
**ADVANCE EDITED
VERSION**

Distr.
GENERAL

E/CN.4/2004/101
28 January 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 18 (b) of the provisional agenda

**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS**

National institutions for the promotion and protection of human rights

Report of the Secretary-General*

* In accordance with General Assembly resolution 53/208B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

Summary

The present report, covering activities for the period November 2002 to 19 December 2003, contains information on the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to establish and strengthen national institutions, the measures taken by Governments and national institutions in this regard and cooperation between national institutions and international mechanisms to promote and protect human rights. Information regarding the work of national institutions in respect of specific thematic issues is also included. Additional information on assistance provided to national institutions can be found in the reports on activities of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights (E/CN.4/2004/53 and Add.1, and E/CN.4/2004/99).

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1	5
I. OHCHR AND NATIONAL INSTITUTIONS	2 - 24	5
A. Advisory services	2 - 4	5
B. Support to international initiatives	5 - 10	5
C. Support to regional initiatives	11 - 24	7
1. The Americas and the Caribbean	11 - 14	7
2. Africa	15 - 18	7
3. Asia and the Pacific	19 - 21	8
4. Europe	22 - 24	9
II. COOPERATION BETWEEN HUMAN RIGHTS TREATY BODIES, SPECIAL MECHANISMS OF THE COMMISSION ON HUMAN RIGHTS AND NATIONAL INSTITUTIONS	25 - 27	10
III. COOPERATION BETWEEN OHCHR, UNITED NATIONS AGENCIES AND PROGRAMMES AND INTERNATIONAL AND REGIONAL ORGANIZATIONS	28 - 31	11
IV. NATIONAL HUMAN RIGHTS INSTITUTIONS AND THEMATIC ISSUES	32 - 39	11
A. Promotion and protection of economic, social and cultural rights	32	11
B. Rights of persons with disabilities	33	11
C. Racism and racial discrimination	34 - 35	12
D. HIV/AIDS	36	12
E. Reproductive rights	37	12

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
F. Prevention of torture	38	13
G. Administration of justice	39	13
V. THE PARIS PRINCIPLES	40 - 42	13
VI. CONCLUSIONS	43 - 45	14

Annexes

I. NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE ADMINISTRATION OF JUSTICE	15
II. THE PARIS PRINCIPLES: A REFLECTION	19

Introduction

1. The present report has been prepared pursuant to paragraph 18 of Commission on Human Rights resolution 2003/76 in which the Commission requested the Secretary-General to report to it at its sixtieth session on the implementation of the resolution. The present report is submitted in accordance with that request.

I. OHCHR AND NATIONAL INSTITUTIONS

A. Advisory services

2. The activities of OHCHR have been undertaken with the support of the National Institutions Team (“the Team”) within the Activities and Programmes Branch. At their request, practical advice is given to Governments on an appropriate constitutional or legislative framework for any new national institutions and on the nature, functions, powers and responsibilities of such institutions. Increasingly advice is being provided to OHCHR colleagues concerning national institutions and their work on particular thematic issues. National institutions are seen not only as institutions to which advice may be provided, but also as bodies that can impart knowledge, including to the United Nations.

3. Since March 2003, OHCHR has provided advice on constitutional provisions or enabling legislation relating to national institutions to Afghanistan, Armenia, Côte d’Ivoire, the Democratic Republic of the Congo, Japan, Jordan, Serbia and Montenegro, Sierra Leone, Slovenia, Sudan, Qatar, the former Yugoslav Republic of Macedonia, Timor-Leste and the United Kingdom of Great Britain and Northern Ireland. Egypt received information to guide it in the establishment of an institution that would conform to the Paris Principles. Advisory missions were undertaken to Afghanistan, Jordan, Norway, Slovenia and Sri Lanka and to the Occupied Palestinian Territories.

4. During the period covered, OHCHR has been in contact with over 70 national institutions through the provision of advice and information on activities and issues which might assist them in participating in various forums. This is an increase of at least 20 institutions when compared with the previous report to the Commission (E/CN.4/2003/110). A number of these initiatives are highlighted below. Similarly, the Team provided advice to its various regional representatives, who in turn were able to address a number of specific issues concerning national institutions within their region. Other initiatives are described in the reports of the special procedures of the Commission and country reports, as well as the Secretary-General’s report on technical cooperation (E/CN.4/2004/99).

B. Support to international initiatives

1. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

5. OHCHR continues to act as the secretariat of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), providing it with relevant information and facilitating the holding of its meetings. The Committee generally

meets during the annual sessions of the Commission on Human Rights and during the reporting period the Committee met once, holding its twelfth session during the fifty-ninth session of the Commission. The ICC Credentials Committee has continued to act in an independent capacity (its work facilitated by the Team) to the extent that its resources permit. To date, the Committee has accredited 46 national institutions. The National Institutions Team, in consultation with ICC, is considering ways to strengthen the work of this important committee.

