WORKSHOP ON THE ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN COMPLIANCE WITH THE PARIS PRINCIPLES

Next Steps

On your return from this workshop, if you wish to explore options for the establishment and strengthening of a national human rights mechanism, please consider the following steps:

1. **Formal Letter Requesting Technical Assistance** - a formal request for assistance is required. The letter should be addressed to the United Nations High Commissioner for Human Rights, Ms Navi Pillay at:

   Ms Navi Pillay  
   High Commissioner for Human Rights  
   1201 Geneva 10  
   Switzerland

   The letter should also be copied to your local UN representative if one exists in your State and to the UN Office of the High Commissioner for Human Rights (OHCHR). Relevant contact details are set out below:

   | Mr. Vladlen Stefanov  
   | Chief of National Institutions and Regional Mechanisms Section  
   | OHCHR/FOTCD:  
   | tel. +41-22-928-9377  
   | F: +41-22-928-9008  
   | E: vstefanov@ohchr.org |

2. **Defining the Assistance** – OHCHR and UNDP could work with your Government to define the assistance required, terms of reference and the timeframe for delivery. For example, the assistance may be a scoping exercise to examine the domestic context and provide options/recommendations to the Government on various models for the establishment and strengthening of a national human rights mechanism.

3. **Coordinated International Assistance** - OHCHR and UNDP could seek, unless formally advised otherwise, to provide a coordinated international response to the provision of assistance. This would generally involve relevant UN agencies, donor agencies and other relevant stakeholders identified. Relevant contact details of Commonwealth Secretariat are set out below:

WHAT TYPE OF INSTITUTION?

4. **What is a national human rights institution?**  
A National Human Rights Institution is an official State-funded body institution with a constitutional and/or legislative mandate to promote and protect human rights. The Paris Principles require NHRIs to have a constitutional or legislative basis, or both. NHRIs that are in compliance with the Paris Principles are the cornerstone of national human rights protection systems, and, increasingly, serve as relay mechanisms between the international and regional human rights system and the State.
5. Models of National Institutions

Despite many years of activity in the area and the establishment of the Paris Principles, it remains that there is no one, universally accepted and applied model for a national human rights institution. 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 tradition.

National institutions can be distinguished between institutions with reference to their general structure and authorities, in terms of their mandate, the political and legal traditions within which they operate. We can distinguish single, from multi-member institutions; those whose primary orientation is to advise governments on matters of human rights policy from those that handle individual complaints.

A distinction can be done on the Hispanic, Francophone or Commonwealth tradition; or organise them by continent: we can find multi-member institutions that receive complaints in most of Africa and Asia; single-members Defensores del Pueblo in Latin America and Spain, Ombudsman in European Nordic countries, advisory institutions in Europe.

The various categories of institutions that currently exist are discussed below. It is important to note that the categorisation used is meant to provide a broad-brush picture for purposes of better understanding the different types of institutions that currently exist. They are representative models only, however, and as such do not entirely reflect the reality, which is much more complex. And in reality, the distinctions that exist between institutions may not always be so clear-cut. Moreover, a specific institution, depending on which factors one chooses to emphasise, might appear to be of one type or another. What is more relevant than the label attached to an institution is the fact is that the institution’s mandate, functions and powers accord with the letter and spirit of the Paris Principles.

Human Rights Ombudsman Institutions

NHRIs that are ombudsmen are generally structured around a single head of the institutions and they have the mandate to promote and protect human rights and investigate human rights abuses. This model has been developed in Central and South America (Defensores del Pueblo) and in Central and Eastern Europe (Public Defenders). A large number of the national institutions accepted as being in conformity with the Paris Principles. The Ombudsman institution can often receive individual complaints and they are generally limited to making recommendations, although, more recently, some have been given authority to go to court or to specialized tribunal in instances where the recommendation made has been rejected. In addition, institutions created in the style of an Ombudsman may have generalised authorities for human rights matters, or they may be specialised, that is, deal with a single human rights issues, women's rights, for example.

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 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.

Human Rights Commissions

There are also a large number of institutions that are called Human Rights Commissions. Such institutions tend to have members that are representative of the societies in which they are found, have the authority to promote and protect human rights, and have the specific obligation to investigate individual allegations of human rights abuse. The majority of these institutions have, like classical Ombudsman, the power to make recommendations only.

