

**Ninth International Conference of
National Institutions for the
Promotion and Protection of Human Rights
Nairobi, Kenya, 21-24 October 2008**

The Nairobi Declaration

1. The Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights was devoted to the role of national human rights institutions (NHRIs) in the Administration of Justice. The Conference took place in Nairobi from 21 to 24 October 2008 and was organized by the Kenya National Commission on Human Rights (KNCHR), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Coordinating Committee (ICC) of NHRIs. Participants thanked the KNCHR, OHCHR, the *Organisation Internationale de la Francophonie*, the Swedish International Development Cooperation Agency (SIDA), the Commonwealth Secretariat and UNDP for their support.
2. NHRIs expressed their gratitude to the KNCHR for the excellent organization and warm hospitality that they had enjoyed. They welcomed the statements of the United Nations Deputy High Commissioner for Human Rights, the ICC Chair, the President of the UN Human Rights Council and other keynote speakers, as well as the fruitful and concrete discussions and deliberations. Non-governmental organizations from around the world made a valuable contribution at a pre-conference Forum and by actively participating in the Conference itself. The Conference was further enriched by the participation of the Prime Minister of the Republic of Kenya, the Minister of Justice, National Cohesion and Constitutional Affairs and the Attorney General of the Republic of Kenya.
3. The Ninth International Conference of NHRIs adopted the following Declaration:

The Ninth International Conference of NHRIs,

4. *Noting* the report of the United Nations Secretary-General to the Human Rights Council A/HRC/7/69 acknowledging that NHRIs compliant with the Paris Principles are key elements of strong and effective national human rights protection systems;
5. *Acknowledging* that through the exercise of their mandates, NHRIs can support Governments in ensuring that international human rights norms are applied at the national level, including by facilitating follow-up actions to the recommendations resulting from the international human rights system;
6. *Recalling* Declarations issued by previous international conferences of NHRIs, especially the Seoul Declaration and Santa Cruz Declarations;

7. *Urging* the continued enhancement of the role and participation of NHRIs in the international human rights system and NHRIs' interaction with the UN Human Rights Council, the UN Human Rights Treaty Bodies, the Special Procedures Mandate Holders, the UN Commission on the Status of Women and UN instruments and mechanisms concerned with the rights of indigenous peoples and enforced disappearances. The establishment of a Representative of the ICC in Geneva will assist in this role;
8. *Stressing* that the independence and autonomy of NHRIs, their pluralistic representation, as well as their interaction with a broad range of stakeholders, is necessary for their compliance with international standards and their effectiveness at the national, regional and international levels;
9. *Welcoming* the increasingly important role of NHRIs in the work of OHCHR and the deepening of their partnership in connection with the implementation of the High Commissioner's Plan of Action and OHCHR country engagement strategy, and in this regard also welcomes the development of a guidance note for NHRIs on transitional justice as well as an operational guide on torture prevention;
10. *Welcoming* the initiative of the High Commissioner for Human Rights in the context of the 60th anniversary of the Universal Declaration of Human Rights with respect to the "Dignity and justice for detainees week" and the action undertaken by NHRIs worldwide in response to that initiative;
11. *Welcoming* the participation of the Harvard University Law School Human Rights Program in the international conference and welcoming closer cooperation between that Program, NHRIs, regional coordinating bodies and OHCHR;
12. *Welcoming* the participation and contribution of Equitas, Rights and Democracy and the Association for the Prevention of Torture in the proceeding of the International Conference and their continuous cooperation with the NHRIs, regional coordinating bodies and the OHCHR;
13. *Recognizing* that the more the United Nations system works closely with and through independent NHRIs, the greater are the chances of success and sustainability of good governance, rule of law and human rights efforts and welcoming the cooperation of OHCHR with UNDP in the development of a Toolkit for UNCT staff on NHRIs;
14. *Welcoming* the increasingly important role for NHRIs to work collaboratively with NGOs in implementing their mandate and welcoming the NGOs Plan of Action presented at the NGOs Forum of the 9th International Conference;

