



ASIA PACIFIC FORUM
ADVANCING HUMAN RIGHTS IN OUR REGION

International Human Rights and the International Human Rights System



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International Human Rights and the International Human Rights System: A Manual for National Human Rights Institutions

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Cover photographs

Left: A gift to the United Nations from Canada, known as the “Canadian Doors”, which lead into the General Assembly lobby. UN Photo by Evan Schneider.

Centre: A wide view of the Human Rights Council at its 18th session, in Geneva, Switzerland. UN Photo by Jean-Marc Ferré.

Bottom: Palais Wilson Geneva, home of the Office of the United Nations High Commissioner for Human Rights. Photo by Niklas Plutte.

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Foreword

The relationship between National Human Rights Institutions (NHRIs) and the international human rights system is a two way relationship. The international human rights system promotes NHRIs. It has adopted the Paris Principles, the main normative standard for NHRIs. Through the Universal Periodic Review and the treaty monitoring bodies, it urges every State to establish an effective, independent NHRI that complies with the Paris Principles and to strengthen it. It provides technical assistance for that.

In return NHRIs contribute to the international human rights system. They can participate in sessions of the United Nations Human Rights Council. They can utilize the Council's complaints procedure to bring consistent patterns of gross human rights violations to the attention of the Council. They can cooperate with the Council's special procedures. They can also contribute to the Universal Periodic Review process for their country and to the treaty monitoring bodies' work in considering countries' reports of compliance.

This manual aims to assist NHRIs with their engagement with international human rights mechanisms. It also provides a ready reference for their work with the international human rights system. I hope that it will be well used not only during APF training courses but also within APF member institutions for internal capacity building.

A handwritten signature in black ink, appearing to read 'Kieren Fitzpatrick', with a long horizontal line extending to the right.

Kieren Fitzpatrick
Director
Asia Pacific Forum of National Human Rights Institutions

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List of key abbreviations

APF	Asia Pacific Forum of National Human Rights Institutions
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECOSOC	United Nations Economic and Social Council
GA	United Nations General Assembly
HCHR	United Nations High Commissioner for Human Rights
HRC	United Nations Human Rights Council
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NGO(s)	Non-governmental organization(s)
NHRI(s)	National human rights institution(s)
NIRMS	National Institutions and Regional Mechanisms Section of the Office of the United Nations High Commissioner for Human Rights
NPM(s)	National preventive mechanism(s) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Operative paragraph
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
PP	Preambular paragraph
SC	United Nations Security Council
SCA	Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
SP(s)	Special procedure(s) of the Human Rights Council
TMB(s)	Treaty monitoring body (bodies)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review

Chapter 1: Introduction

KEY QUESTIONS

- **What has been the role of the international human rights system in promoting the establishment and development of NHRIs?**
- **What does the international human rights system expect of NHRIs in their interaction with the international system?**



National human rights institutions (NHRIs) are the creations of their own domestic laws and processes but their existence is closely connected with the international human rights system. Although the first NHRIs were established in the late 1970s and 1980s, their growth can be traced directly to the strong endorsement they received from the Vienna World Conference on Human Rights, held in Vienna, Austria, in 1993.

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, having regard to the 'Principles relating to the status of national institutions' and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.¹

Each year following the Vienna World Conference, the United Nations Commission on Human Rights passed a resolution re-affirming international support for NHRIs and encouraging all States to establish them.² The Human Rights Council (HRC) adopted its first resolution on NHRIs in 2011, with wide co-sponsorship and unanimous support, perhaps reflecting that this is now an uncontroversial issue and that the position and importance of NHRIs are well accepted.³ There have been similar resolutions in the General Assembly (GA), most recently at the end of 2011.⁴ Treaty monitoring bodies have added their voices, often including recommendations for establishing or strengthening NHRIs in their concluding observations.⁵ And since the commencement of the Universal Periodic Review (UPR) procedure in the HRC in 2008, recommendations on NHRIs have featured prominently in the reports adopted by the HRC on individual States.

Since 1995, the United Nations High Commissioner for Human Rights (HCHR) has responded to the Vienna Declaration and Programme of Action and to the resolutions of United Nations (UN) bodies by supporting the establishment and strengthening of NHRIs. From 1995 to 2003, this support was provided first by a senior Special Adviser.⁶ More recently it has been provided by a specialist unit within

1 Vienna Declaration and Programme of Action; Part 1; para. 36.

2 Resolution 2005/74 was the last such resolution of the Commission on Human Rights.

3 HRC Resolution 17/9, adopted on 16 June 2011.

4 GA Resolution 66/169, adopted on 19 December 2011.

5 The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights has prepared a compilation of recommendations made by treaty monitoring bodies concerning NHRIs region; see: <http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx>.

6 The Special Adviser was a very experienced practitioner, Brian Burdekin, who had been the Australian Human Rights Commissioner from 1987 to 1994.

the Office of the United Nations High Commissioner for Human Rights (OHCHR), the National Institutions and Regional Mechanisms Section.

Fortunately, before this rush of interest began, the NHRIs themselves sought to set international standards by which institutions could be established and assessed for their seriousness. The first set of guidelines for NHRIs was produced in 1978 by an intergovernmental seminar organized by the then Commission on Human Rights.⁷ There were very few NHRIs at the time, however, and the guidelines were generally not well promoted.

In 1991, there were still fewer than 20 NHRIs. That year, at their first international meeting in Paris, they adopted the Principles relating to the Status of National Institutions (the “Paris Principles”), which were subsequently endorsed by the Commission on Human Rights and the GA.⁸ The adoption of these principles was unusual in that the UN system generally does not endorse standards that are not drafted through its own processes. It was also important as it provided a benchmark, a set of minimum requirements, for NHRIs before the rapid growth in their numbers began.

Having promoted the establishment of NHRIs in accordance with international minimum standards, the international system required something in return, namely the contribution of these institutions to the international system itself. The Paris Principles themselves acknowledged this as part of the essential “competence and responsibilities” of NHRIs, requiring that they:

*... cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights.*⁹



Conference Secretary-General Ibrahima Fall (left) and President of the Conference Alois Mock congratulate each other at the conclusion of the World Conference on Human Rights 1993. UN Photo.

7 *National Human Rights Institutions: History, Principles, Roles and Responsibilities*; Professional Training Series No. 4 (Rev. 1); OHCHR; 2010; p. 7.

8 The Paris Principles were drafted and approved at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, held in Paris from 7–9 October 1991. They were subsequently adopted by Commission on Human Rights Resolution 1992/54 in 1992 and GA Resolution 48/134 in 1993.

9 Paris Principles; para. 3(e).

This provision is being applied by the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) through the process of granting and reviewing accreditation of NHRIs that comply with the Paris Principles.¹⁰ The SCA has said:

*The Sub-Committee would like to highlight the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. This means generally NHRIs making an input to, participating in these human rights mechanisms and following up at the national level to the recommendations resulting from the international human rights system. In addition, NHRIs should also actively engage with the ICC and its Sub-Committee on Accreditation, Bureau as well as regional coordinating bodies of NHRIs.*¹¹

In accreditation reports, the SCA frequently comments on the international engagement of the NHRI under review and draws its attention to the SCA's views on the subject.¹²

According to the results of a survey of NHRIs published by the OHCHR in July 2009, however, the majority of NHRIs are not heavily engaged with the international human rights system.¹³

There are good reasons for NHRIs to be engaged in the international human rights system, quite apart from their desire to be recognized as fully compliant with the Paris Principles. The international human rights system is of limited effectiveness. It needs NHRIs far more than they need it. It needs NHRIs to provide independent, objective information about human rights situations. States' reports to international bodies are invariably self-serving and reports from NGOs are often criticized as being political or inaccurate. NHRIs that comply with the Paris Principles are official but independent bodies able to speak authoritatively. They have responsibility and power under the law to investigate and report on situations of human rights violation. They are able to draw from their national experiences to assist the development of international law and practice.

NHRIs now have opportunities to contribute to and through many international human rights mechanisms. Many do so but their number is still far too few. Some cannot see any advantage or relevance in engaging with the international system and so do not do so. Some simply do not know how to contribute effectively.

This manual examines the opportunities for engagement and the experiences of NHRIs that do so. It deals with both that part of the system derived from the UN Charter; that is, the HRC and its special procedures and UPR mechanisms. It also addresses that part of the system that derives from human rights treaties; that is, the treaty monitoring bodies. The manual provides information about how NHRIs can engage effectively with the various international mechanisms to advance human rights internationally and domestically.

To begin, however, the manual considers some fundamental questions:

- What are human rights?
- What is international human rights law?

¹⁰ The international accreditation system for NHRIs is discussed in Chapter 16 of this manual.

¹¹ See ICC Sub-Committee on Accreditation General Observations; "1.4. Interaction with the international human rights system".

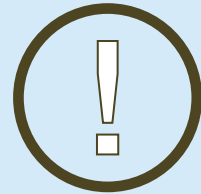
¹² For example, see the comments on the Russian Office of the Commissioner for Human Rights, the People's Advocate of Albania and the Defensoria del Pueblo of Paraguay in the "Report and recommendations of the session of the Sub-Committee on Accreditation of 3–6 November 2008"; and the comments on the Qatar National Human Rights Committee, the Commission Nationale Consultative de Promotion et de Protection des Droits de l'Homme of Algeria, the Defensoria del Pueblo de Ecuador and the National Human Rights Commission of Malaysia in the "Report and recommendations of the session of the Sub-Committee on Accreditation of 26–30 March 2009"; <http://nhri.ohchr.org/EN/ICC/ICCAccreditation/Pages/SCA-Reports.aspx>.

¹³ *Survey on National Human Rights Institutions*; OHCHR; July 2009; see <http://nhri.ohchr.org>. NHRIs were invited to respond to a questionnaire on many issues about their structure and work. Sixty-one institutions did so. Unfortunately a number of the more active NHRIs were not among the respondents. Non-respondents included the NHRIs of Australia, Denmark, Ghana, India, Indonesia, Kenya and Republic of Korea.

It then considers the various mechanisms in the international human rights system and how NHRIs can engage with them. Finally, it examines how NHRIs collaborate internationally and regionally.

KEY POINTS: CHAPTER 1

- **The Vienna World Conference on Human Rights in 1993 encouraged all States to establish independent NHRIs in compliance with the Paris Principles.**
- **The United Nations High Commissioner for Human Rights has been a principal advocate for the establishment and strengthening of NHRIs.**
- **NHRIs are required to interact with the international human rights system.**



Chapter 2:

What are human rights?

KEY QUESTIONS

- **What does it mean to be human?**
- **What do human beings require to live fully human lives?**
- **What are human rights?**
- **What are the essential characteristics of human rights?**



1. DEFINITIONAL CHALLENGES

Defining “human rights” is difficult. There are many international human rights treaties, declarations and resolutions but none of them provides an agreed definition of “human rights”. There are many learned books on human rights – some academic in nature and others more popular – but they generally assume that readers know what “human rights” means without trying to define it. International human rights law can be defined, the characteristics of “human rights” have been identified and the content of “human rights” has been and is being developed. However, agreeing on a single, universally accepted definition of “human rights” has not been possible.

“Human rights” is more described than defined. Human rights are said to be:

- fundamental or foundational, going to the heart of human personhood
- entitlements, not mere claims or requests
- applicable to every human being.

Agreeing on a single, universally accepted understanding of the origins of human rights has also been impossible. International law and international statements about human rights are silent on this subject. When asked where human rights come from, different people respond in different ways depending on their personal beliefs and opinions. Many people will say that human rights come from God and are gifts of God. Others will adopt a secular analysis or respond from an ideological perspective. Post-modern scholars will say that they are constructed from human imagination or for ideological purposes and have no objective reality.

These issues are debated in academic circles. Sometimes they are also debated and even resolved at the domestic level, to the satisfaction of a particular community’s beliefs or culture or tradition. At the international level, however, a pragmatic approach has been adopted and these issues have been avoided, or bypassed, in favour of seeking to identify the characteristics of human rights and the content of human rights law.

2. HUMAN RIGHTS ARE THE ANSWERS TO TWO FUNDAMENTAL QUESTIONS

One approach to resolving the difficulty of defining “human rights” is to examine what the concept of human rights seeks to do and what role human rights play in human self-understanding.

From the beginnings of human consciousness, human beings have sought to understand themselves and the nature of their humanity. This capacity for consciousness and self-reflection is what distinguishes

human beings from other forms of life. Human beings have been preoccupied with two fundamental questions about themselves:

- What does it mean to be human?
- What do human beings require to live fully human lives?

People have sought answers to these questions in the various disciplines of human knowledge and science.

- Philosophers have pondered these questions and developed theories.
- Theologians have studied and developed religious teaching and practices.
- Biologists have studied the ways in which our bodies are comprised and work.
- Sociologists have studied the way humans interact.
- Anthropologists explore these questions by observing cultures and societies.

Human rights are the answers to these two fundamental questions using the language and concepts of philosophers, at a general level, and of lawyers, when it comes to expressing these answers in detailed legal terms. They are the attempt to express in law what it means to be human and what human beings require to live fully human lives; the essential entitlements of each person, derived from her or his dignity as a human being. They are a comprehensive statement of this, touching all aspects of human personhood and human existence and treating the human person holistically; as a whole person and not merely a collection of parts.



Family in Tarialan soum, Uvs aimag (province), Mongolia. UN Photo by Eskinder Debebe.

3. THE ESSENTIAL CHARACTERISTICS OF HUMAN RIGHTS

The characteristics of human rights were definitively agreed at the Second World Conference on Human Rights, held in Vienna, Austria, in 1993. The Vienna Declaration and Programme of Action (VDPA) said:

*Human rights and fundamental freedoms are the birthright of all human beings ...*¹⁴

*All human rights are universal, indivisible and interdependent and interrelated.*¹⁵

These statements supplemented the opening words of the Universal Declaration of Human Rights (UDHR) referring to “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”.

Based on these and other internationally negotiated and approved texts, human rights are said to have five essential characteristics that distinguish them from all other kinds of rights. Human rights are:

- inherent
- universal
- inalienable
- indivisible
- interdependent.

These characteristics are essential in that they go to the core of what human rights are. Each characteristic is important individually but collectively they express what constitutes human rights.

Inherent means that human rights derive from the humanity of each person. They are, in the words of the UDHR, “the birthright of all human beings”; the entitlements of each human being from the beginning, not somehow conferred by government grant or gift or concession. Because they are inherent, part of the humanity of each person, they are not given and they cannot be taken away. Governments cannot confer human rights and they cannot abolish human rights. They can only respect and protect them or violate them.

Universal means that all human beings have the same human rights. The foundational human rights document, the UDHR, makes this point in its very title. Human rights are the rights of all people, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹⁶ The vision statement of the Australian Human Rights Commission expresses it well: “human rights: everyone, everywhere, everyday”.¹⁷ The VDPA describes the relationship between universality and national and local customs and traditions.

*While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*¹⁸

Inalienable means that human rights cannot be given up. A person can decide not to exercise a right on a particular occasion or at all but she or he cannot give the right away. So, for example, someone could decide not to express an opinion on an issue of public concern or not to participate in an assembly or not to join an association. However, the person cannot give away forever the right to freedom of expression or freedom of assembly and movement or freedom of association. If human rights define what it means to be human, then a person who gives up a right would be less than human. No human being can be less than human.

14 Vienna Declaration and Programme of Action; Part I; para. 1.

15 Vienna Declaration and Programme of Action; Part I; para. 5.

16 International Covenant on Civil and Political Rights; article 2. Article 2 of the International Covenant on Economic, Social and Cultural Rights contains a similar formulation.

17 See: www.humanrights.gov.au/about/index.html.

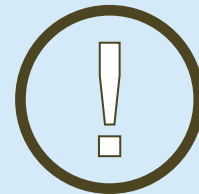
18 Vienna Declaration and Programme of Action; Part I; para. 5.

Indivisible means that there are no conflicts between rights and no priorities among rights. There will be situations or occasions where rights must be balanced and prudent decisions taken about how all rights can best be protected and promoted. However, no right or category of rights is inherently more important than other rights. Human rights are a comprehensive, integrated whole, incapable of division or subordination of some rights to others, because human rights describe a whole and integrated human being, not a part-person.

Interdependent means that the enjoyment and fulfilment of any right depends on the enjoyment and fulfilment of other rights. So, for example, a child who is unable to receive necessary medical care (the right to the highest attainable standard of health) will have difficulty in learning at school (the right to education) and, as an adult, will have difficulty in finding a fulfilling job (the right to work), in expressing her or his views (the right to freedom of expression), in contributing to political life (the right to vote) and so on. These rights are interdependent, relying on the enjoyment of one for the enjoyment of others.

KEY POINTS: CHAPTER 2

- **Human rights are the answers, in legal terminology, to two fundamentally human questions: “what does it mean to be human?” and “what do human beings require to live fully human lives?”**
- **Human rights have five essential characteristics. They are inherent, universal, inalienable, indivisible and interdependent.**



Chapter 3:

What is international human rights law?

KEY QUESTIONS

- **What is international law?**
- **What is the Universal Declaration of Human Rights?**
- **What is treaty law?**
- **What is international customary law?**



1. WHAT IS INTERNATIONAL LAW?

International law is a body of law that governs the conduct of States and their relations with each other. It has been developed over a number of centuries but its development over the last 100 years has been broader and more comprehensive than at any early time, reflecting the rapidly increasing pace of globalization.

There are two sources of international law:

- agreements between States, known by the general name of treaties
- custom.

Treaties are negotiated by States and set out legal obligations of States to each other. They bind only those States that become parties to the treaties, through processes known as “accession” and “ratification”.

- Accession is a single step process by which a State accepts the obligations of a treaty and becomes a State party to it.
- Ratification is the second in a two-step process. The first step is signature, by which a State indicates an intention to become a party to a treaty at some point in the future and makes a commitment not to act in the meantime in a way that undermines the implementation of the treaty. Upon ratification, the second step, the State accepts all of the obligations of the treaty and is fully bound by its provisions.

Upon accession or ratification a State becomes a party to a treaty. A treaty only binds States parties to it and a State party only has obligations towards other State parties, not towards States that are not parties to the treaty.

International customary law, by contrast, binds all States and so is universal in its application. However, the rules of international customary law are difficult to identify and define because they are found not in written texts, like treaties, but in State practice. As a result they are often contested, obscure and ill-defined. However, the International Court of Justice and other international tribunals are now providing extensive guidance on the content of customary international law through a growing body of jurisprudence. Much customary international law has also been codified in new treaties, such as the Statute of the International Criminal Court.

2. THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW

Concepts of rights have grown from the ethical and moral teachings of major religions and philosophical systems but their transformation into law has been the product of specific events, in specific places at specific times. Generally it has been a reaction to cultures and practices that, in the words of the UDHR, have “outraged the conscience of mankind”.¹⁹ Although the origins of international law lie many centuries ago, the human rights dimensions of the law only began to develop in the 19th century as a response to these kinds of events. It seems that growth came as a result of specific events that shocked even the leaders of nations.

Norms against slavery developed in the first half of the 19th century through international campaigning against the horrors of the international trade in human beings.

Particularly bloody warfare in northern Italy in the 1850s resulted in the development of international humanitarian law (also called the “law of war” or the “law of armed conflict”) during the second half of the 19th century. By the turn of the 20th century, there were international treaties on many issues associated with warfare: the conduct of war,²⁰ the treatment of civilians,²¹ the treatment of prisoners of war²² and the treatment of war wounded.²³

The unprecedented scale of death and destruction in World War I prompted the establishment of the first international organizations – the League of Nations and the International Labour Organization – and the first declarations and treaties to address domestic human rights issues, relating to children and minorities.

The genocides, war crimes and crimes against humanity committed by Nazi forces in Europe and the Japanese Imperial Forces in east and south east Asia before and during World War II led to the strongest commitment yet to developing an international legal regime that would make such activities unthinkable.



United Nations exhibit at Rockefeller Plaza, New York, March 1943. Close-up of photographic display and seals of the nations. Photo by Marjory Collins.

19 UDHR; OP. 2.

20 Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land; The Hague; 18 October 1907; see: www.icrc.org/ihl.nsf/intro/195?OpenDocument.

