



# UNDP-OHCHR Toolkit

for collaboration with  
**National Human Rights Institutions**



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## FOREWORD

Effective national systems which protect and promote good governance, the rule of law, and the realization of human rights are important for sustainable human development. Among the components of such systems are governments which accept primary responsibility for the promotion and protection of human rights and the functioning of independent National Human Rights Institutions (NHRIs) which conform with the Paris Principles.

The UN is currently providing NHRIs in more than sixty countries with technical assistance. This is a strategic priority for us. NHRIs can help ensure that national development, poverty reduction, and MDG policies and strategies are not only grounded within human rights, but also are implemented according to human rights' standards and principles. NHRIs are also the best mechanism at the country level to ensure adherence to international human rights' commitments states make, including to those from the UN Treaty Bodies, special procedure mandate holders, and the UN Human Rights Council. NHRIs have a crucial role to play in advocating for those responsibilities to be translated into law and practice.

UNDP and OHCHR have developed this practical guide for UN staff on how best to support NHRIs with policy advice, technical assistance, and capacity development support from the pre-establishment phase. It includes information on country planning processes and capacity assessments, identifies challenges and opportunities NHRIs may encounter, and suggests how to deal with situations which threaten to undermine their effectiveness.

This toolkit is the result of a two year long process of research and consultation which has benefited from review and validation by NHRIs, UNDP and OHCHR staff, and numerous NHRI practitioners. A Core Support Group composed of the National Human Rights Commissions of India, South Africa, and Uganda, as well as the Danish Institute for Human Rights (DIHR), oversaw the drafting process. The result is a practical and informative guide tailored to meet the needs of UN staff.

The NHRIs recognized the initiative in the 2008 Nairobi Declaration, adopted during the 9th International Conference of National Institutions for the Promotion and Protection of Human Rights in Nairobi, Kenya.

The UN Secretary General, in his 2009 General Assembly *Report on national institutions for the promotion and protection of human rights*, welcomed the development of the Toolkit as way to foster "strong partnerships system-wide to build on the capacities and expertise of United Nations entities" in supporting NHRIs.

The toolkit is now in your hands. We hope it will provide practical guidance in the process of developing NHRIs and strengthening those existing already, in line with the relevant international standards. We are convinced that the more the UN system works with and through NHRIs, the greater the degree of national ownership of human rights, and the more effective and sustainable good governance, rule of law, and human rights programmes become.



Helen Clark  
UNDP Administrator



Navanethem Pillay  
High Commissioner for Human Rights

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The importance of the user perspective was ensured through the establishment of the joint UNDP-OHCHR electronic **User Group**, whose field perspective, contribution and participation in the Validation Consultation of an advance draft of the Toolkit helped to anchor the document in recent and practical experience. Contributions from the following colleagues are gratefully acknowledged: Clemence Alfazema, Suki Beavers, Sekhonyana Bereng, Emmanuel Buendia, James Chacko, Natia Cherkezishvili, Samuel Egwu, Bairbre Fee, Elizabeth Fong, Geraldine Fraser-Moleketi, Birgit Gerstenberg, Mohamad Doddy Kusadrianto, Rustam Pulatov, Siphosami Malunga, Enid Ndiga-Irungu, Sudarshan Ramaswamy, Mario Solari, Mounir Tabet, Alla Bakunts, Angela Dumitrasco, Emilia Mugnai, Aparna Basnyat, Nusrat Jahan, Shireen Said, Jagoda Walorek, Tatiana Lopes, Nolitha Peter, Tek Tamata, Ahowanou Agbessi, Heike Alefsen, Homayoun Alizadeh, Alida Arana, Richard Bennett, Matilda Bogner, Vladlen Stefanov, Citlalin Castañeda, Dimiter Chalev, Mahamane Cisse-Gouro, Paulo David, Frej Fenniche, Musa Gassama, Dirk Hebecker, Todd Howland, David A. Johnson, Jeroen Klok, Paul Miller, Ahmed Motala, Simon Munzu, Jacqueline Nzoyihera, Christophe Peschoux, Jonathan Prentice, and Benedict Sannoh. Additional feedback and insights from the participants at the 2009 UNDP Global Human Rights Community of Practice Meeting is also acknowledged.

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The Toolkit initiative was coordinated and managed by Zanofer Ismalebbe and Patrick van Weerelt, on behalf of the Democratic Governance Group and the UNDP Global Human Rights Strengthening Programme. Special appreciation is due to Gianni Magazzeni (former Chief of National Institutions and Regional Mechanisms Section (NIRMS)) for being the OHCHR counterpart and for his unwavering dedication and support, as well as several staff at the NIRMS for their contribution to different stages of the process.

The Toolkit drafters are Pearl Eliadis and John Dwyer. They have a combined three decades of experience working with NHRIs, as well as with other types of institutions such as ombudsman and transitional justice institutions in Africa, the Middle East, Asia and North America. Possible errors or omissions would be, of course, those of the drafters.



# UNDP-OHCHR Toolkit

## for collaboration with National Human Rights Institutions

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## LIST OF ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution / Alternate Dispute Resolution	<b>IOI</b>	International Ombudsman Institute
<b>APF</b>	Asia-Pacific Forum for National Human Rights Institutions	<b>IR</b>	Informal Resolution
<b>APRI</b>	Asia-Pacific Regional Development Initiative (or AP Regional Initiative)	<b>IT</b>	Information Technology
<b>APT</b>	Association for the Prevention of Torture	<b>KM</b>	Knowledge Management
<b>AWID</b>	Association for Women's Rights in Development	<b>MDG</b>	Millennium Development Goal
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment / Committee Against Torture	<b>NGO</b>	Non-Governmental Organisation
<b>CCA</b>	Common Country Assessment	<b>NHRI</b>	National Human Rights Institution
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women	<b>NI</b>	National Institution
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights	<b>NIRM Section</b>	National Institutions and Mechanisms Section
<b>CRC</b>	Convention on the Rights of the Child	<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities	<b>OP-CAT</b>	Optional Protocol to the Convention Against Torture
<b>ECOWAS</b>	Economic Community of West African States	<b>PAF</b>	Project Activity Framework
<b>ESCR</b>	Economic, Social and Cultural Rights (or ESC rights)	<b>PDH</b>	Human Rights Ombudsman ( <i>Procurador de los Derechos Humanos</i> )
<b>HQ</b>	Headquarters	<b>PRSP</b>	Poverty Reduction Strategy Paper(s)
<b>HRBA</b>	Human Rights-Based Approach	<b>SAHRC</b>	South African Human Rights Commission
<b>ICC</b>	International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights	<b>SCA</b>	Sub-Committee on Accreditation
<b>ICCPR</b>	International Covenant on Civil and Political Rights	<b>SRS</b>	Special Representative of the UN Secretary General
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights	<b>SWOT</b>	Strengths, Weaknesses, Opportunities and Threats Analysis
<b>ICPED</b>	International Convention for the Protection of All Persons from Enforced Disappearance	<b>TA</b>	Technical Assistance
<b>IDP</b>	Internally Displaced Person	<b>UN</b>	United Nations
		<b>UNCT</b>	United Nations Country Team
		<b>UNDAF</b>	United Nations Development Assistance Framework
		<b>UNDP</b>	United Nations Development Programme
		<b>UNFPA</b>	United Nations Population Fund
		<b>UNICEF</b>	United Nations Children's Fund
		<b>UPR</b>	Universal Periodic Review
		<b>WG</b>	Working Group



## TOOLKIT STRUCTURE

The Toolkit is divided into two modules, each of which is free standing and can be read on its own. Within each module, chapters are also designed so that readers can go directly to the area that interests them, without having to read preceding chapters.

### The Toolkit contains two Modules.

The Toolkit assembles a practical set of tools in each chapter to support UNCT staff in their work.

Concrete tools are drawn from a wide range of UNDP and OHCHR projects and programmes from every region of the world, but include inter-agency examples as well. The reader will find the following:

### MODULE 1: NHRIs: Overview and Key Functions

**Chapter 1:** Introducing NHRIs

**Chapter 2:** Models of NHRIs

**Chapter 3:** Roles and Responsibilities of NHRIs

**Chapter 4:** The Rule of Law and the NHRI  
Core Protection Mandate

**Chapter 5:** NHRIs, Development and  
Democratic Governance

### MODULE 2: Supporting the Establishment and Development of NHRIs

**Chapter 6:** NHRIs and the UN Country  
Planning Cycle

**Chapter 7:** Pre-establishment Phase of NHRIs

**Chapter 8:** Establishment Phase for NHRIs

**Chapter 9:** Consolidation Phase: Strengthening  
the Mature NHRI

**Chapter 10:** Paris Principles and Accreditation

- **Guidance notes**, prepared by OHCHR on a range of NHRI issues, including the role of the UNCT in establishing NHRIs, and special considerations for core protection issues.
- **Notes** for UNCTs, developed in consultation with UNDP and OHCHR on suggested standard operating procedures and steps in supporting the establishment of NHRIs.

- **Examples and scenarios:** short illustrations of real-life situations and issues that have faced UNCTs in the past when working with NHRIs.
- A functional analysis of different **models of NHRIs** including regional specificities.
- Tables and checklists for **capacity development and assessment for NHRIs**.
- **Case studies**
- **Organizational planning tools for UNCTs supporting NHRIs**, including:
  - “how to’s” for policy development, knowledge development and organizational coaching.
  - tools for strategic planning, action planning and financial planning for the three key phases of NHRI development: pre-establishment, establishment and consolidation.
  - case management systems, IT and knowledge management.
- **Human resources strategies** in hiring, promotion and internal practices, which ensure respect for human rights within the NHRI, along with initiatives to positively advance women, minorities and other groups within the NHRI.
- **Training guidance** for UNCTs, with specific considerations for coordinating donors and experts working with NHRIs to prevent “training fatigue” and loss of productivity, and for ensuring that training is integrated into operations.
- **Fact sheets** on a range of topics, including management tools, alternative dispute resolution and many others.
- **Tabular presentations of Paris Principles requirements** and accreditation criteria.
- A **glossary** of terms related to NHRIs and accreditation by the International Coordinating Committee.

Each chapter contains an executive summary and key messages. A list of tools is found at the end of each chapter and a complete list is found at the end of the Toolkit.

## “The promotion and protection of human rights is a bedrock requirement for the realization of the Charter’s vision of a just and peaceful world.”

KOFI A. ANNAN, Former UN Secretary-General (2002)<sup>1</sup>

### INTRODUCTION

2008 marked the 15<sup>th</sup> anniversary of the Vienna Declaration and Programme of Action. Two significant outcomes of that Programme were the emergence of national human rights institutions (NHRIs) as key national actors in ensuring respect for human rights, and the acknowledgement of the Paris Principles as the international standard for effective and independent NHRIs.

A “national human rights institution” (NHRI) is an institution with a constitutional and/or legislative mandate to protect and promote human rights. When in compliance with the Paris Principles, NHRIs are cornerstones of national human rights promotion and protection systems. NHRIs also serve as relay mechanisms between international human rights norms and the national level.

NHRIs are not only central elements of a strong national system to promote and protect human rights: they could also be an effective bridge between rights holders and duty bearers (the State). They link the responsibilities of the State to the rights of citizens. They could connect national actors to regional and international human rights systems. And at the same time, NHRIs must afford a degree of protection to victims of human rights violations and often have the power to follow up on individual complaints, usually with national authorities. This may result in a degree of tension with national authorities. This is considered normal in the sense that it is the result of an effective and pro-active stance of the independent institution.

NHRIs are new and unusual institutions – they are part of the State but are not part of the executive, legislative or judicial branches. They are arm’s length from national authorities and are funded primarily by the State. Indeed, the importance of sustainable funding for NHRIs and their activities has been highlighted by the UN Secretary-General, who has underscored the importance

of “budgetary resources [being] provided to continue and further extend these activities and invites Governments to contribute additional voluntary funds to that end.”<sup>2</sup> Their members are not elected by the people, although the institutions are accountable to the Parliaments. In many countries, the public, United Nations Country Teams (UNCTs), public opinion, the media and even the NHRI staff themselves may find it difficult or challenging to define and explain the status of these institutions.<sup>3</sup>

#### QUESTIONS FACING UNCT’S IN SUPPORTING NHRIS

- What are good and proven strategies for supporting NHRIs in-country?
- How can the UNCT assess the capacity of an NHRI, notably as regards its core protection mandate and complaints handling process?
- How can NHRIs use human rights-based approaches to support development and democratic governance?
- What are the basic guidance and process steps that UNCTs need to know as they work with NHRIs?
- How can NHRI’s be supported in providing policy advice and assistance to governments, including ratification of instruments, removing reservations, etc?
- What are the entry points and supports for UNCTs?

UNCTs, whose primary working partner is the State itself, need to understand these institutions and should support their work when needed. UNCTs are frequently called on to support and strengthen NHRIs, on the one hand, while carrying out broader governance and justice programmes in partnership with national authorities, on the other.

<sup>1</sup> “Strengthening of the United Nations: An Agenda for Further Change,” UN Doc A/57/387, 09 September 2002.

<sup>2</sup> Annual Report of the United Nations High Commissioner For Human Rights and Reports of the Office of the High Commissioner and The Secretary-General “National Institutions for the Promotion and Protection of Human Rights”. Report of the Secretary-General. A/HRC/10/54. 26 January 2009. *Advance Edited Version*, at para. 92.

<sup>3</sup> Adapted from Carver and Korotaev, “Assessing The Effectiveness of National Human Rights Institutions” 2007. Study Commissioned by the UNDP Regional Centre in Bratislava.

Supporting this delicate balance, while ensuring that the central and core elements of NHRIs' functions – promotion and protection of human rights – are achieved effectively, is an overarching theme of this Toolkit. Providing UNCT staff with the tools to do this work is its central goal. As well, other members of the UN system will have an interest in furthering their understanding of how to work with NHRIs. Indeed, UN inter-agency cooperation is integrated into the Toolkit, in order to reflect ongoing UN reform efforts to assist countries to strengthen national protection systems and thus advance human rights at the country level.

## UN inter-agency cooperation

The Secretary-General's 2002 report on UN reform, the UN High Level Panel on System-Wide Coherence, and the 2005 World Summit have expressed a desire to foster greater UN inter-agency cooperation in advancing human rights.<sup>4</sup> This has become a topic of inter-agency concern.

There is a need to foster UN inter-agency cooperation in supporting and collaborating with NHRIs. While both UNDP and OHCHR are the lead agencies in supporting NHRIs, it is also important for other UN agencies, to strengthen engagement with NHRIs in achieving common goals. In relevant instances, the Toolkit highlights those areas where their participation brings a clear comparative advantage in terms of expertise. For instance, an NHRI could collaborate with UNODC on maladministration and anti-corruption issues, UNIFEM on women's rights, UNICEF on child rights, and the UNHCR on the protection of refugees and displaced persons. NHRIs can benefit from the presence of standard-setting organisations in particular, such as ILO, UNESCO, and the WHO, to reinforce linkages between their human rights-related conventions and the NHRIs' operational activities.

The diversity of mandates of the UN system should be promoted as a source of strength for the benefit of NHRIs and as a way to bringing together the entire range of

analytical, normative and technical expertise of the UN family. This Toolkit looks at a range of strategies to achieve this goal.

These types of collaborations can increase the impact and coherence of outcomes and provide richer and more holistic UNCT assessments and responses to the country's needs. Considering human rights promotion and protection within the relevant social and cultural context can result in better understanding of complex situations, while increasing the likelihood of popular acceptance of the NHRI's work.

## Rationale

There is a good deal of documentation on “what” should be done during the establishment and consolidation phases of NHRIs, especially from a theoretical perspective. Several documents look at “how” NHRIs should function, and “what” should be considered by the International Coordinating Committee of National Human Rights Institutions when it accredits NHRIs.<sup>5</sup>

There is, however, no practical tool at present that guides United Nations Country Teams (UNCTs) on “how” to support NHRIs in the context of the UN country planning process, including the timing and development of technical assistance projects to develop or assess capacity, how to identify challenges and opportunities for NHRIs, or how to discern issues that lie beneath the surface and threaten and/or undermine the effective and efficient functioning of NHRIs.

It has been noted that there is a need to strengthen capacity for human rights programming at the level of the UNCT, and to boost facilitation skills, while strategies for generating debate are also especially needed. In some UNCTs, resources are often lacking at all levels. Further, there is a limit to the quality of expertise available to both UNCTs and to programme countries from the UN system, which vary considerably. These factors constrain the effectiveness of the UN system's response at the country level.<sup>6</sup>

<sup>4</sup> See Secretary-General, *Strengthening the United Nations: An Agenda for Further Change*, UN GAOR, 57<sup>th</sup> Sess., UN Doc. A/57/397 (2002); *2005 World Summit Outcome*, GA Res. 60/1, UN GAOR, 60<sup>th</sup> Sess., UN Doc. A/RES/60/1 (2005).

<sup>5</sup> See OHCHR, “Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level.” December 2007 (National Institutions Unit); “Information Note: The Role of The UNCT in Establishing or Strengthening a National Human Rights Institution.” April 2007.

<sup>6</sup> C. Castañeda. “Relevant Findings on UNCTS, Human Rights & Capacity Development.” October 2008. The author notes that findings are based on extracts of the following documents: “Report of the Second Interagency Workshop on Implementing a HRBA in the Context of the UN Reform”, Stamford, USA, 5-7 May 2003; “Mainstreaming Human Rights. The Human Rights-Based Approach and the United Nations System, Desk Study Prepared for UNESCO”, André Frankovits, Human Rights Council of Australia, 2005; “Synthesis Report of the Global Review OHCHR Technical Cooperation Programme”; “Results-Based Management and the UNDAF Results Matrix”, UNSSC; Resident Coordinator Annual Report 2007, UN, “Common Country Assessment and United Nations Development Assistance Framework. Guidelines for UN country Teams on Preparing a CCA and UNDAF”, February 2007; UNDG; “Triennial Comprehensive Policy Review of Operational Activities of the United Nations Development System: Conclusions and Recommendations”, 62 Session of the General Assembly, 2007; and “Synthesis Report: Finding and Recommendations from a Seven Country Study of UN Engagement in Poverty Reduction and National Development Strategies”, prepared for the UNDG by Martin Greeley, Institute of Development Studies, Sussex, March 2008.

Within the UN system, UNDP and OHCHR have been increasingly involved in supporting the establishment and/or strengthening of NHRIs. For both organizations, engagement with NHRIs has become a priority area.<sup>7</sup> However, this has brought with it many substantive and operational challenges. There are constraints on the UN system's capacity to mobilize the skills required to support national development strategies and achieve development goals. Consequently, intensive, harmonised and integrated efforts are still needed. There may be difficulties in contextualising a Human Rights-Based Approach (HRBA) at the country level: How does one reconcile universality of human rights to history, politics and the socio-economic context of the country? There remains a need to share experiences and knowledge about HRBA and developing implementation strategies tailored to particular national contexts. UNCT members stress the need for a clear framework and call for sharp, focused examples, lessons learned, handbooks, fact-sheets, modules, "tip sheets" and other tools.<sup>8</sup>

In 2004, an UNDP Issues Paper, "Supporting National Institutions for the Promotion and Protection of Human Rights – a Strategic Niche for UNDP?", was commissioned through the Danish Institute for Human Rights. The Issues Paper assessed the support provided by UNDP Country Offices in the establishment and strengthening phases, and identified potential ideas for UNDP support at the international, regional and national levels, as well as the type of capacity development needed. It raised a number of key challenges and opportunities, including general capacity issues, professional leadership and management, analysis and research capacity, follow up on legislative reviews, the role of NHRIs in conflict areas, coordination, monitoring and evaluation of NHRI performance, and fund raising strategies.

The Toolkit targets these issues, as well as other challenges and opportunities, and identifies good practices and support strategies for projects aimed at supporting organisational development and capacity assessment generally, with a focus on the two substantive areas of NHRI work:

- *Protection mandate*: investigations, effective complaints handling strategies, alternative dispute resolution and conflict resolution (at both the individual and community levels), public inquiries and monitoring.
- *Promotion mandate*: good practices in public education, media relations, advice and assistance to government, reports, policy development, and programs of cooperation that can "leverage" resources and achieve broader impact.

<sup>7</sup> See for example the UNDP Strategic Plan 2008-2011 and OHCHR Strategic Management Plan 2008-2009.

<sup>8</sup> Ibid.

## Overview of Goal and Objectives

**Overall Goal:** The overall goal of the Toolkit is to provide concrete tools to help UNCT staff working with NHRIs. The focus is on tools that foster:

- a good understanding of what an NHRI is;
- knowledge about what works in terms of capacity development and assessment tools;
- sound methodological approaches and ideas for training NHRI staff;
- capacity development for UNCTs themselves;
- tested and useful policy and budget monitoring tools, to support UNCTs in their work;
- effective strategies to harness stronger collaboration between NHRIs, government, Parliament, judiciary and civil society; and
- effective practices, procedures and resources, especially within the UN, when responding to requests for assistance regarding NHRIs during these phases.

Based on this goal, the following basic objectives were identified by UNDP and OHCHR, as well as by the Toolkit project's Core Steering Group and User Group. These objectives in turn form the basis of the structure of the Toolkit.

### Objective 1:

Clearly explain what an NHRI is and its relevance to UN Country Teams. Describe the context in which NHRIs operate, including the human rights framework at the national and international levels, and the special importance of NHRIs in both.

### Objective 2:

Identify different types of NHRIs, including regional specificities (by consolidating regional experiences) and existing guidelines.

### Objective 3:

Set out in detail the roles and responsibilities of NHRIs, including the human rights framework at the national and international levels with a focus on how NHRIs relate to the UN system.

### Objective 4:

Raise awareness about the importance of engaging with NHRIs as a vehicle for influencing better enjoyment of human rights by ensuring greater respect for the rule

of law and the administration of justice, focusing on strengthening the core protection mandate of NHRIs especially as regards law enforcement, security institutions and detention facilities.

### Objective 5:

Highlight possible roles and added value of NHRIs in the larger development context, particularly on influencing development processes, with concrete case studies in areas such as participation in the formulation of poverty reduction strategies, decentralisation programmes, policy and budget monitoring.

### Objective 6:

Provide an overview of best practices, procedures and resources, especially within the UN, when responding to requests for assistance regarding NHRIs, including strategies for UNCTs to integrate support to NHRIs into the UN planning cycle for country programming.

### Objectives 7-9:

Identify key challenges and opportunities for UNCT staff when called upon to support NHRIs during *pre-establishment (7)*, *establishment (8)* and *consolidation (9)* phases, and provide specific guidance, guided by the international human rights framework and concrete case studies.

### Objective 10:

Provide guidance on the accreditation process, how and what support vis-à-vis non Paris Principle-compliant institutions, or those that have been downgraded by the International Coordinating Committee. Address selected country-level issues, and to some extent regional, that could have a direct impact on the functioning of a NHRI.

## Who this Toolkit is for

This Toolkit is intended primarily to support UNCT staff who have little or no working experience with NHRIs, as well as those who have a better understanding, but nonetheless need practical tools and guidance to support the establishment, consolidation, or assessment of these important institutions. As well, those who work in other parts of the UN system may have an interest.

Secondary audiences include **NHRIs** and civil society, as well as other partners in the development community who would like a better understanding of the UNCT perspective and approach.

## Key concepts

UNCTs are being requested to support NHRIs in a rapidly changing environment where the concepts underlying NHRI are experiencing rapid change. Here are some of the key concepts addressed in the Toolkit.

**A complex governance environment:** The number of NHRIs themselves has more than tripled since 1993; there are now about sixty Paris Principle-compliant institutions.

As the number of NHRIs has proliferated, so has their complexity. Several institutions have multiple mandates dealing not only with human rights, but also with mandates like mal-administration and anti-corruption.

As well, NHRIs frequently share the field with other national institutions, such as independent “classic” ombudsman offices, gender commissions, commissions or offices for children or for elderly, and special institutions or commissions for Indigenous peoples, to name but a few. UN staff need to take a dynamic approach to working with all these institutions, as well as NHRIs, recognising that there is no “one way” or single style of institutional approach to human rights or its institutional structure.

NHRIs themselves exist on a spectrum of compliance with the Paris Principles ranging from fully to partially compliant, and to institutions that are not compliant at all.

**NHRI effectiveness:** In some countries, there is growing scepticism about whether NHRIs are as effective as one might like. Clearly, no NHRI can function well in an environment where the state has failed, where the institution itself is under attack, or less dramatically, when its independence and effectiveness are undermined. In short, it is rare that an NHRI can be more effective or stronger than the governance structure or environment in which it operates. UNCTs may be therefore being requested to engage in parallel efforts to strengthen the State, which will involve efforts to strengthen NHRIs themselves.

- Many NHRIs are judged on how well they handle **core protection issues** related to the rule of law and the administration of justice. UNCTs should focus on supporting NHRIs in this crucial area (where the NHRIs in fact have authority under law) especially in relation to issues such as preventing torture, forced disappearances, arbitrary detention, and the abuse of power more generally, including by law enforcement and security forces.
- As well, NHRIs have the **potential to support development processes**, by mainstreaming human

rights, including economic, cultural and social rights, into democratic governance, poverty reduction, and achieving the Millennium Development Goals.

- Ensuring equality between men and women is an overarching and cross-cutting theme in all NHRI work.
- NHRIs need to be supported when they are engaging in issues that are controversial or that are designed to protect the rights of specific groups. NHRIs frequently come under attack by governments, the media, civil society, and by powerful social forces that are opposed to NHRI human rights objectives. The UNCT staff could play an important role in this regard and could help build alliances with these groups.

**Donor coordination:** NHRIs can find themselves the “targets” of multiple donors looking to develop programmes and build capacity. Sometimes, NHRIs are fragile, institutionally or financially: this may make it difficult to raise funds or in some cases refuse donor money or to meet the demands imposed by technical assistance projects (integrating consultants into work processes, finding time for training, fulfilling reporting requirements, etc.) of various projects. It is not unusual to find NHRIs faced with various training and technical assistance projects that they cannot absorb, or which are duplicative, or which operate at cross purposes. The UN can play an important role supporting and coordinating well-intentioned efforts so that they do not inadvertently weaken the very institutions they set out to help. Coordination efforts can ensure that programming is a function of NHRI needs, and thus demand, rather than supply. Multilateral or bilateral cooperation efforts can be important strategies to minimise duplication and enhance effectiveness.

**UN effectiveness:** A key area of interest for UN Country Offices is how to do engage and deliver support to NHRIs “as one” within the UN system. Support to NHRIs is, in many countries, a joint UN project (with some countries having OHCHR, UNDP, UNICEF, UNIFEM supporting the project). UNCTs need to know how to initiate, manage and coordinate such projects in a manner that is internally consistent and that is coherent for the NHRI and other national actors. These issues are discussed in Chapters 6-9.

**Finally, and crucially, this Toolkit helps to answer the question of whether UNCTs have made a difference.** Do they assist NHRIs in carrying out their work more effectively and efficiently? How is this measured? How do UNCTs assess the outcomes and impacts of projects designed to help NHRIs?

## GLOSSARY OF KEY TERMS

**A-Status institution:** A national institution may be afforded this accreditation status by the Bureau of the International Coordinating Committee of National Institutions (ICC Bureau) when it is in full compliance with the Paris Principles. A-Status institutions that can participate fully in the work and meetings of National Institutions internationally and regionally as a voting member, and they can hold office in the ICC Bureau or any Sub-Committee established by the Bureau. A-status institutions are also able to participate in HRC sessions and take the floor under any agenda item, submit documentation and take separate seating.

**The Abuja Guidelines:** Adopted in Nigeria in 2004 at a meeting of representatives of national human rights institutions and of parliaments from the Commonwealth. They are guidelines for developing effective relationships between parliaments, parliamentarians and NHRIs for the promotion and protection of human rights. They recognize that both NHRIs and parliaments have an invaluable contribution to make to the promotion, protection and realization of human rights and that parliaments should develop a special working relationship with, and support the work of, NHRIs. The guidelines also recognize that NHRIs have a significant role to play in supporting the work of parliaments and parliamentarians.

**Access to justice:** The process of ensuring that all individuals have access to the legal services and to legal processes in order to defend and enforce their rights as well as to seek or obtain a legal remedy.

**Accession:** The act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.

**Accreditation:** The official recognition by the Bureau of the International Coordinating Committee of National Institutions (ICC Bureau) of whether a national institution meets or continues to comply fully with the Paris Principles. National Institutions may be afforded the following accreditation Statuses: (1) "A status": compliant with the Paris Principles; (2) "B status"; observer status - not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and (3) "C status"; not compliant with the Paris Principles.

**Accreditation process:** The process by which the Sub Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) reviews and analyzes accreditation applications and makes recommendations to ICC Bureau members on the compliance of applicants (NHRI institutions) with the Paris Principles. At the end of the process, an NHRI may be afforded one of the 3 statuses ("A," "B," or "C" status). The process has "progressively become more rigorous and transparent, and now considers the effectiveness of NHRIs and their engagement with the international human rights system" (according to <http://www.nhri.net/default.asp?PID=605&DID=0>).

**Amicus curiae:** The *amicus curiae* is someone who, although they are not a party to the lawsuit, petitions the court or is requested by the court to file a brief due to their strong interest in the subject matter of the lawsuit (also referred to as "friend of the court" or "*amicus*").

**Arbitrary detention:** Holding an individual in custody without due cause, substantive evidence, or due process of law. All individuals have the right to liberty; therefore, arbitrary arrest or detention violates the rule of law and habeas corpus. Art 9(1) of ICCPR and Art. 9 of the Universal Declaration of Human Rights prohibit arbitrary detention. Art. 55 of the Rome Statute of the International Criminal Court defines arbitrary detention as a crime.

**Arrest:** Arrest generally refers to seizing or forcibly restraining an individual. More specifically, it signifies the act of placing a person in custody under legal authority of the state. This is generally done in response to a criminal charge. Unlawful arrest, in contrast to lawful arrest, would involve taking a person into custody without a valid warrant or without probable cause to believe the person has committed a crime.

**Asia-Pacific Regional Human Development Initiative (AP Regional Initiative or APRI):** The APRI is a regional programme. It provides UNDP Country Offices and other partners in the Asia-Pacific region with Human Development Reports and other forms of policy-oriented research, analysis, and advocacy. It seeks to link research and stakeholders as means to more effectively align policies with human development. The APRI also provides capacity development and policy advisory services to regional Country Offices.

**Assembly, freedom of:** The right to come together to address or promote common concerns. Freedom of assembly is guaranteed by Art. 21 ICCPR. It may be restricted in the interests of racial and religious harmony. Countries may require permission for assemblies by security forces without any reasonable basis being required for refusal. Certain assemblies and meetings are unduly restricted and or criminalized. For instance, it is illegal to join any group or person engaged in “terrorist” offences.

**Association, freedom of:** The right to join others in a peaceful, common undertaking that is considered lawful when pursued individually. It includes the right to form trade unions. Freedom of association is protected by Art. 22(1) ICCPR. However, governments have criminalised meetings held by, or membership held in, particular groups.

**B-Status institution:** A national institution may be afforded this accreditation status by the Bureau of the International Coordinating Committee of National Institutions (ICC Bureau) when it is not fully in compliance with the Paris Principles or has not yet submitted sufficient documentation for the ICC Bureau to make that determination. B-Status institutions may participate as observers in the work and meetings of national institutions nationally and regionally. They cannot vote or hold office within the ICC Bureau or its Sub-Committees. They are not given NHRI badges, nor may they take the floor under agenda items and submit documentation in the HRC.

**Bureau of the International Coordinating Committee of National Institutions (ICC Bureau):** The Bureau that grants accreditation to a national institution. National Institutions may be afforded the following accreditation Statuses by the ICC Bureau: (1) “A status”: compliant with the Paris Principles; (2) “B status”; observer status - not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and (3) “C status”; not compliant with the Paris Principles.

**C-Status institution:** A national institution may be afforded this accreditation status by the Bureau of the International Coordinating Committee of National Institutions (ICC Bureau) when it is non-compliant with the Paris Principles. C-Status institutions that have no rights or privileges with the Network or in UN rights fora. They may, at the invitation of the Chairperson of the Bureau, attend meetings of the ICC.

**Capacity assessment:** Focuses on assessing the internal ability of the NHRI to do its work and, as a result, on the forward-looking opportunities for UNCT programming in areas where capacity is lacking. Capacity assessment is an evaluative process that can also “feed” into other evaluative process.

**Case management system:** A mechanism that assists the NHRI in receiving, processing, investigating and tracking human rights complaints and investigations. Whether commissions have the capacity to receive individual complaints (as is the case for quasi-jurisdictional institutions) or to investigate human rights matters more generally, the objective is to establish clear, consistent and effective investigation mechanisms and to support the ability to provide recommendations to address human rights cases.

**Changed circumstances:** Where the condition or situation of any NHRI becomes altered in a way that might affect its ability to comply with the Paris Principles, the NHRI is expected to inform the Chairperson of the ICC of such changes. Its accreditation will then be reviewed by the Sub-Committee on Accreditation (SCA). If it the SCA Chairperson notices that the condition or situation of an NHRI has changed, he or she may independently initiate an accreditation review. For instance, the rise of a repressive regime or a coup may affect an NHRI’s ability to comply with the Paris Principles and could lead to accreditation review.

**Civil and political rights:** The rights of all human beings to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information. Civil and political rights are defended in a number of international instruments including the International Covenant on Civil and Political Rights.

**Civil law:** A prominent legal system originating in the Roman Empire that remains influential in continental Europe and Latin America, among other regions. The law in a civilian system is often codified. The code precedes judgments and provides an interpretive framework for the legal system. Most civil law systems are “monist.”

**Civil society:** Civil society refers to all groups outside government such as community groups, non-governmental organizations, labour unions, indigenous peoples’ organizations, charitable organizations, faith-based organizations, professional associations and foundations. Civil society expresses the interests of social groups and



raises awareness of key issues in order to influence policy and decision-making. In recent decades, such organizations have been successful in shaping global policy through advocacy campaigns and mobilization of people and resources.

**Common law:** The common law originates in English law. It is distinct from civil law, which has its roots in the Roman Empire. It is a system of legal concepts and techniques that form the basis of the law in common law jurisdictions. The common law has traditionally derived primarily from judicial decisions, rather than statutes or conventions, though in contemporary jurisdictions the extent of this general characteristic varies a great deal. Most common law systems are “dualist.”

**Consolidation phase:** Occurs after the institution is set up and has carried out its basic functions and programming. There are few predictable activities that can be cited as common needs of NHRIs at this phase. Each institution will present unique challenges and while there may be some trends in terms of common issues, the lack of uniformity means that evaluative activities are critical to this phase. Rather, the objectives are to take stock, take corrective action as required, and to enhance the institution’s efforts to promote and protect human rights based on capacity assessments and programme evaluations. During the consolidation phase, the UNCT will be in a position to assess whether the NHRIs work is progressing properly and whether to recommend a change in direction. UNCT staff should support NHRIs in making decisions about how to manage projects and to optimize the chances of success and should avoid second-guessing the NHRIs’ leadership or substituting UN opinion for that of the NHRI leadership.

**Convention:** The general meaning of “convention” is an international agreement. “Conventional law”, is a term used to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term “convention” thus is synonymous with the generic term “treaty”. Unlike declarations, Conventions are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, Member States can then ratify the convention, promising to uphold it. Governments that violate the standards set forth in a convention can then be censured by the UN.

**Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the “UNESCO Convention”):** Adopted by the UNESCO General Conference on 20 October 2005. It addresses the need to take cultural diversity into account in national and international development policies. It expresses cultural diversity not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used. The UNESCO Convention also acknowledges and addresses the tension that sometimes exists between culture and human rights.

**Convention on the Rights of the Child (CRC):** Also known as the Children’s Convention, the CRC sets forth a full spectrum of civil, cultural, economic, social, and political rights for children. It was adopted in 1989.

**Core protection issues:** Core protection issues raise a degree of urgency and are linked to core rights. The OHCHR especially supports NHRIs regarding core protection issues, which are central to the very rationale of NHRIs. They include investigating human rights violations and handling complaints, especially as regards the prevention of torture and degrading treatment, arbitrary detention, disappearances and the protection of human rights defenders, are fundamental to what NHRIs do. In addition, NHRIs have a critical watchdog role in reviewing conditions in detention facilities, and should have the right to visit facilities unannounced and request private interviews with detainees.

**Core protection mandate:** While the protection mandate of NHRIs – in the general sense of that term - extends equally to all human rights, be they civil, political, economic, social or cultural in nature, the core protection mandate deals with a narrower group of rights associated with civil and political rights of an urgent nature. The OHCHR especially supports NHRIs regarding their core protection mandate, such as the prevention of torture and degrading treatment, summary executions, arbitrary detention and disappearances, and protection of human rights defenders. In carrying out its core protection mandate, NHRIs should be especially sensitive to the impact of rights violations in these areas as regards vulnerable groups.

**Culture of human rights:** A way of life based on human rights, where respect for the fundamental dignity of each individual is recognized as essential to the functioning and advancement of society. It works to uphold each article of the Universal Declaration of Human Rights.

**Declaration on Cultural Diversity:** Adopted by the UNESCO General Conference on 2 November 2001. It acknowledges cultural heritage as a basic part of how human beings identify and express themselves. Specific examples include oral expressions and traditions, including language, performing arts, social practices, rituals and festive events, knowledge and practices concerning nature and the universe.

**Derogation:** To abrogate, suspend or partially repeal a law by an act that limits its scope or impairs its efficacy and force. In terms of human rights treaties, derogation is a suspension of a right, which is only permissible in particular circumstances. For instance, the ICCPR limits derogations from the Covenant by states parties to times of official public emergency. Certain rights are “non-derogable” and therefore cannot be suspended under any circumstance.

**Detention:** The act of holding an individual in custody. Detention also refers to confinement or forced delay.

**Domestic implementation:** For a state that is a party to an international agreement, the process of adopting all relevant national, regional, or local policies, laws and regulations, and undertaking all necessary actions to meet its obligations under the agreement.

**Dualist:** Most common law jurisdictions are “dualist,” meaning that, as a general rule, an international instrument will only have legal enforceability if it has been incorporated into law by national legislation. For instance, Commonwealth nations such as Canada and India follow this common law tradition, as do most Anglophone nations in Africa.

**Economic, social and cultural rights:** Economic, social and cultural rights (ESC rights) are the fundamental human rights that support and enhance human existence and dignity by assuring equality and preventing discrimination. ESC rights concern the necessities of life, including the right to enjoy one’s cultural identity and the benefits of development. Examples include the right to work; the right to an adequate standard of living, including food, clothing, and housing; the right to physical and mental health; the right to social security; the right to a healthy environment; and the right to education. These rights

are deeply intertwined with civil and political rights. For example, the right to speak freely means little without a basic education. Similarly, the right to work is diminished if you are not allowed to meet and assemble with co-workers to discuss work conditions.

**Effective implementation:** For a Party to an international agreement, refers to the successful process of adopting all relevant policies, laws and regulations, and undertaking all necessary actions to meet its obligations under the agreement. The assessment of effective implementation depends on a wide range of policy instruments such as programmes, directives and administrative measures. Actual practice must be assessed to determine whether it is in conformity with the measures and norms that have been put into place. Monitoring is an important means of ensuring that legislative and policy initiatives are being successfully implemented. NHRIs can use the results of monitoring activities to promote more effective implementation measures.

**Enabling law (or enabling legislation):** The legal basis on which an entity depends for its existence, and which confers its lawful authority to act. NHRIs are creatures of statute and depend on enabling legislation for both their existence and legitimacy.

**Equality:** The notion that all human beings are entitled to the same human rights without distinction. The equality principle is embodied in article 2 of the Universal Declaration of Human Rights. Equality does not necessarily mean treating people the same but rather taking whatever steps are necessary to promote a more just society for all. A distinction is often drawn between the interconnected concepts of formal and substantive equality. Formal equality assumes that equality is obtained if a law or a policy treats everyone, e.g. men and women, in the same way, or in a neutral manner. Substantive equality is concerned with the effects of laws and policies and with ensuring that they alleviate, rather than propagate, the inherent disadvantage experienced by traditionally discriminated groups, such as women. See also Montreal Principles.

**Establishment phase:** The period immediately after the NHRI is established in law, when support will focus on structural issues, institutional development and the beginning of operations.

**Evaluation:** Evaluation is a broad term that has a variety of meanings, depending on the context and the objectives. In the context of this manual, it is used to describe

the intentional and systematic effort to assess the impact, quality or effectiveness of a particular intervention. It is through evaluation that the UN can determine whether its work has been successful. Alternatively, an evaluation can point to areas which require attention in the future. It is for these reasons that evaluation is built into project design. UN project documents generally call for two evaluations: a mid-term review and an end of project evaluation. On-going evaluation is carried out through a Project Coordinating Committee. An NHRI's strategic plan can identify other appropriate points for internal evaluation efforts, and these too could go to the Coordinating Committee for review and information. Evaluation is a strategy not only for finding out how successful a project was, but also as a tool for organizational development, including how a mature organization should be investing in and developing its human resources with an eye to the particularities of NHRIs.

**Focal point:** The term originates in the business realm and refers to the individual or organization that is tasked with coordinating the activities and assignments of a number of groups or networks.

**Forced disappearance (or enforced disappearance):** Enforced disappearance is defined in Article 2 of the *International Convention for the Protection of All Persons from Enforced Disappearance* as

“the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

The Convention states that no exceptional circumstances may be invoked as a justification for enforced disappearance. Art. 6 of the Convention and the Rome Statute of the International Criminal Court define the widespread or systematic use of enforced disappearances as a crime against humanity. Enforced disappearances violate fundamental human rights, including the right to liberty and the right to a fair trial.

**Formal evaluations:** Assessments of the performance of individual employees based on criteria that are relevant to their role in the organisation (such as the criteria stated in their job description). Formal evaluations should contain the following features: they are conducted at least

bi-annually, but ongoing feedback is also a standard procedure, employees are encouraged to evaluate themselves against objective performance criteria, and action steps are drafted after each evaluation and monitoring of the achievement of these actions is carried out by the supervisor during observation and feedback sessions.

**Fribourg Declaration:** Adopted in Fribourg on 7 May 2007. It declares that cultural rights are part of human rights and affirms women's active participation in the interpretation of culture.

**Gazetted bill:** A proposed law or piece of legislation that has been announced or published in an official journal.

**Habeas corpus:** (Latin: “that you have the body”) A writ, petition, or court order demanding that an individual who is detained be brought before a judge in order to decide whether the detention is lawful. It also refers to a prisoner's contestation of the legality of his or her detention. Habeas corpus has traditionally been a criminal law remedy, but has been used in other situations, such as immigration proceedings. A key feature of martial law is the suspension of habeas corpus.

**Human rights:** Human rights are the fundamental rights and freedoms which, it is generally agreed, everybody has from the moment of birth, simply because they are human beings. They are not privileges which need to be won and they apply equally to everybody, regardless of age, sex, race, ethnicity, wealth or social standing. Because they are rights, they cannot be taken away from anyone by the government (although they can be limited and sometimes suspended during states of emergency). These rights are based on a number of human rights principles. Human rights become enforceable as they become codified as conventions, covenants or treaties, or as they become recognized as customary international law.

**Human rights-based approach (HRBA):** A rights-based approach to development is a conceptual framework for human development that “integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development” (according to the Office of the High Commissioner for Human Rights, [www.ohchr.org/Documents/Publications/FAQen.pdf](http://www.ohchr.org/Documents/Publications/FAQen.pdf)).

**Human rights instruments:** This term refers to any and all of the legal documents that together embody the ideals, principles and norms of human rights.

**Implementing legislation:** Law(s) that incorporate an international agreement into the domestic law of a party to the agreement.

**Information systems:** Information systems are the, often computer-based, systems that are used to record and process data. Information systems, specifically databases, can contribute to automating certain aspects of data processing by identifying patterns and trends in data. They are powerful tools that may, for instance, assist NHRIs in identifying which cases to investigate and in creating a “fact base” for a specific type of case and its investigation.

**International Coordinating Committee of National Institutions (ICC):** The ICC coordinates the activities of the NHRI network. It encourages joint activities and cooperation among NHRIs, serves as liaison with the United Nations and other international organizations, and assists governments to establish institutions in conformity with the Paris Principles. The meetings organized by the ICC and its regional counterparts afford an excellent opportunity to enhance cooperation between NHRIs. The ICC was established by NHRIs at the International Conference held in Tunis in 1993 with the aim to coordinate the activities of the NHRI network. In 1998, rules of procedures were developed and its membership was enlarged to 16 members, four from each of the geographical regions. In 2008, the ICC was incorporated under Swiss law, with a Bureau of 16 voting members representing the four regions of the ICC. The ICC also adopted the ICC Statute as a basis for the incorporation.

**International human rights law:** International human rights law is formed by the codification of legal provisions governing human rights in various international human rights instruments. The Universal Declaration of Human Rights is generally agreed to mark the beginning of the modern International Human Rights Law era.

**International humanitarian law:** A set of rules that, for humanitarian reasons, attempts to limit the effects of armed conflict. It restricts the means and methods employed in warfare and seeks to protect individuals who are not or who have ceased to participate in the conflict. The majority of existing international humanitarian law rules are codified in the Geneva Conventions and their protocols. International humanitarian law is also known as the law of war or the law of armed conflict.

**International instruments:** This term refers to any and all of the legal documents that together embody the ideals, principles and norms of international law.

**International law:** International law, or the law of nations, refers to the legal system that governs relationships between different states. It is contained in agreements between states, such as treaties or conventions, customary rules and general principles. International law also refers to the law of international relations, which encompasses the relationship between nations, international organizations, and individuals.

**Justiciability:** A justiciable case is one that can be brought before the courts and in which a remedy can be sought and obtained. Justiciability is a key feature of a right. It also refers to the ability to use a human rights standard before the courts or to enforce such rights more generally. The justiciability of economic, social and cultural rights has been a contentious issue for years.

**Knowledge management (KM):** Knowledge Planning requires research and data, and these in turn require effective information systems to capture, manage and use the data. This group of activities is often collectively called “knowledge management.” Knowledge management capacity is especially important for an NHRI’s ability to generate and analyze disaggregated data. Effective knowledge management systems are directly linked to the institution’s ability to link strategic planning objectives to institutional performance and to programme evaluation, starting with information required to understand the baseline situation and to track indicators. Effective knowledge management can, over time, help to identify national trends through situation monitoring, and support the identification of strategic approaches. They also support decisions for NHRI resource allocation activities such as investigations, policy development and thematic reports on substantive areas of human rights law.

**Legal rights:** Rights that are laid down in law and can be defended and brought before courts of law.

**Legislative review:** The process of evaluating existing or proposed legislation.

**Life, right to:** Individuals are protected under international law from being arbitrarily deprived of his or her life by the state. Art 6(1) ICCPR guarantees this inherent right to life. Prohibitions against corporal punishment, the abolition of the death penalty, criminalization of torture, and the right to seek pardon provide further safeguards. The right is also upheld by Art. 3 of the Universal Declaration of Human Rights.

**Millennium Development Goals (MDGs):** The MDGs represent a global partnership that has grown from the commitments and targets established at the world summits of the 1990s. Responding to the world's main development challenges and to the calls of civil society, the MDGs promote poverty reduction, education, maternal health, gender equality, and aim at combating child mortality, AIDS and other diseases. Set for the year 2015, the MDGs are an agreed set of goals that can be achieved if all actors work together and do their part.

**Minimum core obligation:** A basic standard that must be met by all states parties to an international agreement. The state party must still ensure that its obligations are progressively implemented over time. Monitoring bodies, when evaluating whether a state party is meeting its obligations under international law, will first examine whether the minimum core obligations have been met. For example, the ESC right of an adequate standard of living includes a minimum core obligation of access to adequate food.

**Mobility, right of:** Also known as freedom of movement or right to travel. The right of an individual lawfully within a territory of a state to have the right to liberty of movement and the freedom to choose his or her residence within that territory. It is also the right to be free to leave any country, including one's own. The right of mobility is guaranteed by Art. 12 ICCPR. Restrictions on the right must be appropriate to achieve their purpose and must be the least intrusive instrument among available options and proportionate to the interest to be protected. Lawful restrictions should use precise criteria and not permit unfettered discretion.

**Monist:** Many countries with civil law systems are "monist", meaning that they accept ratified instruments automatically as part of domestic law. This means that rights and duties exist without the need for specific legislation. The Netherlands, France and Germany take a similar approach, as do other countries with a civil law tradition, including several Francophone countries in Africa.

**Montreal Principles on Women's Economic, Social and Cultural Rights (Montreal Principles):** These principles aim to guide the understanding and implementation of the guarantees of non-discrimination and the equal exercise of economic, social and cultural rights, found in articles 3 and 2(2) of the International Covenant on Economic, Social and Cultural Rights, so that women can

benefit from these rights fully and equally. The Montreal Principles were adopted in December 2002 by a civil society expert group in Montreal, Canada.

**Nairobi Declaration on the Administration of Justice:** The Declaration was adopted at the Ninth International Conference of National Human Rights Institutions (Nairobi, Kenya, 21-24 October 2008). The Declaration elaborates upon the important role that NHRIs play in ensuring an effective administration of justice, in particular with regard to access to justice, the judiciary, law enforcement and correctional and detention facilities. The *Nairobi Declaration* is an important tool for NHRIs in working in close cooperation with other stakeholders to ensure fair administration of justice.

**National human rights institution (NHRI):** An institution with a constitutional and / or legislative mandate to protect and promote human rights. NHRIs are independent, autonomous institutions that operate at the national level. They are part of the State, are created by law, and are funded by the State. The Paris Principles broadly group NHRIs into three categories: human rights commissions, ombudsmen, and specialized national institutions designed to protect the rights of a particular vulnerable group (such as ethnic minorities, indigenous populations, refugees, women or children). In particular, the Paris Principles emphasize that NHRIs should be given "as broad a mandate as possible" and that they should be independent from the executive branch.

**National Institutions and Regional Mechanisms Section:** The main entry point for the OHCHR's efforts to establish and strengthen NHRIs, as well as for cooperation with NHRIs.

**National law (or domestic law):** The internal rules and regulations of a sovereign state.

**Non-governmental organisations (NGOs):** Organizations formed by and of people outside of Government. Non-profit, human rights, humanitarian aid and grassroots organizations can all be NGOs. NGOs monitor the proceedings of human rights bodies such as the Human Rights Council and are the "watchdogs" of the human rights that fall within their mandate. Some are large and international (e.g. the Red Cross, Amnesty International, the Girl Scouts); others may be small and local (e.g. an organization to advocate for people with disabilities in a particular city; a coalition to promote women's rights in

one refugee camp). NGOs play a major role in influencing United Nations policy, and many of them have official consultative status at the UN.

**Office of the High Commissioner for Human Rights (OHCHR):** A department of the United Nations Secretariat, mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights laws and treaties. It is led by the High Commissioner for Human Rights. Its mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies.

**Ombudsman:** An Ombudsman can be any third party who deals with conflicts on a confidential basis and gives disputants information on how to resolve the problem at issue. In human rights terms, the Ombudsman is an Officer, independent of the government and political parties. The Ombudsman's job is to ensure the accountability of government through effective overseeing of the administration of government services in his or her jurisdiction.

**Ombudsman office:** An autonomous national institution, independent of the government and political parties, that ensures the accountability of government through effectively overseeing the administration of government services in its jurisdiction. The 'classical' Ombudsman office is not an NHRI.

**Optional protocol:** Very often, human rights treaties are followed by "optional protocols" which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty. A party to the main treaty can opt but is not required to sign, accede or ratify the optional protocol.

**Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT):** Adopted by the UN General Assembly on 18 December 2002. It is an international treaty that establishes "a system of regular visits undertaken by independent international and national bodies to

places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment" (Art. 1). The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment oversees the system.

**Optional Protocol to the International Covenant on Economic, Social and Cultural Rights:** Adopted by the UN General Assembly on 10 December 2008. It is an international treaty that establishes a complaint mechanism for the *International Covenant on Economic, Social and Cultural Rights*. States parties consent to accept the competence of the Committee on Economic, Social and Cultural Rights to evaluate rights violation claims under the Covenant.

**Paris Principles:** The *Principles relating to the Status of National Institutions*, provide international minimum standards on the status and roles of NHRIs. In 1991, the UN Commission on Human Rights held an international workshop of human rights institutions, UN member states and specialised agencies, and non-governmental organisations (NGOs). The purpose was to review the cooperation between national and international institutions, and to explore ways to increase their effectiveness. The resulting "Paris Principles" were subsequently endorsed by the UN General Assembly in December 1993.

**Parliamentary Committee:** A group of members of Parliament selected to perform a special function or group of functions. For instance, a Parliamentary Committee may be brought together to conduct a clause-by-clause study of a bill and to propose amendments to it.

**Poverty Reduction Strategy (PRS):** A PRS is a "national cross-sectoral development framework, designed and implemented by national governments, specifically to tackle the causes and impact of poverty in a country" (according to "Human Rights, Health and Poverty Reduction Strategies" World Health Organization, 2005, 10). Poverty reduction is a gradual process and a PRS is a vehicle for achieving this long-term objective.

**Poverty Reduction Strategy Papers (PRSPs):** PRSPs describe the macroeconomic, structural, and social policies and programs that a country will develop over the course of several years in order to promote growth and reduce poverty. They are "prepared by governments in low-income countries through a participatory process involving domestic stakeholders and external development partners, including the IMF and the World Bank" (according to <http://www.imf.org/external/np/exr/facts/>

[prsp.htm](#)). The adoption and implementation of a PRSP is a way for a state to demonstrate its commitment to realizing all human rights for citizens. Many authors agree that a successful PRSP requires a strong human rights perspective.

**Presumption of innocence:** The fundamental principle of criminal law that a person may not be convicted of a crime unless guilt is proven beyond a reasonable doubt. The burden of proving innocence is generally not placed on the accused.

**Privacy:** Freedom from arbitrary or unlawful interference. The right to privacy is guaranteed by Art. 17(1) ICCPR. The State should justify intrusions or interceptions of personal privacy, including the home, correspondence and communications. However, wide search, seizure, and break and entry powers (without warrant) can be exercised by officers or security forces in the interests of national security, public order or similar justifications.

**Private sector:** The part of the economy that is not under direct government control. For instance, businesses may form part of the private sector.

**Project Activity Framework (PAF):** An outline, within a UN Project Document, that sets standards against which to review or evaluate a project's success. Programme activities that are predictable and important should be included in the project document and linked to the PAF. From the institution's perspective, the strategic plan will generally be the starting point for an evaluation. The starting point from the UN perspective is usually a project document and in particular the Project Activity Framework. The two should coincide since the NHRI's strategic plan should reflect what is in the PAF to the extent that the UNCT is supporting the NHRI. Strategic planning should be undertaken soon after the NHRI's establishment and that plan should then form the basis for revising the PAF.

**Project Document:** Defines the programme of action for a planned endeavour. The development of outcomes, indicators and targets are usually set out in broad terms in the strategic plan itself, but details of the activities and their costing should be contained in a workable action plan that focuses resources on activities that are both effective and coordinated. The plan should identify partners to work with; develop a realistic program of action to meet these challenges and overcome constraints. And it should set out costs (financial and personnel) of the program. In addition, the NHRI should develop mechanisms and processes to measure the degree to which the plan is being

met and to take corrective action as required. Certain programme activity is both predictable and important and should be included in the initial project document. This would include: the preparation of core documents on human rights and the role of the NHRI, the design and delivery of public education programmes, and the design and delivery of training to key stakeholder groups: the police; prison officials; the army and security forces. Any review or evaluation has to assess capacity since the overall point of any Project Document is capacity development.

**Ratification:** The act by which a State formally agrees to be legally bound by a treaty's provisions. It usually requires the approval of the State's legislative body (or bodies, in the case of federal States). A State that ratifies a treaty is called a "State Party" to that treaty. An agreement that is ratified is applicable and legally binding on the State Party. Some treaties do not enter into force until they have been ratified by a certain number of the States that have signed it. The number of ratifications required is specified in the text of the treaty.

**Re-accreditation:** The ICC Rules of Procedure under sub-article 3(g) provide that:

"Where the circumstances of any member of the group of National Institutions change in any way which may affect its compliance with the Paris Principles, that member shall notify the Chairperson of those changes and the Chairperson shall place the matter before the accreditation sub-committee for review of that member's membership. Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it appears that the circumstances of any member of the group of National Institutions may have changed in any way which affects its compliance with the Paris Principles, the Chairperson or sub-committee may initiate a review of that member's membership."

This review process constitutes re-accreditation.

**Remedy:** In legal terms, the means by which a right is enforced or the violation of a right is prevented, redressed or compensated.

**Reservation:** A reservation is a declaration made by a State by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that State. A reservation enables a State to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the

treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made on its application, the NHRI can document the impact of those reservations and attempt to influence the State to remove them.

**Restorative justice:** Restorative justice is a non-adversarial, non-retributive approach to justice that the United Nations Economic and Social Council defines as “an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities” (<http://www.un.org/docs/ecosoc/documents/2002/resolutions/eres2002-12.pdf>). It offers victims an opportunity to obtain reparation and seek closure, while allowing offenders to take responsibility for their behaviour. Restorative justice promotes community well-being and deterrence. It can take various forms – from a national Truth and Reconciliation Commission to innovations in juvenile justice systems.

**Rule of law:** One of the fundamental, overarching ideas in legal systems. The rule of law is a safeguard against arbitrary governance and requires legal decisions to be made according to known principles or laws of general and equal application. The rule of law ensures that no one is above the law and that individuals are entitled to due process of law. It is a state responsibility. It informs and structures the effectiveness and integrity of the entire justice system, including the work of NHRIs.

**The Siracusa Principles:** The Siracusa Principles set standards of acceptable limitations and derogations from the ICCPR which supplement treaty norms. They seek to ensure that the clauses of the ICCPR are interpreted and applied in a manner consistent with the Covenant’s objects and purposes. They were adopted at an international conference held in Siracusa, Italy in 1984.

**States Parties:** States that have ratified or acceded to a treaty.

**The Sub Committee on Accreditation (SCA):** In accordance with the Rules of Procedure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), the Sub-Committee on Accreditation of the ICC has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to ICC Bureau members on the compliance of

applicants with the Paris Principles. The SCA is composed of one “A status” accredited NHRI for each of the four regional groupings; namely Africa, the Americas, the Asia Pacific, and Europe. Members of the SCA are appointed by the regional groupings for a renewable term of three years. OHCHR participates in the work of the SCA as a permanent observer and in its capacity as ICC secretariat. An NHRI can receive any of the following 3 statuses; (1) “A status”: compliant with the Paris Principles; (2) “B status”; observer status - not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and (3) “C status”; not compliant with the Paris Principles.

**Systemic level:** The state of relating to or affecting an entire system

**Torture:** Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture as a human rights violation and a crime that involves the intentional infliction of severe pain or suffering for such purposes as punishment, intimidation, and obtaining information, when inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. Torture is prohibited by the Geneva Conventions, the ICCPR, and the CAT.

**Transitional justice:** Transitional justice refers to “a range of processes and mechanisms associated with society’s attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with varying levels of international involvement, or none at all. Individual prosecutions, reparations, truth-seeking, institutional reform, or a combination of these functions, may form part of the processes” (according to the Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, paragraph 8). The NHRI’s responsibility for transitional justice will depend on its enabling statute or other legislative provisions. A number of NHRIs have themselves been established as part of institutional reform in the transitional justice process.

**Treaty:** Formal agreement between States that defines and modifies their mutual duties and obligations; used synonymously with convention and covenant. When conventions are adopted by the United Nations General Assembly, they create legally binding international



obligations for the Member States who have signed the treaty. When a national government ratifies a treaty, the content of that treaty should be incorporated into its domestic legal order, subject to transformation.

**Treaty body:** A group of experts set up according to the terms of a treaty to monitor each State Party's progress in fulfilling its obligations under that treaty. Also called a committee, a treaty-based body or a treaty monitoring body.

**Treaty obligation:** The duties and responsibilities assumed by a State once it has become a party to an international treaty. In terms of economic, social and cultural rights, state obligations are usually seen as three-fold, i.e. as obligations to respect, protect and fulfill.

**Triage:** The process of sorting through the numerous inquiries and potential human rights complaints that are made in-person, in writing or electronically to determine which can and should be investigated by the NHRI, as well as which require immediate or special attention. This process weeds out out-of-jurisdiction cases and identifies cases requiring immediate attention.

**UN Country Team (UNCT):** The family of UN organisations involved in a particular country, including UN Specialised Agencies, Funds and Programmes.

**UN Global Compact:** Launched in 2000 as a policy platform and a practical framework for companies committed to sustainability and responsible business practices. As a leadership initiative endorsed by chief executives, it seeks to align business operations and strategies everywhere with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

**Unincorporated convention:** An international agreement that has been ratified by a state, but that has not been implemented domestically through the process by which a state adopts all relevant policies, laws, and regulations, and undertakes all necessary actions to meet its obligations under the agreement.

**Universal Periodic Review (UPR):** The Universal Periodical Review (UPR) mechanism of the Human Rights Council is a fundamental tool to measure the extent to which each State has fulfilled its human rights obligations and commitments. The UPR is to look at best practices but also at challenges and obstacles that a State might face, based on information provided by the State concerned; reports of Treaty bodies, special procedures, and other United Nations documents deemed relevant by the Office of the High Commissioner for Human Rights; and information from other relevant stakeholders, including non-governmental organizations and NHRIs.

**Vienna Declaration and Programme of Action:** Consensus document arising from the 1993 United Nations Conference on Human Rights in Vienna. It states that human rights are universal, indivisible, interconnected and interrelated and underlines the need for assisting States in the task of building and strengthening national institutions and legal systems in the field of human rights. It also affirms that the human rights of women are an inalienable, integral and indivisible part of universal human rights and recognizes violence against women as a human rights violation.

**Vienna World Conference on Human Rights:** World Conference on human rights held in Vienna in 1993; produced the Vienna Declaration and Programme for Action. Women's human rights advocates used the conference to advocate for recognition of women's human rights.

**Working Group on Arbitrary Detention (WG):** The WG was established in 1991 and its mandate under the Human Rights Council includes the investigating of cases of deprivation of liberty imposed arbitrarily and to seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives. UNCTs can provide information to NHRIs about the Working Group and its procedures. NHRIs can support the international human rights system and fulfill their domestic mandate by supporting efforts by entities such as the WG.

## SOURCES FOR COMPILING THE GLOSSARY OF KEY TERMS

### Treaties and Other International Agreements

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10 Dec 1984

Convention on the Protection and Promotion of the Diversity of Cultural Expressions 20 Oct 2005

CRC: Convention on the Rights of the Child 20 Nov 1989

Declaration on Cultural Diversity 20 Nov 2001

Fribourg Declaration 7 May 2007

ICCPR: International Covenant on Civil and Political Rights 16 Dec 1966

ICCPR-OP1: Optional Protocol to the International Covenant on Civil and Political Rights 16 Dec 1966

ICESCR: International Covenant on Economic, Social and Cultural Rights 16 Dec 1966

International Convention for the Protection of All Persons from Enforced Disappearance 20 Dec 2006

Nairobi Declaration on the Administration of Justice 21-24 Oct 2008

OP-CAT Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 18 Dec 2002

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Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, paragraph 8.

UN ESC, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Syracuse Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights," UN Doc: E/CN.4/1984/4 (1984).

UN Human Rights Committee, "General Comment No. 27: Freedom of Movement," UN Doc. CCPR/C/21/Rev.1/Add.9 (1999).

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## OVERVIEW: MODULE I

Module I is introductory in nature and is designed to provide an overview of NHRIs and their role in national, regional and international human rights systems, with a focus on issues relevant to UNCTs.

Module I contains five chapters.

### Chapter 1: Introducing National Human Rights Institutions

**Objective:** Clearly explain what an NHRI is and its relevance to UN Country Teams. Describe the context in which NHRIs operate, including the human rights framework at the national and international levels, and the special importance of NHRIs in both.

This chapter provides a general, short introduction for UNCT staff regarding the basic features and functions of national human rights institutions, the context in which they operate, the special relationship between NHRIs and the UN, and the ways in which UNCTs can work with NHRIs. This Chapter also introduces the “Paris Principles,” which set minimum standards for NHRIs.

Because the UN has an important role in supporting NHRIs, this chapter emphasises the importance of strengthened co-operation which offers greater chances of success in ensuring the sustainability of democratic governance, the effective application of the rule of law, and the securing of human rights. Both the UNDP and the OHCHR have recognised that engagement with NHRIs is a priority.

### Chapter 2: Models of NHRIs

**Objective:** Identify different types of NHRIs, including regional specificities (by consolidating regional experiences) and existing guidelines.

This chapter is designed to familiarise UNCT members with the various NHRI models, with a focus on functional and structural differences, as well as regional specificities. UNCTs will improve their understanding of legal, political, and regional institutional cultures that affect NHRIs and the work they do. Other factors, such as economic circumstances, philosophical differences, and practical considerations are taken into account in examining the evolution of different models.

### Chapter 3: Roles and responsibilities of NHRIs

**Objective:** Set out in detail the roles and responsibilities of NHRIs, including the human rights framework at the national and international levels with a focus on how NHRIs relate to the UN system.

This chapter looks in detail at the main roles and responsibilities of NHRIs at both the national and international levels. The Chapter begins with an overview of the context in which NHRIs function and then moves to the standard grouping of NHRI roles. It should be noted that NHRI functions or activities are described in the Principles as “responsibilities”, suggesting that these are things that institutions are obliged to do.<sup>1</sup> It is intended as a general overview only.

<sup>1</sup> International Council on Human Rights Policy. 2005. “Assessing the Effectiveness of National Human Rights Institutions” [http://www.ichrp.org/files/reports/18/125\\_report.pdf](http://www.ichrp.org/files/reports/18/125_report.pdf)

## Chapter 4: The Rule of Law and the Core Protection Mandate

**Objective:** Set out in detail the roles and responsibilities of NHRIs, including the human rights framework at the national and international levels with a focus on how NHRIs relate to the UN system.

The rule of law and the administration of justice are State responsibilities. NHRIs also have a role in strengthening both areas. This Chapter examines the role of NHRIs and the particular strategies and activities that NHRIs can undertake to strengthen the rule of law.

A related and crucial aspect of the NHRI mandate is core protection work. The OHCHR considers core protection issues to be one of the more important elements in determining the credibility of NHRIs at both the national and international levels. This chapter also emphasizes the role of NHRIs in the core protection mandate such as:

- General activities relating to the prevention of torture, summary execution and arbitrary detention
- Complaints from detainees
- Detention monitoring
- General activities relating to the protection of human rights defenders

## Chapter 5: NHRIs, Human Development and Democratic Governance

**Objective:** Highlight possible roles and added value of NHRIs in the larger development context, particularly on influencing development processes, with concrete case studies in areas such as participation in the formulation of poverty reduction strategies, decentralisation programmes, policy and budget monitoring.

While many NHRIs tend to focus on civil and political rights, they also have important roles to promote and protect economic, social and cultural rights and to strengthen the ties between these rights and ESC rights. UNCTs can assist NHRIs in this work at the national level, including through supporting the integration of the Millennium Development Goals to develop a road map on programmatic priorities. Adapting these to the particularities of each country permits effective target-setting and programming for NHRIs.

Working within cultural contexts is integral to a NHRI's approach to development and human rights, and especially to the effectiveness of NHRIs working to achieve equality. Working within cultural traditions can allow the NHRI to work with social and cultural leaders to effect attitudinal and practical changes. With the support of UNCTs, NHRIs can be informed of relevant norms and documents related to cultural rights and their relationship to other human rights.

Because of the important links between democratic governance and human development, NHRIs can look to strategic planning processes as a way to identify specific areas of priority in the development context that have implications for human rights. The collaboration of UNCTs, NHRIs and UNDP is necessary to the creation of an enabling environment to achieve MDGs. NHRIs can also play an effective role in poverty reduction strategies, by maintaining a strong human rights-based approach to Poverty Reduction Strategy Papers (PRSP). Their role may include seeking involvement in the development and monitoring of a PRSP, and intervening where necessary.

# chapter

# 1

## Introducing National Human Rights Institutions

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## OBJECTIVE:

Clearly explain what an NHRI is and its relevance to UN Country Teams. Describe the context in which NHRIs operate, including the human rights framework at the national and international levels, and the special importance of NHRIs in both.

## EXECUTIVE SUMMARY

This chapter provides a general, short introduction for UNCT staff regarding the basic features and functions of national human rights institutions, the context in which they operate, the special relationship between NHRIs and the UN, and the ways in which UNCTs can work with NHRIs. This Chapter also introduces the “Paris Principles,” which set minimum standards for NHRIs.

A “national human rights institution” (NHRI) is an institution with a constitutional and/or legislative mandate to protect and promote human rights. When in compliance with the Paris Principles, NHRIs are cornerstones of national human rights protection systems. NHRIs also serve as relay mechanisms between international human rights norms and the national level.

NHRIs must be independent and autonomous. Otherwise, they will not be recognised internationally as a Paris Principle-compliant NHRI. Similarly, institutions lacking a constitutional and/or legislative mandate to protect and promote human rights are not NHRIs.

NHRIs may improve their effectiveness by coordinating their activities with government, parliament and the judiciary other societal actors, and with regional and international organisations. They can also help to address gaps between human rights standards and implementation, address individual complaints ensuring the rule of law and fighting impunity. Because most international mechanisms lack enforcement powers at the national level, NHRIs help to make human rights a reality on the ground. They enhance the sustainability of a human-rights based approach to development by identifying and empowering claim-holders to assert their rights and identifying duty-bearers and ensuring that they have the responsibility, authority and resources needed to discharge their duties. This, in turn, assists in developing a culture of human rights.

The UN itself has an important role in assisting the development of independent and effective NHRIs. Strengthened cooperation between the UN and NHRIs offers greater chances of success in ensuring the sustainability of democratic governance, the effective application of the rule of law, and the securing of human rights. Both the UNDP and the OHCHR have recognised that engagement with NHRIs is a priority.

Like NHRIs themselves, UN Country Teams also work with many entities – State institutions, civil society, the international community and advocates – in order to ensure respect for human rights, justice and the rule of law. NHRIs can perform a number of roles that enhance the ability of UNCTs to strengthen the national promotion and protection system and create an enabling environment for the success and sustainability of good governance, rule of law and human rights efforts.

The “Paris Principles” (“Principles Relating to the Status and Functioning of National Institutions”) set out basic standards for NHRIs. The Paris Principles require NHRIs to have as broad a mandate as possible in the promotion and protection of human rights. An NHRI which complies with the Principles is eligible to be accredited by the Sub-Committee of the ICC, under the auspices of the OHCHR.

NHRIs, as independent institutions with a broad mandate to promote and protect human rights, are also directly engaged in work related to civil and political rights and economic, social, and cultural rights. In addition, they address issues related to vulnerable persons that cut across civil, political rights, economic, social and cultural rights, and may involve situations where the rights at stake are highly contested and socially controversial.

## 1.1 What is a “national human rights institution?”

*Terminology:* A “national human rights institution” (NHRI) is an institution with a constitutional and/or legislative mandate to protect and promote human rights. NHRIs are independent, autonomous institutions that operate at the national level. They are part of the State, are created by law, and are funded by the State.

Some texts also use the term “national institutions” to refer to NHRIs. To avoid confusion with other types of institutions that operate independently at a national level, but that may not have a broad human rights mandate, the term NHRI is used here.

When they are in compliance with the Paris Principles, NHRIs are among the cornerstones of national human rights protection systems, and serve as relay mechanisms between international human rights norms and the national level.

NHRIs must be independent and autonomous. An institution that is located within and subject to the direction of a government department is not recognised internationally as a Paris principle-compliant NHRI. (See discussion of the accreditation process in Chapter 10.)

Institutions lacking a constitutional and/or legislative mandate to protect and promote human rights are not NHRIs. For example, Auditors General, or “classic” ombudsman offices with no human rights mandate, are certainly autonomous national institutions, but they are not NHRIs.

On the other hand, ombudsman offices may have responsibility for human rights either alone or in combination with other responsibilities and thus may be considered to be NHRIs. Only by carefully reading the enabling law and the mandate of the institution can it be determined if an institution is an NHRI.

It should be noted that although some non-governmental organisations (NGOs) use the word “commission” in their title, an NGO is not an NHRI.

For an overview of different models of NHRIs, see Chapter 2.

*Basic Functions:* NHRIs protect and promote human rights. They usually investigate and monitor human rights. While retaining their independence, NHRIs improve their effectiveness by coordinating their activities with the

State, as well as with societal actors (e.g., civil society), and with regional and international organisations. NHRIs also promote human rights and provide advice to States. Depending on their enabling law, they may have a role in receiving individual complaints and in ensuring that remedies are available in the event that violations occur.

NHRIs also contribute to addressing gaps between human rights standards and implementation, ensuring the rule of law, and fighting impunity. Because most international mechanisms (for example, the concluding observations of treaty bodies) lack often enforcement powers at the national level, NHRIs help to make human rights a reality on the ground. Because they operate in, and have lawful authority at the domestic level, NHRIs can, for instance, follow up on recommendations of treaty bodies and hold authorities accountable with respect to their human rights obligations.

NHRIs can be the primary actors who ensure national ownership of a human rights agenda, and thus enhance the chances for success and sustainability of technical cooperation projects and for the development of a culture of human rights.

*Key Features:* NHRIs are:

- Central elements of strong national HR protection system;
- Ideal relay mechanisms at the country level to ensure application of international human rights norms;
- Crucial to address core protection issues;
- Central relay mechanisms to link human rights with development and democratic governance.

Depending on their mandate, NHRIs can also:

- Receive and investigate individual human rights complaints;
- Address gaps in national human rights protection systems; and
- Support peace-building strategies in post-conflict situations.

See “What is a national human rights institution?” by Morten Kjærum at the Danish Institute for Human Rights web site. (<http://www.humanrights.dk/about+us/what+is+a+nhri>)

For a detailed discussion of the roles and responsibilities of NHRIs, see Chapter 3 of this Toolkit.

## 1.2 NHRIs in Context

At the national level, many actors and stakeholders share responsibility for promoting and protecting human rights: NHRIs can only be understood in this larger context.

First, it is States who bear the primary responsibility for respecting, protecting and fulfilling human rights. The Government, Parliament, the Judiciary and other bodies enact laws, set policy frameworks, take judicial decisions and monitor the impact of their policies and programmes. As well, the judiciary has a very important role, enforcing the rule of law, controlling the constitutionality of the acts of government and of Parliament, and applying a human rights lens generally to their work. The police and other bodies enforce the law and are of course required to comply with human rights standards.

Civil society plays a central role, whether through the dedicated work of NGOs at the grassroots level, or through religious institutions, community service organizations, professional groups or associations and trade unions. The media bring human rights issues and concerns to the attention of the broader public and provide a forum for discussion and debate. The education system ensures that students at all levels are exposed to human rights through awareness raising, sensitisation and courses. Business (the private sector) plays an increasingly important role as well.

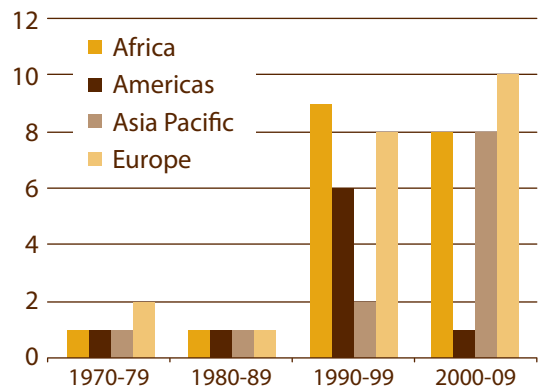
In the midst of all these actors, NHRIs are unique: they exist in a dynamic position between States, civil society and other actors, offering a neutral and objective space in which to interact, develop human rights laws and policy, and exchange ideas. NHRIs use their expertise and on-the-ground experience as a basis for promoting and protecting human rights. They conduct public education, use media to build or strengthen a national culture of human rights and provide a focal point for human rights in the country. These efforts educate and inform, but they also serve to prevent abuses from occurring in the first instance. NHRIs bring a human rights-based approach to the activities of government, so that development and economic issues are analysed through the lens of human rights principles, standards and corresponding obligations.

More detail on the relationship between human rights based approaches and the role of NHRIs in the development context is discussed in Chapter 5.

### 1.2.1 The Emergence of NHRIs

In many countries, NHRIs have worked for decades, operating under national laws that were inspired or influenced by international human rights law. In the last fifteen years, however, the number of NHRIs has surged around the world, largely as a result of the United Nations' push to support these institutions "on the ground." In particular, as shown by Figure 1: Year of NHRI Establishment the responses showed that the number of NHRIs began to grow in the Americas in the early 1990s, in Africa in the mid-1990s and in the Asia Pacific in the late 1990s, while Europe has seen a steady growth since the mid 1990s.<sup>1</sup>

**FIGURE 1: YEAR OF NHRI ESTABLISHMENT**



Source: OHCHR, Survey of National Human Rights Institutions. 2009. See note 1. [www.nhri.net](http://www.nhri.net)

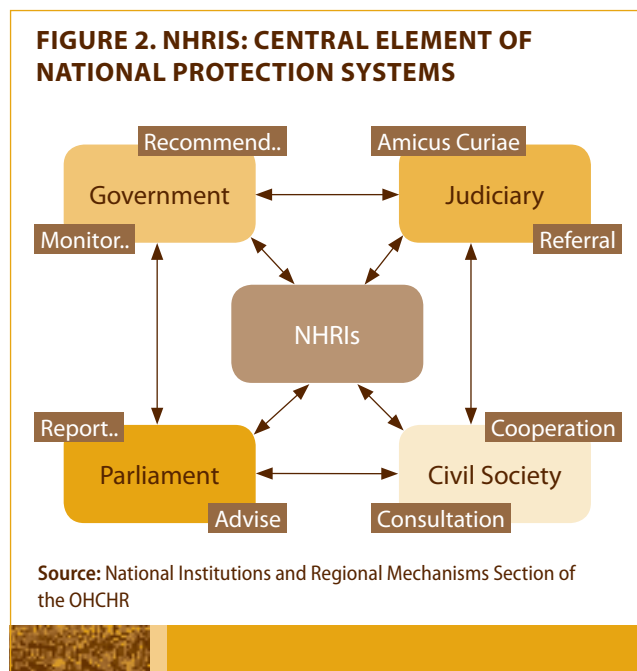
### 1.2.2 Democratic governance and a human rights framework

The central responsibility to protect human rights rests with the States which have broad obligations under international human rights law, namely to respect, protect and fulfil human rights. In order for these obligations to be met at the national level, States are required to take "all appropriate steps", including legislative and institutional steps, to ensure rights are realised at the State level. Establishing NHRIs is an important way of doing this because NHRIs link international human rights to the domestic or national human rights framework.

<sup>1</sup> OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

NHRIs that comply with the Paris Principles are cornerstones of national human rights protection, and can be a force for making international human rights obligations a national reality. NHRIs are therefore central elements of national human rights protection systems. They work hand in hand with other parts of the State and with social actors: these include the executive, an independent judiciary, law enforcement agencies, effective and representative legislative bodies, strong and dynamic civil society organisations, a free press, and education systems containing human rights programmes at all levels.

NHRIs can provide a central role in building a culture of human rights, while reinforcing the rule of law. Operating within a national framework, NHRIs typically draw on rights from several sources: first, their mandate is typically derived from a combination of a national constitution and legislation. Operating together, the constitution and enabling legislation will guarantee the NHRI's existence and independence, and authorise its actions. While NHRIs are not, of course, at the centre of a country's governance system, seeing the inter-relationships can help to place NHRIs in context with other actors in government as figure 2 does:



NHRIs also draw their authority and responsibilities from regional and international human rights obligations arising from treaties, covenants and other instruments.

NHRIs thus foster the link between international law and the national framework by encouraging the incorporation of international human rights norms into the domestic framework of rights.

Third, the development of guidelines and principles, sometimes called “soft law”, provides interpretative guidance for understanding NHRIs and their work.

To summarise, the mandate of NHRIs – *what they can and should do* – depends on three things:

- First, the constitution and NHRI's enabling legislation, which form a legal basis and confer lawful authority to act.
- Second, international instruments that are ratified in the country have legal effect and are a principal source of human rights law (In some countries, ratified conventions or covenants are automatically part of the country's law. In others, the country must take an extra step and enact legislation.).
- Third, there are various types of principles that aid in interpreting instruments or laws. There are specific guidelines or standards that apply to NHRIs and these are called the Paris Principles. Although the term is not universally accepted, such principles are sometimes called “soft law” because, while they are not binding, they do provide interpretive guidance and tend to have a normative effect.

### 1.2.3 Enabling Laws: Grounded in constitutional law and legislation

National human rights institutions are part of the State structure in the sense that they are creatures of the law – they depend on laws for their existence and to authorise their actions.

According to a recent survey, a third of NHRIs are created by a constitution, about a third are created by legislation, and a further 15% have both.<sup>2</sup> The South African example, illustrated here, combines a constitutional foundation with a legislative base. Certainly, having a constitutional base provides a measure of security for NHRIs since it is very difficult to amend a constitutional provision.

Legislation is passed by a national assembly, a parliament, or a state legislature. Enabling legislation may cover human rights generally, or it may define specific rights.

<sup>2</sup> OHCHR Survey, note 1, above

In some countries, the law may say that the NHRI must protect and promote human rights which are contained in ratified international treaties. Constitutions and NHRI enabling laws will vary from country to country, and should be read carefully. Some countries do not have a constitutional basis for their NHRIs, but only a legislative base. A NHRI created in this manner complies with the Paris Principles.

#### **HUMAN RIGHTS COMMISSION ACT, 1994 South African Human Rights Commission**

“WHEREAS the Constitution provides that the Human Rights Commission shall, inter alia, be competent and obliged to **promote the observance of, respect for and the protection of fundamental rights**; to develop an awareness of fundamental rights among all people of the Republic” (emphasis added).

In some countries, NHRIs are created by decree, orders-in-council, proclamations or other executive instruments that do not require the approval of the country’s elected representatives. NHRIs created by such executive instruments do not meet international standards. According to the ICC’s General Observations, the creation of an institution by an instrument of the Executive is *not* adequate to ensure permanency and independence.

For details on enabling laws and compliance with the Paris Principles, see Chapters 7 and 10.

Generally speaking, human rights laws should be given a broad, liberal and purposive interpretation. NHRIs can provide a central role in building a culture of human rights, while reinforcing the rule of law. And while this cannot be used to “read in” rights that do not exist, a broad reading of an NHRI law can be used to interpret a set of existing rights more expansively and in a way that is more consistent with the achievement of human rights. For example, in some jurisdictions the right to be free from discrimination on the grounds of sex has been read broadly to include the rights of women who are pregnant and breastfeeding.

### **1.2.4 International human rights law**

This Toolkit deals primarily with obligations arising from treaties and focuses on the UN system, although there will be some reference to regional systems.

Many human rights norms have been codified by the United Nations over the past fifty years and given force through a range of covenants, conventions, protocols and other instruments. These human rights norms are universal, indivisible, interdependent and interrelated, as States re-affirmed at the 1993 Vienna World Conference on Human Rights. States have also accepted the establishment of international bodies to supervise national compliance with international human rights law. Thus, the promotion and protection of human rights has become an objective in the international community and this has direct implications for UNCT staff in the field. In many cases, treaty bodies<sup>3</sup> have identified NHRIs as key implementing mechanisms for facilitating the national application of international human rights.

#### **TWO SOURCES OF CONVENTIONAL OR TREATY-BASED INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

The **UN system** has general application internationally, subject to individual state ratifications or accessions, declarations and reservations.

**Regional systems** for human rights protection apply within territorial limitations, e.g. the African, the Inter-American and the European human rights systems.

There are three general sources of international law: (1) treaty or conventional law, (2) customary international law, and (3) general principles of law. For the purposes of this Toolkit, we will focus on treaty or conventional law.

Upon **ratifying a treaty or convention**, States undertake certain legal obligations.

**Annex 1:** Table of UN Instruments and International Law provides an overview of the key UN instruments listed according to their thematic relevance. (See the end of Chapter 1)

<sup>3</sup> Information on treaty bodies can be found in Chapter 3, section 3.6.1

**Annex 2:** Table of Regional Instruments and International Law provides an overview of the key regional instruments. (See the end of Chapter 1)

A guide to interpreting specific instruments is provided in **General Comments** prepared by the relevant UN Treaty Bodies.

Many international human rights instruments impose obligations on ratifying States “to take all appropriate measures” to ensure that international human rights are implemented at the national level. The establishment of a national institution is a key mechanism through which States respond to this obligation.

NHRIs can serve as ideal relay mechanisms at the country level to ensure application of international human rights norms. The list of instruments ratified by each country, as well as the relevant reservations and declarations made by or in respect of each country, are found on the website of the Office of the High Commissioner of Human Rights (<http://www.ohchr.org>).

At the regional level, there are also important human rights instruments:

**Annex 2:** Table of Regional Instruments and International Law provides an overview of the key regional instruments.

UNCTs should also be aware of regional networks of NHRIs: i.e., the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas; the Asia Pacific Forum of National Human Rights Institutions; the Network of African National Human Rights Institutions, and the European Group of National Human Rights Institutions. Sub-regional groupings have also been established, e.g., the West-African Group of National Human Rights Institutions. NHRIs of the Commonwealth also collaborate with the support of the Commonwealth Secretariat. Many NHRIs are also members of the International Ombudsman Institute.

### 1.2.5 Can the NHRI apply international standards domestically?

Core protection issues require that States take steps to ensure that rights are realized at the State level. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. NHRIs, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of State’s obligations under international human rights law. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

How does the right contained in an international or regional instrument become part of national or domestic law? This question is central to the issue of justiciability, which refers to the ability to use human rights standards before the courts or enforce them more generally. Legislative steps can be accomplished through existing laws, or by incorporating new laws designed to bring international rights into the domestic sphere. The application of international law standards at the domestic level depends in part on the country’s legal traditions and constitution.

Most common law jurisdictions are “dualist,” meaning that, as a general rule, an international instrument will only have legal enforceability if it has been incorporated into law by national legislation.<sup>4</sup> For instance, Commonwealth nations such as Canada and India<sup>5</sup> follow this common law tradition, as do most Anglophone nations in Africa.<sup>6</sup>

<sup>4</sup> Commonwealth Secretariat, *Handbook on Ratification of Human Rights Instruments* (London: Human Rights Unit, 2006) at 47 (accessed on October 9, 2007 at [http://www.thecommonwealth.org/Shared\\_ASP\\_Files/UploadedFiles/20AFBD50-7AF7-492D-B68B-CDA734583FAD\\_RatificationHandbook.pdf](http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/20AFBD50-7AF7-492D-B68B-CDA734583FAD_RatificationHandbook.pdf)).

<sup>5</sup> P. Malanczuk, *Akehurst’s Modern Introduction to International Law*, 7<sup>th</sup> revised ed. (New York: Routledge, 1997) at 66.

<sup>6</sup> A. Katz, “An Act of Transformation: The Incorporation of the Rome Statute of the ICC into National Law in South Africa” (2003) 12 *African Security Rev*, 4 at 26. However, some Anglophone countries in Africa do not follow this tradition. Article 144 of the Namibian Constitution of 1990 provides that “unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.”

In contrast, many countries with civil law systems are “monist”, and accept ratified instruments automatically as part of domestic law. This means that rights and duties exist without the need for specific legislation.<sup>7</sup> The Netherlands,<sup>8</sup> France and Germany take a similar approach,<sup>9</sup> as do other countries with a civil law tradition, including several Francophone countries in Africa.

### 1.2.6 NHRIs and human rights-based approach to development

Human rights are a crosscutting and normative set of rules and standards that have legal effect across every aspect of governance and human activity. In this regard, it is important to see human rights as standards that should be mainstreamed across all UN work as well as a distinct set of programs and activities.

NHRIs can, through their existing roles and responsibilities, support a human rights-based approach to development. Two sets of tasks are engaged, which speak directly to the functions of NHRIs:

- Identifying and empowering rights-holders to assert their rights.
- Identifying duty-bearers and ensuring that they have the responsibility, authority and resources needed to discharge their duties.

The human rights-based approach (HRBA) to development has been founded on the following human rights principles:

- Universality and Inalienability
- Indivisibility
- Interdependence and Interrelatedness
- Equality and Non-Discrimination
- Participation and Inclusion
- Accountability and Rule of Law

### 1.2.7 NHRIs and the protection of specific groups

NHRIs also address issues related to thematic issues and to particular categories of specific persons/groups, issues that cut across civil, political, economic, social and cultural rights, and may involve issues where the rights at stake are highly contested:

- Women<sup>11</sup>
- Children
- Indigenous peoples
- Persons with disabilities<sup>12</sup>
- Persons belonging to national or ethnic, religious and linguistic minorities
- Refugees and internally displaced persons
- Persons with disabilities, including HIV/AIDs
- Migrant workers
- Lesbian, gay, bisexual and transgendered persons

For further discussion of the role of NHRIs in the protection of vulnerable persons, see Chapter 3.

### 1.2.8 NHRIs and the UN system

The United Nations has an important role in assisting the development of independent and effective NHRIs. There is significant potential for strengthened cooperation between the UN and NHRIs in promoting and protecting human rights. The more the UN system works closely with and through independent, credible NHRIs, the greater are the chances of success in ensuring the sustainability of democratic governance, the effective application of the rule of law and the respect of human rights.

Within the UN system, the UNDP and the OHCHR have been increasingly involved in supporting NHRIs. For both organisations, engagement with NHRIs has become

<sup>7</sup> Commonwealth Secretariat, *supra*, at 47-48.

<sup>8</sup> Malanczuk, *supra*, at 67-68.

<sup>9</sup> Article 25 of the Basic Law for the Federal Republic of Germany states that, “the general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.”

<sup>10</sup> This section is adapted from: UNDP [http://www.undp.org/governance/focus\\_human\\_rights.shtml](http://www.undp.org/governance/focus_human_rights.shtml). See also: UNDP, *Poverty Reduction and Human Rights: A Practice Note* (June 2003) and *Human Rights: A Practice Note* (March 2004).

<sup>11</sup> CEDAW. See General Recommendation No. 6 (seventh session, 1988). <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom6>

<sup>12</sup> Convention on the Rights of Persons with Disabilities. For a discussion of the role played by NHRIs in this convention, see Stein and Lord, “The United Nations Convention on The Rights Of Persons With Disabilities as a Vehicle for Social Transformation” [http://www.nhri.net/2008/0805\\_libro\\_discapacidad.pdf](http://www.nhri.net/2008/0805_libro_discapacidad.pdf). Accessed November 11, 2008.

a priority area.<sup>13</sup> Likewise, in line with their respective mandates, other UN agencies, funds and programmes have carried out activities in this realm.

For example, the First Global Meeting of Independent Human Rights Institutions for Children organized by UNICEF in 2002 and the UNESCO Strategy on Human Rights set the organisational goal of strengthening partnerships and collaboration with NHRIs. This has brought with it many substantive and operational challenges that UN agencies have to confront and address as they continue to support NHRIs to enhance their legitimacy and to become more effective, efficient, coordinated and coherent. According to a recent resolution of the General Assembly, the OHCHR was commended for its work on national institutions, and the High Commissioner was encouraged, “in view of the expanded activities relating to national institutions, to ensure that appropriate arrangements are made and budgetary resources provided to continue and further extend activities in support of national human rights institutions, and invites Governments to contribute additional voluntary funds to that end”:

**Source:** General Assembly Resolution 63/172. “National institutions for the promotion and protection of human rights” (March 20, 2009).

The OHCHR’s engagement strategy for NHRIs includes:

- Country engagement: supports to States to establish or strengthen NHRIs in accordance with the Paris Principles;
- Leadership: strengthens NHRI capacity to work effectively and independently;
- Interaction with the UN human rights system: supports an effective interaction between NHRIs and Treaty Bodies, and mechanisms such as Special Procedures and the Universal Periodic Review;
- Partnership within the UN system: mainstreaming of the work of NHRIs throughout the whole UN system.

The OHCHR works at the global, country and regional levels in consultation with the geographic sections and field presences of OHCHR. At the request of Member States, tailored advice is provided to countries on:

- Appropriate constitutional or legislative frameworks regarding the establishment of NHRIs.
- The nature, functions, powers, and responsibilities of NHRIs.

It undertakes and facilitates comparative analyses, technical cooperation needs assessments, project formulation and evaluation missions.

The OHCHR works worldwide with NHRIs, including in cooperation with UNDP and UN Country Teams to support NHRIs. There is an emphasis on core protection issues linked to civil and political rights, such as the prevention of torture and degrading treatment, summary executions, arbitrary detention and disappearances, or the protection of human rights defenders. NHRIs can, and should, play a role in advancing all aspects of the rule of law, including with regard to the judiciary, law enforcement agencies and the correctional system.<sup>14</sup>

More details on the supporting NHRIs through the pre-establishment, establishment and consolidation phases are provided in Chapters 7, 8, and 9.

The National Institutions and Regional Mechanisms Section (NIRM Section) is the main entry point for OHCHR’s efforts to establish and strengthen NHRIs, as well as for cooperation with NHRIs.

#### QUICK FACTS ABOUT NHRIS AND THE UN SYSTEM

- As of June 2009, 66 NHRIs were accredited with “A” status by the ICC, under the auspices of the OHCHR, in compliance with the Paris Principles. Summaries of NHRIs that have undergone accreditation in the past are all available through <http://www.nhri.net>.
- The UNDP and the OHCHR work with 80+ national institutions worldwide, many of which are Paris Principle-complaint NHRIs.
- Regular NHRI Information Notes are prepared by the NIRM Section of the OHCHR, providing highlights of national, regional and international issues on NHRIs. More information can be obtained from <http://www.nhri.net> or from the NIRM Section of the OHCHR at <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>.

<sup>13</sup> See for example the UNDP’s *Strategic Plan 2008-2011* and the OHCHR’s *Strategic Management Plan 2008-2009*.

<sup>14</sup> See the Secretary-General “National Institutions for the Promotion and Protection of Human Rights”. Report of the Secretary-General. A/64/320. 64<sup>th</sup> Session. 24 August 2009 at. para. 99.



## 1.2.9 NHRIs and UNCTs

UN Country Teams' work is generally guided by the universal obligations and aspirations contained in the UN Charter and UN human rights treaties. Like NHRIs themselves, UNCTs also work with many entities – State institutions, civil society, the international community and relevant stakeholders – in order to ensure respect for human rights, justice and the rule of law. As one Country Team member observed during meetings for the preparation of this Toolkit, respect for and observance of human rights is a general responsibility for *all* UNCT staff. Indeed, UNCTs have been mandated to promote and protect human rights. There are two key rationales for this mandate:

1. Since the 1993 Vienna Declaration and Programme of Action was adopted, there has been an increased recognition of the need to advance human rights at the country level. Likewise, at the Millennium Summit, the Millennium Assembly committed to strengthening countries' capacities for promoting respect for human rights.
2. The Secretary-General's 2002 report on UN reform emphasised the need to strengthen the UN-system wide support to assist countries in advancing human rights at home with a special focus on NHRIs.<sup>15</sup> The High Level Panel on UN System Wide Coherence further captures these ideas by recommending that RC/HC and UNCTs be held accountable and better equipped to support countries in their efforts to protect and promote human rights.

