

**THE INTERNATIONAL NORMS AND PRACTICES FOR THE  
ESTABLISHMENT OF NATIONAL INSTITUTIONS FOR THE  
PROMOTION AND PROTECTION OF HUMAN RIGHTS**

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**Introduction: <sup>(1)</sup>**

The role of national Governments in the realization of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions.

It is evident also that the United Nations is engaged in a wide range of activities aimed at fulfilling one of its principal purposes - the promotion and protection of human rights. In addition to these activities, the United Nations also provides practical assistance to States in their efforts to protect and promote human rights, and informs the public about the rights to which it is entitled.

By their very nature, non-governmental organizations have a freedom of expression, a flexibility of action and a liberty of movement which allow them to perform tasks which Governments and intergovernmental organizations are unable or may even be unwilling to perform

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(1) Fact Sheet No. 19 of March 1994 (ISSN-1014-5567). pages 1 and 2.

On the hand, regional human rights systems have reinforced international standards and machinery by providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned.

**The importance of nation institutions:**

It has been recognized that the effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. Official human rights institutions have been set up by many countries in recent years. While the tasks of such institutions may vary considerably from country to country, they share a common purpose and for this reason are collectively referred to as "national institutions for the protection and promotion of human rights".

On its part, the World Conference on Human Rights has encouraged the establishment and Strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" (endorsed by the CHR in March 1992 and annexed to UN GA resolution 48/134 of 20 December 1993)." And also it has recognized that it is the right of each State to choose the framework which is best suited to its particular needs at the national level .<sup>(2)</sup>

In the course of its work in the area of national institutions, the United Nations has come to realize that no single model of national institution can, or should be, recommended as the appropriate mechanism for all countries to fulfil their international human rights obligation. Although each country can benefit from the experience of others, national institutions must be developed taking into account cultural and legal

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(2) Vienna Declaration and Programme of Action of 1993. Part I. paragraph 36.

traditions, as well as existing political organization.<sup>(3)</sup>

National institutions cannot be expected to address all the human rights issues which are currently occupying governments and the international community. Nor are such institutions set up to replace the human rights organs of the United Nations or non-governmental organizations working in the same area. The role of national institutions is clearly complementary, and their strengthening can only enhance the effectiveness of both national and international systems for the promotion and protection of human rights.

Also, the platform for Action adopted by the fourth World Conference on Women has urged Governments to create or strengthen independent national institutions for the promotion and protection of human rights, including the human rights of women.<sup>(4)</sup>

On the other hand, both, the United Nations General Assembly and the Commission on Human Rights have emphasized the importance of international cooperation among national human rights institutions whether through the meeting of Coordinating Committee created by national institutions or otherwise.<sup>(5)</sup>

Furthermore, the international community has also welcomed regional cooperation among national human rights institutions, in particular through, the fourth Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions, held in Manila in September 1999, the third meeting of European National Institutions, held in Strasbourg in March 2000, the first Regional Meeting of National Institutions for the

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(3) Jose Ayala Lasso ex-United Nations High Commissioner for Human Rights, Foreword to Professional Training Series No. 4 of June 1995 (ISBN-92-1-154115-8) and (ISSN 1020-1688) page V.

(4) Fact Sheet No. 19. pages 2-5.

(5) A/CONF. 177/20 chap. 1, annex 11.

Protection and Promotion of Human Rights in the Americas, held in Tegucigalpa in September 1999, and the fifth International Workshop of National Human Rights Institutions, held in Rabat in April 2000. Also, the international community has underlined the importance of regional cooperation between national human rights institutions and other regional rights forums including the first round table between the Council of Europe and national institutions in Strasbourg in March 2000 and the adoption of a resolution by the African Commission on Human and People's Rights on the granting of observer status to national human rights institutions in Africa. <sup>(6)</sup>

The support for the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms was outlined in article 14, paragraph 3, of the declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. <sup>(7)</sup>

In the area of cooperation, a workshop was convened by the Asia-Pacific Forum of National Human Rights Institutions, in cooperation with the Office of the United Nations High Commissioner for Human Rights, on cooperation between non-governmental organizations and national human rights institutions in Sri Lanka in July 1999. <sup>(8)</sup>

The Committee on Economic, Social and Cultural Rights expressed the view that national human rights institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and

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(6) Commission Human Rights resolution 2000/76, PP8, and resolution 1999/72, PP8 .

