THE SIXTH INTERNATIONAL CONFERENCE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS

COPENHAGEN AND LUND
10-13 APRIL 2002

HOSTED AND ORGANISED BY THE DANISH CENTRE FOR HUMAN RIGHTS AND THE SWEDISH OMBUDSMAN AGAINST ETHNIC DISCRIMINATION

OMBUDSMANNEN MOT ETNISK DISKRIMINERING
DO

THE SIXTH INTERNATIONAL CONFERENCE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS

COPENHAGEN AND LUND
10 - 13 APRIL 2002

HOSTED AND ORGANISED BY
THE DANISH CENTRE FOR HUMAN RIGHTS
AND
THE SWEDISH OMBUDSMAN
AGAINST ETHNIC DISCRIMINATION

The Conference was organised in cooperation with
The Office of the High Commissioner for Human Rights
and the International Coordination Committee.

The Conference was mainly funded by the Office of the High Commissioner for Human Rights, the Swedish International Development Cooperation Agency (Sida), and the Danish Ministry of Foreign Affairs.

The Danish Centre for Human Rights
Wilders Plads 8 H
1403 Copenhagen K
Tel: + 45 3269 8888
Fax: + 45 3269 8800
Web: www.humanrights.dk

Editor: Lisbeth Garly Andersen

Preparation:
Fergus Kerrigan, Lone Lindholt
and Katja Sofie Tolstrup
The Danish Centre for Human Rights

Proofreading of Part 1: Fergus Kerrigan
The Danish Centre for Human Rights

Printed in Denmark by BookPartner
ISBN: 87-90744-55-1

Table of Contents

PART 3 - ANNEXES

Preface

The Sixth International Conference for National Human Rights Institutions held in Copenhagen and Lund 10-13 April 2002 took as its point of departure the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. In the Declaration and Programme of Action adopted by UN member States at the World Conference, it was made clear that national institutions are expected to play a stronger role in the future in the area of combating racial discrimination.

The Declaration recognised among others the importance of national institutions, including ombudsman institutions, in the struggle against racism, racial discrimination, xenophobia and related intolerance, as well as for the promotion of democratic values and the rule of law.

The Conference furthermore encouraged States to establish national institutions and called on the authorities and society in general to cooperate to the maximum extent possible with these institutions, while respecting their independence.

At the World Conference, national institutions adopted a statement stressing the importance of the struggle against racial discrimination and their own role with regard to combating this injustice. National institutions furthermore committed themselves to provide information to the International Coordinating Committee of National Human Rights Institutions on measures taken by them to address racism, including analysis of best practices.

The Sixth International Conference for National Human Rights Institutions held in Copenhagen and Lund provided an opportunity to follow up on the World Conference and to discuss how its recommendations can be translated into reality.

The Conference programme took its outset in the Declaration from the World Conference as well as the joint Statement from national institutions to the Conference. Four themes were specifically singled out and addressed by keynote speakers as well as by the various working groups. The selected themes of the conference were: monitoring, remedies and advocacy / education. National institutions shared information and examined potential best practices in these areas and came up with a range of examples of how to combat racial discrimination through a variety of approaches.

The Copenhagen Declaration adopted by 104 delegates from 61 countries and the richness of the debates clearly demonstrated that there is a an amble scope for dialogue and action in the field of combating discrimination in spite of the very diverse challenges facing the different institutions. The Copenhagen Declaration will hopefully become a useful tool and yardstick for national institutions when addressing issues related to racial discrimination.

It is furthermore our hope that the Conference and all the networks created during the four days in Copenhagen and Lund will serve as inspiration for new approaches needed to encounter the challenges of combating racial discrimination.

It was a great pleasure for us to meet and host all the delegates in Copenhagen and Lund.

Morten Kjærum
Director General
The Danish Centre for Human Rights

Margareta Wadstein
The Swedish Ombudsman Against
Ethnic Discrimination

October 2002

Executive Summary

The 6th International Conference for National Human Rights Institutions (NHRIs) was held from April 10-13, 2002 in Copenhagen, Denmark and Lund, Sweden where 104 participants represented 61 NHRIs worldwide. The Conference was organised by The Danish Centre for Human Rights (DCHR) and the Swedish Ombudsman against Ethnic Discrimination in cooperation with United Nations Office of the High Commissioner for Human Rights (OHCHR) and the International Coordination Committee (ICC).

The Conference was funded by OHCHR, the Swedish International Development Cooperation Agency (Sida), and the Danish Ministry of Foreign Affairs (MFA), with additional donations from the German Institute for Human Rights in Berlin and the French National Consultative Commission for Human Rights.

The overall theme of the Conference was the role of national human rights institutions in combating racial discrimination, as a follow up on the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban in August and September 2001. The aim was to discuss best practices in promoting tolerance through education and the media, as well as debating remedies and the monitoring and advocacy function of NHRIs.

In the opening speech made by Mr. Per Stig Møller, the Danish Minister for Foreign Affairs, the timeliness of a campaign against racism was underlined, as well as the importance of having states learn from the lessons taught by history and thus confronting their own past. Education, a social system based on burden sharing, and the principle of equal opportunity for all were highlighted as basic means for overcoming prejudices and promoting tolerance. Both the political parties and the media play a major role, but the Minister underlined that developing a global young

people's network may hold the best prospect for enhancing intercultural understanding and respect.
The Minister touched shortly upon the potential of having the anti-discrimination unit within the OHCHR provide knowledge and information about best practices in overcoming racist attitudes as a means for politicians, governments and states to assist each other in the campaign. Ending his speech, the Minister pointed to the essential role to be played by the National Human Rights Institutions, the main roles being advisory assistance to state authorities, assistance to victims of human rights violations, dissemination of information, and education - thus forming a bridge between the authorities and civil society.

The opening speech was followed by speeches from Mr. Brian Burdekin, Special Adviser on National Institutions to the High Commissioner for Human Rights (OHCHR) Mr. Driss Dahak, chairman of the International Coordination Committee (ICC), and Mr. Morten Kjærum, Director General of The Danish Centre for Human Rights (DCHR).

Mr. Brian Burdekin underlined the responsibility of all, both OHCHR, The Danish Centre for Human Rights, and other NHRIs as well as governments around the world for implementing in praxis those standards and principles for which the UN stands, as well as those known as the Paris Principles, agreed upon in 1993. In relation to the Conference in Copenhagen and Lund being a follow up to the World Conference against Racism in Durban, Mr. Burdekin underlined the importance of the practical starting point of the 6th NHRI Conference. Further, Mr. Burdekin continued listing both progress made in the area of NHRIs since the 5th International Conference in Morocco two years back, as well as future challenges. He underlined one particular development, i.e. the election of the some NHRI members to UN Treaty Bodies, with whom cooperation should be increasingly developed.
In conclusion, Mr. Burdekin stressed his own belief as well as that of the High Commissioner that the real independence of the institutions represented at the Conference, the integrity of their mandates, the commitment of their members, and the effectiveness of their programme - in particular in following up on the World Conference in Durban - will assist in the future work of promoting and protecting human rights.

In his speech, Mr. Driss Dahak expressed his hope that The Danish Centre for Human Rights would continue to play an active and dynamic role as NHRI in its new form as The Danish Institute for Human Rights.
Mr. Dahak went on to stress that the Sixth International Conference differed from previous workshops in a number of ways. First of all, by being a conference and not a workshop; secondly, by the number of institutions and observers present and finally, the aim of addressing specific themes.

Mr. Dahak referred to the Conference being a follow up on the International Conference in Durban Against Racism, Racial Discrimination, Xenophobia and Intolerance and the declaration by National Institutions on combating racism. He concluded by stressing that the institutions should agree on a program of action for the prevention of all forms of racism and intolerance. Such a program should among other issues include educational activities as well as information.

Mr. Morten Kjærum, Director General of The Danish Centre for Human Rights and Chair of the European Group of NHRIs, underlined the continued strength and validity of the Paris Principles and the work of the NHRI by referring to the recent debate in Denmark concerning the mandate and independence of the DCHR.
Mr. Kjærum qualified the choice of an overall theme for the Conference by mentioning first, how the Paris Principles underlined the particular obligation of the NHRIs to address racial and ethnic discrimination and second, that it seemed natural to continue the debate of the implementation of the Declaration and Programme of Action stemming from WCAR in Durban. This declaration presents a joint statement that underlines the importance of NHRIs in combating racism, calls on States to involve national institutions in fighting discrimination, and commits NHRIs to inform the ICC of measures taken to combat racism. The latter could form the basis upon which ICC could develop guidelines aimed at confronting and combating discrimination.
The Director General referred in detail to several provisions in the Programme of Action, for instance that states should cooperate with NHRI in human rights training activities for prosecutors, members of the judiciary and others; that the work of promoting exchanges at both regional and international level among independent national institutions should be enhanced etc. Then he moved on to mention the 4 key issues set up as constituting the main framework for the Conference, i.e. monitoring racial discrimination, remedies, advocacy and education, and he pointed at the anticipated outcome of the Conference being a catalogue of Best Practices and Methodologies, which would bring inspiration and guidance to NHRI.

At the end of the first day, the assigned working groups - Remedies (Working group 1), Monitoring Racial Discrimination (Working group 2), and Education and Advocacy (Working group 3) - met shortly in order to introduce the participants and present the tasks of the working groups.

The second day of the Conference opened with a session of 4 keynote speakers, followed by discussion in plenary:

The topic of the first speech, made by Dr. William Jonas, Acting Race Discrimination Commissioner from the Human Rights and Equal Opportunity Commission, Australia was 'Remedies to deal with complaints related to racial discrimination'. Under the

title 'Procedures and remedies for dealing with complaints of racial discrimination and vilification', Dr. Jonas opened by referring to the fact that punishing racist perpetrators by no means is left out of article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) demanding the protection of all inhabitants against discrimination as well as a secured access to compensation. Dr. Jonas pointed out complaint handling as a slightly overlooked issue in former ICERD recommendations, and suggested that this could include seeking settlement through conciliation or via the law; informing about rights and remedies available etc.
Dr. Jonas then referred to several empirical examples from Australia in relation to the pioneering work done using the conciliation model of complaints resolution. In reference to an evaluation of the conciliation model, Dr. Jonas referred to commonly presented criticism, being that discriminatory acts are treated more as individual matters rather than structural matters. Although he agreed that the effort of converting conciliation issues into matters of systemic changes could be strengthened, Dr. Jonas underlined the advantages of conciliation as a speedy and efficient way of handling cases as well as its accessibility, educational effect etc. Several procedural safeguards were also mentioned in relation to this specific model.

Judge Mr. Jagdish Sharan Verma, chairperson of the National Human Rights Commission of India built his speech on the topic 'Monitoring: Legal Frameworks relevant for Racial Discrimination'.
Opening his speech, Judge Verma elaborated on the various judicial tools available in combating racial discrimination and promoting human rights in general by a detailed reference to resolutions and conventions and urged strongly for action, not merely knowledge and words. Two central points were highlighted, namely that first, racial discrimination can be, and often is multiple in character, and second, that NHRIs should base their definitions of racial discrimination not only on explicit definitions stemming from for instance international resolutions, but pay attention to discrimination specific to their own society.
Then Judge Verma presented 10 potential actions, which could improve the monitoring of racial discrimination by NHRIs. They included relations between NHRIs and UN Treaty Bodies; seeking of statutory competence by NHRIs thereby making themselves further able to work in a proactive manner; building close cooperation with senior judicial institutions; monitoring actions of the NHRI depends on the statutory capacity to receive and investigate complaints etc.

The 3rd speech was presented by Mr. Alain Bacquet, President of the National Consultative Commission for Human Rights in France. His given topic was 'Advocacy' with a particular focus on treaty ratification and legislative change. He stressed the importance of states ratifying key covenants and underlined that National Institutions

have an important role in exerting pressure on their respective governments to ensure ratification. In addition to this, National Institutions play a central role in contributing to the process of bringing the national law into conformity with international human rights standards as well as monitoring the implementation of such changes.
Alan Bacquet further discussed the balance between a judicial and political debate and the risk of being accused of taking sides politically while criticizing a law proposal. He underlined that National Institutions should not restrict themselves to a purely legal debate, and noted that the boundary between the judicial and the political debates was at times rather blurred.
He underlined that positions taken by National Institutions could sometimes have strong political reverberations, but in his opinion this would not make the position of the institution illegitimate.
To retain the legitimacy of the institution he stressed certain indispensable principles, such as independence, competence, and a pluralistic foundation. Maintaining these principles would ensure the essential political neutrality of the institution, based exclusively on the principles of human rights.

Mr. José-Louis Soberanes-Fernández, President of the Human Rights Commission of Mexico, presented the final speech of the day. His speech focused on 'Advocacy: Combating Racial Discrimination in practice' and he presented a range of issues, which could be useful in relation to a concrete follow up on the international conferences on racism and racial discrimination, including the World Conference in Durban.
He stressed that the action programs by NHRIs should not be limited to investigating phenomena of racial discrimination, but should also emphasise prevention of violations and a modification of administrative and government practices that are a danger for the respect of human rights. The institutions should advocate for and contribute to a legislative reform.
In Mexico, a number of laws had been revised in order to achieve an improved protection of ethnic minorities. Furthermore, Mr Soberanes underlined the vital role of campaigns promoting cultural respect, conducted in cooperation with the authorities and civil society.
He noted however that cooperation with authorities can sometimes be problematic, as some authorities tended to formally accept recommendations in the area of racial discrimination, but in practice behaved evasively.
He concluded by stating that the promotion of a culture of respect was not sufficient as long as the legal framework did not guarantee the right to non-discrimination.

Following the 4 speeches, the delegates met in the 3 assigned working groups.

Day 3 of the Conference took place at the University of Lund, Sweden where Mrs.

Boel Flodgren, Rectrix Magnifica, University of Lund and Ms Margareta Wadstein, the Swedish Ombudsman against Ethnic Discrimination welcomed the participants. This was followed by 4 keynote speeches.

Mr. Emile Francis Short from the Commission on Human Rights and Administrative Justice, Ghana related his speech to the issues of 'Remedies: The relation between NHRIs and other institutions / mechanisms'.
Mr. Short started out by examining the legal framework for NHRIs and underlined that the investigation and resolution of complaints is a significant function of NHRIs. Then Mr. Short turned to the problematic area of the observance of the rules of natural justice in relation to the person or institution being investigated. He provided examples of solutions to this problem. Further, the concept and standards of remedies in human rights violation cases were analysed in detail.
Then he moved on to the area of relations between NHRIs and courts, Ombudsmen, governments, police, and with regional and international Human Rights Mechanisms. Referring to cases in Ghana, Mr. Short explained how people in some situations are more attracted to the NHRIs than to the courts. However, there is a sharp limit as to what kinds of cases can be subject to conciliation and Mr Short stressed that NHRIs are never more than complementary to the courts.
When turning to the subject of how NHRIs can enforce remedies, Mr. Short mentioned how most NHRIs can only issue recommendations, as opposed to binding orders, and must therefore rely on their own credibility in society as well as the fear of the accused of negative publicity. Mr. Short referred to a few exceptions where NHRIs possess the power to enforce their recommendations through a court process; otherwise many NHRIs can institute proceedings in court. Then Mr. Short listed a number of possibilities when a NHRI wants to grant affirmative remedies to deal with for instance racial discrimination.
Mr. Short pointed out how a dynamic relationship between NHRIs and the courts - where the courts deal with questions of strict law, while NHRIs will deal with questions of HR and administrative complaints - can result in making justice more accessible and ensure a more expeditious delivery system.

Ms Margareta Wadstein, Ombudsman Against Ethnic Discrimination in Sweden, addressed 'Education Against Racial Discrimination' in her speech taking her point of departure in the concrete practices of Sweden.
Ms Wadstein's office works with actions of a proactive kind, as well as being supportive in individual cases of discrimination. The office places a high priority on providing educational material for the public and specific target groups and this effort was the focus of her speech and an issue of high priority for the Ombudsman.
Ms Wadstein underlined the educational and informative effect of taking individual cases to court, thereby materialising and personalising the concept of discrimination.

Turning to issues regarding the labour market, Ms Wadstein described how the main target groups are both those at risk of being discriminated against - e.g. jobseekers - as well as those allegedly prone to discriminating, i.e. people with influence and power. Miss Wadstein explained the focus on educating a network of so-called ambassadors, persons who will be educated by the Ombudsman's staff and then continue the effort of informing about discrimination within their own networks. The long-term effect of these educational efforts was stressed.

The Ombudsman's Office focuses on using and cooperating with the media, and the office publishes various forms of written material, a monthly newsletter online etc. With a broader view to furthering interracial and intercultural understanding, the Ombudsman underlined the importance of individual contact, with special reference to immigrants, and she urged NGOs to include a focus on integration of minorities in their work.

The speech concluded that intercultural and interracial understanding is simplified by a more integrated working-life and by referring to experience from the field of gender discrimination, the importance of preparing the working place for the inclusion of people from ethnic minorities was highlighted.

In the day's second speech on education, Mrs. Margaret Sekaggya, chairperson of Uganda Human Rights Commission explored the topic of 'Integration of anti-racism into basic training curricula', Mrs. Sekaggya placed her focus on the anticipated role of NHRIs in the development and design of training curricula geared towards the promotion of HR in general and anti-racism through education in particular.

Mrs. Sekaggya started by referring to the Declaration adopted at the WCAR, which highlighted education at all levels as the key tool by which to alter attitudes and behaviour based on racism and to promote tolerance. When taking into consideration the different mandates of NHRIs and the fact that only some have laid out a strategy for combating racism, these factors explain the diversity in influence from different NHRIs on the combat of racism. Moving on to the activities of the Uganda Human Rights Commission (UHRC), Mrs. Sekaggya described a number of activities of the UHRC within the framework of a national debate, which aimed at enhancing the awareness of racism and discrimination and underlining safeguard remedies. The debate was conducted through sessions with the media through public lectures, workshops, a National Convention, focusing on for instance the development of a value based educational system etc.

Laying out the aims of HR education, Mrs. Sekaggya underlined the difference to other fields of education and explained in detail different models by which HR education could be conducted. Stressing that HR education is the responsibility of all bodies in a society, Mrs. Sekaggya turned to the specific role of NHRIs. Apart from the obligation to inform the public, NHRIs should also be exerting influence on values and attitudes, aiming at a culture of respect. Mrs. Sekaggya painted a picture of the various obstacles to developing HR curricula, but concluded that if HR education is

built on an interactive approach and is relevant to the daily life of the audience, this can enhance the influence of HR education, even to the effect of social transformation. Apart from developing curricula, schools can be targeted through various others means, such as textbooks, workshops etc. that make HR a part of the general education, rather than a specific topic.
By way of conclusion, Mrs. Sekaggya stated, that maintaining a continued working relationship with relevant organs would be the best way for NHRIs to influence the development and design of a national curriculum.

The last speech of the day was presented by Mrs. Michelle Falardeau-Ramsay, Chief Commissioner of the Canadian Human Rights Commission. Building on the topic of monitoring practices, especially documentation of racial discrimination, Mrs. Falardeau-Ramsay laid out 2 main aspects of the topic, the first relating to processing of race-based complaints, the second to other means of documenting racial discrimination. She went on to define racial discrimination as expressed in 3 different ways - overtly, covertly, and systematically and moved on to the proceedings in the Canadian HR Commission when it comes to complaint handling.
Ms. Falardeau-Ramsay then went on to list other means of documenting racial discrimination and pointed out among other things public reports, public enquiries as well as workshops and educational programmes, where views of racial discrimination among different parts of the society could be exchanged.

Results of the Working Groups
In the working group focusing on 'Remedies', the discussions evolved around questions such as effective and fair caseflow management, balancing concerns of transparency and confidentiality, and ensuring respect for fundamental principles of impartiality and independence.
Besides a discussion of the differences between the institutions in relation to mandate, the working group added to the list of issues on their agenda, a discussion of Alternative Dispute Resolution. The working group underlined that in order for fair and effective case flow management to exist, principles such as transparency and rigor in the working process concerning a complaint as well as clearly formulated selection criteria are important. In addition to the question of how to make remedies effective, some suggested to seek a legal solution to the problem of non-compliance with the decision of a Commission.

In conclusion from a lively debate on the question of confidentiality, the participants agreed that the decisions of Commissions were important tools for advocacy and education and should be released, however in anonymised format when required.

During the debate on independence the importance of written and binding rules of procedure was underlined.

In relation to the range of questions posed in the relation to case handling, some pointed out solutions coming from a change in the legislation, from which commissions and other institutions derive their mandate. The relationship with other institutions, for instance the courts or the police was also debated and many different examples were presented.

The working group 'Monitoring racial discrimination' addressed questions of monitoring racial discrimination, both with respect to the formal or legal aspect, and in relation to the practice of state and civil society, including documentation and reporting.
The group touched upon a wide range of issues related to monitoring legal frameworks relevant in the combat of racial discrimination. The group stated that national institutions should ensure that the respective states sign, accede to, or ratify the different human rights conventions relevant for racism, racial discrimination, xenophobia, and related intolerance. This signature should be accompanied by guidance of the state concerning the necessary transformations of the law in order to comply with the international conventions. Another part of the discussion evolved around how national institutions could contribute to the elaboration of the state report due by UN treaty on human rights. Different types of contributions were discussed, among others the elaboration of a shadow report or sending information directly to the UN treaty bodies. With regard to documentation of racial discrimination, a broad variety of subjects was discussed. The discussion especially focused on ethics and methodologies in relation to documenting racial discrimination as well as possible biases in the documentary work. The discussion on ethics focused on the handling of information, including protection of the informant, while at the same time ensuring the right of public access to information. The group also discussed methodologies with regard to documentation and mentioned the use of video graphics as an alternative to interviews and collection of written information.

The third working group, 'Advocacy and Education' started out by debating balancing act that NHRIs have to master, when they wish to comment on political matters without being accused of being politically biased, for instance the importance of relating the debate to facts, or ideally working on the basis of research.
Concerning the issue of disseminating knowledge of human rights among decision makers, means like training and education were underlined as important additions to merely disseminate information. When debating how to intervene in order to achieve legislative changes, the group agreed upon building relations with key actors;

however, parallel reporting was also mentioned as a way of following up on actual actions taken by the governments. Educating the media to ensure positive influence on the population on the question of combating racial discrimination was underlined. The debate on general issues of education started out stressing that national human rights institutions play a key role by contributing to the creation of a culture of respect. Furthermore, the participants agreed on the importance of having human rights issues incorporated in all curricula, something NHRIs could urge via opinions and notes. Finally, the debate was also related to the question of how to target the labour market and taking point of departure in terming the combat of discrimination in positively.

General Rapporteur

Mrs. Kerry Buck, Director of Policy and International Programs Branch at the Canadian Human Rights Commission presented her General Rapporteur's report on the 4th day of the Conference.

The ICC Rules of Procedure were amended and adopted as the last point on the agenda.

Questionnaire

In cooperation with OHCHR, The Danish Centre for Human Rights developed a questionnaire, which was distributed to all institutions invited. The completed questionnaires provided an insight into the actions of various NHRIs in the struggle against discrimination, the mandates and working conditions of NHRIs in this area and the areas in which actions are taken.

The vast majority of the institutions answering the questionnaire - 25 in all - are working within the framework of a mandate aimed at combating racism and racial discrimination.

The legal frameworks build on ratification of international instruments as well as domestic legislation, the latter often seen as Constitutional provisions. However, a number of countries are in need of law-reform, a process in which only few NHRIs participate - a law-reform that would ensure conformity between statutes and international and superior domestic legislation.

Further, a majority of countries need to develop a Human Rights Plan of Action and to increase efforts within the area of educational activities - both areas in which the NHRIs can play crucial roles.

Conducting joint activities in cooperation with government departments seems mostly to be a moderate success, while when it comes to recommendations authored by

NHRIs, government institutions seem less keen on following the advice given.
In contrast, most NHRIs refer to a well-developed and multi-faceted cooperation both with civil society actors and NGO's, especially within the areas of documentation and education, and with the media.

Looking into the area of remedies, it is within the mandate of most NHRIs to receive complaints relating to racial discrimination On the other hand, the lack of systematic and continued statistical registration is profound. In the questionnaires, this is related to a matter of the priority given to the combat of racism. Many answers refer to an under-prioritisation of racial discrimination, due to scarce financial resources of their country, the latter also being the explanation to the downgrading of statistical registration.

Finally, many NHRIs indicated that racial discrimination is not perceived as a key violation of human rights in their country.

PART 1

WORKING GROUPS REPORT BY GENERAL RAPPORTEUR, CONFERENCE DECLARATION AND REPORT ON QUESTIONNATRE RESULTS

Day 2 - Working group 1

REMEDIES: CASE HANDLING BY NATIONAL HUMAN RIGHTS INSTITUTIONS

Chairman : Mr. *Albert Sasson* (Morocco)
Discussant : Mrs. *Olga Lucia Gaitán Garcia* (Colombia)
Rapporteur : Mr. *Manuel Aguilar Belda* (Spain)

The central task of the working group was to define best practices in their respective areas of competence. To this end, the following list of questions - suggested by the Conference secretariat - were presented to serve as either a source of inspiration or a starting point for the discussion.

1. Effective and fair caseflow management

2. Balancing concerns of transparency and confidentiality

3. Ensuring respect for fundamental principles of impartiality and independence

Making remedies effective

The group started by distinguishing specific remedial measures from the processes surrounding them. Examples of remedial measures would be: compensation/damages, restitution, an apology, a court declaration, an injunction or order (negatively) not to engage in certain conduct or (positively) to perform certain acts within a certain time. The group understood its task however as primarily not to discuss these things themselves, but processes surrounding them, particularly those where NHRIs have a specific role to play. The group recognized as a point of departure that there was a significant divergence of competence and mandate among them. Some institutions' case hand-ling was confined to complaints against public authorities, some could only act in specific thematic areas, whereas others had wide and general mandates.

In addition to the issues proposed for discussion by the conference secretariat, the group decided to discuss Alternative Dispute Resolution (ADR), as other processes concerning remedies. In relation to this subject, the group adopted working definitions of *mediation* as being a generally voluntary process where a third party takes responsibility for the process whereby parties in dispute are brought together, controlling that process in order to make it run smoothly and fairly, but where the external mediator does not intervene in the substance of the negotiations or the solution to be arrived at; *conciliation* as being a process (often mandatory) where a

third party goes further, examining the positions of the parties and trying to identify middle ground between them, proposing a solution and trying to bring the parties to accept it. In contrast to the first two, *arbitration* involves a third party imposing a solution that is binding on the parties, who of their own volition grant to the arbitrator the power to arrive at such a solution. It differs from normal court proceedings only in that it is less technical and formal, and that its authority normally derives not from public law, but from the agreement of the parties.

Some of the other processes in which NHRIs are involved include: handling of individual complaints and issuing decisions or recommendations based on these, carrying out public inquiries, institutional human rights audits, acting as amicus curiae, bringing cases in court on behalf of complainants, or providing legal aid for this purpose (or legal assistance, where the Commission assists a party to make a legal complaint, as the discussant described was the case in Colombia) and procedures whereby decisions of the NHRI can be transformed into binding judgments.

Fair and effective case flow management

The group identified the following features as important in this respect:

(i) Clarity and rigor: establishing and following a complaint handling timeline, covering the entire process, from reception to a final disposition. While treatment and disposition of a matter often depends on third parties (particularly the party complained against), many aspects of the process are in the NHRI's control.

(ii) Transparency: process and timeline should be made known to complainants at the outset. Complainants should be kept informed throughout the process as to the progress of the case. The representative of the Indian Commission informed the group of a complaint tracking system via the internet, where complainants could, by means of a code system, learn of the progress of their cases. Other Commissions follow a practice of routinely informing the complainant of developments. Likewise, rules on admissibility should be clear and made known to the public.

(iii) Criteria for selection should be made explicit and clear. Most of the Commissions represented handled complaints simply according to the dates on which they were received. However, some expressed a need to prioritize thematically (treating issues regarded as particularly urgent or serious as a matter of priority). The group accepted that this could be necessary, but said that the criteria used should be made explicit. Prioritization may have a budgetary as well as a time element, particularly in matters such as the granting of legal aid.

(iv) ADR should be built into the process. The representative from Fiji mentioned the use of an obligatory conciliation conference within ninety days. However, such time limits should be used carefully, as a 'cooling-off' period is often necessary before parties are ready to conciliate. Three months may be too short a period in some cases.

(v) NHRIs should have referral mechanisms to other bodies and procedures built into their procedures (discussed in more detail on day 3 of the Conference).

Balancing transparency and confidentiality

There was a lively debate within the group on this topic, as there were clear variations in practice among the Commissions represented on the question of how much information should be made public concerning pending cases. In Hong Kong, parties are informed from the beginning about the procedure to be followed, but the substance of the matter is kept confidential. Some Commissions felt strongly that publicity can damage the process, and perhaps also the perception of the neutrality of the Commission. In Ghana, a distinction is made between matters that are essentially in the private sphere and those where there is a public interest in knowing the progress of the case. This would especially be so when public servants or authorities are part of an identified problem. Public knowledge of and interest in pending cases is an important educational tool about the Commission itself, and about the conduct of public administration. In Ghana, this applied even where a final determination had not been reached. The Spanish Commission (Defensor) mentioned that legal rules on protection of identity would often apply regarding complaints.

The Indian web-based system was referred to again, as a means to track progress of complaints. Some participants expressed concerns about confidentiality with such a system. The Indian representative said that some details (such as names) are left out of the orders and documents made available in this way.

There was general agreement among the participants that decisions of the Commissions were important elements in education and advocacy, and that for this reason, they should be made publicly available. In some cases, this should be done in an anonymized way to protect the identities of individuals. Breaches of the principle of confidentiality should only take place with the consent of the complainant, and (depending on the country and on the nature of the particular case) often of the respondent as well.

Ensuring respect for fundamental principles of impartiality and independence
The participants stressed the importance of written and binding rules of procedure, to which the NHRIs should adhere.

A practical suggestion was made of compiling an electronic databank of rules and internal procedures on case handling, and indeed on other matters. The databank could be made available on or via the www.nhri.net site. The DCHR said that it would explore this possibility with the OHCHR.

There was some discussion of the multiplicity of roles, which an NHRI plays (policeman, prosecutor and judge), and the danger that this will dilute the institutions' impartiality. Note was taken of the response of Canada to this problem, whereby there was both a Human Rights Commission and a Human Rights Tribunal. In countries where there was no such division, a high level of demand of professionalism was placed on Commissions as to the internal organization of their functions, so as to avoid conflicting roles or the appearance of them.

In addition to the debate on making remedies effective, some participants raised the question of non-compliance with determinations of the Commission. The representative from Hong Kong underlined the importance of a carrot and stick approach, where the carrot was the interest of both parties in having the matter settled and closed. This is so especially where there is an ongoing relationship between the parties. The stick is the possibility of court proceedings being brought in the event of a solution not being reached. The two are thus complementary. There was general agreement with this, and of the value of a procedure whereby Commission decisions can be transformed into binding court judgments. In Ghana, where this avenue exists, the High Court does not reopen the substance of the matter decided by the Commission. The Court would usually confine itself to examining whether the procedure followed by the Commission was fair. If principles of natural justice could not be said to have been breached, the court enforces the decision of the Commission as a judgment.
In countries where there are particular problems of non-compliance, a solution could be to seek a change in legislation to permit this possibility. In some countries, Commissions or Ombudsman institutions publish annual lists ranking public bodies in terms of their compliance or non-compliance with decisions of the Commission. This can be a useful form of pressure through the media.
It was also observed that an individual decision can herald the establishment of a general principle, through public knowledge. Publicity can help in making remedies effective, by putting pressure on persons or authorities to comply. Reference was made again to the subject of apologies. Courts are very reluctant to impose these as

part of a judgment. However, they are often important to victims. NHRIs can be more flexible in this.

The group then discussed the question of cases in which the remedies that can be provided by an NHRI are not appropriate. Most agreed that very serious violations of human rights, such as torture, extra judicial killings etc., should lead to criminal and civil actions against the perpetrators, and that they are thus not suitable to be settled in a friendly manner. Friendly settlements in cases like these would lead to impunity, and great pressure could be brought to bear on complainants to accept settlements that are unconscionable. NHRIs should seek to promote the rule of law, not undermine it. This does not however take away from the very important role, which an NHRI can have in investigating such violations of human rights and advocating for appropriate steps by other authorities. In addition, there may be circumstances where the award of compensation to victims of such violations through a complaint handling procedure could be of value. Such a compensation award may signal admission of the wrong done by a person or public authority, and provide much needed quick relief to a victim or victims. In such a case, relief of this kind should be explicitly without prejudice to later claims in a more formal setting, but where the compensation initially paid can be taken into account in calculating any later award of damages.

Day 2 - Working group 2

MONITORING LEGAL FRAMEWORKS RELEVANT FOR RACIAL DISCRIMINATION

Chairman : Mr. *Memane Oumaria* (Niger)
Discussant : Mr. *Patrick Charlier* (Belgium)
Rapporteur : Mr. *Carlos Rafael Urquilla Bonilla* (El Salvador)

The central task of the working group was to define best practices in their respective areas of competence. To this end, the following list of questions - suggested by the Conference secretariat - were presented to serve as either a source of inspiration or a starting point for the discussion.

1. How to ensure harmony between domestic and international rules

2. How to ensure that ratification leads to transformation of national law when necessary

The group touched upon a wide range of issues related to monitoring legal frameworks relevant for racial discrimination. One of the main questions addressed was how to ensure harmony between domestic and international rules and implement a transformation of national law. Another question addressed was the contributions from National Human Rights Institutions in the elaboration of state reports due by UN treaty.

The group commenced by stating that National Institutions should ensure that the respective states sign, accede to or ratify the different human rights conventions relevant for racism, racial discrimination, xenophobia and related intolerance. Next, the signature should be accompanied by guidance of the state concerning the necessary law transformations in order to comply with the international conventions. The group underlined the necessity of taking a pro-active role in relation to racial discrimination. The institutions should inform the different parts of society of the existence and validity of international law in the area of racial discrimination and promote legislative development.
In the discussion about racial discrimination the need for a clear definition was pointed at. Different Conventions highlight different issues, which can make it difficult to manage in practice. The group therefore identified a need to establish a system of objective indicators, which could embrace the differences.
Another part of the discussion revolved around how NHRIs could contribute to the elaboration of the state reports due by UN treaty on human rights. This theme was

debated in detail and different types of contributions were listed. Among the suggestions were: contribution of information to the reports, development of a shadow report or sending information directly to the UN treaty bodies.

The importance of elaborating shadow reports was stressed. Shadow reports were considered especially useful in cases where states denied allegations made against them. In these situations the treaty bodies would have an independent document to work on and base their intervention on. Considering time and resource constraints by the national institutions, the shadow reports could be relatively short, only highlighting some of the key human rights issues.

Some institutions warned against national institutions collaborating with states in preparing state reports. It was stated that their independence could be compromised and that there was a risk that the state in the end would leave out problematic issues and critique, which had been pointed out by national institutions.

The group furthermore mentioned the possibility of participating in the official government delegation. In order for this to be successful, however, there should be a clear distinction between the government delegation and the independent national institutions. Following such a constellation, the views of the institutions could be presented alongside those of the government.

Another way NHRIs could contribute to the report to treaty bodies would be by asking the committee to allocate time for national institutions in their examination of a country report. On such an occasion, the national institution would have the opportunity of elaborating on its views and its shadow report and answer questions.

Apart from contributing to the country reports, it was stressed that the institutions should monitor the implementation of the recommendations by the treaty bodies and ensure the public dissemination of the results. One way of monitoring the implementation of the recommendations is publishing an annual up-date. With regard to the public dissemination of results, it was suggested that national institutions should convey the outcomes of the examinations by the treaty bodies to the public and the media back home or perhaps invite a committee member to the country and discuss the report of the committee.

Day 2 - Working group 3

ADVOCACY: THE RELATION TO GOVERNMENT, MEDIA, AND CIVIL SOCIETY

Chairman : Ms. *Aurora Recina* (Philippines)
Discussant : Mr. *Saafroedin Bahar* (Indonesia)
Rapporteur : Mrs. *Ana Alejandrina Pineda* Hernández (Honduras)

The central task of the working group was to define best practices in their respective areas of competence. To this end, the following list of questions - suggested by the Conference secretariat - was presented to serve as either a source of inspiration or a starting point for the discussion.

1. How does an National Human Rights Institution comment on political matters without becoming (or being accused of becoming) political?

2. Balancing a critical role with an encouraging one

3. Making standards know among decision makers

4. Intervention to achieve legislative change

5. Use of media

The group commenced by discussing the question of how national institutions can comment on political matters without becoming (or being accused of becoming) political. A number of key reflections were made in the session. It is often stated that "human rights are not political", which often leads to the notion that political matters are therefore not something that national institutions should deal with. However, it should be kept in mind that all human rights issues are within the mandates of national human rights institutions, even though they may have a political dimension as well. It is therefore important to distinguish between a political debate and a political commitment (particularly a *party* political commitment). Whereas the former is an acceptable avenue for national institutions, the latter is not. When operating in a politically volatile climate or with issues of a politically sensitive nature, it is important to work on the basis of facts, ideally on the basis of research, keeping in mind that the national human rights institutions often are in a position to do so, in contrast to e.g. the media or non-governmental organisations. Finally, it was claimed that many individuals working within national institutions may have political ambitions, and a separation should therefore be ensured, for instance through criteria ensuring that

politicians are not appointed as commissioners or that the latter serve in double roles which could be problematic.

On the question of how to make human rights standards known among decision makers, it was stressed that this should be done in the form of training and education, not merely through dissemination of information. Also, this should be done not only in the form of instruction but through seminars and other means geared towards raising awareness and serving as the basis for strategic decisions. Sometimes concrete experience shows that there may be obstacles to such a process, for instance with the armed forces fearing that their effectiveness is hampered as was the case in Peru. Similarly, in the United Kingdom judges were provided with training on non-discrimination, but expressed scepticism as to whether it was of relevance to them. Examples of efforts in this area include the Philippines, where the national institution has provided information and addressed statements to the government on issues such as the death penalty, and Switzerland, where high-ranking police officers were given guidance on behaviour and reminded of their role of educators and as examples for the population in this area. In Australia, public inquiries have been held, allowing for the expression of personal opinions and testimonies of violations as well as those of expert witnesses. The reports of such inquiries were published for consideration among decision makers, and moreover facilitated research on, for instance, the relationship between international obligations and domestic legislation in this area. First and foremost, they built expectations that the government would actually do something about the problems!

In relation to the question of intervention in order to achieve legislative change, the group agreed that an essential element is to build relations with key actors. However, it may be difficult to ensure that governments actually follow up on recommendations, and an attempt should therefore be made to influence this, for instance through a process of parallel reporting. Best practice examples in the area of influencing legislators include Cameroon, where the national institution has held seminars for parliamentarians, and the Philippines, where especially the group of Young Legislators has been targeted. In Venezuela and Bolivia, departments of the NHRIs dealing with constitutional and legislative matters have made submissions to Parliament and even, in case of the latter country, succeeded in initiating the forming of Parliamentary Committees.

Finally, with respect to the last question, on the use of the media in relation to advocacy, it was stressed that the media can be either a negative or a positive element in relation to racial discrimination, and that it may be important to educate the media in order not to produce a negative impact on the population. Examples of best practices in this area include Cameroon and Venezuela, where weekly radio slots and programmes have been used to combat racial discrimination. Other

mechanisms include working especially with the local, and alternative press, print media as well as TV and radio. In Bolivia the national institution has made strategic alliances with national media, and in South Africa the focus has been on showing the press that addressing racial discrimination made good "business sense" instead of just focussing on what the people need. In Peru the government invests huge sums of money in advertising while at the same time maintaining the criteria that programmes may not be openly or tacitly discriminatory; secondly, those who invest in advertising have been targeted in campaigns to avoid advertising in connection with programmes which are discriminatory.

Day 3 - Working Group 1

REMEDIES:
THE RELATIONSHIP BETWEEN NHRIs AND OTHER INSTITUTIONS/MECHANISMS

Chairman : Ms. *Sophie Magennis* (Ireland)
Discussant : Mrs. *Shaista Shameen* (Fiji)
Rapporteur : Ms. *Alexandra Papadoploulos* (Hong Kong)

The central task of the working group was to define best practices in their respective areas of competence. To this end, the following list of questions - suggested by the Conference secretariat - were presented to serve as either a source of inspiration or a starting point for the discussion.

1. How do NHRIs avoid overlapping or 'turf wars' with other case handling institutions?

2. How do NHRIs establish productive and understanding relations with the judiciary?

3. When is a recommendation by a NHRI not enough? How can a NHRI ensure that a case is followed up by the police, the prosecution and the courts?

4. What procedural issues must be respected in the interface between case handling by NHRIs and the courts / other case handling institutions?

5. How can NHRIs improve case handling by the executive organs of the state?

The Working Group examined this subject using the questions posed by the conference secretariat, and in the light of the points made by the keynote speaker and discussant.

How do NHRIs avoid overlapping or 'turf wars' with other case handling institutions?
The discussant pointed out that this was primarily a jurisdictional question, which should be addressed in the legislation from which the Commission and other institutions derived their mandates. Where mandates are broad, it is very important to establish clear boundaries. Rules on admissibility will usually address the question. These will usually be found in primary or secondary legislation. Beyond formal jurisdiction, there is the question of practice. A second point concerns internal controls.

