



PC.SHDM.GAL/5/11  
20 May 2011

ENGLISH only

## **SUPPLEMENTARY HUMAN DIMENSION MEETING**

**National Human Rights Institutions  
(Ombudsinstitutions, commissions, institutes and other)**

**14 – 15 April 2011  
VIENNA**

**FINAL REPORT**

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## **I. EXECUTIVE SUMMARY**

The first Supplementary Human Dimension Meeting (SHDM) in 2011 was dedicated to the topic of national human rights institutions (NHRIs). The meeting brought together 197 participants, including 115 delegates from 47 OSCE participating States, 4 delegations with 7 representatives and one expert from OSCE Partners for Co-operation, 20 representatives from 17 NHRIs and other independent human rights structures, 32 representatives from non-governmental organizations, 12 representatives from OSCE Institutions/Field Operations, and 10 representatives from 6 international organizations.

The meeting was organized into three working sessions:

- National Human Rights Institutions – Their Role in Promoting and Protecting Human Rights;
- National Human Rights Institutions and Governments;
- National Human Rights Institutions and Civil Society.

Discussions focused on a range of critical issues relating to the further need to ensure independence and effectiveness of NHRIs. Participants presented numerous examples of NHRI engagement with various branches of government as well as fruitful work undertaken in collaboration with civil society actors. It was stressed that while NHRIs play an increasingly important role in the protection and promotion of human rights at the national level, the responsibility for ensuring the enjoyment of human rights for all people remains with the OSCE participating States.

Ambassador Lenarčič announced at the conclusion of the SHDM that the OSCE Lithuanian Chairmanship together with the OSCE/ODIHR will organize a Conference on NHRIs in Vilnius in July 2011.

## **II. SYNOPSIS OF SESSIONS AND RECOMMENDATIONS**

This part of the report summarizes the discussions which took place during the three thematic sessions and presents the recommendations made by the participants. The recommendations were directed towards a variety of actors, particularly OSCE participating States, OSCE institutions and field operations, as well as to NHRIs and civil society actors. These recommendations have no official status and are not based on consensus. The inclusion of a recommendation in this report does not suggest that it reflects the views or policies of the OSCE. Nevertheless, these recommendations are useful indicators for the OSCE to reflect on how participating States are meeting their commitments to promote human rights and consider possible ways to enhance the contribution of national human rights institutions in this area.

### **OPENING SESSION**

In his opening remarks, Ambassador Janez Lenarčič noted the importance of the work undertaken by NHRIs and outlined some of the key challenges they faced in exercising their mandate. He stated that NHRIs across the OSCE region play a key role in protecting and promoting human rights at the national level.

H.E. Renatas Norkus, Chairperson of the OSCE Permanent Council presented an overview of the role of NHRIs in strengthening adherence to existing OSCE and international commitments of participating States. The Ambassador highlighted in particular the work of ODIHR and the OSCE field operations in providing expertise and technical assistance, while also encouraging further engagement in this field.

In his keynote speech, Professor Brian Burdekin highlighted the diversity that exists amongst different models of NHRIs, and affirmed the critical role of NHRIs set up in accordance with the

so-called Paris Principles<sup>1</sup>, the internationally recognized minimum standards for NHRIs with mandates to protect human rights.

The role of NHRIs is primarily that of translating human rights standards into reality. One of the challenges that NHRIs face is that they operate within diverse national legal frameworks, many of which predate the emergence of international human rights conventions. These conventions have framed a large proportion of NHRIs' mandates. The agreement on the Paris Principles was grounded on the recognition of the need to consolidate democratic systems with additional mechanisms to protect the rights of the most vulnerable groups in society, including religious, linguistic and ethnic minorities. Although governments are the primary duty bearers in the field of human rights protection, NHRIs play an important role as monitors, educators and, occasionally, investigators of human rights violations.

In outlining some of the key characteristics of NHRIs, Professor Burdekin explained the importance of establishing NHRIs on the basis of a legislative text adopted by elected representatives of the people of a country. He also stressed the importance of securing the conditions for NHRIs to execute their mandated functions free from interference.

Professor Burdekin described some of the key changes in the international order that have taken place across the globe over recent decades, including a significant number of democratic transitions from autocratic and military dictatorships. The recognition of the interrelatedness and interdependence of human rights has also developed, together with a new sense of international accountability for perpetrators of gross violations of human rights. However, new challenges exist in the area of accountability, including the privatization and outsourcing of services that have been previously provided by States.

NHRIs often face the challenge of an overly broad mandate coupled with limited resources. In light of this, the importance of close co-operation with civil society must be understood, particularly in view of the need for NHRIs to provide authoritative and accurate advice to government. In recent years, the significance of NHRIs has developed particularly in regard to their engagement with UN treaty and charter based mechanisms.

Although NHRIs work mainly at the national level, these institutions also play an increasing role in addressing cross-border issues such as human trafficking or the rights of migrant workers, asylum seekers and refugees. Furthermore, the UN's most recent international conventions on torture and on disabilities specifically foresee the potential for NHRIs to act as the designated national monitoring bodies. These additional responsibilities should however be accompanied by additional resources from government. With regard to the evolving mandate of NHRIs, states should ensure that protection of human rights remains comprehensive and the institution accessible by society at large, without limiting these mechanisms to address only the rights of particular groups.

Professor Burdekin went on to outline the lessons learnt in the field of NHRIs. These include the importance of the universally accepted standards endorsed in the 1993 Vienna Declaration and Programme of Action; the importance of clear mandates for NHRIs; the necessity to grant NHRIs powers commensurate with their responsibilities, and the importance of educating the public to understand that people should be treated with dignity. In addition, it is important to work to amend relevant legislation. Human rights violations are tackled most effectively at the national level, and accessibility of relevant mechanisms is essential to securing human rights in reality. The role of NHRIs in promoting understanding and acceptance of individual dignity and human rights is important, particularly when viewed in light of the devastating effects of racial hatred or ethnic and religious intolerance. Given existing challenges at the practical level resulting from broad mandates and limited resources, it is important to remember that NHRIs have particular responsibility for the

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<sup>1</sup> United Nations Principles relating to the Status of National Institutions, adopted by the United Nations General Assembly resolution 48/134 of 20 December 1993.

most vulnerable groups in the community: the homeless, the ill, the elderly, children, persons with physical and mental disabilities, those who are isolated and those in places of detention, among others.

## **SESSION I: NATIONAL HUMAN RIGHTS INSTITUTIONS – THEIR ROLE IN PROMOTING AND PROTECTING HUMAN RIGHTS**

**Introducer: Dr. Maurice Manning**, President of the Irish Human Rights Commission, Republic of Ireland; Chair of the European Group of National Human Rights Institutions

**Moderator: Mr. Vladlen Stefanov**, Chief of the National Institutions and Regional Mechanisms Section, United Nations Office of the High Commissioner for Human Rights

Working Session I offered an opportunity for participants to exchange views on the role, functions and existing different models of NHRIs. The moderator set the stage for the discussion by noting the unique position of NHRIs as state funded entities at the ‘crossroads’ between states, civil society and other actors. While being part of the state, NHRIs are located outside of the executive, legislative and judicial branches of the state. Ideally, NHRIs should operate in a neutral and objective space in which they can more easily interact and influence other stakeholders both at the national and international level.

The introducer of the session outlined the functions of NHRIs with reference to the UN Paris Principles. He noted the importance of the accreditation process by the International Coordinating Committee of NHRIs (ICC). Strong institutions depend upon secure and stable funding, he said. The importance of a broad institutional mandate covering all human rights issues and provisions for substantial engagement with civil society was also noted. Governments were urged to ensure that recommendations made by NHRIs are received in a systematic manner. Following these remarks, the introducer presented the set of draft recommendations developed by NHRIs gathered earlier in the day for a Preparatory Meeting convened by ODIHR.

