
	State funding is sufficient to allow for core programming[51] *in protection and promotion*		
	Funding not subject to financial control, which might affect independence		
	Budget drawn up by the institution		
	Budget separate from any department's budget		
	Institution has authority to defend budget requests directly before parliament		
	Budget is secure		
	■ *Not subject to arbitrary reduction in year for which it is approved*		
	■ *Not subject to arbitrary reduction from one year to the next*		

[51] "Core programming" in this context means that the institution has enough funds available to conduct investigations, carry out general outreach programming and publish an annual report.

Principle	Requirements	Y	N
METHODS OF OPERATION (examination of issues)	The institution can consider any issue within its competence on its own initiative on the proposal of its members or any petitioner		
	The institution can hear any person or obtain any information or documents necessary to carry out its work		
	The right to hear any person and obtain any document is enforceable by law		
	The right to enter any premises to further an investigation is set out in law		
	Obstruction in obtaining, or denial of, access to a person, document or premises is punishable by law		
	The institution has the legal authority to enter and monitor any place of detention		
	The institution can enter the place of detention without notice		
METHODS OF OPERATION (meetings)	The institution can let the public know its opinions or recommendations, including through the media, without higher approval		
	The institution meets regularly and in plenary		
	Special meetings can be convened as necessary		
	All members are officially convened for meetings		
METHODS OF OPERATION (organizational structure)	The institution can set up working groups (which may contain non-NHRI members)		
	The institution can set up regional or local offices		
METHODS OF OPERATION (consultation)	The institution consults with other bodies responsible for promoting and protecting human rights		
	The institution consults with NGOs working in human rights or related fields		
	The institution carries out joint programming with NGOs working in human rights or related fields especially in awareness-raising and education		

Conclusion

The Paris Principles are the international normative framework for NHRIs. They provide benchmarks against which NHRIs legitimacy can be assessed. It is important, therefore, that those involved in institutions, and those involved in creating and strengthening them, fully appreciate the letter and the spirit of the Paris Principles. The Paris Principles are not always as clear as they might be, and represent a set of minimum expectations. Nonetheless, especially when interpreted generously and in keeping with international rights norms generally, they are an important development in the national and international human rights system.

IV. HUMAN RIGHTS PROMOTION

Introduction

National human rights institutions must have a mandate to promote human rights under the Paris Principles. This chapter places promotion before protection, not because it is more important, but because the demands and immediacy of the protection mandate can overwhelm resources so that promotion is overlooked. It is important that this should not happen. Institutions must be able to attract and retain qualified communications and public education staff, and to manage media relations.

Quick facts about how the promotional mandate is resourced in NHRIs
An OHCHR survey shows that a number of NHRIs are not carrying out human rights education and research, despite having the mandate to do so. Many, particularly in Africa, Asia and the Pacific, have commented that they do not have enough resources or materials to do this work. The survey examined what these activities entail and how they may be undertaken. Its findings help to understand the range of possibilities that exist for promoting human rights and give general guidance on how these may be effectively realized.[52]

Learning objectives

After reviewing this chapter, the reader will be able to:

- Explain why promotion is an important function for an institution and identify the guidelines that it should follow in carrying it out;
- Identify and describe the types of promotional activity that are typically undertaken by NHRIs; and
- Develop and justify a human rights promotion programme that responds to a country's needs.

[52] OHCHR, "Survey of national human rights institutions".

A. What is human rights promotion and why is it important?

Human rights promotion is a core function of NHRIs and a basic element of the Paris Principles. It enables information and knowledge about human rights to be disseminated to the general public and to specific target groups. Ultimately, it creates a culture of human rights so that every individual in society shares the values that are reflected in the international and national human rights legal framework, and acts accordingly. A successful human rights promotion programme moves individuals beyond knowledge into action.

While laws, redress mechanisms and other measures are necessary, they are not sufficient. Promotion is needed to ensure that members of society:

- Know their rights and the redress mechanisms available to them if those rights are abused;
- Understand that others enjoy rights as well, and that everyone shares a responsibility for promoting and protecting those rights.

Officials in positions of authority should understand the human rights obligations they must uphold and act accordingly.

Human rights promotion is integrally linked to protection. Whether human rights violations are intentional or unintentional, structural or specific, a lack of knowledge can result in actions that breach human rights principles. Sometimes traditional ways of thinking and behaving result in human rights abuse. In either case, human rights education and the inculcation of human rights values can promote change in behaviour without the need for punitive sanctions. Successful human rights promotion can therefore help prevent human rights violations from occurring in the first place.

International treaties place an obligation on the State to undertake the promotion. The International Covenant on Economic, Social and Cultural Rights (art. 13), the Convention on the Rights of the Child (art. 29), the Convention on the Elimination of All Forms of Discrimination against Women (art. 10) and the International Convention on the Elimination of All Forms of Racial Discrimination (art. 7), all provide that education in human rights is a State obligation. The declarations and programmes of action that resulted from the world conferences, including from the 1993 Vienna World Conference, reflect these obligations.

Institutions may undertake a variety of initiatives to promote human rights, and are limited only by their resources and imagination. The following are common, but this list is by no means exhaustive:

- **Human rights education and training**, including in schools and in the informal sectors, as well as professional training;
- **Public awareness** initiatives, including campaigns, local events and sessions, either for the general public or targeting particular groups;
- **Media strategies**, including press conferences, press releases and newspaper inserts; radio and television interviews and public service announcements;
- **Publications**, including general information pamphlets, annual and special reports, website material and material developed for a target audience;
- **Seminars and/or workshops** as a vehicle for examining and promoting a better understanding of a substantive human rights issue and, on occasion, advocating change;

- **Community-based initiatives** as a public vehicle for promoting human rights; and
- **Policy development**, to ensure that knowledge is developed and disseminated about emerging human rights issues and the approach that the NHRI takes or will take to them.

The extent to which the above-mentioned approaches are used, or whether others are adopted, will depend on:

– The level of human rights awareness among the population (if it is relatively high, the NHRI may decide not to carry out sessions for the general public);

– Priority human rights concerns (e.g., if the human rights of women are not respected, an institution might develop programming to address this);

– The maturity of the institution (a newly established institution might focus on informing the public about its existence and the services it can offer, an activity that might be less essential for older and well-known institutions);

– The sophistication of the institution (a newly established institution might bring in outside experts to carry out specialized training for the police, for example);

– The literacy rate of the target population (radio spots might replace print publications to reach a remote and largely illiterate audience);

– The financial resources (television spots may be effective, but are also costly unless the station agrees to offer public service announcements); and

– The possibility of cooperation (the cost and complexity of general human rights orientation sessions locally can be reduced if done in partnership with local NGOs, for example).

The Plan of Action for the first phase (2005–2009) of the World Programme for Human Rights Education included "education, training and information aiming at building a universal culture of human rights," as well as awareness-raising and establishing documentation centres (A/59/525/Rev.1).[53] It was adopted by the General Assembly in July 2005 and is available from the OHCHR website. The second phase focuses on higher education and on human rights training programmes for teachers and educators, civil servants, law enforcement officials and military personnel at all levels.

[53] A. Benavot and C. Braslavsky (eds.), *School Knowledge in Comparative and Historical Perspective: Changing Curricula in Primary and Secondary Education* (Dordrecht, Netherlands, Springer, 2007).

B. General principles

1. Programme-based and strategic

Institutions' promotional activities should be programme-based, i.e., planned and tailored to meet defined needs, and should be:

– Appropriate for the audience;

– Designed to achieve their intended results;

– Evaluated to determine the extent to which those results have been achieved.

Programme-based activities should be strategic, cooperative and leveraged.

Strategic approaches are developed through planning, with each element reinforcing strategic priorities. Activities should be progressive (from basic to more specific and in-depth). The development of a publication on human rights and HIV/AIDS, for example, could be coupled with a general awareness programme and lead to a national seminar on the subject. Doing this not only reinforces core messages, but also keeps costs down.

While some promotional activity may be considered *core*—annual reports, for example, or publications on what the NHRI does—the promotional programme as a whole should respond to identified strategic needs. A strategic approach also implies **cooperation with partners**. This helps to leverage resources, amplify messaging, improve community relations and minimize duplication. Cooperation also minimizes important gaps in the programme and, to the extent possible, avoids contradictory messages. Some institutions, for example, have created national promotion and education committees that include representatives from civil society for the specific purpose of encouraging and facilitating cooperation.

Leverage is achieved by **training trainers**, which, if carried out properly, can produce spin-offs, most notably an increase in the number of promotional or training sessions and in the number of persons reached. Two factors are crucial to its success. First, the training must give individuals both the knowledge and the skills to train others. Second, since success depends on the individuals trained having the financial capacity or material resources to carry the programme forward, it is important to consider and support follow-up activities in the design stage.

2. Learner-centred

Training and educational activities should be participant- or learner-centred, i.e., recognize, first, that each individual involved in the training activity brings something of quality that should be exploited and, second, that individuals learn best by active participation rather than passive listening. Panel discussions, group discussions and break-out sessions, role play, case studies and practical exercises should all be exploited.

Human Rights Training: A Manual on Human Rights Training Methodology[54] reinforces this approach, stating that human rights training should be:

- **Interactive**: since individuals learn best when they are involved in the process, the experience of trainees should be drawn on through interaction and active participation;
- **Flexible**: the trainer must allow for and encourage participation and not be overly rigid when it comes to timekeeping or interruptions;

[54] United Nations publication, Sales No. E.00.XIV.1.

- **Relevant**: the training should relate to the day-to-day experience of the trainee, especially for professional training;
- **Varied**: varying the training techniques helps keep the trainees motivated and interested.

3. Programmes should exploit the media

As a general principle, when designing promotional and educational activities consideration should be given to how the media can be brought in and engaged. Positive media coverage can raise the profile of the NHRI and its work, and encourage access to it. Moreover, media involvement can help to inform journalists and makes it more likely that in their daily work they will have a human rights focus or, at least, a human rights awareness. Staff should have training in communications and media relations, as the media can have a critical role in ensuring that the NHRI is well perceived externally.[55]

There are a number of reasons why it is important for an institution to make its decisions public.

- Creating a culture of human rights includes promoting an open and honest discussion of human rights. The open use of the media encourages this;
- The NHRI aims to improve the existing human rights situation. This requires it to be able to communicate openly and to use press organs to inform the public and mobilize public opinion;
- Impunity thrives in an environment of secrecy. Publicizing perceived wrongdoings opens up the issue to public scrutiny and helps hold the Government and, as necessary, the individual accountable for action or inaction;
- Reporting on the work of the institution also informs the public about its existence and the ways in which it can assist;
- Any public and democratic institution must be open and transparent in its activities. An NHRI must lead by example in this respect.

Communications planning is a key part of any media strategy. Communications are often treated as a mere add-on. In fact, communications are part of strategic planning and should be closely integrated into it, including an analysis of the strengths and weaknesses of the NHRI, and the particular characteristics of the media and the human rights environment.

[55] See R. Carver, "Developing a communications plan", ACE Project, Media and Elections, available from http://aceproject.org/ace-en/topics/me.

C. Public education

1. Programmes in the formal education sector

Human rights education is the key to developing a culture of human rights and nowhere is this more important than in the formal education sector. International human rights treaties contain a specific obligation to include human rights education in the formal sector and NHRIs often develop programmes to ensure that this obligation is met.

This section describes how an institution may support human rights education at the primary, secondary and tertiary levels.

Human rights education in primary and secondary schools

The first phase of the World Programme for Human Rights Education (2005–2009) focused on primary and secondary schools. It underscored the importance of a rights-based approach in schools. All components and processes of education—including curricula, materials, methods and training—help to ensure that the human rights of all members of the school community are respected. Its plan of action also provides valuable information and practical suggestions on how to integrate human rights education into formal education at primary and secondary schools, and should be used as a tool by NHRIs developing and implementing programmes of this nature. The plan of action sets out five components for action:

– Ensuring that appropriate educational policies are developed;

– Planning for the implementation of those policies;

– Ensuring that the learning environment is conducive to human rights learning;

– Addressing the teaching and learning processes; and

– Providing professional development for teachers and other educational personnel.

National human rights institutions should have a role in all these courses of action and may have a direct role in ensuring that some aspects are put into effect. The following section describes the five components and identifies where NHRIs can contribute.

Policy development

Policy development has a particular role in human rights education. Normative frameworks—including international law, constitutional law, legislation, regulations, curricula, plans of action and training policies—in and for the education system must reflect and promote human rights principles and specifically refer to and include human rights education. They should be constructed in a participatory manner with input from all key stakeholders. They should meet internationally agreed standards in education and human rights education, such as those enshrined in the Convention on the Rights of the Child. They should be coherent with other national and sectoral initiatives in education, human rights and related issues (discrimination, migrants, etc.).

As a stakeholder in human rights education, an NHRI should be consulted when normative frameworks for education/human rights education are being developed. National human rights institutions could initiate such development by making proposals to the ministry of education, and by ensuring that its expertise is tapped and that international standards are met.

For instance, curricula are crucial: they guide teachers on what material is to be presented to pupils. The curriculum should therefore appropriately and adequately reflect

human rights principles. Typically, education experts within the ministry of education, often in consultation with other stakeholders, develop and review curricula. National human rights institutions can play a central role in this process, for instance by ensuring that education officials are adequately trained in human rights content.

Policy implementation

Policies are effective only if they are successfully implemented. For this reason care must be taken to plan for, ensure and measure the implementation of rights-based education and human rights education policies. This should include respecting current trends in educational governance such as devolution, democratic governance and school autonomy. The plan of action referred to above sets out indicators for the successful implementation of educational policies. At the organizational level, this includes the development of a national implementation plan for human rights education, ensuring that a unit in the ministry of education is in place and is sufficiently resourced for effective coordination and that there are mechanisms for successful linkages and coherence with other national and sectoral education and human rights initiatives. The plan of action also recommends, at the implementation level, that resources should be adequate, that mechanisms for the participation of stakeholders should be in place, that the national strategy should be published, that a resource centre should be established, that appropriate research should be supported and encouraged, and that rights-based quality assurance systems that involve learners and educators directly in monitoring and evaluation-related programmes should be established.

As with policy development, an NHRI should be consulted in the development of a national implementation plan and should play a role in its implementation.

Learning environment

Human rights education is not limited to cognitive learning: it includes the social and emotional development of all those involved in teaching and learning. For this reason, human rights teaching and learning must occur in a human rights-based learning environment, one in which the educational objectives, priorities and organization of the school are consistent with human rights values and principles.

What would a rights-based school look like? It would have a charter of pupils' and teachers' rights and responsibilities, codes of conduct that prohibit violence, sexual abuse, harassment and corporal punishment; non-discrimination policies for all members of the school community; and mechanisms to mark human rights achievements, such as awards and festivals. School management would promote interaction between the school and the wider community, for instance by raising awareness among parents and families of the rights of the child, involving parents in human rights initiatives and school decision-making, and promoting extra-curricular projects and initiatives in human rights. Teachers in a rights-based school would have an explicit mandate to cover human rights education, themselves receive education and professional development in human rights content, and have methodologies and mechanisms at their disposal for sharing innovations and good practices. Pupils in a rights-based school would have the opportunity for self-expression and decision-making, consistent with their age and capacity, as well as the opportunity to organize activities and defend their own interests.

National human rights institutions can support the promotion of a human rights learning environment in schools by working with school administrators and staff, and by supporting pupils to provide model "educational charters of rights" and "codes of conduct". They can also effectively support extra-curricular projects and initiatives, such as human rights clubs or competitions/awards, and the education and professional development of teachers on human rights content.

Teaching and learning

A variety of factors must be considered in ensuring quality teaching and learning:

- Teaching and learning practices and methodologies which are coherent with human rights principles;
- Appropriate teaching and learning material, including textbooks;
- Support for teaching and learning, including networking, exchanges, information-sharing and the use of new technologies; and
- Assessment methodologies for human rights education.

National human rights institutions can play a particularly useful role through their sub-regional, regional and international contacts with other institutions: they can support the collection and sharing of human rights education material and good practices in human rights education. If the NHRI has a documentation centre, it can offer material and services to teachers and other personnel involved in formal or informal education. They may help to review textbooks in the light of the substantive expertise they have in human rights principles. This same expertise may be used to support the development and/or review of other human rights education material, such as teaching guides, manuals or comic strips. They may use their websites to offer interactive educational opportunities for teachers and pupils. Again, all of these principles and ideas apply to varying degrees to education in the informal sector.

Education and professional development

Teachers play a vital role: to be effective in human rights education, they must have the requisite human rights knowledge and demonstrate a true commitment to the principles and values they espouse; their teaching methodologies need to reflect human rights principles. The education and professional development of teachers (as well as of other school personnel, such as head teachers and inspectors), which is a responsibility shared by many, including ministries of education, universities, teacher-training centres, NHRIs and unions, must support this.

The plan of action referred to above describes in some detail what is required with regard to curricula on human rights education; developing and using appropriate training methodologies; developing and disseminating appropriate resources and material; effective networking and cooperation; promoting and participating in international education; and training and evaluating training activities.

In the medium to long term, organizations with responsibility for training and certifying teachers should develop programmes to ensure that teachers have both the knowledge and personal qualities required to become effective in human rights education. National human rights institutions can support efforts by ensuring that teacher-training institutions have the mandate and capacity to develop competencies in this area. At the same time, teachers must be trained if they are to be successful in human rights education. In this regard, see also the discussion on "professional training" below.

2. Human rights education at the tertiary level

Some NHRIs develop programmes to help colleges and universities introduce specific courses on human rights or incorporate human rights elements in existing programmes. They can also support students engaged in research, as well as educators interested in developing courses or providing information materials to their students.

National human rights institutions can also give guest lectures in human rights to university students either generally or with regard to key areas of study, such as law, political science and social work, to name a few.

Some institutions actively encourage senior university students to prepare their theses on issues of importance to human rights through, for example, the offering of prizes for outstanding work. This approach not only benefits the students individually but also encourages further study and advancement in the understanding of human rights generally, including in ways that might benefit the institution.

3. Educational initiatives in the informal sector

Educational initiatives need to reach people outside the formal school system, in particular street children, working children and homeless children and young adults. Non-governmental organizations working with these groups sometimes offer informal educational opportunities.

Similarly, governmental and/or community efforts can be mobilized towards literacy training for adults. Again, some institutions cooperate in these efforts, sometimes simply by developing human rights-related material that can be used to teach literacy.

Professional training: General

Professional training generally includes four components:

- An **information component**—what human rights are and why they are important;
- A **knowledge component**—what particular rights standards are and how they apply to the professional context;
- A **practical component**—applying human rights standards to the work of the professional being trained; and
- An **awareness component**—how can the attitudes and behaviour of the professional being trained change so that human rights violations do not occur?

Professional training aims at a complete understanding of human rights standards and supports the transformation of knowledge into operational skills. The sessions are, therefore, longer and more detailed than general awareness sessions and often involve outside experts. For these same reasons, professional training programmes tend to be relatively costly.

National human rights institutions should start by seeking the agreement and co-operation of the organization itself to carry out professional training. Where this willingness is lacking, ongoing negotiations may be necessary, with the organization and with Government leaders to build support. There may be instances where professional training is the result of a binding ruling as a result of a human rights violation or a complaint, and the organization can be shown that its potential liability may be mitigated if it can demonstrate that it has provided appropriate human rights training to its employees.

While NHRIs may conduct training programmes, especially at the beginning, most design their efforts so that ongoing responsibility for the training rests with the employer. For this reason, they often use a training-of-trainers (TOT) approach in professional training.

Professional training courses must:

- Suit the particular audience;
- Emphasize international and national human rights standards applicable to the day-to-day tasks of the professionals being trained;
- Use experienced trainers drawn from the same field as the participants;

- Ensure that trainers use adult-centred learning and TOT techniques;
- Create the expectation that those trained will themselves all conduct training or distribute pertinent information;
- Alternatively, focus on those already involved in training others in the profession, so that they develop the knowledge and skills necessary to incorporate human rights effectively into their own teaching programmes;
- Be evaluated.

Materials on the relevant human rights issues should be made available in writing both during and after the course to make them easier to share. Effective pre-course questionnaires allow trainers to prepare a programme that precisely meets the educational needs of the audience and provide them with information about expectations. Post-course evaluations allow trainers to gauge what participants have learned from the course. They can also help NHRIs modify and improve their courses, which should be a continuous process.

Since the objective of the training is not only to ensure that professionals understand the appropriate human rights standard but also to effect change, longer-term evaluations should be considered. For prison guards, for example, an institution may want to see if it can establish a correlation between training and the incidence of alleged or proven human rights violations.

Professional training: Training law enforcement personnel, prison officials and the armed forces

Prison guards, law enforcement officials and army personnel deal with populations that are particularly vulnerable to human rights abuses. In addition, they have specific and direct obligations to ensure that human rights standards are respected in their day-to-day work, including through their specific operating procedures. The Office of the United Nations High Commissioner for Human Rights has a range of material available for training this group of professionals:

No. 5	*Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police*
No. 5/Add.1	*International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police*
No. 5/Add.2	*Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police*
No. 5/Add.3	*Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police*
No. 11	*Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials*
No. 11/Add. 1	*Human Rights and Prisons: A Compilation of International Human Rights Instruments concerning the Administration of Justice*
No. 11/Add. 2	*Human Rights and Prisons: A Trainer's Guide on Human Rights Training for Prison Officials*
No. 11/Add. 3	*Human Rights and Prisons: A Pocket Book of International Human Rights Standards for Prison Officials*

Other professionals

National human rights institutions also train judges, lawyers, parliamentarians, Government officials, journalists, members of NGOs, social workers, doctors, community leaders, etc. Typically, the purpose of training these groups is to ensure that they have the appropriate human rights knowledge and insight to carry out their work effectively.

For example, human rights law is not universally taught in all law schools and has often only relatively recently been introduced. Judges and senior lawyers may not have the training necessary to argue human rights cases or apply human rights principles to decisions. An NHRI may wish to fill this training gap. Parliamentarians have the main responsibility for passing laws and promoting and overseeing Government policies and practices. It is important that they should understand human rights principles to ensure that their work is consistent with, and supports, those principles. The media play a crucial role in explaining and defining the issues of the day, and can be a watchdog for executive, parliamentary and judicial action. It is therefore important that they should understand human rights so that they can take a human rights perspective in their work.

As with professional training for law enforcement officers, prison officials and the armed forces, a TOT approach may be the most efficient.

No. 8/Rev.1	*The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
No. 9	*Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*

Promoting human rights through seminars/workshops[56]

A "seminar" is a gathering of individuals who share an interest in a human rights issue primarily for the purpose of sharing information, ideas and knowledge. Several variations are possible: a seminar on "human rights and HIV/AIDS", for example, might bring together activists to share information and to better define current difficulties and needs. Another may bring together activists and medical practitioners, to discuss the human rights dimensions of the problem so that medical practitioners are better equipped. Here, one purpose is to share information, but also to raise awareness of human rights among medical practitioners in a less formal and threatening environment than a formal training initiative. Finally, a seminar might bring together activists, relevant Government officials and representatives of the medical community in a public session to discuss the issue and raise awareness among the general public.

A "workshop" is a gathering of experts on a human rights issue for the purpose of developing a specific product—a recommendation, a plan of action, a declaration, etc.—related to the matter being addressed. To continue the example, a workshop on "human rights and HIV/AIDS" involving activists and Government officials would aim to develop a protocol for ensuring that the human rights of people living with HIV/AIDS are protected in employment. Workshops tend to be more formal and result-driven than seminars and may require the services of a strong facilitator to ensure results. Workshops assume that there is sufficient common understanding and acceptance of the human rights issues involved by the participants to ensure that a positive result can be achieved.

[56] For the purpose of this publication, the definitions of "workshop" and "seminar" set out in *Professional training series No. 6, Human Rights Training: A Manual on Human Rights Training Methodology* (United Nations publication, Sales No. E.00.XIV.1) will be used.

Both types of activity require careful planning: the precise purpose must be defined; the programme must support the achievement of the objectives; participants must be selected; background material may be required; and the event must be evaluated to determine the degree to which it achieved its objectives.

As with other promotional activities, consideration should be given to developing a media strategy for seminars and workshops so as to ensure that the issues discussed and the conclusions reached are widely disseminated. This may be especially important for workshops, and an advocacy and follow-up strategy may be necessary to ensure that any recommendation or advice is acted on.

D. Public awareness

National human rights institutions should promote a wide understanding and acceptance of human rights principles. They may seek to do this through programmes of public awareness sessions and/or the use of the media.

Sessions to promote public awareness may be of two general types:

- **General or public awareness campaigns**, during which basic information on human rights is presented to the public and the role of the NHRI is explained;
- **Targeted campaigns**, which focus on a specific right or set of rights.

National human rights institutions tend to use general public awareness sessions at the start-up stage, shortly after their establishment, especially if they perceive the human rights culture to be weak or underdeveloped. Such sessions may let the public know more about the NHRI itself and the services it offers.

General campaigns, while effective, can be relatively costly and labour-intensive. They involve face-to-face meetings throughout the country with as many people as possible. They are also difficult to evaluate. Given the scale of the effort, therefore, general public sessions typically involve cooperation and coordination with others. Consideration should be given to using media campaigns as an adjunct, or as an alternative, to these kinds of sessions. Public sessions can also be done quickly and informally, and usually involve a representative of the institution meeting with the general public or a specific group. Targeted sessions may be used when the institution perceives that a type of right is not widely understood or honoured, or to encourage a better understanding and acceptance of human rights principles in important and/or emerging areas. For example, where women's rights are not well understood or accepted, targeted campaigns focus on making women more knowledgeable and men more respectful.

Media campaigns

In many countries, the media are the most important vehicle for expressing ideas and forming opinions. Free and independent media can be useful partners in human rights promotion:

Radio and television:

- National human rights institutions can develop regular, independent radio programmes using, where possible, free or subsidized airtime. This is an easy and cost-effective way of reaching a large audience, especially in countries where the media are on the lookout for low-cost programming;
- Phone-in radio and/or television programmes are quite popular in some countries and can be used both to gauge public opinion on topical issues and to present a human rights analysis of them;
- Short advertising clips and public service announcements.

Radio broadcasts may be advantageous where literacy is low and television not widely available. Where resources allow and there is sufficient access by the general public, television can provide certain advantages, including, of course, the ability to present images.

Print media:

- Newspaper inserts (particularly effective where literacy levels are high and newspapers enjoy a wide circulation);

- Inserts on themes or to commemorate an international day, such as inserts on women's rights in collaboration with United Nations agencies, ministries with a stake in the issue and women's NGOs to commemorate International Women's Day;
- Guest editorials for printing in newspaper op-eds.

Where the press is well established, inserts can be an effective and relatively inexpensive way of providing information to the public.

Many NHRIs use press conferences organized around commemorative days or when they release their annual report, for example. Most will also routinely issue media releases and/or background documents to inform the media of their work, including decisions reached in a human rights investigation. News conferences can be effective but only if the institution has something truly newsworthy to communicate. Press releases and media background documents may be picked up, but usually only if they set out the issues in simple terms and in ways that attract media attention.

The **Internet** remains a potent tool for disseminating information about the NHRI:

- NHRI websites, containing their own information and publications, and links to online material, video clips and other interactive media. While this may be of limited use in reaching the public in countries where literacy is low, it ensures that human rights defenders, NGOs and the international community have access to current information about the NHRI and the human rights context;
- Social media, such as Facebook, YouTube and networked information sources, can offer accessible and timely information about the NHRI and its activities, especially to younger people.

National human rights institutions should develop a media strategy, including objectives (who is to be reached, how, the extent of coverage and the evaluation of the strategy). The NHRI must have spokespersons authorized to speak on all or some issues, with back-up contacts and media protocols on the types of issues that spokespersons can address. Virtually all media operate with short deadlines; delays in getting comments to them can mean that opportunities are lost. The strategy should also be realistic about potential media pick-up. Even if a substantive report presents cogent and important information, it may be unrealistic to expect the media to develop their own analysis. Press releases and background documents facilitate and improve coverage by simplifying this task for the media.

Institutions' officials and communications staff should receive proper media training, including in handling interviews. Staff should also be trained in the preparation of press releases and the organization of press conferences. Given the important role the media can play, many NHRIs employ public relations experts or media officers to ensure that all avenues are fully exploited in their efforts to promote human rights.

E. Publications

This section will look at options that are widely used by institutions:

- Core publications;
- Annual reports;
- Specialized human rights publications.

All of these can be produced in hard copy and online. Online publications must comply with international accessibility standards for persons with visual disabilities.

1. Core publications

National human rights institutions typically develop core human rights material that allows the public to develop a general understanding of human rights, as well as to learn about their work:

- Describing the NHRI and what it does, and how to contact it;
- Explaining key human rights and basic principles;
- Explaining the rights of particular groups.

Plain language and clear layout will make the material visually attractive, and easy to navigate and understand. In countries with more than one official language, material should be made available in the different languages to promote accessibility. Material should be made available in alternative formats to persons with disabilities (large-print, Braille and audiobooks).

Publication is only one aspect of the process; effective dissemination is important, too. The material should be available online, at the NHRI offices and in community organizations, for example, or local municipal offices. It should be routinely distributed at local awareness-raising or training events sponsored or conducted by the institution. Given their wide distribution, basic publications tend to be produced relatively cheaply.

2. Annual reports

Annual reports are generally required by law and serve as a basic tool for institutional accountability (between the NHRI and the Government) and for general public awareness of what the NHRI does and how it uses its allocated resources.

Reports typically describe the types of investigations or inquires undertaken over the year and, for quasi-jurisdictional NHRIs, the number of complaints received, investigated and dealt with. They will also provide a summary of the types and numbers of information and training sessions given, the number of research studies undertaken, etc., as well as the resources devoted to these efforts. Many institutions go beyond this and use the report as an education and advocacy tool. This can be done, for example, by including substantive comments on the country's human rights situation, the Government's reaction or lack of reaction to the institution's recommendations, including those that result from investigating complaints, and the results of any special studies or reviews.

The annual report targets several audiences: parliament, or another appropriate authority to which the institution is accountable; key partners; the media; and the general public. This presents a challenge: the report must be sophisticated enough to showcase the work of the NHRI to parliament and others working for human rights yet accessible to the media and the general public. National human rights institutions often use the media—press releases, press conferences, newspaper inserts and radio broadcasts—to

present the content of the report more widely and in a more accessible manner. They may encourage parliament or, where it exists, a parliamentary committee to review the report and so generate increased media and public interest. Some institutions publish parts of the report, e.g., analyses of the state of human rights in the country, in less expensive formats and distribute these sections more widely. Those institutions with the necessary resources and technical capacity are also likely to ensure that their annual reports can be viewed online and downloaded.

3. Specialized human rights material

National human rights institutions may develop more specialized publications. They might publish regular newsletters or magazines for a general audience, or they might publish substantive human rights publications or research targeted at a more professional audience. Given the costs involved, institutions that wish to publish such material must develop an information strategy to ensure that their publications meet a genuine need.

An institution may consider developing substantive specialized publications if this is important to facilitate the development of general and specialist expertise in human rights, if it wants to foster public debate on important issues and/or if it wishes to help ensure that the Government is held accountable for its action. Specialized publications may also be developed if the institution believes that, by incorporating local realities, it can present an issue in a more accessible and meaningful way to the local population.

F. Documentation centres

As national focal points for human rights, NHRIs should be a depository for both national and international human rights documents. Some have created documentation centres to ensure that human rights material is maintained, catalogued and available. They are a useful reference source for NHRI members and staff as well as for the public, including students, scholars and human rights workers.

Moreover, where other documentation centres exist, for example in UNDP offices, universities or human rights NGOs, areas of specialization can be agreed on, as can protocols for the sharing of information.

Setting up and running a documentation centre requires the skills of an information manager, the creation and maintenance of an appropriate classification system, and facilities for reading, writing and copying. Sufficient resources will be needed for all of these. Institutions that do not have the space and resources for such a centre should consider a simple online database through their website. A virtual documentation centre with materials and links can thus be created, at considerably less expense than a physical archive.

In addition to serving as access points for their own material, NHRIs should collect and make available a wide variety of human rights material produced regularly by the United Nations and other international, regional and national organizations. Many of these are produced in several languages and accessible to the general population.

In addition to their own material, NHRIs should have at their disposal the following core information:

- International human rights instruments and standards (including information on ratifications and reservations by the State in question);
- Reports of the State to treaty bodies and concluding observations made by treaty bodies on those reports;
- Information and training materials developed internationally, regionally and nationally in specific human rights areas;
- Domestic human rights legislation and administrative and judicial decisions on its interpretation or application;
- Information on domestic mechanisms for the protection of human rights (including other NHRIs, parliamentary commissions, ministerial committees and NGOs);
- Information on the structure and functioning of international implementation mechanisms; and
- Human rights studies and reports from ministries, NGOs and international organizations.

Much of this information can be obtained from intergovernmental organizations such as the United Nations, government departments and NGOs. National human rights institutions can ask to be put on the mailing lists of many human rights organizations. They can also ask to become a depository for human rights documentation from the United Nations and regional human rights bodies.