15. *Recognizing* that rule of law development requires the full and meaningful participation and support of national stakeholders;
16. *Recognizing* the fundamental importance which the rule of law and administration of justice has in ensuring the promotion and protection of human rights;
17. *Recognizing* the important role of the judiciary in applying human rights standards, in the development of a strong national system for human rights protection;
18. *Recognizing* the importance of the establishment by the United Nations Secretary-General of the Rule of Law Coordination and Resource Group, coordinating UN system-wide attention on the rule of law and welcoming closer cooperation of the UN with NHRIs in implementing programs on the rule of law at the national level;
19. *Recognizing* the important role that NHRIs play in ensuring an effective administration of justice, in particular with regard to access to justice, the judiciary, law enforcement and correctional and detention facilities;
20. *Emphasizing* that the rule of law should be based on a Constitution and national legislation, consistent with international human rights standards and principles;
21. *Acknowledging* that the role of NHRIs with regard to courts is one of support and cooperation, aimed at a constructive engagement in order to ensure the highest standards for the promotion and protection of human rights;
22. *Acknowledging* that the relation between law enforcement and NHRIs is one of oversight on the part of NHRIs and of necessary cooperation;
23. *Acknowledging* that while prisons are places where there is deprivation of liberty, all human rights of detainees must be guaranteed;
24. *Taking note* of the recommendation contained in the report to the 8th session of the Human Rights Council of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/8/3) to appoint a Special Rapporteur on the rights of detainees;

In order to implement this Declaration, NHRIs hereby agree:

25. To undertake initiatives towards the strengthening of the administration of justice, within their mandates, and encourage cooperation in this area at the regional and international level, including through OHCHR and the wider UN system;

26. To publicize and encourage implementation of relevant recommendations of UN Treaty Bodies, as well as the Human Rights Council's Special Procedures to monitor thematic areas in human rights and ensure reporting and proper follow-up;
27. To promote incorporation of international norms into national law;
28. To engage in inter-country and regional /NHRI cooperation and use the ICC network to communicate on the issue of the administration of justice. NHRIs shall also endeavour to form strategic partnerships with civil society organizations to implement their activities.
29. To develop and implement within their institutions a strategy to strengthen the administration of justice;
30. To establish a working group made up of the NHRIs' regional chairs, through the ICC Chair, to define a concrete plan of action for the implementation and follow-up of this Declaration to be reviewed at ICC meetings, starting in March 2009;
31. To request OHCHR to prepare a report which would include NHRIs best practices as emerged during the 9th international conference in strengthening the administration of justice.
32. To widely share this Declaration to relevant partners including members of UN human rights bodies as well as the UN system.

General Guidelines

The State has the primary responsibility to protect, promote and respect human rights and ensure that the administration of justice is in full compliance with both international and domestic human rights obligations. The following are the main areas where NHRIs, through the exercise of their mandate, working closely with partners, including the NGOs, may become involved in order to strengthen the administration of justice:

NHRIs and the Judiciary and Access to Justice

33. NHRIs should consider, in contributing to the promotion of the role of the judiciary in promoting and protecting human rights, the following actions:
 - a. Role of NHRIs in Receiving Cases of Human Rights Violations and assisting victims: complaints-handling in a sequential nature; i.e. NHRIs may handle complaints submitted to them by a complainant and by settling the case through conciliation and mediation, thereby relieving the existing case-load of courts; Ensuring victims of human rights violations receive compensation, including encouragement of the establishment of the fund

for this purpose; Promoting equal access to justice and assisting victims seeking redress with information on the law and the legal system particularly in relation to marginalized or vulnerable groups as well as migrants;

- b. Seeking informal legal redress mechanisms through conciliation or through binding decisions;
- c. Providing Recommendations to strengthen the legal system and judiciary: Proposing and contributing to legislative reforms to strengthen the judiciary (e.g. procedures related to the level and appointment of prosecutors and judges and qualifying lawyers; the independence of the judiciary and its capacity to adjudicate cases fairly and competently); Advocating for strengthening of laws to improve the judicial or criminal law system including enacting a law against torture where none exist; Strengthening the compliance of informal and traditional justice systems with international human rights standards by monitoring traditional justice mechanisms and addressing all forms of discrimination both in the composition of traditional justice tribunals, their procedures and in terms of substantive outcomes of cases;
- d. Promoting adherence and compliance of the judiciary to international human rights norms including through amicus and legal education: Increasing awareness and knowledge by the judiciary of international human rights norms, standards and practices and related jurisprudence, including through training, seminars, study tours, or articles in professional legal publications. Engaging with judicial educational bodies and professional legal training bodies; Assisting in the education of judges, lawyers, prosecutors and other judicial authorities (e.g. ensuring curricula reflect international human rights law); Providing support for the development of legal education facilities (e.g. library); informing persons who filed petitions with NHRIs of their rights and remedies available intervening in courts as *amicus curiae*, nationally and, if existing, in regional human rights mechanisms;
- e. Taking action where officials in the judiciary are faced by intimidation, threats or violence;
- f. Through their research and monitoring functions examining the conditions of access to justice for all, with particular reference to indigent, vulnerable and marginalised groups;