Thus, "UN Country Teams should become major partners at the country level in these endeavours and ... develop partnerships with NHRIs, especially those compliant with the Paris Principles ... in the areas of the rule of law, good governance and human rights."

In doing so, UNCTs must apply the following five inter-related principles at the country level:

1. A human rights-based approach (HRBA)
2. Gender Equality
3. Environmental Sustainability

4. Results-based management (RBM)
5. Capacity development<sup>16</sup>

Capacity development, in particular, has been recognised as a key UN strategic contribution at the country level. The UN system has been mandated to support capacity development at the country level by both the 2007 Triennial Comprehensive Policy Review and the 2005 Paris Declaration on Aid Effectiveness.<sup>17</sup> The principle of capacity development goes beyond the logic of merely sharing experiences or assisting NHRIs with specific tasks: rather, it signifies a more sustainable UNCT contribution aimed at developing the internal capacities of NHRIs at the individual, institutional and societal levels.

*Source: Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General. Report of the Secretary-General on National Institutions for the Promotion and Protection of Human Rights. 14 January 2008. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-69.doc>*

NHRIs can perform a number of roles that complement the work of UNCTs, namely:

- Serve as country partners to advance the promotion and protection of human rights at the national level and can facilitate interaction with Government, Parliament, and civil society.
- Ensure that international norms are incorporated into domestic law and practice.
- Address gaps in the national human rights protection system, especially the justice system.
- Support peace-building strategies in post-conflict situations where the NHRI is identified as an actor in a treaty or peace agreement.
- UNCTs need to understand how to raise human rights issues and NHRI issues programmatically, depending on the programme cycles and related steps for project development in the UN system. They can be inspired in doing so by referring to existing recommendations made by UN international human rights mechanisms, such as the Treaty Bodies, Special Procedures and the Universal Periodic Review.

<sup>15</sup> Secretary-General, *Strengthening the United Nations: An Agenda for Further Change*, UN GAOR, 57<sup>th</sup> Sess., UN Doc. A/57/397 (2002).

<sup>16</sup> Common Country Assessment and United Nations Development Framework, "Guidelines for UN Country Teams on Preparing a CCA and UNDAF" (2007), online: UNDAF <<http://www.undg.org/docs/6860/2007%20CCA%20and%20UNDAF%20Guidelines%20FINAL.doc>>.

<sup>17</sup> See *Triennial Comprehensive Policy Review of Operational Activities for Development of the United Nations*, UN GAOR, 62d Sess., UN Doc. A/C.2/62/L.63 (2007); *Paris Declaration on Aid Effectiveness* (2005), online: Organisation for Economic Cooperation and Development <<http://www.oecd.org/dataoecd/11/41/34428351.pdf>>.

- In the course of the development of the Common Country Assessment, UNCT staff should assess the need for an NHRI, or assess the effectiveness of the NHRI (in countries that have one), depending on the situation, as a standard part of the assessment and analysis of the development and human rights situations.
- In the course of contributing to the UN Development Assistance Framework and in-country programming processes, UNCTs should develop a common platform for interventions, when asked by the country to do so, as a standard part of the assessment and analysis of the development.

**E-Discussion:** “The Role of UN Agencies and UN Country Teams in Supporting National Human Rights Institutions”. An excellent resource for learning about NHRIs from the UNCT perspective is E. Filmer-Wilson’s 27 March 2008 synthesis of the HuriTALK. Final Summary of E-Discussion: The Role of UN Agencies and UN Country Teams in Supporting National Human Rights Institutions. (2008). <http://www.undg.org/docs/8751/E-mail-Final-Summary.doc>

### 1.3. Introducing the Paris Principles

The 1991 “Paris Principles” (“Principles Relating to the Status and Functioning of National Institutions”) set out the basic international standards for NHRIs and mark the beginning of standardisation of norms for NHRIs. They were adopted by a group of NHRIs at an international workshop and were later endorsed by the former United Nations Commission on Human Rights and the General Assembly. A NHRI which complies with the Principles is eligible to be accredited by the Sub-Committee of the ICC.

#### A brief history

In 1991, the UN Centre for Human Rights (now the OHCHR) convened a conference of national human rights institutions to define common attributes that NHRIs should possess. The meeting produced a set of standards. Because that meeting was held in Paris, these standards came to be known more simply as the “Paris Principles”.

The Paris Principles have become part of the human rights lexicon. The Vienna Declaration qualified any mention of national institutions with the phrase “established in

conformity with the Paris Principles”. The Paris Principles were endorsed by a **UN General Assembly Resolution in 1993**<sup>18</sup> and today are broadly accepted as the test of an institution’s legitimacy and credibility vis-à-vis international standards. A NHRI that fails to meet these standards may still be a legal institution in the national context, but it will have failed to comply with international norms.

#### 1.3.1 Key features

The Paris Principles are standards that all national human rights institutions should meet.

They also contain “additional” or optional principles that apply only to institutions with what is called “quasi-jurisdictional competence” in the Paris Principles. These additional principles apply to institutions authorised to receive individual complaints and to render decisions on them. Since these additional principles are optional, they are not dealt with in detail here.

The Paris Principles are minimum conditions. NHRIs should comply with them in order to be effective in terms of human rights protection and promotion, and to be accredited by peer institutions within the UN system.<sup>19</sup> However, the Paris Principles should not be understood as preventing States from creating NHRIs that have additional powers or from exceeding the standards set in the Paris Principles. But the Principles must be met in order for a national human rights institution to be accredited. Under the Paris Principles, NHRIs are required to:

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

As independent institutions with a mandate to combat discrimination and promote and protect human rights and, subject to their enabling statutes, NHRIs are directly engaged in work related to:

- Civil and political rights
- Economic, social and cultural rights

<sup>18</sup> *Principles relating to the Status of National Institutions*, General Assembly Resolution 48/134, 20 December 1993. <http://www2.ohchr.org/english/law/parisprinciples.htm>

<sup>19</sup> The process by which a national institution is accredited as complying with the Paris Principles is described in Chapter 10 of this Toolkit.

- The Paris Principles identify six main criteria:
  - A broad mandate, based on universal human rights standards;
  - Autonomy from other State entities;
  - Independence guaranteed by statute or constitution;
  - Pluralism including through membership and/or effective cooperation;
  - Adequate resources; and
  - Adequate powers of investigation.

A full discussion of each of these six areas can be found in Chapter 10.

It should be noted that non-compliance with the Paris Principles does not mean that the UN should refuse to work with an institution: however, non-compliance does signal that activities should be directed towards achieving compliance.

### 1.3.2 Accreditation and the Paris Principles: introducing the ICC

At the International Conference in Tunis in 1993, NHRIs established the International Coordinating Committee of NHRIs (ICC) to coordinate the activities of the NHRI network. In 1998, rules of procedure were developed and its membership was enlarged to 16 members, four from each of the geographical regions. At that same meeting, the ICC resolved to create a process for accrediting institutions.

In accordance with the Rules of Procedure of the ICC, the Sub-Committee on Accreditation, working under the auspices of the OHCHR, has the mandate to review and analyse accreditation applications forwarded by the ICC Chairperson and to make recommendations to ICC members on the compliance of applicants with the Paris Principles.

#### QUICK FACTS ABOUT THE ICC

- The ICC was established in 1993 to coordinate NHRI network activities. In 1998, rules of procedure were developed for the ICC, and its membership was enlarged to 16 members, with four from each geographical region.
- The ICC is now incorporated under Swiss law, with a new Statute adopted in 2008 in order to better address the changing environment, including the role of NHRIs in the international human rights system.
- The ICC has its head office in Geneva. The ICC Statute can be viewed at <http://www.nhri.net>
- More than 100 NHRIs have been accredited by the ICC.
- Since 2007, the ICC has a permanent representative based in Geneva.
- More information on the ICC, its standards, the accredited NHRIs, and the accreditation process overall can be found in Chapter 10.

A full discussion of the Paris Principles as well as the accreditation process and NHRIs is found in Chapter 10 of this Toolkit.

## KEY MESSAGES

- A “national human rights institution” (NHRI) is an institution with a constitutional and/or legislative mandate to protect and promote human rights. When in compliance with the Paris Principles, NHRIs are cornerstones of national human rights protection systems.
- The roles of NHRIs may vary depending on their enabling legislation, but they all have protection and promotion mandates, which are important to ensuring application of international human rights norms on the ground and are crucial to address core protection issues.
- The central responsibility to promote and protect human rights rests with States; establishing NHRIs is an important way of doing this. NHRIs are central elements of national human rights protection systems: they work hand in hand with other parts of the State and with civil society actors.
- NHRIs can provide a central role in building a culture of human rights, while reinforcing the rule of law. They are directly engaged in work related to civil and political rights as well as economic, social and cultural rights.
- Many human rights norms have been codified by the United Nations over the past fifty years and given force through a range of covenants, conventions, protocols and other instruments. These human rights norms are universal, indivisible, interdependent and interrelated.
- Upon ratifying a treaty or convention, States undertake certain legal obligations.
- Many international human rights instruments impose obligations on ratifying States “to take all appropriate measures” to ensure that international human rights are implemented at the national level. The establishment of a national institution is a key mechanism through which States respond to this obligation.
- NHRIs can, through their existing roles and responsibilities, support a human rights-based approach to development.
- The United Nations has an important role in assisting the development of independent and effective NHRIs through both the UNDP and the OHCHR for whom engagement with NHRIs has become a priority area.
- Like NHRIs themselves, UN Country Teams UNCTs also work with many entities – State, civil society, the international community and relevant stakeholders – in order to ensure respect for human rights, justice and the rule of law.
- UNCTs need to understand how to raise human rights issues and NHRI issues programmatically, depending on the program cycles and related steps for project development in the UN system.
- The “Paris Principles” (“Principles Relating to the Status and Functioning of National Institutions”) set out basic standards for NHRIs. They require NHRIs to have as broad a mandate as possible in the promotion and protection of human rights.
- The International Coordinating Committee of NHRIs (ICC) coordinates the activities of the NHRI network; the Sub-Committee on Accreditation reviews and analyses accreditation applications according to compliance of applicants with the Paris Principles.

## TOOLS IN THIS CHAPTER

### Annex 1:

Table of UN Instruments and International Law provides an overview of the key UN instruments listed according to their thematic relevance, 14-17

### Annex 2:

Table of Regional Instruments and International Law provides an overview of the key regional instruments, 17-18

### E-Discussion:

The Role of UN Agencies and UN Country Teams in Supporting National Human Rights Institutions, 10

### Figure 1:

Year of NHRI Establishment, 3

### Figure 2:

NHRIs: Central element of national protection systems, 4

## ANNEX 1: TABLE OF UN INSTRUMENTS AND INTERNATIONAL LAW

### Charter of the United Nations

The International Bill of Human Rights

International Covenant on Economic, Social and Cultural Rights 1966

International Covenant on Civil and Political Rights 1966

Optional Protocol to the International Covenant on Civil and Political Rights

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

### The ten core international human rights instruments and their monitoring bodies

There are nine core international human rights treaties, one of which – on enforced disappearances – has not entered into force. Each has established an independent committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns or are establishing individual complaints procedures.

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination  
21 Dec 1965

ICCPR: International Covenant on Civil and Political Rights 16 Dec 1966

ICESCR: International Covenant on Economic, Social and Cultural Rights 16 Dec 1966

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women 18 Dec 1979

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10 Dec 1984

CRC: Convention on the Rights of the Child 20 Nov 1989

ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 18 Dec 1990

International Convention for the Protection of All Persons from Enforced Disappearance 20 Dec 2006

CRPD: Convention on the Rights of Persons with Disabilities 13 Dec 2006

ICESCR - OP Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 10 Dec 2008

ICCPR-OP1: Optional Protocol to the International Covenant on Civil and Political Rights 16 Dec 1966

ICCPR-OP2: Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 15 Dec 1989

OP-CEDAW: Optional Protocol to the Convention on the Elimination of Discrimination against Women 10 Dec 1999

OP-CRC-AC: Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 25 May 2000

OP-CRC-SC: Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 25 May 2000

OP-CAT Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 18 Dec 2002

OP-CRPD: Optional Protocol to the Convention on the Rights of Persons with Disabilities 12 Dec 2006

### Universal Human Rights Instruments

In addition to the International Bill of Rights and the core human rights treaties, there are many other universal instruments relating to human rights. A non-exhaustive selection is listed below. The legal status of these instruments varies: declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to States in their conduct; covenants, statutes, protocols and conventions are legally-binding for those States that ratify or accede to them. Information on the status of ratification of selected instruments is available here.

## **World Conference on Human Rights and Millennium Assembly**

Vienna Declaration and Programme of Action

United Nations Millennium Declaration

## **The right of self-determination**

United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples

General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"

International Convention against the Recruitment, Use, Financing and Training of Mercenaries

## **Rights of indigenous peoples and minorities**

Declaration on the Rights of Indigenous Peoples

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

## **Prevention of discrimination**

Equal Remuneration Convention, 1951 (No. 100)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)

Declaration on Race and Racial Prejudice

Convention against Discrimination in Education

Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

World Conference against Racism, 2001 (Durban Declaration and Programme of Action)

## **Rights of women**

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)

Declaration on the Protection of Women and Children in Emergency and Armed Conflict

Declaration on the Elimination of Violence against Women

## **Rights of the child**

Convention on the Rights of the Child (CRC)

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OPSC)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC)

Minimum Age Convention, 1973 (No. 138)

Worst Forms of Child Labour Convention, 1999 (No. 182)

## **Rights of older persons**

United Nations Principles for Older Persons

## **Rights of persons with disabilities**

Declaration on the Rights of Mentally Retarded Persons

Declaration on the Rights of Disabled Persons

Principles for the protection of persons with mental illness and the improvement of mental health care

Standard Rules on the Equalization of Opportunities for Persons with Disabilities

## **Human rights in the administration of justice: protection of persons subjected to detention or imprisonment**

Standard Minimum Rules for the Treatment of Prisoners

Basic Principles for the Treatment of Prisoners

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Safeguards guaranteeing protection of the rights of those facing the death penalty

Code of Conduct for Law Enforcement Officials

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Guidelines for Action on Children in the Criminal Justice System

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Basic Principles on the Independence of the Judiciary

Basic Principles on the Role of Lawyers

Guidelines on the Role of Prosecutors

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Declaration on the Protection of All Persons from Enforced Disappearance

Basic Principles and Guidelines on the Right to a Remedy and Reparation

International Convention for the Protection of All Persons from Enforced Disappearance (not yet entered into force)

## **Social welfare, progress and development**

Declaration on Social Progress and Development

Universal Declaration on the Eradication of Hunger and Malnutrition

Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind

Declaration on the Right of Peoples to Peace

Declaration on the Right to Development

Universal Declaration on the Human Genome and Human Rights

Universal Declaration on Cultural Diversity

## **Promotion and protection of human rights**

Principles relating to the status of national institutions (The Paris Principles)

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

## **Marriage**

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

## **Right to health**

Declaration of Commitment on HIV/AIDS

Right to work and to fair conditions of employment

Employment Policy Convention, 1964 (No. 122)

## **Freedom of association**

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)



## Slavery, slavery-like practices and forced labour

Slavery Convention

Protocol amending the Slavery Convention signed at Geneva on 25 September 1926

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

Forced Labour Convention, 1930 (No. 29)

Abolition of Forced Labour Convention, 1957 (No. 105)

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

## Rights of migrants

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW)

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

## Nationality, statelessness, asylum and refugees

Convention on the Reduction of Statelessness

Convention relating to the Status of Stateless Persons

Convention relating to the Status of Refugees

Protocol relating to the Status of Refugees

Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live

### Also available:

Ratifications and Reservations

Status of ratifications of human rights treaties

Conventions, Declarations and Other Instruments Found in General Assembly Resolutions (since 1946)

## ANNEX 2: SELECTED REGIONAL INSTRUMENTS AND INTERNATIONAL LAW

### Africa

Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15, *entered into force* May 26, 2001.

African [Banjul] Charter on Human and Peoples' Rights, *entered into force* Oct. 21, 1986. Ratification information

Rules of Procedure of the African Commission on Human and Peoples' Rights, *adopted on* October 6, 1995.

Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, June 9, 1998

Protocol to the African Charter on Human and Peoples' Rights, *entered into force* January 25, 2004.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *entered into force* Nov. 25, 2005.

### Rights of the child

African Charter on the Rights and Welfare of the Child, *entered into force* Nov. 29, 1999.

Ratification information

Declaration on the Decade of a Culture of the Rights of the Child in West Africa (2001-2010).

Nationality, statelessness, asylum and refugees

Convention Governing the Specific Aspects of Refugee Problems in Africa, U.N.T.S. 45, *entered into force* June 20, 1974. Ratification information

The Khartoum Declaration on Africa's Refugee Crisis, September (1990).

The Addis Ababa Document on Refugees and Forced Population Displacements in Africa, Adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa, Addis Ababa, Ethiopia, 8 - 10 September 1994

The New Partnership for Africa's Development (NEPAD) 2001.

## Americas

American Declaration on the Rights and Duties of Man, *entered into force* April 1948

American Convention on Human Rights, *entered into force* July 18, 1978

Cartagena Declaration on Refugees (1984)

Inter-American Convention to Prevent and Punish Torture (1985), *entered into force* February 28, 1987.

Protocol to the American Convention on Human Rights to Abolish the Death Penalty, *adopted on* June 8, 1990.

Inter-American Convention on the Forced Disappearance of Persons, *entered into force* March 28, 1996

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, *entered into force* November 16, 1999

## Women's rights

Inter-American Convention on the Granting of Civil Rights to Women, *entered into force* March 17, 1949

Inter-American Convention on the Granting of Political Rights to Women, *entered into force* April 22, 1949

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, *entered into force* March 5, 1995

## Persons with disabilities

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, *adopted on* June 7, 1999

## Europe

Convention for the Protection of Human Rights and Fundamental Freedoms, *entered into force* September 3, 1953

Charter of Fundamental Rights of the European Union (2000/C 364/01) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment *entered into force* in 1989 and was amended by Protocol 1 and 2

European Social Charter (revised), *entered into force* July 1, 1999 Part V, Article E 4(3), 8(2)(3)(4)(5), 20 8(1)

European Convention on the Exercise of Children's Rights, *entered into force* July 1, 2000

Council of Europe Convention on Action against Trafficking in Human Beings, *open for signature* May 16, 2005.

# chapter

# 2

## Models of NHRIs

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## OBJECTIVE:

Identify different types of NHRIs, including regional specificities (by consolidating regional experiences) and existing guidelines.

## EXECUTIVE SUMMARY

This chapter is designed to familiarize UNCT staff with the various NHRI models, with a focus on functional and structural differences, as well as regional specificities.

There is at present no universally accepted and applied ideal “model” for NHRIs, and beyond the term “NHRI”, there is no uniform organisational structure for these institutions either. Names, practices and functions vary widely, and the roles of NHRIs are evolving rapidly. To further complicate matters, the line between NHRIs and other types of national bodies, like ombudsmen and other types of special commissions aimed at advancing the rights women, or children, for example, is starting to blur. Some types of classifications and categories that were used in the past may be of limited use today.

As a result of the many forms and roles of NHRIs, there is a certain risk in making generalisations about “models” of institutions: The way in which an NHRI is categorised often depends on regional practice and accepted terminology within the regional legal tradition(s).

This chapter addresses types of NHRIs using a functional and structural approach. While the principal categories were historically “human rights commissions” and human rights “ombudsman” style offices, classifications are approximate at best and names can be misleading.

Annex 1 provides guidance on these broad categories of models, but should not be viewed as an evaluative tool. Various models are quickly evolving; there are as many variations as there are geographic traditions.

### Annex 1: Comparison of NHRI Models

UNCTs should understand the surrounding legal, political, and regional institutional cultures that affect NHRIs and the work they do. Other factors, such as economic circumstances, philosophical differences, and practical considerations should also be taken into account.

Although UN staff may assist in sharing information about these factors with the NHRI, the Vienna Declaration and Programme of Action specifies that the ultimate decisions regarding the functional and structural shape of the NHRI will rest with the country.

Finally, the growing importance that UN Member States attach to NHRIs and Ombudsmen in protecting and promoting human rights is evident since, in December 2008, the United Nations General Assembly adopted two important resolutions addressing their roles that are set out at the end of the Chapter.

## INTRODUCTION

According to the Vienna Declaration and Programme of Action, each State has the right to choose the framework for the NHRI that best suits its particular needs at the national level in order to promote human rights in accordance with international human rights standards. Although the Paris Principles set out the basic norms for the roles and responsibilities of NHRIs, they do not dictate models or structures.

Attempts have been made to classify and categorise NHRIs, but none has been entirely successful. That is at least in part because there is no universally accepted and applied ideal “model”. Different models, approaches and structures are evolving rapidly, and there are as many variations as there are geographic regions and legal traditions. It has been said that there are as many typologies of NHRIs as papers written about them!

While acknowledging that there is no definitive classification, the models discussed in this document presume that NHRIs identified as such are in full compliance with the Paris Principles.

### 2.1 Different Approaches: Form and Function

There is no ideal or single accepted structure for NHRIs, beyond compliance with the Paris Principles. The Principles do not impose a uniform model for carrying out these responsibilities and exercising these powers. The best strategy for working effectively with an NHRI – or helping to establish one – is to understand the surrounding legal, political and regional institutional culture or the country and region.

How one categorises a NHRI will depend greatly on regional practice and accepted terminology from a legal or structural perspective, as well as what functions the NHRI will have.

Historically, the distinctions are made between institutions that are “Ombudsman-like” and institutions Commissions. As a generality, Ombudsman institutions were headed by a single person, used moral persuasion rather than legal enforcement, and applied to public sector activity only.

- Commissions, on the other hand, tended to be a more representative group, with several members, and could have enforcement powers to deal with abuses

and could apply to both the public and private sector. Given the evolution in the development of institutions, and in the nature and function of Ombudsman institutions, this twofold distinction is not very helpful.

### Legal and Structural Approach

The Paris Principles help to ensure a minimum set of standards and therefore that NHRIs share certain similarities as regards powers and responsibilities. Moreover, even though institutions may share certain similar core responsibilities, the emphasis they put on these may differ markedly. Some institutions may emphasise their advisory, monitoring or promotion function, for example, while others may put a greater emphasis on investigation. Nonetheless, it is possible to distinguish between the national institutions that have been accredited by the international network of national institutions and to categorise them as being of one type or another, if at times somewhat imperfectly.

- If one looks at **legal tradition**, particular models tend to be found in certain regions. In the International Council on Human Rights Policy’s publication “Assessing the Effectiveness of National Human Rights Institutions”, NHRIs are described as being in the “Hispanic, Francophone or Commonwealth tradition”, or as being organised by continent: “multi-member institutions that receive complaints in most of Africa and Asia, single-member *Defensores del pueblo* in Latin America, Ombudsman [offices] in European Nordic countries, and advisory institutions in Europe”.<sup>1</sup> **These divisions reflect regional differences to some extent, but there is often great variety within regions.**
- If one looks at **structure**, one might refer to institutions being either “ombudsman-like” or “commission-like”, depending on whether the organisation is structured around a single person or office-holder, or based on the more corporate and multi-member structure of a commission. Commonwealth of Independent States (CIS) countries, for example, tend to favour an ombudsman style model.
- Even so, care should be taken because classifications are at best approximate, and the names can be misleading: the fact that a “commission” usually investigates complaints does not prevent a purely advisory body from calling itself a “commission”. Similarly, some commissions are, in fact, structured as ombudsman offices - the Mexican Human Rights Commission, for

<sup>1</sup> <http://www.ohchr.org/Documents/Publications/NHRIren.pdf>

example. Some ombudsman-style offices have multiple deputy ombudsmen, much like a commission, etc.

- While there are many different names for NHRIs (see **Figure 1: Names of NHRIs**), the name itself is of little consequence provided that it clearly communicates to the public (1) what the NHRI does and (2) the fact that it is a public institution and not an NGO. For example, it has been noted in one country that the name “Centre for Human Rights” for a NHRI is misleading because it sounds like a NGO.

### FIGURE 1: NAMES OF NHRIS

What’s in a name? NHRIs have different names, depending on the region, legal tradition and common usage:

- civil rights protector
- commissioner
- human rights commission
- institute or centre
- ombudsman
- parliamentary ombudsman or commissioner for human rights
- public defender / protector
- parliamentary advocate

- Your best guide is always the enabling statute of the institution, which sets out the powers and functions of the institution.
- If one looks at **powers and functions**, there is a range, or continuum, of powers consistent with being Paris Principle compliant, including institutions that are:
  - headed by a single individual or by a more representative body of members;
  - able to undertake investigations and make recommendations;
  - “quasi-jurisdictional”, with the power to receive individual complaints and to render decisions with binding effect, or that enforce decisions through the courts or specialised tribunals;

- Is responsible for the concerns of a single group of people or a single issue, or has a wider mandate, and finally?;
- Has authority over human rights concerns only, or can deal with other matters such as those more usually understood as belonging to a classic Ombudsman such as maladministration?

These and other examples and approaches show that the line between NHRIs and other types of national bodies is starting to blur, and disagreements about the “proper” model are not productive beyond the minimum criteria set by the Paris Principles. Because of the practical nature of this Toolkit, we have chosen to address areas of classification from a functional and pragmatic perspective, while at the same time mentioning legal and structural issues, including regional specificities.

## 2.2 Geographic Jurisdiction and Extraterritorial Effect<sup>2</sup>

Since human rights laws apply across the country, NHRIs should have broad jurisdiction or geographic reach across the national territory. According to a recent survey, most NHRI respondents (58) covered the whole country. Only Southern Sudan, Mexico City, Great Britain and Northern Ireland indicated that they had a limited geographic jurisdiction. In all of these cases, complementary jurisdiction is vested with other institutions.

Almost all respondents indicated their jurisdiction cover all those residing in the country, regardless of nationality.

A number of respondents (14) also indicated that their institution has extra-territorial jurisdiction. Examples include:

- The protection of citizens overseas;
- One NHRI from the Asia Pacific region has jurisdiction in a territory that has been designated by the UN as a non-self-governing territory;
- One European NHRI, which works on foreign policy issues, e.g. extraterritorial obligations resulting from ratified HR treaties; and
- Another European NHRI, which supervises the work of the country’s administration outside the territory, such as embassies and consulates.

<sup>2</sup> This section is drawn from OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

Just under 40% of the respondents indicated that other organizations with human rights mandates existed in the country. Examples include: human rights institutions at the state or territorial level (e.g. two NHRIs from the Americas) or with particular geographic responsibility (e.g. a European NHRI); ombudsmen and public mediators (e.g. four from Africa and one from Europe); and specialized agencies for rights of particular groups (e.g. two from the Asia Pacific, one from Africa and two from Europe).

### 2.3 NHRIs vs. Classic Ombudsman Offices

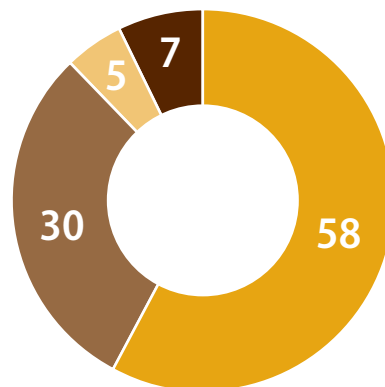
There should be no confusion between a “classic” ombudsman and a NHRI. “Classic” ombudsman offices, such as the Danish Ombudsman Office, deal only with maladministration and citizen’s complaints against government.<sup>3</sup> Ombudsman offices that deal **only** with citizen complaints about maladministration, without an express mandate to address human rights matters, are not NHRIs, even though human rights issues may be the underlying issue at stake. That said, some Ombudsman offices take the position that they can handle human rights matters in practice, even if human rights institutions exist separately in the same country. In such cases, the institutions should be encouraged to work together in a complementary fashion and develop a memorandum of understanding or other working relationships to avoid duplication or confusion.

### 2.4 Models of NHRIs

According to a recent survey, NHRI structures vary considerably. Human rights commissions are in the majority, although ombudsmen institutions are also popular, especially in the Americas, where 6 of 9 respondents were ombudsman institutions. The ombudsman model is also common in Eastern Europe and in CIS countries. In Europe survey respondents had a variety of institutional models. Examples include Germany, Norway and Slovakia, which are human rights institutes or centres.

OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed by NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

FIGURE 2: INSTITUTIONAL TYPE



■ Commission 58%      ■ Hybrid 7%  
 ■ Ombudsman 30%      ■ Other 5%

Source: OHCHR, NHRI Survey 2009.

#### 2.4.1 Human Rights Commissions

“Commission style” models share the following attributes:

- They are State-sponsored, with the explicit mandate to protect and promote human rights; however, some may focus only on a specific area, such as women’s rights.
- They are typically headed by a number of members, full and/or part-time, who are decision-makers.
- Investigation is a core function, and many can receive individual complaints.
- Many have the authority to make recommendations only, following investigation (the more typical model), while some have quasi-judicial competence, i.e., can make decisions that are enforceable directly through the courts or specialised tribunals.

Human rights commissions tend to have sufficient numbers of members to assure pluralism. Members may be full or part-time, although as a rule, the Chief Commissioner is a full-time position.

<sup>3</sup> Historically, the Ombudsman style of institution emerged in countries like Sweden, and was structured to offer citizens recourse against the government and public administration. The Danish Ombudsman, for example, has general jurisdiction over the public administration, but the law makes no reference to human rights issues in its enabling legislation. That does not mean that human rights issues are excluded, just that this is not the specific focus of its work.



Plurality helps ensure the credibility of the organisation, but it has implications for the speed of decision-making and for cost.

The fact that human rights commissions usually – but not always – have the mandate to investigate human rights complaints presents both benefits and difficulties. It benefits individuals who suffer human rights abuses who may be unable to access other venues or achieve redress. Commissions fill this void. This is especially true for commissions with the power to make or seek enforceable orders. The investigation function, therefore, can enhance the public's confidence in the NHRI and shore up its credibility. Investigations can serve other purposes as well: information acquired through the investigation process and the examination of complaints trends can inform programming in other areas, for example, public education.

At the same time, the sheer demands of investigation can be overwhelming. Backlogs in complaints handling are not uncommon, and where they grow large can undermine the institution's ability to devote resources to other programme areas or to deal with systemic issues. Ultimately, large backlogs and delays can lead to a total loss of credibility for the institution since investigation timelines will become unreasonable. Even if the institution manages to contain the volume of complaints, its credibility, in large part, will come from success in providing remedy, not with the speed at which it investigates matters.

If a commission with recommendatory powers only cannot find ways to ensure that its recommendations are accepted and acted on, they, rather than the State, might be seen as weak and ineffective.

While the power to investigate brings benefits, commissions whose decisions or investigations are subject to judicial review tend to be very cautious and careful in investigations, which can lead to delays and overly formalistic approaches: this undermines the relative advantages that the Commission is supposed to offer. It is also true that the costs of Commissions with this authority may also be quite high, especially if they offer free legal services to complainants in cases that go to court or a specialised tribunal.

A number of human rights commissions have mandates that focus on **equality rights and anti-discrimination**, with the power to accept complaints only in the area of equality and discrimination law. Examples of this are found in many Commonwealth countries, including the U.K., North America (Canada and the U.S.), Australia and New Zealand.

In most cases, however, the promotional aspect of the mandates of such NHRIs is not restricted in the same way.

Some examples of "A" status institutions with an equality and anti-discrimination mandate are:

<b>Australia</b>	Human Rights and Equal Opportunity Commission	A
<b>Canada</b>	Canadian Human Rights Commission	A
<b>New Zealand</b>	Human Rights Commission	A

Many more human rights commissions can investigate a wider group of issues and, in some instances, investigate individual complaints, **across the full range of human rights recognised by the State**.

Examples include:

<b>India</b>	National Human Rights Commission	A
<b>Indonesia</b>	National Commission for Human Rights	A
<b>Malawi</b>	Malawi Human Rights Commission	A
<b>Rwanda</b>	National Commission for Human Rights	A
<b>South Africa</b>	South African Human Rights Commission	A

## 2.4.2 Human Rights Ombudsman Institutions

Many NHRIs that comply with the Paris Principles refer to themselves as Ombudsmen (*Defensor del Pueblo* in Hispanic countries, or Public Defenders in parts of Central and Eastern Europe). Most have a single head of the institution, as does a classic Ombudsman Office. Unlike the classical Ombudsman, however, these institutions promote and protect human rights and investigate allegations of human rights abuse, and are not principally focused on maladministration of administrative malfeasance.

“While the traditional ombudsman model was not concerned directly with human rights, more recent institutional models have included a specific human rights protection mandate, often in relation to rights set forth in national constitutions or other legislation. ... In addition, ombudsman institutions are increasingly engaged in promoting human rights, particularly through educational activities and developing information programs.”<sup>4</sup>

“Ombudsman-like” NHRIs may be characterised as follows:

- They are State-sponsored, with the mandate to protect and promote human rights;
- They usually are headed by a single member who is the decision-maker (although some of these institutions have Deputies);
- They have a mandate to deal principally with human rights, although they may be specialized to address single human rights issues such as women’s rights;
- They investigate human rights, and often can receive individual complaints, as a core function;
- They are limited to making recommendations, although more recently, some such institutions have been given authority to go to court or to a specialised tribunal in specific instances where recommendations have been ignored or rejected, so this distinction does not always hold; and
- The ombudsman tradition is a longstanding one that significantly predates NHRIs. Ombudsman offices have been in place for centuries in Nordic countries such as Sweden. They focus on mediation, the use of “good

offices” to investigate and resolve complaints, and they prize confidentiality. They favour quick resolution and so generally are not as focused on formal legal investigations.

Ombudsmen offices that have recommendation powers – the majority – may offer relative advantages with regard to flexibility and speed in complaint handling. While their decisions must be reasoned and supported by the evidence, decisions are not binding, and therefore need not be so rigorous that they stand up to legal scrutiny in the courts.

This model is heavily dependent on the reputation, integrity and leadership of the ombudsman herself or himself, as well as on the authority that the position exercises in society. It should be borne in mind that the political culture of Scandinavian countries, for example, has a long experience with offices of this kind, and recommendations made by an Ombudsman are received with deference and respect. In countries where the legal traditions are newer, and where this deeply ingrained political culture of deference is absent, there are risks that recommendations will be ignored, leading to a loss of credibility for the institution.

Having a single-member head complicates the requirement for pluralism; a single member from the majority culture or ethnic group may diminish credibility among those in the population who do not see themselves reflected in the leadership or who believe that their special concerns or needs are not reflected or understood. There are ways to get around these difficulties, including the use of advisory board or councils.

Most NHRIs with ombudsman-like attributes, can and do investigate matters and, in some instances, investigate individual complaints, **across the full range of human rights recognised by the State.**

Examples:

Mexico	National Commission for Human Rights	A
Georgia	Office of Public Defender of Georgia	A

<sup>4</sup> Navi Pillay, High Commissioner, “Current Challenges to the Protection and Promotion of Human Rights”, talk given at a ceremony to celebrate the 200 year anniversary of the Swedish Parliamentary Ombudsman office, 2009.

It should be noted that NHRIs in line with the Paris Principles are always preferable to Government-led ombudsman institutions. Cooperation and dialogue should be used to increase compliance with the Paris Principles rather than creating a new network of institutions with varying standards that may be lower than those set out by the Paris Principles.

### 2.4.3 Hybrid Institutions<sup>5</sup>

“Hybrid” NHRIs may be characterised as follows:

- They are State-sponsored, with multiple mandates: they not only protect and promote human rights, but may also prevent maladministration, corruption, and even deal with environmental matters;
- They usually share the attributes of an “ombudsman-like” NHRI, that is, they are headed by a single person, they have recommendatory powers only, etc.

Since most hybrid institutions share the features of human rights ombudsman offices, they share their relative advantages and disadvantages. Hybrid institutions, however, clearly have the additional advantage of being able to deal with a range of issues of broad concern to the public, most of whom are not experts and don’t understand and should not be expected to know the difference between “human rights abuse” as compared to “maladministration” or corruption.

In countries without hybrid NHRIs, complainants may be referred from one agency to another to “find” the proper agency or government office; where hybrid institutions exist, people receive “one-stop” service. In addition, an investigation of an allegation of discrimination may disclose that there was an administrative abuse committed but that it did not relate to any particular human rights violation, for example. If the institution undertaking the investigation has a human rights mandate only, it would be forced to make a finding of no discrimination; a hybrid commission could deal with the matter. There are also financial advantages to having one rather than two redress agencies as duplicate premises and services could be avoided. Finally, hybrid-NHRIs can find synergies and strategies to work cooperatively on complaints and national approaches to issues involving human rights and good governance.

The disadvantages of hybrid NHRIs stem from the broadness of the mandate as well as the difficulty with “equating” human rights with maladministration, corruption or other areas.

With regard to the latter, human rights are not of the same category as maladministration and corruption: human rights form one of the three pillars of the United Nations (peace and security, development and human rights) and are enshrined in the Universal Bill of Rights. They are fundamental and inalienable. This cannot be said about either maladministration or corruption, regardless of how serious these other issues may be. There is a possibility that mixing human rights with other issues will diminish the weight and value we give human rights. If so, the risk is that human rights abuse will come to be seen more tolerable, and action to deal with it less necessary rather than more.

As to the former, broader mandates impose broader responsibilities and hybrid commissions must have the resources needed to discharge these.

Trying to get an institution to cover more mandate areas, but only allocating the same budget as to single-mandate institutions, may overburden the NHRI, or may simply mean that some mandates will be unfulfilled. Care needs to be taken to ensure that support to particular mandate areas does not create an imbalance in operations where other parts of the mandate are less popular with donors and thus underfunded.

#### Functional Issues:

All hybrid NHRIs have multiple mandates.

In Spain and some Latin American jurisdictions, for instance, the practice has been to create a single institution having human rights and traditional ombudsman functions.<sup>6</sup>

Examples:

<b>Spain</b>	The Office of the Ombudsman	A
<b>Bolivia</b>	Defensor del Pueblo	A

Elsewhere, the focus may be broader yet: on human rights, anti-corruption and maladministration (Timor Leste and Tanzania, for example) or human rights, maladministration, anti-corruption, and complaints about environmental matters (Namibia):

<sup>5</sup> Many of these institutions also share membership in both the ICC and the IOI, but often are not full-members of the latter.

<sup>6</sup> L.C. Reif, *The Ombudsman, Good Governance and the Human Rights System* (Martinus Nijhoff Publishers, 2004)

Examples:

<b>Timor Leste</b>	Office of the Provedor for Human Rights and Justice	A
<b>Tanzania</b>	Commission for Human Rights and Good Governance	A
<b>Namibia</b>	Office of the Ombudsman	A

## 2.4.4 Consultative and Advisory Bodies

Consultative/advisory NHRIs share the following attributes:

- They are State-sponsored, with the mandate to protect and promote human rights; some operate on a cost-recovery basis in that they sell services. Others may extend their work in the international arena;
- They are drawn from a plurality of social forces and tend to have large memberships;
- They are usually not mandated to investigate cases, but may advise or consult broadly on a wide range of large issues of human rights and may be able to make recommendations; and
- They focus on advising the State on human rights issues and/or conducting human rights research.

Because these NHRIs are highly pluralistic, this can lend them credibility with both the population and Government, this latter because opinions will carry the weight of these social forces. The number of members may, however, be financially debilitating and can inhibit speedy decision-making.

The focus that such institutions put on advice-giving and human rights research encourages in-depth analysis and enhances the quality of results. While research may be more academic in focus, the main concern with such institutions is the absence of direct experience with individual complaints, which distances their work from direct protection of human rights. The absence of a mandate to investigate individual complaints, which is true of many (but not all) such institutions, may be seen as limiting their effectiveness. On the other hand, the institution will have the time and resources to devote to an examination of broader, systemic human rights issues. As with most other models, these institutions can only provide advice or make recommendations. If their advice is not followed or routinely ignored, their credibility will suffer.

These kinds of institutions are found mainly in Europe, but also in Francophone Africa.

These kinds of NHRIs tend to have broad research and advisory mandates **across the full range of human rights recognised by the State**, but do not generally have authority to entertain or investigate individual complaints.

Examples:

<b>France</b>	National Consultative Commission of Human Rights	A
<b>Greece</b>	Greek National Commission for Human Rights	A
<b>Morocco</b>	Human Rights Advisory Council	A

## 2.4.5 Institutes and Centres

A few NHRIs, like Consultative Commissions, Human Rights Institutes or Centres tend to have a very broad membership from different levels of society. They do not traditionally deal with individual complaints. They differ from Consultative Commissions in that the broad membership does not usually participate directly in decision-making, which is left to a professional staff, but rather set the general policy framework. Centres also tend to focus more of their efforts towards research in human rights.

<b>Denmark</b>	The Danish Institute for Human Rights	A
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## 2.5 Recent Resolutions of the UN General Assembly

In December 2008, the United Nations General Assembly adopted two important resolutions. Of particular interest is Resolution 63/172 on the importance of NHRIs for the promotion and protection of human rights. In addition, Resolution 63/169 addresses the role of the Ombudsman, mediator and other NHRIs in the promotion and protection of human rights. These two resolutions are “testimony of the growing importance that the United Nations Member States attach to the role and potential of national human rights commissions and ombudsman institutions in the promotion and protection of human rights at the national, regional and international level.”<sup>7</sup>

<sup>7</sup> Gianni Magazzeni, Chief of Branch, Americas, Europe and Central Asia, OIC of the National Institutions and Regional Mechanisms Section, Field Operations and Technical Cooperation Division, OHCHR, “Current Challenges to the Protection and Promotion of Human Rights”, talk given at a ceremony to celebrate the 200 year anniversary of the Swedish Parliamentary Ombudsman office, 2009.

**Resolution 63/172**, reaffirms the importance of the development of effective, independent and pluralistic NHRIs in line with the Paris Principles; encourages NHRIs to seek accreditation status through the ICC and notes with satisfaction the strengthening of the accreditation procedure and the continued assistance of OHCHR in this regard. It also notes the continuing work of the regional human rights networks in Europe, the Network of NHRIs in the Americas, the Asia Pacific Forum of NHRIs and the Network of African NHRIs.

**Resolution 63/169** underlines the importance of the autonomy and independence of the Ombudsman, mediator and other national human rights institutions. The resolution also encourages Member States to consider the creation or the strengthening of independent and autonomous Ombudsman, mediator and other national human rights institutions and to develop, where appropriate, mechanisms of cooperation between these institutions in order to coordinate their actions, strengthen their achievements and exchange lessons learned.

## 2.6 Factors to Consider in Choosing a Model

A variety of factors will influence the country's choice of model in establishing an NHRI. First and foremost, **the decision rests with the country**. However, UN staff can play a useful role in sharing information about the social, political and legal trends in a particular regional or legal tradition.

### Social, Legal and Regional Factors:

It is important to understand that **legal, historical and regional traditions and trends tend to be the most important factor that governments consider in selecting a model**. There is some data from the evaluation field to the effect that people tend to give more credibility to information, experience and knowledge that comes from similar countries.<sup>8</sup> For example, institutions tend to reflect legal traditions commonly seen in Scandinavian,

Hispanic, Commonwealth or other traditions, although there are exceptions to this. Latin American countries in general tend towards human rights ombudsman offices, sometimes as hybrid institutions, with multiple mandates.

Francophone countries sometimes favour advisory or consultative bodies although recent organizations such as HALDE in France are challenging that tradition. Commonwealth and common law countries tend to favour human rights commissions with the authority to provide remedies and enforce decisions.

In developing countries, the experience and legal legacy of former colonial powers can have an impact on the choice of model.

**Cost and economic circumstances** might also influence the decision:

- Ombuds-style institutions, with one and possibly two members, tend to be less expensive than full commission-style membership.
- Institutions with investigation and complaint receiving functions tend to have the bulk (at least 50%) of their funding dedicated to these activities and related support: this is in part because of the costs of litigation, of legal staff and the protracted and more adversarial nature of dispute resolution.
- Latin American and some Lusophone countries not only choose the ombudsperson model, but also are most likely to combine the human rights and "classic" ombudsperson authorities in one body to avoid what may be seen as unnecessary cost and duplication.
- Other countries might create separate bodies, including separate, specialised human rights bodies, each dealing with a defined group of issues, in the belief that the extra cost and duplication is warranted by the increased focus that results.

**Policy style differences** as to the best approach may also determine the model selected:

- Some countries may feel that change will be achieved by ensuring that social forces come to a united and well-documented opinion on larger human rights issues.
- Other countries believe that NHRIs must focus on, or at least include, redress for the violation of individual rights, and that this requires a specific mandate to investigate individual complaints.

<sup>8</sup> Nedergaard, P. (2006), Which Countries Learn from Which? A Comparative Analysis of the Direction of Mutual Learning Processes within the Open Method of Coordination Committees of the European Union and among the Nordic Countries, in: *Cooperation and Conflict*, Vol. 41, No. 4, pp. 422-442.

**Practical considerations** may also play a part:

- A country with an under-developed and/or overburdened judiciary may, at least at the outset, believe that giving NHRIs the authority to go to court to enforce decisions would strain already-thin resources.
- “Experts”, including international experts and members of existing institutions, bring certain attitudes and perspectives with them. They will tend to see the advantages in models that they have had the most experience with.

While it is risky to generalise about NHRI classifications or “models” of institutions, listing the attributes and pros and cons may encourage better understanding and may assist those who support establishing or strengthening an institution.

A detailed discussion of elements to consider in establishing a NHRI, from the perspective of the UNCT planning cycle and from the standpoint of the “pre-establishment” phase, are set out in Chapters 6 and 7, respectively.

## KEY MESSAGES

- Although the Paris Principles set out the basic norms for the roles and responsibilities of NHRIs, they do not dictate NHRI models or structures.
- Since there is no ideal or single accepted structure for NHRIs, beyond that they comply with the Paris Principles, the best strategy for working effectively with an NHRI – or helping to establish one – is to understand the surrounding legal, political and regional institutional cultures.
- Particular models of NHRIs tend to be found in certain regions, which are in turn linked to the legal traditions of those regions. Care should be taken with names, which can be misleading and may mean different things in different areas. The main models typically referenced include: human rights commissions, human rights ombudsman offices, hybrid institutions and consultative/advisory human rights research institutions.
- The UN General Assembly passed two important resolutions in 2008 on the role of the NHRIs in the promotion and protection of human rights and also addressing the contributions that other institutions can make.
- UN staff should work towards establishing comprehensive, independent NHRIs rather than specialized institutions especially if those are not compliant with the Paris Principles. Compliance of NHRIs with the Paris Principles and membership in existing NHRI networks (e.g. the ICC) will ensure their increasing effectiveness for the promotion and protection of human rights.
- A variety of factors will influence the choice of model in establishing an NHRI. First and foremost, **the decision rests with the country**. However, UN staff can play a useful role in sharing information about the social, political and legal trends in a particular regional or legal tradition. Other factors include economic circumstances and philosophical differences as to the best approach and practical considerations.

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## ANNEX 1: COMPARISON OF MODELS

N.B. The following table is intended to provide guidance on the broad categories of models discussed here and is not an evaluative tool. Rather, it sets out typical characteristics, strengths and weaknesses of the models

presented above. Because the analysis presented here is of necessity broad, it will not apply as a yardstick for a specific institution.

TYPE OR MODEL	CHARACTERISTICS	POTENTIAL STRENGTHS	POTENTIAL CHALLENGES
<b>1. HUMAN RIGHTS COMMISSIONS</b>	<p>Concentrated in Africa, Asia-Pacific and Commonwealth countries with common law traditions.</p> <p>Plurality of members who may be full or part-time.</p> <p>Members make decisions.</p> <p>Usually focus on investigations, and often can receive individual complaints.</p> <p>Relatively large professional staff.</p> <p>Some have authority to make or seek enforceable orders through tribunals or courts.</p>	<p>Plurality enhances credibility.</p> <p>Advisory function strengthened by investigation mandate.</p> <p>For commissions with power to enforce orders, can effect change directly and provide remedy to victims either themselves or through the courts.</p> <p>Allows complainants free access to court/specialised tribunal, with legal representation.<sup>9</sup></p>	<p>Need to address individual case load may lead to less time to devote to other programme areas.</p> <p>Can be costly to operate, especially if the commission provides free legal services to clients before the courts or specialised tribunal.</p> <p>Investigation processes may become rigid and lengthy given that decisions may be brought to court or specialised tribunal.</p> <p>Backlogs of cases are common.</p> <p>Quasi-jurisdictional commissions in countries with a weak judiciary may have difficulty enforcing their orders.</p>

<sup>9</sup> Not all commissions of this type necessarily provide legal representation in all cases when a case goes to the courts or a tribunal. This advantage only applies to those that do this unless there is a legal aid system in place that can assist clients not assisted by the commission.

◀ continued

TYPE OR MODEL	CHARACTERISTICS	POTENTIAL STRENGTHS	POTENTIAL CHALLENGES
<b>2. HUMAN RIGHTS OMBUDSMAN OFFICES</b>	<p>Found in Scandinavian countries and the CIS.</p> <p>Single member head usually makes key decision.</p> <p>More informal and resolution focused approaches.</p> <p>Findings are usually recommendatory.</p> <p>Relatively large professional staff.</p>	<p>Where ombudsman tradition is strong, can be effective.</p> <p>Single head can lead to operational efficiency.</p> <p>More flexibility and less onerous investigatory processes.</p> <p>Advice-giving function strengthened by investigation mandate.</p>	<p>Findings can be ignored (except for those with authority to seek enforceable decisions).</p> <p>Institution may be seen as being about “one person” and may lack the structural depth of a commission in terms of leadership and staffing.</p> <p>Because the ombudsman or commissioner is the head of the organisation, reputation is especially important. This tends to “personalise” the office and can lead to greater difficulties in countries that have not yet developed a culture of respect for the office.</p> <p>Mechanisms needed to ensure pluralism of operations.</p> <p>Need to address individual case load may lead to less time to devote to other programme areas.</p>
<b>HYBRID HUMAN RIGHTS INSTITUTIONS</b>	<p>Found mainly in Latin America and the emerging democracies of Europe although examples exist in Africa and Asia-Pacific as well.</p> <p>Share characteristics of human rights ombudsman offices.</p> <p>Mandate is to protect and promote human rights <b>and</b> deal with malfeasance and/or corruption, and may extend to other issues.</p>	<p>Shares advantages of human rights ombudsman offices.</p> <p>Allows one-stop service to clients.</p> <p>Ensures that issues are dealt with without requiring referral to other agencies.</p> <p>Brings cost efficiencies and minimises conflicts with other institutions.</p>	<p>Breadth of mandate may make it unmanageable and may short-change one or more aspects of the mandate.</p> <p>Risk that resource levels will not match broad responsibilities.</p> <p>Linking human rights to other issues may lead to diminished respect for the fundamental nature of human rights.</p>
<b>CONSULTATIVE/ ADVISORY HUMAN RIGHTS RESEARCH INSTITUTIONS</b>	<p>Found in Europe, Africa, the Middle East and in some countries that share a Francophone tradition.</p> <p>Plurality of members assured by incorporating representatives from all social forces as members.</p> <p>Focus on advice-giving and research.</p> <p>Usually do not investigate individual complaints.</p>	<p>Plurality enhances credibility.</p> <p>Absence of individual complaint mechanism means attention can be paid to policy-level and major issues that are of national significance.<sup>10</sup></p>	<p>Risk that debates will remain at the academic level and not promote change in practice.</p> <p>Decision-making may be difficult given size and diversity of decision-makers.</p> <p>Costs of maintaining large number of commissioners may be prohibitive.</p> <p>Absence of complaint-taking function weakens protection mandate.</p>

<sup>10</sup> Some consultative/advisory commissions do investigate individual cases and, where this is so, the commission has recommendatory authority only. Such consultative/advisory commissions will face the same potential difficulties as those NHRIs lacking authority to enforce decisions.

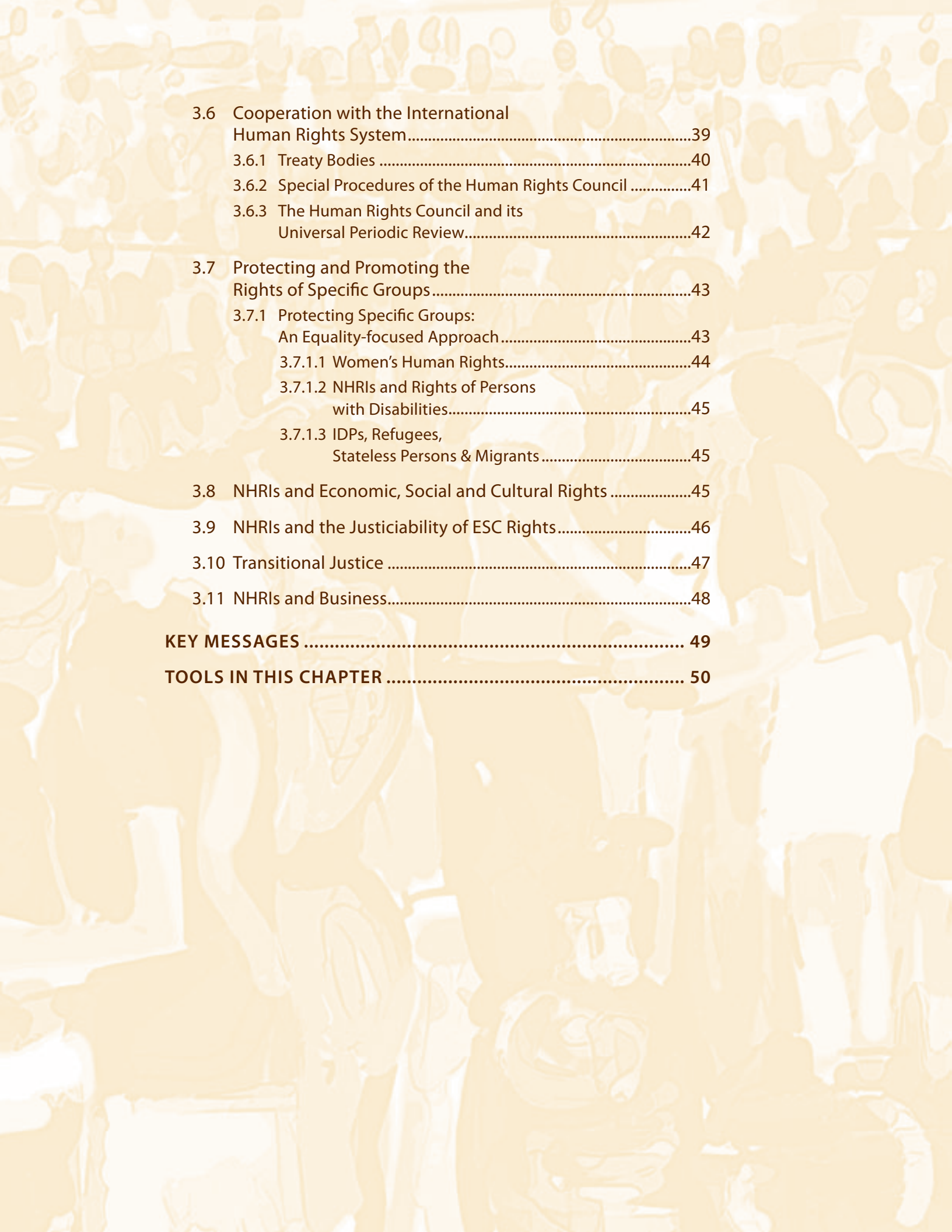


# chapter

# 3

## **Roles and Responsibilities of NHRIs**

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## OBJECTIVE:

Set out in detail the roles and responsibilities of NHRIs, including the human rights framework at the national and international levels with a focus on how NHRIs relate to the UN system.

## EXECUTIVE SUMMARY

This chapter looks in detail at the main roles and responsibilities of NHRIs at both the national and international levels and related linkages. The Chapter begins with an overview of the context in which NHRIs function and then moves to the standard grouping of NHRI roles. It should be noted that NHRI functions or activities are described in the Paris Principles as “responsibilities”<sup>1</sup>

The main roles and responsibilities under the Paris Principles are:

**Human rights protection:** typical roles and responsibilities in the protection mandate are investigations, handling individual complaints (in certain cases), monitoring human rights situations, and undertaking public inquiries into significant human rights problems. NHRIs have a special role in respect of what is sometimes called “core protection” issues. Specific discussion of the rule of law core protection issues is set out in Chapter 4.

**Human rights promotion** is required to create a national culture of human rights in which tolerance, equality, and mutual respect thrive. NHRIs inform people of their own human rights, and encourage State institutions and the public at large to understand and respect the rights of others. Typical activities include guidance on the domestic application of international human rights law, public education and campaigns, creating national documentation centres, training (especially of security and law enforcement officials), and cooperating with national stakeholders and civil society. NHRIs should sensitise State’s entities (i.e. Government, Judiciary and Parliament) to integrate human rights treaty obligations in their relevant policies, laws and programmes.

NHRIs should **coordinate their work with NHRIs from other countries**, and with regional bodies, in order to build international networks of NHRIs and build capacity.

Other roles and responsibilities have evolved considerably over the years, over and above what is in the Paris Principles. NHRIs have a special responsibility to both protect and promote the rights of persons who are made vulnerable by society because of their gender, age, sexual orientation or other minority status. Claiming and applying these rights is often controversial and contested, and NHRIs are frequently the only ones that can and do speak out in defence of those who have no voice, or whose influence is minimal.

In addition to civil and political rights, NHRIs are also increasingly being called on to protect and promote **economic, social and cultural rights**, within the context of the indivisibility of all rights. As well, NHRIs are frequently given the additional responsibility to support or manage **transitional justice processes and mechanisms**.

NHRIs have a growing role to play in interacting with international human rights mechanisms, such as the treaty bodies and the special procedures. Finally, NHRIs have an emerging and growing role in overseeing and working with **businesses** as key national and multinational actors in human rights.

Each of the NHRI roles discussed below is further elaborated for the pre-establishment, establishment and consolidation phases in Chapters 7, 8 and 9.

<sup>1</sup> International Council on Human Rights Policy. 2005. “Assessing the Effectiveness of National Human Rights Institutions” [http://www.ichrp.org/files/reports/18/125\\_report.pdf](http://www.ichrp.org/files/reports/18/125_report.pdf)

## 3.1 Protection

The goal of **human rights protection** is first and foremost to ensure the establishment or reinforcement of a protection framework, to identify and investigate human rights abuses, to bring those responsible for human rights violations to justice, and to provide effective remedies and redress for victims, within a structural framework of policies, laws and programmes that ensures prevention and enforcement.

While there are differences in how NHRIs approach their protection responsibilities, some typical roles and responsibilities in the protection mandate include:

Investigating alleged violations of human rights, including through:

- Own-motion investigations into human rights situations;
- Handling of individual complaints (for NHRIs with quasi-judicial powers);
- Alternative dispute resolution mechanisms; and
- Where the legal system permits, seeking redress or remedies through the courts or specialised tribunals, including by addressing courts as *amicus curiae* where warranted.
- Monitoring human rights at the national level, including:
  - Issues-based monitoring, especially on thematic issues affecting specific groups such as migrants, minorities, indigenous peoples, disabled and the elderly. The focus may also be on women’s human rights and empowerment, as well as on the integration of gender equality, enforcement of children’s rights and other thematic issues that are priorities in the country;
  - Prisons and other places of deprivation of liberty, including preventing torture, to minimize pre-trial and preventive detention, and to ensure that international standards are respected;
  - Monitoring progress in the realization of civil, political, economic, social and cultural rights; and
  - Monitoring progress in achieving development goals such as the Millennium Development Goals and other internationally-agreed goals.

- Undertaking public inquiries into significant human rights issues.
- Protecting human rights defenders.

For details on the rule of law and “core protection mandate” – issues related to serious violations of civil and political rights, including torture, arbitrary detention, and enforced disappearances, and to protecting human rights defenders readers are encouraged to review Chapter 4.

### 3.1.1 Investigations and Human Rights Complaints

Investigating alleged human rights abuses is fundamental to the work of most NHRIs. While the focus is generally geared towards national remedies, there are international and regional bodies where NHRIs play a role. For example, when the protocol on the establishment of the African Court of Justice and Human Rights comes into force (which provides for the merger of the existing African Court on Human and Peoples’ Rights and African Court of Justice), unlike NGOs and other non-state actors, NHRIs will be entitled to bring cases directly to the new Court – and there is already precedent for NHRIs bringing cases before the African Commission on Human and Peoples’ Rights.

According to the Paris Principles, NHRIs may have additional powers through a quasi-judicial mandate, and these NHRIs are required to receive, investigate and resolve complaints (including through settlements, binding decisions and/or on the basis of confidential interventions); to inform complainants of their rights, and of available remedies; and to promote access to remedies, to hear complaints and transmit them to competent authorities; and to make recommendations to competent authorities for redress.

UNCT staff who work with NHRIs in the early stages of establishment must ensure that technical assistance (TA), if it is part of the engagement, includes developing internal capacity to undertake these functions, including to establish effective case management systems in support of an investigation system.

Understanding how a TA project can be developed requires a basic understanding of complaints management. Many NHRIs break down their roles in this area into three basic stages:

#### **Intake and early resolution:**

- *Triage or screening* to eliminate non-meritorious cases, and to ensure that priority cases and emergencies receive appropriate handling;
- *Early information* and counselling, for all parties, to convey information about rights and obligations;
- *Early ADR / mediation* services to create a structured alternative dispute resolution system, resolving as many cases as possible at the outset. Some commissions also offer conciliation.

#### **Complaint investigation:**

- Strategic and systemic case management strategies;
- Investigating complaints and reporting findings;
- Developing, evaluating and discussing options available to affected individuals, including recourse to international procedures that have no exhaustion of domestic remedies requirements, such as special procedures;
- Making decisions on cases.

#### **Publishing recommendations and seeking remedies:**

- Disseminating case reports, investigation results and recommendations;
- Seeking to enforce a decision, or seeking remedies through the courts, where the legislation permits;
- Supporting communications to Treaty Bodies and/or to regional bodies to seek remedies for cases that have exhausted internal remedies at the national level. Some NHRIs have standing to appear before regional bodies such as human rights courts.

### **3.1.2 Monitoring**

“Monitoring” is the collection, verification and use of information to address human rights issues. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with national authorities to

obtain information and to pursue remedies and other immediate follow-up.

Monitoring is important because it provides concrete evidence of what is occurring. Monitoring also provides periodic and regularly-collected data, sheds light on trends, signals progress or deterioration, and suggests areas for priority action.

In addition, monitoring generally extends over a period of time. Extensive details about how to conduct human rights monitoring can be found in a number of sources, including:

Professional Training Series No. 7 “Training Manual on Human Rights Monitoring” (United Nations, New York). 2001. OHCHR. <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>

Virtually all NHRIs monitor human rights, either generally, or with regard to selected issues, or both. Some have programmes to monitor the situation of specific groups. A systematic approach to the monitoring role is especially important for places of detention. SEE CHAPTER 4 WITH REGARD TO MONITORING IN THE CORE PROTECTION CONTEXT.

Since UNCT’s rarely have a human rights monitoring role themselves, even though some of the UN organizations constituting the UNCT may, it is essential to support NHRIs in developing a strong capacity to monitor:

#### **> Example: Monitoring by the South African Human Rights Commission (SAHRC)**

The Constitution authorizes the SAHRC to monitor the social and economic rights guaranteed under the constitutional framework. The SAHRC has established systems for reporting that allow the collection of data from certain governmental organs and has used this data to identify and publish an inventory of state obligations.

Sample reports include: “Report on the Public Hearing on Housing, Evictions, and Repossessions” (2008); “Human Rights Development Report” (2008) and regular reports on the entire range of ESC rights.<sup>2</sup>

### **3.1.3 Public Inquiries**

Many NHRIs undertake public inquiries into human rights situations or issues on their own initiative. Public inquiries permit examination of systemic or general human rights

<sup>2</sup> [http://www.sahrc.org.za/sahrc/cms/publish/cat\\_index\\_41.shtml](http://www.sahrc.org.za/sahrc/cms/publish/cat_index_41.shtml) Accessed August 1 2009.

issues in depth and have been held into a wide range of human rights issues. Examples of issues examined are:

- Starvation deaths and the right to health (India);
- Mental illness and homeless children (Australia);
- Torture (Mongolia); and
- Accessible public transport (New Zealand).

If a UNCT is called on to support or advise on the holding of such a public inquiry, the following issues should be considered:

- Whether the NHRI's enabling legislation authorises the activity, either implicitly or explicitly;
- That there is a clear and transparent objective and outcome: the NHRI will typically state that there will be recommendations, or that State activities will be monitored in a defined area, etc.
- Public inquiries can be costly and complex. They require careful planning and adequate resources. Anticipated gains must therefore be commensurate with expected efforts and costs; and
- Experience shows that public inquiries should be the result of strategic decision-making and require carefully planned media and communication strategies.

NHRIs should be made aware of existing recent **resources**: for example, in 2007, the Asia Pacific Forum hosted NHRIs to pool experiences and expertise on running national public inquiries as part of a pilot training programme.<sup>3</sup> Public inquiries were identified as effective tools for addressing systemic discrimination and violations of human rights, and the meeting provided practical 'how to' strategies on:

- setting up a public inquiry, including choosing the inquiry subject, establishing terms of reference, developing an appropriate methodology, identifying stakeholders and undertaking sufficient planning and preparation;
- resourcing a national inquiry, including the involvement of commissioners; and staff, financial resources and community resources;
- educating and informing the community, including strategies for working with the media; and

- planning follow-up activities and advocating for the implementation of the inquiry recommendations.

Source: Asia Pacific Forum: "Going Public: New Training Resource On National Inquiries" Accessed 06 August 2009.

## 3.2 Promotion

Human rights promotion aims at creating a national culture in which tolerance, equality, mutual respect and human rights thrive. The Paris Principles provide that all NHRIs should promote human rights. They refer directly to the obligation to:

- assist in the formulation and delivery of education initiatives;
- publicise human rights; and
- increase public awareness, including through the media.

NHRIs contribute by informing people of their human rights (no one can assert and defend their rights if they do not know what those rights are). But this is only half the equation: NHRIs also encourage State institutions and the public at large to understand rights and support their enforcement.

NHRIs work with a variety of different stakeholders but do not represent a special interest group: they thus are ideally suited to provide a balanced message on the rights people enjoy as well as relevant commitments undertaken by States.

Further information on promotional activities is set out below, and assistance can be provided by the OHCHR's National Institutions and Regional Mechanisms Section and regional coordinating bodies of NHRIs such as the APF in the Asia Pacific region.

### 3.2.1 Public Education

The range and scope of promotional activities possible are limited only by the capacity of the institution to be creative, and that of its staff, as well as available resources. Generally, however, most NHRIs will undertake the following activities:

- public education and awareness sessions, seminars and workshops to promote human rights (these may be general or targeted to a specific group); as well as

<sup>3</sup> A DVD *Going Public: Strategies for an Effective National Inquiry* was prepared in 2007. Over 2007-8, The APF worked with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) to present a series of sub-regional training workshops for APF member institutions on running effective national inquiries in Indonesia and India. See [www.asiapacificforum.net](http://www.asiapacificforum.net)

supporting and developing educational curricula for human rights, from primary through to secondary and post-secondary studies;

- national information campaigns on human rights, in particular through the media (general or targeted depending on the needs);
- professional training for key groups such as police, prison officials, journalists and the judiciary; and
- producing and disseminating publications, and especially annual reports, on human rights.

As will be discussed below, an institution can and should coordinate and cooperate with other stakeholders in discharging this responsibility.

### 3.2.2 National Repository/Archive for Human Rights Documentation

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

### 3.3 Advising State Institutions (Executive, Parliament, Judiciary)

According to the Paris Principles, NHRIs have a **general responsibility to advise Government, Parliament** and any other competent bodies on human rights matters. Such reports and advice are a valuable source of information for UNCT staff and provide a vital and current source of policy and legal information on a range of human rights issues. NHRIs can foster dialogue and facilitate collaboration and cooperation with all branches of government, executive, legislative and judiciary: these are all important in creating a strong legal framework and a culture of human rights in the country.

The 2004 Abuja Guidelines show how some of these complex relationships are articulated in the context of Commonwealth countries with respect to NHRIs and Parliament:

#### ABUJA GUIDELINES

At a 2004 meeting in Nigeria, representatives of national human rights institutions and of parliaments from the Commonwealth ... adopted Guidelines (the Abuja Guidelines) for developing an effective relationship between parliaments, parliamentarians and NHRIs for the promotion and protection of human rights.

Specifically, parliaments should produce an appropriate legislative framework for the establishment of NHRIs; ensure that NHRIs have adequate resources; debate reports of NHRIs in parliament and ensure that recommendations for action from NHRIs are followed-up and implemented; and establish an all-party parliamentary committee for overseeing and supporting the work of NHRIs. Parliamentarians should ensure that their constituents are made aware of the work of NHRIs.

For their part, Human Rights Commissions should provide parliamentarians with regular expertise and independent advice on national, regional and international human rights issues; provide on-going training for parliamentarians on human rights; advise parliamentarians on the human rights implications of all proposed legislation and constitutional amendments as well as of existing laws; and advise parliaments on the creation of parliamentary human rights committees.

UNDP, "A Primer on Parliament and Human Rights"  
[http://www.undp.org/governance/docs/HR\\_Pub\\_Parlts&HR.pdf](http://www.undp.org/governance/docs/HR_Pub_Parlts&HR.pdf)  
 Accessed 06 August 2009

Advising government can include:

- Developing and conducting programmes to systematically review existing legislation as well as proposed legislation to ensure compatibility with human rights norms.
- Communicating findings and conclusions drawn from day-to-day work. The findings and results can be communicated to the State through reports, good offices interventions and other formal or informal channels.

For example:

- An investigation may lead an NHRI to recommend a particular action to redress a violation or to avert further violations; or
- A research study may show that action is required to strengthen human rights efforts in particular areas, or monitoring may reveal that national standards are being misapplied locally and that better control mechanisms are required.

The Paris Principles also specifically require institutions to promote the adoption of laws that will incorporate or “transform” international norms into domestic law. In this regard, NHRIs will generally have the responsibility to:

- Promote and ensure the harmonisation of national legislation, regulations and practice with the international instruments to which the State is a party;
- Encourage ratification of human rights treaties;
- Contribute to the reports which States are required to submit to UN mechanisms (treaty bodies, special procedures and UPR), or to regional bodies; and
- Encourage the removal of reservations, if any.

Their goal, in short, is to ensure that internationally recognised rights find a home within national legislation, regulation and practice.

### 3.3.1 Working with Security Forces and Law Enforcement Officials

Although issues will vary from country to country, protecting human rights in many countries depends on how law enforcement and security bodies do their work. Areas of protection that are relevant for NHRIs working with law enforcement and security include the following that are drawn from the:

Nairobi Declaration on the Administration of Justice, adopted at the Ninth International Conference of National Human Rights Institutions (Nairobi, Kenya, 21-24 October 2008).

FURTHER INFORMATION ON THE RULE OF LAW, ADMINISTRATION OF JUSTICE AND CORE PROTECTION ISSUES, CAN BE FOUND IN CHAPTER 4.

Training should be undertaken for all law enforcement officers – police, army, prison officials – as well as those involved in the judicial process. Such training should be cooperative and continuous and geared towards the organisations themselves developing permanent training curricula. One approach would be to start with one organisation – for example, the police – and using lessons learned from that to adapt and proceed to other organisations involved in law enforcement. NHRIs can further their work in these areas by undertaking public awareness-raising on complaints procedures against the police.

### 3.3.2 Cooperating with National Stakeholders

#### 3.3.2.1 Civil Society

The Paris Principles require NHRIs to assure pluralism: this includes not only internal governance (for example, ensuring diversity among commissioners and staff), but also mechanisms that “enable effective cooperation”. The Principles require NHRIs to maintain ties with other bodies active in the human rights area, particularly with NGOs that work in the promotion and protection of human rights.<sup>4</sup>

The requirements of maintaining ties and cooperation should be made clear and NHRIs should be encouraged and supported in meeting these responsibilities.

#### 3.3.2.2 Other Institutions

The Paris Principles state that NHRIs should consult with other bodies responsible for human rights protection and promotion. This may include “classic” ombudsman offices dealing with citizen’s complaints about State, special mediators, other institutions,<sup>5</sup> and government departments that are responsible for women or children, for example.

This may not always be easy. Indeed, the proliferation of such bodies – children’s ombudsman offices, gender commissions, anti-corruption bodies, and so on that has occurred as States seek to address one issue or another can be bewildering. Difficulties may arise if there is overlapping jurisdiction between the NHRI and other independent institutions, including specialized bodies such as gender equality commissions, ombudsman offices and the like.

<sup>4</sup> It should be noted that the requirement to maintain ties and cooperate with other organisations applies to all members of civil society, including religious institutions and leaders, community service organisations, trade unions, the media and various associations and educational bodies.

<sup>5</sup> Paris Principles, Methods of Operation (f).



Nonetheless, the existence of other institutions also provides real opportunities to deal comprehensively with complex problems with multiple actors. NHRIs can address complex, systemic issues that other bodies cannot or will not address, while encouraging other institutions to take a human rights-based approach to their mandates. Organisations can, for example, work together on specialised issues, with each examining and addressing matters for which they have the main responsibility. For example, an NHRI and a specialised women's commission or ombudsman could cooperate with parliamentary human rights groups, as well as government departments with expertise in the area, to deal with certain broad-based women's issues.

Ombudsman institutions and their relationship to NHRIs is an area of particular interest. The traditional ombudsman model, as it evolved in Sweden, was not concerned directly with human rights. As noted elsewhere in this Toolkit, there are more recent institutional models that do have specific human rights protection mandates and these bodies, together with human rights commissions, are important interlocutors as NHRIs. According to statement by the UN High Commissioner for Human Rights in June 2009:

*OHCHR also recognizes the important contribution that ombudsman institutions can make as another element in the national human rights protection system – even without an explicit mandate of human rights protection – given their role in ensuring government accountability and strengthening the rule of law. Many human rights abuses are indeed connected with maladministration, administrative malfeasance, or a lack of government accountability. The essential notion of procedural fairness, which underpins the administrative law that ombudsman institutions are mandated to uphold, is thus key to protecting the rights of individuals in their interactions with public authorities.*<sup>6</sup>

The long term objective, from a NHRI and human rights perspective, is to avoid the creation of separate networks of institutions, to work with the Paris Principles, and to seek to expand the mandates of existing or planned ombudsman institutions to include human rights as much as possible. There are concrete examples of this,

for example the emergence of A status Ombudsman institutions in Spain, the Russian Federation, El Salvador, and Ecuador.

Another area where NHRIs should work in close cooperation with other stakeholders is the administration of justice. An important tool in this area is the Nairobi Declaration on the Administration of Justice, which elaborates upon the important role that NHRIs play in ensuring an effective administration of justice, in particular with regard to access to justice, the judiciary, law enforcement and correctional and detention facilities.

Nairobi Declaration on the Administration of Justice, adopted at the Ninth International Conference of National Human Rights Institutions (Nairobi, Kenya, 21-24 October 2008).

### 3.4 Role of NHRIs in domestically incorporating international human rights law

NHRIs have an active and ongoing responsibility to advise the State on the incorporation of international human rights law into the domestic sphere, in States where this is a requirement.<sup>7</sup>

Some institutions have the legal authority to review and comment on all human rights-related legislation and/or policy at the domestic level, to ensure its compliance with international law. Other institutions may be asked to do so as part of the legislative drafting and policy development process. Even where neither the enabling legislation nor administrative practice requires it, however, an institution may use its general authority to advise government, Parliament, the Judiciary or any other competent bodies and to intervene in discussions on proposed legislative and/or policy initiatives.

National human rights institutions can influence the domestic application of international instruments by asking the following questions:

**Has the international instrument been ratified by the State?** If so, NHRIs can argue that the State is obliged to incorporate the international instrument in national law. If not, the NHRI can develop and implement a programme that is meant to move the State towards ratification.

<sup>6</sup> United Nations High Commissioner for Human Rights, H.E. Ms. Navanethem Pillay to the 9<sup>th</sup> International Ombudsman Institute World Conference <http://www.unhchr.ch/hurricane/hurricane.nsf/0/1D42DDE904C1035CC12575D700464329?opendocument>

<sup>7</sup> General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant. 26/05/2004. CCPR/C/21/Rev.1/Add.13. At par. 15.

Similarly, if the State has ratified the instrument but listed reservations on its application, the NHRI can document the impact of those reservations and attempt to influence the State to remove them.

UNCTs can have an active role in assisting NHRIs to advocate for the implementation of international obligations. They can provide information about the ratification of instruments and about domestic implementation of international human rights instruments. Where the State has ratified treaties, NHRIs may concentrate on determining whether they are being fully implemented.

**Is implementing legislation required?**<sup>8</sup> When required by the domestic legal system, the NHRI can actively encourage the State to pass legislation incorporating the treaty into domestic law.<sup>9</sup> NHRIs can also review draft legislation to make sure that the provisions are fully consistent with the treaty obligations. If not, or if legislation is being prepared but not yet in force, UNCTs can engage with NHRIs to illustrate how changes in policies and practices can still have an important impact on the human rights situation on the ground, using or modifying existing legislation to ensure that its application is consistent with international law.

**Is the State willing to take the necessary steps to pass implementing legislation?** If so, the NHRI should provide support and advice. NHRIs can lobby the State, and argue before the judiciary that unincorporated conventions – if ratified can still have an effect on domestic law. For example, in common law jurisdictions, there is case law to the effect that where ambiguity exists in domestic law, the State's domestic law will be interpreted in a way that is consistent with the State's international treaty obligations.<sup>10</sup>

**Is there implementation in practice?** Too often, the passing of legislation is seen as the end and not the beginning of the process to meet international standards. The formal requirement of legislative enactment is not generally sufficient for a State party to meet its obligations.

For all core international human rights treaties, laws are a critical first step, but not the only step. For example, the Human Rights Committee issued General Comment no. 3 for Art. 2 of the ICCPR:

*The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient.*<sup>11</sup>

The assessment of “effective implementation” also depends on a wide range of policy instruments such as programmes, directives and administrative measures. As well, actual practice may or may not be in conformity with the measures and norms that have been put into place: this also requires assessment.

Monitoring is an important way to ensure that legislative and policy initiatives are being successfully implemented. NHRIs identify and monitor the implementation of key human rights standards, and should use the results of these monitoring activities to promote more effective implementation measures.

### 3.5 Cooperation with Other NHRIs and Regional Human Rights Networks

The Paris Principles require cooperation with NHRIs of other countries.<sup>12</sup> It was in response to this, in part, that the International Coordinating Committee of National Institutions (ICC) was established and mandated to encourage coordination and cooperation among national human rights institutions. As noted in several places in this Toolkit, the ICC also serves as liaison with the UN and other international organisations, and assists governments to establish institutions in conformity with the Paris Principles.

<sup>8</sup> Although some instruments suggest that they are self-executing regardless of whether the system is dualist or monist, General Comment No. 9 from the CESCR strongly suggests at paragraph 8 that States formally adopt or incorporate the ICESCR in national law.

<sup>9</sup> See, for example, OHCHR *Handbook for National Human Rights Institutions on Economic, Social and Cultural Rights*. P. 83. The Covenant itself requires that “all appropriate means, including particularly the adoption of legislative measures,” should be taken to satisfy the State's obligations to “take steps” to achieve the realization of economic, social and cultural rights (art. 2.1).”

<sup>10</sup> See also *R v Secretary of State for the Home Department ex p. Brind* [1991] AC 696, at p. 747; *Attorney General of Botswana v Dow* 1994 (6) BCLR 1, at 29-30.

<sup>11</sup> Human Rights Committee, “General Comment No. 3, Art. 2: Implementation at the National Level”, (Thirteenth session, 1981), *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 4 (1994).

<sup>12</sup> Paris Principles, Competence and responsibilities, 3(e).

OHCHR has regional offices that include, for Africa, Southern Africa (Pretoria), East Africa (Addis Ababa) and West Africa (Dakar); Latin America (Santiago and Panama city), the Middle East and the Gulf countries (Beirut), the Pacific (Suva), Europe (Brussels), Central Asia (Bishkek) and South-East Asia (Bangkok). OHCHR is also responsible for the Regional Centre for Human Rights and Democracy in Central Africa (Yaoundé) and the Human Rights and Documentation Centre for South-West Asia and the Arab Region Office (Doha). Initiatives have been ongoing to strengthen and expand regional efforts and to use them as a mechanism for reinforcing NHRIs. It is important to note that OHCHR has been paying particular attention to regional and sub-regional offices and strategies as a key part and tool of its country engagement strategy. Throughout its planning and activities, OHCHR plays a leading role to strengthen cooperation between the United Nations and regional arrangements with a view to closing human rights protection gaps.<sup>13</sup>

The UN human rights system is supplemented by regional human rights mechanisms. In addition to the existing human rights mechanisms in Europe, Latin America and Africa, in July 2009, it was announced that ASEAN would create a regional human rights body called the ASEAN Inter-Governmental Commission on Human Rights. Regional economic and development institutions, such as the sub-regional African economic communities (e.g. ECOWAS and SADC), are also becoming involved in human rights. It is therefore important for the UNCTs and NHRIs to be aware of opportunities to contribute meaningfully to organs established under these regional and sub-regional mechanisms. Doing so will enable NHRIs to expand their influence and is also consistent with the Paris Principles, which mention the need to cooperate with such mechanisms.

FURTHER INFORMATION ABOUT REGIONAL AND SUB-REGIONAL HUMAN RIGHTS BODIES CAN BE FOUND IN CHAPTER 2 AND ITS ANNEXES.

Regional associations of NHRIs represent strategies to enhance cooperation across institutions generally and on specific issues. There are also regional human rights networks in Europe, the Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, the Asia Pacific Forum of National Human Rights Institutions and the

Network of African National Human Rights Institutions, among the many specialized networks in existence.

#### > **Example: Regional Coordination and the Asia Pacific Forum of National Human Rights Institutions (APF)14 Trafficking Focal Point Network**

The Trafficking Focal Point Network is a regional network established in 1999.

Network members are members, commissioners or senior staff from **NHRIs in the Asia Pacific region**, and include Australia, India, Indonesia, Malaysia, Mongolia, Nepal New Zealand, the Republic of Korea, and Thailand. Members share information, undertake research and develop cooperative projects. Resource materials are shared and used in training programs and good practices are identified, documented and distributed among the network.

Network members have also been involved in a number of successful interventions in cases of trafficking. The work of the network has helped improve the capacity of APF members to support regional governments in their efforts to prevent, suppress and punish trafficking. A workshop was held in Sydney in 2005, entitled the APF Regional Workshop on Trafficking and National Human Rights Institutions: Cooperating to End Impunity for Traffickers and Secure Justice for Victims.

Further information is available at <http://www.asiapacificforum.net/services/training/regional-workshops/trafficking>.

**Source:** The text in this section was adapted from Equitas, National Human Rights Institutions at Work *Equality for Women: A Handbook on Economic, Social and Cultural Rights*. 2008. [www.equitas.org](http://www.equitas.org)

### 3.6 Cooperation with the International Human Rights System

The Paris Principles state that NHRIs should cooperate with the United Nations and with organisations in the UN system. Indeed, cooperation with the international and regional human rights mechanisms is a key requirement of the Paris Principles, as emphasized in the General Observation of the Sub-committee on Accreditation, approved by the ICC, on interaction with the international system as set out on next page:

<sup>13</sup> Report of the Secretary-General, "Regional arrangements for the promotion and protection of human rights" UN Gen. Assembly, A/61/513. October 12, 2006.

<sup>14</sup> The Asia Pacific Forum is a regional network of NHRIs established in 1996 to support existing regional NHRIs, to work with governments and NGOs to establish new NHRIs in accordance with the Paris Principles, and to promote staff exchanges, information and hold regular meetings to discuss human rights issues of common or regional concern.

**Interaction with the International Human Rights System: The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.<sup>15</sup>**

NHRIs have a fundamental role in the international system: they cooperate with major UN organisations, agencies, programmes and funds, including not only UNDP and the OHCHR, but also UNICEF, UNIFEM, ILO, UNHCR, UNESCO, WHO and UNFPA. In addition, NHRIs perform an important role in cooperating with intergovernmental bodies, including the UN Human Rights Council, through such processes as the Universal Periodic Review. NHRIs can ensure that the comments and recommendations of Treaty Bodies and of **Special Procedures** are considered and implemented. Because of their practical expertise, they are useful partners in international efforts to define new or develop existing human rights standards and mechanisms. This section will give a brief overview of the different mechanisms and thematic issues in which NHRIs can play an instrumental role.

### 3.6.1 Treaty Bodies

The ten core UN human rights treaties establish treaty bodies to monitor the implementation of their respective instruments or treaties. Each is composed of ten to twenty-three elected experts representing all regions of the world and various legal systems. These bodies are serviced by OHCHR but are really independent. They adopt their own working methods and rules of procedure and take their own decisions.

FURTHER INFORMATION ON CORE HUMAN RIGHTS TREATIES AND THEIR TREATY BODIES CAN BE FOUND IN THE ANNEX TO CHAPTER 1.

Treaty Bodies review the implementation of the treaty or instrument by State parties that have ratified or acceded to it. To this end, States submit reports to Treaty Bodies on a regular basis according to the schedule set out in the

Treaty. In addition to those reports, the Treaty Body will review information received from other sources. Following the review, the Treaty Body will issue “Concluding Observations” or “Concluding Comments” and suggest improvements to States about treaty provisions in their countries.

Given their obligations and in-the-field experience, NHRIs can improve the treaty reporting process by collaborating with State entities responsible for preparing reports, either by contributing to analyses, or reviewing and commenting on drafts. NHRI can also raise awareness on treaty bodies processes among other domestic actors, such as NGOs, professional groups, trade unions, academics, in order to encourage them to participate in the country reviews. NHRIs are increasingly playing a more direct role by providing information to Treaty Bodies. As a result, Treaty Bodies rely on NHRI input in assessing reports submitted by State Parties.

This is an area where UNCTs can support an NHRI in developing the capacity to assess and, where necessary, comment on State reports.<sup>16</sup> In turn, NHRIs are encouraged to use the recommendations and comments of Treaty Bodies to inform their own Government, Parliament and the Judiciary so that these recommendations and comments are followed through on and that necessary measures are taken to make requested change, including in policy, legislation and programming.

**Finally, NHRIs can have an important role in assisting the Government to identify sound and independent human rights experts that can be nominated by the State for treaty bodies elections.**

Source: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

<sup>15</sup> ICC Sub-Committee in Accreditation General Observations, June 2009.

<sup>16</sup> The responsibility for drafting country reports belongs to the State. Any expectation, therefore, that the NHRI should draft the reports themselves, due to lack of resources in the relevant state department or for other reasons, should be rejected.

### 3.6.2 Special Procedures of the Human Rights Council

“Special procedures” are the mechanisms established by the then Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues that transcend national borders. “Special procedures” mandates usually call on a noted expert (“mandate holders”) to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Currently, there are 31 thematic and 8 country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with legal, policy and research support as well as with administrative and logistical assistance in the discharge of their mandates.

Various activities can be undertaken by special procedures, including sending communications to Governments, seeking clarification of allegations of human rights violations, conducting fact-finding visits, conducting studies, reporting to the HRC and General Assembly, issuing public statements, providing advice on technical cooperation at the country level, and engaging in general promotional activities.

Source: OHCHR. Special Procedures of the Human Rights Council. <http://www2.ohchr.org/english/bodies/chr/special/>

National human rights institutions are a key partner for special procedures and the OHCHR in their quest to close protection gaps that exist at the national level. There has been long-standing collaboration between the Special Procedures and NHRIs at the international, regional and national levels as their work is mutually reinforcing. Special procedures work to support the establishment of NHRIs in compliance with the Paris Principles, the strengthening of those that exist, and also make reference in their reports and other outputs to recommendations made or activities carried out by NHRIs.

For their part, independent national human rights institutions are usually ideally placed to interact with, and facilitate, the work of mandate-holders, as well as to contribute to the implementation of, and other types of follow-up to, their recommendations. National human rights institutions have frequently been part of the discussions which have led to the creation of mandates. NHRIs may play an instrumental role regarding:

- **Nomination:** NHRIs may suggest candidates as special procedures mandate-holders;
- **Information:** NHRIs can provide information on human rights issues to mandate holders, which may then result in sending communications or requesting country visits;
- **Human Rights Council:** NHRIs may attend the presentation of Special Procedures reports at HRC sessions and take the floor in the dialogue that follows;
- **Country visits: standing invitations and visit requests:** NHRIs can encourage the Government to extend a standing invitation to all thematic Special Procedures. NHRI can bring specific human rights developments to the attention of the relevant Special Procedures, and when warranted encourage them to request a country visit to the Government;
- **Preparation of a country visit:** NHRIs are encouraged to propose reliable and relevant interlocutors, as well as provide Special Procedures with relevant background information/materials, including relevant annual or thematic human rights reports;
- **During a country visit:** Special Procedures are encouraged to routinely include in their schedule a meeting with the NHRI. NHRIs might be requested to assist in the organization of the “unofficial” part of the agenda;
- **Recommendations after a country visit:** Special Procedures are encouraged when feasible to involve NHRIs in the process of formulating the recommendations, so as to sharpen their focus and specificity. Special Procedures could include in their recommendations that an NHRI in full compliance with the Paris Principles be set up, that an existing NHRI be strengthened so that it fully complies with the Paris Principles, that adequate resources be provided to NHRIs, that an NHRI seeks accreditation through the ICC, etc. If an Special Procedure mandate holder issues a press release or public statement after the country visit, NHRIs are encouraged to widely publicize the statement at the national level;
- **Follow-up:** Special Procedures are encouraged to approach NHRIs to widely disseminate and translate the country visit report to their national contact network, including selected Government officials, Members of Parliament or NGOs and civil society groups. Special Procedures might wish to recommend in their country visits report that NHRIs actively monitor the follow-up of SP recommendations. Special Procedures are encouraged to actively request information from the NHRI in order to assess the

status of implementation of the recommendations made following a country visit, for example through a questionnaire. NHRIs are also encouraged to regularly provide information to mandate-holders on the implementation of their recommendations (or lack thereof). NHRIs are encouraged to take relevant Special Procedures' recommendations into account when submitting opinions, recommendations, proposals and reports to the Government, Parliament or other public body. NHRIs could organize follow-up seminars, either at the request of Special Procedures or at their own initiative, including all the human rights stakeholders as well as the Special Procedures mandate holder. NHRIs are encouraged to take relevant Special Procedures' recommendations into account when preparing their work-plan and when assisting in the formulation of National Human Rights Action Plans and in other human rights related programming activities;

- **Communications:** The Special Procedure can make use of an NHRI as (1) a reliable and available source of information; (2) a potentially good partner to verify the accurateness of information obtained from other sources; and (3) an effective intermediary to obtain information from third parties. In case of an anticipated or ongoing human rights violation, NHRIs can act as an important link for early warning and may bring such situations to the attention of the Special Procedure for their action. Because of their mandate regarding existing or draft legislation, NHRIs are optimally placed to flag relevant (draft) laws to the Special Procedure, who may act upon this information;
- **Protection capacity:** Whenever an NHRI is under threat, relevant Special Procedures could act to protect it through communications or other measures. Special Procedures could make effective use of regional networks of NHRIs to mobilise public opinion to address particular human rights issues;
- **Thematic studies:** NHRIs could bring a specific situation to the attention of the relevant Special Procedure and suggest specific issues be the subject of, or be included in a thematic study. NHRIs can also be approached with a further request for information or the dissemination of a questionnaire among the national contacts of the NHRI for the preparation of thematic studies. NHRIs can organize thematic conferences or seminars and invite the relevant Special Procedure mandate holders to attend. Thematic studies should be more systematically

shared with NHRIs, so that their conclusions may be taken into account by NHRIs when formulating legislative proposals; and

- **International meetings:** Those NHRIs which are in compliance with the Paris Principles (having received an A-status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights) could attend sessions of the Human Rights Council and make an oral statement during the interactive dialogue after the presentation by the relevant Special Procedure mandate holder.

### 3.6.3 The Human Rights Council and its Universal Periodic Review

NHRIs with "A status" ICC accreditation, the ICC and regional coordinating bodies of NHRIs (speaking on behalf of its "A status members") can:

- make an oral statement under all agenda items of the Human Rights Council;
- submit documents, which will be issued with its own symbol number; and
- take separate seating in all sessions

NHRIs that comply with the Paris Principles can participate independently and in their own right in UN Human Rights Council and in certain other UN bodies and meetings.

A review of the human rights records of each of the 192 UN Member States is carried out by the Human Rights Council in a four-year cycle. This is known as the Universal Periodic Review (UPR). It provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in its country and to fulfil its human rights obligations.

The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251. Currently, no other universal mechanism of this kind exists. The UPR is a key element of the Council, and requires States to report on measures they have taken to implement all human rights and fundamental freedoms. The ultimate aim of this new mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. The Human Rights Council is the principal inter-governmental body of the United Nations dealing with human rights made up of 47 States. UPR is a State-driven process, under the auspices of the Human Rights Council.

Source: OHCHR. Universal Periodic Review <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

**Resolution 5/1** authorises the active engagement of NHRIs in the UPR mechanism by:

- Submitting information for inclusion in the summary prepared by OHCHR of information provided by other relevant stakeholders;
- Attending the UPR review in the Working Group;
- Making general comments before adoption of the Working Group report in plenary;
- Being involved in the follow-up to the recommendations (although the primary responsibility for this lies with the State).

As an example of the last point, in Germany the NHRI conducted seminars on concluding observations for various ministries.<sup>17</sup>

According to the OHCHR's 2009 report, *Survey on National Human Rights Institutions*, NHRI participation in the Council's UPR process was high, but interaction with the treaty bodies remained moderate. Participation in the Human Rights Council and interaction with its special procedures mandate holders was low, and interaction with other international mechanisms, conferences, workshops was minimal. Although the survey responses indicated that interaction with the regional human rights system was higher, examples of the types of such interaction referred to general regional interaction (e.g. through regional NHRI networks, OHCHR training etc), rather than formal interactions with the mechanisms of the regional human rights bodies. According to the OHCHR, "These participation rates show a limited familiarity with the international and regional systems. In fact, just over 50% of respondents had participated in training on the international human rights system. OHCHR and UNDP should therefore continue to focus on providing training to NHRIs on the international system. However, it should explore methods of doing so that are less resource-intensive for NHRIs and reach the broadest number of staff."<sup>18</sup>

## 3.7 Protecting and Promoting the Rights of Specific Groups

While all human rights are interdependent and indivisible, NHRIs have special responsibilities to support human rights protection for specific groups and empower them to claim their rights. The rights of these groups are often contested and controversial. NHRIs are often the only ones that can and do speak out and come forward in defence of specific groups, and sometimes in the face of trenchant public critique. These include:

- Women
- Children
- Persons with disabilities
- Elderly persons
- Migrant workers
- Minorities
- Indigenous peoples
- Persons with HIV/AIDS
- Lesbian, gay, bisexual and transgender persons
- Refugees and displaced persons
- Human rights defenders

A detailed analytical framework for each of these categories is beyond the scope of this Chapter, but three main categories are analysed here; namely, women's human rights, persons with disabilities, and refugees, IDPs and stateless persons: guidance notes prepared by the OHCHR exist for each of these groups. However, before reviewing these in detail, here is an overview of the basic equality analysis underpinning many of these rights.

