

Commonwealth Conference on National Human Rights Institutions

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Statement by Mr. Gianni Magazzeni
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Ladies and Gentlemen,

Distinguished colleagues,

It is with pleasure that I address you here in my new capacity as the Coordinator of the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights. I look forward to continuing the fruitful cooperation we have enjoyed since the signing of a Memorandum of Understanding on cooperation in 1998, and hope we can build on these past achievements so as to make our links even stronger.

OHCHR gives priority to the establishment and strengthening of NIs in compliance with the Paris Principles because they are the central element of strong and effective national human rights protection systems which in turn are key to peace, security and economic and social development. The Office provides tailored advice to a growing number of countries on appropriate constitutional or legislative frameworks regarding the establishment of NIs and on the nature, functions, powers and responsibilities of such institutions.

OHCHR supports increased participation of NIs in appropriate United Nations human rights and other international fora, encourages the sharing of best practices among NIs, and supports the strengthening of their regional networks.

The Paris Principles

Ladies and gentlemen,

I would like to first give a brief summary of the Paris Principles, given their prominence in the work of OHCHR in support of national institutions as well as in the context of the mandate of the International Coordinating Committee of National Human Rights Institutions.

From 7 to 9 October 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris following a 1990 request from the Commission on Human Rights to organize a gathering of national and regional institutions involved in the promotion and protection of human rights. The conclusions of the workshop were endorsed by the General Assembly in resolution A/RES/48/134 adopted on 20 December 1993, and which became known as “the Paris Principles”.

The 6 key criteria set out in the Paris Principles are the following:

- Independence guaranteed by statute or constitution;
- Autonomy from government;
- Pluralism, including in membership;
- A broad mandate based on universal human rights standards;
- Adequate resources; and
- Adequate powers of investigation.

These Principles are universal in their application and must be seen as a whole. I would like at this point to praise the efforts made by the Commonwealth Secretariat in widely sharing these principles and developing best practice for NIs which was published into a book in 2001.

Competence and responsibilities

The Paris Principles provide that national institutions are to be vested with competence to promote and protect human rights through as broad a mandate as possible, clearly articulated in a constitutional or legislative text.

The Human Rights Ombudsman of El Salvador (*the Procuraduria de Defensa de los Derechos Humanos of El Salvador*) is a good illustration of this provision. The establishment of the PDDH occurred in 1992, based on the constitutional reform launched by the 1992 peace agreements of El Salvador. The Procuraduria has a strong constitutional mandate and extensive responsibilities for the promotion and protection of human rights, including, among others; the overseeing of the protection, promotion and education of human rights, the initiation of investigations at its own initiative or at the request of a third party, the promotion of reforms before Government bodies, including the presentation of bills for the advancement of human rights; the promotion of ratification of human right treaties; and free access to detention facilities.

The Principles also specify the responsibilities of a national institution. Firstly, national institutions shall submit recommendations, proposals and reports to the Government, parliament and any other competent body. The subject matter can be any legislative or administrative provision relating to the protection of human rights; any situation of a human rights violation; or the preparation of reports on the national human rights situation or more specific matters.

Morocco gives a most vibrant instance of the impact of a NI. In January 2004, the King of Morocco issued a Decree which created the IER (Instance Equité et Réconciliation), upon recommendation of the Moroccan NI. It was mandated to establish a record on the human rights violations that occurred between 1956 and 1999. Institutional responsibilities for such

abuses were identified; measures to compensate the victims were established; and recommendations for reforms to prevent the repetition of such violations were put forward. The Moroccan NI is now in charge of ensuring the follow up over the IER's recommendations. The New Zealand Human Rights Commission is also a good example of the influence which a NI can have on policy, as the conclusions of its 2004 report titled "Human Rights in New Zealand Today" formed the basis for the development of the National Action Plan for Human Rights, released in March 2005.

Thirdly, national institutions may promote conformity of national laws and practices with international human rights instruments, as well as encourage ratification of international human rights instruments and ensure their implementation.

The Ukrainian NI, for example, submitted a notification to Parliament on the Convention on Migrant Workers and attended a session with the Ukrainian Parliament to explain the importance of ratifying this Convention.

An NI may also contribute to the reporting process under international human rights instruments (with due respect for the independence of the national institution). An example is provided by the Irish NI, which attended a CEDAW session in July 2005 and provided a shadow or alternative report to the Committee, highlighting areas of women's rights which the Irish Government had not given much attention to. They expressed their concerns during the session and an informal consultation between the NI and CEDAW took place concerning relevant issues in Ireland. Some of the Irish NI comments were taken up in the CEDAW concluding observations. Another good example is the Uganda Human Rights Commission, which has a mandate under an Act of Parliament and the Constitution to monitor compliance with international treaties and reporting. The Ugandan NI, while writing its first annual report, compiled a list stipulating which treaties the Government had not been reporting on. They also discussed with Government officials and NGOs the reasons why the Government was not

reporting. The Government mentioned a lack of resources. The NI worked with OHCHR and UNDP to build the capacity within the country to report. This eventually led to the development and submission of 5 reports to the treaty bodies.