21 Hague Convention (IV); Annex, Section III; articles 42–56.

22 Hague Convention (IV); Annex, Section I.II; articles 4–20.

23 Hague Convention (IV); Annex, Section I.III; article 21.

[D]isregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.²⁴

These events also led to the establishment of the United Nations (UN), a far more effective international organization than its predecessor, the League of Nations. The great difference is evident in their constitutional documents. The Covenant of the League of Nations had nothing to say about human rights. The UN Charter adopts human rights as one of the three pillars of the organization, alongside peace and development. The promotion of human rights is one of the core purposes of the UN.²⁵ That core purpose has been pursued through the negotiation and adoption of a now great volume of international law for the promotion and protection of human rights, beginning with the UDHR.

3. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

When the UN Charter was adopted and proclaimed human rights as one of the core purposes of the UN, human rights were still undefined. The first human rights task of the new organization, therefore, was to arrive at an acceptable definition; not merely in broad terms but in the specifics of what the content of “human rights” was. That was achieved in a remarkably short period.

The Commission on Human Rights was established in December 1946 and it immediately embarked on the drafting project. It assigned eight of its Member States, drawn from all regions and major cultural systems, together with a member of the UN Secretariat, to the drafting committee:

- the five permanent members of the UN Security Council: China, France, the then Union of the Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America
- three other members of the Commission on Human Rights: Australia, Chile, and Lebanon.²⁶

The Commission provided a draft declaration for the consideration of the General Assembly (GA) in less than two years. The process was treated with the utmost seriousness and the text was seen as a highly significant statement. The draft was debated at length in the GA’s Third Committee and in the GA plenary, with almost 1,300 votes on clauses and amendments.²⁷ The GA adopted the UDHR on 10 December 1948 without a single State dissenting, although eight States abstained in the final vote.²⁸

Now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance ...²⁹

The UDHR was the first international recognition that human rights are inherent and universal.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.³⁰

It recognizes that human rights are the entitlements of everyone, everywhere.

24 UDHR; PP. 2.

25 UN Charter; article 1.3.

26 See: www.un.org/Depts/dhl/udhr/members_eroos.shtml.

27 See: www.udhr.org/history/yearbook.htm.

28 The eight abstaining States were: Byelorussian Soviet Socialist Republic; Czechoslovakia; Poland; Saudi Arabia; Ukrainian Soviet Socialist Republic; Union of South Africa; Union of the Soviet Socialist Republics; and Yugoslavia. See: www.udhr.org/history/yearbook.htm.

29 UDHR; PP. 8.

30 UDHR; article 1.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.³¹

It provides a comprehensive statement of what human rights are, including both principal categories of rights: civil and political rights (articles 3 to 21) and economic, social and cultural rights (articles 22 to 27). It integrates rights and responsibilities as the two sides of the one concept. It recognizes the importance of both the individual and the community, locating the individual and her or his rights firmly within the community.

1. *Everyone has duties to the community in which alone the free and full development of his personality is possible.*
2. *In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*
3. *These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.³²*

The UDHR provides the framework for the further development of human rights law. It is the foundation for all international human rights law developed over more than 60 years since. It is the most translated document in history, being available now in more than 300 languages. It is one of the greatest achievements of the 20th century.



Universal Declaration of Human Rights wall at the United Nations. Photo by Jordan Lewin.

31 UDHR; article 2.

32 UDHR; article 29.

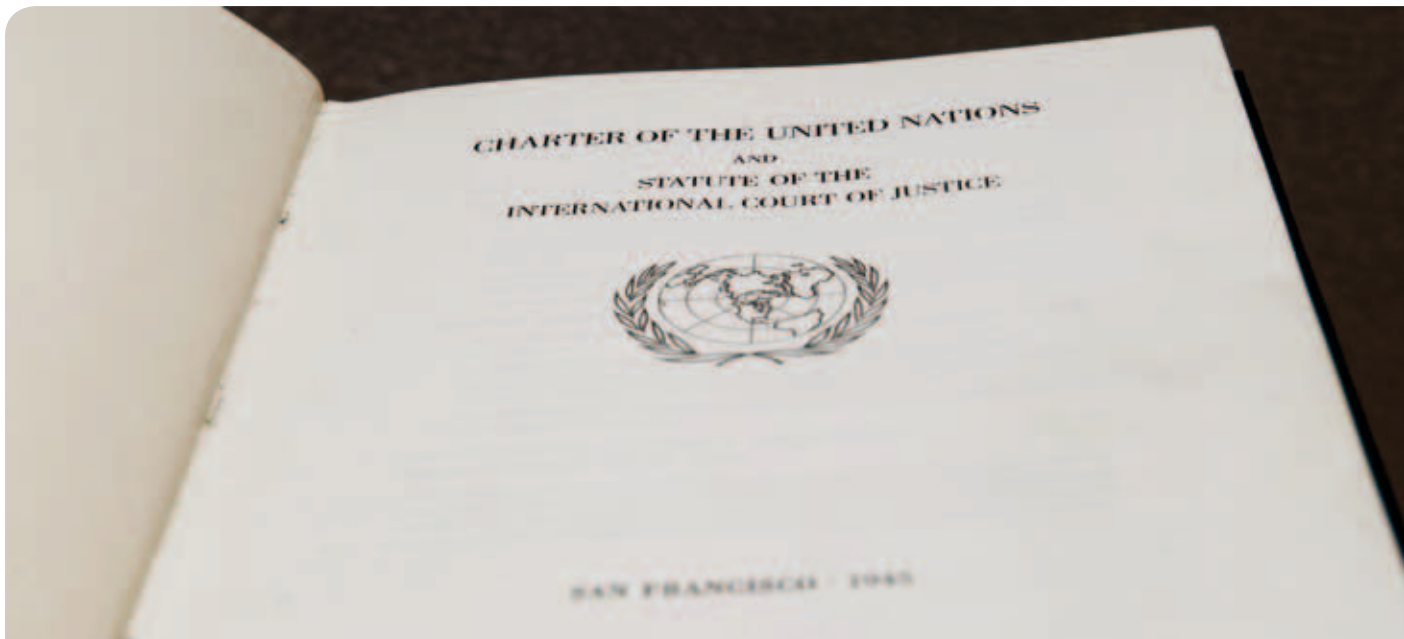
4. TREATY LAW

Treaties are binding in international law whereas declarations are only persuasive. They are “hard law”, creating legal obligations on States that accept them through accession or ratification, while declarations are “soft law” and not directly binding in themselves. The UDHR is a UN declaration and, at the time of its adoption, it was no more than a statement of aspirations.³³ At that time the UN intended to move swiftly to adopt a treaty on human rights to incorporate human rights into binding obligations on States. This work, however, took almost two decades before it resulted in the adoption in 1966 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Together with the UDHR, these two covenants constitute the International Bill of Rights.

4.1. Treaties are binding law

Treaties are agreements between States that constitute binding international law. They set out obligations and entitlements with which States parties to them are required to comply. Treaties have different names. A treaty can be called:

- a charter, as in the Charter of the United Nations
- a covenant, as in the International Covenant on Civil and Political Rights
- a convention, as in the Convention on the Rights of the Child
- an optional protocol, as in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- an agreement, as in the Agreement concerning the Relationship between the United Nations and the Organization for the Prohibition of Chemical Weapons
- a statute, as in the Statute of the International Court of Justice
- a treaty, as in the Treaty on the Non-Proliferation of Nuclear Weapons.



The original copy of the Charter of the United Nations. UN Photo by Mark Garten.

³³ Over the following 60 years, the UDHR has acquired such strong international endorsement on so many occasions that much, if not all, of it is now considered to have become part of binding international customary law. See p. 17 for further discussion.

These differences in name, however, do not indicate any legal difference. All are agreements between States and are of equal status and effect in international law. “Charter”, “covenant” and “statute” are used rarely and so are taken to refer to treaties of particular significance. “Statute” seems to have special significance in relation to treaties that establish international courts. “Optional protocols” are usually treaties that supplement or add to the terms of another, earlier treaty. However, these differences are differences in usage, not differences in law. They all have the same legal status and effect.

4.2. Negotiating human rights treaties

Human rights treaties are negotiated through the UN system, through a working group consisting of all States that want to participate (an “open ended inter-governmental working group”), generally with the participation of NHRIs and non-governmental organizations (NGOs).

Most of the human rights treaties have been negotiated by working groups established by the UN’s principal human rights body, formerly the Commission on Human Rights and now the Human Rights Council. In one case, however, the working group was formed by the GA and reported directly to the GA.³⁴

Usually the process of negotiating a treaty is preceded by a lengthy period during which other documents are drafted and approved – for example, studies, principles, declarations – and then form the basis for the negotiation of the treaty. These earlier documents test the precise wording used to define the rights. States bring to the negotiating table their own views about the issues under discussion. They come with their great diversity in politics, economics, cultures, religions, ideologies and traditions. During the negotiations, they argue and compromise. After the completion of negotiations, the treaty is approved by the GA, typically by consensus. This is the ultimate guarantee of the universality of the rights recognized in it. In spite of their great diversity, all States endorse the universality of human rights through their acceptance of the draft in the GA, regardless of whether they then move on to accede to or ratify the treaty.

States parties have a limited ability to accept most obligations in a treaty without accepting them all. Before ratifying or acceding, a State may make a reservation, indicating that it does not accept or consider itself bound by some particular term or terms in the treaty. A reservation cannot contradict the object and purpose of the treaty; any reservation that does that is void and the State party will be bound by its ratification of or accession to a treaty as if the purported reservation had never been lodged. When a reservation is lodged, other States parties have an opportunity to object to it and to challenge its validity and effectiveness.

Each treaty will provide for its entry into force or commencement. Usually the treaty provides that it will commence when it has had a specified number of accessions and ratifications. The actual number varies from treaty to treaty.

4.3. The core and supplementary human rights treaties

Nine core human rights treaties have been negotiated and approved through the UN system.

- International Covenant on Civil and Political Rights (ICCPR) 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984

34 The Convention on the Rights of Persons with Disabilities.

- Convention on the Rights of the Child (CRC) 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990
- Convention on the Rights of Persons with Disabilities (CRPD) 2006
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED) 2006.

All States have become parties to at least one of these treaties and most States are parties to at least seven of them.

In addition there are another nine treaties that are optional protocols to these core treaties. They are supplementary treaties.

- Optional Protocol to the International Covenant on Civil and Political Rights 1966
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989
- Optional Protocol of the Covenant on Economic, Social and Cultural Rights 2008
- Optional Protocol to the Convention on the Elimination of Discrimination against Women 1999
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure 2011³⁵
- Optional Protocol to the Convention on the Rights of Persons with Disabilities 2006.

4.4. The obligations under human rights treaties

Three principal obligations have been defined under the human rights treaties:

- the obligation to respect
- the obligation to protect
- the obligation to fulfil.

The **obligation to respect** requires the State to ensure that none of its officials acts to violate human rights or the obligations contained in the particular treaty.

The **obligation to protect** requires the State to take action to ensure that no one outside government violates the terms of a human rights treaty.

The **obligation to fulfil** requires the State to take positive action to ensure that everybody within its jurisdiction is able to enjoy fully the rights recognized in the treaty.

³⁵ The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure was approved by the GA on 19 December 2011. It is now open for signature. It will come into effect when ratified by ten States.

5. “SOFT LAW”

Treaties are “hard law”. They create obligations that are binding in international law on the States that accept them through accession or ratification. There are many other international human rights instruments or documents that are “soft law”. They are not directly binding in themselves but they have persuasive or moral authority and sometimes they affect the interpretation of binding treaties and so they can, in some instances, acquire indirect binding status. For example, the UDHR was “soft law” when it was adopted in 1948 but it has acquired far greater authority over the following 60 years.

Like treaties, “soft law” instruments can have many different types of name, including:

- declarations, as in the Universal Declaration of Human Rights
- principles, as in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- rules, as in the Standard Minimum Rules for the Treatment of Prisoners
- guidelines, as in the Guidelines for Action on Children in the Criminal Justice System
- resolutions.

Unlike treaties, the different names for “soft law” instruments denote different levels of authority. Declarations are the most authoritative of these instruments. They are proclamations of the GA, made after a lengthy process of negotiation among States in the same way as treaties are negotiated. Often they will anticipate the negotiation and adoption of a treaty, in the way that the UDHR led in time to the adoption of the ICESCR and the ICCPR or the way that the Declaration on the Protection of All Persons from Enforced Disappearance led to the CPED. At other times they supplement the provisions of a treaty, providing detail that enables the interpretation and implementation of the treaty provision. For example, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides substance to the interpretation and implementation of the right to freedom of religion and belief in article 18 of the ICCPR.

The GA has adopted human rights declarations on:

- religious intolerance³⁶
- violence against women³⁷
- the right to development³⁸
- enforced disappearances³⁹
- minorities⁴⁰
- human rights defenders⁴¹
- the rights of indigenous peoples.⁴²

The role of “soft law” instruments is most important. Many treaties cover many different issues and so they tend to be quite general in their terms. For example, article 10 of the ICCPR provides for the right of “[a]ll persons deprived of their liberty [to] be treated with humanity and with respect for the inherent dignity of the human person” but it does not define what constitutes “treated with humanity”. The Standard Minimum Rules on the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment deal specifically and in detail with this

36 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; adopted by GA Resolution 36/55 of 25 November 1981.

37 Declaration on the Elimination of Violence against Women; adopted by GA Resolution 48/104 of 20 December 1993.

38 Declaration on the Right to Development; adopted by GA Resolution 41/128 of 4 December 1986.

39 Declaration on the Protection of all Persons from Enforced Disappearance; adopted by GA Resolution 47/133 of 18 December 1992.

40 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; adopted by GA Resolution 47/135 of 18 December 1992.

41 Declaration on Human Rights Defenders; adopted by GA Resolution 53/144 of 10 December 1998.

42 Declaration on the Rights of Indigenous Peoples; adopted by GA Resolution 61/259 of 13 September 2007.

issue. They have been held to constitute the substance of the right to treatment with humanity while in detention, as provided in article 10 of the ICCPR. This assists Governments and government officials to know what the treaty requires of them and it assists monitoring and compliance bodies, including courts and NHRIs, to know the standard by which to measure compliance.

Each human rights treaty has a treaty monitoring body that promotes the treaty, interprets it and monitors the compliance of States parties.⁴³ They exercise their interpretative role by issuing general comments or general recommendations, which are “soft law”; not binding in themselves but highly authoritative in defining precisely the nature and content of the international legal obligations the treaty creates.

“Soft law” instruments are very important for their persuasive authority and their role in giving substance to general statements of rights. They can be cited regularly in human rights debates, advocacy, advice and opinions.

6. INTERNATIONAL CUSTOMARY LAW

International customary law is the set of general principles or norms of international law that bind all States. Treaties are written and, as such, clear and relatively precise. Custom, on the other hand, is vague and its content is subject to argument. It is identified from State practice; how States act and whether they so act because they consider themselves obliged to do so. This task of identification has been made far easier over the past century by the work of international courts and tribunals, especially the Permanent Court of International Justice, before 1945, and the International Court of Justice since then.



The towers and gables of the Peace Palace, home of the International Court of Justice in The Hague. UN Photo.

43 See Chapters 11 and 12 of this manual for more information.

International customary law does not concern human rights alone but certainly, over the past half century, human rights have featured prominently in its development. Many human rights provisions have acquired the status of *jus cogens* or “peremptory norm” of international law; that is, they cannot be amended or repealed by any means, not even by a treaty. The Vienna Convention on the Law of Treaties provides:

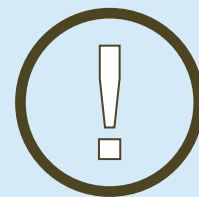
*A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*⁴⁴

It has been suggested that *jus cogens* or peremptory norms now include the prohibitions of:

- genocide
- slavery and the slave trade
- murder and enforced disappearance
- torture and other cruel, inhuman or degrading treatment or punishment
- prolonged arbitrary detention
- systematic racial discrimination.⁴⁵

KEY POINTS: CHAPTER 3

- **International law is the body of law that governs the conduct of States and their relations with each other.**
- **International law has two sources; treaty law and customary law.**
- **Treaties are binding on all States that are parties to them.**
- **Customary law binds all States.**
- **The Universal Declaration of Human Rights is the foundational international human rights instrument. Together with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, it constitutes the International Bill of Rights.**



⁴⁴ Vienna Convention on the Law of Treaties 1969; article 53.

⁴⁵ *International Human Rights in Context*; Henry Steiner, Philip Alston and Ryan Goodman; 2008 (3rd edition); pp. 172–3.

Chapter 4:

The United Nations charter-based system: An overview

KEY QUESTIONS

- **What is the relevance of the United Nations to human rights?**
- **What is the Charter-based system?**
- **What are the roles of the principal United Nations organs; the General Assembly, the Security Council, the Economic and Social Council and the UN Secretariat?**
- **What roles, if any, can NHRIs play in these organs?**



1. INTRODUCTION

The international human rights system is generally described in terms of its two branches.

The Charter-based system has developed under the UN Charter and the various organs and bodies of the UN. The principal organs of the UN – the General Assembly (GA), the Security Council (SC) and the Economic and Social Council (ECOSOC) – all have responsibilities that relate to human rights. The principal human rights body is the Human Rights Council (HRC), established in 2006 as the successor to the Commission on Human Rights. The Charter-based system has been responsible for the development of international human rights law, including the core human rights treaties, and of the international human rights system.

The treaty-based system is built upon those core human rights treaties. Each of the treaties has a treaty monitoring body (TMB) that is responsible for the promotion of the treaty, its interpretation and monitoring compliance. The TMBs also receive and deal with complaints of treaty violation.

This manual examines the international human rights system through its two branches. This chapter provides an overview of the Charter-based system and the following chapters discuss different mechanisms within the Charter-based system. The treaty body system is discussed in the chapters after that.

2. HUMAN RIGHTS AND THE UN⁴⁶

The UN is an intergovernmental organization of States that provides forums for political discussions among States and academic discussions among independent experts. It has legislative power because it promulgates international treaties and standards and other expressions of the will of the international community. However, unlike States, it has no executive or military power independently of States. It has only limited judicial power through the International Court of Justice, which is established by the UN Charter but also has a separate Statute of its own.

The UN Charter accords human rights a central place within the UN system. It provides that one of the principal purposes of the UN is the promotion and protection of human rights and fundamental freedoms. The Charter indicates that the UN will promote human rights education and awareness.

46 For information about the UN, see: www.un.org.

Although the Charter itself does not establish a specialized human rights body within the UN system, it provides for one to be established. In 1946, the ECOSOC established the Commission on Human Rights and, in 2006, the GA replaced that Commission with the HRC.

The UN has three pillars with a high-level specialist council responsible for each pillar.

- The SC is responsible for international peace and security.
- The ECOSOC is responsible for development.
- The HRC is responsible for human rights.

The Charter itself establishes the SC and the ECOSOC and they, together with the GA, are considered principal organs of the UN. Of the three councils, only the HRC has no direct basis in the Charter. It is dependent upon a GA resolution for its establishment, its mandate and its membership. There have been proposals for the HRC to be made a principal organ of equal status with the other two councils but that would require amending the UN Charter, which is a complex and cumbersome process.