2. Seventh International Conference of National Human Rights Institutions

6. The seventh International Conference of National Human Rights Institutions is due to be held in 2004 in the Republic of Korea. The Team has been working with the Chair of ICC as well as the National Human Rights Commission of the Republic of Korea to seek an appropriate venue and ensure that appropriate financial support for the Conference is found. It will be the next in the series of major biennial conferences of national institutions and will again focus on thematic issues of particular concern to them. The Conference will be held under the auspices of OHCHR; the programme will be defined jointly by ICC, the host institution and OHCHR.

3. Information and education activities

7. The Team maintains, with the support of the Danish Institute for Human Rights, a web site on national human rights institutions (www.nhri.net). The site is linked to all existing national institution's web sites and to the OHCHR main web page. The web site has been updated to include more information on thematic issues of interest to national institutions. A database of comparative analyses is also under preparation. Many of the documents dealing with the events noted in the present report may be found on this web site.

8. OHCHR has entered into partnership with the South Africa-United Kingdom-based non-governmental organization (NGO) Fahamu to provide distance training to African national institutions. The pilot training programme, which includes a CD-ROM-based package as well as a seminar to share experiences and best practices and gain further knowledge, will bring together national institutions from Africa. The initiative, developed in 2003, is expected to commence in February 2004.

4. Commission on Human Rights and Sub-Commission for the Promotion and Protection of Human Rights

9. At its fifty-fifth session, the Sub-Commission decided that national institutions could, for the first time, be accredited to the Sub-Commission in their own right and speak on any substantive agenda item of the Sub-Commission.

10. At its previous session, the Sub-Commission, in resolution 2002/16, recommended that OHCHR be requested to ask for additional pamphlets, for inclusion in the *United Nations Guide for Minorities*, in particular on the work of national institutions regarding the promotion and protection of the rights of persons belonging to minorities. The Team has conducted research to prepare such a pamphlet. On 14 May 2003, the Team briefed the Working Group on Minorities concerning the pamphlet and possible areas of cooperation between national institutions and the Working Group. The Working Group, upon concluding its ninth session, recommended that Governments consider establishing national institutions comprising persons of independence and

ability and enabling such institutions to investigate and grant appropriate relief for violations of minority rights by all State agencies, including the police, armed police and paramilitary forces, and also by non-State actors. The Working Group decided that at its next session it would discuss the role of national institutions in protecting minority rights. The Working Group invited OHCHR to provide it with information on the relevant guidelines and practices of national institutions in relation to minority issues at its tenth session (see E/CN.4/Sub.2/2003/19).

C. Support to regional initiatives

1. The Americas and the Caribbean

Network of National Human Rights Institutions of the Americas

11. OHCHR continued to work towards the strengthening of the Network of National Human Rights Institutions of the Americas established in 2000. It provided support to the Network's Second General Assembly held in San José, hosted by the Defensor de los Habitantes of Costa Rica in March 2003. The Network now has 13 member national institutions from Argentina, Bolivia, Canada, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru and Venezuela. The Ombudsman offices of the Caribbean participate actively in the Network as observers and therefore benefit from support to the Network.

12. The National Human Rights Commission of Mexico is the Network's ad interim secretariat and hence OHCHR's principal interlocutor regarding the Network's development. The Coordinating Committee of the Network is composed of the national institutions of Canada, Colombia, Costa Rica and Mexico.

13. In addition to supporting the General Assembly, OHCHR supported the holding of discussions in relation to disability rights and the drafting of a new international convention concerning the rights and dignity of persons with disabilities, held jointly with the General Assembly, on 27 and 28 March 2003. OHCHR supported the Workshop on Security and Human Rights held in Cartagena, Colombia on 2 and 3 September. The OHCHR focal point on terrorism participated in the workshop and will provide the necessary follow-up. The Network held its Governing Body meeting on 2 July 2003, in Mexico, to discuss its programme of action and fund-raising strategy.

Ibero-American Federation of Ombudsman

14. The Seventh Annual Congress of the Ibero-American Federation of Ombudsman was held in Panama City from 18 to 21 November 2003. The two principal themes discussed related to transparency and democracy, and the role of the ombudsman in strengthening the international human rights system.

2. Africa

African Secretariat of National Human Rights Institutions

15. The African Secretariat of National Human Rights Institutions had received financial support in order to recruit an executive director for the secretariat. The recruitment process had lasted a considerable period of time, ending with the post being converted into that of project

officer. The individual who had been recruited has since left the secretariat and subsequently been replaced. OHCHR is encouraging the African Coordinating Group of National Institutions to develop a work plan and programme of action to energize the nascent secretariat. Owing to the lack of adequate staffing within the secretariat, funds that had been put aside to undertake specific activities were not utilized. OHCHR stands ready to support the secretariat, within available resources.

