

Chapter III

Mandate and Powers

3.1 Overview

- An NHRI should have a broad mandate covering the full range of human rights issues and recognising the universality, interdependence, interrelatedness, and indivisibility of human rights.
- “Human rights” should be defined not only by reference to domestic law, but also by reference to all international human rights instruments, whether or not acceded to by the relevant State.
- The mandate of an NHRI should, in addition to providing for the protection and promotion of human rights:
 - cover both the private and the public sector; and
 - cover the promotion of accession to international human rights instruments and the harmonisation of domestic law with international human rights instruments.
- The legislative base of NHRIs should confer a power to take such action as is necessary and convenient to enable the institution to discharge its mandate. The specific powers of NHRIs should be clearly and expressly prescribed in the legislation governing the institution and should include the power to:
 - independently initiate investigations of individual and systemic human rights violations and other related issues;
 - encourage and promote human rights through education;
 - advise government and legislators on draft and existing legislation and submit recommendations to the Parliament to resolve human rights violations resulting from legislation, regulations or any other cause;
 - work with and consult appropriate persons, governmental organisations, international organisations and NGOs;
 - monitor government compliance with human rights treaty obligations and promote the ratification of human rights treaties;

- establish advisory committees to advise the NHRI in relation to the performance of its functions;
 - submit recommendations to the Executive for the resolution of human rights violations relating to administrative action or inaction or any other cause;
 - provide remedies for human rights violations and when relevant, seek and facilitate the provision of remedies by the courts;
 - conduct quasi-judicial hearings. These hearings should generally be held in public. However, an NHRI should have the power to determine that hearings be held in private in appropriate circumstances;
 - compel attendance of witnesses before it, order production of documents and secure access to locations;
 - require co-operation from other government agencies and public actors;
 - administer an oath or affirmation;
 - inspect custodial facilities and places of detention;
 - co-operate as appropriate with NHRIs in other countries, the UN and other relevant international organisations; and
 - do all things that are necessary or convenient to be done in connection with the performance of its functions.
- Where in a particular country it is considered necessary and desirable that an NHRI should have search and seizure powers then these should only be exercised by obtaining a judicially approved warrant and implemented in co-operation with law enforcement authorities.

NHRIs should possess the mandate and power to promote, protect and secure human rights. Broad mandates afford the possibility of greater rights protection and thus are preferable. This is especially relevant for those countries with constitutions that define rights or human rights so narrowly as to afford limited, if any protection against attempts by the government or other actors to impinge on the human rights of citizens. In order to ensure that the NHRI is an effective

and credible protector of rights, the NHRI's mandate should include jurisdiction over all categories of human rights and all public and private actors.

An NHRI must have a general and unlimited power to inquire fully into any matter concerning human rights. Specifically, NHRIs should have the power to: hear and investigate individual complaints, raise awareness about human rights and promote human rights education, and provide advice to government officials and legislators regarding draft legislation and its compliance with the State's human rights treaty obligations. In the exercise of these powers, the NHRI should ensure that it strategically strikes a balance in addressing both systemic human rights issues and the resolution of individual complaints. NHRIs must have the power to provide effective remedies for violations of human rights.

An appropriate exercise of the above powers includes the power to visit and inspect places such as detention centres, immigration camps, refugee camps, correctional institutions and prisons. A wide definition of the term "place of detention" is desirable to facilitate entry into, and, inspection of, any place where a person can be detained against his or her will.

3.2 General Complaint Procedures

- All NHRIs should have the power to investigate alleged human rights violations on their own initiative. This power should be used actively to investigate human rights concerns of people who may have difficulty accessing the NHRI on their own.
- The complaint mechanism of an NHRI should be simple, accessible, inexpensive and expeditious. Where necessary for the protection of witnesses or victims, confidentiality should be guaranteed.
- The enabling legislation of an NHRI should specify the subject matter of admissible complaints. In general, this should include civil, political, economic, social and cultural rights and the rights of women, children, minorities, indigenous persons, the disabled, the aged, and other particularly vulnerable groups. The enabling legislation should also specify who is entitled to lodge a

complaint. The enabling legislation should specify that a representative of the complainant may file complaints.

- It must be possible to file complaints regarding governmental and non-governmental acts or omissions.
- NHRIs should develop methods to encourage complaints from groups particularly vulnerable to human rights violations.
- Procedures for submitting complaints, including the time period for laying complaints, should be published and disseminated widely. Complainants should be regularly informed of the status of their complaints.
- Complaints by illiterate people must be facilitated.

An important power of an NHRI is its ability to protect the human rights of individuals by investigating violations and seeking remedies or redress for victims. The efforts of NHRIs to provide advice, to promote adherence to standards and to educate are very important and should not be undervalued, but NHRIs must also demonstrate that there are effective mechanisms for protecting human rights that have been abridged or threatened.