G. Community-based initiatives

Community-based activities are promotional activities that directly involve local communities or subsectors. They help the community to develop a better general awareness of human rights principles, rather than specific knowledge.

Some examples of community-based initiatives are:

- Song, dance, theatre or drawing competitions with a human rights theme. These are a particularly attractive way to promote awareness among younger individuals for whom more formal education or training initiatives might not be appropriate;
- Cooperative sporting events with a human rights theme;
- Exhibitions and special events to mark anniversaries and special days, such as International Women's Day (8 March), World AIDS Day (1 December) or Human Rights Day (10 December); and
- Human rights awards for individuals or groups within the community who have made a significant contribution to the realization of human rights and fundamental freedoms.

National human rights institutions may take part in community celebrations that are unrelated to human rights, such as during fairs, exhibitions, community anniversaries, etc., to raise their profile and that of human rights generally.

Conclusion

Human rights promotion and education is a key NHRI responsibility and one that can be discharged in a variety of ways. The particular activities that a given institution will undertake will depend on a variety of factors. Nonetheless, virtually all institutions will: develop and distribute information on human rights, including an annual report; engage in public awareness sessions; provide specialized training to key constituents; use the media to promote understanding and awareness of human rights and of their own work; and make an effort to ensure that human rights are taught in schools. An institution must develop the knowledge, skills and abilities, tools and technical approaches to create a strong culture of human rights and ensure that international human rights norms are accepted and implemented on the ground.

V. HUMAN RIGHTS PROTECTION

Introduction

The Paris Principles provide that NHRIs should promote and protect human rights. The protection aspect of the mandate requires that the NHRI should have the power to investigate and monitor human rights and, in many cases, to accept and investigate individual complaints.

Learning objectives

After reviewing the chapter, the reader will be able to:

- Identify the basic forms of human rights protection undertaken by NHRIs;

For all forms of investigation:

- Define the powers an institution should have in order to conduct effective investigations;
- Identify the processes of investigations;

For individual complaint investigation:

- Define the purpose of human rights investigation;
- Describe the typical stages of a complaint investigation and the purpose each serves;
- Define the main issues and considerations that will influence an institution's decision to investigate an allegation;
- Identify the types of evidence that may be collected during an investigation and the weight that might be given to each and why;
- Describe the interview process generally and the key ways to ensure that the necessary information is collected during the interview;
- Describe the objective of remedies that should be sought if an allegation is considered substantiated, and give examples of possible remedies; and
- Situate the possible steps of the investigation in a logical sequence as suggested in the chapter;

For alternative dispute resolution:

- Describe the different approaches taken by institutions to alternative dispute resolution mechanisms;

And for general inquiries:

- Identify the types of investigation that an institution might carry out to examine a systemic or general human rights issue; and
- Describe the public inquiry function.

A. Human rights investigations

Protection work is heavily focused on the power to investigate. But it must be remembered that NHRIs are not a substitute for law enforcement officials or a properly functioning judiciary.

National human rights institutions are complementary mechanisms designed to ensure that the rights of all citizens are fully protected. They offer something that the legal system or other institutionalized processes cannot. In particular, their focus on human rights allows them to develop and apply expertise and to ensure that human rights are integrated into all the areas over which they have jurisdiction.

1. Overall process for all investigations

The following general processes apply to all investigations, regardless of the type of right being investigated. Those steps that are restricted to NHRIs with quasi-jurisdictional competence are italicized.

Intake and early resolution:

- Information gathering and monitoring to identify where investigations are required;
- *Processes to support the receipt and preparation of complaints;*
- Determining if the issue is within jurisdiction;
- Triaging, to ensure that priority cases and emergencies are handled appropriately;
- *Early information and counselling, for all parties, to convey information about their rights and obligations;*
- Early alternative dispute resolution to encourage amicable settlement at the outset.

Complaint investigation:

- Emphasizing strategic and systemic case management strategies;
- *Advising the respondent(s) and providing an opportunity to respond to the allegation;*
- Investigation;
- Reporting findings;
- Developing, evaluating and discussing options available to affected individuals.

Publishing recommendations and seeking remedies:

- Disseminating investigation results and recommendations;
- Deciding on cases and/or seeking to enforce a decision, or seeking remedies through the courts, where the legislation permits;
- Supporting communications to treaty bodies under optional protocols and/or to regional bodies to seek remedies for cases that have exhausted national remedies. Some NHRIs have standing to appear before regional bodies such as human rights courts.

Investigating alleged human rights abuses and situations is fundamental to the work of most NHRIs. It is also a considerable challenge.

Investigations are neutral processes: they do not favour the complainant or the respondent. Investigations collect information about allegations of human rights abuse and seek to reach a determination about what actually occurred and whether the allegations are well founded.

An investigation typically starts with an allegation that a particular action or omission has taken place, or that the level of enjoyment of a particular right is at risk. The purpose of any investigation is to answer two questions:

- Has there been a violation of human rights law that is within the authority of the institution, whether domestic or international?
- If so, who was responsible for the violation?

The Paris Principles state that an institution must have the responsibility to submit to the Government or other appropriate authority advice and recommendations on "*any* situation of violation of human rights which it decides to take up" (emphasis added).

Investigations do this by gathering physical, testimonial and documentary evidence, by research and by assessing the evidence.

A small number of institutions conduct investigations, but are limited to systemic or general issues. Still others choose to undertake systemic or general investigations in addition to or instead of individual investigations. Some combine these techniques. Reference should be had in all cases to the enabling law.

2. Does the institution have jurisdiction?

National human rights institutions may inquire into "any" question within their area of competence. An institution's competence—or jurisdiction with respect to investigation—should be clearly spelled out in the enabling legislation.

For a discussion on the restrictions on the competence and mandate of NHRIs with regard to subject matter, geographic limitations, time limitations and the type of organization that can be investigated, see chapter III.

3. Powers of investigation

The Paris Principles provide or imply certain powers that NHRIs should have, including the authority to "hear any person and obtain any information and any documents necessary for assessing situations…".

The Paris Principles require that an institution should have access to all documents and all persons necessary for it to conduct an investigation. Other powers devolve from the Paris Principles and the nature of the investigation itself. These powers, which should be clearly defined and legally entrenched in legislation, include:

- The power to compel the production of documents and witnesses;
- The power to conduct on-site investigations as necessary, including powers to visit detention facilities, etc.;
- The power to call parties to a hearing; and
- The power to hear and question every individual (including experts and representatives of government agencies and, if appropriate, private entities) who, in the opinion of the investigating body, has knowledge concerning the issue under investigation or is otherwise in a position to assist the investigation.

The power to obtain information and documentation brings with it the ability to impose penalties for obstruction. Retaliating against parties, witnesses or anyone cooperating in

an investigation (often called "reprisal") should be prohibited by law. National human rights institutions should also have the power to impose or seek sanctions when they are obstructed or interfered with in any way.

In some cases, statutes will have a general clause granting NHRIs the power to engage in all (unspecified) activities that, in their opinion, are necessary for conducting a proper investigation. Such an umbrella clause will permit flexibility, but NHRIs should be aware of their own obligations to respect the human rights of all persons at every stage of the investigation.

Some institutions have authority to order interim injunctions or interim relief during the course of an investigation. This can be extremely valuable. Such interim measures are generally intended to ensure that the position of individuals affected by the matter under investigation is not made worse during the investigation, or that this process is not obstructed by subsequent events. Again, such powers must be given explicitly in the legislation.

The authority to initiate an investigation

The Paris Principles provide that an institution can consider any question within its competence brought to its attention, including "on the proposal of its members". This essentially suggests that an institution should have the authority to initiate an investigation (or conduct a *suo moto* investigation, as it is sometimes called). This authority should be spelled out in the founding legislation so that there is no ambiguity.

The power to initiate investigations can be extremely important and far-reaching, especially for disadvantaged and vulnerable groups that are unlikely to have access to NHRIs or the resources to inform the NHRI of their situation. The power to initiate investigations also allows an NHRI to ensure that vulnerable groups are given a public voice and that human rights violations, wherever they occur, become a matter of general knowledge and concern. Through initiated investigations, hidden issues can become part of the public discourse, a requisite step towards dealing with them.

Selecting the issue for investigation

Issues requiring attention may be identified through a trends analysis of incoming complaints (for those institutions mandated to receive complaints), a systematic media scanning, following a strategic planning exercise, or through monitoring. Community and non-governmental organizations may bring urgent local issues to the attention of the institution. Media reports may provide an indication that there is a potential problem and lead an institution to initiate an investigation.

4. Systemic investigations and inquiries

Systemic investigations examine how systems—laws, policies, practices, patterns of behaviour and ingrained attitudes—can operate in a discriminatory manner or in violation of human rights laws more generally. Such patterns, policies or practices may be structural, in the sense that they start with the premise that violations are interwoven in the fabric of society and, therefore, pervasive and widespread.

Not long ago, for example, it was still considered normal and acceptable to deny employment to women of childbearing age or to fire a woman from employment if she became pregnant, on the basis that she was treated the same way as other employees who leave work for long periods.

Systemic investigations not only expose generalized problems, they may also be more effective than investigations into several individual complaints.

Institutions may use a variety of methods.

Modify an investigation process to deal with systemic issues

National human rights institutions may adapt individual investigation processes to ensure that broader-based policy issues can be examined and addressed, including through class actions. Institutions that can accept complaints, for example, may use that process to address systemic issues.

Individual cases can be analysed at an early stage to determine whether they suggest a broader problem.

Example: School fees and the right to education. An NHRI may receive an individual complaint about school fees and the impact on poor families. However, this type of practice necessarily affects more than that one family. The NHRI might decide to seek broader recommendations that apply to all families and not just to the one complaint. If such school fees are universal, an investigation will show only what is already known. It would be preferable to make recommendations of a systemic nature directly to the appropriate authorities. Similarly, an individual case that refers to the direct application of a law or policy has no particular "facts" to discover in investigation. The investigation therefore becomes an analysis of the law or policy to determine whether it constitutes a violation of human rights. Alternatively, if an institution has this authority, it might decide to challenge the provision in court directly rather than investigate it in the sense presented in this chapter.

Sometimes, an NHRI receives a series of complaints all relating to a similar issue. It may then decide to join them and deal with them together to ensure that remedies are broader than individual settlements. Some institutions routinely review data on the types of complaints received in order to identify patterns or trends.

Some NHRIs have a process to review all complaints to determine up front whether the allegations involve systemic issues. These cases would then get priority, since they affect groups of individuals.

Using class actions to deal with systemic issues

A number of NHRIs use class actions, whereby an individual affected by a human rights violation is able to complain not only on his or her own behalf, but also on behalf of others who are similarly affected. This possibility of "class action" or representative complaints helps to ensure that widespread problems are not approached as isolated aberrations. However, if such cases are technically class action cases that will go before the courts, there are technical preliminary requirements for qualifying as a class action suit that must be observed.

Where class actions are possible, strict guidelines are usually established to determine the suitability of an issue or complaint for this kind of resolution. An NHRI may, for example, require some or all of the following conditions to be fulfilled before a complaint is accepted as a class action:

- The complainant must be a member of the class affected or likely to be affected;
- The complainant must personally have been affected by the alleged violation;
- The class of persons affected or potentially affected is so numerous that it is impossible to deal with the matter simply by joining a number of specified individuals to the complaint;
- There are questions of law or fact common to the members of the class, and the claims of the complainant are typical of the claims of the class;
- Multiple complaints would be likely to produce inconsistent results; and
- The grounds for action appear to apply to the whole class, making it appropriate to grant remedies to the class as a whole.

B. Investigating individual complaints

In addition to the general power to investigate, the Paris Principles provide that an institution with quasi-jurisdictional competence may "hear and consider complaints and petitions concerning *individual* situations… brought before it by individuals,… third parties… or… representative organizations." (Emphasis added). Individual NHRIs have different techniques, but effective investigations are supported by adequate legal powers and by trained staff.

These specific principles add detail on how institutions should exercise their investigatory responsibilities. Institutions with quasi-jurisdictional competence should:

- Inform the complainant of his or her rights, the remedies available and how to access them;
- Hear the complaint or transmit it to another competent authority (as prescribed by law);
- Seek an amicable settlement through conciliation or binding decisions (to the extent prescribed by law).

Procedure manual

National human rights institutions should develop standards and guidelines (including rules of procedure) to be applied to investigations. Guidelines and standards for investigating complaints should be made public. This will serve to inform complainants of the investigatory process and also likely improve public confidence in the institution as a competent body for receiving and acting on allegations of human rights violations. The following general principles apply:

- Guidelines should reflect and be consistent with the responsibilities the institution has been given and the powers it has been granted to discharge these responsibilities;
- While providing the necessary operational flexibility, they should also establish a fixed procedure which is not deviated from except in clearly defined circumstances;
- They should set measurable goals of efficiency and timeliness; and
- They should be fair to all sides of the dispute.

For the purposes of this section, the following three distinct phases of the investigative process are generally identified:

- **Intake**: deciding whether a complaint may be accepted for investigation, that is, whether it is within the institution's jurisdiction and whether there are other bodies that can remedy the matter. Early structured alternative dispute resolution tends to occur just after intake and right before the formal investigation.
- **Investigation**: gathering and analysing evidence. Some institutions carry out a preliminary investigation (to determine whether the case may be decided solely on the basis of the statements and submissions by the parties to the complaint, that is, the complainant and the person/agency against whom the complaint is made) either as the first step in the investigation or as a separate, preliminary step.
- **Decision** (when the institution formally takes a decision on the complaint and all subsequent action to ensure that that decision is respected).

These phases offer a general description of the process, but are not intended to be prescriptive.

1. Intake

Procedures for lodging complaints should be simple and straightforward, and should not require a lawyer. Excessively formal procedures may discourage victims from seeking help and result in delays.

Who may file a complaint?

The enabling law generally specifies **who** may file a complaint, and this must always be the starting point.

Additional guidance may be obtained from the Paris Principles, which state that quasi-jurisdictional institutions should be able to receive complaints from "individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations."

Statutory provisions will generally determine if **class actions or representative complaints are allowed.**

Some statutes prevent the filing of **anonymous complaints**. Institutions generally require written complaints to be signed by the victim or other person or entity authorized by law. There are good reasons for prohibiting anonymous complaints, including the fact that NHRIs have no way of verifying the validity of an anonymous complaint and cannot provide redress to an unknown victim. However, confidentiality needs to be ensured. (See below.)

Some institutions face the question of whether "any person" may include an association of persons that is not an incorporated entity. Some NHRIs have taken the position that, if the alleged violation of rights affects an organization as an identifiable entity and not just one of its members, then the organization has the right to file a complaint. Specificity in legislation is desirable, as detailed provisions can prevent technical arguments. Again, in cases of doubt, the Paris Principles specifically refer to "representative organizations".

Although the Paris Principles recognize the right of third parties to file complaints, it is preferable that the person who alleges the violation should be the one who lodges the complaint. It is the alleged victim who has the best knowledge of the incident and who should properly have the freedom to decide whether or not to make a complaint. Nevertheless, the victim is not always in a position to do so, for example if he or she is too young or has a physical or mental disability. In these cases, it is generally a parent, guardian or person with power of attorney who may act.

There may also be instances of multiple or systemic violations where the representative organization is best placed to file the complaint and to shield the victims from reprisal.

In other situations, the victim of a human rights violation may have disappeared, may be in custody, incommunicado, or dead. Because of these very real possibilities, it is essential to make formal provision for complaints to be lodged by a relative, friend, legal representative or NGO on behalf of an alleged victim.

Support for the complainant

National human rights institutions should promote complainant's access to their rights and remedies. These would seem to apply both to those offered by the NHRI and to the rights and remedies that exist elsewhere. National human rights institutions should serve the interests of those who may have experienced human rights abuse. If the institution has jurisdiction, it has a duty not only to inform complainants of their rights and potential remedies, but also to help them through the process. At the same time it must be borne in mind that no allegation is proved at this stage.

- Are the procedures appropriate given literacy levels, cultural traditions and accessibility (for example, by permitting a complainant to appose a fingerprint instead of signing a document whose contents are read aloud)?
- Do the procedures impose unnecessary inconvenience on victims, for example, requiring that allegations are proved by affidavit at the outset, or that the complainant should attend in person to file a complaint when this requires travelling a long distance?
- Are there measures—translators, sign-language interpreters or other forms of assistance—for persons with disabilities, speakers of minority languages or other groups?
- Would electronic filing or faxing of complaints expedite the process?

In most institutions, complaints are usually submitted in writing, although they should be able to accept oral complaints, too.

Lodging a complaint should be free of charge. Complainants should not be required to incur direct or indirect costs. There are, however, some human rights laws that permit the respondent to seek costs if a complaint is found to be malicious or filed in bad faith. This is a high bar, however, and should be used only in clear cases after the investigation demonstrates that this is the case. Care should also be taken to ensure that cost provisions, if they exist, do not become a form of retaliation.

Official complaint forms are typically used to gather and consolidate information about the allegation. The complaint form should elicit all the information that is required to make an initial decision on the receivability of the complaint and, if the complaint is accepted, to start the investigation. This would usually include:

- The name and contact details of the complainant and victim, if different;
- The name and contact details of the alleged perpetrator, if known;
- A summary of the allegation or situation, including what happened, when, to whom, by whom, how and in what circumstances; and
- Whether the matter is before, or has been adjudicated by, any other authority or under examination by another competent body.

A complaint might be filed in person or by telephone, in which case an officer will often assist in the completion of the complaint form, or by post or electronically.

It may be useful to establish contact points throughout the country, particularly in remote areas, to accept and assist in the preparation of complaints. Where possible, it is preferable for a complaint to be lodged directly with the institution. Using intermediaries, such as government bodies or Members of Parliament, will invariably delay and complicate the process. It will also give the impression that the institution is not independent and the complainant's privacy might be compromised.

2. Determining whether to accept a complaint for investigation

Many statutes contain specific rules about whether the NHRI may handle a particular kind of complaint. While individual laws vary, the typical grounds for exclusion include time limitations, bad-faith complaints, complaints against parliament or the courts and complaints that have already been resolved or settled.

There are typically several considerations involved in making this determination, such as:

- Does the institution have jurisdiction over the matter?

- Is there another, more appropriate avenue through which the allegation may be resolved?
- Was the complaint filed in a timely manner?

All of these factors should be addressed in the founding legislation.

Jurisdiction

For a discussion on the restrictions on the competence and mandate of NHRIs with regard to subject matter, geographic limitations, time limitations and the type of organization that can be investigated, see chapter III.

Should the matter be referred elsewhere?

Some jurisdictions also allow the rejection of a complaint that is otherwise within the mandate of the institution if there are other mechanisms that may more appropriately deal with it.

The enabling legislation should clearly set out an institution's legal powers to ensure that there is no duplication of effort between organizations that have remedial powers. But the requirement is not merely a passive one: an institution must refer a client to the appropriate agency if it does not have jurisdiction.

For example, a matter that should have been dealt with through a union grievance procedure first may not be dealt with but referred back if that process was not engaged. Where such restrictions apply, the institution should have some flexibility and discretion. It may be that the "other mechanism" does not work and so is not really appropriate. This is a judgement call, unless the statute is clear about rejecting complaints.

Time limitations

Time limitations are addressed in chapter III.

Frivolous, trivial and vexatious complaints

National human rights institutions are also generally empowered to reject cases on a preliminary basis that are considered frivolous or in bad faith. In some cases, the NHRI can also dismiss complaints that are, on their face, unwarranted or have no reasonable prospect of succeeding. The language of the statue will determine these powers.

Decision not to investigate

If any of the conditions described in this section apply, an NHRI is entitled to decide not to investigate the complaint. It is essential that the institution should inform the complainant of the reasons for the rejection and of the existence of any alternative procedures that may be available. Any delay in formulating or communicating a decision to reject a complaint should be avoided. Quick action at this preliminary stage will ensure that the complainant is able to take full advantage of alternative means of redress. It will also enhance the public image of the institution as a competent and helpful body.

3. The investigation

An investigation is the formal examination of an allegation to determine whether or not the evidence available supports it. The powers related to investigation, as well as the investigative process, or at least parts of it, are often set out in the enabling law. In the most general terms, investigation involves the collection of evidence, the analysis of that evidence to form an opinion and the preparation of a report to facilitate a decision based on that evidence.

Starting the investigation

After the complaint is officially recorded, it is assigned to an investigation officer, who notifies the parties.

The principles that apply to all institutions also apply to quasi-jurisdictional NHRIs. This means that the powers to compel testimony and evidence referred to earlier apply here, too, as does the preference for these powers to be set out clearly in the founding legislation. This may be especially important for quasi-jurisdictional institutions so that there can be no misunderstanding of the nature and extent of their powers when they decide to take up an individual complaint. Moreover, it would be preferable for the institution to be able to apply these powers directly rather than through the courts so as to ensure that it can deal simply and quickly with matters it is investigating.

Maintaining confidentiality

Victims and witnesses should be protected if the circumstances indicate that there is danger of reprisal. While there can never be guarantees, NHRIs should develop structures and procedures that support confidentiality—beginning with the receipt of the complaint and continuing, as far as possible, throughout the investigatory process. Confidentiality should not, of course, be imposed on complainants against their wishes. While there may be circumstances where confidentiality must be maintained, usually for reasons related to the personal security of the complainant or others, procedural fairness requires that a person should be aware of and able to defend himself or herself against the allegation.

Parties and witnesses must be made aware that the information they provide may be used to prepare the investigation report and that it may not be possible to protect their identity should the matter go to court, where this is a possibility. When safety is a legitimate concern, the interviewee must make an informed decision on whether to proceed. It is vital, therefore, that the investigators never promise any action or protection that they are not in a position to guarantee.

Informing the respondents

The principles of procedural fairness require NHRIs to inform respondents of the complaint and give them a reasonable period of time to give their version of events. The nature of the response will influence the scope of the investigation. For example, an alleged perpetrator may accept the complainant's version of events, which might indicate that immediate conciliation is warranted. Even if he or she accepts only certain elements of the allegation, those issues will not require further investigation.

The standard of proof required should be spelled out in the guidelines on the investigative process. Consideration should be given to adopting a civil "balance of probabilities" standard rather than the criminal law standard of "beyond reasonable doubt". This may be justified in view of the evidentiary problems that can exist in many situations of suspected human rights violations and the fact that the objective of most investigatory mechanisms is remedial rather than punitive.

National human rights institutions may call upon experts to support investigations through secondment. Some institutions are able to choose Government officials and members of the police or other forces who are, in the institutions' opinion, best suited to the task at hand. Where this happens, it is essential for these experts to be able to work independently of their parent unit and under the NHRI chain of command. It is also important not to recruit an expert from the same branch or area of government as the individual or agency under investigation.

Preparing an investigation plan

An investigation plan sets out in writing:

- Who the parties are, including their contact details;
- The types of physical, documentary and testimonial evidence that will be required;
- The persons or organizations that have the evidence;
- The identity of the witnesses and their relationship to the parties, if any;
- Expert testimony that might be required;
- The time frame for the various steps of the investigation; and
- A summary of the key issues raised by the complainant and the steps required to substantiate or verify the related facts.

During the investigation, the plan may be modified to take into consideration new facts and developments, but its initial formulation will be based on the complainant's allegations and supporting documentation, as well as on the alleged perpetrator's rebuttal.

Collecting evidence

Three types of evidence may be gathered in a human rights investigation: physical; documentary (both physical documents and digital information); and testimonial.

Physical evidence is any evidence of a physical nature that could prove or disprove an allegation, such as blood, weapons, fingerprints or bruises on the alleged victim's body.

Documentary evidence refers to photographs; notes that refresh memory as to events, feelings or observations; letters, reports (from NGOs, the police, etc.), hospital or police records or notebooks, memos, etc. that may serve to help prove or disprove the allegation. Increasingly, e-mails and computer records and other forms of electronic or digital information are critical forms of evidence.

Testimonial evidence includes statements of the parties and of witnesses but also of others who may be in a position to corroborate one or other piece of evidence.

Conducting interviews

Since much of the evidence in human rights cases is collected through interviews, it is essential for investigators to be fully versed in interviewing techniques. Interviews with witnesses should be structured, organized and professional. The interviewer should take notes during the interview and these should be finalized as soon as possible after the interview is finished. The notes should be specific and accurate, and set out the key information provided by the witness on issues that are material to the case. Unless the exact words of the witness are crucial, notes should not be verbatim transcripts of the interview.

Some institutions may record certain testimonial evidence. While this is a good way of ensuring that the investigator does not misinterpret the evidence, testimony should not be recorded without the informed consent of the witness. This is especially important when safety and/or security are an issue, in which case procedures should be put in place to protect the identity of the interviewee. Generally, audio recordings are needed.

The interview process can be divided into the following phases: preparation; introducing the process and engaging the witness; obtaining the witness's account; documenting the interview; and, finally, evaluating the evidence. As with the division of the investigation process, the above-mentioned description is used for the purposes of this module and may not correspond exactly with how an individual institution conducts interviews.

Preparing for the interview. Investigators should be well prepared and consider, in advance, the interview's purpose. They should ensure that all relevant information is at hand and develop questions that will elicit the information required. All logistical arrangements should also be considered and concluded before the interview takes place.

Introducing the process. Investigators should introduce themselves and describe the purpose and the process of the interview. The interviewee should be put at ease and be reassured that confidentiality will be protected during the investigation, if so desired. Various steps can be taken to ensure this: the interviewee's name can be suppressed from the investigative report; the interviewee's identity can be withheld from the respondent if there is a real threat to a witness or a party. Again, the investigator needs to balance these measures against the right of the respondents to know the case against them.

Obtaining testimony. The active phase of the interview—getting the interviewee's account—is the crucial part of the process. The investigator should let the interviewee speak without interruption. (If the person is getting seriously off-track, the investigator may guide him or her back to relevant issues.) It is especially important to use active listening techniques—maintain eye contact; nod to affirm that you are listening and understand; summarize what has been said—to encourage the person to speak freely and openly. The investigator should, however, take quick notes on matters that might require follow-up questioning.

The investigator should then probe what has been said. It is important at this time to ensure that all relevant details are elicited so that the investigator fully understands what is being said and can, where necessary, test the credibility of the interviewee.

The investigator should use generally accepted interview techniques:

- Use open-ended questions, avoiding negative phrasing or leading questions;
- Avoid judgemental comments;
- Check for assumptions by asking: "How do you know that?"; promote focused retrieval (bring witnesses back to the event by asking them to close their eyes and recreate the experience);
- Avoid jargon/technical language;
- Allow time after the witness has finished to ensure that he or she has nothing more to add.

Where credibility is an issue, the investigator might consider "bouncing around", that is, asking questions out of sequence, or asking the same question at different times and in different formulations. It is also important for the investigator never to tell one witness what another has said. This could not only breach confidentiality but also influence what the witness says.

Document the interview. The investigator should document the interview, preferably at the time of the interview or shortly thereafter. This usually involves writing interview notes—a summary of the relevant information provided by the witness. These notes should be shared with the witness, who should agree with them. Some institutions ask the witness to sign the notes as an affirmation of agreement with them. In all cases, however, the investigator should date and sign the notes to establish it as evidence.

Weighing evidence and preparing an investigation report

While it is not possible to define with precision at what point the accumulated evidence is "enough", certain principles should be kept in mind.

The standard of proof typically used by NHRIs in arriving at a decision is "the balance of probabilities" rather than the "beyond reasonable doubt" standard, which typically applies to criminal courts. The "balance of probabilities" is a lower standard and simply means that the bulk of the evidence shows that the allegation "probably" is or is not founded.

The investigator should review the evidence to determine its completeness, probative value and relevance, as well as the credibility of the witnesses. If necessary, a second interview may be held to obtain further clarification (although this should be the exception). The investigator will also have to determine the degree to which the testimony corroborates other evidence and whether the testimony suggests that other evidence should be sought.

Assessing the value of evidence. Physical evidence is said to be the *best* form of evidence (of the highest *probative value*) because it is the most objective and the least likely to require interpretation. Its value may be lessened if care is not taken to ensure that it can be shown that it was not tampered with. This is called ensuring the chain of possession.

Official documents that are prepared in the normal course of business at or near the time of the incident will have high probative value. For example, an official police report made immediately after an incident would be considered more valuable than a report made several days later and after an investigation has been launched or a private note made in a police officer's diary. Official records can more easily be authenticated and accurately dated.

Other factors to consider are whether the document is original or has been notarized or otherwise authenticated. Such documents are of more value than mere copies. Assessing the value of documentary evidence also requires assessing the document itself and assessing it against all other types of evidence. Does the document show what the individual claims it shows? Is it directly relevant to the case?

Testimonial evidence, though widely used, has less probative value. It can be influenced by human perception, motives and error. Hearsay (testimonial evidence that describes something that someone else said happened) is a form of testimonial evidence, even if its probative value is more limited.

The credibility (or truthfulness) of testimonial evidence can be influenced by a number of factors. Both sides to a complaint have an interest in the outcome and this might taint their perception of events. Similarly, friendship or kinship may generate loyalty to one or the other party to a complaint and a resultant bias in testimony. There may be a real or perceived financial or other benefit associated with supporting one party or another. Similarly, there may be a real or perceived fear of saying something that may be seen as damaging to a person with power or authority, or just perhaps a sense of apathy as to the event or the need to get involved. The existence of any of these factors may not negate the testimony, but the investigator should be aware of them.

The reliability (or accuracy) of testimony can also be affected by several factors. The physical condition of the person at the time is relevant, as are the conditions under which observations were made. Does the person wear glasses, and if so was he or she wearing them at the time of the incident? Were there any obstructions to seeing or hearing what happened? What was the visibility, the distance? Was the person intoxicated or drowsy, etc.? These factors must be taken into account by the investigator.

Assessing the credibility and relevance of testimony involves assessing the individual statement and its relationship to other testimony and evidence. As mentioned above, hearsay testimony is less reliable than direct observation. But even with direct observation, the testimony should be examined to ensure that it is internally consistent, i.e., logical and consistent throughout. The investigator will also wish to ensure that the

inferences or claims made in one person's testimony are consistent with the testimony of others. The investigator will also need to assess the consistency of testimonial evidence with other evidence, including physical evidence. Finally, the motives or interests of the person must be considered.

Preparing an investigation report

An investigation report is usually prepared. While requirements will vary from institution to institution, it typically contains:

- A **summary** of the complaint, the facts and the evidence, as well as the principal conclusions;
- The **identification of the relevant human rights provisions** (laws, international instruments, constitutional rights) that are at issue;
- A description of the **relevant physical, documentary and testimonial evidence**;
- An **analysis** of the evidence to establish the likely truth of the allegation;
- A **conclusion** clearly based on the analysis of the evidence; and
- A **recommendation** as to what action the institution should take to resolve the matter.

The decision

The decision is the culmination point of the investigative process and is usually defined in the founding legislation.

Typically, one or more members of the institution make the decision or, in commission-based models, the plenary panel of commissioners.

This is not universally the case, however; some institutions delegate decision-making to a single official or a small number of officials. In these circumstances the institution usually has checks built into the process to ensure that the decisions taken are sound and consistent.

There is typically a finite range of decisions that it can render, for instance:

- A violation of human rights has occurred and appropriate remedial action is warranted;
- On the balance of evidence, no violation has occurred and the complaint should therefore be dismissed;
- Further investigation is required before a final decision can be made; or
- The matter should be referred to a competent authority.

In the first case—a finding that a violation has occurred—an institution would, in addition to the finding, usually set out either a recommendation for what should be done to resolve the matter, if it has the power to do so, or describe the remedies that it will seek to impose or have imposed, if it has quasi-judicial competence. The enabling legislation of many institutions specifically defines the kinds of remedies that they may apply or seek.

While there are no universally accepted standards on what remedies should be sought or imposed when an institution finds that a violation has occurred, in principle remedies should strive to:

- *Make* the victim *whole*;
- Ensure that the perpetrator faces suitable action;
- Prevent further similar violations.

Making the victim *whole* means to return the victim to the situation that he or she would have been in had there been no human rights violation. While it is not possible to describe the complete range of actions that might be taken to achieve this aim, in part because these would very much depend on the nature and severity of the violation and the impact it had on the victim, it is possible to list generic kinds of remedies that should be considered in individual cases, for instance:

- An order to stop the violation;
- An order to compensate the victim for the material damage done, including indirect damage like projected loss of employment earnings, health and rehabilitation costs;
- An order to compensate the victim for the pain and suffering caused by the violation directly; and
- An order for the agency to take such action as necessary to mitigate the damage by, for example, rehiring an individual dismissed for reasons that violated human rights norms.

Remedies that ensure that the perpetrators are held accountable for their actions will also vary depending on the violation. Some human rights violations are criminal in nature. While an institution does not have the legal authority to impose criminal sanctions, it may either recommend that criminal charges should be brought or, in certain cases, take such cases to the courts itself. The remedies provided in these circumstances would be those authorized by the country's criminal justice system.