16. The Team, in cooperation with the Uganda Human Rights Commission, organized a workshop on the rights and dignity of persons with disabilities for African national institutions in Kampala in June 2003. The workshop adopted recommendations which formed part of the documentation and information presented to the Ad Hoc Committee to consider proposals on a Comprehensive and Integral International Convention on Promotion and Protection of the Rights and Dignity of Persons with Disabilities (hereinafter "The Ad Hoc Committee").

Enhancing national capacities for the promotion and protection of human rights in the Portuguese-speaking African countries

17. The Workshop on Enhancing National Capacities for the Promotion and Protection of Human Rights in Portuguese-speaking African Countries was held in Maputo from 27 to 29 January 2003. The workshop, organized by OHCHR in collaboration with the Government of Mozambique and the United Nations Country Team, brought together 36 participants from Government, civil society and the United Nations in Angola, Cape Verde, Guinea-Bissau, Mozambique and Sao Tome and Principe. This was the first workshop for the lusophone countries of Africa where the theme "National human rights institutions, their role, the Paris Principles and guidelines for their establishment and functioning" was discussed.

Training workshop on the implementation of human rights instruments in Southern Africa, Mbabane, 9-13 June

18. As a follow-up to previous assistance given in the Southern Africa region, it was agreed among the national partners that a cluster workshop would be organized for six or seven countries in the region which share a common language and concerns. Most countries in the region requested that the OHCHR regional office organize a training workshop to strengthen capacities of government officials in charge of the design and enforcement of laws, human rights implementation mechanisms, as well as monitoring and reporting to treaty bodies. One of the focus areas for the workshop was the role of OHCHR and how it provides support to States and national human rights institutions under its technical assistance programme. The Team Leader of the Team addressed participants on the functions and role of national institutions as well as on human rights action plans.

3. Asia and the Pacific

Eleventh Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian-Pacific Region

19. OHCHR participated in and supported the involvement of national institutions in the eleventh Workshop on Regional Cooperation for the Promotion and Protection of Human Rights

in the Asian-Pacific Region held in Islamabad, from 25 to 27 February 2003. Prior to the official meeting on the Framework for Regional Technical Cooperation Programme in the Asian and the Pacific Region, national institutions and civil society met to discuss the Framework and future activities within the region. The workshop welcomed the further strengthening of national institutions for the promotion and protection of human rights in many countries of the region and reaffirmed that independent national human rights institutions should be established following an appropriate and inclusive process of consultation and that the institution should be consistent with the Paris Principles.

Eighth annual meeting of the Asia-Pacific Forum of National Human Rights Institutions

20. The eighth annual meeting of the Asia-Pacific Forum of National Human Rights Institutions, scheduled to take place in September 2003, was postponed. OHCHR has provided financial support for this meeting, which has been rescheduled for February 2004 in Nepal.

Workshop on human rights investigation techniques

21. OHCHR supported the holding of the first in-country training workshop on human rights investigations techniques in Sri Lanka. The five-day workshop, convened by the Asia-Pacific Forum of National Human Rights Institutions from 8 to 12 November 2003, was intended to provide a core professional development programme in order to address systematically the specific training needs of investigations staff within the Human Rights Commission of Sri Lanka (HRCSL). Thirty-four HRCSL staff members as well as representatives of local NGOs and other relevant organizations participated. The training programme and materials had been developed and implemented in close cooperation with HRCSL to ensure that the content and style of training met specific needs and operational requirements. The workshop was held at the request of member States of the Asian-Pacific region which, at the conclusion of the tenth Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian-Pacific Region, had called on OHCHR to continue developing and implementing training programmes on investigation techniques among other subjects.

4. Europe

Cooperation with the Council of Europe

22. OHCHR has established closer linkages with the Office of the Human Rights Commissioner of the Council of Europe, which is the focal point for the Council's work on national institutions. This included consultations with the Council in September 2003 and a joint mission to Slovenia in October 2003 to provide advice to the Human Rights Ombudsman of that country. The Team and the Council have exchanged information about various national institutions within Europe. Such cooperation could be enhanced with the strengthening of the Team.

Cooperation with the British Council

23. The Team collaborated with the British Council, the Asia-Pacific Forum and the host institution, the National Human Rights Commission of India, in the holding of the workshop

entitled "Promoting the rights of people with disabilities: towards a United Nations convention". The meeting, held in Delhi, from 26 to 29 May 2003, brought together representatives of the national institutions of Afghanistan, Australia, Fiji, Ghana, India, the Islamic Republic of Iran, the Republic of Korea, Malawi, Malaysia, Mauritius, Mongolia, Nepal, New Zealand, Nigeria, Northern Ireland, the Philippines, South Africa, Sri Lanka, Thailand and Uganda. The workshop was financed by the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland and OHCHR. Participants discussed, inter alia: (a) country papers on the impact of national legislation and administrative practice; (b) the role of national institutions in promoting the rights of persons with disabilities; (c) "mainstreaming disability" - experiences of United Nations conventions; (d) existing United Nations instruments relevant to disability; (e) international monitoring mechanisms and complaints procedures; (f) the nature and key elements of the proposed new convention on disability - perceptions of national institutions and NGOs, and (f) partnership strategies for action in the lead-up to the new United Nations convention. The conclusions of the seminar were provided to the Ad Hoc Committee.