### 3.7.1 Protecting Specific Groups: An equality-focused approach

This section will look specifically at NHRIs' obligations with regard to equality-based approaches as a strategy to advance the work of NHRIs in protecting and promoting the rights of specific groups.

<sup>17</sup> Human Rights Committee 93rd Sess. Presentation by the Committee Rapporteur on Follow Up. 23 July 2008. CCPR/C/93R.1, 15 July 2008 (International Service for Human Rights)

<sup>18</sup> Available at [www.nhri.net](http://www.nhri.net)

NHRIs may address thematic issues related to particular categories of vulnerable persons, which may involve issues where the rights at stake are highly contested:

- Indigenous peoples
- Lesbian, gay, bisexual and transgendered persons
- Migrant workers
- Persons with disabilities<sup>19</sup>
- Persons with HIV/AIDs
- National or ethnic, religious or linguistic minorities
- Refugees and internally displaced persons
- Women<sup>20</sup>

The protection of these and other groups depends in part on substantive equality. **Formal equality**, sometimes called *de jure* equality, means that all people are treated the same way, say, men and women; or that persons with disabilities should be treated the same as other people, and so on. For example, a rule may allow an employer to hire someone new if the job-holder leaves her job for some time due to pregnancy: this is “formally equal” because it treats everyone the same way. But, it would clearly discriminate against women if it failed to provide maternity protection and return-to-work guarantees. Formal equality will rarely be enough to ensure equal rights – to do this, more is needed: substantive equality.

**Substantive equality** is concerned with the *effects* of laws, policies and practices. In practical terms, this means that just being neutral is not enough. For example, States parties should take into account existing economic, social and cultural inequalities experienced by specific groups. Gender-neutral laws and policies can perpetuate sex inequality because they do not “*take into account the economic and social disadvantage of women; they may therefore simply maintain the status quo. [Formal equality] does not, by itself, provide [real] equality. [...] Whether the measures taken to protect rights are adequate must always be assessed against the background of women’s actual conditions, and evaluated in the light of the effects of policies, laws and practices on those conditions.*”<sup>21</sup>

This section looks in more detail at how equality can be used as an approach for NHRIs to fulfil responsibilities for three specific groups: (1) women, (2) persons with disabilities, and (3) internally displaced persons and refugees. This selection does not represent all specific groups, nor does it suggest these groups’ experiences of discrimination are identical or transferable: it does however illustrate basic concerns and approaches that NHRIs may use to assist these groups in their efforts to ensure that the rights of these groups are respected. It should also be noted that there are many individuals at the intersections of these three groups whose experiences are unique, and that the impact of compounded negative effects of discrimination cannot be overlooked.

### 3.7.1.1 Women’s Human Rights

There is a substantial and growing body of State obligations, laws and norms related to the equality rights of women and girl children.<sup>22</sup> Although the main legal sources of these rights are the ICESCR, and CEDAW, there are other instruments, including the ICCPR, which contains a basic equality guarantee in Article 26 which states that “all persons are equal before the law and entitled without any discrimination to the equal protection of law”, the Convention on the Rights of the Child (CRC) and a number of labour instruments from the International Labour Organization which contain rights affecting women and girl children.

CEDAW’s article I states that the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

In 2002, the Montreal Principles on Women’s Economic, Social and Cultural Rights (“Montreal Principles”) stressed the responsibility of NHRIs to support strategies, plans and policies specifically designed to guarantee

<sup>19</sup> Convention on the Rights of Persons with Disabilities. For a discussion of the role played by NHRIs in this convention, see Stein and Lord, “The United Nations Convention on The Rights Of Persons With Disabilities as a Vehicle for Social Transformation” [http://www.nhri.net/2008/0805\\_libro\\_discapacidad.pdf](http://www.nhri.net/2008/0805_libro_discapacidad.pdf). Accessed November 11, 2008.

<sup>20</sup> CEDAW. See General Recommendation No. 6 (seventh session, 1988). <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom6>

<sup>21</sup> Adapted from para. 9 of the Montreal Principles.

<sup>22</sup> See generally, UN Division for the Advancement of Women, “Promoting women’s enjoyment of their economic and social rights”, Report of the Expert Group Meeting, Abo/Turku, Finland, 1-4 December 1997, UN Doc. EGM/WESR/1997/Report, para. 18; S. Day and G. Brodsky, ‘Beyond the Social and Economic Rights Debate: Substantive Equality Speaks to Poverty’ Canadian Journal of Women and the Law, Vol. 14, No. 1 (2002), pp185-220; L. Farha, ‘Is There a Woman in the House? Re/conceiving the Human Right to Housing’, Canadian Journal of Women and the Law, Vol. 14, No. 1 (2002), pp. 118 - 136; K. Frostell and M. Scheinin, ‘Women’ in A. Eide, C. Krause, A. Rosas (eds.), Economic, social and cultural rights: a textbook, (Dordrecht: Martinus Nijhoff, 2001).



women's human rights.<sup>23</sup> In 2005, the Office of the UN High Commissioner for Human Rights affirmed the importance of NHRIs, in cooperation with other human rights mechanisms, in the protection and promotion of the human rights of women.<sup>24</sup> For NHRIs, women's human rights engage not only legal standards but also monitoring the effect given to legal provisions, which provide indicators of progress. The Millennium Development Goals, for example, are important tools in creating the links between women's ESC rights and measures of progress towards equality through human development and good governance.

A discussion of the links between human rights and development is found in Chapter 5

### 3.7.1.2 NHRIs and Rights of Persons with Disabilities

Similarly, there are various state obligations, laws, and norms that address the rights of persons with disabilities.

According to the UN Convention of the Rights of Persons with Disabilities, "discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural and civil domain, or any other field.

### 3.7.1.3 IDPs, Refugees, Stateless Persons and Migrants

Many NHRIs have the role and responsibility to ensure that these persons receive human rights protections just as other persons under the jurisdiction of the State. This can often be especially challenging since many countries significantly proscribe the rights of migrants and refugees, and even of internal migrants.

## 3.8 NHRIs and Economic, Social and Cultural Rights

NHRIs have a responsibility to promote all rights, including economic, social and cultural rights, and this responsibility spans promotion and protection. Since this is one of the more difficult areas of human rights protection, it merits particular attention for UNCT staff seeking to support NHRIs.

Making ESC rights a reality can present significant challenges in practice for NHRIs. First, not all NHRIs clearly have ESC rights in their jurisdiction, and even if they do, it is not always easy to tackle these complex rights that may require long term approaches and "positive" State action, usually in the area of program development and spending.

Legal standards are set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and in many other human rights instruments that are relevant to this area, such as the Optional Protocol of the ICESCR (See Chapter 1, and Annexes).

CESR General Comment No. 10 (par. 4) sets out the roles that NHRIs play in protecting and promoting these rights:

- Promoting educational and information programs designed to enhance awareness and understanding of ESC rights, both within the general public and among particular groups, such as the public service, the judiciary, the private sector and the labour movement;
- Scrutinising existing laws, administrative acts, draft bills, and other proposals to ensure that they are consistent with the requirements of the ICESCR;
- Providing technical advice or undertaking surveys in relation to ESC rights;
- Identifying national benchmarks for measuring the progressive realisation of ESC rights;
- Conducting research and inquiries to ascertain the extent of realisation of particular ESC rights, at the national level, or in relation to specific vulnerable communities.

CESCR "The role of national human rights institutions in the protection of economic, social and cultural rights." 14/12/98. E/C.12/1998/25, CESCR General Comment 10.

NHRIs can have a role in activities in this regard, including: advocacy and awareness-raising, training and capacity-building, partnership-building, practice development and knowledge networking. Opportunities for integrating human rights with human development occur in all UNDP areas of practice and throughout the programme cycle. Some of these opportunities are discussed in the next sections.

<sup>23</sup> Montreal Principles.

<sup>24</sup> See OHCHR, National institutions for the promotion and protection of human rights. Human Rights Resolution 2005/74.

### 3.9 NHRIs and the Justiciability of ESC Rights<sup>25</sup>

In many jurisdictions, the introduction of legal remedies in cases of violation of economic, social and cultural rights has played an important role in the benefit of right-holders, and brought clarity regarding the content of such rights.

The Committee on Economic, Social and Cultural Rights has issued General Comment No. 9, in reference to the domestic application of the ICESCR, which states that “legally binding international human rights standards should operate directly and immediately within the domestic legal system of each State party.”<sup>26</sup> However, the Committee is not concerned as to *how* this is done, but the means used must be appropriate in the sense that the results are consistent with the full discharge of its obligations.<sup>27</sup>

It must be remembered that international development agencies have been producing research on social and economic conditions and human well-being for decades. These indicators and benchmarks have generated far more periodically produced quantitative data than other areas of human rights. From UNDP’s Human Development Index, to gender-related indices, to UNICEF’s rate of progress measurements, and the World Bank’s World Development Reports, the problem is certainly not insufficient or vague data, but rather how to use the data in the human rights context.<sup>28</sup>

As the Centre for Economic, Social and Cultural Rights – an international human rights network has pointed out, “[h]istorical neglect of ESC [rights] is not a methodological obstacle. While there is always a need for additional indicators to measure compliance in specific rights, it must be emphasized that the definition of all rights changes and expands over time through concrete practice. The main obstacle to realizing ESC rights remains a lack of political will and commitment.”<sup>29</sup>

Countries may argue that ESC rights are not judicially enforceable, that they are too vague to be monitored effectively, or that the basic obligations that are linked to ESC rights are matters for the legislatures, not courts or tribunals. However, many have explicitly accepted international treaty obligations in relation to ESCR.

There are numerous examples of courts applying domestic and international law to protect such rights. The Centre provides examples of ESC rights violations that have been or are already being tried in courts around the world:

#### > Examples of justiciable ESC Issues:

- Forcible evictions;
- Terminating an employee without cause;
- Discrimination in access to medical care, work, housing, education, etc.
- Depriving children of adequate food and water;
- Failing to provide any primary level education;
- Failing to provide basic health care facilities; and
- Housing in such poor condition that it is a risk to safety.<sup>30</sup>

A well-known and internationally significant case showing the justiciability of ESC rights is the *Grootboom Case*, a South African case involving housing rights. The following summary is drawn from AWID’s publication, *Strategies and Lessons from Experience: Respecting and Protecting the Right to Housing: the South African Experience*.<sup>31</sup>

*Grootboom* was a landmark decision: it recognised, first, that ESC rights enshrined in a Constitution were justiciable – i.e. that they could be adjudicated in a court of law, and that remedies could be found to compensate victims. Secondly, the decision also recognised the obligation of the state to ensure access to these rights, despite budgetary or other constraints.

<sup>25</sup> This section draws in part on *Women’s Equality Rights: Women’s Equality Rights: A Handbook for National Institutions* (Equitas; Montreal, 2008) [www.equitas.org](http://www.equitas.org).

<sup>26</sup> Committee on Economic, Social and Cultural Rights General Comment No.9: Domestic Application of the Covenant, Nineteenth session, Geneva, 16 November–4 December 1998, E/C.12/1998/24, CESCR at para. 4.

<sup>27</sup> *Ibid.* at para. 6.

<sup>28</sup> The balance of the section is drawn and adapted from: “Justiciability of Economic, Social and Cultural Rights” in *CESR’s Basic Primer on ESC rights* (Centre for Economic, Social and Cultural Rights). Accessed August 7, 2009.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Association for Women’s Rights in Development (AWID), “Strategies and Lessons from Experience: Respecting and Protecting the Right to Housing: The South African Experience” in *Achieving Women’s Economic & Social Rights*. Accessed August 7, 2009.

### CASE STUDY: THE GROOTBOOM DECISION

The *Grootboom* decision of the South African Constitutional Court involved about 900 people living in inadequate housing in Oostenberg in South Africa. Most had applied for low-cost housing, but were becoming increasingly frustrated after many years of waiting with no response from authorities.

Desperate, they decided to occupy a vacant piece of private property across the road from the site that had been earmarked for low-cost housing.

The owner of the property applied for and received a court magistrate's order to evict the squatters and their homes were destroyed. Now homeless, the community petitioned the High Court for an order for temporary shelter until they could be permanently accommodated under a provincial housing plan. The government offered access to a piece of land and some building materials, as well as access to basic services while they waited for housing to become available. Subsequently, however, the government failed to honour its promise. The community then took their case to the High Court, basing their arguments on Section 26 of the South African Constitution, which states that:

*Everyone has the right to have access to adequate housing; and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.*

The court ruled [...] "that the community's right to have access to adequate housing had indeed been violated... [and] that a legislative or policy framework aimed at the progressive realization of social rights...and that it must be comprehensive, coherent, balanced and flexible...Section 26 imposed a negative duty on states not to prevent or impair the access to housing, as well as a positive obligation to create an enabling environment for the fulfilment of this right. The state's housing plan must respond to the needs of crisis situations, and may not exclude any significant sector of society, especially vulnerable populations. The housing plan in this case did not meet these standards, and therefore the government had a duty to rectify the situation."

The implications for NHRIs are clear: addressing human development from a rights-based perspective is not only a matter of meeting development goals, or supporting more equitable public sector budgeting: it is also about enforceable rights that may be the subject of public inquiries or of claims before the judiciary or other decision-makers, depending on the jurisdiction and powers of the NHRIs in a given country. At a minimum, NHRIs with these powers should be accepting complaints and should have, or should be developing, the capacity to deal with them.

### 3.10 Transitional Justice

Transitional justice refers to

*"a range of processes and mechanisms associated with society's attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms,*

*with varying levels of international involvement, or none at all. Individual prosecutions, reparations, truth-seeking, institutional reform, or a combination of these functions, may form part of the processes."<sup>33</sup>*

Transitional justice efforts involving historical and long term human rights violations pose particular difficulties for NHRIs, in part because of the historical aspects of looking into matters for which the evidentiary record may be weak or non-existent. Transitional justice also engages a number of difficult political issues, including amnesty, impunity and implications for current political stability.

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

<sup>33</sup> Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/616[0], paragraph 8.

NHRIs can play an important transitional role in ensuring accountability and combating impunity by documenting and investigating violations of international law. NHRIs can monitor and record violations during both conflict and authoritarian rule and transitional periods. These efforts can support future prosecution initiatives, truth seeking and truth telling bodies, reparations measures and vetting processes. NHRIs can assist victims by ensuring that they have equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. NHRIs can also assist victims and witnesses with measures such as relocation and resettlement.<sup>34</sup>

In some countries, the NHRI itself may not have the mandate to undertake the transitional justice process, but may nevertheless work with and comment on the work of other situations, to ensure that human rights are respected.

> **Example:** NHRI Role in Transitional Justice in Rwanda

In Rwanda, several government institutions were established to support reconciliation and transitional justice after the 1994 genocide. The Unity and Reconciliation Commission has a lead in promoting awareness of reconciliation through public programs.

The National Human Rights Commission, plays a cooperative role in reviewing these processes on an ongoing basis, including attending and preparing reports on human rights aspects of many of these processes.

### 3.11 NHRIs and Business

The connections between international human rights law, business and domestic application of human rights standards have been in place for years. In 2000, for example, the UN Global Compact was launched for companies committed to sustainability and responsible business practices. As a leadership initiative endorsed by chief executives, it seeks to align business operations and strategies everywhere with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

It is the State's duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication. NHRIs can play a vital role in advancing human rights in practice and supporting the State in meeting this obligation. As

stated in the 2008 report of the UN Secretary-General's Special Representative (SRSG) for Business and Human Rights, '[the] actual and potential importance of [this area] cannot be overstated'.<sup>35</sup>

In Resolution 8/7, adopted in June 2008, the Human Rights Council recognized the need to protect all human rights from abuses by, or involving, transnational corporations or other business enterprises. The Council also renewed the mandate of the Special Representative on the issue of human rights and transnational corporations and other business enterprises to 2011.

According to a survey conducted by the Office of the High Commissioner for Human Rights on behalf of the SRSG, many NHRIs engage in business and human rights issues in some respect, though this remains a limited area of activity for most. Some commissions do handle complaints involving alleged corporate abuse of human rights, for example as regards non-discrimination and labour rights, while others have no limits on either the rights issues or the types of business involved in a complaint.

In 2009, the ICC established a **Working Group** on Human Rights and Business, with the following mandate:

- Strategic planning (facilitating the inclusion of business and human rights issues and providing for joint NHRI programming);
- Capacity building and resource sharing (facilitating skills development of staff and providing a platform for NHRIs to exchange best practices and tools); and
- Agenda setting and outreach (facilitating the participation of the ICC and NHRIs in key debates at the international, regional and domestic levels in relation to business and human rights).

In June 2009, the Danish Institute for Human Rights (DIHR) was nominated to represent the European region of the Working Group on Business and Human Rights of the ICC. The Human Rights and Business Project is a department of The Danish Institute for Human Rights devoted to business and its impact on human rights. Additional information and resources can be obtained at: <http://www.humanrightsbusiness.org>

Finally, the ICC identified the theme of Human Rights and Business as the main theme of the international conference of NHRIs in 2010.

<sup>34</sup> Adapted from the OHCHR Guidance Note on Transitional Justice, September 27 2008.

<sup>35</sup> Message from the Special Representative of the Secretary-General for Business and Human Rights to NHRIs worldwide. 28 January 2009.

## KEY MESSAGES

### **NHRI Roles and Responsibilities at the National Level**

- NHRIs exist in a dynamic tension between right-holders and duty-bearers, offering a neutral and ideally objective space in which to interact and exchange ideas in a constructive way.
- Promotion and protection responsibilities are intertwined and mutually reinforcing.

### **Protection**

- NHRIs have a critical role in investigations, monitoring, and receiving complaints and making recommendations to prevent future human rights abuses.
- Public inquiries are an additional role for NHRIs.

### **Promotion**

- NHRIs should promote human rights. NHRIs must assist in the formulation and delivery of education initiatives to publicise human rights and to increase public awareness.
- NHRIs inform people of the human rights they enjoy. They also encourage States and the public at large to understand rights and that these rights must be respected.
- The range and scope of promotional activities possible are limited only by the mandates and structures as well as the creativity of the institution itself, and that of its staff, and by available finances.
- NHRIs have a general responsibility to advise States institutions, including executive government, Parliament, the judiciary, and any other competent bodies on human rights matters, including the domestic application of international human rights law.
- National institutions are uniquely positioned to facilitate and enable all stakeholders in human rights to come together and, where appropriate, to cooperate in of enhancing human rights protection.

### **Cooperation**

- The Paris Principles state that NHRIs should consult with other bodies responsible for human rights protection and promotion. This includes cooperation with NHRIs of other countries.
- The Paris Principles state that NHRIs should “cooperate with the United Nations and any other organization in the United Nations system”. This particular function has evolved considerably over the years and includes cooperation with international human rights mechanisms.
- NHRIs are well suited to participate in the international human rights system for the promotion and protection of human rights.
- NHRIs may play an instrumental role in collaborating with the special procedures in relation to the organization of country visits, communications, and follow-up to recommendations, as well as in support of nominations of mandate holders and information and outreach.
- NHRI may play a constructive role in engaging with the Human Rights Council, including its universal periodic review.



◀ continued

## KEY MESSAGES

### Protecting Specific Groups

- While all human rights are interdependent and indivisible, NHRIs have special responsibilities to support human rights protection for specific groups and empower them to claim their rights. This includes people who are vulnerable because of their gender, age, minority status, indigenous status, disability, sexual orientation, or because of their internal displacement or refugee status, to name but a few.

### NHRIs and Business

- Today, NHRIs are uniquely placed to play a powerful role in advancing human rights in the context of business activities, as they are at the interface between government, civil society and the private sector, and between the international, national and local levels.
- What role the NHRI can play will depend on the organic law of the NHRI, and whether the law gives the NHRI the ability to accept complaints about private sector activity.

## TOOLS IN THIS CHAPTER

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Asia Pacific Forum: "Going Public: New Training Resource On National Inquiries" Accessed 06 August 2009.,	34	Example: NHRI Role in Transitional Justice in Rwanda,	48
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Example: Regional Coordination and the Asia Pacific Forum of National Human Rights Institutions (APF) Trafficking Focal Point Network,	39	OHCHR. Professional Training Series No. 7 "Training Manual on Human Rights Monitoring",	33
		UNDP, "A Primer on Parliament and Human Rights",	35

# chapter

# 4

## The Rule of Law and the Core Protection Mandate

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## OBJECTIVE:

Raise awareness about the importance of engaging with NHRIs to ensure greater respect for the rule of law and the administration of justice, and to strengthen the core protection mandate of NHRIs, especially as regards law enforcement, security institutions and detention facilities.

## EXECUTIVE SUMMARY

The rule of law and the administration of justice are State responsibilities. NHRIs also have a role in strengthening both areas. With respect to the rule of law, this Chapter examines the role of NHRIs and the particular strategies and activities that NHRIs can undertake to strengthen the rule of law.

A related and crucial aspect of the NHRI mandate is core protection work. The OHCHR considers core protection issues to be one of the more important elements in determining the credibility of NHRIs at both the national and international levels.

This chapter emphasizes the role of NHRIs in the core protection mandate such as:

- General activities relating to the prevention of torture, summary execution and arbitrary detention;
- Complaints from detainees;
- Detention monitoring; and
- General activities relating to the protection of human rights defenders.

The importance of effective protection in these areas cannot be over-emphasised. A NHRI's protection mandate and the effectiveness of its work in this area are its most-scrutinised functions, and this is especially true in the core protection area. NHRIs should be especially sensitive to the impact of rights violations in this area as regards vulnerable groups: for example, a gender lens is required when UNCT staff are supporting NHRIs, to ensure that violence against women is appropriately addressed, and that protection efforts are directed to those who need them most.

As a corollary, the Annex to the Chapter also looks at each of the specific areas that NHRIs can intervene in, and specific areas that UNCTs can support. (See Annex 1).

The final section looks at ways to develop and strengthen capacity in the area of core protection.

## 4.1 Introduction

The rule of law is one of the most fundamental ideas in any functioning democratic legal system. It safeguards against arbitrary governance; it requires legal decisions to be made according to known principles or laws of general application, and it is based on equality. No one is above the law, and individuals are entitled to due process of law. The administration of justice itself turns on the rule of law and NHRIs have an important role in ensuring that human rights standards are respected in the administration of justice. NHRIs can and should play a role in advancing all aspects of the rule of law, including with regard to the judiciary, law enforcement agencies and the correctional system.

While the *protection* mandate of NHRIs extends equally to all human rights, be they civil, political, economic, social or cultural in nature, NHRIs have special responsibilities for addressing alleged incidents that threaten human life and security and which, by their very nature, undermine the rule of law and erode due process. These issues are sometimes referred to as the core protection mandate for NHRIs.

## 4.2 NHRIs and the Rule of Law

The rule of law is a state responsibility. It informs and structures the effectiveness and integrity of the entire justice system, including the work of NHRIs.

States are obliged to respect, protect (or ensure) and fulfil human rights.<sup>1</sup> Mechanisms must be established to give effect to these rights, and NHRIs are among those mechanisms.

NHRIs have a strong voice and role in promoting respect for the rule of law in the following areas, all of which are central to promoting and protecting human rights:

- Ensuring that the State complies with its own laws and other legal instruments, as well as with relevant international norms;
- Promoting the development of administrative accountability systems;
- Ensuring that the administration of justice conforms to human rights standards and provides effective remedies particularly to minorities and to the most vulnerable groups in society; and
- Proposing and commenting on legislative reform undertaken so that national laws are harmonised with international human rights instruments ratified or acceded to by the State Party.

### 4.2.1 Strengthening the Rule of Law

NHRIs can, and should, play a role in advancing all aspects of the rule of law, including with regard to the judiciary, law enforcement agencies and the prison and detention system. Specific areas in which NHRIs can engage, and where UNCTs can provide support if requested are:

<sup>1</sup> Eide, A., "Economic, Social and Cultural Rights as Human Rights" in Eide et al. (eds.), *Economic, Social and Cultural Rights: A Textbook* (Dordrecht: Martinus Nijhoff Publishers, 1995); as regards ICCPR rights, see M. Nowak, "The International Covenant on Civil and Political Rights" in Hanky and Suki (eds.), *An Introduction to the International Protection of Human Rights: A Textbook*, 2<sup>nd</sup> rev. ed. (Turku: Abu Academy University, Institute for Human Rights, 2004).

**TABLE 1: STRENGTHENING THE RULE OF LAW<sup>2</sup>**

<b>ADMINISTRATION OF JUSTICE AND JUDICIAL INSTITUTIONS</b>	<p>NHRI efforts in this area could focus on:</p> <ul style="list-style-type: none"> <li>■ legislative reforms, harmonisation and compliance with international standards, removal of reservations, etc.;</li> <li>■ procedures related to the appointment of prosecutors and judges and qualifying lawyers;</li> </ul>
<ul style="list-style-type: none"> <li>■ Is the NHRI involved in reforming and strengthening the judicial institutions?</li> </ul>	<ul style="list-style-type: none"> <li>■ the security and working conditions of prosecutors and judges;</li> <li>■ monitoring and accountability mechanisms within the judicial system, e.g. disciplinary procedures for judges;</li> <li>■ monitoring the independence and impartiality of the judiciary and its capacity to adjudicate cases fairly and competently;</li> <li>■ equal access to fair justice, especially people living in poverty;</li> <li>■ ensuring that the NHRI undertakes monitoring activities, including monitoring of pre-hearing detention facilities;</li> <li>■ establishing a Legal Aid program and supporting the development of paralegal professionals;</li> <li>■ providing professional development for judges, lawyers, prosecutors and other judicial authorities in human rights law;</li> <li>■ rule of law training that emphasises human rights and international humanitarian law;</li> <li>■ support to legal education facilities, for example, libraries and the online publication of legal decisions and all bills and laws; and</li> <li>■ ensuring that the administration of justice conforms to human rights standards and provides effective remedies particularly to minorities and to the most vulnerable groups in society.</li> </ul> <p>Has the NHRI made active use of the OHCHR Professional Training Series No. 9: <i>Manual on Human Rights for Judges, Lawyers and Prosecutors</i>?<sup>3</sup></p>
<p><b>POLICE AND SECURITY FORCES</b></p> <ul style="list-style-type: none"> <li>■ Is the NHRI involved in reforming and strengthening of law enforcement and security forces?</li> <li>■ Does the NHRI regularly inspect police holding cells to ensure that human rights are respected? Does it report on those inspections and make recommendations for action as necessary?</li> </ul>	<p>NHRI efforts in this area could focus on:</p> <ul style="list-style-type: none"> <li>■ Establishing and carrying out effective and impartial vetting procedures for the recruitment of law enforcement personnel to identify persons involved in criminal acts of violence as well as corruption and other serious crimes;</li> <li>■ Professionalism in the security forces, through senior management training, including <ul style="list-style-type: none"> <li>• human rights training,</li> <li>• setting up of accountability mechanisms based on the development of standard operating procedures and standing orders,</li> <li>• a monitoring system to ensure their application,</li> <li>• and an internal investigation procedure leading to concrete sanctions including prosecution in case of misconduct,</li> <li>• arrest procedures,</li> <li>• collection and preservation of evidence,</li> <li>• procedures for protecting witnesses, including the confidentiality of witnesses when necessary, and</li> <li>• interrogation procedures and preparation of reports.</li> </ul> </li> </ul> <p>Has the NHRI made active use of the OHCHR Professional Training Series No. 5: <i>Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police</i>?<sup>4</sup></p>

<sup>2</sup> See OHCHR, Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level, 2007.

<sup>3</sup> OHCHR (2003). <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx> and see also additions for recent developments 2003-2007.

<sup>4</sup> <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx>. See also the following additions: *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police*; and *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police* (see previous URL).

◀ continued

**PRISONS**

Is the NHRI involved in efforts to ensure that:

- detention facilities meet minimum international standards
- appropriate regulations govern the intake, incarceration and transfer of inmates
- regulations are adhered to
- all personnel receive human rights training and training in proper interviewing and investigatory techniques

Has the NHRI made active use of the OHCHR (2005) "Human Rights and Prisons: A Compilation of International Human Rights Instruments concerning the Administration of Justice."<sup>5</sup>

- OHCHR (2005) "Human Rights and Prisons: A Trainer's Guide on Human Rights Training for Prison Officials"<sup>6</sup>

- Nairobi Declaration on the Administration of Justice, adopted at the Ninth International Conference of National Human Rights Institutions (Nairobi, Kenya, 21-24 October 2008).

Is the NHRI mandated and engaged in conducting prison visits to monitor conditions of detention (both announced and unannounced visits, and private interviews with detainees)? Does the NHRI report on its inspections and make recommendations for change as needed?

Is the NHRI dealing with families of detained persons that appeal to the NHRI in case of irregularities?

Does the NHRI have a process to receive and investigate complaints filed by detainees?

Has the NHRI made active use of the OHCHR Professional Training Series No. 11: "Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials?" and additional related reference materials?

It should be noted that recent human rights treaties like the Optional Protocol to the Convention Against Torture (OPCAT), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) explicitly refer to the importance of linking up human rights institutions at the national and international level as a necessity for actually implementing international human rights law. OP-CAT and art. 33 of the CRPD, for example, require states to establish effective mechanisms at the national level that are responsible for monitoring the implementation of these two new international human rights treaties.

NHRIs can actively advocate that States implement the concluding observations of Treaty Bodies. As well, it is generally recognised that in some circumstances, States may derogate from certain of these rights. For example, there are specific principles that apply to determine what may be acceptable derogations from human rights for public security reasons in times of public emergency or in other circumstances. The Siracusa Principles<sup>7</sup> set standards of acceptable limitations and derogations from the ICCPR which supplement treaty norms.

Additional standards on the rule of law and the Administration of Justice, and the particular role of NHRIs can be obtained from:

*Nairobi Declaration on the Administration of Justice*, adopted at the Ninth International Conference of National Human Rights Institutions (Nairobi, Kenya, 21-24 October 2008).

- Developing or revising standing orders that apply to police and security forces to meet international law standards, especially for places of detention, and arrest, investigation and interrogation procedures;
- Encouraging non-custodial alternatives to pre-trial detention (such as bail, surveillance reporting and non-cash guarantees);
- Encouraging non-custodial measures of punishment (such as community service, fines, restitution or compensation to the victim), especially for breast-feeding mothers;
- Presenting concrete proposals aimed at ensuring that minor offences do not come under the ambit of the criminal law system (e.g. strengthening mediation and direct victim compensation, and promoting local community structures for resolving petty crimes);

<sup>5</sup> <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx> Accessed February 4, 2009

<sup>6</sup> <http://www.ohchr.org/Documents/Publications/training11Add1en.pdf> Accessed February 4, 2009

<sup>7</sup> UN ESC, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights", UN Doc: E/CN.4/1984/4 (1984).

- Periodic site inspections (announced and unannounced) of police stations and prisons, in close partnership with other independent structures tasked with this role and law enforcement and other national authorities, encouraging them to take appropriate, prompt action;
- Legislative proposals on the setting up of accountability mechanisms, monitoring systems to ensure their application and internal investigation procedures and sanctions;
- Monitoring and reporting on alleged cases of corruption in the police and security forces;
- Assistance in vetting processes (through the provision of confidential information on past human rights violations - for serious abuses there are no time limits - the violators, as well as cases of corruption and abuse of authority); and
- Encouraging fair remuneration and working conditions for law enforcement and security personnel.

### 4.3 Core Protection

The importance of effective human rights protection cannot be over-emphasised, nor can the risk of losing credibility if a NHRI fails to demonstrate results in the area of its core protection mandate. The effectiveness of NHRIs' work in the core protection mandate is its most-scrutinised function.

The OHCHR especially supports NHRIs regarding:

- General activities relating to the prevention of torture, summary executions and arbitrary detention;

- Complaints from detainees;
- Detention monitoring; and
- General activities relating to the protection of human rights defenders.

OHCHR prioritises support to NHRIs for core protection issues, as these issues are among the most important elements for NHRI credibility at both the national and international levels.

#### QUICK FACTS ABOUT NHRIS AND CORE PROTECTION ACTIVITIES

In a survey undertaken by the OHCHR, over 80% of NHRI respondents indicated that they are indeed carrying out activities relating to the prevention of torture and ill-treatment, including by visiting places of detention and receiving complaints from detainees. Nevertheless, the quantity and quality of this work appears varied. Furthermore, only two thirds of the responses had dedicated activities for human rights defenders. The level of activity in this area was notably lower among European NHRIs.

*Source: OHCHR, Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide. 2009. [www.nhri.net](http://www.nhri.net).*

The following table contains an overview of some of the key core protection areas requiring particular attention:

**TABLE 2: KEY RIGHTS LINKED TO CORE PROTECTION MANDATE**

<ul style="list-style-type: none"> <li>■ Arrest, freedom from arbitrary</li> <li>■ Arrest, right to be informed of reasons for</li> <li>■ Assembly, freedom of</li> <li>■ Association, freedom of</li> <li>■ Derogations, from fundamental rights &amp; freedoms</li> </ul>	<ul style="list-style-type: none"> <li>■ Detention, freedom from arbitrary</li> <li>■ Detention, right to be treated humanely</li> <li>■ Habeas corpus</li> <li>■ Legal rights (trial and court procedure)</li> <li>■ Life, right to</li> </ul>	<ul style="list-style-type: none"> <li>■ Movement, freedom of</li> <li>■ Presumption of innocence</li> <li>■ Remedy, access to justice</li> <li>■ Retroactive laws, prohibition against</li> <li>■ Servitude, right to be free from</li> <li>■ Slavery, right to be free from</li> <li>■ Torture, protection against</li> </ul>
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### THE CORE PROTECTION MANDATE

“NHRIs can play an important role in upholding and reinforcing the rule of law and the administration of justice; advocating for legal and institutional reform and improvement of security institutions, such as the police and prisons; and monitoring places of detention. However, if NHRIs are unwilling or unable to address, head-on, issues such as the prevention of torture and degrading treatment, arbitrary detention or disappearances, the protection of human rights defenders, they become disconnected from the real concerns of victims of human rights abuses and the urgent needs of the most vulnerable. Not being directly involved in such issues weakens their credibility at home and also at the regional and international levels.”

Source: Mr. G. Magazzeni, Coordinator, National Institutions Unit, OHCHR. “Domestic Protection of Human Rights: Strengthening Independent National Structures” (Dublin, 16-17 September 2008).



#### 4.3.1 Preventing torture, summary executions and arbitrary detention

Core protection issues are central to the very rationale of NHRIs: investigating human rights violations and handling complaints, especially as regards the prevention of torture and degrading treatment, arbitrary detention, disappearances and the protection of human rights defenders, are fundamental to what most NHRIs do. In addition, NHRIs have a watchdog role in reviewing conditions in detention facilities, and should have the right to visit facilities unannounced and request private interviews with detainees.

Since UNCTs are under the authority of Resident Coordinators, and do not themselves undertake human rights monitoring or investigations, the role of NHRIs becomes that much more critical for the work of UNCTs who are seeking to strengthen rule of law and human rights at the country level.

Ideas and strategies for NHRI activities related to solutions in each core protection area, and specific options for UNCTs working with NHRIs, are reviewed in:

**Annex 1:** Table of Core Protection Issues and Potential Activities for NHRI Involvement.

This Tool reviews core protection issues according to the categories in Table 2 (page 55), in detail, and provides concrete suggestions as to what UNCTs might do to provide support to NHRIs in each area.

#### 4.3.2 Prevention of torture

NHRIs are expected to become even more involved and visible as regards the prevention of torture with the entry into force of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The objective of the Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

NHRIs designated as “national preventive mechanisms” under the Protocol have the legal mandate to inspect prisons, by establishing systems of regular visits to places of detention. According to responses to a questionnaire sent by the OHCHR, some 35 NHRIs are already actively engaged in torture prevention activities.

OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

A guide to creating National Preventive Mechanisms by the Association for the Prevention of Torture makes the following recommendations:

- States can choose either to designate an existing mechanism or to create an entirely new mechanism. Neither model is universally inherently better than the other.
- Civil society must be included in the process of deciding whether to use an existing or create a new mechanism.
- Before designating an existing institution, the government and civil society must carefully and exhaustive [sic] review its mandate, jurisdiction, independence, powers and guarantees, to ensure that it fully complies with OPCAT requirements, make any necessary legislative amendments and provide any increase in resources required.<sup>8</sup>

It should be noted that regardless of whether a NHRI is formally designated as a “national preventive mechanism”, the NHRI should nonetheless use its general mandate to monitor, review and comment on the status of detention facilities.

### 4.3.3 Preventing arbitrary detention and forced disappearances

Arbitrary detention and forced disappearances are not only grave abuses in their own right, but also hold the key to stopping torture. NHRIs should monitor carefully the powers of law enforcement officials to detain persons on a preventative basis, and in appropriate cases, should establish mechanisms like priority complaints processing for any serious allegations of abuse or disappearances. Reporting mechanisms like hotlines for missing persons who are alleged to have been detained improperly can be helpful, provided they are accessible, responsive and that the NHRI then follows up with every call on a timely basis.

Some NHRIs conduct spot inspections, without prior announcement, of facilities that may be “safe-houses” or informal detention centres which are in fact illegal detention centres.

Families of detained persons are able to appeal to the NHRI in case of irregularities, and can file complaints, where the NHRI can receive complaints. In most countries, *habeas corpus* applications will be appropriate remedies.

**TABLE 3: NHRIS AND TORTURE PREVENTION<sup>9</sup>**

<b>CAT CONVENTION</b>	<p>Has the State made torture a criminal offence? NHRIs can advocate for this legislative provision if not.</p> <p>Has the NHRI lobbied the State for the ratification of CAT and its Optional Protocol? This requires capacity to provide advice to government.</p>
<b>ACTION TAKEN</b>	<p>Does the NHRI submit opinions and recommendations based on their findings after a prison visit? This requires capacity to follow up with findings, analyzing results and reporting.</p> <p>Does the NHRI provide training to the military, prison officers, law enforcement officials, judges, lawyers, social workers and NGOs? This requires capacity to develop the promotion aspect of the mandate.</p> <p>Does the NHRI actively cooperate with the Special Rapporteur on Torture, the Committee against Torture or its Sub-Committee on Prevention?</p>

<sup>8</sup> Association for the Prevention of Torture, *Establishment and Designation of National Preventive Mechanisms*, Geneva, 2006, p. 88. See Appendix 4.

<sup>9</sup> This is adapted from OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*, 2007, op. cit.

NHRIs can support the international human rights system by cooperating with the Working Group on Arbitrary Detention (WG). The WG was established in 1991. Its mandate under the Human Rights Council includes: investigating of cases of deprivation of liberty imposed arbitrarily; seeking and receiving information from Governments and intergovernmental and non-governmental organisations, and receiving information from the individuals concerned, their families or their representatives. UNCTs can provide information to NHRIs about the

Working Group and its procedures. Many of the core protection issues relevant to this chapter, and the strategies that could be used by NHRIs, are set out in detail in:

**Annex 1: “Core Protection Issues and Potential Activities for NHRI Involvement.”**

This Tool reviews core protection issues in detail, and provides concrete suggestions as to what UNCTs might do to provide support to NHRIs in each area.

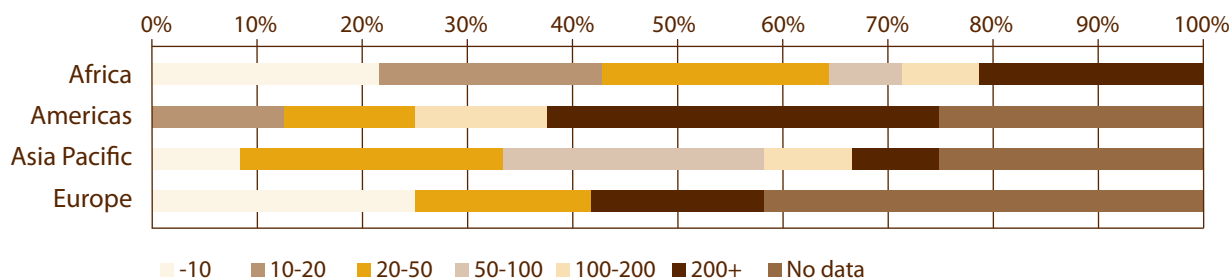
## 4.4 Complaints from detainees

### QUICK FACTS ABOUT NHRIS AND RECEIVING COMPLAINTS FROM DETAINEES:

According to a recent survey, 75% of NHRIs said that they receive complaints from detainees. The percentage that receive complaints from detainees was highest in the Asia Pacific region (100%), followed by the Americas (88.8%), Africa (73.6%) and Europe (57.2%).

Of these respondents, a total of 36 NHRIs provided statistics on complaints of torture and ill-treatment, as shown by the following regional breakdown:

**FIGURE 1: COMPLAINTS STATISTICS - TORTURE AND ILL-TREATMENT**



Respondents reported a wide range of issues from torture to ill-treatment, including: assault and brutality by security personnel, inadequate diet, poor conditions and overcrowding, unnecessary isolation, and forced medical trials.

OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

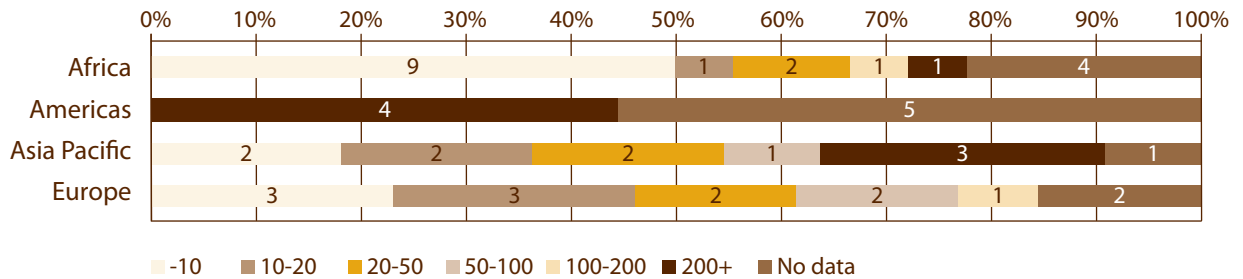


## 4.5 Detention monitoring

### QUICK FACTS ABOUT NHRIS DETENTION MONITORING

According to a recent survey, a high percentage of respondent NHRIs (83.6%) conduct visits to places of detention. The percentage in the Americas is 100%, with African NHRIs at 94.7% and the Asia Pacific at 91.6%. However, the figures were lower in Europe (61.9%). Most African, European and Asia Pacific NHRIs said there were other bodies empowered to visit places of detention (the percentage was notably lower in the Americas at 55.5%).<sup>10</sup>

**FIGURE 2: NUMBER OF DETENTION VISITS IN 2008**



OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

**TABLE 4: NHRIS AND DETENTION MONITORING<sup>11</sup>**

MONITORING	
	Has the State designated the existing NHRI as the national preventive mechanism and, if so, does the NHRI engage in regular visits to places of detention?
	Has the state designated another body as the national preventative mechanism and, if so, is there a mechanism for cooperation between this body and the NHRI?
	Resource: <i>The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
	Is the NHRI mandated and engaged in conducting prison visits to monitor conditions of detention (unannounced visits and private interviews with detainees)?
	Is the NHRI dealing with families of detained persons that appeal to the NHRI in case of irregularities?

See also:

**Annex 2: Standing Instructions for NHRIs: Monitoring Places of Detention**

<sup>10</sup> Other bodies included NGOs, government justice departments, or members of parliament. Other examples of visiting bodies included the International Committee of the Red Cross, magistrates and other members of the judiciary, UNHCR, public prosecutors or other statutory agencies and ombudsmen.

<sup>11</sup> This is adapted from OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*, 2007, op. cit.

## 4.6 Protection of human rights defenders

### QUICK FACTS ABOUT NHRIS AND PROTECTING HUMAN RIGHTS DEFENDERS

According to a NHRI survey, fewer respondents (62.2%) carried out activities aimed at protecting human rights defenders. This percentage was highest in the Asia Pacific, with 11 respondents (91.6%), followed by 7 in the Americas (77.7%), 11 in Africa (57.8%) and 9 in Europe (42.8%).

Only two thirds had dedicated activities for human rights defenders.

When establishing and strengthening capacity in this area, NHRIs should be considering developing their work through the following types of activities:

- receiving and handling complaints from human rights defenders;
- programs to sensitize the general public and particular target groups (state institutions, lawyers, etc.) on the importance of respecting the work of human rights defenders;
- advocating on behalf of human rights defenders at risk, for example through protection programs or by submitting complaints to regional bodies, an appointed Rapporteur on freedom of expression;
- establishing a focal point or unit within the NHRI for human rights defenders; and
- supporting the work of human rights defenders, for example through sharing best practices and holding training workshops, presenting awards (e.g. two NHRIs from Africa, two from the Americas, one from the Asia Pacific region and two from Europe).

Source: OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

## 4.7 Core Protection and Specific Groups

The rights of these groups are often contested and controversial. NHRIs are often the only ones that can speak out and come forward in defence of vulnerable groups, and sometimes in the face of trenchant public critique. When it comes to core protection, these groups are especially vulnerable.

- Women
- Children
- Persons with disabilities
- Older persons
- Migrant workers
- Minorities
- Indigenous peoples
- Persons with HIV/AIDS
- Lesbian, gay, bisexual and transgendered persons
- Refugees and displaced persons
- Human rights defenders.

Many of these can be treated as intersectional issues, that is, issues where the victim is both a woman and a lesbian, and/or has been trafficked, or is also a refugee. An example of this is the case of LGBT persons in South Africa, where victims of attacks are women, people of colour, and people with HIV/AIDS.

### > Example: Increased vulnerability for groups in South Africa

*In South Africa, open harassment and violence towards LGBT people is common. Rape of black and coloured homosexual men occurs frequently. There are reports of "curative rape" of black and coloured lesbians in townships, meaning that young lesbians are raped by a man with consent from their family to "cure" them from lesbianism. Because of the high prevalence of rape, prevalence of HIV/AIDS among black South African lesbians is reported to be as high as in the general population. Homophobia is common among all social groups in South Africa but negative attitudes and homophobic statements are rarely reported to the police. The church still have [sic] leaders who openly condemn*

homosexuality as well as other religious leaders that express negative attitudes. There have been bombs placed in gay/lesbian venues in Cape Town, and local Muslim groups that have claimed responsibility. There is a misconception and confusion among the general population regarding homosexuality and paedophilia, and an apparent lack of knowledge in the general public that homosexuality is something separate from paedophilia.<sup>12</sup>

UNCT staff and NHRI staff need to work towards deepening the understanding of how these multiple identities operate to weaken and destabilize the basic rights – civil, political, social, economic and cultural – of people simply because of who they are. NHRIs have a particular role in standing up for and protecting these vulnerable people, and calling on the government to ensure equality. Women's equality in this area has been particularly highlighted by UNCT staff and is highlighted in the next section.

#### 4.7.1 Violence against women and girls<sup>13</sup>

Violence against women and girls has been described as a problem of pandemic proportions and it is an important aspect of the core protection mandate since it is linked to life-threatening issues and the capacity of law enforcement officials to address this form of abuse. One out of three women around the world has been beaten, coerced into sex, or otherwise abused in her lifetime. According to UNIFEM, violence against women is:

*“perhaps the most pervasive human rights violation that we know today, it devastates lives, fractures communities, and stalls development.” Statistics paint a horrifying picture of the social and health consequences of violence against women.*

*For women aged 15 to 44 years, violence is a major cause of death and disability. In a 1994 study based on World Bank data about ten selected risk factors facing women in this age group, rape and domestic violence rated higher than cancer, motor vehicle accidents, war and malaria. Moreover, several studies have revealed increasing links between violence against women and HIV / AIDS. Women who have experienced violence are at a higher risk of HIV infection: a survey among*

*1,366 South African women showed that women who were beaten by their partners were 48 percent more likely to be infected with HIV than those who were not.<sup>14</sup>*

UNIFEM highlights the following areas affecting women:

- Domestic and Intimate Partner Violence
- Sexual Violence
- Harmful Traditional Practices
- Trafficking in Women and Girls
- HIV/AIDS and Violence
- Crimes against Women in Situations of Armed Conflict

In all the core protection areas mentioned in this chapter, NHRIs have particular responsibility to carry out their mandate through a gender lens, and to ensure that protection issues involving violence against women are given due consideration and addressed as urgent issues requiring State action. Of particular interest are recent international developments clearly placing sexual violence at the heart of protection: a range of sexual violence offences is now included in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals. As well, in 2008 a UN Security Council Resolution noted that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.

UN Security Council Resolution 1820 S/RES/1820 (2008)

#### 4.8 NHRIs in Conflict Situations

NHRIs operating in conflict situations may undertake several roles, all of which have direct relevance to the core protection mandate in times of instability and heightened likelihood of serious human rights violations. These may include:

- efforts to promote dialogue between combatants;
- efforts to promote the establishment and growth of peace-building mechanisms among representative communities; and
- efforts to encourage acceptable and necessary accommodations to deal with underlying human rights issues that may be at the root of the conflict.

<sup>12</sup> Sida Health Division. 2005. *Sexual Orientation and Gender Identity Issues in Development: A Study of Swedish policy and administration of Lesbian, Gay, Bisexual and Transgender issues in international development cooperation*

<sup>13</sup> The section is based, in part, on Equitas, *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*. 2008. [www.equitas.org](http://www.equitas.org)

<sup>14</sup> UNIFEM (2007), *Facts & Figures on Violence against Women*. [http://www.unifem.org/campaigns/vaw/facts\\_figures.php](http://www.unifem.org/campaigns/vaw/facts_figures.php)

NHRIs face particular demands and challenges in times of conflict, such as:

- *Training, education and public awareness:* the NHRI may wish to redouble efforts in community-based training in human rights especially with regard to the need to respect the rights of minorities. Where large numbers of persons are displaced by the conflict, human rights education may also be required for host populations;
- *Investigation:* NHRIs should be aware of particular human rights problems that may occur in situations of conflict, such as the use of child soldiers or the use of sexual assault as an instrument of war. Another important issue is confidentiality and protection of witness/victim identity;
- *Monitoring Human Rights:* The NHRI may be required to monitor events rather than investigate them since full-scale investigations may not be either desirable or possible. This will require the monitors to fully understand the human rights and humanitarian law norms that apply; and
- *Advice to the Government:* NHRIs will likely face criticism when holding Government to account during times of conflict. Certain human rights are not subject to derogation, and an NI must remind the Government of this fact when necessary. Also, certain international rights norms apply to all combatants including insurgent groups.

In times of conflict, UNCTs may undertake efforts to support NHRIs and thereby reinforce their core protection mandate:<sup>15</sup>

- provision of training in and materials on humanitarian law, the rights of displaced persons and refugees, the particular situations involving child soldiers, sexual assault, etc.;
- facilitation of the exchange of information on approaches and best practices that other NHRIs, or UNCTs, may have gathered through their own experiences;
- participation in joint programming, community outreach, monitoring and providing advice to the Government; and
- public support to the NHRI so that it is not isolated.<sup>16</sup>

## 4.9 Strengthening the Core Protection Mandate of NHRIs

If a NHRI cannot or will not investigate major cases involving core protection, experience shows that the NHRI is generally perceived to have failed in its work. When such an NHRI is established through UN assistance and support, experience shows that the UN may be perceived - rightly or wrongly - as sharing in that failure.

Despite the critically important nature of core protection issues, in-country experience shows that coverage of human rights issues in these areas is uneven. Some NHRIs are not addressing these issues to the extent that they could, as shown in the following scenario, drawn from facts from three countries.

### > Scenario: Is the NHRI Focusing on Core Protection Issues?

You have been asked to handle the governance files in a developing country, and one of the files includes the NHRI capacity building project. The NHRI in the country has been in operation for almost seven years, and has a broad mandate to protect human rights, including civil and political rights.

The country has a history of serious and well documented problems regarding human rights violations in the area of rule of law generally and on the issues of torture and arbitrary detention more specifically. There are regular complaints about the lack of follow up on complaints of forced disappearances, which are especially severe in a part of the country occupied by a national minority.

When you review the file and request statistics, you discover that the majority of cases at the NHRI are not complaints about these “core” issues at all! Rather, about 80% are from public sector employees about discrimination related to their salaries, promotions or dismissals.

There is a possibility that the accreditation of the NHRI will be downgraded, following complaints from NGOs about failure to follow up on complaints of forced disappearances and torture.

You are asked for concrete suggestions to help the NHRI get back on track and enhance the confidence of the citizens in its capacity to address core protection cases.

<sup>15</sup> OHCHR National Institutions Unit. 2007. “Information Note: The Role of The UNCT in Establishing or Strengthening A National Human Rights Institution”

<sup>16</sup> OHCHR National Institutions Unit. 2007. “Information Note: The Role of The UNCT in Establishing or Strengthening A National Human Rights Institution”

Part of this challenge is to ensure that NHRIs pay particular attention to (1) keeping the caseload of core protection-related complaints current, (2) giving these cases priority *and* (3) communicating service standards effectively to the public – and then meeting those standards.

Strategies for addressing these types of problems, and areas where NHRIs can provide support, can be seen in:

**Annex 1:** Table of Core Protection Issues and Potential Activities for NHRI Involvement.

This Tool reviews core protection issues in detail, and provides concrete suggestions as to what UNCTs might do to provide support to NHRIs in each area. This is directly related to capacity building in these areas and provides concrete suggestions for UNCT interventions in areas of priority for NHRIs, if requested to provide support.

However, the NHRI cannot address all of these issues, or even most of them, alone. A key strategy for attaining these goals is to work with many actors. An example is provided from the Philippines:

**CASE STUDY: THE UNDP, HUMAN RIGHTS AND THE COMMISSION ON HUMAN RIGHTS - PHILIPPINES (CHR)**

The UNDP supports projects promoting respect for the Rule of Law: the capacity development of Pillars of the Justice System as part of the Human Rights Infrastructure, especially for Courts and the Police transformation programme.

The UNDP supports projects to prevent torture: the national campaign for the ratification of CAT through a multi-stakeholder approach.

UNDP supported a multi-stakeholder summit on extrajudicial killings and forced disappearances where key actions were defined and support to CHR increased.

The UNCT established a Joint Programme on CEDAW with the National Commission on Women and the CHR. The UNDP provided support to enhance investigative capacities and harmonize investigation procedures among key government institutions including the CHR.

UNICEF supports the development of a database or monitoring child rights violations.

**Source:** UNDP, UNCT Support to NHRI: The Core Protection Mandate: A Case Study on the Philippines.

## KEY MESSAGES

- The rule of law is a basic feature of functioning legal systems in democracies. NHRIs have a role in strengthening the rule of law and the administration of justice, particularly in the areas of administration of justice and judicial institutions, police and security forces, and prisons.
- The importance of effective human rights protection cannot be over-emphasised, nor can the risk of losing credibility if a NHRI fails to demonstrate results in the area of its core protection mandate.
- In-country experience shows that some NHRIs are not addressing these issues to the extent that they could. This chapter provides strategies to address these issues. Annex 1 also provides a range of strategies across each area of the protection mandate.
- NHRIs should be especially vigilant in core protection work involving specific groups.
- NHRIs are expected to become even more involved and visible as potential national preventive mechanisms engaged in the prevention of torture with the entry into force of the Optional Protocol to the Convention against Torture.

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## ANNEX 1: TABLE OF CORE PROTECTION ISSUES AND POTENTIAL ACTIVITIES FOR NHRIS AND UNCT SUPPORT

This table is based on an examination of key civil and political rights in especially in a post-conflict, developing country and/or in countries where core protection is an ongoing issue of vital concern. It reviews the key core protection issues and identifies potential areas in which the NHRI can become involved. Please note that the areas included are not exhaustive and may not be applicable in all cases. Several areas may overlap.

RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<b>ARREST</b>			
<ul style="list-style-type: none"> <li>■ arbitrary, safeguards for the right to be free from</li> </ul>	<p><b>Art. 9(1) ICCPR</b> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest ... No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Arrest with warrant is general rule.</li> <li>■ Magistrate or other judicial officer should be notified of arrests without warrant.</li> <li>■ Due presentation of person before justice official within a short time period.</li> <li>■ Limits on police custody of persons arrested without warrant.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to arrest issues; provide advice them on possible activities/best practices.</p> <p>Provide the necessary technical assistance, specialised training, expertise and material support to the NHRI when they are undertaking activities such as</p> <ul style="list-style-type: none"> <li>■ Developing a database of persons arrested under criminal laws and emergency powers</li> <li>■ establishing a 24/7 Hotline to report disappearances, arrests/emergency situations</li> <li>■ communications to police or other authorities to follow up on reported cases</li> </ul>
<ul style="list-style-type: none"> <li>■ arbitrary, derogations from right to be free from</li> </ul>	<p><b>Art. 4 ICCPR</b></p>	<p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ During states of emergency, arrests may result in lengthy preventive detentions.</li> <li>■ Security forces arrest without warrant or reasonable grounds, or conduct mass arrests or round-ups.</li> <li>■ Arrests are carried out on grounds such as “national security”, “terrorism”, or “maintenance of public order” without further specificity.</li> </ul>	<p>Support the NHRI’s position when it issues advice to the government to limit derogations, to bring extraordinary arrest and detention powers in line with international standards and to ensure that permitted derogations are announced to the OHCHR.</p>

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RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<ul style="list-style-type: none"> <li>■ right to be informed of reasons for</li> </ul>	<p><b>Art. 9(2) ICCPR</b></p> <p><b>Art. 13(1) ICCPR</b> ... Any person arrested shall be informed of the reason for the arrest.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Right to know reasons for arrest, to see arrest warrant.</li> <li>■ Arresting officer must issue a document to the detainee's family acknowledging arrest (and upon release).</li> <li>■ Failing to document arrest should be an offence.</li> </ul>	<p>Support the NHRI's position when it:</p> <ul style="list-style-type: none"> <li>■ issues advice to the government to ensure that suspects are advised of reasons for arrest,</li> <li>■ strives to ensure that procedural guarantees are given legal force and that penalties can be imposed on security personnel for non-compliance,</li> <li>■ attempts to ascertain whether security forces ignore instructions or act with impunity.</li> </ul> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to systematically review documentation regarding the arrest of persons, to ensure adequacy of procedures, or to interview advocates to determine if reasons for arrest are obtained in a timely manner.</p>
<p><b>ASSEMBLY, freedom of</b></p>	<p><b>Art. 21 ICCPR</b> ... Subject to restrictions necessary in a democratic society in the interests of national security or public safety, public order, public health or morals or the protection of the rights and freedoms of others.</p>	<p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Countries may restrict protections in the interests of racial and religious harmony.</li> <li>■ Countries may require permission for assemblies by security forces without any reasonable basis being required for refusal.</li> <li>■ Assemblies and meetings are unduly restricted and / or criminalized. It is illegal to join any group or person engaged in terrorist offences.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to freedom of assembly and advise them on possible activities/best practices.</p> <p>Support the NHRI's position when it provides advice to the government on restrictions that are not prescribed by law or subject to sole discretion of executive.</p>
<p><b>ASSOCIATION, freedom of</b></p>	<p><b>Art. 22(1) ICCPR</b> Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.</p>	<p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ The government has criminalised meetings held by, or membership held in, particular groups.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to freedom of association and advise them on possible activities/best practices.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to inquire into situations where minorities, activists, etc. are targeted in</p>

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RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<b>DEROGATIONS</b> ■ non-derogation during public emergency,	<b>Art. 4(1) ICCPR</b> Derogation permitted in cases of public emergency, provided not discriminatory.  Subject to art. 4(2): No derogation from 6, <sup>1</sup> 7, <sup>2</sup> 8 (1 and 2 <sup>3</sup> ), 11, 16 and 18 <sup>4</sup> ICCPR  Only to the extent strictly required; cannot be inconsistent with other international law obligations.  See also <i>Siracusa Principles</i> , outlined opposite.	<b>Limits/Violations:</b> <ul style="list-style-type: none"> <li>■ The use of omnibus derogations from core rights in times of emergency</li> <li>■ Security forces are shielded from prosecution.</li> <li>■ Reversals of the legal burden of proof on the State.</li> </ul>	Ensure that the NHRI understands its responsibilities with regard to derogation issues and advise them on possible activities/best practices.  Aid the NHRI in encouraging the government to abide by the Siracusa Principles, which state that: <ol style="list-style-type: none"> <li>1. No limitations or grounds for applying them to rights guaranteed by the Covenant [ICCPR] are permitted other than those contained in the terms of the Covenant itself.</li> </ol> [...] <ol style="list-style-type: none"> <li>5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.</li> </ol> [...] <ol style="list-style-type: none"> <li>7. No limitation shall be applied in an arbitrary manner.</li> </ol> [...] <b>“Public Emergency which Threatens the Life of the Nation”</b> [...] <ol style="list-style-type: none"> <li>40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4.<sup>5</sup></li> </ol>
<b>DETENTION</b>			
■ bail and	<b>Art. 9(3) ICCPR</b> ... It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees ...	<b>Safeguards:</b> <ul style="list-style-type: none"> <li>■ Legislation creating a presumption of access to bail.</li> </ul> <b>Limits/Violations:</b> <ul style="list-style-type: none"> <li>■ Country prohibits or unduly restricts bail.</li> </ul>	Ensure that the NHRI understands its responsibilities with regard to detention issues; advise them on possible activities/best practices.

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RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<ul style="list-style-type: none"> <li>■ conditions of</li> </ul>	<p><b>Art. 10 ICCPR</b> All persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ No more force should be used than necessary.</li> <li>■ Prohibition of corporal punishment.</li> <li>■ Domestic legislation criminalizing torture.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Inhuman or cruel conditions, including overcrowding, lack of access to a medical officer.</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to</p> <ul style="list-style-type: none"> <li>■ implement a prisons inspection programmes (including through the development of a manual, with standard templates and forms)</li> <li>■ look into and report on living conditions and access to medical care</li> <li>■ report on or study long-term detention in facilities that are designed for short term detention</li> <li>■ work to prevent incommunicado detentions which increase risk of ill-treatment and torture.</li> </ul>
<ul style="list-style-type: none"> <li>■ communication, rights of detainees to</li> </ul>	<p><b>Art. 17(d) Intl. Convention for the Protection of All Persons from Enforced Disappearance</b> (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ <b>Art. 37 Standard Minimum Rules for the Treatment of Prisoners (1955)</b> Prisoners can communicate with family and reputable friends at regular intervals (with necessary supervision).</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to ensure that detainees receive confidential communication with their legal counsel.</p> <p>Support the NHRI in advocating that the State makes provisions against <i>incommunicado</i> detention and prohibits such practices by law.<sup>6</sup></p>
<ul style="list-style-type: none"> <li>■ places of</li> </ul>	<p><b>Art. 9 ICCPR (general)</b></p> <p><b>Art. 17(c) Intl. Convention for the Protection of All Persons from Enforced Disappearance</b> Without prejudice to other int'l obligations of the State Party ... each State Party shall, in its legislation: (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ All places of detention should be official and published.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ The law permits detention in irregular or temporary facilities or movement between facilities without notice.</li> </ul>	<p>Support the NHRI in advocating that the government be open and transparent about the location of authorized places of detention and that informal places of detention are closed or regularised.</p>

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RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<ul style="list-style-type: none"> <li>■ prohibition against arbitrary</li> </ul>	<p><b>Art. 9(1) ICCPR</b> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary ... detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Preventative detentions should be reasonably justified, proportional and undertaken with discrimination against persons based on ethnic origin (see ICCPR and Siracusa Principles).</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Excessive use of preventative detentions; use of security forces for policing.</li> </ul>	<p>Support NHRI's work in seeking to reduce the length and use of preventative detention.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to document and report on cases of preventative detention through prison inspections and through comparative study of jurisdictions that do not rely excessively on preventative detention.</p> <p>Support training security forces / armed forces that are used as a <i>de facto</i> policing force.</p>
<ul style="list-style-type: none"> <li>■ systematic review of places of</li> </ul>	<p><b>Art. 11 CAT</b> Each State party shall keep under systematic review interrogation rules, instructions, methods and practices ... for the custody and treatment of ... persons subjected to any form of arrest, detention or imprisonment ... with a view to preventing any cases of torture.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Systematic review of places of detention.</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to:</p> <ul style="list-style-type: none"> <li>■ establish an effective systematic review of places of detention, including regular and unannounced visits</li> <li>■ produce reports / publicity / information about the results and impacts of prison inspection programs.</li> </ul> <p>The UNCT can support the general discussion and debate by holding seminars, workshops, etc on relevant findings and recommendations of NHRIs.</p>
<ul style="list-style-type: none"> <li>■ right to be brought promptly before judge</li> </ul>	<p><b>Arts. 9(3), 14 ICCPR</b> Derogation in <b>Art. 4.</b></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Must maintain documentation regarding arrest and detention, timeliness of hearing, <i>habeas corpus</i></li> <li>■ Person to be brought before a magistrate or judicial officer within a reasonable period of time.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Restrictions because of national security, public order and protection of public health or morality.</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to document and report instances of detention when detainees are not brought before a judge within the period prescribed in law and pre-trial detention that extends beyond international standards.</p>

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RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<b>EQUALITY</b>			
<ul style="list-style-type: none"> <li>■ before the law (general)</li> <li>■ rights of non-citizens</li> </ul>	<p><b>Arts. 2, 3 ICCPR</b></p> <p><b>Art. 26 ICCPR</b> All persons are equal ... without any discrimination on any ground ... such as ... national or social origin, birth ... or other status.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Constitutional guarantees of equality.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Differential treatment as regards minority groups or vulnerable persons, including treatment that has an adverse impact on persons based on race, sex, ethnic origin and other grounds.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to equality and non-discrimination, and provide advice on possible activities/best practices.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to investigate allegations of unequal or discriminatory treatment in the administration of justice, and legal system generally, especially as regards minority groups or vulnerable persons.</p>
<b>HABEAS CORPUS</b>	<p><b>Art. 9, 13 ICCPR</b></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ <i>Habeas corpus</i> must remain available even during public emergencies threatening the nation.<sup>7</sup></li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Laws that extend the period before which a person has the right to be brought before a judicial officer.</li> <li>■ Restrictions of powers of release without written permission.</li> <li>■ Members of proscribed organizations are excluded from the complaint process.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to <i>habeas corpus</i> and advise them on possible activities/best practices.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to investigate the extent to which <i>habeas corpus</i> is difficult to access either because courts decline applications on a systematic basis, or restrict access to lawyers. Activities could be undertaken in coordination with Bar associations and lawyers' associations, as well as NGOs.</p>
<b>LEGAL RIGHTS</b>			
<ul style="list-style-type: none"> <li>■ interpreter, assistance of an</li> </ul>	<p><b>Art. 14(3)(f) ICCPR</b></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Accused have access to interpreters in court.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ No mention of access to qualified interpreters during questioning by law enforcement officers and limited access to interpretation in court.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities and advise them on possible activities/best practices. E.g. Support monitoring of judicial hearings in areas where minority language rights are an issue and support the preparation of reports on the state of practice and availability of interpreters.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to work with law enforcement to ensure that arrested persons have access to interpretation, emphasising language capacity for languages spoken by minority communities.</p>

◀ continued

RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
■ counsel and legal aid, right to	<b>Art. 14(3)(d) ICCPR</b> Right to defend himself in person or through legal assistance ...; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require ...	<b>Safeguards:</b> <ul style="list-style-type: none"> <li>■ A Legal Aid system and/ or state funded counsel in appropriate cases.</li> </ul>	Provide the NHRI with the necessary technical assistance, specialised training, expertise and material support to investigate the extent to which legal aid is available, especially for vulnerable groups. E.g. “mapping” of legal aid systems, formal and informal, in the country; preparation of accessible and relevant legal aid manuals; training of legal aid lawyers on human rights; linking NHRIs with judicial reform efforts and sectoral reform initiatives from other donors.
■ self-incrimination, protection against	<b>Art. 14(3)(g) ICCPR</b>	<b>Safeguards:</b> <ul style="list-style-type: none"> <li>■ Confessions made to law officers are inadmissible unless in immediate presence of a Magistrate.</li> </ul> <b>Limits/Violations:</b> <ul style="list-style-type: none"> <li>■ Admissibility of confessional evidence or incriminatory statements in any circumstances.</li> <li>■ Persons of interest are forced to answer police questions and are not permitted to exercise a right to remain silent.</li> <li>■ Reversals of the burden of proof.</li> </ul>	Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to report systematically on criminal procedure issues, notably as regards convictions secured through confessions.  E.g. Documenting case; support NHRI efforts to secure amendments to laws that infringe the right not to self-incriminate or that result in reversals of the burden of proof.  Support a “Gap analysis”: preparation of documentation comparing domestic law and practice with international standards.
LIFE, right to	<b>Art. 6(1) ICCPR</b> Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.	<b>Safeguards:</b> <ul style="list-style-type: none"> <li>■ Prohibitions against corporal punishment, abolition of death penalty; criminalisation of torture; right to seek pardon.</li> </ul>	Ensure that the NHRI understands its responsibilities with regard to the right to life and advise them on possible activities/best practices.  E.g. “Gap analysis”: Support the preparation of documentation comparing domestic law and practice with international standards.  Provide NHRI with the necessary technical assistance, specialised training, expertise, and material support to use its promotional programmes to educate the public and key stakeholders on the merits of the abolition of the death penalty. The UNCT can support the general discussion and debate by holding seminars, workshops, etc on issues using and showcasing NHRI findings and information as a springboard.

◀ continued

RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<ul style="list-style-type: none"> <li>■ Disappearances / extra-judicial killings</li> </ul>	<p><b>Art. 6 ICCPR (general)</b></p> <p><b>Int'l Convention for the Protection of All Persons from Enforced Disappearance.</b><sup>8</sup></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ All persons detained should be handed over immediately to the nearest police station and arrests reported and documented.</li> <li>■ Failing to respect procedural safeguards should be an offence.</li> </ul> <p><b>Limits/ Violations:</b></p> <ul style="list-style-type: none"> <li>■ Forced disappearances, extrajudicial killings.</li> <li>■ Search, detention and arrest without warrant of persons under any emergency regulation.</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to:</p> <ul style="list-style-type: none"> <li>■ systematically document and report on all forced disappearances</li> <li>■ take effective steps to keep disappearances under control by, for example, investigating them.</li> <li>■ develop a database of persons arrested under criminal laws, emergency powers.</li> <li>■ establish a 24/7 Hotline to report disappearances, arrests/ emergency situations.</li> </ul>
<p><b>MOBILITY, right of</b></p>	<p><b>Art. 12(1) ICCPR</b></p> <p>Everyone lawfully within the territory... shall have the liberty of movement and freedom to choose his residence.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Restrictions must be appropriate to achieve their purpose, and be the least intrusive instrument among available options and proportionate to the interest to be protected.<sup>9</sup></li> <li>■ Lawful restrictions should use "precise criteria and may not confer unfettered discretion."<sup>10</sup></li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Laws preventing entry of unauthorized persons from "High Security Zones", "Prohibited Zones" and "Restricted Zones" designated by authorities.</li> <li>■ Permits are required to enter or leave certain areas.</li> <li>■ Household registration is used as a tool to monitor people's whereabouts and to control freedom of association</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to the right of mobility and advise them on possible activities/best practices, e.g. support the NHRI's work with the government to phase out laws that restrict mobility and examine and critique, as appropriate, the use of techniques such as household registration lists as law enforcement tools.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to investigate reports of restrictions of movements of citizens, residents or minorities.</p> <p>Support training and monitoring for situations of forced expulsions, deportations and exit controls.</p>
<p><b>PRESUMPTION OF INNOCENCE</b></p>	<p><b>Art. 14(2) ICCPR</b></p> <p>Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ The legal burden of proof should always be on the prosecution</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Legal reversals of the burden of proof; restrictions on the accused to challenge State evidence or cross-examine.</li> <li>■ State is permitted to destroy evidence.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to the presumption of innocence and advise them on possible activities/ best practices.</p> <p>Support the NHRI's efforts to advocate for legal reform to ensure that the burden of proof in criminal matters rests on the State, and that derogations are lawful and consistent with human rights standards.</p>



◀ continued

RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
PRIVACY	<p><b>Art. 17(1) ICCPR</b> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ State should have to justify intrusions / interceptions of personal privacy, including the home, correspondence and communications.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Wide search/seizure/break and entry powers (without warrant) can be exercised by officers or security forces in the interests of national security, public order or similar justifications.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to the right of privacy and advise them on possible activities/best practices.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, material, and support to address issues and practices that invade privacy.</p>
REMEDY, ■ access to justice	<p><b>Arts. 2, 26 ICCPR</b></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Constitutional and legislative provisions providing remedies in the event of a violation of rights.</li> <li>■ Functioning and effective judiciary.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Any laws shielding legislation or government action from constitutional scrutiny.</li> </ul>	<p>Ensure that the NHRI understands its responsibilities with regard to remedies where it has jurisdictional authority and advise them on possible activities/best practices.</p> <p>Support the NHRI's efforts to seek legislative reform to improve accessibility. Support liaison and coordination efforts with relevant government actors.</p>
	<p><b>Remedies from NHRIs</b></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ NHRIs are empowered to conduct investigations into rights violations and there is a provision for seeking a remedy. NHRIs conduct mediations and other forms of alternative dispute resolution (ADR).</li> </ul>	<p>UNCT can provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support for improvements to case management systems to ensure case processing is timely and effective. Help to develop and communicate service standards to the public; ensure functioning and user-friendly case management software that is actually implemented and used.</p> <p>Training on mediation conducted early in the process, preferably with staff who are separate from investigation staff.</p>
■ communications to ICCPR and CAT treaty bodies	<p><b>Optional Protocol to the Convention against Torture</b> <b>First Optional Protocol ICCPR</b></p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Country has ratified Optional protocols.</li> </ul>	<p>If no ratification, support the NHRI to advocate for ratification. The UNCT can provide support and information regarding regional practices, public advocacy to build public awareness and support.</p> <p>Provide technical assistance, specialised training, expertise, and material support to actively follow up on Committee views to ensure that remedies are provided to complainants.</p>

◀ continued

RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<ul style="list-style-type: none"> <li>immunity of persons in official capacity</li> </ul>	<p><b>Art. 2(3) a ICCPR</b>                      a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>Command responsibility; legislation should not confer immunity of security forces.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>Any immunity for any actions taken by public servants or law enforcement or security forces.</li> <li>Good faith acts are given blanket immunity.</li> </ul>	<p>Support advocacy work that is aimed at victims of violations and its efforts to promote legislative reform to ensure opportunity for redress. Support the development of victim and witness protection legislation.</p> <p>Provide NHRI with necessary technical assistance, specialised training, expertise, and material support to engage in community justice initiatives or transitional justice where the statutory or constitutional mandate supports this activity. Alternatively if there are other national institutions with transitional justice responsibilities, support efforts to transfer cases that are more appropriately in the other institution's authority.</p>
<b>TORTURE</b>			
<ul style="list-style-type: none"> <li>definition</li> </ul>	<p><b>Art. 1 CAT</b> "severe pain or suffering, whether physical or mental" to obtain information/ confession from a person or a third person.</p>		<p>Ensure that the NHRI understands its responsibilities with regard to torture and related practices, and advise them on possible activities/best practices.</p> <p>Support and supplement the NHRI in promoting the enactment of laws prohibiting torture and generally complying with CAT.</p> <p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to monitor trials of and convictions secured for torture cases.</p>
<ul style="list-style-type: none"> <li>prohibition and prevention of</li> </ul>	<p><b>Art. 2 CAT</b>                      Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</p> <p><b>Art. 7 ICCPR</b>                      No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>Legislation prohibiting torture and creating offences for torture or cruel treatment.</li> <li>Criminalizing acts which cause harm to extort confessions or information.</li> <li>Prohibition of sexual assault of women in custody and creation of offences.</li> <li>Exclusion of any evidence extracted via torture.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>Any legislation, even emergency legislation that authorizes force "as necessary" and shields perpetrators.</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to</p> <ul style="list-style-type: none"> <li>investigate promptly, or report on, allegations of killings and mistreatment in custody</li> <li>implement a detention facilities visit programme and work to eliminate the use of unofficial places of detention.</li> <li>advocate for policies and practices to prohibit and punish sexual assault in custody.</li> </ul> <p>Support and supplement the NHRI in advocating for adequate training of security forces and law enforcement officials and participate in such training as human rights experts, or help to secure necessary assistance and expertise.</p>

◀ continued

RIGHT OR ISSUE	UN INSTRUMENTS	SAFEGUARDS/LIMITS AND VIOLATIONS	SAMPLE AREAS OF UNCT SUPPORT TO NHRIS
<ul style="list-style-type: none"> <li>■ witness protection and</li> </ul>	<p>Arts. 12, 13 CAT</p>	<p><b>Safeguards:</b></p> <ul style="list-style-type: none"> <li>■ Witness and victim protection legislation.</li> </ul> <p><b>Limits/Violations:</b></p> <ul style="list-style-type: none"> <li>■ Threats against witnesses.</li> </ul>	<p>Provide the NHRI with the necessary technical assistance, specialised training, expertise, and material support to investigate and denounce alleged reprisals, intimidation and threats against persons reporting acts of torture and ill treatment as well as the lack of effective witness and victim protection mechanisms. This could include:</p> <ul style="list-style-type: none"> <li>■ research on victim and witness protection programs</li> <li>■ lobbying government to establish legislation</li> </ul>

## ENDNOTES

<sup>1</sup> Right to life.

<sup>2</sup> Right not to be subject to torture or to cruel, inhuman or degrading treatment.

<sup>3</sup> Right to be free from (1) slavery, and (2) servitude.

<sup>4</sup> Freedom of thought, conscience and religion.

<sup>5</sup> UN ESC, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights", UN Doc: E/CN.4/1984/4 (1984).

<sup>6</sup> UN Human Rights Committee, "General Comment No. 20: Article 7", UN Doc. HRI/GEN/1/Rev.6 (2003).

<sup>7</sup> UN Human Rights Committee, "General Comment No. 29: States of Emergency (Art. 4)", UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), paras.14 and 16.

<sup>8</sup> United Nations Declaration on the Protection of All Persons from Enforced Disappearances (Convention against Enforced Disappearances), adopted December 18, 1992, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992).

<sup>9</sup> UN Human Rights Committee, "General Comment No. 27: Freedom of Movement", UN Doc. CCPR/C/21/Rev.1/Add.9 (1999), para. 14.

<sup>10</sup> *Ibid.*, para. 13.

## ANNEX 2: STANDING INSTRUCTIONS FOR NHRIS: MONITORING PLACES OF DETENTION

### Short to medium-term

1. A set of policy/guideline on the role and nature of the institution's monitoring responsibilities and activities, including coordination and cooperation with other actors.
2. Policy on routine visits and unannounced visits.
3. Policy on issues to be monitored, differentiated by (1) class of place of detention if necessary, and (2) thematic issues, such as issues of specific concern to vulnerable groups.
4. Tools for Monitoring, such as standard templates of information to be recorded, differentiated by class of place of detention if necessary (to ensure a common vocabulary and information recording mechanism).
5. Policy and procedures for reporting on the monitoring programme, including the public release of information on the results, recommendations made, and responses received.
6. Policies on the interpretation of rights and standards that apply, in the country context as appropriate, to detainees and places of detention differentiated by class of place of detention as necessary.

7. General policy on conducting investigations on matters revealed during monitoring activity.
8. Policy, procedure and system for maintaining statistical information on the results of monitoring activity, differentiated by class of place of detention if necessary, and referencing vulnerable groups.
9. Policy and procedures for the preparation of management reports on the monitoring activity, including changes of the situation over time, by region and by class of place of detention.

### Longer-term

10. The review and revision of guidelines, policies, procedures or systems based on experience.
11. Flags or alerts on areas of longstanding or particular concern.
12. Specific policy on conducting investigations of matters revealed during monitoring as regards types or classes of cases, as necessary.
13. The development of a monitoring management system or database to maintain statistical and other information and to generate management reports as required



# chapter

# 5

## **NHRIs, Human Development and Democratic Governance**

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## OBJECTIVE:

Highlight possible roles and added value of NHRIs in the larger development context, particularly on influencing development processes, with concrete case studies in areas such as participation in the formulation of poverty reduction strategies, decentralization programs, policy and budget monitoring.

## EXECUTIVE SUMMARY

Profound linkages exist between development, democratic governance and human rights. NHRIs can be engaged to sustain a human rights-based approach to development and democratic governance that promotes international legal standards.

While many NHRIs tend to focus on civil and political rights, they also have important roles making the connections between development and human rights, including economic, social and cultural rights. UNCTs can support NHRIs in this work at the international level, for example by supporting submissions and reports to Treaty Bodies.

NHRIs should use the Millennium Development Goals as well as other internationally agreed goals as objectives: the goals offer a road map to the determination of priorities at both the international and national levels. Additionally, MDGs offer progress indicators that can track and monitor progress. Adapting these to the particularities of each country permits effective target-setting and programming for NHRIs.

Working within cultural contexts is integral to a NHRI's approach to development and human rights, and especially to the effectiveness of NHRIs working to achieve equality. Working within cultural traditions can allow the NHRI to work with social and cultural leaders to effect attitudinal and practical changes. With the support of UNCTs, NHRIs can be informed of relevant norms and documents related to cultural rights and their relationship to other human rights.

Because of the important links between democratic governance and human development, NHRIs can look to strategic planning processes as a way to identify specific areas of priority in the development context that have implications for human rights. The collaboration of UNCTs, NHRIs and UNDP is necessary to the creation of an enabling environment to achieve MDGs. NHRIs can also play an effective role in poverty reduction strategies, by maintaining a strong human rights-based approach to Poverty Reduction Strategy Papers (PRSP). Their role may include seeking involvement in the development and monitoring of a PRSP, and intervening where necessary.

NHRIs also monitor human rights situation and government resource allocations related to particular issues. In this regard, they might make recommendations for national budgets, since these allocations can support economic, social and cultural rights and therefore promote human development. Finally, keeping in mind that democratic governance, human development and human rights are interconnected, NHRIs can take advantage of UNDP-supported efforts at decentralization of decision-making powers to introduce human rights-based development initiatives to local decision-making new entities.

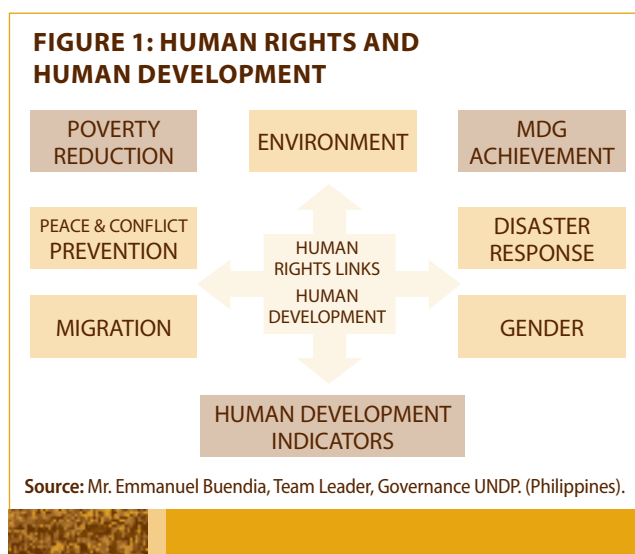
## INTRODUCTION

Human rights and human development are linked in ways that we have long understood but have only recently introduced to programming by NHRIs.

Selim Jahan writes “[h]uman poverty is a denial of human rights – because it infringes on human freedom, it destroys human dignity and it implies discrimination and injustice.”<sup>1</sup> NHRIs should be part of the national planning process and be included in the planning cycle related to the development of the UNDAF at the national level.

Taking a human rights-based approach (HRBA) to human development and democratic governance can significantly enhance results achieved across a number of dimensions, including poverty reduction, the environment, peace and conflict prevention and UN Millennium Development Goal (MDG) achievement, to name a few. Understanding the linkages between human development and human rights is essential to the achievement of both. At the same time, it should be remembered that human rights provide a normative and legal framework, whereas development goals, while important, do not have the same normative and legal force.

Depending on the nature of the UN engagement and the requests from the NHRI and the country, UNCTs can play an invaluable role in supporting NHRIs to help move forward the broader development agenda.



## 5.1 The UN and Human Rights Based Approach to Development<sup>2</sup>

Human rights-based approach to development has been founded of the following human rights principles:

- Universality and Inalienability
- Indivisibility
- Interdependence and Interrelatedness
- Equality and Non-Discrimination
- Participation and Inclusion
- Accountability and Rule Of Law

Using these principles, UNCTs are generally responsible for mainstreaming human rights into the operational activities for development at the country level and for promoting international human rights standards and principles.

In 2002, the Secretary-General launched “Action 2”<sup>3</sup> as part of the UN Reform. Action 2 identified strong human rights institutions at the country level as a principal UN objective, with a focus on the UNCT collaboration to respond to the needs and requests of Member States. As part of this process, a growing number of agencies and programmes have adopted human rights-based approach to development cooperation, and stronger institutional linkages were established between the UN human rights bodies and the Office of the UN High Commissioner for Human Rights (OHCHR) on the one hand, and the operational UN agencies on the other, under the frameworks of the United Nations Development Group (UNDG) and the Executive Committee on Humanitarian Affairs (ECHA).

In 2003 a UN inter-agency meeting on human rights approach to development arrived at a set of recommendations, divided into two parts. The first part was said to consist of elements which are ‘necessary, specific, and unique to a human rights-based approach’:

These were:

- Assessment and analysis in order to identify the human rights claims of rights holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.

<sup>1</sup> Selim Jahan, “Human Rights-Based Approach to Poverty Reduction – Analytical Linkages, Practical Work and UNDP”, online: (2004) UNDP <[www.undp.org/poverty/docs/employment/HRPR.doc](http://www.undp.org/poverty/docs/employment/HRPR.doc) 1>.

<sup>2</sup> This section is adapted in part from: UNDP [http://www.undp.org/governance/docs/HR\\_Pub\\_ParIts&HR.pdf](http://www.undp.org/governance/docs/HR_Pub_ParIts&HR.pdf) See also: *Poverty Reduction and Human Rights: A Practice Note*, UNDP, June, 2003; *Human Rights: A Practice Note*, UNDP, March, 2004.

<sup>3</sup> “Action 2 is a global programme designed to strengthen the capacity of UN country teams to support the efforts of Member States, at their request, in strengthening their national human rights promotion and protection systems. In order to achieve this, adequate national capacity, dedicated resources and expertise are fundamental prerequisites.” <http://www.un.org/events/action2/programme.html>

- Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
- Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

For a candid discussion of the tensions and synergies between human rights and development goals, and a review of what, practically speaking, a human rights based approach practically involves, see *Alston, "A Human Rights Perspective On The Millennium Development Goals."* Paper Prepared as a Contribution to the Work of the Millennium Project Task Force on Poverty and Economic Development.

In 2006 the OHCHR, developed a tool in order to address the chasm between theory and practice especially in using development as a tool to work towards human rights goals, *Frequently Asked Questions On A Human Rights-Based Approach To Development Cooperation*. It seeks to respond to continuing gaps in knowledge and skills, and difficulties in translating human rights norms into concrete programming guidance applicable in diverse policy contexts and national circumstances.

NHRIs can, through their existing roles and responsibilities, support a human rights-based approach to development. However, since UNCTs under the leadership of Resident Coordinators do not themselves undertake human rights monitoring or investigations, the role of NHRIs, as well as others with this kind of mandate, such as the OHCHR or the UNHCR, becomes that much more critical for the work of UNCTs. Two sets of tasks are engaged, which speak directly to the functions of NHRIs:

- Developing the capacities of rights-holders to assert their rights; and
- Developing the capacities of duty-bearers and ensuring that they have the responsibility, authority and resources needed to discharge their duties.

Activities that can engage NHRIs include: advocacy and awareness-raising, training and capacity-building, partnership-building, practice development and knowledge networking. Opportunities for integrating human rights with human development occur in all UNDP practice and sub-practice areas and throughout the programme cycle.

Human rights issues arise during:

- the course of policy and programme dialogue; within the CCA, UNDAF and country programming processes;
- assessment and analysis of the development situation;
- programme formulation, implementation, monitoring and evaluation; and
- programme review.

An example of an UNDAF outcome that reflects a human rights-based approach in Guyana is provided below.

A detailed discussion of how to integrate support to NHRIs in the UN country programming cycle is contained in Chapter 6.

#### > Example of UNDAF outcomes that reflect human rights-based approach principles

Guyana (UNDAF 2006-2010)

In Guyana, the UNDAF outcomes and country programme outcomes reflect equitable access with clear, time-bound targets essential for monitoring the realization of human rights and for accountability. See outcome 1: "By 2010 there will be at least 10 per cent increase in the proportion of Guyanese accessing quality services in education, health, water and sanitation, and housing, with capabilities enhanced to maximize available opportunities."

The UNDAF outcome promotes quality services, rather than coverage alone, consistent with the international human rights standards. While it could have been strengthened further to focus explicitly on the most disadvantaged groups. It is noteworthy in recognizing capability improvement and the importance of people being able to claim their rights.

For more detailed discussion of the United Nations Development Group's appraisal of this and other UNDAFs from a human rights perspective, see <http://www.undg.org>.

## 5.2 Linking NHRI Roles and Responsibilities to Development

Quantitative aspects of human development are now well established, including in the Human Development Reports, which make explicit the links between human development and human rights. Indicators, combined with local country targets, provide tools and benchmarks to track when and whether countries are achieving

or missing their targets, including the Millennium Development Goals. Indicators of inequality are also quantitative indicators of human rights. They also happen to be the basic measures for the development ranking of nations. NHRIs can use well-being and human development indicators to determine what States need to do to meet peoples' needs and to know when States are missing their targets. More broadly, the capacity to make the connection between human rights and democratic governance is linked to projects like poverty alleviation, state budgeting and decentralization initiatives. UNCTs are very well placed to help NHRIs access and use these data as a springboard to taking a rights-based approach to development.

These indicators and goals can also be used by NHRIs to assess how well a given country is progressing. MDGs can be used to benchmark, track and assess human rights-based approaches to major governance objectives such as poverty alleviation and other goals affecting populations generally as well as vulnerable groups. This chapter provides specific examples of how to make the connection to democratic governance and development by linking rights to poverty, development, MDG goals and decentralization initiatives.

### 5.2.1 Economic, Social and Cultural Rights and NHRIs

Understanding the role that NHRIs can play in promoting a human rights-based approach to human development requires understanding economic, cultural and social rights and how these rights can be promoted in the work of NHRIs.

- In 1995, the UN emphasized that, although NHRIs tend to focus on civil and political rights, these institutions may also be empowered to promote and protect economic, social and cultural rights (ESC rights).<sup>4</sup>

- In 1997, the *Maastricht Guidelines on Violations of ESC Rights* suggested that “monitoring bodies such as national ombudsman institutions and human rights commissions should address violations of economic, social and cultural rights as vigorously as they address violations of civil and political rights.”<sup>5</sup>
- In 1998, General Comment No. 10 of the ESCR Committee<sup>6</sup> noted that “national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights” ... “it is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.”<sup>7</sup>
- In 2000, the UNDP report *Human Rights and Human Development* explicitly linked rights and human development.
- In 2001, the Secretary-General's Report, *Road Map Towards the Implementation of the United Nations Millennium Declaration*, stated that ESC rights are at the heart of the MDGs.<sup>8</sup> In 2005, the UNDP's *Human Development Report: International cooperation at a crossroads: Aid, Trade and Security in an Unequal World* pointed out the close ties between a country's development and inequalities on one hand, and well-being and human security on the other hand.

ESC rights are about the fundamentals of human existence:

- the basic necessities of life;
- the right to learn and to work;
- the right to form a family; and
- the right to enjoy one's cultural identity and the benefits of science and development.

While not all NHRIs have legal authority to look at issues of economic, social and cultural rights, many do.

<sup>4</sup> Office of the High Commissioner for Human Rights, United Nations, National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No. 4, Section 48 (1995).

<sup>5</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), online: University of Minnesota Human Rights Library <[http://www1.umn.edu/humanrts/instrree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instrree/Maastrichtguidelines_.html)>.

<sup>6</sup> General comment n. 10, “The role of national human rights institutions in the protection of economic, social and cultural rights”, online: (1998). E/C.12/1998/25, CESCR. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/af81bf2fed39cec1802566d50052f53b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/af81bf2fed39cec1802566d50052f53b?Opendocument)

<sup>7</sup> The United Nations Commission on Human Rights (as it then was) in its *Resolution on National Institutions for the Promotion and Protection of Human Rights* reiterated this statement and called upon all States to ensure that all human rights are appropriately reflected in the mandate of their national human rights institutions when established... UN Commission on Human Rights, Resolution 2002/83, 58th Session, 18 March-26 April 2002.

<sup>8</sup> Secretary-General, *Road Map Towards the Implementation of the United Nations Millennium Declaration*, UN GAOR, 56th Sess., UN Doc. A/56/326 (2001).

- > **Example:** Substantive content of economic, social and cultural rights obligations

### **SUBSTANTIVE CONTENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS OBLIGATIONS**

Human rights (including economic and social rights) standards are becoming more clearly defined both internationally and nationally. Courts in a wide range of countries and legal systems— such as Argentina, the Dominican Republic, Finland, India, Latvia, Nigeria and South Africa—have been giving meaning to obligations associated with economic, social and cultural rights, including in connection with workers' rights and the rights to food, social security, adequate housing, health and education.

For example, in 2002 the **Constitutional Court of South Africa** declared that the Government had breached its human rights obligations by failing to take reasonable measures (at affordable cost) to make wider provision of anti-retroviral medication to prevent mother-to-child transmission of HIV. This decision and the grass-roots campaign surrounding it has saved many lives. Decisions of the **Supreme Court of India**, including a 2002 decision concerning the right to food in the context of a preventable famine in Rajasthan, have likewise had a significant beneficial impact in a number of States in that country. The successful outcomes in these cases are to a great extent attributable to the fact that litigation strategies were integrated within wider social mobilization processes.

*OHCHR. [Frequently Asked Questions on A Human Rights-Based Approach To Development Cooperation](#). 2006*



Even for those that have jurisdictional restrictions for economic, social and cultural rights, these restrictions usually apply only to the power to investigate complaints and do not typically restrict the promotional role of NHRIs to advise governments, educate the public about these issues or to monitor and comment on their application nationally.

It is clearly possible, therefore, for national institutions to develop and institute programming in a variety of areas that mesh with development goals. These include the

eradication of poverty, improvement of governance, the empowerment of vulnerable persons and the equalisation of opportunities.

NHRIs should include details of their mandate and relevant activities when preparing comments or assisting in preparing reports to the Treaty Body under the ICESCR. NHRI activities in the area should include:<sup>9</sup>

- promoting educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the general public and among particular groups, such as the public service, the judiciary, the private sector and the labour movement;
- scrutinising existing laws, administrative acts, draft bills, and other proposals to ensure that they are consistent with the requirements of the ICESCR;
- providing technical advice or undertaking surveys in relation to economic, social and cultural rights;
- identifying national benchmarks for measuring the progressive realisation of economic, social and cultural rights;
- conducting research, monitoring and/or inquiries to ascertain the extent of realisation of particular economic, social and cultural rights, at the national or regional level, or in relation to specific vulnerable communities; and
- monitoring compliance with regard to specific rights under the Covenant and providing reports to public authorities and civil society.

