

**Supporting National Institutions for the Promotion and Protection of
Human Rights – a Strategic Niche for UNDP?**

Issues Paper

FINAL DRAFT

Executive Summary

The Danish Institute for Human Rights

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EXECUTIVE SUMMARY

1 INTRODUCTION AND BACKGROUND

National Human Rights Institutions (NHRIs) are a particular type of institution. They are autonomous and independent, but at the same time they could be considered official state bodies as they are funded by public sources and established by law. Their purported aim is to implement international human rights norms domestically.

The starting point for the report is that NHRIs in some countries are, and in other countries can become, important players in the promotion and protection of human rights at the national level. There is empirical evidence that NHRIs can play the role of a mediator and act as a link between civil society and the state on the one hand, and between international agencies and national state structures on the other hand. The NHRIs have the potential to put human rights on the national policy agenda, to propose the creation of legislation that conforms to international human rights standards, and to monitor and document human rights violations as well as to inform and educate about the implementation of human rights. Most NHRIs have also been mandated to handle individual complaints on human rights violations, thereby fulfilling an important role, especially in societies where general access to justice remains problematic.

All of these functions are included in the mandate of most NHRIs, following the Paris Principles adopted in 1993.¹

UNDP Country Offices (COs) are increasingly involved in the support to National Human Rights Institutions. Support so far has been provided on a case-by-case basis, often as a follow-up to initiatives by UNHCHR, and in consultation with the Office. It is now time to review this area of work for UNDP and to determine its place in the organization's activities. Assuming that it has the potential of developing into a significant niche in UNDP's work related to human rights, it seems important to learn from what has so far been done and to give guidance for future activities, including the articulation of key UNDP messages in dealing with National Human Rights organizations without duplicating the work of others.

Therefore, UNDP has contracted the Danish Institute for Human Rights (DIHR) to draft an Issues Paper on the role of UNDP support to National Human Rights Institutions (Human Rights Commissions and Ombudsman Offices).

Conceptually, the Issues Paper deals with NHRIs accredited by the International Coordinating Committee in accordance with the UN Paris Principles as well as non-accredited NHRIs, and the conceptual and practical relationship to Ombudsman institutions.

In accordance with the Terms of Reference, the Issues Paper will address the following elements:

1. The different types of National Institutions
2. Regional specificities and networks
3. Existing guidelines such as the "Paris Principles"
4. Support provided by UNDP Country Offices

¹ Paris Principles were defined at the international workshop on National Institutions for the Promotion and Protection of Human Rights, Paris, 7-9 October (E/CN.4/1992/43 of 16 December 1991) and were further codified by the UN Commission on Human Rights in Resolution 1992/54, 1992 and in General Assembly Resolution 48/134, 1993

5. Support provided by others and complementary positions and partnerships with other Agencies such as UNHCHR, the Council of Europe etc.; and the bilateral donors providing support to NHRIs
6. Potential ideas for UNDP support at the international, regional and national level, and the type of capacity development needed

Six field missions exploring UNDP experiences were conducted to Azerbaijan, Bolivia, Rwanda, Uganda, Saudi-Arabia and Sri Lanka.

2 POTENTIAL IDEAS FOR UNDP SUPPORT TO NHRIs AND TYPE OF CAPACITY DEVELOPMENT NEEDED

The recommendations of the report are provided in the following. The areas are identified as in need of further strengthening and possible support areas for UNDP. The recommendations of the report also includes recommendations in relation to some of the challenges which UNDP CO have been faced with in their efforts to support NHRIs. The potential intervention areas identified at the national level are divided into: i) Capacity Development for NHRIs ii) Capacity Development of UNDP staff on NHRIs, iii) Rights-based approach & Economic, Social and Cultural rights and support to National Human Rights Action Plans.