NHRIs and Legal Aid Providers and Systems

34. Encouraging and supporting the establishment of legal aid centers that provide out-reach services and enhance access to justice, especially for people living in poverty, and other vulnerable groups;
35. Finding appropriate means of cooperating with such centres, in particular to ensure that human rights are thoroughly integrated into the provision of legal aid;
36. Encouraging the establishment of autonomously managed legal aid schemes in order to meet obligations in national and international law;
37. Working to ensure legal recognition and standardization of paralegalism.

NHRIs and Law Enforcement

38. NHRIs, together with relevant stakeholders, should strive to strengthen law enforcement systems, institutions and personnel, including through:
 - a. Initiating the development, publication and implementation of education and training resources on human rights and international humanitarian law standards, investigation techniques for law enforcement and security forces and encourage them to incorporate human rights and international humanitarian law into all levels of their programs;
 - b. Developing or revising standing orders that apply to police and security forces to meet international human rights and international humanitarian law standards, in particular related to places of detention, procedures of arrest, investigation and interrogation;
 - c. Encouraging alternatives to pre-trial detention (such as bail, surveillance reporting and non-cash guarantees);
 - d. Encouraging non-custodial measures of punishment (such as community service, fines, restitution or compensation to the victim), especially for breast-feeding mothers in detention;
 - e. Presenting concrete proposals aimed at ensuring that minor offences do not come under the ambit of the criminal law system; for instance, by strengthening mediation and direct victim compensation, and promoting local community structures for resolving petty crimes;
 - f. Periodic site inspections (announced and unannounced) of police stations and prisons, in close partnership with other independent structures tasked with this role and law enforcement and other national authorities, encouraging them to take appropriate, prompt action;
 - g. Legislative proposals on the setting up of accountability mechanisms, monitoring systems to ensure their application and internal investigation procedures and sanctions;
 - h. Monitoring and reporting on alleged cases of corruption in the police and security forces;
 - i. Assistance in vetting processes (through the provision of confidential information on past human rights violations -for serious abuses there are no

- time limits- the violators, as well as cases of corruption and abuse of authority);
- j. Public awareness-raising on complaints procedures against the police;
 - k. Encouraging fair remuneration and working conditions for law enforcement and security personnel.

NHRIs and places of detention

- 39. NHRIs should encourage their Governments to ratify the Convention against Torture (CAT) and its Optional Protocol (OPCAT), and to consider their designation as national preventive mechanism in this context, only if the necessary powers and resources are made available to them;
- 40. NHRIs should ensure their Governments adopts appropriate measures to ensure that all detainees are able to enjoy their rights to, among other things, health, food, water and education;
- 41. NHRIs should work with their Governments to ensure that those in detention have the opportunity to complain about violations of their rights, including to the NHRI (for example through face-to-face complaints, complaint boxes or on-site human rights counselling services), and, where a violation is found, that detainees have access to a remedy and compensation;
- 42. NHRIs should monitor their Governments' obligation to respect, protect and fulfil the rights of all people in detention, especially vulnerable or marginalised groups, and support their reintegration within society;
- 43. NHRIs should strive to strengthen the correctional system and its personnel, including through:
 - a. Training of correctional staff (on human rights, interviewing and investigatory techniques, the prohibition of torture, OPCAT, etc.);
 - b. Development of training materials for correctional staff on core international human rights standards regarding the correctional system;
 - c. Revision of implementing regulations in line with international standards;
 - d. Visits or periodic inspections (announced and unannounced) of any place of detention and confidential interviews with detainees;
 - e. Investigating complaints;
 - f. Assistance in vetting processes of staff of any place of detention;
 - g. Legislative review and proposals (possibly based on individual complaints), including on minimum standards for correctional facilities; codes of conduct for correctional staffs; the intake, incarceration and transfer of inmates;
 - h. Facilitating assistance to families of detained persons that appeal to the NHRI;

- i. Appropriate protection and assistance for the best interest of children of women in detention;
- j. Ensuring the protection of detainees from torture and cruel inhuman and degrading treatments and punishments; and
- k. Raising community awareness concerning the dignity and justice for detainees.

Adopted in Nairobi,
24 October 2008