

**Introductory Speech of Mr. George Tugushi, Public Defender of Georgia  
at the OSCE Supplementary Human Dimension Meeting on National Human  
Rights Institutions (Ombudsinstitutions, commissions, institutes and other),  
Vienna, 14 – 15 April 2011**

**Session 2: NHRIs and Governments**

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**Introduction**

**Good day distinguished delegates, ladies and gentlemen!**

Being the Public Defender of Georgia, I have been eagerly anticipating this meeting where the deficiencies, enhancements, and future challenges of national human rights institutions would be profoundly addressed. Like many of you, I would consider this as a unique opportunity, which involves main actors in the field of human rights and provides possibility to discuss relevant issues from different angles and perspectives.

**ROADMAP:** Within this session I shall briefly explore the relationship between the national human rights Institutions and state authorities, mainly concentrating on the mandates of national human rights institutions, importance of their structural independence, the role of state bodies in identification of the main topics, with your permission, I would further open floor for discussions. Getting back to the topic of the present session, I would start with the answer to a very simple though sometimes puzzling question. What is the main role of the NHRI?

According to the Paris Principles the foremost role of NHRI is not to be the public authority, primarily responsible for the promotion and protection of Human Rights and Fundamental Freedoms in its country. Primarily responsible is instead every public authority within its sphere of reference, and it is the task of each public servant, be it a Minister, a judge or an ordinary administrative officer, to be loyal to this responsibility.

In this regard, there exists a common misconception in many countries and among many ordinary citizens as well as high-level officials and politicians. One believes that once an NHRI is established, this institution will be primarily responsible for the human rights situation in the country. This is, though, truly a misconception. The role of an NHRI, be it an Ombudsman or a Commission or some other structure, is to supervise, to monitor, to follow, that all others - those primarily responsible - are doing their duty, and it is for the NHRI to take due action, when this is not the case.

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- **Mandated relationship between NHRI and State Authorities**

When categorizing NHRIs particular importance shall be given to the mandate of the institutions, their organizational composition as well as political environment and legal traditions within which they operate. Assessment of the effectiveness of the institution shall pay adequate attention to a range of conditions, including financial and human resources together with institutional capacity.

The primary document that shaped basic standards for NHRIs was the Paris Principles.<sup>1</sup> Alongside with introducing international and unified standards for all types of national human rights institutions, the Paris Principles<sup>2</sup> prescribed their basic competences and responsibilities.

One of the competences of NHRI is the submission of the **opinions, recommendations, proposals and reports** on issues that are related to the promotion and protection of human rights.<sup>3</sup> The addressees of these advisory documents might be the Government, Parliament or any other competent body.<sup>4</sup> This power should ensure the involvement of NHRI in the process of examination of existing legislation, legal assessment of bills and proposals,<sup>5</sup> as well as evaluation of the compatibility of the legal acts with fundamental principles of human rights.

The **advisory documents** might also focus on the rights of certain vulnerable groups, individual cases, or general situation in the country.<sup>6</sup> This mechanism shall enable NHRI to put emphasis on particular problems and difficulties that carry systematic character.

The intersection of the competence of human rights institutions and state authorities poses several challenges. Due to their character, the advisory documents might not affect the operation of governmental institutions and human rights policy of the state, which would leave the effort of the NHRI without further impact.

Other mainstream activities of the local human rights bodies are **monitoring and consideration of individual and collective complaints** as well as authority to act on the issues on the basis of their own initiative (*suo motu*). Some of the institutions have been subject to certain restrictions related to the access of places of detention. It is upon state to ensure the access to all places of detention, in order to monitor the conditions of all areas of detention facilities.

Efficiency of the consideration of complaints is equally dependent on the will of the state institutions to cooperate. The state authorities often fail to provide timely and adequate information, which makes the latter unable to further examine the case. As a result, complainant is left without effective remedy or respective situation is not properly evaluated.

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<sup>1</sup> Adopted by General Assembly Resolution 48/134, December 20, 1993.

<sup>2</sup> The Paris Principles, Section 1; 2; 3.

<sup>3</sup> *ibid.*, Section 3.a.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*, Section 3.a.(i).

<sup>6</sup> *ibid.*, Section 3.a.(i); (ii); (iii); (iv).

It should further be underlined that the NHRI is in principle not the representative of a complainant nor the ally or the adversary of a particular body, be it a governmental one or a non-governmental one. The NHRI is the “Servant of the Constitution” and of the national legislation adopted by Parliament and Government in line with International Human Rights Instruments and the Constitution, being so with the Institution’s three “eyes” - Independence, Impartiality, and Integrity.

It is in this spirit that NHRI recommendations should preferably be designed and distributed.

On the other hand, there are certain challenges that derive from the operational deficiencies of the NHRI itself, such as inconsistent relation policy with state and failure to objectively detect main problems that should be addressed.

In addition, it is of the greatest importance for the recommendations of the NHRI to contain a clear message that the Institution will follow up the adherence to its recommendations and will - as appropriate - publicly criticize the public authority or the public servant in question in case its recommendations are not duly followed.

- **Importance of Independence**

Independence is a characteristic that establishes solid basis for the legitimacy and credibility of the NHRI in the society and stands as an assertion for effectiveness. Thus the functioning of NHRI without high level of independency renders its activities futile.

The independence shall be ensured by stipulating specific regulations regarding the appointment and composition in the respective legal act, as well as by apparent demonstration of the political will. The law shall ensure that members and staff of NHRI shall not be subject to any kind of instructions from state authorities, directly or indirectly.

Without prejudice to their independence, the practice reveals that the transparent relations with state institutions positively affect the efficiency of NHRI. For example, conclusion of Memorandums of Understanding with state institutions can stipulate specific terms that would make the relations easy to coordinate.

The role of an NHRI is also often misinterpreted as being an adversary, a foe, an enemy, of public authorities, public servants and the Government in general. In fact it is the other way around. The NHRI is there to see to it - to help if you wish - the Government and its bodies to sensibly follow the International Human Rights Instruments, signed and ratified by the country, and the rule of law, the very laws and regulations created by the Parliament and the Government, in the best interest of these institutions and of the citizens of the country.

It should be presupposed that the very objective and wish of these institutions - the Parliament, the Government, all other public authorities - are that the Law should be sensibly followed, that they in fact really want to establish the rule of law. And they should therefore welcome well-founded advice and criticism by the NHRI, when irregularities have taken place. But they should also feel secure that the NHRI will dismiss unsubstantiated complaints, praise good practices, and suggest reasonable ways to handle unclear situations.

Today we shall address various issues related to the relations of NHRI with the state bodies, outlining drawbacks, improvements, and best practices. However, the rationale behind the topic remains the same.

The adequate and well-established relations of state authorities with NHRI comprise one of the important elements on the way of formation of competent NHRI. I would say that effective human rights institution is the one that has acquired complete legal status, organizational and institutional culture, adequate financial and human resources and has developed international links.

On this point, I would like to invite the auditorium to elaborate on how can the state authorities, international organizations and civil society participate in the enhancement of the role of NHRIs.

Hereby, I would like to open floor to discussions about the aspects prescribed in the Agenda of the meeting. I preserve hope that we shall leave the session being more definite about the steps that need to be taken in order to tackle with existing challenges.

Thank you for your attention!