(7) I bid, PP 9 and 10.

(8) The Declaration was adopted by United Nations General Assembly resolution 53/144 of 9 December 1998.

interdependence of all human rights. <sup>(9)</sup>

The Coordinating Committee of national institutions is undertaking important work in close cooperation with the Office of the High Commissioner, in assessing conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights and in assisting Governments and national institutions, when requested, to follow up on relevant resolutions and recommendations concerning the strengthening of national Institutions. <sup>(10)</sup>

The CHR has welcomed the sixth international workshop on national institutions, the fifth Annual Meeting of the Asia-Pacific Forum of National Human Rights Institutions, the third Conference of African National Institutions for the Promotion and Protection of Human Rights and the second Regional Meeting of National Institutions for the Protection and Promotion of Human Rights in the Americas in 2001, and encouraged national institutions to organize similar events with non-governmental organizations in their own regions. <sup>(11)</sup>

The Secretary-General of the UN has prepared a report including a section concerning participation by national institutions in United Nations meetings dealing with human rights. And there is an arrangement at the Commission which allows national institutions to address the Commission from a special section of the floor set aside specifically for this purpose, behind the nameplate "National Institutions" <sup>(12)</sup>

**Guidelines and principles governing the establishment of national institutions:**

While the world-wide interest in national institutions is a relatively recent phenomenon, the original concern of the United Nations with such

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(9) Resolution 2000/76, OP 4 (CHR).

(10) General Comment No. 10 of 1998, document (E/1999/22 E/C. 12/1998/26, annex V).

(11) Resolution 2000/76 OP 14 (CHR).

(12) *I bid*, OP 18.

institutions dates back to 1946 when the issue was first addressed by the Economic and Social Council. <sup>(13)</sup>

In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. These guidelines suggested that the functions of national institutions should be:

(a) To act as a source of human rights information for the Government and people of the country;

(b) To assist in educating public opinion and promoting awareness and respect for human rights;

(c) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;

(d) To advise on any questions regarding human rights matters referred to them by the Government;

(e) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;

(f) To perform any other function which the Government may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

(a) Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision making process in regard to human rights;

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(13) Document (E/CN. 4/1999/95) and also see CHR resolution 1999/72 OP 15.

- (b) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- (c) In appropriate cases have local or regional advisory organs to assist them in discharging their functions.

The guidelines were subsequently endorsed by the Commission on Human Rights and by the General Assembly.

Throughout the 1980s, the United Nations continued to take an active interest in this topic. It was during this time that a considerable number of national institutions were established often with the assistance of the Advisory Services Programme of the OHCHR.

In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The conclusions of this important workshop, held in Paris in October 1991, are known as "Paris Principles" and could be summarized as follows:- <sup>(14)</sup>

### **A. Competence and responsibilities**

First: A national institution shall be vested with competence to protect and promote human rights.

Second: 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.

Third: 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

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(14) Dact Sheet No. 19, pages2-5 .

higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights and which relate to the following areas:

- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights;
  - (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.
- (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;
  - (e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion 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.

### **B. Composition and guarantees of independence and pluralism**

First: 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 protection and promotion 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 they are included these representatives should participate in the deliberations only in an advisory capacity).

Second: 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 this independence.

Third : in order to ensure a stable mandate for the members of the 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.

### **C. 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 consulted;
- (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 protection and promotion 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 protecting and promoting 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.