Perhaps the most overlooked aspect of remedies involves the prevention of future violations. In human rights law, the actions of individuals acting in their formal or employment capacities are considered the actions of the authority itself, for example if they were taken in the course of employment. This means that the employers are liable for the actions of their employees and so should be named as respondents in any complaint. Employers can lessen their responsibility if they can demonstrate in the course of the investigation that they took all reasonable action to ensure that the violation did not occur and to deal with the violation once they knew or should have known it had occurred. If the employers cannot demonstrate this, they too bear responsibility for the action and should be held accountable. This could include actions in the areas already discussed (making the victim whole and criminal prosecution). In addition, however, employers may be required to take other actions to prevent further violations, such as training their personnel in their human rights responsibilities, developing a suitable policy on the issue at hand or more effective mechanisms to enforce existing policies.

Similarly, if a violation results from the lack of an appropriate governmental law, regulation or policy or if the existing law, regulation or policy is insufficient or poorly applied, an institution can propose actions in these areas as part of the remedy. This is to ensure that the underlying or systemic cause of the violation is addressed so that similar violations do not occur.

Powers to implement proposed remedies

National human rights institutions may have the power to have their proposed remedies implemented, including:

- The power to make recommendations;
- The power to make referrals;
- The power to make enforceable decisions.

The power to make recommendations

Institutions with the power only to make recommendations will address these to the appropriate authority. Such recommendations are, of course, not binding. The authorities receiving them may choose to accept or reject them. As discussed in chapter VI, the authority receiving the advice may be required in law to respond formally to the recommendations. Moreover, an institution can publicly report on the degree to which its recommendations have been implemented through its annual report or other channels.

The power to make referrals

An NHRI may be empowered to refer a case which it has investigated to another agency, including to the relevant ministry, to another government agency or a tribunal established for that purpose, to parliament, to the judiciary, or to the prosecuting authorities.

Generally, a referral will be made, if, for example:

- A recommendation or decision is not acted on;
- A settlement of the case cannot be secured;
- The terms of an agreed settlement have not been met;
- The institution believes that obstruction and/or lack of cooperation makes investigation impossible;
- The investigation reveals the reasonable likelihood that a criminal act or disciplinary offence under law has been committed which warrants intervention by the prosecut ing authorities; or
- The investigation reveals that another body or agency may more appropriately deal with the matter.

An institution may nevertheless retain some responsibility for the case. If a case is referred to a court or tribunal, for example, the institution should be able to appear before it. In other cases, the institution may wish to monitor the situation to ensure that the matter raised in the complaint is ultimately dealt with fully and appropriately. Guidelines and procedures should be in place to set out the institution's obligations, duties and authority when it refers a matter elsewhere.

Power to make enforceable orders

National human rights institutions may be granted the power to make legally enforceable orders and binding decisions. Such power will generally permit the institution to seize a higher body (e.g., a tribunal, court or prosecutor's office) of its decision if a party refuses to comply with it within a given time.

Even if the actual enforcement procedure is entrusted to another body, the power to make enforceable orders will benefit the NHRI by considerably strengthening its authority with regard to complaints of human rights violations.

Publicizing decisions

The Paris Principles give an NHRI full authority to freely publicize its recommendations and decisions. This is not, strictly speaking, a remedial power, and competence in this respect should generally co-exist with other mechanisms for remedy and redress. Nevertheless, the ability for an NHRI to make its findings public is an essential prerequisite for establishing the credibility of a complaints mechanism and ensuring maximum effectiveness within the limits of its prescribed powers.

Publication helps to inform public opinion and encourage discussion. This can be particularly important if the cause of the complaint stems from wider problems of discrimination or unfairness that may subsequently need to be addressed by parliament or another branch of government. Publication of the results of an investigation can also be an effective means of assuring both present and future complainants that the institution takes such matters seriously.

As far as possible, publication of investigation results and decisions should take into consideration the parties' needs for confidentiality. It may not always be necessary, for example, to publicize details of the complainants.

C. Alternative dispute resolution

The Paris Principles state that NHRIs with quasi-jurisdictional competence should seek "an amicable settlement through conciliation". Although only "conciliation" is mentioned, it is generally recognized that amicable settlements can be achieved through several alternative dispute resolution techniques.

Alternative dispute resolution refers to a collection of processes and techniques that take place outside formal legal processes and that seek to address the interests of parties and solve the dispute. It is less adversarial and usually informal. It is especially effective if used early in the process. It gives an opportunity to the parties to tell their story and to take responsibility for the settlement of their differences.

National human rights institutions are themselves a form of alternative dispute resolution: many were created to offer alternative redress mechanisms to the courts. In the event, many institutions, even those that do not handle complaints, use conciliation and/or mediation.

Alternative dispute resolution, if successful, is documented in a settlement agreement.

In most cases, a neutral third party (facilitator, mediator or conciliator) helps the parties to find mutually acceptable solutions.

Alternative dispute resolution is **not** generally suited for complaints based on gross violations of human rights or the commission of a crime, such as sexual assault or violations of core civil and political rights such as torture, forced disappearances, etc.

This section will focus on mediation and conciliation, which are increasingly popular strategies to address human rights complaints.

1. Defining mediation and conciliation

Mediation in the human rights process requires the NHRI to take an active role in settling the dispute. The mediator has a structured role in allowing the parties to tell their side of the story, ensuring that the balance of power between the parties is equitable and facilitating the resolution of the dispute.

Conciliation is another form of alternative dispute resolution that NHRIs use. The conciliator gives the parties more space and opportunity to reach a settlement themselves. Often conciliation occurs later in the investigation process and the conciliator has a role in explaining to the parties the relative strengths of their positions.

Early resolution processes tend to be more interest-based, since the respective rights of the parties have not been ascertained by an investigation. The institution can take a more neutral position in such cases. Further down the line, when conciliation may be more appropriate, the institution will have amassed evidence, and will have some basis for taking a position on the strength of the allegation and, consequently, a rights-based perspective that is informed by the evidence and that determines the public interest at stake. To adopt a purely interest-based approach in those circumstances would be to ignore the evidence at hand. Some institutions may carry out conciliation after an investigation is completed, and might even include it as a compulsory step when they find that an allegation has merit. Adopting an interest-based approach in such circumstances is inappropriate, unless the result satisfies the human rights concerns raised by both parties.

Interest-based approaches are highly successful when mediated early in the process: some institutions report a 75 – 80 per cent success rate for voluntarily mediated cases.

For the parties, it is a less confrontational way of resolving matters, which is especially important when a change in attitude or behaviour is considered more important than punishing a violation. However, it should be borne in mind that institutions maintain their role as defenders of the public interest regardless of the technique used.

Some conditions are particularly conducive to successful conciliation and/or mediation. These include, for both processes:

- The willingness and the readiness of two parties to participate (indeed, mandatory alternative dispute resolution is possible only if authorized by law);
- The desire of the two parties to retain good relations;
- The degree to which both parties wish to avoid (further) investigation or other action;
- The desire of the parties to settle their difference as quickly as possible; and
- The authority of the parties to conclude a settlement: if either party is represented, that representative must have the authority to settle the matter. If the respondent is a company, the representative at the negotiations must have the legal power to settle.

For mediation in particular:

- The degree to which each party wants to have control over the issues discussed and the process; and
- The desire of the parties to have their side of the story heard by a neutral third party, without anything to fear.

2. The mediation/conciliation process

There is no single, universally accepted mediation and/or conciliation process. Some institutions may use a different process for mediation than for conciliation.

A generic process is presented below for illustration only; it is not meant to imply that there should be only one approach used in all cases. Where substantive differences in procedures might apply, depending on the position the institution took as to the nature of the process, these are noted below.

Agree on the ground rules

The parties should have a complete understanding of the nature of the process to be used and the degree to which the discussions and agreements are confidential. Some institutions treat alternative dispute resolution confidentially so that nothing said can be used against either party later if the process is not successful and further action (e.g., investigation) is to be taken. This tends to encourage candour and parties may say things they would never say in a hearing.

Others hold that such confidentiality exists with mediation but not for conciliation. This can be used to push the parties to undertake mediation earlier in the process rather than when positions are entrenched and the stakes are higher. Similarly, some institutions keep settlement agreements confidential, whereas conciliation agreement settlements are in the public domain. However, the parties may be required to forfeit their confidentiality if they fail to respect the terms of the agreement, at which point some NHRIs are authorized to seek judicial enforcement of the agreement. Again, this will depend on the powers and standing of the NHRI before the courts.

Parties should know which of these approaches will apply before the process begins.

Listen to the views separately

The mediator or conciliator may wish to begin by listening to the views of each side separately. This is sometimes called shuttle mediation and is especially useful where there are power imbalances between the parties.

This process can encourage openness and will provide a better idea of what is at stake. During this process, the mediator or conciliator must be willing to listen and should stay neutral. Finally, he or she must ensure the parties are willing to meet face to face before moving to the next stage.

Bring the parties together on neutral ground

Mediation and conciliation should always occur on neutral ground. When the parties meet in person, this should be on the commission's premises or other neutral offices, which do not provide an advantage for either party.

Define the mediator's role

In mediation, the role of the mediator is to:

- Enable parties to present their points of view;
- Help the parties come to a settlement;
- Explain the basic principles of human rights;
- Ensure that neither side in the mediation is at a disadvantage;
- Help parties record the settlement;
- Ensure that the settlement is respected; and
- Return the file for investigation if mediation is unsuccessful.

In most circumstances, the facts discovered during mediation cannot be used in the investigation.

Define the conciliator's role

In conciliation, the role of the conciliator is to:

- Let the parties understand the results of the investigation, including likely outcomes if appropriate;
- Allow both parties to present their points of view;
- Help the parties identify their respective interests;
- Ensure that a mutually acceptable solution satisfies their interests as well as the public interest;
- Help the parties record the settlement and present it to the commission for approval, with recommendations; and
- Ensure that the terms of the settlement are applied.

Negotiating the settlement agreement

The settlement agreement should be in writing and should be signed by both parties. It usually takes the form of a legal contract and so may be enforceable. The terms of the resolution should be consistent with international and national human rights law, should resolve the grievances of the parties, and should be sustainable, i.e., develop the durable capacity for dealing with such disputes in future. Settlement agreements that result from conciliation should be in the public interest.

D. Inquiries

The purpose of an inquiry should be to look into incidents and situations to determine if violations occurred. Inquiries may result in recommendations to ensure that violations are redressed. The Paris Principles do not specify the remedies, but the scope of recommendations should be broad enough to ensure that the violations stop, that similar violations do not occur, that sanctions are applied where this is warranted and that victims are "made whole" where this is possible and appropriate.

1. Authority

National human rights institutions have the responsibility to consider questions raised by the Government, a member or an individual applicant. They may hear any person and access any documents necessary to assess that question. They should submit to the Government, or other appropriate authority, advice and recommendations on "any situation of violation of human rights which [they decide] to take up". If violations have occurred, the Paris Principles state further that the institution should be responsible for proposing actions to put an end to the violation and for "expressing an opinion on the positions and reactions of the Government".

Even institutions that do not have the mandate to investigate individual complaints can use the authority and responsibilities described in the previous paragraph to inquire into systemic or general human rights concerns. They do this to ensure that the rights in question are being effectively implemented at the national level and, if necessary, to recommend actions that the responsible authorities should take to correct deficiencies.

The approach that an institution takes will depend on, inter alia, the nature of the institution, the powers it has and the issue being examined. General approaches are presented below. National human rights institutions may use their authority to inquire into a matter and/or to monitor a specific situation or event (see chapter VII). Other strategies include:

- Desk audits, to review information in the public domain, as well as information that it has requested from the relevant authorities. The process used in a desk audit will reflect the nature of the issue being examined and the institution's operating procedures, but could include a review of the literature, as well as targeted questioning of the relevant authorities and experts;
- A special workshop or seminar in plenary or in smaller groups to debate a question in order to arrive at a recommendation. Outside experts may be invited to participate in the debate as a way of enhancing decision-making, or the relevant authorities may be requested to provide information and justification for a certain position and affected parties invited to make submissions. Considerations relevant to workshops and seminars are discussed in chapter IV;
- A formal public inquiry (see the next section).

Institutions may mix and match a number of approaches mentioned above in their inquiries or may use other approaches to gather information and documentation in order to come to a decision.

Most NHRIs do not have the authority to impose remedies. They may make recommendations only. The Paris Principles do provide, however, that the institution can express a view on the position of the Government and its reaction to such recommendations. The institution can, therefore, use the press and other means to try to encourage the Government to respond in a manner that satisfies its recommendations. The NHRI can also document in its annual report the degree to which the Government has responded

to its recommendations. For NHRIs that have the power to receive complaints, the results of an inquiry may lead to an increase in human rights complaints in the area of the inquiry. This may place additional pressure on the Government to respond constructively.

2. Public inquiries

Some institutions have an express or implied mandate to hold public inquiries: while this can be done in relation to a single serious incident, public inquiries usually examine systemic or general human rights issues, for which they are particularly well suited. The inquiry process enables an institution to examine an issue in depth and from a human rights perspective.

> A government department's inquiry into homelessness, for example, might concentrate solely on the availability of housing. A human rights-based inquiry, on the other hand, would be more likely to examine the accessibility, availability and suitability of housing, or its cost, in relation to disaggregated data according to sex, race or ethnic origin. It might also look at data on the distribution of housing that are the result of social or economic forces, including discrimination, that cause homelessness. The fact that a human rights inquiry is broad ensures that the recommendations that stem from it will be broad, too.

The decision to launch a public inquiry should be based on the following considerations:

- Authority in the enabling legislation of the NHRI;
- Planned, clear and transparent objective and outcome;
- Cost (anticipated gains must therefore be commensurate with expected efforts and costs);
- Planning, especially for media and communications.

National human rights institutions should be made aware of existing resources. For example, in 2007, the Asia Pacific Forum (AFP) hosted NHRIs to pool experiences and expertise on running national public inquiries as part of a pilot training programme.[57] Public inquires were identified as effective tools for addressing systemic discrimination and violations of human rights. Formal seminars and group exercises provided practical "how to" strategies on:

- Setting up a public inquiry, including choosing the inquiry subject, establishing terms of reference, developing an appropriate methodology, identifying stakeholders and undertaking sufficient planning and preparation;
- Resourcing a national inquiry, including the involvement of commissioners and staff, financial resources and community resources;
- Educating and informing the community, including strategies for working with journalists and the media; and
- Planning follow-up activities and advocating the adoption of the inquiry recommendations.

Powers associated with a public inquiry

Institutions with the specific authority to conduct public inquiries that have full powers to compel testimony and witnesses should have commensurate powers, comparable to those used in investigations, as discussed above.

[57] A DVD *Going Public: Strategies for an Effective National Inquiry* was prepared in 2007. Over 2007-08, APF worked with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law to present a series of subregional training workshops for APF member institutions on running effective national inquiries in Indonesia and India. See www.asiapacificforum.net.

Some institutions may convene inquiries on issues of interest, but without coercive powers. They may relay on voluntary witnesses and seek input form various members of the public and NGOs without the formal powers of a more formal and adversarial process that is based on statute.

As the name implies, public inquiries are typically carried out in public sessions. The panel should have the authority, however, to hear testimony in camera when this is considered necessary. This might be appropriate, for example, if individual victims are providing personal or sensitive information, or when there are security concerns.

Clear terms of reference

A public inquiry is based on precise terms of reference. These should identify, as precisely as possible, its nature and scope. The terms of reference should be only so broad as time and resources permit; overly broad terms of reference may raise unrealistic expectations.

An inquiry panel

A public inquiry is usually run by one or more persons, who control proceedings, administer oaths to witnesses as required, solicit testimony and prepare the final report. It is important to ensure that the member or members are capable of running court-like proceedings and knowledgeable in the subject matter of the inquiry. Sometimes, the NHRI will use its own members; at other times, outside experts who may confer greater expertise, independence or external credibility are engaged.

Advisory boards

The panel may engage an advisory board to prepare the inquiry, interpret the findings and consider recommendations. This may be helpful, for example, if the inquiry is considering issues relevant to a particular disadvantaged group and the panel wishes to ensure that representatives of that group play a role. It should be made clear to the advisory group, if one is established, that the panel alone is responsible for sifting and weighing the evidence presented at the inquiry and preparing the final report. Ownership of the process should be with the panel and the institution, not the advisory group.

Preparing the inquiry

While there has to be flexibility built into the inquiry process, it should be carefully planned. This is necessary to identify the witnesses who will be called, the submissions that will be requested and the research that is required to support it. The examination will also be useful in identifying the budget and staff required to support the initiative, as well as its likely time frame.

The panel will require a wealth of information to come to a sound conclusion. While an inquiry is often used to find facts, it is usually necessary for the panel members and those supporting the panel to develop a keen understanding of the issue in advance of hearings. This will better enable them to identify which witnesses will be required, as well as what will be required of them, and to identify information and research gaps. The institution must therefore collect as much information, documentation and knowledge as possible in advance of the inquiry to ensure that it is successful.

Potential sources of information and form of presentation

Inquiries should strive to obtain input from all appropriate sources, including communities that are directly affected by the issue, experts, NGOs and Government officials. If the inquiry is examining an issue that has an impact on a particular group, representatives of this group must be adequately consulted to ensure that the group accepts the process as

credible. It may also be important to ensure that the alleged victims have an opportunity to present their views to the inquiry, including a statement on the harm they have suffered.

Presentations to inquiries may be verbal or in writing. It is not always necessary for individuals to appear in person.

Involving the media

Public inquires should promote public debate and examine important issues, effectively shedding light on hidden or poorly understood issues. The process should therefore encourage and facilitate media involvement. Media strategies should be carefully laid out before the hearing, and all appropriate support, including media backgrounders, should be provided to media representatives as warranted. Publicizing the inquiry will also ensure that individuals with important information to share can do so.

Effective reporting

The main "product" of a public inquiry is a comprehensive report on the issue, including recommendations for action. A report can influence decision-making and public opinion only if it is credible. The panel and others involved in the inquiry must therefore fully grasp the issues at play, and carefully and judiciously review and analyse all the evidence before coming to any finding. This implies that time should be set aside before, during and after the public inquiry to review and consider the evidence thoroughly.

Without compromising the integrity of the process, the recommendations should be carefully crafted so that they are acceptable, both to the general population and to the Government, and will be implemented. They should also take into account the country's tradition, culture and fiscal realities.

Following up

Some institutions have the authority to seek redress before the courts or specialized tribunals following an inquiry. Most, however, are limited to transmitting recommendations, based on their findings, to the relevant government department or agency.

Regardless of its specific powers to follow up, an NHRI should make every effort to ensure that the results of its inquiries are made public and disseminated as widely as possible. It should carefully monitor the measures taken with respect to its recommendations and report publicly on the action by government agencies or the legislature in response to its recommendations, perhaps through its annual report. After an appropriate interval, an institution may even schedule public follow-up meetings to ask officials directly what action they have taken. An institution's efforts should focus on achieving positive change, and wide publicity and active follow-up help promote this.

Conclusion

Investigation is an important function for all NHRIs. It is important in its own right: it is through investigation that an institution is often most able to directly protect against human rights violations. Moreover, the existence of an effective and independent mechanism to deal with such violations is a strong deterrent against abuse. Investigation is also important because it is a highly visible activity, and one on which an institution's independence, effectiveness and credibility are likely to be judged. For all these reasons, an institution must fully understand its role in investigation. This chapter attempts to assist in this, but cannot replace the more substantive training and instruction that will be required to ensure that those involved in the process can function professionally. It is important to reiterate that the success of an institution in fulfilling its obligations with regard to investigation also depends directly on its being given the necessary powers and resources to carry out the function effectively and efficiently. And that is an obligation of the State.

VI. ADVISING THE GOVERNMENT AND PARLIAMENT

Introduction

According to the Paris Principles, NHRIs are responsible for advising the Government on human rights matters. This chapter will discuss this responsibility generally, as well as the principal considerations that may apply to giving advice on existing and proposed legislation and on obligations stemming from international treaties.

Learning objectives

After completing this chapter, the reader will be able to:

- Describe the importance of, and general approach used in, reviewing existing or proposed legislation, policy and practice;
- Define the general circumstances in which an institution might provide advice with regard to international treaties; and
- Define the possible role an institution might play in the preparation of reports required by certain treaty bodies.

A. The Paris Principles

An NHRI should have the authority to "submit to the Government, parliament or any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports and any matters concerning the promotion and protection of human rights…".

The constitutional provision and/or law that sets out an institution's powers should specifically allow it to make recommendations on its own initiative to ensure independence of action.

In addition to general advisory responsibilities to the Government and parliament at large, the NHRI also provides advice to specific ministries, departments and committees and to all relevant authorities. For example, in the case of a particular policy and practice resulting from the application of a decision taken in one ministry, the NHRI may consider it most appropriate to direct its recommendation to that ministry.

If a law, policy or practice reflects a governmental initiative, the institution may find it appropriate to provide recommendations relating to these directly to the Government. These responsibilities are over and above the accountability of the institution to parliament through regular reporting.

B. Responsibilities of those receiving the advice

The authority to advise imposes an obligation on the receiving entity to consider such advice in a meaningful way. The Sub-Committee on Accreditation has noted that this means that NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow-up action, as appropriate in any given situation.[58]

This process should be transparent, visible and consultative. The founding legislation may, for example, require the Government to present recommendations in parliament for debate along with its proposed response to a report or other document. Individual departments or ministries may be obliged to respond in writing, setting out what they are doing in response to the recommendations and explaining why a particular recommendation is not being followed. Governments should be aware that ignoring an institution's recommendations may lead the general public and, where appropriate, international treaty bodies to question their willingness to promote human rights nationally.

[58] General observations, para. 1.6.

C. Reviewing existing legislation, policy or practice

National human rights institutions should systematically review existing law, policy and practice "to preserve and extend the protection of human rights". This responsibility extends to *all* laws and situations and not just those specifically intended to preserve and protect human rights. Moreover, the Paris Principles authorize institutions to recommend either the adoption of new or the amendment of existing legislation or administrative arrangements without qualification.

The Paris Principles provide that an institution should make known its advice on violations of human rights which it decides to take up, without limitation. They go on to give NHRIs responsibility for giving advice on local situations of human rights violations, including "the positions and reactions of the Government" to them. In either case, the advice is likely to result from the institution's investigation and/or monitoring activities.

The process is likely to involve some or all of the following:

- Selecting the laws, policies and practices that are to be reviewed and examinin where responsibilities for them rest;
- Identifying national and international human rights standards;
- Assessing the degree to which the laws, policies and practices ensure the rights at issue are being enjoyed;
- Identifying the ways in which the law, policy or practice might be improved and who has the responsibility for this;
- Identifying the general public's expectations of the proposed changes and indicators of success (to assist in subsequent reviews);
- Preparing a report with recommendations;
- Issuing the report;
- Lobbying to ensure that the report is reviewed and the recommendations adopted;
- Reporting publicly on the degree to which the recommendations have been adopted.

National human rights institutions may use research studies, public enquiries, national seminars or workshops, applied research, comparative studies and reports to publicize their work.

Some institutions have the—express or implied—mandate to offer detailed drafting advice when making legislative recommendations. Not all institutions, however, have such specific expertise or feel it is their role to do so. It is, of course, up to the institution to decide on its approach, but unless its staff have legislative drafting expertise, it would seem prudent to limit comments to the general thrust of the legislation rather than the drafting details.

The requirement to cooperate with civil society is greater when dealing with this kind of review, partly to ensure that a wide range of perspectives is brought to bear on the exercise and partly to benefit from the views of experts and NGOs that work with victims.

Providing advice is only the beginning: the NHRI should monitor and, if necessary, follow up on its recommendations. This can be done through:

- Its annual report or special reports;
- Monitoring;
- Lobbying the Government for change, including new or amended legislation or policy;
- Press releases and press conferences.

D. Reviewing proposed legislation, policy or practice

1. Institution's responsibility

Even if the enabling legislation does not specifically authorize the NHRI to comment on proposed legislation, it may nevertheless use its general authority to advise the Government to intervene in the discussion on proposed legislative and/or policy initiatives, for a number of reasons:

– It is easier to change a draft law than to repeal or amend an existing one, once the Government has decided on a course of action;

– Getting legislation, policy and practice right in the first instance prevents problems later on, such as human rights investigations or court interventions after the fact;

– Interventions at the drafting stage promote public and open discussions on the aims and expected impact of the legislation, and help to ensure that the needs of disadvantaged and marginalized individuals are part of this public debate.

The Government should be made aware of the advantages of cooperating in such consultations and on carefully considering and acting on an institution's recommendations.

The review process will be similar to the one outlined in the previous section.

The sooner the institution becomes involved in the process, the easier it is to positively influence its outcome. This is because officials will not have invested so much of their time and effort towards a certain end—time and energy that they might be unwilling to see wasted. Often, proposals for legislative action start in the line ministry and by the time they reach the ministry of justice, which may be responsible for preparing the legal draft, all the hard thinking on the contents is completed. Entering into discussions at this point may be too late, as positions may have become entrenched.

To ensure that it can comment on proposals and do so early in their development, an institution should develop and maintain regular and substantive contact with the staff who are responsible for preparing initial drafts of legislation, regulation, policy and procedures, as well as with more influential officials. Establishing these working relationships helps ensure that the institution is aware of planned initiatives early on and is in a position to effect change as necessary.

2. Advice on incorporating international norms

The Paris Principles specifically require NHRIs to incorporate international norms into domestic law. It must be remembered that the obligation to ensure consistency, statutory or otherwise, with international human rights norms falls to the State. The legislature, the judiciary and the executive should facilitate the implementation of these obligations.

National human rights institutions can help to ensure that international obligations are implemented at the national level and act as a "friendly critic" or facilitator and supporter, but cannot, obviously, be the implementer of these norms. Institutions are generally responsible for promoting and supporting:

- Harmonization of national legislation, regulations and practice with the international instruments to which the State is a party;
- Ratification of or accession to human rights treaties that the State has not yet signed;[59]

[59] Identified as a key function by the Sub-Committee on Accreditation (general observations, para. 1.3).

- Reporting by States to United Nations treaty bodies and processes, and to regional bodies; and
- Removing reservations that the State may have registered.

The goal, in short, is to ensure that internationally recognized rights find a home within national legislation, regulation and practice.[60]

3. Targeted review of legislation, policy or practice

An NHRI providing advice and assistance to the Government on the implementation of international standards will be guided by the country's particular legal tradition.

When a State ratifies an international human rights treaty it is required to ensure that its provisions are reflected in national law. In some countries, national constitutions state that ratified instruments are automatically law. In others, international human rights instruments must be formally incorporated into domestic law before taking effect. Most States have mixed approaches.

When a State considers whether or not to ratify a treaty or accept an optional protocol, there will usually be a national discussion on the issue. National human rights institutions can play an important advisory role, in particular in stressing how the implementation of the treaty or protocol would improve the national situation.

An NHRI might also offer advice if the Government is considering filing a reservation to a treaty. (A reservation is a statement by the Government that certain aspects of the treaty will not or will only partially be applied.) As a general principle, institutions are unlikely to support reservations and will attempt to identify acceptable legislative or other mechanisms that might be required to remove the need for a reservation. An institution would also help the Government understand the national and international consequence of a reservation. If the State nevertheless decides to file a reservation, the institution should seek to limit the scope of the reservation as much as possible and call for regular reviews of the reservation.

An NHRI will also likely encourage the Government to accept the optional protocols to certain treaties and advise it on the impact of doing so.

The institution should provide regular public updates on the international and regional human rights treaties that the State has ratified, the nature and scope of any reservation it has made and the optional protocols it has accepted. There should be continuous pressure and encouragement for the State to accept and apply the widest possible protection for human rights available.

4. Ratification of human rights instruments

National human rights institutions that have the authority to advise the Government on adhering to international treaties can help to advise on the precise nature of the obligations the State would assume upon ratification.

This might involve consideration of whether domestic law already conforms with the standards contained in those instruments (see the previous section) or whether additional legislative initiatives are required. In a federal system, advice could be given on the implications of acceptance for relations between the central Government and the constituent States.

National human rights institutions can support this work by systematically reviewing existing legislation as well as proposed legislation to ensure compatibility with human

[60] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 15.

rights norms. If the State has never carried out such a review, it might request an institution to do so. (An institution might also do so as part of its overall efforts to monitor the country's human rights situation, but this is discussed separately in chapter VII.)

Rather than be responsible for the review itself, an institution might sit on a broader review committee. Alternatively, it might provide advice and recommendations to the State or an established review committee on important legislative issues as an independent, external watchdog.

5. Beyond legislation to implementation

While legislation is an important first step in the process of meeting international standards, it is not generally sufficient for a State party to meet its obligations. States also have to put laws into practice. For example, the Human Rights Committee issued general comment No. 3 (1981) on implementation at the national level:

> The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient.

An NHRI may be able to advise the Government on other measures which could or should be taken to fulfil the State's international obligation such as modifications to fiscal or monetary policy; changes to priorities and practices in the provision of social services; the establishment of reporting machinery within and between ministries, and the implementation of affirmative action programmes and public education activities. An NHRI can familiarize itself with these less direct and often overlooked implementation mechanisms (usually called "instruments" or "policy instruments") and, through its advisory function, ensure that the Government is aware of the scope and extent of the State's existing or potential international obligations.

Moreover, actual practice may or may not reflect formal norms and plans. The mechanisms or processes through which human rights legislation or policy is implemented may have a more profound and direct impact on the enjoyment of human rights than comments on the legislation itself. National human rights institutions should, therefore, closely examine the actual practice on the ground.

6. Advice on treaty body reports

At present the following United Nations treaties and treaty bodies require regular reports:

- The International Covenant on Civil and Political Rights (Human Rights Committee);
- The International Covenant on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights);
- The International Convention on the Elimination of All Forms of Racial Discrimination (Committee on the Elimination of Racial Discrimination);
- The Convention on the Elimination of All Forms of Discrimination against Women (Committee on the Elimination of Discrimination against Women);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against Torture);
- The Convention on the Rights of the Child (Committee on the Rights of the Child):
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Committee on Migrant Workers);

- The Convention on the Rights of Persons with Disabilities (Committee on the Rights of Persons with Disabilities);
- The International Convention for the Protection of All Persons from Enforced Disappearance.

In addition to these international treaties, several regional treaties (e.g., in Europe) also require regular reports that are reviewed by similar expert bodies. Further details on these may be obtained from their websites.[61]

Reports submitted by States describe how well the treaties have been implemented. The reports will, among other things, describe the mechanisms the State has put in place to promote implementation and to redress problems that occur.

When examining country reports, treaty bodies seek the views of stakeholders. Typically, this involves material from national and international NGOs about human rights conditions in that country, or direct submissions from those sources when considering a country report.

National human rights institutions are one such source: State reports should describe the institution itself, its roles and responsibilities and its major accomplishments during the reporting period. At a minimum, therefore, an NHRI may be involved in drafting or reviewing and commenting on the report insofar as it refers to the institution itself. For example:

- A report under the Convention against Torture may include the results of any prison monitoring exercise or investigation undertaken by an NHRI as these relate to the incidence of torture;
- A report to the Committee on the Rights of the Child may include the results of an institution's examination of the degree to which girls' right to education is being respected.

Annual and special reports prepared by institutions, research studies, the results of public enquiries can all be reviewed by treaty bodies. As these sources of information are increasingly available publicly, this is being done as a matter of course. (An institution could submit a report directly to the treaty body. It might choose to do so, for example, if the country report contains, in its view, inaccurate or misleading information about the current situation and other efforts to have it changed have failed.)

National human rights institutions should, at a minimum, review State reports to ensure that representations made concerning their work or their findings are accurately portrayed. Others may be used as a coordinating point through which information from various ministries, departments and organizations is channelled. In the latter case, an NHRI itself may be entrusted with compiling a draft report, which would then be submitted to the relevant authorities for review. In this case it is important to keep in mind that the obligation to report is a *State* responsibility and the report that is presented to the expert committee is a *State report*.

Some institutions may do more than this and actually contribute to State reports. The contribution an NHRI makes to the reporting process will depend on a number of factors, including its functions and the willingness of the Government to seek its assistance. In many cases, an NHRI will be able to offer information, data or statistics directly to the government department charged with preparing the report.

Treaty bodies will make comments on a State's performance based on their review and assessment of the national situation and will propose actions for the State to take.

[61] See, for instance, www.coe.int.

These comments and suggestions are meant to assist the State in meeting its international or regional obligations. An institution should carefully review these comments and recommendations and may wish to advise the Government on what can be done to respond positively to them. An institution may also consider the comments when it is designing and implementing its own programme activities. For example, a comment by a treaty body noting a certain deficiency and proposing corrective action may result in the institution deciding to monitor that particular issue within its overall monitoring programme.

VII. MONITORING HUMAN RIGHTS

Introduction

Virtually all NHRIs monitor human rights. Many systematically assess the human rights situation in the country either generally or with regard to particularly important issues.

Monitoring is a key aspect of the general protection mandate and it also contains important promotional features (notably in reporting results). It includes:

- Country monitoring;
- Issues-based monitoring, e.g., monitoring based on a long-term approach to a selected thematic issue, such as a decision to track the human rights situation or treatment of persons who are members of specific groups over time;
- Incident-based monitoring, i.e., monitoring aimed at specific fact-finding about particular events;
- Monitoring places of detention to prevent torture, minimize pretrial and preventive detention, and ensure that international standards are respected;
- Monitoring progress in achieving internationally agreed development goals.