24. OHCHR addressed participants at the British Council seminar "National human rights institutions; effective or just existing" held in Belfast, United Kingdom, from 26 to 30 October 2003. The seminar brought together representatives of national institutions and experts from around the world to discuss their experiences of how to measure the effectiveness of national institutions.

II. COOPERATION BETWEEN HUMAN RIGHTS TREATY BODIES, SPECIAL MECHANISMS OF THE COMMISSION ON HUMAN RIGHTS AND NATIONAL INSTITUTIONS

25. Increasing attention is being given to the question of how to translate international norms into national law. The Paris Principles provide for an important role for national institutions in ensuring the effective implementation of the recommendations made by the treaty bodies. In this regard, the Team and the Treaty Body Recommendations Unit of the Treaties and Commission Branch of OHCHR, undertook a training workshop, "Strengthening the implementation of human rights treaty recommendations through the enhancement of national protection mechanisms", from 3 to 7 November 2003. Representatives of the national institutions of Colombia, Guatemala, Latvia, the Russian Federation and Sri Lanka participated in the workshop.

26. To support this, which is being financed by the European Commission, the recruitment of an officer to work part time on national institutions and treaty body issues is under way. The secretariats of the different treaty bodies regularly consult the Team about the work of national institutions in countries under consideration.

27. The special rapporteurs of the Commission on Human Rights and the representatives of the Secretary-General increasingly consult with national institution representatives. In addition, they have been an important mechanism in encouraging compliance with the Paris Principles and providing support to national institutions.

III. COOPERATION BETWEEN OHCHR, UNITED NATIONS AGENCIES AND PROGRAMMES AND INTERNATIONAL AND REGIONAL ORGANIZATIONS

28. OHCHR has held consultations with both the United Nations Development Programme (UNDP) and the United Nations Educational, Scientific and Cultural Organization to determine how those organizations could support OHCHR in its national institution capacity-building and -strengthening activities, while ensuring that the international standards concerning national institutions are maintained.

29. During the reporting period, two technical cooperation projects in Mongolia and Rwanda were implemented jointly by OHCHR and UNDP. Each provided different experiences which will need to be assessed to determine the best modalities for future cooperation. UNDP is engaging a consultant to assist in determining its future approach concerning national institutions.

30. The Team was also very active in consolidating an initiative with the United Nations Volunteers (UNV) programme to provide support to the national institutions of the Asian-Pacific region. Should this initiative succeed, possible future ventures with UNV could be undertaken for the networks of national institutions of other regions.

31. The Team has been negotiating a joint initiative with the International Federation of Red Cross and Red Crescent Societies aimed at encouraging national Red Cross and Red Crescent societies and national institutions to collaborate. These two types of institution have a number of similarities that can be built upon at the national level while respecting the need for each to maintain its independence.

IV. NATIONAL HUMAN RIGHTS INSTITUTIONS AND THEMATIC ISSUES

A. Promotion and protection of economic, social and cultural rights

32. OHCHR completed a handbook on economic, social and cultural rights and national institutions this year. It will be released in early 2004 following re-editing and review to ensure that it meets the needs of national institutions. A training programme for national institutions in the Asian-Pacific region on the economic, social and cultural rights of women was being prepared during the reporting period for implementation in February 2004.

B. Rights of persons with disabilities

33. National institutions are represented at the Working Group of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. (The regional meetings on this subject were referred to in the section on support to regional initiatives above.) The representative, chosen by the national institutions members of ICC, is the South African Human Rights Commission. To support the representative, an informal contact group of national institutions disability focal

points has been established; the OHCHR National Institutions Global Project will support the participation of this representative in the Working Group, which is to prepare and present a draft text of a convention to the Ad Hoc Committee.

C. Racism and racial discrimination

34. The OHCHR Anti-Discrimination Unit, in cooperation with the National Institutions Team, provided support to the national institutions of Fiji, Mexico, Mongolia, the Niger and Venezuela to facilitate their undertaking activities to combat racism in their countries. Initiatives included support to the establishment of a Race Relations Unit in the Fiji Human Rights Commission, translation of educational materials in Mexico into indigenous languages, protecting the rights of the Tasstan ethnic minority of Mongolia, a study on practices of slavery in the Departments of Maradi and Tahoua of the Niger, and the provision of training on indigenous peoples' rights, and the international human rights instruments in Venezuela.