On 10 December 2008, the General Assembly adopted resolution A/RES/63/117, on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Optional Protocol authorises the Committee to receive and consider communications from involving State parties to the Covenant that become a Party to the Protocol. It further provides that at Article 2 that communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. As a new procedure in the area of ESC rights, NHRIs will have key role in lobbying for ratification

<sup>9</sup> General comment n. 10, The role of national human rights institutions in the protection of economic, social and cultural rights, online: (1998), E/C.12/1998/25, CESCR. <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/af81bf2fed39cec1802566d50052f53b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/af81bf2fed39cec1802566d50052f53b?Opendocument)>.

of the Optional Protocol and creating awareness of this new instrument. As well, NHRIs can be instrumental in assisting victims to access the process for preparing communications to be submitted to the Committee.

### 5.2.2 NHRI Constraints

For many international partners and donors, development projects are often grounded in economic policy decisions, without the benefit of a human rights-based approach. Despite growing acknowledgement of the importance of a human rights-based approach to development, there are obstacles because development is still often conceived, planned and executed in largely economic terms.

NHRIs themselves are increasingly called upon to get involved in development-related issues. Two related factors impose constraints on their ability to do so. First, the immediacy of core protection issues require urgent actions in areas like torture and arbitrary detention, can push development-related issues to the margins of NHRI work. Second, the realisation of certain rights central to development, such as ESC rights, cannot be instantly achieved, but requires progressive and long-term effort. Immediate and urgent demands on a NHRI may make it difficult for it to make the continuous and long-term effort necessary to achieve success.

This gap between rhetoric and fact, and the time-lines in seeing results, present NHRIs with real challenges. They must find ways to ‘get at’ development issues and human rights-based approach to development, in spite of the focus often given to economic issues. They must have the vision and long-term organisational focus to wait for results, even as most critics will be calling for immediate change.

Many NHRIs also face jurisdictional issues, as their mandates focus mainly on civil and political rights, or on limited aspects of equality rights.

Finally, these rights require positive actions by the state and these decisions – which are ultimately about allocating resources to initiatives like housing, education and health care – are viewed in terms that are seen as governance and policy decisions. Their justiciability is frequently called into question, notwithstanding current initiatives worldwide to the contrary. UNCTs should be aware of these limitations, and can provide examples of how to use the legal system to support NHRIs in the areas of human development and democratic governance.

Despite these constraints, NHRI engagement with national development priorities has the potential to bring HRBA to development issues as they relate to issues addressed in this chapter, such as justiciability of ESC rights, the achievement of MDGs, poverty reduction strategies and budget analysis and monitoring, as well as public administration initiatives like decentralisation.

#### > **Example:** Country office perspective on NHRIs and human development

In Nigeria, progress towards MDGs has been slow and the formulation of poverty reduction strategies has not been inclusive and participatory. Effective interventions by the NHRI might have been helpful. However, in the view of the country office, the Nigerian Human Rights Commission’s overwhelming focus on its traditional roles of human rights monitoring and documentation, as well as its severe capacity gaps, have limited its ability to apply a HRBA to development.

Source: Mr. Samuel Egwu, Team leader, Governance, UNDP Nigeria

UNCTs may have an especially important role in helping NHRIs manage constraints and identify priority areas of action generally through the strategic planning process, as discussed in Module 2 of the Toolkit. As regards human rights priorities among development goals, however, the most evident development gaps in terms of MDGs or other goals will provide good starting points.

### 5.2.3 The Millennium Development Goals and NHRIs

The eight UN MDGs range from halving extreme poverty, to halting the spread of HIV/AIDS and to providing universal primary education by the target date of 2015.

**Goal 1** Eradicate extreme poverty and hunger

**Goal 2** Achieve universal primary education

**Goal 3** Promote gender equality and empower women

**Goal 4** Reduce child mortality

**Goal 5** Improve maternal health

**Goal 6** Combat HIV/AIDS, malaria, and other diseases

**Goal 7** Ensure environmental sustainability

**Goal 8** Develop a global partnership for development

The MDGs form a blueprint agreed to by the world's countries and leading development institutions.<sup>10</sup> The goals are the direct result of commitments to:

- human rights generally;
- the protection of the vulnerable;
- compliance with international instruments; and
- efforts to improve the lives of the most vulnerable.

The goals correspond to many rights set forth in the UDHR. For example, goals number 1, 3, 4 and 8 related directly to Article 25 of the UDHR (“Everyone has the right to a standard of living adequate for the health and the well-being of himself and his family, including food, clothing, housing, medical care and necessary social services. Motherhood and childhood are entitled to special care and assistance”) and goal number 2 relates directly to Article 26 (“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.”) MDGs can further be aligned to the work of NHRIs, with clear linkages between MDGs and ESC rights: The realisation of the UN MDGs by the target date of 2015 is a material test of whether ESC rights have been successfully implemented.

All eight MDGs are important to human rights generally. For women and children, who are so much the focus of development work, MDG Goals 3 and 5 are of particular relevance. NHRIs can incorporate the MDGs into their existing work on gender equality.

MDGs are linked to inequality and discrimination at a general level and are also of particular relevance to issues facing women, in part because women are often disproportionately affected by the areas targeted by the Goals, including extreme poverty and hunger.

The MDGs offer a key opportunity to improve human rights around the world. To be sustainable, the State should establish long-term strategies aimed at achieving the Goals as well as ensuring that human rights obligations are respected. The 2005 Millennium Project Report recommended: “in every country in which national human rights institutions exist, it should be given an explicit mandate to review and report on the realisation of the MDG targets at regular intervals”.<sup>11</sup> UNCT staff are uniquely well-positioned to support NHRIs who wish to strengthen their work” in these areas and to encourage those that have not yet moved in that direction.

The MDGs and Human Development Reports set benchmarks and targets for human development. The MDGs in particular create links between certain ESC rights, the rights of women and children, and a host of other rights that are directly and indirectly linked to development and democratic governance. Some of the goals tackle the disadvantages that vulnerable persons experience in both social structures and institutions: more specific targets have been developed as priorities that can help NHRIs in choosing their own priority areas (SEE CHAPTER 8 FOR DETAILED DISCUSSIONS ON STRATEGIC PLANNING). NHRIs can use these targets to identify objectives and track progress.

## MILLENNIUM DEVELOPMENT GOALS AND HUMAN RIGHTS STANDARDS

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
<b>GOAL 1: Eradicate extreme poverty and hunger</b>	Universal Declaration of Human Rights, article 25(1); ICESCR article 11
<b>GOAL 2: Achieve universal primary education</b>	Universal Declaration of Human Rights article 26(1); ICESCR articles 13 and 14; CRC article 28(1)(a); CEDAW article 10; CERD article 5(e)(v)
<b>GOAL 3: Promote gender equality and empower women</b>	Universal Declaration of Human Rights article 2; CEDAW; ICESCR article 3; CRC article 2

<sup>10</sup> United Nations, “Millennium Development Goals”, online: United Nations <<http://www.un.org/millenniumgoals/>>.

<sup>11</sup> UN Millennium Project, “Investing in Development: A Practical Plan to Achieve the Millennium Development Goals”, New York: 2005, at 120.

◀ continued

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
<b>GOAL 4: Reduce child mortality</b>	Universal Declaration of Human Rights article 25; CRC articles 6, 24(2)(a); ICESCR article 12(2)(a)
<b>GOAL 5: Improve maternal health</b>	Universal Declaration of Human Rights article 25; CEDAW articles 10(h), 11(f), 12, 14(b); ICESCR article 12; CRC article 24(2)(d); CERD article 5(e)(iv)
<b>GOAL 6: Combat HIV/AIDS, malaria and other diseases</b>	Universal Declaration of Human Rights article 25; ICESCR article 12, CRC article 24; CEDAW article 12; CERD article 5(e)(iv)
<b>GOAL 7: Ensure environmental sustainability</b>	Universal Declaration of Human Rights article 25(1); ICESCR articles 11(1) and 12; CEDAW article 14(2)(h); CRC article 24; CERD article 5(e)(iii)
<b>GOAL 8: Develop a global partnership for development</b>	Charter articles 1(3), 55 and 56; Universal Declaration of Human Rights articles 22 and 28; ICESCR articles 2(1), 11(1), 15(4), 22 and 23; CRC articles 4, 24(4) and 28(3)

Source: OHCHR. Millennium Development Goals and human rights standards.

At a practical level, links between each goal, living conditions and related human rights standards are illustrated below:

- **Extreme poverty:** ESC rights are engaged when access to housing is denied, due to expropriations, relocations, and when there is insufficient food to maintain health; ESC rights are also engaged when minimum wage laws are non-existent or inadequate.
- Inability to access basic public **health services**, such as sanitation, due to an exhaustion of available services or because services are not available locally, will go directly to goals 4, 5 and 6.
- **Education**, especially for female children, when they
  - are denied or cannot access primary school education
  - are charged for tuition fees and uniforms for public schools, which might result in them receiving less education than boys who are given preference
  - are members of a single women-headed households and therefore less likely to go to school than girls in male-headed households
  - cannot travel safely to school.
- **Employment**, when discriminatory laws, policies and practices operate to create barriers to:
  - seeking work
  - work on equal terms, especially for persons with disabilities, women, and minority groups, including equal pay for work of equal value.

- decent work conditions
- special measures for women requiring maternity benefits, and being able to access working arrangements to facilitate nursing and caring for young children
- forming trade unions

Each area is linked to specific human rights, which in turn engage the responsibility of the State to respect, protect and fulfil those rights. The MDGs thus offer a “road map” to national human rights institutions that are trying to determine priorities in their respective countries in part by providing progress indicators to track and monitor specific goals. Although the MDGs are a blueprint, they require national ownership and adaptation to a particular country’s context. The capacity to identify progress depends on access to good data across most of the rights areas addressed by ESC rights. Particularly, this requires access to accurate and timely disaggregated data where specific minorities, women or other groups are linked to an NHRI’s programming.

MDGs and other internationally-agreed goals<sup>12</sup> can be used in planning: specific targets can serve as starting points for programming choices. This is especially true for those objectives that are linked to minimum core obligations. For example, the ESC right of an adequate standard of living includes a minimum core obligation of access to adequate food. The MDGs have regional and country targets that can be the basis of even more



specialized planning. NHRIs can use these targets in and work to support progressive implementation.<sup>13</sup> However, MDG advocacy should always be accompanied by a strong articulation of the corresponding international human rights norms.

Some initiatives of the OHCHR bear mention in this context:

- A Special Advisor on MDGs and Human Rights has prepared a paper on the relevance of human rights to the MDGs.
- The human rights aspects of the MDGs have been underlined in both the report of the *Millennium Project, Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, and in the *Secretary-General's report to the General Assembly: In larger freedom: towards development, security and human rights for all*. (Please see the references section of this Chapter)

One of the key recommendations of the Millennium Project is to strengthen MDG-based poverty reduction strategies that provide a framework for promoting human rights. It also aims to increase awareness of the links between human rights and the MDGs and to strengthen the capacity of the UN system at the country level to incorporate human rights concerns into the development issues which lie at the heart of the MDGs.

### 5.2.4 Millennium Development Goals Indicators

To help track progress on the MDGs, a monitoring framework has been developed, and statistical experts have selected indicators to assess progress over the period from 1990 to 2015. An annual report to the United Nations General Assembly provides progress, based on data on the selected indicators, aggregated at global and regional levels.

In 2007, the MDG monitoring framework was revised to include four new targets.

United Nations Statistics Division coordinates the preparation of data analysis to assess progress made towards the MDGs and maintains the database containing

the data series related to the selected indicators, as well as other background series intended to supplement the official indicators. This is done in close collaboration with agencies and organizations within and outside the United Nations system.

Since the periodic assessment of progress towards the MDGs started, the international statistical community has been concerned about the lack of adequate data to compile the required indicators in many parts of the developing world. At the same time, the monitoring requirements themselves have helped focus the attention on this shortcoming and raised awareness of the urgency to launch initiatives for statistical capacity building.

Source: About the Millennium Development Goals Indicators UN

It should be noted that the indicators project is a work in progress, and much remains to be done until all countries are able to produce a continuous flow of social and economic statistics needed to inform their development policies and track progress. Nonetheless, these indicators are an important baseline of information for NHRIs and for UNCTs working with them.

## 5.3 Development, NHRIs and Culture<sup>14</sup>

**“Culture is one of the two or three most complex words in the English language. This is so partly because of its intricate historical development...but mainly because it has now come to be used for important concepts in several distinct intellectual disciplines and in several distinct and incompatible systems of thought.”<sup>15</sup>**

International instruments recognise culture as a human right and as a means through which people express their humanity and add meaning to their lives. Culture is also a powerful tool in promoting development as local cultures possess rich traditions, practices, and values that are protected by international instruments.

<sup>12</sup> “Internationally-agreed goals” (IAGS) relate not only to the MDGs but to other UN frameworks and the international human rights norms and standards.

<sup>13</sup> Source: *The Millennium Development Goals Report 2008*. [http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/mdg%20reports/MDG\\_Report\\_2008\\_ENGLISH.pdf](http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/mdg%20reports/MDG_Report_2008_ENGLISH.pdf) Accessed February 1 2009.

<sup>14</sup> This section is adapted from *Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights*. Equitas (2008).

<sup>15</sup> D. Aytton-Shenker, *The Challenge of Human Rights and Cultural Diversity*, online: (1995), UN Background Note <<http://www.un.org/rights/dpi1627e.htm>>.

There is great potential for NHRIs to advance cultural rights. Sustainable societal transformation does not emerge solely from models or values that are imported from outside of a given regional context. Local cultures also offer insights into potential strategies for advancing human rights. NHRIs can play a key role in fostering connections between these international and local approaches to development.

However, culture, traditions and religions can also become the source of discrimination and of harmful practices. For example, cultural practices that discriminate against women and girl children are widespread and can be highly divisive when religious observance, ethnic identity and established tradition confront women's equality claims. Similarly, Lesbian, gay, bisexual, or transgender (LGBT) persons often experience significant social stigma, persecution and sometimes criminal victimisation in the name of religion, morality or tradition.

Inequality in the enjoyment of human rights by certain vulnerable groups, notably women, indigenous peoples and many others is often deeply embedded in tradition, history and culture, including religious attitudes. While culture is obviously central to economic, social and cultural rights, it also poses unique and particular difficulties for a range of rights: equality between women and men, for example, or for the way in which particular minorities are treated, or how a receiving State treats an influx of migrants from a neighbouring country.

Peer pressure, social conformity and pressure from elders are powerful elements of culture, and may affect attempts to eliminate harmful practices. Using the example of female genital mutilation, peer pressure should not be underestimated in programs and awareness campaigns, as young girls feel pressure to undergo the rite to prevent social exclusion. The practical implications for NHRIs are that they should focus on first ascertaining the cultural rationale, and working with social and cultural leaders and their communities to help in changing these practices.

The following is a list of important international documents related to cultural rights.

#### ■ Declaration on Cultural Diversity (2001)

The UNESCO Universal Declaration on Cultural Diversity (2001) acknowledges cultural heritage as a basic part of how human beings identify and express themselves. Specific examples are: oral expressions and traditions, including language, performing arts, social practices, rituals and festive events, knowledge and

practices concerning nature and the universe; traditional craftsmanship and music; cultural spaces: places where popular and traditional cultural activities occur.

#### ■ Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)

Referred to as the "UNESCO Convention", cultural diversity is expressed here not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

The UNESCO Convention also acknowledges and addresses the tension that sometimes exists between culture and human rights:

*Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed. No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.*

Cultural rights or religious norms cannot be invoked to deny or violate human rights and fundamental freedoms. As such, "cultural relativism" is not an excuse to infringe upon human rights. It is for this reason that CEDAW obliges States to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The Committee on Conventions and Recommendations is a key instrumental body in monitoring the implementation of the UNESCO Conventions. Efforts are currently being carried out to explore greater synergies between this mechanism and the UN Human Rights System. The Committee on ESCR issued a General Comment on the right to take part in cultural life (art. 15 ICESCR) in December 2009.

#### > General Comment No. 28

UN Human Rights Committee's General Comment No. 28 provides a critical link between the International Covenant on Civil and Political Rights (ICCPR), cultural

rights, and women's issues, specifically addressing the role of NHRIs in matters of tradition, history and culture:

*It is in this framework of interdependence and careful weighing of relative rights and obligations that NHRIs should address cultural issues in the context of women's equality rights and ESC rights in particular. [Women's] inequality ... is deeply embedded in tradition, history and culture, including religious attitudes... The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right[s]. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardize, or may jeopardize, compliance with Article 3 [of the ICCPR], and indicate what measures they have taken or intend to take to overcome such factors.*

(CCPR Human Rights Committee, General Comment No. 28: Equality of rights between men and women (Article 3) (29/03/2000. CCPR/C/21/Rev.1/Add.10, General Comment No. 28).

#### ■ **Fribourg Declaration (2007)**

Women's active participation in the interpretation of culture was affirmed by an international group of experts in the Fribourg Declaration on Cultural Rights. Women should have an active role in interpreting and

communicating their own traditions and cultural perspectives, and to ensure that their voices are given equal weight in understanding history, religion and tradition. Culture and equality can be balanced, rather than placed in opposition. In an equality framework, women are part of the process of defining the delivery of social rights in a culturally sensitive way.

NHRIs have an important role in addressing these changes and social attitudes through public education and promotion programs, as well as through their protection mandate. UNCTs can, in turn, support NHRIs by providing NHRIs with basic information about the above documents and their implications for human rights.

Despite their interrelatedness, the links between equality and culture – one of the most difficult issues, especially where women's issues are concerned – received little attention, at least until the early nineties. This has been changing, however, as NHRIs have sought to reframe the issues so as to draw on context and local realities to find innovative solutions to traditional problems, and developed new theoretical perspectives on the topic. NHRIs are playing an important role in navigating these difficult waters. The following case study demonstrates how the Kenya National Commission on Human Rights used a strategy that treated culture as an opportunity for reform rather than an obstacle to progress.

#### **CASE STUDY: KENYA NATIONAL COMMISSION ON HUMAN RIGHTS<sup>16</sup>**

Conventional wisdom views cultural practices as a key obstacle to the realization of human rights. But recent work of the Kenya National Commission on Human Rights (KNCHR) demonstrates that in fact many traditional cultures had systems that ensured the protection and care of the most vulnerable members of society such as widows and orphans. These structures and systems have over the years been ignored or manipulated in ways that perpetuate human rights violations.

The KNCHR believed there to be a need to revive and encourage cultural structures and practices that can be used to protect the vulnerable in society, especially women and children. There is need to breathe life into known but little used alternative methods and traditional cultural safety nets, which have since time immemorial been used to redress disputes and prevent human rights violations.

Using cultural frameworks to address human rights and development is imperative: in spite of the protection offered by national laws and formal institutions, many vulnerable members of society are unable to seek redress from the mainstream legal justice system in their claim for their rights. The formal legal system has by and large worked to the detriment of the vulnerable in society in regard to the protection and enforcement of their human rights. In the case of land for example, which is so critical to securing livelihoods, women's share of land ownership is a meagre 5%.

<sup>16</sup> This section is adapted from Equality for Women: A Handbook for NHRIs on Economic, Social and Cultural Rights. Equitas (2008).

◀ continued

**Why deal with traditional structures?**

Cultural institutions form the first line of governance structure in the lives of many rural communities in Kenya. The majority of families in the country conduct their transactions on issues such as ownership and inheritance of property in accordance with customs. To effectively intervene in matters relating to human rights, one must therefore address issues relating to customs and traditions.

Human rights defenders need to dialogue with elders; they need to identify and work with cultural structures that are supportive of human rights and development. Since cultural institutions are a real and present structure in Kenyan society it is important to acknowledge this and to work with them in addition to formal structures.

This is not to downplay the role of formal structures. Rather, there is a need to recognise that, whereas the legal and formal structures are important, they are not accessible to the majority. Therefore, insisting on *only* working with them amounts to the marginalisation of those unable to access them. We believe that only a multidimensional approach in addressing human rights and development will help to achieve the realisation of ESC rights for the most vulnerable.

**The Project Experience in Luo Nyanza**

The KNCHR in partnership with Health Policy Initiative (Futures Group) and the Luo Council of Elders (Luo is one among several Kenyan communities) has been involved in “groundbreaking” work under its women’s property and inheritance rights project that challenges the status quo regarding culture and human rights.

The project aims to apply cultural norms to strengthen the protection of the property inheritance rights of widows and orphans in the context of the HIV/AIDS pandemic.

Those knowledgeable in the culture and traditions of the Luo are aware that the current practices of disinheriting widows and orphans of their land and property are not part of the Luo culture. Traditionally, land belonged to the wife and the children; men had no right to impose their will on land use.

This is a case where traditional culture provides protection to vulnerable groups and is therefore an ally for development. It also promotes debate about negative practices within cultural institutions that may be harmful to human rights and development.

**Achievements:**

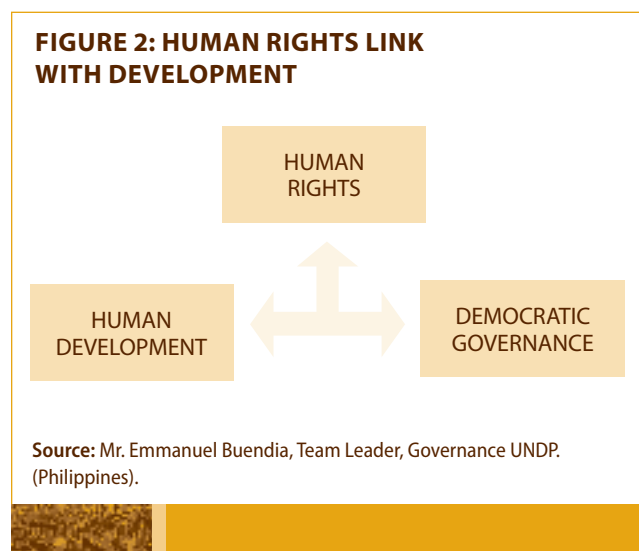
- A documentation centre was set up in the town of Kisumu for all of the Luo in the province of Nyanza
- A documentation officer and community liaison officer were hired
- A documentation tool for identifying cases for relocation was developed and documentation began in November 2006
- By mid-March 2007, a total of 76 cases had been documented and 21 others were referred to other local organizations for legal assistance. The tool identified different needs of the widows including materials for putting up houses; transport to go back home and carry household materials; court fees to pursue documents of administration of estates, marriage certificates, title deeds, and taking orphans to school, among others
- Guidelines on the relocation fund were developed and ready by mid-March 2007. The guidelines included the following elements: the project background, a description of the fund and who could benefit from it, the types of assistance that the fund could support, and the levels and nature of support, to name a few
- The development of a booklet on Luo culture and the rights of women to own and inherit
- Property was distributed

## 5.4 NHRIs, democratic governance and national development priorities

The elements of what the development community calls “democratic governance” range from poverty alleviation to capacity development in the justice sector, to improving basic infrastructure and human services, to enhancing local decision-making. Democratic governance is an umbrella concept that frames many project documents and international development assistance programs.

Democratic governance provides the ‘enabling environment’ for human rights. At the Millennium Summit of 2000, the world’s leaders resolved to “spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognised human rights and fundamental freedoms, including the right to development.” A consensus was reached which recognised that improving the quality of democratic institutions and processes, and managing the changing roles of the state and civil society in an increasingly globalised world must underpin national efforts to reduce poverty, sustain the environment, and promote human development.

Source: UNDP. *About the Democratic Governance Process*



As part of their own **democratic governance** projects, governments need to ensure a “voice” for these groups when public policy is being developed. NHRIs must do the same in their own work.

From a UN perspective, development programmes usually have a democratic governance component, which

generally includes a range of justice projects, along with projects to increase the capacity and effectiveness of the State (including NHRIs) and local leadership, as well as civil society. Meeting country-specific or general targets in relation to MDGs or other internationally-agreed goals is part of this process. It is important to strike a fine balance - in supporting NHRIs, UNCTs must not impose their own priorities onto NHRIs, yet should remind NHRIs of the broader normative framework within which they work (these include ratified international instruments, MDGs, etc.).

One way of achieving this balance is through the strategic planning process. This has historically been an area where the UN (and UNDP and OHCHR in particular) have a good deal of working experience in supporting NHRIs.

### 5.4.1 Creating an enabling environment for UNCT: Human rights, development and democratic governance<sup>17</sup>

From the UNCT perspective, thematic entry points help to create an enabling environment for linking human rights with human development and democratic governance. As can be seen in the example below, UNCTs can work together with NHRIs to help institutions integrate human rights perspectives into areas that reinforce development and democratic governance.

- **Human Rights Mainstreaming.** Ensure that the UNCTs work with leadership of NHRIs to link human rights to development and governance concerns in areas like the ones above.
  - UNDP support to NHRI and Central Planning body to conduct a dedicated rights-based training for staff to ensure that the principles of the HRBA are integrated, reflected and defined in the formulation of the country’s national development policies, plans and programmes.
  - Integration of human rights in the CCA/UNDAF and CPAPs.
- **Including NHRIs as key implementing Partners** of UNDP to pursue Democratic Governance objectives
  - Ensuring that NHRIs have the capacity to work with civil society and the general public, and in turn to provide venues and awareness so that these groups can provide pressure for NHRIs to be responsive and relevant.

<sup>17</sup> Source: Mr. Emmanuel Buendia, Team Leader, Governance, UNDP. (Philippines)

- UNDP to work with NHRIs to conduct capacity assessment for the whole human rights infrastructure

#### ■ Planning and Programming

- UNCTs can support to national executive agencies in formulation of a National Human Rights Action Plan

#### > Example of cross cutting integration of Human Rights into Thematic Areas

UNCT engagement in the Philippines: Sample initiatives:

**Environment:** The UNCT Joint Programme on climate change and proposed integration of human rights.

**Peace & Conflict Prevention:** UNCT Joint Programme on Peace in southern part of the country to promote a culture of peace and respect for human rights.

**Migration:** ILO supported campaign for the ratification of the UN convention on the protection of the rights of migrant workers.

**Gender:** UNCT support to women's network & national commission on women, in the monitoring of CEDAW.

**Service Delivery:** UNDP & UNICEF Joint Programme with NHRI to integrate human rights in the delivery of potable water to waterless districts

**Access to Justice:** UNICEF capacity building support to NHRI to enable them to handle child rights violations

**Electoral & Political Reform:** UNDP support to NHRI to assist disenfranchised voters especially the poor and disadvantaged sectors.

**Corporate Social Responsibility:** UNDP & ILO work with business sector to promote MDGs and Human Rights under the UN Global Compact

Source: Mr. Emmanuel Buendia, Team Leader, Governance UNDP. (Philippines).

### 5.4.2 NHRIs and Poverty Reduction Strategies

While poverty has traditionally been considered primarily an economic issue (relating to income levels or financial capacity), rights issues, such as the denial of

opportunities and equality, also play a role. This section will discuss how NHRIs support the poverty reduction process, again taking a human rights-based approach.

Poverty reduction is a gradual process: many states develop a poverty reduction strategy (PRS) as a vehicle for achieving this objective. A PRS is a "national cross-sectoral development framework, designed and implemented by national governments, specifically to tackle the causes and impact of poverty in a country."<sup>18</sup>

The adoption and implementation of a Poverty Reduction Strategy Paper (PRSP) is a way for a state to demonstrate its commitment to realizing all human rights for citizens. The WHO reports that by 2005, 44 countries had completed full PRSPs and these strategies are now being re-examined and re-implemented.<sup>19</sup> Many authors agree that a successful PRSP requires a strong human rights perspective. The WHO explains the importance of a strong human rights perspective in a national PRSP:<sup>20</sup>

- Rooting a national policy in an international legal framework strengthens the centrality of the state in design, implementation and oversight of PRSPs.
- A PRSP founded on human rights principles is an effective mechanism through which a state can gradually achieve its longer-term obligations.
- Any PRSP, to be effective, legitimate and sustainable, depends upon the empowerment of the poor, and human rights are effective tools of such empowerment.
- While other approaches focus on raising average indicator levels, a human rights approach can ensure that it is the most vulnerable, including the poorest of the poor, that are targeted.
- The resource constraints facing poor countries are recognized by both PRSPs and human rights law under the principle of progressive realisation. Both frameworks recognise the importance of an enabling environment, including the dependence upon the wider international community and non-state actors.

NHRIs can contribute to giving a PRSP a human rights perspective in several ways:

- seek to be involved in the development of a PRSP.

<sup>18</sup> "Human Rights, Health and Poverty Reduction Strategies" World Health Organization, 2005, 10

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

- offer to contribute their expertise in human rights issues of the country, for example by linking poverty reductions strategies to human rights.
- encourage governments to develop a PRSP that is sufficiently broad so as to address the structures of discrimination that generate and deepen human poverty.
- help to encourage countries to formulate PRSPs in an inclusive manner, by facilitating access to relevant institutions and by adding legitimacy to the demand for meaningful participation of poor people and other vulnerable groups in the decision-making and planning processes.

Once a PRSP has been developed, an NHRI can continue to play a key role in its implementation. A particularly important factor in the success of a PRSP is monitoring, in which NHRIs may be able to play a key role. Since poverty has such a strong human rights dimension, the monitoring of a PRSP must be linked to a country's human rights framework. NHRIs can help to measure the progress of a PRSP, help identify gaps in a strategy, flag situations where implementation infringes on other human rights and can assist in developing strategies to overcome these problems.

Further, depending on its mandate, an NHRI can also play a key role in both "cautioning against retrogression and non-fulfilment of minimum core obligations in the name of policy trade-offs" and in "strengthening institutions through which policy-makers can be held accountable for their actions."<sup>21</sup> There will likely be concrete actions it can identify and take in support of initiatives identified in the PRSP. At a minimum, the NHRI should, in its strategic planning process, use the PRSP framework as a template for identifying strategic areas of intervention that may be possible and ensure that its action plans include these. For example, since it is known that female earning capacity is linked very directly to improvements in gender equality and to the reduction of poverty, an NHRI could target barriers to the employment of women as a strategic initiative. This would allow the NHRI to take a variety of measures, including educating employers, auditing human resources systems, fast-tracking and prioritising gender-related employment cases, and so on, to address and improve this issue.

### 5.4.3 Budget analysis and monitoring<sup>22</sup>

National human rights institutions should advocate for the identification and resourcing of activities that support human development from a rights-based perspective in national and sub-national budgets. NHRIs can raise awareness and advocate for the prioritisation of economic, social and cultural rights issues in the context of national budgets and public expenditure, based on the principles set out in the ICESCR, CEDAW, and the CRC, among others.

It is the State's responsibility to develop and implement national budgets, and NHRIs cannot impose budget allocations on the State. However, a NHRI can monitor progress and make recommendations so that budgets respond to Treaty Body report recommendations and move forward on MDGs. At the very least, NHRIs can ensure that there is no retrogression or roll-back on previous commitments, and no budget cuts regarding established programmes that have advanced human rights.

International human rights instruments generally make no specific reference to public expenditure or revenues, but do impose general obligations on State parties to take 'all appropriate measures' to 'the maximum of available resources'. Such provisions exist in Articles 2 and 3 of CEDAW, for example, and Article 2 of the ICESCR. Article 3 of CEDAW for instance, imposes a requirement to ensure gender equality in relation to all human rights, including in their economic dimensions. This provision should be read in light of the guidance on requirements of international human rights law regarding resource allocation that has been provided by the ICESCR. The Committee has noted:

*"[E]ven in times of severe resource constraints whether caused by a process of adjustment, economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes"*<sup>23</sup>

Because States are obliged to use "the maximum of available resources", a failure to do so will render the State in violation of its obligations. Because of the obligation on State parties to "achieve progressively the full realization of the rights recognized," States cannot wait indefinitely to take steps to assure economic, social and cultural rights.

<sup>21</sup> Jahan, *op cit.* 7.

<sup>22</sup> This section is adapted from Equitas, *Women's Equality Rights: A Handbook for National Institutions.* (2008).

<sup>23</sup> CESCR General Comment No 3, at para 12.

According to the principle of taking all appropriate measures “to the **maximum available resources**”, NHRIs can advocate for existing resources to be allocated efficiently and effectively with a view towards the achievement of development-related rights, including ESC rights, without negatively affecting other human rights. States should ensure that resources are distributed while respecting principles of equality and ensuring that the rights of women and vulnerable groups are addressed. This requires several levels of analysis of government budget allocations, depending on the objective. For example, the CEDAW Committee has, in the past, made recommendations that a State ensure that its national human rights institution itself be properly funded, as the following example illustrates:

> **Example:** Funding the Commission on Human Rights (Mexico) CEDAW <sup>24</sup>

“The Committee recommends that the State party ensure that the National Commission on Human Rights is provided with the necessary financial resources and personnel well trained in gender equality issues to effectively fulfil its function in regard to monitoring and evaluating the General Act on Equality between Women and Men.”

To ascertain whether maximum available resources have been spent on development issues of national priority using a rights-based approach, the following steps may be taken by an NHRI:

- A specific assessment of budgetary ‘envelopes’ such as health, housing, education, income assistance and employment, looking in particular at whether budgetary allocations reflect the “maximum available resources” and the extent to which they match priorities from the human rights perspective, including from a gender based perspective;

- A cross-cutting assessment of budgets, based on gender, disability or other selected grounds, to determine the impact of budgets on the affected group; and
- A relatively straightforward measure is to compare the spending in a country with regard to identifiable ESC issues with similarly situated countries. For example, in a country like Uganda, the commission has examined ESC issues to see how spending in the selected envelope compares to other countries in Eastern Africa. If the national budget allocation is lower than that average, the NHRI has a clear argument for calling for an increase.

Examples of recommendations and observations offered by UN treaty bodies are set out in the following section, and are drawn from Diane Elson’s work on this topic.<sup>25</sup> While the strategies raised by Elson are focused on gendered approaches to budgets, similar strategies can be used for taking a rights-based approach to development issues and vulnerable groups more generally.

#### Recommendations and Observations Regarding Budgets

CEDAW Committee: General Recommendation No. 24 (20<sup>th</sup> session, 1999)

30. “States parties should allocate adequate budgetary, human and administrative resources to ensure that women’s health receives a share of the overall health budget comparable with that for men’s health, taking into account their different health needs.”

As well, it should be noted that NHRIs can rely on general comments developed by treaty bodies when interpreting specific provisions related to ESC rights and when advocating for specific budgetary allocations to release that right.

<sup>24</sup> CEDAW Committee. 36<sup>th</sup> session August 2006. Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico

<sup>25</sup> D. Elson, Report Highlights “Monitoring Government Budgets for Compliance with CEDAW” CSW side panel organized by UNIFEM entitled, Government Accountability to Gender Equality through Budgets (2005).



## CASE STUDY: GENDER ANALYSIS OF A BUDGET

Using the framework of a budget being analyzed along gender lines, the key dimensions of a budget analysis project are:

### 1. Review Public Expenditure;

NHRIs can monitor the extent to which States consider:

- Priority given to gender equality, or other thematic issues, and the advancement public expenditure between programmes;
- Presence of discrimination against vulnerable groups, for example women and girls in expenditures;
- Adequacy of public expenditure for realisation of gender equality in the impact of public expenditure; and
- Gender equality and public expenditure reform.

### 2. Public revenues, especially taxation;

- For example, CEDAW implies that women should be equally free to choose how to live their lives; and the tax system should not favour one set of choices above another; and
- The income tax system should be neutral in the burden of taxation on different types of families, taking into account the value of unpaid as well as paid work, and irrespective of the marital status and sex of the partners.

### 3. Macroeconomics of the budget (secondary impacts on inflation, jobs and economic growth)

- Macroeconomic policy should support the right to paid work on equal terms, for example between women and men (CEDAW Article 11); and
- Vulnerable groups should not suffer disproportionately if, as a result of a budget deficit, public expenditures are cut (for example, see CEDAW Article 2);

### 4. Budget decision-making processes:

Some of the key areas in the budget making process should reflect the participation of vulnerable groups in the process and this, in turn, reflects the need to ensure political and local leadership, and the importance of information about how current budget decisions are made and how they affect different sectors of the population. Taking women's equality as an example, this means:

- increasing the presence of women;
- increasing the capacity of women;
- reforming budget decision making processes to make them more transparent and participatory;
- special measures to increase women's presence in:
  - national parliaments, and in parliamentary committees that scrutinize budgets;
  - local council, and in council committees responsible for budgets; and
  - participatory planning and budget processes.

Finally, citizens have:

- a right to information, including sex-disaggregated information; and
- a right to demand a formal investigation or seek legal redress for misappropriation of funds and poor delivery of services.<sup>26</sup>

<sup>26</sup> D. Elson, Report Highlights "Monitoring Government Budgets for Compliance with CEDAW" CSW side panel organized by UNIFEM entitled, Government Accountability to Gender Equality through Budgets (2005). <[http://iwwrap-ap.org/resources/pdf/MonitoringGovernmentBudgetsComplianceCEDAW\\_summary\\_eng.pdf](http://iwwrap-ap.org/resources/pdf/MonitoringGovernmentBudgetsComplianceCEDAW_summary_eng.pdf)>.

### 5.4.3.1 Decentralisation initiatives

In a number of countries, UNDP works with governments to decentralise decision-making and to create or enhance local levels of decision-making. These initiatives frequently involve legislative or even constitutional changes to permit the devolution of legislative responsibilities from the central authority to provincial, municipal or village regions. There are significant implications for service delivery as well as local decision-making.

In many countries, UNDP has provided significant support towards decentralisation initiatives and UNCTs can support NHRIs to be informed of and pay close attention to these developments, in order to take advantage of these opportunities:

- NHRIs can take advantage of the timing of the establishment of new councils or other entities to introduce a public service training component for local decision-makers on human rights and human rights-based development;
- NHRIs can invite local decision-makers to participate in local public awareness and training events;
- For NHRIs that do not have a regional presence, local government offices can provide a good meeting place for public education sessions targeted at the larger community (bearing in mind that such offices are inappropriate for interviewing witnesses or parties to human rights complaints); and
- NHRIs can work with local service delivery providers to make sure that local spending priorities are directed towards vulnerable groups and supportive of equality and especially women's equality.

#### > **Example:** Decentralization in Zambia

Work in the area of decentralization could assist with training of local government officials in HRBA. In Zambia, UNDP is trying to work with the Ministry of Local Government and Housing and the Decentralisation Secretariat. The objective is to promote the institutionalization of training for local government, which involves the provision of targeted courses in national training institutions to equip local government officials with the required skills base for their positions. This is to avoid "one off" workshop style training and frequent staff absences due to attendance and to maintain knowledge and skills within the system. This will allow for capacity-building of national institutions.

**Source:** Example provided by B. Fee, Programme Analyst, Governance, UNDP Zambia

Because the UN often closely works with governments to move forward local decision-making initiatives, UNCTs should also ensure that NHRIs are informed of these developments and the implications for NHRI work. NHRIs should be aware that failure to respect or implement centrally-established human rights policy in regions is often a problem, and may become more so as officials move away from and out of the scrutiny of central oversight.

## CONCLUSION

Human development and democratic governance are closely linked to human rights contained in international legal standards. Taking a human rights-based approach means not only that planning and policy-making should be informed by human rights at the "front end" of the governance process (for example, budget making, program development and decentralisation initiatives), but also that rights should be enforceable if violated – human rights, whatever their source, should be linked to remedies, and in many jurisdictions, such rights *are* enforceable. Across all these initiatives, MDGs and other indicators linked to human well being form a road map for promoting ESC rights.

NHRIs should insist that the connections be made to human rights in all major development and democratic governance projects. A simple template can be used to show the horizontal connections between State responsibility, the NHRI potential role, and the possible strategic venues for UNCT intervention. Because of the UN's close connections to such projects in developing countries, UNCTs are uniquely positioned to provide the necessary tools should a NHRI choose to move this direction.

## KEY MESSAGES

- Human development and democratic governance projects should incorporate a HRBA at the front-end of those projects (planning and budget allocations).
- Effective NHRI engagement can promote and implement a HRBA to development issues, such as: the justiciability of ESC rights, the achievement of MDGs, poverty reduction strategies, budgetary analysis and monitoring, along with public administration reform such as decentralisation.
- NHRIs can be engaged through: advocacy and awareness-raising, training and capacity-building, partnership-building, practice development and knowledge networking.
- Investigating and monitoring existing laws, administrative acts, and draft bills to ensure accordance with ICESCR requirements should be fundamental to NHRI activities. Additionally, NHRIs should research the status of ESC rights and promote educational resources that raise awareness with respect to those rights within the general public and the private and public sectors.
- MDGs are helpful targets that can be used by NHRIs as starting points for programming choices, especially those linked to 'minimum core obligations' in ESC rights.
- NHRIs should rely on the support of UNCTs particularly in relation to managing constraints that NHRIs face in the strategic planning processes. For instance, NHRIs should take advantage of the qualifications of UNCT staff to strengthen their ability to review and report on the realisation of MDGs in every country.
- NHRIs need not change their structures fundamentally, since NHRIs can incorporate MDGs into their existing work on gender equality, for example, due to already-present connections between the two.
- NHRIs should focus on important international documents on cultural rights to work with local social and cultural leaders to help eradicate harmful and marginalising practices. UNCTs can be a useful resource by providing guidance to particular documents.
- Strategic planning can help to strike a balance between the UNCTs' role of reminding NHRIs of the normative framework in which they operate, and the imposition of UNCTs' priorities, which have been identified and agreed to with national partners in accordance with the principle of national ownership.
- NHRIs can be involved in PRSPs to provide a human rights perspective, by becoming involved with PRSP development, implementation, and intervention where necessary.
- NHRIs should also advocate for a rights-based approach to national budgets according to the States' obligations to take 'all appropriate measures' to 'the maximum of available resources'. This will allow for the possibility of reviewing the budgetary allocations toward human rights initiatives that will support development.
- Public administration reform, such as decentralization can provide important opportunities for NHRIs to become involved in awareness-raising, training of local decision-makers on HRBA to development, and collaborative work with local institutions to ensure funds are directed towards the most vulnerable groups.

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## OVERVIEW: MODULE II

Module II provides a more detailed analysis of NHRIs roles and responsibilities, but starting with the integration of NHRI programming into the UN Country Team planning cycle.

The Module then offers three chapters on what UNCT staff need to consider in the pre-establishment, establishment and consolidations phases of organisational development. These three Chapters are focused on capacity development and assessment as lenses through which the UNCT work can be carried out and assessed.

The final Chapter looks in detail at the accreditation process for UNCTs.

### Chapter 6: Situating NHRI Support in the UN Planning and Programming Process

**Objective:** Provide strategies to UNCTs for integrating NHRI support into the UN planning cycle for country programming

This chapter describes how UNCTs can integrate their work in establishing and strengthening NHRIs into each phase of the UN planning cycle, having regard to the stage of development and maturity of the NHRI, whether there is a NHRI in place, and whether it has ICC accreditation status.

Since the country programming cycle forms the template for development assistance in the country over the planning period-usually five years – it is important the UNCTs consider the need to establish and strengthen NHRIs throughout the process. It is equally important that UNCTs involve NHRIs fully in each step.

### Chapter 7: The Pre-Establishment Phase

**Objective:** Identify key challenges and opportunities for UNCT staff who are called upon to support NHRIs during the pre-establishment phase and provide specific guidance, guided by the international human rights framework and concrete case studies. Ensure that the capacity of UNCT staff is supported in the early phases of pre-establishment.

The pre-establishment phase is the first of three phases dealing directly with the establishment of NHRIs in this Toolkit. It extends from assessing the country situation, to supporting the State and relevant stakeholders to create a national consensus, launching a national dialogue, and drafting an enabling law.

Paris Principles-compliant NHRIs are a UN priority. UNCTs should therefore be actively assessing opportunities, while noting the risks, and working towards establishing NHRIs that meet the principles as an international standard.

### Chapter 8: Establishment Phase

**Objective:** Identify key challenges and opportunities for UNCT staff who are called upon to support NHRIs during the establishment phase, and provide specific guidance using the international human rights framework and concrete case studies

Building on the pre-establishment phase, this chapter in the establishment phase provides guidance on the phase from the enabling law to the basic elements of setting up the institution.

UNCTs can have a role in supporting projects to ensure that institutions function effectively across each area, or all of them, while dealing with common challenges during this period of growth. While the issues facing every organisation will vary, UNCTs can have a central role in supporting capacity development in each area.

- **Key Infrastructure:** premises, transportation, telecommunications, IT, etc.
- **Organisational development:** leadership, organisational structure, strategic planning, human resources and knowledge management.
- **Financial resources:** government support, donor cooperation, financial constraints and financial management.
- **Human rights capacity** in substantive areas of human rights, including the rights of vulnerable persons, core protection issues, human rights-based approaches to development, etc.
- **Functional areas of capacity:** protection, promotion, cooperation with stakeholders, support to the international human rights system, and advice to government

Tools and strategies are developed with an eye to complying with the international framework, especially the Paris Principles.

## Chapter 9: Consolidation Phase

**Objective:** Identify key challenges and opportunities for UNCT staff who are called upon to support NHRIs during consolidation phase, and provide specific guidance, guided by the international human rights framework and concrete case studies

This chapter examines the consolidation or strengthening stage of NHRI development in order to assist UNCT staff in providing assistance.

In this phase, it is assumed that the NHRI has been operating for at least two to three years and that there is enough experience and data to assess what is working and what is not.

Unlike the pre-establishment and establishment phases, there are fewer predictable activities that can be cited as common needs of NHRIs at this phase. Each institution will present unique challenges and while there may be some trends, the lack of uniformity means that evaluative activities are critical so that UNCT staff can assess how a specific NHRI is progressing.

It is through evaluative processes like capacity assessments that good information is fed into general evaluations at the institutional level and into the ICC accreditation process. These are the tools through which the UN can determine whether its work and the work of the NHRI are meeting with success across each of the areas where capacity was developed Chapter 8.

## Chapter 10: Compliance with the Paris Principles

**Objective:** Describe and explain the Paris Principles, and provide guidance on how and what support to offer to institutions that do not comply, including those that have been downgraded by the ICC.

This chapter describes the Paris Principles and their application to National Human Rights Institutions (NHRI). The Paris Principles set **minimum conditions** that a national human rights institution must meet to be considered credible by its peer institutions and by the UN.

The Paris Principles require NHRIs to **protect** and **promote** human rights. More specifically, the Paris Principles set out six criteria that NHRIs should meet to be successful:

- A broad mandate, based on universal human rights standards;
- Autonomy from government;
- Independence;
- Pluralism;
- Adequate resources;
- Adequate powers of investigation.

Each of the criteria is examined, and checklists are provided to assess compliance to them.

# chapter

# 6

## **Situating NHRI Support in the UN Planning and Programming Process**

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## OBJECTIVE:

Provide strategies to UNCTs for integrating NHRI support into the UN planning cycle for country programming

## EXECUTIVE SUMMARY

This chapter describes how UNCTs can integrate their work in establishing and strengthening NHRIs into each phase of the UN planning cycle, having regard to the stage of development and maturity of the NHRI, whether there is a NHRI in place, and whether it has ICC accreditation status.

UNCTs work within the UN planning cycle for country programming and development assistance, which generally includes a Common Country Assessment (CCA), a UN Development Assistance Framework (UNDAF), a Country Programme (CP) and a Country Programme Action Plan (CPAP). In some circumstances, initiatives set out in the CPAP will require the development of a Project Document.

Each step is linked: the CCA allows the UN to identify outputs that are strategically important in the country context. These outputs are set out in the UNDAF, which in turn form the basis for initiatives set out in the CP and CPAP. The CPAP is the basis for designing individual project documents.

The UN has developed comprehensive guidelines for the CCA and UNDAF, the 2009 “Guidelines for UN Country teams on preparing a CCA and UNDAF”) (the “Guidelines”). Since the country programming cycle forms the template for development assistance in the country over the planning period- usually five years – it is important the UNCTs consider the need to establish and strengthen NHRIs throughout the process. It is equally important that UNCTs involve NHRIs fully in each step.

## 6.1 The UNCT Comparative Advantage

The UNCT should target support to areas where it can make a difference. The UN's financial contribution is often comparatively modest in relation to other donors. Hence, UNCTs' can offer a powerful convening role that can provide opportunities for dialogue, bringing diverse actors together, and providing information on international law. UNCTs can also encourage the government, NHRIs and civil society to see human rights not only in a legal context but also in an ethical and policy context. Influencing policy discussions and enhancing government capacity are key areas where the UNCT adds value.

In some country contexts, the UNCT has been able to play a central role in promoting the reform agenda. In particular, education is a sector or theme where the UNCT has been able to play a coordinating role. In several countries, the UNCT was able to play a leading role in strengthening sector strategies through analytic work, technical assistance and close partnership with the relevant government agencies. Many governments are appreciative of the UNCT role especially in relation to sector working groups.

In conflict and post-conflict scenarios, the UNCT, as an impartial actor, also has a comparative advantage in using conflict analysis, with national governments and civil society; to address prevention concerns jointly and to ensure that programmes are designed and implemented with a view to conflict prevention.

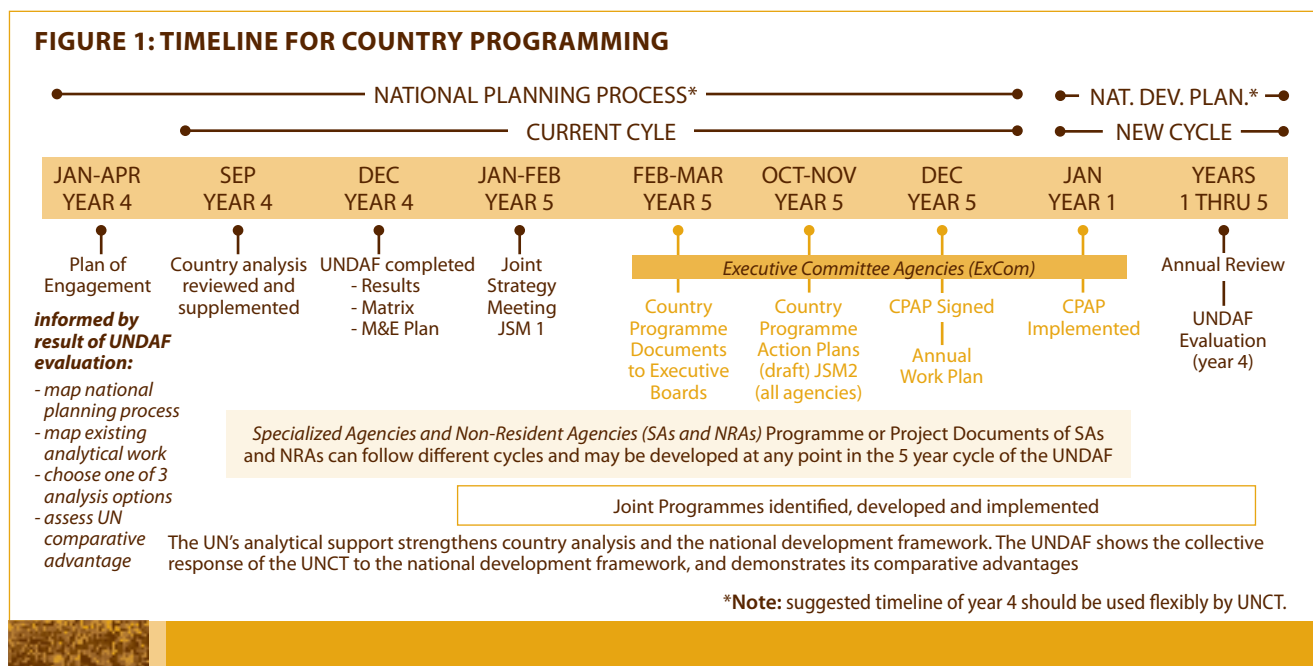
## 6.2 UNCTs and the Country Programming Cycle

The Guidelines set timelines for country programming as well as a road map for developing a UN Development Assistance Framework (UNDAF).<sup>1</sup> These two processes are presented below, in Figures 1 and 2 (page 93), respectively. The UNDAF is based on a country assessment and sets the parameters within which Country Plans (CPs) and individual project documents will operate, usually over a five-year cycle. The entire process is based on the following principles and objectives:

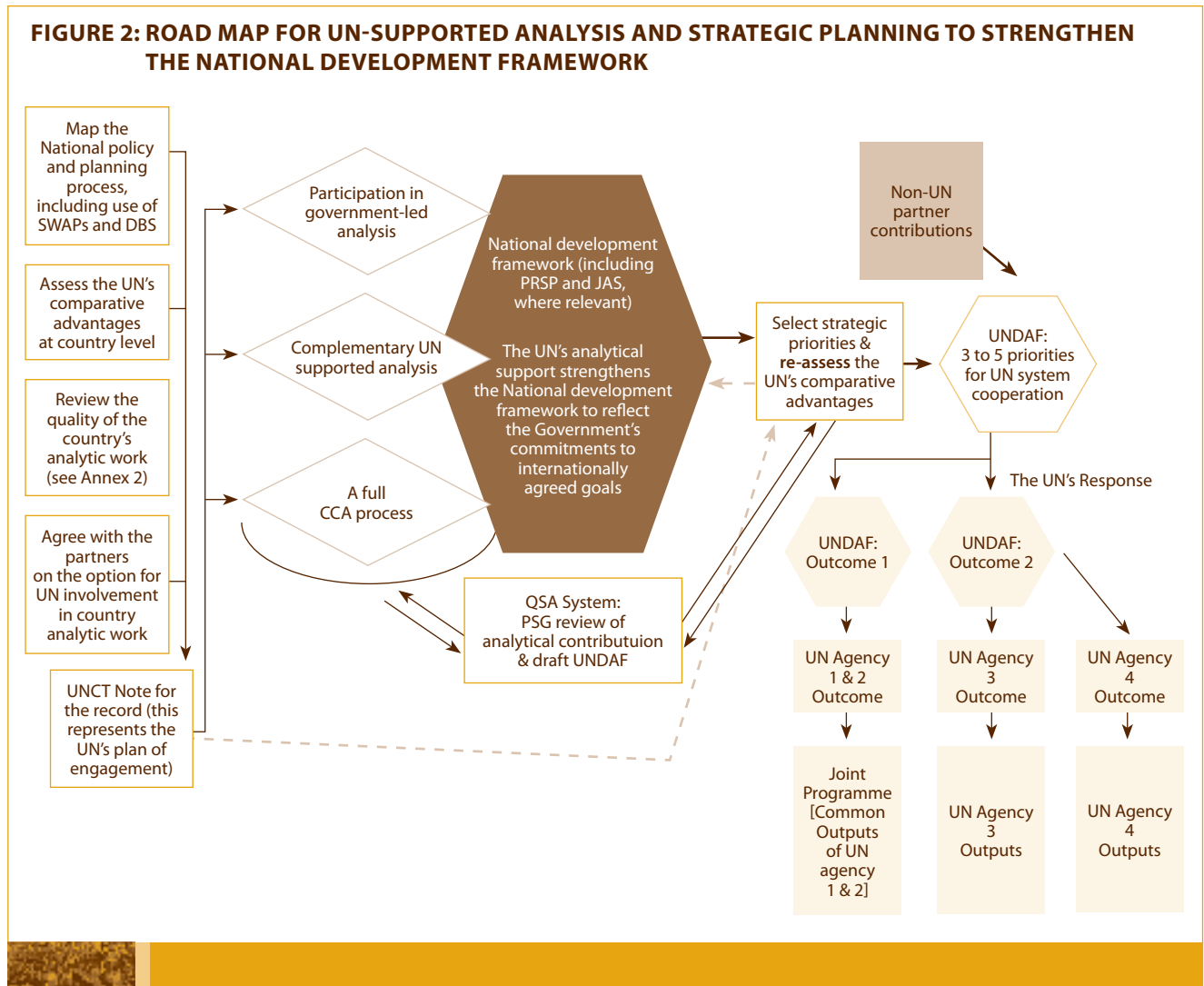
- UN agencies achieve synergies through cooperation and coordination;
- UN agencies and their engagement should reflect the 'comparative advantages' that UN agencies bring to development;
- Development should target strategic needs, preferably as identified by the country, as well as Millennium Development Goals and other internationally-agreed goals; and
- Development initiatives should be rights-based.

This chapter describes briefly each phase of the UN development assistance process and then offers advice to UNCTs as to what considerations should apply at each phase insofar as support for NHRIs is concerned.

### Annex 1: Situating NHRIs in the UN Country Planning Process



<sup>1</sup> At pages xii and xiii of the Guidelines.

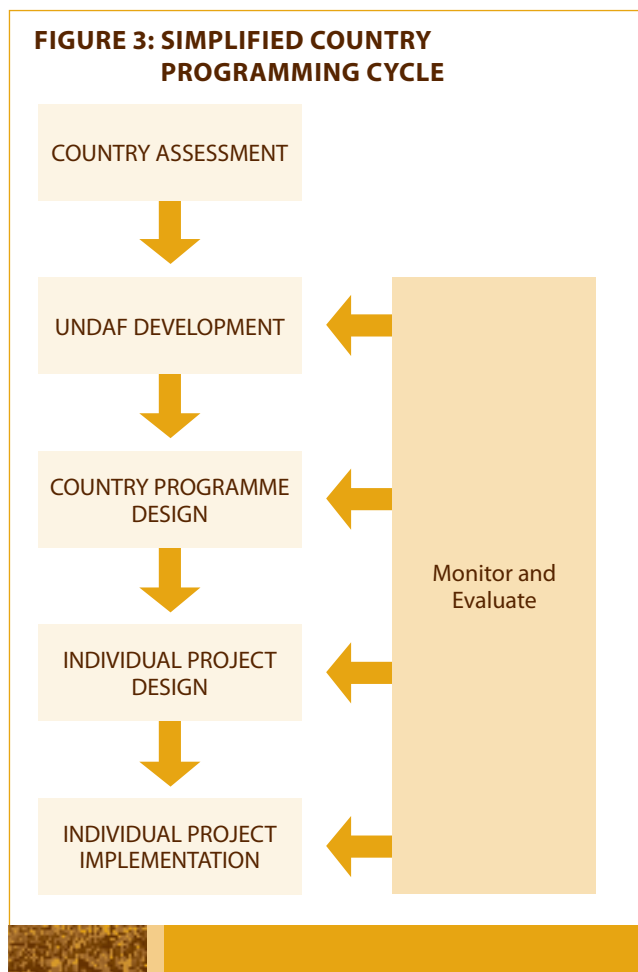


It should be noted that mapping national policy and planning processes is a UN priority and must be reflected in National Development Plans.

UNCTs should specifically consider if, when, and how best to engage with NHRIs. If there is no NHRI yet, they should consider how best to support its establishment, at each stage.

It is important, first, because establishing and strengthening NHRIs is a UN priority. Second, failure to do so could limit options for future engagement in programme delivery.

The process, in a simplified form, may be characterised as follows:



Each step informs the subsequent ones, so that activities undertaken in projects, for example, must flow from and be consistent with the country programme, which in turn must comply with the UNDAF. Everything must derive from a strategic analysis of what is possible and desirable in the country context keeping in mind the comparative advantage and value of the UN, as well as a human rights-based approach to development programming.

## 6.3 Common Country Assessment

Establishing strategic priorities may be done through a government-led process in which the UNCT participates. Alternatively, the UNCT can undertake a parallel analysis with the government, with the UNCT filling any gaps in the government process. The UNCT can undertake the full CCA analysis<sup>2</sup>, but this only occurs when the government has no process of its own, or when the process is seriously flawed. In any case, the Guidelines indicate that UNCT engagement in the country analysis is mandatory.<sup>3</sup>

According to the Guidelines, a high quality country assessment will have used a HRBA and asked the following questions:

1. **What** is happening, where and who is more affected? (*assessment*)
2. **Why** are these problems occurring? (*causal analysis*)
3. **Who** has the obligation to do something about it? (*role analysis*)
4. **What capacities** are needed for those affected, and those with a duty, to take action? (*capacity analysis*)<sup>4</sup>

For further detail on what is involved in the assessment process from the UNCT perspective, please refer to the CCA/UNDAF Guidelines (<http://www.undg.org>).

### 6.3.1 NHRI Participation in the CCA

The CCA is meant to identify national development priorities, and it is therefore developed in close consultation with national authorities and stakeholders. NHRIs are among those stakeholders, bringing unique insights, perspectives and experiences to the analysis as partners in the CCA process.

Where the NHRI has conducted its own strategic planning, the situational analysis contained in it, as well as decisions on priority areas of activity, should inform the work of UNCTs. If the process was carried out properly (see the section in Chapter 8 dealing with strategic planning), it will reflect the input of human rights stakeholders and thus provide a valuable source of information. If the NHRI has not undertaken its own planning, UNCTs should

<sup>2</sup> Page 7 of the Guidelines.

<sup>3</sup> Page 8 of the Guidelines.

<sup>4</sup> Page 18 of the Guidelines.



share their analysis with the NHRI: this will support and help to inform the NHRI's strategic thinking and decisions on programming. UNCTs should also assemble and assess NHRI reports and recommendations, since these will contain analysis and recommendations for national actions that should be captured in the CCA.

### 6.3.2 Targeting NHRIs in the CCA

Engagement with NHRIs at the project level should be a product of UN development assistance planning. UNCTs should therefore ensure that any outcomes related to the establishment and strengthening of NHRIs are captured in the CCA. This should be mandatory given the priority that NHRIs have within the UN system. The focus of the CCA will vary depending on whether there is a NHRI already in place, and if so, its current situation, development phase, and accreditation status, if any.

#### 6.3.2.1 No NHRI, or NHRI in pre-establishment phase:

The CCA in this circumstance should focus on the need for a NHRI as well as the socio-economic, political and judicial 'readiness' for its establishment. (See Chapter 7 for further guidance on this point.)

#### 6.3.2.2 NHRI being established; no accreditation status:

The CCA should examine whether there are major gaps in the pre-establishment phase that need to be addressed and rectified. It should also determine the NHRI's stage of development with regard to its structural and operational needs and where and how the UN could best offer support. (SEE DISCUSSION OF THESE NEEDS IN CHAPTER 8.) This may require an assessment of the degree to which the NHRI satisfies the requirements of the Paris Principles.

#### 6.3.2.3 "A-status" NHRI in place:

The CCA should examine whether all elements of the 'establishment phase' are completed, as well as assess whether the NHRI might benefit from enhanced programme capacity in later phases (see Chapter 9.)

#### 6.3.2.4 NHRI in place, but not accorded A-Status, or has been down-graded:

UNCTs should review the ICC accreditation decision as part of the CCA process and determine whether support is warranted in light of that decision as well as other relevant factors. If the UNCT determines that ongoing engagement is appropriate, or is needed to support work towards

A Status, there are examples of capacity development programs that have been undertaken jointly by the UNDP and OHCHR, in partnership with regional associations such as the APF. (See Chapter 8 for examples, and for a discussion of factors to consider in determine whether to support a non-compliant NHRI in Chapter 10.)

#### 6.3.2.5 In all circumstances:

The CCA analysis should identify the extent and nature of the support being provided to the NHRI and the adequacy of the support in order to determine if there are gaps. This would include an analysis of the sufficiency of State funding for the NHRI.

When the CCA turns up evidence that there are 'early warning' signs or 'changed' circumstances surrounding the NHRI, this information should be passed on to the OHCHR.

(See discussion of 'early warning' and 'changed' circumstances in Chapter 10, in particular the checklist on the UNCTs role in the accreditation process.)

## 6.4 UN Development Assistance Framework (UNDAF)

The UNDAF is a higher-level plan of action for UN development support to a given country. It is "unified" in that it takes into account all UN resident and non-resident agencies, funds and programmes. It is strategic, in that it reflects the priorities of the country as identified through the country assessment. Expected results in the UNDAF are called "UNDAF outcomes." The UNDAF assumes that the framework meets the strategic priority needs of the country, especially the MDGs.

The UNDAF is the strategic programme framework for the UNCT. It describes the collective response of the UNCT to the priorities in the national development framework. The UNDAF should be focused and it should be open to adaptation to reflect changes in the country situation. The UNDAF offers a single matrix that links the strategic contribution of the UN agencies' country programmes to targeted national priorities. Through the UNDAF, agencies can plan together and analyze the best response to development needs at the country level. It also underlines the importance of including the broader international agenda of the Internationally-agreed Development Goals (IADGs) as a basis for analysis and planning at country level, in the context of the national development planning process.

UNDAF outcomes describe where the UNCT can best contribute, given their comparative advantages, to the country development process for the achievement of Millennium Development Goals.<sup>5</sup> The UNDAF therefore focuses on the actions that UN agencies must take to achieve defined country priority goals. As described in the following table (UNDAF Results Matrix<sup>6</sup>), the UNDAF defines country programme outcomes and outputs for

each UNDAF outcome, describes the roles to be played by each partner and sets resource mobilisation targets. In essence, the UNDAF results matrix assigns responsibilities to particular UN agencies to work with State partners in developing action plans for the achievement of UNDAF outcomes; these action plans become the country programme.

**FIGURE 4: UNDAF RESULTS MATRIX (ONE TABLE FOR EACH UNDAF OUTCOME)**

**National priority or goals:**

- One or more priorities or goals from the national development framework, that relate to the MD/MDGs or other internationally agreed development goals and treaty obligations
- Expressed as a measurable, achievable, sustainable change in the lives of people.

**UNDAF outcome**

- The UNDAF outcome makes a contribution to the achievement of the national priority or goal
- Normally, it requires the efforts of two or more UN agencies and their partners, and it relies on critical assumptions about the roles of partners outside the framework of the UNDAF
- Typically, it is expressed as institutional or behavioural change at national or sub-national levels, to be achieved by the end of the UNDAF cycle

AGENCY OUTCOMES	OUTPUTS	ROLE OF PARTNERS	RESOURCE MOBILIZATION TARGETS
Agency outcome (Agency 1)  The institutional or behavioural changes expected from agency cooperation.  The sum of agency outcomes in this column, together with the contributions of other partners, should be sufficient to achieve the UNDAF outcome.	Outputs (Agency 1)  The specific products, services, or changes in processes resulting from agency cooperation.  The sum of outputs should achieve the agency outcome. to the left	Describes the role and contributions of partners for achievement of results.	Indicative estimates of the agency resources to be made available for cooperation, broken down by regular and other resources.
Agency outcome (Agency 2&3)  ...	Outputs (Agency 2)  Outputs (Agency 3)		

**Coordination Mechanisms and Programme Modalities:**

- The coordination mechanisms needed among UN agencies and partners to ensure the achievement of results, including joint programmes.

<sup>5</sup> Adapted from page 24 of the Guidelines.

<sup>6</sup> Page 35 of the Guidelines

Please refer to Figure 2 (page 93), for a description of the analytic framework within which the UNDAF is developed. Please refer to section 6.5, below, for a discussion on Country Programmes.

Further discussion on the UNDAF, including detail on its development, content and significance is found in the Guidelines, in particular Part 3, Strategic Planning. Information on monitoring and evaluating a UNDAF is found in the Guidelines, Part 4 Monitoring and Evaluation.

#### 6.4.1 NHRIs and the UNDAF

NHRIs should be engaged as partner institutions in the development of the UNDAF. In particular, it is important to ask the NHRI to provide comment on the draft Results Matrix, which forms the core of the UNDAF. Their experience and expertise will enhance the Matrix design. The NHRI should also be identified as the partner institution for any programme activity that will support the NHRI directly, in addition to any other programme initiatives to which the NHRI may make a useful contribution. UNCTs should keep in mind the need to support cooperation and collaboration between human rights stakeholders as a way to promote better, faster and cheaper service, as well as a way to build linkages between government and non-government sectors.

If there is no NHRI, UNCTs must identify appropriate partner institutions for programming geared towards the establishment of a NHRI. (See Chapter 7 for details on the pre-establishment phase, in particular, the section dealing with “Supporting a National Process: Steps and Strategies”.)

#### 6.4.2 Targeting NHRIs in the UNDAF

It is vital that the UNDAF identify and situate NHRIs in the development assistance framework. Otherwise, without a direct or inferred link to the UNDAF outcomes, it will be difficult to include activities relating to NHRIs in Country Programmes or in any projects, unless some generic project can be found to “accommodate” the NHRI project after the fact. Although this is not unheard of, it is less than ideal.

The UNDAF outcomes will, of course, reflect the country’s needs as determined in the CCA, and these will, in turn, serve as the basis for developing the CP. The importance of identifying and situating NHRIs in these processes is highlighted in the examples given below.

##### > **Example:** Audit Findings of the UNDAF for Uganda

In this example, an audit was undertaken of the UNDAF for Uganda. It revealed the following shortcomings regarding the link between the NHRI and the Country Program, which had failed to mention independent oversight bodies such as the NHRI:

“A plain reading of the CP Outputs does not necessarily indicate that the UN is interested in supporting these bodies [independent oversight agencies, including the NHRI] *in their roles as accountability and oversight* bodies. The importance of independent bodies is critical to a human rights-approach (due process safeguards in the conduct of Government) as are effective representative bodies (they enable/effect citizens exercise their right to participate in public affairs)”

#### **CASE STUDY: KENYA NATIONAL COMMISSION OF HUMAN RIGHTS (KNCHR)**

While UNDP Kenya supported the national NHRI, the pre-establishment phase of the KNCHR was not, in fact, the result of a specific program for that institution: rather, it took place under a general “Governance for Poverty Reduction Program”, which in turn was based on the Common Country Framework 1999 – 2003.

The original focus was on an earlier institution called the Standing Committee of Human Rights (SCHR), which had been created by Presidential Decree.

The UNDP supported a strategy paper that would underpin a Kenyan National Action Plan for human rights. The Plan, in turn, identified the establishment of an independent NHRI as a prerequisite for the promotion and protection of human rights.



◀ continued

The OHCHR then provided two forms of technical assistance: first, was regional learning and exchange with the Ugandan and South African commissions. The second area of technical assistance was in the form of a special adviser, who played an instrumental role in the enabling law that established the KNCHR in 2002.

Despite these positive aspects, the Common Country Framework 1999 – 2003, mentioned above, had failed to mention an NHRI and this posed a major challenge to transitioning support to the KNCHR

In 2004, UNDP Kenya, having by then having taken over the process from the SCHR, signed a work plan with the KNCHR for the support of the Kenyan National Action Plan process. This included secretariat support, including equipment and provision of consultants for the KNCHR.

**Lessons Learned:** The UN Country Team’s priority areas played a role in ensuring the establishment of a NHRI, but as mentioned earlier, UNDP Kenya’s support occurred in an ad hoc or incidental manner. The programme was not specifically designed to support the establishment of the SCHR or the successor independent institution, the KNCHR. It was placed under the “Governance for Poverty Reduction Programme”, but if “Governance” had not been a priority area for UNDP Kenya, even that incidental support may not have been possible because there would have been no appropriate category of programming in which to place the NHRI support objectives. The failure to mention the NHRI as a specific programme in the Common Country Framework 1999 – 2003 and then in the UNDAF or equivalent document meant that only an *ad hoc* approach was possible, and even then only by inserting the project into a generic programme that did not originally envisage an NHRI.

- Based on a presentation by Ms. Enid Ndiga-Irungu, Programme Officer, Human Rights, UN Country Office, UNDP Kenya. 2009.

The UNDAF, therefore, must refer to the support that will be provided to the NHRI in light of the current situation, as defined in the CCA. That support will vary depending on the development phase of the NHRI (non-existent; pre-establishment; establishment; consolidation, etc.) as well as the accreditation status that the NHRI holds.

### 6.4.3 Delivering as One: Strategies for Unified UN Support

The Resident Coordinator system is the entry point for country requests for NHRIs and more broadly, it depends on collegiality and participation from all parts of the UN system, whether or not they have a country presence. The CCA/UNDAF process provides an important opportunity for better coordination, in part to improve familiarity with the HRBA and to become better aware of the importance of NHRIs as a catalyst for improving human rights and HRBA.

The UNDAF is the most appropriate platform for coordinating UN activities to support a NHRI, as well as to coordinate other donors and organizations. However, there may be other strategies needed, if there is no UNDAF yet, or where opportunities present themselves outside the parameters of a given country plan, despite good planning.

The following case study from Malaysia provides an example of creative thinking to develop a coherent and consistent approach to UN support by the UNCT. Key strategies include the creation of a UNCT Theme Group, the development of a Development and Human Rights plan, social and funding mapping and links to Gender work plans:

### CASE STUDY: MALAYSIA AND SUHAKAM: UNCT ENGAGEMENT

#### Overall context (2009):

UNDP Malaysia has no United Nations Development Assistance Framework (UNDAF) and funding is through NEX execution. There is no direct support to NGOs.

UNCT: UNDP, UNICEF, UNFPA, UNHCR, and WHO

Areas of UNDP focus are:

- Poverty, Gender, Energy, Environment, HIV/AIDS
- Governance: One Initiative on Governance (2003-2007) – Capacity Building on Anti-Corruption
- CPD: No mention of Governance (2008-2012)

Strategic Directions (2009-2012)

- Global Economic and Financial Crisis
- Socio-Economic Challenges and Existing Inequalities
- Environmental Management and National Energy Security
- Gender Empowerment and Good Governance
- South-South Cooperation Initiatives for Development

**With no substantive support for engagement with SUHAKAM, the NHRI, the following steps were taken to provide a coherent and consistent platform within the UNCT:**

#### Establishment of UNCT Theme Group on Human Rights and Development

One Coherent Face to NHRI via Resident Coordinator – Joint Meeting of UNCT Heads with NHRI (June 2009).

#### Initiatives to ensure UN Unified Approach

- Mapping Exercise of support of Agencies to NHRI
- Mapping and identification of relevant Community Service Organizations (CSOs)
- Sharing of Proposals Received and Activities for 2009
- Development of a UNCT Workplan on Human rights and Development
- Link to UNCT Gender Empowerment Workplan
- Agenda on UNCT Meeting

Technical Support: BDP, RCB, OHCHR (Bangkok) and Regional Institution (Asia Pacific Forum)

Coordination with Donors: European Union, Embassies

Universal Periodic Review: Follow up at UNCT, as well as with CSOs and government.-

- Based on information provided by: Mr. James Chacko, Assistant Resident Representative (Programme), UNDP Malaysia. 2009.

## 6.5 Country Programme

The Country Programme (CP) devolves from the UNDAF. Each UNDAF outcome is analysed to determine what has to be done, by whom and by when over the implementation cycle, as well as associated costs. The CP is developed

by the UN agencies in consultation with the State and, in particular, the implementation partners that have been identified in the UNDAF.

The Country Programme Action Plan (CPAP) becomes the over-all action plan that will guide development

assistance for the period covered – usually 5 years. It is a more detailed iteration of the UNDAF results matrix in that it describes the expected outcomes and outputs necessary to achieve UNDAF outcomes, identifies implementation partners and breaks budgets done by each outcome and by year.

The following examples demonstrate how country programmes are devolved from higher-level UNDAF outcomes.

> **Examples:** Devolving Country Programmes from UNDAF Outcomes

GEORGIA	
UNDAF	COUNTRY PROGRAMME
<b>Overall Objective:</b> <b>MDG 1: Eradicate Extreme Poverty</b>	<b>Overall Objective:</b> <b>UNDAF Outcome 1</b>
<b>Outcome</b> 1. Reduced number of households living in poverty through the realisation of potential and the provision of social welfare.	<b>Outcome</b> National capacities for adopting and implementing MDG-based poverty reduction plans and policies increased.  Equitable economic growth promoted through close cooperation with private sector entities within the overall framework of corporate social responsibility
LESOTHO	
UNDAF	COUNTRY PROGRAMME
<b>Overall Objective:</b> <b>National Priority (HIV &amp; AIDS, Gender and Youth cluster)</b>	<b>Overall Objective:</b> <b>UNDAF Outcome 1</b>
<b>Outcome</b> 1. Capacity strengthened to sustain universal access to HIV prevention, treatment, care and support, and impact mitigation.	<b>Outcome</b> Evidence-based HIV-Regular Resources related Programmes and Policies that draw on international best practices are developed and implemented  Scaled up response of Other Resources PLHIV and communities to HIV  Implementation of HIV related programmes is scaled up

In the above examples, it would be easy to see how a CPAP and Project Document could then be developed for support to a NHRI to initiate programming for being part of

the “National capacities for adopting and implementing MDG-based poverty reduction plans and policies” through a HRBA to poverty alleviation, for example.

## 6.6 UNCTs, NHRIs and Country Programme Development

### 6.6.1 NHRI Participation:

Where NHRIs exist, they have an important role to play in developing the Country Programme. They will, of course, participate directly in the programme design, alongside the UN agency identified as partner agencies, for any initiative that targets them directly. They should also be consulted on programmes that have a strong human rights dimension or for which the NHRI will be asked to participate. As discussed earlier, stakeholders should have a role in the identification of appropriate program, and depending on the project, may be partners in programme design and delivery.

### 6.6.2 Targeting NHRI in the Country Programme

As indicated earlier with regard to the UNDAF, the scope and focus of engagement with NHRI, as set forth in the CPAP, will vary depending on the development phase of the NHRI (non-existent; pre-establishment; establishment; consolidation) as well as the accreditation status that the NHRI holds. Chapters 7-9 provide programming advice for the content of each phase.

## 6.7 Project Documents

Not all UNCT interventions require specific project documents. But where a comprehensive programme of technical assistance is desirable and necessary, these will likely form part of UNCTs engagements. Project documents are detailed documents that address specific commitments made in the country programme.

The scope and content of the activities included in a project document will reflect the assessed needs of the NHRI, as well as the stage at which the intervention is being made. These are generally contained in a Project Activity Framework Document.

**Annex 2:** Sample project activity framework to establish a NHRI

Further details are found in Chapters 7-9 on supporting NHRI at the pre-establishment, establishment and strengthening phases.

The following Annex describes the steps and major activities that the UNCT may take, depending on a range of factors including the planning cycle, the stage of NHRI development and of course the timing and readiness for the activity.

**Annex 3:** Steps for establishing a Paris Principles-Compliant NHRI

## 6.8 Project Funding Mechanisms and Donor Coordination

UNCTs have to consider the most effective mechanisms through which technical assistance projects will be funded. The options are:

### 6.8.1 Entirely UN-funded

The UN can develop programme initiatives entirely using funds either from UN operating budgets or donor contributions to the standing general funding initiatives. It might be forced to do so especially in circumstances when the NHRI has no track record yet, and where the country situation is such that donors may be nervous about the prospect of participating in an unknown or risky venture.

### 6.8.2 Support coordinated through the UN

Coordination among donors is always preferable: uncoordinated initiatives can easily skew the operations of the institution and divert the NHRI from dealing with strategically important issues in favour of those for which it can receive financial support in the near term. Uncoordinated approaches also impose heavy reporting obligations, a burden to both the institution itself and to the partners that are supporting it.

It is theoretically possible for donors to coordinate support to a new institution, for example, by defining and carving up funding responsibilities, designating one country as the ‘lead’ and authorising that country to receive financial and other reports on the total of the monies provided the institution. A more typical approach, however, is to have the UN, and the UNDP in particular, as the coordinating agent if requested. When this happens, typically, all the parties ensure coordination and cooperation through a country agreement or MOU. The UN, in these circumstances, develops an **umbrella project** covering technical assistance needs of the institution, and invites and encourages other donors to join. This may be done by channelling funds into and through the UN system, or more simply by agreeing to assume administrative responsibility for delivering a defined portion of

the technical assistance. Both scenarios have occurred in the past, including for example, with the OHCHR and the APF as part of an umbrella approach. While using the UN as the funds administrator is easier, the second option often applies.

The advantages of the umbrella approach for the NHRI are obvious:

- NHRIs will have an easier time participating directly in project design;
- Assistance will therefore be geared to their needs and priority concerns;
- Since they will deal with the UN for reporting purposes, NHRIs will be freed from the tyranny of maintaining multiple accounting ledgers and producing multiple reports on each individual project;
- There will be no need to ‘shop around’ to find support for individual projects; and
- There is less likelihood that NHRIs will be tempted to skew their strategic planning to access need donor funding.

#### > Note: Financing Modalities:

UNCTs should also be aware that a variety of factors, including: a broad mandate, multiple development partners, and a lack of human resources, may lead to a situation where the NHRI has capacity gaps in managing finances. In such circumstance, UNDP has utilised the Direct Execution (DEX) modality to mobilise, channel and manage funds to the NHRI. When this is necessary, the UNDP should include support for ensuring the NHRI develops its internal capacity to manage funds as a focus of its interventions so that the capacity gap is short-term only, as the DEX approach should be.

## 6.9 Special Advisers to the NHRI

In several countries, the UNCT and/ or the OHCHR have established a “Special Adviser” position in order to support and advise NHRIs over a period of two to three years in the Establishment Phase. This resource needs to be built into the Project Document and costed as part of the budget in the Project Activity Framework. The position is generally paid for by the UNCT or through an umbrella fund. The selected Adviser, if this option is chosen, should have extensive NHRI experience, regional experience and have worked in a NHRI before. This is a practical position and requires hands-on experience.

The advantages of this position are:

- Improved overall coordination of NHRIs functions;
- An in-house, experienced advisor who is accessible to the entire institution for advice and counsel (this is especially important at the beginning);
- An advisor who can support the senior NHRI member in meetings with government officials during meetings on budgets and can provide concrete information on NHRI budgets;
- Offers a neutral position that can facilitate high level interventions with UNCT when necessary;
- A liaison point between the NHRI and the UNCT with regard to programme planning and budget management;
- Train a successor in the NHRI through a mentorship; and
- Can support capacity development and assessment processes.

On the negative side, Special Advisers leave after two to three years, and if the person who was to be trained by the Adviser (and is generally chosen by the NHRI) is incompetent or a political appointee, the initiative will have no sustainability and the “corporate experience” will leave with the adviser.

> **Example:** UN Support to the Afghan Independent Human Rights Commission Project Special Technical Adviser to the Afghan Independent Human Rights Commission. In establishing the AIHRC, a technical assistance project was developed to support administrative and substantive capacities needed to function independently. The overall effectiveness of the Project is demonstrated by the AIHRC as a functional and well-run body active across the country on a wide range of issues. An evaluation team spoke with several AIHRC Commissioners who had been with the Commission from the time of its establishment, including the Chairperson of the Commission. They expressed appreciation for the flexibility of the Project, which allowed them the latitude to respond to circumstances. The Project provided a framework to meet the emerging needs of the AIHRC as it developed. The financial and administrative procedures introduced by UNDP were seen as providing a sound foundation for the AIHRC, but were however found to be frustrating, slow and burdensome at times for AIHRC staff and Commissioners. While it was impossible to fully assess the quality of relationships and communication between the UN technical assistance providers and the Commissioners, the partnership appears to have been constructive and pragmatic, with generally sound communication. The role of, and relationship with, the UNOHCHR Chief Technical Adviser was often singled out as positive and highly valued.

Source: Upreti and Griffith, “UN Support to the Afghan Independent Human Rights Commission Project: Final Evaluation.” Undated. On file.



## KEY MESSAGES

- UNCTs must consider NHRIs at every stage of the UN country planning cycle.
- UNCTs should seek to engage NHRIs in the CCA.
- The CCA should identify the NHRI situation, including where that NHRI is in its development phase and what status it has been granted, or otherwise.
- NHRIs should be identified as implementation partners within the UNDAF for projects directed at them; they should also be identified as partners or at least be informed of other rights-based programming, keeping in mind the desirability of cooperation.
- The UNDAF represents an opportunity for the UN to “deliver as one” in developing a coordinated strategy for NHRIs, and there are several strategies or “platforms” that can support UNCT coordination.
- NHRIs should participate actively in the design of CPs and CPAPs for programme initiatives directed towards them, and should be informed of initiatives of for which there is a strong rights-based component; program initiatives should reflect the development phase and accreditation status of the NHRI.
- Where projects for establishing or strengthening NHRIs are put in place, they should be geared towards the defined needs of the NHRI in consideration of its development phase and accreditation status; umbrella funding is considered a ‘best practice’ where possible.

## TOOLS IN THIS CHAPTER

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## ANNEX 1: SITUATING NHRIS IN THE UN COUNTRY PLANNING PROCESS

CCA	UNDAF	UNDAF: COUNTRY PROGRAMME	PROJECT
<p><b>Process:</b></p> <ul style="list-style-type: none"> <li>Engage with NHRI as expert stakeholder in country assessment process.</li> <li>Review NHRI reports and recommendations, if any.</li> <li>Jointly share information/ findings for strategic planning and programme planning purposes.</li> </ul>	<p><b>Process:</b></p> <ul style="list-style-type: none"> <li>Seek NHRI feedback on UNDAF Results Matrix.</li> <li>Include reference to NHRI as a partner agency in areas that deal with human rights or where a HRBA is required.</li> <li>If no NHRI is in place, identify appropriate development partner (Ministry of Justice; Parliamentary Committee, etc.).</li> </ul>	<p><b>Process:</b></p> <ul style="list-style-type: none"> <li>Work closely with NHRI to develop country programme initiative(s) that target the NHRI.</li> <li>Consult with NHRI on country programme initiatives that have a strong human rights component; consider ways of involving NHRI in programme delivery as appropriate.</li> <li>If no NHRI in place, work closely with appropriate development partner on country programme targeting the establishment of a NHRI.</li> </ul>	<p><b>Process:</b></p> <ul style="list-style-type: none"> <li>Work closely with NHRI on developing project document targeting it.</li> <li>Consult with NHRI on project documents with other development partners when those documents have a strong human rights component; seek ways to create synergies and comparative advantages, by including NHRIs as partners in project activity.</li> <li>If no NHRI in place, work closely with appropriate development partner on project document targeting the establishment of a NHRI.</li> </ul>
<p><b>Content:</b></p> <p><i>NHRI not established or in pre-establishment phase</i></p> <ul style="list-style-type: none"> <li>Are socio-economic and political conditions in the country conducive to establishing a NHRI?</li> <li>Is there a national process at play to establish a NHRI?</li> <li>If yes, is that process appropriate (transparent; participatory; geared to establishing a PP-compliant NHRI)?</li> </ul>	<p><b>Content:</b></p> <p><i>NHRI not established or in pre-establishment phase</i></p> <ul style="list-style-type: none"> <li>Include reference to support for establishing NHRI in UNDAF Outcome as appropriate; include reference to funding strategy if necessary.</li> <li>Assign responsibility to appropriate UN agency (OHCHR to be included) to develop programme.</li> </ul>	<p><b>Content:</b></p> <p><i>NHRI not established or in pre-establishment phase</i></p> <ul style="list-style-type: none"> <li>Develop country programme, including funding strategy, to support establishment of a NHRI; include reference to funding strategy if necessary.</li> </ul>	<p><b>Content:</b></p> <p><i>NHRI not established or in pre-establishment phase</i></p> <ul style="list-style-type: none"> <li>Develop project document to support establishment of a NHRI; include reference to funding strategy if necessary.</li> <li>Implement funding strategy as appropriate.</li> </ul> <p>For further information on the content of project documents see Chapter 7.</p>
<p><i>NHRI in Establishment phase</i></p> <ul style="list-style-type: none"> <li>Have all pre-establishment requirement been met, including accreditation application? (Note that applications are not accepted until the NHRI has accumulated one-year of experience)</li> <li>Are existing programmes, if any, sufficient to ensure establishment of an effective and PP-compliant NHRI?</li> </ul>	<p><i>NHRI in establishment phase</i></p> <ul style="list-style-type: none"> <li>Include reference to support for NHRI as appropriate; include reference to funding strategy if necessary.</li> <li>Assign responsibility to appropriate UN agency (OHCHR to be included) to develop programme.</li> </ul>	<p><i>NHRI in establishment phase</i></p> <ul style="list-style-type: none"> <li>Develop country programme, including fund-raising strategy, to support NHRI.</li> </ul>	<p><i>NHRI in establishment phase</i></p> <ul style="list-style-type: none"> <li>Develop project document to support NHRI; include reference to funding strategy if necessary.</li> <li>Implement fund-raising strategy as appropriate.</li> </ul> <p>For further information on the content of project documents see Chapter 8.</p>



◀ continued

CCA	UNDAF	UNDAF: COUNTRY PROGRAMME	PROJECT
<p><i>NHRI in Consolidation phase (A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Have all establishment requirement been met?</li> <li>■ Are existing programmes, if any, sufficient to ensure establishment of an effective and PP-compliant NHRI?</li> </ul>	<p><i>NHRI in Consolidation phase (A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Include reference to strengthen NHRI as appropriate; include reference to funding strategy if necessary.</li> <li>■ Assign responsibility to appropriate UN agency (OHCHR to be included)/ UN focal point to develop programme.</li> </ul>	<p><i>NHRI in Consolidation phase (A-Status)</i></p> <p>Develop country programme, including fund-raising strategy, to strengthen NHRI.</p>	<p><i>NHRI in Consolidation phase (A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Develop project document to support establishment of a NHRI; include reference to funding strategy if necessary.</li> <li>■ Implement fund-raising strategy as appropriate.</li> </ul> <p>For further information on the content of project documents see Chapter 9.</p>
<p><i>NHRI in consolidation phase (Not A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Review ICC recommendations.</li> <li>■ Are existing programmes, if any, sufficient to ensure establishment of an effective and PP-compliant NHRI?</li> </ul> <p>For information on determining whether to engage with non-compliant NHRIs see Chapter 10.</p>	<p><i>NHRI in consolidation phase (Not A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Include reference to support for NHRI as appropriate; include reference to funding strategy if necessary.</li> <li>■ Assign responsibility to appropriate UN agency (OHCHR to be included) / UN focal point to develop programme.</li> </ul>	<p><i>NHRI in consolidation phase (Not A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Develop country programme, including fund-raising strategy, to strengthen NHRI using ICC recommendations as roadmap.</li> </ul>	<p><i>NHRI in consolidation phase (Not A-Status)</i></p> <ul style="list-style-type: none"> <li>■ Develop project document to support establishment of a NHRI; include reference to funding strategy if necessary.</li> <li>■ Implement fund-raising strategy as appropriate.</li> </ul> <p>For further information on the content and design of project documents see Chapter 9.</p>

## ANNEX 2: SAMPLE PROJECT ACTIVITY FRAMEWORK TO ESTABLISH A NHRI

### Overview and guide to reading this document

This document offers a **sample** detailed narrative of proposed project activities in the context of a Project Document (PRODOC) for an NHRI to be established. It is a sample only and is intended to give an idea of how projects have been structured, but it is not determinative of any project, nor is it directive.

It covers the following sample areas that are linked to the Toolkit areas of focus:

- Pre-establishment (infrastructure, hiring the project team, naming of members and passing of enabling law)
- Establishment
  - Appointment of members
  - Human Resources
  - Development of basic management policies
  - Development of knowledge management capacity
  - Investigations and Monitoring
  - Public education, Outreach
  - Engaging stakeholders

This Annex does not purport to cover all the basic areas, but does offer enough detail to show how strategic objectives are linked to activities, outputs and allocations of high-level responsibility across a few sample areas.

It will generally contain an indicative budget as a separate document, and a consultation document (for prospective partners). Details of the management arrangements are generally provided in the PRODOC.

**Assigned responsibilities:** The Project Activity Framework (PAF) designates activities for project staff, as a rule, and does not repeat the responsibilities that NHRI members are given by law, unless applicable legislation assigns particular responsibilities that should be emphasized.

The UNDP, in close consultation with OHCHR, will usually provide overall management for the project and project funding, inter alia by ensuring that monies are dispersed in accordance with the PAF. Because the UNDP will usually provide overall management for the project and project funding under the PRODOC, it is assumed that UNDP will be a partner across all activities. To avoid repetition, the UNDP does not appear in each category except in the start-up phase when a Project Manager or National Project Manager (designated as a **National Programme manager** here) or equivalent position is not yet hired. Other agencies may be involved as well, and consultation should take place with in-country security officials as a matter of course in countries where the security phase would so indicate.

OHCHR (NIRM Section) and relevant UNDP staff (HQ and regional) should be consulted jointly with regard to hiring international experts as well as on the delivery of activities that require a substantive knowledge of the operations of an NHRI, and with related activities requiring training. They should agree on Terms of Reference established for international experts, the work plans developed to guide their activity, and be involved in all aspects of their selection: reviewing applications for the positions, short-listing and selection. Again, this is a general principle applying to the entire PAF in appropriate categories and will not be repeated in each applicable activity.

**Timelines** in PAFs are indicative only.

**Next steps:** PAFs should be revised as necessary following the development of a comprehensive strategic plan, and resultant action plans, by the NHRI. The revised PAF will be incorporated into the PRODOC.

## Project Activity Framework

### PHASE I: Setting the situation for the successful establishment of A NHRI

#### Key Result Area 1: Hire National Project Manager and undertake preparatory work

KRA 1: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
1. NHRI s ready to operate as soon as possible after legislation is adopted.	1.1 National project manager is identified, hired	1.1.1 Publicise position of National Project Manager (NPM) 1.1.2 Contract / secondment agreement 1.1.3 Fill position	1 <sup>st</sup> Q	UNDP/ OHCHR	NPM in place for full length of project + two months to wrap up
	1.2 Office equipment	1.2.1 IT hardware, peripherals and communications purchased or loaned	1 <sup>st</sup> Q	NPM	NPM co-located with UNDP in early phase
■ Planning for security across all program phases	1.3 Security plan	1.3.1 Identify and secure appropriate expertise 1.3.2 Draft plan, ensuring flexibility depending on security situation 1.3.3 Secure approvals	1 <sup>st</sup> Q	NPM	Security phase is appropriate to activity
■ Identify appropriate premises	1.4 Lay ground-work for obtaining appropriate facilities	1.4.1 Identify appropriate facilities 1.4.2 Develop plan to upgrade, secure premises, as needed	1 <sup>st</sup> -2 <sup>nd</sup> Q	NPM	Lease or equivalent will be needed if land gift from government not possible
■ Financial sustainability for the project.	1.5 Government Consultations	1.5.1 Develop a consultative process to examine the commitment and capacity of the government	1 <sup>st</sup> -2 <sup>nd</sup> Q	PSC In consultation with government	Should be accompanied by broader stakeholder consultations on readiness for NHRI
■ Basic operational functionality	1.6 Process for procuring vehicles, core furnishings and equipment	1.6.1 Needs assessments 1.6.2 Procurement / tenders developed	1 <sup>st</sup> Q	NPM	
■ PRODOC modified following consultations and security policy review	1.7 Revised PRODOC and budget	1.7.1 Undertake consultations on the proposal and prepare revised PRODOC, PAF and budget as necessary 1.7.2 Modify PRODOC/ PAF and budget as required	1 <sup>st</sup> Q	NPM	Responsibility to be assumed by NPD once in place

**Key Result Area 2: Physical infrastructure and key operational requirements<sup>1</sup>**

KRA 2: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
2. Basic physical infrastructure secured and ongoing operations supported	2.1 Premises obtained	2.1.1 Develop design / budget, minimum specs, select premises 2.1.2 Negotiate lease agreement	2 <sup>nd</sup> Q	NPM	Government is unable to provide freehold or equivalent land/building
	2.2 Office space is upgraded to meet security needs	2.2.1 General building equipment and repair 2.2.2 Retrofit for security	2 <sup>nd</sup> Q	NPM	Coordinate with UN security as appropriate
	2.3 Vehicle procurement	2.3.1 Needs assessment 2.3.2 Procure / purchase armoured vehicles/ other vehicles 2.3.3 Secure vehicle fuel, maintenance	2 <sup>nd</sup> Q	NPM/ UNDP	
	2.4 IT, communication equipment and misc. office equipment	2.4.1 Procure / purchase e.g., - Office furniture - Purchase office supplies - Desktops and Laptops - Telephones, mobile phones and radio phones - Base phone	2 <sup>nd</sup> Q	NPM	Premises are obtained and secured
	2.5 Recurring operating expenses and misc. supplies are supported	2.5.1 Arrangements are made for utilities, fuel & maintenance, building & equipment repair 2.5.2 Purchase miscellaneous equipment (copiers, fax)	2 <sup>nd</sup> Q	NPM	

<sup>1</sup> These activities only undertaken once enabling legislation is in place.