National human rights institutions need to choose a monitoring programme based on their strategic planning priorities and their legal mandate. Staff should receive basic and advanced training on human rights monitoring.

The purpose of monitoring is not simply to document where things stand, but to encourage positive change.

Learning objectives

After reviewing this chapter, the reader will be able to:

- Define monitoring;
- Describe the general principles that should guide an institution in its monitoring activities;
- Describe how to set up and operate a programme to monitor the human rights situation in a country using a "progressive realization" approach;
- Describe how to set up and operate a programme to monitor the rights of detainees; and
- Describe circumstances in which an institution might monitor an "event".

A. What is monitoring?

Monitoring refers to the activity of observing, collecting, cataloguing and analysing data and reporting on a situation or event. Depending on the circumstances, its aim can be to document human rights abuses so as to recommend corrective action or to be preventive and educational, or it may serve the purpose of advocacy. An institution should attempt to verify that its presentation of an event or situation is factually correct. Nonetheless, a monitoring report is essentially an account of what has been observed either directly by the institution or reported by others. The standards that guide the institution in preparing such a monitoring report are therefore usually less rigorous than those that guide it when it investigates complaints and reports on its investigations.

Some institutions may also monitor elections, but since this not typical and is highly specialized, it is not discussed in this publication. Information on election monitoring can be obtained from the *Training Manual on Human Rights Monitoring*.[62] Many institutions also monitor the legislative and policy development functions of a Government. Since this is done with the specific intent of providing advice to the Government, that activity has been described in chapter VI and will not be repeated here.

[62] United Nations publication, Sales No. E.01.XIV.2.

B. Principles of monitoring

Standards set by the United Nations

There are a variety of publications documenting the monitoring function. Of particular importance is the above-mentioned *Training Manual on Human Rights Monitoring*. It lists 19 principles that should govern the way in which human rights monitoring is carried out. While all are important, the following are especially relevant to the work of an NHRI:

- Do no harm;
- Know the standards;
- Accuracy and precision; and
- Impartiality, integrity, objectivity and professionalism. (These are listed separately in the *Manual*, but grouped here for convenience.)

"Do no harm" is arguably the most important principle that applies to the work of a human rights monitor. It is directly linked to others such as credibility, confidentiality and security. Briefly put, the principle means that the human rights monitor should never act in a way that places another in potential harm.

The requirement to "know the standards" means that monitors must have a thorough understanding of the international or national rights norms against which they are measuring performance. Each individual involved in the monitoring exercise must also have the same interpretation of those standards, especially if data are being collected separately. The monitors and the institution on whose behalf the exercise is being undertaken must also agree on the nature and meaning of these standards. The findings presented after monitoring must be accurate and precise. Knowing the standards being applied helps ensure this. In addition, the method used to collect data must support accuracy and precision, and the monitor must ensure and verify, where necessary, that the data collected are accurate. With regard to data collection, those involved in monitoring have developed the concept of controlled vocabulary, so that they all collect and code information in the same way.

"Impartiality, integrity, objectivity and professionalism" are interrelated and require monitors to apply the highest possible standards when collecting and analysing data and presenting the results.

Monitoring: a programme activity

Generally, the monitoring carried out by an institution should be:

- Managed (planned, resourced, controlled and evaluated);
- Ongoing, regular;
- Usually cyclical;
- Proactive, while responding to priorities; and
- Focused on results.

There may be occasions when circumstances force an institution to carry out unplanned, and one-off, monitoring, but this should be the exception rather than the rule.

Most monitoring activities follow predictable, and cyclic, steps. First, the institution identifies the monitoring priorities. This requires it to understand the country's human rights priorities, as well as the opportunities and risks that exist, identify and understand the

human rights norms at play, and make a realistic assessment of its capacity to carry out monitoring. Institutions must be especially realistic about their resource capacities, since monitoring is a long-term and costly activity. Second, the institution plans the monitoring activity by deciding on an approach, methodology and time frame, and determining the data framework (i.e., it identifies data needs and sources, and identifies or develops data capture tools). Third, the institution collects, verifies and assesses data relevant to the issue being monitored. Finally, it seeks results by reporting on the monitoring exercise and advocating change.

C. The use of surveys in monitoring

Surveys are very useful in compiling the information necessary for monitoring. However, considerable caution must be exercised before carrying them out: professional advice may be required on their design, conduct and analysis. Institutions should, nonetheless, have a general understanding of the kinds of sampling that may be used to collect data. Generally speaking, there are three kinds: a *probability* or *random* sample; a *judgement* sample; or a *haphazard* sample.

Random sampling requires an institution to use only a limited sample. As its name implies, the source from which data are to be drawn is identified randomly using a mathematical theory of probability. It typically requires the use of statisticians in survey design and interpretation. For instance, there are 100 communities in a region and civic education sessions on electoral rights are supposed to be held in each. The institution wants to monitor this to ensure that the education is in fact carried out, and that it is fair and complete. Rather than monitor all civic education sessions in each community, an institution could randomly select 10 communities—for example, by drawing names of communities out of a hat—that it will monitor and draw inferences from those results.

A judgement sample is any sample influenced by human judgement. For instance, the situation is as above, except that the region is ethnically diverse. Of the 100 communities roughly half are largely populated by the majority ethnic group, whereas the other half are populated by a minority ethnic group that has been disadvantaged. The institution therefore wants to make sure that the civic education sessions are fair to the minority group. Its survey methodology is to randomly draw a significant representation of ethnic minority communities from a hat.

A haphazard sample is simply taking what is available in the circumstances without any special plan. While this is not as reliable and valid as other samples, it may still be indicative of the wider situation.

D. Monitoring a country's human rights situation

1. Defining the scope of the monitoring activity

Human rights monitoring can encompass almost every area of human activity, from economic and social issues to incidents involving political and civil rights. See:

- *Training Manual on Human Rights Monitoring;*
- *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions*.[63]

No NHRI can monitor and report on every aspect of a country's human rights situation every year. Most do not. They identify the rights that are of most concern in the country and concentrate on monitoring those either yearly or progressively. Alternatively, they may develop a multi-year schedule for monitoring rights so that all rights are examined, but only over a number of years.

2. Planning the monitoring activity

Most institutions monitor progress over time. This requires the monitor to know what the situation was at a given point in time (the baseline) and what factors (indicators) will demonstrate that there have been positive changes. Sometimes, monitors will also set goals (benchmarks) for those involved in promoting and protecting the right. This approach may be used for all categories of rights, but is particularly useful in tracking achievements relating to economic, social and cultural rights. This is because many of these rights are meant to be realized progressively.

Two types of indicators are typically used in monitoring progressive realization: *process* indicators and *result* indicators. Process indicators are the actions (legislative, regulatory, policy and practice) that have been taken to ensure that the right in question is being effectively implemented and adequately protected.

Result indicators, on the other hand, show the extent to which a right is being enjoyed. That the Government has passed a law outlawing torture is a *process* indicator; that torture has decreased is a *result* indicator.

Defining process indicators is relatively straightforward:

- The legislation, regulation, policy and practice that apply directly or indirectly to the right in question are identified; and
- The stated objective of that legislation, regulation, policy or practice is identified.

Identifying result indicators is more complex. The United Nations treaty bodies have developed guidelines on the form and content of reporting and general comments, both of which specify data requirements for country reporting (see www.ohchr.org). These reference documents are quite comprehensive. Institutions may use them as a template from which to choose the most relevant and important indicators for their particular monitoring activity.

An institution may have to define its own success indicators in some circumstances. If so, it is important that the indicator should be *relevant, understandable* and *useable*. A good indicator measures what it says it measures.

[63] United Nations publication, Sales No. E.04.XIV.8.

3. Undertaking the monitoring activity

Data collection

Much of the literature on monitoring concentrates on primary research and fact-finding. However, most NHRIs rely fairly heavily on secondary sources (data created by others) in their assessments. Secondary data are useful because they are less expensive and less labour-intensive to obtain. Moreover, there is usually a fair amount of data research and collection going on in a country and duplicating existing efforts serves no useful purpose.

There are a number of potential sources of secondary data:

- Budget documents can show the priority a country gives to a certain issue and facilitate comparisons year to year and against the performance of other Governments in the region. This measure is particularly telling in areas in the developing world. For example, education may be underfunded as a result of the country's poor economic situation, but if the allocated budget for education falls below the area's average, the country may not be living up to the requirement to invest resources to the maximum extent possible;
- National statistics;
- Administrative data: Government ministries also typically gather data that relate directly to their own mandates;
- Data from commissions of inquiry and other bodies that may commission studies that generate useful information;
- NGOs often carry out research and other studies. Intergovernmental organizations do the same.

Most NHRIs use their own data and information too, usually internal, administrative data such as complaint statistics, data generated by specific monitoring exercises—monitoring prisons, for example—as well as the results of national conferences or workshops on specific human rights issues. In addition, the institution may conduct, or commission, primary research or fact-finding. This may be necessary when there is either a gap in existing data or the data that exist are deemed unreliable.

National human rights institutions should include qualitative data along with quantitative data. For example, existing data may show that girls are less likely to move from primary to secondary school than boys. Such data are quantitative and show that there is a potential problem. An institution may decide, through the use of surveys or focus groups, for example, to try to explain *why* the situation is occurring. The data generated from such efforts would be qualitative and could help the institution propose effective solutions to the problem.

Analysing data

National human rights institutions use both process indicators and results indicators.

Process indicators **are analysed to:**

- Assess the degree to which the legislation, regulation, policy or practice is:
  - Sufficient to ensure the right is implemented;
  - Actually being applied;
  - Actually meeting the objectives it is meant to achieve; and
- Identify how the legislation, regulation, policy or practice must be modified or improved to ensure that the aims of the human rights provision can be achieved.

This is largely analytical and involves relatively little data-gathering or data analysis. Results data will be used to reveal the extent to which process indicators are working.

Result indicators **may be used to:**

- Delineate the types of data that are needed;
- Form a baseline against which subsequent progress will be measured;
- Track progress;
- Support subsequent analysis.

Once the indicators are set and the data are collected, NHRIs publicize the results of the research and analysis to bring pressure to bear on the authorities to make improvements when this is necessary:

- The monitoring programme will result in a public report such as an annual report or special report;
- The report will, if possible, identify problems and make recommendations for action; and
- The institution will make appropriate efforts to encourage the adoption of those recommendations.

If the institution's annual report is the primary vehicle for presenting monitoring results, the process of data-gathering should be ongoing. Waiting until it is time to draft an annual report to start to collect and analyse data will result in either delays in the report or substandard analysis. An institution may also decide to produce separate special reports on the human rights situation.

National human rights institutions should in all cases take great care in presenting data from secondary sources. Sources should be attributed, both for reasons of research integrity and generally accepted citation practices, but also to make it clear that the institution is citing the material, not vouching for its accuracy. The data should not be presented in conclusive terms unless they have been researched and verified preferably with reference to other credible sources and authorities.

Data that show poor performance by the Government or other organization should be cross-checked against the data of the institution being criticized, and particular care should be taken in presenting data that contradict other published data. It is important to consider the data source; some organizations may exaggerate results or have a particular agenda to advance. This affects the credibility of their data. When data from Government sources contradict other sources, it is necessary to reflect on which to use. Official Government data are on the public record and can be used by officials to contradict or discredit the institution's own data, so care should be taken. To show balance, it may be prudent to give both sets of data, unless there are compelling reasons for believing that one set is more reliable than the other, such as a third set of data or the report of an independent expert. Some explanation of why one set of data is more authoritative is better than ignoring one set over another.

An institution can increase the likelihood of positive change if it can also set out recommendations that are both practical and feasible. A few key recommendations are generally preferable to lengthy and detailed recommendations that are, or appear to be, unrealistic or overly ambitious.

Issuing data and reports is only one step. An institution should consider how best to present its findings by using the media, for example, and by encouraging and coordinating public advocacy by other social forces. Of the utmost importance is encouraging public understanding of the monitoring results and of their importance for the enjoyment of human rights.

E. Monitoring places of detention

Abuse of detainees is almost universal. Monitoring places of detention measures compliance with international human rights standards and can prevent abuse. Failure to comply with international standards, especially those set out in the International Covenant on Civil and Political Rights, the Convention against Torture and its Optional Protocol, and the Standard Minimum Rules for the Treatment of Prisoners, is not necessarily wilful on the part of prison officials. The sad truth is that concern for prisoners' rights is not usually a high priority for Governments because it is not usually a high priority for most citizens. Inadequate detention facilities are often the result of inadequate resources, frequently beyond the control of prison officials.

National human rights institutions have a general obligation to monitor places of detention to **ensure humane treatment**. Article 10 of the International Covenant on Civil and Political Rights requires "all persons deprived of their liberty"[64] to be treated humanely. This extends beyond prisoners to all persons deprived of liberty. "Inhumane treatment" is also broader in meaning than "torture or cruel, inhuman or degrading treatment or punishment" according to article 7 of the same Covenant.

Monitoring should be based on realistic benchmarks against which progress will be measured with prison officials and those responsible for allocating the budgets, including officials in finance ministries and parliamentarians.

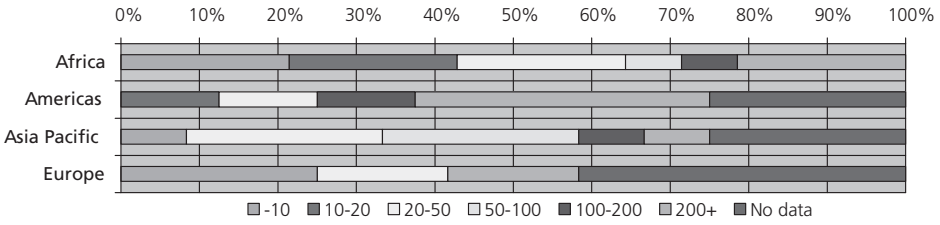
"Places of detention" is not limited to prisons and jails. The term also covers other facilities such as immigration detention centres and medical centres (including for persons with mental disabilities). However, because of the special and urgent protection issues that arise in detention facilities, these are the focus here. That said, NHRIs should never ignore their wider mandate or the potential for abuse that exists in other types of facilities.

It is important that the institution's legal authority to monitor should be set out in law. Institutions should have the powers to: enter any place of detention without prior warning; see official records and take copies as required; see and take statements from prisoners alone and in unsupervised situations, and to request that a given detainee should be presented. These powers will ensure that monitors can access the information they require to properly assess the situation.

[64] "Deprivation of liberty" is "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority" (Optional Protocol to the Convention against Torture, art. 4.).

According to a recent survey, 75 per cent of NHRIs said that they receive complaints from detainees, especially those in the Asia-Pacific region (100 per cent), followed by the Americas (88.8 per cent), Africa (73.6 per cent) and Europe (57.2 per cent). Of these respondents, a total of 36 NHRIs provided statistics on complaints of torture and ill-treatment, as shown by the following regional breakdown:

Complaints statistics - torture and ill-treatment



Source: OHCHR, "Survey of national human rights institutions".

Respondents reported a wide range of issues from torture to ill-treatment, including assault and brutality by security personnel, inadequate diet, poor conditions and overcrowding, unnecessary isolation, and forced medical trials.

National human rights institutions are also expected to play a more effective role and become even more visible in accordance with the Optional Protocol to the Convention against Torture, which entered into force in 2006:

- The Optional Protocol obliges States to set up independent **national preventive mechanisms** to examine the treatment of people in detention, make recommendations to Government authorities to strengthen protection against torture and comment on existing or proposed legislation. The Optional Protocol incorporates a degree of flexibility in the structure of these mechanisms and, in recent years, many countries that have ratified it have in fact designated existing NHRIs (e.g., commissions and ombudsmen) as their national preventive mechanisms.
- The preventive nature of the visits required under the Optional Protocol is different in purpose and methodology from other types of visits that NHRIs may conduct and, in particular, from visits to investigate or document individual complaints made by detainees. The Optional Protocol includes certain guarantees and powers that can help resolve this challenge.

The Optional Protocol to the Convention against Torture provides that States parties will designate independent national prevention bodies to monitor places "where people are deprived of their liberty", including prisons. The purpose of these monitoring bodies will be "to prevent torture and other cruel, inhuman or degrading treatment or punishment". NHRIs may be appointed as the national preventive mechanisms, provided that they satisfy the Paris Principles. The Optional Protocol requires States to ensure that the national prevention bodies have the resources and the authority, including unlimited access to any place of detention, to carry out this responsibility.

As explained in the Training Manual on Human Rights Monitoring, it is essential for monitors to "know the standards". There are a number of standards that apply in this context, for instance:

- The International Covenant on Civil and Political Rights (arts. 7, 9, 10 and 11);
- The Convention against Torture;
- The Standard Minimum Rules for the Treatment of Prisoners;

- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- The Code of Conduct for Law Enforcement Officers;
- The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

The above-mentioned Covenant and Convention are legally binding on countries that have ratified them. While NHRIs are encouraged to apply the other standards too, these are not legally binding.

It is necessary for the institution to review the applicable standards carefully to determine what should be covered in the monitoring exercise. It may be that certain rights or standards are generally well protected in some States and therefore do not need to be included. Some issues may be more relevant to one country than another, so the institution will have to decide which issues it will actively monitor.

1. Planning the monitoring activity

All places of detention should be included to reinforce prevention and to ensure that the standards are applied uniformly across the country. This should include unofficial detention and interrogations sites. Places of detention should be visited more than once. This is necessary to measure the progress made, individually and collectively, as well as to ensure that the situation in places of detention does not deteriorate because the NHRI has shifted its focus elsewhere.

Much of the work involved in monitoring places of detention will focus on result indicators. In this connection, monitoring tools are needed. Many institutions use checklists to compile information on the human rights situation of detainees, which help to define the scope of the monitoring exercise and ensure that monitors concentrate on issues that are relevant for the country. Checklists also standardize data and help ensure that data are comparable and trends can be identified.

Moreover, using "controlled vocabulary" can help ensure consistent data compilation and facilitate analysis. Controlled vocabulary means that the monitor uses a list of terms or descriptors that is as exhaustive and mutually exclusive as possible, where preferred terms are used by those collecting data and analysing the information. Advance planning can ensure relatively comprehensive and controlled use of that information. It can, conversely, prevent overly narrow or rigid approaches, enabling NHRIs to judge the scale of the problem. For example, the Standard Minimum Rules for the Treatment of Prisoners require, in normal circumstances, that there should be only one person to a cell or room. A tool that records only whether that standard is met will not gather important data on the scale and severity of any overcrowding or assess if it is more severe in some regions than in others or in some types of places of detention.

National human rights institutions should also include process indicators to ensure that the rights of detainees are protected: information on these must be collected. The Standard Minimum Rules for the Treatment of Prisoners require a complaints system for detainees, for instance. Other standards include providing specific human rights training to officials who come in contact with detainees. Planning for monitoring should identify the main process indicators that apply in the local circumstances. There should also be a process for families of detained persons to report irregularities to the NHRI, if it has a complaints procedure. National actions may also support efforts by the international human rights system, especially the Working Group on Arbitrary Detention.

2. Undertaking the monitoring activity

Monitoring places of detention involves the collection of primary source data through the physical inspection of places of detention and the subsequent analysis of findings. In addition, process information (laws, regulations, policies and practices that are pertinent to the rights of detainees) is also gathered and analysed.

National human rights institutions should use their authority to make unannounced visits in order to ensure that inspections reveal the true state of affairs: for instance, the physical conditions of prisons—such as cleanliness and the quality and sufficiency of food—could be altered if inspections are conducted with advance warning. Similarly, individual detainees could be moved to another facility if there is advance warning of an inspection. This is why it is important for institutions to have the right to enter and inspect places of detention without prior authorization.

Similarly, a detainee's assessment of the situation will likely differ depending on whether a prison official is present during the interview or the detainee is met in an unsupervised setting. National human rights institutions must have the right to interview detainees in private.

National human rights institutions should attempt, whenever possible, to confirm information given to them during interviews. Many institutions will have a general interaction with detainees and then meet some or all of them individually. This is done to determine the consistency of their statements, both collectively and individually.

If monitoring reveals possible human rights abuses, it is important to handle such instances through the *investigative* process, using the procedures and powers that go with it. An institution should establish procedures for this to be done quickly and effectively. The monitor may be mandated, for example, to accept a complaint immediately. A member of the monitoring team may also be an investigator with the skills to handle the issue immediately.

Collected data must be analysed promptly in relation to acceptable standards. Sometimes this is relatively straightforward.

For example, prisons are required to maintain a **registry** of all detainees, listing, inter alia, the date of, and reason for, incarceration and on whose authority the detainee is being incarcerated. The monitoring process can determine whether this has been done by reviewing the registry and cross tabulating it against information gathered from detainees during the visit. If, for instance, the institution finds a detainee in the prison not listed in the registry, a serious breach has occurred.

Many standards are not so clear. Here the analysis should concentrate on, first, defining the scope of the problem:

- Does the problem apply generally or is it peculiar to a type of place of detention (e.g., national prisons are overcrowded but local jail cells are not); or
- Is the problem particular to one location, area or region, or is it true generally?

The analysis should propose improvements over time: have the problems noted, whatever their scope, improved since the previous monitoring visit?

The analysis of process data is the same as for monitoring general human rights situations: it concentrates on whether the procedures in place are appropriate, effectively applied and sufficient for the purposes intended.

The findings or results of monitoring should be used to encourage positive change. As with other types of monitoring, a public report is often issued with recommendations (using the annual report or special reports as a vehicle) accompanied by an advocacy

and communications strategy in cooperation with the media and other sectors of civil society. A strategy aimed at improving the situation of detainees should include efforts to encourage greater public recognition and acceptance of their rights, as this may be necessary to encourage Government action.

Monitoring can be a source of information for individual complaint investigation.

National human rights institutions should provide, in subsequent monitoring exercises, independent assessments of how well officials are doing in meeting the agreed benchmarks. If international donor assistance is required, the fact that benchmarks have been developed at all, and that an independent commission will provide ongoing monitoring, may encourage donor funding.

Conclusion

Institutions monitor in a variety of circumstances, from monitoring the general human rights situation to monitoring specific issues and places of detention.

Monitoring can be elaborate and resource-intensive but it can also lead to substantive improvements in a country's human rights situation. Successful monitoring requires staff with the requisite knowledge and professional abilities. Substantive training and instruction are critical. Institutions should be active in carrying out their responsibilities in monitoring; they should also invest time and resources in ensuring that these responsibilities are discharged successfully. States must ensure that NHRIs have the resources to do this work.

VIII. COORDINATION AND COOPERATION

Introduction

National human rights institutions are an important part of the national human rights machinery, but they are only one part. They must work alongside other bodies that also have human rights roles and responsibilities, including the courts, law enforcement, the legislature and human rights NGOs. It is important for NHRIs to establish appropriate and fruitful relationships with these potential partners. At the same time, it is a challenge.

This chapter focuses on the relationship between NHRIs and the administration of justice, parliament, civil society and the international human rights system. (Other important partners, including business, other national institutions and regional and international NHRI networks, are discussed in chapters I and II.)

Learning objectives

After reviewing this chapter, the reader will be able to:

- Define the relationships that should exist between an NHRI and the courts, parliament and civil society, as well as the impact these relationships have on its work.

A. Administration of justice and the rule of law

National human rights institutions are part of the rule of law and support the administration of justice. Like NHRIs, the judiciary has an independent status. It also has a defined and well-understood area of competence. An attack on that independence or that competence is an attack on the rule of law.

It may be that the judiciary is weak and not as independent as one would wish in some countries. Where this is so, efforts should be made to strengthen it and its independence as a separate issue. It is not appropriate to give an NHRI an oversight role over the courts as a means to these ends. Some countries have established mechanisms such as judicial oversight bodies, usually themselves formed of judges, to deal with problems relating to the conduct of judges, including bias. Judicial oversight is not an NHRI function.

To avoid confusion, it is important to clearly lay out in legislation the precise roles and responsibilities of an NHRI and to sharply contrast its jurisdiction with that of the courts. Their different spheres of responsibility should also be consistently and clearly publicized.

The rule of law is a State responsibility. It informs and structures the effectiveness and integrity of the entire justice system, including the work of NHRIs. States are obliged to respect, protect (or ensure) and fulfil human rights.[65] Mechanisms must be established to give effect to these rights and NHRIs are among those mechanisms. National human rights institutions have a strong voice and role in promoting respect for the rule of law in the following areas, all of which are central to promoting and protecting human rights:

(a) Ensuring that the State complies with its own laws and other legal instruments, as well as with relevant international norms;

(b) Promoting the development of administrative accountability systems;

(c) Ensuring that the administration of justice conforms to human rights standards and provides effective remedies, particularly to minorities and to the most vulnerable groups in society;

(d) Proposing and commenting on legislative reform so that national laws are brought into line with the international human rights instruments that the State has ratified or acceded to.

This role is especially critical for the ability of the NHRI to address administration of justice and core protection issues:

[65] Asbjørn Eide, "Economic, social and cultural rights as human rights" in *Economic, Social and Cultural Rights: A Textbook*, 2nd rev. ed., Asbjørn Eide, Catarina Krause and Allan Rosas, eds. (Dordrecht, Martinus Nijhoff Publishers, 2001); as regards the International Covenant on Civil and Political Rights, see Manfred Nowak, "The International Covenant on Civil and Political Rights" in *An Introduction to the International Protection of Human Rights: A Textbook*, 2nd rev. ed., Raija Hanski and Markku Suksi, eds. (Turku, Åbo Academi University, Institute for Human Rights, 1999).

Strengthening the rule of law	
Administration of justice and judicial institutions	Is the NHRI involved in the reform and strengthening of the judicial institutions? Efforts in this area could focus on: – Legislative reforms, harmonization and compliance with international standards, removal of reservations, etc.; – Procedures related to the level and appointment of prosecutors and judges and qualifying lawyers; – The security and working conditions of prosecutors and judges; – Institutional monitoring and accountability mechanisms within the judicial system; – The independence of the judiciary and its capacity to adjudicate cases fairly and competently; – Equal access to fair justice, especially for people living in poverty; – Education in human rights law for judges, lawyers, prosecutors and other judicial authorities; – Rule of law training that emphasizes human rights and international humanitarian law; – Support to legal education facilities, for example a library; – Ensuring that the administration of justice conforms to human rights standards and provides effective remedies particularly to minorities and to the most vulnerable groups in society.
	Has the NHRI made active use of OHCHR Professional Training Series No. 9: *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Lawyers and Prosecutors?*[66]
Police	Is the NHRI involved in the reform and strengthening of the security institutions? Efforts in this area could focus on: – Establishing and carrying out effective and impartial vetting of persons involved in criminal acts of violence, as well as corruption and other serious crimes; – Ensuring professionalism in the security forces, through senior management training, including human rights training, and the setting-up of accountability mechanisms based on the development of standard operating procedures and standing orders, a monitoring system to ensure their application and an internal investigation procedure leading to concrete sanctions including prosecution in the event of misconduct, arrest procedures, collection and preservation of evidence, procedures for protecting witnesses, including the confidentiality of witnesses when necessary, interrogation procedures, and preparation of reports.
	Has the NHRI made active use of OHCHR Professional Training Series No. 5: *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police?*[67]

[66] United Nations publication, Sales No. E.02.XIV.3.

[67] United Nations publication, Sales No. E.96.XIV.5. See also the following additions: *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police* (United Nations publication, Sales No. E.03.XIV.1) and *Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police* (United Nations publication, Sales No. E.03.XIV.7).

Strengthening the rule of law	
Prisons	Is the NHRI involved in efforts to ensure that: – Correctional facilities meet minimum international standards; – Correctional facilities have regulations that govern the intake, incarceration and transfer of inmates and that these are adhered to; and – All correctional personnel receive human rights training and training in proper interviewing and investigatory techniques.
	Is the NHRI mandated and engaged in conducting prison visits to monitor conditions of detention (unannounced visits and private interviews with detainees)?
	Is the NHRI dealing with families of detainees who appeal to it in the event of irregularities?
	Has the NHRI made active use of OHCHR Professional Training Series No. 11: *Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials*;[68] *A Compilation of International Human Rights Instruments concerning the Administration of Justice*;[69] *and A Trainer's Guide on Human Rights Training for Prison Officials?*[70]

Source: OHCHR, "Guidance note: national human rights institutions and the work of OHCHR at headquarters and field level", June 2010.

Additional standards on the rule of law and the administration of justice, and the particular role of NHRIs can be obtained from the Nairobi Declaration on the Administration of Justice.

[68] United Nations publication, Sales No. E.04.XIV.1.
[69] United Nations publication, Sales No. E.04.XIV.4.
[70] United Nations publication, Sales No. E.04.XIV.6.

B. Relationship to parliament

1. Reporting to parliament

Many institutions report directly to the legislature or parliament. This is considered a positive practice since it enhances the independence of the NHRI and ensures that its recommendations, advice and reports receive a hearing in the country's representative and elected body. Since parliament is responsible to the people, reporting directly to parliament also underpins the notion that an NHRI is ultimately responsible to the public. Some institutions report to ministers or departments, which is less desirable, though common.

In a parliamentary system of government, parliament usually has the responsibility for budgets. National human rights institutions must be transparent in their dealings with parliament: this means being ready and able to defend their requests. Independence cannot shield an institution from this oversight, nor should it.

2. Principles that apply to parliament

The 2004 Abuja Guidelines are a useful source of information on the relationship with parliament in parliamentary democracies. For instance, NHRIs should:

- ✓ Provide parliamentarians with regular expert, independent advice on national, regional and international human rights issues;
- ✓ Provide ongoing training for parliamentarians on human rights;
- ✓ Advise parliamentarians on the human rights implications of all proposed legislation and constitutional amendments as well as existing laws; and
- ✓ Advise parliaments on the creation of parliamentary human rights committees.

UNDP, "Primer on parliaments and human rights",available from http://hrbaportal.org/.

3. Advice to parliament

This issue is covered in chapter VI. Generally, however, it should be reiterated that an NHRI can be an important and useful ally for the Government when it wants to change a law, policy or practice, or when the NHRI is to assume new responsibilities. Institutions should therefore develop relations with parliament, parliamentary bodies and parliamentarians so that they have the opportunity to influence policy and programme decisions. Regularly appearing before standing parliamentary committees, or their equivalent, to present a human rights analysis of governmental proposals is one important way of ensuring that human rights issues are heard. It will also ensure that such committees come to understand that a human rights analysis should be part of all parliamentary decision-making.

4. The need to be non-partisan

National human rights institutions must remain non-partisan. In dealing with parliament, therefore, they should seek to develop relationships with all political parties or factions. While an NHRI may have a view on what constitutes good social policy in human rights terms, it should be careful to remain above partisan politics. This is important for the institution's independence and credibility; it also reinforces the fact that an institution is a creation of parliament and not that of a particular political party. It is especially important to maintain political neutrality during electoral processes. This does,

of course, have a practical implication, since the institution will likely be required to work with new Governments from time to time, each reflecting a different political ideology, and must be capable of doing so.

This does not mean that the institution cannot have a human rights position on issues of the day, especially ones that are politically divisive. An institution should, however, strive to present positions based on a strict human rights analysis, without commenting on the pros and cons of the alterative political views being laid out.

5. Parliamentary immunity

National human rights institutions must respect the rules governing parliamentary privileges and immunities (see also chap. III, sect. A).

C. The international human rights system

1. Treaty bodies

When a State accepts a human rights treaty through ratification or accession, it becomes a State party to that treaty and takes on the legal obligations set out in it. The treaties provide for the creation of **international committees of independent experts** (human rights treaty bodies) to monitor the implementation of their provisions in those countries that have ratified or acceded to them.

Treaty bodies review this implementation. To this end, States submit reports to them in accordance with the schedule set out in the treaty. Given their obligations and experience on the ground, NHRIs can improve the reporting process by working with those responsible for preparing reports, either by contributing to analyses or reviewing and commenting on drafts. National human rights institutions are increasingly playing a more direct role by providing information to treaty bodies. As a result, treaty bodies rely on NHRI input in assessing the reports submitted by State parties.

In turn, NHRIs are encouraged to use the recommendations and comments of treaty bodies to inform their own national programming so that these recommendations and comments are followed up.

2. Special procedures

"Special procedures" are the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues that transcend national borders. National human rights institutions can be instrumental in this process in several ways:

– Nominations: NHRIs may suggest candidates as special procedure mandate holders;

– Information: NHRIs can provide information on human rights to mandate holders, which may then result in urgent appeals;

– Human Rights Council: NHRIs may attend the presentation of special procedures reports at the Council's sessions and take the floor in the dialogue that follows.

An NHRI can encourage the Government to extend a standing invitation to all thematic mandate holders and bring specific human rights developments to their attention. When warranted, they can encourage mandate holders to request a country visit to the Government.

During the preparations or during the actual visit, NHRIs can provide reliable and relevant interlocutors. They can also provide the visiting mandate holders with relevant background information/materials, including annual or thematic human rights reports. Visiting mandate holders are generally encouraged to routinely include in their schedule a meeting with the NHRI, which might also be requested to assist in the organization of the "unofficial" part of the agenda.

