

TABLE OF CONTENTS

Introduction	1
AMNESTY INTERNATIONAL'S RECOMMENDATIONS ON EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS	2
1. Establishment of NHRIs to ensure independence and effective action	2
1.1 Founding legislation	2
1.2 Consultation with civil society	3
1.3 Effective jurisdiction in federal states	3
1.4 Cooperation with other institutions	3
1.5 Referrals	3
1.6 Assess priorities, measure goals, follow up	4
2. Membership	5
2.1 Qualities of members of the NHRI	5
2.2 Leadership	5
2.3 Selection procedures and consultation	5
2.4 Representation of society	6
2.5 Freedom from bias and expectations for further career advancement	6
2.6 Effective support to fulfil tasks	6
2.7 Privileges and immunities	7
3. Mandate and powers	7
3.1 Scope of human rights within an NHRI jurisdiction	7
3.2 Accountability to ensure effective action	8
3.3 Asserting human rights for all	8
3.4 Participation in international human rights law fora	8
3.5 Advising governments on domestic legislation	9
3.6 Participation in domestic legal cases	10
3.7 Effective communication with government to bring about change ...	10
4. Investigations and Inquiries	11
<u>4.A General recommendations on investigations</u>	11
4.A.1 Timelimits	11
4.A.2 Power to investigate on its own initiative	11
4.A.3 Investigating individual cases and wider patterns	12
4.A.4 Persistent problems and root causes	12
4.A.5 Addressing all perpetrators without fear	12
4.A.6 Compelling evidence	13
4.A.7 Accurate statistics - accurate picture of human rights violations	13
<u>4.B. Methodologies of investigation</u>	13
4.B.1 Independent investigation professionals	14

4.B.2 Training	14
4.B.3 Protection of witnesses	15
4.B.4 Protection of evidence	15
<u>4.C. Individual complaints</u>	15
4.C.1 Who can complain?	15
4.C.2 Reaching out to victims	15
4.C.3 Keeping the interests of victims at the centre of the process	15
<u>4.D. Addressing failed investigations effectively</u>	16
4.D.1 Separation of roles of the NHRI and the judiciary	16
4.D.2 Parallel jurisdiction of NHRI and the judiciary	17
4.D.3 Role of NHRI in following up the actions of prosecutors and the judiciary in cases where crimes are alleged.	18
5. Recommendations and non-judicial remedies	18
5.1 Remedies and interim measures	18
5.2 Remedies but not impunity	18
5.3 Recommendations should be followed up	19
6. Human rights education	19
7. Visits to places of detention	20
7.1 Modalities of visits	20
8. Publicity	21
8.1 Media	21
8.2 Annual reports	22
8.3 Confidentiality	22
9. Accessibility	22
9.1 Regional offices	22
9.2 Accessible premises	23
9.3 Communication with victims	23
10. Budget	24

NATIONAL HUMAN RIGHTS INSTITUTIONS

Amnesty International's recommendations for effective protection and promotion of human rights

INTRODUCTION: STANDARDS ARE A PRE-REQUISITE FOR EFFECTIVE ACTION

National human rights institutions (NHRIs) include institutions such as ombudspersons for the defense of human rights, and the institutions in Latin America known as “*defensorias del pueblo*” and “*procuradorias de derechos humanos*”. Such NHRIs can be distinguished from non-governmental human rights organizations by their very establishment as a quasi-governmental agency occupying a unique place between the judicial and executive functions of the state, and where these exist, the elected representatives of the people. The aim of their establishment should be to promote and protect human rights, through effective investigation of broad human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly.

Amnesty International has developed the following recommendations, based on the organization's observations of the work of NHRIs and their impact throughout the world. This document includes examples of good and bad practice. Amnesty International believes that these recommendations are essential elements to ensure the independent and effective establishment and functioning of national human rights institutions. They should be considered alongside other guidelines such as the “Principles relating to the status of national institutions” (adopted in the UN Commission on Human Rights Resolution 1992/54, known as “the Paris Principles”) as a tool both to assess the effectiveness of existing national human rights institutions, and to ensure that new NHRIs are set up with the requisite ingredients for effective and independent functioning.

The recommendations set out in this document are Amnesty International's assessment of a foundation for effective work to promote and protect human rights. However, implementation of these recommendations on a formal level should not be seen as an end in itself - NHRIs should be judged on their results in effecting improvement in the human rights situation in their country, and in providing investigations and remedies in individual cases. The results of their investigations should be open to scrutiny by civil society, including human rights defenders. They should work to combat impunity for all those who order, carry out, and cover up human rights

violations. NHRIs should be judged on how they implement these goals, not solely on their legal or institutional framework. Amnesty International has received reports of many examples of good practices and good results in these aims, but also many shortcomings, and these recommendations are meant to encourage best practices in all NHRIs. It is Amnesty International's experience that those NHRIs which have been set up according to the principles in these recommendations and are functioning well and enjoy a level of credibility and trust which facilitates their relationship with the executive, the judiciary and most importantly, the victims of human rights violations, and makes their work even more effective.