**Key Result Area 3: Human Resources**

KRA 3 INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
3. Human resources start up activities undertaken	3.1 NHRI selected and receive orientation and leadership training	3.1.1 Publicise positions	1 <sup>st</sup> Q	NPM	Law usually provides rank of members in relation public salary scales
		3.1.2 Set salary scales for chair/ Members		Government	
		3.1.3 Members appointed		Government	Appointments satisfy PP
		3.1.4 Members receive orientation and basic leadership training	2 <sup>nd</sup> Q	NPM/ OHCHR	Orientation may be conducted by UN staff / leadership training by UN or experts
	3.2 Preliminary organizational structure designed	3.2.1 Organizational structure, including staff and reporting lines	2 <sup>nd</sup> Q	NPD <sup>2</sup>	
■ Senior staff, support and security personnel are in place to support project.	3.3 Key NHRI Staff are hired	3.3.1 NHRI approves job descriptions and selection process for staff 3.3.2 Publicise Job Openings 3.3.3 Hire - Senior officer (NPD) - Professional staff - Support staff - Security personnel 3.3.4 Provide orientation	2 <sup>nd</sup> & 3 <sup>rd</sup> Q	NPD <sup>3</sup> UN and IDA to provide orientation	NHRI staff should not be considered gov't. employees, but salaries should be in upper end of public sector salary scale, to be competitive, encourage sustainability after the project, and attract and retain good people
■ Entire project team is in place	3.4 Remaining project team members are hired; NPM transfers to NHRI	3.4.1 Publicise Job Openings 3.4.2 Hire staff 3.4.3 Provide basic orientation	1 <sup>st</sup> & 2 <sup>nd</sup> Q	NPM	<ul style="list-style-type: none"> <li>■ Provide for UN management arrangement for hiring Project staff: minimum 2 years</li> <li>■ Project staff are located with the NHRI at this stage</li> <li>■ NPM, UN staff to provide orientation</li> </ul>
■ Basic and preliminary administrative policies established	3.5. Management, administrative, personnel and financial policies and procedures	3.5.1 NHRI develops a comprehensive preliminary list of work required for Phase I. 3.5.2 Draft policies including human resources manual	2 <sup>nd</sup> & 3 <sup>rd</sup> Q	NPD	Applies to those policies deemed immediately necessary for start-up operations
■ Performance targets are established for the NHRI	3.6 Results-based qualitative and quantitative targets	3.6.1 Retain experts, if required 3.6.2 Develop a comprehensive list of work required	2 <sup>nd</sup> & 3 <sup>rd</sup> Q	NPD	Preliminary targets and will have to validated by the NHRI in Phase II

<sup>2</sup> Executive Director would normally lead the hiring of more junior staff as a delegate of the Members.

<sup>3</sup> Executive Director would normally lead the hiring of more junior staff as a delegate of the Members.

## PHASE II: Capacity Development for Start-up Phase

### Key Result Area 1: Staff Training (knowledge and skills)

KRA 1: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME-FRAME	RESP	ASSUMPTIONS/ COMMENTS
1. Staff and selected key partners have the core knowledge and skills	1.1 Training needs assessment	1.1.1 Retain expert/ consultant(s) to undertake the assessment (International Development Advisor) 1.1.2 Consultation with NHRI, staff, project staff 1.1.3 Draft training needs assessment and program outline 1.1.4 NHRI approves report and proposed core training programme	3 <sup>rd</sup> Q	NPD IDA	Contingency for offsite training in all categories below, if required  UN expert from OHCHR UNDP or other UN agency, if possible
	1.2 Curriculum for each training session	1.2.1 Develop curriculum and related materials	3 <sup>rd</sup> Q	IDA	UN expert from OHCHR, UNDP or other UN agency, if possible
■ Staff trained on legal and institutional issues respecting NHRIs.	1.3 Core Training on NHRI	1.3.1 Experts provide training on Role of NHRI; "Principles of Human Rights" and major International Human Rights Treaties	3 <sup>rd</sup> Q	NPD* IDA  UN expert, if possible. Facilitation for course of one week	<b>* NPD is usually responsible for training (incl. arranging logistics), while the IDA will have responsibility to support the development of content and evaluations. This formula will often be seen to apply throughout the PAF</b>
■ Staff and members trained in operational areas that are core to an NHRI	1.4 Core training is provided in key operational areas	Retain experts to deliver training: 1.4.1 Conducting investigations 1.4.2 ADR (mediation and conciliation) 1.4.3 Complaints processing 1.4.4 Human rights monitoring and reporting 1.4.5 Human rights education and advocacy 1.4.6 Transitional Justice (of applicable) 1.4.7 Promotion and communications	3 <sup>rd</sup> - 4 <sup>th</sup> Q	NPD* IDA	Courses by UN personnel; outside experts; ■ course design and delivery & training manual should be included



◀ continued

KRA 1: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
<ul style="list-style-type: none"> <li>Project staff have adequate knowledge of UN processes and rules</li> </ul>	1.5 Project staff training.	1.5.1 Targeted training needs assessment report based on UN and donor requirements relating to project management, financial control, financial and other reporting	3 <sup>rd</sup> - 4 <sup>th</sup> Q	NPD* IDA	<ul style="list-style-type: none"> <li>This training should be organized and conducted entirely through UN.</li> </ul>
		1.5.2 Project partners develop curriculum/ training materials			
<ul style="list-style-type: none"> <li>Capacity-building: Ongoing learning is generated from the training activities</li> </ul>	1.6 Summative evaluations of each training	1.5.3 Project partners identify or retain expert/consultant(s) to undertake the training	4 <sup>th</sup> Q	NPD IDA	<ul style="list-style-type: none"> <li>Evaluation forms should be prepared by IDA, working with experts. Should evaluate integration of learning into daily work</li> </ul>
		1.5.4 UN staff provide training			
	1.7 Training manual	1.6.1 Evaluations undertaken for all training undertaken	4 <sup>th</sup> Q	NPD IDA	
	1.6.2 Analysis of results				
		1.7.1 NHRI and experts develop training modules for future use			
		1.7.2 NHRI and experts identify and train in-house trainers			

**Key Result Area 2: Ensure that administrative policies are in place and staff is trained**

KRA 2: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIMEFRAME	RESP	ASSUMPTIONS/ COMMENTS
<b>2. Ensure administrative policies are in place and staff is trained on them</b>  ■ NHRI has in-house capacity to orient new staff and provide future training.	2.1 Comprehensive list of core administrative policy needs <sup>4</sup>	2.1.1 Develop TORs, contract; 2.1.2 With the support of experts, and in consultation with staff, develop a comprehensive list of work required.	3 <sup>rd</sup> Q	NPD	UNDP and OHCHR can provide support re experts
	2.2 Policies developed and staff trained	2.2.1 Develop TORs, contract, as required 2.2.2 With the assistance of experts, as required, and core staff, NHRI drafts core materials 2.2.3 Material presented to staff, staff trained 2.2.4 NHRI evaluates training, develops modules and trains trainers for future training	3 <sup>rd</sup> Q	NPD IDA	

<sup>4</sup> E.g., financial management and control (incl. inventory control); purchasing; internal communications and correspondence; vehicle management; human resources planning and management; security policies, including internal travel authorisations, requisites; ICT planning and acquisition.

**Key Result Area 3: Ensure that core operational policies are in place and staff is trained**

KRA 3: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
3. Core operational policies, procedures and work tools are in place to support the NHRI's work and ensure acceptable and consistent performance	3.1 Operational policies, procedures and work tools for all core activities <sup>5</sup>	3.1.1 With the support of experts, and in consultation with staff, NHRI develops a comprehensive list of work required  3.1.2 NHRI develops a schedule for developing policies based on 3.1.1.	3 <sup>rd</sup> Q	NPM IDA	
	3.2 Policies developed; including results-based targets, and staff are trained	3.2.1 With the assistance of experts as required draft policies  3.2.2 Integrate results-based targets set in Phase I into material  3.2.3 Train staff on policies  3.2.4 NHRI evaluates training, developed modules and trains trainers for future training	3 <sup>rd</sup> Q	NPM IDA	(E.g. number of prisons to be visited per year)
	3.3 Develop material, with expert assistance as necessary, and train staff	3.3.1 Draft materials  3.3.2 Recruit experts as required  3.3.3 Conduct training	2 <sup>nd</sup> Q	IDA	
	3.4 Summative evaluations of all training	3.4.1 Conduct a summative evaluation of all training  3.4.2 Analyze results and use outcomes to inform development of subsequent training	Dec 07	IDA	Evaluation forms should be prepared by IDA, working with experts

<sup>5</sup> Human rights complaints management (including intake and triage procedures, complaints forms, reporting forms); investigations (including forms, approvals, models and best practices); mediation and conciliation, (including triage, best practices and model agreements); monitoring and reporting standards, and procedures on general and specific human rights issues.

**Key Result Area 4: Undertake major planning and adjust project document activities as necessary**

KRA 4: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
4. Establishing the NHRI's national work strategy to support, develop, protect and ensure respect of human rights	4.1 Strategic plan, with supporting communication plan	4.1.1 Develop TORs, contract; retain international, national experts	3 <sup>rd</sup> Q	NPD IDA	High level plan to identify key strategic directions  Experts can be trained with support of UNDP and OHCHR
		4.1.2 Develop strategic plan, working closely with project team: - Develop work plan - Interview commissioners and senior staff - Conduct workshops/ consultations with key stakeholders to obtain input - Draft strategic plan - "Test" draft with staff and commissioners, as well as external stakeholders; adjust as necessary - Draft Final Strategic Plan			
		4.1.3 NHRI accepts/approves plan and develops and implements a communications plan to support it			
■ Operational planning to implement strategic directions	4.2 Annual action plans	4.2.1 National experts facilitate the development of annual action plans based on strategic plan, working closely with staff: They: - Develop work plans - Conduct workshops with commissioners and senior staff - Consult with broad base of stakeholders - Support commissioners and division heads in plan development - Develop drafts of plans at departmental levels - "Test" draft plans with staff and commissioners as well as key stakeholders, and adjust as necessary - Prepare budget allocations	3 <sup>rd</sup> Q	NPD IDA	This activity should be undertaken by national staff and/or experts
		4.2.2 Draft final plan and budgets			
		4.2.3 NHRI accepts/approves plans and develops and implements a supporting communications plan.			
		4.2.4 Project staff prepare Annual Project report	4 <sup>th</sup> Q		

◀ continued

KRA 4: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
<ul style="list-style-type: none"> <li>Following the strategic planning, the NHRI should also develop plans that cut across departmental lines for specific functions (ICT, education and outreach, communications, etc.)</li> </ul>	4.3 Specialized functional plans for areas that cut across departmental lines <sup>6</sup>	4.3.1 For each plan, as appropriate, project partners engage international and national experts.  4.3.2 Experts: <ul style="list-style-type: none"> <li>- Develop work plans for each area</li> <li>- Coordinate plans to ensure that each component is coordinated with ongoing operations and with other planning elements.</li> <li>- Draft plans</li> </ul> 4.3.3 NHRI accepts/approves plan and develops a communications / dissemination strategy internally and externally	3 <sup>rd</sup> Q	NPD	National project team members (ICT expert, communications expert and promotions) to support the development of specialized plans in their respective areas
<ul style="list-style-type: none"> <li>Ensure that the project activity framework is adjusted to reflect the planning process</li> </ul>	4.4 Revised PRODOC, PAF, and budgets as necessary	4.4.1 Adjust project documents based on results of strategic planning exercise  4.4.2 PSC reviews and approves	4 <sup>th</sup> Q	NPD	This activity allows the project to link the strategic planning exercise with the project planning
	4.5 Internal capacity re planning	4.5.1 Identify and retain expert  4.5.2 Expert trains staff and members strategic planning  4.5.3 Train staff in planning function, and situate planning function within the NHRI	3 <sup>rd</sup> Q	IDA/ NPM	

<sup>6</sup> ICT, training learning planning, knowledge management, human resources, evaluation, media and communications, outreach, and security plans.

### Key result area 5: Conduct preliminary education and outreach programme

KRA 5: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME-FRAME	RESP	ASSUMPTIONS/ COMMENTS
KRA 5: Targeted, preliminary education and outreach initiatives to spread human rights culture	5.1 Communications strategy to support education and outreach planning	5.1.1 Draft communications strategy to support education and outreach initiatives	3 <sup>rd</sup> Q	NPD	<ul style="list-style-type: none"> <li>■ Should follow the strategic planning process almost immediately.</li> <li>■ Supported by national project expert(s)</li> </ul>
		5.1.2 Plan for translation of material, as appropriate, in minority languages, in accordance with national policy			
		5.1.3 Logistics and security planning			
<ul style="list-style-type: none"> <li>■ Materials and equipment to support the rollout of the preliminary education and outreach planning are in place by the end of Phase II</li> </ul>	5.2 ICT equipment and materials for public education	5.2.1 Identify needs arising from education and outreach plan and media strategy	4 <sup>th</sup> Q	NPD	<ul style="list-style-type: none"> <li>■ Supported by national project expert(s)</li> </ul>
		5.2.2 Procure, purchase equipment and materials			
<ul style="list-style-type: none"> <li>■ A series of visits across the country, with supporting advance media, to introduce the NHRI (subject to security considerations, this activity may be deferred to future years)</li> </ul>	5.3 'Town hall' meeting programme to introduce human rights and the NHRI to the general public	5.3.1 Develop pilot program as part of outreach and promotion strategy	4 <sup>th</sup> Q	NPD	<p>This activity in particular has security implications and should be contingent on the prevailing country situation</p> <p>National project communications expert to support this activity</p>
		5.3.2 NHRI identifies speakers, leaders			
		5.3.3 NHRI advertises event, using media			
		5.3.4 NHRI holds meeting(s)			
		5.3.5 NHRI adapts programme based on experience from pilot			



◀ continued

KRA 5: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
■ A series of visits across the country, to introduce the NHRI)	5.4 Visits programme to introduce human rights and the NHRI to local officials	5.4.1 NHRI develops pilot program as part of outreach and promotion strategy 5.4.2 NHRI identifies speakers, leaders 5.4.3 NHRI advertises event(s), using media 5.4.4 NHRI holds meeting(s) 5.4.5 NHRI adapts programme based on experience from pilot	3 <sup>rd</sup> Q 4 <sup>th</sup> Q	NPD	As above.
■ Early relationships are established with civil society. Mechanism is created to receive ongoing feedback from NGOs.	5.5 Coordination committees with civil society organizations with human rights responsibilities	5.5.1 NHRI identifies human rights NGOs, other civil society organizations 5.5.2 NHRI sets up co-ordinating committee or network	3 <sup>rd</sup> Q	NPD Communications expert (project) IDA re external collaboration	Security considerations, including those of civil society representatives should be considered throughout this activity
■ NHRI becomes part of the regional and international community of human rights institutions.	5.6 Membership in regional/ international NHRI organizations	5.6.1 NHRI joins appropriate NHRI networks 5.6.2 NHRI attends meetings	4 <sup>th</sup> Q (and ongoing)	NPD IDA re external collaboration	Should be coordinated through OHCHR
■ Establish web site that is timely, accessible and searchable as a source of information about human rights and the NHRI's activities.	5.7 Web site development	5.7.1 Identify desired functionalities 5.7.2 Ensure consistency with ICT and Knowledge plan 5.7.3 Retain web site expert for design and development of web site 5.7.4 Expert drafts strategy and seeks approval	4 <sup>th</sup> Q	NPD National project ICT expert	Accessibility: Web site should comply with W3Cs Web Accessibility Initiative  Search engine: Site should be searchable and research documents located in a database

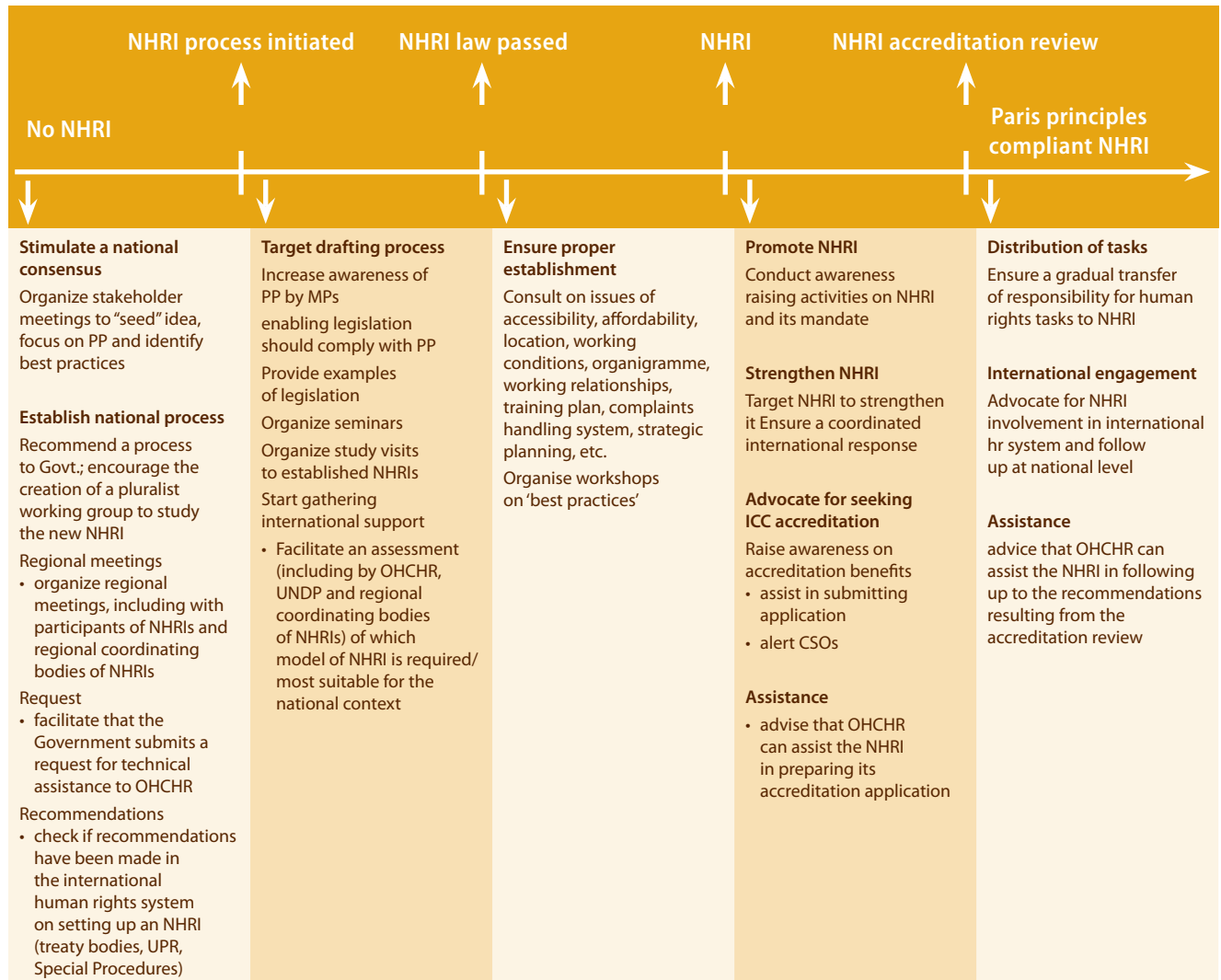
**Key Result Area 6: Knowledge Management<sup>7</sup>**

KRA 6: INTENDED OUTCOMES	OUTPUT	ACTIVITIES: KEY RESULT INDICATOR(S)	TIME- FRAME	RESP	ASSUMPTIONS/ COMMENTS
6. NHRI has clear objectives in terms of the types of information it wishes to capture, evaluate and report on, and systems to facilitate this.	6.1 Knowledge management framework, supported by ICT plan	6.1.1 Write contracts, TORs 6.1.2 Retain expert 6.1.3 Draft plan, including complaints management system, research and evaluation, internal information system, and web strategy 6.1.4 Adjust ICT strategy as needed 6.1.5 Develop a strategy for publicising appropriate information from internal site to web site	4 <sup>th</sup> Q	NPD ■ ICT project expert	■ Systems should be integrated searchable and, where possible, located on shared platforms
■ Evaluation is a tool for capacity-building, ongoing learning, organizational development, and to support evidence-based decision-making	6.2 Evaluation plan	6.2.1 NHRI reviews evaluations to date for training, workshops and other activities 6.2.2 Synthesize and analyze evaluative information and develop an evaluation plan for the NHRI going forward 6.2.3 Adjust and plan for Phase III 6.2.4 Amend strategic and other plans as required	4 <sup>th</sup> Q	NPD IDA	Ensures appropriate and timely adjustments to programmes and programme planning
■ With the assistance of an expert, plan and implement an internal information platform to ensure timely and easy storing and retrieval of important programme information.	6.3 Internal information system	6.3.1 Write contracts, TORs 6.3.2 Retain expert 6.3.3 Based on Knowledge Management Plan, implement/ design an appropriate information system	4 <sup>th</sup> Q	NPD ICT Expert	

<sup>7</sup> The term “knowledge management” is used in management literature and practice as the systematic and integrated activity of managing evaluation, information, research, data and other forms of knowledge as part of ongoing learning and capacity building.



## ANNEX 3: STEPS FOR ESTABLISHING A PARIS PRINCIPLES-COMPLIANT NHRI





# chapter

# 7

## Pre-establishment Phase

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## OBJECTIVE:

Identify key challenges and opportunities for UNCT staff who are called upon to support NHRIs during the pre-establishment phase and provide specific guidance, guided by the international human rights framework and concrete case studies. Ensure that the capacity of UNCT staff is supported in the early phases of pre-establishment.

## EXECUTIVE SUMMARY

The pre-establishment phase is the first of three phases dealing directly with the establishment of NHRIs in this Toolkit. It extends from assessing the country situation, to supporting the State and relevant stakeholders to create a national consensus, launching a national dialogue, and drafting an enabling law.

Paris Principles-compliant NHRIs are a UN priority. UNCTs should therefore be actively assessing opportunities, while noting the risks, and working towards establishing NHRIs that meet the principles as an international standard. Several political, economic and socio-legal factors will influence the decision to support the establishment of a NHRI, the approach to be used, as well as the scope and length of UN engagement. These factors include:

- The level of existing political will;
- The strength of the existing culture of human rights;
- The legal context, including the judicial system; and
- The stability of the country.

UNCTs can have an important role in supporting a national dialogue and in providing information about the advantages of establishing a NHRI. At some point in time, there will be a “tipping point” at which it will be clear that there is movement towards the establishment of an institution. This is the time to develop a programme of action, ensuring that there is international support for the NHRI.

OHCHR and UNDP, along with other agencies, can work with the Government, Parliament and relevant stakeholders to define the assistance required, terms of reference and timeframes for delivery. OHCHR has undertaken, mainly through its National Institutions and Regional Mechanisms Section, to work in consultation with the geographic and thematic units and field presences of OHCHR.

Section 7.3 walks through each step of the process of a country requesting the UN for support in establishing a NHRI, including determining the type of NHRI to establish and the type of assistance UNCTs can provide. In this stage, the legal framework is developed and several key areas of capacity are identified that should be considered and planned.

The final section deals with common pitfalls and strategies to address them.

## INTRODUCTION

**Rationale:** Many standard reference materials on NHRIs identify two phases for NHRI development: (1) establishing, and (2) strengthening the NHRI. However, because there are important and distinct steps before the actual establishment of the NHRI, and because UNCTs may be asked to play a unique role in this early stage, a preliminary or “pre-establishment” phase has been added to the Toolkit. Although the three phases, pre-establishment, establishment and consolidation, are presented in separate chapters, they are not “cut and dried” in real life. The phases may overlap and may not proceed in a linear way. The actual situation on the ground and the needs of the institution will always dictate how to proceed in any given circumstance.

**What is the pre-establishment phase?** The pre-establishment phase is the first of three phases. It sets the groundwork for establishing of NHRIs in this Toolkit (the other two phases, establishment and consolidation, are addressed in “Establishing NHRIs” Chapter 8, and “Consolidation” Chapter 9).

Pre-establishment includes the following milestones:

- Assessing the country’s readiness to establish and NHRI, having regard to the country situation, including opportunities and risks;
- Where appropriate, supporting the development of national consensus to establish a NHRI;
- Stakeholder engagement; and
- Providing information on the models or types, and attributes, of NHRIs and supporting the development of appropriate legislation.

**UNCT role:** UNCTs will have important responsibilities in each of these steps if the UN is requested to support the creation of an NHRI. There are also standard operating procedures related to the initial and follow up requests from the country that should be followed to ensure coordination at the UNCT level and ensure that the expertise and support of the UNDP and OHCHR are harnessed.

**This Chapter should be read together with Chapter 6, which sets out, step by step, the programmatic steps that should be considered in the UN planning cycle in relation to a given NHRI.**

Many UNCT staff themselves may not have good knowledge of NHRIs or how to begin the process of developing support at the country level. UNCT’s own capacity needs may also have to be developed. As the Chapter moves through the various steps in the pre-establishment phase, opportunities to develop the UNCT’s own capacity will be identified.

### 7.1 Assess the Country Situation

Paris Principles-compliant NHRIs are a UN priority. UNCTs should therefore be actively assessing opportunities, while noting the political, economic and socio-legal factors that will influence the decision to establish a NHRI, as well as the approach to be used, and the scope and length of potential UN engagement. These factors include:

- The level of existing political will;
- The strength of the existing culture of human rights;
- The effectiveness of the existing justice system; and
- The stability of the country.

*Political will:* Some governments will respond positively to the idea of creating a NHRI, for example, after recommendations in the Universal Periodic Review process. Other may, on their own initiative, request UN support for early development of strategies to establish NHRIs.

Not all governments will share the belief that strong NHRIs are necessary to ensure that human rights are respected. If there is no political will to move forward or no realistic prospect of success, there may be a need to redirect attention by building the capacity of NGOs and civil society more generally. This may result in a coalition of progressive social forces that is nurtured and ready to act when and if the political winds change.

This stage also presents an opportunity for the UN to support interested government officials to learn more about other NHRI successes that may exist in the region.

*Culture of Human Rights:* It is easier for a state to establish a NHRI if a strong culture of human rights exists. A country with a strong culture of human rights permits debate and dissent and has strong political resolve to introduce NHRIs. Experience has shown that NHRIs can strengthen a weak human rights culture.

If there is a country in the region with an established and successful NHRI, this is also relevant to the potential for building a culture of human rights in the country.

*Justice System:* A functioning justice system and respect for the rule of law are important to the success of an effective NHRI. See Chapter 4 for further discussion in the Rule of Law. This is especially so for NHRIs with quasi-judisdictional powers since, in the absence of a functioning justice system, NHRIs will be unable to enforce remedies or to intervene before the courts: this will lessen the incentives for officials to follow NHRI recommendations.

In the absence of a functioning judiciary, NHRIs may have the added burden of high expectations and being one of the few institutions to which people can turn for help. This creates expectations that are hard to meet. Thus, depending on the situation, concurrent efforts by UNCTs might be directed towards strengthening existing judicial infrastructure and supporting NHRIs.

*Political Stability:* A country experiencing conflict may not be ready for a NHRI because such institutions are rarely equipped to maintain their own security, let alone that of those persons who seek help. There may be exceptions when the conflict is low-intensity and prolonged, and/or where the conflict is playing out in only part of the country. In these circumstances, a human rights institution may play both an important and positive role if it is properly resourced and independent. And, of course, steps may be taken on a preliminary basis, as a part of the strategy leading towards the cessation of hostilities.

Ultimately, assessing the risks and opportunities is a matter of knowledge and judgement and must be made in light of the situation on the ground. When the government already accepts the idea, and if other factors are positive, the efforts to develop a national consensus will dovetail quickly with the decision to determine the NHRI model and draft enabling legislation.

If the government is not ready or reluctant, efforts will more likely be geared towards establishing a national consensus.

## 7.2 Supporting the Development of National Consensus

A national consultation process should precede the establishment of an NHRI, in order to build consensus and to maximize the likelihood of public acceptance.

In exceptional circumstances, the impetus for creating NHRIs is through **internationally-driven efforts**, often led by the UN, to bring about peace and/or civil reconstruction to countries torn apart by war and internal divisions.

### > **Examples:** NHRIs Established through Internationally-Driven Efforts

The requirement to establish human rights institutions was contained in peace treaties brokered for El Salvador, Guatemala, Bosnia and Herzegovina, Sierra Leone, Timor Leste, Afghanistan, Northern Ireland and Rwanda.

More often, however, the impetus or driving force is in the form of a **request from the State to the UN**. This may be influenced by external factors: for example, recommendations in an international document, such as a Universal Periodic Review, for example, or pressure exerted by key stakeholder communities. However, because a NHRI is, by definition, a State-sponsored entity, the State itself must accept the need for and desirability of establishing one.

**Consensus from and within the State:** The establishment of a NHRI involves a conscious decision by the State to subject itself, its apparatus, its decisions and its personnel to independent oversight by the NHRI.

The State must truly accept this: the State is likely to be the main respondent to many human rights complaints, especially in countries that have a recent history of conflict and abuse of power. National governments may lack receptivity and commitment to human rights, which are often viewed in “political” terms.

UNCTs can lay the groundwork when the government or some part of it has expressed an interest. Or, it may be done over time by ‘seeding’ the idea of a NHRI with key stakeholders, holding national seminars and meetings, supporting study trips and research, and generally seeking to inculcate the idea of a NHRI. Even if the idea comes from the State itself, UNCTs should support work to develop a national consensus, in particular through the active engagement of stakeholders.

### 7.2.1 The Importance of Stakeholder Engagement

A Government can signal that it is serious about creating a NHRI that complies with the Paris Principles by involving national stakeholders as well as international partners. By stakeholders, we mean the range of interested parties that include not only government but also NGOs.

UNCTs can have a role in fostering a more inclusive approach but need to accept this idea themselves: There is a need for “non-traditional” partners among

local/national human rights organizations and a need to strengthen the capacity of all national stakeholders. In short:

*“UNCT needs to understand the processes, timelines, actors and their agendas involved in the national planning process. UNCT should review and draw as appropriate on existing joint or collaborative UN frameworks and strategic partnerships (e.g. the EFA global action plan) which can both support country level action and increase coherence in the UNDAF.”<sup>1</sup>*

Stakeholder participation has many advantages:

- transparency;
- a healthy and sustainable culture of human rights;
- ensuring that the institution meets the needs of the people; and
- improving compliance with the Paris Principles.

Stakeholder involvement can prevent a State from attempting to compromise the independence and neutrality of the institution. Stakeholder engagement also helps ensure that the newly established institution will have credibility. It is important, therefore, that national stakeholders are engaged actively throughout the process. The UN, if asked to support the establishment of a NHRI, can play a pivotal role.

**Broader stakeholder engagement:** Involving stakeholders representing a diversity of interests ensures that pluralism is built into the process, and that civil society ‘buys in’ to the concept of a NHRI. This should include organizations that represent the interests of vulnerable groups.

**Ensuring that consultation is meaningful:** Ensuring adequate time and “space” for stakeholder engagement is critical, as is facilitating their involvement. This means that:

- Draft documents should be reviewed, approved and sent well before the scheduled consultation;
- Consultees should be given enough time to prepare;
- When travel is required, representatives of local or national NGOs should be paid their travel expenses and provided with meals, as appropriate, subject to UN rules in this regard; and

- The time allotted for the meeting should be appropriate and adequate, giving room for discussion.

#### > **Scenario: Engaging Stakeholders in the Pre-Establishment Phase**

**A government was working with the UN to establish a NHRI.** A steering committee was established, working with the UN, and together they decided to organize a national conference on a proposed draft NHRI law. The objective was to seek the input of NGOs and academics. There was already a good deal of scepticism among civil society about the government’s “true intentions” and good faith in this process – scepticism that was reinforced when the invitations to the meeting, along with a copy of the draft law, appeared only two days before the scheduled event.

Only a few NGOs appeared, as they had no confidence on the process and no time to prepare properly.

- When meetings are convened, the active participation of all stakeholders should be welcomed and encouraged so that events are not dominated by ‘official’ spokespersons
- The media should be invited.
- A consultation report could be drafted and widely shared after the event, summarizing the input in an objective manner and setting out next steps.

These steps will not only assist in ensuring the credibility of the process among stakeholders, but will also help prevent the State from unilaterally weakening the institution at a later date. This is because the stakeholder community would not allow this to happen without some form of opposition if the NHRI is viewed in a positive light.

#### > **Example: The Importance of Community Support: Nepal**

In June 2005, the King of Nepal decided to appoint new Commissioners to the National Human Rights Commission (NHRC) without consultation.

This sparked criticism that the selection process was contrary to the legal process. By the time the Royal government fell in 2006, credibility and support from key civil society actors for the NHRC had deteriorated. This was especially regrettable as previous Commissioners had built public legitimacy for the NHRC by ensuring that NGOs had had an active role in the NHRC’s establishment. Following extensive

<sup>1</sup> Relevant Findings on UNCTs, Human Rights & Capacity Development



pressure from civil society and other social forces, new commissioners were named in 2007.<sup>2</sup>

> **Checklist: Who are Stakeholders?**

- ✓ **Politicians**, since ultimately political action is a prerequisite for the establishing NHRIs
- ✓ **Government**
- ✓ **Members of Parliamentary committees** dealing with human rights
- ✓ **Public servants**, and especially Justice officials and/ or representatives of Attorney-General office, Ministry of the Interior, or equivalent.

**Civil Society**

- ✓ **Trade unions and similar professional associations**
- ✓ **NGOs active in human rights**
- ✓ **Human rights advocates and activists;**
- ✓ **Religious leaders**
- ✓ **Representatives of regional and international organisations**
- ✓ **Community service organizations**
- ✓ **Other Groups representing disadvantaged, vulnerable or marginalized persons** since, as prime beneficiaries, it is important to forge a sense of ownership in the process and be assured that the institution established will speak on their behalf;
- ✓ **Academics**
- ✓ **Members of the Bar (lawyers) and the judiciary**, especially those involved in human rights
- ✓ **Media/Journalists**

**International Community**

- ✓ **UN officials** and in particular the NIRM Section of the OHCHR and the UNDP since they have broad and relevant experience in fostering and encouraging such dialogue and accessing relevant expertise.
- ✓ **Other members of the donor/ international community**

## 7.2.2 Gathering Support

At some point in time in this phase, there will be a “tipping point” at which it will be clear that there is movement towards the establishment of an institution. This is the time to develop a programme of action, ensuring that

there is international support for the NHRI. Care must be taken to ensure that the UN planning processes take place at the earliest possible stage, and not after the NHRI has already begun operation. This means that common country frameworks, common country assessments and UNDAFs should include a mention of the NHRI, i.e. that the NHRI is reflected in and supported the UN planning cycles. **SEE CHAPTER 6 FOR UNCT ENGAGEMENT WITH NHRIS IN THE CONTEXT OF THE UN COUNTRY PLANNING PROCESS.**

There may be regional associations of human rights that should be involved, informed and engaged at the early stages, as well as NHRIs in other countries. **SEE CHAPTERS 2 AND 3 FOR FURTHER INFORMATION ABOUT COOPERATING WITH THE INTERNATIONAL AND REGIONAL SYSTEMS.**

In the pre-establishment phase, other NHRIs in the same region can be valuable sources of information, and may be helpful resources. Their stories, histories and examples of successes and missteps will serve to both manage expectations and provide guidance on how to avoid repeating errors. Study tours and reciprocal visits are helpful strategies to build knowledge. There is some research in the evaluation community showing that people are more interested in and receptive to knowledge and strategies that are adopted in the region, as opposed to strategies that may work very well in another geographic area or legal tradition. For this reason, it is important to create opportunities for government officials to learn more about successes in the same regional area.

In addition, other intergovernmental bodies, development partners and the diplomatic community may be important advocates for the creation and eventually the support of NHRIs.

## 7.3 Supporting a Country Request for Assistance

The UN Resident Coordinator may be engaged in discussions with the government about establishing a NHRI, either as a result of a recommendation from a treaty body or as a result of the UPR process, or because the government is itself initiating discussions. “Talking points” to support this discussion are attached in Annex as a briefing note. These will support the RC in being an effective advocate for NHRIs as part of the democratic governance objectives of the UN.

<sup>2</sup> J. Poudyal, “OHCHR’s challenge in Nepal”, online: (2008) 222 ACHR Weekly Review <<http://www.achrweb.org/Review/2008/222-08.html>>.

### 7.3.1 The Letter of Request: Supporting the UN Resident Coordinator

**Annex 1:** Briefing Note for Resident Coordinators on NHRIs

**Request for Assistance:** In order to initiate the process, the Country will generally prepare a letter of request to the UN for assistance in establishing a NHRI.

#### ■ Suggested Standard Operating Procedures for Supporting a Country Request for Assistance

##### 1. Formal Letter Requesting Assistance

If the country seeks assistance, a formal request is generally required, in the form of a letter, to UN officials.

The Resident Coordinator is the entry point for such requests at the country level. As the representative of resident and non-resident UN Agencies, the UN Resident Coordinator could mobilize appropriate support.

The letter may be **addressed jointly** to the UN Resident Coordinator in the country and to the UN High Commissioner for Human Rights.

In the event that a letter requesting assistance is addressed to either the Resident Coordinator or to the United Nations High Commissioner for Human Rights alone, the recipient office should forward a copy to the other office.

As well, there may be regional associations who have close working relationships with the OHCHR or the UNDP in the matter of establishing NHRIs, and these may be copied as well.

##### 2. Contact details regarding the High Commissioner and the OHCHR are set out below:

Office of the United Nations High Commissioner for Human Rights  
1201 Geneva 10  
Switzerland

Mr. Vladlen Stefanov  
Chief of the National Institutions and Regional Mechanisms Section  
Field Operations and Technical Cooperation Division  
T: + 41 22 928 93 77  
E: vstefanov@ohchr.org

Field Operations and Technical Assistance Division  
1201 Geneva 10, Switzerland.  
T: +41 22 928 9212  
E: gmagazzenni@ohchr.org

Regional Representative  
OHCHR (will vary by region)

For UNDP: contact relevant advisers at the Democratic Governance Group/Bureau for Development Policy and the Regional Service Centres.

##### 3. Timeframes: As a general rule, a service standard of five (5) to ten (10) working days from receipt of correspondence will be considered a reasonable time frame from the OHCHR for initial feedback in terms of further involvement or commitment to next steps, and any such feedback should be copied to the UN Resident Coordinator.

**Annex 2:** Checklist of Steps in the Pre-Establishment Phase

#### Regional Networks of NHRIs:

**Africa:** Abderrazak Rouwane, Head of the Department of Cooperation and External Relations, NHRI of Morocco, Chair of the Network of African NHRIs (rouwane@ccdhr.org.ma). Gilbert SEBIHOGO, Executive Director of the Permanent Secretariat of the Network of African NHRIs (gsebihogo@nanhri.org and gsebihogo@knchr.org)

**Asia Pacific:** Kieren Fitzpatrick, Director of APF (KierenFitzpatrick@asiapacificforum.net)

**Americas:** Raizabel Díaz, Director of International Relations, NHRI of Venezuela, Chair of the Network of NHRIs of the Americas (secretariared@defensoria.gob.ve)

**Europe:** Kirsten Roberts, Director of Research and Policy, NHRI of Ireland, Chair of the European Group on NHRIs (eurochair@ihrc.ie and kroberts@ihrc.ie)

for up-to date contact information, consult [www.ohchr.org](http://www.ohchr.org)

### 7.3.2 Making it Happen: Next Steps

Please see also Chapter 6, which sets out, step by step, the programmatic steps that should be considered in the UN planning cycle in relation to a given NHRI.

OHCHR and UNDP, along with other identified agencies, work with the Government to define the assistance required, terms of reference and timeframes for delivery. OHCHR has undertaken, mainly through its National Institutions and Regional Mechanisms Section, to work in consultation with the geographic and thematic sections and field presences of OHCHR. Tailored advice is provided on appropriate constitutional or legislative frameworks regarding the establishment of institutions and on their nature, functions, powers and responsibilities. Comparative

analyses, technical cooperation needs assessments, project formulation and evaluation missions are also undertaken to both establish and strengthen the institutions.

### 7.3.2.1 Fostering National Dialogue

There are several approaches that can be used to develop a national consensus: this might include a high level national conference on the establishment of a NHRI, as well as parallel workshops, public meetings and a media strategy. Dialogues between similar organizations – grouping NGOs with NGOs, for example, or bringing together academics – would also be an effective strategy and allow for the cross-fertilisation of ideas.

The process of internal discussion on next steps within the UN system should begin right away.

#### UNCT strategies to encourage and promote dialogue and national consensus:

- Support a workshop, seminar or meeting with OHCHR, UNDP and key stakeholders
- ‘Seed’ the area, that is, increase receptivity to the concept of NHRIs. This can be done by:
  - inviting NHRIs from the region, regional coordinating bodies and/or practitioners to foster exchanges
  - Organizing meetings with key stakeholders to examine the Paris Principles and best practices
  - Sponsoring seminars or workshops on NHRIs looking at regional successes, and engaging NHRIs from countries in the region to provide advice and guidance, in collaboration with regional NHRI networks, if such exist
  - Ensure that the dialogue is informed by the Paris Principles
  - Encourage the engagement of stakeholders (see the checklist, above, in Section 7.2)
  - Engaging regional NHRI Networks since they will be best able to speak to the practical realities of NHRIs and respond to any concerns
  - Sharing basic information about the nature and functions of NHRIs, and perhaps concrete examples of how NHRIs may assist in protecting and promoting human rights, to provide to local stakeholders
  - Sponsoring other interactions between key potential national stakeholders and practitioners and/or experts, as well as contact between national NGOs and International and Regional

NGOs dealing with NHRIs (again, potentially, through Regional Networks), as a way to diminish misconceptions or fears the NGOs might have about the creation of an Institution.

**Guiding the discussion:** Depending on the stakeholders and their knowledge of NHRIs, UNCTs, working with UN focal points, can develop and provide background materials to guide discussion:

- A research paper or series of research papers on NHRIs;
- A “white paper” or similar policy document;
- Basic information about the nature and functions of NHRIs, with concrete examples of how they may assist in protecting and promoting human rights; and
- A comparative analysis of other NHRIs in the region.

UNCT staff should take a full role in attending these events and discussions, and should support the development of materials in order to develop their own knowledge and understanding of NHRIs and the process of establishing NHRIs. This will help to build and reinforce their own knowledge base.

Where possible, UNCTs should ensure that NHRI practitioners/experts assist in the process at the very outset. As mentioned above, staff from other NHRIs in the region can provide this type of support. NIRM Section (OHCHR) and UNDP staff may also provide important expertise. Independent experts may also be retained in technical assistance projects. Regardless of the type of expertise, this is critical, since it is always more difficult to attempt to change ways of thinking after the fact than it is to mould and shape a vision at the front end. Requests for specific technical expertise should be jointly directed to the UN Resident Coordinator and the Office of the High Commissioner for Human Rights, as indicated above in Section 7.3.

**The framework for the discussion** should be the Paris Principles and the ICC’s SCA General Observations. The goal should be a process that examines whether and how a NHRI in conformity to the Paris Principles could improve the human rights situation in the country.

### 7.3.2.2 Coordinating International Assistance

OHCHR, UNDP and other partners, as appropriate, can provide a coordinated international response to the provision of assistance. This would generally involve relevant UN agencies, regional associations and NGOs, international organizations, donor agencies and other relevant stakeholders identified.

## CASE STUDY: WHEN A NATIONAL GOVERNMENT REQUESTS UN SUPPORT

### Establishing a NHRI in Tajikistan 2006-2008<sup>3</sup>

In 2006, Tajikistan did not have an independent NHRI. While national legislative bodies could address human rights as regards both domestic legislation and international human rights instruments ratified by Tajikistan, none of these organizations was an effective, autonomous protector of human rights.

### Ombudsman conference and OHCHR mission February 2006

In February 2006, OHCHR undertook a mission to Tajikistan to support and participate in a conference jointly organized by OSCE, OHCHR and UN Tajikistan Office of Peace-building (UNTOP). Financial support came from OSCE, the Swiss Agency for Development and Cooperation and the Swedish International Development Cooperation Agency. Bilateral meetings with the Government and civil society were held.

The conference familiarized participants with the 'Paris Principles', providing best practices of NHRIs in other countries. Establishing a NHRI in Tajikistan was presented as a possible outcome. Some 80 participants attended the conference, including representatives of the Government and Parliament, the judiciary, law enforcement bodies, academics, NGOs and international organizations. International expertise was from OHCHR, national human rights institutions (Denmark, Northern Ireland, and Ombudsmen from CIS countries, and Mongolia) attended. The conference stressed the importance of a wide consultation at the national level with involvement of civil society. It proposed a mandate that is as broad as possible, with strong complaint handling powers and unconditional access to places of detention.

### UNCT Information Note

In April 2007, OHCHR sent a letter to UN Resident Coordinators, including Tajikistan. Accompanied was an Information Note to the attention of the United Nations Country Team outlining the steps that can be taken in close coordination with OHCHR on the establishment and strengthening of national human rights institutions.

### High Commissioner visit to Central Asia April 2007

As part of a visit to Central Asian countries, the High Commissioner visited Tajikistan in April 2007 where she supported the establishment of a national human rights institution. On 30 April 2007, the President of Tajikistan recommended to Parliament to create a NHRI. The Minister for Foreign Affairs of Tajikistan then sent a letter in August 2007 officially requesting technical assistance to set up a NHRI.

### A government working group

A governmental working group was entrusted with the development of draft legislation. It had 11 members.

### Selection of an international expert

An international expert was selected by the OHCHR's Regional Representative for Central Asia in partnership with the UNDP to accompany the governmental working group in its drafting process. Drafts were developed and commented on, and shared by the government with the NGO and academic communities in a conference held in Dushanbe in December 2007. The governmental working group went on a regional study tour and was provided with materials on the merits of different human rights institutions in the country.

### Enabling Law:

The NHRI legislation was passed in 2008.

<sup>3</sup> See "Conference Proceedings on the Perspective of Establishment of a National Human Rights Institution in Tajikistan" (Dushanbe, 2006). Conference Organizers: UNTOP, UNDP, OHCHR, OSCE.

### 7.3.2.3 Inception missions:

Inception missions by independent regional experts or international experts have proved useful in helping to set out the parameters of potential needs and developing the framework for a project document or other planning tool for UNCT. These missions bring in the expert for an orientation period to begin the process of generating the internal country dialogue to create a NHRI.

The NIRM Section of the OHCHR and UNDP have years of collective experience in identifying suitable persons to carry out such assignments, these are typically individuals who have had relevant experience in NHRIs. They should be consulted jointly if it is determined that an inception mission is necessary to support defining the needs more precisely, as well as project development.

> **Note:** Inception missions

Inception missions are a good starting point to lay the groundwork and conduct a needs assessment for the pre-establishment phase. The NIRM Section of the OHCHR should be contacted, along with UNDP, to begin this process and support the identification of relevant experts.

> **Note:** Lists of qualified experts

UNDP and OHCHR (NIRM Section) are developing lists of qualified experts according to areas of technical assistance and regional experience. OHCHR and UNDP contact points are set out above in 7.3.1.

### 7.3.3 Focal Points in Government and in the UN

The decision to establish a NHRI is taken by the State. This is because the NHRI must have a legislative foundation, either through a constitutional provision or ordinary legislation, or both. Only the State can ensure this is done and the sovereignty of the State must be respected in this regard. This means that an 'official' process designed to lead to the establishment of a NHRI must involve government, and is usually led by government. At this point in time, a government focal point should be identified, which will have the responsibility to oversee the establishment of the NHRI.

The focal point can be in a Ministry and supported by senior staff in the Ministry. Alternatively, it might be spearheaded by a Parliamentary Committee. In some countries, the Office of the President or equivalent office, may oversee the process. Whatever mechanism is used, two factors are critical: first, the Government must be

serious in its intention to create an institution that is Paris Principle-compliant, and, second, the process should be as transparent and participatory as possible.

- Is there a "natural" focal point in the State for coordinating the establishment process (for example, a government steering committee, a parliamentary committee or advisory body with a mix of government and civil society)?
- Does the UN have its own focal point (for example, OHCHR and UNDP) for supporting the government process and liaising with it, coordinating with other organizations and ensuring resource allocation? This could work in parallel with the government process.

Even though the formal process, by necessity, must be led by government, there is an on-going need to ensure that stakeholders continue to be involved beyond initial dialogue and consultations. One approach that has shown to be effective is to create one or more working or advisory groups comprising representatives from civil society to examine and recommend features of a new institution. If more than one group is created, meetings should be coordinated to assure a shared basic vision and understanding.

The overall focus of the working groups would be to:

- Determine what type or model of institution to establish;
- Define the general mandate, roles and responsibilities of that NHRI; and
- Assist in the development and/or review of draft legislation to establish the NHRI.

### 7.4 What kind of NHRI?

Having reached consensus on the need to act, a parallel or next step should be to move the process from the general (does the country wish to establish a NHRI? What are the advantages?) to the specific – what kind of NHRI, among the many models, should be adopted by the country?

For information on various NHRI models, please see Chapter 2. While the information in Chapter 2 will not be repeated here, it will be recalled that many different types of model can, in theory, conform to the Paris Principles and, in that sense, will satisfy the basic international

requirements of a NHRI. UNCT staff can encourage the government and stakeholders to examine the various options – for example by looking at different solutions in other countries in the region – and providing basic information on the Paris Principles and different models of NHRIs. It can further provide technical advice, support study tours or research papers, or support access to experts with that technical knowledge, as indicated earlier in this section. This will involve assessing, in light of the situation, including the socio-political situation and the health of the justice sector, the weight that should be given to the following factors:

- Compliance with the Paris Principles, including issues such as plurality through broad membership in the leadership of the institution (see Chapter 10).
- The type of institution needed in the country: in addition to a “classic” NHRI, is there a need for transitional justice, or hybrid mandates? (See Chapter 2). The State must determine which human rights the NHRI will promote and protect (equality rights only, for example, or the full range of rights?).
- Which sectors it will cover (public sector only, or public and non-governmental / private sector)?
- Will the NHRI play a role under the OPCAT (as a NPM or not)? or whether it will have other mandate areas in addition to human rights. See Chapters 3 (roles and responsibilities of NHRIs), 4 (role of NHRIs in core protection issues, including torture prevention) and 10 (compliance with the Paris Principles) for further details.

Once again, the final decision regarding any model and legal structure belongs to the country.

## 7.5 Developing the Legal Framework

Once the general decision on the type of model is taken by the government, there is a technical phase of preparing the ground work for the enabling legislation. A number of policy decisions need to be made, and the UNCT can support this process through a technical assistance project.

### Annex 3: Overview of NHRI Legislative Features

See also Chapter 10 with regard to minimum provisions in the legislation to comply with Paris Principles.

### 7.5.1 Scope of Mandate:

Effective NHRIs generally have a broad and non-restrictive mandate, which includes civil, cultural, economic, political and social rights. Programmes should focus on issues that are country-relevant and that are seen as important to the public, and to civil society, the government and to public bodies.<sup>4</sup>

**General:** At a minimum, NHRI's should be vested with competence to both protect and promote human rights (Paris Principles Section A1). A simple statement to this effect is appropriate in the early sections of enabling legislation. A broad statement to the effect that the NHRI is entitled to look into, investigate or comment on any human rights situation, without any form or prior approval or impediment, is also desirable, to ensure independence and autonomy.

Reference to applicable international instruments is also desirable.

> **For example,** the *Law of the Public Defender of Georgia* states:

*Article 2: In his activities, the Public Defender shall follow the Constitution of Georgia and the present Law, as well as the universally recognized principles and rules of international law, international treaties and agreements concluded by Georgia.*

The **mandate will depend on political circumstances and political will.** Sometimes the internal situation of a country means that a NHRI with a broad mandate is not possible, either because it is not acceptable to key forces or for other reasons. In such circumstances, strategic choices may be inevitable. Settling for less than perfection is an option: an institution can grow organically as it builds experience and credibility, and with general advancements in the human rights situation of the country in which it operates.

#### Applying only to the public sector or more broadly?

Human rights laws typically apply to the government at a minimum, which includes all departments and administrative branches of the State, law enforcement bodies, the Army, correctional and detention facilities, local government administration; government committees and agencies. It usually extends to state-owned companies and companies where the Government exercises control, for example, where it owns over 50% of the capital; or other bodies as prescribed by law.

<sup>4</sup> International Council on Human Rights Policy. 2005. *Assessing the Effectiveness of National Human Rights Institutions* [http://www.ichrp.org/files/reports/18/125\\_report.pdf](http://www.ichrp.org/files/reports/18/125_report.pdf)

Questions can still arise: does the NHRI have power over state-owned corporations? State-controlled bodies? To avoid arguments in future, some statutes will solve this problem by defining terms such as “government”, “public service”, “public authority” or other entities whose actions are subject to the NHRI’s reach.

**Application to both public and private sectors:** As noted in the previous section, it is important to establish whether the law will be restricted to the state or whether it will also apply to non-state sectors. Although human rights commissions in developing and post-conflict countries tend to focus on State action, human rights violations can also be caused by the actions of other entities in other sectors, for example, corporations, partnerships or persons in employment, housing and other sectors.

Non-state actors also have human rights responsibilities, and the obligations put on the State by international obligations extend to ensuring human rights are respected by non-state actors. The Paris Principles are consistent with a broader application of the NHRI mandate to cover both the private sector and the public sector. This is especially important as regards equality rights in the areas of discrimination in employment, housing, goods and services because these are typically offered by the private and non-profit sectors.

**MORE INFORMATION ON THE ROLE OF NHRIS IN RESPECT OF PRIVATE SECTOR BUSINESS IS FOUND IN CHAPTER 3.**

There should be **no unnecessary duplication**. For example, if there is an independent Electoral Commission with the authority to receive and deal with complaints relating to the right to participate in elections or the conduct of elections, there is no need to give the NHRI the same authority, although nothing should preclude independent decisions to review human rights abuses by any other institution. That said, NHRIs should cooperate with and support the functions of other institutions that are also concerned with human rights issues, directly or indirectly.

**A broad mandate should be planned to correspond with financial capacity and human resources.** Even if the NHRI is to be mainly or entirely funded through donor assistance at the outset, at some point in time the UN will require an exit strategy and the NHRI will have to be funded through the State budget. If a small budget is planned with only a few people and no authority to investigate complaints (an activity that generally requires several staff), then a full mandate is not likely to be properly carried out.

## 7.5.2 “Established by law”

The Paris Principles require that NHRIs be established by law. In practice this means by constitution or a law passed by the legislature, or both.

For example, the National Commission Human Rights of Togo was established first by the legislative Act n°87-09 of 9 June 1987 and was later entrenched in a constitution during a subsequent democratic process in 1992. The founding law was then revised by the Act n°96-12 of 11 December 1996.

While the Principles do not favour one over the other, there are advantages to a constitution: it is more difficult for the State to eliminate or cut back the institution when its existence is guaranteed in a constitution. It is worth reiterating, though, that according to the ICC’s General Observations, the creation of an institution by an instrument of the Executive (for example a presidential decree) is *not* adequate to ensure permanency and independence. **To avoid perceptions of interference in State sovereignty, UNCTs should not initiate proposals for constitutional amendments unless there is already a constitution-building or reform exercise underway and a request for specific assistance in this is made by the state authority.**

Laws, either alone or in combination with constitutional provisions, offer certain advantages. They can address the operational and functional aspects of the NHRI in more detail than would generally be appropriate in a constitution. Laws can also be modified more easily than constitutions: for example, a NHRI may initially have recommendatory powers only, at least until such time as the judicial system is strengthened and is capable of accommodating quasi-jurisdictional powers of accepting individual complaints and taking issues to court. If the judicial system is eventually strengthened, it is far easier to amend legislation than to try to change a constitutional provision.

UNCTs should ensure that the provisions describing the nature, responsibilities and powers of the institution are consistent with international and regional best practices and with the Paris Principles.

Continuing the consultative and inclusive approach described in earlier sections offers many advantages, ones that have already been discussed. Additionally, involving stakeholders in the process will improve understanding of the future NHRI, as well as the constraints under which it will operate.

For further details about the content of legislative provisions and compliance with the Paris Principles, see Chapters 1 and 10.

### 7.5.3 Funding

The State is required to provide adequate funding that should, at a minimum, include:

- a) the allocation of funds for adequate accommodation, at least its head office;
- b) salaries and benefits awarded to its staff comparable to public service salaries and conditions;
- c) remuneration of Commissioners (where appropriate); and
- d) the establishment of communications systems including telephone and internet.

Adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the organisation's operations and the fulfillment of their mandate.

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

The UNCTs can work with the government to provide a general idea of what a NHRI will cost, having regard to successful examples in the region and UN expertise. Basic infrastructure costs and human resources costs are foreseeable and can be planned for. It is important to ensure that there are funds earmarked for programme spending beyond fixed operating expenses, since planned activities will only be developed at the time of the strategic planning in the Establishment Phase. While the specific activities are not yet known, a draft budget can be developed based on consultations with regional NHRIs and other associations with NHRI expertise.

In many developing countries, the UN can provide tangible evidence of its support by providing concrete and specific start up funding and, in some instances, core funding, depending on the country context.

### 7.5.4 Coordinating donor support

Getting the foundations of donor assistance into place for the Pre-establishment Phase takes time and has foreseeable challenges. For UNCT staff who are asked to help

coordinate donor support, or to approach donors, there are several salient features:

- The UN planning system should reflect and support the plans to engage with the NHRI (see Chapter 6);
- Like the UN itself, donors rarely have funds available (except for minor initiatives) at short notice for unplanned projects;
- Donors are reluctant to commit funding unless the need is demonstrated and there is a strong likelihood that the entity will actually exist and serve identified needs; and
- Funding approaches can only be made when it is clear that an institution will be established and that the institution will conform to the Paris Principles.

The combination of these factors poses a dilemma and can lead to problems. If donor funding is secured too late, the institution will begin operations without the benefit of prior training, properly planned infrastructure and the tools that are needed before its doors open.

UN agencies, in particular the UNDP and OHCHR, which have a high level of expertise in the area of NHRIs, need to time their funding approaches carefully so that they conclude the project agreements in a manner that ensures support is provided in a timely fashion. In addition, legislators could be advised to include a clause in the enabling legislation that would grant lead-up time to the institution beginning to function.

### 7.5.5 Providing budget support for core costs and wages

Should the UNCT plan to supplement or pay wages of NHRIs staff, or even members?

The ICC Sub-committee has noted that funding from external sources, such as from development partners, should not compose the core funding of the NHRI as it is the responsibility of the state to ensure the NHRI's minimum activity budget in order to allow it to operate towards fulfilling its mandate.<sup>5</sup> In this regard, NHRI salaries in particular are a State responsibility and supplements provided by donors would, in any case, end once the project ends.

There is a view in some circumstances that supplements are necessary to ensure that the institution can attract and retain quality members and staff at the outset and

<sup>5</sup> ICC Sub-Committee on Accreditation *General Observations* (Geneva, June 2009).



buys time during which more suitable, long-term corrections can be made either legislatively or administratively.

There are insufficient reliable studies on the relative merits of the two schools of thought to come to a determination as to which is best. That being said and noting that there will be exceptions, as a rule, UN should not be required to supplement public service wages beyond the short to medium term.

## 7.6 Building in Capacity from the Start

There are certain basic areas of performance and legitimacy that are well known and should be built in from the start, i.e. in the Pre-establishment Phase. Each one is linked to particular areas of preparation, which leads to focused capacity development and, later on, will serve as the basis for capacity assessment. The section should read in conjunction with the specific requirements of the Paris Principles in Chapter 10.

The discussion below is drawn in part from:

**International Council on Human Rights Policy.** 2005. *Assessing the Effectiveness of National Human Rights Institutions* [http://www.ichrp.org/files/reports/18/125\\_report.pdf](http://www.ichrp.org/files/reports/18/125_report.pdf)

### 7.6.1 Public legitimacy

NHRIs will have public or popular legitimacy when they are seen to stand up for the rights of those who are vulnerable, and to handle effectively the issues within their purview.

An institution's legitimacy is also partly rooted in its formal or legal status and its compliance with the Paris Principles.

*What this means for the pre-establishment phase:* There should be a public consultation process leading up to and including the development of legislation. See Section 7.2, above. The drafting of enabling legislation should include specific legal responsibilities regarding the protection of human rights, especially for those who are vulnerable. Enabling legislation should be in the form of a constitutional provision, a law passed by legislation, or both. The enabling law should comply with the Paris Principles. See Chapter 10 and Annex 3 of this Chapter.

**Annex 3:** Overview of NHRI Legislative Features

### 7.6.2 Accessibility

NHRIs will have to publicise their work and ensure that they can be contacted easily. The public and civil society

organisations should be confident that NHRIs will be welcoming and will take them seriously. Their offices should be accessible. Disadvantaged groups in society should be encouraged to access the NHRI.

*What this means for the pre-establishment phase:* There should be a public dialogue and an awareness campaign during the process of drafting and passing the enabling law, with specific outreach to stakeholders and persons who are working with vulnerable communities. (Issues regarding accessibility to persons with disabilities, premises design and location, communications and general public access are addressed in Chapters 8 and 9).

### 7.6.3 Functional organisational structures and culture

Organisations that are open, collaborative and self-critical are far more likely to respond well to the needs of the public and other organisations and to identify shortcomings in their practice. Issues regarding organisational structure and sound management are dealt with in Chapters 8 and 9. Premises, communications and accessibility are addressed in Chapter 8).

*What this means for the pre-establishment phase:* Effective organizational structures should be established by the leaders of the NHRI once they are in place, and should not be micro-managed in advance by the State.

### Transparency in appointments and nominations

The nominations process should support independence and transparency and preferably be set out in law. In practice this means that, as a minimum, the appointment process should involve nominations from civil society, and should engage Parliament by having the latter be responsible, as the elected body for naming members after receiving nominations from various social actors.

Executive appointments are not recommended.

*What this means for the pre-establishment phase:* NHRI laws should have transparent appropriate processes for nominations built into the law.

> **Example:** Nominations process that involves a National Parliament: Timor Leste

The law establishing the Office of the Ombudsman for Human Rights and Justice of East Timor provides in articles 12 and 13 for selection criteria and a process that involves National Parliament.

*The National Parliament shall appoint the Ombudsman for Human Rights and Justice through absolute majority votes of its members on active duty.*

The same law also sets, in article 21, stringent conditions on which a member may be dismissed:

*The Ombudsman for Human Rights and Justice can be removed from office by a two-third (2/3) majority in the National Parliament...*

For more information on this, please see Chapter 10.

### **Ensuring integrity and quality of members and staff**

The quality of members, leadership and staff are vital to the NHRIs' reputation and effectiveness. Transparent and merit-based procedures will help ensure independent, professional and courageous members.

*What this means for the pre-establishment phase:* The legislation should provide for members of the organisation to have experience in human rights and public administration or at least in senior management.

The legislation should not force the NHRI to recruit staff from the public service, but should permit the leadership to set its own by-laws in this regard.

Issues regarding pluralism and diversity among staff and members are discussed in Chapters 8 and 10, respectively.

### **Consult with civil society**

NHRIs are required by the Paris Principles to cooperate with civil society. Civil society organisations, in particular human rights NGOs and community-based groups, can be effective links between national institutions and individuals or groups who are politically, socially or economically marginalised.

*What this means for the pre-establishment phase:* The NHRI should have the power to work with and consult with any organization, without prior approval.

### **Have power to monitor compliance with their recommendations**

National institutions should have power to monitor the extent to which relevant authorities follow their advice and recommendations.

*What this means for the pre-establishment phase:* These powers should be built into the enabling law, with respect to any situation that the NHRI chooses, and to obtain information and documents on request.

### **Interact with the International System**

NHRIs can become a key relay mechanism between national human rights enforcement systems and international and regional human rights bodies.

The Sub-Committee interprets the function of encouraging ratification or accession to international human rights instruments, set out in the Paris Principles, is a key function of a National Institution.

*What this means for the pre-establishment phase:* NHRIs should have the power to protect and promote human rights as set out in international instruments ratified by the country. They should also be able to cooperate with and support the international human rights system. The ICC Sub-Committee has encouraged the entrenchment of the function of encouraging ratification or accession to international human rights instruments in the enabling legislation of the National Institution to ensure the best protection of human rights within that country.<sup>6</sup>

#### **7.6.4 Capacity to undertake promotional work**

It is not unusual to see promotional work treated as an afterthought, receiving less training and fewer resources. In fact, the NHRI's success - if not its long term survival - depends on its ability to manage the media, get its story out into the public and communicate its work effectively. This requires a serious approach to planning, resourcing and staffing promotional activities.

#### **7.6.5 Capacity in Investigations**

**List of Legislative Powers** for adequate investigation skills in enabling law<sup>7</sup>

In terms of the NHRI jurisdiction to investigate complaints, this should be explicitly set out in the enabling law, which should:

- provide that an individual victim, his or her representative, third parties and NGOs, trade unions or other representative organisations can file a complaint;

<sup>6</sup> ICC Sub-Committee on Accreditation *General Observations* (Geneva, June 2009).

<sup>7</sup> OHCHR National Institutions Unit. 2007. "Information Note: The Role of The UNCT in Establishing or Strengthening A National Human Rights Institution"

- authorise the NHRI to initiate complaints;
- specify the powers of the NI in investigation, including:
  - the power to compel the production of relevant information (either in the form of documents or by means of oral evidence);
  - the freedom to conduct on-site investigations, if necessary;
  - the power to call parties to a hearing;
  - in some cases, may include the power to grant immunity from prosecution to persons giving testimony or otherwise appearing as witnesses;
  - the power to hear and question any individual (including experts and representatives of Government agencies and, if appropriate, private entities) who, in the opinion of the investigating body, has knowledge concerning the alleged violation or is otherwise in a position to assist the investigation;
  - the power to summon witnesses and compel their appearance; to receive oral and written evidence under oath; and to compel the production of such documents or other material evidence from public agencies and authorities as the investigating body considers necessary for proper investigation of the complaint;
  - the power to impose or seek sanctions when the NHRI is obstructed or interfered with in any way, as well as similar powers when there has been intimidation or reprisals made against a party or witness to a complaint; and
  - the authority to order interim injunctions or interim relief during the course of an investigation.
- clearly spell out the NHRI's remedial powers: to make recommendations; to seek enforceable decisions through the courts or a specialised court or tribunal; and to make enforceable decisions (very rare); and
- define the types of remedy that may be applied or sought and make it clear that the NI can freely publish its findings and recommendations, without the need for prior approval.

Additional features of enabling legislation are set out in Annex.

### Annex 3: Overview of NHRI Legislative Features

## 7.6.6 Capacity to Review Legislation

Many NHRIs have the power to review national legislation and assess its consistency with human rights standards. These powers are either explicitly set out in the laws, or they exist in virtue of the broad mandate to review all human rights matters.

## 7.6.7 Capacity of NHRIs as National Preventative Mechanisms

As noted in Chapters 3 and 5, countries that have adhered to the Optional Protocol to the UN Convention against Torture (OPCAT) are required to establish a National Preventive Mechanism (NPM). Regardless of whether the NHRI is designated as the NPM, the NHRI is expected to play an enhanced role in preventing torture.

The decision to allocate these responsibilities to a NHRI implies that the NHRI will be equipped to undertake the role. The first issue is similar to those faced by hybrid institutions that have additional mandates and responsibilities: becoming a NPM can detract from other central responsibilities, especially if the activity is unfunded.

On the other hand, being designated as the NPM raises the profile of the NHRI and is consistent with its other human rights responsibilities.

Each country will have its own solutions, but the main issue is that the decision to designate a particular entity as NPM should be made carefully with due regard to capacity, rather than simply assuming that the NHRI can take over the duties with no additional resources. The NHRI may become the NPM, or it may be part of a designated umbrella group, that could include a wide range of representatives.

## 7.6.8 Capacity to Obtain Information and Documents

A frequently-cited deficiency in NHRI legislation is the failure in the legislation to either grant powers to compel production of documents and information, or to punish failure to do so through the courts. If the NHRI is perceived as powerless, government officials may ignore requests for information.

The perceived powerlessness of the NHRI also has consequences for the powers to obtain information: It is not unusual to see the enabling law make it an offence to fail to comply with the requests of an NHRI, but it is rare to see the law specify the penalty, or integrate the offence into administrative or criminal laws: it is even rarer to see the NHRI use such provisions where they do exist.

This issue is clearly stated in the following text:

*The most serious complaint that we have heard ... refers to the practical absence of effective legal mechanisms for ensuring a response to ... recommendations or requests for information. While ... the law on the NHRI creates an offence of interfering with or impeding activities of the ombudsman, they do not list any specific punishment and simply refers to "relevant legislation". In practice ... the institution has almost no means of compelling the authorities to respond to its recommendations or to provide requested information. This appears to be a problem for practically most NHRIs in the region. In order to solve this problem it would be necessary to amend the law on NHRI and several other relevant laws and, which is even harder, to change the established judicial practice.<sup>8</sup>*

The solution is in part in the legislation in the pre-establishment phase, when the laws are being drafted. Even for those NHRIs that cannot enforce their decisions, many laws will indicate that public officials (and sometimes others as well) are obliged to comply with requests for information. There should be a clear mechanism to enforce these powers, including the creation of specific summary offences (or the equivalent in criminal or administrative law).

### 7.6.9 Capacity to undertake monitoring<sup>9</sup>

At the pre-establishment phase, the legislation should be reviewed to ensure that the NHRI has the mandate to review and report on human rights situations, and that it provides for unimpeded access to public officials and information as necessary.

Finally, NHRIs require the legal right to visit the sites of incidents, private property, public institutions – including places of detention – and freely publicise the results without the need for prior approval.

If the NHRI is to monitor places of detention, the enabling legislation should specifically provide for this, and confer authority to: enter any place of detention without prior warning; see official records and take copies as required; see and take statements from prisoners alone and in unsupervised situations and request that any detainee be presented.

### 7.6.10 Capacity to provide advice to the state institutions<sup>10</sup>

Enabling legislation should specifically provide that the NHRI:

- can provide advice either at the request of the State or on its own initiative directly to the authority that the NHRI considers the most appropriate, and without the prior consent by any higher authority;
- can publicise its advice without restriction or prior approval; and
- is entitled, within a reasonable delay, to a full response from the authorities indicating the actions they will take and by when.

### 7.6.11 Human Rights and Business

The NHRI's role in this area will depend in part on the jurisdiction provided for in the enabling law, e.g. whether the NHRI can accept complaints about private sector activities.

At another level, however, the Paris Principles require NHRIs to advise state institutions on human rights-related legislation, and thus NHRIs can play a role in the regulatory and enforcement frameworks regarding corporate behaviour and human rights, and this entails the capacity to review legislation, which is dealt with above in section 7.6.6.

## 7.7 Pitfalls and Strategies to Avoid Them

There are several recognised pitfalls that can be planned for and addressed at the pre-establishment phase.

### 7.7.1 Managing Expectations

NHRIs are an important part of a State's human rights apparatus, but cannot be a panacea for all human rights issues. NHRIs operate within existing socio-political and legal contexts, and will face challenges and constraints. Especially at the outset, they will lack experience and expertise. It is important, therefore, to be realistic about what an institution can accomplish within the short run when its doors open and people come forward with their human rights problems expecting solutions. UNCTs must

<sup>8</sup> Ibid.

<sup>9</sup> OHCHR National Institutions Unit. 2007. "Information Note: The Role of The UNCT in Establishing or Strengthening A National Human Rights Institution"

<sup>10</sup> Ibid.

have a good understanding of current conditions, as well as the capacities of the new institution.

They should attempt to ensure that stakeholders appreciate that institutions cannot do it alone and will require support and encouragement.

It is crucial that the State not attempt to establish an institution as a form of “window dressing” by establishing a powerless institution that will avoid taking necessary action.

Clear, measured and attainable objectives that “start small” are much preferable than grand and ambitious announcements that are not matched by legislative powers and planned resources.

Expectations regarding complaint-handling in particular must be realistic. If the institution has recommendatory power only, it will be dependent on government to act. There are mechanisms available to help ensure that governments do act - keeping issues in the public record over time; enlisting other stakeholders to support remedial action; and ensuring that Parliament debates the matter. But in the final analysis, ‘hard’ results depend on government’s good will for NHRIs without quasi-judicial powers.

Moreover, it must be remembered that the institution’s investigatory responsibilities will impose on the institution the requirement to be fair, balanced and impartial, as well as to base decisions and recommendations on the basis of ‘proof’ uncovered within the investigation process. They cannot represent a constituency and advocate on their behalf in the same way that NGOs do. Their decisions, therefore, will not always please everyone.

### 7.7.2 Getting ahead of the legislators

Actively engaging stakeholders can have advantages, many of which have already been noted. It also brings risks:

- The proposals and recommendations raise expectations and go beyond what the legislators are ready to do.
- The government might elect to ‘go it alone’ with no further consultation or public disclosure, with the result that the newly established institution is born with several strikes against it, including the expectation that it will be ineffectual at best, and a tool of government at worst.

It is important that those supporting the establishment of the institution get a clear sense of where its political limits are from the earliest possible moment, and attempt to

develop a consensus that pushes at these limits without shutting down the process. This can only be done through continual and direct contact with the political authorities themselves and in particular the authorities that are the focal points or ‘champions’ for the institution.

### 7.7.3 Operational Constraints

In an effort to control the new NHRI by law, there is a frequent temptation to constrict operational flexibility by defining detailed organisational structures, operating procedures or even strategic objectives beyond the basics in law. This is contrary to the independence that institutions should have, because NHRIs themselves are responsible for determining how to organise and conduct their work. States should be dissuaded from trying to create by-laws or other binding documents to pre-empt the commissioner or members from developing their own organisational structure and organisational objectives.

### 7.7.4 Developing programming for institutions before they are established

A related difficulty is the need for a programme of action in order to attract donors and justify a budget for project activities before the institution has actually come into being. This poses a dilemma: NHRIs have independence, including the independence to develop their own programme initiatives. A detailed plan that is developed too early will force programme and other administrative initiatives onto an institution that, once established, will have its own views about needs and priorities. This presents a conundrum: how to attract donors, which often require defined programme activities, while at the same time leaving the possibility open for the institution to come to its own decisions on programming initiatives?

> **Example:** Developing the Program of Action without adequate ownership by NHRI: Afghanistan.

The Project to Support the Afghan Independent Human Rights Commission (AIHRC) was implemented by the United Nations Development Programme (UNDP), United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner on Human Rights (OHCHR). The Project was intended to be an effective mechanism for supporting the AIHRC to become functional and to build capacity. The AIHRC itself, however, determined that the programme of action defined in the project document did not meet its real strategic needs.

Although the NHRI senior members were part of the stakeholder group that developed the plan, they therefore decided to change the plan. Subsequent reviews and evaluations have noted this problem, noting in particular that the initial strategic plan, which formed the basis of the project document and was designed by an outside expert, was too ambiguous and ambitious.<sup>11</sup>

There are ways to mitigate this problem:

- Building into any project document a mandatory strategic planning process which could result in modifications to project activities that are projected in the pre-establishment phase.
- Concentrating on designing support programmes that feature needs that are predictable and common to all newly established NHRIs. (These are discussed Chapter 8).

### 7.7.5 Capacity Gaps in Financial Management

Experience shows that new institutions are unlikely to have the ability to respond to UNDP financial and other reporting requirements from the outset. This is a predictable difficulty that must be addressed. The reporting and accounting processes and requirements of the UNDP are unique, as are the policies and practices surrounding project management and implementation. **Project officers without UN experience may find it difficult.** Bookkeepers and accountants, who are available locally, including those employed by the institution, are not always trained in the UN requirements and therefore will not be able to apply them. **Financial officers without first-hand experience working with UNDP systems may also face difficulties.** This is a reality on the ground, and any significant technical assistance project must recognise and deal with it at the outset.

Individuals with the responsibility in the institution for project management and implementation, as well as financial control and reporting, receive significant training on UN procedures and requirements. This would include integrating UN electronic reporting packages into institutional IT systems. Obviously, if there are other major funding partners with their own requirements, these needs should be taken into account in any training. One solution is to have the project team established at the pre-establishment phase (which includes UN staff)

assume initial responsibility for ensuring that the project is implemented and that the necessary financial controls and reporting systems are in place. A critical requirement of the project team would be to transfer the knowledge and expertise they have about UN processes to NHRI staff. This can only be done if these individuals are hired in the pre-establishment phase and actively engage with their counterparts.

### 7.7.6 Difficulties in Hiring Qualified Staff

NHRIs frequently have difficulties in attracting and retaining qualified staff: these are recurrent and common problems and should be anticipated even before the institution is established.

In developing countries, salary and benefits levels should at a minimum be comparable to the public sector jobs.<sup>12</sup> However, public sector salaries are low in most developing countries: governments will frequently apply the same salary standards of the public sector. While this may not cause problems in attracting and retaining some staff, it will clearly have an impact on others. The main difficulty is that the real comparator group for many positions in an institution will be the NGO sector. Since that sector typically largely draws its financing from donors, the wages it pays are usually substantially higher than those paid in the public sector in developing countries.

**Implications for the pre-establishment phase:** The easiest way to avert this problem is to anticipate it by giving the NHRI the power in law to set the level of wages for the members and staff, especially professional staff, thus giving the institution greater flexibility to determine the salary level that should apply to any given position and/or by authorising greater flexibility in the design of benefits packages that might serve to off-set lower wage levels.

### 7.7.7 Insufficient Capacity to Manage Core Protection Issues

When an NHRI is established through UN assistance and support, but cannot or will not investigate major cases involving core protection, experience shows that NHRIs are generally perceived to have failed in their work. To the extent that the UN has supported and is publicly seen to be supporting the NHRI, experience shows that the UN may be also be seen - rightly or wrongly - as sharing in that failure.

<sup>11</sup> Upreti and Griffith, "UN Support to the Afghan Independent Human Rights Commission Project: Final Evaluation." 2008.

<sup>12</sup> ICC Sub-Committee on Accreditation *General Observations* (Geneva, June 2009).

Part of this challenge is to ensure that NHRIs pay particular attention to (1) keeping the caseload of core protection-related complaints current, (2) giving these cases priority and (3) communicating service standards effectively to the public – and then meeting those standards.

**Implications for the pre-establishment phase:** If the country is experiencing violations of basic rights that are linked to issues like torture, arbitrary detention, forced disappearances, etc. then the government needs to understand early on that the principal priority of the NHRI will inevitably be to deal with these issues, and that political pressure or reprisals may not help the cause. Examples from other countries, preferably in the region, may help.

Several approaches to dealing with core protection are set out in chapter 4.

### 7.7.8 Balanced Support for Hybrid Institutions

Similarly, it is vital that the international community and donors in particular, recognise the holistic nature of the national human rights system and not forget that financial support must be directed at the whole and not one part. This is especially important for NHRIs that have hybrid mandates, and where different and powerful funders are “interested” in one part of the mandate, but not the others.

> **Example:** Ensuring balanced donor support for a hybrid NHRI

The Timor Leste Ombudsman, the *Provedoria dos Direitos Humanos e Justiça* was established in 2006 with a triple mandate - human rights, good governance and anti-corruption, as well as general oversight responsibility for the constitutionality. At the time of its establishment in 2006 donors and, to some extent, civil society, tended to see the organization through the three silos of human rights or anti-corruption, or to a lesser extent, maladministration.

Because there was little international experience with this type of multiple mandate, and little organisational integration, the organization and its international partners tended to focus on and fund one area, or to promote one aspect of the mandate over the other.

Expectations were developed in accordance with funder priorities. The UN funded primarily the human rights mandate, and other funders supported the other two aspects. The silo approach led to uneven organizational development, some internal tension, and missed opportunities for synergies between the mandates. In response to perceived inaction, the government floated the idea of creating a separate anti-corruption commission.

More recently, projects from all funders have attempted to push for more balanced and vigorous organizational development and capacity building.<sup>13</sup>

## CONCLUSION

UNCTs can encourage and promote a successful process of preparing the groundwork for a NHRI.

This can include ensuring that the following issues are addressed:

- Assessing the human rights situation of the country, including the strength of the judicial system, which will help define the mandate and powers of the proposed institution; and
- Engaging a process of national dialogue and stakeholder engagement.

UNCTs can also ensure that good information and resources are made available: they can provide information about models of NHRIs, success stories in the regions and the international human rights system.

UNCTs can support the proposed legal basis for the NHRI, whether by constitution or by legislation, or both. Key responsibilities should be included in the law: the promotion mandate, as well as the responsibilities of the NHRI to advise State institutions, investigate human rights violations and monitor the human rights situation.

Basic issues that should be dealt with at the legislative drafting stage include matters that will help enforce compliance with the Paris Principles, including:

- Measures to ensure independence;
- Measures to ensure pluralism;

<sup>13</sup> Source: 2007 Strategic Planning document for the PDHJ. (Prepared for OHCHR and USAID) Unpublished, 2007. Copy on file.

- The structure of the national institution, including staffing and geographical accessibility;
- Methods of appointing members or commissioners that are open and consultative and provide for the necessary qualities of competence, integrity, independence and pluralism; and

- Adequate resources for the national institution.

Finally, there are a number of predictable pitfalls and problems that should be envisaged at this stage and UNCTs can have a role in pointing these out and offering solutions.

## KEY MESSAGES

- Establishing Paris-Principle compliant NHRIs is a UN priority.
- In assessing a country's readiness to establish a NHRI, UNCTs should take into account the level of political will, the strength of the culture of human rights in the region, the effectiveness of the existing justice system, and the stability of the country.
- UNCTs can aid in developing national consensus by 'seeding' the area of government, civil society and other stakeholders, so that the idea of a NHRI is accepted by government and key stakeholders.
- Engagement with stakeholders needs to be organized, effectively planned and prepared so as to gain credibility with stakeholders.
- When it is clear that there is movement toward the establishment of a NHRI, a preliminary programme of action should be developed to support the new institution then, and not after.
- Strategies to develop a coherent and consistent approach to UN support by the UNCT, involve the integration of NHRIs into the UNDAF and into other planning tools in the UN planning cycle. For further discussion, see Chapter 6.
- UNCTs can also support the national process by encouraging and promoting dialogue, where the framework for discussion is the Paris Principles.
- UNCTs should ensure that there is a focal point within the government and the UNCT for supporting and coordinating the overall process.
- In determining the type of NHRI to establish, UNCTs should encourage stakeholders to consider the various options that will aid in deciding what is best suited to the country's needs, having regard to regional and legal specificities. Consultation with experts and resources through the UN, UNDP and NI Unit of the OHCHR is key.
- UNCTs should aid in the development of enabling legislation, whether by constitutional amendment or through ordinary legislation. This in compliance with the Paris Principles.



## TOOLS IN THIS CHAPTER

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## ANNEX 1: (MODEL) BRIEFING NOTE FOR UN RESIDENT COORDINATORS FOR MEETINGS WITH SENIOR GOVERNMENT OFFICIALS

(Note: Text in parentheses should be amended to reflect country situations, as appropriate.)

The purpose of this note is to provide “talking points” and relevant background material to support the UN Resident Coordinator in high level discussions with senior country officials regarding National Human Rights Institutions (NHRIs).

It is anticipated that in forthcoming discussions with (senior country official), the issue of the (creation or strengthening) of the country’s NHRI will be raised.

### Overall message:

**The international community considers that the protection and promotion of human rights is a priority, and notes the important role that NHRIs play: the UN has the capacity, tools and desire to help you create (or strengthen) an institution in your country. How can the UN best help?**

### 1. National Human Rights Institutions in Context

(Country) is a signatory to human rights instruments (see Annex 1) and has recently (been reviewed through the Universal Periodic Review Process, in its session (date) or make reference to other relevant and timely event regarding NHRIs and international system).

#### The RC may wish to:

- Signal the importance that the international community attaches to establishing effective national mechanisms to promote and protect human rights;
- Note the significant roles that NHRIs can play in support of human rights (Annex 3);
- Stress that (country) is one of the (only, few) countries in (region) that have not yet created a NHRI in line with the Paris Principles (or) that several countries (in region) have worked collaboratively with the UN to strengthen these institutions;

- Recall the importance of establishing a NHRI in line with the Paris Principles, as (as recommended by several Treaty Bodies) and also committed to by (Country, if applicable) in its voluntary pledges;
- Point out that the UN has the capacity and willingness to support the creation or strengthening of NHRIs including a proven track record in mobilising support for technical assistance projects; and
- Point out that OHCHR directly supports the accreditation process of NHRIs, for instance, which is key to their international and regional recognition.

### 2. Key Messages

#### The RC may wish to outline the following points:

- **Incentive** - Government has the primary responsibility for establishing and/or strengthening NHRIs (depending on country context). Having a Paris Principles compliant NHRI will, among other things, bring international recognition for the commitments of the government for the promotion and protection of human rights, as well as increased visibility and credibility at the national and regional levels. At the international level, Paris Principles-compliant NHRIs may apply for accreditation with the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights, which is the key to both international and regional recognition.
- **Culture of Human Rights** - NHRIs can be constructive partners in assisting and/or facilitating the governments and other partners in identifying mutual areas of interest, including in the areas of good governance, rule of law, and independence of judiciary.
- **Support to Development Processes** – NHRIs can also assist the government in developing national development and human rights plans, as well as strategies that aim to eradicate poverty and achieve the Millennium Development Goals.
- **National Ownership** - NHRIs, being national independent institutions, can ensure greater accountability for human rights, thus increasing national ownership and adding-value to the sustainable efforts of the government and the international community.

- **Commitment to Support:** The UN/UNCT stands ready to assist the government in every stage of this process, and upon request, the UN Resident Coordinator, as the representative of resident and non-resident UN Agencies, can mobilize appropriate support.
- **Capacity to Help:** Within the UN system, UNDP and OHCHR are focal points for supporting the establishment and/or strengthening of NHRIs. They have developed a partnership to work collaboratively to support countries that seek assistance regarding NHRIs. They have the knowledge, expertise and experience to provide this support.

## List of Annexes

- Annex 1– List of Human Rights Instruments ratified by (country)
- Annex 2– Excerpt of (recommendations regarding country/ NHRI from international system, e.g. UPR process, treaty body, ICC SCA regarding existing NHRI).
- Annex 3 – Background on National Human Rights Institutions.
- Annex 4 – Background of types of assistance provided

## SAMPLE ANNEX 1

### List of human rights instruments ratified by (country).

Will vary by country

## SAMPLE ANNEX 2

### Background on NHRI in Country:

**Relevant excerpts from comments or observations (UPR process, treaty body recommendations, ICC, etc., as appropriate).**

(Country) has a network of (list independent institutions already in existence, e.g., list national or regional ombudsmen, independent authorities (e.g. Privacy, Communications, Antitrust, Banking, anti-corruption), etc. However, the country lacks a national human rights institution in compliance with the Paris Principles.

AND/OR

Following recommendations from the Universal Periodic review

AND/OR

In their Concluding Observations, Treaty bodies (specify) recommended the government to undertake consultations with civil society representatives with the support of OHCHR/UNDP to ensure the NHRI complies with the Paris Principles.

(Outline any steps that have been taken so far in establishing / strengthening NHRIs in the country, including any record of past statements or pledges by the government to establish/ strengthen the NHRI).

## SAMPLE ANNEX 3

### Background on National Human Rights Institutions and the UN system

A “national human rights institution” (NHRI) is an institution with a constitutional and/or legislative mandate to protect and promote human rights. NHRIs are independent, autonomous institutions that operate at the national level. They are part of the State, are created by law, and are funded by the State.

When they are in compliance with the Paris Principles, NHRIs are among the cornerstones of national human rights protection systems, and serve as relay mechanisms between international human rights norms and the national level.

NHRIs perform several basic roles and responsibilities, including human rights investigations, monitoring, promotion of a culture of human rights, advising government and supporting the international human rights system.

OHCHR, through its focal point at the National Institutions and Regional Mechanisms Section, regularly provides expert advice on the establishment strengthening of NHRIs. In the past, support has ranged from deployment of a senior level delegations, facilitation of workshops and seminars on the Paris Principles with high-level representatives, provision of legal advice on draft legislation and/ or on regional best practices to encourage compliance with the Paris Principles, and the provision of capacity development and assessment advice and support at all stages of development of NHRIs. The OHCHR also directly supports the accreditation process by the ICC.

## ANNEX 2

### Checklist of steps in pre-establishment Phase

Before the establishment of an NI, the following questions should be answered

<b>Human rights presence</b>	<p>Questions to ask:</p> <ul style="list-style-type: none"> <li>■ is there an OHCHR stand-alone Field Office in the country?</li> <li>■ is there an OHCHR Regional/Sub-Regional Office?</li> <li>■ is there an UN/OHCHR Human Rights Advisor present?</li> <li>■ is there a human rights component attached to a UN peace mission?</li> </ul> <p>For more information, please consult <a href="http://www.ohchr.org">www.ohchr.org</a> For UNDP: contact relevant advisers at the Democratic Governance Group/Bureau for Development Policy and the Regional Service Centres.</p>
<b>Contact points at OHCHR Geneva (please consult <a href="http://www.ohchr.org">www.ohchr.org</a> for up to date contact information.</b>	<p>Contact points at OHCHR Geneva include:</p> <ul style="list-style-type: none"> <li>■ National Institutions and Regional Mechanisms Section (<a href="mailto:vstefanov@ohchr.org">vstefanov@ohchr.org</a>): regardless of other contacts, this Section should be contacted as a standard procedure. The Section stands ready to assist UNCTs with technical advice on the establishment or strengthening of NIs.</li> <li>■ Rule of Law and Democracy Section (<a href="mailto:mrishmawi@ohchr.org">mrishmawi@ohchr.org</a>)</li> <li>■ Methodology, Education and Training Section (<a href="mailto:fmarotta@ohchr.org">fmarotta@ohchr.org</a>)</li> <li>■ Geographic Desks (Africa Section: <a href="mailto:scampbell@ohchr.org">scampbell@ohchr.org</a>; Middle East and North Africa region Section: <a href="mailto:ffenniche@ohchr.org">ffenniche@ohchr.org</a>; Asia Pacific Unit: <a href="mailto:rmungoven@ohchr.org">rmungoven@ohchr.org</a>; Europe and Central Asia Section: <a href="mailto:dchalev@ohchr.org">dchalev@ohchr.org</a>; Americas Section: <a href="mailto:mmartin@ohchr.org">mmartin@ohchr.org</a>)</li> </ul>
<p><b>Once the human rights presence or contact point has been identified and a working relationship has been established, the following issues should be considered, in close cooperation with OHCHR</b></p>	
<b>Developing a national consensus</b>	<p>Organise in cooperation with OHCHR a sensitisation meeting involving all key stakeholders (Government officials, Members of Parliament, NGOs, research centres, experts from Paris Principles-complying NIs in the region), in order to:</p> <ul style="list-style-type: none"> <li>■ 'seed' the idea of NIs and gather national support;</li> <li>■ identify key elements of the Paris Principles;</li> <li>■ look at the successes that existing NIs in conformity with the Paris Principles have had</li> <li>■ obtain or develop material providing basic information about the nature and function of NIs, and perhaps some concrete examples of how they may assist in protecting and promoting human rights, to provide to local stakeholders</li> </ul>
<b>Establishing a national process</b>	<ul style="list-style-type: none"> <li>■ encourage and support national ownership for creating an NI, for example by recommending to the Government that a process be set in motion involving an appropriate Ministry (one with a supportive Minister and senior staff) or a Parliamentary Committee to determine the details of what kind of NI should be created, as well as its roles and powers</li> <li>■ encourage the creation of one or more working groups that would consist of representatives of every important social sector and which would examine and recommend on the features of a new NI</li> </ul>



◀ continued

<b>Statutory base / Enabling legislation</b>	<ul style="list-style-type: none"> <li>■ ensure that Parliament and other appropriate officials are aware of the statutory powers that an NI requires to undertake effective programming (see section III on the Paris Principles, as well as section V on the human rights functions)</li> <li>■ ensure that Parliament and other appropriate officials are aware of the main considerations when choosing a model of NI</li> <li>■ ensure that Parliament and other appropriate officials are aware that the enabling legislation should; (1) establish the separate legal identity of the NI; (2) define the scope of the NI's responsibilities; (3) define the legal authorities that the NI can exercise in the implementation of its responsibilities; (4) where appropriate, set out the complaint process and the remedies available; (5) define the membership, membership criteria, membership selection and dismissal process, duration of term and privileges and immunities of members; (6) authorise the establishment of the NI and the right to employ staff; and (7) describe reporting procedures, preferably to Parliament</li> <li>■ provide sample legislation on NIs to parliamentarians or other appropriate officials</li> <li>■ organise seminars or workshops to discuss, with appropriate stakeholders, the statutory powers that an NI requires in order to undertake effective programming</li> <li>■ organise visits by expert practitioners to discuss with parliamentarians and other appropriate officials the need for appropriate legislative powers</li> </ul>
<b>Organisational structure</b>	<ul style="list-style-type: none"> <li>■ organise workshops on 'best practices' to promote appropriate organisational structures and relationships that allow for the effective delivery of programmes (see pp.7-8)</li> </ul>

## ANNEX 3: OVERVIEW OF NHRI LEGISLATIVE FEATURES

NHRI laws vary widely, but should conform to the Paris Principles.

A detailed analysis of the Paris Principles, including how they should influence the drafting of enabling legislation is in Chapter 10.

The following are some basic features of a draft law that may be considered once the institutional model is chosen.

Details on the types of model for NHRI are found in Chapter 2.

### Institutional leadership

The law should identify the head of the NHRI, and the powers and authorities that the person will have. In particular, some institutional heads are not responsible for day to day operations (for example if the law provides for a permanent secretary or executive director) or if the NHRI is entitled to delegate operations a senior official of the NHRI.

National human rights institutions can have many Commissioners, a feature that shifts the leadership burden to a larger number of people. It also helps to create better opportunities for pluralism or diverse membership.

Commissioners can be full time with specific operational mandates, or in the case of members other than the Commissioner herself or himself, part time. Titles vary: senior commissioners can be called a President of the Human Rights Commission, Chief Commissioner or simply Human Rights Commissioner.

Similarly, a Human Rights Ombudsman can have one or more Deputies, who can act in her or his absence, and/or can assume specific functions (for example gender equality, or social and economic rights, or promotion).

### Preamble

Some NHRI enabling laws contain preambles. Preambles are declaratory, introductory statements that set out the context for the law, its importance and, in this case, may also make reference to the relationship of human rights to international norms. States may use preambles to:

- Declare commitment to fundamental human rights and freedoms, e.g. the Universal Declaration of Human Rights and/ or a regional charter;

- Express compliance with the Paris Principles, including asserting the NHRI's independence;
- Pronounce commitment to human rights, the constitution, and compliance with international instruments ratified by the country; and
- Affirm the desire to create an NHRI, and to promote and protect human rights and freedoms and guarantees, within the rule of law.

