

Performance and legitimacy: national human rights institutions

Summary of Findings

Many national human rights commissions have been created in the last decade. This document summarises the findings of a research project to examine how successfully such institutions promote and protect human rights in their societies. It looks at what NHRIs have done well and, based on the experience of specific institutions in a range of countries, what they might do to be more effective. A full report of the research, including detailed recommendations, is available from the International Council.

Some comments on *Performance and legitimacy: national human rights institutions*, published by the International Council on Human Rights Policy in March 2000:

"A very good piece of work... A welcome addition to the study of national institutions... the best piece I have read on the subject."

Kieren Fitzpatrick,
Director, Asia Pacific Forum on National Human Rights Institutions

"Serious, well organised, and easy to read."

Augusto Sánchez Sandoval,
Professor, Universidad Nacional Autónoma de México

"The first detailed study...to provide some evaluation of effectiveness rather than simply describe formal structures and processes."

Chris Sidoti,
Australian Human Rights and Equal Opportunity Commissioner

"The report is admirably clear and makes many valuable observations as well as providing much information which has not been readily available before."

Sarah Spencer, Director, Citizenship and Governance Programme,
Institute for Public Policy Research, London.

"A comprehensive study containing both analytical reflections and extensive information extremely valuable to the institutions themselves and to those working in the field."

Lone Lindholt, Senior Legal Research and Development Analyst,
Danish Centre for Human Rights

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THE FINDINGS

National human rights institutions (NHRIs) take many forms, as ombudsmen, defensores del pueblo, procurators, and advisory and anti-discrimination commissions. Their authority may be constitutionally entrenched or they may have merely advisory powers with little legal protection from executive interference. They also operate in widely different political contexts – industrial democracies, poor societies, states in transition from oppressive regimes. This project defines them as autonomous quasi-governmental or statutory institutions with human rights in their mandate.

In 1991, minimum standards for NHRIs were agreed at an international workshop in Paris. The “Paris Principles” recommended that states should establish independent national institutions to (i) promote human rights, (ii) advise governments on human rights protection, (iii) review human rights legislation, (iv) prepare human rights reports, and (v) receive and investigate complaints from the public. Under their influence, many national institutions were formed during the 1990s and NHRIs now play a role in the protection and promotion of human rights in numerous countries.

Are they effective? Their diversity, and also the range of political contexts in which NHRIs function, make this question difficult to answer. Why have some made little impact although they apply the Paris Principles? Why are others widely respected though they appear compromised or constitutionally defective? Most research on these institutions has focused on normative and legal issues — how they were set up and what their objectives are. In the end, however, an organisation’s usefulness is determined by what it does and by how it is perceived by those it serves. This study therefore focuses on what NHRIs do and on their treatment of vulnerable groups.

It is a study of several real cases, chosen not because they are “best” or “worst” examples but because they are representative of various kinds of experience. Though generalisations taken out of context will be unhelpful, in general we found that the most successful NHRIs operate well at several levels. In particular, they are perceived to be legitimate, make themselves accessible, and build good working links with relevant institutions in civil society and government.

THE RESEARCH PROCESS

This study of national human rights institutions (NHRIs) was undertaken between October 1998 and November 1999. It assesses how effectively they promote and protect human rights. The researchers examined the mandate of NHRIs; investigation techniques; legitimacy and level of commitment; ability to handle cases; formation and history; and how they have applied international human rights norms. The research team considered three main questions:

- Under what conditions do NHRIs acquire public – not just constitutional – legitimacy?
- How far do vulnerable social groups have effective access to their services?
- To what extent do other bodies in and outside government influence their work?

The principal researcher, Richard Carver, undertook first-hand research in Ghana, Indonesia and Mexico. Local research consultants guided and advised him in each country. He also made short visits to South Africa and Zimbabwe and did secondary research on NHRIs in Canada, Guatemala, India, Latvia, New Zealand, Nigeria, the Philippines, Spain and Togo.