3. THE GENERAL ASSEMBLY⁴⁷

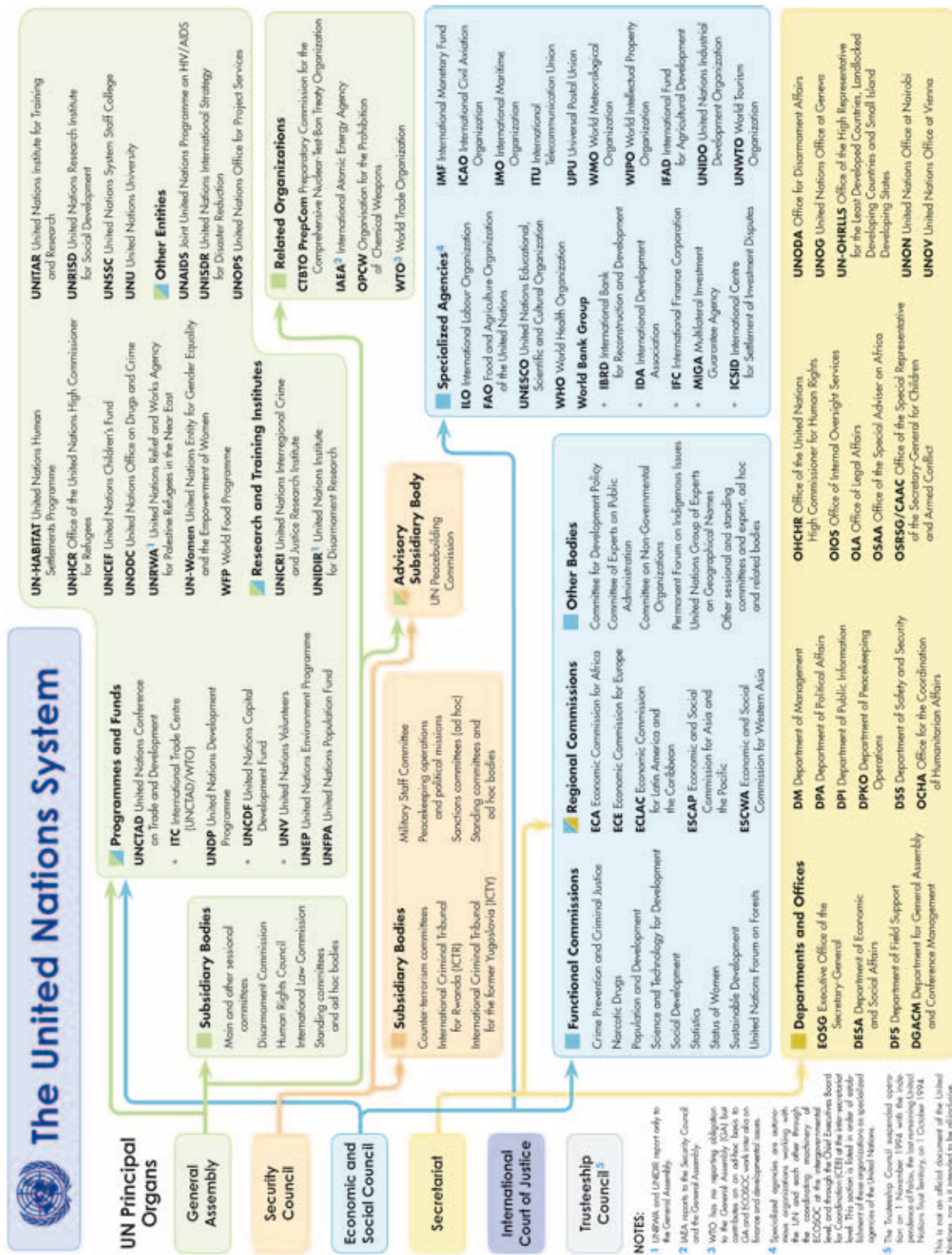
The GA is the principal political organ of the UN. It has universal membership; that is, all 193 UN Member States are members of the GA. It has equality of membership; that is, every member of the GA has one vote regardless of population, geographical size, military might, economic wealth or any other factor. So Nauru, a small Pacific island State with just 10,000 people, has one vote, the same as China with more than a billion people or the United States of America, the world's military superpower and largest economy.



Wide view of the General Assembly hall as the President-elect addresses the sixty-sixth session of the General Assembly. UN Photo by Eskinder Debebe.

47 For information about the GA, including agendas for meetings and resolutions, see: www.un.org/en/ga.

Figure 4.1: The United Nations charter-based system



The GA can consider any matter related to the UN Charter and its implementation except situations that are on the agenda of the SC. This is a very broad mandate and inevitably leads the GA to consider human rights issues, in relation both to the development of human rights law and to the situation in specific countries. The GA is the UN organ that gives approval to new treaties and declarations relating to human rights. It will also deal with country situations where the SC is unwilling or unable to act. In addition, the GA elects the 47 members of the HRC. It receives the HRC's annual report and, through its Third Committee, considers HRC resolutions that require GA endorsement.⁴⁸

The GA decides matters by a majority vote, with no State having a veto on any matter. Most matters are decided by a simple majority but some “special” matters require a two-thirds majority and some elections require an absolute majority. However, its decisions are not binding on UN Member States and they are not enforceable. They have political and moral authority only, not legal authority. As a result the GA is considered to be the highest forum for the expression of international opinion and aspirations but it is powerless to force compliance with its views.

The GA has six committees through which its work is organized and in which more detailed consideration is given to any matters to come before the GA in plenary:

- First Committee (Disarmament and International Security Committee)
- Second Committee (Economic and Financial Committee)
- Third Committee (Social, Humanitarian and Cultural Committee)
- Fourth Committee (Special Political and Decolonization Committee)
- Fifth Committee (Administrative and Budgetary Committee)
- Sixth Committee (Legal Committee).

The Third Committee – that is, the Social, Humanitarian and Cultural Committee – considers human rights issues. As well as giving preliminary consideration to issues and resolutions proposed to come before the GA plenary session, the Third Committee hears reports from international human rights experts and has interactive dialogues with them. These experts rarely have the opportunity to report directly to the plenary session and to have open discussions in the plenary session. The Third Committee, therefore, provides a unique forum for States to discuss issues with these experts in public under the auspice of the GA.

The GA conducts its annual session from September to December. However, it meets frequently at other times during the year to consider specific issues. It always meets in New York.

Only UN Member States have the right to participate, including speaking rights, in the GA and its committees. NHRIs and NGOs have no speaking rights and so they are unable to participate in human rights debates in the GA plenary or committees. They undertake their advocacy through more traditional lobbying efforts, both written and in meetings, with State delegations and UN officials. They seek to influence the GA agenda and GA decisions in this way. GA consideration of country situations has been important in increasing international moral and political pressure on States that violate human rights. NHRIs and NGOs will want to influence that process.



⁴⁸ For information about the HRC, including its membership, elections, agendas for meetings and resolutions, see: www2.ohchr.org/english/bodies/hrcouncil. A Geneva-based NGO, the International Service for Human Rights, publishes reports of all HRC activities, frequent alerts on developing issues and events, and regular updates, with an email list for those wishing to be advised as new material becomes available; see: www.ishr.ch.

3.1. The regional groupings

Member States in the GA are organized into five regional groupings:

- the Africa Group, with 54 States
- the Asia Group, with 54 States
- the Eastern European Group, with 23 States
- the Latin American and the Caribbean Group, with 33 States
- the Western European and Others Group, with 29 States.

The ECOSOC and the HRC have the same regional groupings and their membership is divided proportionally into designated numbers of places for each grouping. UN elections are often conducted on this basis.

There are a small number of States that are considered “special cases”. Turkey participates fully in two regional groups, the Asian Group and the Western European and Others Group (WEOG). The United States of America attends meetings of the WEOG only in an observer capacity and therefore does not cast any votes. Israel has only been a permanent member of the WEOG since 2004. The Pacific island State of Kiribati has never designated a permanent representative to the UN, unlike other Pacific island States that have been included in the Asian Group.⁴⁹

4. THE SECURITY COUNCIL⁵⁰

The SC is the most powerful UN organ, the only one with the legal authority to make binding and enforceable decisions. It is responsible for international peace and security, both through peaceful settlement of disputes under Chapter VI of the UN Charter and through enforcement action with respect to threats to peace, breaches of peace and acts of aggression under Chapter VII. It is said that under the UN Charter, the SC has a monopoly on authorizing the lawful use of force in the modern world.

The SC has 15 members. Five members hold permanent seats and are known as the “P5” – China, France, Russia, United Kingdom and United States of America.⁵¹ They were the Great Powers at the conclusion of World War II, when the UN Charter was negotiated and the UN was established. Ten members hold elected seats with terms of two years. They are elected by an absolute majority of the GA, with five being elected each year to enable rotating membership. The ten seats are allocated among the five UN regional groups of Member States and so the elections are conducted on that regional basis. Elected members are not entitled to a second consecutive term.

Decision-making is subject to special majorities and vetoes. Each of the P5 has a veto and can defeat any proposal, even if all 14 other members are in favour of it. For any substantive matter to be resolved, the SC requires nine members to vote in favour, with none of the P5 voting against it. As a result, decision-making in the SC is a difficult, lengthy and highly politicized process. However, the rate of decision-making has been much faster over the past 20 years; the SC passed its 1000th resolution in 1995, its 50th year,⁵² but it passed its 2000th resolution late in 2011, its 66th year.⁵³

The SC meets all year round, in fact, there are almost daily formal sessions or informal consultations. It usually meets in New York but it has occasional meetings elsewhere when there is some particular reason to do so; for example, as part of a mission to a particular country or region where it has a concern, or when it holds joint meetings with other international bodies or regional forums.

49 See: www.un.org/depts/DGACM/RegionalGroups.shtml

50 For more information about the SC, including its membership, elections, agendas for meetings and resolutions, see: www.un.org/Docs/sc. A New York-based NGO, Security Council Report, publishes monthly forecasts of SC activities, frequent alerts on developing issues and events and regular updates, with an email list for those wishing to be advised as new material becomes available; see: www.securitycouncilreport.org.

51 Russia took the seat of the Union of the Soviet Socialist Republics by way of State succession when the USSR was dissolved in 1991. The People’s Republic of China took the seat of the Republic of China in 1971.

52 S/RES/1000 (1995), regarding the extension of the United Nations Peace Keeping Operations in Cyprus.

53 S/RES/2000 (2011), regarding the extension of the United Nations Peace Keeping Operations in Cote d’Ivoire.



A wide view of the Security Council at its meeting on women, peace and security. UN Photo by Rick Bajornas.

The SC has strict and exclusive rules of procedure. Only members of the SC and States directly affected by a matter under discussion are entitled to participate in debates. The SC has occasional “open debates” in which other UN Member States are permitted to participate, however, NHRIs and NGOs are never permitted to speak and are only occasionally permitted to attend.

With its mandate for international peace and security, the SC deals constantly with situations that directly or indirectly affect human rights.

First, human rights violations can require that the SC act. In the past it has not described the exercise of its mandate in human rights terms. However, in more recent years it has acknowledged that gross violations of human rights can endanger international peace and security and so can provide a basis on which the SC can and should exercise its jurisdiction. The concept of the “responsibility to protect” has been developed precisely because of the need for international intervention to prevent or end gross violations of human rights that a Government is perpetuating or is unable or unwilling to prevent or end.⁵⁴ NHRIs and NGOs have an interest in decisions of the SC that can contribute to preventing or ending human rights violations and protecting those at risk of human rights violations.

Second, decisions of the SC can themselves lead to human rights violations. The SC can and does authorize the use of military force, that is, warfare, and war inevitably involves human rights violations. NHRIs and NGOs are concerned about the consequences of SC decisions. They will have roles in monitoring those consequences but they will have no direct access to the SC to report on their findings.

The greater attention that the SC now pays to human rights is reflected in the frequency with which, and the number of occasions on which, the United Nations High Commissioner for Human Rights (HCHR) or her representative addresses the SC on an agenda item under debate.

54 GA Resolution 60/1 (the “2005 World Summit Outcome”); adopted by the GA on 16 September 2005; paras. 138–140.

5. THE ECONOMIC AND SOCIAL COUNCIL⁵⁵

The ECOSOC is the principal organ responsible for the UN's development work. It promotes economic and social development, including:

- higher standards of living, full employment, and conditions of economic and social development
- solutions to international economic, social, health and related problems and cultural and educational cooperation
- universal respect for and observance of human rights and fundamental freedoms for all, without distinctions as to race, sex, language or religion.

It undertakes these responsibilities through studies; negotiating international instruments and agreements; making recommendations to the GA; and sponsoring forums for discussion and debate. It also establishes specialized commissions in the economic and social field, such as the Commission on the Status of Women. The former principal UN specialized body on human rights, the Commission on Human Rights, was established by the ECOSOC and reported to the ECOSOC. It was abolished in 2006 and replaced by the HRC, directly under and responsible to the GA.

The ECOSOC has 54 members, elected by the GA for three-year terms. It makes decisions by a simple majority of votes.

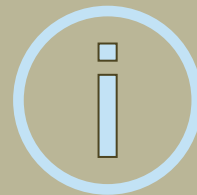
Under the UN Charter, the ECOSOC is responsible for the UN's collaboration with civil society, including NGOs. The ECOSOC grants accreditation to NGOs and supervises their involvement with the UN system through an ECOSOC committee on NGOs. However, NGOs do not have participation or speaking rights at ECOSOC meetings.



A general view of a high-level segment of the Economic and Social Council at the United Nation's headquarters in Geneva, Switzerland.
UN Photo by Jean-Marc Ferré.

⁵⁵ For information about the ECOSOC, including its membership, elections, agendas for meetings and resolutions, see: www.un.org/en/ecosoc.

The ECOSOC has promoted NHRI engagement with the UN system, especially the principal human rights bodies, but it does not have any role in accrediting NHRIs, in supervising their involvement or in adopting rules of procedure to govern their participation.



6. UN SECRETARIAT⁵⁶

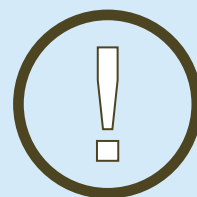
The UN Charter provides for a secretariat to perform the substantive and administrative work of the organization. The UN Secretariat is headed by the Secretary-General, currently Ban Ki-moon from the Republic of Korea. He leads the 7,500 members of the staff, drawn from 170 countries. The UN Secretariat has its principal offices in New York, Geneva, Vienna and Nairobi, as well as a number of regional offices; for example, the Asia Pacific regional office in Bangkok.

The HCHR is the principal UN official with responsibility for human rights.⁵⁷ The Office of the United Nations High Commissioner for Human Rights (OHCHR) is located in Geneva and there is a small presence in New York. It now has staff placed in many regions and countries. The current High Commissioner is Ms Navanethem Pillay from South Africa. The HCHR has promoted the establishment and strengthening of NHRIs in all countries, through the National Institutions and Regional Mechanisms Section (NIRMS) in Geneva.

Many other UN departments and offices have human rights responsibilities. The UN is committed to mainstreaming human rights throughout the work of all agencies, departments and offices.

KEY POINTS: CHAPTER 4

- **The UN system has three pillars: international peace, development and human rights.**
- **The UN has a specialist council response for each of these three pillars: the Security Council for international peace; the Economic and Social Council for development; and the Human Rights Council for human rights.**
- **The General Assembly is the UN's principal political organ, consisting of all 193 UN Member States.**
- **All these organs have responsibilities that include human rights, though the Human Rights Council is the principal body with specialist human rights responsibilities.**
- **NHRIs have limited roles in UN organs except for the Economic and Social Council and the Human Rights Council.**



⁵⁶ For information about the UN Secretariat see: www.un.org/en/mainbodies/secretariat/index.shtml.

⁵⁷ For information about the OHCHR see: www.ohchr.org.

Chapter 5:

Human Rights Council

KEY QUESTIONS

- **What is the Human Rights Council?**
- **What does it do?**
- **How does it do it?**
- **What roles, if any, can NHRIs play in the Human Rights Council?**



1. INTRODUCTION

The Human Rights Council (HRC)⁵⁸ was established in 2006 as the successor to the Commission on Human Rights. The Commission on Human Rights had worked for 60 years to develop international human rights law and the international human rights system but, in the end, it was condemned as lacking “universality, objectivity and non-selectivity in the consideration of human rights issues” and displaying “double standards and politicization”.⁵⁹ After a concerted campaign against it, the General Assembly (GA) decided to replace the Commission with a new body that would work on “the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation”.⁶⁰

The context of the establishment of the HRC is of continuing importance as the HRC was shaped by the criticisms of the Commission. The GA resolution and the HRC’s early decisions on its mechanisms and procedures reflect the politics of the time. Member States from all regions were determined that the new Council should be very different from the old Commission, though they had conflicting ideas about what was wrong with the Commission and what the Council should be. In the end, however, they created a Council that is only a little different from the Commission that preceded it.

The GA passed resolution 60/251 on 15 March 2006 and the new HRC commenced on 19 June 2006.

2. MANDATE

The HRC has a very broad mandate for the promotion and protection of human rights. The promotional role comes first, as it was the more broadly accepted part of the mandate. The HRC is “responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”.⁶¹

The protection role was far more controversial. Much of the criticism of the former Commission on Human Rights related to its debates and resolutions on the human rights situation in specific countries. In the negotiations to establish the HRC there was strong pressure to deny the new Council a mandate to deal with any country situations or, at the very least, to require a special majority of HRC members to

58 For information about the Human Rights Council, including its membership, elections, agendas for meetings and resolutions, see: www2.ohchr.org/english/bodies/hrcouncil. A Geneva-based NGO, the International Service for Human Rights, publishes reports of all HRC activities, frequent alerts on developing issues and events, and regular updates, with an email list for those wishing to be advised as new material becomes available; see: www.ishr.ch.

59 GA Resolution 60/251; PP. 9.

60 GA Resolution 60/251; OP. 4.

61 GA Resolution 60/251; OP. 2.

permit debate and pass resolutions on specific country situations. This pressure was resisted and the GA resolution provides explicitly for the HRC to undertake this role. In addition to the broad functions relating to promotion of human rights, the HRC is also to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”.⁶²

The HRC also has a mandate to “promote the effective coordination and the mainstreaming of human rights within the United Nations system”.⁶³

3. BASIC OPERATING PRINCIPLES

The GA decided the following basic operating principles for the HRC.

- “[T]he work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights”.⁶⁴
- “[T]he methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures”.⁶⁵
- The HRC should “[c]ontribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies”.⁶⁶



A general view of participants at the 16th session of the Human Rights Council. UN Photo by Jean-Marc Ferré.

62 GA Resolution 60/251; OP. 3.

63 GA Resolution 60/251; OP. 3.

64 GA Resolution 60/251; OP. 4.

65 GA Resolution 60/251; OP. 12.

66 GA Resolution 60/251; OP. 5(f).

4. MEMBERSHIP

The HRC is a political body, not an expert body. Its members are States, represented by diplomats who act on the instructions of their Governments. Although in casting their votes in HRC meetings they will take into account international human rights law and the legal dimensions of issues, their votes in fact reflect the interests of their Governments. For many States and on many occasions those interests support international human rights law and uphold the international legal system, however, for other States and on other occasions they do not. In spite of the fine statements of principle in the GA resolution establishing the HRC, in the end the HRC is a political body whose member States act politically.

The HRC has 47 member States.⁶⁷ Each member State is elected individually by an absolute majority of the GA in a secret ballot, according to the five regional groupings:

- 13 States from the Africa Group
- 13 States from the Asia Group
- six States from the Eastern European Group
- eight States from the Latin America and Caribbean Group
- seven States from the Western European and Others Group.⁶⁸

There are no eligibility criteria for membership. However, “when electing members of the HRC, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto”.⁶⁹ Once elected, members are required to “uphold the highest standards in the promotion and protection of human rights [and] shall fully cooperate with the Council”.⁷⁰ Further, “the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights”.⁷¹ A member State serves a three-year term and can only be re-elected to one further consecutive term.⁷² Elections are held in the GA for one-third of the HRC’s membership each year. The HRC’s year runs from January to December and so newly-elected members take up their seats on 1 January in the year following their election.⁷³

The composition of the membership of the HRC is critical to its effectiveness. The process of election in the GA is very important. It can be a complex process with significant campaigning by and on behalf of candidate States and lobbying of States that will vote. The election procedure has had significant effects on the composition of the HRC’s membership.

Nominations come through the regional groupings and each region is encouraged to nominate more candidates than the number of seats to be filled for that region. However, some regions often nominate only the same number of candidates as there are seats. This certainly increases the chances of all the candidates being elected, however, the requirements for an absolute majority and for a secret ballot have resulted in some candidates being defeated.

67 The Commission on Human Rights had 53 member States and so the HRC is a little smaller.

68 GA Resolution 60/251; OP. 7. Member States in the Commission on Human Rights were also elected by regional groupings. The Western European and Others Group and the East European Group had proportionally more members and the African Group and the Asian Group had proportionally fewer members in the Commission than in the HRC. The change from the Commission to the Council therefore has led to significantly different results in voting on resolutions and, as a consequence, significant differences in the content of resolutions.

69 GA Resolution 60/251; OP. 8.

70 GA Resolution 60/251; OP. 9.

71 GA Resolution 60/251; OP. 8. Libya was suspended from membership of the HRC under this provision by GA Resolution 65/265 adopted on 1 March 2011. Its membership was restored by GA Resolution 66/11 adopted on 18 November 2011.

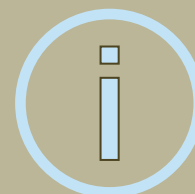
72 GA Resolution 60/251; OP. 7.