The use of preambles is largely a matter of the legal culture and national practice.

### A statement to establish the NHRI

Not all enabling laws do this, but expressly acknowledging the establishment of the NHRI in law can create clarity. For example: Section 68 of the Northern Ireland Act provides, simply, that:

*There shall be a body corporate to be known as the Northern Ireland Human Rights Commission.*

### Statement of Principles

A statement of principles is appropriate in NHRI laws. For example, one law provides that the Commissioners' acts are informed by principles of "publicity, transparency, legality, justice and impartiality."

### Definitions

Enabling legislation often uses terms that require definition or clarification. For example, this may include the definition of terms such as:

- "commissioner" (if commissioners are chosen rather than ombudsman);
- "complaint"
- "conciliation"
- "disability"
- "equal",
- "government"
- "human rights"
- "mediation"
- "member"
- "ombudsman"
- "public authority"

## Mandate and Scope of Application

At a minimum, NHRI's should be vested with competence to both **protect** and **promote** human rights (Paris Principles Section A1). A simple statement to this effect is appropriate in the early sections of enabling legislation. A broad statement to the effect that the NHRI is entitled to look into, investigate or comment on any human rights situation, without any form or prior approval or impediment, is also desirable, to ensure independence and autonomy.

The Paris Principles also provide that national institutions shall be given as broad a mandate as possible, which shall be clearly set forth in a constitution or law, or both, specifying its sphere of competence. Reference to applicable international instruments is also desirable.

For example, the Law of the Public Defender of Georgia states:

### *Article 2*

*In his activities, the Public Defender shall follow the Constitution of Georgia and the present Law, as well as the universally recognized principles and rules of international law, international treaties and agreements concluded by Georgia.*

Human rights laws typically apply to the government, which includes all departments and administrative branches of the State, law enforcement bodies, the Army, correctional and detention facilities, local government administration; government committees and agencies; State owned companies and companies where the Government exercises control, for example, where it owns over 50% of the capital; or other bodies as prescribed by law.

Questions can still arise: does the NHRI have power over state-owned corporations? State-controlled bodies? To avoid arguments in future, some statutes will solve this problem by defining terms such as "government", "public service", "public authority" or other entities whose actions are subject to the NHRI's reach.

It should also be noted that international cooperation is an important part of most NHRI mandates.

## Application to both public and private sectors

As noted in the previous section, it is important to establish whether the law will be restricted to government or whether it will also apply to non-governmental sectors. Although human rights commissions in developing and post-conflict countries tend to focus on State

action, human rights violations can also be caused by the actions of other entities in other sectors, for example, corporations, partnerships or persons in employment, housing and other sectors.

It is true that international human rights obligations bind the State. Nonetheless, non-state actors also have human rights responsibilities, and the obligations put on the State by international obligations extend to ensuring human rights are respected by non-state actors. The Paris Principles are consistent with a broader application of the NHRI mandate to cover both the private sector and the public sector. This is especially important as regards equality rights in the areas of discrimination in employment, housing, goods and services because these are typically offered by the private and non-profit sectors.

More information on the role of NHRIs in respect of private sector business is found in Chapter 3.

## Exclusions

The judicial branch and Parliament are generally excluded from the jurisdiction of NHRIs, or are included only to the extent of their own administrative actions.

For example, if an administrative assistant employed by the court system complains of discrimination, she should be able to complain to a human rights commission. Denial of justice is also often one of the complaint subjects some NHRIs are entitled to handle. Conversely a human rights complaint that is also the subject of a judicial decision cannot be "reviewed" by a NHRI.

## Appointment and Dismissal of Members

The Paris Principles require that appointment processes of members should support pluralism. The process should support independence and transparency and preferably be set out in law.

In practice this means that, as a minimum, the appointment process should involve nominations from civil society, and could engage Parliament by having the latter responsible, as the elected body, for naming the members. Executive appointments are not to be recommended. Similarly, members should be protected in law from arbitrary dismissal.

> **Example:** The law establishing the Office of the Ombudsman for Human Rights and Justice of East Timor provides in articles 12 and 13 for selection criteria and a process that involves National Parliament.

*The National Parliament shall appoint the Ombudsman for Human Rights and Justice through absolute majority votes of its members on active duty.*

The same law also sets, in article 21, stringent conditions on which a member may be dismissed:

*1. The Ombudsman for Human Rights and Justice can be removed from office by a two-third (2/3) majority in the National Parliament...*

## Pluralism

The ICC Sub-Committee on Accreditation, in a general observation, notes that there are different ways in which pluralism may be achieved through the composition of the NHRI, and these should be set out in the legislation. For example:

- a) Members of the governing body represent different segments of society as referred to in the Paris Principles;
- b) Pluralism through the appointment procedures of the governing body of the National Institution, for example, where diverse societal groups suggest or recommend candidates;
- c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or
- d) Pluralism through diverse staff representing the different societal groups within the society.<sup>1</sup>

## Immunity

The ICC Sub-committee has strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.<sup>2</sup>

## Investigation and monitoring powers

NHRIs usually issue opinions and recommendations following full investigations and an assessment of the evidence. They can decide whether it is more likely than not that a human rights violation has occurred. A specific legislative authority is required to investigate human rights matters, and to undertake independent investigations.

The Paris Principles mention that there is an “additional” power to receive individual complaints. Related to this is the capacity not only to receive complaints from individuals, but also to investigate on the Office’s own initiative.

The power to monitor human rights should be set out explicitly and in particular, the power to monitor prison conditions and visit places of detention without warning should be set out in the law.

## The Right to obtain information and documents

The Paris Principles provide that NHRI should have the authority ‘hear any person and obtain any information and any document’ and generally enquire into any matter. Enabling legislation should specify the powers that the institution has at its disposal in this regard.

> **Example:** The law establishing the Human Rights Ombudsman of Bosnia and Herzegovina provides in article 25 (3) that:

*An Ombudsman may not be denied access to any file or administrative document or to any document relating to the activity or service under investigation,*

Article 31 (2) provides that:

*Where an official of a government body impedes an investigation by refusing to send documents required by an Ombudsman, or through negligence in sending such documents or by refusing an Ombudsman access to administrative files or documents necessary to the investigation, the Ombudsman shall send the relevant file to the official’s superior or to the competent prosecuting authorities for the appropriate disciplinary or penal action to be taken, in accordance with the law.*

## Power to Issue Recommendations and Decisions

Most NHRIs can issue decisions, or at least recommendations. In many ombudsman-style jurisdictions, there is no power to legally enforce recommendations, but there should at least be power to compel the production of information and documents.

For further information, see chapters 3 and 10.

<sup>1</sup> ICC Sub-Committee On Accreditation *General Observations* (Geneva, June 2009).

<sup>2</sup> *Ibid.*



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# chapter

# 8

## Establishing NHRIs

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## OBJECTIVE:

Identify key challenges and opportunities for UNCT staff who are called upon to support NHRIs during the establishment phase, and provide specific guidance using the international human rights framework and concrete case studies

## EXECUTIVE SUMMARY

Building on the pre-establishment phase (Chapter 7), this chapter provides guidance on the phase from the enabling law to the basic elements of setting up the institution.

UNCTs can have a role in supporting projects to ensure that institutions function effectively across each area, or all of them, while dealing with common challenges during this period of growth. While the issues facing every organisation will vary, UNCTs can have a central role in supporting capacity development in each area.

- **Key Infrastructure:** premises, transportation, telecommunications, IT, etc.
- **Organizational development:** leadership, organizational structure, strategic planning, human resources and knowledge management.
- **Financial resources:** State support, donor cooperation, financial constraints and financial management.
- **Human rights capacity** in substantive areas of human rights, including the rights of vulnerable persons, core protection issues, human rights-based approaches to development, etc.
- **Functional areas of capacity:** protection, promotion, cooperation with stakeholders, support to the international human rights system, and advice to government.

Tools and strategies are developed with an eye to complying with the international framework, especially the Paris Principles.

This section is meant to allow UNCTs to develop successful projects, but it is not intended to suggest that UNCTs should second guess NHRI management or otherwise challenge the NHRI's decision-making.

The issues dealt with in the establishment phase are focused on developing capacity in each of the areas identified above: they create benchmarks, baseline information and targets that can then be the subject of capacity assessment in the consolidation phase. See Chapter 9.

## INTRODUCTION

This Chapter deals with the establishment phase: it covers the period immediately after the institution is established in law, when support will focus on structural issues, institutional development and the beginning of operations.

- **Key Infrastructure** (premises, transportation, telecommunications, IT, etc.).
- **Organisational development** (leadership, organizational structure, strategic planning, human resources and knowledge management).
- **Financial resources** (government support, donor cooperation, financial constraints and financial management).
- **Human rights capacity** in substantive and thematic areas of human rights (including the rights of vulnerable persons, core protection issues, human rights-based approaches to development, transitional justice and human rights and business).
- **Functional areas of capacity** (protection, promotion, cooperation with stakeholders, international liaison, advice to government).

New NHRIs face a number of immediate challenges that are common to all NHRIs, although their relative importance may vary. Because these challenges are known and predictable, UNCT staff preparing project documents or developing any plan or assessment involving NHRIs should consider if and how technical assistance should be provided to help the institution respond to these challenges, and if so, what the most effective approach might be. The information set out in this section is meant to allow UNCTs to develop more successful projects, not to suggest that UNCTs should second guess NHRI management or otherwise challenge the NHRI's decision-making.

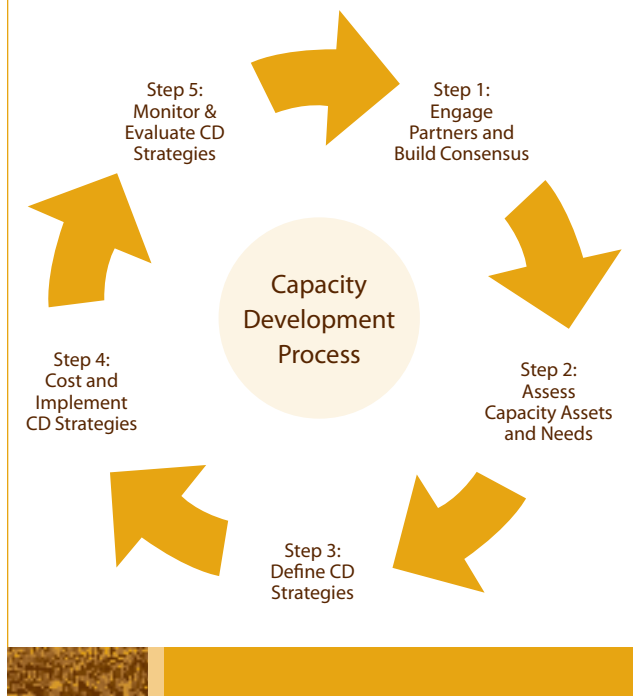
UNCTs can help bring to light good practices, and ensure that both the UNCT staff and the NHRI staff have the knowledge and tools to work effectively.

Many ideas in this Chapter are adapted from a project to advance the institutional capacity of NHRIs entitled *Regional Capacity Assessment Partnership: Initiative in Support of Institutional Capacity Development of National Human Rights Institutions* of the Justice and Human Rights Team and Capacity Development Team of the UNDP Regional Centre in Bangkok, in partnership with the Asia Pacific Forum of National Human Rights Institutions (APF), and the National Institutions and Regional Mechanism Section of the OHCHR to advance the institutional capacity of National Human Rights Institutions.<sup>1</sup>

As highlighted in the Figure 1 on page 153, one of the first steps in the capacity development process is a capacity assessment, a self-assessment used to identify capacity strengths and needs of the NHRI. The capacity assessment complements strategic planning, priority setting and work planning processes of NHRIs and can be used at different stages of the life of an NHRI and will be particularly effective to support the implementation of the Strategic Plan. The objective of the assessment is to systematically understand existing capacity strengths and gaps of the NHRI and subsequently develop capacity development strategies and responses to help the NHRI fulfill its mandate and the goals and objectives. In order to do so the capacity assessment process also helps the NHRI analyse stakeholder positions and review its organizational structure, operational functions and business processes.

An overview of the capacity assessment process can be found in Annex 8: Sample Briefing Note for a Capacity Assessment of a National Human Rights Institution.

<sup>1</sup> In 2008, a Regional initiative was launched to assist NHRIs to understand their capacity, strengths and needs, and to develop tailored capacity development strategies to address capacity gaps on a continuing and comprehensive basis. The initiative is intended to complement and enhance the support implement by UNDP Country Offices and UNCTs for NHRIs at the national level and is supported by the UNDP Global Human Rights Strengthening Programme.

**FIGURE 1: CAPACITY DEVELOPMENT PROCESS<sup>2</sup>**

## 8.1 Key Infrastructure

### > Scenario: Getting Started with a New NHRI

As a new UNCT staff member, you have been asked to assume responsibility for the establishment of a NHRI. Very little has been done since the law was passed. What to do now? What are the basic structural and capital requirements? What criteria are particular to NHRIs? What are the normal requirements to get the institution going – offices, transportation and basic equipment?

#### What will it cost?

The planned activities for capacity development that are undertaken by the UNCT should be coordinated with the planning process in the UN country planning cycle, and set out in the Project Activity Framework (PAF). A sample of the PAF, showing how costing can be broken down by activity level is provided in Chapter 6.

#### Who pays?

While paying for basic infrastructure is a state responsibility, the UN often “kick starts” the NHRI at the establishment phase in developing countries, or

in countries in transition. The UNCT will typically work with other donors to support basic structural needs of the organization.

Each case should be reviewed on its merits to determine whether and the extent to which basic capital or infrastructure support is appropriate. In some cases, capital expenses are one-time only and so the issue of sustained funding is not a concern. However, even one-time capital costs are incurred in relation to items that have recurring costs: for example, buying computers is not a “one shot deal”. It systems require maintenance, back up and technical support.

The UN should not be viewed as permanent source of ongoing funding, and even in long-term cases, an exit strategy should be planned to transfer responsibility to the State at a point in time.

### 8.1.1 Premises

The State is responsible for ensuring the NHRI has suitable premises. Even in countries experiencing severe financial limitations the State should provide either office premises or land for suitable premises.<sup>3</sup> Ideally, an institution will own its own premises (although many do rent).

Owning premises means that funds that would otherwise go towards rent can be redirected to programming and planned growth, with the NHRI secure in the knowledge that it has a stable location that it controls.

#### > Example: Premises for the Uganda HRC

The Uganda Human Rights Commission was granted a one-time endowment of \$1,000,000 US from SIDA for the purchase of premises of the NHRI. This acquisition allowed the NHRI to secure appropriate, accessible facilities. It also freed the organization from high rents or mortgage payments, although underfunding of the Ugandan commission has restricted their ability to expand and repair the premises. Source: Ugandan Human Rights Commission.

Source: Uganda Human Rights Commission; 8th Annual Report to Parliament, Chapter 7 (2005).

It is true that many institutions do have to rent premises and thus rental costs should be part of the standard budget appropriation for the NHRI by the legislature.

<sup>2</sup> Source: UNDP, *The UNDP Capacity Assessment Framework*

<sup>3</sup> For example, see the comments made by the ICC Sub-Committee on Accreditation with reference to the application of Afghanistan regarding the importance of the Commission having its own premises and being independent of government. <http://www.nhri.net/2009/AFGHANISTAN%20-%20Summary.pdf>

The following basic criteria for premises are linked to the necessity of independence in the Paris Principles. Premises should be:

- located away from government buildings<sup>4</sup>,
- accessible: easy to get to and into and centrally located,
- close to public transport, and
- accessible to persons with disabilities.

Commercial buildings that have paid parking, and /or heavy security (other than the security personnel that the NHRI may have for its own premises), may not be ideal. NHRIs in such buildings have come under criticism as being inaccessible in some countries.

The location should not be on property that casts the credibility of the institution or its office holders in doubt, especially if the costs are high and perceived as elitist and out of touch with social realities. There may also be conflict of interest issues. For example, an NHRI may rent premises in a building that is owned by a senior member of government or a person who is not at arm's length from the NHRI. This is a conflict of interest, and resulting in damage to the NHRI's reputation if the news gets out and is reported in the media.

A checklist for premises and considerations for opening new regional offices are in Chapter 9.

*Implications for the UNCT in the establishment phase:* If asked to support this aspect of programming, UNCTs can provide information on these basic criteria, having regard to the country circumstances. Emphasis should always be placed on the minimal criteria of the Paris Principles.

### 8.1.2 Transportation

NHRIs must be mobile and should be able to go out to communities to deliver programming effectively, whether this involves public education, monitoring or complaint investigations. In countries where road infrastructure is inadequate, this means four-wheel drive vehicles for in-field travel and will thus account for a significant part of the start-up budget.

In other countries, other forms of transport may be more appropriate: These factors should be checked and validated by staff with in-country experience having particular regard for safety.

Other vehicles (cars, motorcycles, etc.) may be required to allow the institution to carry out purchasing, delivery and other activities.

*Implications for the UNCT in the establishment phase:* Transportation is a basic requirement for programme implementation. In some countries with well developed infrastructure and transportation budgets, the NHRI may be able to use rented private transport. But in many countries, vehicles are necessary.

Because of cost, acquisitions should be based on a needs assessment and a planned acquisition programme, including planned maintenance and fuel costs.

### 8.1.3 Telecommunications

Telecommunications are central to programme delivery and must be part of a general project of technical support. Along with IT requirements, telecommunications needs should be set out in a **needs assessment**. As IT and telecommunications technologies converge, integrated planning for both systems is increasingly the standard. While office needs assessments tend to be standard in the public service, there are some NHRI-specific issues that merit attention:

**Telephone and fax services:** Although email is widely used, inexpensive and quick, it should be remembered that email attachments are not secure (unless they are handled through a secure server) and can be intercepted. This will be a particular concern for documents containing sensitive information about human rights investigations and cases. This means that the fax is still a relevant technology.

As well, in some jurisdictions, the only alternative to personal service of legal documents before the courts is the fax. Where NHRIs have the mandate to receive complaints, it is important that they have a secure fax area.

**Mobile Phone:** The use of mobile technology is widespread and officials and officers who travel in the field must have mobile phones. In some countries, there may

<sup>4</sup> NHRI premises should be easily distinguished from those of government. In particular, efforts should be made to avoid co-locating with government agencies that might cause concerns among complainants. Instead, NHRIs might co-locate with other independent agencies, such as an Auditor General, Ombudsperson, Anti-corruption commission, etc. That said, it is not unusual in developed countries to see NHRIs located in government buildings or buildings occupied primarily by government departments. Much depends on the level of democratic governance, respect of the rule of law and risks related to security and confidentiality.



also be a need for radio-phones, due to terrain, or because it is the best available technology, or to ensure the safety and security of Commissioners and staff.

*Implications for the UNCT in the establishment phase:* Again, these should be assessed and costed through a needs assessment, based on operational requirements.

### 8.1.4 Information Technology

It is impossible for an institution in any country to function without information technology. A technical assistance project must respond to that reality.

*Implications for the UNCT in the establishment phase:* The institutional needs should be assessed by an IT specialist working closely with the telecommunications specialist (or these might be the same person). A third party IT specialist might also be included in a start up project team, though, and will usually undertake the needs assessment. The assessment should address both the immediate needs of the institution – for example, activities in its preliminary planning phase or in umbrella projects – and longer-term organisational growth.

Later on, a TA project should plan for an in-house IT specialist on staff. Some NHRIs keep the third party contractors, but there are security issues in light of the sensitive and confidential mandate of the NHRI and its vulnerability if third parties have access to information systems. That person can be assigned the responsibility of ensuring that the institution's IT expert has the experience and knowledge to support the investment and should therefore have input into hiring decisions to ensure that the person selected is qualified.

Sustainability will be achieved if nationals are trained to manage, maintain and troubleshoot problems, especially in the short and medium terms, with some institutional and performance evaluation carried out at the mid-term.

The following items should also be considered:

- Software and hardware purchases should be accompanied by enhanced warranties for after-purchase service;
- Secure and regular backup of data, and preferably, secure off-site storage of data;
- Access to internet through a secure connection;
- Standard office software package with word processing, email, calendar functions, spreadsheets, etc.;

- A simple off-the-shelf database for capturing case management, administrative and management information;
- A separate server and email domain from other government offices; and
- Firewalls and enhanced security features to protect sensitive information, as well as up-to-date anti-virus protection.

### 8.1.5 Other Requirements

Standard office equipment specifications are part of any appropriation plan.

In addition, while specific requirements will of course vary, basic additional requirements that may be particular for a NHRI might include: **specialised equipment for investigators** (digital cameras, audio recorders, secure storage, dedicated photocopying and scanning capacity etc.) to record and securely store physical evidence and witness testimony. Similarly, **education and promotion staff** will need specialised equipment to conduct seminars and workshops such as screens, flip charts, facilitation boxes, microphones, and projectors or portable white boards. **Corporate requirements** also tend to be relatively standard: in addition to basic IT and communications, a typical needs assessment will identify and address requirements related to the need to ensure confidentiality for stored personnel and financial information and documents such as secure filing cabinets, etc.

In some countries, a **generator** is critical to provide power where there are electricity outages or other interruptions of power supply. Off-grid solutions such as solar energy collectors and other sources of energy can easily be planned at the outset during a design phase and represent sustainable solutions for the NHRI in the longer term.

## 8.2 Organizational Development

**Organizational development** includes leadership development, strategic planning, organizational structure, human resources and knowledge management.

### 8.2.1 Leadership

#### 8.2.1.1 Appointments

After the enabling law, the **appointment of NHRI members or the governing body** is critical. Since this process is intrinsically linked to the accreditation of the NHRI and to compliance with the Paris Principles, it is dealt with in detail in Chapter 10.

*Implications for the Establishment Phase:* A survey shows that diversity in the governing body appears to be a challenge for NHRIs, and so this should be taken seriously as an area to be addressed at the Establishment Phase rather than dealing with these issues later on.

See OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

### 8.2.1.2 Leadership development

Investing in NHRI leadership is fundamental to its human resources management. Although this is linked to training and professional development, NHRI members merit separate attention. They are frequently brought into these positions with little prior experience with NHRIs. Leadership development programmes should be dedicated to this group, in part because of the members' unique responsibilities.

These topics have been identified by the AP Regional Initiative:

- orientation and training on strategic planning for leaders,
- leadership modelling,
- result-based management,
- change management, including stakeholder engagement and managing external relations,
- competency-based recruitment for both management and staff – including practices that are sensitive to diversity issues,
- negotiation skills and consensus-building,
- Ethics, and
- human rights training.

**AP Regional Initiative NHRI Capacity Assessment** (see note 1, above)

### 8.2.1.3 Role Definition

At the Establishment Phase, a clear definition of the roles and responsibilities of each member or groups of members should be defined. While the Chief Commissioner or Ombudsman will have obvious responsibilities as the senior official, the roles of other members should be clarified. This will avoid overlaps and conflicts later on.

### 8.2.1.4 Vision and Leadership

NHRI leaders need to know when they are succeeding in their work: indicators of such include developing the capacity to:

- maintain the autonomy and independence of the NHRI;
- influence key stakeholders and government to change behaviours and to respond positively to recommendations of the NHRI;
- lead the organization through strategic planning (see the next section), including developing a shared vision, mission, values and codes of conduct;
- motivate staff to implement the programs and activities emerging for the planning process;
- protect staff who are conducting investigations;
- communicate effectively the vision and achievements of the NHRI to the media and to stakeholders;
- establish processes to evaluate the organisation and its staff effectively and fairly;
- establish networks and contacts with other NHRIs, regional associations and the international human rights system; and
- Ensuring that the members are focused on major strategic decisions, engaging stakeholders and ensuring the stability and finding of the organisation.

In terms of indicators for human resources, baseline information should be obtained from stakeholders and staff about the relative speed of decision-making. Staff should feel that they are supported by the senior leadership of the organisations in terms of openness and responsiveness to suggestions, and in terms of creating opportunities for professional development.

### 8.2.2 Strategic Planning

Demands on a new NHRI will almost certainly be greater than the resources at hand. New institutions must therefore identify specific priority activities in order to accomplish relevant results. Strategic planning is the key vehicle for achieving this.

**National human rights institutions of all descriptions face a common problem: there are massive (and unrealistic) expectations facing them and limited resources, both human and material, with which to meet these expectations. This – over and above many other good reasons – is why planning is so vital for such institutions.<sup>5</sup>**

Strategic planning allows NHRIs to:

- ask and answer basic questions about the status of rights in the country;
- take charge of their own action plans;
- direct energy and resources towards important, achievable programme initiatives;
- provide a mechanism through which progress can be measured;
- use planning to communicate and coordinate with other stakeholders in a transparent, mutually respectful and beneficial manner;
- link internal planning to what is happening externally, including MDGs, indicators and data about progress on important rights-related development issues;
- assist donors to see planning as an indication of organizational maturity (donors often set planning as a condition for supporting the NHRI); and
- create benchmarks for capacity assessment, programme and performance evaluation.

Strategic plans are not ends in themselves. They are “road maps” that are only useful if they lead to a concrete plan of action that is monitored regularly, and adjusted to achieve objectives.

Many NHRIs request assistance in carrying out strategic planning, in part because they are new and in part because it is unlikely that there will be enough internal capacity when the NHRI is just be established.

Strategic planning should begin as early as possible in the establishment phase, and be carried out in consultation with stakeholders.

> **Scenario:** A Technical Assistance Project for Strategic Planning

As a UNCT staff member involved establishing a NHRI, you may be called upon to support a strategic planning process. You have been asked to identify experts

to get the process going and to inform NHRI members and senior staff about exactly what is involved.

You should consider:

- engaging an expert practitioner to guide the institution;
- supporting consultations with key stakeholders; and
- UNCT staff participating in the exercise to build UNCT capacity to serve the NHRI in the longer term.

**Annex 1:** Sample terms of reference for strategic planning expert

> **Guidelines for Developing a Strategic Planning Process**

**Duration:** A good strategic planning process for NHRIs requires time: when consultations are included, the process can take about three months. Shorter periods are possible, but may compromise time for consultations, scenario building or action planning.

**Internal Consultation:** It is advisable to check in with other UNCT members, before starting. Are there other development-related initiatives that might be linked to strategic planning for the NHRI? Strategic planning training might serve as a platform for other UNCT colleagues to present aspects of their work that are relevant to NHRIs on topics like:

- Budget development support;
- Decentralisation initiatives; and
- Integrating thematic areas of focus, including HIV/AIDs, gender equality and women’s issues.

To ensure integration with country programming, please see Chapter 6.

**Consult** with other intergovernmental and donor agencies who may be considering a similar programme: The worst possible outcome is to forget to check in with other organisations such as the EU or bilateral cooperation bodies, only to discover four separate strategic planning initiatives all underway at the same time - and that the NHRI has agreed to all four! This is not a

<sup>5</sup> Carver and Korotaev, “Assessing The Effectiveness of National Human Rights Institutions” 2007. Study Commissioned by the UNDP Regional Centre in Bratislava.

far-fetched scenario - it has happened. If the project does become a cooperative one, where several organizations contribute to a joint project, ensure that the overall objectives of the organisations are shared and consistent. A MOU or relevant agreement is advisable.

**Expertise:** Depending on the country's level of development, nationals or other experts in the region can train staff and senior officials. Staff should consult the NIRM Section of the OHCHR or the UNDP for available resources. The person selected should have experience in the region, and **demonstrated practical expertise in handling strategic plans and coaching NHRIs specifically.**

If local or regional resources are unavailable, an international expert may be required to oversee the process.

**Ensure that there is a public consultation process:** This is critical for buy-in, cooperation and as a promotional aspect of the NHRI's work. As well, broad-based consultation enhances the likelihood of identifying the most pressing issues.

- > **Note:** Consultation with UNDP and OHCHR: Both the UNDP and the NIRM Section of the OHCHR have significant experience in supporting strategic planning and related tools and should be consulted as a matter of course in the development of a strategic plan and the selection of experts to support technical assistance.

Experts in planning and institutional performance evaluation have different approaches to strategic planning, depending on their disciplinary training and personal approach. Different donors may also have specific requirements, or use different terms: but there are nonetheless **basic outcomes that should result from a good strategic planning process.** These include:

- Clear articulation of the vision, mission and values of the NHRI;
- A few high-level strategic priorities;
- Outcomes;
- Key indicators, including baseline data on indicators;
- Targets; and
- A schedule or program of evaluation for the strategic plan.

Outcomes, indicators and targets are usually set out in broad terms in the strategic plan itself, but details about activities and their costing should be contained in a

workable action plan that aligns resources with objectives in a way that is effective and coordinated. These activities, if supported by the UNCT, should be linked to the Project Activity Framework of the UN Project Document (See Chapter 6).

## Annex 2: Steps in Strategic Planning

### 8.2.3 Organisational Structure

NHRIs members working with the Executive Director or equivalent position will set about establishing the organizational structure, which should reflect the NHRI's general mandate, roles and responsibilities, with a focus on functional areas of responsibility.

Key principles: Responsibilities, accountabilities and delegations of authority should be clear: the levels of hierarchy should be held to a minimum.

Assessing organizational developing and opening local / regional offices is dealt with in Chapter 9.

Sample key elements of a sound **organisational structure in NHRIs:**

#### > Sample Key Elements of an Organisational Structure

- Members or commissioners lead the organisation and are accountable to the government or Parliament for the overall performance of the organization, usually through annual reports and special reports.
- A senior official who runs operations, such as an executive director or secretary general who is accountable to the members.
- Departments broken down by functional lines, for example:
  - Investigation / Complaints Handling/ Monitoring Department.
  - Legal /Policy Department: responsible for policy advice generally, providing legal advice on corporate matters, as well as on substantive human rights issues such as reviewing laws and incorporating international standards.
  - Promotion Department: responsible for human rights education; media relations, publications, communications.
  - Administrative or corporate services department (human resource, finances, coordinating IT and other corporate services).

- Specialised structures for strategic focus and expertise. For example, many NHRIs have distinct organisational units specialising in gender and women’s equality (see section 8.4).
- A “registrar” or similar position (a term commonly used in many NHRIs to describe the person responsible for physically receiving, cataloguing and tracking incoming cases and related inquiries). The function generally reports to either the senior office-holder or the senior public servant.

Should the NHRI create specialised structures, like units dedicated to particular issues? For thematic areas of priority, there is often a tension between mainstreaming, which is designed to ensure that the issue is taken seriously across the organisation, and creating a dedicated or specialised structure. On the other hand, mainstreaming has had mixed results in many organisations. That, plus the special needs that may exist in individual countries, has led some NHRIs to take a long-term and more specialized approach supported by a permanent structure and dedicated resources. This may involve the establishment of specific departments, units, specialised committees, centres or individual focal points. These may be especially relevant for vulnerable groups such as women, children, persons with disabilities or IDPs, depending on national priorities.

An effective organisational structure will support good human resource management, effective and quick decision-making and clear lines of authority. As well, the organization must support all of the areas of human rights capacity and the functional areas of capacity.

## 8.2.4 Human Resources

Human resources management is about developing and maintaining equitable systems and processes that attract and retain motivated employees through training, professional development and systems planning. In this way, staff are equipped to assist the organisation achieve its mission and strategic plan. At the outset of establishing NHRIs, the senior staff should develop a human resources or corporate manual including hiring and promotion policies, terms and conditions of employment, performance evaluations, training and procedures and processes for ensuring internal equity and respect for human rights. Disciplinary procedures should be fair and transparent.

*Implications for the establishment phase:* UNCTs may be asked to support the development of human resources to ensure adequate staffing levels and development through

staff training. Supporting the development of a human resource manual will ensure that there is a clear and consistent approach to human resource development across all the areas mentioned below.

### 8.2.4.1 Hiring and Promotion Policies

Most countries have human resource policies in their public services that apply to all government agencies, boards and commissions, including NHRIs.

However, NHRIs should have flexibility in applying public service guidelines to the hiring process. This is especially so as regards the possibility of hiring outside of the civil service system. There are many reasons for this: Many of the most qualified candidates for NHRI jobs will likely be those who have experience in the NGO sector as opposed to government. Because NHRIs must demonstrate that the staff profile is merit-based, gender balanced and representative of the population it serves, this may require a search beyond those already employed in government. (See also Chapter 7).

NHRIs must meet the highest standards of good governance and respect for human rights: this means that the requirements of plurality (diversity) apply to staff as well as members, who should be seen to be representative of the wider community. Pluralism and diversity have proved to be challenges for NHRIs both in terms of diversity among members, and at the staff level. UNCTs should be alive to these difficulties: a capacity development project should build diversity in as an indicator of success.

OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

One strategy to address these issues in terms of gender is set out in the next section.

### 8.2.4.2 Gender Equity and Hiring

Hiring and promotional policies used by institutions must never, directly or indirectly, discriminate on a ground prohibited by human rights law. The institution will likely have the duty to take complaints of discrimination in hiring and promotion, and it has a duty to proactively ensure that it is itself beyond reproach. Moreover, it must serve as a model for progressive policies, including special or temporary measures, where this is necessary in light of difficulties experienced by minorities, women, etc. to overcome barriers to hiring in the NHRI.

> **Scenario:** Are Special Measures Needed?

You are working with an NHRI at the early stages of its development. Job recruitment is underway, and you hear through the staff at the NHRI that all the senior staff candidates are men, and that all the administrative and junior staff are women.

When you probe a bit in conversation, the project officer tells you that few women applied for the senior jobs and that those who did were unqualified. Hiring, you are told, is proceeding on a merit basis. If women or minorities do not qualify there is nothing that can be done.

Salaries are part of the core NHRI budget and so should be funded by the state although preferably not paid directly by the State. It is not unusual to see the international community contribute to salary support. This raises its own problems: donors are often uncomfortable paying for core costs because they are recurrent, and one has to be vigilant to ensure that the government, seeing an opportunity to trim costs, does not claw back its own contribution to match donor support.<sup>7</sup> Despite these legitimate concerns, there is some support for the view that it is appropriate in certain countries to cover or partially support operating costs such as salaries, at least at the very beginning.

### 8.2.4.3 Terms and Conditions of Employment

The ICC Sub-committee on Accreditation has observed that salaries and benefits awarded to its staff should be “comparable” to public service salaries and conditions.<sup>6</sup> It should be noted, though, that public sector salaries may not always be adequate or appropriate. Thus, comparable salaries should be a minimum criterion. (See the Discussion in s. 7.7.6 in Chapter 7.)

One consideration is that it may be almost impossible to attract and retain qualified personnel if governmental salary levels apply. Similarly, internal promotion policies may impede NHRIs from recognising and rewarding staff who develop significant expertise. For this reason, as mentioned in Chapter 7, it is important for legislation to allow flexibility to NHRIs in hiring and promoting staff. Once

#### CASE STUDY: WORKING TOWARDS GENDER EQUALITY IN NHRIS

Gender equality in hiring is a human resources objective for NHRIs. NHRIs should model diversity: Human resources research suggests that women are less prone to engage in questionable conduct and are less likely to engage in corrupt practices – a key consideration for the legitimacy and credibility of NHRIs generally. Women also tend to be skilled in obtaining information through verbal questioning, may be seen as less threatening.

NHRIs should recruit women actively, and temporary special measures (sometimes called affirmative action) are a useful and, in most countries, a lawful strategy to identify and fill positions within the organisation by making selected positions open only to female applicants. Some NHRIs use these strategies with success. However, they rarely address concerns of inadequate female representation in more senior ranks, and can create “backlash” among resentful male colleagues if not handled properly.

It is not uncommon in developing countries to find that NHRIs encounter difficulties in achieving gender equity in the recruitment process and that not enough women apply for or are deemed qualified for many positions.

One innovative strategy recommended by a human resources firm working with an NHRI in Southeast Asia is a “**Women in Development Program**” The NHRI can post advertisements of positions under “Women in Development Program” with modified selection criteria to increase the likelihood of women applying.

Under this program, women “are recruited into core, non-administrative roles and selected using modified selection criteria. Once selected, these women are placed on probation while undergoing training and development which is also open to their male counterparts. Women who are deemed competent for promotion after training and after on the job assessments can fill the position on a permanent basis.

- Adapted from recommendations made by Global Justice Solutions in the context of an NHRI in Southeast Asia.

<sup>6</sup> ICC Sub-Committee on Accreditation *General Observations* (Geneva, June 2009).

<sup>7</sup> Carver and Korotaev, “Assessing The Effectiveness of National Human Rights Institutions” 2007. Study commissioned by the UNDP Regional Centre in Bratislava.

the NHRI can demonstrate, through consultation with the public service that its own processes can be applied professionally and fairly, restrictions that impede the capacity of the NHRI to be effective might be lifted.

Finally, staff should be hired into positions with clear job descriptions.

#### Annex 3: Criteria for job descriptions

These issues should be addressed as early as possible, before the actual hiring starts.

Other important areas are: ensuring that there are processes and resources for accommodating staff. NHRIs should pay particular attention to the accommodation of special requirements for employees with disabilities, and should have a policy in this regard. Similarly, the needs of religious minorities and those with parenting obligations, including new mothers, etc. should be accommodated

Finally, disciplinary processes and complaint processes should be established and perceived as transparent and fair, including processes for handling harassment complaints.

#### 8.2.4.4 Training and Professional Development

Because of the specialised nature of NHRIs, it is unlikely that either the members or the staff of the institution will come to their job fully equipped from previous job experience. This makes training especially important for NHRI staff. Training should cater to both short-term and longer-term needs, and so should address professional development as a broader objective. Institutions must embrace the notion of achieving excellence: this means members and staff should be known as experts in their fields. Human rights issues evolve over time and so professional training is part of the 'life-time of learning' philosophy.

Training and development are more than a one-time transfer of knowledge and skills: they should seek to ensure sustainability so that the NHRI develops the internal capacity to provide its own in-house training, and develop **train the trainer programs**. This will mean that an 'engaged' or participatory approach is preferred. A core group of NHRI staff should be involved in all aspects of the training – programme and material development; delivery; and evaluation. It also means that the trainer will be required, in tandem with the core NHRI group, to develop a **training manual** that the NHRI can use for subsequent in-house training. This approach, while more costly at the front end, promotes sustainability and allows

the NHRI to train and orient new staff in core human rights issues.

Training should be based on a **needs assessment** that systematically structures all training needs and links them to job descriptions and operational requirements, as well as to the strategic plan.

As part of the strategic objective of building collaboration with civil society, many NHRIs make it a practice to invite NGOs and community organisations to staff training courses. This is done, of course, on an "as appropriate" basis. A particular effort needs to be made to ensure that women's organisations, and those representing vulnerable groups more generally are included and, where possible, their direct expenses paid, subject to applicable UN rules. Similarly, UNCT staff should attend sessions to the extent possible.

*Implications for the Establishment Phase:* Training should be seen as a necessary part of any general project of technical assistance. Much of the training, especially the practical training on programme implementation, will likely require the use expert-practitioners, preferably those with experience in the region.

#### Annex 4: Guidelines for general NHRI training

Other options for professional development include:

- mentoring;
- exchange programmes; and
- study tours or longer attachments, where professional staff from newer institutions visit more established ones that carry out similar kinds of programming to learn from them and then apply those lessons at home.

#### 8.2.4.5 Performance Evaluations

Many organisations use performance evaluations to assess employees against a set of criteria established at the beginning of employment. This information provides important data for organizational evaluation and should be clearly linked to operational plans.

Given the strains on NHRIs, particularly in new institutions working in tense and post-conflict circumstances, performance management is something that is often left to the side or done in a haphazard fashion. This is not productive for the organisation and is unfair to good performers. In terms of reviewing both organisational and employee capacity, the following issues should be addressed. What following issues?

## 8.3 Knowledge Management

Planning requires research and data, and these in turn require effective information systems to capture, manage and use the data. This group of activities is often collectively called “knowledge management” (KM).

KM is important for any organisation, but NHRIs present special challenges: experience in several countries shows that NHRIs face high staff turnover and of course senior officials such as Commissioners and Ombudsmen change on a regular basis. As new institutions without developed traditions and systems of transferring knowledge and experience, NHRIs can become dependent on individual institutional memory. To avoid these problems, institutions need to develop institutional memory and capacity.<sup>8</sup> This can be done by creating **information systems** to manage data and trends, to generate **management information**.

Effective KM supports research planning and execution. It begins with good data about the start point (baseline data) and then is used to support the capacity to track progress, evaluate results and store knowledge. Effective knowledge management can, over time, help to identify national trends through situation monitoring, and support the identification of strategic approaches. Good data also supports decisions for NHRI resource allocation for activities such as investigations, policy development and thematic reports on substantive areas of human rights law.

Finally, knowledge management systems are the most important systems for setting and tracking institutional progress towards targets, and this is the basis for both program and institutional **evaluation**.

### 8.3.1 Information Systems

KM activities require information systems to support them. See Chapter 7 for the steps to be taken in the Pre-Establishment Phase.

While it is possible to track data manually, this is both labour intensive and unreliable because of the high potential for human error. For this reason, software to manage data is indispensable.

This goes to the quality and efficiency of programme delivery and of management information, as well as the reliability of statistical information used to report to

Parliament and the public. Information systems contribute to the capacity to disaggregate data for purposes of tracking progress on specific groups or issues, as well as the development-related issues discussed in Chapter 5.

An important part of information systems in NHRIs is case management: data management tools can be as simple as word-processing programs, which can be used to generate registers of cases; more useful are spreadsheets, and most useful from a data management perspective are databases. Customised versions of existing software that do not require ongoing expert advice are more affordable and are used in a number of countries, including developing countries like Uganda, Nepal and Afghanistan.

**Case management systems:** Databases must be designed along the same lines as the complaint processing system. If that does not work well, or does not capture the right data, the supporting database will not either. Databases cannot be built by IT experts in isolation: they must be designed together with individuals who actually implement the programme and manage it – those are the people who must establish system parameters. If they do not, the system may be a marvel of technological innovation and yet not meet the needs of the end user.

**For the above reasons the actual development of a system should not start until the case processing system is reasonably established and even then, only when an experienced user group is in place to provide guidance to the IT experts engaged on the design and features of the system.** Managers must define their information needs because unless the system is set up to capture that information, it will not be available later. Finally, an internal IT expert should be engaged at the time the system is being developed and tested. That person will have to deal with several issues and modifications that will inevitably be required once the system is installed.

### 8.3.2 Management Information

Being able to assess an NHRI's performance depends on access to valid, reliable and periodically produced data, including data disaggregated by the relevant human rights ground (say, race or gender). It also implies the ability to capture internal information about case management within the NHRI. The information systems discussed in the previous section must generate useful management information.

<sup>8</sup> Carver and Korotaev, “Assessing The Effectiveness of National Human Rights Institutions” 2007. Study Commissioned by the UNDP Regional Centre in Bratislava



Unless the members of staff have been involved in setting up such a system themselves in other institutions, the NHRI will likely require the assistance of external experts to develop and implement such a system.

Details about case flow, support tools and information management are technical issues and require the hands-on experience of individuals who have 'lived the experience' both in terms of participating in the design the software to support the business processes, and in terms of having the IT staff person clearly understand what is required from the "business" side.

> **Note:** Getting help for a Capacity building for case management tools

The NIRM Section of the OHCHR and the UNDP have significant experience in supporting capacity building for case management and related tools, and therefore are a good source for finding experts in the area.

#### Annex 5: Types of Case Management Reports

#### Annex 6: Case Management Policies and Procedures

Additional discussion of work tools is set out in section. 8.5.

### 8.3.3 Research

Other types of KM activities require long-term planning:

- **Internal research programs** (either within the organization generally or in specialized units or centres);
- **Internal archives or documentation centres** that systematically collect and classify data.
- **Information management systems to support human rights-based approaches to development and the management and monitoring of socioeconomic data.**

With a good system, statisticians or researchers can disaggregate data to identify and address human rights issues, including gender, development, and economic, social and cultural rights issues that otherwise might be hard to grasp. The capacity to identify progress on these issues depends on (1) the existence of socioeconomic data, and (2) access to such data, preferable on a desegregated basis.

In developed countries, NHRIs generally have access to high quality data through national statistical agencies, although relatively few NHRIs avail themselves of such data regularly. In developing countries and countries in transition, on the other hand, it is not always the case that

reliable statistical agencies exist. Sometimes the data do exist, but are lodged in various government departments and are, for all intents and purposes, inaccessible.

The best solution in these contexts is to rely on the international community, through UN agencies (especially data in relation to the Millennium Development Goals MDGs), the World Bank, the OSCE, and to use international indices already in existence (such as the Human Development Index) to compare progress and set benchmarks. NHRIs can compare this data with their own internal statistical information to help it assess whether their own caseload reflects the national situation.

### 8.3.4 Evaluation

Evaluation assesses the impact of NHRI programmes in relation to institutional performance and in particular, can assist in helping UNCTs know when capacity development targets have succeeded and when UN objectives have been met.

By using internal process and output targets, as well as indicators, and matching those targets to international targets where applicable, NHRIs can conduct or commission capacity development and evaluation exercises that help satisfy accountability requirements and allow organisational progress and development. This issue is discussed in Chapter 9.

## 8.4 Funding and Financial Capacity

This area involves NHRI ability to deliver services and carry out mandated roles and responsibilities within the constraints of available funding. NHRIs require the capacity to mobilise resources, and handle unexpected financial pressures.

At the Establishment phase, the budget for the NHRI should already have been included in the government Annual estimates (see Chapter 7) and the planned expenditures should match what was committed at the pre-establishment phase. If UNCTs are working with the government, support can be provided to offer information about standard budget line items, as necessary, having regard to practices in other countries.

Donor coordination is especially important at this phase. The UNCT or another selected lead donor can provide a shared platform to meet with others and coordinate assistance, as well as ensuring that there is receptor capacity at the NHRI to manage the funds.

*Implications for the establishment phase:* Funding levels should be adequate for the NHRI to function and carry out its responsibilities, having regard to the country situation, practices in comparable countries and advice from public administration officials.

NHRIs require some flexibility to realign their spending targets depending on national situations of crisis or even longer term issues as they evolve. NHRIs should be given the authority in developing countries to seek additional funding from donors and to work with the UN and other entities to maintain control of funds thus obtained.

## 8.5 Human Rights Capacity

### 8.5.1 Overview

Developing human rights capacity in **substantive and thematic areas of human rights** is central to the establishment phase. It deals with the ability to formulate policies, strategies and programming based on the established and emerging human rights issues facing the country, especially as regards **specific groups**:

- Children
- National or ethnic, religious and linguistic minorities
- IDPs and refugees
- Indigenous persons
- Lesbians, gays, bisexual and transgender persons
- Migrant workers
- Persons with disabilities, including those with HIV/AIDS
- Women

In addition, there are cross-cutting areas of human rights capacity that also must be addressed in the establishment phase, which track the issues noted in Module 1, such as core protection issues, human rights-based approach to development and to incorporate economic, social and cultural rights into NHRI work. In addition, two areas discussed earlier, human rights and business and transitional justice issues, may be important aspects of NHRI work. See Chapters 3 and 4 for further information on building capacity in these two important areas.

At the establishment phase, it is important to consider the structures and processes that might best support the development of thematic areas: For example:

- strategic planning will identify particular areas of priority.
- training and development for members and staff will ensure that staff have the knowledge levels about specific areas of expertise.
- NHRIs may create structural solutions: specialized departments, units, centres and individual focal points are used to address issues related to specific groups, for example, depending on national circumstances and priorities.
- Knowledge management activities in relation to the selected areas.

If a particular part of the organisation is given responsibility for a thematic area, it should have responsibility for creating and maintaining a knowledge base on that issue. It will serve to facilitate, ensure, and evaluate internally the intervention areas that the NHRI has chosen. The range of responsibility given to the structural unit will also reflect the national reality and resources. Programme responsibilities of these organisational units could include:

- Investigating specific types of complaints.
- Undertaking research and data collection relating to the specific issue or group.
- Carrying out promotional activities relevant to the specific issue or group.
- Developing and implementing mechanisms to ensure that all planning, programming and evaluating activities incorporate an equality focus relating to that specific issue or group.

That said, NHRIs should be aware of the potential pitfalls. If the specialised Department or Unit is given responsibility for direct programme implementation, there is a risk that 'mainstream' programme Units will feel they have no responsibility for dealing with the identified priority issue. An investigations department may not feel the need to consider issues relevant to women or children because a specialized unit has been set up. Moreover, managing and controlling a programme like complaints management that is delivered by two distinct units can pose management and accountability challenges.

For these reasons, a mixed approach – mainstreaming and specialised or dedicated structures – should be used where possible. UNCTs can have a role in providing advice, if asked, in these areas, and in providing information about strategies and ideas that have worked elsewhere. Specific examples follow in the sections below as regards three categories of vulnerable groups.

### 8.5.2 Core Protection Issues

A crucial aspect of the NHRI mandate is core protection work. The OHCHR considers core protection issues to be one of the more important elements in determining the credibility of NHRIs at both the national and international levels:

- General activities relating to the prevention of torture, summary execution and arbitrary detention;
- Complaints from detainees;
- Detention monitoring; and
- General activities relating to the protection of human rights defenders.

Specific suggestions for activities related to supporting this area and corresponding capacity development interventions are contained in Chapter 4.

### 8.5.3 Women’s Equality

Given the global nature of gender equality issues, capacity should be developed to ensure that women’s rights are being addressed:

> **Example:** Specialised Units in the Afghan Independent Human Rights Commission:

The work of the different AIRHC units is interconnected. For example, individual cases of violence against women involve both the Women’s Rights Unit and the Monitoring and Investigation Unit. Human rights education workshops are carried out by both thematic programmes, and the Human Rights Education Unit. Thematic programme units – Women’s rights and Child Rights – conduct monitoring, aspects of case work, and promotion activities.

To an extent these areas of duplication have been pragmatically resolved. However, Commissioners have begun to consider substantial structural and organizational changes, including reformulating the Executive structure into Promotion, Protection, Monitoring and Capacity Building programmes.

Source: *UN Support to the Afghan Independent Human Rights Commission Project*

**TABLE 1: NHRIS AND ENSURING WOMEN’S EQUALITY**

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
KNOWLEDGE MANAGEMENT AND REPORTING	Establish capacity to generate gender de-segregated data from case management system (information systems)
	Establish capacity to use indicators and relevant MDGs to track progress regarding women’s well-being and human development
HR POLICY	Develop internal gender-related policies on hiring, promotion and representation of women (See section 8.2 on human resources).
PLANNING AND INTERNAL STRUCTURE	The strategic plan should focus on the need for specialized or thematic approaches to building expertise and / or complaints handling in gender issues.
	Establish internal structures and capacity to ensure that women’s issues are considered in all programme activities, including identifying and addressing complaints on gender equality.

Finally, establishing focal points can be linked to both national and regional initiatives, as the following examples show:

> **Example:** Focal Points for Fighting Trafficking

**Regional approaches:** In view of the prevalence of trafficking, and at the request of the UN High Commissioner for Human Rights as well as on the recommendations of the APF, several Asian NHRIs nominated their Members to serve as Focal Points on Human Rights of Women, including trafficking.

**India.** Among the activities initiated by the Focal Point on Trafficking & Women's Human Rights in India was an Action Research on Trafficking in Women and Children in 2002 in collaboration with UNIFEM and the Institute of Social Sciences, a research institute in New Delhi. The purpose was to determine trends,

dimensions, factors and responses related to trafficking in women and children in India. The Focal Point further examined other facets of trafficking, including viz., routes of trafficking, transit points, the role of law enforcement agencies, NGOs and other stakeholders in detecting and curbing trafficking.

Source: NHRC/ UNIFEM /ISS Project. 2004. "A report on Trafficking in Women and Children in India 2002-2003." <http://nhrc.nic.in/Publications/ReportOnTrafficking.pdf>

#### 8.5.4 IDPs, Refugees and Stateless Persons

Many of the structural issues discussed above regarding strategic planning and the creation of areas of specialisation for gender apply to this area as well. Determining whether this is a priority area for which specialized support and capacity should be developed will emerge from the strategic planning process.

**TABLE 2: NHRIS AND IDP'S REFUGEES AND STATELESS PERSONS**

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
CAPACITY AREAS TO DEVELOP AT THE ESTABLISHMENT PHASE	Establish cooperation programs or links with humanitarian organizations, especially those where UNCTs can facilitate contacts and liaison.
	Establish monitoring programs as a basis for effective assistance programmes (for example, monitoring of the right to food, shelter, health care and education of vulnerable groups).
	Create mechanisms so the NHRI can receive and handle complaints from IDPs, refugees and stateless persons.
	Develop a promotional campaign or strategy to foster cordial relations between refugees and the host communities.
	Establish capacity to review legislation on citizenship and nationality that could lead to statelessness and urge governments to establish an efficient registration mechanism.

TABLE 3: DISABILITY AND NHRIS<sup>9</sup>

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
DISABILITY CONVENTION	<p>If the NHRI is designated as (one of) the independent national mechanisms to promote, protect and monitor the implementation of the Disability Convention, ensure that specialized capacity is built in across all functional areas of the NHRI's work.</p> <p>Even if an NHRI has not been specifically designated, it still may have general jurisdiction to promote, protect and monitor disability issues. NHRIs should support the implementation of the Disability Convention:</p> <ul style="list-style-type: none"> <li>■ promotion: education, awareness-raising, encouraging further and better implementation of the Convention;</li> <li>■ protection: assisting with and taking cases, strategic litigation;</li> <li>■ monitoring: reflecting periodically on domestic implementation and commenting on or proposing legislation that best fits local circumstances, in close consultation with NGOs and persons with disabilities.</li> </ul>
HR POLICY	<p>Develop internal policies to ensure the accommodation of staff with disabilities (See section 8.2 on human resources).</p> <p>Ensure that NHRI premises, services and publications are accessible to persons with disabilities.</p>

### 8.5.5 Persons with Disabilities

Many of the structural issues discussed above regarding strategic planning and the creation of areas of specialisation for gender apply to this area as well. Like gender equality, the rights of persons with disabilities are a significant area of NHRI work and in NHRIs whose mandate is limited to equality issues, it is usually at or near the top of grounds cited in complaints.

The following table provides a checklist that may be applied in developing the capacity of an NHRI with regard to promoting, protecting, and monitoring disability rights at the establishment phase, both internally and in its thematic work.

### 8.5.6 Human Rights-Based Approach to Development

Specific suggestions for activities related to supporting this area and corresponding capacity development interventions are contained in Chapter 5.

### 8.5.7 Transitional Justice

An introductory discussion of the role of NHRIs in this area is in Chapter 3.

Engaging in transitional justice assumes that the NHRI has the legal mandate to do so and that there is clarity about the type of role and authority that will be exercised. The following activities are ones that NHRIs might establish:

- Monitoring and Reporting
- Investigation
- Complaints handling
- Information gathering, documentation and archiving
- Cooperation with national, regional, hybrid or international judicial mechanisms.

The government should ensure that the NHRI is properly resourced.

<sup>9</sup> This is based in part on the OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*. 2007. Available from NI Unit, OHCHR.

**TABLE 4: NHRIS AND TRANSITIONAL JUSTICE: ESTABLISHING CAPACITY<sup>10</sup>**

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
ACCOUNTABILITY	Establish effective accountability mechanisms.
	Developed a KM system to document past abuses, or to support other truth-seeking/truth-telling mechanisms, and to preserve truth commission archives.
	Develop a plan or program to review and comment on enabling legislation for a Truth & Reconciliation Commission, Special Court or Reparation Programme.
	Create capacity to advise on <ul style="list-style-type: none"> <li>■ Institutional reforms (as a remedy to address causes of conflict)</li> <li>■ Legal reforms</li> </ul>
REINTEGRATION	Develop capacity to support the reintegration of demobilised forces, displaced persons and returning refugees into society.
	Include special initiatives for child soldiers and child abductees, and integrate a gender-sensitive approach.
REPARATION	Does the NHRI include as part of its outreach information about its capacity to assist victims with claims?
	Does the NHRI promote the adoption of ad-hoc measures for victims?

### 8.5.8 Human Rights and Business

An introductory discussion of the role of NHRIs in this area is in Chapter 3.

At the establishment phase, NHRIs that have jurisdiction over private sector entities should be able to provide access to remedies for abuses of human rights. One of the current issues in this area is the lack of available information about alternative dispute resolution mechanisms. These mechanisms can complement judicial recourses, by enabling an early and speedy means of resolution.

See the ADR section 8.5, below and BASESwiki

#### **BASESWIKI:**

This online portal is the initiative of the UN Secretary-General's Special Representative on Business and Human Rights, with the Corporate Social Responsibility Initiative at Harvard Kennedy School and with the International Bar Association and Compliance Advisor/Ombudsman of the World Bank Group. It aims to help Business and society explore solutions to grievances and disputes, including resources for grievance resolution, accountability mechanisms and access to experts in ADR. [www.baseswiki.org](http://www.baseswiki.org)

The portal of the UN Special Representative to the Secretary-General on business & human rights in the Business & Human Rights resource centre



Specific promotional programmes dedicated to business become important areas of potential intervention for NHRIs and therefore may be areas for the UNCT to provide support, if requested.

<sup>10</sup> See OHCHR, "Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level", 2007, op. cit.

## 8.6 Functional Areas of Capacity

Managing human rights cases requires the capacity to develop, institutionalise and implement mechanisms that will assist the NHRI in receiving, processing, investigating and tracking human rights complaints and investigations. Whether the NHRI has the capacity to receive individual complaints (as is the case for quasi-judicial institutions) or to investigate human rights matters more generally, the objective is to establish clear, consistent and effective investigation mechanisms and to provide recommendations.<sup>11</sup> The following general areas of capacity should be targeted:

- Protection (investigations, complaints handling, alternative dispute resolution, monitoring, precautionary measures and public inquiries);
- Promotion (communications, public education, campaigns, publications and reports);
- Stakeholder engagement;
- Advice to government and Parliament; and
- Support to the international human rights system.

### 8.6.1 Protection

#### 8.6.1.1 Protecting Witnesses and Human Rights Defenders

In assistance projects to NHRIs, UNCTs should be sensitive to and aware of issues that pertain to protecting witnesses (including the complainant) and human rights defenders from attacks and reprisals. The role of NHRIs in protecting human rights defenders is part of the core protection mandate and this issue is also addressed briefly in Chapter 4.

*Implications for the Establishment Phase:* Case management or investigations manuals should include a section on proper procedures, including physical protection of witnesses, disclosure, how to handle reprisals, and ensuring confidentiality and privacy.

#### 8.6.1.2 Investigations and Complaints Handling

NHRIs in the establishment phase have to build effective systems to ensure the quick and effective resolution of investigations. For NHRIs with the additional power to receive individual complaints, this part of the work assumes particular significance. It is not unusual, from the very earliest phases, to see NHRIs quickly overwhelmed with large numbers of cases. The dangers of being overwhelmed are more serious in countries where established and familiar governance systems are in transition or have been eroded, or have disappeared entirely. Thus, in several CIS countries, for example,

*the population often sees the NHRI as a substitute for old complaints-taking bodies, such as the Communist Party committee complaints department. As a result, NHRIs receive a huge volume of complaints not only about violations of human rights, but also – and sometimes mainly – about violations of all possible laws, rights and interests. Widespread corruption and a poorly functioning judicial system only aggravate this situation. Only by educating the population about what an Ombudsman can and cannot do, and by demonstrating the results of its work can NHRIs win popular support and legitimacy in the eyes of society;<sup>12</sup>*

Implications for the Establishment Phase: (see text box, “Simple Steps to Control Case Load”)

#### SIMPLE STEPS TO CONTROL CASE LOAD

- Ensure that the full complement of NHRI investigations staff is in place before the NHRI opens its doors.
- Design an effective and efficient case flow that includes an intake phase to screen in only those cases that the NHRI is authorised by law to deal with (see the section below);
- Prepare a case management manual that includes intake procedures (complaint forms; standard letters; standing instructions for early refusal and referral); investigation procedures (policy and procedures) – that are required to support complaint investigation, and
- Collect and use of case load data to track trends.

<sup>11</sup> See “Asia Pacific Regional Initiative”, supra note 1.

<sup>12</sup> Ibid.

### 8.6.1.3 Effective Case Flow Design

An effective, well designed case flow will ensure that the investigation is thorough without being overly complicated, that procedural fairness is respected, and that decisions are taken at the appropriate time and level. It is also necessary to understand the case flow system in order to develop appropriate work tools and establish the data collection system.

The specific design will depend, at least in part, on the model of the institution chosen, the legislative authority that the institution has, local practices and requirements and the degree to which decision-making may be delegated. However, it would typically involve these stages:

- Intake, during which basic information on the complaint is gathered and a determination on jurisdiction is made;
- Preliminary jurisdictional decisions (where the NHRI decides whether to deal with cases that are out of jurisdiction according to the law);
- Early resolution and ADR (good offices interventions or early mediations to resolve cases quickly);
- Investigation, during which fact-finding takes place and a report is prepared;
- Decision-making and follow-up when a decision is made as to whether a human rights abuse has occurred; and
- Enforcement procedures, depending on the authorities granted the institution, to ensure that the findings are implemented fully.

One key to the success of an effective case flow design is an **internal complaints committee**: this is in part a function of the organisational structure. Many NHRIs have internal complaints committees (including the senior member or official, directors of investigation, legal and policy, for example, as well as the Registrar or equivalent position). The committee is responsible for reviewing the progress of cases on a regular basis and for addressing problems, delays and or ensuring policy formulation. They identify cases that appear to raise the same issues repeatedly, i.e., with fact patterns and systemic issues, cases that are aged (usually as a result of complexity, political sensitivity or obstruction by respondents), and serve as a warning light when caseloads are rising faster than the system can cope.

*Implications for the Establishment Phase:* UNCTs may support NHRIs to establish an effective case management process and prepare manuals. Sometimes, special advisors

are retained through UN projects who work closely with NHRIs on the development and design of the case management process and assisting, where requested, to support decision-making. Efforts to improve organisational structures can include information from other jurisdictions about how internal complaints committees function. More information on the role and selection of special advisors may be found in Chapter 6.

### 8.6.1.4 Intake and Triage

Intake is the stage of complaint investigation during which basic information on complaints is gathered and determinations on jurisdiction and case priority status are made.

One of the main purposes of intake is to sort through enquiries and potential complaints (regardless of the form in which they are received) to determine what can and should be investigated, as well as which cases requires immediate or special attention. This is referred to as triage. Triage should eliminate out-of-jurisdiction cases, and identify priority cases requiring immediate attention.

*Implications for the Establishment Phase:* The case management manual should include a section on the intake phase and set out rules, based on the statute for which types of cases are in or out of jurisdiction, and what formalities are required to file a complaint.

### 8.6.1.5 Systemic Cases

Addressing systemic cases is an important strategy for improving case management at the institutional level, and for resolving cases expeditiously. Systemic cases may be identified when the institution receives several cases on the same issue, where there is a pattern of similar problems appearing over time, or when an examination of an individual case shows that the cause or proximate cause of a problem is found in faulty legislation, regulations, policy or practice rather than individual behaviour. These are called “systemic” cases simply because they are part of or based in systems and structures, rather than in an intentional or unintentional one-off act. Recognising these cases and applying resources to them is an important part of case management because it can increase the efficiency of the organisation significantly.

*Implications for the Establishment Phase:* The case management manual should include a section on the identification of systemic cases and the process for creating a special team of staff to address broad-ranging and large-scale issues of this kind.



### 8.6.1.6 Work Tools for Case Management

New investigators are unlikely to have significant pertinent experience in investigating human rights abuses. Members of NHRIs such as commissioners, no matter how competent, are equally unlikely to have this knowledge. Training will help, but developing standard tools, operating policies in manuals or similar tools is critical. Several NHRIs use standard forms and precedents in the case management process, but not all have clear, comprehensive and regularly updated manuals. Manuals are major undertakings and should be specifically targeted as projects once the case design and other basic working processes are in place.

The development of such tools should be required at the outset so that there is no significant time lapse between establishing the institution and undertaking investigations. The risks associated with not doing so are great and could generate longstanding problems.

**Annex 5:** Types of Case Management Reports

**Annex 6:** Case Management Policies and Procedures

### 8.6.1.7 Enforcement and Remedies

The practical ability to achieve remedies and ensure a response to NHRI recommendations or requests for information of NHRIs is a common problem. In many countries, the NHRI has no executory power itself, and no clear path or process to access judicial mechanisms like the courts. In other countries that rely on a good offices model of non-binding recommendations (many Ombudsman Institutions, for example), the power to achieve a remedy is even weaker.

This is to some extent an issue for the enabling law: pathways to remedies or to punish obstruction of failure to comply with information requests, should be clearly set out in legislation. This is discussed in Chapter 7.

At the establishment phase, if the laws do exist, NHRIs should establish mechanisms to use them, and should develop procedures to engage the authority of the State where circumstances require it.

*Implications for the establishment phase:* NHRIs should have organisational systems in place to ensure:

- effective and timely resolution of cases,
- information systems to capture and analyse internal data on case outcomes,
- effective and timely write-up of case decisions and recommendations,

- effective engagement of public prosecution offices in the event that there are criminal issues to be addressed, and
- where the powers exist in law, capacity to intervene before the courts as parties or amicus curiae, including seeking interim measures to prevent irreparable harm.

NHRIs should have the influence and credibility to persuade officials and respondents to follow recommendations, where there is no enforcement power.

### 8.6.1.8 Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is an alternative to litigation and to the more adversarial approach of seeking a legal remedy before the courts. It can be a fast, efficient way to resolve complaints. Typically, institutions will use two or three distinct ADR processes: early resolution; mediation; and, sometimes, conciliation.

**Annex 7:** Fact Sheet on ADR

Those engaging in ADR must have specific training. Chapter 9 contains additional materials on advanced training.

**Annex 4:** Guidelines for general NHRI training

### 8.6.1.9 Monitoring and Reporting on Human Rights Situations

Monitoring carried out by an NHRI should be aimed at systematically reviewing and reporting on the priority human rights in the country and be:

- Focused on areas of strategic priority
- Managed (planned, resourced, controlled and evaluated);
- An ongoing, regular activity;
- Usually cyclical;
- Pro-active, while responding to priorities; and
- Aimed at targets or results and, where appropriate, progressive realization of targets.

> **Examples:** Country experiences of Monitoring

In **Guatemala**, the Human Rights Ombudsman (PDH) prepares an extensive annual report and submits it to the National Congress. These reports highlight the monitoring findings of investigations into human rights violations such as gender based violence, the denial of fair trial rights, and denial of access to food, education, and healthcare.

In **South Africa**, the South African Human Rights Commission (SAHRC) conducts preliminary need assessments through public hearings regarding public interventions and strategies and administrative practices and programmes. The SAHRC then prepares a report based on these assessments for the national parliament.<sup>13</sup>

Monitoring is not restricted to civil and political rights, of course. In its General Comment No. 10, the Committee on Economic, Social and Cultural Rights emphasizes that NHRIs should monitor States parties' compliance with ESC rights.<sup>14</sup> This addresses the progressive realization of ESC rights: the only way to determine progress is to evaluate and analyse events over time. This underscores the importance of long-term tracking, baseline data, targets and indicators. "Progressively" means that although the benchmark or target can only be reached over time, there has to be measurable progress and effort towards this end. It also means that a government is devoting the "maximum of its available resources" to meeting its obligations. The NHRI can assess this by monitoring government resource commitments through a budget analysis.

*Implications for the Establishment Phase:* NHRIs should prepare rigorous and regular reports on the human rights performance of the government based on priorities established through strategic planning and carried out through a regular monitoring program.

Specific areas of capacity include:

- Monitoring laws, administrative acts, draft bills, and other proposals on an ongoing basis, to ensure that they are consistent with human rights in general and specific priority areas in particular;
- Undertaking surveys in relation to the state of human rights in order to create a baseline for monitoring;
- Identifying national benchmarks for measuring the progressive realization of economic, social and cultural rights;
- Conducting research and inquiries to ascertain the extent of realisation of rights at the national level;
- Providing reports to public authorities and civil society; and

- Monitoring the views and recommendations of bodies in the international system (see the following section).

## 8.6.2 Promotion

NHRIs have a dual responsibility to both protect and promote human rights. Because of the visibility and immediacy of the protection mandate, the promotion side of the mandate can be overlooked. It is important that this not happen. NHRIs require the ability to attract and retain qualified communications and public education staff, and to manage media relations.

### QUICK FACTS ABOUT HOW THE PROMOTIONAL MANDATE IS RESOURCED IN NHRIS

An OHCHR survey shows that a number of NHRIs are not carrying out activities relating to human rights education and research, despite having the mandate to do so. Many, particularly in Africa and the Asia Pacific have commented that there was a lack of resources or materials available to do so.

See OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)



The long term project of fostering a change in the culture of human rights requires a change in attitudes and behaviours, and it is vital to disseminate the results for protection work so the public knows what is going on.

**Dedicated Training:** While members and staff of a new institution will have the same needs as other professional staff with regard to human rights generally, promotion staff will need training in core activities as well as guidance from standing instructions.

**Specific Programming:** The array of public programming that may be initiated by an institution is discussed in Chapter 3. The Institution will define in its strategic planning process which activities will be emphasised. Certain programme activities are both predictable and important, and should be included in the initial project document:

- The preparation of core documents on human rights and the role of the NHRI in the country;

<sup>13</sup> See OHCHR (2008), "Guidance Note on National Human Rights Institutions and Transitional Justice" (2008). Available on [www.nhri.net](http://www.nhri.net). Accessed June 24, 2009.

<sup>14</sup> *The role of national human rights institutions in the protection of economic, social and cultural rights*. 14/12/98. E/C.12/1998/25, CESCR General Comment 10. (General Comments)

- The design and delivery of public education programmes and awareness campaigns on general or specific topics;
- The design and delivery of training to key stakeholder groups: the police; prison officials; the army and security forces;
- Communications planning, including the dissemination of information on NHRI recommendations and decisions;
- Ensuring accessibility of information (linguistic, regional and for persons with disabilities);
- Support for report writing, design and dissemination;
- Developing teaching materials for human rights in the school system at all levels; and
- Sponsoring popular arts and theatre competitions and events with a human rights theme; etc.

While the strength of cooperation and collaboration between NHRIs and the NGO sector starts with the planning process, as noted earlier, it should also extend to their inclusion in selected training courses, in monitoring activities and in outreach education programming.

**Preparing Reports:** Institutions usually have a legal obligation to produce annual reports. The programme of support to NHRIs could assist by facilitating the design of a standard mock-up report that can guide the NHRI on how to track and collect the information needed throughout the year, and by providing assistance in writing the report. Funds might also be available to ensure that the report receives a wide circulation; this could include presenting the report, a press conference, holding a national workshop attended by key stakeholders, etc. Similar approaches could be used for special and thematic reports.

**Communications Planning:** Communications are often treated as the last element of an initiative, an add-on to be undertaken at the end of the process. In fact, communications are part of the strategic planning process and should be closely integrated into planning, including an analysis of the strengths and weaknesses of the NHRI, as well as by the particular characteristics of the media and the human rights environment.

Staff should have training in communications and media relations and can have a critical role in ensuring that the NHRI is well perceived externally.<sup>15</sup>

**Annex 1:** Sample terms of reference for strategic planning expert

### 8.6.3 Interaction with the International Human Rights System

Cooperation with the international human rights system – including regional mechanisms – is a requirement of the Paris Principles. The ICC, in its General Observation, notes as follows:

*The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.<sup>16</sup>*

*Implications for the establishment phase:* See the tables in the following two sections.

#### 8.6.3.1 Capacity Development to engage with Treaty Bodies

There is some evidence to suggest that NHRIs require more resources to understand UN human rights treaty bodies and their work.

See OHCHR, *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide*. 2009. [www.nhri.net](http://www.nhri.net)

Existing international and national human rights instruments and mechanisms need to be better utilized and the UNCT can assist NHRIs to identify areas where the country has fallen short of internationally-agreed standards and to learn more about the system overall.<sup>17</sup>

<sup>15</sup> See R. Carver, "Developing a communications plan", ACE Project, Media and Elections. <http://aceproject.org/ace-en/topics/me>.

<sup>16</sup> ICC Sub-Committee On Accreditation *General Observations* (Geneva, June 2009).

<sup>17</sup> C. Castañeda, "Relevant Findings n UNCTS, Human Rights & Capacity Development" October 2008.

The following checklist will help determine key areas of capacity to develop at the establishment stage:

**TABLE 5: NHRIS AND TREATY BODIES<sup>18</sup>**

MILLENNIUM DEVELOPMENT GOAL	KEY RELATED HUMAN RIGHTS STANDARDS
<b>REPORTING</b>  Drafting accompanying reports or comments in connection with the reports that States are required to submit to UN bodies.	Build a KM system to collect information about gaps and weaknesses in rights protection.
	Establish a process for the NHRI to provide information to the secretariat of the particular Treaty Body for the drafting of the List of Issues.
	Plan for NHRIs to make presentations in treaty body pre-sessional working groups.
	Establish a liaison with the ICC representative in Geneva to address treaty bodies on its behalf (only for A-status NHRIs).
<b>FOLLOW-UP</b>	Create a system to monitor the effective implementation by the Government of the concluding observations and recommendations of treaty bodies and provide guidance on possible courses of action.
	Create a system to support and host follow up meetings to concluding observations and recommendations of treaty bodies intended for the Government, Parliament, public authorities, and civil society.
	The NHRI should engage with Government, Parliament and other public authorities regarding the implementation of concluding observations and recommendations.
	Where possible, institute programmes and activities based on observations and recommendations.
<b>PETITIONS/ENQUIRY PROCEDURE</b>	Create an internal process to facilitate or assist victims' petitions to treaty bodies.
<b>INTERNATIONAL HUMAN RIGHTS INSTRUMENTS</b>	Ensure training on state ratification of relevant instruments, as well as reservations and implementation gaps following views and recommendations expressed by treaty bodies.
	Establish a programme to publicise / disseminate information about international human rights instruments.
	Establish education campaigns for advocacy and for governments, Parliament, and stakeholders regarding international instruments.
<b>TRAINING</b>	Establish a programme to train state officials regarding reporting procedures, collection of data that is required for reports and other relevant issues relating to the reporting process.

<sup>18</sup> See OHCHR, "Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level". 2007 (drafted by J. Klok, NI Unit, OHCHR); UN, "Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies" HRI/MC/2007/3, 7 February 2007.

### 8.6.3.2 Capacity Development in Special Procedures

The following checklist will help UNCTs support NHRIs in establishing capacity to engage with Special Procedures of the Human Rights Council.

**TABLE: 6 SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL**<sup>19</sup>

<b>COMMUNICATIONS</b>	Establish contacts with mandate holders in areas of particular concern at national level.
	Ensure that NHRI receives regular communications from mandate holders in areas of particular concern to government.
	Establish contacts with ICC representative in Geneva.
	Plan for NHRI to attend relevant meetings (annual thematic, etc.).
<b>KNOWLEDGE MANAGEMENT</b>	Ensure KM system in place to collect information about gaps and weaknesses in rights protection.
	Establish a system to actively monitor and implement mandate holders' recommendations to the State.
	Develop an awareness programme of follow-up seminars, including human rights stakeholders regarding mandate holders' recommendations to the State.
	Strategic planning: NHRI should take relevant mandate holder recommendations into account when preparing its work-plan and when assisting in the formulation of National Human Rights Action Plans and in other human rights related programming activities.

**TABLE: 7 NHRIS AND THE HUMAN RIGHTS COUNCIL**<sup>20</sup>

<b>SESSIONS</b>	Plan to attend meetings of the HRC (active participation in these meetings is restricted to A-status institutions).
	Ensure KM system in place to deliver reports, oral statements on agenda items.
	Ensure that the NHRI can issue documentation for the HRC, with its own UN document symbol number.
	Establish contacts with ICC representative.
<b>UNIVERSAL PERIODIC REVIEW</b> (Preparation at the country level)	Ensure NHRI is included in national consultation process organised by the State for the purpose of the preparation of the information for the UPR.
	Ensure KM system in place to provide information to OHCHR for summary of stakeholder information.
	Prepare for a lead in a broad consultation with state entities, civil society organizations and NGOs for the purpose of (joint) submissions of information.
<b>UNIVERSAL PERIODIC REVIEW</b> (Participation in UPR review)	Take steps to ensure NHRI attendance at UPR review in the Working Group.
	Make use of the presence of the ICC representative in Geneva to make a statement on its behalf.
<b>UNIVERSAL PERIODIC REVIEW</b> (Follow-up to the UPR outcome)	Communications planning to disseminate UPR process outcomes to all major stakeholders at the national level.
	Prepare action plan or strategy to contribute to the implementation of the various recommendations (see strategic planning).
	Establish a system to monitor implementation of UPR recommendations
	Prepare to issue communications to the attention of national stakeholders, including through the media, regarding the UPR and upcoming deadlines.

<sup>19</sup> OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*. December 2007.

<sup>20</sup> OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*. December 2007. See also "Information note for NHRIs regarding the Universal Periodic Review mechanism" (as of 18 August 2008) 4th, 5th and 6th UPR sessions. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/NoteNHRIS.aspx> Accessed February 2, 2009.

### 8.6.4 Advice to Government and Parliament

Basic information on the role of NHRIs in providing advice to government and Parliament, including advice on legislation, is set out in Chapter 3.

If an NHRI requests support to establish its strategy to review national legislation, UNCTs can provide assistance by providing basic guidelines and steps. Before this, however, the government should be made aware of the advantages of reviewing draft bills and permitting NHRIs to establish programmes to systematically review proposed legislation at the draft stage because:

- It is easier to change a draft law than to repeal or amend an existing one;
- Reviewing proposed regulations, or even policy and procedures is also easier than changing them once government has decided on a course of action;
- Getting legislation, policy and practice right in the first instance prevents potential problems later;
- A review process can avoid the complication and costs of human rights investigations, litigation or communications to Treaty Bodies after the fact; and
- Intervention at the drafting stage usually ensures that there is a public and open discussion on the aims and expected impacts of the legislation; institutions can ensure that human rights principles and the needs of disadvantaged and marginalized individuals form part of this public discourse.

NHRIs should develop the capacity to engage government and Parliament in formulating policies and priorities for the country. This area is part of the strategies used by NHRIs to develop mechanisms to ensure regular communications: this can take place through regular attendance at Parliamentary committee hearings, contacts with Ministers of key departments.

*Implications for the Establishment Phase:* The NHRI needs to begin regular and structured communications with key actors in government and Parliament to promote communications about upcoming Bills and other human rights developments.

### 8.6.5 Stakeholder Engagement

This area of capacity is linked to the requirements of the Paris Principles, and is an important aspect to consider when establishing a NHRI.

Securing strong ties and partnerships with human rights stakeholders is a core responsibility of all NHRIs. As noted earlier, there should be meaningful and transparent participation of stakeholders in the **strategic planning** process in order to ensure quality, community ownership, and coordination and cooperation between stakeholders.

NHRIs can create capacity to work with civil society in public awareness and knowledge development or knowledge management, by creating advisory bodies, creating research teams for preparation of reports and policy documents.

Many NHRIs rely heavily on civil society and especially on human rights NGOs to obtain information about alleged human rights violations. This is linked to **investigations and monitoring capacity of NHRIs**, even if there are concerns about NHRI effectiveness. Consider the following observations:

*It is often neglected that precisely the same considerations [of working with NGOs] apply in receiving and investigating complaints. It was striking in our field research that a large proportion of complaints, especially from remote areas of the country, were channelled through NGOs. This was particularly so in Indonesia and Mexico, where NGOs have a far broader geographical implantation than the national institution – but also, noticeably, where the NGOs have considerable misgivings about the independence and effectiveness of the institution.*

Source: International Council on Human Rights Policy.<sup>21</sup>

As well, stakeholder engagement can support public inquiries and, of course, promotional activities.

*Implications for the Establishment Phase:* UNCTs can support this engagement by supporting the integration of stakeholders into strategic planning, and also with respect to other activities that offer opportunities to build links with stakeholders. These include human rights dialogues, learning events and advocacy campaigns, as well as targeted thematic or cross-cutting research projects.

Simple yet effective strategies include establishing regular meetings between NHRIs and key stakeholders, and feedback mechanisms, including perceptions of accessibility and responsiveness to human rights issues.

<sup>21</sup> *Performance & Legitimacy: National human rights institutions*, 2nd ed., 2004. International Council on Human Rights Policy (Versoix, Switzerland).

## KEY MESSAGES

- The establishment phase covers the period in time immediately after the institution is established in law, and includes setting up the organisation and developing capacity in infrastructure, organisational development, human rights capacity and functional areas of responsibility.
- If asked to support NHRIs, UNCTs can help bring good practices to light, and ensure that staff have the knowledge and tools to work effectively. Establishing NHRIs should be undertaken with a view to creating capacity across the all major areas.
- A newly created NHRI will face a number of immediate challenges. Because these challenges are known and predictable, UNCT staff should consider if and how technical assistance should be provided to help the institution respond to the challenges, and, if so, what the most effective approach might be.
- An NHRI's organisational structure reflects its general mandate and responsibilities. It should also reflect principles of good management and be conducive to operational efficiency.
- There should be meaningful and transparent participation of stakeholders with expertise in human rights and community issues, especially in the strategic planning process, and also in reports, investigations, public inquiry work, and promotional activities.
- Investing in the leadership of the NHRI is a fundamental part of its human resources management, but it also represents a cross-cutting theme for the organisation.
- NHRIs must adopt processes and procedures that meet the highest standards of good governance and respect for human rights: requirements of plurality demands that employees be representative of the wider community.
- Because of the visibility and immediacy of the protection mandate, the promotion side of the mandate is sometimes overlooked. It is important that this not happen.
- The longer-term need to foster a change in the culture of human rights requires a change in attitudes and behaviours and it is vital to disseminate the results for protection work so the public knows what is going on.

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## ANNEX 1: SAMPLE TERMS OF REFERENCE FOR A SENIOR STRATEGIC PLANNING FACILITATOR

> **Note:** These are samples only for indicative purposes. They are based on precedents from TORs used in the UN system

### Senior Strategic Planning Facilitator

#### Background of the Project:

- Provide historical overview of relevant country situation;
- Provide overview of history of NHRI in country, or initiatives to establish NHRI, including constitutional and legislative basis, if applicable;
- Describe organisational structure of NHRI, if applicable;
- Assess weakness and strengths of the NHRI, if applicable;
- Identify opportunities and threats in the operating environment;
- Describe need for a planning process, document requests from government or NHRI, as appropriate; and
- Describe NHRI commitment as senior levels for a planning process.

#### Strategic planning

The [title of head of organisation] believes that developing a strategic plan for the entire institution is the only way to identify priorities, consolidate activities and craft a comprehensive institutional strategic plan.

The Plan will result in the selection of strategic priorities for the NHRI, plus a medium term strategic plan for a period of three (3) years. It should also include short-term institutional operational planning over a period of one year.

Indicative budgets, in the short, medium, and long-term, will be prepared and will be directly linked to specific activities and benchmarks.

The strategic plan should be used as a public document in order to demonstrate the effective management of the institution's resources while ensuring that its work is as relevant as possible to the legitimate concerns and aspirations of the people of [country]. This is very much in the spirit of transparency and accountability upon which the institution wishes to base itself.

The strategic plans will be a blueprint for institutional development including recruitment and training of new staff, ongoing development of procedures and staff manuals, internal monitoring systems, development of external relationships, promotional and training activities, and development of regional offices.

#### Objectives:

In response to a request from the NHRI the terms of reference pursues the following objectives:

- 1) Provide the basis for the engagement of a Senior Strategic Planning Manager;
- 2) Support the institutional strategic planning process; and
- 3) Support the preparation of institutional plans, as noted above.

#### Scope of Work:

The Senior Strategic Planning Facilitator will be engaged starting in [term from, to] with the assistance of local nationals as necessary in order to:

- 1) Prepare the program design, timeline and all project guide documents for the institutional strategic planning process;
- 2) Facilitate the implementation of the approved program design and ensure that established timelines and deliverable deadlines are observed within the terms of the contract;
- 3) Supervise and facilitate the implementation of all workshops, meetings, consultations, round-table discussions, focused group discussions as part of the strategic planning process, while in country;
- 4) Prepare the final drafts of the institutional short and medium term institutional strategic action plan and submit to the [head of NHRI or Deputies] for final approval;

- 5) Prepare a short narrative document setting out proposed directions and priorities for a five-year planning period;
- 6) Consult with the *[head of NHRI or Deputies]* staff and all component/area technical advisers at all stages of the strategic planning process; and
- 7) Perform such other functions as directed.

### Outputs and deliverables:

The following outputs and deliverables are expected to be generated by the Senior Strategic Planning Facilitator:

- 1) A strategic planning programme design and a timeline for workshops, consultations, meetings, discussions and for submission of deliverables;
- 2) A small number of strategic priorities;
- 3) Short and medium term institutional strategic plans, and longer term indicative guidelines, devolving from the strategic priorities; and
- 3) A project evaluation report with recommendations.

### Timing, Level of Effort (LOE) and Reporting Relationship:

The Senior Strategic Planning Facilitator will take place in *[location of NHRI, country]* for a first period of time for orientation, training and planning for consultations for *[two weeks to a month]* over *[identify calendar period]*. A second period may be planned to carry out consultations as required, coordinate input into planning and prepare first drafts of the required plans and budgets.

He or she will work under the supervision of the *[head of NHRI or Deputies]* in coordination with a Strategic Planning Steering Committee composed of the *[head of NHRI or Deputies UN staff or mission title; UN human rights advisor]*

The Senior Strategic Planning Facilitator shall provide regular reports to the OHCHR (National Institutions and Regional Mechanisms Section), *[name person responsible]* at *[add email address]* and will ensure reports are shared with other colleagues in OHCHR and in UNDP *[as appropriate]*, as well as the desk officer for *[country]*.

The Facilitator shall be asked to travel [ x ] times to *[country]* in the *[calendar period]*.

## ANNEX 2: STEPS IN STRATEGIC PLANNING

### Background

There are many, many ways to undertake strategic planning, and many of the steps described here are called different things, depending on the person who is guiding the process. It is important to remember to link the plan to capacity assessments (capacity assessments are a form of evaluation and will tell the planning team about the institutional strengths and weaknesses), evaluation planning and results-based management.

The following sections illustrate the major steps normally undertaken with a focus on the functional objective of each steps.

Terminology will differ from country to country and expert to expert.

### 1. Ensure the Proper Expertise and Leadership is in Place

Efforts should be made to work with the UN and with the government to identify expertise in-country or in the region. If there is insufficient expertise, international expertise may be required.

See **Annex 1** for sample terms of reference.

Within the NHRI, the senior office holder and a select few staff will provide leadership within the institution itself and should be closely involved in the process.

### 2. Conduct a SWOT analysis

The objective of this step is to understand the environment within which the NHRI is operating, and to answer basic questions about its capacity and readiness to go through the strategic planning process. **A variation of this is sometimes called a readiness assessment. An environmental analysis tends to look primarily at the external environment.**

A SWOT refers to strengths, weaknesses, opportunities and threats related to the NHRI.

Setting strategic goals in isolation leads to lack of ownership, both internally and externally. A principal mechanism to get information in the early stages is through participatory, iterative processes throughout the planning cycle.

For example, preliminary consultations are held with staff and stakeholders to identify national priorities and to draft preliminary versions of planning documents. Drafts should be validated at a later point.

### 3. Examine the international context

Integrate views, recommendations and other conclusions from treaty bodies, special procedures etc. into the planning process.

### 4. Identify a few high level strategic objectives

Through the internal analysis and consultation with staff and stakeholders, a successful planning process will result in a few high-level strategic goals or objectives that will govern priority-setting over the long term with respect to emerging and important human rights priorities for the country.

> **Example:** Introduce human rights education to the formal education system

### 5. Identify purposes or outcomes of intervention

Outcomes tell the organization what success will look like – they help to identify the benefit sought and to inform the organization when the goals are achieved.

> **Example:** High schools in the country will have human rights education as part of the curriculum

### 6. Indicators and Baseline Data

Indicators are variables that will tell us how the organization has performed in relation to the planned outcome. While it is not unusual to see indicators set after the targets are established, if you do not know where you are starting from, you cannot set targets.

Indicators help monitor progress and help to indicate where corrections or improvements are needed. Indicators should be:

- Clear (precise and unambiguous)
- Relevant (appropriate)
- Economic (reasonably costed)
- Adequate (provide a sufficient basis to assess performance)
- Monitorable (can be independently validated)

Once indicators are chosen, they can be used to understand and describe the starting point of the NHRI in terms of its current data and its circumstances. To monitor progress in moving towards outcomes, the organization must know where it is starting from, and what the current situation is.

This may be described in numbers (for caseloads, for example) or qualitatively, but in any case is linked to the readiness assessment mentioned earlier. Baseline indicators will tell you where you are starting from.

> **Example:** The percentage of public secondary schools in the country that have human rights in the curriculum.

> **Example:** Baseline indicator: 0% of schools currently have human rights in the curriculum.

Other indicators may be more subjective or qualitative (see in particular Chapter 8).

### 7. Set targets

Targets are simply the result of knowing (1) the current situation and (2) how you would like to improve it.

$$\begin{array}{l} \text{E.g.} \quad \text{Baseline indicator level} + \\ \quad \quad \text{Desired level of Improvement} \\ \hline = \text{target performance} \end{array}$$

(In some situations, a quantitative indicator may not be easily identified for NHRIs, but in most cases, process indicators are possible).

Targets should be **SMART**

- specific,
- measurable,
- ambitious,
- realistic, and
- time-bound

In some organisations, targets and outcomes are the same thing, depending on how the change model is developed.

> **Example:** Within three years, a pilot curriculum will be tested in 5% of high schools.

Within six years, HRE curriculum will be in 80% of high schools.

### 8. Articulate the Assumptions made in choosing Targets

Articulating assumptions helps planners identify risks, and may provide flexibility if the underlying assumptions prove invalid.

> **Example:** The education authorities in government will want to cooperate with creating a human rights curriculum for schools.

### 9. Identify the principal activities that will be needed to achieve the outcomes

This will generally take place in an action plan or operational plan that devolves from the strategic goals.

Costing the activities – the plan budget – is often referred to as inputs, and is normally done in this stage as well

> **Example:** Create a working group with government education authorities to develop a high school curriculum.

Hold eight workshops over the three-year period to validate curriculum design.

### 10. Link the plan to an evaluation framework and organizational capacity assessment

While this step is often forgotten in traditional planning, or assumed, without being explicitly integrated, it is important to ensure that resources and time are dedicated to evaluating how the organization is performing against the plan. Links should be made to the assessment of the organization’s capacity in future for the purposes of strengthening the organization.

#### Putting It All Together

In many regions, NHRI staff, development partners and experts take the above elements, or variations of them, and integrate them into a tabular form sometimes called a “logframe” analysis or LFA.

This format is used by several funding agencies, and NHRIs as grant receivers, are in turn required to use the LFA. Again, different organisations set up the LFA differently, and there should be consultation with donors about the format and structure that is required or preferred.

The LFA is an important part of the Strategic Plan: It helps to visualise the various “pieces” of the strategic planning process in a single document and links them conceptually.

STRATEGIC GOAL OR OBJECTIVE			
<b>Example:</b> Introduce human rights education to the formal education system			
<p><b>Outcome or Purpose</b></p> <p>How will the NHRI show that it has achieved the objective?</p> <p><i>Example:</i> High schools in the country will have human rights education as part of the curriculum.</p>	<p><b>Indicators</b></p> <p>Establish a baseline indicator (where are you starting from?)</p> <p><i>Example:</i> 0% of schools have HRE at present.</p> <p>And how you quantify what you want to achieve.</p> <p><i>Example:</i> % of schools with HRE curriculum.</p>	<p><b>Targets</b></p> <p>What will be achieved.</p> <p>Baseline indicator + Desired improvement = Target over time period.</p> <p><i>Example:</i> Within three years, a pilot curriculum will be tested in 5% of high schools.</p> <p><i>Example:</i> Within six years, the validated HRE curriculum will be in 80% of high schools.</p>	<p><b>Assumptions</b></p> <p>What key factors must hold true?</p> <p><i>Example:</i> The education authorities in government will want to cooperate with the NHRI in creating a human rights curriculum for schools.</p>

A Strategic plan is a high-level plan. It should contain the broad details of what is to be accomplished and a basic road map for getting there. The details of the plan – inputs, activities and budgeting, are normally (but not always) contained in an Action Plan or Operational plan.

An example is set out below.

ACTION PLAN OR OPERATIONAL PLAN			
Target or Outcome	Activities	Inputs	Budget
	What activities are needed to produce the outcome and achieve the selected targets?	List the resources (and costs) needed to produce the activities.	Quantify the cost of each input, over fiscal years.

A final (if modifiable) version of the plan should be written, validated and disseminated. This is a summing up phase, that allows the institution to briefly synthesise the strategic process and state: where it is going (vision), how it will get there (mission) and articulate its main goals as identified through the planning process. This is normally done in a short document that is communicated widely inside and outside the organisation.

### Selected References:

Manji, F. *Proposals that make a difference*, Fahamu, Oxford, 1998.

R. Rist. Ten Steps (World Bank)

## ANNEX 3: CRITERIA FOR JOB DESCRIPTIONS

Every NHRI should have a clear statement of roles and responsibilities for NHRI members, the senior management group and line managers. Job descriptions should set out clear skill sets and attributes required for the position, job expectations and level of effort, as well as providing the basis for planned performance objectives. Areas of collaboration with others, as well as departments and reporting lines, should be clarified.

### Job descriptions serve a number of purposes:

- Enable management and NHRI members to define the work they want employees or groups of employees to perform;
- Provide employees with a clear list of the duties and responsibilities;
- Reveal structural and classification problems such as reporting and functional overlaps;
- Enable a process for describing work which is undertaken by a particular position or group of positions;
- Give job applicants a clear understanding of the particular vacancy and whether they meet requirements;
- Give selection panel members a tool support the selection process;
- Identify position objectives and competencies as part of performance planning and performance management systems; and
- Provide benchmarks for organisation review, workforce planning, and training and development activities.

## ANNEX 4: GUIDELINES FOR GENERAL HUMAN RIGHTS TRAINING

**Overview:** NHRI staff should have functional knowledge of human rights, as well as technical knowledge related to their particular positions. This requires a structured training and mentoring programme for staff, which should be based on a human rights development plan. The plan should be aimed at supporting professional learning and development requirements of staff, based on their job descriptions. In some countries, government departments are required to spend 10% of their budgets on staff training, but it is not unusual to see staff training for NHRIs fall well short of that level.

Donors and the international community more broadly, should coordinate their efforts to ensure that training is coordinated, progressive, and responsive to the needs of the organisation and the staff based on the assessment.

**Getting Started:** Training programmes should be based on an assessment of training needs. The assessment should be linked to job descriptions and strategic decisions about the phase the NHRI is in, and its priority areas.

NHRI staff training should be conducted systematically to achieve results. Participants should be able to explore and understand approaches to human rights education and training, including the larger context in which NHRIs operate. Courses should take into consideration:

- The NHRI's overall human rights focus and its education work on particular issues;
- Involvement of other local, national and regional actors and NHRIs working on similar issues within the society;
- The broader international human rights community addressing similar issues nationally, regionally and globally;
- The human rights situation and context of the participants; and
- Situating these issues in the global human rights environment.