Some of the recommendations concern the establishment of NHRIs and as such are aimed at governments, but others concern the operation of NHRIs, and are therefore aimed at governments, so that they can do all that is necessary to facilitate the efficient running of NHRIs, but also the NHRIs themselves. They may also be useful to those in civil society who are monitoring their performance.

The position of NHRIs as institutions within the state structure and yet independent - and where necessary, critical - is relatively new development in the protection of human rights. It is important to clarify their true role: NHRIs should never be seen as a replacement or alternative to an independent, impartial, properly resourced, accessible judiciary, whose rulings are enforced. NHRIs can however constitute an effective complement to the judiciary and other institutions within the state in promoting and protecting human rights standards. There can be no alternative to a determined government policy to holding the perpetrators of human rights violations accountable.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS ON EFFECTIVE PROTECTION AND PROMOTION OF HUMAN RIGHTS

1. Establishment of NHRIs to ensure independence and effective action

The following recommendations on the establishment are to ensure that action can be taken by the NHRI in full independence and to ensure its ability to take effective action to address violations. Formal independence without effective action is not sufficient.

1.1 Founding legislation

NHRIs must be independent from the executive functions of government and its founding charter should reflect this. It is essential therefore that NHRIs should be established by law or, preferably, by constitutional amendment. Where NHRIs are established merely by presidential

or other kinds of decree, it is easier to abolish them, or to limit powers which are necessary to their effective functioning.

1.2 Consultation with civil society

The consultation process on and about the establishment of NHRIs should include representatives of civil society, such as human rights organizations, human rights defenders, lawyers, journalists, academics, the medical profession, social workers, trade unionists, and non-governmental organizations generally. Members of sectors of the population such as women, children and those representing their interests, religious, ethnic and racial groups, and other groups which are vulnerable to human rights violations (and which may be under-represented amongst civil society bodies) should also be consulted about the kind of assistance they require to promote and protect their human rights. The consultation process should be transparent, adequate, effective and properly resourced to ensure proper consultation.

1.3 Effective jurisdiction in federal states

Amnesty International has frequently noted that NHRIs have difficulties in ensuring that they can address violations throughout the territory of federal states. In some federal countries, NHRIs have been established with mandates that only permit them to consider cases where federal personnel commit human rights violations, or where human rights violations take place during the enforcement of federal law.

Amnesty International recommends therefore that any legislation in federal systems setting up an NHRI is made explicitly applicable to all parts of the federal system so that there are no *de facto* gaps in jurisdiction. Any NHRI, whether in a federal state or otherwise, should be able to examine all human rights violations, as defined by international human rights law, throughout the country's territory and regardless of the identity of the perpetrator.

All citizens with complaints of human rights violations should be able to bring them to an NHRI.

1.4 Cooperation with other institutions

The founding legislation of an NHRI should include provisions whereby the NHRI is empowered, on its own initiative, to submit reports to, and where appropriate, to address in person, legislative bodies, the executive, or other political institutions.

The NHRI should be directed to establish effective cooperation with other human rights institutions, whether domestic or from other countries, non-governmental organizations, including

human rights organizations, and UN human rights bodies. In some cases, it may be useful to develop memoranda of understanding between NHRIs and other institutions to facilitate such relationships. NHRIs should use such contacts to exchange first-hand information about reports of human rights violations and also to share expertise and experience of best practices.

The NHRI should consider using the NGO sector's wider social outreach mechanics, which in many cases is larger than that of the NHRI itself, to publicise its activities and to facilitate receiving complaints from sections of society who are either geographically, politically or socially remote. In all its contacts with NGOs and other organs of civil society an NHRI must take steps to protect its independence and impartiality.

1.5 Referrals

Where complainants raise problems which are outside the mandate of the NHRI, referrals may be appropriate to other organizations. This may be appropriate to help with, for example, medical, housing or social problems or consumer difficulties, particularly where complainants coming to the NHRI for help are having difficulties in obtaining assistance. In one case reported to Amnesty International, the NHRI gives the complainant a short letter on NHRI letterhead to bring to the referral agency outlining the problem and suggesting an appropriate response, which frequently leads to a quicker solution for the complainant and is a much appreciated service.

1.6 Assess priorities, measure goals, follow up

NHRIs frequently have a broad remit and scarce resources. It is therefore important to assess priorities through consultation with those affected, and work on priorities strategically, ensuring that those goals are met before ending work on the issue.

Violations of the right to life and the right to physical and mental integrity frequently involve crimes under international law, such as extrajudicial and other unlawful killings, torture, "disappearance", war crimes and crimes against humanity. In many countries NHRIs will need to prioritize work on such violations in order to be effective and credible in their work to protect and promote human rights.

NHRIs should also be empowered to take action on violations of other rights particularly social, cultural and economic rights.

NHRIs should assess priorities and needs through consultation with victims of human rights violations, and the availability of redress through other institutions within the country.

2. Membership

NHRIs require experienced, trained and skilled staff, and particularly strong, independent and effective leadership. NHRI workers include those who lead the NHRI and take main responsibility for the work. In many cases they are appointed by the legislative or executive parts of government. Amnesty International refers to them in this document as “members.” NHRI workers also include the staff who assist them, either through administrative or substantive investigative and legal work.

