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National human rights institutions and UN treaty monitoring bodies

**A recommendations paper by the International Coordination
Committee of National Human Rights Institutions (ICC)**

- DRAFT -

THE ICC IS A REPRESENTATIVE BODY OF NATIONAL HUMAN RIGHTS INSTITUTIONS ESTABLISHED FOR THE PURPOSE OF CREATING AND STRENGTHENING NATIONAL HUMAN RIGHTS INSTITUTIONS WHICH ARE IN CONFORMITY WITH THE PARIS PRINCIPLES. IT PERFORMS THIS ROLE THROUGH ENCOURAGING INTERNATIONAL CO-ORDINATION OF JOINT ACTIVITIES AND CO-OPERATION AMONG THESE NATIONAL HUMAN RIGHTS INSTITUTIONS, ORGANISING INTERNATIONAL CONFERENCES, LIAISON WITH THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS AND, WHERE REQUESTED, ASSISTING GOVERNMENTS TO ESTABLISH A NATIONAL INSTITUTION.

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National Human Rights Institutions (NHRIs) and UN treaty monitoring bodies should act as close partners pursuing the same objective - the promotion and protection of human rights. This paper, after a short introduction outlining the principal areas of possible co-operation between both kinds of bodies, presents a set of recommendations to UN treaty monitoring bodies for enhanced co-operation with NHRIs. At the same time, the paper elaborates on the many areas where NHRIs intend to improve their contribution to strengthen their link and commitment to co-operation with treaty bodies.

It does not, though take any position on the treaty body reform process. NHRIs have been informed by the Office of the High Commissioner for Human Rights during the 17th session of their International Coordination Committee in April 2006 on the reform proposal and current debates. NHRIs came to the conclusion that as they did not have the time for an in-depth discussion of that proposal they do not take a position on the reform process. Thus, all recommendations in this paper relate to seven, one or any different set and constellation of treaty bodies.

1 Introduction

1.1 Role of treaty bodies: All seven core human rights treaties of the United Nations¹ provide for state reporting on the implementation of the treaty at the national level. Some of them have, in addition, established a mechanism that allows submission of individual communications or an investigating procedure. For all treaties, independent expert bodies have been established to supervise implementation of the provisions of the treaty in all states who are party to the treaty. After reading and discussing a state report, these bodies recommend important steps for further implementation of a treaty to states parties. Where this option is enshrined in a treaty or one of its optional protocols, they take positions on individual complaints or petitions. In dealing with practical implementation of their respective treaties, treaty bodies, in issuing General Comments, interpret the various treaties such as they become living instruments.

While treaty bodies themselves have limited means for observing the implementation of their own recommendations some of them introduced follow up mechanisms and today they all consider introducing procedures for following up their recommendations. These mechanisms are of vital importance. Nevertheless, in his 2002 report on UN reform, the Secretary-General underlined the crucial importance of the national level for the effective protection and advancement of human rights, and he declares the enhancement of the national protection system to be a principal objective of the United Nations².

¹ This paper relates to the International Covenant on Political and Civil Rights 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Convention on the Elimination of all forms of discrimination against Women 1980 (CEDAW), the International Convention on the Elimination of All Forms of Discrimination 1965 (ICERD), the Convention on the Rights of the Child 1989 (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (ICRMW).

² Strengthening of the United Nations: an agenda for further change. Report of the Secretary-General. UN-Index A/57/387, 9 September 2002



1.2 Role of National Human Rights Institutions: Assuming that compliance with human rights treaties is, above all, a national issue, there is - apart from states who are responsible for implementation of human rights treaties - one actor who is in a particularly appropriate position to act as a national partner for treaty bodies: the National Human Rights Institution NHRI. NHRIs are democratic institutions established by law - many of them by constitutional provisions - as independent institutions for the promotion and protection of human rights at the national level. They are organized as, for example, commissions, institutes or (groups of) ombudsmen. While some of them have quasi-judicial functions, including investigatory powers, and are entitled to work on individual complaints, others confine themselves to monitoring, advising governments and legislatures, providing human rights education and, in some cases, research on human rights theory and practice.