35. In addition, the two teams have cooperated with the New Zealand Human Rights Commission to organize the first-ever meeting of race relations commissioners or focal points to discuss issues of common interest. The purpose is to share experiences in relation to the major common issues and challenges facing such institutions and to identify practical actions that can be taken, both internationally and in their own countries, on the basis of those experiences. The International Race Relations Round Table will be convened in Auckland, New Zealand, from 2 to 5 February 2004, with the support of OHCHR.

D. HIV/AIDS

36. OHCHR, through its National Institutions Team and the Research and Right to Development Branch, and UNAIDS have developed terms of reference for an activity which relates to the drafting of a handbook on the role of national institutions in the prevention of HIV/AIDS and in combating HIV/AIDS-related discrimination. It is anticipated that the handbook will be drafted in 2004.

E. Reproductive rights

37. Representatives of the Ombudsman Offices of the Caribbean, met in Kingston from 18 to 20 March 2003, to participate in the workshop entitled "The promotion and protection of reproductive rights through the work of the Ombudsman Offices of the Caribbean". The workshop was convened by OHCHR, the United Nations Population Fund and the Inter-American Institute of Human Rights, and facilitated by the Caribbean Ombudsman Association. The objectives of the workshop were: to provide the Ombudsman Offices with a framework for the application of human rights to reproductive and sexual health issues; to discuss critical reproductive health/rights issues within the region; to assess obstacles and opportunities that women and men face in the exercise of reproductive rights; and to examine the existing structures and/or mechanisms within the Ombudsman Offices to promote and protect reproductive rights within the region.

F. Prevention of torture

38. The Team, in cooperation with the Association for the Prevention of Torture, held a seminar at the Palais Wilson in Geneva on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The seminar, held from 2 to 4 July 2003, enabled representatives from a variety of national bodies with responsibility for visiting places of detention, including national institutions, to share their experiences and draw lessons on the methodology, functioning and effectiveness of different types of national visiting mechanisms. It is expected that the lessons learned will be instrumental to the establishment of the national visiting bodies foreseen by the Optional Protocol. The proceedings of the seminar will be published with the support of the two host organizations.

G. Administration of justice

39. The Team and the Danish Institute for Human Rights co-organized and co-sponsored the round table discussion "National human rights institutions and the administration of justice" held in Copenhagen on 13 and 14 November 2003. The round table, part of a series of initiatives supported by OHCHR to provide an opportunity for national institutions to exchange experiences among themselves, brought together chairs, members and representatives of 22 national human rights institutions from Africa, Asia and the Pacific, Europe and Latin America. All the participants highlighted the centrality and importance of implementing the Paris Principles, in particular that national institutions should have quasi-judicial powers. The 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 conclusions of the conference may be found on the web site www.nhri.net and are reproduced in annex I to the present report.

V. THE PARIS PRINCIPLES

40. The Paris Principles were adopted by the General Assembly in its resolution 48/134. To commemorate the tenth anniversary of their adoption, the Team undertook two main initiatives. Small grants relating to the promotion of the Paris Principles at the national level were awarded to the national institutions of Albania, Ghana, Haiti, the Philippines, Uganda and Zambia. The Mexican Human Rights Commission held a seminar on the Paris Principles on 9 October 2003, bringing together international experts, including the National Institutions Team Leader, and representatives of the state and national human rights commissions.

41. On 10 and 11 December, a round table on the Paris Principles was held at the Palais Wilson. It was attended by the Chair of ICC; chairs, members and senior representatives of 13 ICC members from Canada, Costa Rica, Denmark, Fiji, France, Greece, Mexico, Mauritius, Morocco, Nepal, Nigeria, the Philippines, Uganda and the South African Human Rights Commission; representatives of Amnesty International, Human Rights Watch, the International Council on Human Rights Policy and the International Commission of Jurists and OHCHR. The International Federation of Red Cross and Red Crescent Societies participated as an observer.

42. All the participants highlighted the centrality and importance of implementing the Paris Principles and building on them. The discussion, which was informal, inclusive and participatory, covered the key issues of the independence and the functions, powers and cooperation initiatives of national institutions. Discussions specifically addressed: (a) legal bases and resources: experiences, constraints and solutions; (b) composition, appointments procedures and staffing; (c) other challenges to independence and strategies for mutual assistance; (d) methods of operation, competencies and responsibilities for the promotion of human rights; (e) methods of operation: protection of human rights and relations with NGOs and the international human rights machinery; and (f) relations with the executive, legislative and judicial branches. A summary of the discussions will be reflected in the proceedings. The conclusions may be found on the web site www.nhri.net and are reproduced in annex II to the present report.

