

**Clifford, Julia (SEN)**

**From:** John Pace [j.pace@unsw.edu.au]  
**Sent:** Tuesday, 22 April 2003 10:58 PM  
**To:** Legal and Constitutional, Committee (SEN)  
**Subject:** Submission to the Senate Committee Inquiry on the proposed amendments to the HREOC legislation

Mr Peter Hallahan,  
Secretary,  
Senate Legal and Constitutional Committee,  
Room S1.61,  
Parliament House  
Canberra ACT 2600

Dear Secretary,

I am writing for the purpose of making a submission to the Senate Committee on the proposed HREOC legislation. I understand that the deadline is 24 April 2003 and I sincerely hope that this communication reaches you in good time, since I am making it from Geneva, where I am at present based, and where I am conducting my research work in connection with international human rights law.

I am a Visiting Fellow at the University of New South Wales and belong to the Australian Human Rights Centre which is based in the Faculty of Law. I was Director of that Centre until July last year and remain an active member of AHRC. Prior to that, I was Secretary of the Commission on Human Rights and I held numerous positions of responsibility in the United Nations human rights secretariat during my 33-year career. This included responsibility for the development of national human rights institutions as a tool for the implementation of international human rights norms.

I am making this submission in my own name - for logistical reasons, as I shall not have enough time to seek the endorsement of my colleagues at AHRC. I would like to share the following points with the Committee:

1. The proposed legislation reflects a serious retrograde step in the evolution and development of HREOC. I attach a paper that I prepared two years ago, in which I trace the history of such national institutions for the promotion and protection of human rights ( please consider the attached paper entitled "National Human Rights Institutions and the United Nations" as well as Fact Sheet no 19 issued by the United Nations High Commissioner for Human Rights, as an integral part of my submission). The re-structured HREOC, including the requirement of AG consent prior to seeking leave to intervene in Court proceedings would bring HREOC closer to the 1978 model and for all intents and purposes, would deny its protection function - it would place HREOC decades behind the Paris Principles (see Fact Sheet 19 attached). Protection of human rights of individuals is an essential element of the mandate of any national institution.
2. Reform should be based on an assessment of the functioning that the new law seeks - presumably - to improve. No assessments have been made - as far as I am aware - of the manner in which HREOC has functioned thus far, to justify such reforms. On the contrary, the reputation and worth of HREOC,

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nationally and internationally is recognised and well-established. I have had first-hand experience with the work of HREOC since the mid-eighties and I can attest to this fact. The proposed re-structuring would remove the vital focus on sectors of primary human rights concern, such as issues of social justice, and racism, for example. Sectors of Australian society depend on HREOC to ensure awareness and action of their situation; the proposed removal of sectoral focus would weaken HREOC's effectiveness considerably.

3. National Institutions, such as HREOC, have a complementary function to carry out, with other State or para-Statal authorities, in ensuring the protection of individuals in society against discrimination. National Institutions were - and are - intended to bridge the gap that often exists between the individual and the protection that the administration of justice system affords. National Institutions share this common goal: ignorance, poverty, being underprivileged, often deter individuals from groups who need it most, the protection that the law is there to provide. The proposed reforms would put HREOC into the category of an information centre. The education function cannot be effectively carried out unless the institution maintains its links with the day-to-day human rights realities. Thus the power to intervene in Court proceedings is a necessary corollary of a national institution, and is meant to strengthen the rule of law. Similarly as regards the power to recommend the payment of damages or compensation. For these reasons, I would like to register my concern at the proposed legislation. I am available to the Committee should it consider it necessary to question me or to hear further grounds of these submissions. Should your time frame permit, please note that I plan to be in Australia during most of July and August.

Yours faithfully,  
john p. pace

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## NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE UNITED NATIONS

1. In earlier presentations on the subject, I have dwelt at some length on the evolution in United Nations action in the field of human rights. Essentially this evolution applies to the passage from the first phases of drafting of international human rights standards, to the subsequent phases of implementation of these same standards, first through the formal or conventional implementation process, then through the extra-conventional or *ad hoc* approaches of special procedures of implementation, and finally to the phase of the adoption of measures of promotion and prevention. The latter consisting of awareness building, education and information, and most recently, of technical cooperation and advisory services.