The keynote speaker on the first day mentioned that the president of his institution always examined complaints to determine jurisdiction. Where the volume of complaints is large, it is necessary that the case handling staff is knowledgeable about other procedures and mechanisms. A third avenue to avoid overlaps is to establish agreements with the other case handling institutions, defining boundaries in areas of doubt, and establishing mutual referral mechanisms. In order to do this, it may be necessary for all case handling institutions to conduct planning and prioritisation exercises in order to arrive at a precise understanding of their mandates. Close working relationships are of course valuable and necessary to help avoid the problem. Mention was made of India, where there are separate institutions for the protection of particular groups: women, scheduled castes and tribes, minorities, etc. Indian legislation attempted to solve problems of overlap through a legislative requirement that the chairperson of each of these specialized institutions is deemed to be a member of the National Human Rights Commission, and that they meet every quarter to discuss issues of common concern. In South Africa, coordination is founded more on informal arrangements but works well in most areas. There has nevertheless been a problem of access to each other's databases. This would be helpful in relation to avoiding overlaps, but entails problems of breach of confidentiality. A suggestion was made that it could be possible to demand that complainants execute a limited waiver, permitting the NHRI to carry out checks with other institutions. Others pointed out that the problem can usually be avoided simply by asking the complainant whether (s)he has submitted the complaint to other instances.

In relation to referrals, it was considered a best practice that the institution, if rejecting a claim on admissibility grounds, systematically inform complainants about other appropriate avenues of complaint. In Holland, the NHRI was obliged to refer cases automatically in case of 'wrongly addressed' complaints.

How do NHRIs establish productive and understanding relations with the judiciary?

Raising awareness among judges to issues of racial equality, and indeed to human rights standards more generally was agreed to be a key issue. It was remarked that it is often better to invite judges to 'colloquia' rather than to tell them that they need 'training'. It is often wise to invite their own peers to give talks, and to carry out such activates in collaboration with the judiciary's own mechanisms for continued legal education. In South Africa, it was found important not to single out the judiciary, which will invite defensiveness, but rather to make such 'sensitisation' courses universal.

The mandates of most NHRIs exclude the examination of cases that are pending before the courts. However this would not, in principle, prevent a NHRI from examining systemic issues of human rights in the administration of justice, it does lead many NHRIs to adopt a 'hands-off' approach to the courts. In Zambia, the NHRI does have a mandate to investigate misadministration of justice. This can make relations between the two uncomfortable. They have found that, despite this power, an informal approach sometimes works best, using contacts to sympathetic judges to raise issues internally.

In India, there are frequent contacts with the judiciary, letters are addressed to the High Court on particular issues. The Supreme Court has especially learnt about the Commission through the cases that the latter has taken there. The Commission ensures that its newsletter is sent to the courts. Interestingly, the courts in India do occasionally refer litigants to the Human Rights Commission. The participants found this to be useful, particularly in cases where conciliation is an option.

In countries where the decisions of the NHRI can be transformed into binding court judgments, smooth working relationships with the courts are particularly important.

When is a recommendation by a NHRI not enough? How can a NHRI ensure that a case is followed up by the police, the prosecution, and the courts?
Police and prosecution – some institutions experienced an unwillingness on the part of the police to pursue particular kinds of case. Vigilant follow-up by the NHRI is particularly important here. There is a particular difficulty when police are suspected of violations. In Fiji, the Commission has persistently raised some cases with prosecutors, doing so centrally with the DPP when local prosecutors did nothing. In some jurisdictions (such as France and Northern Ireland) special bodies existed with mandates to investigate police conduct. In Ghana, cases involving police are often investigated by retired police officers with special investigative expertise, ensuring that files can be transferred directly to the prosecutor's office, bypassing the police if necessary. They also occasionally use the media in such cases, using publicity to force action.

While the independence of other institutions must also be respected, the participants agreed that prosecution authorities should be obliged to provide reasons for decisions not to prosecute. In Colombia, cases are regularly transferred to the prosecutor's office, and these are regularly followed up. In Poland, the state bodies are legally obliged to inform the Ombudsman of the progress of cases referred by the office. In Chad, the Commission can itself refer a matter to an examining magistrate if it is unsatisfied with the prosecutor.

What procedural issues must be respected in the interface between case handling by NHRIs and the courts / other case handling institutions?

One important issue here is that time limits must be rigorously respected by NHRIs. Problems can arise where one institution refers a matter to another, which then refers it back. The complaint may be timed out by the time it is resubmitted to the first institution. It was recalled that NHRIs are public bodies, and could themselves be subject to legal action for failure to take due action to protect people's rights.

Day 3 - Working group 2

MONITORING: DOCUMENTATION OF RACIAL DISCRIMINATION

Chairman : Mrs. *Frauke Lisa Seidensticker* (Germany)
Discussant : Mrs. *Evangelina Mabusela* (South Africa)
Rapporteur : Mrs. *Heng Keng Chiam* (Malaysia)

The central task of the working group was to define best practices in their respective areas of competence. To this end, the following list of questions - suggested by the Conference secretariat - was presented to serve as either a source of inspiration or a starting point for the discussion.

1. The challenge of documenting race based discrimination

2. How to ensure analytical and qualitative reporting not only focusing on quantitative aspects?

A broad variety of subjects were discussed, relating to the challenge of documenting race-based discrimination. Areas especially focused on were ethics while documenting racial discrimination, methodologies, including collection of data and dissemination of information and finally, possible biases in the documentation work. Furthermore, the balance between quantitative and qualitative reporting was discussed.

The discussion on ethics revolved around the handling of information, including protection of the informant, the problem of rights to access information and reports, while at the same time protecting the confidentiality of the information and ethics while classifying and analysing data.

It was considered a big challenge to keep information confidential and respect the anonymity of the informant, while at the same time respecting freedom of information and access by the public. There were several proposals on how to handle this issue: The Indian Human Rights Commission mentioned for example that they had developed a complaint handling module to manage information of about 80.000 complaints a year. Through the Internet, the complainant and others can access status of cases and complaint handling, while the identity is protected. This system has also the advantage that people do not need to travel far to gain access to information concerning their case. Another example of how to handle this issue was given by Canada. The Commission runs a system where the material in the files remains inaccessible until the case goes to tribunal or court, at which point the documentation

becomes available. If the Commission rejects a complaint, then the documentation becomes accessible. Complainants can access information concerning cases, but identifying information will be removed.

The discussion moved on to deal with the protection of the source of the information. It was emphasised that informants and activists providing information about racial discrimination in some cases run a considerable risk. The Nicaraguan Commission pointed out the fact that those who report on racism place themselves in danger. It was stressed that the informants leave themselves exposed to police and army and even private enterprise security forces.

The group widely agreed that it is a challenge for human rights institutions to handle the information they receive correctly and protect the informants.

A final ethical issue discussed was the aspect of analysing and classifying data. It was underlined that National Institutions should bear ethical considerations in mind while collecting and analysing data. It was especially seen as problematic to put people into categories they will feel unable to leave.

The group went on to discuss methodologies in relation to documenting racial discrimination. The possibility of using video graphics as life documents, instead of only focusing on written reports was discussed. Video graphics was especially considered as useful for documenting post-mortems in certain cases.
The traditional method of interviewing was subsequently discussed. The importance of listening to the people and documenting the experiences was underlined. The participation of the people in producing documentation in general was regarded as essential. It was also mentioned that the use of key informants could be useful. This method means not only interviewing a victim of discrimination, but also interviewing key informants, who can offer a broader picture and maybe outline systematic discrimination.
Cooperation with NGOs was furthermore singled out as a useful methodology in relation to documentation. In Niger for example the Commission has contact with specialist NGOs with representatives in the key regions who were able to collect relevant information.

The discussion moved on to point at different biases with regard to documentation and dissemination of information. Nicaragua mentioned for instance the problem of reaching all regions of the country. This makes documentation of abuse difficult, especially when adequate technology and human resources are lacking.
Also the issue of information dissemination can lead to problems of bias. The central issue is to whom the information is distributed and made available. In South Africa

for example there are 11official languages. This issue is to be considered when making information generally available to people and raise awareness.

In relation to the question of quantitative and qualitative analysis and reporting, the group discussed the usefulness of both methods. The discussion especially revolved around the use of indicators. It was suggested that NHRIs could make use of a system of indicators to monitor racial discrimination. This system could enhance a qualitative analysis and could increase the level of knowledge about the phenomenon and the progress of it.

The group furthermore mentioned the development of a typology of violations of human rights as a possible tool. This could enable the classification of complaints and the analysis of the context, the dimension of the phenomena, and the impact.

Day 3 - Working group 3

POPULAR EDUCATION: PRO-ACTIVE STRATEGIES IN THE AREA OF EDUCATION

Chairman : Mr. *Komi B.Gnondoli* (Togo)
Discussant : Mr. *Hadji Malick Sow* (Senegal)
Rapporteur : Mrs. *Patricia Sloan* (Northern Ireland)

The central task of the working group was to define best practices in their respective areas of competence. To this end, the following list of questions – suggested by the Conference secretariat – was presented to serve as either a source of inspiration or a starting point for the discussion.

1. The role of NHRIs in building a culture of respect. What can the institutions do?

2. How is anti-racism integrated in basic training curricula? (Primary and secondary schools, police, journalists).

3. How is discrimination targeted in the labour market?

The group discussed general issues relating to education, stressing that national human rights institutions play a key role by contributing to the creation of a culture of respect. They must work directly with different actors, from treaty bodies via national parliaments to local school directors. Examples, for instance from Senegal, show that discrimination is a problem affecting all in society, not just one particular group, and that it is often engrained in society, persisting over long periods of time, and therefore very difficult to uproot. Education and training must therefore be targeted against all groups of society.

In relation to addressing the level of national government, national institutions may draft opinions and notes urging for education on international human rights instruments to be included in all curricula. It may be a useful strategy for the national institution to start by approaching the lower levels of the administrative system first, and on the basis hereof work one's way up to the higher level of the political system. Primary schools should teach basic human rights concepts, in a manner appropriate to the context, and vocational schools, for instance for training of police and nurses, should also teach human rights, possibly on a voluntary basis. When it comes to targeting people outside the formal educational system, a variety of different media, public or private, should be used, in a way that reaches all levels of society and in a de-centralised manner ensuring that also rural areas are reached - in short every

person in society should be exposed to human rights education. This can be done through study days, seminars, and workshops, singing and dancing, and 'cultural weeks' where different cultures in society meet and learn about each other.

In relation to the first question posed, about how the national institutions can approach their role in building a culture of respect, it was acknowledged that the role of national institutions is not just to inform, for instance through campaigns and to sensitise professional groups, but also to educate, i.e. providing knowledge as well as socialisation. It could often take the form of 'training of trainers'. It should also be kept in mind that educational methodology should be adapted to each society's particular culture - especially when illiteracy is prevalent, dramatisation, singing, and dancing may be more appropriate than workshops and symposia. The group identified different best practice examples, for instance from Togo where 'Human Rights Raps' were used to teach young people about human rights, and from Bosnia-Herzegovina where civil servants were approached and provided with a 'civil conduct code' for fair and impartial treatment, in addition to members of society being asked to put pressure on the government. In the Philippines, human rights are introduced in the curricula at all levels of the educational system, for instance through discussions, the composition of human rights songs, and the establishment of 'human rights desks' in various public offices. In cases where discrimination is deeply rooted, a necessary first step is to acknowledge that it exists, as was done in Ghana; and when it has become as institutionalised as in South Africa, it may be necessary to start by attempting to restore the legitimacy of the justice system, i.e. by targeting the police and the judiciary and attempting to change their mind set.

The group discussed questions 2 and 3, on integrating anti-racism in basic training curricula e.g. for primary and secondary schools, police and journalists, and how to target the labour market, agreeing that this is also a complicated area, especially as the authorities may view human rights with some scepticism. It is therefore very important to address the issue in positive terms, for instance by stressing in communication with the police how human rights can be directly beneficial to them in their work, and by showing the labour market parties how costly discrimination is for society rather than simply banning it. A best practice example is Honduras, where the NHRI started to cooperate with relevant Ministries on how to introduce human rights in primary school curricula, spurred by Honduras being condemned by the Inter-American Human Rights Commission for systematic human rights abuses. In Indonesia, four different groups, i.e. parents, teachers, religious and traditional leaders, were singled out as particularly instrumental in relation to human rights promotion. Even in societies where the political climate is not conducive to human rights, progress can be made. This can for instance be done by identifying so-called 'pockets of commitment' within the government system and by deliberately avoiding the most

sensitive areas such as democratisation, and instead focussing for instance on the training of judges in fair trial procedures, as was done in Nigeria. In Cameroon, training of administrators at all levels during 5-day seminars has generated a positive response, especially in view of initial suspicion. With respect to the labour market, the national institution in Madagascar has particularly addressed discrimination against women, also in relation to sexual harassment, through distribution of brochures and information material. In Cameroon, workshops were used to bring employers and employees together to discuss human rights issues.

Report by the General Rapporteur

Mrs. Kerry Buck
Canadian Human Rights Commission

Background and context of the Conference

The Sixth International Conferences for National Institutions held in Copenhagen, Denmark and Lund, Sweden from 10 to 13 April 2002 was the culmination of a series of important meetings of National Institutions. These included regional meetings held in Africa, Europe, Latin America and Asia Pacific in preparation for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the productive Johannesburg meeting of National Institutions immediately prior to the World Conference and the Durban Conference itself. The theme therefore chosen for the Sixth International Conference for National Institutions was racism, racial discrimination, xenophobia and related intolerance.

The Paris Principles clearly state that National Institutions have a particular obligation to address racial and ethnic discrimination. In the consensus Statement adopted by National Institutions at the World Conference Against Racism, National Institutions reaffirmed this obligation and committed to provide the International Coordinating Committee with information on measures they have taken to address racism, including analysis of best practices. The Declaration and Programme of Action of the World Conference elaborated on this in a number of provisions, reiterating measures to be taken to enhance the work of National Institutions in ensuring remedies, monitoring, advocacy, and education against racism. Below is an overview of discussions amongst conference participants on three key themes, drawing out some of the experiences and best practices of National Institutions in combating racism, racial discrimination, xenophobia and related intolerance.

Remedies

The Range of Remedies.

Participating National Institutions discussed a broad range of remedies or complaints-handling methods - from alternate dispute resolution to adjudication of individual complaints to public inquiries on systemic racism, among others. They examined effective case flow management, the need to balance transparency and confidentiality, to ensure independence and impartiality, and to make remedies effective.

In the context of individual complaints of racism, there was considerable discussion of the use of alternate dispute resolution because of its accessibility, its flexibility to respond to complainant's needs, its relatively low cost and its educational impact, particularly for the perpetrators of racism. Participants identified three types of alternate dispute resolution - conciliation which refers to a process annexed to a court system and imposed by statute; mediation, where the parties voluntarily enter into the process and a third party mediator facilitates a voluntary solution; and arbitration where resolution is made by a third party and is usually binding. The challenges of alternate dispute resolution included the potential imbalance of negotiating power between complainants and respondents, the need for adequate support for complainants, confidentiality of negotiated settlements and the limits this places on public education and the need for stronger powers of enforcement or follow-up. There was also discussion about the types of cases appropriate for alternate dispute resolution - perpetrators of racism associated with violence, for example, should face the full force of the law, including criminal prosecution where necessary and should not be able to avail themselves of alternate dispute resolution. The suggestion was made that criteria could be developed for determining which types of cases were not appropriate for alternate dispute resolution.

Also in the context of individual complaints, the Conference examined other remedies available, such as compensation for lost benefits or hurt feelings, payment of legal fees, provision of goods or services which were denied, provision of a job or promotion which was denied, issuing of apologies, declarations that an act constituted a violation of human rights and injunctions. Effective and fair case-flow management was discussed and the Conference examined suggestions regarding criteria for prioritization of cases to allow National Institutions to focus their efforts on the most serious cases, the development of feasible timelines and means of ensuring consistency of decision-making when functions are decentralized within a national institution. Participants flagged the importance of a coordinating function within National Institutions, for instance Policy Units, to ensure consistency of decision-making. On the tension between confidentiality and transparency of information, the point was made that in certain types of cases, such as rape, the benefits to the victim of keeping information confidential outweighed the public interest in transparency.

Some Conference participants pointed out that, given the range of case-handling methods available to National Institutions, there are instances where they will act as investigators, prosecutors, and judges in the same case. The Conference discussed the potential for conflict amongst these various roles and means of avoiding it, such as separating functions amongst different Commissioners, or creating separate human rights tribunals. The point was also made that advocacy and adjudication functions can be combined in the same institution without conflict.

For National Institutions which do not have a complaints-handling function or for situations of systemic human rights abuses, the Conference discussed the use of other types of 'remedies', such as special reports or public inquiries. Public inquires and special reports can target certain areas or practices where there is a significant problem of racism or discrimination. Special reports can not only provide details of a particular case but also tell us more about vulnerable groups and regions. Such reports can also be used to lobby in the government, the legislature as well as raise public awareness. The use of special programmes or affirmative action measures for vulnerable groups was also highlighted as another remedy for systemic discrimination. For example, the use of data collected from employers to assess representation of minorities among different occupational groups and different seniority levels was one means of monitoring and documenting the situation of these groups.

The Relationship between National Institutions and Other Human Rights Bodies

Under the rubric of remedies, Conference participants also examined the relationship between National Institutions and other institutions dealing with racism, such as the police, prosecution, and courts as well as ombudsmen, regional and international human rights mechanisms, government departments, and civil society. In many countries, a mosaic of institutions has the power to respond to human rights issues and complementary relationships among them need to be developed to ensure human rights issues are not given short shrift in the consideration of complaints and to avoid conflicts of jurisdiction. Reference was made to the use of memoranda of understanding or framework agreements to avoid duplication of work. Informal means for continuous exchange of information and mutual referral of cases were also discussed. Establishing jurisdictional boundaries was seen as key. Suggestions were made concerning the establishment of databases to ensure crosschecking a number of institutions to ensure complaints were not launched with a number of bodies simultaneously.

In particular, the relationship between National Institutions and other institutions working on human rights - Ombudsmen for instance was mentioned. A number of different models were discussed - some National Institutions bring all human rights areas

into one institution but with different Commission members having responsibility for different human rights issues; while in other countries, responsibilities are divided amongst specialized agencies. Particularly in the latter case, mechanisms to enhance cooperation and collaboration among these human rights bodies were seen as key.

In many jurisdictions, the courts and National Institutions share a common responsibility to provide remedies for human rights complaints. The Conference flagged the importance of both National Institutions and the courts in translating human rights law into practice. It is important to appreciate that National Institutions are not courts; nor are they substitutes for courts. Each forum has its comparative advantages and disadvantages. National Institutions may be more accessible to complainants than the courts because they may be less expensive, less formal, less adversarial, and faster. National Institutions should be seen as complementary to the courts and every effort should be made to promote a harmonious and complementary relationship and avoid conflicts of jurisdiction. As one example, National Institutions may have the capacity to intervene as *amicus curiae* in cases where the courts are considering serious human rights cases or considering legislation with a human rights impact. National Institutions might also have the capacity to launch complaints or inquiries on their own initiative in response to serious or systemic human rights issues. In appropriate cases, courts should have the capacity to refer cases to National Institutions, particularly if conciliation is a viable option. The need for training or sensitization of the judiciary to human rights was also mentioned as an important measure to ensure human rights considerations are not given short shrift in cases handled by the courts. Different strategies for sensitizing judges were discussed, including judicial colloquia, continuing legal education bodies, manuals, newsletters or training delivered by judicial peers.

Similarly the relationship between National Institutions and the Police needs to be carefully calibrated. Some forms of racial discrimination may be more appropriately dealt with by the police and the courts, which have remedies unavailable to National Institutions, such as criminal sanctions. National Institutions should be able to address the human rights dimensions of such cases, while leaving the criminal investigation and prosecution to others. Human Rights training programs for the police can be another important role for National Institutions, for example in sensitizing them to human rights norms governing police practices or enabling them to identify human rights violations. When police are themselves the source of human rights violations specialized mechanisms to receive and investigate complaints may be best placed to address such violations.

The question of follow-up to decisions by National Commissions was also discussed. The point was made that National Institutions are public bodies, and as such, a failure by a National Institution to protect and promote human rights could itself be

actionable by the victim. Possible initiatives to make remedies more effective included provisions allowing National Institutions to go to court to force implementation of a remedy or publishing lists of those who fail to comply.

Monitoring

The International Conference discussed both the formal or legal type of monitoring as well as that undertaken through documentation or reporting instances of racism. In regard to the legal framework, the complexity and scope of the laws and mechanisms governing racism in place at the domestic and international level was highlighted. Participants cited some thirty-three international human rights treaties applicable to racism, racial discrimination, xenophobia and related intolerance, the range of protection against racism found in national institutions' respective constitutions, as well as legislation and judicial decisions. All of these provide the legal framework or monitoring mechanisms to deal with racial discrimination. As with other forms of discrimination, racial discrimination can be multiple in characters - it can be overt or covert, systemic, direct or indirect. Therefore, when National Institutions monitor racism, they need to be cognizant not only of acts of racial discrimination as defined in the International Convention on the Elimination of All Forms of Racial Discrimination but also to acts that might result from other grounds of discrimination. They also need to be attuned to specific forms of discrimination particular to their own countries.

The Conference then discussed specific actions National Institutions might take to improve monitoring. First, Conference participants considered that National Institutions need to urge their respective governments to ratify international instruments on racism, racial discrimination, xenophobia and related intolerance. National Institutions need to be strategic and should give priority to the legal instruments of particular relevance to their specific country situations. Where States have entered reservations or made declarations, particularly those contrary to the object and purpose of the treaty, National Institutions should seek to have these removed. National Institutions could ensure reporting not only on the international treaties ratified by their respective states, but also on those not ratified, as well as reporting on the existence and content of reservations.

Second, National Institutions need to monitor the manner in which their respective states implement their treaty obligations. National Institutions participation in the drafting of state reports to the treaty bodies should be carefully calibrated so as not to undercut the independence of National Institutions. They might choose to submit shadow reports to the treaty bodies, include information on the concluding observations of treaty bodies in their annual reports, or work with civil society in submitting

information to the treaty bodies. National Institutions might also consider inviting members of treaty bodies to visit their countries to discuss committee reports publicly. To ease the burden of preparing comprehensive shadow reports, National Institutions might consider using short shadow reports to identify key human rights concerns. Conference participants raised the challenge of dealing with conflicting definitions or standards in international human rights law, for example different definitions of discrimination.

Conference participants also flagged that National Institutions should work to enhance their relationship with the treaty bodies. Treaty bodies could consider inviting National Institutions to join them in discussions when country reports are considered. Other special mechanisms of the United Nations, for example the special rapporteur on violence against women, or the special rapporteur on freedom of opinion and expression, might take similar initiatives when visiting or reporting on a specific country.

National Institutions have a role to play in encouraging their respective governments to respect their international human rights obligations and cooperate with the treaty bodies, even if the comments of the treaty bodies are at times discomforting.

National Institutions should have the statutory competence to examine international human rights instruments and make recommendations for their effective implementation. This should include the responsibility to review proposed legislation or any law in force in their respective countries to ensure they are compatible with their national constitutions and international instruments.

Monitoring by National Institutions also depends on their research and policy capacity. Such capacity is needed in order to be able to track and report on incidents, types and causes of racism, or to analyze and propose legislation or keep abreast of human rights law. As regards tracking incidents of racism, National Institutions can draw on a number of indicators, such as the number of complaints received by National Institutions, the police, or other bodies; incidence of racial violence; discrimination in the workplace, housing, provision of services or in the prisons. Conference participants flagged the particular difficulties involved in collecting information from the police.

National census data can also be a source of information about racism and the relative treatment, access to health, education and poverty levels of different ethnic communities. National Institutions can also engage in public consultations to draw out information on the prevalence of racism and can work in cooperation with non-governmental organizations, other members of civil society and institutions active in human rights to assist in reporting on racism. Employers can be requested to provide information on the representation of different ethnic groups within their workforce.

Decentralized or regional offices of national institutions can also be a useful conduit for monitoring and reporting on racism at the local level. Monitoring of case law and legal developments is also important to identify trends in racism, racial discrimination, xenophobia and related intolerance. The proposal was made that important decisions and law reports of national human rights institutions could be made available to other National Institutions.

The point was made by many participants that monitoring and reporting on racism requires more than quantitative analysis, it requires qualitative understanding of the forms, causes, and impacts of racism. Some National Institutions spoke about initiatives to develop typologies of violations of human rights to assist in classifying complaints, understanding the context and the impact on the complainant and at the gravity of the complaint. The development of common indicators to monitor racial discrimination would be of assistance to National Institutions and help with qualitative analysis of discrimination.

The difficulty of reporting on racism is exacerbated by the fact that many victims decline to report incidents, either because they are afraid to go to the authorities or they are not aware of their rights or the mechanisms available. The efficacy of monitoring racial discrimination therefore goes hand in hand with the efficacy of public education initiatives. Adequate monitoring of racism also depends on cooperation with the victims of racism - often victims have limited access to law and legal remedies and consequently National Institutions should ensure they have access when National Institutions undertake monitoring. Ensuring access for victims requires questioning victims in their own language, taking into account their levels of literacy and questioning in a culturally and gender sensitive manner. There was also discussion of some of the media, which can be used for monitoring, including use not only of written materials but also of methods such as videotaping, for instance videoing post-mortems in certain cases.

Discussion about documentation of racism also led to a discussion of confidentiality of complainants' information. On a policy level, participants spoke of the need for interaction between National Institutions and bodies or laws concerned with confidentiality of personal information, such as access to information legislation or privacy laws. Challenges identified included the resources needed for electronic case-management, development of practices allowing the public release of information with identifying information removed and the ethical issues associated with the collection of data on racism and how victims are described and classified. While documentation of racism can promote human rights by combating racism, in certain countries it can also jeopardize human rights because those providing the information or collecting it can become targets unless the information is kept confidential. The

publication of information about model cases was proposed as one means of reporting on racism without violating privacy.

Advocacy and Education

The Conference approached the issue of advocacy and education by National Institutions in two ways. First, it examined advocacy for treaty ratification and legal reform through techniques to make human rights standards known to decision-makers, use of the media as a tool for advocacy and strategies to comment on 'political' matters without becoming (or being accused of becoming) political. Second, the Conference examined education aimed at changing discriminatory practices by building a culture of respect and integrating human rights into basic training curricula and the labour market.

Advocacy for Legal Reform

On the first issue of advocacy for ratification of international human rights treaties, Conference participants stressed the importance of international human rights law to the work of the National Institutions. The binding nature of international human rights treaties means they can carry significant legal, moral and political weight in relation to the States. The need for training and education of decision-makers about international human rights standards was stressed. The aim is not simply to disseminate information, but to show decision-makers how international law can be a useful basis for their work. National Institutions also have a key role to play in advocating for the development and amendment of domestic legislation to ensure conformity with international and domestic human rights standards. National Institutions therefore need an enhanced capacity to systematically scrutinize and analyse legislation and government practices. For instance, some National Institutions provided examples of advocacy they had undertaken in response to anti-terrorism legislation developed post September 11th to ensure its consistency with human rights norms. The importance of policy statements, special reports, and annual reports as tools for advocacy for legal reform was also flagged. Advocating for legal change also requires National Institutions to build relationships with other key actors - government departments, legislators, judges and other decision-makers.

This discussion regarding the tools used for advocacy led to a wider discussion of the distinction between criticizing state action from a juridical, human rights perspective, and doing so from a partisan or political perspective. When National Institutions take positions contrary to those of their governments, and do so in the context of legally enshrined international, regional and domestic human rights standards, they are merely fulfilling a legitimate and necessary role set out in the Paris Principles.

Conference participants stressed the need to safeguard this important role, and to provide the support of the international community when National Institutions were under attack by their governments. In this regard, suggestions were made for the development of concrete strategies to be undertaken to support National Institutions under threat.

Human Rights Education

The mandates of National Institutions in educating against racism vary widely, ranging from Institutions with an explicit anti-racism mandate to those with a general mandate to protect and promote human rights. Even for those with a more general mandate, the Durban Conference prompted an increase in anti-racism educational activities and Conference participants stressed that it is important to maintain this momentum post Durban.

The role of National Human Rights Institutions goes beyond merely informing the public and extends to the responsibility of shaping values and attitudes. The overarching role of National Institutions is thus to build a culture of respect for human rights. The concrete measures to achieve this aim must necessarily depend on the political context of the state, as building a human rights culture will be a greater challenge and require different tools in countries marked by violent conflict, political instability or high rates of poverty or illiteracy.

There are two main target groups for human rights education: those who are at risk of being discriminated against and those who are at the greatest risk of discriminating, i.e. persons with power and influence over other persons and their lives. If members of the first group learn about rights and how to vindicate their rights, while members of the second group learn what discrimination looks like and how it can be avoided, then we will get results. Specific target groups identified by the Conference included the police, those working in the prison system, teachers, government officials, the judiciary, parents and religious or traditional leaders.

At the same time, because discrimination is systemic and pervasive, human rights education strategies also need to be aimed at society as a whole. One way of achieving this within limited resources is to *train the trainers* - to work with people from within trade unions, employer's groups, police forces or ethnic minority communities, for instance, to ensure they can spread the message to others. One National Institution spoke of this as creating 'networks of human rights ambassadors'. Developing cooperation with civil society organisations active in human rights can also assist in easing resource pressures on national institutions. Tracking the effectiveness of

educational strategies is also important, either through polling or surveys to measure whether knowledge or awareness of human rights increases from year to year.

Different channels can also be used to get the human rights message out to the public. Written educational materials can take many different forms - ranging from brochures, handbooks and training manuals to advertisements, annual reports and newsletters. Public lectures, sensitization and training programmes in human rights were also identified by Conference participants as important educational tools. The media can be an extremely important and useful channel, through coverage of individual cases, articles on human rights issues or televised debates. However, the media should not be targeted as mere conduits of information, but also as beneficiaries of human rights education programmes, since the media themselves can be propagators of racist information. Human rights education can turn the media into promoters of human rights and enable them to more easily identify incidents of racism, racial discrimination, xenophobia and related intolerance. Diversity of ownership of the media is a key goal, as is ensuring that there is no "racial profiling" or stereotyping of ethnic, racial, national, cultural, religious or linguistic groups by the media. Conference participants also stressed the importance of working with alternative and community media in addition to the mainstream media. The Conference also discussed the integration of human rights curricula within the formal educational system and the use of other tools such as the establishment of human rights groups, intercultural associations or debating clubs. The formal educational sector was seen as a particularly important means of getting the human rights message to large sectors of the population.

Regardless of the method used or the forum, the *content* of human rights messages is the most important aspect of National Institutions educational work. Educational tools need to acknowledge and identify the many forms of racial discrimination, including overt racism, systemic or institutionalized racism and covert racism. They need to recognize the interrelationship between racism and other forms of discrimination, for example gender discrimination. Messages should not be aimed solely at condemning racist behaviour, but should be proactive and aimed at furthering interracial and intercultural understanding. Methods used included facilitating face-to-face meetings among groups and finding grounds of common interest among those groups so that the similarities, rather than the differences among them, become the focus of discussion.

Public information campaigns also need to be in plain and accessible language and in forms accessible to all educational levels, to rural and urban audiences and to different genders. Materials need to be tailored to the cultural context and use culturally specific

materials and approaches. Although the content of human rights education might vary from group to group, depending on age, level of education, etc. the basic underpinning is constant and revolves around the rights and freedoms guaranteed in the Universal Declaration of Human Rights and other international and domestic human rights instruments. What is needed is a translation of these international standards into the local context. Human rights training and curricula should respond to the needs of different target audiences and can range from transmitting basic knowledge about human rights issues (values and awareness), to teaching strategies to monitor human rights violations or advocate for change (accountability), to empowering individuals and communities not only to recognize violations but to make it their responsibility to prevent abuses (transformation). Current human rights training programs are often isolated and discreet programs and need to become part of a continuous, organised and sustainable civic education process.

The Conference also examined different ways of tackling racism in the labour market. Interracial / intercultural understanding can be enhanced by an integrated working life. Employers have to do more than hire members of ethnic minorities - they need to ensure that the workplace environment is free of racial discrimination. This requires a much more sustained and longer-term approach to human rights education and developing strategies to facilitate discussions between employers and employees. Addressing racism in the labour market also requires considering the economic implications for employers and developing a strategic approach. In all areas, whether the labour market, the schools, the prisons, the police or the courts, the best strategy is to start by identifying 'pockets' of commitment to human rights and starting with the less difficult issues in order to gradually build support for human rights. The participants suggested that the International Coordinating Committee of National Institutions should establish a sub-Committee on education to exchange materials and best practices.

Conclusion

A common thread ran through the Conference discussions - that is, measures by National Institutions to provide remedies, to monitor and report on racism, to advocate for reform or to educate against racism cannot be seen in isolation from each other. The provision of effective remedies against racism depends on adequate monitoring of the extent, forms and causes of racism, which depends, in turn, on public human rights awareness. It is in this context that the plenary and working group discussions took place.

The Copenhagen Declaration

SIXTH INTERNATIONAL CONFERENCE FOR NATIONAL INSTITUTIONS
FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS
COPENHAGEN AND LUND, 10 - 13 APRIL 2002

Recalling that the Universal Declaration of Human Rights affirmed that all human beings are born free and equal in dignity and in rights and that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration without distinction of any kind.

Reaffirming the importance of international human rights treaties to the work of National Institutions and recalling that the Durban Declaration and Programme of Action refer to the International Convention on the Elimination of All Forms of Racial Discrimination as the principal instrument to combat racism, racial discrimination, xenophobia and related intolerance.

Affirming further the importance of implementing the commitments in the Declaration and Programme of Action adopted by the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Noting with appreciation the full participation of National Human Rights Institutions in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as called for in their Rabat Declaration and welcoming the recognition by the World Conference of the important role that national human rights institutions play in combating racism and racial discrimination, and of the need to strengthen such institutions and provide them with greater resources.

Committing to the implementation of the consensus statement of National Institutions adopted during the World Conference and recalling our acknowledgement in the Statement that, throughout human history, various forms of racism, racial discrimination, xenophobia and related intolerance have created millions of victims. Recognising that such discrimination can be overt or covert, direct or indirect and that institutionalised or systemic racism or related intolerance continue in spite of our efforts to eradicate them. Noting at the same time, that we must be careful to ensure that we identify and address all new manifestations of racism, racial discrimination, xenophobia and related intolerance.

Reiterating also the particular concern expressed in the National Institutions Statement

regarding situations which risk escalating into genocide, ethnic cleansing or armed conflict and noting that national institutions have a particular role to play in providing early warning of the dangers in this regard.

Recalling also the conclusions of the Second Conference of Euro-Mediterranean National Human Rights Institutions, held in Athens from 1-3 November 2001, that National Institutions should be vigilant so that measures aimed at combating terrorism which are taken in their own countries following the attack of September 11th do not encroach on fundamental rights and liberties through restrictions which are disproportionate to their aims or through measures applied in a discriminatory manner, especially on racial or religious grounds.

Noting that the participation of National Institutions in the World Conference was based on regional and sub-regional meetings of national institutions held in Africa, the Americas, Asia and the Pacific and Europe and, in this regard:

Welcoming the emphasis placed by the Sixth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions, held in Sri Lanka 24-27 September 2001, on the importance of focussing on practical initiatives in implementing the outcomes contained in the Declaration and Program of Action of the World Conference.

Welcoming also the Conclusions of the Second Conference of Euro-Mediterranean National Human Rights Institutions, relating to racism, racial discrimination, xenophobia and related intolerance, including the human rights of immigrants, migrant workers, non-refoulement and asylum seekers.

Welcoming as well the convening of the First General Assembly of the Network of National Institutions of the Americas for the Promotion and Protection of Human Rights held 7-9 March 2002 in Jamaica, and applauding its focus on the human rights of Indigenous Peoples.

Noting with satisfaction the significant increase, since the Fifth International Conference held in Rabat, Morocco in April 2000, in the number of national institutions for the promotion and protection of human rights in all regions of the world and their efforts at full compliance with the Paris Principles (adopted unanimously by the United Nations Commission on Human Rights in 1992 and annexed to the United Nations General Assembly resolution 48/134 of 20 December 1993) and recognising their role in combating racism, racial discrimination, xenophobia and related intolerance;

Devoting the Sixth International Conference for National Institutions for the Promotion and Protection of Human Rights, organised by The Danish Centre for Human Rights and the Swedish Ombudsman Against Ethnic Discrimination, from 10 to 13 April 2002, in consultation with the Chair of the International Co-ordinating Committee of National Human Rights Institutions and in co-operation with the United Nations Office of the High Commissioner for Human Rights, to the theme of racism, racial discrimination, xenophobia and related intolerance:

Therefore National Human Rights Institutions shared information and examined potential best practices in the areas of remedies, monitoring and advocacy and education and, in this regard National Institutions:

1. Have at their disposal a broad range of **remedial functions** which, working in a complementary manner with other recourse mechanisms, should provide victims of racism with appropriate and just remedies and recourses, including, where appropriate:

a. Hearing, consistent with the Paris Principles, complaints and petitions or working to ensure they can be brought forward to another competent authority.

b. Using alternate dispute resolution such as conciliation, mediation or arbitration to address individual complaints of racism, as appropriate.

c. Launching complaints, investigations or inquiries on their own initiative in response to serious or systemic human rights issues.

d. Appearing as amicus curiae or as a party before the courts on important human rights cases.

e. Developing partnerships with other institutions to ensure their work is complementary with that of National Institutions.

f. Working to ensure a range of remedies, including compensation, are available to victims of racism.

1. Have a crucial role in **monitoring** and reporting on human rights violations, including by:

a. Acting as a channel between action at the international level - through international treaty bodies, the special procedures, human rights resolutions and other mechanisms - and action at the national level to combat racism.

b. Using special reports, public inquiries, annual reports and develop indicators to monitor and report on racism, racial discrimination, xenophobia and related intolerance.

c. Working to ensure the promulgation, reform and strengthening of national legislation and monitoring its implementation and consistency with domestic and international human rights laws.

d. Enhancing their research and policy capacity in order to track and report on incidents, types and causes of racism.

e. Developing partnerships with other relevant institutions, including civil society organizations to monitor and report on racism, racial discrimination, xenophobia and related intolerance

2. Have a key role in human rights **advocacy** and **education** including through:

a. Working to ensure their respective governments ratify international human rights treaties, remove reservations contrary to the object and purpose of the treaty and ensure consistency between domestic laws, programmes and policies and international human rights standards.

b. Disseminating information on international and domestic human rights laws and ensuring such information is accessible to all sectors of society.

c. Developing partnerships and strategies with the media to disseminate anti-racism information, encourage the media to avoid racial profiling or stereotyping of any group, whether an ethnic, racial, national, cultural, religious or linguistic group and to stress the value of cultural diversity.

d. Developing partnerships and constructive dialogue with educational institutions, civil society and community organisations, the judiciary and other relevant organisations to combat racism, racial discrimination, xenophobia and related intolerance.

e. Taking measures to build a culture of human rights and ensure access by all to human rights.

f. Taking measures to protect National Institutions whose independence and impartiality are under threat from their governments.

This Declaration is intended as a contribution by the participants of the Sixth International Conference of National Human Rights Institutions to building a culture of respect for human rights and working to prevent racism, racial discrimination, xenophobia and related intolerance.

Report on Questionnaire Results

Prior to the Conference, DCHR authored a questionnaire which all participating national human rights institutions (NHRIs) were asked to fill in as a mode of preparation for the Conference. The following constitutes a presentation of the questionnaire results.

INTRODUCTION

The objective of the survey was to map out and analyse the work of NHRIs in the area of racial discrimination, particularly with a view to identifying common problem areas and successes. This would give an overall picture of where NHRIs currently stand in relation to combating racial discrimination, i.e. it would identify similarities and differences in mandate, legal framework, and approach; come up with illustrative examples and best practice; and point out common areas of particular challenge to the institutions. As such, the study was to provide the NHRIs with a sense of areas that need to be cultivated, both on a global, regional, and domestic level. This is particularly important with respect to the adoption of strategies for NHRIs in relation to the follow-up on the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban August and September 2001.

Only a sample[1] of the participating institutions submitted the questionnaire prior to the Conference. Still, it may be regarded as a representative survey, in light of the even balance between the countries in terms of geographical distribution, developmental and /or political status, the size and seniority of the institutions, etc.

The questionnaire was provided in both electronic form and printed form, and the institutions had the option of filling in the answers online on the Internet.

In the following, the structure of the questionnaire has been followed, with each section and number corresponding to the individual questions. In addition, a small chart sums up some of the information extracted from the answers in the questionnaire.

---

[1] Responses were received from 25 countries: seven of these in the Americas (Antigua/Barbuda, Argentina, Canada, Colombia, El Salvador, Mexico and Peru), seven in Europe (Denmark, France, Poland, Slovenia, Greece, the Republic of Ireland, and the Netherlands), six from Asia and the Pacific (Hong Kong, the Peoples' Republic of China (HKSAR-PRC), Malaysia, Mauritius, Mongolia, New Zealand and the Philippines), and five from Africa (Madagascar, Nigeria, Rwanda, Uganda and Zambia).

Questionnaire Responses

1 Mandate

Almost all institutions are mandated to work with racial discrimination. For the majority, this includes education, monitoring and commenting upon draft and adopted legislation, and the competence to receive and handle complaints related to this particular area.

A few of the institutions have a mandate which includes other activities, such as conducting inquiries, reporting to the Prime Minister on introducing desirable measures to comply with international HR standards, giving information and training, advising the government; the possibility of taking cases to court and intervention in the law-making process in order to defend to right to equality and non-discrimination, etc.

3 National Legislation – conformity with international obligations

In almost all of the countries represented in the survey, domestic legislation has been adopted which directly addresses racial discrimination[2], and almost everywhere it appears in the form of Constitutional provisions, however for a large number of the countries also in the form of statutory provisions.

In a few countries national legislation has been identified as being in violation of the international instruments[3].

Only two institutions – in France and Madagascar – have played a role in relation to anti-discrimination legislation. Two institutions explained their role in bringing offences before the police or the prosecution, one by having it (presumably the complaint) included in the police investigation (Madagascar); the other institution played a role in relation to combating racially motivated violence (Slovenia).