A lively discussion followed the introducer’s presentation, enabling participants from Austria, Azerbaijan, Bosnia and Herzegovina, Finland, France, Germany, Italy, Kazakhstan, Kyrgyzstan, Lithuania, Norway, the Russian Federation, the United Kingdom, the United States and the EU Fundamental Rights Agency to comment on the work of NHRIs across the OSCE region.

There was a general agreement that NHRIs play a vital role in the protection and promotion of human rights at the national and, increasingly, international level. One participant noted the particular importance of NHRIs for post-Soviet states. The need for participating States to respect the Paris Principles was further stressed by several participants, including to take into account the General Recommendations made by the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions (ICC). A number of NHRIs agreed that all NHRIs shall strive to be accredited with A Status with the ICC.

A number of participants also agreed that different institutional models of NHRIs exist in the OSCE region and noted that regardless of their individual structure, certain basic conditions need to be fulfilled in order for NHRIs to fully perform their functions. These include a strong legislative framework and broad mandate, appropriate structures and an adequate budget as well as public recognition of their work.

The independence of NHRIs was stressed as a key element of success, and several interventions noted that this independence could be undermined where the above conditions are not fulfilled. One participant shared the example of a weak mandate in cases where, for example, an ombudsperson can be dismissed without reason, prior to the expiry of his or her term. On the structure of NHRIs, another intervention highlighted the need to balance the composition of NHRIs. Here an inclusive and transparent selection process of the head of the NHRI was offered as a good example.

Representatives from civil society also reaffirmed the need for NHRIs to be free to provide an alternative point of view from the government of the state within which they operate.

Although the key role of NHRIs is to review the governments' compliance with human rights standards, various contributions acknowledged the difficulties that some governments had found in creating conducive working conditions for NHRIs to operate effectively. On the other hand, it was stated that NHRIs can mitigate the burden on governmental structures invested with human rights protection.

One participant noted with concern the existence of NHRIs in autocratic systems characterized by a dependent judiciary, corruption, and a general disregard for human rights. In these cases, it was said, NHRIs would not be able to effectively contribute to the protection and promotion of human rights.

In reiterating recommendations made by NHRIs at the preparatory meeting to the SHDM, two NHRI participants called for the OSCE to ensure that NHRIs receive a special status at OSCE fora.

Several participants recalled the importance of NHRIs' work with vulnerable groups, such as ethnic and national minorities. It was stressed that vulnerable groups were still rarely involved in shaping institutions and that specific outreach would be needed. Moreover, NHRIs were an important player to monitor cases of hate crimes. Participants from different parts of the OSCE region noted the need for NHRIs to prioritize work on freedom of religion, conscience and belief, as an essential element to combat intolerance and discrimination.

Situating the work of NHRIs within the wider human rights protection system, participants noted the existence of new international human rights mechanisms and tools including the Universal Periodic Review of the UN Human Rights Council, the Optional Protocol to the UN Convention against Torture and the UN Convention on the Rights of Persons with Disabilities. It was stressed that if forces are concentrated and combined from all relevant actors, human rights compliance could be ensured.

Some participants noted the problem of multiple independent human rights bodies existing in one country. The existence of only one official NHRI could be rather helpful in identifying gaps in human rights protection and coordinating efforts to address apparent deficiencies. In this regard, a representative of the French NHRI shared the view that the merging of several previously existing institutions into one is expected to make referrals by public institutions more efficient. Participants also drew attention to the recommendation of the Council of Europe's Commission for Democracy through Law (the Venice Commission) that there be only one ombuds institution in every country.

*The following specific recommendations were made in Session I:*

Recommendations to the OSCE participating States:

- fully acknowledge that NHRIs contribute to the protection and promotion of human rights, predominantly but not exclusively at the national level;
- establish, where they do not yet exist, NHRIs that comply with the UN Paris Principles as further elaborated by the Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs;
- ensure the establishment of functionally and institutionally independent NHRIs accountable to parliament;
- ensure an open, transparent, and inclusive selection process of the head (and members) of the NHRI;

- provide for a strong legislative framework ensuring a broad mandate and wide range of functions pertaining to the protection and promotion of human rights;
- ensure that the legislative mandate of the NHRI includes cooperation with civil society actors, acknowledging the importance of civil society in the promotion and protection of human rights;
- recognize that different types of NHRIs exist across OSCE participating States, all of which shall be mandated to protect and promote human rights;
- ensure that NHRIs are provided with sufficient human capital and financial resources to allow them to exercise their mandate effectively, especially when they are given additional tasks under national or international law;
- provide for secure and stable funding from central budget under a separate budget line for NHRIs, with parliamentary oversight;
- ensure that NHRIs are not disproportionately affected by budget cuts;
- ensure that annual and special reports from NHRIs are discussed in parliament in a timely manner and consider the establishment of parliamentary human rights committees to engage directly with NHRIs;
- commit to undertake all necessary steps to ensure that recommendations and initiatives of NHRIs are given due consideration and are systematically implemented by governmental authorities;
- after consultation with and the consent of the NHRI, to vest the NHRI with additional functions under international agreements, such as the Optional Protocol to the United Nations Convention Against Torture or the United Nations Convention on the Rights of Persons with Disabilities, and national legislation such as anti-discrimination laws;
- ensure independence in the context of a country situation where a parliament can dismiss an ombudsman before the end of his or her term.

#### Recommendations to the national human rights institutions

- develop and strengthen relationships with vulnerable groups including establishing and maintaining contacts with religious communities and migrant communities;
- consider to increasing their human resource capacity through, *inter alia*, offering internships and fellowships;
- monitor human rights in the armed forces;
- promote freedom of religion as an important element of preventing discrimination and intolerance.

#### Recommendations to the OSCE Institutions and Field Operations

- continue supporting the work of NHRIs, in co-operation with the United Nations, the Council of Europe, other relevant international organizations and the International Coordinating Committee of NHRIs;
- acknowledge that various institutional models of NHRIs are compliant with Paris Principles;
- to ensure that capacity building for and engagement with NHRIs is undertaken by field offices;
- involve NHRIs when developing OSCE commitments;
- take into account the information provided by NHRIs when drafting reports;
- engage NHRIs in collaborative awareness raising and educational initiatives;
- consider NHRIs as a source of expertise and experience, and foster exchange between institutions;
- consider NHRIs as important interlocutors on human rights issues;
- facilitate consistent participation of NHRIs at OSCE meetings and to ensure that NHRIs receive special status with the OSCE, namely by having dedicated seats in the plenary room for official meetings from where they can make statements using their own status and mandate;

- support the establishment of a permanent Secretariat of the European Regional Group of NHRIs.

## SESSION II: NATIONAL HUMAN RIGHTS INSTITUTIONS AND GOVERNMENTS

**Introducer:** Mr. George Tugushi, Public Defender (Ombudsman), Georgia

**Moderator:** Mr. Markus Jaeger, Head of National Human Rights Structures Unit, Prisons and Police Division, Council of Europe

The discussion during Working Session II addressed issues pertaining to the interaction between NHRIs and various branches of governments. At the outset of the session, the moderator thanked ODIHR for the quality of the Annotated Agenda.

The introducer outlined the relationship between NHRIs and state authorities, mainly concentrating on the mandates of NHRIs, the importance of their structural independence, and the role of state bodies in strengthening their capacity. The introducer explained that the primary responsibility for remedying human rights violations rests with public authorities, even after the establishment of a NHRI. He described the main competencies of NHRIs including submission of opinions, recommendations, proposals and reports to the government, parliament, and other competent bodies. The introducer suggested that effective NHRIs are those which have acquired full legal status, an organizational and institutional culture, adequate financial and human resources and international links. Due to their commitment to uphold the rule of law, governmental and public institutions should welcome well-founded advice and criticism of NHRIs while also feeling secure that good practices will be praised, and unsubstantiated claims or unclear situations handled wisely.

In the open discussion that followed, representatives from Australia, Bosnia and Herzegovina, Finland, Germany, Ireland, France, Kazakhstan, Kyrgyzstan, Norway, Poland, the Russian Federation, Slovenia, Tajikistan and Uzbekistan reviewed the relationship between NHRIs and the three branches of government – the parliament, the executive and the judiciary.