Following the visit, NHRIs should translate and widely disseminate the mandate holder's report to their national contact network, including to Government officials, Members of Parliament and civil society.

The information garnered by the NHRI should then form the basis for follow-up activities and be taken into account in preparing workplans or supporting national human rights action plans. Further examples of follow-up are:

(a) Using regional networks of NHRIs to mobilize public opinion to address particular human rights issues;

(b) Organizing thematic conferences or seminars and invite the relevant mandate holders to attend;

(c) Using thematic studies when formulating legislative proposals;

(d) For "A" status NHRIs, attending sessions of the Human Rights Council and making oral statements during the interactive dialogue after the presentation by the relevant mandate holder;

(e) Maintaining regular interaction with special procedure mandate holders at their annual meeting. This could provide a venue to discuss and identify best practices and lessons learned;

(f) Monitoring retaliatory action against sources of information that have cooperated with a mandate holder during a country visit. NHRIs should inform OHCHR of such events, for the attention of the mandate holder.

3. Human Rights Council and the universal periodic review

National human rights institutions have a clear role in the Human Rights Council: those with "A" status, along with the International Coordinating Committee itself and regional coordinating bodies of NHRIs speaking on behalf of their "A" status members, are entitled to:

– Make oral statements under all agenda items of the Human Rights Council;

– Submit documents, which will be issued with a unique symbol number;

– Take separate seating in all sessions.[71]

The universal periodic review (UPR) is a human rights mechanism established through the Human Rights Council. It was created through United Nations General Assembly resolution 60/251 of 15 March 2006.[72] It reviews the human rights obligations and commitments of each United Nations Member State. It is a cooperative mechanism and is intended to complement, not duplicate, the work of the human rights treaty bodies.

Human Rights Council resolution 5/1 sets out the periodicity and process. The review operates on a four-year cycle. States prepare their reports through a broad national consultation process, which should include NHRIs.

The review is conducted in a working group and leads to a report, consisting of a summary of the proceedings, conclusions and/or recommendations, and the voluntary commitments of the State concerned. Although the primary responsibility lies of course with the Member State, resolution 5/1 authorizes the active engagement of NHRIs by:[73]

– Submitting information for inclusion in the summary prepared by OHCHR of information provided by other relevant stakeholders;

– Attending the UPR in the Working Group;

– Making general comments before the adoption of the Working Group's report in plenary;

– Being involved in the follow-up to the recommendations (although the primary responsibility for this lies with the State).

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71 Rule 7 of the Human Rights Council's rules of procedure (set out in its resolution 5/1) provides that the participation of NHRIs shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including those in its resolution 2005/74.

72 For more information, see www.ohchr.org.

73 The universal periodic review shall "ensure the participation of all relevant stakeholders, including NGOs and NHRIs, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard" (para. 3 (*m*)).

D. Other national human rights institutions and regional networks

One of the reasons why NHRIs, supported throughout by the United Nations, have developed national, regional and subregional associations was to facilitate inter-institutional dialogue and promote the sharing of best practices. Newly created institutions should be encouraged and supported in developing and maintaining contacts with these networks. Regular dialogue with other institutions will help a new institution understand that the problems it faces are common to many other institutions. More importantly, this dialogue is an opportunity to learn from others.

Some of the methods that have been used to encourage and facilitate this exchange, beyond regular meetings, are:

- Promoting staff exchanges so that institutions can benefit from the experience of others with regard to their approaches to particular issues;
- Promoting study tours from one institution to another where one has a recognized expertise in an area that the other wishes to develop;
- Promoting the sending of experts from one institution to another to help the second institution develop its own expertise;
- Organizing seminars and workshops with two or more institutions to examine a particular problem or issue in order to compare and draw lessons from how each approaches the issue;
- Encouraging the development of formal and informal relationships between institutions to allow regular contact between them, including at the staff level;
- Organizing national, subregional or regional training in a human rights area of common concern; and
- Encouraging easy and cost-effective ways of sharing information on how a given institution has dealt with a particular issue.

Encouraging participation in international and regional networks also serves to validate the newly created institution. Acceptance and accreditation by the networks will confirm that the institution operates in conformity with the Paris Principles and lend it the credibility it will need to carry out the tasks required of it. Withholding an accreditation, of course, has the opposite effect, hence the need to ensure from the outset that an institution does meet the requirements imposed by the Paris Principles.

E. Relationship with civil society

Cooperation is both a requirement and a need

As noted in chapters II and III, the Paris Principles specifically require NHRIs to cooperate with NGOs and to ensure pluralism. More pragmatically, the overall responsibilities of NHRIs in promoting and protecting human rights are extremely broad and cannot be attained without the active and ongoing engagement of other human rights actors. Cooperation is a requisite for success. Scarcity of resources is a reality for civil society generally and NGOs in particular. Cooperation and coordination are therefore needed to ensure that limited resources are used effectively, including by avoiding the duplication of effort.

Civil society, in particular NGOs, operates at the grass-roots level and will therefore have local information that may not be so readily available to an NHRI. This information is necessary to allow the institution to develop effective initiatives to deal with current issues. It also enables the institution to take preventive action to deal with local issues that might emerge later as more serious human rights problems. National human rights institutions, too, can offer civil society a number of advantages, including: a greater expertise in certain fields; a broader perspective on human rights issues; and mechanisms through which such issues may be addressed more effectively.

Civil society may be suspicious of a Government's motives for setting up an NHRI. It may view the establishment of an institution as having more to do with a Government's wish to deflect criticism than an honest desire to help secure human rights. An NHRI is, after all, a State-sponsored and State-funded organization and so it is understandable that civil society might be cynical, especially if it is not aware of the positive role an institution can play. For this reason it is important to involve civil society in the debate on the establishment of an NHRI as early as possible so that it has a stake in ensuring that the new institution satisfies the Paris Principles.

A proposed or newly created NHRI may also be seen by civil society as a potential rival for donor funding. If fact, the roles of NHRIs and civil society are complementary but different, and the establishment of a strong human rights culture in any country will require both to operate and to do so effectively. Civil society must understand that NHRIs are a fact of life, and can play a leading role in promoting and protecting human rights. They can also, through cooperation and coordination, increase programming opportunities rather than diminish them. At the same time, to the extent that an NHRI receives donor funding, this should not be at the expense of civil society. Moreover, donor funding can promote the genuine cooperation and coordination between the two sectors that is necessary for human rights to flourish.

Conclusion

Throughout this publication the important roles and responsibilities of NHRIs have been examined. Institutions do not operate in isolation, however, and there are other bodies with major roles to play in securing human rights. The task of doing so, given its enormity, importance and difficulty, can best be achieved if all those involved in promoting and protecting human rights—in particular institutions, the courts, parliament and human rights NGOs—understand their unique areas of competence and coordinate and cooperate when this is practical and appropriate. Each of these bodies can contribute greatly to the human rights situation; each must be respected and supported; each must work constructively with the others. Ultimately, the successful implementation of human rights depends on this.

IX. NATIONAL HUMAN RIGHTS INSTITUTIONS IN CONFLICT AND POST-CONFLICT SITUATIONS

Introduction

National human rights institutions operate in countries with very different histories, cultures and traditions, but conflict and post-conflict situations present particular challenges. This chapter is meant to provide the reader with an understanding of the difficulties that an institution operating in these situations faces and the ways in which it might modify its programmes to respond to these difficulties.

Learning objectives

After reviewing this chapter, the reader will be able to:

- Identify the unique challenges that an institution operating in a conflict or post-conflict situation faces and describe what impact these might have on programme delivery.

A. National human rights institutions in situations of conflict

1. Establishing institutions during conflict

During conflict, normal political, judicial and other systems have necessarily failed to resolve disputes. The consensus or practical capacity to create an NHRI may not exist in times of public emergency or may simply not be a priority. Nonetheless, establishing an NHRI during conflict may promote dialogue between moderates on all sides. It might also signal the Government's intention to deal with existing problems, as well as provide some check on potential abuses on either side of the conflict. Early planning can be undertaken with the support of the international community, perhaps in a safe zone in another country, to get the parties to focus on the creation of an institution that can start to address issues as soon as feasible.

2. Roles of national human rights institutions in times of conflict

National human rights institutions operating in conflict situations may undertake several roles, all of which are directly relevant to the core protection mandate in times of instability and heightened likelihood of serious human rights violations. These may include:

– Efforts to promote dialogue between combatants;

– Efforts to promote the establishment and growth of peacebuilding mechanisms among representative communities; and

– Efforts to encourage acceptable and necessary accommodations to deal with underlying human rights issues that may be at the root of the conflict.

National human rights institutions face particular demands and challenges in times of conflict. The role of an NHRI during an internal conflict in the country will differ from normal programme functions. The NHRI might be required to fundamentally shift programme emphasis towards core protection, peacebuilding or transitional justice, depending on the context. In all cases, the change in activity or new functions should be consistent with the enabling legislation:

- **Training, education and public awareness**: NHRIs may concentrate on community-based training, especially with regard to the need to respect the rights of minorities. Where large numbers of persons are displaced by the conflict, human rights education may also be required for host populations;
- **Investigation**: NHRIs should be aware of particular human rights problems that may occur in situations of conflict, such as the use of child soldiers or the use of sexual assault as a weapon. Another important issue is confidentiality and the protection of witness/victim identity;
- **Monitoring human rights**: NHRIs may be required to monitor events rather than investigate them since full-scale investigations may not be either desirable or possible. This will require the monitors to fully understand the human rights and humanitarian laws that apply;
- **Advice to the Government**: NHRIs have a responsibility to advise Governments during times of conflict. In fact, it is precisely during such periods that respect for human rights is the most at risk.

National human rights institutions may face criticism from the authorities and their supporters that they care more for human rights violators than for the security of citizens and victims; or that they are holding the Government accountable for

standards that are being ignored by the other side. To address these criticisms, it is important for NHRIs to ensure that rebel factions are held accountable for human rights violations, in addition to holding the State accountable for its human rights obligations.

Certain international rights norms apply to all combatants including insurgent groups. While a Government has the duty to protect itself and its people from violence, it does not have carte blanche. The major international agreements give Governments latitude to restrict the application of certain rights to ensure public order. There is a mechanism available to States to suspend or restrict some rights by derogating from a treaty, but States must follow formal procedures. If a State intends to restrict rights in this manner, the NHRI must press it to fulfil its responsibilities in this regard. Moreover, certain rights are not subject to derogation, and NHRIs must bring this fact to the attention of any Government that is considering restricting them.

Insurgents, by definition, operate outside the legal framework of a country. In some ways, therefore, it may be impossible to hold them accountable for human rights violations in the same manner as Governments. Nonetheless, some international rights norms apply to all combatants whether State actors or not. There is also a body of opinion which holds that, if an insurgent group has the effective control of an area, it is the de facto government and therefore has the same responsibilities and is liable to the same consequences as Governments for violations of customary law. An NHRI has the responsibility to let insurgent groups know that they, too, have human rights responsibilities and will ultimately be held accountable.

An NHRI must also advise the Government on how to respond to the underlying problems and tensions that have led to the conflict, since many of these will likely relate to human rights.

Peacebuilding: an institution's efforts to build peace are likely to involve at least: (a) efforts to promote dialogue between combatants; (b) efforts to promote peacebuilding mechanisms among representative communities; and (c) efforts to encourage acceptable and necessary accommodations to deal with underlying human rights issues that may be at the root of the conflict.

Promoting dialogue between combatants. Resolving conflict requires the combatants to enter into a respectful dialogue. National human rights institutions may seek ways to ensure that this dialogue can start and be sustained. The fact that there is conflict means that normal channels of dialogue have failed. It may be possible, nonetheless, in the absence of these normal channels for an institution to establish itself as the interface between combatants.

To do this, it must establish its credentials as an honest interlocutor. It must convince non-State actors that it is not a front for the Government; it must convince the Government that it is not a sympathizer of the insurgents. This might best be accomplished if the institution can join with other non-politicized social forces—religious, cultural, traditional leaders—to form a peace group whose sole aim is to encourage a peaceful solution without firm reference to terms and conditions.

Promoting peacebuilding efforts between communities. Insurgency may be fed by animosity between different communities. An NHRI can encourage and promote peacebuilding efforts between communities that feel aggrieved. Even in the most divisive circumstances there are always moderates: NHRIs should seek them out and facilitate meetings to allow them to discuss the issues underlying the conflict, as well as ways in which peace and harmony can be restored. Representatives of church groups, NGOs promoting peace, local leaders, respected elders, all can be brought together to demonstrate that change can be achieved by other ways than conflict.

Proposing solutions to underlying problems. National human rights institutions should promote acceptable solutions to the underlying issues. This requires, first, that they should develop a thorough understanding of those issues from the perspective of both sides. The institution should be seen to appreciate the points of view involved, since failure to do so will mean that one side or another will not feel that its concerns are being heard. It also means that the institution must develop recommendations that not only respond to the concerns of both sides but that are practical. If possible, attempts can be made to get agreement before moving on to more difficult issues. As with other efforts to promote peace, proposals that find favour with moderates within the combatant communities have the best chance of success.

Training, education and public awareness: an institution operating in a situation of conflict will wish to ensure that the State organs involved understand both the human rights and the humanitarian norms that apply, as well as the potential consequences of breaching them. This will be especially relevant for vulnerable groups such as internally displaced persons.

The institution may also wish to redouble its efforts in community-based human rights training, especially with regard to the need for respecting the rights of people who may not share the same political view or belong to the same cultural, ethnic or language group as the majority.

If the root of the conflict lies in a real situation of inequality, the institution must make every effort to ensure that the majority population understands the nature of legitimate grievances, as well as the need to address them.

If large numbers of persons are displaced by the conflict, training may be required to ensure that the population in areas to which persons are displaced are sensitive to their situation, as well as their rights. Similarly, institutions in neighbouring countries may have to ensure public education on the rights of refugees, where this is an issue.

Monitoring human rights: the general discussion on monitoring set out in chapter VII applies here, but certain issues take on special importance. The absolute obligation on human rights workers to "do no harm" must be respected, especially as regards individuals who may be endangered because they are on one side or another in the conflict. Safety considerations are paramount, both with regard to the public generally and the staff member; rules about confidentiality and the protection of witness/victim identity apply.

National human rights institutions will likely be restricted to incident-based monitoring since full-scale investigation may be neither desirable nor possible. This will require the monitors to fully understand the human rights and humanitarian laws that apply.

Institutions operating in situations of conflict will also likely have to monitor the situation of internally displaced persons to ensure that their needs are being adequately attended to and that, if they are from a minority population, their rights are not being ignored. Similarly, institutions operating in neighbouring countries may also have to be vigilant in monitoring the rights of refugees who arrive there.

Investigation: as with the discussion on monitoring above, the general principles that apply to human rights investigations set out in chapter V also apply to investigations in conflict. Again, as with monitoring, the obligation to "do no harm", safety and the protection of identity are particularly important to investigations conducted in situations of conflict.

An investigation into an insurgent action may not necessarily involve non-State actors, who have different legal responsibilities than States. Moreover, in many countries, NHRIs may not have jurisdiction over non-State actors. Nonetheless, the NHRI should be able

to record the facts and, where possible, make findings of fact. This will permit the evidence to be made public and may also permit NGOs or individuals to have a stronger factual base to initiate proceedings themselves. This might be particularly important if specialized international or national tribunals are set up when the conflict ends.

National human rights institutions should be aware of, and where possible fully document, particular human rights problems that may occur in conflict: the use of child soldiers or the use of sexual assault as a weapon, for example.

B. National human rights institutions in post-conflict situations

The establishment of an NHRI has become a feature of recent peace proposals and agreements. There is an acceptance that institutions can play both a preventive and a restorative role in such circumstances. Their role in promoting human rights, tolerance and respect can help ensure that local issues are resolved without recourse to violence. They can also help deal with the particular fallout from past violence in ways that bring closure. Institutions in post-conflict situations are likely to play roles that are unique to them and to modify normal programme functions to respond to the specific situations they face.

1. Unique functions of institutions in post-conflict situations

The social fabric will have been damaged by prolonged conflict and countries in post-conflict situations will therefore need to promote the different and sometimes competing demands of justice and reconciliation.

Reconciliation may ensure that people, especially those that have experienced violations, are able to voice their feelings, experiences and expectations. It may support the rehabilitation of combatants and their reintegration into society. And it helps to create an environment where people can live together again. Ensuring justice may serve to deal with past abuses so as to ensure that there is no impunity for gross human rights abuse.

The balance that is appropriate in any one country is a matter for that country, and its people, to decide, so long as it is consistent with international norms. An institution can play a useful role in helping define where this balance may be found, including by surveying the views of the people. In all cases, the activities of the NHRI should be consistent with its enabling law.

2. Documenting past abuses

Institutions that are created in post-conflict situations may be given the authority to receive and document allegations of abuse that occurred during times of conflict. The institution may not have the authority to investigate the abuses, since these would predate the creation of the institution. Nonetheless giving an institution the authority to compile allegations and evidence could serve a number of important functions. It would give victims a chance to be heard. It could facilitate the development of a databank that might be useful if a special process were put in place to deal with such abuses. It would establish a historical record.

Where conflict has resulted in serious crimes against humanity, specialized international or national tribunals may be set up. An NHRI that has documented past abuses may provide evidence in that forum.

3. Supporting reintegration

With peace comes the demobilization of combatants, and with demobilization comes the need for rehabilitation and reintegration. National human rights institutions can play a role by preparing the terrain through community-centred awareness programmes, lobbying the Government and others to financially support the initiative to ensure that ex-combatants are trained and supported in their reintegration. Allegations of abuse should be dealt with quickly and effectively. Given the overwhelming need to support reintegration and harmony, non-adversarial approaches might be the most appropriate for dealing with potential problems.

Land redistribution may also become an issue with demobilization. An institution may have to be especially vigilant and responsive to potential human rights problems related to this. These should be addressed quickly and, to the extent possible, in non-confrontational ways, since the aim should be to rebuild harmony within the community.

Reintegration issues will also arise with regard to returning refugees or displaced persons. Many of the same tensions that may arise with returning demobilized combatants will apply to these individuals as well.

4. Supporting special initiatives for child soldiers and child abductees

Child soldiers and children who have been abducted will have very special needs. Of prime importance is the need for comprehensive programmes to allow them to deal with the trauma they have experienced, which may have included sexual abuse.

There may also be a specific need to support the reintegration of the former child soldier or abducted child. This will likely involve special education and training initiatives, because their age, and other factors, may make returning to regular classrooms unrealistic. It may mean the establishment of alternative care programmes for children with no family. It may also mean special efforts to promote the acceptance of these children back into the community, which, for a variety of reasons, may be reluctant to have them back.

5. Challenges in carrying out normal programme functions

Training, education and public awareness: a country that has experienced long periods of violence and upheaval is unlikely to have developed a strong human rights culture or will have had that culture severely weakened. Institutions may therefore consider general human rights awareness training to be a priority. People who have lived under such conditions may also be unaware and/or distrustful of official mechanisms, including a newly created NHRI. Institutions will have to develop education programming to publicize what they can do and establish their credibility.

Human rights defenders, including NGO activists, are often targeted during conflict. Many may have been killed as a consequence of their activities; many more will have gone into exile and may not return immediately, if at all. This is a serious loss for the country's human rights culture and NHRIs may determine that there is a particular need to support the creation of NGOs in post-conflict situations and develop their capacity.

Many conflicts are caused or exacerbated by real or perceived inequities suffered by religious, ethnic, social, cultural, political or other minorities. To the extent that this is the case, an NHRI operating in a post-conflict situation will develop specific education programmes directed towards ensuring that minority rights are both understood and respected.

Armies and/or police forces are often implicated in human rights abuse, particularly during a period of conflict, when normal conditions of discipline and accountability may have been relaxed or ignored. In addition, a peace agreement, or simple political reality, may require the integration of former combatants into such forces. In all circumstances, but especially if rebel forces have become integrated, professional training for the army and police will likely be a priority for institutions operating in post-conflict situations.

Advice to the Government: as discussed above, to the extent that human rights issues were the cause or proximate cause of past violence, an institution will concentrate on advising the Government on how to deal with those issues in a way that will prevent them from reoccurring.

Should the State not be a party to, or have reservations to, international human rights treaties or not have acceded to their optional protocols on communications procedures,

an institution might put a premium on advising the State to do so. This is especially important if either or both could serve to mitigate the kinds of problems that led to the violence in the first place.

Monitoring human rights: to the extent that human rights issues were considered direct or indirect causes of past violence or instability, an institution operating in post-conflict situations would likely make these a priority for its monitoring activity.

Peace agreements, whether interim or final, will usually contain provisions that require one side or another, or both, to do, or to refrain from doing, certain things. Where this is the case, the institution would likely want to monitor how well these provisions are being respected. This will be especially important if there is a residue of mistrust between the parties, or if one side or the other attempts to make exaggerated or misleading claims.

Monitoring the reintegration of combatants, refugees and displaced persons into the community is also likely to be a priority for NHRIs.

Investigation: an institution is likely to consider the investigation of the root causes of past violations, including possible minority rights issues, as a priority, and link this activity with its monitoring activity. It might consider a public inquiry into the causes and consequences of past violence as a way of bringing underlying tensions into the open, where they may be discussed and resolved. The process might also be considered as part of the restorative justice process. In addition, certain issues might assume more importance to an institution since they are directly related to peacebuilding efforts: land claims and land distribution, for example, in the context of reintegration may be considered a higher priority. In either case, the institution's objective should be to restore harmony within the community and it might therefore seek non-confrontational and non-adversarial ways to resolve the conflicts.

6. Transitional justice

If NHRIs are given a transitional justice mandate or asked to support one, this assumes that the NHRI has the legal mandate to do so and that there is clarity about the role and authority that will be exercised. Activities that NHRIs might establish are:

- Monitoring and reporting
- Investigation
- Complaints handling
- Information gathering, documentation and archiving
- Cooperation with national, regional, hybrid or international judicial mechanisms.

The Government should ensure that the NHRI is properly resourced.

National human rights institutions and transitional justice: establishing capacity	
Accountability	Establish effective accountability mechanisms
	Develop a knowledge management system to document past abuses, or to support other truth-seeking/truth-telling mechanisms, and to preserve truth commission archives
	Develop a plan or programme to review and comment on enabling legislation for a truth and reconciliation commission, special court or reparation programme.
	Create capacity to advise on ■ Institutional reforms (as a remedy to address causes of conflict) ■ Legal reforms
Reintegration	Develop capacity to support the reintegration of demobilized forces, displaced persons and returning refugees into society
	Include special initiatives for child soldiers and child abductees, and integrate a gender-sensitive approach
Reparation	Does the NHRI include, as part of its outreach, information about its capacity to assist victims with claims?
	Does the NHRI promote the adoption of ad hoc measures for victims?

Source: OHCHR, "Guidance note: national human rights institutions and the work of OHCHR at headquarters and field level".

Conclusion

Institutions operating in conflict and post-conflict situations face extreme challenges that may require them to alter the programmes they implement or even undertake entirely different ones. Despite the difficulties that these institutions face, it is imperative that they should remain as active in human rights promotion and protection as possible, since it is precisely during these periods that human rights are most in jeopardy. It should also be apparent that institutions operating in these extreme and difficult situations deserve the support and encouragement of the international community, including their fellow institutions.

X. SUPPORTING NATIONAL HUMAN RIGHTS INSTITUTIONS

Introduction

There is growing interest in NHRIs, partly because of an increased acknowledgement that strong national mechanisms are important to ensure human rights are implemented locally. For this reason, the establishment of an NHRI is increasingly being mandated by peace agreements brokered with international assistance in countries that have been torn by war or rebellion. More generally, the United Nations has increasingly suggested that NHRIs are an important indicator of a State's commitment to human rights and it has supported them in their infancy. The international aid agencies of many countries have also supported the establishment and strengthening of NHRIs. In addition, international and regional networks of NHRIs have been influential in encouraging their creation.

This chapter is meant to provide the reader with a good understanding of how the creation of an NHRI may be supported and what is critical to ensuring that the process is successful. It begins with the pre-establishment phase, including broad-based consultation. Advocates can support the process, but the process must be driven by national will. It goes on to discuss the key considerations in the establishment phase and makes a number of suggestions for achieving success.

Learning objectives

After reviewing this chapter, the reader will be able to:

- Describe, in general terms, a three-stage process for encouraging and supporting the establishment of NHRIs;
- Describe the management challenges that a newly established institution might be required to address immediately; and
- Describe the benefits that might come from establishing links with other NHRIs.

A. Pre-establishment phase

The **pre-establishment phase** extends from assessing the country situation, to supporting the Government to create a national consensus, launching a national dialogue and drafting an enabling law.

National human rights institutions compliant with the Paris Principles are a United Nations priority. Donors and international partners should therefore actively assess opportunities, while noting the risks, of working to establish NHRIs that meet the Paris Principles. Several political, economic and socio-legal factors will influence the decision to support the establishment of an NHRI, the approach to be used, as well as the scope and length of United Nations engagement, such as:

– The level of political will;

– The strength of the existing culture of human rights;

– The legal context, including the judicial system;

– The stability of the country.

1. Developing national consensus

A national consultation process should precede the establishment of an NHRI to build consensus and maximize the likelihood of public acceptance.

In exceptional circumstances, the impetus for creating NHRIs is **internationally driven**, through efforts, often led by the United Nations, to bring about peace and/or civil reconstruction to countries torn apart by war and internal divisions. More often, however, the impetus or driving force takes the form of a **request from the State to the United Nations**. This may be influenced by external factors: for example, recommendations in an international document, such as a universal periodic review, or pressure exerted by key stakeholder communities. However, because an NHRI is, by definition, a State-sponsored entity, the State itself must accept the need for and the desirability of establishing one.

Consensus from and within the State: the establishment of an NHRI involves a conscious decision by the State to subject itself, its apparatus, its decisions and its personnel to independent oversight by the NHRI.

The State must truly accept this: it is itself likely to be the main respondent to many human rights complaints, especially where there is a recent history of conflict and abuse of power. National Governments may not be receptive or committed to human rights, which are often viewed in "political" terms.

UNCTs can lay the groundwork if the Government or some part of it has expressed an interest. Or it may be done over time by instilling the idea of an NHRI among key stakeholders, holding national seminars and meetings, and supporting study trips and research. Even if the idea comes from the State itself, UNCTs should support work to develop a national consensus, in particular through the active engagement of stakeholders.

Several approaches can be used to develop a national consensus, such as a high-level national conference on the establishment of an NHRI, as well as parallel workshops, public meetings and a media strategy. Dialogues among similar organizations—grouping NGOs with NGOs, for example, or bringing together academics—would also be an effective strategy and allow for the cross-fertilization of ideas.

2. The importance of stakeholder engagement

A Government can signal that it is serious about creating an NHRI that complies with the Paris Principles by involving stakeholders. Stakeholder participation has many advantages:

– It ensures transparency;

– It fosters a healthy and sustainable culture of human rights;

– It ensures that the institution meets the needs of the people;

– It improves compliance with the Paris Principles.

Involving stakeholders representing a diversity of interests ensures that pluralism is built into the process and that civil society buys into the concept of an NHRI. This should include organizations that represent the interests of vulnerable groups. It should include Government, parliament, senior public servants, civil society, media and academia, as well as members of the international community and regional networks of NHRIs.

3. Starting the process

At some point, national authorities may decide to create an institution. National human rights institutions must have a legislative foundation, either through a constitutional provision or ordinary legislation, or both, and only the State can ensure this is done and the sovereignty of the State must be respected in this regard. This means that an "official" process designed to lead to the establishment of an NHRI must involve the Government and is usually led by it. At this point in time, a Government **focal point** should be identified to oversee the establishment of the NHRI.

The focal point can reside in a ministry, with a supportive minister, and be supported by senior staff in the ministry. Alternatively, it might be spearheaded by a parliamentary committee. In some countries, the office of the president, or an equivalent office, may oversee the process. Whatever the mechanism used, two factors are critical: (a) the Government must be serious about its commitment to proceed, and (b) the process put in place to do so should be as transparent and participatory as possible.

The Government can show its commitment by publicly confirming that the institution will conform fully to the Paris Principles and by facilitating broad-based consultations with all stakeholders. Ensuring that the process remains broad-based will also give the institution legitimacy in the eyes of key human rights stakeholders. A commitment to conforming to the Paris Principles and to the broad-based process will help ensure that the institution is as strong and independent as possible and will contribute to its eventual effectiveness.

Several key factors must be examined closely in the process of establishing an NHRI. A decision must be made on the nature and mandate of the new NHRI. The considerations that must be examined in this analysis are discussed in chapters II and III.

It may be helpful if one or more working groups with representatives of all important social sectors are set up, perhaps assisted initially, periodically or in an ongoing manner by NHRI practitioners and/or experts, to examine these issues. If more than one working group is created, all groups should meet regularly to assure that each shares the same basic vision and understanding.

4. Seeking United Nations assistance

In developing countries, the United Nations can provide concrete and specific start-up funding and, in some instances, core funding.

If the country seeks assistance from the United Nations, a formal request is generally required, in the form of a letter, from the country to United Nations officials. The Resident Coordinator is the entry point for such requests at the country level. As the representative of resident and non-resident United Nations agencies, the Resident Coordinator can mobilize appropriate support. The letter may be addressed to both the country Resident Coordinator and the United Nations High Commissioner for Human Rights.

The letter should in any case be copied to the local United Nations representative, if there is one, and to the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Moreover, there may be regional associations that work closely with OHCHR or UNDP on establishing NHRIs and they may be copied as well.

OHCHR, UNDP and other partners, as appropriate, can provide a coordinated international response to the request for assistance. This would generally involve relevant United Nations agencies, regional associations and NGOs, international organizations, donor agencies and others.

Inception missions by independent regional or international experts have proved useful in helping to set out the parameters of potential needs and developing the framework for a project document or other planning tool for UNCTs. These missions bring in experts for an orientation period to begin generating the internal country dialogue to create an NHRI. The OHCHR National Institutions and Regional Mechanisms Section and UNDP have years of experience in locating suitable persons to carry out such assignments. These are typically individuals who have relevant experience in NHRIs. They should be consulted jointly if it is determined that an inception mission is necessary to help define the needs more precisely, as well as to develop the project.

5. Developing the legal framework

Once the Government decides which type of NHRI it wishes to set up (see chap. II), the technical groundwork must be laid for the enabling legislation. The enabling law must be grounded in the constitution or in legislation or both (see chap. III).

Scope of mandate

As noted in chapters II and III, effective NHRIs generally have a broad and non-restrictive mandate, which covers civil, cultural, economic, political and social rights. Their programmes should focus on issues that are relevant to the country and that are seen as important to the public, as well as to civil society, the Government and public bodies.

At a minimum, NHRIs should be vested with competence to both protect and promote human rights. A simple statement to this effect is appropriate in the early sections of enabling legislation. A broad statement to the effect that the NHRI is entitled to look into, investigate or comment on any human rights situation, without any form or prior approval or impediment, is also desirable, to ensure independence and autonomy. Reference to applicable international instruments is also desirable.

Applying only to the public sector or more broadly? Human rights laws typically apply to the Government at a minimum, including all departments and administrative branches of the State, law enforcement bodies, the army, correctional and detention facilities, local government administration, government committees and agencies. It usually extends to State-owned and to Government-controlled companies, too.

It is important to establish whether the law will apply also to non-governmental sectors. Although human rights commissions in developing and post-conflict countries tend to focus on State action, human rights violations can also be caused by the actions of

other entities in other sectors, for example, corporations, partnerships or persons with authority over employment, housing and other sectors.

Non-State actors also have human rights responsibilities, and a State's international obligations extend to ensuring human rights are respected by non-State actors, too. The Paris Principles are consistent with a broader application of the NHRI mandate to both the private sector and the public sector.

There should be **no unnecessary duplication**. For example, if there is an independent electoral commission with the authority to receive and deal with complaints relating to the right to participate in elections or the conduct of elections, there is no need to give the NHRI the same authority, although nothing should preclude independent decisions to review human rights abuses by any other institution. That said, NHRIs should cooperate with and support the functions of other institutions that are also concerned with human rights, directly or indirectly.

A broad mandate should be planned to correspond with the financial capacity and the human resources. Even if the institution is to be mainly or entirely funded through donor assistance at the outset, at some point international donors, such as the United Nations, will require an exit strategy and the NHRI will have to be funded through the State budget. If a small budget is planned with few people and no authority to investigate complaints (an activity that generally requires several staff), then a full mandate is not likely to be properly carried out.

6. Funding

The basic requirements for funding are addressed in chapter III. In short, basic infrastructure and staff costs are foreseeable and can be planned for at this stage. It is important to ensure that there are funds earmarked for programme spending beyond fixed operating expenses, since planned activities will be developed only at the time of the strategic planning in the establishment phase. While the specific activities are not yet known, a draft budget envelope can be developed based on consultations with regional NHRIs and other associations with NHRI expertise.

In its general observations, the Sub-Committee has noted that funding from external sources, such as development partners, should not compose the core funding of the NHRI as it is the State's responsibility to ensure a minimum activity budget so that the NHRI can operate and work towards fulfilling its mandate. In this regard, NHRI salaries in particular are a State responsibility and supplements from donors would, in any case, end once the project ends.