Another question addressed whether domestic legislation prohibits discrimination in the field of employment or in other fields, and this was in fact the general picture, except for a few exceptions[4]. However, apart from a few cases where statutes -

[2] Exceptions are Colombia and KHSAR-PRC (answered no) and Malaysia (NA). [3] In France, the government discovered that domestic law was in violation of the European Framework Convention and the national institution made a submission to the legislature, which it followed. In Madagascar, the government and the national institution also identified and recommended a legislative, administrative, and judicial reform. In the Netherlands, the government and others identified that certain aspects of the criminal law violated the Convention on the Elimination of All Forms of Racial Discrimination but the national institution has made no submission on this matter. In Denmark, the Documentation and Advisory Centre on Racial Discrimination also identified acts, which were in violation of the Convention on the Elimination of All Forms of Racial Discrimination. [4] HKSAR-PRC, Malaysia and the Philippines, as well as Uganda.

covering areas such as penal, labour and employment law - include racial discrimination, this area is regulated through general constitutional or statutory provisions.

Only the French Commission takes credit for having played a role in relation to the actual adoption of anti-discrimination legislation, whereas other NHRIs state that the national legislation in this area predates the establishment of the respective institution[5]. Some have assisted in bringing offences to the attention of the police and/or prosecution[6], however mostly by engaging in dialogue with the government on these matters. Among the rest of the NHRIs, a few have taken action to promote the adoption of such legislation[7].

4 Human Rights Plan of Action

Seven countries responding to the questionnaire have a Human Rights Plan of Action. Generally, NHRIs have participated in the elaboration of the respective Human Rights Plan of Action, primarily by being involved in the actual drafting, but in some cases also by providing input and engaging in consultations. In some of the seven countries that have a Human Rights Plan of Action, NHRIs do not monitor the implementation of the Plan[8].

When it comes to evaluating the extent to which the government follows the recommendations of the national institutions, only four of the institutions state that this is generally the case[9]. In several of the countries, this is only done to some extent[10].

5 Public Policy / Public Administration

13 of the institutions have direct interaction with government branches and institutions. The most common approach is for the institutions to recommend action to be taken to change a particular practice, or to provide expert advice in the form of sitting on ministerial committees and preparing memoranda on legislative proposals. In some cases the interaction has taken the form of joint campaigns or other activities such as general dialogue, capacity building, information and educational activities,

---

[5] Canada; Greece; New Zealand and the Republic of Ireland. [6] Canada, Madagascar, and Rwanda. [7] Poland, Slovenia, the Netherlands and Uganda, in addition to France. [8] Argentina and Columbia do not monitor the plan, while the Irish Human Rights Commission is involved in the work initiated by the government developing a monitoring and consultation process in relation to the Human Rights Plan of Action. [9] Argentina, France, Nigeria and Zambia. [10] Antigua/Barbuda, Canada, Colombia, El Salvador, Madagascar, Malaysia, Mongolia, Peru, the Philippines, Poland, the Republic of Ireland, Rwanda, and the Netherlands.

in addition to legal intervention and the entering into memoranda of agreement with specific departments for special projects.

In cases where the institutions have submitted recommendations to the government, only some of the institutions maintain that these recommendations are followed to a large extent[11], while the others to whom the question applies find that this is the case only to some or even lesser extent[12].

6 School Curricula

When it comes to including the issue of combating racial discrimination in school curricula, only seven of the responding countries have taken such steps. All seven countries have incorporated such education at the primary level; some have defined the teaching on racial discrimination to be compulsory, others as optional. Five of the states include it at the levels of secondary and high school[13].

These seven national institutions have played a role in achieving the aforesaid progress and state that their institution has been advocating for the introduction of such a curriculum[14]. Some by taking part in the curriculum development[15], while others monitor the implementation and developments in this area in general[16], even if racial discrimination is not yet part of the curriculum[17]. Finally, a number of states engage in other educational activities, such as the development of a website as a resource for combating racial harassment in the school community (New Zealand), or networking with other organisations for the introduction and development of school curricula (Mongolia).

7 Public Enquiries

Only five of the institutions have conducted public inquiries in the field of racial discrimination[18]. One example is a study of racial discrimination and private rental accommodation, indicating the extent of discrimination in this area[19].

When the institutions were asked why they have not undertaken such public activities,

---

[11] France, Mexico, Nigeria, Slovenia, the Netherlands, and Zambia. [12] Argentina, Canada, Denmark, El Salvador, Madagascar, Mongolia, New Zealand, Peru, the Philippines, Poland, and the Republic of Ireland. [13] El Salvador, Madagascar, and Mauritius have it as compulsory at both levels, in France it is optional at both levels, in the Philippines it is optional at the secondary level and compulsory at high school level. In Slovenia it is offered as an option at the secondary level only. [14] Mauritius, Mexico, New Zealand, the Philippines, Poland, Uganda, and Zambia.[15] France, Mexico, and New Zealand. [16] France, Denmark, and Poland. [17] Mauritius, the Philippines, Denmark, Mexico, New Zealand, Poland, Uganda, and Zambia. [18] Madagascar, Mexico, New Zealand, Peru, and Slovenia. [19] New Zealand.

the most frequent explanation referred to a lack of resources or that the need had not yet arisen. A number of institutions also stated that they had not found this form of intervention to be appropriate due to circumstances. Finally, a few countries cited that racial tensions were not perceived as being a particular problem in their country[20]. Only one institution quoted a lack of mandate and jurisdiction as the main reason (HKSAR-PRC).
Other methods of operating in the public sphere include the publication of reports, research studies, and establishment of information databases.

8 Cooperation with NGOs and Civil Society

Examples of cooperation between NHRIs and indigenous groups or organisations working with indigenous groups include: monitoring all enquiries made on racial discrimination and advising NGOs and groups accordingly; forums, dialogue sessions and visits to settlements of indigenous groups; and permanent working relations and regular meetings with NGOs.

Ten of the institutions had conducted campaigns against racial discrimination[21], for instance directed at preventing the broadcasting of stereotypes and messages supporting racism, racial discrimination, xenophobia and related intolerance[22], documentation and posters in local languages[23], addressing racial discrimination in sales and rental businesses[24], public lectures and symposia[25], sensitisation campaigns[26], and workshops primarily aimed at young people and employees[27].

Some of these campaigns were conducted by the institutions alone[28], or in a single case in collaboration with either an NGO or with public authorities[29]. In five instances, the institutions collaborated with both public authorities and with private organisations[30].

9 Remedies

As shown in the summary chart, a majority of institutions have the mandate to receive and handle complaints related to racism and racial discrimination. When asked

[20] Nigeria, Poland, and Uganda. [21] Greece, Madagascar, Mexico, New Zealand, Nigeria, Peru, Rwanda, Slovenia, Uganda, and Zambia. [22] Madagascar. [23] Mexico. [24] New Zealand. [25] Nigeria. [26] Slovenia and Uganda. [27] Zambia. [28] Greece, Mexico, Nigeria, Peru, and Zambia. [29] Uganda and Slovenia. [30] Denmark, Madagascar, New Zealand, the Republic of Ireland, and Rwanda.

whether the NHRIs actually do receive complaints, a majority of 17 countries answered that they do receive complaints. However, that majority were not able to supply any statistics on the numbers of complaints received.

The types of complaints received by the NHRIs vary widely, including: problems with late receipt of pensions and welfare payments, public utilities, late receipt of land titles, and lack of adequate infrastructure on lands purchased from the government; discri-mination in employment or in the receipt of services; request of compensation for descendants of slaves; due process of law, labour rights, the right to education, housing, property and social security; discrimination in working situations (payment, discriminatory remarks), and discotheques refusing the entry of non-whites.

A number of reasons for rejecting complaints were cited, inter alia: complaints being directed against private sector, (e.g. the media[31]), lack of competence[32]; anonymity, cases which have not previously been decided through administrative proceedings, which are at the stage of registration, inquiry and investigation, or on trial[33]; where no detriment was established, or which did not reach the threshold necessary under act[34]; lack of sufficient factual background[35]; no or not enough proof[36] and others. Some institutions also reported that some complaints were channelled into a conciliation procedure.

Twelve institutions stated that in their opinion the number of admitted complaints does not reflect the actual pattern of violations in their countries[37]. The main reasons cited for this were: lack of popular education and knowledge of human rights and of the existence and function of the institutions; lack of access to the institutions; lack of confidence in public institutions; racism being "more insidious than apparent"[38]; language barriers and insufficient resources for interpreters[39]; and fear of reprisals, for instance employees not wanting to lose their jobs if the employer realises that they have filed a complaint[40].

When it comes to providing remedies, none of the institutions has the power to recommend a fine.

---

[31] Mauritius and Peru. [32] Mexico. [33] Mongolia. [34] New Zealand. [35] Poland. [36] The Netherlands. [37] Argentina, Canada, Colombia, El Salvador, Mauritius, Mexico, New Zealand, Peru, Poland, Slovenia, Uganda, and Zambia. The remaining institutions put NA. [38] Mauritius. [39] New Zealand. [40] Zambia.

The most common approaches for settling cases are to provide legal assistance or to forward the dossier to another institution[41], but a number of institutions can (also) recommend compensation or reinstatement[42].
In addition to the other functions, a smaller number of the institutions can engage in alternative dispute resolution[43]. Finally, other approaches may be allowed for. For instance, when there is a clear case of discrimination in the public sector, an institution may be in a position to recommend disciplinary action against the offender[44], submit claims to the courts with regard to issues of violation of human rights and freedoms by business entities, organisations, officials or individual persons[45], or recommend other forms of public action[46].

Again, when it comes to providing statistics on the numbers of cases and the approaches made for settling cases, the institutions generally do not provide this information.

When receiving complaints of alleged government violations, all the institutions to whom this applies indicated that they approach the state institution itself. This may take different forms, e.g. ranging from the relatively non-confrontational approach of writing a letter requesting information and/or an explanation and the submission of recommendations[47], to the conducting of public inquiries, requesting files and calling witnesses[48], and to on-the-spot investigations[49].

Finally, a small number of institutions state that they provide other types of assistance to victims of racial discrimination[50]. This may take various forms, such as evoking domestic and international mechanisms of justice, general awareness-raising, use of the media, and information campaigns and active follow-up on a decision. It may also be formalised by way of an official victims' assistance programme[51], or by submitting claims to the courts[52].

10 and 11 Working with and Monitoring the Media

In a large number of cases the national institutions have taken steps to encourage the media to avoid ethnic profiling. In some cases, the institutions have also worked

[41] Colombia, New Zealand, Peru, and Slovenia can provide legal assistance, while Antigua/Barbuda, Denmark, El Salvador, HKSAR-PRC, and Uganda can refer the dossier; Argentina, Canada, Mongolia, the Philippines, Poland, and the Republic of Ireland can do both. [42] Argentina, Canada, El Salvador, Mexico, and Uganda can do both, while Slovenia and Zambia can only recommend reinstatement. [43] Canada, El Salvador, Mexico, Mongolia, New Zealand, and Uganda. [44] Mauritius. [45] Mongolia. [46] Peru. [47] Argentina, Peru, Poland, and Slovenia. [48] Mauritius, Mongolia, and New Zealand. [49] The Netherlands. [50] Denmark, Madagascar, Mexico, Mongolia, New Zealand, Poland, the Netherlands, and Republic of Ireland. [51] Mexico. [52] Mongolia. [53] Canada, Madagascar, and Mongolia have done both; Colombia, France, HKSAR-PRC, Nigeria, the Philippines, Denmark, and Rwanda have interacted with the media only, while Poland and Slovenia have focussed on the legislative aspect.

on promoting legislation and other measures aiming at enhancing diversity of media ownership[53].

In three instances the institutions have conducted investigations of racial discrimination in the media and/or on the internet[54].

12 Seriousness of Human Rights Violations

The institutions were asked to indicate the most serious human rights violations in their respective societies, ranking them in negative order so that highest numbers equalled the most serious violations.

When adding up the scores from the answers, the two highest ranking human rights violations were poverty; violations of social, economic and cultural rights, followed by gender issues. Only then were violations of civil and political rights listed, followed by racial discrimination and racism, together with violations of the rights of refugees and asylum seekers. These were followed by HIV/AIDS, and by violations of international humanitarian law. Furthermore, a number of violations indicated by the individual institutions were violations of the rights of women, children and prisoners, corruption and bad governance, extra-judicial killings and others.

13 Limitations

In completion of the survey, the institutions were asked to give reasons for any limitations in their activities in the area of racial discrimination. The number one reason was stated as stemming from the fact that racial discrimination is not considered to be a particular problem[55], followed by a reference to a lack of resources and lack of capacity within the institutions. However, other priorities were also stated as a reason. It is interesting to note that none of the states ascribed any of the latter two reasons to the fact that 'other institutions may be responsible for / specialised in this area'. Among other reasons, several institutions quoted a lack of mandate and competence, as well as a lack of public awareness and the sensitive nature of the subject.

---

[54] Argentina, relating to a project on child pornography; Colombia, where the Minister for Information was contacted; France, submission of a proposal for legal amendment; and New Zealand, where an inquiry into the extent of racism on the Internet. In addition, the Canadian institution has jurisdiction over hate speech transmitted via the Internet and the recent Tribunal decision in the Zundel case confirmed the powers of the Commission to seek an order from a Tribunal to close down Internet sites. [55] Antigua/Barbuda, Argentina, Madagascar, Mauritius, Mexico, Nigeria, the Philippines, Poland, Rwanda, and Uganda.

General Conclusions

A number of conclusions may be drawn on the basis of the above findings:

1. with very few exceptions, all of the institutions have a sufficient mandate to address racism and racial discrimination through various means of consultation and dialogue with governments as well as with civil society bodies;

2. the fundamental legal framework for combating racism and racial discrimination, on both a general as well as a specific level, is largely in place everywhere, both in the form of ratification of international instruments and to a large extent also in the form of domestic legislation, often at the level of Constitutional provisions;

3. however, a number of countries are in need of law reform when it comes to ensuring conformity between statutes and international and superior domestic legislation, and most countries in the survey also do not penalize racism and racial discrimination;

4. in general, national institutions have neither involved themselves actively in the process of law reform or the lobbying for adoption of legislation, nor do they provide much assistance in terms of bringing these violations before the administration of justice;

5. Human Rights Plans of Action continue to be established in a few countries only, though several Plans are in process, and in most countries the NHRIs seem to play a key role in the preparation of such plans;

6. in relation to educational activities and racial discrimination, this is also an area where many countries have not progressed very far, but where the national institutions play a pivotal role;

7. when it comes to cooperation with government departments, most NHRIs seem to enjoy a fairly good relationship with these, especially when it comes to conducting joint activities. When it comes to following the recommendations submitted, governments seem to be taking the institutions less seriously, in the sense that they only to a limited extent follow the advice and suggestions provided by the institutions for changes in policy, etc.;

8. comparatively, the national institutions seem to have a well-developed and multifaceted working relationship with civil society actors and NGO's everywhere, especially when it comes to conducting joint campaigns, documentation, and information and education activities;

9. this goes for cooperation with the media as well, where many institutions have addressed ethnic and racial discrimination;

10. when it comes to taking concrete action in the field of racial discrimination, the majority of the national institutions can and do receive complaints relating to racial discrimination, and can provide remedies in some form or another. In some cases, this even includes alternative dispute resolution. To a limited extent, however the institutions also address it through other means such as the conducting of public enquiries, commission of studies, etc;

11. there is a significant lack of systematic registration and maintenance of statistics by the NHRIs, indicating that this has not been considered a highly prioritised area in most institutions;

12. this is further indicated by the institutions themselves, who emphasise that racial discrimination is not perceived as a key problem of human rights violations in their countries, and is therefore not given a high priority, particularly when scarce resources limit the range of action.

Areas of Particular Challenge

Following the answers by the NHRIs in relation to the national anti-discrimination legislation, very few have had a role to play in the work preceding the legislation. One could thus argue that efforts should be intensified in terms of engaging NHRIs in the reform and strengthening of national legislation aimed at combating racial discrimination.

Likewise, one could argue that following the National Human Rights Institutions' Declaration from the World Conference Against Racism, held in Durban, all countries should strive for developing a national Human Rights Plan of Action in consultation and corporation with NHRIs.

In the area of developing school curricula where human rights issues are incorporated, again there is a need for an enhanced effort to implement such plans at the national level. It should be noted, however that a number of NHRIs have already been involved in advocacy work in this particular field.

Finally, increased attention should be paid to enhancing the competence of NHRIs in relation to complaints handling. Ordinary people should be made aware of the possibility of filing a complaint, the institution should be known and accessible, etc. Further, as mentioned in the 'National Institutions' Statement to the WCAR', criminal penalties should be attached to racial discrimination and incitement to racial hatred.

Additional Questionnaire Responses

	Country	Mandate				Ratification		National law	National Human Rights Action Plan	Coope-ration with NGOs
		Racial discrimi-nation	Complaint handling[1]	Advocacy	Education	CERD [2]	CPNM [3]	Criminal penalties for racial dis-crimination		
ASIA-PACIFIC	Malaysia	Yes	Yes / sole mandate	NO	Yes	NO	Does not apply	NA	NO	Yes
	The Philippines	Yes	NO / other institution	Yes	Yes	Yes	Does not apply	NA	Adopted	Yes
	Mauritius	Yes	Yes / sole mandate[4]	NO	Yes	Yes	Does not apply	Yes	NO	NO
	Mongolia	NA*	Yes / sole mandate	Yes	Yes	Yes	Does not apply	Yes	In process	NA
	New Zealand	Yes	Yes / sole mandate	Yes	Yes	Yes	Does not apply	Yes	In process[5]	Yes
	Hong Kong (SAR-PRC)	NO*	**	NO	NA	Yes	Does not apply	NA	NO	Yes
AFRICA	Madagascar	Yes	NO	NO	Yes	Yes	Does not apply	Yes	Adopted	NO
	Nigeria	Yes	Yes [6]	Yes	Yes	Yes	Does not apply	NO	Adopted	Yes
	Rwanda	Yes	Yes [7]	Yes	Yes	Yes	Does not apply	Yes	NO	NA
	Uganda	Yes	Yes / sole mandate	NO	Yes	Ye	Does not apply	NO	NO	NO
	Zambia	Yes	Yes / sole mandate	NA	Yes	Yes	Does not apply	NO	Adopted	NO
	Antigua/Barbuda	NA*	NA	NA	NA	Yes	Does not apply	NO	NO	NA
AMERICAS	Argentina	Yes	Yes / sole mandate	Yes	Yes	Yes	Does not apply	NO	Adopted	Yes
	Canada	Yes	Yes / shared mandate[8]	Yes	Yes	Yes	Does not apply	Yes	NO	Yes
	Colombia	Yes	Yes / shared mandate	Yes	Yes	Yes	Does not apply	NO	Adopted	Yes
	El Salvador	Yes	Yes / sole mandate	Yes	Yes	Yes	Does not apply	Yes	NO	Yes
	Mexico	Yes	Yes / shared mandate[9]	NO	Yes	Yes	Does not apply	Yes	NO	Yes
	Peru	Yes	Yes / shared mandate	Yes	Yes	Yes	Does not apply	NO	NO	Yes
	Denmark	Yes[10]	NO / other institution	Yes	Yes	Yes	Yes	Yes	NO	Yes
	Poland	Yes	Yes / shared mandate	Yes	NO	Yes	Yes	Yes[11]	NO	Yes
	France	Yes	NO / other institution	Yes	Yes	Yes	NO	Yes[12]	NO	Yes
	Slovenia	Yes	Yes	NO	Yes	Yes	Yes	Yes	NO	Yes
	Greece	Yes	NO	NO	Yes	Yes	Yes	Yes	NO	Yes
	Republic of Ireland	Yes	Yes[13]	Yes	Yes	Yes	Yes	Yes[14]	Adopted	Yes
	The Netherlands	Yes	Yes / shared mandate[15]	NO	Yes	Yes	Yes	Yes		Yes

NA = not applicable;

sole mandate = indicates that only the NHRI has the mandate;

other institution = indicates that another institution has this mandate;

shared mandate = indicates that the NHRI in question as well as an other institution(s) has this mandate.

* In spite of these negative answers, the following answers filled in by these 3 institutions indicated their domestic situation, which is why they have been further included in the chart and the summary on the results.

** The Hong Kong NHRI said yes to the question on whether the institution receives complaints, but put NA to the question whether the institution holds the mandate to carry out this task.

[1] Very few institutions were able to provide statistical information on the num-bers of complaints.

[2] The International Convention on the Elimination of all Forms of Racial Discrimination.

[3] The Framework Convention for the Protection of National Minorities (Euro-pean Council).

[4] Mauritius admitted 3 complaints in 2001, all were rejected.

[5] The NHRI commented: New Zealand currently does not have a National Plan of Action. However, the recent Amendment requires the Commission to develop a national plan of action,in consultation with interested parties for the promotion and protection of human rights in New Zealand. The Commission has sought funding on the next budget round to begin work on the Plan of Action that will include a race component addressing racism and racial discrimination.

[6] But answered NO to the question on whether the institution receives any com-plaints.

[7] But put a NA to the question on whether the NHRI receives any complaints.

[8] The Canadian NHRI notes that approximately 30% of the complaints are

[9] The Mexican NHRI admitted 4 complaints in 1999; 5 in 2000; 13 in 2001.

[10] This is not specifically included in provisions but the Danish NHRI works with this issue.

[11] Poland listed 2 cases of prosecutions in 1999 and 2 in 2000. 1 case resulted in a conviction in 2000.

[12] France listed 104 prosecutions in 1999 and 119 in 2000.

[13] The Irish NHRI has no complaint handling mechanism as of now, but some complaints have already been directed to the institution.

[14] The Republic of Ireland listed 1 case of prosecution in 1999.

[15] The Dutch NHRI admitted 29 complaints in 1999 and 47 in 2000. related to racial discrimination.

PART 2

KEY NOTE SPEECHES

Opening Statement

Mr. Per Stig Møller
Danish Minister for Foreign Affairs

Distinguished participants, Ladies and Gentlemen,

I am very pleased to open this Sixth International Conference for National Human Rights Institutions. The theme of the Conference: The role of National Institutions in the fight against racism is a very timely one. Thus it is a matter of grave concern that at the outset of the third millennium racism, racial discrimination, xenophobia and related intolerance are still flourishing around the world. How do we eradicate the root causes of these ugly phenomena?
By reaffirming **that** all people and individuals constitute one human family, **that** diversity is a gift, not a threat, that all civilizations and cultures form the common heritage of mankind. Or to put it in the negative: to reaffirm that any doctrine of racial superiority is scientifically false, morally condemnable, socially unjust and dangerous, and must be rejected along with theories, which attempt to determine the peculiarities of human races.

States should confront their own past with a view to learning from historical wrongs. I believe we in Denmark have learned the lessons from our own past. Over the last 150 years we have been struggling to develop a democratic society built upon the rule of law and human rights and with a social welfare system based on solidarity and participation of all members of society. An essential feature in that development has been education - from the primary school free of charge to life-long learning. Such a measure combined with a social system based on burden sharing and the principle of equal opportunity for everyone provides in my view the basic means for overcoming prejudices and for promoting understanding and tolerance among people.

Manifestations of racism and racial discrimination exist in all parts of the world. Any such manifestation should never be taken lightly. In its extreme form, it may lead to

ethnic cleansing and genocide as we have witnessed even in Europe in our days. We therefore need constantly to watch out for the dangerous signs of racism and to combat this phenomenon by all legal means.

A more direct response to the appearance of racist attitudes is to appeal to politicians and political parties to use their influence to actively prevent the spread of racist ideologies. Likewise the media have an important responsibility in this field. Propagation of racist ideas through the Internet must also be dealt with in a more effective manner.

Last, but not least, involvement of youth in the elaboration, planning and implementation of activities to fight racism is essential. Development of a global network among youth may hold the best prospect for building intercultural understanding and respect among individuals and peoples.

In the worldwide struggle against racism the United Nations High Commissioner for Human Rights has a prominent role as reflected in the Programme of Action from Durban. The establishment of an anti-discrimination unit within the High Commissioner's office is an important measure. The unit may act as a clearing-house for information on practical means to address manifestations of racism. In particular it might be helpful to have a compilation of best practices to overcome racist attitudes as a means for politicians, for Governments, and for States to assist each other in advancing tolerance and equality.

National human rights institutions will no doubt have an important role to play in these endeavours as recognized in the concluding document from Durban. At the national level these institutions constitute an essential mechanism for the implementation of human rights including matters relating to racial discrimination. The core function of National Institutions include advice of State authorities, assistance to victims of human rights violation, dissemination of information and education about human rights. In this respect the National Institutions act as bridge builders between the authorities and the civil society. But they may also act as a network connecting the civil society at large and the High Commissioner's Office - a welcome supplement to the dialogue between the High Commissioner and Governments.

I shall not anticipate the outcome of this Conference by elaborating further on the role of National Institutions, but merely wish you all success in your deliberations over the next 4 days.

Thank you for your attention.

Introductory Speech

Mr. Driss Dahak
Chairman of the International Coordination Committee

Son Excellence Monsieur Per Stig Møller, Ministre des Affaires Etrangères du Danemark;
Monsieur le Représentant de Madame le Haut Commissaire aux Droits de l'Homme;
Monsieur le Directeur Général du Centre Danois pour les Droits de l'Homme;

Chers Collègues; Mesdames, Messieurs,
C'est pour moi à la fois un privilège et un plaisir de m'adresser à cette auguste assemblée en ma qualité de Président du Comité International de Coordination. Je suis d'autant plus ravi de cette agréable tâche, que je m'en acquitte en présence de son Excellence Monsieur Per Stig Møller, Ministre des Affaires Etrangères du Danemark, qui a bien voulu honorer de sa présence notre Conférence et nous pro-diguer ses précieux conseils et encouragements.

L'intérêt que porte ainsi le gouvernement danois à notre rencontre, est un gage supplémentaire, et de poids, pour son succès. Il illustre par ailleurs, s'il en est besoin, le rôle d'avant garde que joue le Danemark dans la promotion et la protection des Droits de l'Homme; et son attachement à cette vocation. A cet égard, nous avons grand espoir que le Centre Danois pour les Droits de l'Homme, qui est un membre particulièrement actif de notre groupement, continuera à jouer ce rôle avec le même dynamisme, dans le cadre de son nouveau statut en tant qu'Institut pour les Droits de l'Homme.

Permettez-moi de saluer également la présence parmi nous, de Monsieur Brian Burdekin, Conseiller spécial pour les institutions nationales de Madame Mary Robinson, Haut Commissaire aux Droits de l'Homme.

En s'associant personnellement ou par le biais de ses représentants à nos activités,

Madame Mary Robinson nous gratifie ainsi de son soutien et de sa confiance. Nous apprécions à sa juste valeur l'appui moral mais aussi matériel qu'elle n'a cessé d'accorder aux institutions nationales, pour leur permettre de jouir d'une plus grande légitimité et audience.
Je voudrais saisir cette occasion pour remercier Madame ROBINSON et sa dynamique équipe des institutions nationales, pour leur précieuse coopération et l'assurer de notre soutien dans l'accomplissement de ses nobles mais bien souvent exigeantes fonctions.

Monsieur le Ministre; Chers Collègues; Mesdames, Messieurs,
Notre sixième Conférence internationale se tient sous des auspices particulières et encourageantes à bien des égards.

En effet, pour la première fois nous nous réunissons dans le cadre d'une Conférence internationale et non plus comme avant dans le contexte d'un atelier. Ce changement d'appellation n'est pas seulement de forme mais traduit notre volonté d'institutionnaliser nos rencontres internationales et de leur conférer les attributs des conférences internationales, qu'il s'agisse de leurs objectifs, préparation, organisation, déroulement et suivi.

C'est d'ailleurs, dans cette optique que j'ai pris l'initiative, en ma qualité de président du CIC, de proposer et de soumettre à l'appréciation des membres de notre groupement, un projet de règlement intérieur pour nos Conférences internationales.

Ce projet que plusieurs institutions nationales ont bien voulu enrichir de leur précieuse contribution, est à l'ordre du jour de la réunion annuelle du CIC qui se tiendra la semaine prochaine à Genève, en marge de la 58ème session de la Commission des Droits de l'Homme.

L'objectif de ce projet est de fournir des règles de procédure à cet espace et à ce concept nouveau des rencontres de nos institutions, que nous venons d'inaugurer aujourd'hui et que nous formaliserons bientôt je l'espère.

Par ailleurs, cette 6ème Conférence est particulière par le nombre élevé d'institutions nationales et d'observateurs qui participent à ses travaux.

Cette participation record traduit l'intérêt et l'audience croissants, dont jouissent désormais les réunions de notre groupement. Elle est également le fruit d'une bonne coopération et coordination entre les organisateurs, le CIC, les institutions nationales et le Haut Commissariat aux Droits de l'Homme. En effet dès les premiers préparatifs

de la 6ème Conférence, un courant intense de concertation et de communication s'est développé entre ces différents intervenants, ce qui a contribué à assurer cette grande participation à la 6ème Conférence.

L'approche thématique et interactive choisie pour nos travaux, ainsi que le recours à des Présidents et des représentants d'institutions nationales pour diriger et animer les discussions, constituent un autre trait distinctif de la 6ème Conférence. Cette avancée dans la conduite de nos travaux est un signe de la maturité de nos institutions et de leur capacité à organiser et mener elle mêmes les débats au cours des Conférences internationales.

A cet égard, je remercie Monsieur Morten Kjærum, Directeur Général du Centre danois pour les droits de l'homme d'avoir bien voulu associer la présidence du CIC à sa réflexion concernant cette nouvelle méthodologie dans la conduite de nos travaux.

Mais peut être que ce qui distingue le plus cette 6ème Conférence internationale, c'est le contexte dans lequel elle se tient.

En effet, notre présente réunion s'inscrit dans le cadre du suivi de la Conférence mondiale de Durban contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, et la mise en oeuvre de la Déclaration adoptée par les institutions nationales en marge de cette importante manifestation.

La décision de placer la 6ème Conférence internationale sous le signe du suivi de la Conférence mondiale contre le racisme, a également fait l'objet d'une concertation entre les organisateurs, la Présidence du CIC et le Haut Commissariat aux droits de l'homme.

Ce choix a été favorablement accueilli par les institutions nationales et traduit leur engagement à contribuer à la lutte contre le racisme et toutes les autres formes d'intolérance, aux niveaux national et international.

La discrimination est un fléau qu'il convient de prendre au sérieux et contre lequel nous nous devons de lutter avec détermination, car il constitue un véritable danger pour l'humanité et pour la paix et la bonne entente entre les peuples, les communautés et les civilisations.

L'ordre du jour de la 6ème Conférence nous trace un cadre concret pour atteindre cet objectif. Ainsi, nous débattrons de l'importance et de la nécessité de dénoncer toutes le formes de racisme et d'intolérance, des mesures législatives et institutionnelles pour les prévenir et les réprimer sur les plans national et international.

Dans ce contexte, il serait judicieux de rappeler et de mettre en exergue les différents outils juridiques dont dispose la Communauté internationale et de souligner la nécessité de leur mise en œuvre, au niveau national, notamment par l'intégration de leurs dispositions dans la législation nationale et sur le plan international, en particulier par un recours optimal aux organes conventionnels pertinents des Nations unies.

Nous nous attacherons surtout à convenir d'un programme d'action que les institutions nationales pourront mettre en oeuvre pour la prévention de toutes les formes réelles ou latentes de racisme et d'intolérance.

Un tel programme devrait se baser avant tout, sur l'éducation et l'information pour sensibiliser les générations présentes et futures aux dangers de ce fléau ; et sur une large diffusion de la culture de la tolérance, de l'acceptation de l'autre et de sa différence raciale, ethnique, culturelle et religieuse.

Il serait également souhaitable de prévoir dans ce programme, la mise en place au sein de chaque institution nationale, d'un observatoire ayant pour mission la réception et le traitement des plaintes relatives à toutes les formes de discrimination raciale.

C'est en adoptant d'une telle démarche et en nous engageant à la mettre en œuvre, que nous aurons valablement contribué au suivi de la Conférence mondiale de Durban et de la Déclaration des Institutions Nationales adoptée à cette occasion.

Notre vocation première, qui est la promotion des droits de l'homme et de la tolérance, conformément à notre mission qui découle des « Principes de Paris », nous impose d'agir dans ce sens pour honorer notre statut et nos aspirations.

Monsieur le Ministre; Chers Collègues; Mesdames, Messieurs,
Avant de conclure, permettez-moi de m'acquitter de l'agréable devoir de remercier et de féliciter au nom du CIC, le Centre Danois pour les droits de l'homme et l'ombudsman contre la discrimination ethnique de Suède ainsi que leurs collaborateurs, pour la parfaite organisation de la Conférence ; et pour les nombreuses marques d'attention et d'hospitalité qu'il nous accordent si aimablement depuis notre arrivée.

Je voudrais également réitérer nos vifs remerciements au Haut Commissariat aux Droits de l'Homme et en particulier à l'équipe des institutions nationales par son appui multiformes à cette Conférence.
J'aimerais aussi saluer les institutions nationales qui, grâce à leur esprit de solidarité et de générosité, ont permis à plusieurs participants de prendre part à nos travaux et de s'enrichir ainsi des enseignements de cette expérience particulière et exaltante.

Permettez-moi enfin de renouveler notre profonde gratitude à Monsieur le Ministre des Affaires Etrangères du Danemark, pour avoir aimablement accepté de présider l'ouverture de notre Conférence.
Au nom de mes collègues du CIC, je souhaite plein succès à nos travaux.
Je vous remercie de votre aimable attention.

Opening Speech

Mr. Morten Kjærum
Director General of The Danish Centre for Human Rights

Mr. Minister, ambassadors, representatives from the Office of the High Commissioner for Human Rights, President of the International Coordinating Committee, esteemed colleagues, ladies and gentlemen;

In my capacity as Chair of the European Group of National Human Rights Institutions and Director General of The Danish Centre for Human Rights, it is a great pleasure to welcome you here to Copenhagen, to Eigtveds Pakhus, and to this the Sixth World Conference for National Human Rights Institutions.

The preparations and hosting of this conference is a clear expression of the good and constructive collaboration between various institutions around the world. I cannot mention all who have contributed to the conference; allow me however to mention a few key contributors. The conference has been co-organised by the Swedish Ombudsman Against Ethnic Discrimination - who will be our host on Friday - and The Danish Centre for Human Rights. The preparation has been carried out in an excellent collaboration with Ms. Mary Robinson, High Commissioner for Human Rights, and Mr. Brian Burdekin and Mr. Orest Nowosad from her office, as well as with the President of the ICC, M. Driss Dahak.

I will also take this opportunity to thank the Danish Ministry of Foreign Affairs, the Swedish International Development Agency, and the Office of the High Commissioner for Human Rights for their core funding of this event. Finally, I wish to thank the German Institute of Human Rights in Berlin, which also has offered a substantial financial contribution; and the French Human Rights Commission, which in particular is ensuring participation of some of our African colleagues by funding the travels of members of these institutions to Copenhagen.

I must admit that it is a particular pleasure for me to welcome our friends and colleagues in light of the events here in recent months. As most of you will know, there were considerations in the Danish Government to restructure The Danish Centre for Human Rights in a manner, which would have interfered with its independence. However, after an open - although somewhat belated - democratic debate on the role and functions of a national institution, it has now been settled that Denmark will continue to have a national institution mandated with protecting and promoting human rights and combating discrimination.

The process here in Denmark has shown the strength and continuing validity of the Paris Principles as a framework, guiding states in relation to our institutions. Over the past months, more people here have come to know of the existence of these principles than could have been achieved through the most focussed information campaign, though I would have preferred a classical campaign. Let me also thank all of you who helped us making the Paris Principles visible during the latest months. Your assistance meant a lot for the staff and myself and most importantly for the positive outcome of the debate.

Finally, this event should illustrate the topical nature and timeliness of the Conference theme and the need to stress that national human rights institutions do have a key and active role to play, when it comes to combating racial discrimination and xenophobia in any society, however progressed, well developed, and rich in terms of economy, standard of living, and long-standing democratic traditions.

Mr. Chairman,
Non-discrimination, together with equality before the law and its equal protection, constitutes a fundamental principle in the protection of human rights. And yet we know that discrimination is all too real for millions of people around the world, with grave consequences for the individual human being as well as for entire societies in form of marginalisation and in worst cases violent conflicts.

In a subtle way, Nelson Mandela describes the impact of racism in his book 'Long Walk to Freedom'. Here he describes his first trip abroad flying Ethiopian Airways to Addis Ababa in the beginning of the 1950's. Before boarding the plane he met the pilot, who turned out to be a black man. He writes: 'My immediate reaction was: How can a black man fly a plane? However, I rapidly realised that I myself had fallen in the trap of apartheid mentality. Skin colour has nothing to do with flying a plane'. It is a brilliant example of how profoundly stereotyping can strike, so that it even becomes part of the self-image of those people being stereotyped.

In the International Convention on the Elimination of All Forms of Racial discrimination, the term 'racial discrimination' is defined as 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. The UN Committee on the Elimination of Racial Discrimination has stated that in seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin. This is within all spheres of life: the right to equal treatment before tribunals, the right to marry, the right to housing, the right to education etc.

With still more societies being multiethnic, every national human rights institution will at some point have to address the evil of racism; and it is important that we take up the challenge because to use the words of Augustin: We create the time in which we live.

Mr. Chairman,
It has been decided to elevate this bi-annual workshop of national institutions, the sixth of its nature, into a World Conference, as a reflection of its size and recognition of the ambitions we have for its outcome. These ambitions were raised during our productive meeting in Johannesburg prior to the World Conference against Racism Racial Discrimination, Xenophobia and Related Intolerance held in Durban, September last year. The ambitions are high because if you strive for the sun, you will not be left with mud on your hands.

There are multiple reasons for adopting a thematic approach to the conference and for the choice of the particular focus of racial discrimination: Taking one particular focus, representing the external and thematic aspects of our work will hopefully enable us to be forward thinking and concentrated in our discussions.

The choice of racial discrimination has its background in two different aspects, apart from the seriousness of the issue: Firstly the Paris Principles clearly state that national human rights institutions have a particular obligation to address racial and ethnic discrimination.

Secondly, the international community placed the issue on the top of its agenda in 2001, by arranging the World Conference against Racism. It is only natural that we discuss our responsibility in implementing the Declaration and Programme of Action, emanating from the conference.

On that occasion, the fifty national institutions accredited to the conference presented a joint statement in which they stressed' - the vital importance of national institutions and other relevant specialised institutions in combating racism, racial discrimination, xenophobia and related intolerance'. The national institutions also called on States' - to include the struggle against racism, racial discrimination, xenophobia and related intolerance in the mandates of national institutions and to provide them with adequate human and financial resource'. Finally, they committed themselves to provide to the International Coordinating Committee information on measures they have taken to address racism, including analysis of best practices. This would then form the basis of the work of the International Coordinating Committee in its endeavours to develop guidelines against racism and to enhance cooperation and exchange of information among national institutions.

Furthermore, in the final document from the World Conference the States'- recognize the importance of independent national human rights institutions - in the struggle against racism, racial discrimination, xenophobia and related intolerance'. The Conference stated further that it does' - encourage States, as appropriate, to establish such institutions and call upon the authorities and society in general - to cooperate to the maximum extent possible with these institutions, while respecting their independence'.

The Programme of Action continues to elaborate on this in a number of provisions, addressing among other issues: the need for States to foster cooperation between specialized institutions working in this area and national human rights institutions (par. 91); that states should cooperate with national institutions in training activities in this area for prosecutors, members of the judiciary and other public officials (par. 135); to reinforce protection against these violations, by ensuring access to effective and adequate remedies and to seek just and adequate reparation and satisfaction from national institutions and other competent organs (par. 165); to promote exchanges at the regional and international levels among independent national institutions, and to strengthen regional bodies and centres (par. 187 and 188); to elaborate action plans in consultation with national human rights institutions and other actors, to be followed by the submission of annual progress reports on their implementation to the United Nations, based among other sources on monitoring and background information from national human rights institutions (par. 191); and finally to strengthen the collaboration between national institutions and international treaty bodies.

Mr. Chairman,
It is obvious from the Durban declaration and programme of action that the international community expect national institutions to play a stronger role in the future in

this area. Consequently, the conference program takes its outset in the Declaration and Programme of Action and the Statement from national institutions.
Four general aspects have been singled out, and are being addressed by keynote speakers as well as by the various working groups.

First, *monitoring*, both with respect to the formal or legal aspect, and in relation to the practice of state and civil society, including documentation and reporting;

Second*, advocacy,* where a distinction is made between advocacy for treaty ratification and for legal reform, and advocacy directed at changes of discriminatory practices, including the use of the media as well as constructive dialogues and the adoption of strategies;

Third*, remedies,* including complaints and case-handling procedures by national human rights institutions. This section also addresses the relationship between national institutions and other institutions, including police, prosecutions, and courts as well as ombudsmen and regional and international human rights mechanisms; and

Fourth, e*ducation*, for instance how to target racial discrimination in the labour market, the furthering of interracial and intercultural understanding, and the integration of anti-racism into basic training and education curricula of primary and secondary schools as well as police, journalists and other professional groups.

These themes run through the programme of the conference and form the basis of the working groups.

The intended outcome of this Conference is that we will be able to define 'Best Practices' in this area, drawing up a 'catalogue of methodologies', from which national institutions can seek inspiration and guidance. This will be done in the form of a publication, which will be distributed shortly after the Conference.

The focus of the Conference may therefore be described as an attempt to map what national human rights institutions are presently doing in this area and how it is done; and from exchanges on these subjects, to distil best practices. In order to assist us in this process and bring us swiftly forward, the replies to the questionnaire sent to everyone will provide us with a common platform for our analysis.

The working methodologies addressed throughout the conference deal with essential elements of the work of national human rights institutions in any area, beyond the question of discrimination, so we foresee a number of interesting discussions,

for instance in the working groups, which will deal directly with our general effectiveness as national institutions.
Our particular status as national institutions provides us with a unique opportunity to contribute to improvements in this area - at the level of state practices as well as in civil society. We all know that working with racial discrimination touches upon sensitivities in any society, thus national institutions run a risk when working in this field. However, the Chinese sign for risk contains two elements - one refers to danger, the other to opportunity. Let us have the latter in focus in our deliberations.