The selection of commissions took account of regional differences, political and legal systems, context (states in transition, states that abuse human rights), institutional form (commission, ombudsman), legal foundation (constitution, statute, presidential decree), and record of activity. In each country, the research team met national human rights institutions, government and judicial officials, NGOs, and community-based organisations. Interviews drew on a list of core questions covering the legal basis of the institution, its accessibility, structure, mandate and jurisdiction, powers (investigations, enforcement, education, training), and relationship to civil society, government and international bodies.

In August 1999, the Council sent a draft of the report for comment to 250 individuals and institutions in 59 countries. The 77 responses received were collated and integrated into a final draft completed in November 1999. The Council published *Performance and legitimacy: national human rights institutions* in March 2000. This Summary of Findings has been produced simultaneously in English, French, Spanish and Bahasa Indonesian.

THE RESEARCH TEAM

Dr. Mohammad-Mahmoud Mohamedou designed and managed the project. He is a research director at the International Council.

Richard Carver wrote the main report on which this summary is based and the original feasibility study from which the project was developed. He began work in October 1998, visited Jakarta and Irian Jaya on 11-28 January 1999, Mexico City and Guadalajara State with Dr. Mohamedou on 6-19 April, and Accra and the Ashanti and Northern region of Ghana on 8-25 June.

An advisory group provided general guidance and direction. The advisory group met in Geneva in November 1998, held three telephone conferences in the course of the research, and met again in October 1999 to approve the final report and agree recommendations. Its members were:

Dr. Kamal Hossain (Chair), senior advocate at the Supreme Court of Bangladesh;

Mercedes V. Contreras, Commissioner, Philippine Commission on Human Rights;

Ian Hamilton, Director, National Institutions Programme, Canadian Human Rights Foundation;

Dr Juan E. Méndez, then Executive Director, Inter-American Institute on Human Rights.

Dr. N. Barney Pityana, Chairperson, the South African Human Rights Commission.

The local research consultants were:

Dr. Nii Ashie Kotey, senior lecturer at the Faculty of Law, University of Ghana;

Denny Yomaki, the Irian Jaya Environment Foundation,

Benny Giay, University of Cenderawasih, Jayapura,

Hendy Lukito, the Indonesian Legal Aid and Human Rights Association;

Aída María Noval, human rights documentalist, Mexico,

Phil Gunson, independent researcher, Mexico.

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Cover illustration: © The British Museum. Hieroglyphs. Details from a list of kings' names found in the temple of Ramesses II at Abydos Nineteenth Dynasty, c 1300 BC.

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Acquiring Legitimacy

A sound constitutional foundation is the best guarantee of legitimacy. NHRIs acquire most public legitimacy when they are legally well entrenched. It is better to be formed by law of parliament than by presidential edict and better still to have constitutional protection. Nevertheless, legitimacy still has to be won.

Quality of staff is a key factor. Senior staff tend to be appointed from government and many are lawyers. Few commissions have recruited significantly from NGOs or vulnerable groups (such as women and minorities). Broadening the base of appointments would sharply enhance the credibility and appeal of some NHRIs.

Credibility also depends directly on how complaints are managed. An efficient complaint mechanism – low cost, swift, understandable, not bureaucratic – wins public trust. It is vital to monitor compliance, especially in cases that result in prosecution.

Many NHRIs treat complaints in isolation and their caseload is unsustainable as a result. Individual complaints can be addressed in ways that have a wider educational and preventive function. Many NHRIs would be more effective if they concentrated on key problem areas and identified vulnerable groups (i.e., children, women, minorities, prisoners, people with disabilities, etc). It is important to communicate chosen priorities to government, the public and vulnerable groups.

Some NHRIs settle cases by conciliation while others have a more prosecutory approach. The most respected commissions handle sensitive political issues, such as political corruption and social taboos. It seems that such interventions establish credibility and a reputation for independence.

Accessibility

Wherever NHRIs have made efforts to be accessible, for example by opening district and local offices, especially in remote rural areas, public awareness of NHRIs and the services they provide is higher.

