



NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE ADMINISTRATION OF JUSTICE

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The following are the main conclusions of the discussions held by Chairs, Members and representatives of twenty-two national human rights institutions from Africa, Asia and the Pacific, Europe and Latin America hosted by the Danish Institute for Human Rights and the Office of the United Nations High Commissioner for Human Rights. All present highlighted the centrality, and importance, of implementing the Paris Principles (Principles relating to the Status of National Institutions)¹ and their reference to the quasi-jurisdictional powers of national institutions. Topics discussed included the relationship between national human rights institutions and the judiciary, judicial enforcement mechanisms and national institutions, direct powers of intervention and national institutions, the complaints handling powers of national institutions including civil cases and military and security force cases, and case handling systems. The discussions which led to these will be reflected in a conference proceedings paper.

MAIN POINTS REGARDING THE ADMINISTRATION OF JUSTICE

- ❖ It is important to take into consideration the political and social context within which a national institution exists in the determination and exercise of its powers and the most appropriate approach which it must decide to adopt. Nevertheless, the sharing of good practices among national institutions enables them to explore possibilities of strengthening their effectiveness in the promotion and protection of human rights.
- ❖ It is important to understand the respective roles and responsibilities of the national institution and judiciary. This would include a respect for the separation of powers and a clear demarcation of roles and responsibilities of these institutions.
- ❖ The independence of the national institution and the judiciary is essential for the effective discharge of their respective mandates.
- ❖ Public awareness of the mandate and jurisdiction of the national institution is critical. National institutions should use the media to assist in such awareness raising.
- ❖ National institutions can facilitate a greater understanding within the judiciary of international human rights norms to ensure their application in national jurisprudence. Awareness raising with the judiciary is often more effective where it is supported by its higher levels; the materials and discussions use a

¹ General Assembly resolution 48/134 of 20 December 1993, annex.

language which the judiciary can relate to; and resource persons undertaking awareness raising initiatives include representatives of the judiciary.

- ❖ The use of judgements of the courts in the daily work in the protection of human rights by national institutions has proven to be of benefit to the national institution and a strengthening of human rights jurisprudence.
- ❖ National institutions should meet occasionally with senior judicial officers and other key actors in the legal system to strengthen their relations.
- ❖ It is important for a national institution to work with the various judicial enforcement mechanisms, taking into consideration domestic laws, to enforce determinations of the national institutions.
- ❖ National institutions should work to ensure transparent, non-discriminatory treatment in prosecutorial procedures to ensure the effective discharge of justice and the avoidance of impunity as per the relevant United Nations principles.
- ❖ Examples have shown that the courts have broadly interpreted national institutions' promotion mandates to include the power to directly access the courts.
- ❖ Powers of judicial intervention have proven particularly useful in jurisdictions where the courts are not easily accessible to a vast majority of victims of human rights violations.
- ❖ Access to the courts by national institutions may be achieved, as appropriate, by:
 - Empowering the national institution to initiate contempt proceedings in court for failure or refusal to comply with a subpoena issued by the institution.
 - According *locus standi* to the national institution as a complainant in its own right.
 - Empowering the national institution to have an *amicus curiae* role. National institutions are well placed to gather information and be at the fore of human rights jurisprudence and hence their powers of intervention as *amicus curiae* can be of help to the courts.
 - Granting a power of intervention in relevant cases
 - Empowering the national institution to provide assistance (in a manner which it chooses as appropriate) to individuals seeking redress for grievances through the courts.
 - Empowering the national institution to refer matters for prosecution or action by other public agencies.
 - Granting the national institution power to apply to the court to enforce its decisions or recommendations (where they are of a binding nature).
- ❖ Experience has demonstrated that it is important that cases presented are solid and well formulated which in turn garners respect with the judiciary.

- ❖ National institutions have been able to draw attention to legal systemic issues such as delays in the administration of justice, access to justice including cost factors, and the effective provision of legal aid.
- ❖ In those countries coming out of conflict national institutions are well placed to assist in the establishment of a system for the administration of justice.
- ❖ National institutions should avail themselves of the various possibilities to seek and provide remedies through the international and regional level human rights protection systems (for example the Commission on Human Rights, Sub-Commission for Human Rights, United Nations Human Rights Treaty Bodies, African, American and European human rights systems).
- ❖ A number of administrative and legal remedies may be sought, or provided by, national institutions. The provision of compensation has been demonstrative as one effective approach.
- ❖ National institutions should reflect on ways of addressing human rights issues relating to the military, law enforcement and other security forces, including those of the private sector.
- ❖ National institutions have found effective the provision of training programmes for military and law enforcement personnel in ensuring respect for human rights in accordance with United Nations human rights standards. The practice of such forces receiving rights-based training prior to undertaking their official duties has proven a good practice.
- ❖ National institutions can facilitate the development of rights based codes of conduct and standing orders for law enforcement and military officials.
- ❖ Some national institutions have the power to subpoena police and military officials which has proven important to strengthen the protection of human rights.
- ❖ National institutions should explore the necessity and appropriate ways of intervention in relation to military courts and military tribunals.
- ❖ National institutions should review the possibility of providing advice concerning witness protection programmes.

MAIN POINTS REGARDING COMPLAINTS HANDLING

- ❖ National institutions should draft their own internal procedures to deal with complaints. They should be clear, consistent and transparent.
- ❖ Criteria concerning admissibility and assessing applications should be developed by national institutions. It is important that the public understand

the mandate of the national institution and what matters it can or cannot treat, and what assistance it can or cannot provide.

- ❖ The national institution should ensure that its offices and complaints handling officers are accessible and the public (citizens and non-citizens) knows how to access the complaints handling system. This information needs to be regularly communicated to the public.
- ❖ Concerning human rights issues of citizens outside the territory of their state it is important for national institutions to work with, *inter alia*, consular offices and partner institutions in the host state to deal with the human rights issues of such persons.
- ❖ National institutions should explore appropriate ways of intervention in matters concerning the private sector which are public interest.
- ❖ Senior leadership within the national institution should support the complaints handling process adding weight to this role within the institution.
- ❖ The receipt and handling of complaints should be seen as part of a process and the national institution should ensure to see the complaint through to resolution or dismissal, whichever is appropriate, and effective follow up.
- ❖ Mediation and conciliation and other alternative dispute resolution mechanisms should be used wherever possible prior to undertaking other possible remedial action.
- ❖ National institutions should consider the holding of public inquiries where there arises evidence of systemic issues through the complaints handling process or other sources of information.
- ❖ An effective complaints handling data base, which is user friendly, cost effective and secure, can be of use to disaggregate data for effective analysis and assist the national institution to determine systemic trends. It can also be an important tool to track follow up to recommendations and reports including those in relation to treaty bodies.
- ❖ Criteria to assess indicators of success and results in relation to the role of national institutions regarding complaints handling should be developed.
- ❖ It is important that authorities direct public sector officials to comply with all decisions of national institutions, including the provision of evidence regarding complaints.
- ❖ It is important for national institutions to publicize the important decisions made by them and seek the cooperation of the media in this regard.
- ❖ Where there exist other competent bodies to receive and handle complaints the national institution should encourage, and even strengthen them, to deal with such complaints through a rights based approach.