Finally, I hope that the old proverb 'Blessed is he who has nothing to say and who refrains from saying it' will be inapplicable on this occasion. On the contrary, I am convinced that just because you have so much to say on this issue, you will not refrain from saying it. Let us therefore use the next three days to draw inspiration from the work of our colleagues in various areas, keeping in mind that this is a rare opportunity to be among so many distinguished and experienced colleagues from all over the world.

I trust that you will use this occasion to the fullest possible extent and, once again, I welcome you to the Conference and to Copenhagen.

Key Note Speech

PROCEDURES AND REMEDIES FOR DEALING WITH COMPLAINTS OF RACIAL DISCRIMINATION AND VILIFICATION

Dr William Jonas
Social Justice and Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission, Australia

The obligation to afford an effective remedy

While prevention of racial discrimination, incitement and racial vilification is the priority of both the international scheme to combat racism and domestic policy, victims of racism are not forgotten. Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD), commits all member countries to 'assure to everyone within their jurisdiction effective protection and remedies … against any acts of racial discrimination', 'as well as the right to seek … just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination'.

In its General Recommendation No. 26 (March 2000) the Committee on the Elimination of Racial Discrimination emphasised that punishment of the perpetrator would not on its own satisfy article 6. 'Just and adequate reparation or satisfaction for any damage' would usually require an award of financial compensation.
An earlier General Recommendation (No. 17, March 1993) recommended ICERD States Parties consider establishing national commissions to promote the principles of the Convention. Interestingly the list of suggested functions does not include complaint handling. Yet already the Paris Principles, adopted in 1991, saw complaint handling as a desirable feature of national human rights institutions, though not an essential feature.

The complaint handling function could involve:

a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality.
b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them.

c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law.
d. Making recommendations to the competent authorities, especially by pro posing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Australia's conciliation model

Australia pioneered the conciliation model of complaint resolution in a period when European race discrimination laws typically created a criminal offence relying on the police for enforcement. The national legislation implementing ICERD is the 1975 *Racial Discrimination Act* or RDA.

In Australia - a federation of 8 constituent States and Territories - there are 9 separate anti-race discrimination systems at work with some overlap between each State or Territory law and the national RDA. Nevertheless, coverage and process are sufficiently similar to justify treating the 'Australian model' as distinct for our purposes today.

In Australia only an aggrieved person, or a trade union on behalf of a member, can submit a complaint of race discrimination. The complaint must be in writing (whether posted or emailed). It does not need to have been drawn up by a lawyer and, in fact, complaints rarely are.

In the national institution it is the President who investigates complaints. She does so through her delegate, the Director of Complaint Handling. She can terminate a complaint on any one of a number of grounds:

- no unlawful discrimination is disclosed
- the complaint is out of time - older than 12 months
- complaint is trivial, vexatious, misconceived or lacking in substance
- another, satisfactory, remedy has been obtained or could be sought
- the issue has been adequately dealt with by another statutory authority - for example, by an Ombudsman - or could so be dealt with
- the issue is one of public importance which should be considered by a court
- there is no reasonable prospect of conciliation[1].

Where it appears a complaint can be resolved by the parties themselves, the institution will try to help them reach a fair agreement. Conciliation processes are flexible and sometimes matters may be settled by exchange of letters, telephone negotiation through the officer handling the matter, or by a telephone conciliation conference. Sometimes the parties will be brought together in a 'conciliation conference', which

is an informal, impartial and private process. The conciliation officer sets the standards for the conference. If the conciliation officer agrees, a party may have a lawyer, advocate or support person at the conference. However, legal representation is not necessary and, if it is agreed to, is at the party's expense.

The Australian institutions have powers to compel the production of documents and attendance at conferences. These powers are rarely used in practice since parties are generally co-operative. While the negotiated outcome of conciliation must be lawful, there are no statutory limits on its extent.

Where the parties cannot reach an agreement, the complainant is entitled to have the matter adjudicated by an independent, quasi-judicial specialist tribunal in the States and Territories or in the Federal Court under the RDA. Thus while a judicial determination is always available as a last resort, complainants must usually attempt conciliation before seeking one.

Examples of remedies agreed and awarded
Conciliated cases

Conciliation example 1
The complainant claimed that she was the victim of discrimination after a promotion in that:

- she was issued a performance warning based upon unfounded allegations and unreasonable complaints, such as speaking Chinese to a Chinese-speaking customer
- she was victimised for lodging internal complaints and
- because her complaints were written in a lower standard of English, they were not taken seriously.

The respondent agreed that the allegations made by other staff members against the complainant were unfounded and that the official performance warning was not justified. However, the respondent stated that, while the complainant may have been treated less favourably by her co-workers, this was because of 'internal conflicts' rather than the complainant's race.

Outcome: The complaint was settled by conciliation with the respondent agreeing to issue the complainant with a letter of apology, pay the complainant $15,000 compensation, reimburse costs incurred by the complainant in pursuing the complaint and publish a tribute to the complainant in the organisation's newsletter.

Conciliation example 2
The complainant claimed that she was speaking to a friend in her first language, which is Italian, while waiting for an appointment at a community club. The complainant alleged that the Club Secretary approached her and said, 'Be quiet. This is an Australian Club and you ought to speak English. This is the Club rule'.
The Club Secretary eventually admitted making the alleged remarks. The Club President advised that there had never been a policy that people must speak English while on the Club's premises.

Outcome: The complaint was resolved by conciliation with the Club Secretary of the Club providing a personal written apology to the complainant. The Secretary was also counselled by the Club Committee.

Court and tribunal verdicts
Determination example 1
At a workshop organised by the local Council of which both parties were members, the respondent suggested a 'solution' to an issue in the Aboriginal community was to "shoot them". The complainant, an Aboriginal councilor, and two Council staff were present and gave evidence that the comment was not made flippantly. The tribunal noted: 'Suggesting that a particular group of people … should be shot is simply offensive. It is made more so when such a suggestion is made by the holder of a public officer who has no doubt sworn an oath to appropriately serve all of the people in the ward which he represents [including the Aboriginal community referred to].' The respondent was ordered to pay $1,000 compensation to the complainant. The Commissioner took into account the fact that an apology had been offered and that the respondent had undertaken cultural awareness training[2].

Determination example 2
A complainant of Ugandan descent established he had experienced racial discrimination and harassment in employment to the point where he was at the time of the hearing incapacitated for work. He was awarded $30,000 in general damages and $25,000 for loss of earning capacity[3].

Evaluation of the conciliation model
Criticisms of conciliation
One criticism of the reliance on conciliation in discrimination cases is that it has the effect of defining discrimination as an unwanted 'trespass' to the individual rather than an unlawful act against community standards[4]. It is also noted that conciliation is unlikely to bring about structural change or 'effect substantive equality'[5].

Settling' discrimination cases through conciliation, carried out in private, detracts from recognition of the pervasive problem, which is discrimination. It turns a structural matter into a question of individual or personal harm[6].

Australian research to some extent contradicts this, although more could be done to achieve systemic change through conciliation. The process offers an opportunity for the complainant to request and the respondent to offer or agree to a policy change benefiting everyone in the complainant's class[7].

There has also been criticism of the justice of conciliated outcomes. Theoretically the outcome may be tailor-made to suit the parties' needs. In practice, without a precedent or benchmark (or 'tariff'), the outcome depends on the complainant's self-estimation and the respective bargaining power of the parties. Universal principles of justice do not come into play.

Advantages of conciliation
On the other hand, the advantages of conciliation for resolving race discrimination disputes include that:

- it is free of charge, efficient and speedy
- it is readily accessible to those who did not have the financial, educational or other means to go through elaborate court processes
- it is informal, not limited by artificial legal categories or remedies, and can be tailored to the parties' needs
- it makes it possible to confront individuals accused of racially discriminatory action with the true immorality of what they have done
- it has an educational effect on the community[8].

Procedural safeguards and administrative provisions
In a conciliation model where the complaint can proceed into open court, there are some fundamental procedural safeguards that must be ensured during complaint handling.

Australian legislation protects the confidentiality of the conciliation process by making evidence of things said or done by the parties during the attempt at conciliation inadmissible during a subsequent court or tribunal hearing, if any[9].

Although no legislation defines conciliation or sets out the process or procedures to be followed, Australian courts have imposed a minimum standard of procedural fair-

ness because of the legal hazard faced by the respondent if conciliation is flawed (namely the risk of court proceedings). Thus, for example, the conciliator must be independent and objective[10].

Moreover, at the national level, the institution's decisions and actions in relation to a complaint can be subject to judicial review. A decision to decline a complaint, or to terminate one, is reviewable on a number of grounds. Two influential grounds are, first that the decision-maker took irrelevant considerations into account and, second, that natural justice and procedural fairness were denied.

Irrelevant considerations include the complainant's behaviour in dealings with the institution, the seriousness of the matter (unless it is properly declined as 'trivial'), and officers' perceptions of the futility of pursuing the complaint.

The two rules of natural justice typically referred to in reviews on this ground are that the person affected should be told the case being made out against him or her and have an opportunity of replying to it[11]. Procedural fairness is somewhat broader and covers the decision-making process more generally. Most importantly it requires even-handedness and impartiality in the decision-maker.

Assisting the courts

Intervention function

When the Australian Commission was established in its current form in 1986, one of its functions was the power to intervene, with the leave of the court, in proceedings that involve discrimination issues[12] or human rights issues generally[13].

One of the most important cases in which the Commission successfully intervened was *Teoh*. This case challenged a deportation order issued against the Vietnamese father of seven Australian children. The Commission argued that the Minister's decision to deport Mr Teoh had failed to take into account his children's rights. These include the rights to know and be cared for by their father (CROC article 7), to preserve their family relations (article 8) and to maintain personal relations and direct contact with both parents on a regular basis[14]. (article 9). Australia's highest court agreed that the Minister should make the best interests of the children affected a primary consideration in his decision[15].

More recent Commission interventions have been approved in the case brought on behalf of the asylum seekers rescued by the Norwegian vessel Tampa and refused permission to land in Australia,[16] a case brought to challenge the continued detention of an offender from Vietnam for some 4 years after the expiration of his sen

tence of imprisonment pending his deportation [17] and a case brought by Australia's Catholic Bishops to prevent single women accessing IVF assisted reproduction technology[18].

Amicus curiae

Since April 2000 the Commission also has the possibility of appearing as *amicus curiae* or friend of the court in cases under legislation we administer. Actually, unlike the intervention function, which is a whole-Commission function, the *amicus* role is exercised independently by each of the Commissioners individually. As Race Discrimination Commissioner I can seek to appear as *amicus* in cases dealing with complaints under the RDA. Conflict of interest is avoided, as I no longer have any role in complaint handling at the conciliation stage. That is the sole responsibility of the Commission's President through her delegate.

Any Commissioner may seek to appear as amicus in one of three circumstances:

1. where the outcome may significantly affect the human rights of non-parties
2. where the case has significant implications for the administration of the legislation OR
3. where special circumstances satisfy the Commissioner that assisting the court would be in the public interest.

I have yet to appear as *amicus* in any proceedings. My colleague the Sex Discrimination Commissioner has appeared as *amicus* in one case involving a complaint of sex discrimination brought by a female professional kick boxer refused registration to practice her profession in her state of residence. Although the Commissioner's interpretation of the *Sex Discrimination Act* was adopted by the court, the complainant was unsuccessful in her claim[19].

Conclusions

Australia's legal regime for the protection of human rights is in many ways unique because we do not enjoy the protection of a Bill of Rights. Most human rights, including the prohibition of racial discrimination, do not enjoy constitutional protection.

Thus these principles have been slow to filter into our legal consciousness and, it must be said, are still too easy to ignore. The *Teoh* principle and the courts' acceptance of international standards influencing the evolution of the common law make limited impact on the enjoyment of rights in Australia. The national government is not only free to pass legislation excluding the operation of human rights but also to award itself retrospective immunity from performing its human rights obligations.

In this legal environment, court decisions on individual complaints and the Commission's *amicus* and intervention roles are almost the only means of expanding human rights jurisprudence in Australia.

[1] *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOCA) section 46PH.
[2] *Jacobs v Fardig* (1999) EOC 93-016.
[3] *Rugema v Southcorp Packaging* (1997) EOC 92-887.
[4] Margaret Thornton, 'Equivocations of Conciliation: The Resolution of Discrimination Complaints in Australia', (1989) 52(6) *Modern Law Review* 733-761, at page 735.
[5] Id, page 760.
[6] Jocelynne Scutt, 'Privatisation of Justice: Power Differentials, Inequality and the Palliative of Counselling and Mediation', in Jane Mugford (ed), *Alternative Dispute Resolution* (Australian Institute of Criminology, Canberra, 1986), 185-211, at page 192.
[7] In a review of sex discrimination cases, researchers found almost one-half of conciliated settlements in two Australian states involved policy changes: Rosemary Hunter and Alice Leonard, *The Outcomes of Conciliation in Sex Discrimination Cases* (Centre for Employment and Labour Relations Law, University of Melbourne, 1995) page 28.
[8] Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia* (Butterworths, Sydney, 1992) page 12; Committee on the Elimination of Racial Discrimination, *Summary Record of the 444th Meeting*, 6 August 1979, UN Doc. CERD/C/SR.444, para. 32.
[9] See for example, *Equal Opportunity Act 1984* (South Australia) section 95(7).
[10] *Koppen v Commissioner for Community Relations* (1986) EOC 92-173.
[11] *Kioa v West* (1985) 159 CLR 550; see page 558.
[12] Re race discrimination see RDA section 20(1)(e).
[13] HREOCA section 11(1)(o).
[14] *UN Convention on the Rights of the Child* articles 7, 8 and 9 respectively.
[15] *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273.
[16] *Minister for Immigration and Multicultural Affairs & Ors v Victorian Council for Civil Liberties; Minister for Immigration and Multicultural Affairs & Ors v Eric Vadarlis* [2001] FCA 1329.
[17] *Luu v Minister for Immigration and Multicultural Affairs* [2001] FCA 1136.
[18] 'McBain Case', heard 4-6 September 2001; decision reserved.
[19] *Ferneley v Boxing Authority of NSW and State of NSW* [2001] FCA 1740.

Key Note Speech

MONITORING: LEGAL FRAMEWORKS RELEVANT FOR RACIAL DISCRIMINATION

Judge Jagdish Sharan Verma
Chairperson of the National Human Rights Commission, India

Thank you for inviting me to give the keynote speech on the subject 'Monitoring: Legal Frameworks relevant for Racial Discrimination.'
I am happy you used the word 'frameworks' in the plural for the title, for when I commenced writing my speech, I was bemused to see from an excellent UNESCO publication, issued prior to the Durban Conference, that there were already some 33 International Instruments relevant to combating racial discrimination[1]. Of these, 12 were adopted under the auspices of the United Nations, 3 under the aegis of the International Labor Organization (ILO), 6 under the United Nations Educational, Scientific and Cultural Organization (UNESCO), 8 under the Council of Europe, 1 under the Organization of African Unity (OAU) and 3 under the Organization of American States (OAS) (*see Annexure I*) In reality, the number of such instruments is even more.

In addition, most of the Constitutions of our respective countries have specific provisions prohibiting discrimination of various kinds, including racial discrimination, and many of us have a plethora of national laws on the subject. Further, there are the pronouncements of our Courts and now, increasingly, the recommendations and directives of a growing number of National Institutions.

Together, all of these provide the 'legal frameworks' and the 'monitoring mechanisms', that exist at various levels - the international, the regional and the national - to deal with racial discrimination. There is clearly no shortage of legal frameworks and monitoring mechanisms. Yet the problem of racial discrimination persists, in varying and complex forms, in all parts of the world.

This brings to mind the great Danish philosopher, Søren Kierkegaard, who was born in this lovely city, and who had the disconcerting habit of questioning the purpose of his own existence. He once wrote:

'What I really need to do is come to terms with myself: about what I am **to do, not** about what I am **to know, except insomuch as knowledge must precede every act.'**

Kierkegaard's advice to himself is singularly appropriate for all of us, charged with the promotion and protection of human rights. For National Institutions, **a theoretical knowledge of legal frameworks must, to be of any use, lead to effective monitoring and corrective action to prevent discrimination in all its forms, including racial discrimination.** To paraphrase Kierkegaard, we must **do**, not merely **know.** That should be our guiding philosophy.

I should now like to develop my thoughts on:
- The Legal Frameworks relevant to racial discrimination, and
- The Role of National Institutions in monitoring respect for such legal frameworks and contributing to them;
- Further, as requested by our hosts, I shall illustrate my observations, as appropriate, with comments on the situation in India, in the hope that our experience may be of some interest and value to other National Institutions.

As indicated earlier, there exist at the international, regional and national levels, a vast array of instruments and laws to combat various forms of discrimination, including racial discrimination. It is therefore useful to pause for a while to examine the range of at least some of these instruments, particularly those having global reach [2.]

The **UN Charter**, adopted in 1945, the great over-arching Treaty to which all Member States are a party, itself lists as a central Purpose of the World Organization the promoting and encouraging of respect for human rights for all 'without distinctions as to race, sex, language or religion'.

- These four criteria were enlarged in the **Universal Declaration of Human Rights, 1948** which added colour, political or other opinions, national or social origin, property, birth or status to the Charter's words and, further, introduced the concepts of equality before the law and equal protection under the law.
- The **two International Covenants on Human Rights of 1966,** used precisely the same criteria as the Universal Declaration.
- The first treaty to deal with a specific aspect of racial discrimination and the grave consequences of it, was the **Convention on the Prevention and Punishment of the Crime of Genocide, 1948;** it was, in fact, adopted a day ahead of the Universal Declaration, such was its importance in the aftermath of the Holocaust and the 2nd World War, an importance sadly re-affirmed by the catastrophic recurrence of genocide in recent years.

- Since discrimination was widely prevalent in respect of employment, including on grounds of race, **ILO** adopted a series of Conventions on **Equal Remuneration for Work of Equal Value (1951), Discrimination in respect of Employment and Occupation (1956), and on Indigenous and Tribal Peoples (1989).**
- Further, given the prevalence of **Discrimination in Education,** UNESCO felt it essential to adopt a Convention on this subject in 1960.
- In parallel, the United Nations dealt with specific aspects of racial discrimination, inter alia, in Article 3 of the **Convention relating to the Status of Refugees, 1951;** Article 3 of the **Convention relating to Stateless Persons, 1954; the International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973;** and the **International Convention against Apartheid in Sports, 1985.** Further, Article 1 of the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984** and Article 2 of the **Convention on the Rights of the Child, 1989** are relevant to the combat against racial discrimination, as are the **Convention on the Elimination of All Forms of Discrimination against Women, 1979,** and the **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.**
- In addition, Article 85, paragraph 4 of the **Additional Protocol (Protocol 1) to the Geneva Conventions** of 12 August 1949 on the Protection of Victims of International Armed Conflicts, 1977, is germane to efforts to combat racial discrimination.
- The adoption of the **International Convention on the Elimination of All Forms of Racial Discrimination, 1965** resulted, of course, in the most comprehensive instrument on this subject. Under the provisions of Article 1.1 the term 'racial discrimination' was defined as

> 'any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field in public life.'

This is not the occasion to amplify on the details of these global treaties, or indeed of the relevant regional instruments. But two points emerge that can usefully be made at this stage.

- First, as with other forms of discrimination, so with racial discrimination, the nature of discrimination can be, and often is, **multiple** in character.
- Second, in practical terms, when performing their monitoring functions, National Institutions must be vigilant **not only** to the acts of racial discrimination as defined in CERD, but also to acts that might result from other grounds of discrimination

listed in the Universal Declaration and the two International Covenants on Human Rights of 1966. Further, National Institutions must constantly keep in mind the vast range of subject-specific instruments mentioned earlier in this speech, if their monitoring is to be comprehensive. In addition, National Institutions should be especially vigilant to the specific forms of discrimination particular to their own countries or societies - **which may not be explicitly defined in any international instruments,** but which may well be known to them or referred to in their national Constitutions or laws. In the case of India, discrimination based on 'caste' is one such example; other countries may have yet other society-specific grounds of discrimination.

As Kierkegaard would argue, we need the courage to recognize what these forms of discrimination are, and having identified them, we must act on this knowledge. I should now like to comment on some of the specific actions that National Institutions could perhaps take to improve monitoring. In offering these comments, I shall draw, inter alia, on the broad themes of the Programme of Action adopted at the World Conference in Durban, the Statement of National Institutions on that occasion, and the experience of our own Institution - the National Human Rights Commission of India.

First, at the most basic level, National Institutions need to urge the Governments of their respective countries to consider acceding to or ratifying the international instruments on racial discrimination and non-discrimination listed in the Durban Programme of Action[3]. Not all of these instruments are equally relevant to all countries, so National Institutions should prioritise them and pursue these priorities with their respective Governments. In the case of India, our Commission has, in particular, urged the early ratification of the Convention against Torture, which the Government has already signed on our recommendation, and an early examination of the Convention and Protocol relating to the Status of Refugees and the drafting of appropriate national legislation on the subject. Further, where States have entered reservations or made declarations in conflict with the object and purpose of international human rights treaties, National Institutions should seek to have these removed. This was stressed in the Statement of National Institutions adopted in Durban.

Second, National Institutions need to monitor the manner in which the Governments of their respective States implement the treaties to which they are party. In India, we have hitherto chosen not to participate in the drafting of country reports to the various Treaty Bodies, or to draft alternative reports. The first course would tie us too closely to the official report and, frankly, the second course would be too time-consuming. National Institutions often have their hands full and the last thing they

need to do is to write yet more reports. In our case, however, we have analysed the advice and comments of the Treaty Bodies in our Annual Reports to Parliament, and have urged the Government to take specific actions thereafter.
Third, we are of the view, however, that the relationship between Treaty Bodies and National Institutions is still inadequately developed. We therefore urge that the Treaty Bodies specifically invite National Institutions to join in discussions with them when country reports are considered. Other 'special mechanisms' of the United Nations should also take similar initiatives. Perhaps the United Nations High Commissioner for Human Rights could consider discussing this further with the Chairpersons of the Treaty Bodies, Special Rapporteurs, Country Rapporteurs and others concerned, and institutionalise and rationalize the manner in which such contacts can be arranged.

Fourth, I believe that National Institutions should encourage the Governments of their respective countries to respect the international human rights regime established under the auspices of the United Nations and consistently observe the discipline of the treaties to which they are States Parties, even if the comments of the Treaty Bodies are at times discomforting and at variance with the established wisdom of the Government. CERD for instance, has identified particular categories or groups of persons in some 20 countries, including my own, who are especially vulnerable to discrimination and their observations and comments have not always been well received or gone unchallenged. By the same token, this implies that the Treaty Bodies must always maintain the highest standards of understanding and objectivity, if their comments are to retain the unqualified respect of States Parties.

Fifth, National Institutions must have the statutory competence to examine international human rights instruments and make recommendations for their effective implementation. Likewise, they must have the statutory responsibility to review proposed legislation or any law in force in their respective countries in order to ensure that these are compatible with their national Constitutions and international instruments and do, indeed, further the better protection of human rights. Where National Institutions do not have such statutory competence, they should seek to secure it. These are essential attributes of National Institutions based on the Paris Principles and they should be exercised in a pro-active manner. In the case of our Commission we have, in recent months, taken positions in respect of a number of proposed bills/ordinances and, indeed, existing acts, when we have felt that the promotion and protection of human rights so required us to act in order, particularly, to protect the rights of vulnerable groups including minorities, Scheduled Castes and Scheduled Tribes (Dalits and Adivasis). The range of our interventions have included opposing the Prevention of Terrorism Bill, 2000 and an Ordinance on the same subject in 2001, commenting on a Freedom of Information Bill, the Bonded Labour (Abolition) Act, various acts relating to the Rights of the Child (including

Child Labour and the Child Marriage (Restraint) Act), and making proposals regarding the law needed for the acquisition of land for mega-size developmental projects (e.g. dams), and the legislation regarding Manual Scavenging.

Sixth, National Institutions can gain immensely in their capacity to monitor the various legal frameworks if they can act in complementary with the senior judiciary of their respective countries. In the case of India, the Supreme Court has remitted to our Commission a series of key cases having strong human rights implications, requesting the Commission to act on its behalf. Further, respect for the UN Treaty System has been greatly strengthened by the landmark Judgement of the Supreme Court which, in examining the applicability of international conventions to the country, held:

> 'Any international convention not inconsistent with the fundamental rights and in harmony with their spirit must be read into these provisions to enlarge the meaning and content thereof …. regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic laws' (Visakha vs. State of Rajasthan (1997(6)SCC24).

Seventh, it also strengthens the hands of National Institutions in their monitoring function if they have the capacity to 'intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court'. Such a provision exists in the Statute of the National Human Rights Commission of India and has been used by the Commission to good effect, most notably in the Supreme Court in a case involving the rights of an ethnic group called Chakmas, who sought the protection of the Commission and amongst whom were many refugees.

Eighth, proper monitoring and action by National Institutions also depends on whether or not they have the statutory capacity to receive and investigate complaints both in respect of individuals and well as situations more generally which indicate practices of discrimination; whether they can order interim measures to avert or prevent human rights violations; and whether they can award interim relief to those who have suffered.

Ninth, an area that appears to need greater attention in most National Institutions if they are to strengthen their capacity, particularly in respect of analysing and proposing legislation and keeping abreast of human rights law, relates to the improvement of research capacity. This, it appears to us in the Indian Commission, is an area calling for greater cooperative endeavour between National Institutions and the Office of the UN High Commissioner for Human Rights. It would be extremely helpful to the global effort to promote and protect human rights if National Institutions had some

ready way of gaining access to the growing body of human rights jurisprudence. In the Asia-Pacific Forum, we have constituted an Advisory Council of Jurists, including some of the most eminent of our region, to study and advise Forum members on individual issues. And in India, we have, in addition, constituted a Core Group of Legal Experts to advise our Commission, drawn from among the very best in the profession. But there is need, nevertheless, for a wider system to be established that could readily bring the jurisprudence of human rights to all National Institutions.

Tenth, in the final analysis, however, it will be the readiness or otherwise of National Institutions to set about their responsibilities with courage and integrity that will determine whether or not they will contribute with purpose and effect to the fight against discrimination. As we observed in our statement to the World Conference in Durban, it is not the nomenclature of the form of discrimination that must engage our attention, but the fact of its persistence that must cause us concern and impel us to act. It was because of this perception that our Commission took the view in Durban that the debate on whether race and caste are co-terminus, or similar forms of discrimination, was not the essence of the matter. The Constitution of India, in Article 15, expressly prohibits discrimination on either ground, and that Constitutional guarantee has to be vigorously implemented. Each of our National Institutions has, in the context to our respective countries, a responsibility and a moral imperative that can and must be honoured for, after all, it is at the ground level that the battle for human rights and against discrimination must finally be fought, and won.

If I recalled earlier the words of Kierkegaard on the need not just to know, but to act, I should like to conclude with a thought from Mahatma Gandhi, who with characteristic simplicity and clarity once said:

'Action for one's own self binds, action for
the sake of others delivers from bondage'.

That, too, should be part of our guiding philosophy.

[1] United to Combat Racism, pp ix-xi, UNESCO 2001.
[2] Op.Cit. p.24, Essay by Rudiger Wolfrum: The Elimination of Racial Discrimination: Achievements and Challenges.
[3] See in particular, paragraphs 75-83.

Annexure I

Judge Jagdish Sharan Verma
Chairperson of the National Human Rights Commission, India

UNIVERSAL INSTRUMENTS AGAINST RACIAL DISCRIMINATION UNITED NATIONS (UN)

1) *International Bill of Human Rights*
   Universal Declaration on Human Rights (1948)

   International Covenant on Economic, Social and Cultural Rights (1966)

   International Covenant on Civil and Political Rights (1966)

2) *Other Instruments*
   United Nations Declaration on the Elimination of All Forms of Racial Discrimination (1963)

   International Convention on the Elimination of All Forms of Racial Discrimination (1965)

   International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)

   Convention on the Elimination of All Forms of Discrimination against Women (1979)

   Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

   International Convention against Apartheid in Sports (1985)

   Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (1985)

   International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Declarations on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

INTERNATIONAL LABOUR ORGANISATION (ILO)

Convention (No 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951)

Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (1958)

Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1989)

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

Convention against Discrimination in Education (1960)

Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education (1962)

Declaration on Race and Racial Prejudice (1978)

Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War (1978)

Declaration of Principles on Tolerance (1995)

Universal Declaration on the Human Genome and Human Rights (1997)

COUNCIL OF EUROPE

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 1 (1950)

European Social Charter (1961)

European Convention on the Legal Status of Migrant Workers (1977)

Convention on the Participation of Foreigners in Public life at Local Level (1992)

European Charter for Regional or Minority Languages (1992)

Framework Convention for the Protection of Nationals Minorities (1995)

European Social Charter – Revised (1996)

European Convention on Nationality (1997)

ORGANIZATION OF AFRICAN UNITY (OAU)

African Charter of Human and Peoples' Rights (1981)

ORGANIZATION OF AMERICAN STATES (OAS)

American Convention on Human Rights - Pact of San Jose (1978)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural rights - Protocol of San Salvador (1988)

American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (1999)

Key Note Speech

LES ACTIONS DE PROMOTION ET DE SENSIBILISATION DES INSTITUTIONS NATIONALES

Mr. Alain Bacquet
President of the National Consultative Commission for Human Rights, France

Les actions de promotion et de mobilisation en faveur des droits de l'homme (DH) constituent l'un des volets essentiels de l'activité des Institutions nationales de protection et de promotion des D.H.(INDH). Cette fonction dynamique de promotion, de progrès, est complémentaire de la fonction de contrôle dont vient de parler le précédent orateur. Elle est présentée et développée de façon très explicite dans les 'Principes de Paris'.

En quoi consiste-t-elle? Le programme de notre Conférence internationale mentionne trois types d'actions: encourager la ratification des traités; informer sur l'existence de normes internationales; favoriser l'adaptation des législations et l'élaboration de projets ou de propositions de lois.

En effet ce sont bien là, en pratique, les trois modalités efficientes de la démarche visant au progrès des DH dans un pays, les trois domaines privilégiés d'application des initiatives d'une INDH.

En guise d'introduction de mon exposé, je vais commenter très rapidement deux de ces points.

L'action d'une INDH en faveur de la ratification des conventions internationales relatives aux D.H. est très importante, puisque, comme vous le savez, les traités, les conventions, constituent le 'noyau dur' - je veux dire la partie vraiment contraignante - du droit international. C'est parce qu'il s'est engagé en ratifiant une convention qu'un Etat est vraiment lié et que toute personne pourra invoquer cette convention à l'encontre de cet Etat.

Certes, en dehors des conventions, certains grands principes proclamés par des textes déclaratifs fondamentaux, comme la Déclaration universelle des DH de 1948, ont acquis la valeur de normes internationales coutumières, voire même de normes impératives du droit international. On peut dire que la communauté internationale reconnaît une autorité morale et normative particulière à la Déclaration universelle. Cependant, c'est bien pour assurer plus solidement le caractère obligatoire de règles fondamentales en matière de DH qu'ont été élaborées, sous l'égide des Nations Unies, plusieurs grandes conventions: non seulement les deux grands Pactes internationaux de 1966, qui reprennent les principes de la Déclaration universelle, mais aussi des conventions à objet spécialisé telles que celles concernant la répression du génocide, l'abolition de la traite des êtres humains et de l'esclavage, l'élimination de toutes formes de discrimination raciale, ou fondée sur le sexe, la lutte contre la torture, les droits de l'enfant, la Cour pénale internationale… Vous remarquerez que la plupart de ces conventions concernent, de façon directe ou indirecte, la lutte contre le racisme et la xénophobie.

Donc, quelle que soit la force du droit coutumier international en matière de DH, il reste très important d'obtenir la ratification de ces Conventions essentielles par le maximum d'Etats, car cela reste le moyen le plus sûr de progresser vers l'établissement de normes contraignantes réellement universelles. Il y a donc là un premier champ d'action important pour nos Institutions nationales: elles doivent faire pression sur les Gouvernements et mobiliser les opinions publiques pour que les Etats adhèrent à ces grandes conventions.

D'autre part, l'action d'une INDH pour favoriser l'évolution de la législation interne des Etats est évidemment fondamentale et je pense même, en me référant à l'expérience de la Commission française des DH, que c'est la mission principale de l'Institution, du moins dans l'exercice de sa fonction consultative.

La modification de la législation interne peut être rendue nécessaire par la ratification d'une convention internationale. Mais, le plus souvent, l'intervention d'une INDH pour proposer un changement résultera de sa propre initiative, à la suite de son examen critique de la législation ou des pratiques gouvernementales existantes, dont elle signalera les erreurs, les insuffisances, les lacunes, bref la non-conformité aux principes et aux valeurs des DH.

A la vérité, le champ potentiel des initiatives qu'une CNDH peut prendre en ce sens est très vaste, sinon illimité. Pourquoi? Parce que les exigences proclamées par les grands textes fondamentaux, notamment par la Déclaration universelle, ou du moins les objectifs qu'ils déterminent, sont tels que même les Etats les plus "vertueux",

ceux qui se veulent ou se croient les plus respectueux des DH, ne sont jamais tout à fait quittes à leur égard. Par exemple, en ce qui concerne la lutte contre la discrimination raciale, qui est un combat permanent, jamais terminé, des progrès sont toujours possibles et même indispensables. Ainsi, en France, la législation de lutte contre le racisme est déjà très développée, tant dans la loi sur la presse que dans le Code pénal et le Code du travail ; mais il reste encore beaucoup à faire pour assurer **l'application pratique** effective de ces lois, c'est à dire pour détecter les comportements discriminatoires, aider les victimes de discriminations à utiliser les voies de recours, sensibiliser les employeurs et les propriétaires de logements etc. Actuellement, selon l'appréciation de la Commission française des DH, les dispositifs mis en place à cet effet par le Gouvernement ne sont pas suffisants; nous demandons que des mesures supplémentaires, mieux conçues et plus efficaces soient prises pour renforcer la lutte contre la discrimination.

Je poursuivrai mon exposé en traitant successivement deux points différents. Je vais d'abord présenter rapidement l'activité de la Commission nationale consultative des droits de l'homme française (CNCDH); ensuite, j'aborderai la question que le Centre danois pour les DH m'a demandé d'examiner particulièrement, à propos des actions de promotion des INDH, à savoir la question des limites du "débat juridique" et du "débat politique".

Donc, d'abord quelques informations sur la manière dont la Commission française des DH exerce cette fonction de promotion des DH.

Je rappelle que, selon ses statuts, la Commission française a une fonction **exclusivement consultative.** Elle n'a pas pour mission de recevoir et d'instruire les réclamations individuelles de personnes se plaignant de la violation de leurs droits.

Elle exerce cette fonction consultative en adressant des avis au Premier ministre, ou parfois à tel ou tel ministre du gouvernement. Ces avis constituent des prises de position: sur un projet de texte, ou sur les conditions d'application d'une législation, ou sur une situation ; tout cela, bien entendu, au regard des normes et principes des DH. Ces avis comportent des analyses, plus ou moins développées, des diagnostics et des appréciations, souvent critiques, et formulent des propositions ou des recommandations. Sauf exception, tout avis de la Commission conclut en demandant au Gouvernement d'agir de telle ou telle façon, dans tel ou tel sens.

La Commission émet un avis soit parce qu'elle a été consultée par le gouvernement, soit parce qu'elle s'est saisie elle-même, d'office, d'une question (auto-saisine). Les demandes d'avis du gouvernement portent habituellement sur des projets de

loi, plus rarement sur des projets de décret; quelquefois sur d'autres questions (par exemple, le ministre de l'Education nationale a consulté la Commission l'année dernière au sujet de la formation des enseignants qui assurent l'éducation aux DH).

Les auto-saisines de la Commission peuvent concerner aussi un projet de loi, dont la Commission a connaissance mais dont le gouvernement ne l'a pas saisie (cela a été le cas en 2001 pour un projet de loi prévoyant le renforcement de la lutte contre le terrorisme, dont la Commission a contesté plusieurs dispositions). Mais, en général, lorsque la Commission se saisit d'office, elle examine plutôt des **situations,** très diverses, qu'elle juge problématiques, critiquables du point de vue du respect des DH (normes internationales, mais aussi nationales et notamment constitutionnelles), situations qu'elle analyse et pour lesquelles elle préconise des remèdes, des solutions, qui peuvent consister en des modifications de la législation, mais aussi en des changements des pratiques administratives et l'intervention de mesures nouvelles.

Je donnerai **quelques exemples** d'avis émis par la Commission au cours des deux dernières années, sur "auto-saisine":
En 2000:
- Avis sur les discriminations liées au handicap (examen très critique de la mauvaise application de la législation nationale sur les handicapés, législation jugée elle-même insuffisante).
- Avis sur le 'harcèlement moral' dans les relations de travail (qui concluait à la nécessité d'une intervention du Parlement, qui eut lieu effectivement un an plus tard).
- Avis sur la révision des lois relatives à la bioéthique (avis donné au moment où cette révision était en préparation, mais avant que le gouvernement ait élaboré un projet de loi. La Commission eut notamment l'occasion d'exprimer son opposition au "clonage thérapeutique").

En 2001:
- Etude et avis sur l'asile en France (examen très critique de l'application par la France de la Convention de Genève, et des conditions d'accueil des demandeurs d'asile, avec proposition de réformes profondes).
- Avis sur l'application de la loi relative à la lutte contre les exclusions (c'est à dire sur la politique gouvernementale de lutte contre l'extrême pauvreté, la précarité et l'exclusion sociale).
- Avis sur les placements d'enfants en France (en France, il y a 150.000 enfants placés dans des familles qui ne sont pas les leurs, à la suite de décisions judiciaires ou administratives. La Commission a demandé la modification de la législation sur plusieurs points et la modification de diverses pratiques administratives, pour que les droits des familles et des enfants soient mieux respectés).

- Avis sur l'adaptation du droit interne au statut de la Cour pénale internationale.

Ces exemples concernent des interventions dans le champ des affaires nationales. Mais la Commission se saisit également de questions relevant du domaine international.

- Parfois pour exprimer ses préoccupations devant les graves violations des droits de l'homme et du droit humanitaire dans certains pays;
- mais, le plus souvent, sur des questions de portée plus générale (par exemple, avis sur le projet de Charte des droits fondamentaux de l'Union européenne; avis sur l'avenir de l'Europe, dans le cadre d'une vaste consultation nationale sur l'avenir de l'Union européenne).

Tout récemment, la Commission a émis un avis sur la situation des personnes arrêtées dans le cadre du conflit armé international de l'Afghanistan et détenus à Guantanamo et en d'autres lieux (affirmant l'applicabilité de la Troisième convention de Genève et du statut de prisonnier de guerre à ces personnes, et l'applicabilité des normes non dérogeables du droit international des DH à toute personne accusée, même d'actes terroristes).

La Commission a rendu 20 avis en 2000 et 18 avis en 2001. Pour chacune de ces deux années, il y eut une nette majorité d'auto saisines (3/5). C'est un bon indice de l'indépendance de la Commission vis-à-vis des autorités politiques, de sa liberté d'opinion et d'expression. Cela correspond aussi à sa vocation de témoignage et d'expression de la sensibilité de la société civile, qui est très largement représentée dans la Commission.

Toutefois nous attachons aussi de l'importance aux consultations officielles du gouvernement, car nous souhaitons que le gouvernement - même s'il n'apprécie pas et ne suit pas toujours nos avis - considère la Commission comme un pôle fiable de conseil et d'expertise en matière de DH. Est-ce contradictoire avec l'indépendance de la Commission ? Je ne crois pas. Je pense qu'une INDH, instance officielle mais indépendante, doit pouvoir se montrer critique à l'égard des pouvoirs publics tout en étant respectée par ceux-ci.

- Je précise enfin que tous les avis de la Commission sont systématiquement et immédiatement **rendus publics,** communiqués aux agences de presse et aux principaux médias et mis en ligne sur notre site internet.

- Je n'ai guère parlé jusqu'ici, en évoquant l'activité de la Commission, de la lutte contre le racisme, la discrimination raciale et la xénophobie. Bien sûr, il y a eu aussi, au cours des dernières années, beaucoup d'avis de la Commission sur ce thème, en particulier sur l'évolution de la législation. Mais c'est principalement

dans son **rapport annuel** que la Commission s'exprime sur ce sujet, car, en vertu d'une loi de 1990, elle doit présenter chaque année au gouvernement un 'rapport sur la lutte contre le racisme et la xénophobie'.

On y trouve en particulier une évaluation de l'état du racisme en France (statistiques des actions racistes et antisémites, enquêtes d'opinion), ainsi que l'exposé des mesures prises dans l'année par les pouvoirs publics, mais aussi la présentation des initiatives des ONG membres de la Commission, qui jouent un rôle important dans l'information, la formation, la sensibilisation du public et le soutien aux victimes.

Le rapport annuel sur le racisme comporte aussi des études rédigées par la Commission elle-même. Pour l'année 2001, l'accent a été mis sur les avancées de la protection des victimes de discrimination raciale sous l'influence du droit communautaire européen. La Commission a examiné si et comment le gouvernement avait appliqué deux directives européennes adoptées en 2000, relatives à l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique, notamment dans le domaine de l'emploi et du travail. A cette occasion, la Commission a relevé que, malgré de nouveaux progrès en 2001, la législation française, n'était pas encore parfaitement conforme à ces directives européennes.

Je vais maintenant vous donner mon point de vue sur la question particulière que l'hôte de notre Conférence, le Centre danois pour les DH, m'a demandé d'examiner, toujours à propos des actions de promotion des DH : c'est la **question de la limite, de la frontière, entre le "débat juridique" et le "débat politique"**. (J'espère avoir bien compris la question qui m'était posée).

