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MINORITIES AND NATIONAL HUMAN RIGHTS INSTITUTIONS

Note by the Secretariat

1. The Working Group on Minorities at its ninth and tenth sessions invited the Office of the High Commissioner for Human Rights to prepare pamphlets for inclusion in the United Nations Guide for Minorities.
2. The text of the pamphlet on minorities and the work of national human rights institutions is attached, for inclusion in future versions of the United Nations Guide for Minorities.

Future Pamphlet No. 15 of the United Nations Guide for Minorities

Minorities and national institutions for the promotion and protection of human rights

1. Background

In his second reform report to the General Assembly on the strengthening of the United Nations of September 2002, United Nations Secretary-General Kofi Annan highlighted the importance of building strong human rights institutions at the country level. He underlined that the emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should be a principle objective of the Organization. The Secretary-General noted that this is what in the long run will ensure that human rights are protected and advanced in a sustained manner.¹

The important roles that can be played by national institutions in the promotion and protection of human rights have been well emphasized throughout the United Nations system. In 1993, the General Assembly adopted the Principles relating to the status of national institutions for the promotion and protection of human rights (the “Paris Principles”),² transmitted by the Commission on Human Rights in 1992,³ as the minimum guidelines for the establishment, competence, responsibilities and composition (including pluralism, independence, methods of operation, and quasi-judicial activities) of such national bodies. Over the past years, the General Assembly and Commission on Human Rights have repeatedly called for the establishment and strengthening of national human rights institutions, underlining the important role that such institutions play in promoting and protecting human rights.

When it comes to the protection and promotion of the rights of vulnerable groups in societies, national institutions have particular merits. With their comparative advantage of generally being readily accessible to all sectors of society, national human rights institutions are able to communicate directly with marginalized communities and State authorities on key concerns. As an independent advisory authority vis-à-vis Government in respect of human rights at the national and/or international level, a national institution can systematically review the Government’s human rights legislation and policy in order to suggest ways of improving it. Furthermore, a national institution’s ability to initiate inquiries and campaigns on its own behalf allows it to engage effectively in major human rights concerns, particularly with regard to situations which involve persons or groups who do not have the financial or social resources to defend their rights.

Based on the recognition of such merits, the United Nations Sub-Commission on the Promotion and Protection of Human Rights requested the Office of the United Nations High Commissioner for Human Rights to add a pamphlet to the present United Nations Guide for Minorities on the work of national human rights institutions regarding the promotion and protection of the rights of persons belonging to minorities.⁴

2. What national human rights institutions are

A national human rights institution has a remit that includes functions specifically defined in terms of the promotion and protection of the human rights guaranteed in international and national laws. While no two institutions are exactly the same, an independent human rights institution should conform to the minimum criteria set out in the above-mentioned Paris Principles. The majority of existing national institutions can be grouped into two broad categories: “human rights commissions” and “ombudsman’s offices”. Another less common, but no less important variety are the “specialized” national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities.

One of the strengths of national human rights institutions lies in their capacity to make a substantial contribution to the realization of human rights at the national level. National institutions are uniquely placed to act as a bridge between local and international actors in addressing national human rights concerns. With their roots in civil society and their ability to receive and address individual human rights-related complaints, national institutions are in a key position to sensitize the public on particular problems affecting persons belonging to minorities in a cost-effective and systematic manner. Their broad-based mandates enable effective cross-reviewing where vulnerable groups of society have manifold concerns.

The next section illustrates how national institutions can contribute to the promotion and protection of the rights of peoples belonging to national minorities.

3. What national institutions can do to promote and protect the rights of minorities

There are many ways in which national human rights institutions can effectively promote and protect the rights of minorities. Their most important contributions arise from the exercise of powers which may include:

- Assessing the situation of minorities, providing advice to Government, parliament, the judiciary and other relevant institutions on legislation, policies and programmes to promote respect for minority rights and monitor their implementation;
- Promoting rights and educating the public; and
- Receiving complaints and undertaking investigations of alleged violations of rights and conducting public inquiries.

Their success depends on their being independent, qualified and diverse in their membership, adequately staffed and resourced, accessible to the public, and on their ability to work with partners.

Advisory functions: advice and recommendation on legislation and/or policy relating to minorities

Most national institutions are mandated to provide advice to Government, parliament and, in some instances, the judiciary and other relevant institutions on legislation and/or policy concerning human rights.

On the basis of their assessment of the situation of the human rights of persons belonging to minorities, they can advise Governments on ways and means of translating into practice relevant human rights norms, including through regional mechanisms, and on effective policy development and its meaningful implementation. This may include the development of accurate statistics on minorities.

