

BREAKOUT SESSION V: Challenges due to multiple mandates

Topic : The Ombudsman as National Preventive Mechanism (NPM)

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NHRIs / Ombuds institutions with an NPM mandate

One of the more obvious advantages of being entrusted with multiple mandates is the platform to address a range of human rights issues. As a result, ombuds institutions already have several qualities necessary for an NPM. This includes legislative powers of unannounced access to places of detention, access to documents and people, provisions to enforce compliance with recommendations, as well as existing work conducting monitoring visits and regular dialogue with the authorities.

An existing ombuds institution with a broad human rights mandate that functions independently and effectively, assumes a position of influence in the national human rights context and, as a result, they can launch initiatives that address interrelated human rights issues such as torture and the right to life, dignity of persons deprived of their liberty, and right to health care.

Having a single institution with relevant or interrelated human rights mandates also keeps the system of oversight and monitoring less complicated for rights holders and other stakeholders. When an ombuds institution is designated as NPM, torture related mandates are all under one roof, making it a focal point for dialogue on the issue and providing a single point of entry. This also avoids duplication, when multiple bodies have overlapping mandates.

Institutions with broad mandates, especially relating to investigation or systemic monitoring can also launch inquiries or systemic monitoring endeavours to look into violations identified during an ongoing undertaking. For instance a complaint into denial of access to a lawyer in detention could reveal other issues relating to ill-treatment that can be examined using the institutions visiting powers.

Having multiple mandates also translates to greater impact, allowing an institution to work on systemic issues as well as those only linked to individual complaints.

Having multiple roles within one institution also ensures that the NPM has support from other units / functions of the office, such as in-house legal support and advice on legislative reform. It also provides an avenue to use human rights treaty bodies and special procedures to draw attention to the work of the NPM. For instance many countries are party to the Convention on the Rights of the Child and so have reporting mandates. Alternative reports can be vehicle to raise issues pertaining to juveniles in detention.

Some ombuds institutions already visit detention facilities. Although mostly for investigative purposes, these visits give them an understanding of detention conditions. And this background knowledge makes the transition to a proactive NPM monitoring mandate smoother if and when they assume this role.

Nevertheless it is challenging to be effective in addressing a range of human rights issues under a single umbrella. It is imperative that the role of the NPM is assigned and established in law, especially when the mandate holder is an already established human rights mechanism. It is necessary for stability, independence and protection from reprisals. Getting established in law either requires an amendment to an already existing law or adoption of new legislation and these processes are not without challenges. The Maldives NPM had to work continuously with multiple stakeholders for over six years after its designation by an executive order, in order to have the NPM established in law. One of the most continuously challenging experiences of the Maldives NPM within the Human Rights Commission was adopting a preventive approach and changing the “reactive” culture, as well as keeping the investigation and prevention mandates functionally segregated within the same institution. This included separate staff, operational space, other resources and budget. Additionally, keeping rights holder and the state mechanisms informed of these two separate mandates and functional approach took years of reiteration. This made constructive dialogue a constant challenge when the Human Rights Commission had to take torture cases with criminal liability to the prosecutor general.

The process of NPM report endorsement, decisions regarding interventions and publications always takes place within the context of other responsibilities and mandates within a multidisciplinary independent institution. The Maldives NPM struggled for the Commission’s time and prioritized attention it required amidst everything else that was taking place domestically regarding human rights. As a result, during periods of political unrest the NPM reports and decisions suffered unexpected delays.