2.1 Capacity Development of NHRIs

2.1.1 General Capacity: Lack of sufficiently trained staff

In the cases reviewed, there is generally a lack of sufficient trained staff to carry out the functions of the NHRIs. Many NHRIs may have a sufficient number of staff, but generally there is a need for upgrading staff qualifications. In the case studies reviewed, an overall need for training of the staff in a variety of areas both relating to the substance areas (human rights themes) as well as specialized training to carry out specific functions including financial administration, IT, case handling, legislative review, investigation techniques etc, has been identified. This is particularly the case in the regional offices of NHRIs, but also at the central offices of NHRIs. UNDP has already been involved in many capacity building activities with NHRI staff and could continue this support in the key competence areas of NHRIs. There is, however, a need for a more systematic approach in this regard. The development of training plans for NHRI staff could be developed to ensure that the training is tailor-made and targets the development of capacity within the competence areas of the NHRIs and is not just limited e.g. to broad human rights training. UNDP has gained some experiences in this area in some countries, and could utilize, when appropriate, this experience in other countries.

2.1.2 Professional Leadership / Management

There seems to be a general need for a more professionalized management of NHRIs. Most NHRIs are headed by lawyers, judges, political scientist and/or academics, and while they are generally found to have a high level of expertise in human rights and legal matters, most of them have limited professional backgrounds in organisational management and administration. Leadership and management training for the top management of the NHRIs is needed in most cases reviewed in this study, in order to ensure that the organisations are professionally managed. For instance, it is the management's responsibility to ensure that there are clear terms of references for each staff and each department within the NHRI to ensure that roles and responsibilities are clear to staff

members. UNDP could play a role in assisting with the development of these types of organisational tools.

2.1.3 Financial Management

In relation to financial administration, there is a weak capacity at NHRIs studied. Many NHRIs lack basic administrative procedures and there is a need for assistance in this regard. There is also a need for training of NHRI staff in this area. Generally, the institutions were found that to have limited knowledge and understanding of donor procedures, including reporting requirements, and such training may be provided for NHRI staff involved in execution of donor funded projects. In some cases the role of UNDP could also be to ensure donor coordination by streamlining the reporting requirements so as to enable the NHRI to do this within one framework acceptable to all the donors in order to avoid duplication of a task which the NHRIs find very time consuming.

2.1.4 Analysis

Most NHRIs have a mandate to research on human rights issues and publish findings on analyses of patterns of human rights violations. Many NHRIs, however, have limited capacity in the area of research and analysis. The area is important as it feeds into many of the other functions of the NHRI such e.g. legislative review and screening, but seems to have been under-prioritised by the NHRIs, probably due to the fact that it is a very long-term investment. The research capacity of the NHRIs should be strengthened if the NHRIs are to have an impact on policy and legislation with their respective countries. There is a need for developing tools enabling NHRIs to do short-term analysis of the human rights situations in their countries in a way that is action-oriented rather than theoretical in nature.

2.1.5 Legal Aid to Victims

Many NHRIs provide some sort of legal aid to the victims of human rights violations. While the provision of legal aid, at least in terms of representation in courts, in most cases fall outside the mandate of NHRIs, many NHRIs have taken it upon themselves to provide legal advice, a role which is closely linked to the NHRIs' mandate to handle complaints of human rights violations. UNDP has experience with legal aid programmes and could in that regard seek to increase support by applying a multi-sectoral approach where legal aid NGOs, the NHRIs and the formal judicial system collaborate and ensure division of work, roles and responsibilities between the parties.

2.1.6 Complaints handling: Backlogs in cases

A major problem for most NHRIs is the backlogs of cases. There are many reasons for this, and some of them positive in themselves, e.g. when awareness campaigns raise the awareness of the public of their complaints options. In some cases, NHRIs take on cases on the border line of their mandate, even if this is broad, because they feel obliged to take on the cases as they see themselves as access to justice providers. This is regarded, by some NHRIs, as a way to strengthen their reputation and legitimacy. Also, many NHRIs deal with cases in a manner where the ensuing recommendations have to be decided by the top management/chairperson of the NHRIs, which obviously prolongs the complaints handling process.

UNDP have already in some cases supported electronic case management systems for NHRIs, and this type of assistance could be continued, as such systems can provide for more efficient handling and follow-up of cases.

The development of Complaints handling procedures to NHRIs could also be supported as such procedures can guide and clearly spell out how complaints should be handled and which structures within the NHRIs should be involved in case handling. The complaints handling procedures may also need to ensure follow-up mechanism in cases where complainants are referred to other institutions.