3.3 Investigation of Complaints

- Each NHRI should establish its own guidelines and rules of procedure for the investigation of complaints. Its procedures should reflect the principles of natural justice and procedural fairness.
- Investigations should accord the right of reply to the person or body whose acts or omissions are investigated.
- NHRIs should have the power to effectively address non-co-operation, obstruction, or victimisation in an investigation, e.g. a refusal to produce evidence.

- An NHRI should not be strictly bound by the rules of evidence, but its evidentiary requirements should reflect the principles of natural justice and procedural fairness.
- People compelled to give evidence should have the right against self-incrimination. In addition, professional privilege should be respected.

NHRIs should develop fair and standardised procedures for investigating complaints. The rules and procedures of an NHRI should demonstrate that it will, in good faith, make efforts both to ascertain the truth and protect the rights of both complainants and respondents.

While some discretion on the part of NHRIs is necessary to protect victims, the practices should guarantee procedural fairness. For example, it is generally true that an NHRI should not consider complaints relating to incidents that took place more than one year before the complaint was lodged due to the difficulty of obtaining reliable evidence. However, an NHRI should have the discretion to accept complaints that fall outside this time period under well-defined circumstances.

The power to compel co-operation is essential to the fact-finding function of the NHRI. If an NHRI needs the judicial system to enforce co-operation, the effectiveness of NHRI investigations and hence the public perception of the NHRI, will be dependent upon the speed and independence of the judiciary.

3.4 Promotion of Rights

- NHRIs should have the power to provide information, education, strategic advice and training on human rights issues including:
 - training for government and other public officials about applicable norms and human rights standards. Specific training should be designed for members of the police, military forces, judiciary, legal profession and other members of society that have particular powers or responsibility relevant to human rights;

- targeted education for vulnerable groups;
 - building the capacity of human rights advocates and NGOs to perform their work;
 - training NHRI staff to build the capacity of the NHRI to perform its work;
 - public awareness campaigns; and
 - developing and supporting human rights clubs – particularly in schools and other formal educational institutions.
- NHRIs should widely disseminate information on their complaints process, the remedies available and the contact details of the NHRI.
 - NHRIs should have the power to use mass media as appropriate and available to communicate with the public. For example, in developing countries, radio may be very effective. In other countries, toll-free phone systems and websites may be useful.
 - NHRIs should collaborate with other public and private institutions to maximise the provision of human rights education.

The powers possessed by NHRIs to educate victims and perpetrators of human rights abuses should be extensive and cover a broad range of activities. NHRIs should consider it their duty to educate the public about human rights and what mechanisms exist to protect them. Great care should be taken to target vulnerable groups because they are unlikely to be reached through traditional education campaigns.

NHRIs can change the culture of government and its employees, the judiciary and the legal profession, the security forces and those in positions of power through training. This training, which should be designed to impart the message that sensitivity to human rights issues is required for effective job performance, should form part of all personnel development programmes. NHRIs should work with trainers and educators to ensure that the importance of human rights is recognised in other training programmes.

3.5 Review of Laws

- NHRIs should have the power to analyse all existing and proposed legislation and make recommendations regarding consistency with international human rights norms.
- Governments should consult with NHRIs on legislative proposals and introduce the practice of including a human rights impact assessment in the explanatory documents and second reading speeches produced for all bills submitted to parliament.

The power of NHRIs to analyse legislation and make recommendations is important for the promotion of human rights for two reasons. The first is that it may lead to the codification of human rights principles into the laws of the land. The second is that it raises the awareness of law-makers about international treaty obligations and human rights norms.

3.6 Remedies

- An NHRI should have the power to use conciliation, mediation and other alternative dispute resolution mechanisms, when appropriate, to resolve complaints.
- NHRIs should be empowered to refer matters for prosecution.
- An NHRI should have the power to seek effective remedies including, where appropriate, through the courts.
- The respective statutes of limitations should not be so narrow as to limit the ability of NHRIs to examine allegations of abuse or maladministration.
- Legislation should not exclude agencies within the state apparatus from NHRI investigations.

NHRIs must be able to provide effective remedies for violations of human rights. The means that are available to NHRIs to resolve complaints will affect both public perception and the ability of an NHRI to successfully foster a culture of respect for human rights. Human rights breaches may be resolved in various ways ranging from alternative dispute resolution to action in the courts. The power to conciliate and mediate between disputants is important as a means of resolving complaints expeditiously. Delays in the provision of remedies will diminish public confidence in the NHRI and deter victims from looking to the NHRI for redress. NHRI decisions should, where appropriate, be enforceable through the courts. In addition, complainants should have access to the courts should they be dissatisfied with the findings of an NHRI.

Perhaps not always seen as a remedy but of major importance in the armoury of an NHRI is work aimed at prevention of abuses. It is therefore important that national human rights institutions should have powers to issue guidelines to encourage the protection of human rights.