Successful NHRIs communicate what they stand for and offer in simple and understandable terms. This enables them to build good links with vulnerable groups and civil society institutions as well as with the wider public. Effective use of the media is also important. To be accessible NHRIs need to work in local languages. This implies recruiting staff with language skills, publishing documents in local languages and enabling complainants to communicate in their own vernacular. Some NHRIs do this well, others do not.

Linkages

NHRIs stand at the crossroads of government and civil society. They need to define and delimit the space they occupy in relation to other institutions that protect human rights, within and outside government. To operate well, NHRIs need to be truly independent of the executive and other institutions of government, including the judiciary, but they must have access to and influence within those institutions.

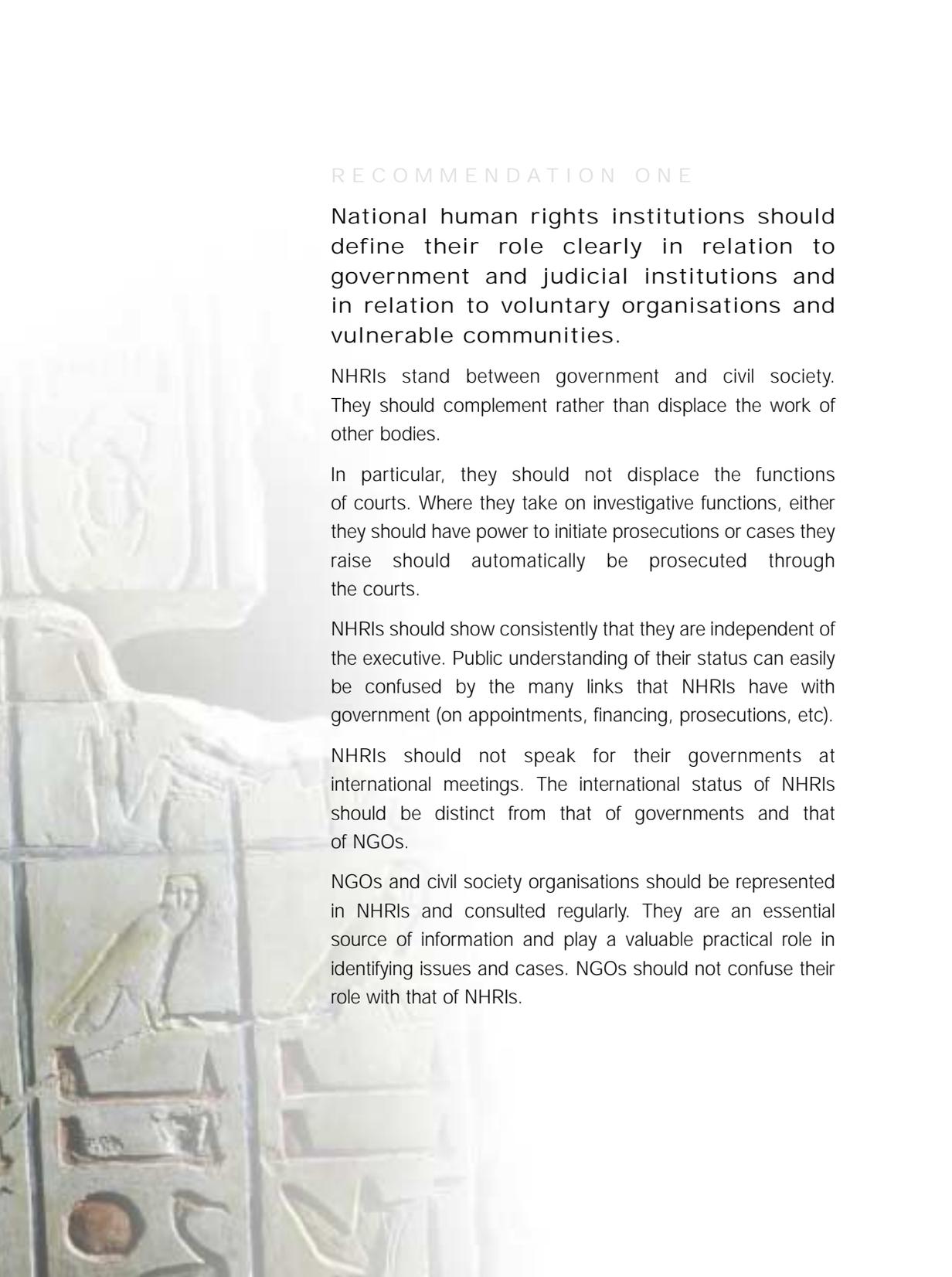
Effective NHRIs also co-operate well with civil society institutions, while remaining independent of them. NGOs play a vital role in identifying and channelling complaints.