They can encourage Governments to formulate and adopt legislation under the terms of which States parties would be required to abide by decisions emanating from international human rights mechanisms. Some are empowered to participate in the drafting of legislation on human rights and to make inputs and submit memoranda to parliament. They can also contribute to the development of mechanisms for the participation of minority groups in policy and consultative processes on issues affecting them. Some are allowed to assist the work of the judiciary by monitoring and commenting on their decisions. They can constantly monitor the implementation of legislation and policies and their impact on the rights of persons belonging to minorities and make appropriate recommendations to relevant institutions.

Such functions of national institutions can contribute positively to the promotion and protection of the rights of persons belonging to minorities.

Example: Colombian Ombudsman's Office (Defensoría del Pueblo of Colombia)

The Colombian Ombudsman's Office has both a constitutional and a legal basis to protect and promote the human rights of all ethnic groups of Colombia, including such minority groups as Afro-Colombians. Based on such a mandate, the Ombudsman's Office has assigned a commissioner to focus on issues relating to ethnic minorities and to carry out activities to advise the Government on its policies relating to ethnic minorities. For example, the Ombudsman's Office monitored the implementation of the Government's public policy on minorities. In particular, the Office pressed the Government to include in public school curricula issues concerning the rights of Afro-Colombians, in accordance with relevant laws and decrees.

In addition, the Office has advised the Government to take concrete measures to identify the exact number of Afro-Colombians living in the country and include the information in the national census. The Office is also exploring the possibility of preparing a report on the participation of Afro-Colombians and indigenous peoples in the decision-making process for public policies of the national Government, with a view to identifying the existence of discrimination against these peoples.

Example: National Human Rights Commission (NHRC) of India

The National Human Rights Commission (NHRC) of India made comprehensive recommendations to the central Government and the state government of Gujarat in the aftermath of the violence against Muslim minority groups in the country. Based on a fact-finding mission to the State of Gujarat, the NHRC noted that the state did not take appropriate action to address human rights violations arising from the incident and put forth detailed recommendations on how the Gujarat state government could meet its human rights obligations. The main recommendations included that certain critical cases should be investigated by the Central Bureau of Investigation (CBI), India's main investigation agency, and that witnesses should be provided with security. The NHRC also recommended the creation of special courts to try these cases and the appointment of special prosecutors for the conduct of proceedings in such a manner that the traumatized condition of many of the victims, especially women and children, was not aggravated. It also recommended that actions should be initiated to identify and proceed against those state officials who failed to act appropriately to control the violence.

The state government of Gujarat responded that an investigation conducted by the state police could not be discredited and its fairness questioned merely on the basis of hostile propaganda. It took the stand that the transfer of critical cases to the CBI would indefinitely delay the investigation and help the accused to be granted bail. Disagreeing with that view, the NHRC pointed out that the central principle in the administration of criminal justice - those against whom allegations were made should not themselves be entrusted with the investigation of those allegations - was at stake.

A key witness to the incident at the Best Bakery premises in Vadodara, where 12 persons were burned to death on 1 March 2002, approached the NHRC, requesting to intervene in reopening the case. As a result, on 31 July 2003 the Commission petitioned the Supreme Court for a retrial of the 21 Hindus acquitted in the incident. The petition noted that "violation of the right to a fair trial is not only a violation of fundamental rights under our constitution, but also a breach of internationally recognized human rights as spelled out in the International Covenant on Civil and Political Rights, to which India is a party".

The Supreme Court accepted the petition and held a hearing with the NHRC in September 2003. During the hearing, the Supreme Court ordered the Gujarat state government to appoint new public prosecutors to investigate the case.

In April 2004, the Supreme Court demanded that the Gujarat state government remove the state public prosecutor and ordered a new trial, to be held in the neighbouring State of Maharashtra.

Promotional activities: enhancing public awareness/education on the rights of minorities

A lack of understanding of the rights of minorities, not only on the part of the government authorities but also the general public and persons belonging to minorities themselves, is often a cause for poor safeguarding of such rights.

Capitalizing on their characteristics as institutions mandated to promote and protect all the rights of those who reside in the country concerned, national institutions can work to enhance public awareness on minority rights in various ways. Undertaking awareness-raising campaigns concerning relevant standards and entitlements of minorities is one of the key activities that national institutions can conduct in order to achieve this goal.

This may include the taking of particular measures to reach non-dominant groups and distributing information about their activities, with special emphasis on encouraging minority groups to consult them. Most national institutions have the capacity to develop new and innovative strategies for outreach to minority groups, including community dialogue, and ways of gathering information and conducting research with respect to discrimination against minorities and publicizing human rights standards and violations.