73 The HRC year used to begin on the anniversary of the first meeting of the HRC, 19 June, and run until 18 June in the following year. The terms of members serving in the year that began on 19 June 2011 were extended, however, so that the HRC year now corresponds to the calendar year.

States that are notorious human rights violators are now less likely to present themselves as candidates as they risk being defeated in the election. Some that have nominated have been compelled to withdraw their nominations and others that have proceeded into the election have been defeated.

The election process provides an advocacy opportunity for NHRIs to promote the election to the HRC of States that are supportive of human rights and the international human rights system. NHRIs have no speaking rights in the GA and no votes but an NHRI can contribute by:

- encouraging supportive States to seek election to the HRC
- influencing the lobbying and the voting of its own Government, either for or against particular candidate States.



5. MEETINGS

HRC sessions are held in the Palais des Nations, the UN headquarters in Geneva.⁷⁴ The HRC meets at least three times each year in ordinary sessions for a total of at least ten weeks.⁷⁵ To date, it has met for four weeks in March, three weeks in June and three weeks in September. It also meets in a special session when so requested by a third of its members.⁷⁶



A view of the park surrounding the Palais des Nations, with the Manship Sphere in the foreground. UN photo by Jean-Marc Ferré.

74 GA Resolution 60/251; OP. 1. For information about all sessions of the HRC, both the ordinary sessions and the special sessions, see: www2.ohchr.org/english/bodies/hrcouncil.

75 GA Resolution 60/251; OP. 10. The former Commission met in a single annual session for six weeks.

76 GA Resolution 60/251; OP. 10.

As part of the “institution building package” in its first year of operation, the HRC has adopted operating principles, rules of procedure and a standard agenda and framework for its work at all regular sessions.⁷⁷ The operating principles are:

- universality
- impartiality
- objectivity
- non-selectiveness
- constructive dialogue and cooperation
- predictability
- flexibility
- transparency
- accountability
- balance
- inclusive/comprehensive
- gender perspective
- implementation and follow-up of decisions.⁷⁸

The agenda and framework for the three regular sessions held each year⁷⁹ are set out below.

Item 1	Organizational and procedural matters <ul style="list-style-type: none"> • Election of the Bureau • Adoption of the annual programme of work • Adoption of the programme of work of the session, including other business • Selection and appointment of mandate-holders • Election of members of the Human Rights Council Advisory Committee • Adoption of the report of the session • Adoption of the annual report
Item 2	Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General <ul style="list-style-type: none"> • Presentation of the annual report and updates
Item 3	Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development <ul style="list-style-type: none"> • Economic, social and cultural rights • Civil and political rights • Rights of peoples, and specific groups and individuals • Right to development • Interrelation of human rights and human rights thematic issues
Item 4	Human rights situations that require the Council's attention
Item 5	Human rights bodies and mechanisms <ul style="list-style-type: none"> • Report of the Human Rights Council Advisory Committee • Report of the complaint procedure
Item 6	Universal Periodic Review

⁷⁷ HRC Resolution 5/1 adopted on 18 June 2007.

⁷⁸ HRC Resolution 5/1; “V Agenda and framework for the programme of work”; part A.

⁷⁹ HRC Resolution 5/1; “V Agenda and framework for the programme of work”; part C.

Item 7	Human rights situation in Palestine and other occupied Arab territories <ul style="list-style-type: none"> • Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories • Right to self-determination of the Palestinian people
Item 8	Follow-up and implementation of the Vienna Declaration and Programme of Action
Item 9	Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action
Item 10	Technical assistance and capacity-building

Special sessions of the HRC are convened whenever a requisition for a session, signed by one-third of the HRC member States, is presented to the HRC President. Special sessions are held regularly. In its first six years, from June 2006 to June 2012, the HRC held 18 special sessions, dealing with both specific country situations and general human rights issues. Special sessions work on the same rules of procedure as regular sessions, though there are additional rules governing them.⁸⁰

HRC meetings are characterized by a high level of participation. The 47 HRC member States are the principal participants and the only ones permitted to vote. Other States and organizations are permitted to participate as observers, without a vote:

- UN Member States (“observer States” in the HRC)
- UN specialized agencies (for example, the United Nations Development Programme, the World Health Organization and the United Nations Children’s Fund)
- regional and other groupings of States (for example, the Arab League, the Commonwealth and the Organisation of Islamic Cooperation)
- NGOs with ECOSOC accreditation
- “A status” NHRIs and their international and regional associations.⁸¹

HRC sessions are almost always held in public and observers, including NHRIs, have full access to the floor of the session. However, some meetings or parts of meetings may be closed to observers and restricted to member States. At each regular session, there is a confidential meeting to consider complaints.⁸² In addition, the HRC may decide to conduct a private meeting in “exceptional circumstances”.⁸³ All decisions taken at a private meeting must be announced subsequently at an early public meeting of the HRC.⁸⁴

6. PARTICIPATION BY NHRIs IN HRC MEETINGS

In establishing the HRC the GA decided explicitly that:

*... the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities ...*⁸⁵

80 HRC Resolution 5/1; “V Agenda and framework for the programme of work”; part D.

81 For information about the accreditation of NHRIs and their levels of status, see Chapter 16 of this manual.

82 Under agenda item 5. See Chapter 13 of this manual for more information.

83 HRC Rules of Procedure; Rule 16.

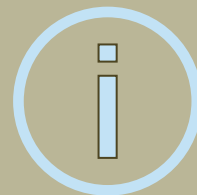
84 HRC Rules of Procedure; Rule 17.

85 GA Resolution 60/251; OP. 11.

This ensures a firm foundation for NHRI participation in the HRC, though without any clarity on what the nature of that participation should be. The former Commission on Human Rights had permitted NHRI participation only in the debate on the agenda item in which NHRIs themselves were discussed and it did so not on the basis of rules of procedure but through an annually renewed arrangement by the Bureau of the Commission. Late in its life, the Commission decided to extend the participation rights of NHRIs but that decision had not been implemented by the time the Commission was abolished. In fact, the practices observed by the Commission on Human Rights in relation to NHRI participation were very limited. The GA resolution, however, contained a direction to the HRC on “ensuring the most effective contribution” of NHRIs and, on that basis, the HRC agreed, in its institution building package, to very comprehensive participation.⁸⁶

NHRIs accredited with “A status” have full observer status in the HRC. They now have participation rights more than those of ECOSOC-accredited NGOs and, in many respects, comparable to those of observer States. They are entitled to attend and participate in all sessions of the HRC, both regular and special sessions, apart from the small number of meetings that are private or confidential.

An NHRI intending to be present at a session of the HRC can accredit its representatives in advance so that they can be given UN badges to enter the buildings and attend the session.⁸⁷



“A status” NHRIs are entitled to make **oral statements** to the HRC on any item on the agenda of the HRC session. The length of statements can vary. Oral statements are made in person, by a representative of the NHRI, at an HRC session during the debate on the agenda item to which the statement relates. They are usually limited to three minutes but on occasion they may have a shorter limit, such as two minutes.

Being entitled to speak is not the same as being permitted to speak. Not every NHRI that wants to speak may be able to speak. There may be a time limit on the debate for an agenda item, with the available time allocated to member States, then observer States, then NHRIs and NGOs. NHRIs usually share an allocation of time with NGOs. Speaking slots will be allocated according to the order of registration on a speakers’ list and the debate will be concluded at the end of the total time allocated, regardless of whether there are more speakers on the list who have not been heard.⁸⁸ It is important, therefore, for NHRIs to register early on the speakers’ list if they want to be assured of being given the opportunity. The speakers’ list is kept by OHCHR staff at a desk in the HRC meeting room. The HRC President announces when the list opens for each agenda item.

“A status” NHRIs may make **written statements** to the HRC. Written statements should be no longer than 2,000 words and should be relevant to the HRC’s Programme of Work for the particular session.

“A status” NHRIs may submit **other documents**, for example, investigation reports, policy papers, studies and other publications, to the HRC. The documents should relate to a particular HRC agenda item. They should not exceed a reasonable number of pages – not more than 30 to 40 pages. These documents will receive an official UN document symbol and number. The HRC does not provide facilities to translate these documents and so they should be submitted in at least one of the working languages of the UN in Geneva, namely English, French or Spanish.

⁸⁶ HRC Resolution 5/1.

⁸⁷ For information about NHRIs attending HRC sessions, including information about accrediting representatives, see: www2.ohchr.org/english/bodies/hrcouncil/nhri.htm.

⁸⁸ The exception is during debate in the HRC plenary of the Universal Periodic Review report on a State, when the NHRI of that State has a guaranteed opportunity to speak and a special place in the debate to do so, immediately after the State representative.

“A status” NHRIs may attend **informal consultations and working groups** that occur before and during HRC sessions. These meetings prepare HRC work, including proposals for resolutions, and negotiate draft resolutions. At the very least, attendance at these meetings gives NHRIs important information about what is developing and what is proposed so that they can be well informed in advocating their views directly with State representatives. At best, attendance gives NHRIs the opportunity to participate directly in the negotiation of proposed resolutions. Often representatives of NHRIs will be given the opportunity to speak in these meetings, adding their views to those of member and observer States and so directly influencing the content of resolutions.

“A status” NHRIs may organize **parallel events** during the period of the HRC session. Parallel events are held in the Palais des Nations, usually close to the HRC meeting room. They provide opportunities to discuss situations and issues that are relevant to the HRC agenda; that is, on any human rights situation or issue.

- Parallel events enable lengthier, more detailed and more focused debate of an issue or situation than is possible in the HRC session. Most parallel events occur over a two hour period, most commonly during the lunch breaks in HRC sessions.
- Parallel events enable experts on the issue or situation, including victims, to give information, views and analysis. Most of these experts will not be accredited as representatives of States, NHRIs or NGOs and so are unable to address the HRC directly.
- Parallel events enable issues to be raised and discussed in the HRC environment that, because of sensitivities or global politics or sheer ignorance or apathy, are not being raised in the HRC plenary itself.

Most parallel events take the form of a panel of expert speakers, each of whom presents her or his information and opinions, followed by a period of questions and discussion. They are attended by State representatives, NGO and NHRI representatives and UN officials and so can inform and influence key opinion within the HRC context.

Accredited representatives of “A status” NHRIs are permitted to move freely through the Palais des Nations during HRC sessions. They can walk the floor of the HRC meeting room, have coffee with State representatives in the coffee shop, meet in the lobbies and corridors. Accreditation provides not only the right to participate in the HRC but the opportunity of access to key decision makers, both governmental and UN. It permits and enables **advocacy** on issues of concern to NHRIs. The results of that advocacy can be seen in the strength of resolutions of the HRC and of the Commission on Human Rights before that, since 1995, concerning NHRIs – their importance as official but independent state institutions, the need for them to be established consistently with the requirements of the Paris Principles, their strengthening and so on – and in the wide provisions for their participation in the international human rights system.

The participation rights of NHRIs are extended to their **international and regional associations**.⁸⁹ The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and the Asia Pacific Forum of National Human Rights Institutions (APF), along with other regional associations in Africa, the Americas and Europe, can and do make oral and written statements, submit documents, attend consultations and working groups, sponsor parallel events and advocate in and around HRC sessions. The ICC has a permanent representative in Geneva and the APF sends a representative to Geneva regularly. They speak and act on behalf of their member NHRIs collectively but they can also do so on behalf of individual NHRIs. Accredited NHRIs can also speak on behalf of other “A status” NHRIs. These are important opportunities as many NHRIs do not have the resources – financial and personnel – to attend HRC sessions regularly and none has the resources to attend all sessions.

89 See Chapter 15 in this manual for discussion of the international and regional associations of NHRIs.

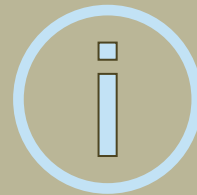
7. HRC AND INFORMATION TECHNOLOGY

The HRC is exploring ways to use information technology to make its procedures more transparent and accessible.

All regular and special sessions of the HRC, apart from private meetings, are now webcast live.⁹⁰ In addition, the website has an excellent archive that enables past sessions to be accessed and individual events and statements to be watched long afterwards. This service was funded by the Swiss Government during the first years of the HRC and is now accepted as a continuing HRC arrangement. An NHRI is able to follow HRC debates without having to travel to Geneva and an “A status” NHRI can participate through ICC and APF representatives in Geneva, including by having those representatives make any statements that the NHRI may wish to make.

In addition, the HRC has decided to “explore the feasibility of the use of information technology, such as videoconferencing or video messaging, in order to enhance access and participation by non-resident State delegations, specialized agencies, other intergovernmental organizations and [“A status”] national human rights institutions ... as well as by non-governmental organizations in consultative status, bearing in mind the need to ensure full compliance of such participation with its rules of procedure and rules concerning accreditation”.⁹¹

On 5 March 2012, during the HRC’s 19th ordinary session, the Provedor for Human Rights and Justice in Timor Leste became the first NHRI to address the HRC by video when he presented a three-minute statement as part of the NHRI’s follow-up activities to the February 2011 visit to Timor Leste by the UN Working Group on Enforced or Involuntary Disappearances.⁹²



A Timorese child holding a United Nations flag is seen inside a local bus in Dili. UN Photo by Martine Perret.

90 The webcast is accessible at: www.un.org/webcast/unhrc/.

91 HRC Resolution 16/21; para. 59.

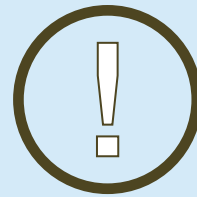
92 See: www.asiapacificforum.net/news/nhris-join-global-discussion-of-key-human-rights-issues.

8. MECHANISMS

The HRC works through a number of mechanisms, including the Universal Periodic Review and the special procedures. It has other permanent and ad hoc mechanisms. The next chapters of the manual deal with these various mechanisms and how NHRIs can engage with them.

KEY POINTS: CHAPTER 5

- **The Human Rights Council is the UN’s principal specialist human rights body.**
- **It was established by the General Assembly in 2006 as the successor to the UN Commission on Human Rights.**
- **It is an intergovernmental body, with 47 member States, and is a political body, not an independent, expert, legal body.**
- **It has a broad mandate to deal with all human rights issues and situations.**
- **It meets in regular session three times a year and in special session as required.**
- **NHRIs with “A status” have extensive participation rights in the Human Rights Council, including the right to make oral statements in all sessions on all agenda items.**



Chapter 6:

Universal Periodic Review

KEY QUESTIONS

- **What is the Universal Periodic Review?**
- **How is it conducted?**
- **What roles can NHRIs play in the Universal Periodic Review?**



1. INTRODUCTION

The Universal Periodic Review (UPR) is the most significant development in the transition from the Commission on Human Rights to the Human Rights Council (HRC). In resolving to establish the HRC, the General Assembly (GA) decided that the HRC:

... should undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.⁹³

During its institution building year, the HRC negotiated and adopted procedures for the conduct of the UPR.⁹⁴ Between late 2007 and 2011, the HRC reviewed the human rights performance of all the then 192 UN Member States. Towards the end of the first cycle of State reviews, in 2010–11, the HRC reviewed the UPR process itself and, with minor amendments, decided to commence the second cycle in June 2012.⁹⁵ All 193 current UN Member States will have their human rights compliance reviewed under the UPR between June 2012 and the end of 2016.⁹⁶ The second and subsequent cycles will be four and a half years in length. The UPR is now well established as a key mechanism of the HRC.

The 2007 institution building package laid down the guidelines, principles, basis and procedures for the UPR, including in relation to the full and active participation of NHRIs. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has released an information note for NHRIs on participation in the UPR.⁹⁷

2. PRINCIPLES AND OBJECTIVES OF THE REVIEW

The principles of the UPR are broad and general. They reflect, on the one hand, the commitment to an effective review based on universality of human rights and the equality of all States and, on the other hand, the nervousness of many States about it, for example, in the large number of negative principles. Importantly the principles incorporate inclusive participation, specifically providing for NHRIs and NGOs.

93 GA Resolution 60/251; OP. 5(e).

94 HRC Resolution 5/1; Part I.

95 HRC Resolution 16/21 adopted on 25 March 2011, as supplemented by HRC Resolution 17/119 adopted on 17 June 2011.

96 Since the completion of the first cycle of the UPR, South Sudan has been admitted as the 193rd Member State of the UN and will participate in the second cycle of the UPR.

97 See: www.ohchr.org/Documents/HRBodies/UPR/InfoNoteNHRIUPR2ndCycle.pdf.

The **principles** are to:

- promote the universality, interdependence, indivisibility and interrelatedness of all human rights
- be a cooperative mechanism based on objective and reliable information and on interactive dialogue
- ensure universal coverage and equal treatment of all States
- be an intergovernmental process, UN Member-driven and action-oriented
- fully involve the country under review
- complement and not duplicate other human rights mechanisms
- be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner
- not be overly burdensome to the concerned State or to the agenda of the HRC
- not be overly long; it should be realistic and not absorb a disproportionate amount of time or human and financial resources
- not diminish the HRC's capacity to respond to urgent human rights situations
- fully integrate a gender perspective
- take into account the level of development and specificities of countries
- ensure the participation of all relevant stakeholders, including NGOs and NHRIs.⁹⁸

The UPR has six **objectives**:

- the improvement of the human rights situation on the ground
- the fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State
- the enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned
- the sharing of best practice among States and other stakeholders
- support for cooperation in the promotion and protection of human rights
- the encouragement of full cooperation and engagement with the HRC, other human rights bodies and OHCHR.⁹⁹

3. BASIS OF THE REVIEW

The UPR is to review the “fulfilment by each State of its human rights obligations and commitments based on human rights treaties and other instruments that they have ratified”.¹⁰⁰ It is based on obligations arising from:

- the UN Charter
- the Universal Declaration of Human Rights
- the human rights treaties to which the State under review is a party
- voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the HRC.¹⁰¹

The review is undertaken taking into account applicable international humanitarian law.¹⁰²

98 HRC Resolution 5/1; Part I.B.2.; para. 3.

99 HRC Resolution 5/1; Part I.B.2.; para. 4.

100 GA Resolution 60/251; OP. 5(e).

101 HRC Resolution 5/1; Part I.A.; para. 1.

102 HRC Resolution 5/1; Part I.A.; para. 2.

These bases of the UPR are both universal and State-specific. The UN Charter and the UDHR impose obligations on all UN member States, as does international humanitarian law. The treaty obligations and voluntary pledges and commitments differ on a State by State basis but, in each case, entail obligations freely accepted by the particular State.

The inclusion of international humanitarian law was controversial. Some States saw human rights law and humanitarian law as distinct areas of law that should be kept well separated. The inclusion of international humanitarian law, even if only on the basis of being taken into account, demonstrates a growing recognition that the two areas of law are in fact closely related.

The second and subsequent cycles of the review will be based on the implementation by the State under review of the accepted recommendations of previous cycles as well as developments in the human rights situation in the State.¹⁰³

4. WHO UNDERTAKES THE UPR?

The review of each State is undertaken entirely by the HRC itself, through a working group of the whole membership followed by discussion and decision in plenary session. There are no independent experts involved in the process itself, only State representatives. So the UPR is a political process, not a legal process, even if it has a basis in international law. The comments, conclusions and recommendations of States made during the course of the review will reflect the policies of the Governments, which are not necessarily legally grounded. NHRIs can therefore add important legal expertise and expert knowledge about the situation in the country to the more political contributions of States.

The UPR Working Group meets three times a year for two weeks and reviews 14 States on each occasion, allocating three and a half hours for the “interactive dialogue” with each State under review.¹⁰⁴

Each State review is facilitated by three rapporteurs, known as the “troika”, chosen by ballot, from member States of the HRC, from different regional groups. A different troika is chosen for each State under review. The troika prepares the review, including oversight of the documentation, gathering questions from States in advance of the interactive dialogue and preparing the report.



Photo by Michael Power/Asia Pacific Forum of National Human Rights Institutions.

103 HRC Resolution 16/21; para. 6.

104 In the first cycle, 16 States were reviewed at each session of the UPR Working Group, with three hours allocated to the interactive dialogue with each State under review.

5. PROCESS OF THE REVIEW

The review of each State goes through five distinct stages:

- documentation
- interactive dialogue in the UPR Working Group
- the UPR report and its recommendations
- HRC plenary debate and adoption of the report
- follow up.

NHRIs have important roles to play at each stage.