1.3 Paris Principles: The United Nations have issued a set of stipulations - called the Paris Principles³ - that list a series of potential tasks for such institutions, as well as some basic requirements. NHRIs are accredited by the International Coordinating Committee ICC of NHRIs, a body elected by the four regional sub-groups of NHRIs. Full accreditation requires full compliance with the Paris Principles. The criteria for full accreditation are, among others, independence, fulfilment of reporting obligations, implementation of some of the key tasks of national human rights institutions, and financial independence, i.e. a minimum level of core funding that guarantees the institution's independence. In its 17th session, the ICC decided to increase the threshold for continuous accreditation. NHRIs will now be scrutinized for the fulfilment of the Paris Principles every fifth or sixth year. With this decision, NHRIs underline the crucial importance of their own independent, accountable performance.

1.5 NHRIs as a bridge between the international and national human rights protection system: In order to fulfil another key function stipulated by the Paris Principles national human rights institutions should try to “promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party and their effective implementation”⁴. Thus, as reflected in the UN Paris Principles and other UN resolutions, an important function of NHRIs is to act as a bridge between the international and national protection system.

NHRIs play an indispensable role in the promotion of the full implementation of human rights obligations undertaken by States, in particular by

- Documenting the human rights situation in their respective countries
- Providing expertise on the national protection systems, including key national institutions
- Advocating and advising the state on the scope and implementation of its human rights obligations

³ Principles relating to the Status of National Human Rights Institutions (The Paris Principles), GA Res. 48/134 (1993), annex.

⁴ See note 4, The Paris Principles, article 3b.



- Following-up on the recommendations of the UN bodies.

1.6 Interaction between NHRIs and treaty bodies:

To date, three treaty bodies have issued General Comments on the role of NHRIs in relation to the state reporting process: the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee on Elimination of Racial Discrimination. Several of them invited NHRIs to present their concerns in a session. NHRIs also took initiatives to interact with treaty bodies: For example, by submitting additional reports, by meeting in formal or informal settings with treaty bodies or individual treaty body members or by taking an active role in the follow-up of treaty body recommendations. Nevertheless, given the obvious role national institutions could and should play as partners of treaty monitoring bodies, relations and co-operation should be intensified on different levels.

2 Recommendations to UN treaty bodies

Thus, while valuable forms of reference, interaction and co-operation between NHRIs and UN treaty monitoring bodies have been developed, with this paper the ICC would like to submit a series of recommendations to treaty bodies while underlining at the same time the commitment of NHRIs to strengthen mutual co-operation from their side. NHRIs are committed to undertake a series of steps to improve co-operation with treaty bodies. They also intend to learn more on related issues such as the functioning of treaty bodies; harmonization of national legislation with international human rights standards, the submission of individual communications to treaty bodies - be it by training each other or in co-operation with the Office of the High Commissioner for Human Rights. Against this backdrop, they would appreciate if their recommendations to treaty bodies would find a positive echo.

2.1 Ratification:

NHRIs are committed to undertake pro-active measures to promote ratification of human rights standards in their countries. It is one of the prominent tasks of NHRIs to promote ratification of all international and regional human rights standards in their country, including ratification of optional protocols to human rights treaties. This includes systematic activities directed to all national actors relevant for ratification. Furthermore, NHRIs will work to remove reservations made by States parties to the Conventions.

2.2 Reporting

NHRIs will, by different means, and according to their capacity, contribute to reporting to treaty bodies. They may submit supplementary information and documentation to the State parties' reports in the form of additional reports or comments. Others will support alternative reporting of NGOs by means such as hosting conferences for discussion of government reports and for civil society consultation, by providing training on alternative reporting or by coordinating alternative reporting. Training measures on human rights for the ministries in charge of reporting offered by NHRIs could contribute to improved government reporting.