The representative from Germany framed the discussions recalling that NHRIs serve as reminders that states exist for the people and not vice versa.

A large number of those taking the floor pointed out that parliaments should function as allies of the NHRIs and highlighted the crucial role that parliaments have in supporting the work of NHRIs. They stressed the importance of strong legislation - which sets the grounds for the independence of an NHRI - and the necessity for transparent appointment procedures in which the human rights expertise of candidates is verified. Whereas some participants noted that annual reports of NHRIs were often seen by the parliament as a report of the work of the NHRI only, rather than being accepted as a more general assessment of the overall human rights situation in the country, a contrasting experience was presented in which the analyses provided by a NHRI to parliament were regarded as objective and informed about the general human rights climate.

Review and follow up to annual reports produced by NHRIs was seen as a core responsibility of the parliament in relation to a NHRI. A number of NHRI participants discussed the practices of their parliaments in this regard. The representative from the Slovenian NHRI shared the experience from his country which has a system in place to ensure that the recommendations of the ombuds institution are followed up and implemented by the executive. The annual report of the NHRI presented to parliament requires a response from the government in which the executive outlines its planned activities to tackle issues raised in the annual report. Another good practice was shared presenting the case of France where the executive is obliged to respond in writing to the opinion of the NHRI concerning new or amended legislation. It was further recommended to engage NGOs in the drafting of and follow up to the annual reports of NHRIs.



Several participants from Central Asia raised the issue of whether NHRI reports must be approved by the parliament which is the practice in several participating States, arguably encroaching on the independence of the institution. Participants recommended that every parliament establish a Human Rights Committee. In this respect, the work of the British Parliament's (House of Commons) Human Rights Committee was pointed out as a positive example.

Participants also noted the need to convince parliaments to take up NHRI recommendations and to grant NHRIs the opportunity to be heard by parliamentary commissions, before which NHRIs could explain whether certain aspects of draft legislation are in line with human rights principles. In Germany, the NHRI submits independent written observations and participates in parliamentary hearings on various human rights issues.

On the issue of oversight, one participant noted the importance of monitoring the government's work, using the mechanisms provided by the UN treaty bodies, the Universal Periodic Review, and judgments of the European Court of Human Rights, the European Court of Justice and the Council of Europe human rights treaty bodies.

In regard to the relationship with the executive, the Polish NHRI shared the newly introduced practice of meeting high-level ministerial officials on a regular basis in order to discuss governmental policies and practices with human rights implications.

As an NHRI with a strong judicial mandate, the Polish NHRI further commented on the position and authority of the ombudsman, suggesting that the powers of the ombudsman lie in the ombudsman's ability to appeal to courts and to challenge court rulings under existing procedures. In cases where human rights are violated by maladministration or government activity, the NHRI should first of all attempt to engage in general information efforts, including letters to government ministries.

It was also suggested that NHRIs should have a privileged role in national discussions, serving as a facilitator of dialogue between government and civil society. On that note, the moderator stressed the importance of the way in which governments refer publicly to the role of NHRIs. Positive referral to the work of NHRIs was one way in which governments could show their support for the institution.

Finally, the role of the media was highlighted and illustrated using the example of effective media coverage regarding the plight of the persons with mental disabilities in Australia.

*The following specific recommendations were made in Session II:*

Recommendations to the OSCE participating States

- in order to strengthen the role of National Human Rights Institutions (NHRIs), develop and adopt new OSCE commitments on NHRIs;
- safeguard the independence of their NHRI by way of structural measures, emphasizing the status of NHRIs as state bodies distinct from government.
- ensure that their governments do not monopolise the appointment process of the staff and head of NHRIs: appointments should happen as a result of an open process, involving civil society and, if possible, opposition parties;
- ensure independence in law, through constitutional provisions, as well as through general practice;
- take measures to protect NHRIs against the possibility of arbitrary dismissal of their head or members;
- provide stable financial grounds for NHRIs and avoid subjecting it to disproportionate budget cuts;

- examine attentively the reports of NHRIs and ensure that ongoing institutional relationships foster receptivity to the position of their NHRI, engaging in constructive dialogue with their NHRI using respectful and clear language;
- ensure that governments endeavour to refer to the work of NHRIs and pay due attention to this work;
- affirm the primary role of NHRIs in informing the government of its views and assessment of human rights;
- ensure that a formalized procedure and a wide range of channels for interaction with the government are established;
- establish the practice whereby governments request concrete advice from NHRIs. To this end, governments should ensure that NHRIs are informed of draft legislation in good time, so as to give NHRIs the opportunity to comment on legislative proposals;
- consult their NHRI and give due consideration to their assessment of human rights situations.

### Recommendations to NHRIs

NHRIs should:

- make full use of their relationship with their national parliament, in a spirit of cooperation and partnership;
- be ready and able to provide concrete recommendations to their governments;
- stand ready to advise the government on the appropriateness of signing or ratifying international conventions;
- be ready to assist the government in UN treaty body reporting obligations and in the execution of judgments of the European Court of Human Rights;

### Recommendations to the OSCE Institutions and Field Operations

- OSCE institutions are recommended to facilitate or support opportunities for NHRIs to exchange experiences amongst themselves.

## **SESSION III: NATIONAL HUMAN RIGHTS INSTITUTIONS AND CIVIL SOCIETY**

**Introducer:** Ms. **Jasminka Džumhur**, Human Rights Ombudsperson, Bosnia and Herzegovina

**Moderator:** Ms. **Snježana Bokulić**, Head of the Human Rights Department, OSCE/ODIHR

Working Session III was designed to discuss the relationships between civil society actors and NHRIs. In setting the stage for the discussion amongst participants, the moderator noted that effective implementation of human rights was impossible without the inclusion of NHRIs and civil society actors in the work of human rights protection. The moderator noted the need for such interrelationship between NHRIs and civil society to be regular, transparent, inclusive, substantive and effective.

The introducer further framed the following discussions by defining the nature of civil society and emphasizing its role as a corrective mechanism. She placed NHRIs as a bridge between the government and its citizens. Because it is impractical for NHRIs to be abreast of all human rights concerns in a country, civil society's support is important in enabling the NHRIs to get full insight into the needs of all communities.

During the discussion that followed, contributions were made from participants by Armenia, Australia, Azerbaijan, Belarus, Bosnia and Herzegovina, Finland, France, Georgia, Germany, Italy, Kazakhstan, Kyrgyzstan, Norway, Poland, the Russian Federation, United Kingdom. Contributions

examined ways to ensure a sustainable relationship and co-operation between NHRIs and civil society.

A large number of participants highlighted that collaboration with non-governmental organizations (NGOs) contributes to the success of NHRIs, in affirmation of the standards laid out in the Paris Principles in that regard. Keynote speaker Professor Burdekin elaborated that the strength of an institution depends on strong links with civil society, links with religious leaders, and links with the legal profession.

The engagement with civil society actors was seen as critical not only because NGOs play a role as early warning systems to indicate a deteriorating human rights situation but also because of their role as a source of information and expertise from all segments of society, such as religious communities and other minorities. Here, new opportunities for mutual engagement created by the Universal Periodic Review of the UN Human Rights Council were mentioned.

Participants from Kazakhstan shared the positive experience from their country where civil society actors are invited to assist the NHRI in examining legislation and monitoring governmental bodies in their fulfilment of human rights commitments. A participant from France also referenced the internal consultation process that allowed the French NHRI to consult the opinion of civil society and explained that the French NHRI was regularly requested by its government to consult civil society. It was recommended that government ministries use NHRIs to organize consultation processes.

Participants noted a series of thematic areas where engagement and co-operation are seen to be useful: education, information gathering, complaints handling, formulation of recommendations, national public enquiries, input into state reports and drafting of alternative reports to international mechanisms and treaties and acting as a partner in strategic litigation processes. The focus of engagement was said to lie on vulnerable groups, such as persons with disabilities, the elderly, children and migrants. A participant suggested that NHRIs and civil society actors should jointly develop common principles that must be respected in order to consider collaboration. Such collaboration should be substantive, regular, transparent and long-term.