Many NHRIs are poorly financed and this reduces both their independence and their effectiveness. International organisations have an important role to play in strengthening NHRIs financially and organisationally. NHRIs should manage their own budgets, which should be voted by institutions independent of the executive. They should be subject to regular financial scrutiny.

In the end, it seems that NHRIs work most effectively when they operate within a functioning democratic framework. The absence of political and ethnic violence, acceptance of the rule of law, judicial independence, and a democratic or democratising framework create the most favourable conditions for efficient national institutions. Those who work within NHRIs, and those who support them financially and institutionally, need to focus on creating these conditions if they want NHRIs to flourish and be effective in the long term.

The following recommendations are designed to be of use to national institutions in the countries studied and more widely. The Report contains a more detailed list of recommendations.



The background of the page features a faded, light-colored image of ancient Egyptian hieroglyphs and a seated figure, possibly a deity or a high-ranking official, rendered in a traditional style. The image is semi-transparent and serves as a decorative backdrop for the text.

RECOMMENDATION ONE

National human rights institutions should define their role clearly in relation to government and judicial institutions and in relation to voluntary organisations and vulnerable communities.

NHRIs stand between government and civil society. They should complement rather than displace the work of other bodies.

In particular, they should not displace the functions of courts. Where they take on investigative functions, either they should have power to initiate prosecutions or cases they raise should automatically be prosecuted through the courts.

NHRIs should show consistently that they are independent of the executive. Public understanding of their status can easily be confused by the many links that NHRIs have with government (on appointments, financing, prosecutions, etc).

NHRIs should not speak for their governments at international meetings. The international status of NHRIs should be distinct from that of governments and that of NGOs.

NGOs and civil society organisations should be represented in NHRIs and consulted regularly. They are an essential source of information and play a valuable practical role in identifying issues and cases. NGOs should not confuse their role with that of NHRIs.

RECOMMENDATION TWO

National human rights institutions should move from a complaints-led to a programme-led approach

For many NHRIs a complaints-led approach will not be sustainable. A thematic approach will enable NHRIs to concentrate their resources on areas of acute need, while improving accountability and communication with the public. Individual complaints should not be ignored but the objective should be to focus resources where need is greatest. Staff should link actions to resolve individual cases with general policies of prevention.

Priorities should be identified in consultation with government. Because NGOs have specialised expertise and close links with vulnerable groups, NHRIs should be prepared to take advice from NGOs when they set priorities and during investigations.

Over time, NHRIs might usefully develop models of public inquiry. These can highlight and analyse serious human rights issues, put key subjects on the national agenda via reports to parliament and the media, and generate political and public pressure for action.

RECOMMENDATION THREE

National human rights institutions should encourage consultation and participation

NHRIs should consult publicly on important decisions such as the appointment of senior executives and selection of programme priorities. Particular effort should be made to consult vulnerable groups and NGOs with expertise in human rights.

NHRIs should generally recruit more women and representatives of vulnerable groups (notably minorities) to senior executive posts and staff positions. They should also recruit more staff from human rights NGOs.