Some human rights commissions, however, have the authority, following investigation, to seek enforceable decisions to remedy a violation. Some human rights commissions are specialised: they have the specific responsibility to deal with single human rights issues, for example, women's rights, the rights of persons with disabilities or the rights of ethnic or racial minorities. Others may have authority, usually applied to the investigation of complaints only, to deal with some types of human rights abuses, such as discrimination, but not other human rights principles. Such specialised institutions have either recommendatory powers only or the authority to go to specialised tribunals or the courts to seek enforceable orders.

Finally, some countries have more than one national institution each with specific responsibility for a separate single issue (a Women's Rights Commission, a Commission for Racial Equality and a Commission for Children's Rights, say). Where this is the case, it may be that the sum total of the coverage provided by all such Commissions results in human rights protection that comes close to that afforded by the most broadly mandated Commission.

Consultative Commissions

Consultative Commissions tend to have a very broad membership, with participation from many social sectors. While they have the authority to both protect and promote human rights, not all have the authority to undertake investigation of individual complaints. Consultative Commissions tend to place an emphasis on advising government on major human rights issues and reporting on particularly significant problem areas. They, like most other types of national institutions, can make recommendations only.

Human Rights Institutes or Centres

A very small number of 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 many representatives of society together for decision-making purposes. 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 set the general policy framework within which the Centre operates. Centres also tend to focus more of their efforts towards research in human rights.

Hybrid Commission/Ombudsman

A more recent phenomenon is the creation of institutions that have responsibility for promoting and protecting human rights and dealing with acts of administrative abuse, corruption or environmental matters. A classical Ombudsman and not a human rights institution would typically carry out this second category of activity since administrative malfeasance, while a grave injustice, is not necessarily a human rights violation. Other than this distinction, institutions of this type may be typical of a number of models presented here. They may be Ombudsman-like (have a single head) or Commission-like (have a representative membership). They may have the authority to make recommendations only, or they may have the powers to seek enforceable decisions.

6. What Advantages does a National Institution have?

As indicated above, a national institution is a quasi-state body. It receives it powers, authorities and financing from the State. This does lead to some challenges, but it also provides advantages. First, a national institution established by the State has an official capacity that lends legitimacy and weight to its actions and decisions. The extent of that legitimacy and the weight carried by an institution's decisions are, of course, subject both to the official mandate it is given and its willingness to act. Nonetheless, a national institution's standing gives it an authority that non-governmental actors simply do not have. Second, a national institution as a quasi-state body will have access to government. Its recommendations will therefore usually have a hearing.

A national institution's status as a quasi-state body, but one that is independent from Government control, also allows it to be a focal point for human rights, a place where
government and civil society can come together to deal with human rights issues in a positive way. 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. In ratifying international treaties, States commit themselves to take all necessary efforts to ensure that the rights set out in the treaties are fully enjoyed.

As independent entities, but ones established by government, national institutions occupy a unique terrain, one that can link civil society to government. Providing a focal point for human rights, apart from encouraging respective dialogue, also encourages and facilitates the possibility of collaboration and cooperation in activities between and among the various players.

A national institution established in conformity with the Paris Principles will have the mandate to promote human rights. Human rights promotion is required to create a national culture in which tolerance, dignity, equality, mutual respect and human rights thrive. National institutions inform people of the human rights they are entitled to enjoy. They also encourage people to understand that others have rights too, and that these must be respected as well. NHRIs are ideally suited to provide a balanced message on the rights people enjoy as well as the obligations they carry with regard to others. Their capacity to serve as a focal point enhances opportunities for cooperation and collaboration between the parties which engage in human rights promotion. This in turn improves the possibility of creating a culture of human rights in the country.

A national institution established in conformity with the Paris Principles will also have the mandate to protect human rights, by seeking to ensure the existence of a legal and policy framework that supports respect for human rights. It will also seek to ensure that remedies are provided when abuses do occur. In this latter, a national institution will seek not only to rectify any harm that has been caused to a victim, but it will also search for remedies to combat impunity and ensure that similar violations do not reoccur. While the role of a national institution is primarily remedial, where necessary an institution will also try to ensure that those who abuse human rights do not do so with impunity. Civil society will also benefit from this in that they may bring cases of importance to the attention of the institution and, through them, to the government and the wider public.