2. As this evolution unfolded over the years, we can see a distinct pattern that emerges, reflecting, as it took place, the changing pattern in the international political spectrum. The two principal milestones here, may be identified by the process of decolonisation of the sixties and seventies, and later, the end of the Cold War, with the end of the eighties.

3. If there is a year that one can fix, in retrospect, as the point of 'no return' for the United Nations in regard to its work on human rights, it is 1978. In this year, we see the convening of the first sessions of the treaty bodies of the 'flagship' human rights treaties, i.e. the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, the setting up of the first special rapporteur, and the adoption of the first decision to undertake an investigation under the so-called 1503 procedure, which deals with individual complaints.

4. All these are measures of an implementation nature; but at the same time, the United Nations also started, albeit on a much more modest scale, to dedicate its efforts to the so-called measures of prevention, consisting, among others, of measures aimed at setting up, or strengthening, national capacities to afford remedies against abuses of human rights.

5. It was indeed in 1978 that the Commission on Human Rights adopted the first substantive decision<sup>1</sup> on the subject of national institutions. That year, the Commission, invited

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<sup>1</sup>Commission on Human Rights resolution 23 (XXXIV) of 8 March 1978

*“Member States, within the framework of their national legislation and policy and according to their available means, to set up national institutions for the promotion and protection of human rights.”*

6. By this resolution, the Commission set into motion a process that, slow to start with, was to gain momentum and to play the important role that it plays today in the sphere of international action on human rights. At that time, the resolution gave a list of possible functions that such national institutions could perform “if so decided by the Government concerned”.

7. The United Nations first refers to the subject in 1946, when the Economic and Social Council asked member States to consider *“the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”*. Later, in 1960, the Council recognized the unique role that national institutions could play in the protection and promotion of human rights, and invited Governments to encourage their formation, and to communicate their ideas and information on the subject with the Secretary-General, a process that was to go on for several years thereafter, and leading to the 1978 resolution mentioned earlier, by which the idea of guidelines was proposed.

8. Guidelines were proposed by a seminar held that same year, and subsequently endorsed by the Commission on Human Rights and by the General Assembly. These guidelines cover the functions and the structure of such organizations. As to the functions, they suggested that these should be the following:

**a. To act as a source of human rights information for the Government and people of the country;**

**b. To assist in educating public opinion and promoting awareness and respect for human rights;**

**c. To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;**

**d. To advise on any questions regarding human rights matters referred to them by the Government;**

**e. To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;**

**f. To perform any other function which the Government may wish to assign to them in connexion with the duties of that State under those international agreements in the field of human rights to which it is party.**

9. The guidelines made the following recommendations with regard to the structure of such institutions:

**a. They should be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;**

**b. They should function regularly, and that immediate access to them should be available to any member of the public or any public authority;**

**c. In appropriate cases, they should have local or regional advisory organs to assist them in discharging their functions.**

10. During the eighties, national institutions were, in fact, established in a number of countries and in 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. This workshop was to review the patterns of cooperation of national institutions with international institutions, such as the United Nations and its agencies, and to explore ways of increasing their effectiveness. This workshop, which was held in Paris in 1991, produced a set of "Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights", also commonly referred to as the "Paris Principles".

11. These principles were endorsed by the Commission on Human Rights in 1992.

12. A comparison of these principles with the guidelines agreed to in 1978 shows some interesting considerations.

13. In the first place, the principles reflect the momentum that had gathered since 1978; a significant decision, for instance, was to invite national institutions to participate in the World Conference on Human Rights, taken by the Preparatory Committee of the Conference as it prepared the Rules of Procedure of the Conference, thus admitting national institutions as a component of the international human rights community, alongside inter-governmental organizations, and non-governmental organizations with consultative status.

14. Secondly, the principles clearly reflect the independence of national institutions from the Governments that establish them.