2.1 Qualities of members of the NHRI

Members should be selected on the basis of proven expertise, knowledge and experience in the promotion and protection of human rights. They should have practical expertise and abilities.

2.2 Leadership

It is Amnesty International's experience that the leadership of NHRIs is particularly important, indeed vital, for the effective functioning of NHRIs, as frequently the actions of the senior leadership of the organization sets the tone for the activities of the institution as a whole. It is of primary importance that the highest calibre candidates, with proven expertise of practical human rights work, be appointed.

2.3 Selection procedures and consultation

The independent procedures of selection, appointment, removal and terms of tenure of NHRI members and staff should be clearly specified, laid down in its founding legislation, so as to afford the strongest possible guarantees of competence, impartiality and independence.

The selection, appointment, and removal procedures of the members of the NHRI should not be handled exclusively by the executive branch of government.

The method of selection and appointment of the members of the NHRI should be fair and transparent, so as to afford all necessary guarantees of independence. Broad representation is also important, and steps should be taken to guarantee this - for example - by allowing members of civil society to nominate possible candidates for membership of the NHRI.

The selection and appointment process should involve representatives of civil society, especially human rights defenders representing the interests of particularly vulnerable sections of society (and members of those groups also), and may also include NGOs, opposition leaders, trade unionists, social workers, journalists.

Civil society should participate in the selection and appointment process as far as possible.

2.4 Representation of society

The NHRI members and staff should as far as possible include representation of all sections of society, including women, ethnic minorities, and people with disabilities, who may be under-represented in other official bodies and would have particular relevant experience of the needs of those sectors of society. Non-nationals should not be deterred or specifically prohibited from taking up a post at the NHRI.

2.5 Freedom from bias and expectations for further career advancement

The members and staff should consist of men and women known for their integrity and impartiality of judgement who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason, for example, allegiances to political parties, or strong links with the executive part of government.

In some cases, there may be an expectation that office in an NHRI is a stepping stone leading to ministerial or other political office which limits the independence of NHRI members and staff - as with such expectations, they may be less willing to criticize the executive.

Salaries and working conditions have a positive role to play in recruiting and retaining effective staff, and in ensuring independence. This, along with local factors, such as salary levels for similar positions, whether in the public or private sector, must be taken into account when setting and revising staff terms and conditions.

2.6 Effective support to fulfil tasks

There should be sufficient staffing to fulfil the tasks allotted to the NHRI. The key issue is to ensure effective oversight and action. NHRIs must have a functioning and efficient secretariat to carry out the tasks entrusted to the members.

2.7 Privileges and immunities

Like the judiciary, members of NHRIs should be immune from criminal or civil legal action for all tasks undertaken by them in the proper exercise of their official functions. However, decisions made by them in their official capacity should still be subject to judicial review by the courts.

3. Mandate and powers

The mandate should make the NHRI truly independent in action, to promote and protect human rights in whatever manner is most appropriate. It should not be set up as a purely advisory body to advise the government, rather it should listen to victims of human rights violations, and have their concerns at the heart of its work. It should also work to promote a culture of respect for human rights through education and raising of awareness of human rights issues.

The scope of the NHRI's concerns should be principally and clearly defined in terms of international human rights law. This should include states' obligations under international law to respect and also to ensure that rights are respected by all, that is, to take steps to ensure that domestic law and practice form a framework where the abuses of human rights by non-state actors are effectively addressed. NHRIs should make recommendations for changes in law and practice where states are not fulfilling their obligation be able to take reasonable steps to protect citizens from abuses of their human rights by other citizens.

3.1 Scope of human rights within an NHRI's jurisdiction

NHRIs should enjoy the broadest possible mandate to address human rights concerns as set out in international human rights law and standards. The mandate should not be defined solely in terms of those rights that are specifically provided for in the country's constitution - particularly as some constitutions do not contain key rights such as the right to life. Rather NHRIs should take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties. The mandate should include the power to protect and promote economic, social and cultural rights, as well as civil and political rights.

This is particularly important to ensure that human rights violations are monitored and acted upon in an accurate way. For example, Amnesty International has received reports that cases of torture are routinely described as "abuses of official position" rather than torture, which leads to a misleading assessment of human rights violations occurring in the country, as well as a failure to take appropriate action.

3.2 Accountability to ensure effective action

NHRIs should report publicly on their activities and be held accountable for their results - either to an independent civil society body, or to a functioning and exacting parliamentary body. This is particularly important as an ineffective NHRI which does not address human rights violations actively can be an instrument of impunity, rather than a tool to promote and protect human rights.

3.3 Asserting human rights for all

The mandate should include the power specifically to promote and protect the rights those sections of society which are particularly at risk of violations of human rights, for example, children, women, people with disabilities, ethnic minorities, refugees, human rights defenders and non-nationals such as asylum-seekers and migrant workers. It should promote the right not to suffer discrimination, as this is often the source and motivation of other human rights violations, such as torture.