Multi-member institutions promote diversity and help to increase the legitimacy of NHRIs. A strong and diverse governing council is recommended.

Governments should consult widely, particularly with NGOs, before defining the mandate, membership and structure of new NHRIs.

RECOMMENDATION FOUR

National human rights institutions should ensure that senior executives and staff are qualified, committed, representative and independent

Commissioners should have security of tenure. Procedures should avoid conflicts of interest during and also after commissioners' term of office.

The executive branch should not control appointment procedures, which should be seen to involve open and fair consultation with civil society.

RECOMMENDATION FIVE

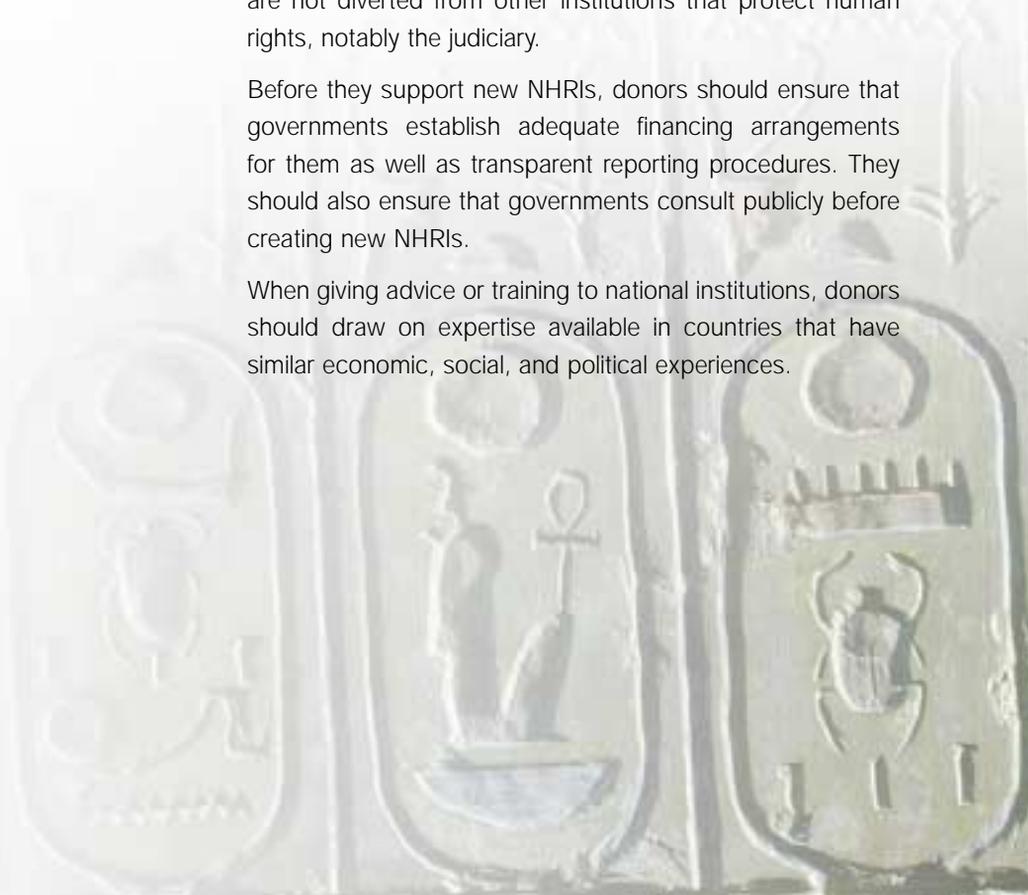
International bodies that co-ordinate or finance the work of national human rights institutions should assist them to perform effectively

During the 1990s, donors and the United Nations High Commissioner for Human Rights encouraged the creation of many new NHRIs. Many are nevertheless underfunded and cannot work effectively. It is not wise to promote the creation of new institutions while many existing bodies are not able to function well. Reliable funding is essential.

When they fund NHRIs, donors should ensure that resources are not diverted from other institutions that protect human rights, notably the judiciary.