15. Thirdly, they explicitly attribute the competence of national institutions in regard to take up matters coming within their terms of reference, as distinct from the earlier notion of acting in a consultative or referral capacity to Governments.

16. Fourthly, the range of issues deemed to come within the competence of national institutions is considerably enlarged.

17. Whereas the tone in 1978 was notably cautious, the 1991 principles are forward-looking and bold in their propos. Considering that 1978 marks the beginning of the implementation of the International Covenants, it is significant to associate the development of national institutions by the United Nations to the other efforts deployed to assist Governments in meeting their international human rights treaty obligations, efforts grouped traditionally under the over-all umbrella of activities for the promotion and protection of human rights.

18. States have the sovereign responsibility for the realization of human rights and human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through

adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.

19. When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained therein. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that a law exists to protect certain rights is not enough if these laws do not also provide for their effective realization. The effective enjoyment of human rights thus calls for the establishment of national infrastructures for their protection and promotion.

20. The many national institutions that exist today are varied, as they reflect national needs and characteristics. They do have, however much in common:

i. They are national. They bridge the gap between the individual and the protection to which the individual is entitled under international human rights norms. They enhance the efficiency of the State institutions for the protection of the individual, without substituting them. They reflect the make-up and cross sections of the society, and the cultural and other particularities that characterize that society.

ii. They are human rights institutions, and therefore their terms of reference are the international human rights norms.

iii. Their role is to protect and promote human rights, and therefore they are to engage also in awareness-building activities, designed to assist the sectors of society that are involved in particular issues, whether these are part of the public or government sectors, or individuals or groups of society.

iv. They are independent from government, but accountable, and their activities must therefore be public and transparent.

21. National institutions are therefore likely to vary according to the characteristics of the society that they are set up in; these common denominators, however, enable them to interact among themselves, and since the World Conference on Human Rights, a Coordinating Committee exists, which brings them together periodically. These meetings have enabled them to network among themselves to share experiences, and compare ideas for enhancing their mission. Today national institutions constitute a necessary component of the United Nations machinery to bring international human rights norms home to the individual.

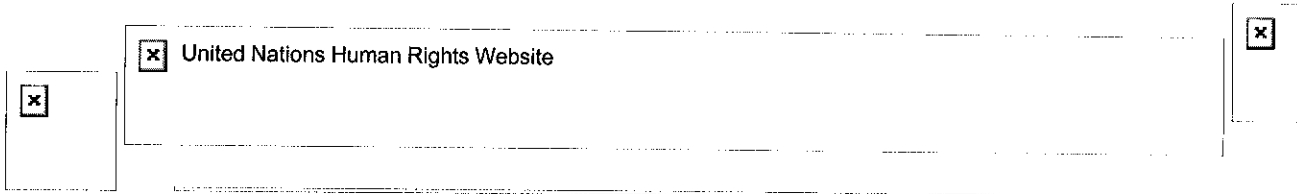
22. The Universal Declaration of Human Rights was adopted over fifty years ago, when one looks back, one may see the evolution - that we highlighted at the outset - that has taken place in this time. The emergence of national institutions is an integral part of this evolution, and reflects the process of translating international norms into national realities.

23. When we reflect on the present, we realize how much ground there is still to cover. How many national institutions yet have to consolidate their independence, how many have yet to secure their accessibility to the people whose rights they are to promote and protect. How much there is still to be done to ensure the true inter-dependence of human rights, and to bring human rights back to its rightful place in the United Nations Charter.

24. Finally, we look at the future - and we are encouraged. The United Nations High Commissioner for Human Rights, has made the establishment and strengthening of national institutions a major priority in our programme. National institutions will have an important role to play as the reform programme of the Secretary-General is applied, and the mainstreaming of human rights into the activities of the rest of the international system gathers momentum. As this progresses, international action in the field of human rights will become a natural part of the development process, and it will shed its image as a form of indictment of member States for not complying with the international human rights norms that they have drafted and agreed to over the years. National institutions have a vital role to play in this process, since they provide a bridge by their mandate to apply international norms at the national level.