2.1.7 Follow-up on Legislative Reviews / Comments to Parliament & Recommendations of the Annual reports

Most NHRIs are obligated to forward annual reports to their Parliaments in order to report on activities during the year. Most of them also have a mandate to provide recommendations to Parliament on human rights issues in the form of legislative reviews and comments. Many NHRIs recommend legislative changes, administrative or structural measures to be taken in connection with a particular human rights problem. There is, however, a lack of follow-up on the recommendations provided and it is therefore not possible to receive information on what issues have been addressed and what issues are still outstanding. Furthermore, many NHRIs have not developed a process where they engage in continued dialogue with Parliament or with government ministries on the recommendations provided by NHRIs, and may not even follow-up on their own recommendations. This is an area where monitoring systems could play a role in strengthening the NHRIs.

Finally, there is a balance to be found for the NHRIs between a complaints-driven approach, focusing on case handling, and a more strategic and advocacy-based approach based on the establishment of communication and influence with e.g. the head of the police forces, key ministries and Parliament. The UNDP could in most cases use its experience as well as understanding of the NHRIs situation to help them find and implement such a balance between these approaches.

2.1.8 Documentation of enforcement of NHRI recommendations

Most NHRIs complained about the difficulties in ensuring that their recommendations are enforced by state agencies. Some NHRIs indicated that a stronger mandate would solve such a problem. However, while this might be the case in some countries, there are examples of NHRIs having a strong mandate to e.g. order compensation, and still finding it difficult to ensure that the state agencies actually pay the compensation.

There is a need to assist the NHRIs in identifying how best to motivate the government and its institutions to follow its recommendations. A first step may be to assist the NHRIs in establishing a monitoring mechanism documenting e.g. how many, and how, its recommendations are being enforced.

2.1.9 NHRIs in Conflict areas: Peace building and mediation

Many NHRIs operate in very difficult environments with severe human rights challenges. Four of the NHRIs reviewed operate in situations where there is a violent ongoing conflict within or in the outskirts of the country.

Those NHRIs in particular need assistance in relation to their operation in these areas. Besides from infrastructural assistance, there is also a need for capacity building in conflict prevention and conflict resolution for staff in the local offices, which may be less capacitated than staff at the central level. Furthermore, UNDP could support studies which need to be conducted on the various

aspects of the conflicts in order for the NHRIs to analyse how they can enter the conflict areas and contribute to peace building.

2.1.10 Coordination with key actors

Many NHRIs need to develop their relationship further with civil society and state institutions. It is obvious that the NHRIs cannot, and should not, be the only promoter of human rights, and there is generally a need to strengthen the collaboration and coordination between the organisations working on human rights within the respective countries. UNDP has already supported such processes in some countries, for instances through consultative meetings between the sectors in order to harmonize interventions e.g. within the justice sector. This area may be further supported, especially in light of the fact that the particular nature of the NHRI enables it to serve as a “meeting point” between different actors such as human rights organisations and the state, on key human rights issues.

2.1.11 Monitoring and Evaluation of NHRIs performances

Almost all NHRIs reviewed lack internal systems to ensure that the performance of NHRIs is monitored and evaluated continuously. There is in general a lack of systematic information and documentation about activities carried out by NHRIs, with the only source of information in this regard being the annual reports of the NHRIs and the quality of these reports vary. The indicators applied by NHRIs are often quantitative, e.g. listing how many cases have been handled in a certain area such as torture. There is a need partly to elaborate on these indicators, e.g. how long is the complaints handling process from registration to decision making in relation to a case and partly to link these indicators with qualitative indicators such as e.g. the follow-up process in relation to cases referred to other institutions.

UNDP could assist the NHRIs in developing monitoring and evaluation systems in order to ensure that the professional level of the institutions is raised. Furthermore, none of the NHRIs reviewed seem to have competence development systems in evaluations and monitoring, which could also be a potential area for UNDP support.

2.1.12 Fundraising strategies and capacities

The issue of lack of provision of sustainable funding for NHRIs from their respective governments is a cause of concern, as many NHRIs still rely heavily on donor support. Some matching between donor support and governmental support should take place, and the UNDP could assess the possibility of putting pressure on the national governments in order to ensure a balance in this respect.