The model of an expert council with civil society representatives for NHRIs of single-headed institutions was commended. Here, a participant from Kyrgyzstan shared his experience of being part of the Advisory Board to the Kyrgyz Ombudsman. A representative from Finland also noted that the future Finnish NHRIs would have an Advisory Board made up of NGOs, researchers and other actors working to promote human rights in Finland. The Polish NHRI added that three expert commissions exist in Poland to advise on potential activities of the ombudsperson with persons with disabilities, the elderly and immigrants. Engaging civil society representatives to participate in these social councils had also helped to initiate new activities.

Examples were further given as to the benefit for civil society to work with NHRIs. It was for example mentioned that NGOs can use NHRI reports for their advocacy work with governments. A participant also suggested that NGOs could provide information to the Sub-Committee on Accreditation of the ICC on the performance of the NHRIs.

One participant noted that public discourse towards human rights could be hostile and may result in the lack of public trust in NHRIs. He described a new project in the United Kingdom specifically involving human rights defenders that enjoy greater levels of public trust and influence. It was suggested that such projects enable civil society actors to become partners of the NHRI in public awareness-raising. Where civil society is contracted by states to deliver public services, NHRIs were also encouraged to assess the work of civil society in delivering these services.

Rounding up the discussions, keynote speaker Professor Burdekin concluded that in order to secure confidence in a NHRI, it was essential to gain the confidence of civil society. Good laws and structures would not be sufficient for the successful operation of NHRIs without their work with civil society.

*The following specific recommendations were made in Session III:*

Recommendations to the OSCE participating States

- ensure that parliamentary vote on NHRI reports does not compromise the independence of NHRIs;
- engage NHRIs in the planning of public consultation processes.

Recommendations to NHRIs

- engage and consult with a diverse range of civil society organizations, including church leaders and representatives of vulnerable social groups such as the elderly, disabled and migrant communities;
- develop mechanisms that create opportunities for individuals to contribute to the work of NHRIs through *inter alia* the creation of internship programmes, and programmes to train and nurture young “ambassadors” for human rights;
- draw extensively from information submitted by civil society actors, having verified and evaluated such information.

Recommendations to Civil Society

- take active part in policy making processes, including through engagement with the parliamentary process;
- inform the Sub-Committee on Accreditation regarding any concerns which arise regarding the independence of NHRIs;
- hold NHRIs accountable for their work.



**SUPPLEMENTARY HUMAN DIMENSION MEETING**

**NATIONAL HUMAN RIGHTS INSTITUTIONS  
(ombudsinstitutions, commissions, institutes and other mechanisms)**

**14-15 April 2011  
Hofburg, Vienna**

**Day 1**                      **14 April 2011**

15.00 - 16.00            **OPENING SESSION:**

*Opening remarks*

**Ambassador Renatas Norkus**, Chairperson of the OSCE Permanent Council, Lithuania's Permanent Representative to the OSCE

**Ambassador Janez Lenarčič**, Director, OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

*Keynote speech*

**Prof. Brian Burdekin AO**: former Adviser to the Australian Prime Minister, several ministers and the Federal Attorney General, former Federal Human Rights Commissioner and International Adviser to a number of National Human Rights Institutions in the OSCE region, Asia and Africa.

*Technical information* by the OSCE/ODIHR

16.00 - 18.00            **SESSION I: NATIONAL HUMAN RIGHTS INSTITUTIONS – THEIR ROLE IN PROMOTING AND PROTECTING HUMAN RIGHTS**

**Introducer: Dr. Maurice Manning**, President of the Irish Human Rights Commission, Republic of Ireland; Chair of the European Group of National Human Rights Institutions

**Moderator: Mr. Vladlen Stefanov**, Chief of the National Institutions and Regional Mechanisms Section, United Nations Office of the High Commissioner for Human Rights

*Discussion*

18.00 – 19.00 Reception hosted by the Lithuanian OSCE Chairmanship

**Day 2** **15 April 2011**

10.00 - 12.00 **SESSION II: NATIONAL HUMAN RIGHTS INSTITUTIONS AND GOVERNMENTS**

***Introducer: Mr. Georgy Tugushi***, Public Defender (Ombudsman), Georgia

***Moderator: Mr. Markus Jaeger***, Head of National Human Rights Structures Unit, Prisons and Police Division, Council of Europe

*Discussion*

12.00 - 14.00 Lunch

14.00 - 16.00 **SESSION II: NATIONAL HUMAN RIGHTS INSTITUTIONS AND CIVIL SOCIETY**

***Introducer: Ms. Jasminka Džumhur***, Human Rights Ombudsperson, Bosnia and Herzegovina

***Moderator: Ms. Snježana Bokulić***, Head of the Human Rights Department, OSCE/ODIHR

### ***Discussion***

16.00 - 16.30 Break

16.30 - 17.30 **CLOSING SESSION**

Reports by the Working Session Moderators

Comments from the floor

***Closing Remarks***

**Ambassador Janez Lenarčič**, Director of the OSCE/ODIHR

17:30 Close of Day 2

## **SUMMARY OF RECOMMENDATIONS**

**from the participants of the OSCE Supplementary Human Dimension Meeting on National Human Rights Institutions (ombudsinstitutions, commissions, institutes and other mechanisms), held 14 -15 April 2011 in Vienna**

### **RECOMMENDATIONS TO THE PARTICIPATING STATES**

OSCE participating States are recommended to:

#### General

- fully acknowledge that National Human Rights Institutions (NHRIs) contribute to the protection and promotion of human rights, predominantly but not exclusively at the national level;
- in order to strengthen the role of National Human Rights Institutions (NHRIs), develop and adopt new OSCE commitments on NHRIs;
- establish, where they do not yet exist, National Human Rights Institutions that comply with the UN Principles Relating to the Status of National Institutions (Paris Principles) as further elaborated by the Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs and encourage NHRIs to seek accreditation with the International Coordinating Committee of NHRIs;
- ensure the establishment of functionally and institutionally independent NHRIs accountable to parliament;
- ensure an open, transparent, and inclusive selection process of the head (and members) of the NHRI;
- engage with their NHRI in a constructive dialogue which includes involving NHRIs in legislative drafting processes and using them as a source of expertise;
- commit to undertake all necessary steps to ensure that recommendations and initiatives of NHRIs are given due consideration and are systematically implemented by governmental authorities.

#### Legislative

- provide a strong legislative framework which ensures a broad mandate and wide range of functions pertaining to the protection and promotion of human rights;
- ensure that the legislative mandate of the National Human Rights Institutions includes cooperation with civil society actors, acknowledging the importance of civil society in the promotion and protection of human rights;

#### Resources

- ensure that NHRIs are provided with sufficient human capital and financial resources to allow them to exercise their mandate effectively, especially when they are given additional tasks under national or international law;
- provide for secure and stable funding from central budget under a separate budget line for NHRIs, with parliamentary oversight;

#### Operational

- ensure that annual and special reports from NHRIs are discussed in parliament in a timely manner and consider the establishment of parliamentary human rights committees to engage directly with NHRIs;

#### Additional functions

- after consultation with and the consent of the NHRI, consider vesting the NHRI with additional functions under international agreements, such as the Optional Protocol to the United Nations Convention Against Torture or the United Nations Convention on the Rights of Persons with Disabilities, or national legislation such as anti-discrimination laws;
- when mandating NHRIs with additional functions, ensure that adequate additional resources are allocated.