VI. CONCLUSIONS

43. **During the reporting period OHCHR has sought, through a wide range of activities, to heighten its commitment to supporting the Secretary-General in the building of strong national institutions at the country level. Considerable efforts have been made to consolidate the work within OHCHR so that it is seen as relevant and important to each staff member's daily work.**

44. **In addition, advice continues to be provided to Governments, national institutions, civil society and United Nations partners on a wide variety of matters including legislation, functions and mandates, powers, and thematic and substantive issues. The Team will continue its outreach to its partners within and outside OHCHR. The increasing number of initiatives involving civil society and regional partners and those within the United Nations has demonstrated that this strategy is working and that the Team is recognized as a centre of excellence within the United Nations.**

45. **During 2004, OHCHR will continue to provide a space where national institutions can engage in substantive discussions, learn from each other and share best practices. OHCHR will continue to reaffirm the validity of the Paris Principles and the critical importance of full compliance with them. Additional attention will be paid to providing training on national institutions for United Nations personnel, including United Nations country teams.**

Annex I

NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE ADMINISTRATION OF JUSTICE

The following are the main conclusions of the discussions held on 13 and 14 November 2003 by chairs, members and representatives of 22 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 High Commissioner for Human Rights. All participants highlighted the centrality and importance of implementing the Paris Principles (General Assembly resolution 48/134) 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 conclusions will be reflected in the proceedings.

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 the judiciary. This would include respect for the separation of powers and a clear demarcation of the 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 senior members; where the materials and discussions use a language which the judiciary can relate to; and where resource persons undertaking awareness-raising initiatives include representatives of the judiciary.
- The use of judgements of the courts in the daily work of protecting human rights by national institutions has proven to be of benefit to the national institution and to 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 relationship.

- 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 administration of justice and the avoidance of impunity, in accordance with the relevant United Nations principles.
- Examples have shown that the courts have broadly interpreted the promotion mandates of national institutions to include the power to access the courts directly.
- 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:
 - (a) Empowering the national institution to initiate contempt proceedings in court for failure or refusal to comply with a subpoena issued by the institution;
 - (b) According locus standi to the national institution as a complainant in its own right;
 - (c) 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;
 - (d) Granting the national institution a power of intervention in relevant cases;
 - (e) Empowering the national institution to provide assistance (in a manner which it chooses as appropriate) to individuals seeking redress for grievances through the courts;
 - (f) Empowering the national institution to refer matters for prosecution or action by other public agencies;
 - (g) Granting the national institution the 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 be solid and well formulated, which garners the respect of 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 emerging from 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 of seeking and providing remedies through the international- and regional-level human rights protection systems (for example, the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, United Nations human rights treaty bodies and African, American and European human rights systems).
- A number of administrative and legal remedies may be sought, or provided by, national institutions. It has been demonstrated that the provision of compensation is 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 the provision of training programmes for military and law enforcement personnel to be effective in ensuring respect for human rights in accordance with United Nations human rights standards. The practice of providing such forces with rights-based training prior to undertaking their official duties has proven to be a good one.
- 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 strengthening the protection of human rights.
- National institutions should explore the necessity and appropriate ways of intervening 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 that the public (citizens and non-citizens) knows how to access the complaints handling system. This information needs to be communicated regularly 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 intervening in matters concerning the private sector which are of public interest.
- Senior leadership within the national institution should support the complaints handling process, thereby 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 that it sees 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.
- Where there arises evidence of systemic issues, national institutions should consider the holding of public inquiries using the complaints handling process or other sources of information.
- An effective complaints handling database, 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 should be developed to assess indicators of success and results in relation to the role of national institutions regarding the handling of complaints.
- 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 to 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.

Annex II

THE PARIS PRINCIPLES: A REFLECTION

The following are the main conclusions of the discussions held by the Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC); chairs, members and senior representatives of 13 of its members from Canada, Costa Rica, Denmark, Fiji, France, Greece, Mexico, Mauritius, Morocco, Nepal, Nigeria, the Philippines, Uganda and the South African Human Rights Commission; representatives of the non-governmental organizations (NGOs), Amnesty International, Human Rights Watch, the International Council for Human Rights Policy and the International Commission of Jurists; and the Office of the High Commissioner for Human Rights (OHCHR) during the round table entitled "The Paris Principles: a reflection", held at the Palais Wilson on 10 and 11 December 2003. In addition, the International Federation of Red Cross and Red Crescent Societies participated as an observer.

The round table was held to commemorate the tenth anniversary of the adoption of the Principles relating to the status of national institutions for protection and promotion of human rights (the Paris Principles) by the General Assembly by its resolution 48/134 of 20 December 1993. In addition to commemorating their adoption, the round table is part of a series of focused discussions supported by OHCHR directly with representatives of national human rights institutions. The round table was informal, inclusive and participatory. The discussions will be reflected in the proceedings.