Plus précisément: jusqu'où une INDH peut-elle aller dans la critique d'un projet de loi, ou d'une loi existante, ou d'une situation, sans être accusée de prendre parti politiquement? Comment trouver le bon équilibre dans l'expression de la critique et la demande de changement? Bref, les prises de position des INDH peuvent-elles être considérées comme 'politiques'? pourraient-elles n'être que 'juridiques'? Je vais y réfléchir ici, devant vous, de manière générale, c'est à dire pas seulement à propos de la lutte contre le racisme et la xénophobie.

J'observerai d'abord que la question de la frontière entre le 'juridique' et le 'politique' se pose chaque fois qu'une instance officielle, mais qui n'a pas de mandat politique, a le pouvoir de critiquer, voire de condamner, les actes des autorités politiques (Parlement, Gouvernement). Ce débat est classique et ancien à propos des juges, des tribunaux, et surtout des cours constitutionnelles qui peuvent juger que des lois démocratiquement votées par le Parlement du pays ne sont pas conformes à des

principes ou des normes de valeur juridique supérieure. Dans quelques pays, comme la France, certains pensent qu'il arrive à une Cour constitutionnelle d'aller au-delà de sa fonction et d'empiéter sur le domaine politique.

Pour clarifier la suite de mon exposé, je voudrais dire, très schématiquement, et en forçant un peu les termes de l'opposition, comment je vois ici la distinction entre le "débat juridique" et le "débat politique":

- Je dirai qu'il y a "débat juridique" lorsqu'il s'agit seulement de déterminer si l'autorité politique a ou n'a pas respecté une norme obligatoire, bien établie et qui s'imposait à elle.
- Ce qui caractérise, au contraire, le 'débat politique', c'est que la solution d'une question en discussion n'est pas imposée par une norme: un choix est possible entre plusieurs solutions. Et ce choix, qui concerne la vie de la société du pays, est normalement exercé par les instances politiques responsables, selon les mécanismes de la démocratie.

Les INDH sont-elles concernées par cette problématique? Je pense que oui, bien qu'elles ne soient pas des tribunaux et bien qu'elles n'aient pas le pouvoir de prendre des décisions ayant un effet obligatoire. Mais elles ont un pouvoir d'influence et elles sont amenées à prendre position, éventuellement de façon critique, à l'égard des actes ou des carences des autorités politiques.

S'agissant de l'action des INDH pour la promotion des DH, il me semble que la frontière entre le 'débat juridique' et le 'débat politique' est assez imprécise.

- Certes, la matière des DH relève pour une bonne part du champ juridique puisqu'il y a - heureusement - des normes contraignantes: non seulement, d'ailleurs, celles du droit international impératif, coutumier ou conventionnel, mais aussi celles des instruments régionaux (par exemple la Convention européenne des DH ou la Charte africaine des DH et des peuples) et celles des droits nationaux, notamment les dispositions constitutionnelles.

  Une INDH se trouve bien dans le cadre du débat juridique quand elle estime que le gouvernement ne se conforme pas à ces normes obligatoires, qu'il méconnaît des principes fondamentaux ou ne respecte pas ses engagements, et lui demande d'agir autrement. Même si une telle initiative a un impact politique - parce quelle est rendue publique, commentée par les médias, qu'elle mécontente ou gêne le gouvernement, est exploitée par l'opposition - même dans ce cas, on ne peut pas dire que l'INDH sort du cadre du débat juridique et qu'elle "fait de la politique". Sur ce terrain du respect du droit, son intervention est particulièrement

légitime et nécessaire, ce qui ne veut pas dire qu'elle soit facile, ni qu'elle ne demande pas du courage. Pensons ici, par exemple aux fermes interventions de Mme Mary Robinson, Haut-Commissaire des NU aux DH, pour rappeler que les Etats parties au conflit armé de l'Afghanistan devaient reconnaître l'application et respecter les dispositions des Conventions de Genève et, en particulier, accorder les garanties du statut de prisonniers de guerre aux personnes arrêtées dans le cadre de ce conflit.

- Mais, très souvent, les situations devant lesquelles se trouvent les INDH ne sont pas aussi claires, aussi tranchées. On ne peut pas toujours affirmer qu'une violation des DH est certaine, évidente, qu'aucune discussion n'est possible, qu'il faut absolument modifier une loi, changer de politique etc.

  Au contraire, il y a fréquemment des discussions, des hésitations, des incertitudes sur le caractère normatif et obligatoire d'un texte; ou sur la signification et la portée exacte d'une règle ou d'un principe, qui prête à interprétation; et surtout sur les conséquences qu'il faut tirer, à un moment donné, d'un droit proclamé ou d'une convention ratifiée.

  Ce dernier point est particulièrement important. En effet, la formulation des DH a souvent un caractère assez général, surtout dans les grands textes déclaratifs universels. Ces textes n'entrent évidemment pas dans le détail de leur application concrète. En outre, le niveau des exigences requises n'est pas déterminé de façon absolue: il peut y avoir des degrés dans la satisfaction des droits proclamés, et cette satisfaction peut n'être que progressive, dans le temps, en fonction du niveau de développement du pays. C'est particulièrement vrai pour la mise en œuvre des droit économiques et sociaux (droit au travail, au logement, à la santé, à des ressources minimales…). On sait bien que, non seulement il est difficile pour certains pays d'assurer la satisfaction même minimale de ces droits, mais aussi qu'il peut y avoir plusieurs façons d'y parvenir, selon les orientations politiques, le rôle de l'Etat, le système économique, l'organisation administrative et judiciaire, les valeurs et traditions sociologiques et culturelles du pays etc..

  Ainsi donc, en présence d'un objectif fixé par les normes et principes des DH - objectif qui est par lui-même contraignant -, il peut y avoir plusieurs types de réponses, plusieurs politiques envisageables, entre lesquelles un choix est possible. La réponse peut varier selon les pays, qui n'ont pas les mêmes systèmes politiques et juridiques, les mêmes cultures (cf. les positions nationales différentes sur des questions telles que la peine de mort, la procédure pénale, le droit de la famille, la protection de la santé, l'euthanasie…). Mais la réponse peut aussi être l'objet d'une discussion nationale, dans chaque pays.

En outre, il y a aussi des cas dans lesquels les normes des DH, déclaratives ou conventionnelles, ne fournissent par elles-mêmes aucune solution, ni même aucune orientation précise, alors même que la question posée touche à des droits de la personne. Un exemple : le récent arrêt de la Cour européenne des DH, rendu en 2001 (affaire FRETTÉ c/France) dans une affaire qui opposait le gouvernement français à un homme, homosexuel, auquel avait été refusée l'autorisation d'adopter un enfant pour la raison principale qu'il était homosexuel. La Cour devait dire si ce refus constituait une discrimination interdite par l'article 14 de la Convention européenne des DH. Elle a jugé que ce refus d'autorisation d'adopter n'était pas discriminatoire, au sens de la Convention, parce que l'adoption d'un enfant par une personne homo-sexuelle était une question de société très controversée dans les Etats européens, une question sur laquelle existaient de profondes divergences des opinions publiques nationales et internationales, et qui divisait aussi la communauté scientifique. La Cour a estimé qu'en l'absence d'une communauté de vues suffisante sur cette question, les Etats disposaient d'une grande latitude pour fixer les règles applicables, et qu'ils pouvaient faire prévaloir l'intérêt supérieur de l'enfant sur le droit de pouvoir adopter.

Alors, faut-il conclure que, dans tous les nombreux cas où la réponse à une question, à une situation n'est pas dictée de manière certaine, de façon "mécanique", par une norme juridique précise et obligatoire des DH, une INDH ne doit pas prendre position? Faut-il admettre qu'une INDH n'a rien à dire, rien à proposer, parce qu'il n'y a pas de solution tout à fait évidente, parce qu'il y a une marge d'appréciation? Faut-il penser que, si elle le fait, elle pénètre de manière illégitime sur le terrain du "débat politique"?

Je ne le crois pas. Je crois qu'il ne peut pas y avoir de frontière précise, dure et étanche, entre le juridique et le politique quand il s'agit de la mise en œuvre des DH.

D'abord parce que la matière même des DH est "politique" par nature, au sens général du terme: qu'elles touchent aux relations entre les individus et l'Etat ou aux relations entre les personnes, les questions de DH sont intimement liées à la vie des sociétés et à leurs conflits. De plus, il me semble qu'une INDH n'est ni une instance juridique, ni une instance politique: c'est une institution originale qui, bien entendu, ne peut agir que par référence aux DH et aux normes qui existent dans ce domaine. Mais dans l'exercice de sa mission de protection et de promotion des DH, une INDH doit néces-sairement disposer d'une certaine latitude pour apprécier concrètement ce qui, dans une législation ou dans une situation, est le mieux conforme (ou non) aux exigences des DH. Evidemment, les positions que prend une INDH doivent toujours être inspirées et motivées par la philosophie, les valeurs et la logique des DH; mais elles ne peuvent pas être limitées à une application "mécanique" de telle ou telle norme générale.

J'observe d'ailleurs, plus généralement, que la matière des DH, telle que nos INDH l'appréhendent, n'est pas réductible à un système de normes juridiques: elle existe en amont d'un tel système car elle est d'abord, à l'origine, une construction philosophique, un 'corpus' de principes et de valeurs. Bien sûr, il faut chercher inlassablement à progresser vers la création de normes contraignantes ; mais cela prend du temps. Il faut donc aussi, au jour le jour, par une réflexion fondée sur ces principes et valeurs, soutenir un effort permanent de construction de solutions concrètes de mieux en mieux conformes aux exigences des DH. Ainsi, au plan international, on peut considérer les Nations Unies comme un vaste système d'encouragement collectif à la recherche de consensus sur des solutions marquant un progrès dans le respect et la mise en œuvre optimale des DH. Eh bien, de la même manière, au plan national, au sein de chaque Etat, les INDH doivent jouer leur rôle dans cette dynamique constructive, sans se borner à un strict contrôle juridique.

Au surplus, le bon sens recommande de reconnaître à chaque INDH une capacité **d'adaptation** des normes générales des DH aux multiples législations et situations nationales et locales. Bien entendu, il y a l'universalisme des DH proclamés dans la Déclaration de 1948: il est primordial. Mais il y a aussi la diversité des histoires, des systèmes politiques et juridiques et des cultures. Puisqu'on parle ici de "frontière", je dirais volontiers que chaque INDH est en quelque sorte placée à la frontière de l'universel et du national: elle doit promouvoir l'insertion des normes fondamentales des DH dans le tissu complexe des particularités nationales, en tenant compte de ces particularités; mais, bien sûr, sans trahir les exigences des principes de valeur universelle, surtout dans le domaine des droits civils et politiques dont la plupart doivent être considérés comme "indérogeables". Il est clair qu'aucune 'exception culturelle' ne saurait justifier, par exemple, la torture, les mutilations, les disparitions forcées, les exécutions sommaires, les condamnations prononcées sans possibilité de se défendre.

Mais les choses ne sont pas toujours aussi évidentes. En définitive, il me paraît donc nécessaire, et plus exactement inévitable, que l'action des INDH pour la promotion des DH ne se limite pas au cadre du seul "débat juridique". Bien qu'elles ne soient pas elles-mêmes des instances politiques, elles sont naturellement amenées à intervenir dans le champ des choix de société, qui est celui du "débat politique", au sens que j'ai précisé tout à l'heure. **Il est dans leur vocation de contribuer à ces choix, à ce débat,** en y apportant leur réflexion spécifique inspirée des exigences des DH. Selon les cas et situations, cette réflexion pourra être critique, voire même offensive, à l'égard de la législation et de l'action des pouvoirs publics; ou se présenter comme des encouragements et comme une pédagogie, en vue de la prise de conscience des améliorations nécessaires.

Cette conclusion, cette opinion, me semble pouvoir être soutenue en invoquant la nature originale des INDH; mais aussi en soulignant que ces institutions doivent elles-mêmes respecter leur vocation et les principes sur lesquels elles sont fondées.

- Je crois d'abord que si les INDH n'ont pas à se limiter au champ juridique, c'est parce qu'elles ne sont pas des instances juridiques. Elles n'ont pas été créées pour 'dire le droit', comme des juges. Elles ne sont pas des juges, même si, comme les juges, elles sont des institutions officielles, créées par les pouvoirs publics, et pourtant indépendantes des autorités politiques. Mais elles n'ont ni les pouvoirs, ni les compétences, ni les responsabilités des tribunaux: elles ne sont que des instances consultatives, dont les avis ne sont pas obligatoires pour les autorités politiques. Et c'est aussi pour cela qu'elles peuvent aller plus loin qu'un tribunal dans l'interprétation des textes et leurs 'déclinaisons' pratiques, et faire preuve d'une certaine créativité dans la recherche de la juste application des principes et valeurs des DH dans les législations et les autres actions des autorités publiques. Les INDH ont une fonction d'inspiration et d'orientation. Si elles ont un pouvoir, ce n'est qu'un pouvoir d'influence.

  La légitimité de ce pouvoir est fondée sur les Principes de Paris (consacrés par une Résolution de l'Assemblée générale des Nations Unies) et sur le statut national de chaque INDH. Cette légitimité est en quelque sorte fonctionnelle: les INDH sont - doivent être - compétentes (je dirais volontiers: professionnellement et déontolo-giquement compétentes) dans le domaine des DH. Elles sont réputées avoir cette compétence grâce à leur membres, s'ils sont judicieusement choisis. Et cette compétence, je l'ai dit, n'est pas exclusivement juridique, sans être non plus politique: elle est au carrefour de ces deux qualifications. Il est vrai que la prise de position d'une INDH sur telle ou telle question peut avoir, à un moment donné, un fort retentissement politique, s'il y a une vive discussion sur cette question dans le pays, si les médias ont mis cette position en vedette. Mais ce n'est par pour cela que l'intervention de l'INDH aura été illégitime.

- Cependant, pour conserver cette légitimité, les INDH doivent elles mêmes respecter les principes sur lesquels elles sont fondées.

- D'abord le principe de l'indépendance. Ce n'est pas seulement l'indépendance par rapport au Gouvernement, même si cette indépendance est essentielle. C'est aussi l'indépendance de l'institution à l'égard de toutes les forces politiques, de toutes les idéologies, ou religions. Une INDH ne doit pas être partisane, quelles que soient les appartenances de ses membres.

- Le principe du pluralisme, dans la composition d'une INDH, est aussi très impor-

tant pour asseoir sa légitimité. Les membres d'une INDH ne sont pas élus, comme les parlementaires; ils sont nommés par les pouvoirs publics. Mais si le principe du pluralisme est bien appliqué, si les membres choisis viennent d'horizons très divers de la société, l'INDH peut alors se prévaloir d'une certaine **représentativité** de la société civile, ce qui donne du poids à ses positions et, surtout, ce qui légitime plus solidement son intervention dans le champ des 'choix de société', au-delà du seul champ juridique. Je dirais même volontiers que le pluralisme est nécessaire pour animer de véritables débats internes au sein de chaque INDH, spécialement lorsque l'appréciation d'une situation au regard des DH est délicate, n'est pas évidente. Le consensus qui peut être obtenu au sein d'une INDH réellement pluraliste, après une large et peut-être vive discussion, est en principe le gage d'une juste appréciation, quel que puisse être son impact politique. C'est en tout cas l'expérience de la Commission française des DH.

Indépendance, compétence, pluralisme, ces caractéristiques sont donc indispens ables pour assurer la légitimité de l'institution, pour accréditer sa neutralité politique. L'essentiel est que, pour les autorités politiques comme pour l'opinion publique, une INDH soit toujours vue comme une institution dont les positions - quoi qu'on en pense - se fondent exclusivement sur la considération des principes et valeurs des DH.

- Enfin je voudrais ajouter, en terminant cet exposé, que si les INDH doivent agir et s'exprimer sans timidité, sans craindre de mécontenter éventuellement le pouvoir politique, et au besoin avec courage, elles doivent aussi savoir le faire avec **discernement;** c'est à dire en s'assurant d'abord que les situations considérées soulèvent effectivement des questions relatives aux respect des DH; (car si on peut estimer que toute question relevant des DH touche au domaine politique, comme je l'ai dit tout à l'heure, l'inverse n'est pas vrai: toute question politique ne met pas forcément en cause le respect des DH); en sachant distinguer ce qui est essentiel et ce qui est contingent, accessoire, ce qui rend une intervention indispensable et ce qui ne la mérite pas.

Car tout n'est pas au même niveau d'importance et de gravité dans le domaine des DH. Le contenu et le ton de l'intervention d'une INDH ne devraient pas être les mêmes selon qu'il s'agit de dénoncer une situation absolument inacceptable (la violation certaine et grave de droits fondamentaux, le maintien d'une législation manifestement non conforme à ces droits.) ou seulement de proposer des améliorations souhaitables. Une INDH doit d'efforcer de trouver le ton juste, parfois modéré, parfois offensif, pour exprimer sa position.

En conclusion, je pense que les INDH ne doivent pas avoir peur, dans leurs interven-

tions justifiées, de pénétrer sur le terrain du "débat politique", c'est à dire d'aller au-delà du strict contrôle juridique, car cela me paraît inévitable, en pratique, et tout à fait légitime, en raison de la nature et de la vocation particulière de nos institutions. Mais je crois aussi qu'elles ne doivent pas invoquer les DH à tout propos, sans discernement. Les DH ne fournissent pas de réponses à tous les problèmes et ne doivent pas envahir abusivement le champ du politique.

Key Note Speech

PROMOVIENDO LEGALMENTE EL COMBATE A LA DISCRIMINACIÓN RACIAL

Mr. José-Luis Soberanes-Fernández
President of the National Commision for Human Rights, México

En seguimiento a la Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y otras formas conexas de Intolerancia a la que convocó la Asamblea General de las Naciones Unidas y fuera celebrada en la ciudad de Durban, Sudáfrica, durante septiembre de 2001, conviene revisar las prácticas efectivas para la lucha contra estos terribles males.

Aunado a ello hace falta la revisión de la efectividad de las medidas acordadas en ésta y en las dos conferencias mundiales anteriores, e incluso revisar el planteamiento mismo del problema.

Incluso parece indispensable revisar las estrategias posibles que los organismos nacionales promotores y protectores de derechos humanos pueden poner en práctica como medios de lucha contra el racismo, entre los que destaco la utilización de los medios y el diálogo constructivo, así como las estrategias para mejorar las condiciones de las personas que pueden ser víctimas de la discriminación por motivos étnicos.

Las propuestas de las conferencias anteriores

Como señalamos antes, el problema de la discriminación racial ha sido objeto de la atención de las Naciones Unidas, de manera especial en los últimos años, en los que se han llevado a cabo las conferencias mundiales de Ginebra en 1978 y 1983 así como la de Durban en 2001, con otros antecedentes entre los que se cuentan la resolución 1997/74 del 18 de abril de 1997 de la Comisión de Derechos Humanos, la resolución 52/111 del 12 de septiembre de 1997 de la Asamblea General.

Resulta preocupante que la implementación práctica de medidas que den cumplimiento a los acuerdos celebrados en estas conferencias estén lejos de dar los resul-

tados deseados, pues, como dice la Declaración de Durban "pese a los esfuerzos de la comunidad internacional, no se han alcanzado los principales objetivos de los tres Decenios de Lucha contra el Racismo y la Discriminación Racial, que aún hoy, un sinfín de seres humanos siguen siendo víctimas del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia" (CapítuloI).

En la primera conferencia para Combatir el Racismo y la Discriminación Racial, de Ginebra en 1978, se afirmó que todas las formas de racismo, discriminación racial y el apartheid eran una afrenta a la conciencia y a la dignidad de la humanidad. Se acordó que toda doctrina de superioridad racial es científicamente falsa, moralmente condenable, socialmente injusta y peligrosa y no tiene ninguna justificación, puesto que el avance y progreso de la civilización, se debe a un esfuerzo conjunto de todos los pueblos y grupos humanos. Se estableció que todas las formas de discriminación basadas en la teoría de la superioridad, la exclusividad o el odio raciales, constituyen una violación a los derechos humanos fundamentales y amenazan las relaciones de ayuda, amistad, paz y seguridad entre las naciones.

En esta primera conferencia, se consideró al apartheid como la forma extrema del racismo institucionalizado, un crimen de lesa humanidad, una afrenta a la dignidad de la humanidad y una amenaza a la paz y seguridad en el mundo.

Asimismo, se recomendó que para ayudar a combatir el racismo, se deberían adoptar mecanismos que procuren mejorar las condiciones de vida de los hombres y de las mujeres, puesto que la discriminación racial constituye un factor que genera desigualdades económicas.
Si bien es cierto que en Sudáfrica se dio un vuelco histórico a la situación de apartheid, no es menos cierto que en otras partes del mundo han vuelto a aparecer situaciones semejantes o incluso otras que atentan contra la dignidad de los pueblos mediante expresiones y actos de limpieza étnica.

Asimismo han sido claramente insuficientes las medidas contra las desigualdades causadas por la discriminación, ya que estas se han venido polarizando.

La segunda Conferencia Mundial para combatir el Racismo y la Discriminación racial llevada a cabo en Ginebra en 1983 formuló medidas concretas para garantizar la aplicación de los instrumentos internacionales de derechos humanos tendentes a eliminar el racismo, la discriminación racial y el apartheid. En la Declaración allí aprobada se solicitó que se adoptasen medidas contra aquellas ideologías y prácticas que se fundamentaran en la exclusión racial o étnica o la intolerancia, el odio, el terror o la negación sistemática de los derechos y libertades fundamentales. Se tomó conciencia de la doble y hasta múltiple discriminación de que era víctima la mujer, se

hizo notar la necesidad de proteger los derechos de los refugiados, los inmigrantes los trabajadores migratorios; se acogió con agrado el establecimiento del grupo de Trabajo de las Naciones Unidas sobre las Poblaciones Indígenas.
Resulta claro que ha sido insuficiente la realización de estas medidas, quizá por la falta de concreción de las mismas o por la falta de un trabajo de implementación local de las mismas. Tan grave ha sido la situación, que los cambios históricos en diversas latitudes, han producido nuevas condiciones que han sido ocasión del crecimiento del racismo y la intolerancia en los años siguientes a esta conferencia.

Así pues, debido al aumento del número de incidentes de esta naturaleza la Asamblea General de las Naciones Unidas, en su resolución 52/111 del 12 de diciembre de 1997 decidió convocar una conferencia mundial contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia a más tardar en el año 2001.

Esta conferencia incluyó entre sus objetivos examinar los medios que mejor garanticen la aplicación de las normas existentes en la materia y formular recomendaciones concretas sobre la adopción de medidas prácticas para combatir el racimo y la discriminación racial, tales como la prevención, educación y protección.

Una de las contribuciones de esta conferencia fue la de incluir de manera explícita a diversos grupos humanos que pueden ser víctimas de la discriminación e intolerancia como las personas que viven con el VIH y el Sida, y las personas con diversa creencia religiosa. Haría falta un trabajo que identifique todos los grupos que viven esta injusta discriminación y aún no son abordados por estas conferencias internacionales, como las que son discriminadas en razón de su preferencia sexual o de su identidad genérica, preferencias políticas o ideológicas.

Entre las medidas que propone destacan la necesidad de revisar las condiciones políticas, económicas, culturales y sociales no equitativas que pueden engendrar y fomentar el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, que a su vez exacerban la desigualdad (76). Reafirma la importancia de la adhesión universal a la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación racial y su pleno cumplimiento (77), identifica como obstáculos para vencer la discriminación racial: la falta de voluntad política, la legislación deficiente y la falta de estrategias de aplicación y medidas concretas por los Estados (79). Destaca el papel fundamental que la educación, el desarrollo y la aplicación de las normas de derechos humanos internacionales, en particular la promulgación de leyes y estrategias políticas económicas y sociales, como fundamentales para combatir el racismo, la discriminación y las formas conexas de intolerancia (80).
La Conferencia dedica seis numerales al papel de los medios de comunicación (89-94) que bien pueden ser positivos al mostrar la diversidad, dar voz a las víctimas,

proporcionar información en al libertad; o negativos favoreciendo estereotipos o diseminando información que promueve el odio. Asimismo se reconoce la importancia de la educación a todos los niveles, comenzando por la familia como clave para modificar las actitudes y los comportamientos basados en el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia y para promover la tolerancia y el respeto de la diversidad en las sociedades (95).

Entre las medidas eficaces se destacan la necesidad de enseñar la historia de la humanidad mostrando las causas, naturaleza y consecuencias del racismo (98), la necesidad de pedir perdón por los actos del pasado y el pago de indemnización a las víctimas (99-104), incluyendo el acceso a la justicia para las víctimas. Los últimos números de la declaración hacen referencia a la necesidad de diseñar, promover y aplicar en el plano nacional, regional e internacional, estrategias, programas y políticas, así como legislación adecuada que puede incluir medidas especiales y positivas para promover un desarrollo social equitativo, incluyendo la cooperación internacional y el papel de las instituciones nacionales independientes de derechos humanos, e incluso se alienta a los Estados a crear dichas instituciones.

Es este el papel que ahora revisamos y lo hacemos en un contexto difícil para este tema, ya que muchos de los retos plateados no se han superado.
Más preocupante aún es el hecho de que en la escena mundial a la que asistimos, se presenten retrocesos en la materia así como retos inéditos.

Planteamiento del problema

Es particularmente preocupante la persistencia del problema de la discriminación racial en nuestros días. A pesar de los esfuerzos de los organismos internacionales y de las instituciones públicas de cada país encargadas de la promoción y defensa de los derechos humanos, pues el racismo permanece como elemento inocultable, en actitudes culturales, y visible, hasta en datos que se pueden comprobar por investigaciones empíricas de las ciencias sociales, en no pocos rasgos de la manera en que se distribuyen entre los miembros de una misma sociedad los satisfactores para una vida con calidad y en el acceso de ciertos grupos a posiciones de decisión sobre asuntos que les conciernen como miembros de los Estados a los que pertenecen. Indicadores como la tasa de morbilidad, acceso a la educación y a los servicios de salud, a los servicios públicos, e incluso la forma como se procura y administra la justicia, dan muestra de cómo, existen grupos étnicos con mayores beneficios que otros.
A esto hay que añadir la carencia de marcos oportunos que favorezcan la conservación de las culturas, las lenguas, los usos y las costumbres, y los demás rasgos propios de los pueblos.

Al tiempo que algunas regiones del mundo alcanzan mayor o menor grado de prosperidad, esta no es alcanzada por muchos, y en ocasiones esto ocurre en coincidencia con la pertenencia a un grupo racial o étnico determinado. Las más de las veces, el problema se agrava, sumándose a otras condiciones de vulnerabilidad, muchas veces inherentes a la condición humana, como el género o la discapacidad, y otras derivadas de la legítima libertad de las personas, como su preferencia religiosa o política.

En muchos casos los grupos étnicos minoritarios siguen padeciendo de formas sutiles y abiertas de discriminación y violencia. La garantía de que todas las personas, sin excepción de raza o pertenencia a un grupo étnico o cultural debe gozar de todos los derechos humanos fundamentales, no es una realidad en los hechos, choca a diario con numerosos patrones culturales racistas, xenofóbicos y excluyentes que impiden el ejercicio pleno de tales prerrogativas.

Es preocupante el nivel de estas violaciones en la población migrante, refugiada y desplazada en el mundo, que comporta una buena porción de la humanidad en nuestros días.

Aún así, existe propensión de muchas autoridades a negar o matizar los componentes del racismo. En América Latina, por ejemplo, "existe un afán de ocultar, tergiversar o encubrir la existencia del racismo y la discriminación racial" (Dulitzky, Ariel E, 2001)

Entre las más destacadas razones por las que el racismo persiste como una realidad en nuestro tiempo, tras tres décadas de lucha internacional en su contra, podemos mencionar, sumada a la de la negación del fenómeno en diversos lugares: las carencias en los marcos normativos. Las dificultades en la aplicación de la misma norma, donde es vigente; la carencia de una cultura de la tolerancia y de la visualización del valor de la diversidad humana, y los nuevos retos a partir de la crisis mundial vigente desde el 11 de septiembre de 2001, derivados de la sensación de una especie de situación de excepción, donde las medidas racistas se justificarían por razones de seguridad nacional.

Diálogo constructivo y estrategias para mejorar en este aspecto

Entre las medidas a tomar por parte de los organismos defensores de los derechos humanos, se encuentran las de promoción y prevención. Las propuestas de acciones legislativas y de medidas de políticas públicas para proteger a las personas de estas formas de discriminación, constituyen la parte positiva y propositiva de esta acción.

Como organismos defensores y promotores de la vigencia de los derechos humanos,

no debemos limitar nuestra actuación a conocer e investigar las violaciones a esos derechos y a orientar a las víctimas de las mismas, sino que por nuestra naturaleza, debemos buscar la prevención de las violaciones y la identificación y modificación de las prácticas administrativas y de gobierno que constituyan un peligro para la vigencia de los derechos humanos.

En México, por ejemplo, tras un largo debate en el país, se ha llevado a reforma constitucional una serie de disposiciones legales que conciernen a la materia indígena con la finalidad de incorporar plenamente a los pueblos originarios a la vida nacional, con respeto a su cultura, usos y costumbres. Asimismo la Comisión Nacional de los Derechos Humanos de este país, ha venido planteando la pertinencia de analizar distintos ordenamientos legislativos de carácter secundario que se considera necesario modificar, como la Ley General de Educación, con el fin de establecer educación bilingüe e intercultural, por ejemplo; La Ley General de Salud, para que se reconozca la práctica de la medicina tradicional para fines curativos y rituales; la Ley de Planeación, para que los gobiernos federales, estatales y municipales incluyan esquemas que definan la participación de los indígenas en la planeación del desarrollo, y la Ley de Coordinación fiscal, para que se incluya un rubro especial que fortalezca a los pueblos y comunidades indígenas. De la misma manera se propone revisar la Ley de caza y Pesca, para que se reconozca el derecho de los pueblos indígenas a proveerse de sustento por medio de estas actividades; la Ley Federal sobre Monumentos y Zonas Arqueológicos, Artísticos e Históricos, para que se agregue también como materia de tutela, los sitios sagrados de los indígenas; la Ley Federal de Defensoría Pública, para que se contemple la creación de una unidad de Defensores Públicos Bilingües en los juicios del orden federal, y otras similares a nivel estatal.

De la misma manera se procura la realización de distintas campañas en conjunto con autoridades y la sociedad civil para promover el respeto a la diversidad, pues estamos convencidos de que el cambio decisivo es de carácter cultural, de las actitudes de las personas en su convivencia con los otros.

En este mismo orden de ideas, no cejamos en el esfuerzo por promover más y mejores contenidos de derechos humanos en el ámbito educativo. Los cambios perdurables en la vida de los pueblos pasan necesariamente por los espacios e instituciones educativas y los derechos humanos en general, y el respeto a la diversidad humana y la no-discriminación, son remedios efectivos contra el racismo.

Por otro lado, una vez que los actos de discriminación han sido consumados, estos hechos no pueden quedar impunes, sobre todo hoy día en que un buen número de los países han incorporado (como recién lo hizo México en agosto de 2001) en sus marcos constitucionales y en sus ordenamientos legales de menor jerarquía, prohibi-

ciones expresas a la discriminación racial y de otros tipos de distinciones, muchas veces incluso con penalización a esas conductas.

Es en este orden de ideas que se hace precisa la defensa de las personas y comunidades para que no sean objeto de intolerancia y discriminación en razón de su pertenencia a un grupo étnico, racial o cultural. En estos casos, las visitadurías y demás órganos de investigación de las instituciones nacionales de derechos humanos cumplen un papel fundamental en la averiguación de la presunta violación al derecho humano de la no-discriminación. Esta investigación puede llegar, no sin obstáculos, entre otras cosas debido a la dificultad de acopiar elementos probatorios de discriminación, a derivar en una recomendación a las autoridades para el resarcimiento del derecho violado, el castigo de los responsables y la implementación de mediadas que prevengan estos hechos en el futuro.

Un hecho que por desgracia no es excepcional es la conducta misiva y evasiva que pueden presentar algunas autoridades, que aceptan formalmente las Recomendaciones de los organismos públicos de defensa de los derechos humanos pero que no cumplen con el compromiso de iniciar los procedimientos administrativos de sanción o las denuncias penales que les correspondería hacer.

Este problema se manifiesta igualmente en el recelo de algunas autoridades para rendir informes, aceptar medidas precautorias, aportar pruebas, acudir a reuniones conciliatorias y en general, en obstaculizar, en ocasiones de manera clara y en otras solapada, el trámite de las quejas de parte del organismo público protector.

Ante el rechazo o escasa disposición de algunos funcionarios públicos para escuchar los argumentos de las instituciones públicas promotoras y protectoras de derechos humanos, se hace necesario el recurso a la comunicación directa con la sociedad y sus organizaciones, ejerciendo incluso la denuncia pública e informando a los medios de comunicación social sobre las resoluciones a las que se ha llegado, tras analizar e investigar las quejas presentadas.

Otras soluciones prácticas

Entre las diversas medidas de promoción de una cultura de la tolerancia y la no-discriminación, preventiva del racismo está el uso de los medios de comunicación para resaltar las prácticas positivas y negativas, destacando la convivencia posible entre los diversos y la gravedad de las actitudes racistas.

Una estrategia más es la visualización de la diversidad y las diversidades en los productos culturales, como son las artes, y su difusión en los medios de comunicación.

La promoción de una cultura de la tolerancia y de la no-discriminación no es suficiente si los marcos normativos no garantizan el derecho a la no-discriminación. Esta perspectiva ha de estar presente en todo el cuerpo jurídico de cada país, por lo que ha de garantizarse el derecho a la no-discriminación en las leyes fundamentales de los Estados y han de revisarse las distintas leyes para que esta disposición se respete y se castigue su incumplimiento.

En este sentido, la penalización de la discriminación se convierte en el instrumento por medio del cual el derecho a la no-discriminación se hace exigible y ataja las dificultades y la lentitud propia de un cambio propiamente cultural, dando una protección efectiva a los grupos vulnerables a la discriminación, De la misma forma, es preciso promover la denuncia de los hechos violatorios de este derecho y realizar, mediante el seguimiento un efectivo combate a la impunidad en la materia. Estas mismas acciones son necesarias en materia de crímenes de odio, que son la forma más exacerbada de la intolerancia y el odio por razones de discriminación.

Con la finalidad de promover un desarrollo equitativo y combatir las condiciones de desigualdad, se ha de favorecer el desarrollo de programas compensatorios temporales de acción afirmativa para las personas que están en condiciones de vulnerabilidad al racismo, la discriminación racial, xenofobia y otras formas conexas de intolerancia.

Esperamos que estas anotaciones, unas tantas más prácticas de la defensa de la población expuesta al racismo, la discriminación racial, la xenofobia y otras formas conexas de intolerancia, puedan ser útiles para la implementación de programas que las instituciones nacionales de derechos humanos puedan realizar como concreción de las directrices de las conferencias internacionales en la materia.

Key Note Speech

REMEDIES: THE RELATIONSHIP BETWEEN NATIONAL HUMAN RIGHTS INSTITUTIONS AND OTHER STATUTORY INSTITUTIONS/MECHANISMS, WITH SPECIAL REFERENCE TO RACIAL DISCRIMINATION

Mr. Emile Francis Short
Commissioner, Commission on Human Rights and Administrative Justice, Ghana

Chairperson, the Director General of The Danish Centre for Human Rights, Distinguished Ladies and Gentlemen, I feel honoured and wish to express my appreciation to the organizers of this Conference for inviting me to give a keynote address. Let me congratulate the organizers for choosing for me such an important, but very much neglected, topic: Remedies - The Relationship Between National Human Rights Institutions And Other Statutory Institutions/Mechanisms, With Special Reference To Racial Discrimination.

Previous conferences and workshops have tended to focus more on adequate powers, investigative techniques, and competence of National Human Rights Institutions (NHRIs) but rarely on the nature and scope of remedies. This is an important subject because there has always been a conflict between what NHRIs can do by way of remedies and what the public expects.

My presentation will examine the nature, purpose and powers of NHRIs, the relationship between NHRIs and other institutions like the Judiciary, the Police and Regional and International Bodies. I will then discuss the nature and scope of remedies that NHRIs may grant for human rights violations, with particular reference to racial discrimination.

The Nature, Purpose and Powers of NHRI – The Legal Framework

The United Nations has consistently encouraged member states to establish national human rights institutions to ensure the effective realisation of human rights. The World Conference on Human Rights in Vienna in 1993 also emphasized the important role that national institutions could play in the promotion and protection of human rights.

Most national human rights institutions have several functions. One of their core functions is to promote public awareness of human rights by informing people about their rights and responsibilities, by trying to shape values and change public behaviour and attitudes towards discriminatory practices and other human rights violations.

More significantly, they have an important role in providing remedies for violations of fundamental human rights. The investigation and resolution of complaints is an important core function of the majority of NHRIs. The effective performance of these roles require that NHRIs must not only have an efficient, fair and expeditious individual complaints processing mechanism but also the capacity to provide remedies for victims of human rights abuses. For most victims of human rights violations, an overriding concern is the availability of remedies from NHRIs for human rights violations. The credibility and public legitimacy of complaints handling NHRIs hinge to a large extent on their ability to be responsive to this particular need of their clientele.

NHRIs use a number of different methods to resolve human rights complaints. They range from early resolution without prior investigations, field, documentary or telephone investigations, mediation, and, in appropriate cases, the conduct of public hearings to determine the merits of a complaint. In some national institutions, their enabling legislation permits them to use all these complaints-handling methods in an individual case, even where the particular case was investigated on the Commission's own initiative. In some cases, the national institution may also have power to institute an action in court to enforce its decisions.

The use by a Commission of these diverse complaints handling methods, coupled with the power in some cases to institute an action in court to enforce its decisions, raise serious issues about the observance of the rules of natural justice in relation to the person or institution being investigated. The use by NHRIs of these different forms of conflict resolution strategies have led to the criticism that NHRIs sometimes act as investigators, prosecutors, and judges in the same case. This objection is not adequately met with the explanation that as a matter of internal administrative arrangement, the same officials who investigate a case, or take part in mediation, do not take part in the adjudicatory process.

It is for this reason that in some jurisdictions like British Columbia in Canada and Australia, special human rights tribunals or courts have been established to adjudicate human rights complaints that are normally referred to them by human rights commissions, whose mandate is then restricted to preliminary investigation of such complaints, and to such other activities as public education and mediation and approval of employment, equity programmes. Other jurisdictions in Canada like Alberta, Quebec, Ontario and Nova Scotia vest the power in a Minister to appoint Boards of Inquiry to adjudicate human rights cases.

The Concept of Remedies

One of the most fundamental defining characteristics of statutory national human rights institutions is the power to make, or at least recommend, remedies for human rights violations. The purpose of human rights law is remedial, not punitive. As is widely appreciated, the contemporary human rights movement is underpinned by a strong anti-discrimination ethos resulting from the world community's revulsion against the atrocities of the Nazi holocaust, which culminated in the birth of the Universal Declaration of Human Rights. The object is to protect and promote respect for the dignity of the human being, and to secure the conditions that protect our ability to satisfy our basic needs in dignity and respect. The universally accepted standard for proving discrimination is the *civil standard* of the preponderance of the probabilities, rather than the stringent *criminal standard* of proof beyond reasonable doubt. Since the legislation is remedial in focus, the import of this standard or qualification is that it is unfair to require the victim of discrimination to prove intention, an obviously onerous burden that dwindles the possibility of successful discrimination claims by individual victims. For example, the history of rights claims in Canada and the United States is a history of initial colossal failures on the platform of the criminal standard and recent reasonable successes on the platform of the civil standard.

Thus, concerning racial discrimination, for instance, human rights legislation seeks to restore victims to the position they would have been in had the discrimination not taken place. To succeed, the victim must only prove on a balance of probabilities that his/her race was a factor in the impugned conduct; there is no obligation to establish that the respondent intended to visit the consequences of that conduct on him/her, or that the victim's race was the sole, or even the most significant, factor in that treatment. It is sufficient to establish that the impugned conduct occurred and that it was contrary to existing human rights law that prohibits discrimination on the ground of race. The victim may make a further claim of injury to his/her dignity or self-respect as a result of the discrimination, but this is only additional to the main complaint of discrimination: It is a long-established principle that the violation of a human right *in itself* warrants remedy. The award of remedies for injury will depend on the facts of each case, on the extent of *actual* or demonstrated injury suffered, and on the nature of mitigation pursued. As the means employed to enforce a right or redress an injury, remedy may thus be distinguished from right, which is a well-founded or acknowledged claim.

In a broad sense, then, the concept of remedies in the human rights context implies a search for social justice and, wherever possible, the restoration of pacific relations between parties. It aims at righting wrongs. It is grounded in the respected idea that the violation of a human right inherently deserves compensation. Remedy then re-

fers to the means by which a right is enforced or the violation of a right is prevented, redressed or compensated.

NHRIs and Other Institutions and Mechanisms

The efficacy of national human rights commissions in the provision of remedies for human rights abuses can be best assessed in terms of how they interact with the courts, the Ombudsman, where it exists, regional and international human rights mechanisms, government departments, the police and civil society. It is imperative that NHRIs develop links with these bodies to respond effectively to the needs of the public.

The Judiciary

An independent judiciary has an important role in the protection of human rights in society. The courts have the responsibility of translating human rights law into practice. It enforces and interprets the bill of rights found in constitutions of most democratic societies governed by constitutionalism and the rule of law. The interpretation of the constitution, especially its human rights provisions, and the law in general by the judiciary has a profound effect on the rights and remedies available to victims of human rights violations. The importance of this role is demonstrated by the fact that the under the South Africa apartheid regime, judges turned a blind eye to flagrant violations of the fundamental rights of the majority of South African blacks. The judiciary was used as an instrument of oppression and contributed to the institutionalization of racism in South Africa.

It is also now well recognized that it is a proper part of the judicial function for national courts to have regard to obligations undertaken by a country under international conventions they have ratified. For example, some courts in India have even gone further to hold that even where the state has not ratified a n international treaty or convention, national courts may refer to international conventions in interpreting national laws, especially in cases of doubt.