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Recommendations:

- NHRIs should be invited by treaty bodies to intervene before the committee before, during or after the dialogue with the government. A separate time slot should be offered to NHRIs to distinguish their role from that of the reporting state party and from NGOs. If a time slot is offered during the dialogue, the difference of roles should be visible.
- Treaty bodies could issue guidelines or recommendations for NHRI contributions to state reporting. These should take into account the specific role of NHRI as distinguished from both state parties and NGOs.
- The country rapporteur could get in touch with the NHRI in the respective country and ask them for additional information to prepare the dialogue. He/she should draw on information by NHRIs for fact finding.
- Treaty bodies that develop indicators for the reporting process could draw on knowledge and expertise in NHRIs on the appropriateness and quality of an indicator for a given country.

2.3 Follow Up to treaty body concluding observations/recommendations

NHRIs see themselves in a key role to follow implementation of human rights treaties in their country. They are committed to support follow up to treaty body observations / recommendations and do this in different ways: By submitting information and documentation on implementation of the recommendations to the respective treaty bodies; by seeking to actively engage government and civil society on ways and means for effective follow-up, by means such as distribution and translation of concluding observations - if this is not done by the state -, by hosting conferences on their implementation, by discussing recommendations with the ministries concerned and by informing and encouraging members of parliament to follow up implementation. All these measures are undertaken immediately after the publication of the concluding observations but also after an interim period.

Recommendations:

- Treaty bodies should encourage and acknowledge the important role of NHRIs in following up their recommendations. Information on follow up (or lack of follow-up) received from NHRIs should be used for the list of issues preceding the dialogues.

2.4 Monitoring a country situation

While treaty bodies primarily focus on long term implementation of human rights treaties with the inquiry procedure, by requesting exceptional reports and urgent action procedures they dispose over three means to react to emerging human rights crises. These procedures open the way to investigations that lead beyond the reporting cycle. National institutions do have a key function regarding early warning in regard to increasing violations and crisis situations in a country. A signal for a severe crisis may, in fact, be a threat to the NHRI itself and to its financial and political independence. Thus,

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NHRIs should be seen as an important source of information on large scale violations, crisis situations and human rights development that could be of concern to treaty bodies.

Recommendations:

- When focussing on an emerging crisis situation in a country, treaty bodies should draw on NHRIs as a support for fact finding, documentation, and information and for linking up with stakeholders concerned by the human rights violations.
- A threat against the independence or the status of an NHRI should be evaluated as a signal for a severe crisis by UN treaty bodies and they should interact closely with the International Coordination Committee for NHRIs in relation to the protection of NHRIs and their members. Treaty bodies should request information about the situation of the NHRI in the country from all states parties in their reports.
- Should treaty bodies undertake *in situ* monitoring missions, NHRIs should be included in the agenda and be allowed to submit information.

2.5 Consultation with NHRIs:

NHRIs study lots of thematic or regional issues that are of interest for treaty bodies as well. Many treaty body discussions could be enriched by the debates, studies and practical experiences of NHRIs and NHRIs would be pleased to provide their expertise. They could participate in treaty body debates with a delegate from the ICC, a head of a regional group or an expert mandated by the ICC.

Recommendations:

- NHRIs should be invited to take an active part in days of general discussions.
- There should be consultations on the general comments on the interpretation of the conventions issued by the UN Treaty Body system and NHRIs.

2.6 Petitions/individual communications:

NHRIs may be in a good position to follow individual cases that have been submitted to treaty bodies at least regarding those parts of the procedures which are not confidential.

Recommendations:

- NHRIs should be invited to submit information on the implementation of adjudicated cases.
- In the interaction between the UN Treaty Body system and the State parties, treaty bodies should draw on additional information and documentation on the relevant issue by NHRIs.
- Where all domestic remedies have been exhausted NHRIs should be able to avail themselves of the petitions/complaints systems of the treaty bodies.

Seidensticker for the ICC
June 18th, 2006

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