## **RECOMMENDATIONS TO NATIONAL HUMAN RIGHTS INSTITUTIONS**

NHRIs should:

- engage and consult with a diverse range of civil society organisations, including religious communities and representatives of vulnerable social groups such as the elderly, persons with disabilities;
- make full use of their relationship with their national parliament, in the spirit of cooperation and partnership;
- be ready and able to provide concrete recommendations to government on issues relating to human rights;
- be ready to assist the government with its international obligations such as the Universal Periodic Review, UN treaty body reporting or in relationship to the European Court of Human Rights;
- develop mechanisms that create opportunities for individuals to contribute to the work of NHRIs through *inter alia* the creation of internship programmes, and programmes to train and nurture young “ambassadors” for human rights;

## **RECOMMENDATIONS TO CIVIL SOCIETY**

Civil society actors should:

- take active part in policy making processes, including through engagement with the parliamentary process;
- hold NHRIs accountable for their work;
- inform the Sub-Committee on Accreditation regarding the performance of NHRIs.

## **RECOMMENDATIONS TO THE OSCE**

OSCE institutions, such as the OSCE Office for Democratic Institutions and Human Rights, and OSCE field operations should:

- facilitate consistent participation of NHRIs at OSCE meetings and to ensure that NHRIs receive special status with the OSCE, namely by having dedicated seats in the plenary room for official meetings for NHRIs from where they can make statements using their own status and mandate;
- continue supporting the work of NHRIs, in co-operation with the United Nations, the Council of Europe, other relevant international organizations and the International Coordinating Committee of NHRIs;
- consider NHRIs as a source of expertise and experience at the national level and engage NHRIs in providing capacity building to local stakeholders as well as in developing OSCE commitments;
- facilitate consistent participation of NHRIs at OSCE meetings, giving recognition to their special status as independent bodies;
- facilitate or support opportunities for NHRIs to exchange experiences amongst themselves;
- support the establishment of a permanent Secretariat of the European Regional Group of NHRIs.



## **Opening Remarks by Ambassador Renatas Norkus, Chairperson of the OSCE Permanent Council**

**at the OSCE Supplementary Human Dimension Meeting on National Human Rights Institutions (ombudsinstitutions, commissions, institutes and other mechanisms), 14 April 2011, 3.00 p.m.**

Excellencies, ladies and gentlemen,

Kindly permit me to officially open the first Supplementary Human Dimension Meeting of the present year and to welcome you most warmly on behalf of the Lithuanian Chairmanship.

Promoting and strengthening the role and efficiency of National Human Rights Institutions – or NHRIs – is one of the Lithuanian Chairmanship’s human dimension priorities for this year.

Why did we choose to make it a priority?

As the Chairperson-in-Office, Lithuania’s Foreign Minister Audronius Ažubalis, emphasized in the 2011 OSCE work programme presented in January: “Human rights and fundamental freedoms need constant protection.” In this connection he called on participating States to make “a new effort to examine the role of independent national human rights institutions” in protecting and promoting human rights and fundamental freedoms in the OSCE area.

As participating States of the OSCE, we are under an obligation to adhere to international human rights standards and to implement the OSCE’s commitments in this field.

The Chairmanship believes that NHRIs can play a key role in introducing human rights issues to national policy agendas, in keeping them on those agendas, and in supporting their governments in adhering to international human rights standards.

And while we bear the responsibility in our own countries for creating an environment that promotes the enjoyment of human rights by all people, we can be given invaluable support in this sometimes challenging task by other actors: most notably the international community with its special expertise, civil society with its knowledge of the concern and needs of the people – and NHRIs.

Though NHRIs are independent in nature, they are state-established institutions legitimized by our parliaments and as such are mandated to assist the OSCE participating States in implementing the OSCE’s commitments on human rights and fundamental freedoms.

Ladies and gentlemen,

While the history of National Human Rights Institutions goes back as far as 1806, and in more recent history to 1946, it was only in the 1990s that the concept of NHRIs became internationally known and was developed further.

In the 1990 Copenhagen Document, the participating States resolved to “facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law.”

Much has been done since 1990: at the present time there are NHRIs existing at state level in no fewer than 41 OSCE participating States.

Most recently, in Turkey discussions are in process on adoption of an ombudsman law and in the Netherlands respectively – on a draft law to establish an NHRI.

But let me turn to my own country, Lithuania. Even though there is great understanding in Lithuania of the usefulness of having a National Human Rights Institution corresponding to the UN Paris Principles and there is a Copenhagen commitment to establish one, we have to admit that in spite of intense discussions among government institutions, parliament and civil society in the years 2006 to 2008, no NHRI has yet been established.

In our defence, if I may say so, it should be noted that we have four different specialized ombudsinstitutions, all of which are operating well.

I am particularly pleased that Lithuania's Children's Rights Ombudswoman Ms. Edita Žiobiene is present with us today. I know that she was actively engaged in efforts to establish an NHRI in Lithuania. I am sure she will be ready to tell us about aspects of the Lithuanian experience at the present meeting.

At this meeting today and tomorrow Lithuania will be among those looking to learn from the experience of other OSCE participating States and to hear how their performance in establishing and implementing human rights policies has improved after the establishment of an NHRI.

I am also pleased to inform you that later this year we are planning to host an OSCE conference in Vilnius on "Strengthening the Effectiveness and Efficiency of National Human Rights Institutions.", which we hope will raise the awareness on the value of NHRIs in my country.

Ladies and gentlemen,

Recognizing the important role NHRIs play in enforcing respect for human rights at the national level, I believe that this meeting will give us an excellent opportunity to exchange experience on the different models of NHRI and on their relationships with government and civil society.

I am confident that this SHDM, as intended, will help us to assess what further support these institutions require to enable them to effectively and efficiently perform their role of assisting governments in the task of adhering to international human rights standards and OSCE commitments.

I would like to wish you all an interesting and productive series of discussions. I am looking forward to the outcome and, possibly, to the meeting bearing fruit in a set of recommendations.

If your discussions show that there is a need to strengthen the political commitment of the OSCE participating States with regard to NHRIs, the Chairmanship will be happy to initiate a follow-up process by asking the Human Dimension Committee, chaired by Ambassador Thomas Greminger of Switzerland, to look into the matter.

Finally, let me thank Ambassador Lenarcic and the ODIHR for their invaluable input and for the work they have done in preparing the event.

Before closing, I would like to emphasize that the ODIHR and the OSCE field operations play a crucial role in providing assistance to participating States in establishing National Human Rights Institutions and, once they have been established, in helping the NHRIs to flourish and constantly enhance their operations.

Thank you.

## **Opening Remarks by Ambassador Janez Lenarčič, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)**

Excellencies,  
Ladies and Gentlemen,

it is my pleasure to address and welcome you at this first OSCE Supplementary Human Dimension Meeting of this year.

I would like to start by thanking the Lithuanian Chairmanship for putting the national human rights institutions as the priority for this year, and in this way providing the opportunity to, in different frameworks, discuss their situation and issues they face in different areas of their work.

This is not the first time NHRIs are discussed in the form of the SHDM. However, it was usually linked to a more thematic topic. While at the first glance, it may seem as if this time we are looking at more organizational, institutional, matters, it is not solely that. In many countries, as they should, NHRIs play a crucial role in the promotion and protection of human rights. And it is time to look into their role on a more general level. For their work to be effective and meaningful, they namely need the support and acknowledgement of governments.

It is particularly important that there are representatives of National Human Rights Institutions participating in this event, since it is particularly them who are to share experience, exchange best practices and outline challenges they face in exercising their tasks.

Ladies and Gentlemen,

OSCE participating States have committed themselves to adhere to international human rights standards and to implement OSCE commitments – to prevent torture, to ensure equal treatment of men and women and to protect minority groups and other marginalized groups of society, to name but a few. Many governments of participating States have – in order to be supported in their endeavours to comply with the human rights standards – chosen to follow a global trend and to establish a special independent bodies, in many instances mandated to focus solely on guiding and advising on the ways to protect and promote human rights.

ODIHR and the OSCE field operations have been, together with other relevant partners from the international community (many of whom are here), for years providing technical or legislative assistance to support the establishment of new national human rights institutions, including Ombuds Institutions, or to strengthen the work of existing institutions.

NHRI representatives here will surely speak for themselves, also those that met earlier today to prepare for the upcoming sessions. But I wish to share what we in ODIHR usually hear as main concerns when we meet with NHRIs: 1) they often report to us having insufficient human and financial resources to exercise their work and 2) their advice, guidance and recommendations are at times not followed or are even ignored.