In most jurisdictions, both the courts and NHRIs share a common responsibility of providing redress for human rights complaints. Victims of human rights violations may elect which forum they want to approach. A complainant whose complaint is dismissed by an NHRI may institute an action in court on the same facts if the action is not statute barred. The decisions of NHRIs do not operate as estoppels in another action taken in court based on the same facts because NHRIs are not courts.

On the other hand, NHRIs are generally precluded by their founding legislation from entertaining a complaint, which is either pending before the court or has already

been determined by a court. What seems to be unclear is whether a party before a NHRI can withdraw his or her complaint and institute a fresh action in court, especially at the eleventh hour when the party anticipates an unfavourable decision by the NHRI. In such circumstances, should the courts assume jurisdiction or should they stay the proceedings in court until the matter before the Commission is finally disposed of?

The courts decide complaints of human rights violations primarily by adjudication, even though some courts, such as those in Ghana, are empowered to encourage parties to use such non-litigatory methods as mediation and conciliation to resolve their disputes. The courts are, for a variety of reasons, either inaccessible or unattractive to a wide segment of society, especially those from the lower income bracket or vulnerable groups.

NHRIs serve as a more attractive forum for the resolution of conflict because their services are virtually free, procedures are less formal and cases are, or should be, disposed of in a more expeditious manner. The rules of evidence applicable in courts are not applied rigidly in NHRIs. Human rights institutions, like all administrative tribunals, are masters of their own procedure and their overriding consideration is the observance of the rules of natural justice or procedural fairness.

Moreover, the frequent use by NHRIs of alternative dispute resolution methods such as mediation and conciliation, which have various advantages over the adversarial approach used by the courts, makes a NHRI a more attractive forum for many victims of human rights violations. This process tends to be faster, cheaper, and very often result in a win/win situation for both parties, thereby preserving valuable relationships. It is however important that NHRIs do not mediate or conciliate serious human rights violations such as killing, torture, disappearances, domestic abuse and racial discrimination accompanied by violence. The perpetrators of such acts should be made to face the full rigours of the law, including criminal prosecution, where necessary.

It is equally important to appreciate that NHRIs are not courts; nor are they substitutes for courts. NHRIs are and should be seen as complementary to the courts and every effort should be made to promote the complementarity of the two institutions and avoid any conflict of jurisdiction. NHRIs should work to create a harmonious relationship with the courts. This means, for example, that NHRI should not handle cases pending before the courts and should not usurp the functions of the court without express constitutional or statutory authority. The courts guard jealously their independence and jurisdiction.

NHRIs should not lose sight of the fact that they are more akin to administrative tri-

bunals even though most NHRIs have quasi-judicial powers such as the power to compel attendance of witnesses, to provide information relevant to a matter under investigation, and to compel production of documents.

NHRIs and the Police

It is important to recognise that certain human rights violations may also constitute a criminal offence. NHRIs have been criticized for losing sight of this fact by mediating such human rights violations without referring the criminal conduct to the police for the necessary prosecution. Examples are torture, police brutality, domestic violence, sexual harassment accompanied by rape, etc. NHRIs should not be content with handling the human rights dimension of such cases without referring the criminal aspect to the police for appropriate prosecution. Such an approach tends to encourage impunity for the perpetrators and blurs the distinction between civil and criminal remedies for human rights violations.

NHRIs should develop a close working relationship with the Police to ensure referral of criminal human rights cases by NHRIs to the Police and referral by the Police of civil human rights violations to NHRIs. A good example of cooperation between a NHRI and the police is in Ghana where the Ghana Commission on Human Rights and Administrative Justice has forged a working relationship the Women and Juvenile Unit (WAJU) of the police. The Unit was set up to deal primarily with the increasing wave of domestic violence against women and children. The Commission has referred complaints of rape, defilement, and wife battery to the Unit and has participated in training programmes organized for the staff to sensitize them on human rights issues and appropriate skills in dealing with victims of domestic violence.

Recently, the Unit referred to the Commission the complaint of a young girl who had been brought from her village to the city of Accra to serve as a domestic help to a female High Court Judge. She worked for the Judge for 11 years without being paid any salary. To add insult to injury, the Judge dismissed her with a paltry sum of the equivalent of U$70 because she was compelled to pay for the medical expenses of a fibroid operation the complainant had to undergo.

NHRIs and the Ombudsman

Where a human rights complaint is made against a public agency, it may fall within the mandate of an NHRI or an Ombudsman. In jurisdictions where NHRIs co-exist with the Ombudsman, it is necessary for both agencies to maintain effective collaboration and for one agency to refer complaints to the other based on guidelines they

have developed for determining which agency will handle what type of cases. For example, it is appropriate that complaints lodged with the Ombudsman against governmental officials or agencies alleging discrimination based on one of the well recognized prohibited grounds such as race, ethnic origin, gender, age, sexual orientation should be referred to the human rights commission because of the latter's expertise in matters of anti-discrimination law and also because a number of NHRIs, unlike the Ombudsman, apply international standards of human rights as the explicit or implicit basis of their work. In such matters, NHRIs are in a much better position to handle and grant more effective remedies. Examples of such cases would include a situation where a female employee of a government agency is dismissed without adherence to the rules of natural justice because of her refusal to respond favourably to the sexual demands of her employer, or where an employee in a government agency is subject to a regime of racial insults or discriminatory practices.

NHRIs and Regional & International Human Rights Mechanisms

NHRIs should maintain links with regional and international human rights mechanisms and promote awareness of their enforcement mechanisms and the procedure for accessing their remedies. Within the United Nations system, there are three bodies competent to receive, in a quasi-judicial manner, communications from individuals who claim to have suffered human rights violations. These are the Human Rights Committee, under the Optional Protocol to the International Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination (CERD), under article 14 of the Convention, and the Committee against Torture under article 22 of the Convention.

The regional bodies are the African Commission on Human and Peoples Rights, the European Court of Human Rights, the Inter-American Commission and the Inter-American Court of Human Rights. An African Court of Human and Peoples Rights will soon be established to supplement the Commission, after the requisite number of fifteen member states have ratified the Protocol.

Most regional mechanisms and treaty bodies require a complainant to exhaust domestic remedies before he or she can file a complaint, save in exceptional circumstances. In addition, the expense involved in accessing these bodies put them out of reach of many aggrieved complainants.

There is no doubt that national human rights institutions and the domestic courts are the most effective means of providing remedies for victims of human rights abuses. It is therefore desirable or preferable for NHRIs to be given a broad mandate, which includes international standards, and national courts are encouraged and sensitized

about the importance of domestic application of international human rights norms in arriving at their decisions.

The role of NHRIs in Enforcing Remedies

Links with the Judiciary

The credibility and public legitimacy of a NHRI is enhanced where the enabling statute empowers it to go to court to seek a remedy for a human rights violation and/or to bring an action in court to enforce its recommendations.

All NHRIs use negotiations, mediation, investigations and public hearings to resolve complaints. The majority of NHRI cannot make binding orders after their investigations or after conducting public hearings. Their decisions are generally in the form of recommendations. There are exceptions - notably the Uganda Human Rights Commission which can make binding orders like imposing a fine, ordering the release of a person unlawfully detained, while allowing the unsuccessful party to appeal to the High Court against the Commission's decision.

The most NHRIs are not empowered to enforce their recommendations and have to depend on the moral force of their decisions based on the Commission's credibility in society or negative publicity or the embarrassment caused to the unsuccessful respondent by its failure or unwillingness to comply with the Commission's recommendation. This methodology is similar to that of the classical Ombudsman who relies for compliance with its recommendations on the integrity of the office, embarrassment of the recalcitrant respondent and possible intervention by Parliament.

On the other hand, some NHRIs are empowered to enforce their recommendations by court process. Others, who do not have this specific power, are nevertheless permitted to institute proceedings in court. An example of the latter position is the South African Human Rights Commission, which is not empowered to make binding orders, nor is granted power expressly to institute proceedings in court to enforce its recommendations but "may bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons." In the landmark case of *The Government of the Republic of South Africa v. Irene Groortboom & others,* the South African Human Rights Commission applied and was admitted as a friend of court (amicus curiae) in a case involving 510 children and 390 adults who were rendered homeless as a result of their eviction from their informal homes situated on private land earmarked for formal low-cost housing. They had applied to the High Court for an order requiring the government to provide them with adequate basic shelter or housing until they obtained permanent accommodation. The application against the Government was granted.

NHRIs should be able to appear in courts as a friend of the court in human rights cases, including racial discrimination.

An example of a NHRI that has wide access to the courts is the Ghana Human Rights Commission. Article 229 of the Ghana Constitution provides that: 'for the purposes of performing his functions under this Constitution and any other law, the Commissioner may bring an action before any court in Ghana and may seek any remedy which may be available from that court.'

More specifically, Section 18(2) of the Commission on Human and Administrative Justice Act, 1993, (Act 456) empowers the Commissioner to 'bring an action before any court and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission,' if after three months the recommendations have not been implemented. A similar provision can be found in the Tanzania Commission on Human Rights and Good Governance Act, 2001.

In considering this enforcement provision, the Ghana Court of Appeal in the case of *The Commissioner of CHRAJ v. The Ghana Commercial Bank*, Suit No. CA/165/2000 dated 20th December 2001, stated that: 'In my view, the High Court had no jurisdiction to usurp the functions of CHRAJ or to re-open the matter de novo. Its duty in relation to the originating Notice of Motion was simply to grant an Order compelling the Respondent herein to implement the decision of the Commission unless it was clearly in breach of the principles of natural justice or otherwise unjustified in law and/or in fact.'

Enforcing Remedies for Racial Discrimination

Around the world, national human rights institutions and special human rights bodies have granted a wide variety of remedies in racial discrimination cases depending on the governing legislative scheme, relevant human rights jurisprudence and the facts and circumstances of each case. NHRIs can grant more affirmative remedies to deal with complaints like racial discrimination.

Among the list of remedies are the following:

- Payment of monetary compensation to victims of human rights violations
- Compensation for injured feelings (humiliation, loss of dignity, self-respect/self-esteem)
- Compensation for lost wages
- Compensation for lost benefits such as sick leave
- Oral or written apology from the responsible person, organization or authority

- Provision of goods or services which were denied
- Provision of a job or promotion which was denied
- Removal of negative performance appraisals from the employer's file
- Provision of letter of reference
- Provision of severance pay
- Provision of retirement allowance and/or pension package
- Payment of legal costs and other legitimate expenses incurred by the claimant as a result of the discriminatory treatment (e.g. travelling and child-care expenses incidental to the
- Payment for personal or career counselling
- Development and implementation of workplace anti-discrimination policy
- recommendations for institutional reform or training programmes to be undertaken by an employer in a particular field like gender equality or harassment at the workplace,
- a cease and desist order.

The following two cases from Canada, which deal with racial discrimination, are instructive. In *Julius H E Uzoaba V Correctional Services of Canada* 1996 26 C.H.R.R D/ 361, JU came from Nigeria in 1966. He was employed as a Classification Officer for the Correctional Services, working with in-mates to assess them for programs, parole or release. His work performance evaluation contained negative comments from in-mates, which were racially motivated; and even from in-mates who had never met him. He then received anonymous, racially profane calls. He reported them but no investigations were conducted. As a result of a petition from in-mates complaining about him, he was asked to sign an agreement that he would not work with inmates again.

He took 2 years study leave to complete a doctorate and was told on his return that there was no suitable position available at his level, as he could not work with inmates.

The Canadian Human Rights Tribunal found that he was discriminated against because of his race; that the respondents failed in their duty to mitigate the effects of racial harassment; and that if efforts had been made suitable alternative employment could have been found for him.

The Tribunal ordered the Respondent to provide an apology within 30 days of the decision, to offer him a position at an appropriate level without in-mate contact at the first reasonable opportunity; to provide him with sufficient training in current practices and procedures to enable him to fulfil his responsibilities of his new posi-

tion; to pay the complainant three years of lost wages and that the agreement be removed from his file. The Tribunal also ordered the Respondent to pay the Complainant $5000 to pay him compensation for injury to feelings and self-respect and interest on all the amounts awarded.

In *Mike Naraine v. Ford Motor Company ltd and others* (1997 28 C.H.R.R D/267) The Ontario Board of Inquiry had to consider the appropriate remedy following a finding of racial harassment in the working environment and also a finding that the decision to discipline the complainant was discriminatory. It found that the Respondent's decision to discipline the Complainant in two previous cases was justified and that the relations between MN and some union representatives, and his co-workers was severely damaged at the time of the dismissal. Nevertheless, it held that reinstatement was the only remedy which would properly serve as restitution to MN, and most likely to restore him to the position he would have enjoyed had the contravention not occurred.

It also held that it was essential for the Respondent to take steps to ensure that the complainant's reintegration into the workforce is successful. Therefore, the Board ordered the Respondent to provide appropriate retraining and employment assistance counseling. The Board encouraged the Respondent to develop policies to discourage racist graffiti, name-calling, and harassment within its plants, to develop an effective procedure to handle future race complaints, and to provide anti-racism education for its entire workforce.

The Board also ordered the Respondent to pay MN compensation for income and benefits which he would have been entitled to from the time of his dismissal to the time he found alternative employment, to expunge from the record all but the two disciplinary penalties found justified, and to pay general damages for infringement of his rights.

Although allegations of racial (including tribal) discrimination are occasionally reported in the Ghanaian media, the Commission has not, to date, received any complaint of racial discrimination[1]. Such allegations are rather rare, and are typically levelled against European, Indian, Chinese and Malaysian expatriate employers by Ghanaians employees. The bulk of them concern alleged violations of dignity - primarily subjection to cruel, unusual or degrading treatment or punishment. It follows that the Commission has not 'tested' the reaction of the Ghanaian courts to a racial discrimination complaint.

Perhaps, the brightest clue to the potential response of the courts to the Commission's

decision in a racial discrimination case may be gauged from the decision of the High Court in *The Commission on Human Rights and Administrative Justice v. Prof. Frank Norvor*, a case in which the Commission sought to enforce its maiden sex discrimination (sexual harassment) complaint investigated in 1999. The court rejected the defendant's submissions that:

a. The Commission lacks jurisdiction to investigate a sexual harassment complaint, and, therefore, acted *ultra vires* when it investigated the complaint of a 22-year flight attendant, who alleged that her boss and owner of Fan Airway Ltd., a private airline, had subjected her to a long series of unsolicited sexually-flavoured compliments, a severe regime of humiliating demands for sexual intercourse, and verbal abuse, intimidation and dismissal for failing to acquiesce to the demands;

b. The impugned conduct did not constitute sexual harassment;

c. Sexual harassment is not a form of discrimination;

d. Sexual harassment is not a prohibited grounded of discrimination in Ghana because the term is not found in Chapter 5 of the Constitution (1992), which deals with the fundamental human rights, or indeed in any part of the Constitution, or in any other law.

In its written decision rendered in January this year, the court upheld all the submissions of the Commission asserting claims directly opposite those of the defendant. The court also ordered the defendant to comply with the Commission's order to pay to the Complainant monetary compensation for the humiliation she suffered, and the injury to her dignity and self-esteem occasioned by the sexual harassment. He was also ordered to pay her compensation for lost wages and travel expenses, among others.

The courts in established democracies routinely defer to the technical investigative and adjudicative expertise of national human rights institutions as specialized quasi-judicial bodies. It is reasonable to anticipate that the courts in Ghana will defer to the specialized expertise and competence of the Commission in deciding human rights and administrative justice complaints, while retaining jurisdiction to review decisions of the Commission on strict questions of law. This, in turn, should serve to enhance public confidence in the Commission and to reduce the heavy caseload on the courts. The cumulative effect of such a dynamic relationship would be to make justice more accessible, and to ensure a more expeditious delivery system in the area of human rights complaints.

Conclusion

There are no universally accepted rules on the remedies NHRIs can provide. Much depends on the legislative text, and where the legislation is silent, on the institution's interpretation of the legislation, subject to guidance from the courts. However, the credibility and effectiveness of a NHRI is seriously undermined if its complaints mechanism cannot provide effective and speedy remedies.

It is vital that NHRIs foster partnerships and collaboration among other statutory complaints mechanisms such as the courts, the police and the Ombudsman to provide effective and speedy remedies for human rights violations. Co-operation among these agencies in their common effort to resolve conflicts will increase their collective clout to enhance their probability of success in protecting human dignity and freedom of the individual and providing a peaceful atmosphere for democracy and freedom to thrive.

[1] The Commission has also not investigated on its own motion any racial discrimination cases. In two of the cases, the Government deported the expatriate employers as a result of public outcry at their "reprehensible behaviour", thereby precluding the possibility of a complaint. The Commission has, however, undertaken a number of promotional activities designed to raise public awareness of the evils of racism, racial discrimination, xenophobia and related intolerance.

Key Note Speech

MONITORING PRACTICE: DOCUMENTATION OF RACIAL DISCRIMINATION

Ms. Michelle Falardeau-Ramsay
Chief Commissioner of the Human Rights Commission, Canada

Dear Friends and colleagues.
It is an honour for me to have been asked to participate in this conference and deliver a presentation on documentation of racial discrimination.
This is in fact a very topical issue for two reasons: the first one being - as you well know - that participants of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) recognised the important role of national human rights institutions in providing effective and appropriate protection and remedies to victims of human rights violations resulting from racism.

The second reason is because this is an issue that has been of considerable interest and growing concern for the Canadian Human Rights Commission for the past 20 years. In fact, the theme 'documentation of racial discrimination' potentially contains two separate - albeit related - aspects. The first relates to the processing of race-based complaints, including the investigation process and evidence gathering. The second aspect of this theme relates to other means than complaints to document instance of racial discrimination. This is a very difficult issue and I will use mostly my experiences at the Canadian Human Rights Commission as a basis for my comments. But before going in to the core of the subject, let me first establish what I refer to when I speak of racial discrimination.

The first, and easiest instances of discrimination exist when there is direct evidence of discrimination, what we call 'overt' discrimination. Generally, in Canada those cases are seldom encountered. An employer would not give as a reason to refuse to employ an individual the colour of his skin. But such cases still do occur. Early in 2002, the Canadian Human Rights Tribunal issued a decision in a case (Zundel) that involved an Internet web site exposing Jews to hatred. In it's ruling, the Tribunal concluded that the site created condition allowing hatred to flourish, and ordered

the removal from the site of the offensive material. It went on to note that '…the benefit (of its ruling) continues to outweigh any deleterious effects on (Mr Zundel's) freedom of expression'. This was a fairly straightforward case, given the blatant racially discriminatory behaviour of Mr. Zundel.

Canada has the reputation of a place where people from every corner of the world can live in harmony, enjoying mutual respect. It is a pluralistic society that values multiculturalism and encourage diversity.
The events that unfolded after September 11th are extraordinary examples of direct discrimination. There were attacks against Canadians of Arab origin, Muslims and others. Places of worship - Muslim, Jewish, Hindu and Sikh - were defaced and, in one instance burned to the ground. People on the street were subjected to racist taunts because of the way they dressed, looked or sounded.
However, this overt or direct discrimination was in reaction to exceptionally tragic events. Usually, racial discrimination in Canada is not expressed in such explicit and violent ways. On the contrary, it is insidious, indirect, what we call 'covert discrimination'. For example, an employer will refuse employment to a member of a visible minority group on the ground of personal suitability, i.e. the person does not mesh well with the current group of employees. In any event, racism is almost always not intentional or even conscious. It finds its source in deeply ingrained prejudices that are not even recognised as such by those who hold them.

This leads me to the third type of racial discrimination, systemic discrimination. Our Supreme Court has determined that systemic discrimination occurs when the application of a rule or a standard that is apparently neutral results in a disadvantage for a specific group of people. Let me give you an example. There was at on time in Canada a rule to the effect that police officers has to be of a certain height. Even if neutral in appearance, this standard put members of some communities, for example Asians or Philippinos at a disadvantage because they were generally shorter than the average white individual.

Having defined what is meant by racial discrimination, and in order to allow for a better understanding of my comments, I will briefly explain the CHRC process in dealing with complaints. When a complaint is filed with the Commission and is not settled at mediation, it is assigned to an investigator who will gather the evidence and prepare a report. This report, along with the representations of the parties is presented to the Commission for decision. If the commissioners come to the conclusions that the facts as reported presents a prima facie case of discrimination, that further investigation into the case is warranted and that the public interest would be served, the complaint is sent to the Human Rights Tribunal and from there may eventually proceed to the Courts.

So, given the facts that in the vast majority of complaints, racial discrimination is indirect and in many cases present systemic issues, the investigation must be very thorough. Investigators should gather as many detailed facts as they can through in-depth interviews with various witnesses. They should also give particular attention to documentary evidence such as inter-office memoranda, employment policies relevant in the particular circumstances of the case, notes that were taken during various meetings of colleagues or managers, e-mails, letters etc. Often, the investigation report will present many versions of the same event with the result that credibility of the witnesses becomes the major issue. Generally speaking, those complaints will be sent to tribunal where the process of direct examination and cross-examination under oath of the witnesses will allow the decision-maker a better chance to get to the truth of the matter.
By analogy, the role of the counsel in presenting evidence before the tribunal is similar to that of the painter of an impressionist tableau: a great number of small brush strokes are required. Let me give you the example of a case we dealt with recently, the Grover case, where in order to establish racial discrimination in the employment of the complainant who was a scientist, evidence was adduced to prove that he was not sent to as many conferences as his white colleagues; that he was not given proportionately an appropriate budgetary allocation to manage his laboratory; that he was not given the same opportunities to present the results of his research at international gathering and that he was by-passed for a promotion that went to one of his white colleagues because, according to his superior, he did not have the 'north-American style of management'.

In dealing with racial discrimination complaints, the Human Rights Tribunal, supported by the Courts, devised the so-called 'smell test'. In other words, the evidence adduced should lead the decision-maker to detect the 'subtle scent of discrimination'.

Cette 'odeur subtile de discrimination' se retrouve aussi dans les plaints de discrimination systémique qui, d'ordinaire, sont fondées sur, entre autre, de la preuve statistique. Elles sont logées soit par des individus, soit par un groupe d'individus, par des syndicats ouvriers ou par des organisations non-gouvernementales. Laissez-moi illustrer mon propos en vous entretenant brièvement de la plainte de l'Association pour les Relations Raciales de la Capitale Nationale á l'encontre de Santé Canada alléguant l'existence de discrimination systémique á l'encontre d'un groupe d'hommes de science, tous membres de minorités visibles. Plusieurs d'entre eux étaient á l'emploi du ministère depuis une vingtaine d'années et aucun d'entre eux n'avait pu obtenir une promotion au rang de gestionnaire, malgré les nombreuses occasions qui s'étaient présentées au cours des années. A la suite d'un examen minutieux des documents tel qu'énoncés de politiques, notes de service échangées entre gestionnaires, notes manuscrites prises lors des entrevues tenues dans le cadre des concours de promotion,

statistiques portant sur le nombre de postes occupés de façon intérimaires, présence á des cours de formation, le tribunal en est venu á la conclusion qu'il y avait effectivement discrimination, bien que non intentionnelle et en toute bonne foi et a ordonné á Santé Canada de prendre tout un ensemble de mesures correctives sous la surveillance de la Commission.

Même si les plaintes de discrimination raciale engendrent des changements positifs au sein des organismes contre lesquels elles sont logées, il reste que ces effets, non seulement requièrent un grand déploiement de ressources, mais surtout demeurent ponctuels. En effet, un grand nombre de personnes, victimes de discrimination ne logent pas de plaintes, soit qu'elles hésitent á mettre en danger leur emploi ou leur place dans la société, soit tout simplement qu'elles ignorent en avoir la possibilité.

Il convient donc de se pencher sur les autres moyens qui devraient être mis á la disposition des Institutions Nationales pour s'occuper efficacement de la discrimination raciale et, ainsi, donner á chacun des membres de la société qu'elles servent la possibilité d'y participer pleinement d'une manière juste et équitable. Certaines institutions parmi celles qui sont représentées ici disposent de ces moyens, mais aucune, du moins á ma connaissance, n'en possède toute la panoplie.

Programmes de formation

Mes remarques précédentes démontrent la nécessité pour les institutions nationales qui ont des pouvoirs d'enquête de mettre en place un programme de formation tant au niveau de la cueillette des preuves qu'au niveau de l'analyse des plaintes á l'accueil. Un tel programme de formation devrait aussi être offert aux commissaires ou aux membres des Institutions qui ont á décides de ces plaintes.

Rapports publics

Les rapports publics sur l'état du racisme dans la société sont aussi un excellent moyen de sensibiliser la population a l'existence de cette forme pemicieuse de discrimination dont sont victimes les membres des groups désavantagés. Je me permettrai de mentionner ici, a titre d'exemples, le rapport publié chaque année par la Commission Nationale Consultative des Droits de l'Homme de France qui a toujours un important retentissement, non seulement en France mais aussi a l'étranger.

De tels documents, bien médiatises, en plus de pousser les dirigeants politiques a agir, sont d'un précieux secours aux ONG qui oeuvrent dans le domaine. Ils sont certainement un moyen efficace d'éduquer le public, de l'interpeller et de lui permettre de découvrir ses propres préjuges.

Enquêtes publiques
Il y a quelques années, nos collègues australiens ont tenu une enquête publique sur les conditions de détention des réfugiés et, un peu plus tard, une autre sur le travail des enfants. Ce type d'enquête, en plus de générer la publicité d'un rapport, permet aux personnes impliquées de venir témoigner publiquement, soit en tant qu'individu, soit en tant qu'organisme, des actes discriminatoires dont ils ont été victimes ou de ceux qu'ils ont documentés. Ces enquêtes donnent la possibilité d'étaler sur la place publique les instances de racismes et les effets qu'elles entraînent.

Les ateliers et les programmes d'éducation
La tenue d'ateliers et l'établissement de programmes d'éducation soit au travail, soit á l'école, conduisent á un échange qui ne peut qu'être fructueux entre les divers éléments de la société, á une meilleure connaissance des divers groupes qui s'y côtoient et á une réalisation des préjugés raciaux qui y existent.

Les lois
Finalement, il est parfois malheureusement nécessaire de recourir á la législation pour forcer les irréductibles á prendre des mesures qui autrement ne seraient jamais entreprises. Au Canada, la loi sur l'équité en matière d'emploi a entraîne une augmentation marquée de la représentativité des membres des groupes de minorités visibles aux seins des organismes de compétence fédérale tant dans le domaine privé que dans le domaine public. Le système de vérification mis en place á la Commission en application de cette loi a pour but de s'assurer que les systèmes et politiques d'emploi des employeurs ne comportent pas de barrières systémiques qui soient de nature á désavantager les membres des minorités visibles et les empêcher de prendre leur juste part des avantages économiques auxquels ils ont droit.

Conclusion
D'initiatives qui ont donné d'excellents résultats. Mon intention n'était pas de faire une étude. Je suis certaine qu'il existe beaucoup d'autres moyens de documenter et de contrer la discrimination raciale et je suis aussi certaine que plusieurs d'entre vous pourraient donner des exemples exhaustifs de ces moyens, mais bien de vous donner des exemples qui pourront, je l'espère, vous inspirer. La conférence internationale de Durban de même que les récents évènements internationaux nous rappellent haut et fort que le racisme est encore bien vivant dans nos sociétés et qu'il faut mettre en œuvre toute la créativité dont nous disposons pour en venir á bout et assurer á tous la possibilité de vivre dans le respect et la dignité.
Merci.

Key Note Speech

EDUCATION AGAINST RACIAL DISCRIMINATION

Ms. Margareta Wadstein
Ombudsman against Ethnic Discrimination, Sweden

Introduction

There are many different ways of working with education against racial discrimination but it is not easy to get an overview. My contribution today therefore departs from a very concrete practise, which also is the one I know best - the experience of the Swedish Ombudsman against Ethnic Discrimination. My mandate as Ombudsman is to prevent and react on discrimination against individuals and groups on grounds of race, colour, national and ethnic origin and religion in all spheres of society - ethnic discrimination for short. In performing this, my office has a four-fold task: first, to give advice to and help individuals to get to their rights. In working life and in higher education, this includes taking action in court in individual cases of discrimination. The second task is proactive, initiating activities on a general level in different parts of society in order to prevent ethnic discrimination. The third task is to contribute to increase knowledge and to moulding the public opinion in matters related to ethnic and religious discrimination. Finally, we work with proposing amendments in legislation and to propose other measures to the government with a view to preventing ethnic discrimination. I will elaborate on what I called the third task, education and information by sharing with you some experiences and strategies, mainly departing from the field of working life.

Also let me mention a few facts from the reality in which I work. Sweden is a country of many nationalities. Immigrants and their children amount to 20 percent of the population of almost 10 million. There are also five national minorities: Jews, Roma, Sami, Finns, and Meänkieli - persons living another 2 000 km further north, close to the river Torne, which divides Sweden from Finland.

First, let me underline the extreme usefulness of having both to deal with individual cases as well as working with information and education. These two types of activi-

ties can be highly interrelated in a strategy to combat discrimination. If you inform about and use individual cases as a source in education, they spread like rings ion the water when you throw a stone, and thus, taking cases to court helps to increase the understanding, knowledge, and awareness of what discrimination really is. But departing from individual cases also means that you spread knowledge of rights, which in its turn generates complaints, which gives you more to inform about, more complaints will come and this goes on and on. Individual cases help to make discrimination concrete, visible, 'flesh and blood', and makes it easier to educate rather than just use rhetoric or more 'political' talk, and refer to very abstract situations. The reaction we meet is often 'Oh, this is what discrimination is about!'

Education is a very important part of work to prevent discrimination. Increased knowledge and awareness also will help to decrease denial the occurrence of discrimination. About 20 % of the activities of my office and 40 % of the costs each year are devoted to education and information.

Targeting discrimination on the labour market

When targeting discrimination on the labour market the strategy, channels and methods used are very much the same as in other areas of society. Since my office works with a staff of only 15, and a rather small information budget - about 2 million SEK (about 200.000 USD) out of a total of 14 million SEK (about 1.400.000 USD) and at the same time is supposed to cover the whole population of, as mentioned, close to 10 million inhabitants, this forces us to form a strategy where we focus on having the biggest possible outreach by spending only a little money.

The first part of the strategy therefore is to have professionals on education and information among your own staff. I have one information officer and one press officer, both working full time in my office.They then become very familiar with the substance of our work and can see to it that it is circulated and disseminated in a professional way.

The *aim of our education strategy* is that we have to decrease ethnic discrimination and increase knowledge of and respect for human rights. There are two main *target groups* for education: those who are at risk to be discriminated against, i.e. jobseekers and employees and those, who are at the greatest risk to discriminate, i.e. persons with power and influence over other persons and their lives. If members of the first group learn about rights and how to vindicate their rights and members of the second how discrimination can best be avoided, how situations of potential discrimination can be defined and what the costs can be, we believe that we will get results. But of course, also the general public is very important. However, our resources are not enough to focus constantly on everybody.

Our resources are not even enough to focus on all the persons of the targeted groups. Instead we have decided to use certain *key-persons*, persons from within the respective groups, that can be educated by my staff and take upon themselves to continue to spread the message within their groups. Those so-called ambassadors are often persons responsible for education and information in the national trade unions and employer's organizations or persons working in the National Board of Labour. We also work with persons who are active in ethnic or religious organizations and they function well as ambassadors. From these ambassadors we have created a network and we offer members of the network repeated seminars for updating and exchanging their experiences.

Once a year we also try to evaluate whether there have been any changes of knowledge and awareness by making a Gallup among members of the target groups. In this way, we can communicate to the different branches the changes in awareness and knowledge, which we can detect in the Gallup from year to year.
Part of our strategy is to integrate education into a long-term strategy of different measures of continuous work. I do not believe in isolated information campaigns. One way of managing this is to enter into agreements with different organisations that commit themselves to performing an education programme on ethnic discrimination, in order to increase knowledge and awareness among their members. This type of cooperation started a year ago, so results so far are not very far-reaching or very spread. But the measurable results of increased knowledge among the staff of the National Board of Labour, with whom we entered into an agreement a year ago, is very encouraging.

We also use different *channels* to reach the general public. In view of our scarce resources, one extremely important channel is the *media*. And here again, individual cases turn out to be extremely useful, in view of the fact that media are almost obsessed with the fate of individuals. Our strategy therefore is to make use of this interest and be very cooperative with journalists and service-oriented when they ask for information on individual cases. Instead of seeing them as a nuisance and persons disturbing our work with their frequent phone-calls, we try to see them as an important tool, in particular to reach the general public. The value of this type of reach-out can be measured in economic terms, which was in fact done by my information officer. He translated the amount of press-clippings each year into the amount of money that had to be spent if you had to pay for it: it corresponds to 32 million SEK!

I also write articles and participate in debates in media and so far have had no difficulties to have access to media at all.
As to *methods* used, apart from the media, we spread our message orally, at conferences or seminars, and through written material.

The material we use is produced by us. Its *content* - apart from reflecting some history on ethnic relations and how the population of modern Sweden has rapidly changed, due to intense immigration particularly over the last 50 years- focuses on the contents of legislation to combat discrimination in working life, on case-law, settlements, and good examples on how employers work to prevent discrimination.

Our written material takes different forms: We publish brochures on the legislation to employers and provide them with written advice as well as publish handbooks, for instance on recruitment and how to avoid "traps" that might lead to discrimination. In order to make employers more active with regard to their obligation to prevent discrimination through active measures, we have also organised advertisement campaigns in newspapers and magazines particularly read by employers. These campaigns are then followed by investigations of different companies on what they have actually done to fulfil their obligations.

Our own newsletter, free of charge, is published every month and can also be downloaded from one of our two websites. These websites are our most important channels for written material. Here, we publish all the material that we have, including educational material. This can all be downloaded free of charge, to be used in educational session with members, employees etc. Together with my colleagues, the Equal Opportunities Ombudsman, the Ombudsman for the Disabled and the Ombudsman against Discrimination on Grounds of Sexual Orientation, we have opened a special website (www.antidiskriminering.nu) aimed only at offering educational material to be downloaded free of charge for those who organise education focusing on the combat against discrimination. Apart from our own material, we offer others to publish their own education material. The only condition for those who want to share with and inspire others by publishing their material on the website is that they have to accept that the users are allowed to include the content in and adapt it to their own educational material. So far, both trade unions and employers' organizations as well as the National Board of Labour have joined the website.

Has our strategy on education been successful? It is hard to tell, but, apart from the measurable result I already mentioned, at least I think that we have succeeded the most in spreading the message among jobseekers and employees. Our efforts are partly the reason for a big increase of complaints for discrimination: from 59 in 1997 to 272 in 2001!

Furthering interracial / intercultural understanding

One other strategy in education against racial discrimination is of course furthering interracial and intercultural understanding. Individual contact between persons of

different ethnic or national background is, I would say, one of the best ways of preventing racial discrimination. Let me give an example.

In my country for the past 30 years, many refugees and immigrants have arrived. There is, unfortunately reluctance in some parts of society and among parts of the general public to accept immigrants in general. Immigrants, not the government or the parliament, are often targeted when discontent is expressed with regard to immigration policies of the country. My office now and then receives letters expressing this, letters with a content that can make you really afraid. But, on the other hand, there are lots and lots of examples where whole communities actively support refugee or immigrant families, whom they have made acquaintance with as neighbours, as classmates in schools etc, when these families are at risk of being denied residence permit. This is for me an example of the importance of personal meetings.

In my work I only too often get questions regarding traditions and religious rules of different ethnic or religious communities from employers, persons from the judiciary or other persons in decision-making. I often answer by asking, 'Why you do not ask the persons concerned themselves'. My suggestion, then, to these employers or other organisations is to simply invite persons from different ethnic or religious groups for lunch or to discussions and ask them which particular problems their members see in daily life in connection to the activity that your organisation is dealing with. And you get the possibility to learn directly from those concerned - you can ask why women can refer to the Quran when they want to wear headscarves or whether it is necessary at all for Muslims to go to the mosque on Fridays. And you learn that there are often a variety of solutions to what you see as a problem connected with that religion, to mention a couple of questions that preoccupy many in my country these days.

So one important strategy for further interracial/intercultural understanding, and thus the prevention of discrimination, is to arrange meetings between persons from different ethnic, religious and other groups. But it is important to find situations, where the fact of being an immigrant is not the main subject of discussion. Behind the immigrant label, that tends to be the only characteristic of persons that have left their countries to start their life over again are persons with the same education, the same profession and the same interests as those who were born in our country.

NGO's should focus much more on integrating. This is particularly relevant, I think with regard to women's rights. Traditional women's organisations are often ethnically very segregated and do not at all reflect the ethnic or cultural diversity of a country. Women of Swedish origin for instance are not at all familiar with the lives and situation of their sisters of other ethnic or non-Lutheran backgrounds. And yet,

here is an important example of a field where women of different ethnic origins have very much in common. This is an issue that I have discussed with my colleague the Ombudsman on Equal Opportunities between Men and Women and we are now decided to treat discrimination against Muslim women jobseekers, who are refused jobs because they are wearing headscarves, not only as religious discrimination but also as indirect gender discrimination. All feminist activists will not like this position.
One other example: My office has cooperated with the Swedish National Crime Victim Compensation and Support Authority on a project to educate persons to support witnesses and injured parties in judicial proceedings. The target group was members of ethnic organisations and it was met with great interest. Some 20 persons 10 times during a couple of months were educated by professionals from the police and different parts of the judiciary - lawyers, barristers, prosecutors and judges - and activists from the local NGO for Victim Support on how our penal system works and how crime victims and witnesses can be supported in this environment unusual and unknown for all but to immigrants in particular. Not only was this a great inspiration to the lecturers, who, as things turned out, in fact met colleagues, with whom they could compare and share experiences of different legal systems. The participants, after this education, were invited to join the local NGO for Victim Support, which they did, and where they now have a natural common ground for working towards a common goal, not focused on their ethnic belonging.

Finally, of course one of the most important ways for many reasons is for everyone is to have a chance to be employed. Intercultural/interracial understanding is simplified by a more integrated working-life. This is where people meet and have common problems and challenges, not connected with their ethnic belonging, to deal with. This is where you as an immigrant have the biggest possibilities to get to know your new fellow country-men and fellow country-women and the other way around And apart from that, get the best platform for being able to decide on your own life and not being economically dependant on others. But my advice to employers is: You have to prevent discrimination in the working place by preparing it in different regards before focusing on how to recruit employees from ethnic minorities. If the conditions in the working place are not free from obstacles, including the behaviour and attitudes of the co-workers, for employees from different backgrounds that have not traditionally been represented there, experience from the field of gender shows that those new employees will soon disappear, because of harassment or other types of discrimination. This is again why you have to get knowledge and education, first, through other types of meetings, among these, those that I have just described.

Key Note Speech

EDUCATION: INTEGRATION OF ANTI-RACISM INTO BASIC TRAINING CURRICULA

Ms. Margaret Sekaggya
Chairperson of the Uganda Human Rights Commission

Summary: This keynote address focuses on the anticipated role of national human rights institutions in the development and design of training curricula geared towards the promotion of human rights generally and most specifically anti-racism as inspired by the Durban Declaration, particularly on education. Illustrations will be drawn from the best practices that have been attained by the Uganda Human Rights Commission in its human rights and civic education activities and from other jurisdictions as necessary. *At the centre of all the discussion will be the hypothesis that merely setting human rights standards and even legislating on them without putting in place mechanisms for educating the people about the standards contravenes the foundation for human rights and the right to human rights education which should be an inseparable component thereof.*

Introduction

The World Conference Against Racism, Racial Discrimination, Xenophobia and Other related intolerance, which was held in Durban South Africa in 2001, provided an appropriate opportunity to review strategies for the elimination of racism, racial discrimination, xenophobia and other related intolerance. As you are aware, work to combat racism dates as far back as 1978, and if you wish you can say that it started as far back as 1945, when the UN Charter was adopted. However, as was noted at the Durban Conference and emphasised in the preamble to the Durban Declaration,

> '…despite the efforts of the international community, the principal objectives of the three Decades to Combat Racism and Racial Discrimination have not been attained and [that] countless human beings continue to the present day to be victims of racism, racial discrimination, xenophobia and related intolerance.'

There are success stories in the 3 Decades; however, there are also many gruesome

experiences that would signify a failure in the Decades to combat racism. The Durban Conference reviewed what could have gone wrong, but also considered the change in circumstances that calls for a review of strategies. The Durban Declaration takes cognisance of the causes, victims, and effects of racism and tries to understand why the previous Decades to combat racism did not attain the desired goals. The Declaration re-defines parameters for combating racism through the Program of Action. The Declaration recognises that a global fight against racism, racial discrimination, xenophobia and related intolerance is a priority for the international community in the third millennium. It also recognises that human rights education at all levels and for all ages, including within the family 'is a key to changing attitudes and behaviour based on racism, racial discrimination, xenophobia and related intolerance and to promoting tolerance and respect for diversity in societies' and that it 'is a determining factor in the promotion, dissemination and protection of the democratic values of justice and equity', which are essential to prevent and combat the spread of the above vices. (Refer to Paragraph 95, page 15 of the Declaration). The Declaration further emphasises the links between the right to education and the struggle against racism and the essential role of education (human rights education and other education) which is sensitive to and respects cultural diversity, especially among children and young people in order to prevent and eradicate all forms of intolerance and discrimination.

The Declaration recognises the important role of national institutions for the protection and promotion of human rights post-Durban programme for preventing and eradicating racism, racial discrimination and xenophobia. The Declaration urges States to 'establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions', to enable them competently address issues of racism, racial discrimination and related intolerance.

In laying the strategies for the role of national institutions in the area of education for eradicating racism, there is need to consider what is in existence for a particular institution and how appropriate it is in the given circumstances. Some national institutions already handle anti-racism as a speciality. The Australian Human Rights and Equal Opportunities Commission is a case in point. Some institutions have a general mandate in human rights protection and promotion, under which they would handle anti-racism. There are also national institutions, which lack such a mandate. Discussing human rights education on anti-racism would therefore need to take into regard these differences in understanding the influence that given institutions can have in designing anti-racism curricular.