### Dos and Don'ts:

#### Do

- Start with a needs assessment based on the HR management programme;
- Adopt a participatory approach, based on adult learning principles;
- Ensure the training is grounded in human rights education methods;
- Draw on experts from the country and region, where possible;
- Structure the sessions, as much as possible, as "train-the-trainer sessions", where participants are required to train others, as part of the programme;
- Emphasise experiential learning and mentoring, so that participants can internalise and operationalize what they have learned;
- Use evaluation as a developmental tool on a continuing basis, and test the learning as a development tool;
- Involve civil society as trainers, participants and facilitators, wherever possible;
- Try to structure training from the general to the particular, from the basic to the advanced;
- **Ensure that** staff integrate new ideas and practices with their work. Refresher courses can be added as needed;
- Avoid "training fatigue" by building in time to absorb and operationally the work; and
- Involve NHRI members and senior staff, but also ensure to build in separate leadership develop courses and opportunities for this group.

Some key messages about basic human rights training:

- They should move in sequence from the general to the particular, with sufficient time between courses to absorb and internalise learning.
- Staff need to be given the time and opportunity, as part of the training, to integrate the new ideas and practices into their work. Refresher courses can be added as needed.

- Civil society should part of the delivery and participants in training, wherever possible.
- UNCT staff should help develop and participate in training, to build their own capacity.

### Don't...

- Have lengthy off-site training that stalls the NHRI operationally for long periods.
- Organize multiple trainings in sequence or “back to back”.
- Have summative evaluations as the main evaluation activity.
- Treat training as an “information dump.” Rather, focus on long-term learning and integrating what is learned into operations.
- Conduct one-time evaluations at the end of the session. Instead, evaluate on a daily basis and adjust.

## General Training in Human Rights Protection:

**Objective:** To ensure that those involved in programme activities have sufficient human rights knowledge to carry out their activities. Sample course areas include (in alphabetical order):

- Alternative Dispute Resolution
- Case Management
- Civil and Political Rights
- Core Protection Issues for NHRIs
- Economic, Social and Cultural Rights
- International Human Rights Protection System
- Introduction to Investigative Techniques
- Introduction to the Principles of Human Rights
- Monitoring
- Public Inquiries and Systemic Approaches
- Role of National Human Rights Institutions

## Thematic Issues:

**Objective:** To ensure that those involved in programme activities have sufficient human rights knowledge about cross-cutting thematic issues. Sample course areas include:

- Rights of Indigenous Peoples (where applicable)
- Rights of Detainees
- Rights of national or ethnic, religious and linguistic minorities
- Rights of IDPs and Refugees
- Rights of Persons with Disabilities, including HIV/AIDS
- Rights of the Child
- Rights of Women, including gender sensitivity training

## General Training in Promotion

**Objective:** To ensure that commission employees involved in developing and delivering education and sensitisation programmes have the knowledge skills and abilities to carry out their functions in a thorough and professional manner.

- Developing effective public education programs
- Developing effective web sites (undertaken with IT specialist)
- Participatory Training Methodology / Adult Centered Learning
- Making effective presentations
- Report writing (annual reports, periodic reports, preparing summary documents)
- Communications and media liaison

## Resources

See the Resources Section for Chapter 8

## ANNEX 5: TYPES OF CASE MANAGEMENT REPORTS

### Data and Reports on Cases (in alphabetical order)

**Ad hoc** queries on current status of any case or class of cases based on file name or file number (as required)

**Ageing** report of cases by officer, category\*, priority status, and region for all non-closed cases (e.g., 0-3 months; 3-6 months; 6-9 months; > 9 months) (quarterly/ annually)

**Assigned cases**, by officer, category, respondent type, priority status (monthly/annually)

#### Closed,

- by category, respondent type, priority status, region and result (monthly/annually)
- by officer, by category, respondent type, priority status, result\*\* (monthly/annually)

Received, by category (for example, by race, religion, gender, etc.), respondent type or sector (government, business), priority status and region (monthly/annually)

#### Referred,

- with recommendation for which no response has been received by age (30-day increments), category, respondent type, priority status and region (monthly/annually)
- with recommendation not yet implemented by category, respondent type, priority status (monthly/annually)
- with recommendations by category, respondent type, priority status, region (monthly/annually)

**Settled:** Mediated/conciliated / attempted, by category, respondent type, priority status, region, result, office/ member (monthly/annually)

**Status of current priority cases** by priority type, investigation stage, age (monthly)

## ANNEX 6: CASE MANAGEMENT POLICIES AND PROCEDURES

### To be developed in the Short to medium-term

1. Policy/guidelines on the NHRI complaint investigation function (a procedure or operations manual)
2. A Complaint Registration Form
3. A system to register and record actions on complaints
4. The identification and cataloguing of human rights grounds that may be cited by complainants (this will then be used for Case Management Reports and Data: See Annex 5)
5. Core policies and procedures include:
  - a. Interpretation and definition of key human rights grounds identified in point 3, above.
  - b. Jurisdiction and intake, including when complaints should be referred to other agencies or bodies.
  - c. What constitutes a priority complaint.
  - d. Instructions or how to complete a Complaint Registration Form, what level of assistance is to be provided, minimum requirements, and special procedures for persons with disabilities or persons who are not literate.
  - e. Maintaining the complaint Register.
  - f. Production of complaint management reports (how frequently generated: See Annex 5).
  - g. Preparation and process for investigation plans.
  - h. Service standards: e.g. within what timeframe is the respondent notified? Within what timeframe is the complainant advised of notification to respondent? Etc.
  - i. General policy on evidentiary requirements and chain of possession (e.g. burden or proof and nature of evidence accepted).

\* Category of cases refers to cases by type of right and / or human rights ground.

\*\* Result includes the type of resolution (ADR, following a recommendation or decision, etc.)



- j. Investigation of sensitive issues relating to witness protection, women’s and/or children’s rights.
- k. Obtaining evidence, including the circumstances and process of compelling documents or testimony, if statute permits.
- l. Safeguarding sensitive information.
- m. Interviewing witnesses.
- n. Taking statements.
- o. Preparing and reviewing of investigation reports.
- p. A policy on which cases might be referred to mediation/conciliation.
- q. Procedures for conducting of mediation/conciliation.
- r. General policy on settlement agreements resulting from mediation/conciliation.
- s. Implementation of settlement agreements and follow up, including for dealing with instances when settlement agreements are not implemented in full.
- t. Periodic review of investigation reports and decision-making processes, including the delegation of decision-making by class or type of case if necessary.
- u. General policy on the nature and form of remedy to be recommended.
- v. General policy and procedure on the review of responses and determining whether further action is warranted.
- w. Policy and procedure for releasing information publicly on the results of investigations, including media guidelines and recommendations made to parties as well as the response received.

## ANNEX 7: FACT SHEET ON ALTERNATIVE DISPUTE RESOLUTION IN NHRIS

“ADR” or “Alternative Dispute Resolution” refers to processes and techniques used as alternatives to litigation. The term describe processes that settle the complaint more informally, usually early in the process, without investigation or adversarial processes.

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

ADR processes and techniques are **not** generally suited for human rights complaints based on gross violations of rights or the commission of a crime, such as sexual assault or violations of core ICCPR rights such as torture, forced disappearances, etc.

### Different techniques and terminologies may exist

#### Informal Resolution (IR):

In many instances the first contact an individual has with the NHRI is a telephone call or visit. The person describes the concern to an intake officer and who may resolve the issue right away through a quick phone call or by providing information. IR covers all early and non-escalated forms of ‘good offices interventions’ to assist in the resolution.

#### Structured Interventions:

NHRIs use various techniques based on the involvement of a neutral third party who does not impose an outcome, but rather helps the parties find a mutually acceptable solution to a dispute. For the most part, ADR techniques and approaches used by NHRIs come within the “**mediation**” category of ADR techniques.

(In addition to classic mediation, these approaches often include shuttle diplomacy, facilitation and conciliation, none of which are discussed here, but which contain different aspects of the issues discussed in this fact sheet).

**Mediation** is a form of ADR handled by an acceptable, impartial and neutral third party who has no decision-making authority. The objective is to assist the parties to reach an acceptable resolution. Mediation is useful in highly-polarised disputes where the parties have either been unable to initiate a productive dialogue or where there is a seemingly insurmountable impasse. Classic mediation is purely voluntary in the human rights context, since few NHRIs can legally force parties into mediation. Settlements often formalised and put into writing, although they may be “off-the-record”, depending on the wishes of the parties. Many training programmes are available to teach mediation, and most offer a certificate of completion.

Mediation is typically used early in the investigation process and involves the institution acting as ‘third party neutral’ in assisting the parties come to a settlement. In some institutions, however, all ADR undertaken uses the mediation approach regardless of the timing. Mediation should generally be structured early in the process, and should be handled by someone other than the person who may later investigate the file if the mediation fails.

**Conciliation:** Some institutions use conciliation, which involves the institution being a party to and having to accept the results of settlement discussions. Institutions that conciliate tend to have this authority defined in their legislative mandate and to undertake conciliation only after the investigation is well underway, or at the end of investigation. Conciliation rather than mediation is considered necessary at later stages of the investigation since facts will have been established and the institution will likely have formed an opinion on the parties’ respective rights.

## ANNEX 8: SAMPLE BRIEFING NOTE FOR A CAPACITY ASSESSMENT OF A NHRI

### Asia Pacific Forum of National Human Rights Institutions

#### National Institutions and Regional Mechanisms Section, OHCHR

#### UNDP Regional Centre Bangkok

#### Regional Capacity Assessment Partnership: Initiative in Support of Institutional Capacity Development of National Human Rights Institutions

> **Briefing Note:** Capacity Assessment of the National Human Rights Institution

### Executive summary

The United Nations Development Programme Regional Centre in Bangkok (UNDP-RCB), the Asia Pacific Forum of National Human Rights Institutions (APF) and the National Institutions and Regional Mechanisms Section of the Office of the High Commissioner for Human Rights (OHCHR-NIRMS), have developed a project to support the institutional capacity development of National Human Rights Institutions (NHRIs) in the Asia-Pacific region.

The objective of the project is to assist NHRIs in the region to generate an understanding of their capacity strengths and needs and to develop strategies to fill capacity gaps. One of the first steps of the capacity development process is a capacity assessment, a self-assessment used to identify capacity strengths and needs of the NHRI. UNDP, APF and OHCHR will act as facilitators to the process by which the NHRI can assess its own capacities and identify and prioritise capacity development needs. In close consultation with the NHRI, they will produce an analytical report, measuring required future capacities of the NHRI against its current capacities and making recommendations for capacity development strategies. This report will be presented to the NHRI in draft form for discussion and joint finalisation.

The capacity assessment complements strategic planning, priority setting and work planning processes of NHRIs. The objective of the assessment is to systematically understand existing capacity strengths and gaps of the NHRI and subsequently develop capacity development strategies and responses to help the NHRI fulfil its mandate and the goals and objectives set out in the Strategic Plan. In order to do so the capacity assessment process also helps the NHRI analyse stakeholder positions and review its organizational structure, operational functions and business processes. The capacity assessment is complementary to the Strategic Planning process. It can be carried out in conjunction with that process and will be particularly effective to support its implementation.

The potential benefits for NHRIs in developing and implementing capacity development strategies that result from capacity assessments are great. This approach looks systematically at the capacity strengths and needs of the NHRI in order to perform its mandate effectively. It fosters engagement of NHRI members and staff and key external stakeholders, often across sectors. It leads to capacity development initiatives that are strategic, longer term and integrated, rather than ad hoc and fragmented.

This regional project complements and enhances the support projects being implemented by UNDP Country Offices and UN Country Teams for NHRIs at the national level and informs the development of tailored capacity development interventions to support NHRIs on a continuing, comprehensive basis.

Two pilot capacity assessments were carried out in December 2008 with the Human Rights Commission of Malaysia (SUHAKAM) and in October 2009 with the Human Rights Commission of Maldives (HRCM). The Jordan National Centre for Human Rights and the National Human Rights Commission of Thailand have both completed the capacity assessments in 2010.

## Project overview

### Objective

To assess and develop strategies to address the most important capacity needs of the National Human Rights Institution.

### Approach

- To enable the NHRI to assess its current capacities against the capacities it requires to implement its strategic plan;
- To identify the capacity gaps that are the most important and most urgent to be addressed; and
- To develop strategies to address the identified capacity gaps in a long-term manner.

### Participants

The process is a self assessment approach in which:

- NHRI members and staff are the principal participants;
- Key external stakeholders are also invited to contribute their perspectives on the basis of their experience with NHRI;
- A joint UNDP-APF-OHCHR project team facilitates the process, in consultation with a NHRI contact person or group; and
- A senior officer from the Maldives HRC joined the facilitation team in the spirit of peer-to-peer exchange. (The Secretary of SUHAKAM was part of the team that facilitated the assessment of the Maldives HRC).

### Methodology

Information is collected through:

- Individual and group discussions with NHRI members and staff;
- Background material shared by NHRI;
- Completion of an analytical “worksheet” by NHRI members and staff; and
- Individual and group interviews with key external stakeholders.

## Timetable

- One or two days to introduce the process to the Commissioners and staff;
- Two weeks for the assessment itself, at the end of which a draft report will be presented to the NHRI for comment; and
- A final report will be submitted about a month after the completion of the assessment mission.

## Expectations on the NHRI:

The NHRI is expected to provide:

- One senior person as liaison officer (in both SUHAKAM and Maldives it was the Secretary General), with administrative support from the Commission's sections and departments, to work with the team and assist in identifying and providing relevant documents and arranging internal and external meetings. The team will request the appointment of the liaison person or group when the project proposal is approved by the NHRI;
- Availability of staff of each section for two sessions with the assessment teams. Each session will not exceed 90 minutes. The first session will take place during the first week of the assessment mission and the second one during the second week; and
- The costs of the assessment team will be borne by the partners (APF, UNDP, OHCHR).

## Product

A comprehensive report of the self assessment, with:

- Analysis of the qualitative and quantitative data to illustrate the key capacity challenges facing NHRI in implementing its Strategic Plan and realising its mandate; and
- Proposal of strategies to address identified priority needs for capacity development prepared jointly by the NHRI and the project team.

## Result

The capacity development strategy recommendations, once endorsed by the NHRI, can be developed into an implementation plan to strengthen the NHRI. Support, if required, can be provided by UNDP, OHCHR and APF in the implementation of the recommendations.

## Implementation

The process will be facilitated by the project team in close consultation with the NHRI liaison person or group. Implementation involves five steps, using the Capacity Development Framework developed by the UNDP Capacity Development Group.

### 1. Scoping

The NHRI and the project team first clarify and define the objectives and expectations of the project and plan for the assessment itself. This occurs during an initial two day preliminary visit to the NHRI. The scoping mission has a two-fold goal of:

- (1) briefing all the Commissioners and staff on the purpose and process of the Capacity Assessment and clarifying any questions and concerns on it;
- (2) identifying and collecting relevant background documents; and
- (3) developing a schedule for the capacity assessment dates including meetings with the external stakeholders.

During the scoping, a small number of key external stakeholders are identified for inclusion in the assessment process. They can be drawn from government, parliamentary committees, civil society, the judiciary, academia and any other area of relevance. The NHRI contact group will play an important role in refining the list of key external stakeholders to ensure that it is manageable in number and includes the most significant commentators.

### 2. Capacity assessment by Commissioners and staff

The capacity assessment missions usually take place within 2 months of the scoping mission and lasts for about 2 weeks. Commissioners and staff undertake their individual assessments of the NHRI current capacities and required capacities, through focus groups discussions and in depth interviews in the first week and subsequently, in the second week, by using a "worksheet" or questionnaire prepared by the project team.

The focus group discussion in the first week enable the team to make an initial identification of key issues that will be the principal focus of the self assessment. These issues can concern the current and required capacities in relation to:

- The external environment in which the NHRI works;
- Organisational issues for the NHRI; and
- NHRI members and staff.

Issues might include:

- Institutional development: mission and strategy, business processes, human resource management, information and communications technology;
- Institutional management: ability to foster independence of the NHRI, ensure plural representation and strengthen relationships with external stakeholders, develop, communicate and give direction on vision, mission and values based on the universal standards of human rights, and create an environment that motivates and support right holders including NHRI staff;
- Knowledge: training and education of NHRI staff and rights holders; and
- Mutual accountability: capacity to ensure accountability through prevention and enforcement, strengthen national integrity of the NHRI, increase public participation and build collaborations; increase mobilisation, access to and use of information, work with the international community including the ICC and the Asia Pacific Forum.

The identification of key issues enables the preparation of the assessment worksheets. The worksheets focus attention on these issues. By seeking assessments of present and required capacities, they reveal the capacity gaps in the organisation and the extent of the gap to be met. The data produced by the worksheets is both qualitative (what kinds of gaps? how important are they?) and quantitative (how many people see this as a gap? what is the extent of the gap that they see?).

The worksheets are completed by Commissioners and staff in small groups of similar nature. For example, Commissioners in leadership positions in working groups might work together and other Commissioners work together; staff in director level positions might work together; administrative staff might work together. Each individual member of the Commission or staff completes a personal, anonymous set of worksheets. By working in a group environment, however, there are also opportunities for discussion and sharing of perspectives and views.

### 3. Interviews with key external stakeholders

During the scoping, a small number of key external stakeholders will have been identified. The project team conducts individual interviews with these stakeholders during the first week of the assessment visit to provide an external perspective on the capacity needs of the NHRI. These interviews are directed towards an external assessment of the NHRI's capacities, current and required, not of its work. The persons interviewed will not be given the worksheets or asked to complete them but will participate in a short interview to seek their overall perceptions and comments. The information collected during the scoping and interviews will be shared with the NHRI.

### 4. Data analysis and development of strategies

Following the completion of the focus group meetings and worksheets by Commission members and staff and the interviews with external stakeholders, the project team collates and analyses the data and other information. In close consultation with the NHRI contact person or group it begins to develop possible strategies to address the most important capacity gaps identified. Those possible strategies are tested with other senior NHRI Commission members and staff, refined and further developed.

The strategies will be practical and able to be implemented. They will address the most important capacity gaps within a comprehensive framework that reflects the needs and priorities of the NHRI as a whole.

### 5. The report

The capacity needs assessment culminates in a report that identifies the capacity gaps, indicates priorities, provides the analysis and offers strategies. The project team, in close consultation with the NHRI contact person or group, will produce a draft report for presentation to and discussion with the NHRI members and directors at the end of the two week assessment mission. After a period for comments from the NHRI, the report will be finalised and submitted to the NHRI.

The report is owned by the NHRI and the NHRI has full authority over its circulation and implementation. After the presentation of the report, the Commissioners are able to decide what to do with it and how to proceed with the implementation of the strategies recommended by the self-assessment. While UNDP, OHCHR and APF, as the project team, will have copies of the report, the distribution of the report will be in the hands of the NHRI. It may decide to make it public, give it limited distribution as desirable or keep it entirely as an internal document.

The project team would recommend a wide distribution in order to use it to broaden the understanding of and support for the NHRI and its work and to ensure implementation of the report's strategies. The NHRI can decide how best to move forward with the report after the final report is received.

### Implementation of the strategies

The production of the report is the end of the project but it is not its principal objective. The principal objective is strengthening the capacity of the NHRI to do what it wishes and needs to do in order to operate more effectively and efficiently, including through implementation of the report's strategies. UNDP, OHCHR and APF will be available after the project to support the NHRI in its endeavours to implement the strategies. The UN Country Team and UNDP Country Office can play an important role at this stage. The report will also encourage UN agencies and other partner organisations to plan future targeted assistance tailored to the needs of the NHRI.

Through participation in the needs assessment project, UNDP, OHCHR and APF commit themselves to continuing support for the NHRI capacity development.

### Benefits to HRCT

Participation in the capacity needs assessment project will give the NHRI:

- An understanding of its current organisational capacities;
- A rigorous assessment of its capacity needs;

- Clear priorities for capacity development;
- Sound strategies both short-term and long-term for capacity development;
- A strong analytical report that can assist in securing the support needed to implement the strategies;
- A baseline assessment of capacity that can be used to measure improvement and achievement over time;
- An additional means to improve its effectiveness;
- Key NHRI personnel trained in capacity needs assessment and development; and
- The opportunity to lead capacity development for other NHRIs in the region and globally.

### Benefits to other NHRIs

If the NHRI decides to participate in the capacity assessment project, it will be benefiting not only itself but NHRIs generally. The capacity assessment framework has been piloted successfully with SUHAKAM and the Maldives Human Rights Commission. There is growing interest from other NHRIs in the region and globally in this initiative. As it develops, the project aims at increasing the skills of people from Asia Pacific NHRIs in capacity needs assessment and development through peer-to-peer exchanges and learning, so that at the regional level NHRIs themselves and their members and staff can be self sufficient in assisting each other in this work, an example of cooperation that could also be offered to NHRIs in other regions.

# chapter

# 9

## **Consolidation Phase: Strengthening the Mature NHRI**

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## OBJECTIVE:

Identify key challenges and opportunities for UNCT staff who are called upon to support NHRIs during the consolidation phase, and provide specific guidance, guided by the international human rights framework and concrete case studies

## EXECUTIVE SUMMARY

This chapter examines the consolidation or strengthening stage of NHRI development in order to assist UNCT staff in providing assistance.

In this phase, it is assumed that the NHRI has been operating for at least two to three years and that there is enough experience and data to assess what is working and what is not.

Unlike the pre-establishment and establishment phases, there are fewer predictable activities that can be cited as common needs of NHRIs at this phase. Each institution will present unique challenges and while there may be some trends in terms of common issues, the lack of uniformity means that evaluative activities are critical so that UNCT staff can assess how a specific NHRI is progressing.

It is through evaluative processes like capacity assessments that good information is fed into general evaluations at the institutional level and into the ICC accreditation process. These are the tools through which the UN can determine whether its work and the work of the NHRI are meeting with success.

By examining key phases of NHRI development and using constructive approaches to assessment and evaluation, UNCTs can plan for improvement. Annex 8 contains an overview of key recommendations and findings from a global survey of NHRIs that will help UNCTs design, support and troubleshoot their work on NHRIs based on international and regional experience.

**The information provided here, as elsewhere in this Toolkit, is intended to support UNCT staff in managing UN projects and supporting the work of NHRIs through such projects. It is not intended to be used as a basis for second-guessing the leadership of NHRIs or substituting UNCT opinion for that of the NHRI leadership.**

## INTRODUCTION

The consolidation phase occurs after the institution is set up and has carried out its basic functions and programming. The objectives are to take stock and strengthen capacity, while taking corrective action as required. It is also at this stage that the UNCT will be in a better position to assess whether their work is progressing properly or whether a change in direction is necessary.

Unlike the previous phases, there are fewer predictable activities that can be cited as common to NHRIs at this phase. Each institution will present unique challenges, and while there may be some trends, the lack of uniformity means that evaluative activities are critical for UNCTs in this phase across the following areas:

- **Key Infrastructure:** premises, transportation, telecommunications, IT, etc.
- **Organizational development:** leadership, organisational structure, strategic planning, human resources and knowledge management.
- **Financial resources:** government support, donor cooperation, financial constraints and financial management.
- **Human rights capacity** in substantive areas of human rights, including the rights of vulnerable persons, core protection issues, human rights-based approaches to development, etc.
- **Functional areas of capacity:** protection, promotion, cooperation with stakeholders, support to the international human rights system, and advice to government.

A capacity assessment as introduced in Chapter 8 can be of great value in taking stock of the current capacity of the NHRI and help the NHRI identify and prioritise capacity development needs. A Capacity Assessment is an analysis of **current** capacities against **desired future** capacities. The results can help to promote better understanding of capacity assets and needs, and these can in turn lead to the formulation of capacity development strategies for UNCT staff members to develop with NHRs. It is important to distinguish a capacity assessment from an **evaluation**. While both exercises analyse the institution's effectiveness, the evaluation is usually carried out by independent consultants and typically assess effectiveness in achieving objectives. The capacity assessment is a self-assessment process that helps to draw out reflections from the NHRI members and its staff. The results of the capacity

assessment can provide a baseline and indicators to measure effectiveness as well as identify potential bottle necks in implementation.

A discussion of the role of evaluation is found in section 9.3.3. An overview of capacity assessment process can be found in **Annex 8 of Chapter 8: Sample Briefing Note for a Capacity Assessment of a NHRI**.

## 9.1 Key Infrastructure

### 9.1.1 Premises

There are several indicators to assess whether the NHRI premises have proved to be adequate and appropriate: These are set out in Annex 1.

#### Annex 1 Premises Checklist

**Regional Expansion** and local offices: While there may be a need to establish offices quickly, it is best to wait until the institution has attained a certain level of maturity, has developed basic management structures and programme areas, and has the funds to support the new offices. Local or regional offices do have advantages: they allow the Institution to serve people locally, and to operate in outlying areas, often where human rights abuses may be more pronounced and where the understanding of human rights is least evolved.

Despite the good reasons to consider local offices, there are difficulties involved.

First, because opening regional offices is part of sequencing organisational growth, they require careful planning.

Second, they are expensive.

Third, ensuring appropriate management control over programme activity is a challenge: regional offices often develop their own distinct management culture that can lead to difficulties in imposing standard procedures and performance measures. It is therefore important that the NHRI have a high level of organisational maturity before embarking on expansion.

Where the required level of organisational maturity has not been achieved, or where there are insufficient funds, there are alternatives to full regional or local offices: NHRIs can look at different options such as *ad hoc* regional outreach programmes or establishing itinerant offices where headquarters staff visit the regions of the country. Some examples are set out below:

> **Examples:** Strategies to ensuring nation-wide access: Bolivia and Namibia

*Bolivia:* In many developing countries with small budgets, the success stories tend to be less about large offices and technology, and more about out-reach and presence. In Bolivia, for example, the Defensor del Pueblo wanted a regional presence but could not afford full-scale offices with expensive rents, cars and office equipment. Instead, they decided to open a main office in La Paz, and a secondary office in another major city. The regional presence was achieved through storefront operations at street level, with one staff person and very basic equipment. Nine storefront offices were launched. Intake is conducted in these offices and the files are then sent to head office for processing and registry. The accessibility of the Bolivian institution is seen as a strong feature.

*Namibia:* An alternative or complementary strategy is to establish regional presence through regular tours and visits. The office can organize advance publicity in each area to let people know when the office will be in the area, with designated hours, and a process for setting up appointment schedules in advance.

Even when there are strong and independent regional offices or other regional forms of representation, it is important that the NHRI develop and maintain the capacity to collect and handle data and case processing centrally. Otherwise, consistently collected case management data will be difficult to come by.

### 9.1.2 Transportation

Transportation might seem an unimportant or mundane topic and may not always be seen on the capacity assessment checklists. And yet the use of NHRI-owned or controlled vehicles is fundamental to NHRI operations especially in developing countries with limited communications and difficult terrain.

Managing transportation resources and costs is also linked to the organization's control procedures.

From a UN perspective, there are two points of interest: the first, obviously, is the appropriate use of vehicles purchased by the UN to support NHRI work. Second is the ability to assess overall impact of the access to vehicles on organization's ability to perform its everyday work.

> **Scenario:** Inappropriate Use of Vehicles in a UN funded project

You are responsible for a project where the UN has acquired a vehicle for the duration of a capacity-building project.

As the project officer you discover that your counterpart in the NHRI, or a UN staff person working on the project, has commandeered the vehicle for personal use and generally organising the scheduled time of the driver around his or her personal schedule. The vehicle is rarely available for its official purpose. You cannot openly confront the person without exposing the source of your information. What should you do?

**Internal controls** should be in place, such as logs, and can be used to assess whether vehicles are in fact used for the purposes intended. Vehicles intended for monitoring and investigation in the field should not be commandeered by Commissioners, Department Heads or staff for their exclusive and personal use. A simple questionnaire to staff about the level of access to vehicles in relation to the demands of their work will pinpoint issues quickly.

While particular instances of personal use are sometimes inevitable, it is reasonable to demand and expect that vehicles purchased for programme delivery be used for programme delivery. The acquisition plan for vehicles should respect the security needs and operational needs of senior members, but should also recognise the operational requirements of the core business of the NHRI.

The work of NHRIs in many countries depends on the ability to get around – to attend meetings, examine the scenes of incidents, and interview witnesses. Thus vehicles must be available for staff to accomplish these basic tasks.

#### Annex 2: Transportation Checklist

Gaps in the areas identified by the Checklist need to be addressed at this stage.

### 9.1.3 Telecommunications

The public's ability to reach NHRI easily is critical. Telephone service should be available for the entire business day, and all key staff should be connected to an internal telephone. Intake staff who receive complaints, in quasi-jurisdictional NHRIs, should be assigned a distinct internal line.

Service standards should be in place to inform the public of wait times and when calls will be returned if there is an automated attendant. Regular or routine calls should be returned by the latest on the next business day. If the NHRI provides hotlines or other emergency contact information and referral services, these should be staffed around the clock or at least have an automated attendant and an emergency referral number.

#### Annex 3: Telecommunications Assessment Checklist

Gaps and deficiencies in any area need to be addressed at this stage.

### 9.1.4 Information Technology

NHRI staff are knowledge workers, and despite the fundamental importance of a functioning IT system to an NHRI's daily work, it is not unusual to see institutions functioning with a crippled or dysfunctional network and computers that lack backup systems and anti-virus protection, reliable internet access or after-purchase warranties.

Annex 4 contains a checklist which, by no means comprehensive, should at least give UNCT staff an idea of the types of issues that a capacity assessment process may cover.

#### Annex 4: IT Checklist

Gaps or deficiencies in any of these areas need to be addressed at this stage.

## 9.2 Organisational Development

**Organisational development** includes leadership development, strategic planning, organisational structure, human resources and knowledge management. The capacity development of each area was reviewed in Chapter 8. By this stage, there should be enough information to look at the indicators and assess how the organization is doing in relation to each one, and then to set targets for improvements, if needed.

### 9.2.1 Leadership

Based on the indicators developed in Chapter 8, the basic question at this stage is: are NHRI leaders meeting the requirements and expectations of the position? Capacity assessments can be undertaken with staff, civil society and internally, through document review, to determine performance and capacity in each of the relevant areas.

#### 9.2.1.1 Leadership Development

Assessing this area includes determining whether the NHRI has put into place adequate leadership development opportunities, including seminars, peer learning and other mechanisms, to ensure that members can fulfil their responsibilities and develop the requisite skills. (See Chapter 8 for a list of leadership development strategies.)

#### 9.2.1.2 Role Definition

Clearly defining the roles and responsibilities of each member or groups of members is a priority at the Establishment Phase, as discussed in Chapter 8. At Consolidation, however, an assessment of staff's view about the functionality of the NHRI's structure, including clarity of the members' roles, and reporting lines will provide information on areas that require clarification.

#### 9.2.1.3 Vision and Leadership

Vision and leadership refer to the ability of the members to hold the course steady, maintain institutional integrity and independence and meet the statutory objectives of the NHRI. Some basic questions will assist in revealing strengths and areas for improvement.

- Does the leadership safeguard the autonomy and independence of the NHRI?
- Can the leadership influence key stakeholders and government to respond positively to recommendations of the NHRI?
- Has the leadership led the NHRI, through strategic planning, as well as by developing a shared vision, mission, values and codes of conduct? Have these been communicated to staff and the public?
- Have the leadership communicated effectively the vision and achievements of the NHRI to the media and to stakeholders?
- Are staff motivated to implement the programmes and activities?
- Do staff who conduct investigations feel safe in their work?
- Has the leadership overseen processes to evaluate or assess the organization and its staff effectively and fairly?
- Has the leadership established networks and contacts with national stakeholders, other NHRIs, regional associations and the international human rights system?

- Has the leadership ensured that the members are focused on major strategic decisions, rather than spending time on minor decision making?

The answers to these questions will point the way to capacity building in the leadership area.

### 9.2.2 Strategic Planning

Basic process indicators for assessing capacity in this area are:

- Has the NHRI undertaken and completed strategic planning?
- Has it resulted in a coherent plan, along with clear action or operational plans, budgets, planned outcomes and targets?
- Have achievements against plans been regularly measured and adjustments made as necessary?
- Does the organization's vision and mission statement reflect the statutory mandate of the NHRI?
- Have these documents been developed with broad public consultation and with the participation of staff?

If the answer to any of these questions is "no", then the NHRI needs to develop or revise its planning process, as soon as possible. See Chapter 8.

If there is a plan, then a **mid-term** evaluation or assessment will determine how the plan is proceeding, if there are shortcomings and if adjustments are needed.

As well, by this point, there may be additional information available as a result of the recommendations of the ICC Sub-committee on Accreditation. These should serve as a road map for future action.

From the UNCT perspective, there is usually a project document in place and in particular a Project Activity Framework (PAF) which sets standards against which the project should be assessed. If the UNCT is engaged with the NHRI, the two should coincide since the NHRI's strategic plan should reflect what is in the PAF. The strategic plan can form the basis for revising the PAF, if necessary. See Chapter 6 for an overview of the UN planning process and for a sample PAF.

If the analysis has not been undertaken, one way the UNCT can assist immediately is by securing an expert to conduct an evaluation or support a developmental

assessment process. This will provide an overview of achievements against the plan as well as an analysis of why there were shortfalls, if any. This then would serve as a vehicle through which to assess current programme capacity, as well as to assist the institution develop the capacity to carry out future assessments.

#### QUICK FACTS: NHRI ORGANISATIONAL STRUCTURES

An OHCHR survey shows that in Africa and the Asia Pacific, management structures are a weakness for many institutions, with fewer than 60% of respondents considering their institution's organisational structure to be efficient.<sup>1</sup>

> **Note:** Assistance in securing an evaluation expert

The UNCT, working with the OHCHR, can support this process by bringing in an expert who can support the evaluation. Terms of reference can be developed with the assistance of the UNDP and/ or the OHCHR.

### 9.2.3 Organizational Structure

(Chapters 7 and 8 address organizational structure in the pre-establishment and establishment phases, and section 9.2.1 of this chapter for sequencing growth.)

By this time, it should be possible to assess whether the NHRI structure is, in fact, working.

> **Scenario:** Is the NHRI's Structure Working?

You have been working over several months to help establish a NHRI. Now that the NHRI has opened its doors, it has become clear that the organizational structure is not working well. Too many senior members appear to have competing or overlapping responsibilities, and there is no executive director.

Staff members are pulled in different directions by well-meaning commissioners who insist on having direct supervision and on making every hiring decision, from directors to drivers and cleaners. Operations have ground to a halt. Staff feel that they have to report to multiple supervisors and are worried about offending their senior staff and are afraid of making mistakes.

<sup>1</sup> OHCHR Questionnaire

You know you cannot intervene directly, but you have been asked confidentially for guidance. What do you do?

The assessment process can start by asking staff, through a confidential internal review process, what the issues are, and what solutions they might propose. A similar exchange should take place with members.

UNCT can assist by providing examples of different possible structures (looking at different models used in successful NHRIs in the region, for example).

A good opportunity to introduce these types of support and assistance, if required and requested, is at the time of the mid-term institutional evaluation. Selected experts should have extensive experience not only in evaluation but also in organisational structure and development. Inserting a process of review and following up with confidential recommendations on the organisational structure is one useful strategy that has been effective in the past.

Assigning clear reporting lines and ensuring that member have well defined roles is part of the solution, and this is part of the human resources aspect of organisational development.

### 9.2.4 Human Resources

At this stage, basic questions can be asked to assess the status of the human resources development in the organization, across all the basic areas touched on in Chapter 8, the Establishment Phase.

> **Checklist:** Indicators for a human resources system

- √ Has the NHRI been able to **attract and hire** qualified staff?
- √ Do staff understand their jobs and have clear **job descriptions**?
- √ Do staff understand and share the vision and mission of the organization?
- √ Are reporting lines clear?
- √ Is **gender equality** reflected in the staff profile across all levels?
- √ Are their opportunities for **training and professional development**?
- √ Is there a regular and systematic **performance management system** in place?
- √ Are staff representative of the people they serve (diversity /plurality)?

- √ Has basic staff training taken place?
- √ Are there equitable personnel policies in place, including accommodation for staff with disabilities, parenting responsibilities, etc?
- √ Has a human resources manual been prepared and is it followed, and updated as required?
- √ Do staff have personal professional development plans?
- √ Are there clear and fair policies to handle staff complaints and disciplinary issues?

At this stage, there will be an additional series of issues that can be assessed:

- √ **Staff turnover:** Are staff leaving at rates higher than for the public service as a whole?
- √ **Is staff morale** at an acceptable level?
- √ **Exit interviews:** Is there an exit interview strategy to determine the cause of turnover?

Some of these issues are dealt with in the following sections.

#### 9.2.4.1 Attracting and Hiring Qualified Staff

Chapters 7 and 8 address the issues of attracting and hiring qualified staff, and strategies to address known difficulties that face NHRIs at the pre-establishment and establishment phases.

If the NHRI is unable to attract staff, please review Chapters 7 and 8 for strategies to modify legislation or public service policies, as appropriate. If the problem is that there are few qualified candidates in the country, and/or few qualified candidates who are women or are from minority communities, for example, it is likely that the NHRI will have to invest heavily in training, developmental positions, and other professional learning opportunities. See the relevant sections on training in Chapter 8 and in this Chapter.

With respect to attracting staff for regional offices, especially in developing countries, the difficulties of attracting staff are even more acute. Regardless of whether the local office is a full-service office or a storefront operation, the capacity to staff regional positions is a challenge, especially where there are many and/or different languages spoken. It is critical that local staff speak local languages, but also that they are knowledgeable about NHRI procedures.

One innovative strategy developed by a NHRI was to bring selected head office staff to the regions to set up offices, and to use qualified local staff for translation and

interpretation in the early phase. Eventually, the local staff will become versed in intake procedures and functions of the NHRI, and later on, qualified individuals may be selected to take over as local representatives of the NHRI responsible for intake, education and related functions.

#### 9.2.4.2 Training

Mature NHRIs should have suitable induction and job rotation programmes so that the goal of ensuring that staff are multi-skilled is achieved, and to encourage personal and professional development.

The training proposed in the Establishment Phase is important, but must be linked to continuous training and development programmes. Otherwise, there is a risk that the training will be ad hoc and “one off” and not linked to performance management or the human resources management system.

Training should be developed based on the skills that employees need to do their jobs (see the Annex 3 on “Criteria for Job Descriptions” in Chapter 8), with **sequential training moving from the general to the specific**.

Training should be linked to the priorities established during strategic planning.

Training should be coordinated: It is not unusual to see several training sessions being offered by well-meaning donors, with no consultation with the human resources professional or manager, and no real plan for ensuring that a selected expert knows about the specific country situation, or the particular challenges that the NHRI is facing. Some ideas for addressing these issues at the Establishment Phase are set out in Annex 4 to Chapter 8. Advanced training ideas are found in:

#### Annex 5: Indicative Advanced Training Menu

**Assessing training:** At a minimum, evaluations should be conducted at the end of each training session to obtain staff perceptions of the training, as well as one to two months later to establish that the materials taught have been integrated into daily work. This second appraisal is often ignored, but is clearly more meaningful as an evaluation tool as to whether (1) specific learning has been understood and retained, and (2) the extent to which the learning has been integrated into organizational practices. Thus, training must include **strategies to integrate the learning** into the organisation’s current business practices. It is not productive to offer course upon course to staff, without providing direction on how the knowledge gained is to be applied in their daily work.

Training **regional staff** should also be given careful consideration. Preferably, the NHRI will have developed its in-house training capacity by the time regional offices are established, and so core training can be also provided in-house. Having standard operating rules and principles on hand will help, and mentoring from HQ staff seconded in the early operating period could also be considered. In addition, however, bringing regional officers into training sessions offered at HQ should be including in training programme design and costs.

#### 9.2.4.3 Performance Evaluation as an Assessment Tool

In more mature organisations, individual performance evaluations should include a set of individual performance indicators linked to higher organisational performance goal that are in the strategic plan and related action plans. Ideally, this level of detail should be adopted by the second to third year of operation.

At the consolidation phase, formal performance evaluations should be in their first cycle and at least one review completed for each employee. Assigned targets and measures must be **relevant to the staff roles**. The criteria stated in job descriptions are a good start.

Basic questions can be asked to assess whether the performance evaluation process is working: features:

- Are formal evaluations conducted at least bi-annually?
- Is there ongoing feedback to reinforce the evaluations and provide support?
- Are employees encouraged to evaluate themselves against objective performance criteria?
- Are action steps drafted after each evaluation and are achievements monitored in feedback sessions?

### 9.3 Knowledge Management

At the Consolidation phase, information systems should be set up and, in particular, the case management system should be established. There should be protocols in place for file retention and disposal.

A research programme should be underway for key areas of priority as identified in the strategic plan, and there should be a document archive or other mechanism to ensure that research information is stored and retrievable.

Finally, an evaluation system should be integrated into the organization’s planning cycle and this should be linked to the UNCT planning process.

### 9.3.1 Case Management

The following questions can be used to determine whether information systems are being used for case management information.

> **Checklist:** Is the Information System Supporting Case Management?

- √ Has a database been established to collect internal administrative data on the case load?
- √ Have staff been trained on the use of the database, and can they train other staff in a train-the-trainer format?
- √ Does the NHRI issue internal reports with caseload information on how many complaints were received, how many resolved, and on outcomes, disaggregated by ground, type of complaint and region?
- √ Are internal reports used to manage, control and evaluate the investigation process?
- √ Is the database for case management updated in "real time"?
- √ Is the database used to identify trends and identify policy issues as they arise?
- √ Do the priority areas in the case load correspond with and reflect the major human rights issues in the country?
- √ Can the data base produce reliable, comprehensive and comprehensible statistics on programme performance generally and on a disaggregated basis i.e. by selected traits (geographic location of complaint; type of complaint; respondent; resolution; etc.)?

Negative answers to these questions frequently result in scenarios like the following one:

> **Scenario:** Ineffective Data management

You are the UNDP manager for a project that is helping to establish an NHRI and the organization has been operating for two years. The project has provided for a project officer who is located with the NHRI.

You have been asked by your supervisor to support the writing of a UNCT report on the effectiveness of the NHRI in the context of an evaluation. You need a list of the types of complaints that the NHRI is dealing with, and a summary of how well these cases are being handled (an aged cases report for example, and standard processing times), as well as results and recommendations in each category of cases.

You contact the NHRI project officer to request the information. After some time, you are told that it will take a few weeks because the registrar will have to collect the cases by hand and she is busy on something else now.

If this happens, it is a clear sign that there is no adequate system in place or that the registrar and investigations director are not performing their functions well. If the UNCT is requested to provide support, reinforcing the information system, or creating one, and improving staff performance through specific measures are a priority area.

#### Data for Research on ESC and development-related rights:

Even at the consolidation phase, it is not unusual to see that many NHRIs:

- Do not develop long-term objectives regarding priority areas to monitor in development and ESC rights.
- Have difficulties developing research programmes.

The capacity to identify progress in rights protection at the broader country level depends on (1) the existence of valid and repeating socioeconomic data, and (2) access to such data. As noted earlier, this is especially true for development-related rights such as ESC rights. Although it may be done earlier, it is usually during the consolidation stage that such data is developed, along with supporting information systems for data management. Some strategies and ideas for improving data and information systems are to assess whether:

- The NHRI has gathered information from UN Treaty Bodies or other reports noting gaps in rights protection related to development?
- The NHRI is using country-level data and MDGs to track progress towards the MDGs?
- The internal database can generate disaggregated data on the selected issues, and if the data actually being produced and analysed?

As noted in Chapters 5 and 8, some of these data may be obtained through UN agencies (especially data in relation to the Millennium Development Goals), the World Bank, and the OSCE, using international indices already in existence (such as the Human Development Index) to compare progress and set benchmarks. NHRIs can compare this data with their own internal statistical information to help it assess whether its own caseload reflects the national situation. UNCTs in turn should be using this



data for their own analysis of the NHRI's effectiveness in dealing with human rights priorities in the country.

### 9.3.2 Research Programmes

Key questions to ask at this phase are:

- Has the NHRI developed a research plan for priority issues over the medium term (two to four years)?
- Is the NHRI publishing research reports on these topics?
- Do stakeholder communities have access to these reports e.g. on the web?
- Are the reports well-regarded in terms of data, analysis and recommendations?
- Does the NHRI have partnerships with research institutes and universities to develop and deepen knowledge in key research areas?
- Is there an internal archive or documentation centre, with appropriate staffing and an acquisitions plan, to store this material and facilitate its access?
- Does the NHRI web site contain all publications?

### 9.3.3 Evaluation

*"... NHRIs themselves (often) undertake strategic planning exercises and develop and adopt good programs for action but may not adequately assess their capacity to implement their plans."*<sup>2</sup>

**Evaluation** is a broad term with a variety of meanings, depending on the context and the objectives. Here it is used to describe intentional and systematic efforts to assess the impact, quality or effectiveness of a particular intervention. It is through evaluative activities – formal evaluations, project evaluations, institutional performance assessments, etc. - that NHRIs and the UN can determine whether their work has succeeded. It is for these reasons that evaluation should be built into project design and is an essential part of knowledge management.

Evaluation is not only about accountability or determining how successful a project was, but it is also a tool for organisational development. Even if there is no UN project in place, UNCTs have an interest in supporting the NHRI review its own capacity before engaging in a project. They should ask to review any internal evaluations conducted by the NHRI or by other donors.

There are several entry points for this process:

- First and foremost are the recommendations by the ICC Sub-Committee on Accreditation issues after its review of the institution, if the NHRI was institution has been reviewed. These serve as a "road map" or programme of action for the NHRI. See Chapter 10 for further details.
- Second are the overall goals and targets in the strategic plan of the NHRI in the Establishment Phase (see Chapter 8), and in related action or operational plans.
- From the UNCT perspective, there are also the indicators and targets set out the Project Document and the Project Activity Framework pertaining to the NHRI. See Chapter 6.
- Specific areas of capacity that were developed in Chapter 8 can be assessed by the NHRI through a capacity assessment process that can provide a baseline for future programmatic interventions.

From the UNCT perspective, capacity assessments provide a useful lens through which NHRIs can determine whether or not they have done a good job in establishing institutional capacity and what the opportunities are for improvement. The notion of capacity assessment focuses on assessing the internal ability of the NHRI to do its work and, as a result, on the forward-looking opportunities for UNCT programming in areas where capacity is lacking. Capacity assessment is an evaluative process that can also "feed" into other evaluative process. Capacity Assessment is an analysis of current capacities against **desired future** capacities. The results can help to promote better understanding of capacity assets and needs, and these can in turn lead to the formulation of capacity development strategies for UNCT staff members to develop with NHRIs.

For an overview of steps in the capacity assessment process, see **Annex 8 of Chapter 8: Sample Briefing Note for a Capacity Assessment of a NHRI**.

From a programmatic perspective, UN project documents generally call for two evaluations: a mid-term review and an end of project evaluation. On-going evaluation is carried out through a Project Coordinating Committee. The project manager is usually assigned the task of preparing up-to-date material for this purpose. Representatives of UNCT should be active participants in these committees

<sup>2</sup> See APE, "New approach aims to build strong NHRIs" <http://www.asiapacificforum.net/news/new-approach-aims-to-build-strong-nhris.html/?searchterm=institutions>

and make sure that reports are providing sufficient information to evaluate project performance so that corrective action may be taken. In addition, the NHRI's strategic plan can identify other appropriate points for internal evaluation efforts, and these too could go to the Coordinating Committee for review and information. Depending on the scope of the project, consideration might be given to having more frequent mini-evaluations aligned with the major stages of the project.

In situations where a summative or more formal evaluation is needed, the choice of a trusted independent evaluator with relevant expertise is crucial. In more informal, participatory exercises where the NHRI is self-evaluating, an expert evaluator can act as a coach or support through the process. In many of these instances, UNCTs will be asked for their support in securing an expert.

> **Note:** Assistance in identifying evaluators or specialists in capacity assessment

For a UN project, if an external evaluator is required, it is important to select someone with a degree of independence (i.e. not someone who was involved in the project itself), and who is familiar with NHRIs. The NIRM Section of the OHCHR and the UNDP have extensive experience working with the evaluation of NHRIs and can provide assistance with Terms of reference and selection of experts, in partnership with the UNDP. Consulting with NHRIs throughout the process is advisable.

It should not be forgotten that the status of an organisation with respect to the Paris Principles and its level of accreditation, if applicable, should be routine part of any assessment or evaluation. Readers should refer to Chapter 10 for further detail.

## 9.4 Funding

NHRIs in many regions are under-resourced. Governments have to fund their own administration, the military, security forces, the judiciary, and law enforcement bodies, and these areas tend to take precedence over NHRIs. NHRIs are therefore rarely viewed as being priority or high-ranking areas of spending, except as a strategic area of focus in the early years. This reality exists in both developing and the developed countries.

It is not unusual to see that the financial situation of NHRIs worsen with time. These institutions have been “kick-started” into existence with external donor funds, and then budgetary responsibility is handed over to national authorities after a few years. Funding may then be decreased or responsibilities added with little regard for the additional burden. It has been noted that only wide popular support for NHRIs is likely to change this situation and result in public pressure on governments to fund NHRIs.<sup>3</sup>

UNCTs should therefore be careful about monitoring government spending allocations for NHRIs after the first few years. Is spending being maintained or increased, depending on whether the NHRI is being asked to take on new areas of responsibility? Is the government clawing back funding when donors provide funding? Funding pressures affect the independence and autonomy of the NHRI, and may affect the accreditation of the institution, as discussed in Chapter 10.

## 9.5 Human Rights Capacity

Strengthening capacity in **substantive and thematic areas of human rights** requires the UNCT to assess the policies, strategies and programming related to established and emerging human rights issues facing the country.

First, there are the cross-cutting areas of human rights capacity described in Module 1, such as **core protection issues** and **human rights-based approaches** to development and to **incorporating economic, social and cultural rights into NHRI work**. See Chapters 4 and 5 for further information on strengthening capacity in these two important areas.

In addition, two areas that are mentioned throughout this Toolkit, namely human rights and business, and transitional justice, may be important aspects of NHRI work, depending on its legal mandate and the national context.

<sup>3</sup> Carver and Korotaev, “Assessing The Effectiveness of National Human Rights Institutions” 2007. Study Commissioned by the UNDP Regional Centre in Bratislava.

As the organisation matures, UNCTs may be engaged in projects to strengthen thematic areas of focus and to develop expertise in specific areas of focus including **vulnerable persons**:

- Children's rights
- National or ethnic, religious and linguistic minorities
- IDPs and refugees
- Indigenous persons
- Migrant workers
- Persons with disabilities including those with HIV/AIDS
- Victims of Human Trafficking
- Women's rights

While it is beyond the scope of this Chapter to deal with strengthening capacity in each area, this section focus on women's equality, IDPs and refugees and persons with disabilities, using an equality rights focus, as illustrations.

### 9.5.1 Core Protection Issues

This is dealt with in Chapter 4.

### 9.5.2 Women's Equality

The following queries can be used in a capacity assessment regarding the NHRI's work in promoting the equality of women and its own capacity to address this area.

For additional information regarding women's equality and ESC rights, please see Chapter 5.

**TABLE 1: WOMEN'S EQUALITY**

<b>REPORTING</b>	Does the NHRI have the capacity to generate gender de-segregated data about its own case load and investigations?
	Does the NHRI use indicators and the relevant MDGs to track progress regarding women's well-being and human development?
	Has the NHRI provided advice on institutional reforms (as a remedy to address causes of inequity)?
<b>INTERNAL STRUCTURE</b>	Does the NHRI have internal gender-related policies on hiring, promotion and representation of women?
	Does the NHRI have the internal structure and capacity to ensure that women's issues are considered in all programme activities, including identifying and addressing complaints on gender equality?
<b>PROTECTION AND PROMOTION ACTIVITIES</b>	Has the NHRI taken and publicised positions on important gender-related issues prevalent in the country?
	Has the NHRI carried out investigations and reported on findings related to key gender issues? Does it assist victims with claims in a gender-sensitive and gender appropriate manner having regard to the nature of the complaint?
	Has the NHRI monitored whether the State has taken all appropriate measures, including legislation, to ensure the full development and advancement of women? Has it made suggestions on how the legislative and/or policy framework can be strengthened?
	Has the NHRI targeted women's issues in its promotion activities?
	Does the NHRI's strategic plan specifically identify and address important gender-related issues?

### 9.5.3 IDP's Refugees and Stateless Persons

The following queries can be used in a capacity assessment regarding the NHRI's work in promoting the rights of IDP's, refugees and stateless persons and its own capacity to address this area.

### 9.5.4 Persons with Disabilities

The following queries can be used in a capacity assessment regarding the NHRI's work in promoting the equality of persons with disabilities and its own capacity to address this area.

**TABLE 2: IDP'S, REFUGEES AND STATELESS PERSONS<sup>4</sup>**

<b>ACTIVITIES</b>	Has the NHRI been engaged in ensuring that persons in need of assistance enjoy the right to humanitarian assistance, that humanitarian organisations have a right to provide it, and that the Government grants these organisations access?
	Has the NHRI contributed to human rights monitoring as a basis for effective assistance programmes (for example, monitoring of the right to food, shelter, health care and education of vulnerable groups)?
	Has the NHRI received and handled complaints from IDPs, refugees and stateless persons?
	Is the NHRI fostering cordial relations between refugees and the host communities?
	Is the NHRI evaluating and reviewing existing legislations on citizenship and nationality that could lead to statelessness and urging their governments to establish an efficient registration mechanism?

**TABLE 3: DISABILITY AND NHRIS<sup>5</sup>**

<b>DISABILITY CONVENTION</b>	If the NHRI been designated as an independent national mechanisms to promote, protect and monitor the implementation of the Disability Convention, what steps has it taken to promote, protect, monitor and implement the rights of persons with disabilities?
	Have persons with disabilities been integrated in decision-making and priority setting?
	Even if an NHRI has not been specifically designated, it still may have general jurisdiction to promote, protect and monitor disability issues. NHRIs should support the implementation of the Disability Convention: <ul style="list-style-type: none"> <li>■ promotion: education, awareness-raising, encouraging further and better implementation of the Convention;</li> <li>■ protection: assisting with and taking cases, strategic litigation; and</li> <li>■ monitoring: reflecting periodically on domestic implementation and commenting on or proposing legislation that best fits local circumstances, in close consultation with NGOs and persons with disabilities.</li> </ul>

<sup>4</sup> See OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*. December 2007. Available from NI Unit, OHCHR.

<sup>5</sup> Ibid.

At Establishment, concern is directed towards ensuring that the NHRI has the structural capacity to support activities in this area. At Consolidation, assessment should, in addition, look at accomplishments.

<b>ACTIVITIES</b>	Has the NHRI been engaged in ensuring that the issues facing persons with disabilities are priority issues for the Government and government organizations?
	Has the NHRI, whether it is a designated independent national mechanism or not, monitored and reported on the implementation of the Disability Convention?
	Has the NHRI contributed to human rights monitoring as a basis for effective programmes (for example, monitoring the accessibility of public buildings, the availability of important public documents in accessible formats, etc.?)
	Has the NHRI received and handled complaints from persons with disabilities?
	Has the NHRI developed and delivered promotional programming dealing directly with the priority issues of persons with disabilities?
	Has the NHRI reviewed and developed its own policies for supporting staff and for citizens seeking to access the NHRI?

### 9.5.5 Transitional Justice

The following question should be asked to determine the performance of NHRIs that have a transitional justice mandate.

**TABLE 4: NHRIS AND TRANSITIONAL JUSTICE<sup>6</sup>**

<b>ACCOUNTABILITY</b>	Has the NHRI undertaken to establish effective accountability mechanisms?
	Has the NHRI contributed to the documentation of past abuses or other truth-seeking/truth-telling mechanisms?
	Has the NHRI been involved in advising on an enabling act for a Truth & Reconciliation Commission, Special Court or Reparation Programme?
	Is the NHRI involved in the preservation of truth commission archives?
<b>INSTITUTIONAL REFORM</b>	Is the NHRI involved in vetting initiatives?
	Has the NHRI provided advice on institutional reforms (as a remedy to address causes of conflict)?
	Has the NHRI provided advice on legal reform?
<b>REINTEGRATION</b>	Does the NHRI support the reintegration of demobilised forces, displaced persons and returning refugees into society?
	Does the support include special initiatives for child soldiers and child abductees, as well as integrate a gender-sensitive approach?
<b>REPARATION</b>	Does the NHRI assist victims with claims?
	Does the NHRI promote the adoption of ad-hoc measures for victims?

<sup>6</sup> See OHCHR, "Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level", 2007, op. cit.

## 9.5.6 Human Rights and Business

Two key resources are available for NHRIs wishing to strengthen their role in this area, and for UNCTs who wish to know more:

### BASESWIKI:

This online portal is the initiative of the UN Secretary-General's Special Representative on Business and Human Rights, with the Corporate Social Responsibility Initiative at Harvard Kennedy School and with the International Bar Association and Compliance Advisor/Ombudsman of the World Bank Group. It aims to help Business and society explore solutions to grievances and disputes, including resources for grievance resolution, accountability mechanisms and access to experts in ADR. [www.baseswiki.org](http://www.baseswiki.org)

The portal of the UN Special Representative to the Secretary-General on business & human rights in the Business & Human Rights Resource Centre contains topic-specific links to the Special Representative's materials such as:

- company policies
- conflict zones
- complicity
- export credit agencies
- grievance mechanisms
- impact assessments
- national human rights institutions

This is the second portal on the Centre's website. The [Corporate Legal Accountability Portal](#), launched in 2008, provides information on lawsuits from across the world alleging human rights abuses by companies.

## 9.6 Functional Areas of Capacity

The following functional areas of capacity should be targeted:

- Protection (investigations, complaints handling, alternative dispute resolution, monitoring, precautionary measures and public inquiries).
- Promotion (communications, public education, campaigns, publications and reports).
- Stakeholder engagement.
- Advice to Government, Parliament and relevant stakeholders.
- Support to the international human rights system.

### 9.6.1 Protection

#### 9.6.1.1 Investigations and Complaints Handling

Managing human rights cases requires the capacity to strengthen mechanisms that will assist the NHRI in investigations, handling complaints and undertaking monitoring. Whether NHRIs have the capacity to receive individual complaints (as is the case for quasi-judicial institutions) or to investigate human rights matters more generally, the objective is to strengthen investigation mechanisms and to support the ability to provide recommendations to address human rights cases.<sup>7</sup>

Much of the NHRI reputation rests on its capacity to carry out investigations and handle complaints in a timely way. That said, this capacity is not easy to develop and sustain.

> **Checklist:** Investigations: Earmarks of a troubled system:

- √ An NHRI that is in a country with significant human rights problems is receiving few cases related to core protection issues, despite its broad mandate. This may be due to low public confidence in the NHRI's capacity to assist victims and their families.
- √ Cases are subject to endless investigations, in the two-year-plus range. This may indicate that investigations are not qualified and require re-training, that case management and statistical reporting are weak and/or that work tools or processes are faulty (with the result that there is no internal tracking system to monitor trouble spots).
- √ Cases involving vulnerable peoples are not flagged and streamed properly e.g. gender cases, or cases involving other groups.

<sup>7</sup> See "Asia Pacific Regional Initiative", supra note 1.

- √ An “aged” Old or non-current caseload, where most cases are more than one year old or a large backlog exists (exceeding half of the annual average incoming cases), containing many unresolved cases.
- √ A caseload where the vast majority of cases are resolved by referring them to other bodies, when the cases appear to be in jurisdiction, suggesting limited capacity to do full investigations. This may indicate flaws in the intake system, poor investigation capacity due to inadequate recruitment and training, or lack of will at the senior levels to move difficult cases through.
- √ A caseload showing that the majority of cases addressed and investigated were closed for reasons of jurisdiction which should have been addressed at the intake stage. This may indicate that intake staff need training and/or that work tools or processes are faulty.
- √ NGOs have stopped bringing complaints to the NHRI, or report that there is little follow-up on complaints that have been filed. This may indicate that management tools and processes are faulty and/or that the institution lacks resolve to move forward.
- √ An inability to produce consistently reliable statistics on performance. This may indicate that knowledge management capacities and/or tools are weak.

An effective system, on the other hand, is one that:

- √ Handles complaints promptly and effectively by:
  - √ Identifying out-of-jurisdiction complaints and potential referrals out to other organisations at the intake stage.
  - √ Using information and tips from NGOs, advocates, and other organisations in the field to pursue investigations.
  - √ Using alternative dispute resolution (ADR) in the early stages of the complaint process (statistics show that voluntary mediation can resolve 30% - 50% of complaints submitted, if properly structured).
  - √ Tracks the performance of investigators in terms of the numbers of complaints they handle and close per year, depending on whether cases are systemic or complex in nature. This information feeds into both individual performance measures and institutional targets. (The target may be higher in Ombuds-style NHRIs that rely on quick, early resolution processes to resolve cases without many legal formalities).
- √ Communicates regularly with parties about the status of the complaint and recording this activity.
- √ Demonstrates that the NHRI has made recommendations following investigations on important human rights issues (as set out in the strategic plan) and has made efforts to ensure that these recommendations were adopted.
- √ Uses case management committees, or an equivalent structure, that meets regularly and provides timely process decisions.
- √ Has decision-making structures, whereby senior office-holders meet regularly to review and decide on investigation reports, and document those decisions.
- √ Sets service standards for timelines for each part of the investigation process and communicating these to the public.
- √ Is used to inform and improve programming and performance in investigation and in other programme areas.

### 9.6.1.2 Effective Case Flow Design

Assessing the effectiveness of the case flow is a useful starting point in assessing the case management system. This is best achieved through a “case flow analysis” that analyses and tracks sample cases through the system to identify how much time is spent on average in each step. This will also determine whether special circumstances – priority cases; aged cases, etc. – were noted and dealt with. When a case flow system is well designed, cases move smoothly and steadily forward. If the system functions well, it is clear that “problem cases”, aged cases and cases with systemic implications are identified early and discussed regularly at a case management committee meeting.

Once a case flow analysis is done, a determination can be made as to which, if any, areas require “re-engineering.” Key problem areas could be:

- insufficient or inappropriately allocated resources;
- overly complex procedures;
- ineffective case management committee;
- insufficient delegation of authority;
- insufficient training;
- absence or unsuitability of policy and procedural standing instructions; and
- unnecessary duplication.

### 9.6.1.3 Intake and Triage

An NHRI at this stage of its development should have a reasonably sound intake process. But it is not uncommon for the intake stage of complaint management to be seen as the poor cousin to investigation. This should not be the case: intake is arguably the most important part of the investigation process. Intake staff should be at least as knowledgeable and capable as investigators, albeit with a different focus. They must understand and have supporting standing instructions that allow them to determine jurisdiction, to refer clients to other available redress mechanisms, to identify cases that are either urgent or a priority or both. And they must do all of this in a way that presents a positive image of the institution to the public it serves. Unless intake is done well, the repercussions will be felt throughout the process and will become more damaging over time.

#### > Scenario: A Faltering Intake System

You have a project with an NHRI that has been in operation for two years. You have just received the first annual report and seen the case statistics. Although the NHRI has a broad mandate, as set out in the Paris Principles, it appears that most of the cases that have been dealt with so far were out of the organization's jurisdiction or should have been referred elsewhere. In short, it appears that most of the organization's energy is focused on issues that it should not have been dealing with in the first place, and that most of the cases investigated resulted in a finding of "no jurisdiction" or referral to another body.

For further information, see:

#### Annex 6: Intake Checklist

### 9.6.1.4 Handling Systemic Cases

The ability to identify and address systemic issues is a key indicator as to whether an established institution has matured.

Having a database to handle information about the case management system will ease the task of identifying systemic cases, but specialised training and expertise is also required, as is a process of data analysis and review that supports the identification of such cases.

The simple questions to ask are:

- Has the organization identified systemic cases?
- Have any been systemic investigations been undertaken?

- What organizational strategies exist to address them? E.g. structuring distinct units or departments for thematic areas (see chapter 8), launching own motion complains or pooling cases.

Many institutions have the capacity to launch 'own-motion' complaint investigations. Others may have the authority to undertake public enquiries. Either authority may be particularly useful in dealing with systemic issues that come to light either through the complaint handling process or the monitoring that an institution engages in.

One strategy for dealing with such cases is to pool them. This might mean actually putting the cases together and investigating them as if they were one. Alternatively, it may mean deciding to investigate one case as a lead or pilot case and using the findings to attempt to resolve all cases.

### 9.6.1.5 Alternate Dispute Resolution

In the early stages of an NHRI's development, staff are usually trained on ADR and will try to settle cases. However, they will rarely have a structured early resolution process, and this should be an area of attention as the NHRI grows in maturity. For a brief overview of ADR, please see Chapter 8.

In assessing the capacity of NHRI, the first question to ask is whether ADR is actually occurring? How many cases are selected for settlement attempts? What are the success rates?

In assessing the work of the intake staff, for example, one should determine whether they are doing as much as possible to assist complainants to resolve cases quickly and at an early stage, where this is possible and appropriate (certain types of cases such as those involving core protection issues are not generally suitable for ADR). This may involve, for example, mediation at the front end of the investigation process that will encourage the parties to come to a mutually acceptable resolution themselves, with the assistance of a neutral third party

**Experience suggests that up to 30% or more of cases might be resolved in this manner.** Clearly this represents a significant 'savings' to the institution since those cases might otherwise have had to be investigated; it also represents a 'savings' to the parties who can free themselves from the adversarial nature of complaint investigation.

#### Annex 7: ADR Assessment Checklist



### 9.6.1.6 Monitoring and Reporting on Human Rights Situations

Some basic queries at this point will shed light on the extent to which capacity was established in the NHRI:

- Has the NHRI submitted annual and special reports on Commission's activities and human rights situations, including on thematic issues and national priority issues?
- Are there reports on the situation of places of detention?
- Does the leadership have the capacity to advocate for a common, acceptable (to the government) monitoring evaluation and reporting framework for the NHRI on human rights monitoring?
- Do staff have the capacity to monitor, evaluate and report, based on universal human rights standards?
- Does the NHRI staff have the capacity to engage other stakeholders in identifying appropriate human right indicators for monitoring and reporting?
- Does the NHRI staff have the capacity to understand and utilize highest human rights standards into monitoring and reporting?

If the answer to these questions is in the negative, the NHRI leadership should review training needs, and develop priorities at the national level regarding monitoring in areas of priority for the NHRI. Attention should be paid to the adequacy of the staff complement.

### 9.6.2 Promotion

By this stage, the NHRI should have issued its basic publications, and developed a publication programme for annual and special reports. In addition, a strong communications plan can ensure that the media are aware of and engaged with the NHRI's work.

Some basic indicators at this stage include:

- Promotion / education staff are in place, trained and have the necessary tools.
- Annual reports are issued on time and provide a comprehensive overview of the NHRI's work.
- Publications in general are available in the major national languages, and are accessible to people with disabilities (large print versions, for example).

- The NHRI undertakes public education and awareness campaigns on key issues affecting the country.
- The NHRI has a policy on communications with the media and standard media protocols.
- The results of monitoring work are published and accessible.
- Local and regional outreach should be taking place, using not only traditional media but also popular education tools like music, dance, theatre, sports and other strategies to bring people together and communicate messages about human rights in an accessible manner.

Moving into the formal education sector will normally receive more focused attention at this stage: NHRIs frequently work in collaboration with education departments and the governments develop curricula that are taught in primary and then secondary schools. This is an intensive and advanced project for NHRIs, but obviously is something that requires significant research and support from many actors.

Finally, targeted education and training of government public servants, as well as the police and the army, should become standard features of training programs offered by the NHRI at this stage.

### 9.6.3 Supporting the International Human Rights System

A mature NHRI should have developed on-going and substantive relationships with the UN system. As well, the UNCT should be able to bring the resources of the UN to bear in supporting NHRIs, across different agencies.

#### 9.6.3.1 Capacity Assessment: Engagement with Treaty Bodies

According to the NIRM Section of the OHCHR, about 112 country reports were reviewed by various treaty bodies and of these, 82 had NHRIs. It is striking that only 38 of that number participated in the treaty body process. This is a clear area for strengthening the NHRI's capacity.<sup>8</sup>

The following checklist will help assess the capacity to engage with treaty bodies, building on the steps taken in Chapter 8:

<sup>8</sup> Statement by G. Magezzeni, Coordinator, NI Unit OHCHR, May 25, 2009, Johannesburg, South Africa.

**TABLE 5: NHRIS AND TREATY BODIES<sup>9</sup>**

<b>REPORTING</b> By drafting accompanying reports or comments in connection with the reports that States are required to submit to UN bodies. NHRIs may express an opinion, with due respect for their independence.	Does the NHRI provide information to the secretariat of the particular Treaty Body for the drafting of the List of Issues, highlighting gaps in human rights protection at the national level)?
	Has the NHRI contributed to the preparation of State party reports, including through consultation or commenting on the report? Have they provided independent information on the implementation of human rights to the Treaty Bodies that review State compliance with its treaty obligations?
	Has the NHRI made an oral presentation in pre-sessional working groups of treaty bodies?
	Has the NHRI made use of the presence of the ICC representative in Geneva to address treaty bodies on its behalf (only for A-status NHRIs)?
<b>FOLLOW-UP</b>	Does the NHRI monitor state dissemination of information to all relevant actors on concluding observations and recommendations of treaty bodies and support public awareness thereon?
	Does the NHRI support and host follow up meetings to concluding observations and recommendations of treaty bodies intended for the Government, Parliament, public authorities, NGOs and other relevant actors of civil society?
	Does the NHRI monitor the effective implementation by the Government of the concluding observations and recommendations of treaty bodies and provide guidance on possible courses of action?
	Where possible, has the NHRI developed its own programming to ensure that observations and recommendations of treaty bodies are applied at the national level?
	Does the NHRI engage with Government and Parliament and other public authorities regarding the implementation of concluding observations and recommendations?
<b>PETITIONS/ENQUIRY PROCEDURE</b>	Does the NHRI facilitate or assist victims' communications to treaty bodies?
	Does the NHRI lobby the State to assent to the respective individual complaint mechanisms of the treaty bodies?
	Does the NHRI follow up to treaty bodies' assessments of complaints to monitor State party action undertaken in relation to it?
	Does the NHRI follow up on interim orders of treaty bodies given to State parties in relation to complaints where irreparable harm is envisaged?
	Does the NHRI engage with treaty body enquiry procedures, in an appropriate manner, including through briefings and the provision of information?
<b>INTERNATIONAL HUMAN RIGHTS INSTRUMENTS</b>	Does the NHRI encourage ratification of international human rights instruments and accession to these instruments?
	Does the NHRI publicise / disseminate information about international human rights instruments and undertake advocacy and educational campaigns?
	Does the NHRI assist governments and other stakeholders in understanding, conceptualising and contextualising international instruments?
	Does the NHRI inform Parliaments about State party obligations regarding international human rights instruments?
	Has the NHRI encouraged the removal of State party reservations to the respective treaties including through public awareness campaigns?
<b>TRAINING</b>	Is the NHRI supporting the capacity building of state officials regarding reporting procedures, collection of data that is required for reports and other relevant issues relating to the reporting process?

<sup>9</sup> See OHCHR, "Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level". 2007 (J. Klok, NI Unit, OHCHR); UN, "Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies" HRI/MC/2007/3, 7 February 2007.

9.6.3.2 Capacity Assessment: Special Procedures of the Human Rights Council<sup>10</sup>

TABLE 6: SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

<b>COUNTRY VISITS</b>	Has the NHRI encouraged the Government to extend a standing invitation to all thematic mandate holders?
	In preparation for a visit, has the NHRI provided the mandate holder with relevant information and materials on the human rights situation? Has it facilitated meetings during country visits, including with civil society and human rights reporters?
	Has the NHRI met the mandate holder during the visit?
<b>FOLLOW-UP</b>	Was the NHRI involved in the process of formulating the recommendations of the mandate holder?
	Has the NHRI widely publicised the press release or public statement of the mandate holder following a visit?
	Has the NHRI translated as necessary and widely disseminated the country visit report, including to Government officials, Members of Parliament, NGOs and civil society groups?
	Is the NHRI actively monitoring the implementation of the mandate holder recommendations to the State? ( <i>N.B.</i> The ICC has set a standard of six months for follow up by the government) <sup>11</sup>
	Does the NHRI take relevant mandate holder recommendations into account when submitting opinions, recommendations, proposals and reports to the Government, Parliament or other public body?
	Does the NHRI monitor any retaliatory action against sources of information that have cooperated with a mandate holder during a country visit?
	Has the NHRI organized follow-up seminars, including all human rights stakeholders as well as the mandate holder?
	Does the NHRI take relevant mandate holder recommendations into account when preparing its work-plan and when assisting in the formulation of National Human Rights Action Plans and in other human rights related programming activities?
	Is the NHRI in contact with relevant mandate holders in case of an anticipated or ongoing human rights violation?
<b>COMMUNICATIONS</b>	Does the NHRI flag relevant legislative developments to the relevant mandate holder?
<b>THEMATIC STUDIES</b>	Does the NHRI bring a specific human rights situation to the attention of the relevant mandate holder and suggest that specific issues be the subject of, or be included in, a thematic study?
	If a Special Rapporteur has been invited by the country, has the NHRI organised thematic conferences or seminars and invited the relevant mandate holder to attend?
<b>ANNUAL MEETING</b>	Has the NHRI participated in the annual meeting of Special Procedure Mandate Holders?
<b>HUMAN RIGHTS COUNCIL</b>	Has the NHRI attended the presentation of mandate holder reports at HRC sessions and taken the floor in the following dialogue?
	Has the NHRI made use of the presence of the ICC representative in Geneva to make a statement on its behalf after the presentation of a mandate holder before the HRC?

<sup>10</sup> OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*. 2007.

<sup>11</sup> ICC Sub-Committee on Accreditation General Observations (Geneva, June 2009).

## 9.6.4 Stakeholder Engagement

**Maintaining and strengthening close contacts** with NGOs and civil society is vital for an NHRI and linked to its accreditation by the ICC. NGOs at the grass roots level have access to broad networks. They can also support community-level buy-in for the work of NHRIs and **information-sharing and monitoring** about human rights situations on the ground.

It is important for NHRIs to work to maintain strong links with all those groups relevant to its mandate and its priority areas of work. This is not always easy: by this stage, it is not unusual to see NHRIs develop tense and mutually critical relationships with civil society.

### > **Scenario:** Bridge-building with civil society

You are working with a NHRI that has a difficult relationship with civil society and with human rights NGOs in particular.

NGOs complain to the UN and to the international community more generally that the NHRI is “useless”. They allege that the appointees are government puppets and do not seriously investigate cases.

The NHRI, for its part, complains that NGOs are unfair and overly critical, and do not understand that the NHRI is neither an NGO nor a government body, and that it operates within constraints that the NGO community cannot or will not respect.

The NHRI has begun to reduce its contacts with NGOs that it perceives as being in bad faith or unduly critical: this further worsens relations. Both sides call you for help. What do you do?

**Understanding the context:** There are always two sides to a story and it is important to listen to both. There have been instances where NHRIs are actually doing the work that they are accused of neglecting, but there may be poor communications. UNCTs can help by developing more effective media strategies, supporting the preparation of annual reports and newsletters, or facilitating regular dialogue with the NGO sector. It would of course be best to help ensure that these vehicles are in place within the NHRI at the outset rather than trying to “fix” problems once they have started.

It may be that the NGO has unrealistic expectations of what the NHRI can do and, if so, efforts must be made to

encourage them to better understand the roles, responsibilities and authorities that an NHRI possesses.

There may be situations where, for reasons of political pressure or internal unwillingness to address serious issues, the NHRI is not performing well. In these cases, if help is requested, it is important to determine (1) whether there is a genuine willingness to improve and (2) what support can realistically be provided.

NHRIs are responsible for establishing an open dialogue, no matter how critical or unfair the NGOs may be perceived to be. They can build ties with NGOs by holding regular briefing meetings, issuing press releases to major NGOs as well as the media, including NGOs in NHRI training sessions as appropriate, as well as in their strategic planning exercises, and working with NGOs to develop treaty body reports and other forms of reporting. If critiques are unfair, NHRIs have a responsibility to address them head on. In other cases, NHRIs may seek to address concerns about lack of communications around such things as complaints handling (a frequent source of concern) by developing and disseminating information about service standards (for example, around complaint processing).

**Building on early partnerships with NGOs, as well as with media and State officials** on specific issues affecting disadvantaged groups can result in concerted and coordinated action to tackle persistent social problems, or to follow up and monitor government actions on issues relevant to those groups.

**International Cooperation:** The Paris Principles recognize the importance of cooperation and collaboration with a wide range of organisations and groups in order to ensure the effectiveness of NHRIs. NHRIs around the world cooperate and collaborate with a variety of stakeholders, including the United Nations,<sup>12</sup> and regional institutions, as well as with NHRIs in other countries.<sup>13</sup>

## 9.6.5 Cooperation with other human rights institutions

The ICC encourages joint activities and cooperation among national human rights institutions. NHRIs should closely cooperate and share information with statutory institutions established also for the promotion and protection of human rights, for example at the state level or on thematic issues, as well as other organisations, such as NGOs, working

<sup>12</sup> *Principles relating to the Status of National Institutions*, General Assembly Resolution 48/134, 20 December 1993. Paris Principles, Principle 3(e).

<sup>13</sup> *Ibid.*

in the field of human rights and should demonstrate that this occurs in their application to the ICC Sub-Committee.<sup>14</sup>

**Regional groupings of NHRIs** also provide the opportunity for concerted action on important trans-national issues.

**General Resources:** Additional organizations and associations that can offer support, resources and information on regional, thematic and other types of coordination and available programming include:

- Office of the High Commissioner for Human Rights: [www.ohchr.org](http://www.ohchr.org)
- National Human Rights Institutions Forum: [www.nhri.net](http://www.nhri.net)
- Asia Pacific Forum of National Human Rights Institutions: [www.asiapacificforum.net](http://www.asiapacificforum.net)
- Network of African National Human Rights Institutions [www.nanhri.org](http://www.nanhri.org)
- Commonwealth Secretariat: [www.thecommonwealth.org](http://www.thecommonwealth.org)
- Equitas: International Centre for Human Rights Education [www.equitas.org](http://www.equitas.org)
- Raoul Wallenberg Institute: [www.rwi.lu.se](http://www.rwi.lu.se)

## 9.7 Advice to Government

### 9.7.1 Strengthening capacity to review legislation

Even if NHRIs are given the power to review legislation, it is not unusual to see this area slip to the background as more urgent matters take over. Sometimes, governments in developing countries do not have an accessible and transparent process for gazetting bills and ensuring public access. Governments can be resistant to sharing advance drafts, and developing a review process is easier said than done.

#### > **Scenario:** Difficulties in obtaining draft laws

A newly established NHRI begins to comment on laws that are passed by the legislature. The NHRI leadership quickly realises that commenting after the fact is far less effective than commenting on earlier drafts. However, the government does not systematically publish or gazette draft bills, so it is very difficult to access the legislative development process at an earlier point in time. The only way for NHRI officials to intervene

is if an elected official in opposition or a sympathetic public servant tipped off an NHRI official who obtains the bill informally. The NHRI then petitions the office of the Justice Minister to request disclosure of bills at the draft stage. The Government responds, stating that the Parliament is supreme that that the NHRI has no authority to supervise acts of the legislature.

The NHRI has come to the UN for guidance. What do you do?

Government officials may view such a request as an infringement of the legislature's supremacy. Officials may not have fully understood that NHRIs have the authority to review and comment on national legislation, or they may have understood, but are resistant. In such cases, UNCTs can help by facilitating discussions about this power and its implications in the pre-establishment phase (see Chapter 7), or later on in the context of seminars or meetings on the issue of legislative review post-establishment.

Government officials must understand that the NHRI power to review legislation is not a supervisory power but a review power, and that it does not, of course, bind the legislature. Reviews can also be done in a confidential manner. Optimally, the government may be encouraged to follow a more systematic approach to the publication and dissemination of gazetted bills, which is an overall improvement for transparency in the country.

#### > **Guidelines** for NHRIs Seeking to Engage in the Legislative Review Process

The sooner NHRIs become involved in dialogue with government on the issue of legislative review, the easier it will be to influence positive outcomes. Government officials will have invested time and effort towards a certain end: this is time and effort that they might be unwilling to see go wasted if extensive critiques are delivered too late in the process. Often, proposals for legislative action start in Ministries responsible for the particular subject. By the time they reach the Ministry of Justice, which generally has responsibility to prepare the legal draft and review its constitutionality, all the hard thinking as to the content of the legislation will have been completed. Entering into discussions at this point may be too late.

#### **Getting access to draft legislation:**

To ensure that NHRIs can comment on proposals, and do so early in their development, an institution should

<sup>14</sup> ICC Sub-Committee on Accreditation General Observations (Geneva, June 2009).

develop and maintain regular and substantive contact, at the staff level, with those who are responsible for preparing initial drafts of legislation, regulations, policy and procedures. More senior NHRI officials should maintain contacts, through regular courtesy visits, with more senior officials. Establishing these working relationships helps ensure that the institution is aware of planned initiatives early in their life cycle and is positioned to influence change as necessary.

### Influencing change

Although an NHRI should seek to influence change at the earliest possible stage, an institution must be aware and take advantage of the opportunities that present themselves. A Parliamentary Committee may examine draft legislation. Institutions should take the initiative to put their views of proposed legislation on the record at this stage and, where necessary, use publicity and lobbying to influence positive change.

**Steps in reviewing legislation** The following steps are generally used for NHRIs that review proposed legislation and/or policy. UNCTs should be aware of these steps and provide advice on them, if asked, and as appropriate in the circumstances.

- Identify legislative drafts or policy initiatives with human rights content or with human rights implications. These may include, *inter alia*, proposed laws or policies relating to crime and the administration of justice, emergency or security regulations, matters regarding the family (divorce, maintenance, custody), labour standards, immigration, elections reform, nationality and citizenship laws, and social welfare legislation;
- Ascertain the degree to which the draft law or proposed policy complies with the State's international and domestic human rights obligations; NRHI should focus on the technical legal aspects: with references to relevant international law, constitutional texts, practice, etc. so that its engagement is seen not as political, but as juridical. Similarly, policy oriented comments should be grounded in references to applicable instruments;
- Assess the potential human rights implications of the draft law or proposed policy;
- Submit a report based on the previous two steps to the executive, to a parliamentary drafting group or to any other relevant body; and

- Submit a report based on the previous two steps to the executive, to a parliamentary drafting group or to any other relevant body.

Advising governments on the degree to which legislative proposals meet national and international human rights standards is an important function for NHRIs. There are difficulties involved in this, however, especially if the Institution does not have significant resources to expend on the effort.

### CASE STUDY: STAKEHOLDER CONSULTATIONS ASSIST IN ASSESSING LEGISLATIVE PROVISIONS IN UGANDA

The Parliament of Uganda had undertaken wide consultations before drafting a proposed Domestic Relations Bill that was meant, among other things, to help protect family members against domestic violence. The Uganda Human Rights Commission, however, wanted to ensure that the draft law was subjected directly to a human rights analysis. To assist them in this assessment, they convened a stakeholders meeting where the draft law was reviewed carefully against national and international human rights standards. Stakeholders made a series of very specific recommendations on the draft legislation, on how the contents could be improved and on how gaps might be filled. The assistance of stakeholders in this work not only reduced the workload on the Commission, but also contributed to the development of a highly credible set of recommendations that was supported by a cross section of civil society in Uganda. As one measure to ensure that the recommendations were distributed widely, the Commission presented them in their Annual Report.

Government should be made aware of the advantages of cooperating with NHRIs and of carefully considering and acting on an institution's recommendations. Moreover, there are countries where the government routinely provides early drafts of legislation to institutional stakeholders and other social groups as part of ensuring a participatory approach to legislative development, as is the case in Denmark.<sup>15</sup>

<sup>15</sup> Thanks to Ulrik Spliid of the Danish Institute for Human Rights for providing this example.

## KEY MESSAGES

- There are few predictable activities that can be cited as common needs of NHRIs during the consolidation phase. Rather, the objectives are to take stock, take corrective action as required, and to enhance the institution's efforts to promote and protect human rights based on capacity assessments and programme evaluations.
- During the consolidation phase, the UNCT will be in a position to assess whether the NHRIs work is progressing properly and whether to recommend a change in direction.
- UNCT staff should support NHRIs in making decisions about how to manage projects and to optimize the chances of success and should avoid second-guessing the NHRIs' leadership or substituting UN opinion for that of the NHRI leadership.
- The notion of capacity assessment focuses on assessing the internal ability of the NHRI to do its work and, as a result, on the forward-looking opportunities for UNCT programming in areas where capacity is lacking.
- If the institution has not carried out this work, there is an indication that it does not understand and/or has not implemented a proper strategic planning process, and this should be a focus of renewed capacity development efforts.
- Much of the NHRIs reputation will rest on its capacity to manage its case load. That said, actually being able to identify problems and help improve matters is not an easy task.
- The ability to identify and addressing systemic issues is a key indicator as to whether an established institution has matured.
- There are a number of indicators to assess whether the NHRIs have adequate and appropriate premises in order to carry out programming commensurate with its level of operational maturity.
- The adequacy of key infrastructure and human resources are crucial to assessing the organisation's success. There are several basic indicators, listed in section 9.5.1, that can signal whether an institution's human resources system is thriving or whether it is faltering.
- A mature NHRI should have developed on-going and substantive relationships with the UN system, in particular OHCHR and UNDP, and with local NGOs as well as with regional and international associations of NIs.
- As the organization matures, its structure should be examined to ensure that it can begin to support thematic areas of focus and develop expertise in specific areas of work, including gender equality, children's rights, and IDPs, to name a few.
- The choice of structure that an NHRI will select for thematic areas of focus and specific areas of work will depend on a variety of factors: the importance of the issue in the country-context; resources; the availability of qualified individuals; the perceived need to have a high-placed individual (usually a Commissioner) charged with the responsibility; the management philosophy of the leadership, and so on.
- The work of focal points and specialized units can potentially be integrated with the work of other units in a NHRI and can be linked to regional initiatives, yet have direct national impact.

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## ANNEX 1: PREMISES CHECKLIST

Based on needs assessment

### Space

- ✓ Are the premises large enough for the current staff complement?
- ✓ Has there been any planning with regard to expansion in future, and if so, will the current premises support the growth?
- ✓ Have the staff been canvassed about their level of satisfaction with their work areas?
- ✓ Is the waiting area adequate for people coming for meetings or interviews?
- ✓ Does the waiting room have a display area containing information (posters, brochures etc. about the organisation, its service standards and how to file a complaint)?
- ✓ Have confidential meeting rooms been set up, including for meeting witnesses
- ✓ Is there space for larger meetings, workshops, etc.

### Location

- ✓ Are the premises located separately from government locations? Are they perceived by the public to be separate?
- ✓ Does usage show that people access the offices easily in terms of location and proximity to public transport?

### Accessibility

- ✓ Has there been an evaluation of whether persons with disabilities can access main entrances and meetings rooms? The premises should be wheelchair accessible, and where possible the premises should have an integrated physical design that is accessible to people with other mobility restrictions.

### Power supply

- ✓ In countries with unreliable electrical power, back up generators should be on site and functional.

## ANNEX 2: TRANSPORTATION CHECKLIST

Based on needs assessment

### Transportation Assessment Checklist

- ✓ Is there an inventory of vehicles assigned to the NHRI? Does it conform to the original acquisitions list that was based on the needs assessment?
- ✓ Are types of vehicles appropriate? (It is not usually necessary to have 4-wheel drive to deliver correspondence locally, for example.)
- ✓ Are there vehicles assigned to Commissioners, senior officials and investigators and other staff required to undertake work in the field?
- ✓ Is necessary field work given priority?
- ✓ Are travel and fuel purchase logs handed in to the controller or finance officer for vehicle usage by drivers at the end of each day?
- ✓ Flexibility of usage: Can vehicles destined for commissioners be used by staff for investigations or emergency situation when required?
- ✓ Is there a budget for routine maintenance and is routine maintenance actually carried out?

## ANNEX 3: TELECOMMUNICATIONS CHECKLIST

Based on needs assessment

- ✓ Does the telecommunications equipment match the requirements as set out in the Needs Assessment conducted at the Establishment Phase, including adequate land lines, mobile phones and fax lines?
- ✓ Are phone lines and faxes secure to avoid intercepted communications?
- ✓ Do investigators have mobile phones and, in appropriate cases, radio-phones for work in the field?
- ✓ Is there a phone line dedicated to the intake service?
- ✓ Is there a log of all calls and inquiries, including those that are related to potential complaints?
- ✓ Is this log entered into the database?
- ✓ Has there been an assessment done with key stakeholders such as human rights NGOs as to the ease of reaching the NHRI?

## ANNEX 4: IT CHECKLIST

Based on needs assessment

### IT Checklist

- √ **Inventory:** Is there a current inventory of all equipment and does it match the needs assessment done at the Establishment Phase?
- √ **Acquisition Policy:** Is there a plan to upgrade and acquire new equipment to meet new needs and innovations in technology, as well as to address the inevitable aging of equipment.
- √ **Hardware:** Do all staff who need access to computers have computers or access to them as required?
- √ Are laptops available to staff who require them in the field?
- √ **Service:** Were computers purchased or leased from a reputable vendor with basic warranties and after-sales service?
- √ Are qualified IT staff available or on call for service to computers or the network?
- √ **Security:** Do all computers have passwords to protect confidentiality?
- √ Network servers contain all the information stored in the system of the NHRI. They are thus vulnerable to hackers as they contain confidential information such as complaints information. Are servers and data generally physically secure (in a locked room) and protected with adequate firewalls?
- √ Does each computer and the network have appropriate levels of security, with virus scanning and cleaning software, regularly updated, as well as firewall, spyware and other related security software.
- √ **Access to the internet and networks**
- √ Is the internet connection consistently functioning?
- √ **Software:** Is all the software appropriately licensed for its use? In addition to normal operating packages - Word; Excel; Power Point, databases, etc., there are also financial accounting packages; human resource planning and management software and correspondence control software.

- √ **Web site:** Is there a regularly updated web site, hosted by a reliable internet service provider supported by qualified staff in-house who can update the web site? Does the web site have a content management system? Does it allow on-line registration of complaints or provide at least basic form?<sup>1</sup>
- √ Does the web site contain, at a minimum, a complete and up to date inventory of all NHRI publications?

## ANNEX 5: INDICATIVE ADVANCED TRAINING MENU

### Introduction

General training on human rights is discussed in Chapter 8.

This indicative training menu proposes advanced training in areas that would enhance an NHRI's capacities to manage and implement its programmes beyond the areas covered in the Establishment Phase. Some suggested training initiatives are meant to enhance the knowledge and skills that staff should already possess. Others are meant to offer new skills that will benefit the Institutions as it expands its scope of operations.

Once again, a training program should always be based on **needs assessment**. By the Consolidation Phase, it will be possible to conduct an assessment of staff knowledge and understanding of their work to see where there are gaps and weak areas.

The main principles regarding training for NHRIs are set out in Chapter 8 and Annex 4 to that chapter and should be reviewed.

### Advanced courses in Core Protection Issues, e.g.

- Monitoring places of detention
- Preventing torture and other violations
- Protecting witnesses, complainants and human rights defenders

### Advanced investigation techniques

- Investigation planning
- Interviewing witnesses
- Planning and carrying out systemic investigations

<sup>1</sup> Even many well-developed NHRIs do not yet have this feature, but increasingly it is the way of the future, especially in countries where travel is difficult and the mail unreliable.

**Evidence**

- Techniques for collecting and preserving physical evidence
- Chain of evidence
- Documentary evidence
- The law of evidence
- Specific cases: discrimination; torture; forced disappearances; summary execution/ extrajudicial killings; and sexual assault,

**Advanced monitoring and research methodologies**

- Understanding the principles of statistical analysis
- Analyzing and synthesising data
- Report writing

**Policy Development in NHRIs**

- Linking case data to policy development
- Research, analysis and report writing
- How to conduct consultations
- Policy processes: Case studies from successful NHRIs

**Advanced Training in Alternative Dispute Resolution**

(consider a recognized certificate-level course)

**Regional National Human Rights Institutions**

- Comparative analysis of NHRIs in region; best practices, case law.

**Specialized Topics, e.g.**

- Internally displaced persons and refugees
- Gender equality
- Minority rights
- Rights of Indigenous peoples
- Rights of persons with disabilities, including HIV/AIDS
- Rights of the Child
- Labour law and human rights

**Human-Rights Based Approaches to Development**

- Collecting and disaggregating data
- Millennium Development Goals and other internationally-agreed goals
- Tracking progress: monitoring and report-writings

**Database Management (Case management)**

- Generating and interpreting User and Management Reports from database

**How to Hold Public Inquiries****Communications and Promotion**

- Event planning and publicity
- Adult education principles
- Report writing
- Developing reports that are accessible (different languages, accessibility to persons with disabilities, etc.
- Advanced train-the trainer sessions for security forces, and police

**Training on Strategic planning****ANNEX 6: INTAKE CHECKLIST**

- √ Are there statutory criteria that set out the types of complaints or issues that the NHRI deals with and does not deal with?
- √ Are there trained staff assigned to the intake process and are they specifically trained on these criteria?
- √ Are these criteria well-understood by stakeholders and the public?
- √ Does the NHRI database track and report on the number and type of inquiries, and which ones are screened out?
- √ Are most cases that are outside the NHRI jurisdiction identified at the intake stage?
- √ Is data being captured at the intake process for trends and systemic cases? I.e. does the profile of cases at intake show that a particular issue or set of issues is coming up regularly? If so are there strategies in place to deal with this?
- √ Is there a protocol for priority or emergency cases, for example, involving danger to a person's life or health, or that involves a child's welfare?
- √ Is there a process for referring to an internal case committee on a priority bases cases dealing with potential irreparable harm in order to seek interim measures?

## ANNEX 7: ADR CHECKLIST

This checklist will provide a quick overview of key areas to assess in the context of alternative dispute resolution.

- √ Does the NHRI have an ADR program?
- √ Is ADR structured so it is part of the case design flow and in particular is resolution or mediation attempted regularly in appropriate cases?
- √ Is mediation undertaken by a person other than the investigator? (in order to maximise the chances of success and not to prejudice the investigator's later work if the mediation fails, the mediation should be undertaken by someone other than the investigator)
- √ Have staff received adequate training?
- √ Has the ADR process been evaluated or assessed by parties and stakeholders, by inviting them to share their overall satisfaction with the process?
- √ Is the ADR voluntary? (Only NHRIs with a legal statute authorizing mandatory mediation may force the parties to mediate)
- √ What is the take-up rate of ADR? If much fewer than a third of eligible cases are fully investigated without even attempting ADR, there may be a problem
- √ What is the success rate of mediation? Structured voluntary mediation with a success rate below 50% requires re-evaluation and analysis.

## ANNEX 8: FINDINGS AND RECOMMENDATIONS

OHCHR 2009 *Survey of National Human Rights Institutions: Report on the Findings and Recommendations of a Questionnaire Addressed to NHRIs Worldwide* [www.nhri.net](http://www.nhri.net)

### PART A. Background

The questions in this section were designed to provide a general snapshot of NHRIs around the world. The responses indicate that NHRIs – a fairly recent phenomenon from the 1990s onwards – are generally human rights commissions or ombudsmen with a broad geographic jurisdiction. In Europe and the Asia Pacific respondents were commonly statute-based commissions, although the ombudsman model was common in Eastern Europe. In the Americas they are commonly constitutionally-based ombuds-institutions and in Africa are commonly constitutionally-based commissions.