5.1. Documentation

The review of a State is based upon three documents:

- information prepared by the State concerned, not exceeding 20 pages
- a compilation prepared by OHCHR of the information contained in the reports and official documents of relevant UN bodies and agencies, not exceeding ten pages
- a summary prepared by OHCHR of “[a]dditional, credible and reliable information provided by other relevant stakeholders”, not exceeding ten pages.¹⁰⁵

The preparation of the State report is a State responsibility and an NHRI should not undertake this task on behalf of the State. Preparation leads to responsibility and ownership. The State should take responsibility for its own report and should own the contents and voluntary commitments, if any, in it. If an NHRI or any body other than the Government prepares the report, the Government is able to distance itself from its contents and commitments.

The State is encouraged, however, to prepare its report through a broad consultation process at the national level with all relevant stakeholders.¹⁰⁶ An NHRI can participate in this consultation, giving the Government the benefit of its views and recommendations. The Government can accept or reject the NHRI’s views and may or may not adopt them for inclusion in the State report. That is the Government’s prerogative. The NHRI, however, is entitled and encouraged to present its views directly to the UPR Working Group in a submission and it should do so.

The State report should include the following information:

- a description of the methodology and the broad consultation process followed for the preparation of information
- developments since the previous review in the background of the State under review and its framework, particularly its normative and institutional framework, for the promotion and protection of human rights: Constitution; legislation; policy measures; national jurisprudence; human rights infrastructure, including any NHRI; and the scope of international obligations identified in the basis of review
- promotion and protection of human rights on the ground: implementation of international human rights obligations identified in the basis of the review; national legislation and voluntary commitments; NHRI activities; public awareness of human rights; and cooperation with human rights mechanisms
- the follow-up to the previous review
- identification of achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations and the development of human rights situations

105 HRC Resolution 5/1; Part I.D.; para. 15.

106 HRC Resolution 5/1; Part I.D.; para. 15(a).

- key national priorities, initiatives and commitments that the State concerned has undertaken and intends to undertake to overcome those challenges and constraints and improve human rights situations on the ground
- expectations of the State concerned in terms of capacity-building and requests, if any, for technical assistance and support received.¹⁰⁷

“Additional, credible and reliable information” contributed by the NHRI is incorporated into the third document. In the first UPR cycle, the NHRI information was usually integrated with NGO information and information from “other relevant stakeholders”. In the second and subsequent cycles, however, “[t]he summary of the information provided by other relevant stakeholders should contain, where appropriate, a separate section for contributions by the NHRI of the State under review that is accredited in full compliance with the Paris Principles”.¹⁰⁸ The summary is still limited to ten pages in total and so it is essential that the NHRI information be concise; ideally no more than five pages (2,815 words) so that it can be incorporated into the summary with little or no editing by OHCHR. OHCHR provides guidance to NHRIs on the logistics of preparing and submitting information.¹⁰⁹

Unlike for the State report, the UPR guidelines do not prescribe what the NHRI “additional, credible and reliable information” should contain. The NHRI itself decides that. If it wishes, the NHRI can, for example:

- structure its information along the same points as the list above for the State report
- respond only to those issues in the State report to which it objects or with which it does not agree
- identify a small number of priority human rights concerns and address those alone.

Certainly, in the second and subsequent cycles of the UPR, an NHRI should deal with its State’s implementation of the recommendations of the previous cycle.

OHCHR publishes on its website dates for the submission of reports and other information for each State under review.¹¹⁰ Usually NHRIs and NGOs are required to submit their information six months before the review and States under review are required to submit their reports three months before the review.

5.2. Interactive dialogue in the UPR Working Group

The second stage of the UPR is an interactive dialogue with each State under review. The interactive dialogue takes the form of statements, including questions and answers, by the State under review, HRC member States and observer States. It takes place in the HRC’s UPR Working Group. Each State is allocated a session of three and a half hours for its interactive dialogue, with the time being divided so that:

- the State under review has a total of 70 minutes for its initial presentation, replies to statements by other States and answers to their questions, and its concluding comments
- the remaining time (140 minutes) is divided among member States and observer States.¹¹¹

The State under review can decide to allocate its 70 minutes as it wishes. It will usually make a lengthy opening statement and then shorter responses to statements and questions and a short concluding statement. It can take the positive step of offering its own voluntary commitments in its opening statement. These are promises of human rights actions that it will implement to increase its compliance with international human rights law. An NHRI can encourage its State to develop and implement voluntary commitments in the opening statement.

107 HRC Decision 17/119; para. 2.

108 That is, NHRIs accredited with “A status” only. Other NHRIs can submit written information but it is not included separately in the compilation; see HRC Decision 16/21; Annex, “Outcome of the review of the work and functioning of the United Nations Human Rights Council”; para. 9.

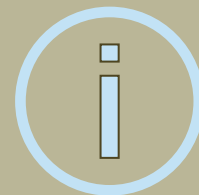
109 See: www.ohchr.org/Documents/HRBodies/UPR/InfoNoteNHRIUPR2ndCycle.pdf; pp. 14–20.

110 See: www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx.

111 HRC Decision 17/119; para. 3.

All States that wish to speak in the interactive dialogue may do so and the time for each speaker is determined on that basis.¹¹² If there is sufficient time, a member State may speak for three minutes and an observer State for two minutes. However, if the speakers' list is so long that the time available (140 minutes) would expire before all speakers have been heard, then the speaking time will be shortened, first to give each speaker two minutes and then, if that is still insufficient to enable all States that wish to speak to do so, to allocate the available time (140 minutes) equally among all those on the speakers' list.¹¹³

“A status” NHRIs can attend the UPR Working Group but they are not permitted to speak. Nonetheless, their attendance itself can be significant. They are able to speak with State delegations to raise issues relevant to the State under review. They can arrange parallel events that enable them to brief State delegations on their views and analysis of the human rights performance of the State under review. They can advocate for recommendations that States can make in the Working Group.



5.3. The UPR report and its recommendations

The UPR Working Group prepares a report of the interactive dialogue that is forwarded to the HRC for consideration and adoption in a plenary meeting at a future regular session of the HRC. A draft of the report is prepared by the troika for the particular State under review with the full involvement of the State under review and the assistance of the secretariat (OHCHR).¹¹⁴ The draft is discussed for 30 minutes in the Working Group and adopted and referred to the HRC.

The Working Group report on each State under review includes:

- a summary of the proceedings
- conclusions
- recommendations made by individual States in the interactive dialogue
- voluntary commitments made by the State under review.¹¹⁵

To date, the reports on States under review have basically summarized the interactive dialogue. They contain the views of the State under review and of each State that spoke. The Working Group does not attempt to form its own collective conclusions but the report incorporates the individual views of individual States or groups of States.

The Working Group does not debate the recommendations made by individual States and it does not adopt its own recommendations. Accordingly, the report simply includes all the recommendations put forward by individual States on that basis, neither endorsing nor rejecting any of them. The fact that the Working Group does not consider and vote on each recommendation has resulted in many more recommendations being included in the report – generally well over 100 and sometimes over 200 – and they are usually far stronger than the Working Group would be prepared to endorse. To avoid them being scattered randomly throughout the report, recommendations “should be clustered thematically with the full involvement and consent of the State under review and the States that made the recommendations”.¹¹⁶

112 This was not the case in the first cycle when speaking times were fixed and the number of States able to speak was limited by the length of the session.

113 HRC Decision 17/119; paras. 5–7.

114 HRC Presidential Statement 8/1; para. 9.

115 HRC Resolution 5/1; Part I.E.; para. 26.

116 HRC Resolution 16/21; para. 15.

The approach to recommendations opens the way for NHRIs to have their views incorporated into UPR reports. Many States are committed to good reports with good and appropriate recommendations but they rarely have enough knowledge and experience of every State under review to be able to formulate good, appropriate recommendations themselves. They look to independent experts – certainly NHRIs and often NGOs – for advice. Drawing on their own expert knowledge, NHRIs can propose good, appropriate recommendations to States and then see those recommendations included in UPR reports. They can make their proposals in the information they provide to the UPR or, more effectively, in approaches to individual States or groups of States before and during the UPR examination.



5.4. HRC plenary debate and adoption of the report

The UPR Working Group report on each State under review is considered and adopted at a regular session of the HRC soon after the completion of the Working Group session. An hour is allocated for the consideration of each individual report. The hour is apportioned between the State under review (20 minutes), HRC member and observer States (20 minutes) and other observers, that is, NHRIs and NGOs (20 minutes).

The State under review speaks first. It is expected to respond to the recommendations in the Working Group report either before the plenary debate or at it.

*The State under review will inform the Council about its views concerning the recommendations and/or conclusions as well as voluntary commitments/pledges whenever it is in a position to do so, during the meeting of the Working Group, or between the session of the Working Group and the next session of the Council, or during the meeting of the Council at its plenary session.*¹¹⁷

On the basis of this response, the report of the debate identifies the recommendations that the State under review supports, the recommendations that it is still considering and the recommendations that it does not support.¹¹⁸ The State can then be held accountable for its implementation of the recommendations it supports and it can later be questioned and pressed in relation to those it does not.

The “A status” NHRI of the State under review has special status. It is “entitled to intervene immediately after the State under review during the adoption of the outcome of the review by the Council plenary”.¹¹⁹



The ordinary rules of procedure of the HRC apply and so all other “A status” NHRIs are also permitted to make oral statements during the debate after member and observer States. However, statements must be directed towards the draft report, not the interactive dialogue with the State under review. This provides a very broad scope for comments but some statements have received objections and some speakers have been prevented from continuing because of complaints that their statements do not address the draft report.

117 HRC Presidential Statement 8/1; para. 11.

118 HRC Resolution 5/1; Part I.D.; para. 32.

119 HRC Resolution 16/21; para. 13.

NHRIs, apart from that of the State under review, must share the observers' speakers' list with NGOs. The time for the debate is restricted to one hour and, unlike in the UPR Working Group, not every State or observer that wishes to speak will be given time. States and others that wish to speak in the plenary debate are given a place on the observers' speakers' list on a "first come, first listed" basis. When the allocated hour expires, the debate ceases, regardless of how many on the speakers' list remain unheard. However, the "A status" NHRI of the State under review is guaranteed the opportunity to address the HRC plenary.

5.5. Follow up

Implementation of the UPR recommendations is the principal objective of the process. States are expected to act on the recommendations they accept and to consider further those they do not accept. Implementation is a State responsibility but international assistance may be required, especially for least developed and developing States. The United Nations Development Programme, OHCHR and other UN agencies and field presences may be able to provide assistance with implementation.

The procedures adopted for the UPR now require reporting on follow up and implementation. In the second cycle of the review, States are required to report on their follow up and implementation of recommendations of the first cycle.¹²⁰ In subsequent cycles they will report on follow up on recommendations in all past review reports. In addition they are asked to provide the HRC with a mid-cycle report on implementation.¹²¹

NHRIs have important roles in encouraging follow up and implementation.

- An NHRI can publicize the results of the review in its own country, through seminars and media statements and drawing them to the attention of the parliament and the general public. It can make the report widely and easily available; for example, by placing the report on its website and by providing it to relevant governmental Ministers, departments and agencies, to parliamentary committees, to NGOs, to academic institutions and to the general public.
- An NHRI can encourage the State to accept recommendations the State did not accept at the HRC plenary. It can advocate for them directly with responsible Ministers and departments, with parliamentarians and in public forums and the media.
- An NHRI can monitor the State's implementation of the recommendations the State accepted at the HRC plenary. It can help to ensure that State commitments are met and implemented in fact, not only accepted in words.
- An NHRI can report to the HRC on the State's follow up and implementation. The UPR is on the agenda of every regular session of the HRC and statements can be made on matters relevant to the UPR under that item. During the first UPR cycle many NHRIs used that opportunity to report on implementation and to encourage the State to perform better.
- Finally, in the following UPR cycle an NHRI can include in its information to the UPR Working Group a report on the State's follow up and implementation of the previous cycle's recommendations.¹²²

6. SCHEDULING

The second UPR cycle began in June 2012. Between then and the end of 2016, all 193 UN Member States will undergo the review. The HRC's UPR Working Group will have three sessions a year, each of two weeks, and it will review 14 States at each session.¹²³ States will be reviewed in the same order as in the first cycle.¹²⁴

120 HRC Resolution 16/21; para. 6.

121 HRC Resolution 16/21; para. 18.

122 *UPR Good Practice Compilation*; Asia Pacific Forum of National Human Rights Institutions; 2010; A/HRC/14/NI/10.

123 HRC Resolution 16/21; para. 3.

124 HRC Resolution 16/21; para. 4. The full schedule for the second cycle is agreed in HRC Decision 17/119, Annex 1; see: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.



A wide view of the Human Rights Council at its 19th regular session. During the day's meetings Members considered the Universal Periodic Review reports of Ireland, Swaziland, Syria and Thailand, among others, as part of the Council's process to periodically review the human rights records of all 193 UN Member States. UN Photo by Jean-Marc Ferré.

7. ROLES OF NHRIs IN THE UPR

The UPR highlights each State's human rights performance in a major international forum, before other States, UN agencies, human rights NGOs, other NHRIs and the international community generally. It therefore provides an important opportunity for every NHRI to promote and protect human rights in its own country and internationally. An "A status" NHRI can contribute to this process at every stage, in many ways, including through:

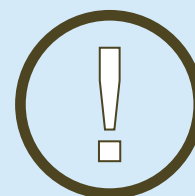
- participating in the State consultation prior to the preparation of the State report
- encouraging the State to report frankly and comprehensively, highlighting both significant achievements and important challenges and identifying priorities for action
- recommending that the State make voluntary commitments in its report and in its statement to the UPR Working Group
- providing information for the UPR to the HRC and proposing recommendations
- promoting its views and recommendations to other States that can raise them during the UPR Working Group interactive dialogue
- attending the interactive dialogue to provide its expertise informally to the Working Group and to monitor the State's statements and commitments
- organising parallel events at the Working Group session to provide information, expert analysis and recommendations
- participating in the HRC plenary discussion of the Working Group report, addressing the HRC under the special provisions for the "A status" NHRI of the State under review
- promoting the UPR report and its recommendations within its own country, to inform and encourage implementation of the recommendations
- encouraging acceptance by the State of recommendations not accepted during the UPR process itself

- monitoring implementation and follow up of the UPR report and recommendations
- reporting to the HRC during the course of the cycle on progress with implementation and follow up
- providing information of implementation and follow up to the next cycle of the UPR.

“B status” NHRIs can also contribute through the provision of information to the UPR Working Group but they cannot attend sessions of the Working Group or participate in the HRC plenary. They can be involved, of course, in all the in-country preparation and in follow up and monitoring.

KEY POINTS: CHAPTER 6

- **The Universal Periodic Review is a mechanism of the Human Rights Council under which all 193 UN Member States are reviewed by the HRC for their performance of their international human rights obligations.**
- **The second cycle of the UPR began in 2012 and will continue until 2016. The schedule for the second cycle has been set so that the UPR session for each State’s review is fixed and public.**
- **All NHRIs, whatever their accreditation status, can provide “credible and reliable information” for the review.**
- **No NHRIs can participate in the interactive dialogue with the State under review in the UPR Working Group.**
- **“A status” NHRIs can participate in the HRC debate on the adoption of the UPR Working Group reports, with the “A status” NHRI of the State under review being entitled to speak in the HRC plenary session immediately after the State under review.**
- **NHRIs have important roles to play in promoting and monitoring implementation of the UPR recommendations.**



Chapter 7:

Special procedures

KEY QUESTIONS

- **What are the special procedures?**
- **How do the special procedures undertake their mandates?**
- **What roles can NHRIs play in the work of the special procedures?**



1. INTRODUCTION

The most effective mechanism established by the former Commission on Human Rights was the system of special procedures (SPs). They were often described as the “arms and legs” and the “eyes and ears” of the Commission. Their role was so important that, in establishing the Human Rights Council (HRC), the General Assembly (GA) decided that the HRC should “maintain the system of special procedures” and that the HRC should “review and, where necessary, improve and rationalize” it.¹²⁵

The SPs are independent human rights experts appointed to undertake certain mandates on behalf of the HRC.¹²⁶ They provide a centralized point for:

- studying and increasing understanding of a particular human rights matter or situation
- receiving information and reporting on particular human rights violations.

They serve on an unpaid, voluntary basis, although they are reimbursed for expenses alone.

A mandate can relate to the human rights situation in a specific country (a “country mandate”) or to a general human rights issue (a “thematic mandate”). There are currently 46 SPs, 36 with thematic mandates and ten with country mandates.¹²⁷

Mandate holders can be individuals or groups. Of the current 46 SPs, six are undertaken by groups of five members, one from each of the five UN geographical regions. The SPs can have a variety of names: Special Rapporteur, Independent Expert or, occasionally, Special Representative. The HRC has sought to standardize the title and now most SPs are called Special Rapporteur. Group mandates are called Working Groups.

2. CREATING A MANDATE

Each SP mandate has been created by a resolution of the HRC. The HRC reviewed all the existing mandates when it was established in 2006. Since then it has ended some and created others. Thematic mandates are usually created for a period of three years and can be renewed for the same period. Country mandates are usually created and renewed on an annual basis.¹²⁸

125 GA Resolution 60/251; para. 6.

126 For information about SPs and their activities, see: www2.ohchr.org/english/bodies/chr/special/index.htm.

127 As at May 2012; see: www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx. For the full list of all current SPs, including present and past holders of each mandate, see: www2.ohchr.org/english/bodies/chr/special/docs/Mandate_Holders_2011.xls.

128 The only exception is the mandate on the Occupied Palestinian Territories which has been established indefinitely until the occupation of the territories is ended.

The establishment of a mandate can be proposed by an HRC member or an observer State. NHRIs and NGOs can also propose and advocate the establishment of a mandate but the proposal will require State sponsors before it can come before the HRC. Usually the establishment of a mandate will be preceded by other action in relation to the issue or situation, including studies, panel discussions, HRC resolutions and so on. Except where there is urgency, a proposal for a new mandate is considered and debated for some time before a decision is taken.

The HRC resolution establishing or renewing a mandate will:

- define the mandate
- provide terms of reference, including functions and reporting requirements
- determine whether an individual or a group will exercise the mandate
- indicate the title, now almost always “Special Rapporteur” or “Working Group”.¹²⁹

NHRIs can propose and advocate the establishment of new mandates for SPs and the renewal of existing mandates. Because of their knowledge and experience in the implementation of international human rights law, they are aware of gaps in the international protection mechanisms and so are well placed to identify a need for a mandate and to advise on the required scope of a mandate. They will need to obtain support for any proposal from HRC member States and so the proposal should be advocated with a well-argued case, including facts and analysis.

3. QUALIFICATIONS FOR SPs

The HRC has defined certain broad specifications for persons being considered for appointment to an SP. It has adopted both general criteria and technical requirements. The “general criteria ... of paramount importance” are:

- expertise
- experience in the field of the mandate
- independence
- impartiality
- personal integrity
- objectivity.¹³⁰

The “technical and objective requirements” are:

- qualifications: relevant educational qualifications or equivalent professional experience in the field of human rights; good communication skills in one of the official UN languages
- relevant expertise: knowledge of international human rights instruments, norms and principles; as well as knowledge of institutional mandates related to the UN or other international or regional organizations’ work in the area of human rights; proven work experience in the field of human rights
- established competence: nationally, regionally or internationally recognized competence related to human rights
- flexibility/readiness and availability of time to perform effectively the functions of the mandate and to respond to its requirements, including attending HRC sessions.¹³¹

129 However, two of the four most recently created mandates have been “Independent Experts”; the Independent Expert on the promotion of a democratic and equitable international order (2011) and the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment (2012).

130 HRC Resolution 5/1; Part II.A.; para. 39.

131 HRC Decision 6/102; Part C.

In addition “due consideration” should be given to:

- gender balance
- equitable geographic representation
- appropriate representation of different legal systems.¹³²

4. APPOINTMENT PROCEDURE

The HRC has laid down a complex procedure for the appointment of persons to SP mandates. The procedure involves stages of nomination, shortlisting, assessment by an intergovernmental committee, consideration by HRC member States and appointment by the HRC President with the endorsement of the HRC.

Candidates for appointment can be nominated by a variety of stakeholders, including member and observer States, international organizations, NHRIs and NGOs. They can also nominate themselves.¹³³ From the list of nominees, the Office of the United Nations High Commissioner for Human Rights (OHCHR) prepares, maintains and regularly updates a public list of eligible candidates.¹³⁴

Specific nominations are sought when a mandate is to be filled. Nominees must submit “an application for each specific mandate, together with personal data and a motivation letter no longer than 600 words”.¹³⁵ The OHCHR prepares a list of eligible candidates from the nominees.