There is a view that, in some circumstances, such supplements are necessary for the institution to attract and retain high-calibre members and staff at the outset and buy time during which more suitable, long-term corrections to the institution's budget can be made either legislatively or administratively.

B. Establishment phase

The **establishment phase** covers the period immediately after the institution is established in law, when support will focus on structural issues, institutional development and the beginning of operations.

- **Key infrastructure** (premises, transport, telecommunications, information technology, etc.)
- **Organizational development** (leadership, organizational structure, strategic planning, human resources and knowledge management)
- **Financial resources** (Government support, donor cooperation, financial constraints and financial management)
- **Human rights capacity** in substantive and thematic areas (including the rights of vulnerable persons, core protection, human rights-based approaches to development, transitional justice, and human rights and business)
- **Functional areas of capacity** (protection, promotion, cooperation with stakeholders, international liaison, advice to Government).

1. Premises

The Government is responsible for ensuring the NHRI has suitable premises. Even in countries experiencing severe financial limitations, the Government should provide either office premises or land for suitable premises.[74] Ideally, an institution will own its premises (although many do rent).

To ensure independence as set out in the Paris Principles, NHRI premises should be:

- Located away from government buildings;[75]
- Accessible: easy to get to and into and centrally located;
- Close to public transport;
- Accessible to persons with disabilities.

The location should not be on property that casts doubt on the credibility of the institution or its office holders, especially if the costs are high and it is perceived as elitist and out of touch with social realities.

2. Transport

National human rights institutions must be mobile and should be able to go out to communities to deliver programming effectively, for instance for public education, monitoring or complaint investigations.

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[74] For example, see the Sub-Committee on Accreditation's comments in October 2008, with reference to the application from Afghanistan, on the importance of the Commission having its own premises and being independent of the Government, available from www.nhri.net.

[75] NHRI premises should be easily distinguished from those of the Government. In particular, efforts should be made to avoid co-locating with government agencies that might have a "chilling" effect on complainants. These would include the police or ministries for the interior. Instead, NHRIs might co-locate with other independent agencies, such as the auditor-general, ombudsperson, anti-corruption commission, etc. Nevertheless, it is not unusual in developed countries to see NHRIs located in government buildings or buildings occupied primarily by government departments. Much depends on the level of democratic governance, respect for the rule of law, and risks related to security and confidentiality.

3. Telecommunications

Telecommunications are central to programme delivery and must be part of a general project of technical support. Along with information technology (IT) requirements, telecommunications needs should be set out in a **needs assessment**. As IT and telecommunications technologies converge, integrated planning for both systems is increasingly the standard. While office needs assessments tend to be standard in the public service, there are some NHRI-specific issues that merit attention.

Telephone and fax services: although e-mail is widely used, inexpensive and quick, e-mail attachments are not secure (unless they go through a secure server) and can be intercepted. This will be a particular concern for documents containing sensitive information about human rights investigations and cases. This means that the fax is still a relevant technology.

Mobile phone: the use of mobile technology is widespread and officials and officers who travel in the field must have mobile phones.

4. Information technology

It is impossible for an institution in any country to function without information technology. The institutional needs should be assessed by an IT specialist working closely with the telecommunications specialist. The assessment should address both the immediate needs of the institution—for example, activities in its preliminary planning phase or in umbrella projects—and longer-term organizational growth.

The following items should also be considered:

- Software and hardware purchases should be accompanied by enhanced warranties for after-sales service;
- Secure and regular backup of data and, preferably, secure off-site storage of data;
- Access to the Internet through a secure connection;
- Standard office software package with word processing, e-mail, calendar functions, spreadsheets, etc.
- A simple off-the-shelf database for capturing case management, administrative and management information;
- A server and e-mail domain separate from government offices;
- Firewalls and enhanced security features to protect sensitive information, as well as up-to-date anti-virus protection.

5. Other requirements

Standard office equipment specifications are part of any appropriation plan.

In addition, while specific requirements will of course vary, basic additional requirements that may be particular for an NHRI might include: **specialized equipment for investigators** (digital cameras, audio recorders, secure storage, dedicated photocopying and scanning capacity, etc.) to record and securely store physical evidence and witness testimony. Similarly, **education and promotion staff** will need specialized equipment to conduct seminars and workshops such as screens, flip charts, facilitation boxes, microphones, and projectors or portable white boards. **Corporate requirements** also tend to be relatively standard: in addition to basic IT and communications, a typical needs assessment will identify and address requirements related to the need to ensure confidentiality for stored personnel and financial information and documents such as secure filing cabinets, etc.

In some countries, a **generator** is vital to provide power when there are electricity outages, brownouts or other interruptions of power supply. Off-grid solutions such as solar energy collectors and other sources of energy can easily be planned during a design phase and represent sustainable solutions for the NHRI in the longer term.

6. Organizational development

Organizational development includes leadership development, strategic planning, organizational structure, human resources and knowledge management.

Leadership

A credible and transparent process for **appointing NHRI members or their governing bodies** is critical. Since this process is intrinsically linked to the accreditation of the NHRI and to compliance with the Paris Principles, it is dealt with in detail in chapter III.

A survey shows that making the governing body diverse is a challenge for NHRIs. This should therefore be addressed at the establishment phase rather than later on.

See OHCHR, "Survey of national human rights institutions".

Investing in NHRI leadership is fundamental to its human resources management. Leadership development programmes should be dedicated to this group, in part because of the members' unique responsibilities.

These topics have been identified by the AFP-UNDP-OHCHR Capacity Assessment Project:

- Orientation and training on strategic planning for leaders
- Leadership modelling
- Result-based management
- Change management, including stakeholder engagement and managing external relations
- Competency-based recruitment for both management and staff—including practices that are sensitive to diversity issues
- Negotiation skills and consensus-building
- Ethics
- Human rights training.

AFP-UNDP-OHCHR, Capacity Assessment Project (see Forum Councillors Meeting, Fifteenth Annual Report, 2010).

Strategic planning

Demands on a new NHRI will almost certainly be greater than the resources at hand. New institutions must therefore identify specific priority activities to achieve results. Strategic planning is the key vehicle for achieving this.

Strategic plans are not ends in themselves. They are "road maps" that are useful only if they lead to a concrete plan of action that is monitored regularly, and adjusted to achieve objectives. There are **basic outcomes that should result from a good strategic planning process**, for instance:

- Clear articulation of the vision, mission and values of the NHRI
- A few high-level strategic priorities

– Outcomes

– Key indicators, including baseline data on indicators

– Targets

– A schedule or programme of evaluation for the strategic plan.

Outcomes, indicators and targets are usually set out in broad terms in the strategic plan itself, but details about activities and their costing should be contained in a workable action plan that aligns resources with objectives in a way that is effective and coordinated.

Organizational structure

At the establishment phase, the roles and responsibilities of each member or groups of members should be clearly defined. While the chief commissioner or ombudsman will have obvious responsibilities as the senior official, the roles of the other members should be clarified in a human resources plan based on an approved structure. The organizational structure should reflect the general mandate, roles and responsibilities of the NHRI, with a focus on functional areas of responsibility.

Responsibilities, accountability and delegation of authority should be clear: the levels of hierarchy should be kept to a minimum.

An effective organizational structure will support good human resource management, effective and quick decision-making and clear lines of authority. Moreover, the organization must support all of the areas of human rights capacity and the functional areas of capacity.

Human resources

It is often difficult for new institutions to find experienced and suitable candidates, especially for positions that may be unique to an NHRI such as human rights investigators, mediators and conciliators and, to a lesser extent, human rights monitors. Even for those positions for which some professional skills may exist—policy development, public education, research, legal analysis and advice—individuals with the required professional qualifications will not necessarily have specific experience in or knowledge of human rights. It is highly likely, therefore, that the institution will need to provide substantive skills and knowledge training to new staff, and do so very early on in its mandate.

At the outset, the senior staff should develop a human resources or corporate manual, setting out recruitment and promotion policies, terms and conditions of employment, performance evaluations, training, and procedures and processes for ensuring internal equity and respect for human rights.

National human rights institutions should have the authority to hire their own staff. This will help ensure that suitable persons are chosen to carry out the various functions that the institution will perform; it will help ensure the independence of the institution, since the loyalty of the individuals hired will be to the institution itself and not to some other authority.

Most countries have human resource policies in their public services that apply to all government agencies, boards and commissions, including NHRIs.

However, NHRIs should have flexibility in applying public service guidelines to recruitment. This is especially so as regards the possibility of hiring outside of the civil service system. There are many reasons for this: the most qualified candidates for NHRI jobs will likely be those who have NGO experience as opposed to Government experience.

Because NHRIs must demonstrate that the staff profile is merit-based, gender-balanced and representative of the population they serve, this may require a search beyond those already employed in Government.

An institution must demonstrate that it has been absolutely non-discriminatory and shown no nepotism in recruitment. It must stand as an example. Because of the need for the institution to demonstrate pluralism and diversity at all levels, an institution should also, where appropriate, use special measures to advance the position of underrepresented minorities and women. Finally, while all employees of an institution must bring the necessary skills to the job, they must also have a personal commitment to human rights in order to perform their assignments. The selection process must therefore look beyond skills to determine the personal suitability of candidates. The institution's recruitment and promotion policies must serve as a model: they must be progressive, and may include special or temporary measures.

In its general observations, the Sub-Committee on Accreditation has noted that salaries and benefits awarded to staff should be "comparable" to public service salaries and conditions. However, public sector salaries may not always be adequate or appropriate. Thus, comparable salaries should be a minimum criterion.

Training and professional development

Because of the specialized nature of NHRIs, it is unlikely that either the members or the staff of the institution will come to their jobs fully equipped for their new positions. This makes training especially important for NHRI staff. Training should cater to both short-term and longer-term needs, and so should address professional development as a broader objective. Institutions must embrace the notion of achieving excellence: this means members and staff should be known as experts in their fields. Human rights issues evolve over time and so professional training is part of the "lifetime of learning" philosophy.

Training and development are more than a one-time transfer of knowledge and skills: they should seek to ensure sustainability so that the NHRI develops the internal capacity to provide its own in-house training and develop **training-of-trainers programmes**. This will mean that an "engaged" or participatory approach is preferred. A core group of NHRI staff should be involved in all aspects of the training: programme and material development; delivery; and evaluation. It also means that the trainer will be required, in tandem with the core NHRI group, to develop a **training manual** that the NHRI can use for subsequent in-house training. This approach, while more costly at the front end, promotes sustainability and allows the NHRI to train and orient new staff in core human rights issues.

Training should be based on a **needs assessment** that systematically structures all training needs and links them to job descriptions and operational requirements, as well as to the strategic plan.

Knowledge management

Planning requires research and data, and these in turn require effective information systems to capture, manage and use the data. This group of activities is often collectively called "knowledge management".

Knowledge management is important for any organization, but NHRIs present special challenges. Experience in several countries shows that NHRIs face high staff turnover and of course senior officials such as commissioners and ombudsmen change on a regular basis. As new institutions without developed traditions and systems of transferring knowledge and experience, NHRIs can become dependent on individual memory.

To avoid these problems, institutions need to develop their own memory and capacity.[76] This can be done by creating **information systems** to manage data and trends, and to generate **management information**.

(a) Management information

Being able to assess the performance of an NHRI depends on access to valid, reliable and periodically produced data, including data disaggregated by the relevant human rights ground (say, race or gender). It also implies the ability to capture internal information about case management within the NHRI. Details about case flow, support tools and information management are technical issues and require the hands-on experience of individuals who have "lived the experience", having participated in the design of the software to support the business processes and clearly understanding what is required from the "business" side.

(b) Research

Other types of knowledge management activities require long-term planning:

- Internal **research programmes** (either within the institution generally or in specialized units or centres);
- Internal **archives or documentation centres** that systematically collect and classify data;
- **Information management systems** to support human rights-based approaches to development and the management and monitoring of socio-economic data.

7. Human rights capacity

Developing capacity in **substantive and thematic areas of human rights** is central to the establishment phase. It deals with the ability to formulate policies, strategies and programming based on the established and emerging human rights issues facing the country.

In addition, there are cross-cutting areas of human rights capacity that must also be addressed in the establishment phase, such as **core protection** (including torture prevention), **human rights-based approaches** to development and incorporating **economic, social and cultural rights** into NHRI work. In addition, two areas discussed earlier, human rights and business and transitional justice, may be important aspects of NHRI work.

At the establishment phase, it is important to consider the structures and processes that might best support the development of thematic areas: For example:

– Strategic planning will identify particular priorities;

– Training and development for members and staff will ensure that staff have the knowledge they need;

– National human rights institutions may create structural solutions: specialized departments, units, centres and individual focal points are used to address issues related to vulnerable persons, for example, depending on national circumstances and priorities;

– Knowledge management activities in relation to the selected thematic areas.

[76] Richard Carver and Alexei Korotaev, "Assessing the effectiveness of national human rights institutions" (2007). Study commissioned by the UNDP Regional Centre in Bratislava.

8. Investigations and complaints handling

National human rights institutions in the establishment phase have to build effective systems to ensure the quick and effective resolution of investigations. For NHRIs with the additional power to receive individual complaints, this part of the work assumes particular significance. It is not unusual, from the very earliest phases, to see NHRIs quickly overwhelmed with large numbers of cases. The dangers of being overwhelmed are more serious in countries where established and familiar governance systems are in transition, have been eroded or have disappeared completely.

(a) Effective case flow design

An effective, well-designed case flow will ensure that the investigation is thorough without being overly complicated, that procedural fairness is respected, and that decisions are taken at the appropriate time and level. It is also necessary to understand the case flow system in order to develop appropriate work tools and establish the data collection system.

(b) Work tools for case management

It is important for any organization to develop work tools for its staff. New investigators are unlikely to have significant experience in investigating human rights abuses. Members of NHRIs such as commissioners, no matter how competent, are equally unlikely to have this knowledge. Training will help, but developing standard tools, operating policies in manuals or similar tools is critical. Several NHRIs use standard forms and precedents in the case management process, but not all have clear, comprehensive and regularly updated manuals. Manuals are major undertakings and should be seen as projects, once the case design and other basic working processes are in place.

These policies and procedures need not be overly detailed at the outset, but they should provide staff with sufficient guidance on what they must do to meet their obligations and to ensure a degree of consistency. These instructions will have the added benefit of being useful training documents for subsequent staff.

The clearest need for such documentation is in complaints-handling, since human rights investigation is a function that is largely unique to NHRIs. Basic policies and procedures will likely be required for all stages of the complaints process, for monitoring and for areas that are specialized, such as prison monitoring. It should not be too difficult to develop these, since many prototypes are already being used by institutions elsewhere.

C. Consolidating and strengthening national human rights institutions

After an NHRI is established, and after it has carried out its basic functions and programming, there is an ongoing, indeed critical step of taking stock and strengthening capacity, while taking corrective action as required. Partners, civil society and the NHRI itself will be in a better position to assess whether its work is progressing properly or whether a change in direction is necessary.

Unlike in the previous phases, there are fewer predictable activities that can be cited as common to NHRIs at this phase. Each institution will present unique challenges, and while there may be some trends, the lack of uniformity means that evaluations are critical across all the areas outlined above:

– **Key infrastructure**: premises, transport, telecommunications, IT, etc.;

– **Organizational development**: leadership, organizational structure, strategic planning, human resources and knowledge management;

– **Financial resources**: Government support, donor cooperation, financial constraints and financial management;

– **Capacity** in substantive areas of human rights, including the rights of vulnerable persons, core protection, human rights-based approaches to development, etc.;

– **Functional areas of capacity**: protection, promotion, cooperation with stakeholders, support to the international human rights system, and advice to Government.

The type of evaluations that NHRIs are currently focusing on is **capacity assessment**. It is an analysis of *current* capacities against *desired future* capacities. The results can help to promote better understanding of capacity assets and needs, which, in turn, can lead to the formulation of capacity development strategies.

Capacity assessment focuses on the internal ability of the NHRI to do its work and, as a result, on the opportunities to improve. If the institution has not carried out this work, it is an indication that it does not understand and/or has not implemented a proper strategic planning process, and this should be a focus of renewed capacity development. Based on experience, particular attention should be paid to the following:

- Much of the reputation of the NHRI will rest on its capacity to manage its case load. However, being able to identify problems and improve matters is not easy.
- The ability to identify and address systemic issues is a key indicator of whether an institution has matured.
- There are a number of indicators to assess whether the NHRI has adequate and appropriate premises to carry out programming commensurate with its level of operational maturity.
- Assessing the adequacy of its key infrastructure and human resources is crucial to assessing the organization's success. There are several basic indicators that can signal whether an institution's human resources system is thriving or faltering.
- A mature NHRI should have developed ongoing and substantive relationships with the United Nations system, in particular OHCHR and UNDP, and with local NGOs, as well as with regional and international networks of NHRIs.
- As the organization matures, its structure should be examined to ensure that it can begin to support thematic focuses and develop expertise in specific areas of work, including gender equality, children's rights and internally displaced persons, to name a few.

- The choice of structure that an NHRI will select for thematic focuses and specific areas of work will depend on a variety of factors: importance of the issue in the country; resources; availability of qualified individuals; perceived need to have a high-placed individual (usually a commissioner) charged with the responsibility; the management philosophy of the leadership, and so on.

Assessing the capacities of NHRIs and evaluating their progress will help to identify areas for improvement and, in turn, offer "road maps" for future action plans.

Conclusion

National human rights institutions can be an important vehicle for ensuring that international human rights norms are implemented fully and effectively in the national context. For this reason, many have been established in the past decade. Institutions will have a better chance of success, however, if they are established through processes that involve key national stakeholders directly. The knowledge and experience of international experts can and should also be tapped, but ultimately an institution must reflect a national consensus. Several key areas will be critical in the debate leading to the establishment of an institution, including the selection of the model for the institution, the determination of its mandate and the development of appropriate legislation. All of these should be the subject of transparent and meaningful consultation. Newly established institutions will also be required to deal quickly with important issues, such as defining an organizational structure, hiring and training staff, and developing a strategic plan. These institutions should be encouraged and helped to establish links with the international and regional networks of NHRIs whose experience may be helpful, as well as with OHCHR.

Annexes

Annex I

The Paris Principles

The Paris Principles, which the General Assembly welcomed and annexed to its resolution 48/134 (see below), define the minimum conditions that an NHRI must meet if it is to be considered legitimate. An NHRI in compliance with the Paris Principles is one that has a broad responsibility to promote *and* protect human rights, and that can act independently from the Government, including in coming to opinions and decisions on human rights matters within its jurisdiction and publicizing them.

Principles relating to the status of national institutions

(annexed to General Assembly resolution 48/134)

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(*a*) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(*b*) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(*c*) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(*d*) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations

and, where necessary, to express an opinion on the subject, with due respect for their independence;

(*e*) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(*f*) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(*g*) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(*a*) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(*b*) Trends in philosophical or religious thought;

(*c*) Universities and qualified experts;

(*d*) Parliament;

(*e*) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(*a*) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(*b*) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(*c*) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(*d*) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(*e*) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(*f*) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(*g*) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(*a*) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(*b*) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(*c*) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(*d*) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Annex II

List of national human rights institutions accredited by the International Coordinating Committee (June 2010)

In accordance with the Paris Principles and the Statute of the International Coordinating Committee, the Committee uses the following classifications for accreditation:

A Compliance with the Paris Principles

B Not fully in compliance with the Paris Principles

C Non-compliance with the Paris Principles

"A" STATUS INSTITUTIONS

National institution	Status	Year reviewed[a]
Asia and the Pacific		
Afghanistan: Independent Human Rights Commission	A	October 2007 Placed under review November 2008 - A
Australia: Australian Human Rights and Equal Opportunity Commission	A	1999 October 2006
India: National Human Rights Commission of India	A	1999 October 2006
Indonesia: National Human Rights Commission of Indonesia	A	2000 March 2007
Jordan: National Centre for Human Rights	A	April 2006 March 2007 October 2007 Will be reviewed in October 2010
Malaysia: Human Rights Commission of Malaysia (SUHAKAM)	A (see Sub-Committee on Accreditation's report November 2009)	2002 April 2008 Will be reviewed in second half of 2009 To be reviewed at the Sub-Committee's second session of 2010
Mongolia: National Human Rights Commission of Mongolia	A	2002 – A (R) 2003 November 2008
Nepal: National Human Rights Commission of Nepal	A	2001 – A (R) 2002 - A Special review started in April 06 Under review in March 07 October 2007 November 2008 – A (to be reviewed in second half of 2009) In 2009 deferred to first session of 2010 March 2010: recommended to be accredited with B

[a] Unless specified, previous years in the third column refer to the same status as the most recent one.

National institution	Status	Year reviewed[a]
New Zealand: New Zealand Human Rights Commission	A	1999 October 2006
Palestine: Palestinian Independent Commission for Citizens' Rights	A	2005 - A (R) March 2009 - A
Philippines: Philippines Commission on Human Rights	A	1999 March 2007 October 2007
Qatar: National Committee for Human Rights	A	October 2006 (B) November 2008: deferral to March 2009 March 2009 - A Will be reviewed in 2010 (first session) March 2010: deferral to October 2010
Republic of Korea: National Human Rights Commission of the Republic of Korea	A	2004 November 2008
Timor-Leste: Provedoria for Human Rights and Justice	A	April 2008
Thailand: National Human Rights Commission	A	2004 November 2008
Africa		
Cameroon : National Commission on Human Rights and Freedoms	A	1999 - A October 2006 – B March 2010 - A
Egypt: National Council for Human Rights	A	April 2006 - B October 2006
Ghana: Commission on Human Rights and Administrative Justice	A	2001 November 2008
Kenya: Kenya National Commission on Human Rights	A	2005 November 2008
Malawi: Malawi Human Rights Commission	A	2000 March 2007
Mauritius: Commission Nationale des Droits de l'Homme	A	2002 April 2008
Morocco: Conseil Consultatif des Droits de L'homme du Maroc	A	1999 – A (R) 2001 October 2007 Will be reviewed in October 2010
Namibia: Office of the Ombudsman	A	2003 (A (R)) April 2006
Rwanda: National Commission for Human Rights	A	2001 October 2007
Senegal: Comité Sénégalais des Droits de l'Homme	A	2000 October 2007 Will be reviewed in October 2010

National institution	Status	Year reviewed[a]
South Africa: South African Human Rights Commission	A	1999 – A (R) 2000 October 2007
Togo: National Commission for Human Rights	A	1999 – A (R) 2000 October 2007
Uganda: Uganda Human Rights Commission	A	2000 – A (R) 2001 April 2008
United Republic of Tanzania: National Human Rights Commission	A	2003 – A (R) 2005 – A (R) October 2006
Zambia: Zambian Human Rights Commission	A	2003 A (R) October 2006
The Americas		
Argentina: Defensoría del Pueblo de la Nación Argentina	A	1999 October 2006
Bolivia (Plurinational State of): Defensor del Pueblo	A	1999 - B 2000 March 2007
Canada: Canadian Human Rights Commission	A	1999 October 2006
Colombia: Defensoría del Pueblo	A	2001 October 2007
Costa Rica: Defensoría de los Habitantes	A	1999 October 2006
Ecuador: Defensor del Pueblo	A	1999 – A (R) 2002 April 2008 2009
El Salvador: Procuraduria para la Defensa de los Derechos Humanos	A	April 2006
Guatemala: Procuraduría de los Derechos Humanos de Guatemala	A	1999 - B 2000 – A (R) 2002 April 2008
Honduras: Comisionado Nacional de los Derechos Humanos de Honduras	A	2000 October 2007 A status placed under special review for October 2010
Mexico: Comisión Nacional de los Derechos Humanos	A	1999 October 2006
Nicaragua: Procuraduría para la Defensa de los Derechos Humanos	A	April 2006
Panama: Defensoría del Pueblo de la República de Panamá	A	1999 October 2006
Paraguay: Defensoría del Pueblo de la República del Paraguay	A	2003 November 2008

National institution	Status	Year reviewed[a]
Peru: Defensoría del Pueblo	A	1999 March 2007
Venezuela (Bolivarian Republic of): Defensoría del Pueblo	A	2002 April 2008
Europe		
Albania: Republic of Albania People's Advocate	A	2003 – A (R) 2004 November 2008
Armenia: Human Rights Defender of Armenia	A	April 2006 – A (R) October 2006
Azerbaijan: Human Rights Commissioner (Ombudsman)	A	October 2006 A status placed under special review for October 2010
Bosnia and Herzegovina: Human Rights Ombudsman of Bosnia and Herzegovina	A (see Sub-Committee on Accreditation's report November 2009)	2001 – A (R) 2002 - A (R) 2003 - A (R) 2004 November 2008: deferral of review to October/ November 2009 Placed under review – November 2009
Croatia: Ombudsman of the Republic of Croatia	A	April 2008
Denmark: Danish Institute for Human Rights	A	1999 – B 2001 October 2007
France: Commission Nationale Consultative des Droits de l'Homme	A	1999 October 2006 review deferred to October 2007 October 2007
Georgia: Public Defender's Office	A	October 2007
Germany: Deutsches Institut für Menschenrechte	A	2001 – A (R) 2002 – A (R) 2003 November 2008
Great Britain: Equality and Human Rights Commission	A	November 2008 A status placed under special review for October 2010
Greece: National Commission for Human Rights	A	2000 – A (R) 2001 October 2007 Reviewed November 2009 A status maintained - November 2009
Ireland: Irish Human Rights Commission	A	2002 - A (R) 2003 - A (R) 2004 November 2008

National institution	Status	Year reviewed[a]
Luxembourg: Commission Consultative des Droits de l'Homme du Grand-Duché de Luxembourg	A (see Sub-Committee on Accreditation's report March 2009)	2001 – A (R) 2002 Reviewed in November 2009 To be reviewed in October/ November 2010
Norway: Center for Human Rights	A	2003 A (R) 2004 A (R) 2005 A (R) April 2006
Northern Ireland: Northern Ireland Human Rights Commission	A	2001 - B April 2006 - B October 2006
Poland: Commissioner for Civil Rights Protection	A	1999 October 2007
Portugal: Provedor de Justiça	A	1999 October 2007
Russian Federation: Commissioner for Human Rights in the Russian Federation	A	2000 - B 2001 – B November 2008
Scotland: Scottish Human Rights Commission	A	November 2009: deferral to March 2010 March 2010
Serbia: Protector of Citizens of the Republic of Serbia	A	March 2010
Spain: Defensor del Pueblo	A	2000 October 2007
Ukraine: Ukrainian Parliament Commissioner for Human Rights	A	2008 - B March 2009 - A

"B" STATUS INSTITUTIONS

Asia and the Pacific		
Maldives: Human Rights Commission	B	April 2008 March 2010
Sri Lanka: Human Rights Commission of Sri Lanka	B	2000 A status placed under review March 2007 October 2007 Reviewed in March 2009
Africa		
Algeria: Commission Nationale des Droits de l'Homme	B	2000 – A (R) 2002 – A (R) 2003 - A Placed under review - April 2008 2009 – B March 2010: deferral to October 2010

Burkina Faso: Commission Nationale des Droits de l'Homme	B	2002 – A (R) 2003 – A (R) 2005 (B) April 2006, March 2007
Chad: Commission Nationale des Droits de l'Homme	B	2000 – A (R) 2001 – A (R) 2003 – A (R) November 2009 – B
Mauritania: Commission nationale des Droits de l'Homme	B	November 2009
Nigeria: Nigerian Human Rights Commission	B	1999 – A (R) 2000 - A October 2006 (special review) Placed under review March 2007 October 2007
Tunisia: Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales	B	2009
Europe		
Austria: Austrian Ombudsman Board	B	2000
Belgium: Centre for equal opportunities and opposition to racism	B	1999 March 2010
Netherlands: Equal Treatment Commission of the Netherlands	B	1999 - B 2004 March 2010
Republic of Moldova: Human Rights Centre of Moldova	B	November 2009
Slovakia: National Centre for Human Rights	B	2002 – C October 2007
Slovenia: Human Rights Ombudsman of the Republic of Slovenia	B	2000 March 2010

"C" STATUS INSTITUTIONS

Africa		
Benin: Commission Béninoise des Droits de l'Homme	C	2002
Madagascar: Commission Nationale des Droits de l'Homme de Madagascar	C	2000 – A (R) 2002 – A (R) 2003 – A (R) April 2006 – status withdrawn October 2006

Americas		
Antigua and Barbuda: Office of the Ombudsman	C	2001
Barbados: Office of the Ombudsman	C	2001
Puerto Rico: Oficina del Procurador del Ciudadano del Estado Libre Asociado de Puerto Rico	C	March 2007
Asia and the Pacific		
Hong Kong, China: Hong Kong Equal Opportunities Commission	C	2000
Iran (Islamic Republic of): Islamic Human Rights Commission	C	2000
Europe		
Romania: Romanian Institute for Human Rights	C	March 2007
Switzerland: Commission fédérale pour les questions féminines	C	March 2009
Switzerland: Federal Commission against Racism	C	1998 - B March 2010

SUSPENDED INSTITUTIONS

Africa		
Niger: Niger Commission Nationale des Droits de l'Homme et des Libertés Fondamentales	Removed Note: The Commission was dissolved in February 2010	March 2010: the Commission was removed as per its dissolution in February 2010
Asia and the Pacific		
Fiji: Fiji Human Rights Commission	Suspended Note: Fiji resigned from the International Coordinating Committee on 2 April 2007	2000 Accreditation suspended in March 2007 for review in October 2007 Commission resigned from the International Coordinating Committee on 2 April 2007

Annex III

Statute of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights*

	SECTION 1: DEFINITIONS AND INTERPRETATION
Art. 1.1	**In this Statute**
	Former Rules of Procedure means the Rules of Procedure of "The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights" adopted on 15 April 2000 and as amended on 13 April 2002, and on 14 April 2008 which are now merged into this Statute;
	ICC means the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights existing under the former Rules of Procedure, referred to in the United Nations Commission on Human Rights resolution 2005/74 and the United Nations Human Rights Council resolution 5/1, which is now given independent corporate personality by this Statute;
	ICC Bureau means the committee of management established under Article 43 of this Statute;
	Days: In this statute, a reference to days means calendar days, not working days.
	NHRI means a National Human Rights Institution;
	NIU means the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights;
	Observer means an institution or person granted permission to participate in ICC meetings or other open meetings or workshops without voting rights and without the right to speak unless invited to do so by the Chairperson of the meeting or workshop.
	OHCHR means the Office of the United Nations High Commissioner for Human Rights;
	Paris Principles means the Principles Relating to the Status of National Institutions, adopted by the United Nations Commission on Human Rights in resolution 1992/54 of 3 March 1992 and endorsed by the United Nations General Assembly in resolution 48/134 of 20 December 1993;
	Rules of Procedure of the ICC Sub-Committee on Accreditation mean the Rules of Procedure for the ICC Sub-Committee on Accreditation adopted by the members of the International Coordinating Committee constituted under the former Rules of Procedure at its 15th session, held on 14 September 2004 at Seoul, Republic of Korea, as amended at the 20th session, held on 14 April 2008 at Geneva, Switzerland, and continued in existence under the transitional provisions of this Statute;
	Regional Coordinating Committee means the body established by NHRIs in each of the regional groupings referred to in Section 7 of this Statute to act as their coordinating secretariats, namely: ■ Asia Pacific Forum of National Human Rights Institutions; ■ European Coordinating Committee of National Human Rights Institutions;

* Reproduced as adopted.