Before they support new NHRIs, donors should ensure that governments establish adequate financing arrangements for them as well as transparent reporting procedures. They should also ensure that governments consult publicly before creating new NHRIs.

When giving advice or training to national institutions, donors should draw on expertise available in countries that have similar economic, social, and political experiences.



RECOMMENDATION SIX

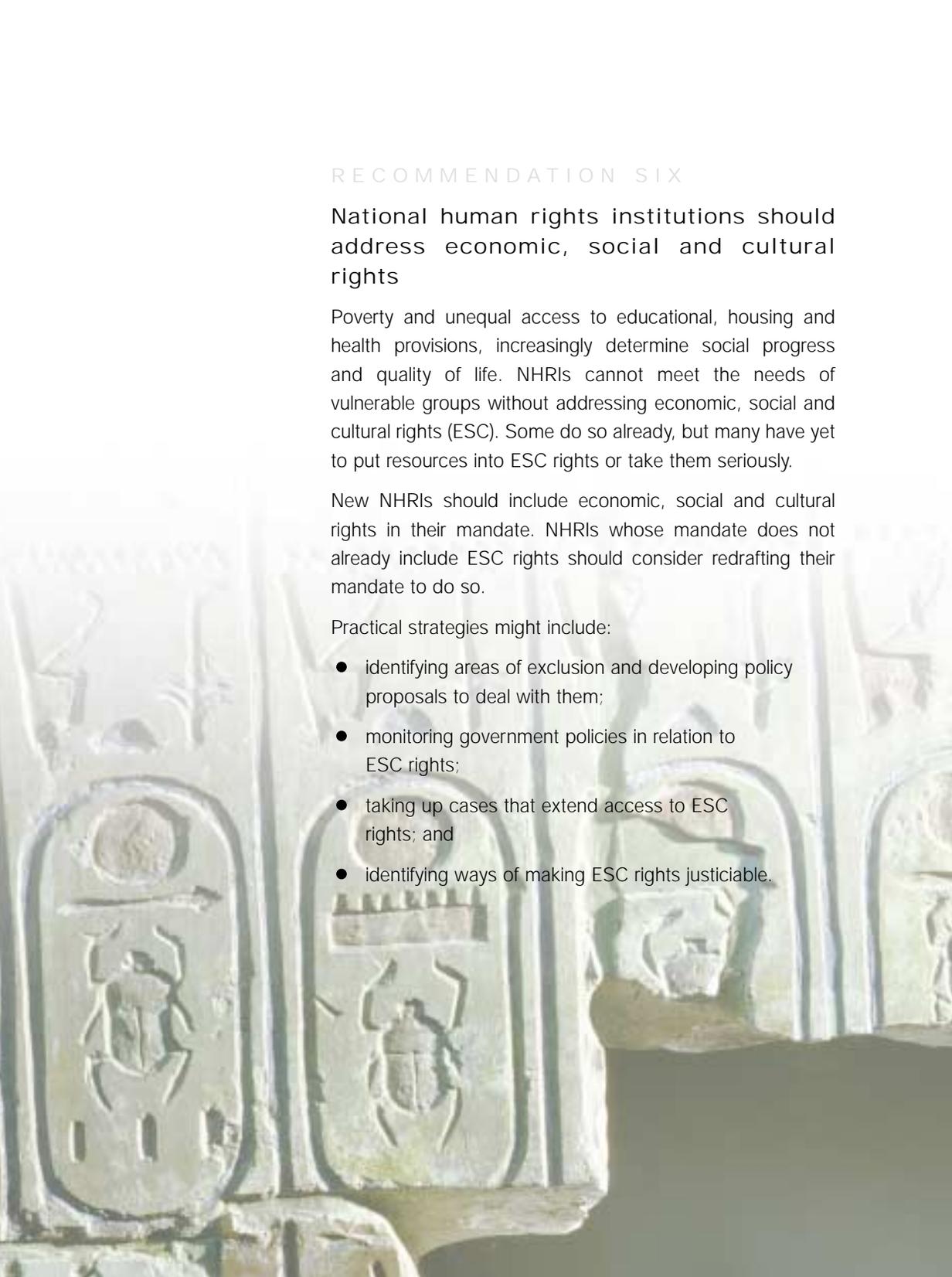
National human rights institutions should address economic, social and cultural rights