Although the majority of respondent institutions were established by a founding law, as required by the Paris Principles, a small number of respondents in all regions would benefit from a strengthened legal framework.

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors, could support NHRIs to prioritise advocacy with their government for the revision and strengthening of the legal framework of those NHRIs established by an executive instrument. Recommendations from UN Treaty Bodies, the SPMHs, and the UPR in the Human Rights Council, as well as the ICC Sub-Committee on Accreditation may all support the expansion of the mandate of NHRIs.

### PART B. Institutional Character

#### 1. Composition of the governing body

An institution's mandate is vested with its members (e.g. commissioners, ombudsmen and deputies etc.), described collectively as its governing body. OHCHR has recognised that governing bodies tend to be more effective when they have a small number of full-time members. This trend was broadly reflected in the responses received; with roughly two thirds of the respondents indicating that their governing body had 10 members or less, the majority of which worked full-time. Nevertheless, respondents with both small and large governing bodies rated their composition as effective (4 or 5 out of 5).

A governing body whose members reflect society's diversity is also an important method for achieving pluralism in an institution, one of the core concepts of the Paris Principles. Just over half of respondents indicated that their institution's founding law included a provision on pluralism (this low number may be attributable to the fact that the governing bodies of single member ombuds-institutions cannot reflect the principle of pluralism). However, there did not appear to be a strong correlation between the existence of a legal provision on pluralism and diversity in practice, particularly in the Asia Pacific and in Europe. Overall, less than half of the respondents rated the diversity of their governing body as good (4 or 5 out of 5). This percentage was roughly even across the four regions. In addition, data on the representation of particular groups showed that while the representation of women is strong, in all regions it is limited for both people with disabilities and minority groups.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors, could support activities that explore and gather best practice on the types of legal provisions (e.g. membership criteria, appointment processes) ensure the governing body is effective and diverse in practice. Data on other mechanisms of ensuring pluralism within an institution, beyond the composition of its governing body, would also be useful.*

## 2. Appointing members to the governing body

The ICC, in its General Observation 2.2 on the selection and appointment of the governing body, notes that an open and transparent process is important in ensuring the pluralism and independence of the NHRI.

The vast majority of respondents (90%) indicated that appointment procedures are specified in their institution's founding law and or elsewhere. Nevertheless, such processes only include independent scrutiny of candidates for just over 60% of respondents; only include the advertisement of vacancies for just over 50% of respondents; and only include consultation with civil society for 45% of respondents. Generally these percentages were consistent across the four regions, although the level of public vacancy announcements in Africa was notably lower, at around 30%.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, interested donors, could support NHRIs to prioritise advocacy with governments for the revision and strengthening of procedural requirements for the selection and appointment of members.*

## 3. Security of tenure for members of the governing body

In its General Observations, the ICC has recognised the importance of security of tenure of members of an institution's governing body as a means protecting its independence. A secure term of office for members is an important guarantee of their independence; to ensure a period during which members can develop expertise and be vocal without fear of hindering future prospects. The ICC's General Observation 2.9 on guarantees of tenure for members of governing bodies further states that dismissal of a member of the governing body should follow all substantive and procedural requirements, as prescribed by law, and should not be solely at the discretion of the appointing authorities.

Almost 80% of respondents indicated that the terms of their members were between 3 – 5 years, which is a reasonable period to ensure tenure of membership. Nevertheless, only just over 70% of respondents' founding laws state the grounds on which members may be dismissed (this statistic was roughly even across all four regions). Even fewer (just under 60%) included a procedure for the dismissal of members (again, this percentage was roughly even, but was lower in Africa at just over 40%).

**Recommendation:** *as the ICC's General Observations state that dismissal or forced resignation of a member may result in a review of the institution's accreditation, strengthening legal requirements for dismissal (building on the best practice examples provided by respondents) should be a priority. OHCHR, UNDP, RCCs of NHRIs, and interested donors could support NHRIs in securing such legal requirements.*

## 4. Operational and Financial Autonomy

Independence, one of the core concepts of the Paris Principles to ensure an institution's legitimacy and credibility, must include practical, as well as formal independence. Over 70% of respondents considered their institution to be very independent in practical terms. This is a positive indicator. Nevertheless, almost 40% of respondents indicated that a government department had administrative responsibility for their institution; and of these respondents, approximately 20% ranked the department's influence over their institution as moderate or greater (this percentage was roughly even across all four regions). In its general observation on administrative regulation, the ICC has noted that where the administration and expenditure of public funds by an NHRI is regulated

by government, such regulation must not compromise an NHRI's ability to perform its role independently and effectively and that therefore the relationship between government and the NHRI must be clearly defined.

Another crucial guarantee of an institution's independence is financial autonomy, which ensures its ability to independently determine its priorities and activities. This remains a problem area for many institutions, with nearly half of the respondents, indicating that their budget is insufficient. This statistic was roughly even across all regions, although just over 50% in Africa. Furthermore, to ensure financial autonomy, public funds should be provided through a mechanism that is not under direct government control. Over 75% of respondents indicated that their budget is not presented directly to parliament, but rather through a government ministry; and further, almost 50% of respondents commented that the relevant ministry has much influence over their budget allocation. This percentage was roughly even in all regions, although slightly higher in Africa and the Americas.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors, could prioritise activities to develop the capacity of NHRIs to effectively manage the relationship with their relevant government department, including in budget allocation. In addition, they could also prioritise continued advocacy with member states to ensure they meet their obligation to provide adequate resources.*

## 5. Organizational structure and staffing

The Paris Principles state that an institution shall have an infrastructure suited to the smooth conduct of its activities, encompassing a number of issues relating to the institution's internal structure and staffing. For an institution to be effective, it needs diverse staff with the necessary professional skills and knowledge on human rights; as well as an organisational structure that allows for the most effective use of its resources, budget and powers.

Overall, just under 70% of respondents were satisfied with the organizational structure of their institution, including the functioning of working groups and specific units to address vulnerable groups, although this percentage was lower in the Asia Pacific and Africa (at under 60%). In addition, a significant number of respondents (approximately 40%) in all regions considered their staff size to be insufficient and a number highlighted the challenge of recruiting and retaining skilled candidates. Staff diversity, particularly the representation of minority groups

and people with a disability, also remains an area for improvement; with only 50% of respondents rating their staff as diverse (4 or 5 out of 5).

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors, could prioritise further training and capacity development for NHRI staff across all levels. They should also prioritise support for institutions to develop human resource plans to increase staff effectiveness, career development and diversity.*

## 6. Accessibility

Although not specifically articulated in the Paris Principles, a crucial element of an institution's effectiveness will be its visibility and accessibility to people exposed to human rights violations. Respondents generally considered the physical accessibility of and communication with their office to be satisfactory. However, the percentage that described their relationship with marginalised groups as strong (4 or 5 out of 5) varied between roughly 60% in the Asia Pacific to just over 40% in Europe.

Generally, well over 70% respondents in all regions considered their accessibility by phone, post and email to be high or very high (4 or 5 out of 5), although less so with respect to the web (this was particularly the case in the African region, where under 50% of respondents indicated their website was regularly updated; compared with an average of 84% in the other three regions). Respondents' comments noted the need to increase the number of regional offices and/or strengthening their outreach capacity; ensure physical accessibility to offices for people with disabilities; and to improve electronic communication systems.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors could prioritise support to institutions to improve their accessibility, with a particular focus on reaching out to vulnerable groups.*

## PART C. Mandate and Competences

### 1. The Mandate in General

The Paris Principles require that an institution have a broad mandate to promote and protect human rights and specify a number of areas in which institutions are expected to have competence. Responses indicated that breadth of mandate is not considered to be a key concern amongst institutions and that most respondents are mandated to perform the responsibilities specified in the Paris Principles. However, protection-related functions (such

as detention visits, providing remedies) are notably less prevalent amongst European NHRIs. As the following sections show, it is the fulfilment of the institution's mandate where challenges arise.

## 2. Complaint Handling

Where an institution has a quasi-judicial function to hear and consider individual complaints, the Paris Principles set out several principles on which this function may be based. Responses showed that, in line with these principles, the majority of respondents with complaint handling functions are able to inform complainants of their rights and transmit complaints to competent authorities; although fewer can seek settlement through conciliation, and only a very small number can make binding decisions. Generally, the large majority respondents are able to receive complaints in relation to all rights and against all relevant parties. However, fewer respondents could receive complaints against individuals, business and intelligence agencies (particularly in the Americas and Europe).

Respondents were asked to provide data on the numbers and types of complaints they received in 2008. However, beyond the number of complaints received for that period, many did not. This may be an area for further exploration, as it suggests a need for more developed processing and data systems. Indeed, a number of respondents from all regions commented that complaints handling systems were underdeveloped or inadequate and that resources were insufficient to respond to high caseloads.

## 3. Monitoring core protection issues

OHCHR has consistently prioritised support to NHRIs to carry out their work on core protection issues; as it considers this to be one of the most important elements in determining their credibility at the national and international levels.

The large majority of respondents indicated that they are indeed carrying out activities relating to the prevention of torture and ill-treatment; with highest majority in the Asia Pacific (100%), followed by Africa (89%), the Americas (77%) and Europe (71%). Such activities included visiting places of detention and receiving complaints from detainees. However, the quantity and quality of this work appears somewhat varied. For example, the number of detention visits respondents had conducted in the past year ranged from 1 to 6000. Others described promotional activities, rather than more direct protection work; such

as public awareness raising and encouraging ratification of the relevant international instruments. A large number of respondents, especially in Africa and Europe, reported that there were other bodies mandated to conduct detention visits, although the types of other bodies identified by respondents did not always have the equivalent independence or official status of an NHRI.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors could prioritise work with NHRIs, in the framework of the Nairobi Declaration, to effectively implement their core protection functions, particularly in detention monitoring. Follow up research with NHRIs to collect best practice on collaboration and coordination with other visiting bodies is also important to explore, to address any potential protection gaps.*

Fewer respondents had dedicated activities for human rights defenders; with the highest in the Asia Pacific (92%), followed by the Americas (78%), Africa (58%) and Europe (43%). However, only a very small number referred to advocacy on behalf of human rights defenders at risk. A few respondents from Africa commented that they lacked capacity in this area.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors, should prioritise further guidance to NHRIs in relation to their activities for human rights defenders, including by systematically collecting and disseminating examples of best practice. Capacity building activities for NHRIs, particularly in Africa, to support human rights defenders (generally and in cases threat) should also be prioritized.*

## 4. Following up recommendations

Given the non-binding nature of most institutions' recommendations, their effectiveness depends on a good working relationship with relevant government bodies. Overall, roughly 65% of respondents indicated that government bodies are formally required to respond to the institution's resolutions. And a similar percentage of institutions had developed mechanisms to follow up their resolutions, reports, or recommendations (although these percentages are notably higher in the Americas).

Nevertheless, overall only 30% of respondents stated that government bodies take recommendations on board well; suggesting limited effectiveness of existing follow up mechanisms and provisions. This is therefore an area where increased capacity is needed. This issue is of particular concern in Africa and the Americas where only

just over 20% of respondents rated the responsiveness of government bodies as good. However, even the highest percentage, in Europe, was under 40%

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors could prioritise support to institutions to develop strategies for follow up where they do not exist and strengthen them where they do. Advocacy for strengthened legal frameworks that require the state to formally respond to institutions' recommendations is also another important medium- and long-term priority.

## 5. Human rights education and research

Human rights education and research are key responsibilities of NHRIs identified in the Paris Principles. Although almost all respondents indicated that they have mandates for human rights education and research (overall 98% and 95% respectively), the actual implementation of these mandates in practice is lower.

In Africa, less than 70% of respondents carried out regular research on human rights, and less than 60% carried out activities to mainstream human rights in education curricula or developed materials for informal educational settings. In the Americas the percentage was closer to 90% for research, but under 80% for education. In the Asia Pacific the percentage was over 90% for education, but just over 80% for research. In Europe the percentage was over 80% for research, but just over 50% for education. The main challenges respondents noted in promoting human rights education, particularly in Africa and the Asia Pacific was a lack of resources available to the institution or lack of (appropriate) materials, as well as a lack of interest or resistance from the education sector

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors could consider providing support to NHRIs in this area, as well as developing mechanisms to encourage institutions to pool educational and research material.

## PART D. Relationships with other organizations

### 1. Relationships with civil society

The Paris Principles recognise civil society as a group with whom an NHRI should have a well developed relationship. Over 80% of respondents in the Asia Pacific and Europe described their relationship with civil society as strong (4 or 5 out of 5). However, this percentage was closer to 70% in Africa and the Americas. Nevertheless, the frequency of respondents' engagement with civil society varies

widely and numerous responses highlighted challenges for engagement, such as lack of capacity and lack of understanding amongst both NHRIs and NGOs about each other's respective role. Activities respondents had undertaken to improve or enhance relationships with civil society included joint projects or activities such as meetings, forums and roundtables.

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors could facilitate increased awareness raising for both NHRIs and NGOs on each others respective roles, for example through joint activities. Support for the strengthening of legal provisions that require NHRIs to establish formal relationships with civil society is also another important medium- and long-term priority (only 45% of respondents indicated that their founding law contains such a provision).

### 2. Relationship with public organisations

An NHRI's official status puts it in a unique position to influence and work with politicians and public authorities. Indeed, over 60% of respondents indicated that their founding law required the institution to establish formal relationships with public bodies. Nevertheless, across all regions generally around 50% or fewer respondents rated their relationship with the executive, parliament, the judiciary, police and prison administrators a strong (4 or 5 out of 5). Relationships with parliamentary human rights committees were generally ranked as strong in Europe (just under 75%), but less so in Africa (just over 50%) and the Asia Pacific (just over 40%). Around 70% of respondents, in all regions, described their relationships with other human rights entities (including state bodies, NGOs, regional organisations etc) as strong. Nevertheless, respondents commonly noted, particularly in Africa and the Asia Pacific, that public organisations lacked an appreciation of or interest in human rights issues generally, or the institution specifically.

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors could facilitate and assist NHRIs direct engagement with these organisations, thus also increasing the level of awareness about the work of NHRIs.

### 3. Interaction with the International Coordinating Committee and regional networks

Cooperation with international and regional human rights organisations is one of the functions the Paris Principles vest with an NHRI. An institution's participation



in the regional and international networks of NHRIs, in particular, helps to reinforce an institution's independence and effectiveness.

While over 80% of respondents regularly attend the meetings of their regional network, there is room for improvement in relation to the level of participation in ICC meetings, which is currently just over 60% overall. It is worth noting however, that participation amongst Asia Pacific NHRIs was over 80%; highlighting how a strong, well established regional network is important for strengthening the ICC. Strategies to increase the incorporation of the ICC's declarations into institutions' work plans should also be a priority, as roughly only 50% of respondents in Africa, the Americas and Europe indicated that they often refer to the declarations in developing their work plans. In the Asia Pacific this percentage was even lower, with only a third indicating that they often refer to the declarations. The ICC might consider undertaking further consultations with its members to explore how to enhance the utility of the declarations for NHRIs in their domestic work.

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors could consider extending support to institutions to overcome budgetary constraints to improve participation rates in ICC events. Respondents also made a number of valuable suggestions on how to enhance the benefits of ICC meetings, which OHCHR should work with the ICC and the RCCs to implement.

#### 4. Interaction with institutions in other countries

Increasing the frequency of interaction between institutions on a bilateral or sub-regional level in all regions should also be a priority. The percentage of respondents describing such interaction as frequent (4 or 5 out of 5) varied between over 75% in the Americas to under 45% in Africa, with the Asia Pacific and Europe both at roughly 50%.

**Recommendation:** OHCHR, UNDP, RCCs of NHRIs, and interested donors could facilitate capacity building missions, encourage increased cooperation and provide opportunities for working experiences with regional networks. Comments from respondents particularly noted the educational value in these types of activities. To facilitate this, such bodies may consider supporting the establishment and strengthening of regional and sub-regional networks of NHRIs.

#### 5. Interaction with UN bodies at the country level

Many institutions, particularly in Africa and the Asia Pacific had interacted with UNDP and OHCHR's field presences; as an implementing partner, recipient of technical assistance or training, or joint partner in activities. While over 70% of respondents overall described their relationship with the UN as strong (4 or 5 out of 5), there is scope to improve this even further.

**Recommendation:** OHCHR could further consult with NHRIs on their experiences of working with the UN at the country level, as respondents did not generally comment on this in their responses. Collecting examples of best practice in relation to coordination and collaboration between NHRIs and field presences would also be valuable.

### PART E. Interaction with International and Regional Mechanisms

Cooperation with international and regional human rights mechanisms is a key requirement of the Paris Principles. As emphasized in the ICC's General Observation on interaction with the international system, this includes making an input to, participating in and following up the recommendations of the Human Rights Council and its mechanisms (including supporting the work of SPMH, especially during country visits), and the human rights treaty bodies. In practice however:

- NHRI interaction with the UN treaty bodies was moderate overall. In Africa, almost 80% of respondents had contributed to a state report and 50% had participated in a session. However, few had submitted a parallel report or contributed to the list of issues. In the other three regions, fewer had contributed to a state report, but the level of parallel reports and contributions to the list of issues was higher (around 30-40%). In all regions, only 40-45% of respondents had disseminated concluding observations and conducted follow up activities and only around 20% had participated in the treaty bodies' general work (days of general discussion and drafting concluding observations).
- The UPR mechanism demonstrated the highest level of engagement from respondents. The countries of 27 respondents had been reviewed and all 27 institutions indicated that they had participated in the process in some capacity. While the Americas and the Asia Pacific showed consistent engagement in the

various stages of the process, in Africa and Europe increasing the level of follow up activities should be encouraged. The need to increase the level of contributions of independent information was also noticeable in Africa.

- Generally, less than 35% of respondents had provided information to a special procedures mandate holder or met with them during a country visit, although this percentage was over 50% in the Asia Pacific region. Follow up to the country missions of SPMHs was even lower, with less than 20% publicizing mission reports, monitoring recommendations and reporting on their implementation, on average.
- The level of interaction with the Human Rights Council, for activities such as submitting documents, contributing to SPMH reports and OHCHR reports, attending council sessions and making oral statements averaged about 20% or less.
- The interaction respondents had with other international mechanisms, conferences, workshops etc was minimal.

- Although the responses indicated that interaction with the regional human rights system was higher, examples of the types of such interaction often referred to general regional interaction (e.g. through regional NHRI networks, OHCHR training etc), rather than formal interactions with the relevant mechanisms of the regional human rights bodies (i.e. courts and/or commissions).

These participation rates show a limited familiarity with the international and regional systems. In fact, just over 50% of respondents had participated in training on the international human rights system.

**Recommendation:** *OHCHR, UNDP, RCCs of NHRIs, and interested donors could prioritise continued training to NHRIs on the international human rights system. However, they should explore methods of doing so that are less resource-intensive for NHRIs and reach the broadest number of staff. This could include “train the trainers” workshops for identified focal points on international engagement and developing online or distance training materials.*

# chapter

# 10

## Compliance with the Paris Principles

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## OBJECTIVE:

Describe and explain the Paris Principles, and provide guidance on how and what support to offer to institutions that do not comply, including those that have been downgraded by the ICC

## EXECUTIVE SUMMARY

This chapter describes the Paris Principles and their application to National Human Rights Institutions (NHRI). The Paris Principles set minimum conditions that a national human rights institution must meet to be considered credible by its peer institutions and by the UN.

The Paris Principles require NHRIs to protect and promote human rights. More specifically, the Paris Principles set out six criteria that NHRIs should meet to be successful:

- A broad mandate, based on universal human rights standards;
- Autonomy from government;
- Independence;
- Pluralism;
- Adequate resources; and
- Adequate powers of investigation.

Each of the criteria is examined, and checklists are provided to assess compliance to them.

### Annex 1: Checklist Compilation for Assessing Compliance with the Paris Principles

The Bureau of the International Coordinating Committee of National Institutions (ICC) accredits institutions based on their compliance with the Paris Principles as being “A-Status”, “B-Status”, or “C-Status”. An “A-Status” accreditation signifies compliance with the Paris Principles and means that the NHRI is considered credible by the ICC and the international community. “B-Status” accreditation signifies that the NHRI meets some but not all the requirements of the Paris Principles. “C-Status” accreditation signifies that the NHRI is non-compliant. Only “A-Status” NHRIs have the right to participate as voting members within the ICC and to take part in the work of the UN Human Rights Council.

“A-Status” and “B-Status” accreditation is reviewed every five years and may be changed based on that review.

Accreditation status may also be reviewed in the event that circumstances change, for example if the enabling legislation of a NHRI is amended.

The ICC, supported by the NIRM Section of the OHCHR, has developed a process for accreditation and re-accreditation that assesses a NHRI compliance with the Paris Principles both “on paper” and substantively.

UNCTs can support the accreditation and re-accreditation process in a variety of ways, including by providing information to NHRIs. When a NHRI is not granted A-Status, or loses that status following a review, the ICC will issue recommendations on what the institution must do to conform to the Paris Principles. UNCTs should use these recommendations as a road-map for assisting non-compliant NHRIs to move towards greater compliance with the Paris Principles.

The default position for UNCTs should be to support NHRIs along the continuum of compliance that exists. In rare occasions, such as poor performance by a NHRI due to its ‘politisation’ or for other reasons deemed serious enough, withdrawing support may be warranted, but this should only be done in consultation with the OHCHR.

## 10.1 The Paris Principles

The “Paris Principles” (“Principles Relating to the Status and Functioning of National Institutions”) define basic standards or benchmarks against which to assess a National Human Rights Institution (NHRI). The Principles form a set of standards or guidelines that, while not legally binding, link the domestic protection of human rights and the international human rights framework. A NHRI can only be considered as credible if it complies with the Principles.

### 10.1.1 A Brief History

In 1991, the UN Centre for Human Rights (today’s OHCHR) convened a conference of national human rights institutions to define common attributes that all new or existing NHRIs should possess. Because the meeting was held in Paris, the resulting standards came to be known as the “Paris Principles”.

The Paris Principles have become part of the human rights lexicon: the Vienna Declaration, for example, qualified any mention of national institutions with the phrase “established in conformity with the Paris Principles”. The Principles were approved by a **UN General Assembly resolution in 1993**<sup>1</sup> and today are broadly accepted as the international standard or test of an institution’s independence and effectiveness.

Understanding the requirements of the Paris Principles takes some effort, since they are vague at times and can often be fully appreciated only with reference to ‘best practice’ or at least ‘good practice’. The following discussion identifies each standard, and outlines the requirements as expressed in the Principles on how those requirements may be satisfied. A checklist to assess the degree to which a proposed or existing NHRI meets the standard being discussed is provided. A compilation of these checklists is also provided at the end of the Chapter<sup>2</sup>.

### 10.1.2 Key features

The Paris Principles set out standards that *all* national human rights institutions should meet, as well as a few additional principles that apply only to institutions with “quasi-jurisdictional” competence. These additional Principles are optional, even for institutions with such

competence. Since these are not part of the ‘minimum standards’ that all institutions must meet, they are not dealt with in any detail here.

The Paris Principles are minimum conditions that must be met for a NHRI to be considered credible by its peer institutions and within the UN system.<sup>3</sup> Under the Paris Principles, NHRIs are required to:

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

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

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

It should be noted that non-compliance with the Paris Principles does not mean that the UN should refuse to work with an institution; however, non-compliance does signal that activities should be directed towards achieving compliance. (See further discussions on this point at 10.3, “Non-compliant NHRIs.”)

### Principle 1: A Broad Mandate

The second article of the Paris Principles provides that “a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.” The NHRI mandate must

<sup>1</sup> *Principles relating to the Status of National Institutions*, General Assembly Resolution 48/134, 20 December 1993. <http://www.unhcr.ch/html/menu6/2/fs19.htm#annex>

<sup>2</sup> The compilation is formatted to follow the sequence of standards as they are set out in the Paris Principles and so does not ‘match’ exactly the individual checklists provided following the discussion of each Principle.

<sup>3</sup> The process by which a national institution is accredited as complying with the Paris Principles is described later in this chapter.

include the dual responsibility to both promote and protect human rights. Promotion includes measures such as public education, publishing reports, or taking other measures to ensure that individuals understand human rights standards and know that they must respect the rights of others. Protecting human rights means ensuring that there are effective mechanisms in place, such as investigating and monitoring human rights situations.

The Paris Principles describe the range of responsibilities that should be within the operational mandate of an institution as:

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

With regard to the responsibility to provide “opinions, recommendations, proposals and reports”, the Paris Principles make clear that an institution must, first, have the power to provide advice on its own initiative, and not merely on the request of the authorities. Second, an institution must be free to publicise its advice without

restraint and without requiring prior approval. It should also be understood that the first responsibility listed (to provide advice on legislation and human rights violations and situation) generally includes the responsibility to:

- Receive, investigate and issue opinions and recommendations regarding alleged human rights violations (although it may not include the specific power to receive individual human rights complaints); and
- Monitor and report on human rights issues generally and on the situation of detained individuals in particular.

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

Similarly, the implications of a broad mandate are that, subject to their statutes (as discussed in greater detail below), NHRIs should be directly engaged in work related to civil and political rights as well as economic, social and cultural rights. They may, within this broad mandate, however, choose to focus attention on one area, such as women’s rights,<sup>4</sup> protecting the rights of persons with disabilities<sup>5</sup> and/or combating racial discrimination, depending on circumstances and priorities.

Despite the principle in favour of a broad mandate, some restrictions are common and not problematic. For example, most NHRIs are prohibited from dealing with matters that are before the courts, or that have already been decided by the courts. Such limitations avoid duplication and the appearance of usurping the judiciary’s role. They do not, moreover, contradict the Paris Principles.

Many enabling laws specifically restrict subject-matter jurisdiction: for example, the NHRI may be authorised to receive complaints dealing with civil and political rights, but not economic, social and cultural rights. Similarly, some institutions have mandates that relate to one type

<sup>4</sup> CEDAW. See General Recommendation No. 6 (seventh session, 1988). <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom6>

<sup>5</sup> Convention on the Rights of Persons with Disabilities. For a discussion of the role played by NHRIs in this convention, see Stein and Lord, “The United Nations Convention on The Rights Of Persons With Disabilities as a Vehicle for Social Transformation” [http://www.nhri.net/2008/0805\\_libro\\_discapacidad.pdf](http://www.nhri.net/2008/0805_libro_discapacidad.pdf). Accessed November 11, 2008.

of human rights violation – usually discrimination – but not others. Such limitations do not, in themselves, mean that the NHRI is not in conformity with the Paris Principles, but they should be read narrowly. In the examples cited here, a narrow reading would mean that restrictions that prevent the receipt of complaints in ESC rights should be read to be limited to complaints investigations, and should not diminish the institution’s ability to comment more generally on human rights matters of all types, including ESC rights.

In other words, the NHRI should not be prevented from undertaking monitoring, public education or advice-giving in relation to rights for which it has no power to receive complaints.

There are other types of restrictions: many institutions, for example, do not have jurisdiction to deal with human rights matters involving the private sector (companies and corporations).

It is true that some NHRIs cannot enquire into matters concerning the armed forces, the security services and/or government decisions regarding international relations. These restrictions do not contradict the letter of the Paris Principles, but they do contradict its spirit. Item 5.2 of the General Observations of the ICC Subcommittee provide that “the scope of the mandate of many National Institutions is restricted for national security reasons. While this tendency is not inherently contrary to the Paris Principles, it is noted that consideration must be given to ensuring that such restriction is not unreasonably or arbitrarily applied and is exercised under due process”. It may be reasonable to place restrictions on who may access certain sensitive documents in cases where national security issues are demonstrably at stake, and where a judicial authority has proclaimed such to be the case, but wholesale exclusion of jurisdiction should be avoided.

#### **QUICK FACTS ABOUT NHRIS AND THE BUSINESS SECTOR**

In a recent survey, 13 out of 43 NHRIs reported that they lack legal mechanisms for complaints against companies.<sup>6</sup> This exclusion, in some cases, stems from the mistaken notion that human rights exclusively involve the relationship between the individual and the State.

States are responsible for ensuring that human rights standards are applied within the country in both the public and private spheres. They can fulfil this responsibility by taking measures, including legislative measures, to protect rights and to provide redress for abuses, and this should include the private sector or, at the very least, those organisations operating in the private sector that have a public function, such as banks, energy providers, etc. Giving national institutions authority over the private sector is one way of complying with this responsibility.

More discussion on the role of NHRIs and business is found in Chapter 3.

<sup>6</sup> OHCHR (2009). “Business and Human Rights: A Survey of NHRI Practices. Results from a survey distributed by the Office of the United Nations High Commissioner for Human Rights.”



CHECKLIST: BROAD MANDATE AND RESPONSIBILITIES<sup>7</sup>

PRINCIPLE	REQUIREMENTS	Y	N
<b>BROAD MANDATE</b> <i>(subject-matter jurisdiction)</i>	Competence is as broad as possible <i>(from most to least broad)</i>		
	■ Includes both CP and ESC Rights		
	■ Includes most CP and ESC Rights		
	■ Includes only CP Rights		
	■ Includes a subset of CP Rights		
<b>BROAD MANDATE</b> <i>(object matter jurisdiction)</i>	Competence is as broad as possible <i>(from most to least broad)</i>		
	■ Over State and Private Sector <i>(with public function), without restriction</i> <sup>8</sup>		
	■ Over State, without restriction		
	■ Partial <sup>9</sup> restriction with regard to sensitive State Organs <sup>10</sup>		
<b>BROAD MANDATE</b> <i>(time jurisdiction)</i>	Competence is as broad as possible <i>(from most to least broad)</i>		
	■ Can examine matter even if it predates institution		
	■ No limits providing matter occurred since set up of institution		
	■ Discretionary power to limit examination of 'old' cases		
<b>RESPONSIBILITY</b> <i>(TO PROVIDE ADVICE)</i>	■ Limits on capacity to examine matters that are 'old' set in law		
	Can provide advice on own initiative		
	■ On legislative or administrative provisions		
	■ On any violation the institution takes up		
	■ On the national situation generally or in specific		
	■ On situations of violations and government reactions to it		
	Can provide advice directly without referral		
Can publicise the advice without referral or prior approval			

<sup>7</sup> Note that text in italics are derived from, but not given in, the Paris Principles.

<sup>8</sup> "Without restriction" in this context means no restriction except as regards the courts and Parliament.

<sup>9</sup> "Partial" in this context means either that the restriction does not apply to all sensitive State organs, or that the restriction is not absolute.

<sup>10</sup> "Sensitive State organ" in this context means, the Army, the Police, Security Forces and the equivalent.

◀ continued

PRINCIPLE	REQUIREMENTS	Y	N
RESPONSIBILITIES (OTHER)	To encourage the harmonisation of national legislation and practices with international human rights instruments, as well as their effective implementation, <i>including by</i>		
	■ <i>Participating in reviews of legislation and policy at time of ratification</i>		
	■ <i>Regularly reviewing and providing formal comments on draft legislation and policy</i>		
	■ <i>Regularly reviewing and formally commenting on the human rights situation generally or with respect to key issues</i>		
	To encourage the ratification of international human rights instruments		
	To contribute to country human rights reports ( <i>from most to least broad</i> )		
	■ <i>Directly participates in drafting of complete report</i>		
	■ <i>Drafts section(s) on work of institution and reviews report</i>		
	■ <i>Drafts section(s) on work of institution</i>		
	■ <i>Reviews report in whole or in part</i>		
	To cooperate with international and regional human rights organs and other national institutions		
	To elaborate and take part in education and research programs in human rights, <i>including by:</i>		
	■ <i>Assisting in developing/reviewing curricula for schools</i>		
	■ <i>Assisting in training of Prison Guards, Police, Army and Security Forces</i>		
	To sensitise people on human rights through publicity, education, information and the use of press organs, <i>including by</i>		
	■ <i>Publishing an Annual Report</i>		
■ <i>Regularly reporting on important cases through the media</i>			
■ <i>Developing basic brochures on the institution</i>			

## Principle 2: Autonomy

The issue of autonomy is intrinsically linked to independence and is perhaps the most important of the principles elaborated in the Paris Principles; it is also arguably the most difficult and controversial. In the final analysis, a NHRI is a state-sponsored body in the sense that its existence depends on an act of the State and on state funding: it is therefore accountable to elected representatives or to the government in terms of reporting on its performance, on the one hand, but is autonomous and independent on the other.

Accountability to the State is generally achieved through annual reports and other types of reports filed with Ministers or, preferably, directly to Parliament.

Interference by government in the activities of NHRIs is unacceptable.

### > Example: ICC Comment on Interference by government

The ICC Sub-Committee on Accreditation's commented on Ireland's NHRI in November 2008: "IHRC should be able to independently conduct its affairs without undue interference from the Government. This could include having direct accountability to Parliament".

The dependence of NHRIs on government for funding may suggest that they cannot be truly autonomous. It is not unheard of for governments to restrict access to funding quietly – or to threaten to do so – when an NHRI is critical of the government's behaviour. More common is the unspoken pressure on a senior member whose career depends on the good will of the government.

Despite these realities, it is possible for a state-funded entity to exercise autonomy: the courts, for example, are autonomous even though their funding comes from State coffers. It is true that courts have a longer history, more structural guarantees of independence and are not administrative bodies, so there are important practical differences: nonetheless, the point here is that autonomy is possible.

An institution's level of autonomy must be considered in light of a number of structural and procedural factors that should be in place to ensure a high degree of operational independence for an institution. These are presented in the discussion below on "Independence" as well in the discussion of other principles that follow. (A Checklist on "Autonomy and Independence" follows the next section.)

### Principle 3: Independence

#### QUICK FACTS ABOUT NHRI INDEPENDENCE

More than 70% of NHRI respondents to a OHCHR survey considered their institution to be very independent in practical terms. While this is a positive indicator, a significant number of respondents also noted the influence of government departments or ministries over their budget allocation. As nearly half of the respondents in all regions (and slightly higher in Africa) indicated that their budget is insufficient, this administrative connection remains a problem area for many institutions.<sup>11</sup>



#### 10.1.3 Guaranteed by a constitution or legislation

The Paris Principles provide that an institution should have its "sphere of competence" set out in the constitutional provision or legislation that creates it and that it should have the authority to examine any human rights matter that is "within its jurisdiction".

There are several reasons why it is important for an institution's mandate to be set out in a constitution or in legislation: it enhances the institution's permanence

(since its mandate cannot be changed or withdrawn merely by executive order or, if there is a constitutional basis, even by law) and independence (since there is less fear of a changed or withdrawn mandate). Having a NHRI's mandate set out in legislation that has been approved by the nation's elected officials improves visibility and transparency. The public can refer to a text that sets out what that institution is meant to do, as well as what powers it has, and can measure an institution's performance against defined expectations.

While the Paris Principles do not specify a preference for a constitutional mandate, having a mandate based in a constitution strengthens the NHRI since it provides more permanence (a constitution is harder to change) and gives the institution a higher profile in law. That being said, a constitutional mandate should be supplemented with enabling legislation that sets out in greater detail an institution's responsibilities, powers and authorities.

#### 10.1.4 Independence in operation and in funding

Independence is both operational and financial. The truest test of independence is found in the actions of the institution: an institution should have the ability to conduct its day-to-day affairs independently from any outside influence. This means that the institution has the authority to draft its own rules of procedure which cannot be modified by an external authority. An institution's recommendations, reports or decisions should not be subject to an external authority's approval or require their prior review.

In terms of financial independence, the Paris Principles require that funding be sufficient to allow the NHRI to have its own premises and staff "in order to be independent of government". The constitutional provision or law that establishes an NHRI should give the institution a separate legal personality sufficient to allow it to make decisions and undertake responsibilities independently. Having the institution report directly to Parliament or to the Head of State can diminish perceived interference that might exist if the institution reported to a Ministry.

<sup>11</sup> OHCHR (2009). "Business and Human Rights: A Survey of NHRI Practices. Results from a survey distributed by the Office of the United Nations High Commissioner for Human Rights."

### 10.1.5 Independence through appointment and dismissal

#### QUICK FACTS ABOUT NHRI INDEPENDENCE THROUGH APPOINTMENTS

“Although most NHRIs have legal procedures for the selection and appointment of the members of their governing body, these procedures need to be strengthened in all regions to include the public advertisements of vacancies (although this was notably more common in the Americas); the independent scrutiny of candidates, and consultations with civil society. In Africa, in particular, clear legal procedures for the dismissal of members are also frequently lacking.”<sup>12</sup>

The terms and conditions that govern appointment and dismissal of members should be transparent, i.e. set out in the constitutional provision or law (or both) that establish the NHRI. They should include:

- method of appointment;
- criteria for appointment (professional qualifications, recognised competencies, personal history of integrity and independence, etc.);
- duration or term of appointment and possibility of reappointment (guaranteed, fixed-term appointments, which may be renewable); and
- dismissal process (only for wrongdoing of a serious nature, clearly inappropriate conduct, serious incapacity. Mechanisms should be independent of the Executive, such as a Committee of Senior Judges, a court or a vote of Parliament).

*Methods of Appointment:* The Paris Principles emphasize the importance of the selection process of members, but not the ideal or required process. The following practices should be considered as practices that promote transparency and pluralism:

- Explicitly including respect for pluralism and diversity as part of the selection criteria (see the next section);

- Involving Parliament in the formal selection process, by creating a short list of candidates, selecting candidates from a short list developed by the Executive, or formally ratifying decisions of the Executive; and
- Ensuring that social forces have a meaningful say in the process. This could be achieved through the establishment of a representative Committee of Experts to conduct the nomination and selection process. Alternatively, social forces could be consulted directly to participate in nomination or short-listing decisions, perhaps by a Parliamentary Committee.

One study has noted that procedures are more transparent if civil society representatives are involved and if there are clear rules:

*It would be advisable for each country to develop some transparent and widely known procedure for:*

- 1) *primary nomination of candidates with mandatory participation of various groups of civil society like trade unions and NGOs;*
- 2) *public scrutiny of candidates; and*
- 3) *competitive selection and approval of candidates by the parliament.*<sup>13</sup>

*Criteria for Appointment:* As noted in Chapter 7, the quality of members, leadership and staff are vital to the NHRIs' reputation and effectiveness. Transparent and merit-based procedures will likely result in independent and professional members who have the confidence of the communities they serve. Even if there is no requirement in the enabling law that members have human rights experience, this can be ensured by a transparent and engaged process of appointment.

Merit-based and equitable hiring practices are discussed in Chapter 8.

*Government representatives on National Institutions:* The ICC Sub-Committee has noted that the Paris Principles require that Government representatives on governing or advisory bodies of National Institutions not have decision making or voting capacity.<sup>14</sup>

<sup>12</sup> OHCHR (2009). “Business and Human Rights: A Survey of NHRI Practices. Results from a survey distributed by the Office of the United Nations High Commissioner for Human Rights.”

<sup>13</sup> Carver and Korotaev, “Assessing The Effectiveness of National Human Rights Institutions” 2007. Study Commissioned by the UNDP Regional Centre in Bratislava

<sup>14</sup> ICC Sub-Committee on Accreditation General Observations (Geneva, June 2009).

*Terms of Office:* It should be noted that the term of office of members should be long enough to support independence and effectiveness. Terms that are too short – two-years for example – may limit, or be seen as limiting – a NHRI's independence. Members may feel that their re-appointment is dependent on how acceptable they have been to the government of the day. Moreover, short terms of two years or less do not give members the time to both enunciate a vision and put it into effect and therefore may impact negatively on the NHRI's potential effectiveness.

All staff of the NHRI should ultimately report to and be accountable to the head of the NHRI, although day-to-day responsibilities may be delegated. There should be no possibility that senior staff can be appointed or dismissed, except through a decision of the head, preferably in consultation with all members. Doing otherwise would be to seriously compromise the independence of the institution.

#### QUICK FACTS ABOUT INDEPENDENCE, TERMS OF OFFICE AND DISMISSAL

An OHCHR survey shows that almost 80% of respondents indicated that the terms of their members were between 3 – 5 years, which is a reasonable period to ensure tenure of membership. Nevertheless, only just over 70% of respondents' founding laws state the grounds on which members may be dismissed and even fewer (just under 60%) included a procedure for the dismissal of members. As the ICC's General Observations further state that dismissal or forced resignation of a member may result in a review of the institution's accreditation, strengthening legal requirements for dismissal should be a priority



#### > Examples: Dismissal

Wrongdoing of a serious nature:

- E.g. Conviction for a criminal offence punishable by imprisonment (sometimes there is a requirement that the period of imprisonment be significant – minimum 1-year)

Inappropriate conduct and conflict of interest (for example, a NHRI member renders a decision in a case against a company owned by a close relative).

- Conduct that is contrary to the 'code of conduct' is established by the NHRI.
- Engaging in other paid employment, if the position is full time, or, if part time, activity that is incompatible with NHRI's work.
- Substantive activity in a political party.
- Supporting groups or positions that are clearly incompatible with the office, e.g., racist organizations, anti-immigrant policies, etc.
- Incapacity:
  - Mental incapacity as declared by a competent authority.
  - Physical infirmity that makes it impossible to undertake the duties of the job.
- Incompetence or failure to discharge the functions of the office, e.g., not attending commission meetings over a prolonged period.
- Failure to meet legislative conditions on vacating previous employment

#### > Examples: Processes for dismissal

- The House of Peoples and the House of Representatives debate the issues, hear from the individual involved and approve the action by a two third majority vote. Source: Law on the Human Rights Ombudsman of Bosnia and Herzegovina, article 12
- The Supreme Court enquires into an allegation of misdemeanour or incapacity and finds that it is proved. Source: The Protection of Human Rights Act (India), article 5
- The National Parliament establishes an ad hoc enquiry committee to examine a motion to dismiss a member; the findings of the ad hoc committee are communicated to, and may be appealed by, the NHRI to the Plenary; the Plenary takes the final decision and can dismiss only with 2/3rd majority vote. Source: Statute for the Ombudsman for Human Rights and Justice (Timor-Leste), article 21
- A committee is established by the Chief Justice and the President makes a determination based on the recommendation of this committee. (The process is similar to that applied for the removal of Court of Appeal Justices and High Court Justices.) Source: Art 146 of the Ghanaian Constitution.

### 10.1.6 Independence through privileges and immunities

The ICC Sub-committee has strongly recommended that provisions be included in national law to protect legal liability for actions undertaken in the official capacity of the NHRI.<sup>15</sup>

There are two types of immunity: the first is specifically meant to avoid situations where members are sued for slander or similar causes of action as a result of doing their job as required by the law. This immunity is limited to acts performed under the enabling law and it is lifted for offences conducted outside the scope of that authority.

The second is general immunity: The purpose of this latter kind is to protect NHRI members and staff from malicious accusations, and from using such accusations as a pretext to oust a member or harass a staff person. As a general rule, NHRI legislation provides for the first type of immunity. The second is generally taken into consideration indirectly through rigour in dismissal procedures that require some form of Parliamentary or judicial approval prior to dismissing a member for illegal conduct.

Staff discipline should be addressed through the human resources process.

> **Note:** Acts performed in an official capacity and in good faith

Acts performed in an official capacity are those that are related to the mandate and functions of the organisation, that are sanctioned or authorised by the organisation and/or for which the official had been empowered to perform.

A member of a NHRI would be saved from libel claims, for example, when coming to a recommendation or decision or voicing an opinion or view on a human rights matter even if it were proved to be false and/or to have been damaging.

An official with the NHRI would be allowed to seize documents pertinent to an enquiry with impunity when such seizure is authorised by the enabling law and is done in accordance to its rules of procedure.

Immunity does not extend to acts taken in bad faith or in abuse of process, for example, if the member voiced an opinion that he or she knew to be wrong or clearly unsupported, or if the official seized a document that he or she knew was not pertinent but wanted for reasons other than the enquiry, including personal gain.

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

<sup>15</sup> ICC Sub-Committee on Accreditation *General Observations* (Geneva, June 2009).

## CHECKLIST: AUTONOMY AND INDEPENDENCE

(Note that this checklist contains information on “Financial Autonomy” that is replicated later in this Chapter in the section on Principle 5: Financial Resources.)

PRINCIPLE	REQUIREMENTS	Y	N
<b>AUTONOMY &amp; INDEPENDENCE</b> ( <i>mandate</i> )	Mandate is set out in constitution or legislation		
	Mandate gives authority to promote and protect human rights		
<b>AUTONOMY &amp; INDEPENDENCE</b> ( <i>general jurisdiction</i> )	Competence is defined in legislation		
<b>AUTONOMY &amp; INDEPENDENCE</b> ( <i>Appointment Process</i> )	Appointment effected by official act		
	Appointment is for a specific duration, (but not so short – e.g., two-years – as to potentially effect independence and effectiveness)		
	Appointment may be renewable , so long as pluralism is assured.		
	<i>Appointment process, duration, renewability and criteria set out in legislation</i>		
	Appointment process supports pluralism and independence		
	■ <i>Nominations include input from civil society</i>		
	■ <i>Selection process involves Parliament</i>		
	■ <i>Criteria for selection includes demonstrated experience in human rights</i>		
<b>AUTONOMY &amp; INDEPENDENCE</b> ( <i>Dismissal Process</i> )	<i>Conditions for which a member may be dismissed are set out in legislation</i>		
	<i>Conditions relate to serious misconduct, inappropriate conduct, conflict of interest or incapacity only</i>		
	<i>Decision to dismiss requires approval preferably by autonomous body such as a panel of high court judges, at a minimum by 2/3rds vote of Parliament</i>		
<b>AUTONOMY &amp; INDEPENDENCE</b>	If Government Officials in membership, they have advisory capacity only		
	Institution reports directly to Parliament		
	Members have immunity for official acts		
	State funding is sufficient to allow for independent staff and separate premises		
	<i>State funding is sufficient to allow for core programming<sup>16</sup> in protection and promotion</i>		
	Funding not subject to financial control which might affect independence		
	<i>Budget drawn up by the institution</i>		
	Budget separate from any Department’s budget		
	<i>Institution has authority to defend budget requests directly before Parliament</i>		
	Budget are secure		
	■ <i>Not subject to arbitrary reduction in year for which it is approved</i>		
■ <i>Not subject to arbitrary reduction from one year to the next</i>			

<sup>16</sup> “Core programming” in this context means that the Institution has enough funds available to conduct investigations, carry out general outreach programming and publish an Annual Report.

◀ continued

PRINCIPLE	REQUIREMENTS	Y	N
<b>AUTONOMY &amp; INDEPENDENCE</b> <i>(In examination of Issues)</i>	The institution can consider any issue within its competence on its own initiative on the proposal of its member or any petitioner		
<b>AUTONOMY &amp; INDEPENDENCE</b> <i>(Meetings)</i>	The institution can let the public know of opinions or recommendations, including through the media, without higher approval		
	The institution meets regularly and in plenary		
	Special meetings can be convened as necessary		
<b>AUTONOMY &amp; INDEPENDENCE</b> <i>(In Organisational Structure)</i>	All members are officially convened for meetings		
	The institution can set up working groups (which may contain non-NHRI members)		
	The institution can set up regional or local offices		

## Principle 4: Pluralism

The ultimate purpose of pluralism is to ensure that the NHRI can establish 'effective cooperation' with other parts of government and society. Pluralism and diversity are important: they enhance an institution's independence, credibility and effectiveness; they increase the likelihood of cooperation and collaboration with other stakeholders, and they demonstrate that the institution itself takes equality seriously.

One easy and effective way of doing this is to ensure diversity in the institution's membership, i.e. through diversity in its Commissioners or senior office holders. Where this is not possible, institutions can achieve pluralism through the use of advisory councils and other bodies that ensure broad-based input into their operations. In all cases, though, every effort should be made to support diversity in the institution itself so that management and staff reflect the diversity of a given society.

The Paris Principles require that "the composition of the national institution and the appointment of its members ... be established according to a procedure which affords all necessary guarantees to ensure ... pluralist representation" of representatives of all social forces engaged in promoting and protecting human rights. While the list of social forces or social actors set forward in the Principles also include Government, the Principles also make it clear that any Government official who is a member may only act in an advisory capacity so as to remove any suggestion that the institution is not completely independent.

It is not necessary and may not be feasible in countries with highly diverse populations to have each sector of society represented. However, the NHRI's, overall structure and, in particular, the composition of its members, should facilitate cooperation and interaction with society as whole, and especially for vulnerable groups.

While this section focuses largely on pluralism in membership, it should be remembered that pluralism can also be reflected in the work of the NHRI, for example: choice of trainers and participants for workshops, etc. and the thematic areas chosen for focus in research projects, seminars and in public education materials.

**Appointed members:** The ICC Sub-Committee notes the critical importance of the selection and appointment process of the governing body in ensuring the pluralism and independence of the NHRI. In particular, the Sub-Committee emphasises the following factors:

- a) A transparent process
- b) Broad consultation throughout the selection and appointment process
- c) Advertising vacancies broadly
- d) Maximizing the number of potential candidates from a wide range of societal groups
- e) Selecting members to serve in their own individual capacity rather than on behalf of the organisation they represent.<sup>17</sup>

While plurality is best demonstrated when an institution's

<sup>17</sup> ICC Sub-Committee on Accreditation General Observations (Geneva, June 2009).



membership visibly reflects the social forces at play in the State, this does not mean that all groups must be represented at any one time, but it should mean that, over time, groups feel that they are included. There are some basic factors that should be present as a matter of course:

- Plurality is easiest to achieve if an institution has a number of members;
- Institutions that have only one head or senior member, or very few members, can achieve plurality through the use of advisory councils or an equivalent mechanism;
- Women are always represented within the membership of an institution, including in senior positions;
- Where the structure of the organisation provides for

only one member, consideration should be given to appointing women on an alternating basis; and

- In all circumstances, NHRI should collaborate and cooperate with other stakeholders, and doing so is itself a test of commitment to pluralism.

**Staff:** Plurality and diversity will be enhanced if staff composition also reflects societal realities. This means that diversity is reflected across all parts of the organization and all levels of seniority.

Such pluralism can serve to enhance and strengthen the visibility of an institution's commitment to full participation, as well as positively influence programme credibility and effectiveness.

## CHECKLIST: PLURALISM

PRINCIPLE	REQUIREMENTS	Y	N
PLURALISM (membership and staff composition)	Member Composition demonstrates pluralism ( <i>High to Lower</i> )		
	■ Includes representatives of most social forces including NGOs, trade unions or professional associations		
	■ Includes representatives of most vulnerable groups ( <i>ethnic, religious minorities, persons with disabilities, etc.</i> )		
	■ Single member, with representative consultative boards or committees, or similar structural mechanisms to facilitate and ensure pluralistic engagement		
	■ Single member		
	Member composition demonstrates gender balance		
PLURALISM (Consultation and Cooperation)	Staff composition is broadly representative and gender balanced		
	The institution consults with other bodies responsible for promoting and protecting human rights		
	The institution consults with NGOs working in human rights or related fields		
	The institution carries out joint programming with NGOs working in human rights or related fields especially in awareness raising and education		

## Principle 5: Adequate Resources

Financial autonomy is crucial. An institution with little or no control over its finances or its spending cannot be independent or autonomous. The source and nature of funding for an institution should be identified in the enabling law, which should guarantee, at a minimum, sufficient funding for the institution's basic functions.

In some countries, an institution prepares its own budget, which it then submits directly to Parliament where the budget is defended. Parliament is then responsible for reviewing and approving the budgetary allotment as well as reviewing and evaluating financial reports submitted to justify the use of those funds. In other countries, it is the Minister with substantive responsibility for the NHRI that puts forward the budget. The first option, direct responsibility to Parliament, is the preferable scenario since it enhances independence.

The funding for an NHRI should also be 'secure'; that is, it should not be altered arbitrarily during the period for which it was approved. This prevents a Government from penalising a NHRI for taking a decision or action that is critical of the government. Obviously, Parliament is the final authority on spending matters and, when faced with difficult financial circumstances, has both the duty and responsibility to oversee spending and to limit State spending if necessary. In such circumstances, at a

minimum, a budget reduction should not be out of proportion to other core functions, especially in the area of rule of law.

## Principle 6: Adequate Powers of Investigation

The Paris Principles provide that an NHRI can consider any question, so long as it falls within its area of competence, whether it is submitted by Government or "on the proposal of its members or of any petitioner". NHRIs do not need the concurrence of a higher authority when deciding to consider a question. Furthermore, an NHRI operating in conformity with the Paris Principles will also have the authority to "hear any person and obtain any information and any document necessary" to examine such questions.

The Principle that provides that an institution can consider questions on the proposal of a member or petitioner suggests that an institution should have the authority to hear from a victim, representatives of the victim or from third parties, and that it should have the authority to carry out own-motion investigations.

It is possible to have a Paris Principle-compliant NHRI that does not have the power to accept individual complaints. This is different from the general requirement in the Principles that NHRIs should have the power to protect

## CHECKLIST: FINANCIAL AUTONOMY

PRINCIPLE	REQUIREMENTS	Y	N
FINANCIAL AUTONOMY (INDEPENDENCE)	State funding is sufficient to allow for independent staff and separate premises		
	<i>State funding is sufficient to allow for core programming<sup>18</sup> in protection and promotion</i>		
	Funding not subject to financial control which might affect independence		
	<i>Budget drawn up by the institution</i>		
	Budget separate from any Department's budget		
	<i>Institution has authority to defend budget requests directly before Parliament</i>		
	Budget are secure		
	<ul style="list-style-type: none"> <li>■ Not subject to arbitrary reduction in year for which it is approved</li> <li>■ Not subject to arbitrary reduction from one year to the next</li> </ul>		

<sup>18</sup> "Core programming" in this context means that the Institution has enough funds available to conduct investigations, carry out general outreach programming and publish an Annual Report.

rights. The authority to accept, and investigate specific complaints from individuals or groups is a specific and additional power. It is worth setting out the Methods of Operation section of the Paris Principles in this regard:

“Within the framework of its operation, the national institution **shall**:

- a) Freely **consider any question** 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 document** necessary for **assessing** situations falling within its competence”.

(Emphasis added).

The Principles provide that an institution shall consider questions on the proposal of a member or any petitioner.<sup>19</sup> This suggests that an institution should have the authority to inquire into matters raised by a victim, representatives of the victim, or from third parties, and that it should have the authority to carry out own-motion inquiries. (The additional Principles make clear that the authorities set out in the main body of the document also apply equally to institutions with quasi-jurisdictional authority.)

The Principles also state that NHRIs shall have the authority to “hear any person and obtain any information and any document necessary for assessing<sup>20</sup>” the

situation, presumably including when conducting inquiries or investigations. The authority to ‘hear any person’ implies that NHRIs should have powers to compel a person to give evidence or testimony and to protect individuals from potential retaliation for having done so. The authority to “obtain any information and any document” also implies that the institution has the authority to compel the production of documents and is able to use or access search and seizure powers, as well as to apply penalties to those refusing to produce, for destroying or for falsifying information and documents.

That being said, not all NHRIs have the specific authority in law to investigate individual complaints and this is not considered as making them non-compliant with the Paris Principles, so long as they do have the authority to inquire into matters or issues of a general nature.

It is also true that not all NHRIs, including those with the authority to investigate individual cases, have the legal authorities and powers described above. This, too, does not mean that they do not comply with the Paris Principles. However, it is considered a ‘best practice’ that such powers are available to a NHRI since their absence reduces the NHRI’s capacity to fulfil its mandate. Where they are available, it would be highly preferable if the founding law specifically provided the legal authority for this so that there is no doubt or confusion on the matter.

## CHECKLIST: INVESTIGATION

PRINCIPLE	REQUIREMENTS	Y	N
INVESTIGATION (Examination of Issues)	The institution can consider any issue within its competence on its own initiative on the proposal of its member or any petitioner		
	The institution can hear any person or obtain and information or document necessary to carry out its work		
	<i>The right to hear any person and obtain any document is enforceable in law</i>		
	<i>The right to enter any premises to further an investigation is set out in law</i>		
	<i>Obstruction in obtaining, or denial of, access to a person, document or premises is punishable in law</i>		
	<i>The institution has the legal authority to enter and monitor any place of detention</i>		
	<i>The institution can enter the place of detention without notice</i>		

<sup>19</sup> See “Methods of Operation”, (a)

<sup>20</sup> See “Methods of Operation”, (b)

## 10.2 Measuring Compliance: The Accreditation Process and UNCTs

### 10.2.1 What is Accreditation?

Accreditation is the official recognition by the Bureau of the International Coordinating Committee of National Institutions (ICC Bureau) that a national institution meets or continues to comply fully with the Paris Principles. National Institutions may be afforded the following accreditation Statuses:

- A Voting Member:** full compliance with the Paris Principles.
- B Observer Member:** not fully in compliance with the Paris Principles or has not yet submitted sufficient documentation to make that determination.
- C Non-member:** is non-compliant with the Paris Principles.

**A-Status institutions** can participate fully in the work and meetings of National Institutions internationally and regionally as a voting member, and they can hold office in the ICC Bureau or any Sub-Committee established by the Bureau. A-status institutions are also able to participate in HRC sessions and take the floor under any agenda item, submit documentation and take separate seating.

**B-Status institutions** may participate as observers in the work and meetings of national institutions nationally and regionally. They cannot vote or hold office within the ICC Bureau or its Sub-Committees. They are not given NHRI badges, nor may they take the floor under agenda items and submit documentation in the HRC.

**C-Status institutions** have no rights or privileges with the Network or in UN rights fora. They may, at the invitation of the Chairperson of the Bureau, attend meetings of the ICC.

### ABOUT THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS (ICC)

#### The ICC

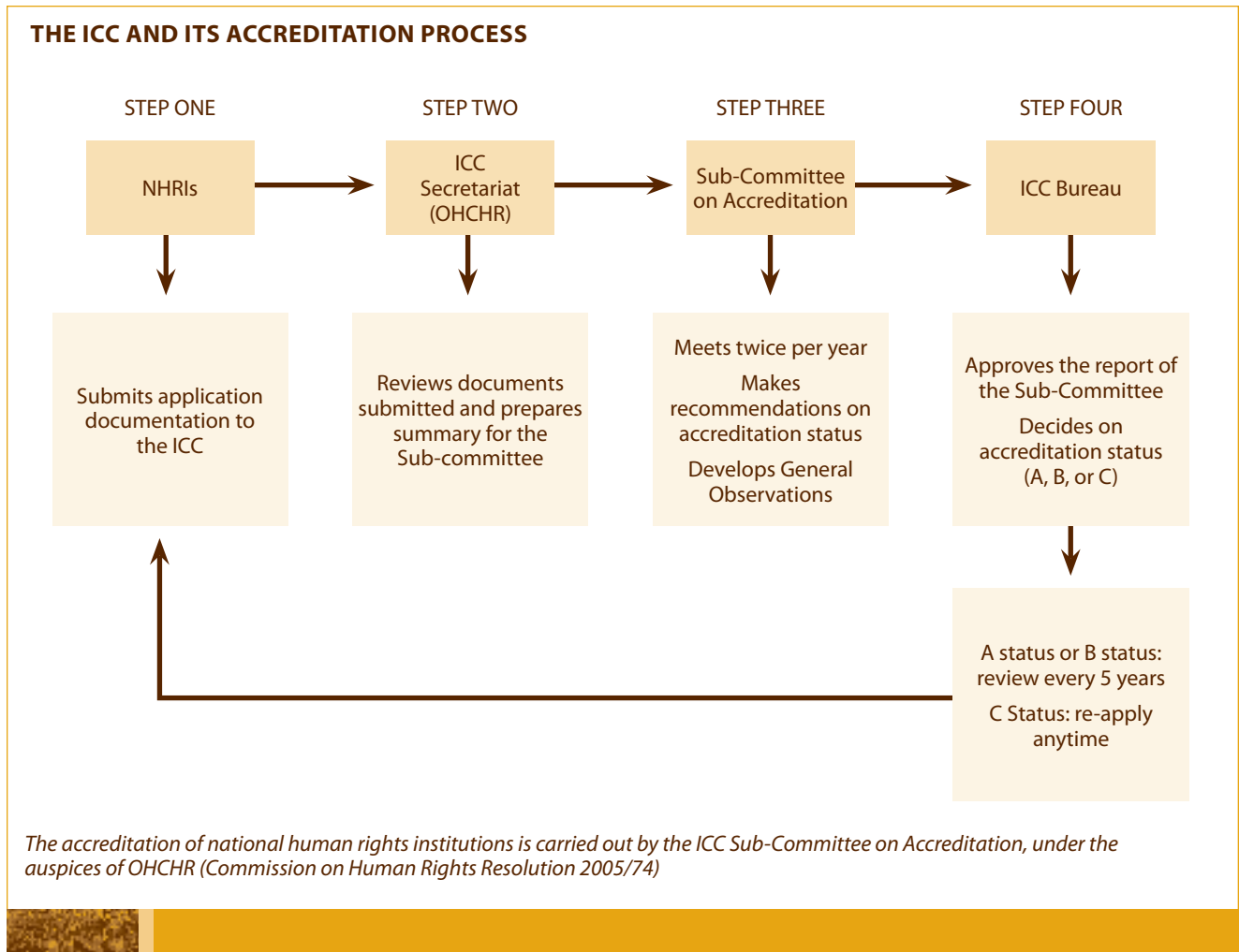
At the 1993 International Conference held in Tunis, NHRIs established the **International Coordinating Committee** of National Institutions for the Promotion and Protection of Human Rights (ICC). It was aimed at coordinating the activities of the NHRI network. In 2008, the ICC was incorporated under Swiss law, with a Bureau of 16 voting members representing the four regions of the ICC. The ICC also adopted the ICC Statute as a basis for the incorporation.

#### The ICC Sub-Committee on Accreditation

The **Sub Committee on Accreditation (SCA)** of the ICC reviews and analyzes accreditation applications and makes recommendations to ICC Bureau members on compliance with the Paris Principles. The SCA is composed of one "A status" accredited NHRI for each of the four regional groupings; namely Africa, the Americas, the Asia Pacific, and Europe. Members of the SCA are appointed by the regional groupings for a renewable term of three years. OHCHR participates in the SCA as a permanent observer and as ICC secretariat.

For an overview of the process currently utilized by the SCA of the ICC to accredit national human rights institutions in compliance with the Paris Principles, and its centrality to the UN, see the *Annual Reports of The UN High Commissioner For Human Rights and Reports of The Office of the High Commissioner and The Secretary-General*, A/HRC/7/70 18 January 2008; 26 January 2009 A/HRC/10/55.

An NHRI can receive any of the following 3 statuses; (1) "A status": compliant with the Paris Principles; (2) "B status"; observer status - not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and (3) "C status"; not compliant with the Paris Principles. As at June 2009, there were 66 NHRIs accredited with A Status by the ICC, i.e. in compliance with the Paris Principles. Summaries of NHRIs that been accredited are available through [www.nhri.net](http://www.nhri.net).



### 10.2.2 Why is Accreditation Important?

Accreditation is a mechanism to assess whether another human rights institution complies fully with the Paris Principles. As will be discussed later, this assessment comprises both a ‘paper’ review and a ‘substantive’ assessment of compliance with the Paris Principles. A-Status accreditation confers international acceptance of the *bona fides* of an institution, an acceptance that would not exist otherwise, and opens the door for that institution to participate in the work and decision-making of the ICC, as well as the work of the UN Human Rights Council and other UN bodies. For example,

“NHRIs accredited by ICC as being in compliance with the Paris Principles may participate and address the Council in an independent capacity... It is important that the principle that only those national institutions deemed to be in compliance with the Paris Principles are able to address the Council be upheld.”<sup>21</sup>

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

<sup>21</sup> Report of the Secretary-General on national institutions for the promotion and protection of human rights: Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council. A/HRC/4/91, 8 February 2007 at par. 15.

### 10.2.3 Who Confers Accreditation?

Accreditation is conferred by the Bureau of the International Coordinating Committee of National Institutions, an elected body that coordinates the meetings and activity of national institutions in the international arena. The ICC Bureau is composed of sixteen (16) members, four (4) NHRIs from each geographical grouping established by the International Network – Africa, the Americas, Asia-Pacific and Europe. Representatives on the ICC Bureau must be A-Status institutions and are elected, including the Chairperson and Secretary, by voting members of the ICC, that is, A-Status national institutions.

While the ICC Bureau makes the final decision on accreditation, a Sub-Committee on Accreditation established by the ICC carries out the actual work of reviewing accreditation credentials and providing reasons for accreditation decisions. The Sub-Committee is composed of one representative of each geographical grouping, each with A-Status accreditation. Other members select the Chair of the Committee on a rotational basis.

The National Institutions and Regional Mechanisms Section (NIRM Section) of the OHCHR supports the work of the ICC Bureau and the Sub-Committee on Accreditation generally, and specifically, with regard to accreditation. In particular, it develops a summary of the key issues concerning an applicant institution's compliance with the Paris Principles that is used by the Sub-Committee in coming to accreditation recommendations. These summaries are posted on the NHRI website at the time that the decision on accreditation decision is being taken. (Visit [www.nhri.net](http://www.nhri.net) to view these.) The annual SG reports to the HRC on the accreditation process of the ICC are a further source of information. (For the latest report please consult A/HRC/10/55.)

### 10.2.4 How are Accreditation Decisions Taken?

An applicant institution is required to complete a template providing detail on its legislative mandate, its operational methods, and its programme implementation. Guidelines have been developed to provide information on how an applicant institution should complete the template. (These may be found at [www.nhri.net](http://www.nhri.net)) The applicant institution is also required to submit supporting documentation, including a copy of its enabling legislation and its most recent Annual Report, or equivalent. The NIRM Section of the OHCHR, based on a review of this documentation, and information from

other sources, prepares a critical summary highlighting any problematic areas. This critical summary tests both the NHRI's 'paper' compliance with the Paris Principles as well as the degree to which the NHRI has demonstrated substantively its independence and effectiveness. The summary is provided to the applicant institution, which may provide additional information, documentation or written commentary to respond to the problems noted in it. The Sub-Committee may also receive and consider submissions by NGOs and UNCTs, OHCHR field presences, or other stakeholders, in support of or opposing an application. These will also be shared with the applicant institution, which may comment on them. Finally, the applicant institution is contacted by telephone if the Sub-committee believes that it needs to clarify any matter relevant to the application. Where necessary, the institution will be asked to provide further written submission in this regard.

In coming to a recommendation, with reasons, as to the accreditation status that will be granted, the Sub-Committee on Accreditation considers a number of sources: the original documentation, the summary and any additional materials provided by the applicant institution or others (NGOs, UNCT's etc.), as well as its own General Observations, developed over time. The recommendations issued are specific and in some cases time-bound. They focus on remedial action so as to ensure compliance with the Paris Principles.

#### > **Guidance Note To UNCTS: The Accreditation Process**

The recommendations made by the ICC Sub-committee define a NHRI's deficiencies, as regards compliance with the Paris Principles, in a comprehensive manner. Assuming that the UNCT determines that continued engagement with the NHRI is appropriate (see separate guidance note following Sub-section 10.2.5 for further detail on this) the recommendations provide a programme of action for that continued engagement.

In accordance with the ICC Statute, where the Sub-Committee on Accreditation comes to an accreditation recommendation, it shall first be forwarded to the applicant NHRI. An applicant can challenge a recommendation by submitting a written challenge to the ICC Chairperson, through the ICC Secretariat, within 28 days of receipt. Thereafter, the recommendation will be forwarded to the members of the ICC Bureau for decision. If a challenge has been received from the applicant, the challenge, together with all relevant material received in connection with both the

application and the challenge, will also be forwarded to the members of the ICC Bureau. Any member of the ICC Bureau who disagrees with the recommendation should, within 20 days of its receipt, notify the Chair of the Sub-Committee and the ICC Secretariat. The ICC Secretariat will promptly notify all ICC Bureau members of the objection raised and will provide all necessary information to clarify that objection. If, within 20 days of receipt of this information, at least four members of the ICC Bureau, coming from not less than two regional groups, notify the ICC Secretariat that they hold a similar objection, the recommendation shall be referred to the next ICC Bureau meeting for decision. If at least four members coming from two or more regional groups do not raise objection to the recommendation within 20 days of its receipt, the recommendation shall be deemed to be approved by the ICC Bureau (the decision of the ICC Bureau on accreditation is final).

The key to A-Status accreditation is to demonstrate the applicant institution's overall compliance with the Paris Principles, both in deed and in fact. It is therefore important for applicant institutions to understand those Principles. As mentioned above, the Sub-Committee issues General Observations (available at [www.nhri.net](http://www.nhri.net)) offer guidance on how it may interpret a particular Principle.

### 10.2.5 When are Decisions on Accreditation Taken?

The Sub-Committee and ICC Bureau can take accreditation decisions in the following situations:

**Initial Accreditation:** This decision is taken when a national institution initially applies for membership in the ICC. Since the applicant institution must submit its Annual Report or equivalent as part of the background documentation with its application, and, as it must also be capable of demonstrating that it is actually functioning effectively, an initial accreditation decision is not taken unless the institution has existed for a year or more. Note that institutions denied full accreditation (A-Status) may re-apply at any time. In the case of a re-application, the same process is followed as with institutions applying for the first time, however, particular attention is paid to the areas of non-compliance that were noted in the initial application. While it has never happened, if a NHRI were to withdraw an application for initial accreditation, it would be as if an application had never been submitted and the institution would have no status within the ICC.

**“Periodic” Re-accreditation:** All A-Status NHRIs, as well as all B-Status NHRIs that have not re-applied for reconsideration of their status, are subject to re-accreditation every five (5) years. This aims to ensure that NHRIs maintain and improve their compliance with the Paris Principles. A NHRI that fails to demonstrate its ongoing compliance with the Paris Principles may have its status downgraded (following the opportunity to provide additional evidence within 12 months).

NHRIs must provide necessary documents to support their re-accreditation applications. Unless compelling and exceptional circumstances exist, an NHRI that fails to provide the required documents will be suspended until it does so. A suspended NHRI loses all memberships privileges during that period. An NHRI that does not submit its re-accreditation application within one-year of being suspended will lapse completely. An NHRI whose membership has lapsed or been downgraded can re-apply for membership.

In exceptional, justifiable circumstances, and at the request of the applicant institution, re-accreditation can be delayed. For example, the Consultative Commission of France was scheduled for re-accreditation at the time when its enabling legislation was being amended. The process was delayed until the amendments were enacted. While the situation has not yet come up, if an A-Status NHRI were to withdraw its re-accreditation application without justification, it would likely be treated as if it had failed to apply for re-accreditation and be suspended. A B-Status NHRI in the same circumstances would likely retain its status.

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

(See also: the separate discussion on the ICC Bureau’s “Early Warning Mechanism”. While this mechanism is not directly related to a review prompted by “changed circumstances”, in effect, ‘early warning’ actions aim to prevent ‘changed circumstances’ from occurring by acting quickly and decisively.)

All summaries, accreditation decisions and SCA recommendations are available on-line through [www.nhri.net](http://www.nhri.net) or through OHCHR. Recommendations by the SCA are an important program of action for UNCTs in engaging with and on NHRIs.

### 10.2.6 Early Warning

A national institution may come under threat including of the following type<sup>22</sup>:

- Impediments placed on the institution concerning required support to ensure their very existence and effective functioning of their mandates including:
  - Financial cuts
  - Restriction of mandate
  - Creation of additional/competing institutions which are more government oriented
  - Intimidation and/or threats of death or violence against members of staff of the institution
  - Removal of commissioners

#### Guidance to UNCTs: Early warning

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

UNCT should be quick to bring potential problematic areas to the attention of the OHCHR NIRM Section and, through them, to the ICC.

Sometimes, ‘early warning’ will involve contemplated actions of the government, such as:

- Suggestions that the enabling legislation should be amended in a way that might impact on a national institution’s compliance with the Paris Principles;
- Suggestions that the nominating process for Commissioners should be less transparent or should otherwise be carried out in ways that might

lead to suspicions about the independence of the Commissioners eventually selected (it is possible that these concerns could come to light during the nomination process itself); and

- Suggestion that Commissioners or key officials should be removed from the Commission because of actions taken that might be viewed as contrary to government policy.

In consultation with the NIRM Section and through them the ICC Bureau, UNCT might interact directly with the government to attempt to address the challenges, inter alia, by pointing to the negative reaction that this might engender internationally and nationally. They could also coordinate or facilitate interventions by other actors, including representatives of national institutions, to reinforce the imperative that the institution has the powers, authorities, independence and other attributes needed to comply fully with the Paris Principles.

The ICC has developed guidelines on what action it should take in the event of such threats, all directed at removing the threat.

In some ways, the early warning mechanism is meant to prevent the circumstances in which the institution operates to down-grade to the extent that the institution is less than fully effective. The early warning mechanism, therefore, may be seen as a step to prevent ‘changed circumstances’ that might lead to a review of accreditation.

## 10.3 Non-Compliant NHRIs<sup>23</sup>

### 10.3.1 Risk Management: Working with Non-compliant or Downgraded NHRI

By definition, an institution that is not accorded A-Status, or that has been downgraded from that status, does not meet all the attributes – such as independence, broad scope of authority, pluralism, and effectiveness – set out in the Paris Principles. It is not unusual, therefore, to hear questions from civil society, government or even the UN itself about whether it is “worthwhile” to engage with NHRIs that fall short of these international standards.

In these cases, careful attention needs to be paid as to the legal and practical aspects of the NHRI, thus avoiding situations in which OHCHR may inadvertently legitimize an NHRI that is neither effective nor independent.

<sup>22</sup> These examples come from the “Early Warning Mechanism” adopted by the ICC at its 15<sup>th</sup> session at Seoul, republic of Korea, in September 2004.

<sup>23</sup> This section is drawn in part from: OHCHR, *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*, September 2007.



There may be situations where, as a last resort, the UN decides to withdraw its support. This may occur where, for example, the NHRI has become politicised (e.g., where the NHRI has begun to speak “for” or act as an apologist for the government, or worse, covers up human rights abuses and acts as a shield for violations). Such decisions should be taken in consultation with the OHCHR and other UN agencies working with the NHRIs. Targets set by the ICC Sub-Committee on Accreditation, should be taken into consideration, where appropriate.

Nonetheless, working with NHRIs along the continuum of compliance should be the norm. In many circumstances, the failures of the institution are not of its own making. NHRIs cannot ‘write’ their own legislation, nor do they control amendments that may be brought forward to alter its operations. A government might establish a large number of institutions, ombudsmen, and other entities that might have overlapping mandates, with no clear single entity that can be called *the* NHRI for the country. In most cases, therefore, it is important to engage or continue to engage with the institution, as well as the government, with a clear focus on helping and supporting the institution perform its functions, as well as moving it towards greater compliance with the Paris Principles.

When an institution itself shows a lack of commitment to human rights principles, a stronger argument can be made to avoid engagement. Care should be exercised even in this circumstance; however, as there may be merit in supporting the institution so that it can become more effective when there is new leadership.

There are a number of considerations, as set out in Guidance Notes to UNCTs contained at the end of this chapter that may influence the UNCT in determining whether support is warranted. Each circumstance needs to be considered carefully, with the support and assistance of the National Institutions Unit of the OHCHR.

- > **Tool:** Using the OHCHR *Guidance Note: National Human Rights Institutions and the Work of OHCHR at Headquarters and Field Level*, the actual performance of the NHRI may be assessed.
- > **See also Chapter 2:** Checklist for assessing the involvement of NHRIs in areas of work of relevance to OHCHR).

### 10.3.2 Support Strategies to Improve/ Upgrade Status

The gaps and areas for improvement that are identified through the above processes may be used by UN staff, whether at the OHCHR National Institutions Unit, in the field, or in cooperation, as benchmarks for improvement. It is important to note that when the ICC Sub-Committee on Accreditation has assessed the NHRI for its compliance with the Paris Principles, the current practice is to ensure that specific recommendations for compliance with the Paris Principles are made to each institution. These recommendations should be a point of departure for follow-up work to strengthen the NHRI.

The following summary points might be useful for those who are providing recommendations to senior officials in the UN system on this question.

#### Underlying considerations

- UN Country Teams should recognise that they are needed to support, establish and/or strengthen governance systems, including national institutions and this, of course, includes not only the countries as a whole, but also the institutions in them.
- The political and social context may be difficult: a distinction needs to be made between the country’s governance problems and the NHRI itself. Usually, it is both.
- **Managing expectations:** Although NHRIs are supposed to be independent of Government and capable of criticising it, NHRIs are rarely much stronger than the human rights culture in which they operate.
- It is not reasonable to expect a NHRI – especially a new one – to emerge fully formed with the capacity to combat long-standing cultures of impunity, corruption and human rights violations.
- NHRI officials will typically engage in areas where there is a chance of success, usually where the NHRI feels its can make the most difference. The issues chosen may not always be the issues that the UN wants to see addressed, but the choices may nonetheless be defensible;
- **Severe pressure on NHRI officials and staff:** As noted earlier in the section on Early Warnings, political instability and weak law enforcement cultures mean that personal threats against NHRI workers and officials are prevalent in certain countries. According to the OHCHR *Guidance Note: National Human Rights*

*Institutions and the Work of OHCHR at Headquarters and Field Level*, “whenever threats are issued against an NHRI or its members, OHCHR staff or the field presence are encouraged to:

- Report these threats to OHCHR HQ and discuss appropriate follow-up action, including public expressions of support which would raise the visibility of the NHRI at the national level and offer some protection;
  - Seek assistance from the ICC for NHRIs in terms of early warning or preventive action;
  - Inform, and possibly involve relevant special procedure mandate holders;
  - Inform and possibly involve relevant treaty bodies when discussing the State party report;
  - Make sure the High Commissioner uses every opportunity to address these threats through public or discreet communications with the national Authorities; and
  - The Resident Representative or Head of the Human Rights Section at least should also be made aware of the threats.
- UN Country Teams need to be sensitive to the daily realities and pressures under which NHRIs operate. This is especially true in post-conflict contexts.
  - **Acknowledge a dynamic and progressive approach:** Where a country assistance framework includes a NHRI, then a progressive approach will work towards compliance with the Paris Principles: the only way to improve may be to engage.
  - NHRIs whose status is downgraded. (e.g., from A to B) by the ICC may need more, not less help; bearing in mind however, the issues discussed in the section on risk.
  - There may be situations where, as a last resort, the UN decides to withdraw support. This may occur where, for example, the NHRI has become politicised (e.g., where the NHRI has begun to speak “for” or act as an apologist for the government, or worse, covers up human rights abuses and acts as a shield for violations). Such decisions should be taken in consultation with the OHCHR and other UN agencies working with the NHRIs. Targets set by the ICC Sub-Committee on Accreditation, should be taken into consideration, where appropriate.

#### > **Guidance Notes to UNCT:**

1. UNCT officials could inform States who are considering establishing NHRIs that the credibility of those institutions will be tested by the ICC Bureau at the time that the institution requests membership in the International Coordinating Committee of National Institutions. The importance of complying with the Paris Principles is not merely a ‘good practice’ or a symbolic measure; failure to comply has tangible consequences. Those that do not achieve A-Status accreditation will be recognised both internationally and nationally as being less than fully credible, no matter the protestations of the national government.
2. Since compliance with the Paris Principles is the key to accreditation, UNCT members must be able to provide advice on how the Principles are to be interpreted. This may pose certain challenges since the Principles are not always clear; nor is there a single manner in which to satisfy them. In fact, often reference must be made to ‘best practice’, or at least “good practice”, when interpreting how, for example, the requirement to have ‘as broad a mandate as possible’ is to be applied. The section of this Chapter that deals with the Paris Principles provides guidance in this area, as will the General Comments of the Sub-Committee on Accreditation.
3. It would be prudent to request information directly from the NI Section of the OHCHR when issues are unclear.
4. The OHCHR NIRM Section uses its own information channels to look behind the formal documentation submitted by a national institution applying for initial accreditation status. Information that the UNCT has on the work of such institutions, their degree of independence, their pluralism, their interaction with NGOs, etc. will help the NI Unit develop its summary for the Sub-Committee on Accreditation.
5. A decision to continue supporting a national institution that has been given a less than full membership status by the ICC Bureau must be taken based on the facts at hand. The following considerations may be pertinent:
  - a. Has the institution been given a B-Status or a C-Status accreditation?

- i. Generally, an institution that receives B-Status accreditation may be reasonably close to being fully accredited. Since the Sub-Committee on Accreditation will cite the specific deficiencies with regard to complying with the Paris Principles, those reasons form a template for further developmental assistance to the institution. The immediate goal would be to take the steps required to ensure that the institution responds to the failings that have been noted. When these require legislative reform, the UNCT could work with the NHRI, government and other stakeholders in seeking appropriate legislative amendments. It would be important to involve the NI Unit in this process to ensure that the amendments brought are sufficient to meet the problems noted and do not inadvertently create other problems.
  - ii. A C-Status accreditation suggests that some considerable distance must be travelled before the institution can be considered in compliance with the Paris Principles or that there is a fundamental deficiency. Reference to the written reasons for the Sub-Committee's recommendation may provide some indication as to both the needs of the institution and the likelihood that any success can be achieved.
- b. Is the institution active and persistent in pursuing changes to achieve full compliance?
- i. A national institution cannot enact its own legislation. It depends on the good will of the political authorities to ensure that its legislative mandate is appropriate. That being said, the institution need not remain complacent in the face of lack of political will. It can engage in a variety of activities to push for such changes, including in collaboration with NGOs and other key stakeholders. National institutions can also seek other ways to overcome legislative deficiencies. If an appointment process is not transparent or consultative, a national institution might consider undertaking its own consultative process in advance of scheduled re-appointment process and 'offer' suggestions to the government based on this process. National institutions that take action that demonstrate their own commitment for improvement may warrant continued support.
- c. Is the political situation likely to remain adverse to the establishment or strengthening of a national institution that conforms fully to the Paris Principles?
- i. Political situations change. Where there is support for national institution renewal within opposition party ranks, or even within the current regime, there may be a rationale for maintaining support for a deficient institution in the hopes that when political change does happen there is a human rights mechanism in place that can be strengthened. Even a deficient institution, especially if it demonstrates a commitment to work to the limits of the authorities it does have, will have accumulated experience and know-how that will be valuable to a new, strengthened version. It may be, as well, that the limits to which an administration will go are elastic and that incremental strengthening is possible even if getting to the final goal immediately is not.
- d. Might the overall impact of the institution, despite its weaknesses, result in a net improvement to the human rights situation?
- i. It is said that 'the best is the enemy of the good'. There may be occasions when the impact of a deficient institution, even if limited, marks an improvement on a bad human rights situation. In such circumstances, a hard-headed calculation might be necessary to determine whether continued assistance is warranted because the prospects of having no institution are worse than having a deficient one.
- e. Are there other human rights agencies that, if supported, might achieve greater short, medium or long-term impacts?
- i. If there are there other players in the field that can achieve the same or better results than a deficient institution then it may be appropriate to support those agencies, barring any of the over-arching considerations described above.
- Where a determination to continue to support a NHRI is made, the recommendations made by the ICC Sub-committee on Accreditation provide a comprehensive road map for assistance, as regards to bringing the NHRI into compliance with the Paris Principles.

6. The ICC Chairperson or any member of the Sub-Committee on Accreditation can cause a review of an institution's accreditation status in the event that there are "changed circumstances". While it is not possible to define all potential circumstances that might lead to a review, the Re-accreditation procedures adopted by the ICC Bureau at its 17<sup>th</sup> Session list the following:
- a. Fundamental limitations to the working climate of the NHRI as reflected by a national repressive regime and/or state coups;
  - b. Adoption of new legal framework, amendment of existing framework of NHRI or legal challenges to elements thereof;
  - c. Discrepancies between the legal framework and the actual implementation, including in relation to appointment procedures of NHRI members; and
  - d. Repeated or gross biased statements by NHRIs in favour of particular interests or against specific groups which violate the values contained in the Paris Principles.

"Changed circumstances" need not, however, be quite so dramatic to warrant the attention, and concern, of UNCT members. Sudden and unexpected removal or resignation of members or senior staff might trigger concerns, as might failures of the institution, such as:

- e. Decisions or policy positions advanced by the institution that seem contrary to human rights principle and might display a lack of independence on the part of the institution;
- f. A failure on the part of the institution to comment or take a position on an important human rights issue;
- g. A failure to engage sufficiently with other stakeholders, especially in the NGO sector; and
- h. Irresponsible spending habits that suggests that Commissioners are more concerned with their own well-being than human rights.

While any one such action or failure may be insufficient to cause a review of accreditation, it may be indicative that there are greater problems within the organisation. These too might be communicated to the NIRM Section. Either the Section or an appropriate regional or international interlocutor may be able to influence improved performance or identify the need for other action, including a review of accreditation.

7. A decision following a NHRI review or re-accreditation resulting in down-grading of an institution's accreditation status leads to the question of whether such institutions should receive or continue to receive developmental support from UNCT. The factors that were listed above, regarding support for institutions denied voting status upon their initial application, apply here as well. In addition, there should be a consideration of the role the institution played in advance of the down-grading. By definition, a review results from 'changed circumstances'. An institution is obliged to inform the ICC Bureau of such circumstances. An institution that did not do so has failed in its responsibilities; it is also likely that it remained silent despite the looming problem, since changed circumstances rarely happen without warning. This would suggest that the institution is either insufficiently independent and/or insufficiently proactive to be effective.
8. Similarly, except when the re-accreditation adjusts an earlier faulty initial decision, down-grading after a re-accreditation process suggests that the institution failed to note that a change had occurred that might affect its status and/or failed to inform the ICC Bureau of relevant changes that might influence its accreditation status. These lead to the same concerns as expressed above with regard to institutions that have undergone a review.

## KEY MESSAGES

- The Paris Principles, while not legally binding, define the basic standards for assessing the credibility of a NHRI. The Principles are broadly accepted as the appropriate test for determining an institution's independence and effectiveness.
- The overarching goals of the Paris Principles are for NHRIs to meet the minimum requirements to **protect** and **promote** human rights. The six main criteria of the Principles set out what a fully functioning NHRI should meet to be successful.
- The six criteria of the Paris Principles provide that NHRIs should have a broad mandate, autonomy, independence, pluralism, adequate resources, and adequate powers of investigation.
- Non-compliance with the Paris Principles does not signify that the UN should refuse to work with an institution; rather, it is a signal that activities should be directed toward achieving compliance.
- The Bureau of the International Coordinating Committee of National Institutions will give an institution accreditation when it meets the criteria of the Paris Principles. Accreditation is conferred as either A-status (compliance), B-status (insufficient, or unknown compliance), or C-status (no compliance).
- An institution granted A-Status accreditation is accepted as credible by the international community. An A-Status opens the door for that institution to participate in decision-making of the ICC as well as to work with the UN Human Rights Council and other UN bodies.
- Initial accreditation occurs when a national institution applies for membership in the ICC. All A-status NHRIs, as well as B-Status NHRIs that have not re-applied for reconsideration of their status, are subject to re-accreditation every five years to ensure that institutions maintain and improve their compliance with the Paris Principles.
- Accreditation may also be reviewed when there are “changed circumstances” such as amendments to the enabling legislation.
- “Early warning” means that there is a threat to the effectiveness of an NHRI based on good field intelligence. The “early warning” mechanism can be seen as a step to prevent “changed circumstances” that might lead to a review of accreditation.
- While it is sometimes necessary for the UN to withdraw support from non-compliant NHRIs, working with NHRIs along the continuum of compliance with the Paris Principles should be the norm as it is often the case that failures of an institution are not of its own making. Efforts should be made for such institutions to become more effective.

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## ANNEX 1: CHECKLIST COMPILATION FOR ASSESSING COMPLIANCE WITH THE PARIS PRINCIPLES

The following checklist – a compilation of the checklists set out in this Chapter for assessing conformity with individual Principles contained in the Paris Principles – is included here; since having the all the information in one document may prove useful. The Checklist compilation identifies the Principles that are enunciated in the Paris Principles and the minimum requirements that must be met to satisfy those Principles. Where the Principle or requirement, or any part thereof, is not directly citable in the text of the Paris Principles, they are set out in italics.

It is impossible to signify by a simple ‘yes’ or ‘no’ response to whether certain Principles are being met, for example, the Principle requiring institutions to have “a broad

mandate”. The Checklist attempts to develop a hierarchy of possibilities in such cases so that an assessment can be made of the degree that an institution meets the standard.

This Checklist is not a definitive method for assessing the capacity or strength of an institution. That would require a more focused examination both on what the institution has done with the mandate it has and how stakeholders perceive it. In particular, an examination of an institution’s responsibilities should not end with whether it *can* carry out a given function. It is much more important that the capacity to do something is actually carrying out the work in a way that demonstrates the institution’s fundamental independence and professional competence. In this context, the Checklist identifies certain areas of activity that may be considered central to NHRI responsibilities. This is meant merely to provide a better assessment of how well the institution is doing in meeting its responsibilities.

### CHECKLIST FOR ASSESSING COMPLIANCE WITH THE PARIS PRINCIPLES

PRINCIPLE	REQUIREMENTS	Y	N
<b>COMPETENCE</b> <i>(mandate)</i>	Mandate is set out in constitution or legislation		
	Mandate gives authority to promote and protect human rights		
<b>COMPETENCE</b> <i>(general jurisdiction)</i>	Competence is defined in legislation		
<b>COMPETENCE</b> <i>(subject-matter jurisdiction)</i>	Competence is as broad as possible <i>(from most to least broad)</i>		
	■ Includes both CP and ESC Rights		
	■ Includes most CP and ESC Rights		
	■ Includes only CP Rights		
	■ Includes a subset of CP Rights		
<b>COMPETENCE</b> <i>(object matter jurisdiction)</i>	Competence is as broad as possible <i>(from most to least broad)</i>		
	■ Over State and Private Sector <i>(with public function), without restriction</i> <sup>24</sup>		
	■ Over State, without restriction		
	■ Partial <sup>25</sup> restriction with regard to sensitive State Organs <sup>26</sup>		
	■ Total restrictions with regard to sensitive State Organs		

<sup>24</sup> “Without restriction” in this context means no restriction except as regards the courts and Parliament.

<sup>25</sup> “Partial” in this context means either that the restriction does not apply to all sensitive State Organs or that the restriction is not absolute.

<sup>26</sup> “Sensitive State organ” in this context means, the Army, the Police, Security Forces and the equivalent.

◀ continued

PRINCIPLE	REQUIREMENTS	Y	N
<b>COMPETENCE</b> <i>(time jurisdiction)</i>	Competence is as broad as possible <i>(from most to least broad)</i>		
	■ <i>Can examine matter even if it predates institution</i>		
	■ <i>No limits providing matter occurred since set up of institution</i>		
	■ <i>Discretionary power to limit examination of 'old' cases</i>		
	■ <i>Limits on capacity to examine matters that are 'old' set in law</i>		
<b>RESPONSIBILITY</b> <i>(TO PROVIDE ADVICE)</i>	Can provide advice on own initiative		
	■ <i>On legislative or administrative provisions</i>		
	■ <i>On any violation the institution takes up</i>		
	■ <i>On the national situation generally or in specific</i>		
	■ <i>On situations of violations and government reactions to it</i>		
	Can provide advice directly without referral		
<b>RESPONSIBILITIES</b> <i>(OTHER)</i>	To encourage the harmonisation of national legislation and practices with international human rights instruments, as well as their effective implementation, <i>including by</i>		
	■ <i>Participating in reviews of legislation and policy at time of ratification</i>		
	■ <i>Regularly reviewing and providing formal comments on draft legislation and policy</i>		
	■ <i>Regularly reviewing and formally commenting on the human rights situation generally or with respect to key issues</i>		
	To encourage the ratification of international human rights instruments		
	To contribute to country human rights reports <i>(from most to least broad)</i>		
	■ <i>Directly participates in drafting of complete report</i>		
	■ <i>Drafts section(s) on work of institution and reviews report</i>		
	■ <i>Drafts section(s) on work of institution</i>		
	■ <i>Reviews report in whole or in part</i>		
	To cooperate with international and regional human rights organs and other national institutions		
	To elaborate and take part in education and research programs in human rights, <i>including by:</i>		
	■ <i>Assisting in developing/reviewing curricula for schools</i>		
	■ <i>Assisting in training of Prison Guards, Police, Army and Security Forces</i>		
	To sensitise people on human rights through publicity, education, information and the use of press organs, <i>including by</i>		
	■ <i>Publishing an Annual Report</i>		
■ <i>Regularly reporting on important cases through the media</i>			
■ <i>Developing basic brochures on the institution</i>			





◀ continued

PRINCIPLE	REQUIREMENTS	Y	N
<b>COMPOSITION</b> (GENERAL PLURALISM)	Member Composition demonstrates pluralism ( <i>High to Lower</i> )		
	■ Includes representatives of most social forces including NGOs, trade unions or professional associations		
	■ <i>Includes representatives of most vulnerable groups (ethnic, religious minorities, persons with disabilities, etc.)</i>		
	■ <i>Single member, with representative consultative boards or committees, or similar structural mechanisms to facilitate and ensure pluralistic engagement</i>		
	■ <i>Single member</i>		
	<i>Member composition demonstrates gender balance</i>		
	<i>Staff composition is broadly representative and gender balanced</i>		
<b>COMPOSITION</b> (APPOINTMENT PROCESS)	Appointment effected by official act		
	Appointment is for a specific duration, (but not too short – e.g., two-years - as to potentially effect independence and effectiveness)		
	Appointment may be renewable so long as pluralism is assured		
	<i>Appointment process, duration, renewability and criteria set out in legislation</i>		
	Appointment process supports pluralism and independence		
	■ <i>Nominations include input from civil society</i>		
	■ <i>Selection process involves Parliament</i>		
■ <i>Criteria for selection includes demonstrated experience in human rights</i>			
<b>COMPOSITION</b> (Dismissal Process)	<i>Conditions for which a member may be dismissed are set out in legislation</i>		
	<i>Conditions relate to serious misconduct, inappropriate conduct, conflict of interest or incapacity only</i>		
	<i>Decision to dismiss requires approval preferably by autonomous body such as a panel of high court judges, at a minimum by 2/3rds vote of Parliament</i>		
<b>INDEPENDENCE</b>	If Government Officials in membership, they have advisory capacity only		
	Institution reports directly to Parliament		
	Members have immunity for official acts		
	State funding is sufficient to allow for independent staff and separate premises		
	<i>State funding is sufficient to allow for core programming<sup>27</sup> in protection and promotion</i>		
	Funding not subject to financial control which might affect independence		
	<i>Budget drawn up by the institution</i>		
	Budget separate from any Department's budget		
	<i>Institution has authority to defend budget requests directly before Parliament</i>		
	Budget are secure		
	■ <i>Not subject to arbitrary reduction in year for which it is approved</i>		
	■ <i>Not subject to arbitrary reduction from one year to the next</i>		

<sup>27</sup> "Core programming" in this context means that the Institution has enough funds available to conduct investigations, carry out general outreach programming and publish an Annual Report.

◀ continued

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

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#### General resources:

- Asia Pacific Human Rights Network
- Commonwealth Human Rights Initiative
- Inter-American Institute for Human Rights
- National Human Rights Institutions Forum





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