All participants highlighted the centrality and importance of implementing the Paris Principles and building on them. Topics revolved around the key issues of the independence, functions, powers of national institutions and cooperation with others. Discussions specifically addressed: legal bases and resources: experiences, constraints and solutions; composition, appointments procedures and staffing; other challenges to independence and strategies for mutual assistance; methods of operation, competencies and responsibilities: promotion of human rights; methods of operation: protection of human rights and relations with NGOs and the international human rights machinery; and relations with the executive, legislative and judicial branches.

Participants thanked the Acting High Commissioner for Human Rights, Bertrand Ramcharan, and the Chair of ICC, Mr. Omar Azziman, for their opening statements. Special tribute was paid to the late High Commissioner for Human Rights, Sergio Vieira de Mello.

As the round table focused on the independence and functioning of national institutions, participants discussed the particular situation of a number of them in all corners of the globe. In particular they expressed concern at the situation of the national institutions in Nepal and Uganda and called on the respective Governments to ensure the continuation, strengthening and independence of those institutions.

Independence

- Concerning the independence of national institutions, the participants highlighted that independence was assured not only through effective legislation but also through substantive action on the part of the institutions.
- Concerning the founding legislation of national institutions, participants highlighted the importance of ensuring as high a level of legal standing for them (the higher in the hierarchy of law the greater the guarantees of independence for the institution). Therefore, participants stressed the importance of constitutional entrenchment of the institution and for it to have a clearly defined legislative basis.
- When drafting legislation States should pay particular attention to appointment and dismissal procedures for national institutions, as the Paris Principles do not pay sufficient attention to this critical area affecting the independence of national institutions.
- An open, transparent appointment process is critical and politically motivated appointments should not occur. Public inclusion in the selection process is strongly encouraged.
- In appointing members to national institutions, attention should focus on quality; there should be clearly defined criteria for the selection of members. Institutions should have a mixed composition, bringing together various competencies and perspectives, and ensure pluralism. Where national institutions are not large, to guarantee full pluralism effective cooperative mechanisms should be established to ensure a representation of diverse interests.
- Vacancies in national institutions should be filled expeditiously, possibly within a time limit set out in the founding legislation.
- It should not always be assumed that national institutions have leaders who are trained human rights experts; therefore, the provision of human rights training to members should be provided early in their mandates.
- National institutions should be accessible, as should their members, staff and premises (especially for persons with disabilities); they should also be accessible to regions outside their central location, including in zones of conflict, and by means of various communication media, including for the most vulnerable and minority groups.
- The location of offices within premises which are governmental or appear to be governmental can compromise the impression of independence of the national institution.
- National institutions should appoint their own staff in order to ensure quality, competence to undertake the mandate of the institution, and sustainability, including ensuring continuity of knowledge.

- The tenure of members of national institutions should be reasonable and provide for a continuity of knowledge within the institution. Renewals of membership should be staggered.
- A national institution should have full control over its finances and financial management. The budget must not be used as an instrument to impede its independence and effectiveness.
- National institutions may look to various sources of finances beyond Government, but it remains a primary obligation of the State to provide adequate resources.
- Where donor financing is provided, it should be provided to the national institution based on the latter's own strategic and work plans.
- National institutions must be accountable. They are independent in terms of what they may do, and held accountable through how they undertake their mandate and report on it.
- Where democratic structures have collapsed, the effective functioning of a national institution must be assured and supported.

Functions and powers

- The mandate of a national institution should be broad based and, therefore, its powers and functions should be in accordance with this principle. It should recognize the universality, interdependence, interrelatedness and indivisibility of human rights.
- National institutions should have an overview of all human rights issues and anticipate ensuring the effective promotion and protection of all human rights.
- The activities of national institutions should be based on the principles contained in international human rights instruments.
- National institutions should address civil and political as well as economic, social and cultural rights. Participants noted that there was a particular lack of attention to cultural rights and would seek ways to work with organizations such as OHCHR and the United Nations Educational, Scientific and Cultural Organization to raise attention to the need to respect those rights.
- National institutions should explore ways to engage with the private sector on human rights issues as well as the public sector.
- No institution, including the military, should be removed from the purview of the mandate of the national institution.
- National institutions must listen to public opinion, but also bring the public along with them in their work. It is also, however, important for a national institution to challenge public opinion when it goes against human rights.

- Where national legislation concerning national institutions is deficient, national institutions are encouraged to undertake the necessary measures to strengthen it.
- The participants considered the issue of transitional justice and noted the importance of national institutions being made more aware of relevant issues, given their mandates, and of how transitional justice issues can impact on their work in the promotion and protection of human rights and the provision of justice.
- National institutions have a critical role to play in ensuring that the limits set by international law concerning amnesty are respected.

Human rights promotion and protection

- Promotion and protection are part of a continuum and are mutually reinforcing. It is therefore important for national institutions to undertake activities in relation to both.
- The holding of public inquiries have proven effective both to promoting and protecting human rights.