Frequently Amnesty International has received information indicating that NHRIs encounter difficulties because they are perceived to be promoting the rights of criminals because of their work on prison conditions, or the torture of criminal suspects. It is therefore important that all NHRIs emphasise the universal applicability of human rights standards to **all** persons.

3.4 Participation in international human rights law fora

NHRIs should recommend and facilitate the signature, ratification or accession of its state to new human rights treaties.

The mandate should include the power to monitor government fulfilment of international and regional human rights treaties and human rights obligations under domestic law. This should include the power to monitor and report - independently on its own behalf, not on behalf of its government - on compliance with and implementation of relevant and necessary international human rights standards, essential to the promotion and protection of human rights, including the Universal Declaration of Human Rights, the International Covenant on Cultural and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Declaration and Convention against Torture, the Convention of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, as well as 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, the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Rules for the Protection of Juveniles Deprived of their Liberty, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary or Summary Executions. They should also assess compliance with standards relating to the administration of justice, such as the Basic Principles on the Role of Lawyers, the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors, and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

NHRIs should as far as possible attend and participate in international meetings and fora including the treaty monitoring bodies and UN political bodies concerned with human rights.

When doing so, they should represent themselves as independent NHRIs, rather than representing their government.

NHRIs should have the power to take note of and ultimately apply international human rights law and standards in their work. It is essential therefore that NHRIs establish effective means to keep abreast of recent developments of international human rights law and standards.

The NHRI should possess the power to follow-up on recommendations and reports made in relation to implementation and compliance with international human rights standards mentioned above. This should include a suitable framework within which the NHRI may compel the relevant authority to explain and report to the NHRI, within a reasonable period of time, as to why, for example, it has not followed and did not apply recommendations made by human rights treaty bodies or thematic mechanisms.

NHRIs should prepare “shadow reports” (reports of their assessment of the human rights situation in their country) to submit to the UN human rights treaty monitoring bodies on their own behalf; they should not write the state’s reports to treaty monitoring bodies.

3.5 Advising governments on domestic legislation

The mandate should include the power to review the effectiveness of existing legislation or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary.

This is especially important regarding internal security laws, administrative detention laws, and police detention and interrogation procedures, which can often facilitate human rights violations, or where enabling legislation implementing international standards does not implement the international obligations effectively.

The NHRI should also examine bills and proposals for new legislation put forward by the government or parliament to assess its conformity with international human rights standards and to ensure the state’s compliance with international human rights standards.

3.6 Participation in domestic legal cases

NHRIs should have the power to bring legal cases to protect the rights of individuals or to promote changes in law and practice. Amnesty International has received information about excellent work including the use of legal applications such as judicial review, constitutional applications and challenges, etc.

NHRIs should have the legal power to bring applications on behalf of those who may be unable to bring cases to protect their rights themselves (for example, children, those with mental health problems or otherwise lacking mental capacity, prisoners).

NHRIs should also have the legal power to bring cases (such as judicial review) to challenge the legality of executive action and to obtain judicial orders to remedy the situation, particularly where the executive has ignored the NHRIs recommendations on the subject.

NHRIs must also have the legal power to submit advice to the courts, such as *amicus curiae* briefs or third party interventions, on legal issues within its field of expertise in an independent capacity, without being a party to the case. This is important to ensure that the courts are informed about specialized human rights law concerns and to ensure that human rights standards are actively implemented in court decisions.

3.7 Effective communication with government to bring about change

NHRIs should be mindful of their official position within state structures and communicate their recommendations confidently and with the expectation that the executive part of government, or the prosecuting authorities, should implement them. NHRIs should open strong and effective methods of communication with all agencies of government, the prosecuting authorities and the judiciary in order to promote their recommendations, and should ensure compliance with recommendations, and not accept recommendations being ignored. NHRIs should also make recommendations to parts of the state, for example, the judiciary and the legislative organs.

4. Investigations and Inquiries

4.A General recommendations on investigations

The NHRI should have the powers to conduct wide-ranging national enquiries on human rights concerns; they should have access to government information; they should respond to victims' concerns in their investigations.

4.A.1 Timelimits

Although some reasonable time limits may be used to ensure that complainants come forward speedily with their complaints, NHRIs should undertake any investigation where there is evidence in existence to consider: they should not be inhibited by arbitrary time limits on investigations, and should not be inflexible in rejecting cases for being brought to their attention outside of timelimits.

4.A.2 Power to investigate on its own initiative

NHRIs should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations. It should be able to set clear priorities for its work in accordance with the seriousness of the violations reported to it, specifically including alleged violations of the right to life and security of the person, and the right to physical and mental integrity, including the right not to be tortured; as well as to the right not to be arbitrarily arrested or detained.

Many NHRIs lose credibility within their countries by failing to engage with such issues directly, and instead focussing almost exclusively on human rights education or promotion or implementation of those rights which involve less criticism of the government.

NHRIs should accept information from any reliable source, and should cooperate with national and international NGOs.