Ladies and Gentlemen,

This SHDM will allow us to look at the current level of engagement between national human rights institutions and their own governments on the one hand and to review the existing level of cooperation between national human rights institutions and civil society on the other. Civil society actors are ‘the eyes and the ears’ of the people, hearing and understanding their concerns and needs. And national human rights institutions have a significant role to play in their function as a bridge between a government and each individual it serves.

Let me conclude by expressing my hope that this SHDM will also allow for OSCE participating States to re-emphasize their commitment towards human rights in general, also by strengthening the work of NHRIs.

With this, I look forward to the fruitful and productive OSCE Supplementary Human Dimension Meeting. I hope it will result in concrete recommendations on how to further strengthen the important work that national human rights institutions undertake across the OSCE region.

I have now the honour to give the floor to our keynote speaker Prof. Brian Burdekin, who is one of the best known experts on national human rights institutions and has worked around the world to support their establishment.

Thank you.

## KEYNOTE SPEECH BY PROF. BRIAN BURDEKIN AO

If I might, so that I'm not misunderstood, make a couple of preliminary observations. First, I am going to talk mainly about National Human Rights Institutions (NHRIs) as we use the term relating to national institutions (NIs) set up in accordance with the Paris Principles. But all institutions, including the more traditional ombudsman and a number of other institutions represented here which have a mandate relating to protecting human rights, are extremely important and play a critical role ensuring that human rights are both promoted and protected. I am going to refer to several international and regional organizations outside the OSCE region, not because I think this is essential, but because the standards we are talking about were originally developed in the Paris Principles in 1991 and because they were accepted by the international community at the World Conference on Human Rights in Vienna in 1993.

A small group sat on the sidelines of the World Conference and drafted the text which in the Vienna Declaration and Programme of Action referred to the obligation of all member states to set up independent human rights institutions according to the Paris Principles which we drafted in 1991 and made it clear that it was the prerogative of each state to set up their national institution in accordance of the structure and the needs of that state. What is equally important is that the Paris Principles lay down half a dozen minimal standards for what those structures should be, regardless of the particular circumstances of each state.

I want to talk about that based on my experience in many of the countries represented here where we already have NIs most of which have been set up in the last ten or twelve years. I will draw on the experience we have had in other regions because I think that, while it's true that the rest of the world has a lot to learn from Europe, I think in the area of NHRIs in Europe and in the other parts of the OSCE, there are lessons we can learn from Asia and other areas.

Twenty five years ago when I had the privilege of being the federal human rights commissioner in my country we only had three in the entire Asian region, we only had 8 in the world. I want to talk about the historical context in which NIs now find themselves because they are very new institutions.

The resistance and the misunderstanding sometimes comes from executive governments who understand in theory what independence is but don't seem to understand in practice what it means, sometimes comes from NGO who see NHRIs as some sort of competitor. That is simply not the case. We are NIs in the sense that we are established by legislation (or we should be), with clear mandate, and therefore unlike NGO we are set up with the imprimatur of the legislature of the state in which we work, and should be set up with powers that are commensurate with our responsibilities.

One of the problems in this very large and diverse area the OSCE represents is that some of the institutions have not been given a clear mandate and some of them have not been given a clear legislative basis for their operations. That makes it difficult to operate effectively and independently.

If I may reflect on the role of NIs which is essentially one of implementation- what we are about is trying to ensure that the international human rights standards are translated into reality. Where do these standards come from?

Part of the challenges to NIs is that we all work within national legal frameworks and whether it is the Common law or the European Code systems, or Islamic law, all of these systems came into existence before the international treaties that we are charged to monitor. Coming out of the Universal Declaration of 1948, not until 1966 (45 years ago) did we begin to develop the two basic international Covenants on Civil and Political Rights in 1966 then in the next 45 years the Core on Human Rights Conventions which are a major part of the responsibility of NIs. Generally states will agree of them having a mandate that includes the human rights in the conventions the state has ratified.

In 1991 in Paris what we were trying to do as practitioners (and those of us who were there from the very small number of NIs) and what we achieved in Vienna in 1993 at the World Conference and then later that year in the General Assembly, when virtually every government was there and voted unanimously, is the establishment of independent institutions based on the Paris Principles. You as member states of the OSCE, of the UN voted for this twice: at the World Conference and also at the UN General Assembly through your ambassadors, ministers or the representatives there.

A fair question is why did we feel we need to do this?

Because as a former adviser to the political leaders of my country, as a former service officer or diplomat, what I had seen was that you could have a democratic system, an executive government responsible to a parliament, you could have independent courts, but all of that put together did not necessarily mean that you had the protection of the rights of some of the most vulnerable groups in society including minorities be they religious, linguistic, ethnic or whatever.

It is governments which are the primary duty bearers, they ratify the treaties, we are simply monitors, human rights educators and in some cases institutions which investigate violations of human rights.

Some of us had been involved in negotiating human rights conventions, we were just finishing the Convention on the Rights of the Child and frankly I knew from my contact as a former diplomat that a number of governments were trying to set up a Children's Commission.

One of the problems had been the very evolution of international norms because as the Elimination of the Discrimination Against Women was ratified, states set up sometimes a Commission on Women Rights, an Equal Opportunity Commission or Native Discrimination Commission. As the Convention on Racial Discrimination was ratified a number of states set up institutions, Ombudsman institutions or commissions focused on that. But some of us believed very strongly that if human rights are universal and equally important, we can't be leaving any groups out: we need an organization which has a holistic approach to human rights and which doesn't leave out any sector of society be it women, children, minorities, indigenous groups etc. And that was really the motivation behind the Paris Principles.

The Paris Principles spell out that national institutions have half a dozen basic functions: research and advice, education and promoting an understanding of human rights, monitoring compliance with international human rights treaties and norms, investigating violations of human rights and providing remedies, cooperating with international and regional human rights mechanisms and interacting with the judiciary.

Some of these are elements which I see beginning to be discussed in some states within the OSCE, some of those are elements which are not included in NIs. It is important that the OSCE is bringing to bear its collective institutional focus on the need to provide national institutions with a clear and effective mandate. We need to bear in mind that in many cases they are given a very broad mandate with sometimes very limited resources and that in itself creates problems.

### **Key characteristics**

To be independent - they are set up by the state, in fact in many countries by the executive government operating in conjunction with the legislature and that was why in 1991 we argued that they should be set up on the basis of a legislative text.

The reason the phrase "legislative text" is important is that it does not mean a presidential decree, it means a text adopted by the elected representatives of the people of the country. Because in our view as practitioners it was part of endowing the institution with the legitimacy, the authority and the support of the parliament because in many countries in other regions we had seen is that what can be set up by a presidential decree can sometimes be disestablished by presidential decree. Part of being independent is being able to do your job fearlessly and get on with, if necessary, giving frank advice to the government and to the parliament. This is one of our challenges as national institutions, we are essentially advisory. Nobody elected us, we are not the government, we are not the parliament, generally we should always try to function as an advisory body, but if there are violations of human rights by the military, by the police, by the government itself, then maybe we have to move to adversarial and not advisory mode. Maybe sometimes we have to be consultative. Maybe occasionally we have to be what the government would regard as confrontational. That is not an easy balance to strike, but it is a balance which is one of the challenges for all national institutions in all regions, including the OSCE.

I want to talk briefly about the evolving international order because we as national institutions face the same problems in the rapidly evolving and globalizing world as many of our governments do. I want to touch what some of the key changes are from a national institution's point of view.

There is a greater recognition: thirty years ago most of the countries in regions like Latin America or in my region were actually autocratic and military dictatorships or governments that were not democratic. That has changed. The understanding of human rights has changed. During the Cold War the constant conflict was between what is more important civil and political rights or economic, social and cultural rights, we now

have a more holistic approach that was set to bed in Vienna in 1993. All of the states agreed that human rights are equally important, universal and need to be seen in that light. So whereas NHRIs are originally focused on violations of civil and political rights, most of the eight years that I was Federal Commissioner in my country I spent looking at the rights of homeless people, mentally ill people, people with disabilities.