Similarly, national institutions can encourage and actively support a variety of means for advancing human rights education for minority groups and public authorities, including judicial actors and wider civil society. They can offer information and educational activities for the general public as well as judges, law enforcement officials and community leaders.

Maintaining effective links with the media to promote positive reporting on minorities and ensure equitable access to programming by media outlets is another key role that national institutions can play. They can develop measures to affect the ways in which minorities are represented in the media and promote media ownership by minorities. They can monitor media coverage concerning minority rights issues and engage the media to provide assistance in campaigns to promote racial equality and harmony.

Furthermore, national institutions can engage constructively with the business sector to address both the legal and structural impediments to the key issues of equal working conditions, safety from harassment in the workplace, and equal access to employment. They can play an important part in breaking down barriers in order to improve or ensure compliance with human rights standards in the employment field, including enhancing appreciation of cultural practices, for example, in relation to minorities and the changing face of the workforce due to migration, and combating the persistence of stereotypes concerning occupations for minorities.

Example: National Human Rights Commission (NHRC) of Nepal

The National Human Rights Commission (NHRC) of Nepal plays a leading role in campaigning for Dalit rights in Nepal. The NHRC implemented the “Integration of Dalits Rights Promotion Programme” with financial support from the Office of the United Nations High Commissioner for Human Rights in the context of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001. The programme was aimed at

(a) Building awareness among politicians, planners, key government officials at the central and district levels, intellectuals, teachers and the general public about the negative aspects of caste-based discrimination

(b) Providing a forum for Dalit activists and supporters of the Dalit cause to discuss various aspects of discrimination and exclusion, including the State's failure to comply with national and international commitments, leading to the drafting of recommendations for corrective action;

(c) Building a countrywide support and solidarity network that could be useful for carrying out other human rights promotion and protection activities of the Commission.

Under the programme, the NHRC carried out several activities aimed at raising public awareness of the rights of Dalits. A series of two-day seminars on "The status of Dalit, challenges and their solutions from a human rights perspective" were held throughout Nepal in 2001 and 2002, bringing together about 1,200 participants including the Prime Minister, the Speaker of House of Representative, members of Parliament and Chief District Officers. The main outcome of the seminars was the 17-point Kathmandu Declaration, which included recommendations for increased political representation of the Dalits in Nepal.

In addition, the NHRC carried out a five-month-long media campaign through Radio Nepal from September 2001 to January 2002 in collaboration with civil society organizations. The programme was aimed at disseminating information about Dalits through mass media. It was also intended to air the message that caste-based discrimination is inhumane and a violation of human rights and to publicize Dalits' problems through media at all levels.

The programme was able to publicize the social, economic and cultural status of this marginalized group. The feedback from these programmes showed that people began to become aware of the Dalits' contributions to the society and to the nation.

Remedial actions: complaint handling and quasi-judicial functions

National institutions may have a distinctive role that complements the courts in dealing with human rights violations. National institutions may deal with complaints if so authorized by the founding law. While most of the cases brought before national institutions are resolved through mediation and/or conciliation, some require further action. Some national institutions can investigate cases of alleged human rights violations and refer matters for prosecution or action by the Government and/or other public agencies. This may include the provision of legal assistance to victims of human rights violations in instances where the victims do not have adequate resources to pursue legal remedies.

In some instances, national institutions use judicial processes to combat human rights violations against minorities, including taking appropriate cases to the courts and exploring different ways of censuring discrimination. In their capacity as *amicus curiae* (friend of the court), some national institutions are able to call for the courts' attention on issues relating to specific human rights issues under their jurisdiction. They can also recommend innovative and far-reaching remedies to courts in addressing violations and thus contribute to the development of a body of human rights jurisprudence in national courts.

Based on their links to international human rights mechanisms, national institutions are able to avail themselves of the various possibilities of seeking and providing remedies through the international and regional human rights protection systems (for example, the United Nations Commission on Human Rights and its Sub-Commission, the treaty bodies, and the African, American and European human rights systems).

Another comparative advantage of national institutions over domestic courts lies in their power to initiate inquiries on their own behalf where there arises evidence of systemic issues affecting the complaint handling process or other sources of information. Minority groups should be encouraged to engage with national institutions in this regard. Redress on systematic issues can particularly benefit those groups that do not have adequate financial and social resources to lodge individual complaints.

Example: Commission on Human Rights and Administrative Justice (CHRAJ) of Ghana

In Ghana, there have been periodic inter-ethnic conflicts that have occurred in the country since independence, the most well known being the Konkomba-Nanumba conflicts. The Commission reviewed the cases brought before it and found that there was no pattern of gross violation of human rights by one ethnic group against another, or use of government forces to brutalize or discriminate against a particular ethnic minority group.