4.A.3 Investigating individual cases and wider patterns

Pending completion of investigations the NHRI should always identify any systematic pattern of human rights violations, and address the root causes, rather than solely treating each case in isolation. They should not look at individual cases in isolation, nor report abstractly on trends and developments - rather they should focus on the facts of individual cases, and identifying patterns, using well-researched, well-attested and evidenced cases.

4.A.4 Persistent problems and root causes

In their reports, NHRIs should conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory. This should include an assessment of the failure of existing institutions and legal mechanisms to provide adequate human rights protection, and its links with impunity, the administration of justice, and for example, treatment of foreign nationals, women, and prisoners.

Recommendations for legal and institutional reform to address human rights violations should be proposed on the basis of the findings.

4.A.5 Addressing all perpetrators without fear

Many NHRIs undermine themselves and lose credibility by asking the alleged violators of human rights - such as the armed forces or the police - to investigate allegations of violations of human rights themselves, rather than the NHRI making an investigation itself. On some occasions, NHRIs simply forward the complainant's initial communication of his or her complaint to the alleged perpetrators (including the complainant's name, address, and other details) to ask the alleged perpetrators, or their colleagues, to investigate. This does not constitute an impartial investigation and can put complainants at risk.

Especially, NHRIs should be authorized to investigate the conduct of the police and the security forces throughout the national territory, and should promptly, effectively, independently and impartially carry out such investigations - especially in situations of internal armed conflict, and during states of emergency. This authorization should not just be made explicit in its implementing legislation; it should also be made a practical reality in its work. NHRIs should not be debarred from operating during states of emergency.

NHRIs should also undertake investigations into human rights violations, even if those responsible include politicians or other powerful agents in society. To do this effectively, the NHRI should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess. It should also have effective powers to protect its own staff and witnesses engaged in such investigations.

This is an all too frequent failure of NHRIs around the world, and a major cause of frustration and cynicism towards NHRIs from victims and the general population within countries, as well as NGOs, especially when the actions of major violators of human rights have not been addressed in a satisfactory way.

4.A.6 Compelling evidence

State officials should be legally obliged to cooperate with the NHRI's investigations. NHRIs should have full and effective powers to compel the attendance of witnesses and the disclosure and production of documents and other pieces of evidence. Effective sanctions should be in place to use when the NHRI's work is obstructed or otherwise interfered with.

4.A.7 Accurate statistics lead to an accurate picture of human rights violations

NHRIs should collect and publish accurate data on, for example, reports of "disappearances", deaths in custody, rape and other forms of torture. Collection of data should be a by-product of day to day work, rather than an aim in itself. Statistics should detail the nature of the complaints, how and when they were investigated, the findings, and follow-up to recommendations.

4.B. Methodologies of investigation

In carrying out investigations NHRI should pursue all available sources of information. These may include statements from victims, witnesses and alleged perpetrators; medical reports; police investigation files; court files; media reports; information from NGOs, families of victims and lawyers.

This is particularly important as investigations that, for example, simply constitute an examination of an existing police investigations file, may lead to a repetition of failures in investigation and in such cases, this may promote or contribute to impunity.

Amnesty International has also received information about cases where the onus of proof is on the complainant to prove his case, rather than the NHRI carrying out an investigation. NHRIs should always take steps to investigate information independently.

4.B.1 Independent investigation professionals

NHRIs should have their own investigative machinery and should have access to expert assistance (forensic pathologists, forensic doctors, ballistic experts, specialists on sexual violence etc.) whenever required to investigate alleged violations of human rights, particularly those involving physical injury (including injuries from sexual violence) and death. It is also important to have access to relevant experts to assist with interviews with victims who may be suffering from the psychological effects of torture, including sexual violence, to identify and record the psychological effects, and to ensure that interviews are conducted in a manner which does not lead to further psychological damage.

Sometimes it will be necessary to bring expertise in from outside the country, where no trained expertise is available.

Wherever possible, such forensic expertise should be at hand at short notice so that effective investigations and recording of, for example, injuries caused by torture or sexual violence, or post mortem investigations, can be made efficiently. When such reliable forensic information is available, then it is much more likely that effective action can be taken in prosecutions of perpetrators.

Such experts should be truly independent - frequently Amnesty International has received reports that such experts have strong links with state officials such as the police, as most of their work is for such state officials. Amnesty International has received some reports of investigators for NHRIs who are actually police officers on secondment from the regular police forces - who were unwilling to investigate allegations against fellow police officers.

NHRIs should have adequate facilities to carry out on-the-spot investigations, including transport, to be able to obtain access to any place in the territory where human rights violations take place.

4.B.2 Training

Effective and practical training of staff working on investigations - especially sharing of skills and best practice from colleagues abroad - should be a priority. Frequently investigations undertaken with good will fail because of lack of training in investigative sciences and skills. They should also receive training in international human rights law so that they can identify and understand legal issues regarding their investigations.

4.B.3 Protection of witnesses

NHRIs should have full and effective access to mechanisms to ensure that witnesses, complainants, or others providing evidence to the NHRI are given appropriate protection. Mechanisms should be in place, which can be triggered by the NHRI, that can lead to the suspension or transfer of officials allegedly involved - without prejudice pending completion of investigations - to other duties where they would have no power over witnesses or complainants.