The eligibility list is considered by a five-member Consultative Group, whose members are nominated by each of the UN regional groups.¹³⁶ The five members serve in their personal capacities but, to date, they have always been Geneva-based diplomats representing States in the various regional groups. The Consultative Group considers the suitability of persons on the eligibility list for each mandate to be filled. In exceptional circumstances it can also consider persons not on the list.¹³⁷ It interviews short-listed candidates¹³⁸ and presents the HRC President with “a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements”.¹³⁹ This list is usually ranked in the order of preference of the Consultative Group.

The HRC President then conducts “broad consultations” on the basis of the Consultative Group’s list and proposes a person for each vacant mandate.¹⁴⁰ If the President proposes a candidate who is not the candidate recommended by the Consultative Group, she or he must give reasons for the recommendation.¹⁴¹ The list of proposed appointees is then endorsed as a whole by the HRC at each ordinary session.¹⁴²

132 HRC Resolution 5/1; Part II.A.; para. 40.

133 HRC Resolution 5/1; Part II.A.; para. 42.

134 HRC Resolution 5/1; Part II.A.; para. 43.

135 HRC Resolution 16/21; Part II.A.; para. 22(b).

136 HRC Resolution 5/1; Part II.A.; para. 49.

137 HRC Resolution 5/1; Part II.A.; para. 50 and HRC Resolution 16/21; Part II.A.; para. 22(c).

138 HRC Resolution 16/21; Part II.A.; para. 22(c).

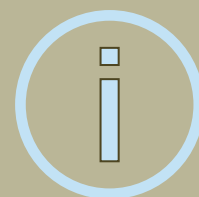
139 HRC Resolution 5/1; Part II.A.; para. 47.

140 HRC Resolution 5/1; Part II.A.; para. 52.

141 HRC Resolution 16/21; Part II.A.; para. 22(d).

142 HRC Resolution 5/1; Part II.A.; para. 53.

NHRIs have been specifically identified as organizations entitled to nominate candidates for appointment to SP mandates.¹⁴³ They can also comment on or support particular candidates who are under consideration for appointment during the consultations undertaken by the Consultative Group and the HRC President. Appointments to mandates are very important decisions that will have a significant effect on the promotion and protection of human rights through the international system and on the development of international human rights law. NHRIs are able to influence those decisions through their engagement with the nomination and selection process.



5. FUNCTIONS

Although the mandates given to SPs vary, there is some uniformity in their methods of work. Most SPs:

- undertake studies, through which they contribute to the development of international human rights law
- investigate situations of human rights violation arising under the mandate
- conduct country visits
- receive and consider complaints from victims of human rights violations and intervene with States on their behalf
- issue urgent action requests
- promote the mandate
- report to the HRC and to other intergovernmental bodies, such as the GA, on their findings, conclusions and recommendations.

The complaint handling function is discussed in Chapter 13 of this manual, along with the complaint handling procedures of the HRC itself and those of the treaty monitoring bodies.

5.1. Special procedures acting jointly

Many human rights situations involve a number of human rights and many SPs have mandates that can overlap in certain circumstances. As a result, many SPs may have responsibilities that are relevant to the same human rights situation. In exercising their mandates and undertaking their functions, SPs cooperate and act jointly to address complex issues in comprehensive ways. They can:

- conduct joint visits to a country
- issue joint statements to the HRC and the media
- make joint recommendations to States
- submit joint reports to the HRC.

When SPs act jointly they demonstrate the interrelatedness of human rights and the integrated nature of international human rights law and mechanisms. They also add strength to the views they express, as joint statements reflect common views and avoid inconsistency.

5.2. Annual reports to the HRC and GA

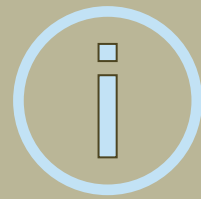
All SPs are required under their mandates to make an annual report to the HRC. Many also make an annual report to the GA. The reports can cover any subject within the mandate that the SP wishes

¹⁴³ HRC Resolution 16/21; Part II.A.; para. 22(a).

to address. They discuss general issues concerning theoretical analysis and general trends and developments with regard to their respective mandate and may contain general recommendations. They also describe briefly the work of the SP during the course of the preceding year. They usually contain summaries of all complaints transmitted to Governments and the replies received.

In the HRC, reports prepared by SPs are distributed over the three regular sessions held during each year. Around a third of the reports are presented at each session. When presenting their reports at an HRC session, the SPs participate in an “interactive dialogue” with HRC member and observer States and other observers, including NHRIs and NGOs. The SP speaks briefly to the report and then receives and responds to comments, reactions and questions from HRC members and observers.

In accordance with the HRC’s Rules of Procedure, “A status” NHRIs are able to participate in that dialogue, commenting and questioning the SP. The time for the dialogue is limited and often not every speaker can take the floor. NHRIs wanting to speak in the session should register early on the speakers’ list in the HRC meeting room.



5.3. Studies

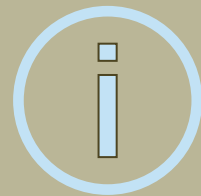
The preparation of studies is one of the principal functions of thematic mandates. These SPs typically identify particular issues associated with the mandate and prepare studies of some of those issues, seeking to develop further international understanding and law on the particular issues. An issue may be some aspect of:

- the interpretation of the right
- the application of the right to a particular area of activity
- the implementation of the right
- assessing State accountability in relation to obligations under the right
- any other matter that can arise under the mandate.

The studies are usually the subject of reports to the HRC or the GA, where they are considered and discussed in an interactive dialogue between the mandate holder and member States and observers.

The studies prepared by SPs can be of great value to NHRIs as they assist in understanding and developing international law and so are relevant to the work of NHRIs in their own countries. NHRIs should monitor the subjects dealt with in these studies so that they are aware of contributions SPs can make to their work.

NHRIs can also contribute to the studies. They can identify gaps in law or understanding of law and draw that to the attention of relevant SPs with proposals for studies. They can provide comments and experiences to SPs to assist them with the studies. “A status” NHRIs can participate in HRC interactive dialogues arising from the studies.



5.4. Country visits

One of the most important functions of the SPs is to conduct country visits. Most SPs make at least two country visits each year to examine the situation in the country in relation to the particular mandate. Across the current 46 mandates, 200 country visits are undertaken each year. This represents a very significant international commitment to the first-hand investigation of human rights situations.

A visit cannot be carried out without the approval of the particular State. An SP will approach a State to express a wish to visit and to seek an invitation. A number of States deny access to all SPs, often not even responding to the SP's request. Others are very selective, depending on the particular mandate or the particular mandate holder. On the other hand, almost 100 States have issued standing invitations to all SPs, indicating a willingness to receive any mandate holders who wish to visit.¹⁴⁴ Issuing a standing invitation, however, does not mean that all SPs can in fact visit freely. Visits must still be negotiated on the basis of mutually suitable dates and sometimes a State that has issued a standing invitation may have great difficulty in finding suitable dates for an SP to visit.¹⁴⁵

Terms of reference for country visits, adopted in 1998, provide that the SPs and UN staff assisting them should have:

- freedom of movement in the whole country, in particular to restricted areas
- freedom of inquiry, in particular as regards;
 - access to all prisons, detention centres and places of interrogation
 - contacts with central and local authorities of all branches of government
 - contacts with representatives of NGOs, other private institutions and the media
 - confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty
 - full access to all relevant documentary material
- assurance by the Government that persons who have been in contact with the SP will not be penalised or suffer retribution of any kind
- appropriate security arrangements without, however, restricting the SP's freedom of movement and inquiry.¹⁴⁶

During a visit, an SP meets with the Government, government officials, the NHRI, local NGOs and local experts, including victims and others affected most by the situation, to hear their views on the issue. There have been recent incidents of those cooperating with SPs being victimized or even murdered afterwards. The HRC has recognized the danger and the reprisals that some have already suffered as a result of their cooperation with UN mechanisms. It has resolved that States should “take all necessary measures to prevent the occurrence of reprisals and intimidation”.¹⁴⁷ A panel discussion was held at its 21st regular session in September 2012 on “the issue of intimidation or reprisal against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights”.¹⁴⁸ The Special Rapporteur on the situation of human rights defenders has particular responsibilities to protect human rights defenders. In addition, all SPs, while making county visits, should emphasize the obligation of States to protect all those who assist international human rights mechanisms. NHRIs can offer protection to those at risk and report to the international mechanisms on the risk and on any action taken against these human rights defenders.

144 For a current list of States that have issued standing invitations, see: www2.ohchr.org/english/bodies/chr/special/invitations.htm.

145 For a table on country visits, showing all visits conducted and reports, visits planned, and requests made but not answered, see: www2.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm.

146 E/CN.4/1998/45.

147 HRC Resolution 18/118; para. 1.

148 HRC Resolution 18/118; para. 3.



Radhika Coomaraswamy, Special Representative for Children and Armed Conflict, speaks with journalists after touring the grounds of the Organisation for Mine Clearance and Afghan Rehabilitation in Kabul, Afghanistan. UN Photo by Eric Kanalstein.

The SP usually briefs the media at the end of the visit to give an initial view of the situation in the country. A report to the HRC, with findings and recommendations, is prepared after the visit. The report is discussed in a plenary session of the HRC, in an interactive dialogue format.

A country visit by an SP is one of the most effective means of bringing a human rights situation to international attention. It can therefore be an important means by which an NHRI can build international support for its work and, in that way, increase its effectiveness. Many NHRIs actively encourage SPs to visit their countries. Most NHRIs assist SPs on country visits. An SP making a country visit generally has limited knowledge of the country and needs access to local expertise. The NHRI can provide its expertise, knowledge and experience to support and advise the SP before, during and after the visit.

After the visit, the SP finalizes and releases the visit report and participates in an interactive dialogue in the HRC regular session. The “A status” NHRI of the country visited can speak, in person or by video, in the HRC session immediately after the State concerned when the report is presented.¹⁴⁹ Later, the NHRI can be the most influential advocate for the report’s implementation.

In supporting SPs and country visits, an NHRI can:

- encourage its Government to issue a standing invitation to all SPs to visit
- propose that its Government invite and encourage a visit by a particular SP whose mandate is relevant to the country situation
- propose a country visit to a particular SP whose mandate is relevant to the country situation
- brief the SP and her or his staff, both before the visit and during it
- brief government officials, NGOs, other experts, legal authorities and victims about the purpose, nature and the arrangements for the visit
- advise the SP on the programme for the visit, including who should be met during the visit

149 HRC Resolution 16/21; Part II.B.; para. 28.

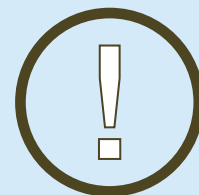
- make a submission to the SP on findings and recommendations
- participate in the interactive dialogue in the HRC plenary session on the SP's report, responding to the report's findings and recommendations
- ensure that the report of the visit, including its findings and recommendations, receives wide circulation in the country
- monitor and report on the safety and well-being of those human rights defenders, victims of violation and others who cooperated with the SPs
- promote, monitor and report publicly, including to the SP and the HRC, on the implementation of the report's recommendations.

5.5. Communications

SPs can also receive communications, that is, complaints, regarding specific allegations of human rights violations. This function is discussed in detail in Chapter 13 of this manual.

KEY POINTS: CHAPTER 7

- **The special procedures are a mechanism of the Human Rights Council. They are independent human rights experts appointed to undertake specific mandates on behalf of the HRC.**
- **A special procedure can have a thematic mandate, to deal with a specific human rights issue, or a country mandate, to deal with a specific country.**
- **Special procedures undertake their mandates through a variety of functions, including research, studies, country visits, investigations and inquiries, and reporting to the Human Rights Council and the General Assembly.**
- **All NHRIs, regardless of accreditation status, can collaborate with the special procedures in their work. The collaboration is especially important in country visits by special procedures, where the expertise and experience of the NHRI will be of great assistance to the special procedure in planning and undertaking a visit. When a special procedure reports to the Human Rights Council on a country visit, the "A status" NHRI of the concerned State can address the plenary immediately after the concerned State.**



Chapter 8:

Other permanent mechanisms of the Human Rights Council

KEY QUESTIONS

- **What are the Human Rights Council's other permanent mechanisms?**
- **How does each of these mechanisms work?**
- **What roles, if any, can NHRIs play in relation to each of these mechanisms?**



1. INTRODUCTION

The Universal Periodic Review (UPR) and the special procedures (SPs) are important and influential mechanisms of the Human Rights Council (HRC) but other HRC mechanisms also contribute towards fulfilling the HRC's mandate for the promotion and protection of human rights. They are permanent or standing mechanisms in that they have been established by the HRC. They were not established on a temporary or ad hoc basis for a particular investigation or mission but have indefinite status and a wide mandate. These mechanisms are:

- the Human Rights Council Advisory Committee¹⁵⁰
- the Expert Mechanism on the Rights of Indigenous Peoples¹⁵¹
- the Social Forum¹⁵²
- the Forum on Minority Issues¹⁵³
- the Working Group of Experts on People of African Descent.¹⁵⁴

These mechanisms all meet and work in open, public session and NHRIs can participate in the work of each of them.

2. HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The HRC established the Human Rights Council Advisory Committee to “function as a think tank for the Council and work at its direction”.¹⁵⁵ The HRC has placed the Advisory Committee firmly under its control and has denied it any power of initiation. It is to “provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered only upon the latter's request, in compliance with its resolutions and under its guidance.”¹⁵⁶ The Advisory Committee cannot adopt resolutions or decisions but it can make suggestions to enhance its “procedural efficiency” and proposals for further research.¹⁵⁷

150 See: www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm.

151 See: www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIIndex.aspx.

152 See: www.ohchr.org/EN/Issues/Poverty/SForum/Pages/SForumIndex.aspx.

153 See: www2.ohchr.org/english/bodies/hrcouncil/minority/forum.htm.

154 See: www2.ohchr.org/english/issues/racism/groups/african/4african.htm.

155 HRC Resolution 5/1; Part III; para. 65. The HRC Advisory Committee is the successor to the Sub-Commission on the Promotion and Protection of Human Rights, established by the former Commission on Human Rights.

156 HRC Resolution 5/1; Part III.C.; para. 75.

157 HRC Resolution 5/1; Part III.C.; para. 77.

The Advisory Committee has 18 members who are experts serving in their personal capacities.¹⁵⁸ They are elected through a secret ballot by the HRC for three-year terms, with one third retiring each year. The 18 positions are allocated among the regional groups:

- five positions from the Africa Group
- five positions from the Asia Group
- two positions from the Eastern European Group
- three positions from the Latin America and Caribbean Group
- three positions from the Western European and Others Group.¹⁵⁹

Candidates for election to the Advisory Committee should have:

- recognized competence and experience in the field of human rights
- high moral standing
- independence and impartiality.¹⁶⁰

To promote “independence and impartiality”, persons holding decision-making positions in government or in any other organization or entity which might give rise to a conflict of interest with the responsibilities inherent in the mandate shall be excluded.¹⁶¹

NHRIs cannot nominate persons for election to the Advisory Committee. Only UN Member States can do that. However, NHRIs can propose candidates to their Governments and seek to persuade their Governments to make a nomination. In addition, “States should consult their national human rights institutions and civil society organizations and, in this regard, include [with their nominations] the names of those supporting their candidates”.¹⁶² NHRIs can also participate in meetings of the Advisory Committee and cooperate with it in its work.



The Advisory Committee meets twice a year, for up to a total of ten working days. It usually meets for five days in January and five days in August. Its meetings are public.¹⁶³ States and organizations entitled to participate in HRC sessions, including “A status” NHRIs, are entitled to attend those meetings and to participate in the discussions.¹⁶⁴ As at meetings of the HRC, they can make written and oral statements on items on the agenda and organize parallel events. The HRC also urges the Advisory Committee to interact with States and organizations entitled to participate in HRC sessions, including “A status” NHRIs.¹⁶⁵

158 HRC Resolution 5/1; Part III; para. 65.

159 HRC Resolution 5/1; Part III.B.; para. 73.

160 HRC Resolution 5/1; Part III.A.; para. 67.

161 HRC Resolution 5/1; Part III.A.; para. 68.

162 HRC Resolution 5/1; Part III.A.; para. 66.

163 HRC Resolution 5/1; Part III.D.; para. 79.

164 HRC Resolution 5/1; Part III.D.; para. 83.

165 HRC Resolution 5/1; Part III.D.; para. 82.

3. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The HRC established the Expert Mechanism on the Rights of Indigenous Peoples to provide continuing advice to it on these issues.¹⁶⁶ The Expert Mechanism has five members, elected with “due regard to experts of indigenous origin”.¹⁶⁷

Like the Advisory Committee, the focus of the Expert Mechanism’s work is studies and research-based advice on issues referred to it by the HRC.¹⁶⁸ It can also propose research areas for the consideration of the HRC.¹⁶⁹

To date the Expert Mechanism has undertaken or is undertaking studies on:

- indigenous peoples’ right to education
- indigenous peoples and the right to participation in decision-making
- language and culture in promotion and protection of the rights and identity of indigenous peoples.

The Expert Mechanism meets once a year for five days, usually in July.¹⁷⁰ States and organizations entitled to participate in HRC sessions, including “A status” NHRIs, are entitled to attend those meetings and to participate in the discussions.¹⁷¹ As at meetings of the HRC, they can make written and oral statements on items on the agenda and organize parallel events.

4. SOCIAL FORUM

The HRC convenes an annual Social Forum as “a unique space for interactive dialogue between the United Nations human rights machinery and various stakeholders, including grass-roots organizations, and underlines the importance of coordinated efforts at national, regional and international levels for the promotion of social cohesion based on the principles of social justice, equity and solidarity as well as to address the social dimension and challenges of the ongoing globalization process”.¹⁷² It is seen as “a vital space for open and fruitful dialogue on issues linked with the national and international environment needed for the promotion of the enjoyment of all human rights by all”.¹⁷³ The annual Forum occurs over three days, usually in October. Each Social Forum has particular themes determined by the HRC.

Participants in the Social Forum include HRC member States and observers that participate in meetings of the HRC, including “A status” NHRIs and ECOSOC-accredited NGOs. However, the HRC also permits the participation of other NHRIs and NGOs, in accordance with its wish for a broad, inclusive participation. It wants to include in particular “newly emerging actors such as small groups and rural and urban associations from the North and the South, anti-poverty groups, peasants’ and farmers’ organizations and their national and international associations, voluntary organizations, youth associations, community organizations, trade unions and associations of workers, as well as representatives of the private sector, regional banks, and other financial institutions and international development agencies”.¹⁷⁴

The chairperson of the Social Forum is appointed by the HRC President from among persons nominated by the UN regional groups, taking into account annual rotation of the position among the groups.¹⁷⁵

166 HRC Resolution 6/36 adopted on 14 December 2007. The Expert Mechanism is the successor to the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights, established by the former Commission on Human Rights.

167 HRC Resolution 6/36; para. 4.

168 HRC Resolution 6/36; para. 1(a).

169 HRC Resolution 6/36; para. 1(b).

170 HRC Resolution 6/36; para. 8.

171 HRC Resolution 6/36; para. 9.

172 HRC Resolution 6/13; para. 3.

173 HRC Resolution 6/13; PP. 4.

174 HRC Resolution 6/13; para. 10.

175 HRC Resolution 6/13; para. 6.

5. FORUM ON MINORITY ISSUES

The HRC has also established a Forum on Minority Issues “to provide a platform for promoting dialogue and cooperation on issues pertaining to persons belonging to national or ethnic, religious and linguistic minorities, which shall provide thematic contributions and expertise to the work of the independent expert on minority issues. The Forum shall identify and analyse best practices, challenges, opportunities and initiatives for the further implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.”¹⁷⁶ The Forum on Minority Issues meets annually for two days, usually in November or December.¹⁷⁷

Like the Advisory Committee and the Social Forum, participation in the Forum on Minority Issues includes all HRC member States and observers, including “A status” NHRIs. Again, the chairperson of the Forum on Minority Issues is appointed by the HRC President from among persons nominated by the UN regional groups, taking into account annual rotation of the position among the groups.¹⁷⁸

The Forum has held four annual sessions, each considering a particular theme determined by the HRC:

- minorities and the right to education (2008)
- minorities and effective political participation (2009)
- minorities and effective participation in economic life (2010)
- guaranteeing the rights of minority women (2011).

