

Open letter
from the Secretary General of Amnesty International
to members of African national human rights institutions
participating in the second Conference on African National
Institutions for the Promotion and Protection of Human Rights,
1- 3 July 1998, Durban, South Africa

London, July 1998

Dear member of an African national human rights institution,

I am writing to you with suggestions which you may wish to consider as a member of a national human rights institution in Africa and in connection with your contribution to this important conference.

As a member of an institution created to promote and protect human rights, you have undertaken to uphold certain fundamental principles, as well as accepted some fundamental duties towards society at large and, in particular, towards victims of human rights violations.

Under Article 26 of the African Charter on Human and Peoples' Rights, state parties have an obligation to "allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter." Therefore, by setting up national human rights institutions, African governments are fulfilling an obligation under international law. The requirement contained in the Charter means that Africans across the continent have a right to enjoy the services which properly empowered and adequately resourced national human rights institutions can and should provide.

National human rights institutions can play an effective role as building blocks of an emerging human rights culture based on the universality, interdependence and indivisibility of **all** human rights for **all people**. The Vienna Declaration and Programme of Action, the final document of the 1993 United Nations (UN) World Conference on Human Rights, praises this unique role, and encourages their establishment and strengthening.¹

¹ The Vienna Declaration and Programme of Action states: "*The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights. The World Conference on Human Rights encourages the*

establishment and strengthening of national institutions" (Paragraph 36, section I).

Since the African Charter's entry into force in 1986, Africa has witnessed the establishment of many such institutions. On the occasion of the 50th anniversary this year of the Universal Declaration of Human Rights, their proliferation should be welcomed as a salutary development for the protection and promotion of human rights. This is especially needed in Africa -- a continent scarred by so many conflicts and widespread human rights abuses -- where institutions empowered to strengthen and uphold human rights can help foster a culture based on justice, reconciliation and stability.

However, it must also be recognised that the record of national human rights institutions has been mixed, not just in Africa, but worldwide. Some have acted responsibly and worked hard to establish themselves as independent and effective mechanisms for complaints and redress. They have received cooperation from government officials and consulted closely and beneficially with both local and international non-governmental organizations. But there have been other cases of national human rights institutions which totally lack any real independence or credibility.

While welcoming the setting up of institutions which should serve as additional domestic safeguards for human rights, Amnesty International is often faced with the difficult task of evaluating their effectiveness. In this context, legitimate concerns have arisen -- for example -- when weak national human rights institutions, totally under government control, have been used as a cover for the government's unwillingness to promote and protect human rights. In these instances, it is clear that national human rights institutions can do more harm than good.

There are a number of lessons that can and should be learned and which I urge you to take into account as you gather in Durban.

As a premise, I would strongly emphasize that these institutions should in no way operate in the absence of, or as a substitute for, other fundamental social or legal infrastructures. Furthermore, although national human rights institutions can serve to enhance the promotion and protection of human rights, they should never replace, nor in any way diminish the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, easily accessible, adequately resourced and effective judiciary.

In addition, the setting up of national human rights institutions should be accompanied by a clear and firm commitment from the government and its law enforcement agencies, including the security forces and the military, to support the rule of law, including upholding, complying with and implementing international human rights standards, as well as recommendations and decisions issued by international bodies entrusted with the protection and promotion of human rights.

It is also crucial that while discharging their powers, national human rights institutions are backed by a determined policy on the part of the government to bring suspected perpetrators of human rights violations to justice, thus holding violators accountable and preventing impunity.

Amnesty International urges governments worldwide to ensure that when establishing or strengthening these institutions they do so in a manner which is consistent with existing international standards for human rights commissions and investigatory bodies, such as the UN Principles Relating to the Status of National Institutions, adopted by the UN Commission on Human Rights in 1992 and endorsed by the UN General Assembly in 1993.² The key functions of a national human rights institution identified by the Office of the UN High Commissioner for Human Rights are as follows: an advisory function, an educative function, and an impartial investigatory function.³

Although no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries, there are a number of characteristics necessary for national human rights institutions to be able to perform their role effectively. Among them are the following:

- 1) they should have enforceable powers to ensure implementation of their decisions and recommendations;
- 2) they should have legal authority to demand cooperation from government agencies, as well as power to impose administrative and legal sanctions when the exercise of their power is obstructed;
- 3) their mandate should contain no restrictions with respect to the scope and subjects of the investigations which they must be empowered to undertake on their own initiative;

²These are also known as the "Paris Principles" and are contained in "*Proposed Standards for National Human Rights Commissions*" (AI Index: IOR 40/01/93), which Amnesty International issued in 1993. These standards are meant to serve as guidelines for the creation of national human rights institutions and outline a number of necessary elements concerning their mandate, composition, facilities and methodology.

³ See the UN Handbook on National Human Rights Institutions, which is part of the UN Professional Training Series, published by the Office of the UN High Commissioner for Human Rights in 1995.

- 4) there should be no provisions in their mandate preventing them from investigating human rights violations allegedly either directly carried out by government agencies, including law enforcement personnel, the security forces and the military, or with these agencies' knowledge, complicity, acquiescence, connivance, or as a result of their direct negligence or failure to exercise due diligence.

To put it succinctly, national human rights institutions should be given true power to protect those they were set up to protect in the first place, namely victims of human rights violations.

Civil society at large can play an important role in supporting national human rights institutions. For instance, when appropriate, local lawyers' associations and other groups could facilitate investigations of alleged human rights violations by providing relevant information. Such a vital contribution, however, should not occur as stop-gap measure. National human rights institutions should be provided with adequate resources to carry out their own investigations impartially and without fear or favour.

I would like to turn to your role as an individual member of a national human rights institution. As I mentioned at the beginning of this letter, you have a number of fundamental duties towards society at large and, in particular, towards victims of human rights violations whom these institutions are ultimately created to serve.

As a member, your primary responsibility is to try to ensure that the institution to which you belong achieves what it was set out to do, namely to protect and promote human rights.

This is not an easy task and there are many ways to oppose it. Your government should support you and the powers it has entrusted to you. You can also call on the international community in Africa and worldwide to support you. But if it all fails, and if you are unable to fulfil your duties towards those you have been appointed to serve and protect, I urge you not to become an accomplice in hindering the protection and promotion of human rights. I urge you to speak out publicly and take all necessary steps to protect the integrity and independence of your institution. By so doing, you will have stood up for the defence of human rights.

Finally, I send you my best wishes for a successful conference. Let it be another milestone in human rights development in our continent.

Yours sincerely,

Pierre Sané
Secretary General, Amnesty International