4.B.4 Protection of evidence

Evidence gathered during investigations, such as witness statements, reports (including reports such as post mortem examinations or other expert reports) and physical evidence (such as evidence gathered during exhumations) should be kept securely by the NHRI.

4.C. Individual complaints

4.C.1 Who can complain?

NHRIs should have powers to begin investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if the complainants themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Individual complaints procedures should be free of charge.

It is important that all people have the opportunity to be represented in applications to NHRIs, regardless of their status under national law. Children, prisoners, the mentally ill, and foreign nationals, for example, must all have access to the NHRI.

4.C.2 Reaching out to victims

NHRIs should use networks of communication and outreach already existing among NGOs and civil society groups such as medical associations, to ensure that victims of human rights violations are aware of the procedures open to them.

4.C.3 Keeping the interests of victims at the centre of the process

Victims or relatives should have access to all relevant information and documents relating to the investigation into their complaints and be granted all necessary facilities to present evidence. Victims should in particular, be kept informed of the process of the NHRI's investigation, and be given reasons for decisions taken about their case, and consulted where there are choices as to how their case will develop.

NHRIs should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the NHRI.

Where the NHRI is unable to take up a case, for example, because it is outside its mandate, it should inform the complainant as soon as possible and give reasons for its decision.

4.D. Addressing failed investigations effectively

Where the police have made an inconclusive or otherwise unsatisfactory investigation, the NHRI should undertake a prompt, thorough, effective and impartial investigation and not be hampered or otherwise inhibited by following the conclusions of a previous investigation. Investigations should not simply constitute an examination of an existing police investigations file.

An NHRI which fails to investigate individual complaints effectively may be an instrument of impunity - rather than allowing a victim access to a remedy, it closes off opportunities to secure a remedy, deterring the reporting of abuses.

4.D.1 Separation of roles of the NHRI and the judiciary

A clear line should be drawn between appropriate roles for the NHRI and the judiciary. The NHRI should be able to investigate, but should not have judicial powers. The result of the

NHRI's investigations should be referred to appropriate judicial bodies without delay so that they can take appropriate action.

Evidence obtained by NHRIs should not be made inadmissible in other proceedings simply by virtue of having been first given to the NHRI.

Amnesty International has received reports which indicate that some NHRIs consider that investigations by the police or the security forces *prima facie* are sufficient investigations. It is important that NHRIs make their own assessment of the effectiveness of such investigations and follow up themselves with prompt, effective, thorough and impartial investigations where existing internal police or army investigations, or judicial investigations are not effective.

Where the NHRI finds evidence that certain individuals may have been responsible for committing human rights violations or for ordering, encouraging or permitting them, the facts of the case should be investigated promptly, effectively, thoroughly and impartially by authorities empowered to bring criminal prosecutions, and if appropriate, those responsible should be brought to justice in legal proceedings which respect internationally-recognized rights to a fair trial, and do not lead to punishments involving torture or cruel, inhuman or degrading treatment, including the death penalty.

NHRIs should have powers to recommend that superior officers are brought to justice for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time. If the NHRI, in the course of its work, is able to identify short-comings in the law whereby it is not possible to hold such officers accountable, the NHRI should make recommendations for legal reform that would ensure that domestic law does not facilitate impunity.

The government should ensure that any prosecutions for crimes involving the abuse of human rights are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in human rights violations.

4.D.2 Parallel jurisdiction of NHRI and the judiciary

The fact that a complainant has been charged and a criminal prosecution is under way should not be a pretext for stopping NHRIs from acting on a complaint, or taking any other action within their mandate to address human rights concerns.

Where prosecutions are pending, the NHRI should not consider the substance of the criminal charge, but should be able to look at ancillary matters relating to the human rights of the accused person, for example, allegations that he or she has been tortured while in custody.

In some jurisdictions, the NHRI is not permitted to receive complaints from a person who has been charged with an offence or who is otherwise under judicial supervision; therefore if the judiciary is not taking appropriate steps to protect the accused person from human rights violations such as torture and ill-treatment in custody, then that person is without recourse to protect their rights.

4.D.3 Role of NHRI in following up the actions of prosecutors and the judiciary in cases of criminal acts

Although it is important to maintain independence of function between the judiciary and the NHRI, the NHRI should monitor whether its recommendations are followed up. Amnesty International frequently receives reports that an NHRI has recommended that, on the basis of their investigations, criminal investigations and prosecutions should be initiated - but the police or prosecuting authorities take no action.

NHRIs should not stand by in silence where recommendations to investigate and bring prosecutions are ignored. In such cases, the NHRI should continue to request that the authorities take up the case, if necessary through domestic and international publicity, or where possible, to bring judicial review action challenging the decision of the prosecuting authorities. NHRIs should not be complicit with impunity.

Where domestic remedies for human rights violations are exhausted or ineffective, NHRIs should raise the matter with the international bodies mandated to assess compliance with human rights standards, such as the human rights treaty monitoring bodies, or the United Nations' thematic mechanisms and special procedures, such as the Special Rapporteurs.