The Statement by National human rights institutions and other relevant specialised institutions for the promotion and protection of human rights to the World Confe-

rence Against Racism, Racial discrimination, Xenophobia and Related Intolerance, adopted in Durban South Africa on 1 September 2001 emphasizes the role of the national institutions and called on States where national institutions do not exist yet to have them established and to give national institutions mandate in anti-racism. In the Statement, the national institutions pledged to pay special attention to the prevention of racism, and to collaborate with the "appropriate" institutions to ensure that educational authorities and other relevant institutions integrate human rights, anti-racism, tolerance, diversity and respect for others in their work and institutions. The National Institutions also pledged in the context of the United Nations Decade for Human Rights Education (1995 - 2004) to integrate anti-racism in national plans of action on education and human rights training, through development of multi-disciplinary programmes, educational manuals, curricula or public campaigns through schools, training institutes or social, cultural or sports clubs, aimed at raising awareness among children and youth.

This is the first international meeting of national institutions since the World Conference Against Racism, Racial discrimination, xenophobia and other related intolerance. For national human rights institutions it is an opportunity to clearly understand the role that is envisaged for them in the post-Durban period. Education is a very central part of the Action plan as contained in the Durban Declaration and the aspirations of national institutions in the area of education in combating racism, racial discrimination, xenophobia and related intolerance as stated above need to be strategically placed in conceptualised in the Plan of Action.

Anti-racism activities of the Uganda Human Rights Commission

Although prior to the Durban Conference the Uganda Human Rights Commission's anti-racism activities were negligible, the activities implemented prior to the conference and the experience obtained has given a remarkable insight in what implementing a fully-fledged anti-racism education programme would entail. The absence of serious activities in the area of racism, racial discrimination and intolerance in Uganda may be attributed to the fact that the above issues are not a problem as compared to other human rights issues. However, even of more concern and interest may be the fact that there is really little awareness about the vices of racism, racial discrimination, xenophobia and other related intolerance, the international and national legal safeguards as well as the existing mechanisms for addressing them. Also as mentioned above, the general nature of the Commission mandate may account for the little activity on anti-racism, coupled with the above factors. However, the experience in the general area of human rights and civic education by the Uganda Human Rights Commission can be authoritatively and persuasively used to advance ideas and proposals for anti-racism education.

The racial/tribal tensions in Uganda date back to the pre-colonial times when tribal groupings were used one against another as a strategy for building influence. The result of this strategy is the stifled and at time overt hatred between tribal groupings because of the role they played in the colonial period, either as collaborators or resistors. These tensions have accounted for most of the post-independence strife and the tribal-based hatred on the change of regimes, since each regime seems to have tribal loyalties and leanings. On the other hand the xenophobic tendencies have mostly been meted out on the people of Rwandese and Asian origin. For the Asians, it is a resentment flowing from domination of ownership of business and economic resources, which left the natives in the disadvantaged position of labourers. Related intolerance can be seen among religious groupings, especially among the major religions like the Anglicans, Catholics and Moslems. Tensions arising out of religious intolerance have been the cause of some very cruel and violent incidents and civil strife. Nepotism has been both a cause and effect of racial related tensions as it limits and in some cases completely denies certain sections of society opportunities based on which region of the country they hail from.

The Constitution of the Republic of Uganda in Article 21 prohibits discrimination on several grounds including race, ethnic origin, tribe, birth, creed or religion. In 1980 Uganda ratified the International Convention on the Elimination of All Forms of Racial Discrimination. Uganda also has an anti-sectarianism law, which aims at providing legal redress in racial related crimes. At the time of the pre-WCAR awareness campaign, the Uganda Human Rights Commission realised that legislating on anti-sectarianism alone was not enough. The best way to go would be to put in place a programme to inculcate values and ideals against discrimination, xenophobic tendencies, and intolerance.

With support from the Office of the High Commissioner for Human Rights, and in collaboration with the Uganda Ministry of Foreign Affairs and local NGOs the Uganda Human Rights Commission launched a national debate on the theme of racism, racial discrimination, xenophobia and related intolerance. The national debate was a platform for the people to get to know about the vices related to racism and racial discrimination and how they can take part in safeguarding against the violations that go with these vices. The activities undertaken included:

Sessions with the media

The Uganda Human Rights Commission targeted the media in press conferences to brief them about the background of the Conference theme, provided them with necessary information, including the Commission's position on several issues surrounding the theme, providing them with full texts of the international conventions,

furnishing them with the timetable for the activities and requesting them to encourage public discussion and debate on the theme.

Lessons learnt

The media are a very important conduit through which any successful awareness strategy can be passed. In the wake of advanced technological advancement we cannot afford to leave the media out of any strategy for public education. Both the Durban Declaration on Racism and the Statement of National Institutions to the World Conference recognise the important role of the media in anti-racism education. The Durban Declaration further notes how the media can and has contributed to the spread of xenophobic and racist sentiments among the public to the extent of violence in some cases. The media should not be targeted as merely professionals, but also as primary beneficiaries of education programmes. The media can be propagators of racist information and so need to be targeted. They can also be targeted for effective coverage and publicity. The media must be able to clearly understand the issues involved and thus the need for them to be availed with all necessary information. Such information can develop them into promoters and enable them to easily identify incidents of racism, racial discrimination and intolerance for further action.

The commitment of national institutions to work with the media, and journalists in order to develop and implement public information campaigns in plain and accessible language, enhancing diversity of ownership, encouraging the public to avoid "ethnic profiling" or the stereotyping of any group, whether an ethnic, racial, national, cultural, religious or linguistic group, would seem to support what was experienced in Uganda during the pre-WCAR conference. In the recent times, the exercise of the right to freedom of expression, especially by the media has been very supportive of the human rights education programmes by the Uganda Human Rights Commission and other human rights civil society organisations and NGOs. It was therefore easy to target all languages through FM Radio stations, local press for the national debate on racism to succeed.

Public Lectures

Several lectures were held for the public, delivered by prominent and professional persons, who through adoption of the participatory approach managed to draw the interest of the public towards the discussion and thereby drawing in their practical experiences from their different contexts. Through the public discussions it was discovered that the issues relating to the theme of the world conference differed from one region of the country to another. In the Eastern part of the country, bordering Kenya the problem was the increasing tensions between people of *Karamoja* and

their neighbours. Their problem had leanings on the influence of their international neighbours and their way of life. In the Northern part of the country, where a civil war has been raging for over 10 years, their concerns related to the perceived injustices to them by the Government and the failure of Government to bring the war with the Lords Resistance Army to an end. The issue of Rwandese in Uganda was of concern to them as well. In the western region concerns revolved around the silent tensions between the Bahima and the Bairu, there were also deep tensions based on religious grounds, which were perceived to be the cause of uneven distribution of leadership opportunities. They were concerned also about the negative attitudes to the Rwandese who have settled there.

Lessons learnt

The discoveries from the public lectures clearly indicated that the needs of any given target couldn't be the same as that of another. There are several factors that account for the difference and have to be taken into regard when developing sensitisation and training programmes in human rights and most specifically they can not be ignored in developing anti-racism curricula, for schools or other institutions and groupings. It is however worth noting that in building a peaceful and united nation-state which benefits from the diversities in cultures, languages, religions, ethnic identities, it would be useful to consider and introduce, in an organised manner, the issues that affect the other regions as well, in order to create the necessary consciousness to assist all citizens to live together in harmony. After all, the task of building a prosperous nation-state is the responsibility of all citizens.

Workshops

Following the public lectures, workshops were organised still in the respective regions, to discuss and try to find solutions to the major issues that emerged out of the public lectures. Resolutions and recommendations were made which were directly related to the theme of the World Conference. Through the workshops public support was enlisted for the anti-racism campaign and country programme of action for combating racism.

Lessons learnt

Participation of the people in drawing solutions to their problems is not only a democratic process, but also gives them fulfilment of the right to participate in the affairs of their country. Participation is necessary in identifying issues and possible solutions if people are to be responsive to the future education programmes for combating racism and other related problems.

Art and Essay Competition

Art and essay competitions were used for mostly schools. There were competitions for the general public as well. The competitions were sensitive to the special education needs and levels of the various categories of targets both in the formal and semi-informal sectors.

Lessons Learnt

The competitions were good tools for assessing the level of consciousness and knowledge/information of the respondents, and would be good sources in developing curricula (if desired) for future action in anti-racism programmes. The racism and intolerance issues raised were different for different categories given the level of appreciation of issues. The response of the general public in the art and essay competition was much less than that of the students and pupils in formal education. This has something to say about choosing the most effective medium for a given target. Education strategies should therefore target both the formal and the informal institutions of learning, since all have influence in their various spheres and appeal to those that subscribe to them.

The National Convention

In developing a nationally acceptable human rights education plan of action it would be good to incorporate all concerns from all sections of the country. The National Convention, organised by the Uganda Human Rights Commission was the highest level of consensus building in the pre-WCAR period. The findings of the consensus-building conference in relation to the World Conference were, among others, that although the people of Uganda recognised and condemned racism and racial discrimination, they noted the main problem and challenge of Uganda to be tribalism, xenophobia towards members of other ethnic groups and Africans from other countries and in relation thereto they considered the problem of regionalism and religious discrimination.

The climax of the racism and racial discrimination activities of the Uganda Human rights Commission culminated in the **National Declaration of Commitment to Action to eradicate Racism, Racial Discrimination, Xenophobia and Related Intolerance in Uganda, August 2001.** In the programme of action at the National level, the Uganda Human Rights Commission was called upon to play a more leading role in peace building and promotion, and in the intervention to resolve conflicts peacefully. It was also recommended that the Commission should work with relevant civil society organisations and Non government organisations to train community leaders in skills of mediation, negotiations, arbitration and reconciliation. This

recommendation hinges on the need for value education in the communities, which is the cornerstone of mutual respect and peaceful co-existence.

The National conference noted that the education system in Uganda does not foster value based educated. As a result it is alarming to find that the so-called elite or educated people are more likely to fuel racist tendencies. By way of recommendation the conference noted the need for Government to ensure that the educational system instils the values of peace, tolerance, appreciation of unity in diversity. Another recommendation was that schools and communities be encouraged by national institutions to establish human rights groups or clubs, clubs for justice and peace, clubs for promotion of friendly relations with particular minority groups.

Lessons Learnt

From the fore-going discussion it is clear that the process of integrating anti-racism education in basic curricula would not be an easy and short-term process. Changing the curricula from what it is now would take quite a while. Uganda, like many other former colonies has for a long time been implementing an education system that was propagated during colonialism. Without imputing that the curricula was all wrong, it is justifiable for the curricula to be re-assessed in line with the present aspirations of the people of Uganda in a forward-looking manner. It is clear that the colonial era impacted differently on people on different regions, and therefore their education needs may differ substantially. The process would therefore begin with re-building the cultural, religious, tribal and other values of individual regions before merging all, to form a nationally acceptable human rights education and anti-racism curricula.

The right to human rights education and its importance as a tool for changing people's attitudes

In 1945 when the United Nations was formed, it was then anticipated that education would play a pivotal role in achieving the aspirations of the people of the United Nations and especially towards maintaining the peace of the world and ensuring security of all people. On 16th November 1945 the United Nations Educational, Scientific and Cultural Organisation (UNESCO) came into being with its mandate being to " *Lay the foundations of peace by working in the fields of competence: Education, Science, Culture and Communication in order to contribute to the acquisition, transfer and sharing of knowledge and to foster values of liberty, dignity, justice and solidarity among individuals" and also "to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion."* - (Article 1 of the UNESCO Constitution).

Towards realising these intentions, UNESCO in several conferences has made recommendations that recognise human rights education as a right of everyone. This is read in almost all international human rights instruments of the UNECSO. At the UNESCO General Conference of 17th October - 23rd November 1974, a reminder was made to all member states that emphasizing the importance of human rights without putting in place means and mechanisms for educating everyone in those rights defeats the very purpose for which the United Nations was set up. At this conference recommendations with guiding principles of human rights education were given, how they can be incorporated into policy, planning and administration. Human rights values were noted with proposals of how they could be integrated in the educational system for both formal and informal education. Since then the right to human rights education has been internationally recognised in successive international fora, like the International Congress on the Teaching of Human rights, Vienna 1978; the International Congress on Human Rights Teaching, Information and Documentation, Malta 1987; the international Congress on Education for Human Rights and Democracy, Montreal, Canada, 1993, etc. The bi-annual UNESCO Prize for the teaching of human rights also attests to the importance attached to human rights education by the United Nations.

UNESCO has developed a complete system of education and training for peace, human rights and democracy, tolerance, non-violence and international understanding, targeting all population groups and covering the needs of all education levels, both formal and informal. UNESCO has done a lot in laying the foundations for peace and security in the education programme for building a culture of peace.

The height of international recognition and affirmation of the right to human rights education can be seen in proclaiming the United Nations Decade for Human Rights Education: Towards the Culture of Peace, 1995 - 2004. The Decade is dedicated to highlighting the right to human rights education and to ensure that Governments, civil society and individuals work towards its full realisation.

UNESCO Guidelines and activities will be an important resource in developing human rights education curricula and integrating anti-racism in basic curricula drawing from the long experience of working on value based education for peace and security.

What human rights education entails:

Developing effective human rights education curricula would begin with understanding the purpose of human rights education and what the right to human rights education would entail. Human rights education focuses on the individual, to enable him/her develop the knowledge, values and skills that can be used in applying the

human rights value systems in interpersonal relationships with members of the community in which he/she lives. It is learning that develops the knowledge, skills and values of human rights (Nancy Flowers in Human Rights Education Handbook).
What makes human rights education different from other fields of education is the fact that the Universal Declaration of Human Rights as a common standard of achievement, and other human rights instruments and the related mechanisms of protection retain a central position. In other words, although the content would vary from one group to another, depending on age, context, level of education, etc, the content of human rights education will revolve around the rights and freedoms guaranteed in the Universal Declaration of Human Rights and other international human rights instruments including those passed by specialised organs of the UN like UNESCO. Human rights education has been noted to be ultimately 'about action for building human rights cultures in our communities…'

Another consideration towards effective human rights education or anti-racism education would be a thorough conceptualisation of appropriate methodology for effective results among various targets. Some models of human rights education have been advanced based on the long experience in civic and human rights education under 3-pronged social change framework, which aims at fostering and enhancing leadership in the promotion and protection of human rights, developing coalitions and alliances, and for personal empowerment (Felisa Tibbitts in her article on *Emerging Models for human Rights Education* In: **Issues of Democracy IIP Electronic Journals focusing on Human Right Education March 2002 volume 7, Number 1).**

The first step would be to build a committed group that is politically aware and with the requisite skills to develop specific objectives and effective strategies in the given political, cultural and economic environment. In the second stage Human Rights Education would be used to prepare people for leadership responsibilities by helping them recognise the advantage of mutual efforts in bringing about social change. The final stage of personal empowerment aims at healing, and development of the community aimed at social transformation.

Felisa Tibbitts presents three HRE models:
The **'Values and Awareness Model',** whose main focus of human rights education is to transmit basic knowledge of human rights issues and to foster its integration into public values with the goal of paving a way for a world that respects human rights through awareness and commitment to the normative goals laid down in the UDHR and other human rights instruments;
The **'Accountability Model'** is administered where the target group/audience is already directly or indirectly associated with the guarantee of human rights through

their professional roles and Human Rights Education here will therefore focus on the ways in which professional responsibilities involve either directly monitoring human rights violations and advocating with the necessary authorities or taking special care to protect the rights of people, especially vulnerable populations for whom they have some responsibility;

The **'Transformational Model'** of human rights education, aims at empowering the individual/communities to recognise human rights abuses as well as make it their responsibility to prevent the abuses. It assumes that the target audience has had personal experiences that would amount to human rights violations, which can be built on to make them promoters of human rights.

These are some ideas, which to me attempt to cover the basic human rights education needs of a given population. Without necessarily trying to create an impression of being proven models, they do capture the main purposes of human rights education. It would be imperative upon an individual national institution to decide on a methodology that answers the human rights educations needs of the population that the institution serves.

The responsibility for human rights education transcends the mandate of a single entity. International human rights instruments concur with the propositions that human rights education is as much an obligations of the state as it is for all institutions and individuals. Therefore human rights education is the responsibility of the State, the family as the basic unit of society, the school, religious and cultural institutions and leaders, the civil society, and Non Government organisations, the media, national institutions and every individual. This keynote, however, will emphasise the role of national institutions.

The role of a national human rights institution with regard to human rights education and curriculum development

In their work of promoting awareness and educating about human rights, national institutions for the protection and promotion of human rights have a mandate which revolves around informing the people about their rights and how they can enforce them, as well as educating them about their own responsibilities to not only protect human rights, but to respect the rights of others and desist from any conduct that may amount to a violation of the rights of others. The mandate of national institutions goes beyond merely informing the public and extends to the responsibility of shaping values and attitudes that are necessary in the full enjoyment of human rights. In this regard national human rights institutions are expected to work towards building a culture of respect for and observance of human rights aimed at seeing the

practical effect of knowledge imparted on the actions of people. National human rights institutions are further required to encourage people to act in defence of human rights.
The educational role of national human rights institutions is based on the thesis that there can be no full realisation of human rights through mere development of protective law and establishment of mechanisms to implement the law, without the components of transformation of attitudes and values through information dissemination and education, as well as the existence of adequate mechanisms and programmes for promotion of knowledge.

As mentioned above, the national institutions are not alone in the field of human rights education and training. What the national institutions plan to do in the area of human rights education must therefore be placed in international, national and local context for effectiveness. Working with Country Commissions for UNESCO would provide invaluable insight, especially where it involves developing human rights training and education materials and curricula for various sectors. There are various organisations with specific mandate for designing, developing, compiling and disseminating education materials and curricula in Uganda (and most probably in other countries). However, I am sure the priorities of all these players may not be the same at any given time. Also, although national institutions have a mandate and role with regard to human rights education, this has to be done in conformity with existing structures and mechanisms.

Developing Curricula for formal education is particularly a sensitive area and would need to be done cautiously. Although there may be no doubt about the necessity for education in human rights, and in this case in anti-racism, the priorities of the primary standard setting bodies in school curricula development need to be heeded. In Uganda for instance it is not possible for anyone or any given organisation to dictate upon what should or should not be included in the school curricula. The primary stakeholders in formal school curricula would include the Ministry of Education and Sports, The National Council for Curriculum Development, the Education Service Commission, and the Uganda National Examinations Board among others.

In developing human rights education programmes regard must therefore be had to the social, cultural, political and economic contexts of the intended targets and how the planned education is likely to lead to social transformation. Human Rights Education programming involves an interactive educational approach. Human Rights Education must be relevant to the target audience's daily living. Therefore all methodology adopted must be such as will help the group not only to develop their knowledge base, but also engage them in attitudinal skill. Whatever is used must be practical, motivating and humanizing in order to bring about the required attitudinal

or behavioural change. A curriculum developing is one of the ways for making human rights education effective. However, primary in developing curricula or designing human rights education programmes is the need and the opportunity.
Training and curricular standard setting are some of the ways that Human Right Education can be legitimised. What you find in current human rights training programmes are isolated and discreet programs whose impact cannot be measured without the set standards as in basic curricula for various target audiences.

The following are some focal areas to look at while integrating anti-racism education in basic curricula:
- Is there a need for anti-racism among the anticipated audiences?
- Is the timing proper, given the existing regulatory mechanisms and guidelines for curriculum development in a given country?
- Do the schools have the technical know-how to support and administer the anti-racism curricula?
- What training would be necessary to prepare the teachers to administer the curricula and who would train them?
- How do you intend to involve other stakeholders?

In Uganda the need has been identified to move from having civic education as a sporadic and intermittent exercise to having it as a continuous, organised and sustainable civic education process. Since 1997 five constitutional bodies with known mandate in certain areas of civic education came together to form a Civic Education Coordination Committee, in order to fulfil the above need. These are, the Electoral Commission which has specific mandate in voter education, the Uganda Human Rights Commission with specific mandate in human rights education, the Inspectorate of Government with specific mandate in transparency and accountability in the conduct of public affairs, the Judicial Service Commission with mandate in the administration of justice and the National Environmental Management Authority with mandate in environmental management education. Two representatives were invited from the civil society organisations. Membership has since expanded to include the National Curriculum Development Centre and the Ministry of Education, given their important role in designing and implementing curriculum in schools as well as their strategic position when it comes to incorporating civic education values and ideas in taught subjects in schools. The Civic Education Coordination Committee is chaired by the Uganda Human Rights Commission, flowing out of its constitutional mandate to **oversee** programmes of civic education in the country. The Civic Education Coordination Committee proceeds on the premise of opening up avenues for cooperation and collaboration in programming, exchange of information and educational materials, but most importantly, the bid to forge a common approach and understanding of the aims and objectives of civic education.

As a beginning point, the Committee set out to integrate human rights in the primary school curriculum with a view of influencing the young minds and hearts through human rights knowledge. Through brainstorming workshop it was agreed that the Committee adopts an integrative approach in designing curriculum for primary schools by integrating human rights into existing subjects taught in school other than introducing it as a new subject. The Committee realised a challenge to develop a comprehensive civic education manual for civic educators based on the findings of a baseline survey of the civic education needs in the country. The Curricula has not yet been integrated because at the time it was finalised, a review of primary school curriculum had just been concluded. This means that the best way for national institutions to influence curricula development and design is to maintain a continuing working relationship and collaboration with the relevant organs, in order to participate in curriculum reviews when they fall due.

It is also worth noting however, that curriculum development is not the only way to go for schools. Students and pupils can be targeted through textbooks, through human rights clubs, extra-curricula activities, debating clubs and associations. The idea here would be to target as many students as possible without limiting to specific subjects. At primary level it is possible in Uganda to include anti-racism in the primary school curriculum because Social Studies, under which it would fall is compulsory. At secondary school level still everyone can have an opportunity for anti-racism education if it is made one of the topics (either in History, or Political Studies) at the lower secondary level before specialisation. At Advanced Secondary level students from both the Arts and Science classes would have an opportunity to study anti-racism if it is included as a topic in the subsidiary and compulsory General Paper. Currently at University level human rights is taught as a subject in the law degree and in the Master of Arts in Human Rights. Therefore anti-racism can be appropriately emphasised.
The hint in the above Ugandan context is that a decision has to be made on whether to have the human rights subject in this case anti-racism taught separately or as part of existing subjects/curriculum. The balance however, for human rights education would be tilted towards integrating anti-racism in existing subjects other that introducing it as a new subject area.

Human rights education: The case of the Uganda Human Rights Commission
Without emphasising development of curricula, the Uganda Human Rights Commission has made some commendable progress in human rights education, which can be used in integrating anti-racism education.
Human rights and civic education form part of the constitutional responsibility of the Commission and are major components of the Human Rights Commission mandate

as contained in Article 51(c), (e), (f) and (g) of the Constitution of Uganda. The Commission has set up a full Education, Research and Training department, whose largest pre-occupation is human rights and civic education.

Targeting special groups for Human Rights Education

The educational mandate of the national institutions for the protection and promotion of human rights envisages provision of professional training to groups through the development of training programmes, which transform knowledge about human rights into operational skills in their areas of influence. There are such groups, which have the ability to affect human rights practice within society, either negatively or positively. The national institutions mandate would therefore focus on targeting such audiences and groups for human rights training. The same would be suitable in the educational strategy for the elimination of racism in the world. Such groups include the Police, Prisons, Armed forces, the media and teachers and teacher trainers and ultimately schools, among others.

Strategies for identifying and targeting them may be different given their varying roles in the protection and promotion of human rights or even in there predisposition to violate or abuse rights. Including, among others where such groups out of their own initiative identify the need for training and solicit such training from the national institution, or where the national institution originates such a plan of action which targets such audiences or groups or even holding training for a combined target audience.

The Uganda Human Rights Commission has had occasion to make use of all the above strategies and the results have still been remarkable. In the case of Uganda, identification of these targets was made as a result of the history of the country with regard to the protection and promotion of human rights. In 1994 a Commission of Inquiry was instituted into the human rights violations from 1962 to 1986.The report widely recorded the violation of rights by security organs, which was in most cases done with impunity and ignorance of the international and national human rights standards. It is out of the same inquiry that the formation of the Uganda Human Rights Commission was born. It was therefore imperative to educate and train these organs and other leaders who would have otherwise fallen culprits of the vices laid down in the report by virtue of their offices and targeting them for a change of attitude arising out of the impartation of knowledge and emphasising their roles as protectors other than violators.

Human rights education in the Police Force

The Uganda Human Rights Commission has targeted the Police Force in human rights education, at first as a programme of the Commission. With time the Police have come to appreciate the human rights education and have requested for the Commission's input during pre-service and in-service training sessions of the Police. The Commission has trained new police recruits as well as Police Officers on promotional courses. As part of the programme for training Police officers, in 1999, the Police together with the Commission developed a Police Human Rights Training Manual. As a result of the collaboration between the Commission and the Police, there are fewer complaints of alleged violations of human rights with impunity by Police and the Police Force is more responsive to the Commission's investigations. The Police have come also to appreciate that the work of the Commission is not only about bringing out the filth, but we do appreciate them for the improvements made as a result of our pointing out the problems. In dealing with them the Commission considers the occupational hazards of the Officers as a human rights issue that affects their attitudes and actions towards those under their custody or those that use their service.

Human Rights Education for the Media

The Uganda Human Rights Commission has also enlisted the media as partners. In 1999 a Media human rights workshop was organised by the Commission, in which the members of the Uganda media were educated on their role in the protection and promotion of human rights and on rights pertaining to their work, including the right to information and freedom of the press. Although human rights have not been included in the formal curricula for media institutes, the media is very responsive to the work of the Commission and the training that the Commission offers. The media has supported the Commission's human rights education programmes, including the racism project prior to the World Conference against racism and they will definitely be very crucial partners in fulfilling the anti-Racism Action Plan. The role of the media in sustaining human rights education and in the success of any human rights education strategy depends on how well they appreciate and understand the issues involved. The media can be used to propagate racist or anti-human rights propaganda, but can more positively be utilised as primary partners in the promotion and protection of human rights through education. It is important therefore for national institutions to espouse the media and make them primary targets for human rights information.

Human Rights Education for the Prison Service

The Prisons Service can be highly abused and become culprits of violation of the rights of the people under their charge. The Uganda Human Rights Commission has

identified the Service as a great partner in scaling down violation of rights for inmates through deliberate joint training programmes. The Uganda Human Rights Commission has mandate in the area of inspecting places of detention to assess the conditions of the prisons and of the in-mates and make recommendations to Parliament as appropriate. On such visits the Commission has been instrumental in sensitising the prison inmates and officials about their rights, duties and obligations while in detention and also sensitising the Prisons Officers on the human rights implications of their actions. Together the Commission and the Prisons Service are developing a training of trainers programme involving various stakeholders in the field of human rights for prisoners. The Commission has also organised joint training workshops involving the staff of the Commission and prisons staff. This has helped in jointly identifying problem areas and how they can be addressed in a concerted manner. The Raoul Wallenberg facilitated one such training. The Commissioner of Prisons in Uganda is one of the Commission's most trusted partners, because he has now taken a positive approach to the deficiencies identified in the Prisons Service by the Commission reports. He has shown good will and is passing on the mantle to all officers under his department.

Human Rights Education in schools

In addition to the primary school curriculum, the Commission is currently implementing a constitutional education project for schools. Schools are very crucial audiences and media for influencing and forming opinions as well as character. The influence of formal education on the attitudes of people in the eras of genocide, slavery, colonialism, war, etc., cannot be ignored. Integrating human rights into formal school curricula would be another way of helping young minds to form positive opinions that regard the importance of mutual respect and peaceful co-existence.

Conclusion

The area of human rights education should be regarded with importance. For National Institutions it is a buffer for all the other work of the National Institutions for the protection and promotion of human rights. If the people do not understand the product that the national institutions have to offer, it is very unlikely that they will desire to use it. Designing human rights curricula in this regard would require that the product be packaged in such a way that it is relevant to the target as to bring about a societal transformation. The entry point for national institutions is to consider the present need of the populations they serve with regard to racism and other related forms of discrimination and intolerance. Above all national institutions should proceed by understanding and ascertaining their mandate in the area; identify the existing resources (including institutional and their comparative advantage) and crea-

te linkages; understand the targets and their specific needs, analyse the impact of existing legal and policy frameworks; and enlist the target participation in the process of developing curricula and disseminating it.

Education strategies should be deliberate in comprehensive plans detailing the expected impact and ensuring that such impact can be assessed.

Thank you.

PART 3

ANNEXES

ICC RULES OF PROCEDURE
QUESTIONNAIRE
CONFERENCE PROGRAMME
LIST OF PARTICIPANTS

ICC rules of procedure

THE INTERNATIONAL CO-ORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Preamble

The International Co-ordinating Committee is a representative body of National Human Rights Institutions established for the purpose of creating and strengthening National Human Rights Institutions, which are in conformity with the Paris Principles[1]. It performs this role through encouraging international co-ordination of joint activities and co-operation among these National Human Rights Institutions, organising International Conferences, liaison with the United Nations and other international organisations and, where requested, assisting governments to establish a National Institution.

It works to create and strengthen National Institutions and to ensure they conform to the Paris Principles.

1. Name

The name of the committee is the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (the ICC).

2. Functions

The functions of the ICC are:

(a) To co-ordinate, at an international level, the activities of National Human Rights Institutions established in conformity with the Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).

(b) To support the creation and strengthening of National Human Rights Institutions (National Institutions) in conformity with the Paris Principles.

(c) To ensure regular contacts with the Office of the United Nations High Commissioner for Human Rights and the other international organisations concerned with the promotion and protection of human rights.

(d) To plan and organise with the host institution International Conferences for National Institutions in co-operation with the Office of the United Nations High Commissioner for Human Rights.

(e) To encourage and assist as requested the organisation of Regional Workshops of National Institutions.

(f) To encourage co-operation amongst National Institutions.

(g) To follow up on and, where appropriate, implement recommendations of International Conferences of National Institutions and other relevant United Nations resolutions.

(h) To liaise with such other organisations as may be engaged in the promotion and protection of human rights.

(i) To undertake such other functions as are referred to it by International Conferences of National Institutions and consider matters referred to it by regional meetings.

3. Membership of the Group of National Institutions

(a) Only National Institutions which comply with the Paris Principles shall be eligible to be members of the group of National Institutions.

(b) Only one National Institution per state shall be eligible to be a voting member. Where more than one institution in a state qualifies for membership the state shall have one speaking right, one voting right, and if elected one committee member. The choice of an institution to represent the National Institutions of a particular state shall be for the relevant institutions to determine.

(c) Any National Institution seeking membership shall apply to the Chairperson of the ICC. That National Institution shall supply, in support of its application:

- a copy of the legislation or other instrument by which it is established and empowered
- an outline of its organisational structure including staff complement and annual budget
- a copy of its most recent annual report or equivalent document
- a detailed statement showing that it complies with the Paris Principles or, alternatively, an outline of any respects in which it does not so comply and any proposals to ensure compliance.

(d) All questions of membership, including whether a National Institution complies with the Paris Principles, shall be decided by the ICC or any membership sub-committee it may establish. No decision adverse to the application for member ship of a National Institution shall be made without consultation with that institution.

(e) Should the application for membership of any National Institution be declined by reason of its failure to comply with the Paris Principles, the ICC or its delegate may consult further with that institution concerning compliance.

(f) Any National Institution whose application for membership is declined may, with the consent of the ICC, attend meetings or workshops of the group as observer and may reapply for membership at any time.

(g) Where the circumstances of any member of the group of National Institutions change in any way which may affect its compliance with the Paris Principles, that member shall notify the Chairperson of those changes and the Chairperson shall place the matter before the accreditation sub-committee for review of that member's membership.

Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it appears that the circumstances of any member of the group of National Institutions may have changed in any way which affects its compliance with the Paris Principles, the Chairperson or sub-committee may initiate a review of that member's membership.

On any such review the Chair or sub-committee shall have all the powers and responsibilities as in an application under Rule 3.

4. Regional Groupings of Members

(a) For the purpose of ensuring a fair balance of regional representation on the ICC the following regional groups are established:

- Africa
- Europe
- the Americas
- Asia-Pacific

(b) The members within any regional group may establish such sub-regional groupings as they wish.

(c) The members of regional groups may establish their own procedures concerning meetings and activities.

(d) Regional groups are to elect four members to represent them on the ICC on a regional or a sub-regional basis as they choose.

5. Membership of the ICC

(a) Membership is the prerogative of a National Institution not of any individual and is restricted to institutions approved to be members pursuant to clause 3 of these Rules. There shall be 16 members of the ICC comprising four representatives from each of the regional groups.

(b) Regional group representatives are eligible for re-election.

(c) Regional group representatives on the ICC shall be elected from within each regional group for a term of two years.

6. Chairperson and Deputy-Chairperson of the International Co-ordinating Committee.

(a) At its first meeting following adoption of these rules the members of the ICC present shall elect one of their number to be the Chairperson and another to be the Deputy Chairperson.

(b) The roles of Chairperson and Deputy Chairperson attach to the National Institution whose representative is elected.

(c) The Chairperson and Deputy-Chairperson shall serve for a term of one year and may be re-elected at the conclusion of the term.

7. Liaison with Other Human Rights Institutions and NGOs

(a) The ICC may liaise with other human rights institutions including the International Ombudsman Institute and non-governmental organisations.

(b) The ICC may decide to grant such organisations observer status at any meetings or workshops of the group of National Institutions.

8. Meetings

(a) A meeting of the ICC shall be held in conjunction with the annual meeting of the Commission for Human Rights.

(b) A meeting of the ICC shall be held in conjunction with the bi-annual International Conference on National Institutions.
Otherwise, the ICC shall meet at such times and places as it shall decide.

9. Conduct of Business

(a) English/French/Spanish shall be the working languages of the ICC.

(b) A majority of the Members of the ICC shall constitute a quorum.

(c) An agenda for each meeting shall be drawn up by the Chairperson in consultation with the Members. Agenda items may be added at the meeting if approved by a majority of the Members present.

(d) Members of the ICC shall be represented by duly authorised representatives of the institutional members concerned who may be accompanied at meetings by such advisers from the institution as they may require.

(e) Each member shall have one vote. Where possible decisions of the ICC shall be reached by consensus. When consensus is not possible, decisions shall be by a majority of members present and voting. In the event of an equality of votes, the proposal being voted on shall be regarded as being defeated.

(f) Representatives of National Institutions established in accordance with the Paris Principles, other than ICC members, are welcome to attend meetings.

(g) The Chairperson, after consultation with ICC members, may invite National Institutions who are not members of the ICC and any other person or institution to participate in the work of the ICC as an observer without the right to vote.

10. Further Procedure

Should any question concerning the procedure of the ICC arise which is not provided for by these rules the ICC may adopt such procedure as it thinks fit.

11. Amendment of Rules of Procedure

These Rules of Procedure may be amended only by an International Conference of National Human Rights Institutions.

ADOPTED 15 APRIL 2000
AND AS AMENDED 13 APRIL 2002

[1] Commission on Human Rights resolution 1992/54 of 3 March 1992, annex *(Official Records of the Economic and Social Council, 1992, Supplement No. 2* (E/1992/22), chap II, sect. A); General Assembly resolution 48/134 of 20 December 1993, annex.

QUESTIONNAIRE TO NATIONAL HUMAN RIGHTS INSTITUTIONS

The inspiration for the following questionnaire derives from the Statement of National Human Rights Institutions at the World Conference against racism, racial discrimination, xenophobia and related intolerance in Durban. The purpose of the questionnaire is to get an overview of what is currently being done by National Human Rights Institutions in the area of combating racial discrimination and the national context in which this is done. There may of course be many legitimate reasons for giving higher priority to other human rights issues than racial discrimination. The idea of this questionnaire is thus not to rank the institutions according to their level of activities, but to create an overview of initiatives in the combat against racism. In this way it is hoped, among others, that exchange of experiences between institutions can be enhanced. The definition used for racial discrimination derives from the Convention on all Forms of Racial Discrimination.

We are aware that some of the data may not be available. We would however appreciate if the respective institutions will make an effort to fill in the questionnaire as best they can, and return the questionnaire to The Danish Centre for Human Rights in any case.

The questionnaire will partly be used to make a comparative diagram, partly for a comparative analysis (qualitative as well as quantitative) and will be available to all participants in the conference. Thus your responses will not be anonymous or confidential. We would like to receive your questionnaire regardless of whether you can confirm your participation in the conference or not.
The deadline for return of the questionnaire is 11 March 2002

How to fill in the questionnaire and who to return it to?

There are three kinds of questions:

1) One option	Yes or No or N/A*	Put a circle around
2) Multiple options	(a) 1 - 5 (b) 5 - 10 (c) 10 - 15 (d)	Other Mark with an x
3) Text lines		Write explanations/Lists

**N/A means Not applicaple, use this when you don't know the answer*

1. You can fill in your answers in this form. PLEASE PRINT. Then fax (+ 45 3269 8800) or send it to:

   THE DANISH CENTRE FOR HUMAN RIGHTS,
   Wilders Plads,
   DK-1403 Copenhagen K
   Denmark
   att. Lisbeth Garly Andersen

2. You can also consult the web-site www.nhri.net/question.htm and fill in the questionnaire there. You don't have to be on-line. When finished, go on-line and press "send." Then it will automatically reach The Danish Centre for Human Rights.

NATIONAL HUMAN RIGHTS INSTITUTION

Name of institution

Country

1. MANDATE

1.1 Does your institution have a mandate to work with racism and racial discrimination? Yes No N/A

1.2 Does this mandate cover:

(a) Advocacy;

(b) Education;

(c) Monitoring and commenting upon draft and adopted legislation;

(d) The competence to receive and handle complaints related to racism and racial discrimination;

(e) Other;

If (e) Other, please describe briefly:

2. INTERNATIONAL INSTRUMENTS

2.1. Has your government ratified:

- The Convention on the Elimination of all forms of Racial Discrimination? Yes No N/A
- (European) Framework Convention for the Protection of National Minorities? (European countries only) Yes No N/A

3. NATIONAL LAW - CONFORMITY WITH INTERNATIONAL OBLIGATIONS

3.1. Has domestic law (constitutional and / or statutes) been adopted directly addressing racial discrimination? Yes No N/A

3.1.1 If yes, was it adopted as:

(a) Constitutional provision

(b) Statutory provision

3.2. Has national legislation / proposed laws been identified which is considered to be in violation of your country's obligations under the above mentioned international conventions? Yes No N/A

If yes…

3.2.1. Were these legislative provisions identified as such by:

(a) The Government itself

(b) Your institution

(c) Others

_____

If (c) Others, state which:

3.2.2. Please state which convention has been violated with which legislation / proposed laws

(a) Violation of the Convention on the Elimination of all forms of Racial Discrimination? Yes No N/A

_____

Which law / proposal?

(b) Violation of the (European) Framework Convention for the Protection of National Minorities? Yes No N/A

_____

Which law / proposal?

3.2.3 Has your institution made official representations to the government / parliament concerning the legislation / proposal in question? Yes No N/A

If yes, please state whether the legislation was / is (*circle one answer*)

(a) Draft

(b) In force

(c) N/A

Please state the name of the bill or law in question:

Please state whether the recommendations of your institution were: (*circle one answer*)

(a) Followed by the government / parliament;

(b) Partly followed;

(c) Not followed

3.2.4. Does your national legislation contain criminal penalties for offences of racist violence and incitement to racial hatred? Yes No N/A

If yes, please describe briefly:

No of prosecutions in:	1999		2000		2001		
No of convictions in:	1999		2000		2001		

3.2.4.1 Has your institution played a role in:

(a) The adoption of this legislation? Yes No N/A

(b) Bringing offences of this kind to the attention of the police / public prosecutors? Yes No N/A

If yes, please describe briefly:

_____

_____

3.2.5 Does the national legislation in your country explicitly forbid discrimination on racial grounds in

(a) Employment; Yes No N/A

(b) Other fields (e.g. entry to places open to the public etc) Yes No N/A

Please describe briefly, including name of legislation

If yes…

3.2.5.1 Has your institution played a role in:

(a) The adoption of this legislation? Yes No N/A

(b) Bringing offences of this kind to the attention of the police / public prosecutors? Yes No N/A

If yes, please describe briefly:

_____

_____

3.2.6 If no, is your institution taking action to promote the adoption of legislation of this kind? Yes No N/A

4. HUMAN RIGHTS PLANS OF ACTION

4.1. Has your country a national human rights plan of action Yes No N/A

If yes…

4.2 Has your institution contributed to the elaboration of the plan? Yes No N/A

If yes…

4.2.1. Did you contribute by

(a) Drafting

(b) Providing input

(c) Consultation

4.3. Does this national human rights plan of action address racism and racial discrimination? Yes No N/A

4.3.1 Does your institution monitor the implementation of the plan? Yes No N/A

If yes, give examples…

_____

_____

4.4. To what extent does the government follow your recommendations (if any)? (*circle one answer*)

(a) To a large extent

(b) To some extent

(c) To a lesser extent

(d) Not to the slightest extent

(e) N/A

5. PUBLIC POLICY / PUBLIC ADMINISTRATION

5.1. In the area of racial discrimination, does your institution interact directly with branches of the public administration? (circle one answer) Yes No N/A

5.1.1 If yes, which branches, please list

_____

_____

5.1.2 If yes, what form does the interaction take?

(a) Your institution recommends action to be taken to change a particular practice

(b) Joint campaigns

(c) Others

If (c) Others please describe briefly

_____

_____

_____

5.2 In case you have recommended changes to the government, to what extent are your recommendations generally followed? (Circle one answer)

(a) To a large extent

(b) To some extent

(c) To a lesser extent

(d) Not to the slightest extent

(e) N/A

6. EDUCATIONAL CURRICULA

6.1. Is the combat of racial discrimination a part of the educational curriculum in the schools? (Circle one answer)

Primary school Yes No N/A

If yes, is this course:

(a) Optional

(b) Compulsory

(c) N/A

Secondary school Yes No N/A

If yes, is this course:

(a) Optional

(b) Compulsory

(c) N/A

High School Yes No N/A

If yes, is this course:

(a) Optional

(b) Compulsory

(c) N/A

6.2. Has your institution played a role in: (Circle one answer)

(a) Advocating for the introduction of this curriculum

(b) Developing this curriculum

(c) Monitoring its implementation

(d) Other

If (d) Other, please describe briefly

_____

_____

7. PUBLIC ENQUIRIES

7.1. Has your institution conducted any public enquiries in the field of racial discrimination? Yes No N/A

If yes, please give examples of enquiries conducted and the findings

_____

_____

If not, is this because:

(a) Your institution does not have such competence

(b) A lack of resources

(c) The need has not arisen

(d) A public enquiry has not been the appropriate method in the circumstances

(e) Racial discrimination is not a particular problem in your country

(f) Other

If (f) Other, please describe briefly

_____

_____

7.2. Has your institution produced / published reports on the question of respect of the rights of ethnic minorities in your country? Yes No N/A

If yes, is this done:
(a) Annually

(b) Periodically, please indicate period:

_____

(c) Occasionally (please indicate how many, and how recent)

No.: how recent:

_____

7.2.1 Who is the target group?

_____

8. COOPERATION WITH NGO'S AND CIVIL SOCIETY

8.1 Does your institution cooperate with indigenous groups or organisations working with ethnic minorities issues? (circle one answer) Yes No N/A

If yes, give examples:

_____

_____

8.2 Has your institution conducted any campaigns against racial discrimination? Yes No N/A

If yes, please list examples:

_____

_____

8.2.1 Was the campaign:
(*circle one answer*)

(a) Conducted by your institution alone

(b) Conducted in cooperation with a NGO / other private organisation

(c) Conducted in cooperation with public authorities

(d) Conducted in cooperation with both public authorities and a NGO / other private organisation

9. REMEDIES

9.1. Does your institution receive complaints related to racial discrimination? Yes No N/A

9.2. Do other institutions exist in your country with specific mandates related to complaints about racial discrimination? Yes No N/A

If yes, please name the body or institution

_____

9.3. If your institution receives complaints (generally), what type of complaints are they? Please list *(i.e. If you have a summary of statistics available on complaints received in the past three years, please send these)

_____

9.4. What percentage of the complaints you receive are related to racial discrimination?

Complaints handling - racial discrimination	1999	2000	2001
No. of admitted			
No. of rejected			
No. of accepted			

9.5. What were the reasons for rejecting complaints?
List 3 most common causes and prioritise order (1 for most important reason):

_____

1

_____

2

_____

3

_____

9.6. In your opinion, does the number of admitted complaints, reflect the actual pattern of violations in your country? Yes No N/A
If no, what are the main reasons for this?