### **Challenges**

Increasingly the challenges we face are the challenges governments face. The next challenges in this increasingly globalised world are that governments are privatising and outsourcing services that governments used to provide: education, healthcare. 200 million people now have to buy their water. That is a human rights issue for NIs based on the Paris Principles, because of the mandate that some of them have.

We are living in a world fortunately where back in the 1970s we had international human rights standards but we had very little accountability. We are witnessing in North Africa in the minute the most recent expression of a relatively new international doctrine on the right to protect of the international community. We are living in a world where increasingly there is recognition. In the last 12 to 15 years, 15 to 20 presidents and prime ministers have been made accountable for violations of human rights. We are living in a world where there is a much greater expectation at these international human rights treaties and just norms created by diplomats out there but to be translated into reality at the national level.

Yet as NIs we face the problem of a broad mandate, very limited resources, the government being the primary duty bearer. We need a very clear mandate to fit in.

As much as needs to be said about civil society and NGOs is in the Paris Principles. We constantly repeated throughout that document the importance of NHRIs working in close cooperation with civil society, not just NGOs, but human rights defenders, advocates, leaders of the profession. In my own country I had to make it clear to Church leaders that we were dealing with human rights issues that involved them as people concerned about the most vulnerable and disadvantaged in their community. So working in conjunction with civil society is the only way that a broad based national institution can focus effectively because civil society is our eyes and ears. We may have staff, but we can't be out there seeing what is happening around our respective countries in the detail that many NIs have to have in order to provide authoritative and accurate advice to government and parliament. In order to do that with limited resources we must cooperate closely with civil society.

I will use the example of my own country, which is in a way similar to Austria and to wealthy developed countries: in the 8 years that I had as head of institution as Federal Commissioner, we handled almost 10,000 cases. In relation to the cases of discrimination against women or violations of women's rights, 70% came from the private sector, we got the message through to our government, but we hadn't got the message through to the private sector. Now if we take seriously our role of monitoring the international Covenant on Civil and Political Rights which obliges governments to respect and ensure that mains of governments outsource or license the provision of something, that needs to be done consistent with the human rights treaty that the state has ratified. There is still a wide spread misunderstanding that as NIs we should hardly be concerned with the private sector, but more and more there are violations of human rights in the private sector. Of the 100 largest economic entities in the world today, 49 are countries, 51 are corporations. In my country the biggest operating mining company's turnover last year was 167 000 million dollars which is more than about 50 of the poorest countries in the world put together.

The corporate world is beginning to understand that human rights do not merely affect the public sector. That creates very serious challenges for those of us given the responsibility to monitor and advise the parliament and the government.

Democracy is very important, but what is democracy? By definition it is the rule of the majority, so the 2.4% of Australians who are aboriginal or indigenous were never meant to make or break a government. The mentally ill, people with multiple disabilities, a lot of groups we spent time working with trying to protect their rights were not politically powerful.

So the NHRIs actually play an advocacy role. In some countries including the OSCE member states there was a very strong view that human rights commissions or institutions must not be political. We are not party political, but I am not aware of a human rights issue that does not have political consequences, whether you are talking about torture on the one hand or about the right to health, including for people with mental illnesses as well as physical sicknesses, on the other.

If we are going to understand where we are going, we have got to understand where we have been. In terms of NHRIs the good news is that in the late 80s and early 90s I had to sit as an advisor to my government delegation, throughout the 90s and early 2000s with the assistance of the High Commissioner for Human Rights, we managed to get NIs sitting in their own spots in the room. This has significance as to where the OSCE is going in terms of focusing on this area.

The most recent developments in Geneva a couple of weeks ago confirmed that NHRIs are independent entities that speak in their own right in the Human Rights Council or the Human Rights Commission.

Over the last 15 years there has been a progressive evolution in the direction of a recognition by the international community of the role which NHRIs play not only in the Human Rights Council but by the international treaties bodies of experts who monitor the Covenant on Civil and political rights, the Convention on the Elimination of Discrimination Against Women, the Convention Against Torture, etc.

NHRIs are increasingly consulted by and engaged by special rapporteurs and by what we call the special procedure mechanisms of the UN. Years ago that was very often a dialogue between governments or governments, NGO and the UN councils or the special treaty bodies, or the special rapporteurs.

Now, national institutions are an increasingly important part of that which poses challenges in terms of their mandate and their resources to work collectively and effectively, primarily at the national level but also on an increasing amount of cross-border issues which are human rights issues: human trafficking, migrant workers, asylum seekers, refugees.

It would be tremendously valuable if the OSCE could give support to the idea of a regional secretariat or body to help NIs talk to each other and exchange experience.

Evolution is not just at that level, there is also an evolution in terms of international human rights conventions and treaties. During the 80s and 90s the first time we succeeded was in the Optional Protocol to the UN Convention Against Torture (OP-CAT) and some of us fit in the idea that the NHRI should be the body which monitors the Op-CAT. This specifically refers to NIs as does the latest Convention of the Rights of People with Disabilities because NIs were very closely involved in the negotiation of that convention. So two of the latest international conventions about very important issues: torture and the rights of people with physical or psychiatry disabilities specifically focus on the potential of NIs to be the national body.

Of course, if the government needs to confer that responsibility, it needs to give the institution adequate resources to deal with that responsibility, which is another challenge.

Finally the mandate of NIs is evolving. There are a number of countries that are looking at this question: if they have existing Ombudsman that have human rights responsibilities, what is the best thing to do? Is it to broaden the mandate of those institutions; is it to bring them together into one institution? I am not suggesting there is any perfect formula, but what the PP mean and what all the governments committed themselves to was appropriate mechanisms to protect human rights across the country and not just of a particular section or group.

Speaking from my own experience, one of the reasons I brought them up together is that I couldn't win any arguments on human rights in Australia without the women's lobby behind me. If I hadn't had the Sex Discrimination Commission as part of Human Rights Commission we wouldn't have won the battles on the rights of aboriginal people and so on. Every country will decide on its own appropriate formula.

The last thing I want to focus on is **what we have learnt**.

We have learnt the importance of the universally accepted standards which were endorsed in the Vienna Declaration and Programme of Action.

We have learnt the necessities of NIs to have a clear mandate.

We have learnt the absolute necessity to give them powers which are commensurate with the responsibilities they are given. If you give them the responsibility to protect human rights or to investigate human rights violations as many institutions do in Africa and Asia you had better give them the power that goes with that and that is the reference in the PP to quasi judicial powers. Many NIs have the power to get evidence, to hear witnesses.



We learnt that changing the law is very often a necessary but not a sufficient pre-condition if we are going to ensure the protection of human rights. Sometimes some of our politicians if they amend a law or if they to comply with international treaties that the job is being done (about 10% of the equation). What is critical is changing public attitudes: we are going to get rid of discrimination against minorities or people with disabilities, etc. then our educational role is fundamentally important. If you are talking about people with disabilities, you can pass all the laws you want, but until the public understands that people should be treated with dignity and that we are all equal, then we haven't achieved what we are obliged to do.

We have learnt that many violations of human rights can be dealt with most effectively at the national level. Wouldn't it be a good idea to have mechanisms at a national level which actually deal effectively with human rights violations which don't necessarily need to go to Geneva, New York or Strasbourg. I am puzzled because in Asia we don't have the choice of having a regional mechanism, we have got 4500 million people and I am not sure where we will ask them to go- in New Delhi or Bangkok. If we are serious about making human rights a reality, we need to be accessible. Strasbourg is not accessible to most of the people to most of your countries and that is why in a number of other regions we have given NIs the right to investigate human rights violations and engage in alternative dispute resolution. About 70-80% of the cases we handled we resolved by reconciliation. They were not constitutionally complex, they did not need to go to our supreme court, nor a regional court, we needed to get the parties together and get the offending party to address and redress the violation that had occurred. Sometimes we had to have formal hearings, but generally not.