5. Recommendations and non-judicial remedies

5.1 Remedies and interim measures

NHRIs should have powers to ensure effective non-judicial remedies, including interim measures to protect the life and safety of an individual and adequate medical treatment where necessary; it should ensure measures of redress and rehabilitation are taken in appropriate cases.

5.2 Remedies but not impunity

NHRIs should not broker agreements for only reparations, such as compensation, to be paid, where the appropriate response would rather be reparation and prosecution of the perpetrator - for example in cases of torture.

Amnesty International has received reports that some NHRIs order compensation for crimes such as torture, and where the government encourages this or other forms of conciliation rather than bringing cases forward for prosecution. Conclusion of a case through friendly settlement should not prevent or hamper prosecutions for crimes under international law, such as torture, war crimes, or crimes against humanity.

5.3 Recommendations should be followed up

The government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the NHRI. The government's response should be made public.

In cases where the government fails to respond, or refuses to respond or implement recommendations, the NHRI should continue to take all possible measures to press the government, for example, through pressure by the media, through parliament, and through international pressure of opinion and bringing the case to the attention of the international human rights bodies, such as the treaty monitoring bodies and the special mechanisms. Cases should remain open and as far as practically possible, the members and staff who dealt with the case up to the NHRI giving its recommendation should remain actively involved with the case and monitoring the implementation of the recommendation to ensure that the situation has been remedied. Continuity of staff is important to ensure that the initial problem has been addressed effectively.

6. Human rights education

Amnesty International has noted that a population which is educated in their human rights is an asset to assist NHRIs to carry out their task. Educating the population on human rights is a task that NHRIs working even under the most repressive governments are able to attempt, so it is important that it is done effectively.

General human rights education should be undertaken in a practical, illustrative way - if possible using media broadcasts to illustrate or dramatise human rights issues - rather than producing glossy, but abstract, promotional material which simply sets out general principles. It is also vital to ensure that material is disseminated to suitable target audiences.

Human rights training should be targetted at people who may have to consider and apply human rights issues in their work - law-makers, administrative decision-makers, judges, lawyers, the medical profession, teachers, social workers, prison officers and police officers, and the armed forces - and they should be encouraged to promote human rights standards among their colleagues. Again, this professional education should be undertaken in a practical way to illustrate the transformative effect of using human rights standards in daily professional life. NGOs and victims groups should be encouraged to participate in such training to ensure that a variety of viewpoints are expressed within the education process.

7. Visits to places of detention

An important role that NHRIs can fulfil is as independent professional body empowered to visit places of detention, with the aim of making recommendations to change conditions in order to prevent the incidence of torture and other cruel, inhuman and degrading treatment or punishment.

Amnesty International has received reports of a wide range of competence in fulfilling this role among NHRIs around the world. Amnesty International has received information regarding cases where an NHRI has given assurances that a certain individual although reported to have been tortured, was fine and in good health, only for the organization's representatives to visit the same individual shortly afterwards to find him showing signs of torture consistent with earlier reports - giving rise to the possibilities that either the NHRI had not visited, or had mis-reported their findings, or lacked the necessary expertise to carry out visits. Thorough training is essential.

On the other hand, Amnesty International has received excellent general reports by NHRIs detailing the conditions of detention, and making recommendations which have led to a decrease in the incidence of torture and cruel, inhuman and degrading treatment and punishment. Unfortunately, recommendations are frequently not implemented by governments.

Even in cases where NHRIs undertake effective visits to places of detention, they are not provided with the human and practical resources (such as transport to all places of detention in all regions) so that they can ensure effective coverage and assessment of all places of detention.

7.1 Modalities of visits

The modalities of visits provided for in the Geneva Conventions of 1949 - Article 126 of the Third Geneva Convention, and Article 143 of the Fourth Geneva Convention - should be used by NHRIs in setting out the modalities for visits to places of detention.

These modalities are that:

1. the visiting mechanism shall have access to all places of detention, and have access to all premises in which detainees may be held.

Frequently, NHRIs are denied access to particular categories of places of detention, such as police stations, military prisons, or prisons where detainees are held under security or “anti-terrorist” legislation. These are frequently the very institutions from which many reliably attested complaints of torture are received, so it is vitally important that independent monitors have access to those places to assess conditions and make recommendations for change.

2. the visiting mechanism shall be able to interview detainees without witnesses, either personally or through the mechanism’s own interpreter.

3. the visiting mechanism shall have liberty to select the places they wish to visit.

Frequently NHRIs are required to seek permission or give long notice of their visit. NHRIs should be able to visit “any place,at any time” without prior authorization in order to make a true assessment of conditions of detention.

4. the duration and frequency of visits shall not be restricted.

The only reason for denying access to a particular place of detention should be physical danger equal to the provision within the Geneva Conventions regarding compelling military necessity - which in practice means that a place of detention should only be out of bounds for visits if it is under weapon fire, and only during the period of danger. State security should not be an issue which would affect visits. The NHRI itself should assess and take appropriate precautions regarding any other risks, such as risk to health through disease prevalent within a certain institution.