#### **D. 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 below 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 or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

**Categories of national institutions:<sup>(15)</sup>**

Categories of national institutions are as follows:

- (a) In some countries, the Constitution will provide for the establishment of a national human rights institution. More often, such institutions are created by legislation or decree. While many national institutions are attached, in some way or another, to the executive branch of government, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate<sup>(16)</sup>.
- (b) The majority of existing national institutions can be grouped together in two broad categories: "human rights commissions" and "ombudsmen". Another less common, but no less important variety are the "specialized" national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women. The following are some details about each category:

**Human rights commissions:**

In many countries, special commissions have been established to ensure that the laws and regulations concerning the protection of human rights are effectively applied.

Most commissions function independently from other organs of

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<sup>(15)</sup> I bid, pages 12-15.

<sup>(16)</sup> I bid, pages 5-10.

government, although they may be required to report to the legislature on a regular basis.

In keeping with their independent nature, commissions are generally composed of a variety of members from diverse backgrounds but each with a particular interested expertise or experience in the field of human rights.

The precise functions and powers of a particular commission will be defined in the legislative act or decree under which it is established.

One of the most important functions vested in a human rights commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law. Even if only used rarely, this power is important. While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. In the process of conciliation, the commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the commission may be able to resort to arbitration in which it will, after a hearing, issue a determination.

It is not usual for a human rights commission to be granted authority to impose a legally binding outcome on Parties to a complaint. If no special tribunal has been established, the commission may be able to transfer unresolved complaints to the normal courts for a final and binding determination.

Another important function of a human rights commission is systematically to review the government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improving it.

The ability of a commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable effectiveness. This is particularly true in regard to situations which involve persons or groups who do not have the financial or social resources to lodge individual complaints.

Commissions are often entrusted with the important responsibility of improving community awareness of human rights. Promoting and educating about human rights may involve informing the public about the commission's own functions and purposes; provoking discussion about various important questions in the field of human rights; organizing seminars; holding counselling services and meetings; as well as producing and disseminating human rights publications. This function could be carried out through a department or a Centre affiliated to the national institution.

**The ombudsman:**

The primary function of this institution is to protect the rights of individuals who believe themselves to be the victim of unjust acts on the part of the public administration. Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and the government.

While the institution of ombudsman is not exactly the same in any two countries, all follow similar procedures in the performance of their duties. In general if the recommendation is not acted upon, then the ombudsman may submit a specific report to the legislature. This will be in addition to an annual report to the same body which may include information on problems which have been identified and contain suggestions for legislative and administrative change.

While any citizen who believes that his or her rights have been

violated may submit a complaint to the ombudsman, many countries require that the complainant first exhaust all alternate legal remedies.

While the ombudsman's authority usually extends to all aspects of public administration, some are not empowered to consider complaints involving presidents, ministers or the judiciary.

The ombudsman is not always restricted to acting upon complaints and may be able to commence an investigation on his or her own initiative.

In many respects, the powers of the ombudsman are quite similar to those of human rights commissions. There are nevertheless some differences in the functions of the two bodies which explain why some countries establish and simultaneously maintain both types of institution. In most cases, the primary function of the ombudsman is to ensure fairness and legality in public administration. Human rights commissions are more specifically concerned with discrimination, and in this respect will often address themselves to the actions of private bodies and individuals as well as the government. In general, the principal focus of activity for an ombudsman is individual complaints. However, ombudsmen are increasingly engaged in a wider range of activities for the protection and promotion of human rights.

**Specialized institutions:**

Vulnerable and minority groups differ from country to country, but the most common problem affecting them all is that of discrimination. Members of the community who are most often recognized by governments as needing specialized human rights institutions to protect their interests are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled.

For the most part, these institutions perform functions similar to

those of the less specific human rights commissions and ombudsmen described above

While generally able to investigate complaints brought by a member of the group against another person or against a government body, these specialized agencies are, like other national human rights institutions, rarely empowered to make binding decisions or to initiate legal action.

Such agencies will frequently be responsible for monitoring the effectiveness of existing laws and constitutional provisions as these relate to the group. In this way, they often act as consultants and advisors to parliament and the executive branch of government.