	■ Network of African National Human Rights Institutions; and ■ Network of National Human Rights Institutions of the Americas; **Secretary** means the individual elected as Secretary under Article 34 who acts as the Deputy to the Chairperson to carry out the role and functions of the Chairperson in her or his absence, including the functions referred to in Article 49; **Sub-Committee on Accreditation** means the sub-committee established under the former Rules of Procedure and referred to as the Accreditation Subcommittee of the International Coordinating Committee of National Institutions in United Nations Commission on Human Rights resolution 2005/74 as the authority to accredit NHRIs, under the auspices of the OHCHR, and whose mandate is given to it under and in accordance with the Rules of Procedure for the ICC Sub-Committee on Accreditation; **Voting member** means a NHRI which is a member of the ICC and is accredited with an 'A' status; and non-voting member means a NHRI which is a member of the ICC and is accredited with a 'B' status; '**Writing**' or '**Written**' includes any hand-written, typed or printed communication, including telex, cable, electronic mail and facsimile transmissions.
Art. 1.2	References to the 'ICC' in the Rules of Procedure for the ICC Sub-Committee on Accreditation shall be read as references to the ICC Bureau established under this Statute, and references to the 'ICC Rules of Procedure' shall be read as references to the former Rules of Procedure, and to the corresponding rules in this Statute.
	SECTION 2: NAME, LOGO AND REGISTERED OFFICE
Art. 2	A non-profit association is hereby created by the National Human Rights Institutions (NHRIs) subscribing to this present Statute, according to Articles 60 and following of the Swiss Civil Code as an international association possessing legal personality independent of its members. The name of the association is the **Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**, in this Statute referred to as the **ICC**. The duration of the ICC is unlimited. The ICC created by this Statute gives independent corporate personality to the loose arrangement of NHRIs hitherto existing under the former Rules of Procedure.
Art. 3	The official logo of the ICC, in each of the working languages, is the following image: INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (ICC) COMITÉ INTERNATIONAL DE COORDINATION DES INSTITUTIONS NATIONALES POUR LA PROMOTION ET LA PROTECTION DES DROITS DE L'HOMME (CIC) COMITÉ INTERNACIONAL DE COORDINACIÓN DE LAS INSTITUCIONES NACIONALES PARA LA PROMOCIÓN Y LA PROTECCIÓN DE LOS DERECHOS HUMANOS (CIC)

Art. 4	The registered office of the ICC is 42 avenue Krieg, 1208 Geneva, Switzerland
	SECTION 3: PURPOSE **Objects**
Art. 5	The ICC is an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights.
Art. 6	General Meetings of the ICC, meetings of the ICC Bureau and of the Sub-Committee on Accreditation, as well as International Conferences of the ICC shall be held under the auspices of, and in cooperation with, OHCHR.
	Functions
Art. 7	The functions of the ICC are: 1. To coordinate at an international level the activities of NHRIs established in conformity with the Paris Principles, including such activities as: ■ Interaction and cooperation with the United Nations, including the OHCHR, the Human Rights Council, its mechanisms, United Nations human rights treaty bodies, as well as with other international organizations; ■ Collaboration and coordination amongst NHRIs and the regional groups and Regional Coordinating Committees; ■ Communication amongst members, and with stakeholders including, where appropriate, the general public; ■ Development of knowledge; ■ Management of knowledge; ■ Development of guidelines, policies, statements; ■ Implementation of initiatives; ■ Organization of conferences. 2. To promote the establishment and strengthening of NHRIs in conformity with the Paris Principles, including such activities as: ■ Accreditation of new members; ■ Periodic renewal of accreditation; ■ Special review of accreditation; ■ Assistance of NHRIs under threat; ■ Encouraging the provision of technical assistance; ■ Fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs. 3. To undertake such other functions as are referred to it by its voting members. **Principles:** In fulfilling these functions, the ICC will work in ways that emphasize the following principles: ■ Fair, transparent, and credible accreditation processes;

	■ Timely information and guidance to NHRIs on engagement with the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies; ■ The dissemination of information and directives concerning the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies to NHRIs; ■ Mandated representation of NHRIs; ■ Strong relationships with the OHCHR and the Regional Coordinating Committees that reflect the complementarity of roles; ■ Flexibility, transparency and active participation in all processes; ■ Inclusive decision-making processes based on consensus to the greatest extent possible; ■ The maintenance of its independence and financial autonomy.
Art. 8	**International Conference** The ICC shall hold a biennial International Conference in accordance with the Rules of Procedure of International Conferences of National Institutions for the Promotion and Protection of Human Rights adopted by NHRIs at their ICC meeting held in Geneva, Switzerland on 17 April 2002.
Art. 9	**SECTION 4: LIAISON WITH OTHER HUMAN RIGHTS INSTITUTIONS AND NGOs** The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organizations. The ICC Bureau may decide to grant such organizations observer status at any meetings or workshops of the ICC or the ICC Bureau.
	SECTION 5: PARIS PRINCIPLES ACCREDITATION [**Note**: Pursuant to Human Rights Council resolution 5/1, VII Rules of Procedure, rule 7 (b), participation of NHRIs in the work of the Human Rights Council is based on arrangements and practices agreed upon by the Human Rights Commission including resolution 2005/74 of 20 April 2005. Resolution 2005/74, paragraph 11 (a), permitted NHRIs that are accredited by the Sub-Committee on Accreditation to exercise participation rights in the Human Rights Commission and subsidiary bodies of the Commission.]
Art. 10	**Application for Accreditation Process** Any NHRI seeking accreditation under the Paris Principles shall apply to the Chairperson of the ICC. Through the ICC Secretariat, that NHRI shall supply the following in support of its application: ■ a copy of the legislation or other instrument by which it is established and empowered in its official or published format; ■ an outline of its organizational structure including staff complement and annual budget; ■ a copy of its most recent annual report or equivalent document in its official or published format;

	■ a detailed statement showing how it complies with the Paris Principles as well as any respects in which it does not so comply and any proposals to ensure compliance. The ICC Bureau may determine the form in which this statement is to be provided. The application shall be decided pursuant to Articles 11 and 12 of this Statute.
Art. 11.1	All applications for accreditation under the Paris Principles, shall be decided under the auspices of, and in cooperation with, OHCHR by the ICC Bureau after considering a report from the Sub-Committee on Accreditation on the basis of written evidence submitted.
Art. 11.2	In coming to a decision, the ICC Bureau and the Sub-Committee shall adopt processes that facilitate dialogue and exchange of information between it and the applicant NHRI as deemed necessary to come to a fair and just decision.
Art. 12	Where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose decision is final subject to the following process: ■ The recommendation of the Sub-Committee shall first be forwarded to the applicant; ■ An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty eight (28) days of receipt. ■ Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau; ■ Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision; ■ If at least four members coming from two or more regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau; ■ The decision of the ICC Bureau on accreditation is final.
Art. 13	Should the ICC Bureau decide to decline an application for accreditation of any NHRI by reason of its failure to comply with the Paris Principles, the ICC Bureau or its delegate may consult further with that institution concerning measures to address its compliance issues.
Art. 14	Any NHRI whose application for accreditation has been declined may reapply for accreditation, according to the guidelines under Article 10, at any time. Such an application may be considered at the next meeting of the Sub-Committee on Accreditation.

Art. 15	**Periodic Reaccreditation** All NHRIs that hold an 'A' status are subject to reaccreditation on a five year cyclical basis. Article 10 applies to NHRIs undergoing reaccreditation. In particular reference to an application for accreditation means both the initial application and the application for reaccreditation.
Art. 16.1	**Review of Accreditation Process** Where the circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles, that NHRI shall notify the Chairperson of those changes and the Chairperson shall place the matter before the Sub-Committee on Accreditation for review of that NHRI's accreditation status.
Art. 16.2	Where, in the opinion of the Chairperson of the ICC or of any member of the Sub-Committee on Accreditation, it appears that the circumstances of any NHRI that has been accredited with an 'A' status under the former Rules of Procedure may have changed in a way which affects its compliance with the Paris Principles, the Chairperson or the Sub-Committee may initiate a review of that NHRI's accreditation status.
Art. 16.3	Any review of the accreditation classification of a NHRI must be finalized within eighteen (18) months.
Art. 17	On any review the Chairperson and Sub-Committee on Accreditation shall have all the powers and responsibilities as in an application under Article 10.
Art. 18	**Alteration of Accreditation Classification** Any decision that would serve to remove accredited 'A' status from an applicant can only be taken after the applicant is informed of this intention and is given the opportunity to provide in writing, within one (1) year of receipt of such notice, the written evidence deemed necessary to establish its continued conformity to the Paris Principles.
Art. 19	An accreditation classification held by a NHRI may be suspended if the NHRI fails to submit its application for reaccreditation or fails to do so within the prescribed time without justification.
Art. 20	An accreditation classification may lapse if a NHRI fails to submit an application for reaccreditation within one (1) year of being suspended for failure to reapply, or if a NHRI under review under Article 16 of this Statute fails to provide sufficient documentation, within eighteen (18) months of being placed under review, to satisfy the body determining membership under this Statute that it remains in conformity with the Paris Principles.
Art. 21	NHRIs whose accreditation has been suspended remain suspended until the body determining their compliance with the Paris Principles under this Statute comes to a determination of their accreditation status or until their accreditation lapses.
Art. 22	NHRIs whose accreditation status has lapsed or been revoked may regain accreditation only by re-applying for accreditation as provided for in Article 10 of this Statute.
Art. 23	In the event that accreditation lapses or is revoked or suspended, all rights and privileges conferred on that NHRI through accreditation immediately cease. In the event that a NHRI is under review, it shall retain the accreditation status it has been granted until such time as the body determining membership comes to a decision as to its compliance with the Paris Principles or its membership lapses.

	SECTION 6: MEMBERS **Eligibility**
Art. 24.1	Only NHRIs which comply fully with the Paris Principles, being those which have been accredited with an 'A' status in accordance with the former Rules of Procedure or pursuant to the procedure established under this Statute shall be eligible to be voting members of the ICC.
Art. 24.2	NHRIs that are only partially compliant with the Paris Principles, being those which have been accredited with a 'B' status in accordance with the former Rules of Procedure or pursuant to the procedure established under this Statute shall be eligible to become a non-voting member.
Art. 25	Any NHRIs wishing to become a member of the ICC shall apply in writing to the Chairperson of the ICC giving: in the case of an application for voting membership, particulars of the date on which it was accredited with A status; and, in the case of an application for non-voting membership, particulars of the date on which it was accredited with B status. In either case, the applicant must indicate their agreement to be bound by this Statute as amended from time to time (including as to the payment of the applicable annual membership subscription). The application shall be considered and decided by the ICC Bureau.
Art. 26	A NHRI shall cease to be a member of the ICC upon written notice by that NHRI of resignation given to the Chairperson of the ICC, but without prejudice to the obligation of the NHRI to discharge outstanding fiscal obligations due to the ICC at the date of resignation.
Art. 27	Membership may be revoked by resolution of the ICC Bureau if the body determining accreditation status under this Statute determines that a member no longer meets the membership eligibility requirements in Article 24.
Art. 28	Membership may be cancelled by resolution of the ICC Bureau if that member has failed for six (6) months or more to pay an annual subscription that is due and owing.
Art. 29.1	A NHRI whose membership has been revoked, or cancelled for non-payment of an annual subscription, may regain membership by reapplying for membership under Article 25 of this Statute.
Art. 29.2	Where membership has been cancelled for non-payment of a subscription, re-admission to membership shall be subject to payment of the outstanding subscription or so much thereof as the ICC Bureau shall determine.
Art. 30	**Independence of Members** Notwithstanding anything in this Statute, the independence, authority and national status of members, and their powers, duties and functions under their own legislative mandates, and their participation in the different international fora on human rights shall in no way be affected by the creation of the ICC or its functioning.

	SECTION 7: REGIONAL GROUPING OF MEMBERS
Art. 31.1	For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established: ■ Africa ■ The Americas ■ Asia-Pacific ■ Europe
Art. 31.2	The members within any regional group may establish such subregional groupings as they wish.
Art. 31.3	The members of regional groups may establish their own procedures concerning meetings and activities.
Art. 31.4	Each regional group is to appoint four (4) members accredited with an 'A' status which shall each have a representative on the ICC Bureau.
	SECTION 8: GENERAL MEETINGS OF MEMBERS
Art. 32	The General Meeting is composed by the ICC members and constitutes the supreme power of the association.
Art. 33	The duties of the General Meeting include control of the activities of the ICC, review and control of the activities of the ICC Bureau, ratification of the program of ICC activities, the amendment of this Statute, consideration of funding issues and the fixing of annual membership subscriptions to be paid by members accredited with an 'A' status provided however that decisions of the ICC Bureau on accreditation determinations shall not be subject to review or control by a General Meeting.
Art. 34	The General Meeting ratifies the appointment of the members of the ICC Bureau and elects the Chairperson and the Secretary. The members of the ICC Bureau must be individuals representing the members of the ICC accredited with an "A" status which have been appointed by their regional groups under article 31.
Art. 35	If required under Swiss Law, the General Meeting must elect an auditor who shall not be a member of the ICC.
Art. 36	The General Meeting meets at least once a year in conjunction with a meeting of the Human Rights Council upon written notice given by the ICC Bureau to the members at least six (6) weeks in advance and at such other times required according to the law including when a request is demanded by one fifth or more of the members.
Art. 37	The agenda of the meeting shall be submitted to the members with the written notice of meeting.
	SECTION 9: RIGHT TO VOTE AND DECISIONS
Art. 38	At General Meetings only members accredited with an 'A' status shall be entitled to vote. A member that has been accredited with a 'B' status has the right to participate and speak in General Meetings (and all other open meetings and workshops of the ICC). A NHRI that is not accredited with either an 'A' or 'B' status may, with the consent of the particular meeting or workshop, attend as an observer. The Chairperson, after consultation with ICC members, may invite NHRIs who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer.

Art. 39	At General Meetings only one (1) NHRI per Member State of the United Nations shall be eligible to be a voting member. Where more than one (1) institution in a State qualifies for membership the State shall have one (1) speaking right, one (1) voting right, and if elected, one (1) ICC Bureau member. The choice of an institution to represent the NHRIs of a particular State shall be for the relevant institutions to determine.
Art. 40	Decisions of the General Meeting are passed by the majority of members present or duly represented. The General Meeting will only deal with matters that are summarized in the Agenda. If necessary, or on the request of more than half of the members present at a General Meeting, the Chairperson can call an Extraordinary General Meeting.
Art. 41	A quorum of at least one half of the total number of members is necessary.
Art. 42	English, French, and Spanish shall be the working languages of the ICC. As a result, documents from the ICC should be available in these languages.
Art. 43	**SECTION 10: ICC BUREAU** The ICC is managed by a committee entitled the ICC Bureau which shall comprise sixteen (16) individuals, including the Chairperson and the Secretary.
Art. 44	In the event that a representative of a member of a regional group for any reason is no longer able to represent that member, or if the member ceases to hold an 'A' status accreditation, or the member's appointment under Article 31.4 is withdrawn, the representative shall cease to be a member of the ICC Bureau and the Regional Coordinating Committee shall thereupon appoint another representative who shall act as a casual member of the ICC Bureau until the next General Meeting.
Art. 45	The Chairperson and the Secretary shall be elected on a geographically rotational basis by the General Meeting for a non-renewable term of three (3) years. The order of rotation shall be: the Americas, the Asia Pacific region, Africa, and Europe.
Art. 46	**Powers of the ICC Bureau** The ICC Bureau is empowered to act generally in the name of the ICC and to carry out the purpose and functions of the ICC. Without limiting the generality of the powers of management the ICC Bureau is empowered to: ■ decide applications for accreditation after considering a recommendation from the Sub-Committee on Accreditation; ■ decide applications for membership of the ICC; ■ summon General Meetings of the ICC; ■ collaborate and work with the OHCHR and its NIU, and in particular to work with the NIU in connection with the ICC accreditation process, annual meetings of the ICC, meetings of the ICC Bureau and international conferences of NHRIs. In addition, the NIU will facilitate and coordinate the participation of NHRIs in the Human Rights Council, its mechanisms, and the United Nations human rights treaty bodies;

	■ use and accept the services of the NIU as the Secretariat for the ICC, the ICC Bureau and its Sub-Committee on Accreditation; ■ appoint from the members of the ICC Bureau a person to be the treasurer of the ICC; ■ acquire, lease, dispose of or otherwise deal in property of any kind; ■ open bank accounts, appoint signatories thereto and define the authority of the signatories; ■ spend money and do all things it considers desirable to promote the purposes of the ICC; ■ delegate any function to a nominated person, standing committee or subcommittee of persons or members; ■ coordinate and arrange conferences, meetings, standing committees and sub-committees, and other activities; ■ engage, dismiss or suspend employees, agents and contractors; ■ enter into contracts; ■ engage professional assistance for the preparation of annual and other financial statements, to obtain legal advice, and for any other purpose; ■ prepare and disseminate information notes, bulletins and papers of any kind to members, and to promote generally information about human rights issues and activities of the Human Rights Council, its mechanisms, the United Nations human rights treaty bodies, and of the ICC in which members could have an interest; ■ receive financial grants and donations, and gifts of any kind; ■ adopt, amend or revoke rules of procedure in relation to the working methods of the ICC Bureau and its sub-committees to regulate or clarify any matter contemplated by this Statute. Every decision to adopt, amend or revoke a rule shall as soon as is practicable be circulated to all members of the ICC and posted on the nhri.net website.
Art. 47	**Membership Subscription** The ICC Bureau shall as and when it considers appropriate recommend to a General Meeting that an annual membership subscription be set by the General Meeting. Once set the Bureau will ensure procedures are in place to collect membership subscriptions. The ICC Bureau in its discretion may waive in whole or in part the annual subscription for a member if satisfied that the member is unable to pay the full amount due.
Art. 48	**Meetings of the ICC Bureau** A meeting of the ICC Bureau shall be held in conjunction with each General Meeting of the ICC and at least two (2) times each year. Otherwise, the ICC Bureau shall meet at such times and places as it or the Chairperson shall decide. Written notice summoning a meeting shall be given at least four (4) weeks in advance unless the ICC Bureau agrees to a shorter period for that meeting. The agenda of the meeting shall be submitted to the members with the written notice of meeting.

Art. 49	**The Chairperson and Secretary** The Chairperson, or in his or her absence the Secretary, shall direct the work of the General Meeting and the ICC Bureau. Until otherwise decided by a General Meeting, she or he shall represent the ICC in accordance with developed practices and authorities followed by the Chairperson acting under the former Rules of Procedure. In particular, the Chairperson may speak at the Human Rights Council, its mechanisms, United Nations human rights treaty bodies and, when invited, at other international organizations: ■ on behalf of the ICC on topics authorized by a General Meeting or the ICC Bureau; ■ on behalf of individual NHRIs when authorized by them; ■ on thematic human rights issues to promote policy decided by a General Meeting, a biennial conference or by the ICC Bureau; and ■ generally to advance the objects of the ICC.
Art. 50.1	**Conduct of ICC Bureau Business** English, French, and Spanish shall be the working languages of the ICC Bureau. As a result, documents from the ICC should be available in these languages.
Art. 50.2	A majority of the members of the ICC Bureau shall constitute a quorum.
Art. 50.3	An agenda for each meeting shall be drawn up by the Chairperson in consultation with the ICC Bureau members. Agenda items may be added at the meeting if approved by a majority of the members present.
Art. 50.4	Members of the ICC Bureau may be accompanied at meetings by advisers, including, by representatives from the relevant Regional Coordinating Committee. Such persons attend in the capacity of advisers to their members and observers to the meeting, and may participate in discussions at the call and invitation of the Chair.
Art. 50.5	Each member of the ICC Bureau shall have one (1) vote. Where possible, decisions of the ICC Bureau shall be reached by consensus. When consensus is not possible, decisions shall be by a majority of members present and voting. In the event of an equality of votes, the proposal being voted on shall be regarded as being defeated.
Art. 50.6	The ICC Bureau may invite NHRIs whether or not members of the ICC and any other person or institution to participate in the work of the ICC or the ICC Bureau as an observer.
Art. 50.7	Notwithstanding the forgoing provisions of this Article 50, the ICC Bureau may decide any matter in writing without the need to formally summon a meeting provided that a majority of the members of the ICC Bureau concur with the decision.
Art. 50.8	The ICC Bureau, through the Chairperson or in her or his absence through the Secretary, shall present to General Meetings reports on activities carried out by the ICC, the ICC Bureau and its officers since the preceding General Meeting.

Art. 51	**Further Procedure** Should any question concerning the procedure of the ICC Bureau arise which is not provided for by these rules the ICC Bureau may adopt such procedure as it thinks fit.
Art. 52	**SECTION 11: FINANCIAL ADMINISTRATION** **Accounting Year** The financial year ends on 31 December of each year.
Art. 53	**SECTION 12: ASSETS OF THE ICC** The assets of the ICC comprise and include: ■ grants obtained from international and national public and semi-public organizations; ■ donations; ■ subscriptions; ■ funds entrusted to it by other organizations, associations, businesses or institutions; and ■ income and property of any kind received from whatever source.
Art. 54	The assets of the ICC must be applied solely towards promoting the purposes of the ICC as set out in Section 3 in line with the Principles as set out in Article 7.
Art. 55	**SECTION 13: DISSOLUTION AND LIQUIDATION** **Dissolution** The ICC may be dissolved by resolution of the ICC in a General Meeting. A General Meeting called for this purpose shall be convened specially. At least one half of the members must be present. If this proportion is not present the General Meeting must be reconvened after an interval of at least two (2) weeks. It can then validly deliberate with whatever numbers of members are present. In any case the dissolution can only be approved by a majority of three quarters of the members present.
Art. 56	**Liquidation** The winding up of the ICC and the liquidation of its assets shall be carried out by one (1) or more liquidators appointed by the General Meeting. The General Meeting must authorize the liquidator or liquidators to distribute the net assets to another association or public organization having similar purposes to the ICC. No part of the net assets available for distribution shall be paid to any member of the ICC.
Art. 57	**SECTION 14: RULES OF PROCEDURE** The General Meeting may adopt, amend or revoke rules of procedure in relation to the working methods of the ICC, including General Meetings and international conferences, to regulate or clarify any matter contemplated by this Statute.
Art. 58	**SECTION 15: AMENDMENT OF STATUTE** This Statute may be amended only by a General Meeting of the ICC.

	SECTION 16: TRANSITIONAL PROVISION
Art. 59	The Sub-Committee on Accreditation and the Rules of Procedure for the ICC Sub-Committee on Accreditation are by this Statute continued in existence, and shall remain in existence until amended or revoked by the ICC Bureau. The Sub-Committee on Accreditation is hereby constituted a sub-committee of the ICC Bureau. The Rules of Procedure for the ICC Sub-Committee on Accreditation are incorporated into this Statute as **Annex I**

EXECUTED BY:

Ms. Jennifer Lynch, Q.C.

30 July 2008

Amended at a General Meeting held at Nairobi, 21st October 2008

Amended at a General Meeting held at Geneva, 24th March 2009

RULES OF PROCEDURE FOR THE ICC SUB-COMMITTEE ON ACCREDITATION

1. Mandate

In accordance with the Statute of the Association International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) (Article 1.1), the Sub-Committee on Accreditation has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to the ICC on the compliance of applicants with the Paris Principles.

2. Composition of the Sub-Committee

2.1. For the purpose of ensuring a fair balance of regional representation on the Sub-Committee on Accreditation, it shall be composed of one (1) ICC NHRI accredited 'Status A' for each of the four (4) regional groups as established by the ICC Statute (Section 7), namely Africa, Americas, Asia-Pacific, and Europe.

2.2. Members are appointed by regional groups for a term of three (3) years renewable.

2.3. The Chair of the Sub-Committee on Accreditation shall be selected, for a term of one (1) year, renewable a maximum of two (2) times, on a rotational basis from within the Sub-Committee so that each region assumes office in turn; in the event that a member of the Sub-Committee whose turn it is to be named Chair declines the office, the Chair shall pass to the region next in line or to another NHRI in that region.

2.4. The Office of the United Nations High Commissioner for Human Rights (OHCHR) shall be a permanent observer to the Committee and in its capacity as Secretariat of the ICC, support the Sub-Committee's work, serve as a focal point on all communications and maintain records as appropriate on behalf of the ICC Chairperson.

3. Functions

3.1. Each regional group representative to the Sub-Committee on Accreditation shall facilitate the application process for NHRIs in the region.

3.2. The regional grouping representative shall supply NHRIs from their region with all relevant information pertaining to the accreditation process, including a description of the process, requirements and timelines.

3.3. In accordance with the ICC Statute (Section 5), any NHRI seeking membership or seeking reaccreditation shall apply to the ICC Chairperson, supplying all required supporting documents through the ICC Secretariat.

3.4. These applications and support documents shall be provided to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee. Subject to rule 3.5 of these Rules, an Institution undergoing reaccreditation that does not comply with this deadline will be suspended until such time as the required documentation is submitted and reviewed by the Sub-Committee.

3.5. Applications and documents submitted after this deadline will only be examined during the subsequent meeting of the Sub-Committee, unless the situation warrants otherwise, as determined by the ICC Chairperson. In the event that the delay involves an Institution seeking reaccreditation, a decision to not suspend the Institution can be taken only if written justifications for the delay have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional.

3.6. Any civil society organization wishing to provide relevant information pertaining to any accreditation matter before the Sub-Committee shall provide such information in writing to the ICC Secretariat at least four (4) months prior to the meeting of the Sub-Committee.

3.7. The ICC Chairperson, with support from the ICC Secretariat, will ensure that copies of the applications and supporting documentation are provided to each member of the Sub-Committee on Accreditation.

3.8. The ICC Chairperson, with support from the ICC Secretariat, will also provide a summary of particular issues for consideration by the Sub-Committee.

4. Procedures

4.1. The Sub-Committee on Accreditation will meet after the General Meeting of the ICC in order to consider any accreditation matter under Section 5 of the Statute.

4.2. The Chairperson of the Sub-Committee on Accreditation may invite any person or institution to participate in the work of the Sub-Committee as an observer.

4.3. Additional meetings of the Sub-Committee may be convened by the Chair with the agreement of the ICC Chairperson and members of the Sub-Committee on Accreditation.

4.4 When, in the view of the Sub-Committee, the accreditation of a particular applicant Institution cannot be determined fairly or reasonably without further examination of an issue for which no policy has been articulated, it shall refer that matter directly to the ICC Bureau for determination and guidance. An ultimate decision as to accreditation can only be taken once the ICC Bureau provides that decision or guidance.

4.5 The Sub-Committee may, pursuant to Article 11.2 of the ICC Statute, consult with the applicant Institution, as it deems necessary, to come to a recommendation. The Sub-Committee shall, also pursuant to and for the purposes set out in Article 11.2, consult with the applicant Institution when an adverse decision is to be recommended. These consultations may be in the form deemed most appropriate by the Sub-Committee but must be supported by written documentation; in particular the substance of verbal consultations must be recorded and be available for review. Since the ICC Bureau makes the final decision on membership, an Institution undergoing a review retains its membership status during the consultation process.

5. Accreditation Classifications

In accordance with the Paris Principles and the ICC Statute, the different classifications for accreditation used by the Sub-Committee are:

A: Voting Member – Fully in compliance with each of the Paris Principles;

B: Non-Voting Member – Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination;

C: No Status – Not in compliance with the Paris Principles.

6. Report and Recommendations

6.1 Pursuant to Article 12 of the ICC Statute, where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall forward that recommendation to the ICC Bureau whose final decision is subject to the following process:

(i) The recommendation of the Sub-Committee shall first be forwarded to the applicant;

(ii) An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within twenty-eight (28) days of receipt;

(iii) Thereafter the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge together with all relevant material received in connection with both the application and the challenge will also be forwarded to the members of the ICC Bureau;

(iv) Any member of the ICC Bureau who disagrees with the recommendation shall, within twenty (20) days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If within twenty (20) days of receipt of this information at least four members of the ICC Bureau coming from not less than two regional groups notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision;

(v) If at least four members of the ICC Bureau coming from not less than two regional groups do not raise objection to the recommendation within twenty (20) days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau;

(vi) The decision of the ICC Bureau on accreditation is final.

6.2 General Observations are to be developed by the Sub-Committee and approved by the ICC Bureau.

6.3 The General Observations, as interpretive tools of the Paris Principles, may be used to:

(a) Instruct Institutions when they are developing their own processes and mechanisms, to ensure Paris Principles compliance;

(b) Persuade domestic governments to address or remedy issues relating to an Institution's compliance with the standards articulated in the General Observations;

(c) Guide the Sub-Committee on Accreditation in its determination of new accreditation applications, reaccreditation applications or special reviews:

(i) If an Institution falls substantially short of the standards articulated in the General Observations, it would be open for the Sub-Committee to find that it was not Paris Principle compliant.

(ii) If the Sub-Committee has noted concern about an Institution's compliance with any of the General Observations, it may consider what steps, if any, have been taken by an Institution to address those concerns in future applications. If the Sub-Committee is not provided with proof of efforts to address the General Observations previously made, or offered a reasonable explanation why no efforts had been made, it would be open to the Sub-Committee to interpret such lack of progress as non-compliance with the Paris Principles.

Adopted by the members of the International Coordinating Committee at its 15th session, held on 14 September 2004, Seoul, Republic of Korea. Amended by the members of the ICC at its 20th session, held on 15 April 2008, Geneva, Switzerland.

Annex IV

Sub-Committee on Accreditation: general observations*

1. Competence and responsibilities

1.1 Establishment of national institutions: An NHRI must be established in a constitutional or legal text. Creation by an instrument of the Executive is not adequate to ensure permanency and independence.

1.2 Human rights mandate: All NHRIs should be mandated with specific functions to both *protect* and *promote* human rights, such as those listed in the Paris Principles.

1.3 Encouraging ratification or accession to international human rights instruments: The Sub-Committee interprets that the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution. The Sub-Committee therefore encourages the entrenchment of this function in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.

1.4 Interaction with the International Human Rights System: The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.

1.5 Cooperation with other human rights institutions: NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organizations, such as NGOs, working in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.

1.6 Recommendations by NHRIs

NHRI recommendations contained in annual, special or thematic human rights reports should normally be discussed within a reasonable amount of time, not to exceed six months, by the relevant government ministries as well as the competent parliamentary committees. These discussions should be held especially in order to determine the necessary follow up action, as appropriate in any given situation. NHRIs as part of their mandate to promote and protect human rights should ensure follow up action to recommendations contained in their reports.

2. Composition and guarantees of independence and pluralism

2.1 Ensuring pluralism: The Sub-Committee notes there are diverse models of ensuring the requirement of pluralism set out in the Paris Principles. However, the Sub-Committee emphasizes the importance of National Institutions to

* Reproduced as adopted.

maintain consistent relationships with civil society and notes that this will be taken into consideration in the assessment of accreditation applications.

The Sub-Committee observes that there are different ways in which pluralism may be achieved through the composition of the National Institution, for example:

a) Members of the governing body represent different segments of society as referred to in the Paris Principles;
b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
d) Pluralism through diverse staff representing the different societal groups within the society.

The Sub-Committee further emphasizes that the principle of pluralism includes ensuring the meaningful participation of women in the National Institution.

2.2 Selection and appointment of the governing body: The Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the National Institution. In particular, the Sub-Committee emphasizes the following factors:

a) A transparent process
b) Broad consultation throughout the selection and appointment process
c) Advertising vacancies broadly
d) Maximizing the number of potential candidates from a wide range of societal groups
e) Selecting members to serve in their own individual capacity rather than on behalf of the organization they represent.

2.3 Government representatives on National Institutions: The Sub-Committee understands that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions do not have decision making or voting capacity.

2.4 Staffing by secondment:

In order to guarantee the independence of the NHRI, the Sub-Committee notes, as a matter of good practice, the following:

a) Senior level posts should not be filled with secondees;
b) The number of seconded should not exceed 25 per cent and never be more than 50 per cent of the total workforce of the NHRI.

2.5 Immunity: It is strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.

2.6 Adequate Funding: Provision of adequate funding by the state should, as a minimum include:

a) The allocation of funds for adequate accommodation, at least its head office;
b) Salaries and benefits awarded to its staff comparable to public service salaries and conditions;
c) Remuneration of Commissioners (where appropriate); and
d) The establishment of communications systems including telephone and internet.

Adequate funding should, to a reasonable degree, ensure the gradual and progressive realization of the improvement of the organization's operations and the fulfilment of their mandate.

Funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate.

Financial systems should be such that the NHRI has complete financial autonomy. This should be a separate budget line over which it has absolute management and control.

2.7 Staff of an NHRI: As a principle, NHRIs should be empowered to appoint their own staff.

2.8 Full-time Members:

Members of the NHRIs should include full-time remunerated members to:

a) Ensure the independence of the NHRI free from actual or perceived conflict of interests;

b) Ensure a stable mandate for the members;

c) Ensure the ongoing and effective fulfilment of the mandate of the NHRI.

2.9 Guarantee of tenure for members of governing bodies

Provisions for the dismissal of members of governing bodies in conformity with the Paris Principles should be included in the enabling laws for NHRIs.

a) The dismissal or forced resignation of any member may result in a special review of the accreditation status of the NHRI;

b) Dismissal should be made in strict conformity with all the substantive and procedural requirements as prescribed by law;

c) Dismissal should not be allowed based on solely the discretion of appointing authorities.

2.10 Administrative regulation

The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding, and reporting arrangements.

In cases where the administration and expenditure of public funds by an NHRI is regulated by the Government, such regulation must not compromise the NHRI's ability to perform its role independently and effectively. For this reason, it is important that the relationship between the Government and the NHRI be clearly defined.

3. Methods of operation

4. Additional principles concerning the status of commissions with quasi-jurisdictional competence

5. Additional issues

5.1 NHRIs during the situation of a coup d'état or a state of emergency: As a principle, the Sub-Committee expects that, in the situation of a coup d'état or a state of emergency, an NHRI will conduct itself with a heightened level of vigilance and independence in the exercise of their mandate.

5.2 Limitation of power of National Institutions due to national security: The Sub-Committee notes that the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process.

5.3 Functioning of an NHRI in a volatile context: The Sub-Committee acknowledges that the context in which an NHRI operates may be so volatile that the NHRI cannot reasonably be expected to be in full conformity with all the provisions of the Paris Principles. When formulating its recommendation on the accreditation status in such cases, the Sub-Committee will give due consideration to factors such as: political instability; conflict or unrest; lack of state infrastructure, including excessive dependency on donor funding; and the NHRI's execution of its mandate in practice.