This is something worth a consideration for your organization; the OSCE not only represents countries from North America and Central Asia but also countries from Europe. If you have not got accessibility in terms of human rights than we need to stand back and have a serious look at whether the institutions we have assumed are the ones we need and are actually performing the job. One of their most important roles is prevention. After the Second World War the whole basis of the Universal Declaration of Human Rights was never again: since we have had Uganda, Cambodia, Rwanda, Sierra Leone, East Timor, Sudan, and Bosnia.

One of the things we have learnt is that as the international community we are not very good at picking up the peaces. It would be better if we put more resources into NIs which have a mandate to promote societies of respect of individual difference because once the genie of racial hatred and ethnic or religious intolerance is out of the bottle, we are not very good at trying to put it back in. That is what NIs are in large part mandated to do: to promote an understanding of human rights, an acceptance of individual dignity and respect. In many countries national institutions had move in to defuse or address discrimination against a particular minority that can lead to violence or even quite horrific violations of human rights.

At the practical level priorities is always a big and difficult issue for national human rights institutions with a broad mandate. We have got limited resources. We have a particular responsibility for most vulnerable groups in our community: the homeless, the ill, the elderly, children, those with physical and mental disabilities, those that live in isolated areas, prisoners.

The reality is that the Member states, the governments must recognize when they give the mandate to a national institution in legislation. The NI itself must have a certain amount of discretion as to what it does and how it does it because with a broad mandate you can't do everything.

In conclusion, the challenge for those of us from member states and NIs set up by member States include:

- cross border issues;
- the necessity with respect for executive government to recognize the independence of NI (there are 4 aspects of independence: in the law setting up the institution, in the integrity, commitment and capacity of the commissioners or the people who run the institution);
- that the government respects that independence;
- to give the institution adequate resources because you cannot function effectively and independently if the state itself will not recognize, acknowledge and give you the way with all to get to up what you are charged to do;

The Paris Principles were drawn as some States that were looking up at setting some window dressing institutions.

In conclusion therefore I would say to those of you who think that the courts protect human rights that they play an extremely important role but if you look at actually implementing the international human rights conventions, many of the most egregious human rights violations were not against the law. The way we treated mentally ill people was a matter of omission and neglect, there was nothing the judges were able to do about it. To many of the most disadvantaged and vulnerable people the law is not a complete answer, to many of them the courts are not accessible. Human Rights Institutions are free, you don't pay fees to come and see us.

Essentially, in conclusion, the judges are reactive: they can only deal with issues brought before them, NHRIs under the PP can play a proactive role.

The great challenge for those of us who work in NIs is to ensure that international norms that states have voluntarily, solemnly undertaken to respect are translated into reality.

## **BIOGRAPHIES OF INTRODUCERS AND MODERATORS**

### **Keynote Speaker: Prof. Brian Burdekin AO**

Prof. Burdekin is International Adviser to a number of national human rights institutions in Africa, Asia and Central and Eastern Europe and is currently visiting Professor at the Raoul Wallenberg Institute. Prior to his international career, he was Chief of Staff to a former Australian Prime Minister, Deputy Prime Minister and Federal Attorney General and was previously in the diplomatic corps. From 1995 to 2003, as Special Adviser on National Institutions to the first three United Nations High Commissioners for Human Rights, he conducted over 200 missions to 55 countries in Africa, Asia, Europe and Latin America. From 1986 to 1994 Prof. Burdekin was the Federal Human Rights Commissioner of Australia. In this capacity he conducted major national inquiries into the systemic abuse of particularly vulnerable groups, including the homeless, mentally ill and people with disabilities. In 1990-91, he was one of the key figures involved in drafting the United Nations principles prescribing the minimum standards for National Human Rights Institutions (the Paris Principles), subsequently adopted by the UN General Assembly.

## **SESSION I: NATIONAL HUMAN RIGHTS INSTITUTIONS – THEIR ROLE IN PROMOTING AND PROTECTING HUMAN RIGHTS**

### **Introducer: Dr. Maurice Manning**

Dr. Manning is the President of the Irish Human Rights Commission (IHRC). Since 2006 the IHRC has chaired the European Group of National Human Rights Institutions (NHRIs) as one of four regional sub-groups of NHRIs. An academic by background, Dr. Manning previously lectured in politics in University College Dublin where he is currently Adjunct Professor in the School of Politics and International Relations. He is Chancellor of the National University of Ireland, and has been a member of the Governing Authority of the European University Institute at Florence.

### **Moderator: Mr. Vladlen Stefanov**

Mr. Stefanov is Chief of the National Institutions & Regional Mechanisms Section of the United Nations Office of the High Commissioner for Human Rights (OHCHR). From 2007 to 2010 Mr. Stefanov worked as the Senior Human Rights Adviser in the South Caucasus for OHCHR, based in Tbilisi, Georgia, and headed UNOMIG's Human Rights Office in Georgia from 2004 to 2007. Before that he served as Senior Political Affairs Officer at the UN Headquarters, New York, as well as head of OHCHR's sub-office in Montenegro. Prior to joining the United Nations, from 1987 to 1999, Mr. Stefanov served in the diplomatic service of Bulgaria. He holds an LL.M. in International Law.

## **SESSION II: NATIONAL HUMAN RIGHTS INSTITUTIONS AND GOVERNMENTS**

### **Introducer: Mr. George Tugushi**

George Tugushi is the Public Defender (Ombudsman) of Georgia since July 2009. Prior to being elected as the Public Defender, Georgy Tugushi worked for the OSCE, the European Commission, the UNDP and USAID in various capacities. In parallel, since 2005, George Tugushi has served as a member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Between 1996 and 2005 Mr. Tugushi worked for the Tbilisi City Hall as an Assistant to the First Vice-Premier of Georgia and the Georgian Parliament. George Tugushi holds a Master's degree in Public Administration from the Georgian-American Institute of Public Administration and an LL.M. in International Human Rights Law from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden.

### **Moderator: Mr. Markus Jaeger**

Mr. Jaeger is the Head of National Human Rights Structures Unit, Prisons and Police Division in the Council of Europe. Prior to his current assignment he served as the Deputy to the Director and Head of the National Human Rights Structures Unit in the Office of the Council of Europe's Commissioner for Human Rights. He studied law, philosophy and political sciences in Germany, France and Switzerland.

## **SESSION III: NATIONAL HUMAN RIGHTS INSTITUTIONS AND CIVIL SOCIETY**

**Introducer: Ms. Jasminka Džumhur**

Ms. Džumhur is one of the three Ombudspersons of Bosnia and Herzegovina (BiH) and has been serving in this function since 2008. Prior to this appointment, she has been for years working on issues related to elimination of gender-based violence, trafficking in human beings and human rights protection. As a consultant she worked for different international and local organizations, such as the Danish Refugee Council, the International Crises Group, OSCE, OECD, UNDP, UNICEF, UNIFEM, USAID and the Soros Foundation. She was one of the founders of the Women Association “Medica” and the Women Legal Aid Center as well as member of the Coordination Board of the BiH Women’s Economic Network and the Executive Board of the Bosnian Women’s Initiative. Ms. Džumhur graduated from the Faculty of Law University of Sarajevo and is a qualified judge. She worked as a lawyer in the private sector and as a judge and the president of the Minor Offence Court in Zenica, BiH.

**Moderator: Ms. Snježana Bokulić**

Snježana Bokulić has since 2010 been working as the Head of the Human Rights Department at the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), in Warsaw, Poland. Prior to joining ODIHR, Ms. Bokulić worked for Minority Rights Group International, United Kingdom, as the Director of Programmes from 2009 – 2010 and as the Head of Europe and Central Asia Programmes/Managing Director of Minority Rights Group Europe, Hungary from 2006-2009. Before joining Minority Rights Group International in 2003, she worked for the Open Society Institute and the OSCE Mission to Croatia. Ms. Bokulić holds a Master Degree in Southeast European Studies from the Central European University in Hungary and a LL.M in International Human Rights Law from the University of Essex in the United Kingdom.