More broadly, a NI may cooperate with the United Nations, regional institutions, and national institutions of other countries, which are competent in the areas of the protection and promotion of human rights;

Finally, NIs may assist in developing and delivering human rights teaching and research programmes, and contribute to increase public awareness of human rights through information and education.

For example, the Indian National Human Rights Commission is involved in sensitizing and educating State agents, magistrates, police officers, NGOs and other practitioners on the implementation of the Indian Human Rights Act. Also, the Jordanian National Centre for Human Rights is working to foster a human rights-oriented dialogue in the Arab region. Here, an Arab-European Dialogue on Human Rights, involving both European and Arab NIs, will start in Amman, Jordan, tomorrow, to discuss and prepare a common platform on human rights issues, such as access to information and civil society development which will be agreed upon in mid-April. A third good illustration is the Canadian Human Rights Commission, which puts emphasis on outreach in order to prevent the incidence of discriminatory practices. The Commission has begun establishing memoranda of understanding with employers under federal jurisdiction. These MOUs will focus on large employers that are willing to work with the Commission to prevent discrimination and resolve complaints effectively and quickly.

Composition

Besides listing the above mentioned responsibilities, the Paris Principles also address the composition of a national institution and its independence, emphasizing the importance of a pluralist representation of social forces involved in human rights promotion and protection. The Principles specifically mention NGOs, trade unions, professional organizations, trends in philosophical or religious thought, academia, parliament, and government departments. On the participation of government representatives, it foresees that they should only have advisory powers.

An interesting example of a pluralistic NI composition is the recent development of the Moroccan NI. In November 2003, it went through a restructuring to increase its autonomy and reduce its dependence on Government ministries. The composition of the Commission was thus enlarged to involve former opponents and former political prisoners, together with human rights activists and members of civil society.

In 2003, to commemorate the 10th year anniversary of the Paris Principles, OHCHR organized a round table to reflect upon the Paris Principles. Participants concluded that particular attention should be paid to appointment and dismissal procedures when drafting legislation, as it was deemed that the Paris Principles do not pay sufficient attention to this critical area which affects the independence of NIs. Appropriate models of appointment include nomination by civil society organizations, appointment by Parliament, or another autonomous institution (such as a judicial service commission). Furthermore, an appointment process could, for example, involve the establishment of a special and fully representative parliamentary committee to handle the selection process. Also, the United Nations argues that it is preferable that members, after having been selected, be appointed for a fixed term of, for example, at least five years. There should be the possibility of re-appointment for one additional term of the same length.

Good practices regarding appointment procedures can be found on the African continent. The Human Rights Commissions of Kenya, Sierra Leone and South Africa have provisions on the appointment and dismissal procedures that are above the threshold set by the Paris Principles. For example, nominations are sought publicly and candidates are screened by a selection panel comprising one representative from the Government, one from the opposition and one from civil society. The selection panel is also gender balanced and short-lists the best candidates. It invites the President of the Republic to select candidates for Commissioners for approval by the National Assembly. In Kenya and Sierra Leone, the Chairperson of the Commission is chosen by the Commissioners themselves. With regards to the dismissal of Commissioners, in South Africa, the President can remove any member of the Commission from office if: (i) such removal is requested by a joint committee composed to investigate the matter; and (ii) such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting.

Furthermore, it must be stressed that, as a guarantee for their effective independence and functioning, national institutions should have adequate funding, allocated by parliament, and have their own staff and premises.

Methods of operation

On the methods of operation, the Paris Principles provide that the NI shall freely consider any question falling within its competence, hear any person and obtain any information and document necessary for assessing situations falling within its competence. It shall also meet on a regular basis, establish working groups from among its members as necessary, set up local or regional sections, consult with other bodies responsible for the protection and

promotion of human rights, develop relations with human rights NGOs, and address public opinion.

Finally, the Paris Principles recognize that a number of national institutions have competence to receive and act on individual complaints of human rights violations.

A good example is the Complaints Committee for Ethnic Equal Treatment established at the Danish Institute for Human Rights. The Committee hears complaints of discrimination on grounds of race or ethnic origin, as well as complaints in which a person has been victimized because they have made such complaints.

Strategic engagement

Ladies and gentlemen,

After this brief overview of the Paris Principles and the minimum standards they put forward, I would like to turn our attention to the importance of national institutions as strategic partners in the work of OHCHR at the national level.

The United Nations High Commissioner for Human Rights, Ms. Louise Arbour, has clearly outlined her vision in the OHCHR Plan of Action and Strategic Management Plan for 2006-2007, stressing that greater OHCHR country engagement is crucial to address human rights challenges and protection gaps. To this end, the High Commissioner has called for closer partnerships at the national level, including an increased focus on national human rights protection systems.