8. Publicity

8.1 Media

NHRIs should ensure that they have access to the media in order to publicise their work to ensure that the population as a whole is aware of the services that the NHRI can provide; that they have human rights that can be protected and enforced; and to ensure a forum for discussion of human rights and publicity (therefore transparency) of the NHRI’s activities. It is very important that the NHRI be seen by all to be taking effective action. NHRIs should also publicise their role as an institution independent from the executive part of the government, and its policies regarding confidentiality and security.

The NHRI should use the most effective media available to make contact with as many people as possible - so, for example, in places where illiteracy is high or where newspapers are hard to obtain, radio broadcasts should be used.

8.2 Annual reports

NHRIs should ensure that their reports, particularly their annual reports, are published and circulated widely.

Amnesty International recommends that NHRIs should be empowered to publish their materials at any time. Amnesty International has received reports that some NHRIs must present their reports to parliament or other political bodies before they are empowered to publish their reports, and frequently parliamentary time is not made available for this purpose. Therefore the NHRI is effectively silenced.

Many NHRIs do not produce annual reports - it is very important that they do so in order to be accountable and transparent, and to be seen to be fulfilling its role, evaluating its results, and planning its future activities. Statistics on the numbers and types of cases received, action taken and results achieved by the NHRI in resolving the cases should be included.

8.3 Confidentiality

Although there should be an assumption in favour of transparency, particularly in reports and the findings of investigations, in such publicity, care should be taken that sensitive details which could lead to complainants, their families, witnesses and human rights defenders being put in danger, or which leads to an invasion of their privacy, should not be released. However this need for confidentiality for sensitive information should not be used as an excuse not to publish any information at all, as this could be an excuse to cover up evidence of human rights violations.

9. Accessibility

9.1 Regional offices

Local and regional offices are vitally important to the effective functioning of NHRIs in a large country, or a county with isolated and inaccessible centres of population, or where transportation is difficult. Mechanisms should allow local offices a positive role in following up cases. Unfortunately Amnesty International has received reports of local offices undertaking prompt and effective investigations, but they are not empowered to follow up with local authorities: instead they have to refer cases to a central office. This can frequently become a "black hole" of bureaucracy, and effectively, cases are not followed up. Where there is a network of local

and central offices, effective coordination and communication between all should be ensured. Responsibility for following up on cases must be clearly allocated and periodic evaluations should ensure that follow-up is taking place.

9.2 Accessible premises

NHRI offices must be stationed in appropriate places - unfortunately Amnesty International has received reports of NHRI offices being located near military installations or police stations. In such cases, potential complainants may fear being noticed or monitored by the security forces if they bring their complaints. Amnesty International has received other reports of offices being intimidatingly smart or located in very up-market areas, so that the poor and other disadvantaged groups feel too uncomfortable and conspicuous to be seen going there. Other reports indicate that some offices are located in inaccessible areas where it is difficult for complainants to visit.

Within offices, there should be facilities such as private meeting rooms where complainants can discuss their complaints with NHRI staff in confidence.

9.3 Communication with victims

NHRIs should take steps to ensure effective communications between itself and potential complainants.

Amnesty International has received reports of excellent initiatives to facilitate such contact - such as free-phone (toll-free) telephone lines, email and internet access, and travelling offices (one example was a specially adapted bus) or travelling field officers who can go to very isolated areas. NGO networks can also facilitate contacts with victims and witnesses.

In countries where some complainants are likely only to be able to speak minority or local languages, these should be catered for. When using interpreters, careful consideration should be given to issues of confidentiality and impartiality. Cultural sensitivities should also be taken into account, which may include the gender of the interpreter. Interviewees (including complainants and witnesses) should consent to the use of interpreters.

In countries where there is widespread illiteracy, there should be common use of oral communication techniques, such as radio, and NHRI staff should take care to explain their procedures verbally, rather than relying on explanatory leaflets.

10. Budget

The government must provide the NHRI with adequate funding and resources in order to be able to fully carry out, and without restrictions and limitations, the aims and functions set out within the mandate, and particularly, to address the demands of the caseload that has been brought to its attention. The NHRI should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.

NHRIs are mandated by international standards, such as the Paris Principles, and by recommendations of civil society, such as the recommendations in this document, to cover a wide range of human rights issues, and clearly some prioritization of activities by NHRIs is required. Professional training and sharing of working skills so that NHRIs can maximise effective action within the bounds of resource constraints is therefore important.

Amnesty International has received reports that restrictions in NHRI budgets are used as a punitive measure to control an NHRI which is deemed to be too critical of government. AI has received reports of many examples where once set up, NHRIs are underfunded to the extent that they cannot function effectively - leading to reasonable doubts about how serious the government was in the first place about improving the implementation human rights through the NHRI.

The mandate should specifically and explicitly include the power to be able to establish effective and alternative routes to receive funding, either from private donors or international agencies, for whatever human rights activities the NHRI is undertaking. NHRIs should develop guidelines to ensure that any such fundraising does not compromise its independence and impartiality.

Funding should be secured with a longterm perspective to enable the NHRI to plan and develop its activities with confidence about being able to fulfil them.