In some cases, UNDP has played a vital role in mobilizing resources for NHRIs. In other cases, the expectations from the NHRIs in this respect were not met as resources were not mobilized. Most often UNDP was even in charge of coordinating the basket fund to the NHRI, but in the one case where another agency had that role, UNDP did not channel funding through the basket. As a means to ensure sustainability of funding to the NHRIs, UNDP could support the NHRIs in developing resource mobilization strategies and build the capacity of the NHRIs in mobilizing resources themselves.

2.2 Capacity Development for UNDP

2.2.1 Partnership concept

In some cases reviewed, the relationship between the NHRI and UNDP was very close and UNDP was almost over-protective of the NHRI and took care of even basic administrative issues of the NHRI. While this support is without doubt very valuable for a weak and criticised institution, it is a challenge for UNDP in such a situation to ensure anchoring and ownership of the NHRI within the local context.

UNDP needs to find a balance between the frequent use of international consultants on the one hand, and increasingly utilising national resources in the strengthening of capacity of the NHRI, an aspect which is often mentioned and criticised by local institutions. UNDP could engage in the development of a partnership concept for its work with NHRIs, where methodologies and tools for capacity building of partners are developed.

2.2.2 Organizational strategy processes

A number of UNDP COs have been involved in strengthening the institutional development of NHRIs by supporting the formulation for strategic plans for NHRIs. In many cases, the NHRIs have benefited from such processes, as they have assisted the NHRIs in its priority setting process. However, many of the strategic planning processes have been led by international consultants and have not been anchored within the NHRIs. This has led to a lack of ownership and commitment to the strategy within the NHRI and its staff, further contributing to implementation of the strategy plans. There is a need to continue support to these processes, but ensuring that the processes are lead by the NHRIs and only guided and facilitated by consultants. UNDP could in its assistance to such processes ensure that process-oriented strategic plans are developed ensuring local ownership.

2.2.3 Capacity building of UNDP staff on NHRIs

In the cases reviewed, UNDP staff identified a need for capacity building of themselves on NHRIs, reflecting a need to ensure that the capacity of the UNDP COs is strengthened if UNDP is to develop this area into a strategic niche. One option in this regard could be that UNDP HURIST and UNHCHR in collaboration designs training modules, targeting UNDP CO staff working on projects supporting NHRIs. The training could aim at building capacity on the role and functions of NHRIs as well as illustrate the experiences of other NHRIs in the region.

2.2.4 Donor coordination

Similar to the area of fundraising, UNDP has in several cases acted as the lead coordinating agency for coordinating donor support to the NHRIs. This may on the one hand ensure against overlap or holes in donor funding, and alleviate the burden on the NHRI itself, but at the same time also in some cases mean that the NHRI does not maintain its own relations with the donors. When acting as a coordinator of donor assistance, UNDP should ensure that it does not stand in the way of a natural relationships developing between the NHRI and other donors.

2.3 Rights based approach & Economic, Social and Cultural rights

Some NHRI are mandated specifically to deal with economic, social and cultural rights. However, based on the poverty levels in their respective country and the fact that they receive many cases where the economic, social or cultural rights have been violated, many of the NHRIs interviewed expressed that economic, social and cultural rights are still considered new priorities of the NHRIs.

Many NHRIs have expressed a wish to gain experience and assistance in this area and UNDP offices have previously been involved in rights based approach programmes with NHRIs. There is a need to develop this area further together and build the capacity of NHRIs in applying this approach.

2.4 Human Rights Action Plans

Some NHRIs have been involved in and facilitated national processes of preparing National Human Rights Action Plans (NHRAPs). The preparation of these plans has been supported by UNDP and a study² in this regard has collected the UNDP experiences in this area. According to the study, the processes around the formulation of a NHRAP have intrinsic value because it includes participatory processes, inter-sectoral coordination and cooperation among stakeholders.³ Worldwide, approximately 17 countries have adopted a NRRAP.⁴ At least one NHRI reviewed for this study is in fact in the process of considering the possibilities of facilitating such a process. However, similar to the issue of e.g. reporting to UN and other bodies, the government has to recognise that this is originally and primarily its own responsibility, and although the NHRI may be considered a valuable partner in such a process, its autonomy and independence should not be jeopardized.