6. WORKING GROUP OF EXPERTS ON PEOPLE OF AFRICAN DESCENT

The Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Other Intolerance requested “the Commission on Human Rights to consider establishing a working group or other mechanism of the United Nations to study the problems of racial discrimination faced by people of African descent living in the African Diaspora and make proposals for the elimination of racial discrimination against people of African descent”.¹⁷⁹ In response, the Commission established the Working Group of Experts on People of African Descent in 2002¹⁸⁰ and the Human Rights Council renewed the Working Group in 2008.¹⁸¹

The Working Group is to:

- study the problems of racial discrimination faced by people of African descent living in the diaspora
- propose measures to ensure full and effective access to the justice system by people of African descent
- submit recommendations on effective measures to eliminate racial profiling of people of African descent
- address all the issues concerning the well-being of Africans and people of African descent
- elaborate proposals for the elimination of racial discrimination against people of African descent.¹⁸²

176 HRC Resolution 6/15; para. 1.

177 HRC Resolution 6/15; para. 3.

178 HRC Resolution 6/15; para. 2.

179 Durban Declaration and Programme of Action; para. 7.

180 Commission on Human Rights Resolution 2002/68.

181 HRC Resolution 9/14.

182 HRC Resolution 9/14; para. 8.

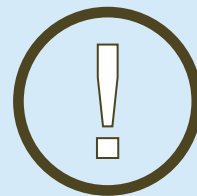
The Working Group operates on a thematic basis and has considered the following issues as they affect people of African descent:

- the administration of justice
- the media
- access to education
- racism and employment
- racism and health
- racism and housing.¹⁸³

The Working Group has five members, one from each regional group. It meets twice a year, for five days on each occasion.¹⁸⁴ The HRC has requested that all relevant individuals and organizations, including NHRIs, “collaborate with the Working Group by providing it with the necessary information and, where possible, reports in order to enable the Working Group to carry out its mandate”.¹⁸⁵

KEY POINTS: CHAPTER 8

- **The other principal permanent mechanisms of the Human Rights Council are the Advisory Committee, the Expert Mechanism on the Rights of Indigenous Peoples, the Social Forum, the Forum on Minority Issues and the Working Group of Experts on People of African Descent.**
- **These mechanisms undertake their work through studies as requested by the Human Rights Council.**
- **They meet in Geneva during the course of each year.**
- **All NHRIs, regardless of accreditation status, can participate in meetings of these mechanisms and contribute to their studies.**



183 See: www2.ohchr.org/english/issues/racism/groups/african/4african.htm.

184 HRC Resolution 9/14; para. 8.

185 HRC Resolution 9/14; para. 11.

Chapter 9:

Ad hoc mechanisms of the Human Rights Council

KEY QUESTIONS

- **What are the Human Rights Council's ad hoc or temporary mechanisms?**
- **How do these mechanisms work?**
- **What roles, if any, can NHRIs play in relation to these mechanisms?**



1. INTRODUCTION

In addition to its permanent mechanisms, the Human Rights Council (HRC) establishes ad hoc or temporary mechanisms to undertake particular tasks. The tasks can be related to the investigation of a particular situation or the drafting of a particular instrument or some other specific assignment. NHRIs can assist the work of these mechanisms where relevant.

2. SPECIAL COMMISSIONS OF INQUIRY

The HRC can establish a special commission of inquiry or fact-finding mission in relation to especially serious situations of human rights violation. These commissions usually relate to a specific incident or period in a specific country. Often they will be the result of a special session of the HRC called in response to some human rights emergency. The HRC decides to take action in relation to the incident or situation by establishing a group of independent human rights experts to investigate the situation and report back to the HRC. The experts are selected by the HRC President or the United Nations High Commissioner for Human Rights or both in consultation.

Examples of these kinds of inquiries include:

- the group of experts on the situation of human rights in Darfur, 2007¹⁸⁶
- the UN fact-finding mission on the Gaza Conflict, 2009¹⁸⁷
- the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, 2010¹⁸⁸
- the international commission of inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, 2011¹⁸⁹
- the independent international commission of inquiry on the Syrian Arab Republic, 2011.¹⁹⁰

A commission of inquiry will want to conduct its investigation on-the-spot, in the area in which the alleged violations occurred. It will want to speak with and take evidence from all those with information

186 A/HRC/5/6.

187 A/HRC/12/48.

188 A/HRC/14/1.

189 HRC Resolution S-15/1; para. 11.

190 A/HRC/S7/2/Add.1.



Young girls pass a vehicle belonging to the United Nations-African Union Mission in Darfur, as they return from school inside Zam Zam Internally Displaced Persons Camp in North Darfur, Sudan. UN Photo by Stuart Price.

about the situation, including any Government involved and the alleged or potential perpetrators. Usually, however, the concerned Government will refuse to cooperate with the inquiry and may even prevent the commission from visiting the location of the situation. The commission may also visit neighbouring countries, especially if the country under investigation refuses it entry, where it will want to speak with those who have fled the situation and who may have direct or indirect knowledge of what occurred or is occurring. The commission may be forced to collect and rely on secondary evidence, that is, evidence from reliable, credible organizations that have direct or indirect knowledge of the events.

NHRIs can play a very important role in these circumstances, as they often have vital information obtained from its own staff and from victims and witnesses. The NHRI of the country concerned and other NHRIs with relevant knowledge can assist these special inquiries by providing information, proposing persons and organizations that may be able to assist, arranging meetings and interviews, and so on. “A status” NHRIs can participate in the HRC debates on the inquiry and the situation, at both regular and special sessions. They can also support the inquiry’s report when it is submitted, commenting on the findings and recommendations, supporting implementation and monitoring and reporting on developments.



3. WORKING GROUPS ON DEVELOPING NEW HUMAN RIGHTS INSTRUMENTS

The HRC establishes an ad hoc working group when it decides to develop a new international human rights instrument. The new instrument can be a treaty, a declaration or some other form of instrument that sets out human rights principles and obligations. These working groups are often described as:

- “open-ended”, because there is usually no deadline by which the task is to be completed
- “intergovernmental”, because it is a negotiating forum consisting of representatives of States.

Since its establishment, the HRC has used or is using working groups to develop or complete:

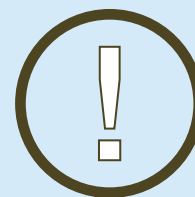
- the Convention for the Protection of All Persons from Enforced Disappearance¹⁹¹
- the Declaration on the Rights of Indigenous Peoples¹⁹²
- an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, enabling individual complaints to be made to the Committee on Economic, Social and Cultural Rights¹⁹³
- a third Optional Protocol to the Convention on the Rights of the Child, enabling individual complaints to be made to the Committee on the Rights of the Child¹⁹⁴
- the Declaration on Human Rights Education and Training¹⁹⁵
- an international framework on the regulation, monitoring and oversight of the activities of private military and security companies.¹⁹⁶

The work of such working groups is very important to NHRIs because international human rights law is developed through this mechanism. The results of the working groups, when adopted through the UN system, will lead to new international law that NHRIs will apply in their work. The working groups provide them with opportunities to influence the content of the law being developed, to ensure that new instruments are comprehensive and relevant and that they meet local needs. NHRIs can make written submissions on the content of instruments and drafts as they evolve. Although intergovernmental, the working group is open to participation by “A status” NHRIs and ECOSOC-accredited NGOs. They can usually be fully involved in the meetings, commenting on drafts, identifying gaps, proposing or opposing text and so on.



KEY POINTS: CHAPTER 9

- **Other mechanisms of the Human Rights Council include special commissions of inquiry and ad hoc working groups.**
- **NHRIs can provide important information to assist the work of these mechanisms.**
- **NHRIs can also contribute their expertise to the studies and other work undertaken by these mechanisms, including by participating in working groups developing new human rights instruments.**



191 See: www2.ohchr.org/english/law/disappearance-convention.htm.

192 Annex to GA Resolution 61/295 adopted on 13 September 2007.

193 Annex to GA Resolution 63/117 adopted on 10 December 2008.

194 See: www2.ohchr.org/english/bodies/hrcouncil/OEWG/index.htm.

195 See: www2.ohchr.org/english/bodies/hrcouncil/education/1stsession.htm.

196 See: www2.ohchr.org/english/bodies/hrcouncil/military_security_companies.

Chapter 10:

The treaty-based system:

An overview

KEY QUESTIONS

- **What is the treaty-based system?**
- **What are the human rights treaties?**
- **What are the treaty monitoring bodies?**
- **What roles can NHRIs play in the work of the treaty monitoring bodies?**



1. INTRODUCTION

The first component of the international human rights system is the United Nations (UN) Charter-based system. The second component is the treaty-based system.¹⁹⁷ The Charter-based system applies equally to all UN Member States, by virtue of their membership of the UN and the obligations they acquired on ratifying the UN Charter. The treaty-based system, which is built on a series of nine separate but related human rights treaties, applies on a treaty-by-treaty basis and only to those States that have ratified that treaty. Nonetheless, every State has ratified at least one human rights treaty and the great majority of States have ratified at least seven of them. So the treaty-based system has universal elements too, as every State is involved in one way or another.

2. THE TREATIES

The nine core human rights treaties that constitute the treaty based system are:

- International Covenant on Civil and Political Rights (ICCPR) 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984
- Convention on the Rights of the Child (CRC) 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990
- Convention on the Rights of Persons with Disabilities (CRPD) 2006
- Convention for the Protection of All Persons from Enforced Disappearance (CPED) 2006.

¹⁹⁷ For an overview of the treaty system, see: www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf.

In addition there are another nine treaties that are Optional Protocols to these core treaties. They are supplementary treaties.

- Optional Protocol to the International Covenant on Civil and Political Rights 1966
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989
- Optional Protocol of the Covenant on Economic, Social and Cultural Rights 2008
- Optional Protocol to the Convention on the Elimination of Discrimination against Women 1999
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002 (OPCAT)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure¹⁹⁸
- Optional Protocol to the Convention on the Rights of Persons with Disabilities 2006.¹⁹⁹

3. THE TREATY MONITORING BODIES

Each of the nine core treaties has its own treaty monitoring body (TMB) that promotes the performance of treaty obligations by States parties.²⁰⁰ In addition, the OPCAT has its own treaty committee, the Subcommittee on Prevention of Torture, that carries out the responsibilities given to it in the Optional Protocol. In all cases but one, the treaty itself establishes the TMB. The exception is the Committee on Economic, Social and Cultural Rights, which was established by a decision of the UN Economic and Social Council (ECOSOC).²⁰¹

TMBs have various functions given to them by the treaties. These functions can vary somewhat from treaty to treaty. In general the nine treaty bodies under the core treaties:

- promote ratification and implementation of the treaty
- receive periodic reports from States parties and examine the States parties on the basis of those reports
- issue guidance to States parties on the interpretation and implementation of the treaty
- receive and give advisory opinions on individual complaints of violation of the treaty where the State party has accepted that jurisdiction of the committee²⁰²
- hold general discussion days on themes arising under the treaty.

The TMBs are legal, technical bodies, not political bodies. Their members are independent human rights experts who serve on an unpaid, honorary basis in their personal capacities. They are not State representatives and they cannot be directed by their Governments or anyone else. In fact they are required to be independent and to act independently. They are elected by the States parties to the particular treaty. They are elected on a rotational basis so that there is never a complete turnover of members.

198 The Optional Protocol to the CRC on a communications procedure was approved by the UN General Assembly on 19 December 2011. It is now open for signature. It will come into effect when ratified by ten States.

199 The Optional Protocol to the CRPD was approved by the UN General Assembly on 13 December 2006. It entered into force on 3 May 2008.

200 See table 10.1 on p. 66 of this manual.

201 The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the ICESCR.

202 Except currently the Committee on the Rights of the Child. On 19 December 2011, the UN General Assembly adopted a new Optional Protocol to the CRC to give this Committee a complaint function similar to that of other treaty bodies. The Optional Protocol can be expected to come into effect within two or three years.

The members of TMBs are elected for a term of four years, with half the number of members of each TMB being elected each two years.

Each treaty contains its own provisions for election and for eligibility but in general TMB members should be persons of:

- high moral character
- recognized competence in the particular field of human rights.²⁰³

In addition, some treaties provide that in electing members to TMBs States parties should give consideration to:

- acknowledged impartiality
- equitable geographical distribution
- representation of the different forms of civilization
- representation of the principal legal systems.

TMB membership varies from ten to 23 members.

Each TMB meets for two or three sessions each year, each session being of two or three weeks.



Treaty monitoring body meeting room. Photo by Benjamin Lee/Asia Pacific Forum of National Human Rights Institutions.

203 Article 28; ICCPR.

Table 10.1: Treaty monitoring bodies²⁰⁴

Human rights treaty body	Founding treaty	Optional protocol(s) to founding treaty	Date established	Current number of members	Periodicity of reporting	Sessions
Human Rights Committee	International Covenant on Civil and Political Rights (ICCPR)	Optional Protocol to the International Covenant on Civil and Political Rights (which allows for individual complaints) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	1977	18	Three-to-five-yearly, at discretion of Committee	Three sessions a year of three weeks each
Committee on Economic, Social and Cultural Rights	International Covenant on Economic, Social and Cultural Rights (ICESCR)	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (which allows for individual complaints)	1985	18	None specified but usually five-yearly	Two sessions a year of three weeks each
Committee on the Elimination of Racial Discrimination	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		1970	18	Two-yearly	Two sessions a year of three weeks each
Committee on the Elimination of Discrimination against Women	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (which allows for individual complaints and inquiries)	1982	23	Four-yearly	Two or three sessions a year of two weeks each plus a week's pre-session working group on each occasion
Committee against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		1987	Ten	Four-yearly	Two sessions a year of two or three weeks each plus a week's pre-session working group on each occasion

²⁰⁴ Table developed from *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*; Office of the United Nations High Commissioner for Human Rights; 2008.

Subcommittee on Prevention of Torture	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (which establishes national and international monitoring mechanisms)	2006	Ten but to increase to 25 after the 50th State Party	No reporting requirements	Three sessions a year of one week each plus a week's pre-session working group on each occasion
Committee on the Rights of the Child	Convention on the Rights of the Child (CRC) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure	1991	18	Five-yearly, for Convention and for Protocols	Three sessions a year of three weeks each plus a week's pre-session working group on each occasion
Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	2004	14	Five-yearly	Two sessions a year
Committee on the Rights of Persons with Disabilities	Convention on the Rights of Persons with Disabilities	2008	18	Four-yearly	Two sessions a year
Committee on Enforced Disappearances	International Convention for the Protection of All Persons from Enforced Disappearance	2011	Ten	As directed by the Committee	Two sessions a year



A replica of a treaty dating from 1269 B.C., the earliest peace treaty whose text is known to have survived, was presented to the United Nations by Turkey. UN Photo by R. Grunbaum.

4. THE CONTRIBUTION OF NHRIs

NHRIs can be of great assistance to the TMBs in the performance of these functions.²⁰⁵ They can:

- recommend and facilitate ratification of treaties and acceptance of the TMB complaints jurisdiction by their State
- advocate for the incorporation of international and regional standards in domestic law and their application in policy and practice
- monitor the State's fulfilment of international human rights treaties under domestic law
- provide TMBs with information to assist in the consideration of State reports and support the implementation of TMB recommendations arising from that consideration
- contribute views and information to the other processes of the TMBs, for example, in relation to developing recommendations and comments on the interpretation of the treaties and to the general study or discussion days on critical issues.

Currently, the status granted to NHRIs and the nature and scope of their participation in the work of the TMBs varies.²⁰⁶ Each TMB has its own rules and approach. Three committees have issued general comments on NHRIs:

- the Committee on the Rights of the Child²⁰⁷
- the Committee on Economic, Social and Cultural Rights²⁰⁸
- the Committee on the Elimination of Racial Discrimination.²⁰⁹

205 For an overview of NHRIs' interaction with the TMBs, see *Information note: NHRIs interaction with the UN Treaty Body System*; National Institutions and Regional Mechanisms Section, OHCHR; 5 April 2011; see: <http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx>.

206 *Information note: NHRIs interaction with the UN Treaty Body System*; National Institutions and Regional Mechanisms Section, OHCHR; 5 April 2011; p. 5; see: <http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx>.

207 General Comment 2; see: www2.ohchr.org/english/bodies/crc/docs/GC2_en.doc.

208 General Comment 10; see: www2.ohchr.org/english/bodies/cescr/comments.htm.

209 General Comment 17; see: [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4872085cc3178e3bc12563ee004beb99?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4872085cc3178e3bc12563ee004beb99?Opendocument).

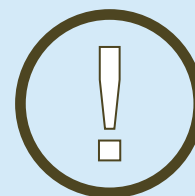
The Committee on the Elimination of Racial Discrimination has also incorporated NHRIs into its working methods and rules of procedure.²¹⁰

Table 10.2: The roles of NHRIs

TMB function	NHRI role
Promotion of ratification of the treaty	<ul style="list-style-type: none"> • Advocacy with the Government for ratification and implementation • Community education and promotion of the treaty
Examination of the State report	<ul style="list-style-type: none"> • Contribute to the development of the State report • Contribute to the list of issues • Participate in pre-sessional meetings • Prepare parallel reports • Participate in the session • Promote the concluding observations and the recommendations
Interpretation of the treaty	<ul style="list-style-type: none"> • Propose a general comment or general recommendation • Participate in days of general discussion • Provide submissions on draft texts
Individual complaints	<ul style="list-style-type: none"> • Provide assistance to complainants
Inquiries	<ul style="list-style-type: none"> • Submit information
Early warning or urgent action	<ul style="list-style-type: none"> • Submit information
Follow-up	<ul style="list-style-type: none"> • Monitoring • Submit information

KEY POINTS: CHAPTER 10

- **The treaty-based system is the second component of the international human rights system. It is based on treaties and so binds only those States that are parties to each of the treaties.**
- **There are nine core human rights treaties and a large number of supplementary human rights treaties.**
- **Each of the nine core treaties and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has a specialist committee of independent human rights experts, known as a treaty monitoring body, to promote the treaty, monitor State compliance with the treaty obligations and, in most cases, investigate complaints of violations of the treaty.**
- **All NHRIs can participate in all aspects of the work of the treaty monitoring bodies.**



210 See: www2.ohchr.org/english/bodies/cerd/workingmethods.htm#B and [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/cb35dcd69a1b52a3802564ed0054a104?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/cb35dcd69a1b52a3802564ed0054a104?Opendocument).

Chapter 11:

Treaty monitoring bodies: Monitoring compliance

KEY QUESTIONS

- **How do the treaty monitoring bodies monitor compliance with the treaties?**
- **What is the process by which States parties are examined on their compliance?**
- **What are the results of the examination of States parties?**
- **What roles can NHRIs play in the treaty monitoring bodies' examination of compliance of States parties?**
- **What are the roles of NHRIs as national implementation mechanisms under the Optional Protocol to the Convention against Torture and the Convention on the Rights of Persons with Disabilities?**



1. INTRODUCTION

The most important function of the treaty monitoring bodies (TMBs) is to monitor States' compliance with obligations under the human rights treaties. Most of their work is monitoring and most of their meeting time is allocated to monitoring. They have three processes by which the monitoring function is performed:

- the receipt and examination of State reports on implementation of the treaties and responding with conclusions and recommendations
- reviews of the performance of States that do not submit reports
- inquiries into particular situations of concern.

NHRIs can assist the TMBs in many ways in each of these processes.²¹¹ In general, the opportunities for involvement are open to all NHRIs and not only to those with "A status" accreditation.

2. THE REPORTING PROCESS

Every State party to a human rights treaty has an obligation to report periodically to the relevant TMB on its implementation of its obligations under the treaty.²¹² The TMB examines the report in the light of other information it receives, forms its own conclusions on the State's achievements and deficiencies, and makes recommendations. The process is one of constructive dialogue with the State, not confrontation or judgement. Its purpose is to assist the State to improve its compliance with the treaty and its performance of its human rights obligations.