John P. Pace (Sydney, 2001)





## **Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights**

*(About Fact Sheets)*

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### **Introduction**

The United Nations is engaged in a wide range of activities aimed at fulfilling one of its principal purposes—the promotion and protection of human rights. Of great importance is the complex machinery which has been set up under various international covenants and conventions to establish standards, monitor implementation, promote compliance and investigate violations of human rights. In addition to these activities, the United Nations also provides practical assistance to States in their efforts to protect and promote human rights, and informs the public about the rights to which it is entitled.

These structures and activities permit the United Nations to play a pivotal role in the realization of human rights and fundamental freedoms. However, it is important to acknowledge that the United Nations has finite resources and inherent limitations on its capacity for direct action, particularly in individual cases. As a practical matter, one organization can never hope to keep an eye on every situation. Neither can it investigate every alleged violation of human rights or bring relief to all victims.

For these reasons, the international system relies heavily on the support it receives from regional human rights systems such as those operating in Europe, Africa and America. Additional support comes from Governments and from concerned non-governmental organizations. Each of these groups has a special role to play in the development of a universal culture of human rights. Non-governmental organizations, for example, by their very nature, have a freedom of expression, a flexibility of action and a liberty of movement which allow them to perform tasks which Governments and intergovernmental organizations are unable or may even be unwilling to perform. Regional human rights systems have reinforced international standards and machinery by providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned.

The role of national Governments in the realization of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.

When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained therein. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal, powers and institutions necessary to ensure their effective realization.

This problem of effective implementation at the national level has, particularly in recent times, generated a great deal of international interest and action. The emergence or re-emergence of democratic rule in many countries has focused attention on the importance of democratic institutions in safeguarding the legal and political foundations upon which human rights are based.

It has therefore become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. Official human rights institutions have been set up by many countries in recent years. While the tasks of such institutions may vary considerably from country to country, they share a common purpose and for this reason are collectively referred to as *national institutions for the protection and promotion of human rights*.

The following pages do not provide an exhaustive description of the full range of existing national institutions. A separate manual on this subject, containing practical, detailed advice to Governments interested in establishing or strengthening such institutions is being developed by the Centre for Human Rights. This Fact Sheet takes a more general approach to national institutions-describing, and attempting to explain their emergence in the context of the general evolution of efforts to protect and promote human rights both within and outside of the United Nations system.

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### **The United Nations and national institutions for the protection and promotion of human rights**

While the world-wide interest in national institutions is a relatively recent phenomenon, the original concern of the United Nations with such institutions dates back to 1946 when the issue was first addressed by the Economic and Social Council. The Council asked Member States to consider "the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights".

In 1960 the Economic and Social Council, in a resolution which recognized the unique role national institutions could play in the protection and promotion of human rights, invited Governments to encourage the formation and continuation of such bodies as well as to communicate their ideas and information on the subject to the Secretary-General. This process is an on-going one and reports on information received are regularly submitted by the Secretary-General to the Commission on Human Rights, the General Assembly and to Member States.

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of these international standards. In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978 during which a series of guidelines was approved. These guidelines suggested that the functions of national institutions should be:

- (a) To act as a source of human rights information for the Government and people of the country;
- (b) To assist in educating public opinion and promoting awareness and respect for human rights;
- (c) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;
- (d) To advise on any questions regarding human rights matters referred to them by the Government;
- (e) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;
- (f) To perform any other function which the Government may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

- (a) Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;
- (b) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
- (c) In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The guidelines were subsequently endorsed by the Commission on Human Rights and by the General Assembly. The Commission invited all Member States to take appropriate steps for the establishment, where they did not already exist, of national institutions for the protection and promotion of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions.

Throughout the 1980s, the United Nations continued to take an active interest in this topic, and a series of reports, prepared by the Secretary-General, was presented to the General Assembly,<sup>(1)</sup> It was during this time that a considerable number of national institutions were established-often with the assistance of the Advisory Services Programme of the Centre for Human Rights.