_____

_____

9.7 What remedies can your institution afford in such complaints?
(a) Recommend a fine
(b) Recommend compensation
(c) Recommend reinstatement
(d) Forward dossier to another institution
(e) Alternative dispute resolution (please describe)
(f) Provide legal assistance
(g) Other
If (e) please describe briefly

If (g) please describe briefly

9.8 Please complete the following table by indicating the no. of cases in which your institution took the following actions:

Remedies for complaints of racial discrimination, 1999 - 2001

	1999	2000	2001
No. of cases where fine recommended			
No. of cases where compensation recommended			
Reinstatement recommended (no.)			
Complaint forwarded to another instance (no.)			
Alternative Dispute Resolution (No.)			
Legal Assistance provided (no.)			
Other assistance provided (no.)			

9.9 When receiving complaints of alleged government violations in the area of racial discrimination, do you approach the state institution itself? Yes No N/A
If no, state main reasons
If yes, how do you approach them?

9.10 Does your institution play a role in providing other forms of assistance to victims of racial and related discrimination? Yes No N/A
If yes, please describe:

10. WORK WITH MEDIA

10.1 Has your institution

(a) Encouraged the media to avoid ethnic profiling Yes No N/A

(b) Worked to promote legislation and other measures promoting enhanced diversity of ownership of the media Yes No N/A

11. MONITORING OF MEDIA

11.1 Has your institution conducted investigation of racial discrimination in the media / on the internet? Yes No N/A

If yes..

11.1.1. What was the action taken?

_____

_____

_____

_____

_____

12. SERIOUSNESS OF HUMAN RIGHTS VIOLATIONS IN YOUR COUNTRY

12.1 Please rank on a scale from one to five the seriousness of each of the following human rights issues in your country (where a score of 5 is the most serious). Please note that we are not looking for a certain ranking order of the issues - that means that more than one issue can have the same score. (Indicate by circling one number)

Violations of civil and political rights	1	2	3	4	5
Gender issues	1	2	3	4	5
Racism / racial discrimination	1	2	3	4	5
Social / economic and cultural rights	1	2	3	4	5
Poverty	1	2	3	4	5
HIV / AIDS	1	2	3	4	5
Refugees / Asylum	1	2	3	4	5
Violations of international humanitarian law	1	2	3	4	5
Other:	1	2	3	4	5
Other:	1	2	3	4	5
Other:	1	2	3	4	5
Other:	1	2	3	4	5
Other:	1	2	3	4	5
Other:	1	2	3	4	5

13. LIMITATIONS

13.1. In case your activities in the area of racial discrimination are limited, is this because of

(a) Other priorities
(b) Lack of resources
(c) Lack of capacity
(d) Racial discrimination not a particular problem
(e) Other institutions are responsible for / specialised in this area
(f) Other If
(f) Other, please describe briefly

_____

_____

Conference Programme

WEDNESDAY 10 APRIL

09.30 - 10.30	Preparatory meeting with ICC at Eigtveds Pakhus (members of ICC only) Departure from Hotel Scandic at 9.00
10.45 - 11.45	Meeting with chairmen, discussants and rapporteurs of the working groups Departure from Hotel Scandic at 10.15
13.00	Departure from Hotel Scandic to the conference at Eigtveds Pakhus (For delegates not participating in the preparatory meetings)
13.30 - 14.00	Registration
14.00 - 14.15	Opening of the conference by Mr. Per Stig Møller, Minister for Foreign Affairs, Denmark
14.15 - 14.30	Introductory speech by Mr. Brian Burdekin, Special Adviser on National Institutions to the High Commissioner for Human Rights
14.30 - 14.45	Introductory speech by Mr. Driss Dahak, Chairman of the International Coordination Committee
14.45 - 15.15	Outline of the main themes for the conference: A follow up to the World Conference in Durban against Racism and Racial Discrimination / the role of National Human Rights Institutions in combating racial discrimination by Mr. Morten Kjærum, Director General of The Danish Centre for Human Rights
15.15 - 15.45	Tea / coffee
15.45	Delegates meet in the assigned working groups - presentation of delegates and of tasks
17.30	Closing of the first day
19.30	Departure from Hotel Scandic to Langelinie Pavillonen
20.00	Welcome dinner (Langelinie Pavillonen)

THURSDAY 11 APRIL

8.15	Departure from Hotel Scandic to the conference at Eigtveds Pakhus
09.00 - 09.25	Key-note Speech: 'Remedies to deal with complaints related to racial discrimination' • Fair and efficient case-handling procedures by NHRIs • Good offices and informal interventions Delivered by: Dr. William Jonas, Social Justice and Race Discrimination Commissioner, Human Rights and Equal Opportunity Commission, Australia
09.25 - 09.45	Discussion
09.45 - 10.10	Key Note Speech: Monitoring 'Legal frameworks relevant for racial discrimination' • Treaty ratification • Analysis of legislation, research capacity Delivered by: Mr. Jagdish Sharan Verma, Chairperson of the National Human Rights Commission, India
10.10 - 10.35	Key Note Speech: Advocacy • Advocacy for ratification • Making international standards known • Advocacy for legislative change, including model bills / law proposals Delivered by: Mr. Alain Bacquet, President of Commission Nationale Consultative des Droits de l'Homme, France
10.35 - 11.00	Discussion
11.00 - 11.30	Tea / coffee
11.30 - 12.00	Key Note Speech: Advocacy 'Combating racial discrimination in practice' • Use of media to highlight positive and negative practices • Constructive dialogue and strategies for improvement Delivered by: Mr. José-Luis Soberanes-Fernández, President of the Human Rights Commission in Mexico
12.00 - 13.00	Lunch

13.00 - 15.30	Delegates meet in three assigned working groups *Group 1 Remedies* Case handling by National Human Rights Institutions *Group 2 Monitoring racial discrimination* Monitoring legal frameworks relevant for racial discrimination *Group 3 Advocacy / Popular education* Advocacy: the relation to government, media and civil society
15.30 - 15.45	Tea / coffee
15.45	Rapporteurs report in plenary on the main findings of each working group, followed by plenary discussion
17.15	Closing of the second day
17.15 - 18.30	Visit to the Danish Parliament (optional)
19.00 - 22.00	Dinner in the Danish Parliament

FRIDAY 12 APRIL

8.00 Departure for Lund from Hotel Scandic

09.30 - 10.00 Welcome by Mrs. Boel Flodgren, Rectrix Magnifica, University of Lund, Sweden and Ms Margareta Wadstein Ombudsman Against Ethnic Discrimination, Sweden.

10.00 - 10.25 Key Note Speech: Remedies 'The relationship between NHRI and other institutions / mechanisms'

- Relations to the police, prosecution and courts
- Effective cooperation with other case handling institutions, in particular the ombudsman
- Regional and international human rights mechanism
- Cooperation with UN treaty bodies

Delivered by: Mr. Emile Francis Short,
Commission on Human Rights and Administrative Justice, Ghana.

10.25 - 10.50 Key Note Speech: Monitoring Practice 'Documentation of racial discrimination'

- Gathering of primary and secondary information
  Relation to case handling (remedies) function
  Monitoring specific institutions
  Public inquiries
  Networking and co-operation with civil society
- Classification and analysis of data
- Analytical and quantitative reporting

Delivered by: Mrs. Michelle Falardeau-Ramsay,
Chief Commissioner of the Canadian Human Rights Commission

10.50 - 11.10 Tea / coffee

11.10 - 11.35 Key Note Speech: 'Education against racial discrimination'

- Targeting discrimination in the labour market
- Furthering interracial / intercultural understanding

Delivered by: Ms Margareta Wadstein,
Ombudsman against Ethnic Discrimination, Sweden

11.35 - 12.00 Key-note Speech: Education 'Integration of anti-racism into basic training curricula'

- Primary and secondary schools, police, journalists, etc

Delivered by: Ms Margaret Sekaggya,
Chairperson of Uganda Human Rights Commission

12.00 - 13.00	Lunch in Tegnérs Matsala, University of Lund
13.00 - 15.30	Delegates meet in three assigned working groups *Group 1 Remedies* The relationship between NHRIs and other institutions/mechanisms *Group 2 Monitoring racial discrimination* Documentation of racial discrimination *Group 3 Advocacy / Popular education* Pro-active strategies in the area of education
15.30 - 17.00	Rapporteurs report in plenary on the main findings of each working group, followed by plenary discussion.
17.00 - 18.30	Sightseeing in Lund
19.00 - 21.00	Dinner in The Pillard Hall, University of Lund
21.00	Return to Copenhagen

SATURDAY 13 APRIL

08.15	Departure from Hotel Scandic to the conference at Eigtveds Pakhus
09.00 - 10.30	Best practices - summing up (by general rapporteur) General discussion
10.30 - 10.45	Tea / coffee
10.45 - 12.00	Adoption of Conference Declaration
13.00 - 14.00	Lunch
14.00 - 15.00	Adoption of amendments for ICC rules of procedure (ICC members only)
15.30 - 16.00	Completion ("The way forward") including views on future co-operation among the institutions and regions Preparation for the sessions in Geneva

List of participants

THE SIXTH INTERNATIONAL CONFERENCE FOR NATIONAL HUMAN RIGHTS INSTITUTIONS
Copenhagen and Lund, 10 - 13 April 2002

ARGENTINA
Asesor para las Relaciones Internacionales
JUAN CARLOS MAZZINI
Defensor del Pueblo de Lanacion Argentina,
Montevideo 1250
Bs.As Argentina 1018, Argentina
Tel. + 54 11 4819 1607
Fax + 54 11 4819 1608
jmazzini@def.gov.ar

ASIA PACIFIC FORUM
Director
KIEREN JOHN FITZPATRICK
Asia Pacific Forum of National Human Rights Institusions
GPO Box 5218
Sydney NSW, Australia
Tel. + 61 2 9284 9673
Fax + 61 2 9284 9825
kierenfitzpatrick@humanrights.gov.au

AUSTRALIA
Social Justice and Race Discrimination Commissioner
WILLIAM JAMES JONAS
Human Rights & Equal Opportunity Commission
GPO Box 5218
Sydney NSW 1042, Australia
Tel. + 61 2 9284 9603
Fax + 61 2 9284 9794
wjonas@humanrights.gov.au

Director Race Discrimination Unit
MEREDITH JAYNE WILKIE
Human Rights & Equal Opportunity Commission
GPO Box 5218
Sydney NSW 1042, Australia
Tel. + 61 2 9284 9603
Fax + 61 2 9284 9794
meredithwilkie@humanrights.gov.au

BELGIUM
Juriste a la Cellule Plainte/Racisme
PATRICK CHARLIER
Centre pour l'égalité des chances et la lutte contra le racisme
Rue de la Loi, 155
B-1040 Bruxelles, Belgium
Tel. + 32 2 233 0755
Fax + 32 2 233 0704
patrick.charlier@antiracisme.be

BENIN
Président
DOMINIQUE ADJAHOUINOU
Commission Béninoise des Droits de l'Homme
04BP607 Cadjehoum
Cotonou, Benin
Tel. + 229 933672
Fax + 229 30 52 71
caobenin@firsnet.bj

BOLIVIA
Responsable de Prensa y Relaciones Publicas
ANA EDIT BENAVIDES CLAVIJO
Defensor del Pueblo de Bolivia
c. Heriberto Gutierrez # 2374
La Paz, Bolivia
Tel. + 591 2 244 3838
Fax + 591 2 211 3538
abenavides@defensor.gov.bo

BOSNIA AND HERZEGOVINA
Head
FRANK ORTON
The Human Rights Ombudsman of Bosnia & Herzegovina
OHRO, Marsala Tita 7
BO-71000 Sarajevo, Bosnia and Herzegovina
Tel. + 387 33 666 006
Fax + 387 33 666 007
frankorton@ohro.ba

Personal Adviser
DANIEL LINDWALL
The Human Rights Ombudsman of Bosnia & Herzegovina
OHRO, Marsala Tita 7
BO-71000 Sarajevo, Bosnia and Herzegovina
Tel. + 387 33 666 006
Fax + 387 33 666 007
dlindwall@ohro.ba

CAMEROON
Chairman
SOLOMON NFOR GWEI
National Commission on Human Rights & Freedoms
PO Box 20317
Yaounde, Cameroon
Tel. + 237 220 6080
Fax + 237 220 6082
cndhl@iccnet.cm

CANADA
Chief Commissioner
MICHELLE FALARDEAU-RAMSAY
Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Canada
Tel. +1 613 941 6810
Fax +1 613 943 9144
michelle.falardeau-ramsay@chrc-ccdp.ca

Director Policy & International Programs Branch
KERRY BUCK
Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1, Canada
Tel. + 1 613 943 9146
Fax + 1 613 995 1035
kerry.buck@chrc-ccdp.ca

COLOMBIA
Directora National
OLGA LUCÍA GAITAN GARCÍA
Defensoria del Pueblo
Calle 55 #10-32, Columbia
Tel. + 57 11571 314 7300
Fax + 57 11571 640 0491
secretaria_privada@hotmail.com

COSTA RICA
Directora
KATHYA RODRIGUEZ ARAICA
Defensoria de los Habitantes de la Republica de Costa Rica
Barrio Mexico, San José
Apdo.Postal 686-1005, Costa Rica
Tel. + 506 248 2249
Fax + 506 248 2468
kathyarodriguez@costarricense.cr

DENMARK
Chairman of board
CLAUS HAAGEN JENSEN
The Danish Centre for Human Rights
Krogh Strædet 5
DK-9220 Ålborg Øst
Denmark
chj@business.auc.dk

Director General
MORTEN KJÆRUM
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
mk@humanrights.dk

Deputy Director General
BIRGIT LINDSNÆS
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
bl@humanrights.dk

Head of Education Department
DIEGO BANG
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
db@humanrights.dk

Project Manager / Team Leader
FERGUS KERRIGAN
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
fk@humanrights.dk

Senior Researcher
LONE LINDHOLT
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
ll@humanrights.dk

Senior Analyst
HANS-OTTO SANO
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
hos@humanrights.dk

Researcher
MARGARET JUNGK
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
mj@humanrights.dk

Project Manager
LISBETH GARLY ANDERSEN
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
lga@humanrights.dk

Web developer
HENRIK LINDHOLT
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
hl@humanrights.dk

Intern
KATJA SOFIE TOLSTRUP
The Danish Centre for Human Rights
Wilders Plads 8 H
DK-1403 Copenhagen K, Denmark
Tel. + 45 3269 8888
Fax + 45 3269 8800
kt@humanrights.dk

ECUADOR
Defensor del Pueblo
CLAUDIO ERNESTO MEUCKAY ARCOS
Defensor del Pueblo
Ave. Juan Montalvo 2 DO Piso
Oficina 203
Quito, Ecuador
defeneecuador@hotmail.com

EL SALVADOR
Asesor
CARLOS RAFAEL URQUILLA BONILLA
Procuraduria para la Defensa de los Derechos Humanos
5A. Calle Poniente y 9A.
Avenida Norte No.535
San Salvador, El Salvador
Tel. +503 222 0011
Fax +503 222 0655
carlosrafael@urquilla.com

FIJI
Director
SHAISTA SHAMEEM
Fiji Human Rights Commission
Level Two Civil Towers, Victoria parade
Private Mail Bag, Suva, Fiji
Tel. + 679 308 577
Fax + 679 308 661
sshameem@humanrights.org.fj

Senior Legal Officer
USAIA RAKUKA RATUVILI
Fiji Human Rights Commission
Level Two Civil Towers
Private Mail Bag, Suva, Fiji
Tel. + 679 308 577
Fax + 679 308 661
uratuvili@humanrights.org.fj

FRANCE
Président
ALAIN BACQUET
Commission Nationale Consultative des Droits de l'Homme
35 rue Saint-Dominique
F-75700 Paris, France
Tel. + 33 1 4275 7709
Fax + 33 1 4275 7714
g.fellous@cncdh.pm.gouv.fr

Président de la sous-commission internationale
EMMANUEL DECAUX
Commission Nationale Consultative des Droits de l'Homme
15 Rue Saint Dommique
F-75007 Paris, France
Tel. + 33 1 4275 7709
Fax + 33 1 4275 7714
emm.decaux@wanadoo.fr

Secrétaire Général
GERARD FELLOUS
Commission Nationale Consultative des Droits de l'Homme
35 rue Saint-Dominique
F-75700 Paris, France
Tel. + 33 1 4275 7709
Fax + 33 1 4275 7714
g.fellous@cncdh.pm.gouv.fr

Vice-Presidente
MARTINE VALDES- BOULOUQUE
Commission Nationale Consultative des Droits de l'Homme
35 rue Saint-Dominique
F-75007 Paris, France
Tel. + 33 1 4275 7709
Fax + 33 1 4275 7714
martine.valdes-boulouque@justice.gouv.fr

GEORGIA
Public Defender
NANA DEVDARIANI
Public Defender's Office
11, Machabell str.
Tbilisi, Georgia
Tel. + 995 32 93 92 42/93 92 22
Fax + 995 32 92 24 70
pdoid@hotmail.com

GERMANY
Vice Director
FRAUKE LISA SEIDENSTICKER
German Institute for Human Rights
Zimmerstr.26/27
D-10117 Berlin, Germany
Tel. + 49 1755 60 9892
Fax + 49 3042 02 1772
flseidensticker@web.de

GHANA
Commissioner
EMILE FRANCIS SHORT
Commission on Human Rights and Administrative Justice
Old Parliament House
Accra, Ghana
Tel. + 23 32 1668 839
Fax + 23 32 7660 020
chraj@ighmail.com

Deputy Commissioner
OPPONG BETT K
Commission on Human Rights and Administrative Justice
Old Parliament House
Accra, Ghana
Tel. + 23 32 1668 839
Fax + 23 32 7660 020

GREECE
Legal Research Officer
NIKOS SITAROPOULOS
Greek National Commission for Human Rights
Herodotou 1
GR-10674 Athens, Greece
Tel. + 30 10 3385 5801
Fax + 30 10 7254 050
nchr@primeminister.gr

HONDURAS
Comisionada Adjunto Primera
ANA ALEJANDRINA PINEDA HERNÀNDEZ
Comisionado Nacional de los Derechos Humanos
Ave.La Paz.Contiguo EDIF.
Galerias La Paz, Honduras
Tel. + 1 504 221 0516
Fax + 1 504 221 0536

YESSINA JULISSA AGULAR-SANTOS
Comisionado Nacional de los Derechos Humanos
Ave.La Paz.Contiguo EDIF.
Galerias La Paz, Honduras
Tel. + 1 504 221 0516
Fax + 1 504 221 0536

HONG KONG
Legal Adviser
ALEXANDRA PAPADOPOULOS
Equal Opportunities Commission
Unit 2002, 20/F, Office Tower
Convention Plaza
1 Harbour Road
Wanchai, Hong Kong
Tel. + 852 2106 2223
Fax + 852 2824 3892
alexandra@eoc.org.hk

INDIA
Chairperson
JAGDISH SHARAN VERMA
National Human Rights Commission, India
1st Floor, Sardar Patel Bhawan
Parliament Street
New Delhi 110001, India
Tel. + 91 011 334 7065
Fax + 91 011 334 0016
chairnhrc@nic.in

Joint Secretary
JALAJA SUBRAMONIA
National Human Rights Commission, India
Room no. 118, Sardar Patel Bhawan
Parliament Street
New Delhi 110001, India
Tel. + 91 011 334 6243
Fax + 91 011 334 0016
sjalaja@hotmail.com

Member
VIRENDRA DAYAL
National Human Rights Commission, India
1st Floor, Sardar Patel Bhawan
Parliament Street
New Delhi 110001, India
Tel. + 91 011 334 7064
Fax + 91 011 334 0016
nhrc3@alpha.nic.in

Private Secretary to Chair person
YADAVALLI RAMACHANDRA MURTHY
National Human Rights Commission, India
1st Floor, Sardar Patel Bhawan
Parliament Street
New Delhi 110001, India
Tel. + 91 011 334 7065
Fax + 91 011 334 0016
murthyyadavalli@hotmail.com

INDONESIA
Vice Chairman
SAAFROEDIN BAHAR
Indonesian National Commission on Human Rights
Latuharhary No. 4B, Menteng
Jakarta 10310, Indonesia
Tel. + 62 21 3925 230
Fax + 62 21 3925 236
nunik_soeharto@yahoo.com

IRAN
Professor, member
SEYYED MOHAMMAD MOUSAVI BOJNOURDI
Islamic Human Rights Commission
Tehran – Iran
Tel.: + 9821 204 58 53
Fax: + 9821 204 58 53
ihrc@majlis.ir

IRELAND
Administrator
SOPHIE MAGENNIS
Irish Commission on Human Rights
17/19 Lower Hatch Street
Dublin, Ireland
Tel. + 353 1 6472 562
Fax + 353 1 647 2515
ihrc@eircom.net

NORTHERN IRELAND
Chief Commissioner
BRICE DICKSON
Northern Ireland Human Rights Commission
39 Temple Court, North Street
Belfast BTI 1NA, Northen Ireland
Tel. + 44 28 9024 3987
Fax + 44 28 9024 7844
nihre@belfast.org.uk

Chief Executive
PATRICIA SLOAN
Northern Ireland Human Rights Commission
39 Temple Court, North Street
Belfast bti 1NA, Northern Ireland
Tel. + 44 28 9024 3987
Fax + 44 28 9024 7844
nihre@belfast.org.uk

KOREA
Officer
JEONG EUN LEE
Division Human Rights Research
National Human Rights Commission of Korea
#502 Leema Building, 146-1
Soosong-dong - Chonglo-gu
Seoul, 110-755, Korea
Tel. + 82 2 3703 3236
Fax + 82 2 3703 3244
manimje@hanmail.net

LUXEMBOURG
DEAN SPIELMANN
Commission Consultative des Droits de l´Homme
4-6 Rue de la Boucherie
L-1247 Luxemburg, Luxembourg
Tel. + 352 46 18 38
Fax + 352 220832
spielmann.d@dupong-dupong-avocats.lu

MADAGASCAR
Magistrate-General Secretary
HONORINE BERNADETTE RAHANTANIRINA
Madagascar National Human Rights Commission
Lot Ivi 25 Bis Andravoahangy
Antananarivo 101
Madagascar
Tel. + 261 20 22 411 16
Fax + 261 20 22 607 64
cndh-mcar@malagasy.com

MALAWI
Deputy Executive Secretary
CHARLES RENEDICTO MALUNGA
Malawi Human Rights Commission
P. B. 378
Lilongwe 3, Malawi
Tel. + 265 771 750
Fax + 265 771 751
mhrc@sdnp.org.mw

MALAYSIA
Commissioner HENG KENG CHIAM
Human Rights Commission of Malaysia
Level 29, Menara Tun Razak
Jalan Raja Laut
50350 Kuala Lumpur, Malaysia
Tel. + 60 3 2612 5644
Fax + 60 3 2612 5620
chiamhk@um.edu.my

Legal Officer
SHARMILA KUMARI SHARMA
Human Rights Commission of Malaysia
Level 29, Menara Tun Razak
Jalan Raja Laut
50350 Kuala Lumpur, Malaysia
Tel. + 60 3 2612 5644
Fax + 60 3 2612 5620
sharmila@suhakam.org.my

MAURITIUS
Chairman
DHEERUTLALL BARAMLALL SEETULSINGH
National Human Rights Commission, Mauritius
Bank og Baroda Building, 4th Fl.
Sir William Newton Street
Port Louis, Mauritius
Tel. + 230 208 2716
Fax + 230 208 2858
mhrcdbs@intnet.mu

MEXICO
Presidente
JOSÉ-LUIS SOBERANES-FERNÁNDEZ
Comision Nacional de los Derechos Humanos
Periferico sur 3469, 5 Piso
10200 Mexico D.F, Mexico
Tel. + 1 56 8180 32
Fax + 1 56 8171 99
correo@cndh.org.mx

Executive Secretary
FRANCISCO OLGUIN
Comision Nacional de los Derechos Humanos
Av. Periferico sur no 4118
Col. Jardines del Pedregal
01900 Mexico D.F, Mexico
Tel. + 1 52 51 35 05 94
Fax + 1 52 51 35 05 94
correo@cndh.org.mx

DAVID BOSADA
Comision Nacional de los Derechos Humanos
Periferico sur 3469, 5 Piso
10200 Mexico D.F, Mexico
Tel. + 1 56 8180 32
Fax + 1 56 8171 99

MONGOLIA
Commissioner
GUUSHIR DALAIJAMTS
National Human Rights Commission of Mongolia
State Property Bldg.1, Liberty Square
Maanbaatar 38, Mongolia
Tel. + 976 11 320 115
Fax + 976 11 320 284
munh14@hotmail.com

Referent
BATCHULUUN KHISHIGSAIKHAN
National Human Rights Commission of Mongolia
State Property Bldg.1, Liberty Square
Maanbaatar 38, Mongolia
Tel. + 976 11 316 509
Fax + 976 11 320 284
munh14@hotmail.com

MOROCCO
Président
DRISS DAHAK
Conseil Consultatif des Droits de l´Homme
Place Ach-Chouhada, BP 1341
10000 Rabat, Morocco
Tel. + 212 3772 2207
Fax + 212 3772 6856
ccd@iam.net.ma

Expert Permanent Chargê de la Cooperation
ALI BARGACH
Conseil Consultatif des Droits de l´Homme
Place Ach-Chouhada, BP 1341
10000 Rabat, Morocco
Tel. + 212 3772 2207
Fax + 212 3772 6856
ccdh@iam.net.ma

Membre du CCDH
ALBERT SASSON
Conseil Consultatif des Droits de l´Homme
Place Ach-Chouhada, BP 1341
10000 Rabat, Morocco
Tel. + 212 3772 2207
Fax + 212 3772 6856
ccdh@iam.net.ma

Membre du CCDH
ABDERRAZAK GUENNOUN
Conseil Consultatif des Droits de l´Homme
Place Ach-Chouhada, BP 1341
10000 Rabat, Morocco
Tel. + 212 3772 2207
Fax + 212 3772 6856
ccdh@iam.net.ma

NEPAL
Member
INDIRA RANA
National Human Rights Commission
Harihar Bhawan, Pulchowk
Lalitpur, Nepal
Tel. + 977 1 525659
Fax + 977 1 547 973
nhrc@ntc.net.np

NICARAGUA
Procurador
NORMAN TIMONTHY BENT ROLAND
Procuraduria para la Defensa
de los Derechos
Humanos de Nicaragua
Apartado Postal 369
Managua, Nicaragua
Tel. + 505 2663 257 58
Fax + 505 266 4141
pepice@pddh.org

Subprocurador
JULIAN ANTONIO CORRALES MUNGUIA
Procuraduria para la Defensa
de los Derechos
Humanos de Nicaragua
Apartado Postal 369
Managua, Nicaragua
Tel. + 505 2663 257 58
Fax + 505 266 4141
sub_procurador@pddh.org

NIGER
Président
MAMANE OUMARIA
Commission Nationale des Droits de
l'Homme
1 Rue du Plateau
Niamey, Niger
Tel. + 227 722654
Fax + 227 722654
oumaria@caramail.com

Commissioner
ALHASSANE A. ALBADE
Commission Nationale des Droits de
l'Homme
1 Rue du Plateau
BP 13334
Niamey, Niger
Tel. + 227 722654
Fax + 227 722654
cndhlf@intnet.ne

Président Sous-Commission Detention
YOUNOUSSA ASSANE DIORI
Commission Nationale des Droits de
l'Homme
1 Rue du Plateau
Niamey, Niger
Tel. + 227 722654
Fax + 227 722654
cndhlf@intnet.ne

NORWAY
Director of information Department
CHRISTIAN BOE ASTRUP
Institutt for Menneskerettigheter
Universitetsgatan 22-24PB
N-6832 Sct. Olaus Plass, Norway
Tel. + 47 22 8420 52
fax + 47 22 8420 02
c.b.astrup@nihr.uio.no

Administrative Director
KRISTIN HØYDAHL
Institutt for Menneskerettigheter
Universitetsgatan 22-24PB
N-6832 Sct. Olaus Plass
Norway
Tel. + 47 22 8420 52
Fax + 47 22 8420 02
kristin.hugdahl@nihr.uio.no

OHCHR
Special Adviser on National Institutions
BRIAN BURDEKIN
National Institutions' Team
OHCHR- Palais des Nation
8-14 AV. de la Paix
CH-1211 Geneva 10, Switzerland
Fax + 41 22 917 9021

Human Rights Officer, member of the
National Institutions' Team
OREST NOWOSAD
OHCHR- Palais des Nation
8-14 AV. de la Paix
CH-1211 Geneva 10, Switzerland
Fax + 41 22 917 9021
onowosad.hchr@unog.ch

PERU
Comisionado en Asuntos Constitucionales
ROBERTO CARLOS PEREIRA CHUMBE
Defensoria del Pueblo del Peru
Jiron Ucayalt 388
Lima, Peru
Tel. + 51 1 426 7800
Fax + 51 1 426 7800 ex. 221
rpereira@ombudsman.gob.pe

PHILIPPINES
Chair person
AURORA RECINA
Philippine Commission on Human Rights
Saag, Bldg. Compound
Commonwealth Ave. Diliman 1104
Philippines
Tel. + 632 928 5655
Fax + 632 929 0102
apnr@chr.gov.ph

POLAND
Director
ANDRZEJ MALANOWSKI
Department for Fundamental Civil Rights
and Liberties
Office of the Commissioner for Civil Rights
Protection
Al. Soli darnosci 77,
00-090 Warsaw, Poland
Tel. + 48 22 827 1313
Fax + 48 22 827 6453
a.malanowski@brpo.gov.pl

RUSSIA
Commissioner
OLEG MIRONOV
Human Rights Russian Federation
103084 ul. Maysnitskaya
Moscow 47, Russia
Tel. + 7 095 207 4404
Fax + 7 095 207 4404
kifrol@gov.ru

Head of International Department
RASHID FEYZUKHANOV
Human Rights Russian Federation
103084 ul. Maysnitskaya
Moscow 47, Russia
Tel. + 7 095 207 4404
Fax + 7 095 207 4404
kifrol@gov.ru

Deputy Chief of Staff
ROBERT SIMONYAN
Office of the Commissioner for Human
Rights
Str. Myasnitskaya 47
Moscow, Russia
Tel. + 7 095 207 4404
Fax + 7 095 207 4404
kifrol@gov.ru

RWANDA
Commissaire
THEODORE SIMBURUDALI
Commision Nationale des Droits l'Homme
P.O.Box 269
Kigali, Rwanda
Tel. + 250 510372
Fax + 250 510393
simburudali@yahoo.fr

SENEGAL
Coordonnateur
HADJI MALICK SOW
Comité Senegalais des Droits de l'Homme
Boulevard Martin Luther King
Dakar, Senegal
Tel. + 221 823 4427
Fax + 221 821 4494

SLOVENIA
JERNEJ ROVSEK
Human Rights Ombudsman
1000 Ljubljana
Dunajska 56, Slovenia
Tel. + 386 1 475 0000
Fax + 386 1 475 0040
jernej.rovsek@varuh-rs.si

SOUTH AFRICA
Chairperson
EVANGELINA MABUSELA
S.A. Human Rights Commission
Entrance 1, Wilds view, Parktown
P.B. 2700, Houghton
2041 Johannesburg, South Africa
Tel. + 27 11 484 8300
Fax + 27 11 484 8403
smabusela@sahrc.org.sa

Deputy Chairperson
JODY NARANDRAN KOLLAPEN
S. A. Human Rights Commission
(Entrance 1, Wilds view, Parktown)
P.B. 2700 Houghton
2041 Johannesburg, South Africa
Tel. +260 11 484 8300
Fax +260 11 484 8403
jkollapen@sahrc.org.sa

HDD-Advocacy
JACOB SKOSANA
SA Human Rights Commission
P.B. 2700, Houghton
2041 Johannesburg, South Africa
Tel. +260 11 484 8300
Fax +260 11 484 8403
jskosana@sahrc.org.za

SPAIN
Adjunto segundo al defensor del Pueblo
MANUEL AGUILAR BELDA
Defensor del Pueblo del
Reino de España
Eduardo Dato 31
E- 28010 Madrid, Spain
Tel. + 34 9 1432 7900
Fax + 34 9 1308 7027
manuel.aguilar@defensordelpueblo.es

Jefe del Gabinete del Adjunto
al Defensor
JOSE MANUEL SANCHEZ-SAUDINOS
Defensor del Pueblo del
Reino de España
Eduardo Dato 31
E- 28010 Madrid, Spain
Tel. + 34 9 1310 4843
Fax + 34 9 1308 7027
jms.saudinos@defensordelpueblo.es

SRI LANKA
Secretary General
RAMALINGAM C. KARUNAKARAN
Human Rights Commission of Sri Lanka
36, Kynsey Road
Colombo 08, Sri Lanka
Tel. + 941 685 337
Fax + 941 696 470/436 381
rexel@sri.lanka.net

SWEDEN
Ombudsman
MARGARETA WADSTEIN
Ombudsman Against Ethnic
Discrimination
Katarina Bangata 79
S-116 72 Stockholm, Sweden
Tel. + 46 8 5560 9500
Fax + 46 8 556 9501
margareta.wadstein@do.se

MARIE NORDSTRØM
Office of the Ombudsman for Equality
Box 49132
S-103 268 Stockholm, Sweden
Tel. + 46 8 440 1060
Fax + 46 8 21 0047

MARISSA GILLI
Office of the Disability Ombudsman
Box 49132
S-10029 Stockholm, Sweden
Tel. + 46 8 406 6541
Fax + 46 8 204 353

SWITZERLAND
Vice-President
BOEL SAMBUC
Federal Commission Against Racism
11, av. Antoinette
CH-1234 Vessy, Switzerland
Tel. + 41 22 343 8653/786 20 20
Fax + 41 22 343 8012
sambuc@iprolink.ch

TANZANIA
Judge
ROBERT KISANGA
Preparatory Secretariat for Human Rights
and Good Governance,
Tanzania
P.B. 2643
Dar es Salaam Tanzania
Tel. + 255 22 2113690
Fax + 255 22 2668624
shrgg@africaonline.co.tz
hb09@hotmail.com

TCHAD
President
NODJIGOTO DOMAYE
Commission Nationale des droits de
l'Homme
N'Djame'na BP 1522, Tchad
Tel. + 235 2933 42
Fax + 235 5220 89

THAILAND
Member
PRADIT CHAREONTHAITAWEE
National Human Rights Commission of
Thailand
422, 4th floor
Phyathai Road Pathumvan District
Bangkok 10330, Thailand
Tel. + 662 219 2943/256 7831
Fax + 662 219 2964/262 1739
profdrpradit@hotmail.com

THE NETHERLANDS
EDITH BRONS
Equal Treatment Commission
Vrouwe Justitiaplein 1
NL-3500 DA Utrecht, The Netherlands
Tel. + 31 30 223 4800
Fax + 31 30 223 4848
cgb@support.nl

TOGO
Charge de la Division des Droits de l'Enfant
KOMI DJAMFELE
CNDH-TOGO
37, Rue 74 Tokoin Doumassesse
BP 3222 Lome, Togo
Tel. + 228 2221 1070
Fax + 228 221 2436
cndhtogo@yahoo.fr

Président
KOMI BOUWEMANDA GNONDOLI
CNDH-TOGO
37, Rue 74 Tokoin Doumassesse
BP 3222 Lome, Togo
Tel. + 228 2221 1070
Fax + 228 221 2436
cndhtogo@yahoo.fr

TUNESIA
Membre
RIDHA KHEMAKHEM
Comité Supérieur des Droits de l'homme et
des Libertés Fondamentales de Tunis
85, Avenue de la Liberté
10022 Tunis – Belvédère
Tel. + 216 1 78 38 58
Fax.+ 216 1 78 40 38

UGANDA
Chairperson
MARGARET SEKAGGYA
Uganda Human Rights Commission
P.O.Box 4929
Kampala, Uganda
Tel. + 256 41 348 006/8
Fax + 256 41 255 261
msekaggya@yahoo.com

Commissioner
VERONICA ISALA ERAGU- BICHETERO
Uganda Human Rights Commission
P.O.Box 4929
Kampala, Uganda
Tel. + 256 41 348 006/8
Fax + 256 41 255 261
veragu@uhrc.org

ZAMBIA
Commissioner
LEWIS CHANGUFU
Permanent Human Rights Commission
P.O.Box 33812
Lusaka, Zambia
Tel. + 260 1 251327
Fax + 260 1 25 13 42
phrc@zamnet.zm

Judge
LOMBE P. CHIBESAKUNDA
Permanent Human Rights Commission
P.O.Box 33812
Lusaka, Zambia
Tel. + 260 1 251327
Fax + 260 1 25 13 42

Director
LASS MUFUZI
Permanent Human Rights Commission
P.O.Box 33812
Lusaka, Zambia
Tel. + 260 1 251327
Fax + 260 1 25 13 42

VENEZUELA
Defensor III
RAIZABEL DIAZ ACERO
Defensoria del Pueblo de Venezuela
Av.Mexico, Plaza Morelos,Edif.
Defensoria del Pueblo,piso 3
Caracas
Venezuela
Tel. +58 212 5781 207
Fax +58 212 5781 207
dgainternational@hotmail.com

Director de seguimiento
OMAR VALENTÍN ROA VÉLIZ
Defensoria del Pueblo de Venezuela
Av.Mexico, Plaza Morelos,Edif.
Defensoria del Pueblo,piso 3
Caracas
Venezuela
Tel. + 58 212 578 3153
Fax + 58 212 578 3153
oroa@defensoria.gov.ve

OBSERVERS
CHRISTOPHER DOMINIC SIDOTI
20 Dickenson Street
Panania NSW 2213, Australia
Tel. + 61 2 9773 9441
Fax:+ 61 2 9773 0019
chrissidoti@gatewaynet.bigpond.com

Senior Research Assistant
VALENTIN AICHELE
University of Mannheim
Rheindammstrasse 43
D-68163 Mannheim, Germany
Tel. +49 621 819 0595
valentin.aichele@web.de

SIMON WILLIAMS
The British Council
10, Spring Garden
London SW1A 2BN
United Kingdom
Tel. + 44 20 7389 4967
Fax + 44 20 7389 4750

SYLVIA BLUCK
The British Council
10, Spring Garden
London SW1A 2BN
United Kingdom
Tel. + 44 20 7389 4967
Fax + 44 20 7389 4750

Program Officer
HELENA LAGERLÖF
Department for Democratic Governance
SIDA
105 25 Stockholm
Sweden

Every second year, National Human Rights Institutions worldwide convene in an international conference to address issues, related to their work.

In 2002, the 6th International Conference for National Human Rights Institutions was held in Copenhagen, Denmark and in Lund, Sweden 10-13 April.

The overall theme of the Conference, where 61 countries were represented, was the role of National Human Rights Institutions in combating racial discrimination. Thereby the Conference functioned as a follow up on the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in August and September 2001.

This publication presents speeches and summaries from the various debates in working groups as well in plenary. Furthermore the publication brings the results of information gathered via a questionnaire prepared by the Danish Centre for Human Rights concerning the work of National Human Rights Institutions in this area, their mandate, relationship with other institutions etc.