The duality of its mandate to both promote and protect human rights is not only a prerequisite for, but also an advantage to, a national institution. This is, of course, in part because both are so important to ensuring that rights can be enjoyed. But it is also because the two functions are mutually supportive. While the most direct objective of promotional activity is to develop a culture of human rights, human rights promotion ultimately aims to diminish both the number and gravity of human rights abuses that occur. The goal of human rights protection is first and foremost to provide an effective remedy when violations take place. But in providing this protection a national institution is also making a highly effective promotional message: human rights are important and those who abuse them will not do so with impunity.

Finally, a national institution is well suited to participate, as appropriate, in the international human rights system for the promotion and protection of human rights. Because of their practical expertise, they are useful partners in international efforts to define new human rights standards and ensure their effective implementation at the national level. Where domestic remedies are exhausted, including where complaints may be unresolved at the national level, national institutions may avail themselves of the international communications system to seek
remedies. While civil society can also perform these functions, a national institution can bring its unique perspective to these interactions.

More recently, National institutions have begun to play a role in areas that had not traditionally been seen as related to human rights. There has been a growing realisation that the creation of democratic institutions and the institution of mechanisms of good governance is also instrumental to the full enjoyment of human rights. In fact, national institutions are seen as one important part of that broader approach. In turn, national institutions are also increasingly offering advice to the State on how they can move forward in these areas.

We have also seen Institutions take a more direct role in situations of conflict, for example, increasingly play an active role in promoting peace initiatives, encouraging efforts to establish peace processes and supporting peace accords. They also may play a role in suggesting and supporting transitional and restorative justice processes following conflict.

7. How can NHRIs Assist at the National Level in Implementing Human Rights?

A national institution can play a number of useful roles at the national level in implementing human rights, as they are key-stones of strong national human rights protection systems.

- NHRIs can help to translate international norms into reality at the national level.
- NHRIs can effectively address the lack of enforcement power of most of the international mechanisms and complement their action as national entities with broad responsibility for the promotion and protection of human rights.
- NHRIs can use its expertise and its on-the-ground experience as a basis for providing advice to governments.
- It can provide a focal point for human rights in the country, a place where Government and civil society can come together to try to deal with human rights issues, and hopefully to cooperate in the work they do to improve the human rights situation in the country.
- It can promote the level of human rights understanding and awareness that is necessary to create a culture of human rights in the country, including by effectively using the media.
- It can help ensure that human rights are protected and, where violations occur, it can help to ensure the provision of remedies.
- It can bring its perspective to international forums and events dealing with human rights issues. This perspective may be different from others in that it will be independent of Government and express the point of view of a human rights expert.

NHRIs can also contribute to addressing critical human rights gaps, to ensuring the rule of law and administration of justice, and to fighting impunity. On the rule of law, NHRIs are instrumental for the reform and the strengthening of judicial and security institutions, including the police and prison administrations, and all sectors of the rule of law, including by ensuring the compliance of standing orders, implementing regulations with relevant international norms as well as the existence of internal accountability systems. NHRIs can also contribute to 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.

NHRIs can contribute to the promotion and protection of Economic, Social and Cultural Rights. They are seen to have an important role in monitoring implementation of ESC rights. National institutions can promote judicial recognition for the ESCR.

Another area where NHRIs can play an important role is with regard to arbitrary detention. NHRIs can conduct unannounced visits to detention premises and request private interviews with detainees. Detainees’ families can also appeal to NHRIs in case of irregularities and in case of the existence of a complaints procedure in the NHRI. Their action at country level could support efforts by the international human rights system, especially the Working Group on Arbitrary Detention.

8. Conclusion

National institutions are State-sponsored and funded organisation that nonetheless act independently from government to promote and protect human rights at the national level. Where they are established in conformity to the Paris Principles they can have an important
and positive impact on the human rights situation of a country. While all Institutions should share basic similarities with regard to their mandate, responsibilities and authorities, there are a number of different models of Institutions. Increasingly, however, the distinctions between these models are becoming blurred. What is more relevant that the label attached to an Institution is the fact is that the Institution’s mandate, functions and powers accord with the letter and spirit of the Paris Principles.