In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The workshop was to review patterns of cooperation of national institutions with international institutions, such as the United Nations and its agencies, and to explore ways of increasing their effectiveness. The conclusions of this important workshop, held in Paris in October 1991, are summarized in the annex to this Fact Sheet.

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### **What is a "national human rights institution"?**

Today, human rights considerations are relevant to almost every sphere of governmental activity and indeed, to many other areas of public and private life. The number and range of "institutions" concerned with human rights issues reflects this reality. The activities of churches, trade unions, the mass media and many non-governmental organizations touch directly on human rights issues, as do those of most government departments, the courts and the legislature.

The concept of a national human rights institution is, however, far more specific-referring as it does to a body whose functions are specifically defined in terms of the promotion and protection of human rights. While no two institutions are exactly the same, a number of similarities can be identified which serve to separate these institutions from the various entities mentioned above. The national institutions being considered here are all administrative in nature-in the sense that they are neither judicial nor law-making. As a rule, these institutions have on-going, advisory authority in respect to human rights at the national and/or international level. These purposes are pursued either in a general way, through opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups. In some countries, the Constitution will provide for the establishment of a national human rights institution. More often, such institutions are created by legislation or decree. While many national institutions are attached, in some way or another, to the executive branch of government, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate.

The majority of existing national institutions can be grouped together in two broad categories; "human rights commissions" and "ombudsmen". Another less common, but no less important variety are the "specialized" national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women. These three categories of national institutions are considered in detail below.

#### **Human rights commissions**

In many countries, special commissions have been established to ensure that the laws and regulations concerning the protection of human rights are effectively applied. Most commissions function independently from other organs of government, although they may be required to report to the legislature on a regular basis.

In keeping with their independent nature, commissions are generally composed of a variety of members from diverse backgrounds but each with a particular interest, expertise or experience in the field of human rights. Each country may have its specific requirements or restrictions for the selection of members, such as quotas on the number of representatives or candidates from different professional categories, political parties, or localities.

Human rights commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights. The precise functions and powers of a particular commission will be defined in the legislative act or decree under which it is established. These laws or decrees will also serve to define the Commission's jurisdiction by specifying the range of discriminatory or violative conduct that it is empowered to investigate. Some commissions concern themselves with alleged violations of any rights recognized in the constitution. Others may be able to consider cases of discrimination on a broad range of grounds including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry.

One of the most important functions vested in a human rights commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law. In order to properly carry out its tasks, the commission will usually be capable of obtaining evidence relating to the matter under investigation. Even if only used rarely, this power is important in that it guards against the possibility of frustration through lack of cooperation on the part of the person or body complained against. While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. In the process of conciliation, the commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the commission may be able to resort to arbitration in which it will, after a hearing, issue a determination.

It is not usual for a human rights commission to be granted authority to impose a legally binding outcome on parties to a complaint. However, this does not mean that the settlement or appropriate remedial steps recommended by the commission can be ignored. In some cases, a special tribunal will hear and determine issues outstanding from an unresolved complaint. If no special tribunal has been established, the commission may be able to transfer unresolved complaints to the normal courts for a final and binding determination.

Another important function of a human rights commission is systematically to review the government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improving it. Human rights commissions may also monitor the State's compliance with its own and with international human rights laws and if necessary, recommend changes. The ability of a commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable effectiveness. This is particularly true in regard to situations which involve persons or groups who do not have the financial or social resources to lodge individual complaints.

The realization of human rights cannot be achieved solely through legislation and administrative arrangements. In recognition of this fact, commissions are often entrusted with the important responsibility of improving community awareness of human rights. Promoting and educating about human rights may involve informing the public about the commission's own functions and purposes; provoking discussion about various important questions in the field of human rights; organizing seminars; holding counselling services and meetings; as well as producing and disseminating human

rights publications.

### **The ombudsman**

The office of ombudsman is now established in a number of countries. The ombudsman (who may be an individual or a group of persons) is generally appointed by the parliament acting on constitutional authority or through special legislation. The primary function of this institution is to protect the rights of individuals who believe themselves to be the victim of unjust acts on the part of the public administration. Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and the government.