3 SUPPORT PROVIDED BY UNDP COUNTRY OFFICES

The report provides an overview of support provided by UNDP Country Offices (COs). In this executive summary, only the concluding observation on support provided by UNDP has been included. The information is based on UNDP COs' responses to the questionnaires sent out to all UNDP COs through the Human Rights Network. 18 UNDP COs forwarded responses on their support to NHRIs. The questionnaires were divided into support in two main phases of support to NHRIs. The first is the pre-establishment phase, i.e. support given to the creation of a NHRI. The second phase is the consolidation of the NHRI. In relation to the second phase on UNDP support to the consolidation of the NHRI, a distinction has been made between support to the organisational development of the institution, and support to the undertaking of each of the NHRI core functions.

3.1 Concluding observations on UNDP support to NHRIs

UNDP interventions have provided support at the pre-establishment and consolidation phases of NHRIs, both in relation to organisational development and implementing specific core functions of NHRIs. Many interventions included input by international consultants.

In the pre-establishment phase, in two countries, the intervention led to a direct result in the form of support to a draft law on an Ombudsman (Kazakhstan), and a workshop on the examination of the draft law on a NHRI (Moldova). In the case of Moldova, the UNDP intervention resulted, not just in the decision by Parliament to engage in the drafting in the Law, but also in its amendment to ensure a higher degree of compliance with the Paris Principles.

There are limited reflections on the side of UNDP in relation to future support, after the pre-establishment phase has been supported. One of the best examples of seemingly well considered future action is Kazakhstan, where it is indicated that follow-up consultations and training will be

² UNDP – Oslo Governance Centre 'A Desk study of National Human Rights Action Plan' October 2003

³ Ibid.

⁴ For an elaboration of the Human Rights Action Plans of the 17 countries, see http://www.unhchr.ch/html/menu2/plan_action.htm

funded, that and UNDP will promote adoption of the comprehensive law by the Parliament, in addition to funding of regional meetings by the regional office in Bratislava.

Support has been provided to the organisational development of NHRIs, both in terms of supporting strategic planning processes, capacity building in administration and management and infrastructural support. There are good examples of UNDP support in this area and a general trend of prioritizing this area of support.

UNDP COs have been less active in supporting the documentation, legislative review and complaints handling function than the information and education function of NHRIs.

The support to documentation has in general consisted of the setting up of libraries, but with little if any support to the maintenance and updating of the libraries, and there also seems to be limited support provided in relation to training of staff in maintenance. The support to the legislative review function has also been limited, but in cases where UNDP COs have supported this area, some important results have been achieved e.g. in Sri Lanka and Kazakhstan where the support led to a large number of laws being reviewed and the ratification of international instruments. Complaints handling is also an area where limited support has been provided, and in this area there seems to have been more dissatisfaction with the performance of the NHRI than in other areas. National coordination activities have been supported and it is obvious from the responses of the UNDP COs, that this is an area where UNDP COs feel more work needs to be done. In many cases the results of the national coordination activities have been brought along with recognition by the partners that they a need to prioritise this area more. Limited support has been provided in relation to international and regional coordination, but has consisted of participation study visits, conferences, workshops and seminars. It is not entirely clear how these activities have been followed-up.

UNDP has generally focused on support to promotional element of the NHRI mandate in terms of education and information activities. In relation to information activities, a majority of countries rely on the internal expertise of the NHRIs in relation to information activities, sometimes supported by national consultants. The latter should be seen as a positive trend which could be expanded considering that overall objective of the UNDP is to build national capacity. The strategic considerations provided by UNDP COs vary, but it should be noted that none of the UNDP COs refer to UNDAF, CCF or Millennium Development Goals. It also seems that when UNDP is involved in supporting information activities, the UNDP COs have to allocate substantial staff time for the implementation of the activities.

UNDP has been very active in the area of education and three trends can be observed. Some UNDP COs have intervened assisting the development of strategic educational plans, others have provided support to human rights education or specialised training for NHRI staff. Lastly, a number of countries have supported study tours to other NHRIs.

4. Team

The study was carried out in the period between January and November 2004.

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