Poverty and unequal access to educational, housing and health provisions, increasingly determine social progress and quality of life. NHRIs cannot meet the needs of vulnerable groups without addressing economic, social and cultural rights (ESC). Some do so already, but many have yet to put resources into ESC rights or take them seriously.

New NHRIs should include economic, social and cultural rights in their mandate. NHRIs whose mandate does not already include ESC rights should consider redrafting their mandate to do so.

Practical strategies might include:

- identifying areas of exclusion and developing policy proposals to deal with them;
- monitoring government policies in relation to ESC rights;
- taking up cases that extend access to ESC rights; and
- identifying ways of making ESC rights justiciable.



RECOMMENDATION SEVEN

National human rights institutions should become more accessible

NHRIs should improve public access by locating offices in provincial towns and in poor or neglected regions. As far as possible, NHRIs should avoid locating offices in exclusive areas or government buildings when to do so might deter vulnerable groups.

NHRIs should create simplified procedures to ensure access by vulnerable groups. They should be able to receive complaints orally and communicate in minority languages.

Access will be improved where NHRIs publicise their priorities and casework effectively.

RECOMMENDATION EIGHT

National human rights institutions should evaluate their performance

NHRIs should annually declare their priorities and identify vulnerable groups who will have first call on their services. They should explain how women's rights will be addressed and how policy will be developed in consultation with all relevant actors, including civil society organisations.

NHRIs should keep casework statistics disaggregated to demonstrate how the institution has dealt with its priorities and with the vulnerable groups identified.

NHRIs should evaluate their work annually, against their programme goals, including their success in meeting the needs of the vulnerable groups identified .

PERFORMANCE & LEGITIMACY:
NATIONAL HUMAN RIGHTS INSTITUTIONS

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The Main Report

Performance & legitimacy: national human rights institutions – Main Report, International Council on Human Rights Policy, 2000, ISBN 2-940259-03-8, 148pp. 165mm x 220mm. Available in English. Frs. 36. – (+ Frs. 3. – p.&p.).

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CONCLUSIONS

The rapid – sometimes disorderly – proliferation of NHRIs during the 1990s seems set to continue. Much has been expected of them and they have sometimes disappointed and sometimes surpassed expectations. Many operate in markedly unfavourable institutional environments. Many are cash-strapped, insufficiently representative or subject to political influence. Yet the evidence suggests that, even when they were established for cosmetic purposes, NHRIs can transcend the political limitations that were initially imposed on them. Though some have failed, others have proved their ability to deepen public and official respect for human rights.

To fulfil their responsibilities well, they need to establish bonds of loyalty and co-operation with the wider public particularly with groups they are trying to assist and with civil society organisations that work to the same ends. Effectiveness depends equally on the ability of NHRIs to complement and strengthen – not displace or compete with – official institutions, notably the judiciary, that provide other services essential to the protection of human rights.

These different actors need to have realistic expectations of what NHRIs can achieve. They have a special and complementary role. Sometimes it is argued that industrial democracies do not need to create NHRIs because such societies more rarely violate human rights and their judicial systems can handle such problems as arise. In fact, the mechanisms that national human rights institutions offer are as useful in the developed economies as elsewhere.

The Paris Principles set essential minimum standards. In coming years, these will need to be deepened and extended as NHRIs evolve in a changing environment. Financially, they must become more self-sustaining. Many need to acquire deeper social legitimacy. This research has shown that they can do much more than investigate and resolve complaints successfully. They have a vital role to play in legitimising and communicating human rights values in society and in extending protection and assistance to vulnerable groups.