Promotion

- In terms of promotional initiatives, the following were the principal areas identified by participants:
 - (a) Education, training, public sensitization and awareness-raising on human rights issues;
 - (b) Raising awareness about the roles and responsibilities of national institutions; and
 - (c) Advisory activities, including the provision of legal advice.
- National institutions need to be able to better communicate their mission and clarify their own roles.
- The publishing of the result of national institutions' litigation efforts by national institutions, where they have such powers, is in itself a method of promoting human rights.
- The development of national human rights education plans are a useful tool for national institutions and their partners in their promotion/education work.
- Innovative technologies for human rights education should be encouraged, including distance learning outside of the regular educational curriculum.
- National institutions should consider having experts on curriculum development within their institution.
- National institutions should involve the mass media in their work.

- National institutions could consider creating specialized mechanisms to help them undertake their promotional work.
- It is important for national institutions to be able to make recommendations to the executive branch but it is also important that the executive respond to those recommendations in a timely manner.
- The relationship between national institutions and legislatures should be strengthened, including through reporting to the legislature and discussion in the legislature of the reports and budget proposals of national institutions.
- The report of the national institution should be made public.

Protection

- National institutions should uphold the rules and principles of fairness and impartiality.
- National institutions need to have the power to undertake initiatives on their own and not only upon request by State authorities.
- Engagement with ministries on particular issues can be an effective mechanism for bringing about effective change to national human right standards or bringing certain issues to the fore.
- Training initiatives should be aimed at civil society as well as public officials. Training of public officials should concern human rights and their responsibilities in ensuring that such rights are respected.
- It is important to compile best practices for national institutions concerning the drafting of national legislation and how national institutions can ensure that national legislation meets international human rights norms, standards and laws.
- National institutions need to ensure that their protection procedures are accessible and therefore should review, where possible, their ability to engage in alternative dispute resolution mechanisms, including mediation.
- In protecting human rights, it is important not to lose sight of redress mechanisms.
- While having a mandate to deal with individual complaints is recognized as important by many national institutions, national institutions must be careful not to have their priorities determined solely on the basis of the complaints they receive.
- National institutions that do not have complaints handling mechanisms are encouraged to rely on the powers of other institutions and to monitor their work, to ensure that victims are protected.

- Participants referred to the conclusions of the Copenhagen round table [annex I] with respect to other potential avenues in relation to the protection mandates of national institutions which they may wish to consider.
- Access to information, particularly in the context of national security, should be assured for national institutions.

Cooperation

- In establishing partnerships, particular attention should be paid to the quality of the relationship. Emphasis should be placed on interacting with those whom national institutions serve - the public.
- Partnerships among national institutions and other bodies established to promote and protect human rights are encouraged. The establishment of multiple bodies with similar mandates to that of national institutions should not be used by States to weaken national institutions.
- Where there are multiple bodies at the national level (e.g. a classic Ombudsman and a national institution), it is important that some coordination mechanism/process be in place.
- A substantive contribution by independent national institutions to international forums such as the Commission on Human Rights and its subsidiary bodies should be encouraged.
- Guidelines for cooperation with NGOs and other partners should be devised.
- National institutions should establish strategic relations with NGOs while respecting the independence, roles and responsibilities of both.
- National institutions need to find mechanisms to provide support to each other when they are under attack. This is particularly the case in situations of conflict, or when the situation in their country changes and presents difficult challenges. Such mechanism could include coordination between individual national institutions, ICC, regional groupings of national institutions, OHCHR and its various units and the mechanisms it services, other United Nations agencies and regional institutions.
- It is recommended that early warning/rapid reaction guidelines be developed for national institutions to use when other national institutions are under threat.
- National institutions should cooperate with efforts to strengthen the treaty body monitoring process, including by ensuring that relevant information on their country's human rights situation reaches the respective treaty body.

- National institutions should contribute in an independent capacity, as appropriate, to the preparation of States parties' reports, including through the convening of consultative meetings with the national institution, Government and civil society prior to the submission of reports.
- National institutions should cooperate with States parties and the human rights treaty bodies to ensure the effective implementation and dissemination at the national level of the treaty bodies' concluding observations and the recommendations of other United Nations and regional human rights mechanisms.
- Participants welcomed the ability of national institutions, through their representative, to contribute to the drafting of an international convention on the rights and dignity of persons with disabilities.
- Concerning relations with the courts, participants referred to the conclusions of the Copenhagen round table [annex I].
- On cross-border issues (e.g. migration), there is a need for cooperation between national institutions in the relevant countries.

Standard-setting

- Impact assessment indicators should be developed against which the effectiveness of national institutions in meeting their mandates can be measured.
- It is important for national institutions to establish/strengthen peer review mechanisms to ensure compliance with the Paris Principles. Such processes should be ongoing.