While the institution of ombudsman is not exactly the same in any two countries, all follow similar procedures in the performance of their duties. The ombudsman receives complaints from members of the public and will investigate these complaints provided they fall within the ombudsman's competence. In the process of investigation, the ombudsman is generally granted access to the documents of all relevant public authorities. He or she will then issue a statement of recommendation based on this investigation. This statement is given to the person lodging the complaint, as well as to the office or authority complained against. In general, if the recommendation is not acted upon, then the ombudsman may submit a specific report to the legislature. This will be in addition to an annual report to the same body which may include information on problems which have been identified and contain suggestions for legislative and administrative change.

While any citizen who believes that his or her rights have been violated may submit a complaint to the ombudsman, many countries require that the complainant first exhaust all alternate legal remedies. There may also be time limits imposed on the filing of complaints, and while the ombudsman's authority usually extends to all aspects of public administration, some are not empowered to consider complaints involving presidents, ministers or the judiciary.

Access to the ombudsman also varies from country to country. In many countries individuals may lodge a complaint directly with the ombudsman's office. In other countries complaints may be submitted through an intermediary such as a member of parliament. The complaints made to the ombudsman are generally confidential, and the identity of the complainant is not disclosed without that person's consent.

The ombudsman is not always restricted to acting upon complaints and may be able to commence an investigation on his or her own initiative. Self-initiated investigations often relate to issues which the ombudsman may have determined to be of broad public concern, or issues which affect group rights and are therefore not likely to be the subject of an individual complaint.

In many respects, the powers of the ombudsman are quite similar to those of human rights commissions. Both may receive and investigate individual complaints. In principle, neither has the power to make binding decisions. There are nevertheless some differences in the functions of the two bodies which explain why some countries establish and simultaneously maintain both types of institution.

In most cases, the primary function of the ombudsman is to ensure fairness and legality in public

administration. Human rights commissions are more specifically concerned with discrimination, and in this respect will often address themselves to the actions of private bodies and individuals as well as the government. In general, the principal focus of activity for an ombudsman is individual complaints. However, ombudsmen are increasingly engaged in a wider range of activities for the protection and promotion of human rights.

### **Specialized institutions**

Vulnerable and minority groups differ from country to country, but the most common problem affecting them all is that of discrimination. Members of the community who are most often recognized by governments as needing specialized human rights institutions to protect their interests are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled.

In general terms, such specialized institutions are established to promote government and social policy which has been developed for the protection of that particular group. For the most part, these institutions perform functions similar to those of the less specific human rights commissions and ombudsmen described above. They are usually authorized to investigate instances and patterns of discrimination against individuals in the group and against the group as a whole. While generally able to investigate complaints brought by a member of the group against another person or against a government body, these specialized agencies are, like other national human rights institutions, rarely empowered to make binding decisions or to initiate legal action.

As well as providing material and consultative assistance on an individual and collective basis, such agencies will frequently be responsible for monitoring the effectiveness of existing laws and constitutional provisions as these relate to the group. In this way, they often act as consultants and advisors to parliament and the executive branch of government.

### **Some final points . . .**

There are some who see no good reason for establishing special national machinery devoted to the protection and promotion of human rights. They may argue that these bodies are not a wise use of scarce resources and that an independent judiciary and democratically elected parliament are sufficient to ensure that human rights abuses do not occur in the first place.

Unfortunately, history has taught us differently. A body that is in some way separated from the responsibilities of executive governance and judicial administration is in a position to take a leading role in the field of human rights. By maintaining its real and perceived distance from the government of the day, such a body can make a unique contribution to a country's efforts to protect its citizens and to develop a culture respectful of human rights and fundamental freedoms.

Some countries have a long tradition of protecting human rights at the national level through the creation of such organs as human rights commissions or ombudsman offices. The majority of institutions, however, have been set up since the 1980s. This trend, which has been actively encouraged by the United Nations, is evidence of a growing momentum, both national and international, in support of human rights. Increasing interest in national human rights institutions should also be viewed in light of recent democratization and reform processes which have been