The importance that the High Commissioner attaches to the development and strengthening of national human rights protection systems stems directly from the 2002 Secretary-General

report “Strengthening of the United Nations: an agenda for further change”. This report stated that the emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should be a principal objective of the United Nations. In his 2005 report “In larger freedom”, the Secretary-General stressed that “Humanity will not enjoy security without development, it will not enjoy development without security, and it will not enjoy either without respect for human rights.” A strong national protection system thus has not only positive results for the human rights situation in a given country but ensures solid foundations for security and development.

Key defining elements of such national human rights protection systems are:

- an independent and effective judiciary;
- a functioning administration of justice,
- a representative national parliament with parliamentary human rights bodies;
- an independent, truly representative and effective national human rights commission in conformity with the Paris Principles;
- the development of a culture of human rights through programs of human rights education in the formal and non-formal sectors as well as a public information campaigns and
- a strong and dynamic civil society.

Because of their central position and role in the national protection system, NIs are naturally strategic partners in the work of OHCHR and the UN system. This can especially be said in the area of the rule of law, to which OHCHR is attaching increasing priority.

In order to reform and strengthen judicial and security institutions and enhance the ability of both Government and civil society to promote and protect human rights and the rule of law, NIs have not only an essential role to play but they are also the best relay mechanism at the national level that can ensure follow up to action by the international human rights system.

In particular, NIs can take the lead in ensuring that the nation's body of law is consistent with the Constitution and with international human rights standards, and includes adequate protections for vulnerable groups such as women and minorities, against discrimination, thus developing the Government's capacity to institutionalize law revision in order to meet the country's ongoing and future needs.

NIs can also ensure that the administration of justice conforms to international standards and provides effective remedies to all. In particular, NIs can make sure that police and prison administrations have adequate standing orders, implementing regulations, internal accountability systems that guarantee effective internal oversight and ensure that national practices are fully in line with relevant international human rights norms.

In countries coming out of a conflict, NIs can play a key role in the development of transitional justice strategies that can ensure accountability for past crimes as well as create effective mechanisms for national reconciliation.

It is therefore of the utmost importance that NIs fully comply with the Paris Principles, in order to maintain the highest standard of professionalism in their work, act as a guarantor of international norms at the national level and use their independent and prominent position in society to effectively interact with international organizations – such as OHCHR – as well as with national governments, State entities, especially national parliaments, as well as civil society.

An important area where NIs can play a crucial role is with regard to addressing critical human rights issues, such as summary executions, torture and arbitrary detention, to mention a few. It is here that NIs are especially encouraged to take the initiative and be proactive, as they are often one of the few authoritative bodies with the capacity and contacts to act urgently and ensure greater protection to individuals in need. NIs are also strategically placed

to monitor the State's follow up to recommendations of UN Human Rights Treaty Bodies as well as those of mechanisms of the Human Rights Council, the so-called Special Procedures. NIs are thus the national guardians *par excellence* over the implementation of international human rights norms, and are a key link to Government, Members of Parliament, NGOs and civil society organizations for the protection and promotion of human rights. It is in liaising and networking with national players in the human rights field, that NIs can mobilize a critical mass, if needed, and ensure the effectiveness of remedial action in cases of violations.

Finally, OHCHR, in accordance with the Secretary-General reform programs, tries to channel its national level activities increasingly through the United Nations Country Team system made up of UN Agencies and Programs such as UNDP, UNICEF, UNHCR, etc., in place in some 140 countries worldwide. OHCHR is making it a priority for 2007 to sensitize and open up UNCT support towards the establishment and strengthening of NIs. NIs are in turn encouraged to seek technical assistance and support from and through members of the UNCTs at the national level.

International partnerships

With an increase in country engagement and technical cooperation towards NIs, OHCHR is ever more looking towards regional and international NI networks as strategic partners for enhanced effectiveness at country level and closer OHCHR-NI engagement. It is in this light and in recognition of the significant potential of networks, that OHCHR is encouraging the establishment of a Commonwealth Forum of NIs, as it will undoubtedly become an important entry point for OHCHR engagement with NIs in its aim to close protection gaps and to strengthen national human rights protection systems.

In 2006, some of the regional organizations and NI networks that OHCHR has actively worked with included; the Agence intergouvernementale de la Francophonie, l'Association francophone des Commissions nationales des droits de l'homme, the British Council, the

Council of Europe, the OSCE, the Asia Pacific Forum of NIs, the Special Fund for Ombudsman and National Institutions of Latin America and the Caribbean, the African Union, and of course the Commonwealth Secretariat, to mention a few.

Another strategic partner with which we hope to build stronger ties is the Inter Parliamentary Union, as it focuses on another key element of a national protection system, that is parliaments. This organisation, much in the same way as NI networks do, assembles parliaments into an international network, creating a force which is stronger than its individual parts. By interlinking networks which focus on different elements of a national protection system, a truly significant momentum can be created to advance human rights at the national level.

I thank you very much for your attention.