6. Procedural issues

6.1 Application processes: With the growing interest in establishing National Institutions, and the introduction of the five-yearly reaccreditation process, the volume of applications to be considered by the Sub-Committee has increased dramatically. In the interest of ensuring an efficient and effective accreditation process, the Sub-Committee emphasizes the following requirements:

a) Deadlines for applications will be strictly enforced;

b) Where the deadline for a reaccreditation application is not met, the Sub-Committee will recommend that the accreditation status of the National Institution be suspended until the application is considered at the next meeting;

c) The Sub-Committee will make assessments on the basis of the documentation provided. Incomplete applications may affect the recommendation on the accreditation status of the National Institution;

d) Applicants should provide documentation in its official or published form (for example, published laws and published annual reports) and not secondary analytical documents;

e) Documents must be submitted in both hard copy and electronically;

f) All application related documentation should be sent to the ICC Secretariat at OHCHR at the following address:
National Institutions Unit,
OHCHR, CH-1211 Geneva 10,
Switzerland
and by email to: nationalinstitutions@ohchr.org; and

g) It is the responsibility of the applicant to ensure that correspondence and application materials have been received by the ICC Secretariat.

6.2 Deferral of reaccreditation applications: The Sub-Committee will apply the following policy on the deferral of reaccreditation applications:

a) In the event that an institution seeks a deferral of consideration of its reaccreditation application, a decision to grant the deferral can be taken only if written justifications for the deferral have been provided and these are, in the view of the ICC Chairperson, compelling and exceptional;

b) Reaccreditation applications may be deferred for a maximum of one year, after this time the status of the NHRI will lapse; and

c) For NHRIs whose reaccreditation applications are received after the due date or who have failed to submit their applications, their accreditation status will be suspended. This suspension can be in place for up to one year during which time the NHRI may submit its application for reaccreditation. If the application is not submitted during this time, the accreditation status will lapse.

6.3 NHRIs under review: Pursuant to Article 16 of the ICC Statute,[1] the ICC Chair or the Sub-Committee may initiate a review of a NHRI's accreditation status if it appears that the circumstances of that NHRI may have changed in any way which affects its compliance with the Paris Principles. Such a review is triggered by an exceptional set of circumstances considered to be temporary in nature. As a consequence, the regular reaccreditation process will be deferred until the review is completed.

In its consideration of NHRIs under review, the Sub-Committee will apply the following process:

a. A NHRI can be under review for a maximum of one and a half years only, during which time it may bring information to the Sub-Committee to demonstrate that, in the areas under review, the NHRI is fully compliant with the Paris Principles;

b. During the period of review, all privileges associated with the existing accreditation status of the NHRI will remain in place;

c. If at the end of the period of review, the concerns of the Sub-Committee have not been satisfied, then the accreditation status of the NHRI will lapse.

6.4 Suspension of Accreditation: The Sub-Committee notes that the status of suspension means that the accreditation status of the Commission is temporarily suspended until information is brought before the Sub-Committee to demonstrate that, in the areas under review, the Commission is fully compliant with the Paris Principles. An NHRI with a suspended A status is not entitled to the benefits of an A status accreditation, including voting in the ICC and participation rights before the Human Rights Council, until the suspension is lifted or the accreditation status of the NHRI is changed.

6.5 Submission of information: Submissions will only be accepted if they are in paper or electronic format. The Statement of Compliance with the Paris Principles is the core component of the application. Original materials should be submitted to support or substantiate assertions made in this Statement so that the assertions can be validated and confirmed by the Sub-Committee. No assertion will be accepted without material to support it.

Further, where an application follows a previous recommendation of the Sub-Committee, the application should directly address the comments made and should not be submitted unless all concerns can be addressed.

6.6 More than one national institution in a State: The Sub-Committee acknowledges and encourages the trend towards a strong national human rights protection system in a State by having one consolidated and comprehensive national human rights institution.

In very exceptional circumstances, should more than one national institution seek accreditation by the ICC, it should be noted that Article 39 of the ICC

[1] Formerly rule 3 (g) of the ICC Rules of Procedure.

Statute[2] provides that the State shall have one speaking right, one voting right and, if elected, only one ICC Bureau member.

In those circumstances the conditions precedent for consideration of the application by the Sub-Committee are the following:

1) Written consent of the State Government (which itself must be a member of the United Nations).

2) Written agreement between all concerned national human rights institutions on the rights and duties as an ICC member including the exercise of the one voting and the one speaking right. This agreement shall also include arrangements for participation in the international human rights system, including the Human Rights Council and the Treaty Bodies.

The Sub-Committee stresses the above requirements are mandatory for the application to be considered.

6.7 NHRI annual report

The Sub-Committee finds it difficult to review the status of an NHRI in the absence of a current annual report, that is, a report dated not earlier than one year before the time it is scheduled to undergo review by the Sub-Committee. The Sub-Committee stresses the importance for an NHRI to prepare and publicize an annual report on its national situation with regard to human rights in general, and on more specific matters. This report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern.

Adopted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) by e-mail after the SCA meeting of March 2009.

Geneva, June 2009

[2] Formerly rule 3 (b) of the ICC Rules of Procedure.

Annex V

General Assembly resolution 60/154. National institutions for the promotion and protection of human rights

The General Assembly,

Recalling its resolutions and those of the Commission on Human Rights concerning national institutions for the promotion and protection of human rights,

Welcoming the rapidly growing interest throughout the world in the creation and strengthening of independent, pluralistic national institutions for the promotion and protection of human rights,

Convinced of the important role that such national institutions play and will continue to play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that the United Nations has played an important role and should continue to play a more important role in assisting the development of national institutions,

Recalling the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,[1] which reaffirmed the important and constructive role played by national human rights institutions, in particular in their advisory capacity to the competent authorities and their role in remedying human rights violations, in disseminating information on human rights and in education in human rights,

Recalling also the Beijing Declaration and Platform for Action,[2] in which Governments were urged to create or strengthen independent national institutions for the promotion and protection of human rights, including the human rights of women,

Reaffirming that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with same emphasis,

Bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds, and that all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

Recalling the programme of action adopted by national institutions, at their meeting held in Vienna in June 1993 during the World Conference on Human Rights,[3] for the promotion and protection of human rights, in which it was recommended that United Nations activities and programmes should be reinforced to meet the requests for assistance from States wishing to establish or strengthen their national institutions for the promotion and protection of human rights,

Noting the valuable role played and contributions made by national institutions in United Nations meetings dealing with human rights and the importance of their continued appropriate participation,

Welcoming the strengthening in all regions of regional cooperation among national human rights institutions and between national human rights institutions and other regional human rights forums,

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1 A/CONF.157/24 (Part I), chap. III.

2 *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

3 See A/CONF.157/NI/6.

Noting with appreciation the existence of the regional human rights networks in Europe, and the continuing work of the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia Pacific Forum of National Human Rights Institutions and the Coordinating Committee of African National Human Rights Institutions,

Welcoming the strengthening *of* international cooperation among national human rights institutions, including through the International Coordinating Committee of National Institutions,

1. *Welcomes* the report of the Secretary-General;[4]

2. *Reaffirms* the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in keeping with the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"), contained in the annex to resolution 48/134 of 20 December 1993;

3. *Reiterates* the continued importance of the Paris Principles, recognizes the value of further strengthening their application, where appropriate, and encourages States, national institutions and other interested parties to consider ways to achieve this;

4. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action,[1] it is the right of each State to choose the framework for national institutions that is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards;

5. *Also recognizes* that national institutions have a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights, and calls upon States to ensure that all human rights are appropriately reflected in the mandate of their national human rights institutions when established;

6. *Encourages* Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of human rights, as outlined in the Vienna Declaration and Programme of Action;

7. *Welcomes* the growing number of States establishing or considering the establishment of national institutions for the promotion and protection of human rights;

8. *Encourages* national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

9. *Notes with satisfaction* the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps;

10. *Reaffirms* the role of national institutions, where they exist, as appropriate agencies, inter alia, for the dissemination of human rights materials and other public information activities, including those of the United Nations;

11. *Urges* the Secretary-General to continue to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions as part of the United Nations Programme of Advisory Services and Technical Assistance in the Field of Human Rights;

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[4] A/60/299.

12. *Commends* the high priority given by the Office of the United Nations High Commissioner for Human Rights to work on national institutions, encourages the High Commissioner, in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national human rights institutions, and invites Governments to contribute additional funds to the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights for that purpose;

13. *Welcomes* the establishment of a national institutions website as an important vehicle for the delivery of information to national institutions and also the launch of a database of comparative analysis of procedures and methods of complaint-handling by national human rights institutions;

14. *Notes with appreciation* the increasingly active and important role of the International Coordinating Committee of National Institutions, in close cooperation with the Office of the United Nations High Commissioner for Human Rights, in assisting Governments and national institutions, when requested, to follow up on relevant resolutions and recommendations concerning the strengthening of national institutions;

15. *Also notes with appreciation* the holding of regular meetings of the International Coordinating Committee of National Institutions and the arrangements for the participation of national human rights institutions in the annual sessions of the Commission on Human Rights;

16. *Requests* the Secretary-General to continue to provide the necessary assistance for holding meetings of the International Coordinating Committee of National Institutions during the sessions of the Commission on Human Rights, in cooperation with the Office of the United Nations High Commissioner for Human Rights;

17. *Welcomes* the continuation of the practice of national institutions convening regional meetings in some regions, and its initiation in others, and encourages national institutions, in cooperation with the United Nations High Commissioner for Human Rights, to organize similar events with Governments and non-governmental organizations in their own regions;

18. *Requests* the Secretary-General to continue to provide, including from the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, the necessary assistance for holding international and regional meetings of national institutions;

19. *Recognizes* the important and constructive role that civil society can play, in cooperation with national institutions, for better promotion and protection of human rights;

20. *Expresses its appreciation* to those Governments that have contributed additional resources for the purpose of the establishment and strengthening of national human rights institutions;

21. *Encourages* all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of national institutions;

22. *Encourages* all United Nations entities, funds and agencies to work in close cooperation with national institutions in the promotion and protection of human rights, and in this regard welcomes efforts made through the action 2 initiative of the Secretary-General;

23. *Requests* the Secretary-General to report to the General Assembly at its sixty-second session on the implementation of the present resolution.

64th plenary meeting
16 December 2005

Annex VI

General Assembly resolution 63/169
The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights

The General Assembly,

Reaffirming its commitment to the principles and purposes of the Charter of the United Nations and the Universal Declaration of Human Rights,[1]

Reaffirming the commitment of Member States, in accordance with the Charter, to promote and ensure the respect of human rights and fundamental freedoms, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling the principles relating to the status of national institutions for the promotion and protection of human rights, welcomed by the General Assembly in its resolution 48/134 of 20 December 1993 and annexed thereto,

Recognizing the role of the existing Ombudsman, whether a male or female, mediator and other national human rights institutions in the promotion and protection of human rights and fundamental freedoms,

Underlining the importance of the autonomy and independence of the Ombudsman, mediator and other national human rights institutions, where they exist, in order to enable them to consider all issues related to the field of their competences,

Considering the role of the Ombudsman, mediator and other national human rights institutions in promoting good governance in public administrations, as well as improving their relations with citizens, and in strengthening the delivery of public services,

Considering also the important role of the existing Ombudsman, mediator and other national human rights institutions in contributing to the effective realization of the rule of law and respect for the principles of justice and equality,

Stressing that these institutions, where they exist, can have an important role in advising the Government with respect to bringing national legislation and national practices in line with their international human rights obligations,

Stressing also the importance of international cooperation in the field of human rights, and recalling the role played by regional and international associations of the Ombudsman, mediator and other national human rights institutions in promoting cooperation and sharing best practices,

1. *Encourages* Member States:

(*a*) To consider the creation or the strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions;

(*b*) To develop, where appropriate, mechanisms of cooperation between these institutions, where they exist, in order to coordinate their action, strengthen their achievements and enable the exchange of lessons learned;

2. *Also encourages* Member States:

(*a*) To consider conducting communication campaigns, with other relevant actors, in order to enhance public awareness on the importance of the role of the Ombudsman, mediator and other national human rights institutions;

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[1] Resolution 217 A (III).

(*b*) To give serious consideration to implementing the recommendations and proposals of their Ombudsman, mediator and other national human rights institutions, with the aim of addressing claims of the complainants, consistent with the principles of justice, equality and rule of law;

3. *Requests* the Secretary-General to report to the General Assembly at its sixty-fifth session on the implementation of the present resolution;

4. *Decides* to consider this issue at its sixty-fifth session.

70th plenary meeting
18 December 2008

Annex VII

General Assembly resolution 63/172
National institutions for the promotion and protection of human rights

The General Assembly,

Recalling its resolutions and those of the Commission on Human Rights concerning national institutions for the promotion and protection of human rights,

Welcoming the rapidly growing interest throughout the world in the creation and strengthening of independent, pluralistic national institutions for the promotion and protection of human rights,

Recalling the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"),[1]

Reaffirming the important role that such national institutions play and will continue to play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing the important role of the United Nations in assisting the development of independent and effective national human rights institutions, guided by the Paris Principles, and recognizing also in this regard the potential for strengthened and complementary cooperation between the United Nations and those national institutions in the promotion and protection of human rights,

Recalling the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,[2] which reaffirmed the important and constructive role played by national human rights institutions, in particular in their advisory capacity to the competent authorities and their role in remedying human rights violations, in disseminating information on human rights and in education in human rights,

Recalling also the Beijing Declaration and Platform for Action,[3] in which Governments were urged to create or strengthen independent national institutions for the promotion and protection of human rights, including the human rights of women,

Reaffirming that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

Bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds, and that all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

Recalling the programme of action adopted by national institutions, at their meeting held in Vienna in June 1993 during the World Conference on Human Rights,[4] for the promotion and protection of human rights, in which it was recommended that United Nations activities and programmes should be reinforced to meet the requests for assistance from States wishing to establish or strengthen their national institutions for the promotion and protection of human rights,

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1 Resolution 48/134, annex.

2 A/CONF.157/24 (Part I), chap. III.

3 *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annexes I and II.

4 See A/CONF.157/NI/6.

Noting the valuable role played and contributions made by national institutions in United Nations meetings dealing with human rights and the importance of their continued appropriate participation,

Welcoming the strengthening in all regions of regional cooperation among national human rights institutions and between national human rights institutions and other regional human rights forums,

Taking note with appreciation of the reports of the Secretary-General to the Human Rights Council on national institutions for the promotion and protection of human rights[5] and on the accreditation process of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights,[6]

Noting with satisfaction the strengthening of the accreditation procedure of the International Coordinating Committee of National Institutions,

Noting with appreciation the continuing work of the regional human rights networks in Europe, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia Pacific Forum of National Human Rights Institutions and the Network of African National Human Rights Institutions,

Welcoming the strengthening of international cooperation among national human rights institutions, including through the International Coordinating Committee of National Institutions,

1. *Takes note with appreciation* of the report of the Secretary-General;[7]

2. *Reaffirms* the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles");[1]

3. *Recognizes* the role of independent national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level, including by contributing to follow-up actions, as appropriate, to the recommendations resulting from the international human rights mechanisms;

4. *Welcomes* the increasingly important role of national institutions for the promotion and protection of human rights in supporting cooperation between their Governments and the United Nations for the promotion and protection of human rights;

5. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action,[2] it is the right of each State to choose the framework for national institutions that is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards;

6. *Also recognizes* that national institutions have a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights, and calls upon States to ensure that all human rights are appropriately reflected in the mandate of their national human rights institutions when established;

7. *Encourages* Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion

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5 A/HRC/7/69.

6 A/HRC/7/70.

7 A/63/486.

and protection of human rights, as outlined in the Vienna Declaration and Programme of Action;

8. *Welcomes* the growing number of States establishing or considering the establishment of national institutions for the promotion and protection of human rights;

9. *Encourages* national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

10. *Recognizes* the role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism and the special procedures, as well as in the human rights treaty bodies, in accordance with Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007[8] and Commission on Human Rights resolution 2005/74 of 20 April 2005;[9]

11. *Notes with satisfaction* the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps;

12. *Acknowledges* the role of national institutions in the strengthening of the rule of law and the promotion and protection of human rights in all sectors, and encourages cooperation, where appropriate, with the United Nations system, international financial institutions, and non-governmental organizations;

13. *Urges* the Secretary-General to continue to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions;

14. *Commends* the high priority given by the Office of the United Nations High Commissioner for Human Rights to work on national institutions, encourages the High Commissioner, in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national human rights institutions, and invites Governments to contribute additional voluntary funds to that end;

15. *Welcomes* the national institutions website[10] as an important vehicle for the delivery of information to national institutions and also the launch of a database of comparative analysis of procedures and methods of complaint-handling by national human rights institutions;

16. *Notes with appreciation* the increasingly active and important role of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in close cooperation with the Office of the High Commissioner, in assisting Governments and national institutions, when requested, to follow up on relevant resolutions and recommendations concerning the strengthening of national institutions;

17. *Also notes with appreciation* the holding of regular meetings of the International Coordinating Committee of National Institutions and the arrangements for the participation of national human rights institutions in the sessions of the Human Rights Council;

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[8] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), chap. IV, sect. A.

[9] See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A.

[10] www.nhri.net.

18. *Requests* the Secretary-General to continue to provide the necessary assistance for holding meetings of the International Coordinating Committee of National Institutions during the sessions of the Human Rights Council, in cooperation with the Office of the High Commissioner;

19. *Encourages* national institutions to seek accreditation status through the International Coordinating Committee of National Institutions, and notes with satisfaction the strengthening of the accreditation procedure and the continued assistance of the Office of the High Commissioner in this regard, as well as the assistance of the Office to the conferences of the International Coordinating Committee;

20. *Welcomes* the continuation of the practice of national institutions convening regional meetings in some regions, and its initiation in others, and encourages national institutions, in cooperation with the High Commissioner, to organize similar events with Governments and non-governmental organizations in their own regions;

21. *Requests* the Secretary-General to continue to provide the necessary assistance for holding international and regional meetings of national institutions;

22. *Recognizes* the important and constructive role that the judiciary, parliament and civil society can play, in cooperation with national institutions, for better promotion and protection of human rights;

23. *Encourages* all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of national institutions;

24. *Encourages* all United Nations human rights mechanisms as well as agencies, funds and programmes to work within their respective mandates with Member States and national institutions in the promotion and protection of human rights with respect to, inter alia, projects in the area of good governance and rule of law, and in this regard welcomes the efforts made by the Office of the High Commissioner to develop partnerships in support of national institutions;

25. *Requests* the Secretary-General to report to the General Assembly at its sixty-fourth session on the implementation of the present resolution.

70th plenary meeting
18 December 2008

Annex VIII

General Assembly resolution 64/161
National institutions for the promotion and protection of human rights

The General Assembly,

Recalling its previous resolutions, the most recent of which is resolution 63/172 of 18 December 2008, and those of the Commission on Human Rights concerning national institutions and their role in the promotion and protection of human rights,

Welcoming the rapidly growing interest throughout the world in the creation and strengthening of independent, pluralistic national institutions for the promotion and protection of human rights,

Recalling the principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles"),[1]

Reaffirming the important role that such national institutions play and will continue to play in promoting and protecting human rights and fundamental freedoms, in strengthening participation and the rule of law and in developing and enhancing public awareness of those rights and freedoms,

Recognizing the important role of the United Nations, in particular the Office of the United Nations High Commissioner for Human Rights, in assisting the development of independent and effective national human rights institutions, guided by the Paris Principles, and recognizing also in this regard the potential for strengthened and complementary cooperation among the United Nations, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and those national institutions in the promotion and protection of human rights,

Recalling the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,[2] which reaffirmed the important and constructive role played by national human rights institutions, in particular in their advisory capacity to the competent authorities and their role in preventing and remedying human rights violations, in disseminating information on human rights and in education in human rights,

Reaffirming that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

Bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds, and that all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

Recalling the programme of action adopted by national institutions, at their meeting held in Vienna in June 1993 during the World Conference on Human Rights,[3] for the promotion and protection of human rights, in which it was recommended that United Nations activities and programmes should be reinforced to meet the requests for assistance from States wishing to establish or strengthen their national institutions for the promotion and protection of human rights,

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1 Resolution 48/134, annex.

2 A/CONF.157/24 (Part I), chap. III.

3 See A/CONF.157/NI/6.

Taking note with appreciation of the reports of the Secretary-General to the Human Rights Council on national institutions for the promotion and protection of human rights[4] and on the accreditation process of the International Coordinating Committee,[5]

Welcoming the strengthening in all regions of regional cooperation among national human rights institutions, noting with appreciation the continuing work of the European Group of National Human Rights Institutions, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia-Pacific Forum of National Human Rights Institutions and the Network of African National Human Rights Institutions, and encouraging them to participate in the workshop on regional arrangements for the promotion and protection of human rights to be organized by the Office of the High Commissioner in 2010,

1. *Takes note with appreciation* of the report of the Secretary-General[6] and the conclusions contained therein;

2. *Reaffirms* the importance of the development of effective, independent and pluralistic national institutions for the promotion and protection of human rights, in accordance with the Paris Principles;[1]

3. *Recognizes* the role of independent national institutions for the promotion and protection of human rights in working together with Governments to ensure full respect for human rights at the national level, including by contributing to follow-up actions, as appropriate, to the recommendations resulting from the international human rights mechanisms;

4. *Welcomes* the increasingly important role of national institutions for the promotion and protection of human rights in supporting cooperation between their Governments and the United Nations in the promotion and protection of human rights;

5. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action,[2] it is the right of each State to choose the framework for national institutions that is best suited to its particular needs at the national level in order to promote human rights in accordance with international human rights standards;

6. *Encourages* Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of all human rights and fundamental freedoms for all, as outlined in the Vienna Declaration and Programme of Action;

7. *Welcomes* the growing number of States establishing or considering the establishment of national institutions for the promotion and protection of human rights;

8. *Encourages* national institutions for the promotion and protection of human rights established by Member States to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

9. *Recognizes* the role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies, in accordance with

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4 A/HRC/10/54.

5 A/HRC/10/55.

6 A/64/320.

Council resolutions 5/1 and 5/2 of 18 June 2007[7] and Commission on Human Rights resolution 2005/74 of 20 April 2005;[8]

10. *Stresses* the importance of the financial and administrative independence and stability of national human rights institutions for the promotion and protection of human rights, and notes with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps;

11. *Urges* the Secretary-General to continue to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions;

12. *Underlines* the importance of the autonomy and independence of Ombudsman institutions, encourages increased cooperation between national human rights institutions and regional and international associations of Ombudsmen, also encourages Ombudsman institutions to actively draw on the standards enumerated in international instruments and the Paris Principles to strengthen their independence and increase their capacity to act as national human rights protection mechanisms, and in this regard reaffirms General Assembly resolution 63/169 of 18 December 2008 on the role of Ombudsman institutions;

13. *Commends* the high priority given by the Office of the United Nations High Commissioner for Human Rights to work on national human rights institutions, encourages the High Commissioner, in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national institutions, and invites Governments to contribute additional voluntary funds to that end;

14. *Requests* the Secretary-General to continue to provide the necessary assistance for holding international and regional meetings of national institutions, including meetings of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in cooperation with the Office of the High Commissioner;

15. *Encourages* national institutions, including Ombudsman institutions, to seek accreditation status through the International Coordinating Committee;

16. *Encourages* all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of national institutions;

17. *Encourages* all United Nations human rights mechanisms as well as agencies, funds and programmes to work within their respective mandates with Member States and national institutions in the promotion and protection of human rights with respect to, inter alia, projects in the area of good governance and the rule of law, and in this regard welcomes the efforts made by the High Commissioner to develop partnerships in support of national institutions;

18. *Requests* the Secretary-General to report to the General Assembly at its sixty-sixth session on the implementation of the present resolution.

65th plenary meeting
18 December 2009

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[7] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 53* (A/62/53), chap. IV, sect. A.

[8] See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A.

Annex IX

Commission on Human Rights resolution 2005/74
National institutions for the promotion and protection of human rights

The Commission on Human Rights,

Recalling the relevant resolutions of the General Assembly, notably resolution 48/134 of 20 December 1993, and its own resolutions concerning national institutions for the promotion and protection of human rights,

Welcoming international recognition of the importance of establishing and strengthening independent, pluralistic national institutions for the promotion and protection of human rights consistent with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) annexed to General Assembly resolution 48/134,

Convinced of the important role such national institutions play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that it is the prerogative of each State to choose, for the establishment of a national institution, the legal framework that is best suited to its particular needs and circumstances to ensure that human rights are promoted and protected at the national level in accordance with international human rights standards,

Recalling the Vienna Declaration and Programme of Action adopted in June 1993 by the World Conference on Human Rights (A/CONF.157/23), which reaffirmed the important and constructive role played by national human rights institutions and their role in remedying human rights violations and in the dissemination of human rights information and education concerning human rights,

Recalling also the Programme of Action (see A/CONF.157/NI/6) adopted by national institutions meeting in Vienna during the World Conference on Human Rights, which recommended that United Nations activities and programmes should be reinforced to meet the requests for assistance from States wishing to establish or strengthen their national institutions for the promotion and protection of human rights,

Welcoming the strengthening of international cooperation among national human rights institutions, including through the International Coordinating Committee of National Institutions,

Noting the outcomes of the seventh International Conference of National Institutions for the Promotion and Protection of Human Rights, held in Seoul from 14 to 17 September 2004, the positive contribution of non-governmental organizations and the Seoul Declaration on upholding human rights during conflict and while countering terrorism,

Welcoming the strengthening in all regions of regional cooperation among national human rights institutions and between national human rights institutions and other regional human rights forums,

Noting efforts to strengthen regional human rights networks, including the fifth European meeting of national institutions for the promotion and protection of human rights, held in Berlin on 26 and 27 November 2004, the third Round Table of National Human Rights Institutions organized jointly by the German Institute for Human Rights and the Commissioner for Human Rights of the Council of Europe in Berlin on 25 and 26 November 2004, the first African Union Conference of National

Human Rights Institutions held in Addis Ababa from 18 to 21 October 2004, the continuing work of the Network of National Human Rights Institutions of the Americas, the Network's third General Assembly held in Buenos Aires from 9 to 11 June 2004, the international seminar on irregular migration and trafficking of people, human rights and national institutions, held in Campeche, Mexico, from 10 to 11 March 2005, and the work of the Asia Pacific Forum of National Human Rights Institutions, including the holding of their ninth annual meeting in Seoul on 13 September 2004,

Noting the conclusions and programme of action adopted at the twelfth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian and Pacific Region held in Doha from 2 to 4 March 2004 with regard to the role of national institutions (see E/CN.4/2004/89),

Noting also the creation of a francophone group of national institutions for human rights in cooperation with the International Organization of la Francophonie,

Noting further the work of the Ibero-American Federation of Ombudsmen as a forum for cooperation and exchange of experience,

Welcoming the call of the twelfth Workshop for the Promotion and Protection of Human Rights in the Asia-Pacific Region for the Office of the United Nations High Commissioner for Human Rights to support the subregional workshop for the Arab Region on national human rights protection systems, including national human rights institutions, held in Cairo, from 6 to 8 March 2005 with the support of the Egyptian National Council for Human Rights,

Noting the valuable role played and contributions made by national institutions in United Nations meetings dealing with human rights and the importance of their continued appropriate participation,

1. *Reaffirms* the importance of the development of effective, independent, pluralistic national institutions for the promotion and protection of human rights consistent with the Paris Principles;

2. *Reiterates* the continued importance of the Paris Principles as a set of important recommended guidelines of practice for national institutions, recognizes the value of further strengthening their application and encourages States, national institutions and other interested parties to consider ways to achieve this;

3. *Welcomes* the decisions of a growing number of States to establish, or to consider establishing, national institutions consistent with the Paris Principles;

4. *Encourages* States to establish or, where they already exist, to strengthen such institutions, as outlined in the Vienna Declaration and Programme of Action;

5. *Recognizes* that national institutions have a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights and calls upon all States to ensure that all human rights are appropriately reflected in the mandate of their national human rights institutions when established;

6. *Takes note with satisfaction* of the efforts of those States that have provided their national institutions with more autonomy and independence, including through giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps;

7. *Recognizes* the important and constructive role that individuals, groups and organs of society can play for the better promotion and protection of human rights and encourages efforts by national institutions to establish partnerships and increase cooperation with civil society;

8. *Welcomes* greater efforts by the Office of the High Commissioner to engage national institutions as partners and provide them with opportunities to

exchange experiences and best practices amongst themselves, and in this context welcomes:

(*a*) The International Workshop of National Institutions for the Promotion and Protection of Human Rights on the theme of causes, effects and consequences of the migratory phenomenon and human rights protection, held in Zacatecas, Mexico, on 14 and 15 October 2004, organized by the National Human Rights Commission of Mexico and the Human Rights Commission of Zacatecas;

(*b*) The Round Table of National Human Rights Institutions and National Machineries for the Advancement of Women held in Ouarzazate, Morocco, from 15 to 19 November 2004 with the Conseil consultatif des droits de l'homme of Morocco in cooperation with the Division for the Advancement of Women, Department of Economic and Social Affairs of the Secretariat of the United Nations; and

(*c*) The International Round Table on National Institutions and Good Governance held in Suva from 13 to 15 December 2004 with the Fiji Human Rights Commission;

9. *Also welcomes* the engagement of the Office of the High Commissioner with concerned national institutions on a regional level in relation to conflict prevention as well as the prevention of torture;

10. *Further welcomes* the practice of national institutions and coordinating committees of such institutions that conform with the Paris Principles of participating in an appropriate manner in their own right in meetings of the Commission on Human Rights and its subsidiary bodies;

11. *Welcomes* the report of the Secretary-General (E/CN.4/2005/107) on enhancing the participation of national human rights institutions in the work of the Commission and its subsidiary bodies and, in accordance with its recommendations, decides to request the Chairperson of the sixty-first session of the Commission, in consultation with all relevant stakeholders, to finalize, by the sixty-second session, the modalities for:

(*a*) Permitting national institutions that are accredited by the Accreditation Subcommittee of the International Coordinating Committee of National Institutions under the auspices of the Office of the High Commissioner, and coordinating committees of such institutions, to speak, as outlined in the report, within their mandates, under all items of the Commission's agenda, while stressing the need to maintain present good practices of management of the agenda and speaking times in the Commission, to allocate dedicated seating to national institutions for this purpose, and supporting their engagement with all the subsidiary bodies of the Commission;

(*b*) Continuing the practice of issuing documents from national institutions under their own symbol numbers;

12. *Welcomes* the continuation of the practice of national institutions convening regional meetings and encourages national institutions, in cooperation with the Office of the High Commissioner, to continue to organize similar events with Governments and non-governmental organizations in their own regions;

13. *Affirms* the important role of national human rights institutions, in cooperation with other mechanisms for the promotion and protection of human rights, in combating racial and related forms of discrimination and in the protection and promotion of the human rights of women and the rights of particularly vulnerable groups, including children and people with disabilities;

14. *Recognizes* the important and constructive role that national institutions can play in human rights education, including by the publication and dissemination

of human rights material and other public information activities during the World Programme for Human Rights Education, and calls upon all existing national institutions to assist in the implementation of human rights education training programmes across all relevant sectors of society, including during the first phase of the World Programme (2005-2007), which will focus on primary and secondary education;

15. *Commends* the United Nations High Commissioner for Human Rights for the priority accorded to the establishment and strengthening of national human rights institutions, including through technical cooperation, and calls upon the Office of the High Commissioner:

(*a*) To continue to strengthen its coordinating role in this field and to allocate the resources necessary for this work from both core and extrabudgetary sources;

(*b*) To continue to support technical cooperation projects focused on specific practical challenges faced by national institutions, including in the area of complaint handling;

16. *Welcomes* efforts, through the Secretary-General's action 2 of the reform programme (see A/57/387 and Corr.1), to ensure effective engagement by all parts of the United Nations with national institutions and notes in this regard the importance of strengthening the National Institutions Unit within the Office of the High Commissioner, including with appropriate specialist expertise;

17. *Expresses its appreciation* to those Governments that have contributed additional resources for the purpose of the establishment and strengthening of national human rights institutions and their regional organizations;

18. *Welcomes* the important role of the International Coordinating Committee of National Institutions, in close cooperation with the Office of the High Commissioner, in assessing conformity with the Paris Principles and in assisting Governments and national institutions, when requested, to follow up on relevant resolutions and recommendations concerning the strengthening of national institutions;

19. *Requests* the Secretary-General to continue to provide, from within existing resources, the necessary assistance for holding meetings of the International Coordinating Committee during the sessions of the Commission, under the auspices of, and in cooperation with, the Office of the High Commissioner;

20. *Also requests* the Secretary-General to continue to provide, from within existing resources and from the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, the necessary assistance for international and regional meetings of national institutions;

21. *Further requests* the Secretary-General to report to the Commission at its sixty-second session on the implementation of the present resolution and on ways and means of enhancing participation of national human rights institutions in the work of the Commission;

22. *Requests* the Secretary-General to report to the Commission at its sixty-second session on the process currently utilized by the International Coordinating Committee to accredit national institutions in compliance with the Paris Principles and to ensure that the process is strengthened with appropriate periodic review;

23. *Decides* to continue its consideration of this question at its sixty-second session.

59th meeting
20 April 2005

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

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