In the small number of incidents of ethnic conflict, the Government and the CHRAJ have been quick to employ experts in community mediation and reconciliation to put a stop to the conflict.

For example, in November 1999, over 200 houses were burnt in an ethnic conflict in the town of Agona-Nyakrom in the Central Region. The groups involved in the conflict were members of the native settler population, the Kotokoli of Nyaakrom, and the Agona, who are the indigenous people of the area. While there were no immediate deaths, five people subsequently died of smoke inhalation.

The conflict arose as a result of ill-advised comments by some Kotokoli youth that they had become wealthier than the Agonas, and that Agona chiefs and elders had been borrowing money from the Kotokoli. The natives were deeply insulted. There was already a latent split between the two factions, “natives” and “non-natives”, of the town. This degenerated into a serious community conflict during a football match when the referee awarded the Kotokoli team a penalty at the closing stages of the match when the score was goalless. Angry Agona youth then attacked the non-natives.

The CHRAJ was notified of these incidents and stepped in. The Commission and its partners managed to resolve the conflict by mobilizing the collective goodwill and mediation resources in the community through the chiefs and elders, opinion leaders and the general citizenry. Representatives of the two factions were engaged in a conflict resolution exercise in the community. After the Commission facilitated a series of mediation sessions between the two groups, no subsequent violence occurred.

One of the key advantages of the CHRAJ is its easy accessibility to the vulnerable groups of society. It can receive complaints from illiterate persons, as all CHRAJ regional offices have staff trained in taking down oral complaints. Once put in writing, the officers read over each complaint to the persons concerned and have them sign or append their thumbprints to it, if they were unable to write. CHRAJ also provides interpretation services for non-English speakers. Legal services are offered free of charge.

In concluding its deliberation on the sixteenth and seventeenth period reports of Ghana in March 2003, the Committee on the Elimination of Racial Discrimination (CERD) noted with satisfaction the important role played by the CHRAJ in the protection of human rights, particularly the rights to be protected from racial discrimination and intolerance.⁵

Example: Ombudsman against Ethnic Discrimination of Sweden

The task of the Ombudsman against Ethnic Discrimination of Sweden is not restricted to discrimination against minorities. However, most of the complaints come from individuals who were themselves born abroad or have parents who immigrated. An example relates to a complaint taken to the Labour Court by the Ombudsman on behalf of a 25-year-old woman of Bosnian origin.

The complainant, who had been living in Sweden since the age of 10 and attended Swedish schools, applied for a telephone interviewer position with a market research company. The company invited her for the first interview, but it subsequently halted the recruitment process, claiming that she did not fulfil the language requirements.

When the Ombudsman brought the case to the court, it was suggested that the company had discriminated against the applicant because she had an accent. The company highlighted the fact that she had an angry reaction when the company informed her that she would not be hired which confirmed its conviction that she was not suitable for the position she had applied for.

Upon hearing the case, the court concluded that there had been indirect ethnic discrimination caused by a non-intentional misjudgement of the language qualifications of the job applicant. In the court's view, the company required a level of Swedish language skill that was higher than was necessary for the position that the applicant had applied for. The court observed that, although the company had applied a neutral criterion, it had in practice "disfavoured" the job applicant.

The court therefore concluded that the company had violated the ban on indirect discrimination of article 9 of the Act on Measures Against Ethnic Discrimination in Working Life and ordered it to pay damages to the job applicant. At the same time, the court ruled that the angry reaction of the job applicant had contributed to the company's decision to cancel her recruitment. Consequently, the Ombudsman had to pay court costs.

4. Conclusion

As an integral part of a national protection system working to ensure the effective implementation of human rights guaranteed in international and national laws, national human rights institutions can contribute significantly to the promotion and protection of the rights of minorities. Although their institutional development is relatively recent, there is growing recognition of the contribution that these institutions can make to safeguard the rights of the less-advantaged groups of society, in close partnership with them.

For more information relating to national human rights institutions, please visit the web site located at www.nhri.net.

Notes

¹ Strengthening of the United Nations: an agenda for further change: report of the Secretary-General (A/57/387 and Corr.1).

² Principles relating to the status of national institutions for the promotion and protection of human rights ("The Paris Principles"), General Assembly resolution 48/134 of 20 December 1993, annex.

³ Commission resolution 1992/54, annex.

⁴ Sub-Commission resolution 2002/16.

⁵ CERD/C/62/CO/4.