211 In November 2007, an international roundtable was held in Berlin to discuss the role of NHRIs and TMBs. The report of that roundtable provides guidance on their interaction. See: HRI/MC/2007/3; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/403/62/PDF/G0740362.pdf?OpenElement>. For an overview of NHRIs' interaction with the TMBs, see *Information note: NHRIs interaction with the UN Treaty Body System*; National Institutions and Regional Mechanisms Section, OHCHR; 5 April 2011; <http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Pages/default.aspx>.

212 See: ICCPR (article 40); ICESCR (articles 16–17); ICERD (article 9); CEDAW (article 18); CAT (article 19); CRC (article 44); ICRMW (article 73); CRPD (articles 35–36); CPED (article 29); Optional Protocol to the CRC on the involvement of children in armed conflict (article 8) and Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (article 12).

The reporting process is a cycle with distinct stages:

- preparation and submission of the State report
- preparation and submission of other information
- preparation of the list of issues and questions presented to the State under consideration for closer study
- briefing the TMB
- interactive dialogue with the State
- preparation and release of the TMB's concluding observations and recommendations
- State response to the concluding observations and recommendations
- implementation and follow up.

2.1. Preparation and submission of the State report

The TMBs have issued guidelines to assist States in the preparation of their reports. The guidelines are designed to ensure that reports are presented in a uniform manner so that TMBs and States parties can obtain a complete picture of the situation of each State party with respect to the implementation of the relevant treaty.²¹³

In 2005, the joint meeting of TMBs adopted common, or “harmonized”, guidelines.²¹⁴ These guidelines encourage States to prepare and submit reports in two parts:

- a Common Core Document (CCD) that contains basic information for all TMBs about the State, its constitutional and legal systems, its political system and basic demographic statistics
- a treaty-specific document.

The CCD should contain:

- general information about the reporting State;
 - demographic, economic, social and cultural characteristics of the State
 - constitutional, political and legal structure of the State
- general framework for the protection and promotion of human rights;
 - acceptance of international human rights norms
 - legal framework for the protection of human rights at the national level
 - framework within which human rights are promoted at the national level
 - reporting process at the national level
 - other related human rights information
- information on non-discrimination and equality and effective remedies;
 - non-discrimination and equality
 - effective remedies.

213 HRI/MC/2005/4; para. 18.

214 *Harmonized guidelines on reporting to the international human rights treaty monitoring bodies*; see HRI/MC/2006/3 or HRI/GEN/2/Rev.6. These guidelines, comprising guidelines for a Common Core Document and treaty-specific documents, were accepted by the fifth inter-committee meeting and the eighteenth meeting of chairpersons of human rights treaty bodies in June 2006. Six committees (the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee on Migrant Workers, the Human Rights Committee and the Committee on the Rights of the Child) have revised their guidelines for treaty-specific reports to complement the guidelines for the Common Core Document; see: HRI/ICM/2011/4; para. 19.

Each TMB has issued its own guidelines for the treaty-specific document.²¹⁵ In general they require the State report to contain information relating to the State's implementation of the specific treaty.²¹⁶ In their guidelines, some TMBs recommend that States take each article in the treaty in turn and report on its implementation. Others group related articles and require reporting on the implementation of each group. Some TMBs have separate guidelines for initial and periodic reports.

The Human Rights Committee has begun a practice of identifying in advance key articles in the ICCPR or issues arising under the ICCPR and requiring States to report only in relation to those articles or issues.²¹⁷ This practice is not being applied to initial reports of States parties or to periodic reports already sent to the Committee for consideration or when the Committee deems that particular circumstances within a State warrant a full report.²¹⁸

If possible, the CCD should not exceed 60 to 80 pages; initial treaty-specific documents should not exceed 60 pages; and subsequent periodic documents should be limited to 40 pages.²¹⁹

The preparation of the State report is a State responsibility. It should not be assigned to an NHRI. Unless the State itself takes on full responsibility for the report, it will not be committed to the contents of the report. However, the NHRI can and should “contribute” to the State report “with due respect for their independence”.²²⁰ The Paris Principles see this as a core responsibility of NHRIs. The requirement of respecting the independence of the NHRI implies that the NHRI should contribute in an advisory capacity, without taking the State's responsibility for determining the content of the report and without detracting from the NHRI's ability to present its own information to the particular TMB.



After receiving the State report, the TMB may set the date for its interactive dialogue with the State and a timetable for the period up until then. The timetable can include deadlines for the submission of other information; the preparation of the list of issues and questions; formal written responses to the list of issues and questions; and any other preliminary steps. The NHRI should ensure that it is aware of any timetable so that it is able to participate effectively at each step, should it decide to do so.

2.2. Preparation and submission of other information

A TMB has little capacity of its own to gather information and analysis as part of the review of a State's compliance with a human rights treaty. It therefore has to rely on information provided by others. UN agencies provide important information but most of the material submitted to a TMB, apart from the State report, comes from the NHRI and from NGOs.

215 HRI/GEN/2 contains the treaty specific guidelines of each TMB. It is updated regularly.

216 HRI/MC/2006/3; para. 60.

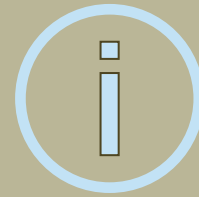
217 CCPR/C/99/4.

218 CCPR/C/994.B.

219 HRI/MC/2006/3; para. 19.

220 Paris Principles; para. 3(d).

NHRIs are encouraged by the TMBs to contribute their own information, analysis and views to TMBs, consistent with their responsibility under the Paris Principles “[t]o cooperate with the United Nations and any other organization in the United Nations system”.²²¹ As official and authoritative institutions, NHRIs are able to provide reliable information and credible views.



Usually the NHRI will provide its information after the State report has been submitted. It is then in a position to respond to the State report, correcting or otherwise commenting on information in the State report and filling its gaps and deficiencies. This kind of response is called a “parallel report”. It is not a substitute for the State report but a supplement to it.

The NHRI’s parallel report will be most helpful to the TMB if it deals comprehensively with the matters the TMB wants addressed, that is, if it follows the same reporting guidelines and format as the State report. This is a demanding exercise but valuable for the monitoring process, if the NHRI has the capacity to contribute in this way. It provides additional credible information and analysis for the TMB and enables it to make a direct comparison between what the State says and what the NHRI says. Nonetheless, if the NHRI does not have the capacity to prepare a comprehensive parallel report, then a parallel report that addresses only the issues that the NHRI sees as most important or as most relevant to its own work, is still of value to the TMB.

NHRI parallel reports should:

- be objective and based on factual sources, not mere assertions or subjective opinions
- be reliable
- not be abusive and not worded in or with an overtly partisan tone
- provide information specific to the treaty
- be structured following State reports guidelines
- give a clear indication of the provisions breached and in what way
- propose recommendations that the TMB should make to the State at the end of the examination.

The preparation and submission of a parallel report by an NHRI has clear positive results in that:

- it encourages more honest State reporting
- it encourages better State representation at the TMB’s oral interactive dialogue with the State
- it enables the identification of a better and more relevant list of issues and questions to be presented to the State prior to the interactive dialogue
- it provides more significant questions for discussion during the interactive dialogue.

Some TMBs set deadlines for the submission of parallel reports, while others do not. In either case, the earlier the parallel report is submitted, the more useful it will be. The date for the interactive dialogue with the State is usually set soon after the State report is received. The TMB will need as much time as possible before that event to examine and review all the information it receives so that the dialogue is as constructive as possible. NHRIs are encouraged, therefore, to submit their information within two or three months of the submission of the State report.

221 Paris Principles; para. 3(e).

2.3. Preparation of the list of issues and questions for closer study

After receiving the State report and before the interactive dialogue with the State, the TMB appoints one or more of its members to take a leadership role in relation to each State under the monitoring procedure. This member, called a rapporteur on the particular State, is expected to be fully informed on the State's situation, to be on top of all the information submitted for the review, to be closely involved in the preparation of the list of issues and questions to the State and then to lead the interactive dialogue on behalf of the TMB.

The TMB prepares a list of issues and questions, arising from the State report, that will be the focus of the examination of the State. The issues and the questions are identified from the State's report and other information available to the TMB, including the NHRI's parallel report if it is available by then.

An NHRI can contribute to the preparation of the list of issues and the questions, either through its parallel report or through a separate submission to the TMB.



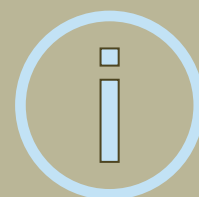
If the parallel report will not be available until close to the interactive dialogue, a separate short submission proposing issues and questions will be useful in briefly informing the TMB as to what the NHRI sees are the most important human rights issues in the State and what questions arise for the NHRI from the State report.

If the list of issues and questions is made public before the NHRI has submitted its information, it may decide that the most useful contribution it can make is to provide its information and comments directly on each of the issues on the list and on the questions. Although this will not be as helpful to the TMB as a full parallel report, it is simpler, easier and quicker for the NHRI to respond at that stage in this way than to attempt to complete a full parallel report and have it to the TMB in time for it to be fully considered.

2.4. Briefing the TMB

The TMBs generally arrange oral briefing sessions with NHRIs and NGOs prior to the interactive dialogue with the State. With some TMBs this occurs at the session immediately preceding the session at which the State is to appear; so generally four to six months in advance. In other TMBs it is held during or immediately before the session at which the State is to appear, perhaps the week before the formal session begins or during the session but a few days before the State appears. Whenever the briefing occurs, it is usually an informal occasion and does not constitute a formal meeting of the particular TMB. These briefings are important occasions in which TMB members can receive further information about the State and during which they can question the NHRI and NGO representatives about the contents of the various reports and submissions that have been provided to the members. The briefings will assist the TMB to shape the interactive dialogue.

The NHRI should ensure that it thoroughly briefs the TMB member who is rapporteur for the State. The rapporteur will lead the interactive dialogue and, later, the preparation of the concluding observations and recommendations.

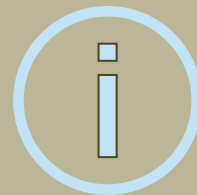


2.5. Interactive dialogue with the State

All TMBs invite the State to meet with the TMB in open session to discuss the State report and more generally the State's compliance with the obligations under the treaty. This interactive dialogue is constructive, not confrontational, and a means to enable the TMB to understand better the situation in the State and the challenges the State faces in fully implementing its treaty obligations. The dialogue assists the TMB to make its conclusions about the State's performance and to formulate its recommendations to the State. During the dialogue, members of the TMB ask questions or make comments and seek responses from the State delegation. The dialogue is led by the TMB member who is rapporteur for the State, however all members of the TMB make comments and ask questions. The dialogue with each State usually takes place over two periods of three hours; six hours in total. The two periods will often be the afternoon of one day and the morning of the next, so that overnight the State representatives can gather additional information to respond to TMB members' questions and the TMB members can consider the State's responses and comments.

States are encouraged to send to the interactive dialogue representatives who are qualified to answer the questions and discuss the issues raised by the TMB members. Geneva-based diplomats may not be sufficiently informed to be able to do so and so may be of limited assistance to the TMB. Many States send large delegations that may be headed by a Minister or another senior official and include political leaders and civil servants. The selection of individual representatives may be influenced by the list of issues and questions the TMB provides in advance so that there are persons in the delegation with the knowledge and expertise to address those issues and questions.

The interactive dialogue is a public process that NHRI and NGO representatives may attend. The presence of an NHRI representative can promote a frank and honest exchange between the TMB members and the State delegation. The State representatives will be aware that their answers and comments are being listened to and reported back to the NHRI. The NHRI can also brief TMB members during the interval between the two periods of the dialogue, providing additional information as required.



Some TMBs now permit NHRI representatives to make an oral presentation in the formal session. The TMBs for ICESCR, ICERD and CMW permit NHRIs to make their statements during the official examination of their State's report, if the State delegation has no objections.²²² These opportunities are not given to NGOs.

In addition to these formal opportunities to assist the TMB, NHRI representatives who are present for the interactive dialogue can also have informal opportunities. For example, they can speak with TMB members during the breaks in formal sessions and at other times. The opportunities for informal contacts are considerable.

²²² The procedure for the Committee on Economic, Social and Cultural Rights seems to be ad hoc rather than formalized. The procedure for the Committee on the Elimination of Racial Discrimination seems to be restricted to "A status" NHRIs. The procedure for the Committee on Migrant Workers adopted at its 36th meeting (fourth session) seems to be to allow any NHRI as long as the reporting State does not object.



The Economic and Social Council held treaty body strengthening consultations for States party to international human rights treaties. Pictured are representatives from participating countries. UN Photo by Paulo Filgueiras.

2.6. Preparation and release of the TMB's concluding observations and recommendations

The TMB's consideration of the State report and other information (including the NHRI's parallel report and briefing) and the interactive dialogue with the State's delegation result in the preparation and release of the TMB's concluding observations and its recommendations. The TMB's concluding observations generally have three parts:

- its comments on achievements of the State
- its comments on the deficiencies in the State's performance and challenges in complying with the treaty
- its recommendations.

The TMB member who is appointed rapporteur for the State leads the preparation of the observations and recommendations.

In recent years, TMBs frequently comment on the establishment in the particular State of an NHRI fully compliant with the Paris Principles.

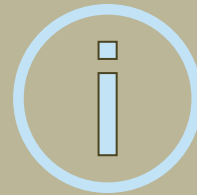
- Where there is no NHRI, the TMB will recommend that one be established.
- Where there is an NHRI but it does not have "A status", the TMB will recommend that all necessary action be taken so that the NHRI complies fully with the Paris Principles.
- Where there is an "A status" NHRI, the TMB may recommend that it be strengthened and that the Government be more supportive and give greater weight to its recommendations.

In these ways the TMB's concluding observations and recommendations can be of direct assistance to the NHRI and its work.

More broadly, the TMB's concluding observations and recommendations will address many of the issues that the NHRI has raised in its parallel report and briefing and in any comments before the TMB. The concluding observations, therefore, will support the NHRI's work and provide an international indication of human rights priorities for the attention of the State and of the NHRI itself.

The NHRI can assist in promoting broad knowledge of and support for the TMB's concluding observations and recommendations. Immediately after their release, the NHRI can distribute them to:

- **key Ministers and senior government officials**
- **members of parliament**
- **the media**
- **human rights NGOs**
- **relevant community organizations**
- **relevant academics and other experts.**



2.7. State response to the concluding observations and recommendations

The TMB asks and expects the State to provide a formal response to the concluding observations and recommendations within a reasonable period after their release. Each TMB has its own follow up mechanism but, in general, there is a member or several members appointed for this. This member will provide such assistance as the State wishes in preparing its response. The NHRI too can assist the State in the preparation of the response, encouraging it to be as positive as possible and to respond with clear commitments to implementation.

2.8. Implementation and follow up

Implementation is the key objective of the whole monitoring process, leading to better compliance with the treaty and better performance of treaty obligations. Implementation is a State responsibility but international assistance may be required, especially for least developed and developing States. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Development Programme (UNDP) may be able to provide assistance with implementation of recommendations made by TMBs.

The NHRI can both promote and monitor implementation. It can promote implementation through:

- **informing the community and relevant key decision-makers about the recommendations**
- **building community support for implementation**
- **advocating with the Government and the parliament for implementation.**

It can monitor implementation through its regular programme of work and report to the TMB on the results of its monitoring. The TMB member with responsibility for follow up will seek information on implementation and the NHRI can ensure that that member is kept well-informed and is pressing the State for positive action.



In the next reporting cycle, the State is expected to advise the TMB what it has done in response to the recommendations of the previous concluding observations and recommendations. The NHRI should include its assessment of this in its parallel report to the TMB. In this way, the treaty monitoring cycle ensures both regular monitoring of compliance and a re-commitment to full performance of treaty obligations.

3. REVIEW PROCEDURE

The monitoring procedure provides a mechanism by which States are required to account on a regular basis for the performance of their obligations under the core human rights treaties. Most States report regularly, meeting their reporting obligations under the treaties, even if they are often behind in doing so. Some States, however, have had poor records in reporting, either becoming overdue by many years in the submission of reports or not submitting reports at all. As a result, the TMBs became concerned that these States were not meeting a fundamental obligation under the treaties. States that met reporting obligations also became concerned that they were being subjected to scrutiny and often criticism, while other States, usually those with the worst records of human rights violations, were never examined.

Over the past decade, the TMBs have developed a review procedure whereby States can be examined for their performance of treaty obligations in the absence of a State report. A TMB can decide to undertake a review of a State whose report is significantly overdue. It will announce its decision to undertake a review, indicate the timetable for the review and request the State to submit a report by a designated date. The process of the review is the same in all other respects as for the examination of a State report. The NHRI and NGOs are able to submit their parallel reports and other information and to brief the TMB. The TMB will also invite the State to participate in an interactive dialogue and it will prepare and release concluding observations and recommendations at the end of the process.

The commencement of a review process is often enough to induce the State to prepare and submit its State report. Most States under review also participate in an interactive dialogue with the TMB. This process therefore encourages States to comply with their reporting obligations, that is, to submit a report and participate in the examination.

NHRIs can encourage their States to submit their reports on time. Where a State does not, the NHRI can engage with the TMB to enable the review to proceed. It can provide essential information for the process and ensure that the TMB is able to proceed in the absence of the State, if necessary. It can also promote the results of the examination to build domestic pressure on the Government to meet its obligations.

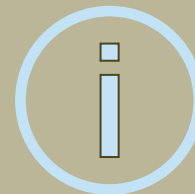


4. INQUIRY PROCEDURE

All but three of the TMBs have or will have a mandate to initiate inquiries, on their own initiative, if they receive reliable information of serious, grave or systematic violations of the particular treaty.²²³ These provisions only bind States that accept the TMB's jurisdiction for this, either under an optional provision in the core treaty or under an optional protocol. NHRIs should encourage their States to accept the jurisdiction by making the necessary declaration or ratifying the optional protocol, as relevant.

²²³ The Committee against Torture (under article 20, CAT); the Committee on the Elimination of Discrimination against Women (under article 10, Optional Protocol to CEDAW); the Committee on the Rights of Persons with Disabilities (under article 6, Optional Protocol to CRPD); and the Committee on Enforced Disappearance (under article 33, CPED). When two new Optional Protocols come into effect, the Committee on Economic, Social and Cultural Rights (under article 11, Optional Protocol to the ICESCR) and the Committee on the Rights of the Child (under article 13, Optional Protocol to the CRC on a communications procedure) will also have inquiry functions. After that time, only the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee on Migrant Workers will not have this jurisdiction.

The inquiry provision is activated by the TMB receiving reliable information of violations and then deciding to undertake an inquiry. An NHRI can communicate this information to a relevant TMB and request that it undertake an inquiry. Because of their status, NHRIs are sources of credible information and their assessment of the potential usefulness and effectiveness of an inquiry would be a strong influence on the TMB's decision-making.



This mandate generally includes an explicit function of making country visits as part of the inquiry process.²²⁴ To date, it has been very rare for a country visit to be undertaken by a TMB. Nonetheless, as this mandate develops, it may become more frequent. In that case, a TMB that decides to undertake a country visit would look to the NHRI for advice and assistance with the visit, including briefings before and during the visit and advice on its programme, both where to go in the country and what individuals and organizations to meet. The NHRI could also advise on the situation being examined and on what the TMB should recommend as a result of its visit.

The TMB with the broadest inquiry function and the most significant mandate for country visits is the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). A State party to the OPCAT must allow the Subcommittee to visit “any place under its jurisdiction and control where persons are or may be deprived of their liberty ... with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment”.²²⁵ One of the principal purposes of the Subcommittee is to visit places of detention and make recommendations.²²⁶

5. NATIONAL IMPLEMENTATION MECHANISMS

Two international human rights treaties specifically require the establishment or designation of national bodies to promote and oversee their implementation. This reflects the increasing international recognition of the importance of independent national mechanisms for the promotion and protection of human rights and of the roles of NHRIs established in accordance with the Paris Principles.

5.1. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Some NHRIs have been designated as “national preventive mechanisms” (NPMs) under the OPCAT.²²⁷ NPMs are to be independent mechanisms.²²⁸ In establishing them, States parties are to give due consideration to the Paris Principles.²²⁹

NPMs are to have the following functions:

- (a) to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment

224 The function is implied in relation to the CAT but explicit for all other committees.

225 OPCAT; article 4.

226 OPCAT; article 11.1(a).

227 OPCAT; article 17.

228 OPCAT; article 18.1.

229 OPCAT; article 18.4.

(b) to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment

(c) to submit proposals and observations concerning existing or draft legislation.²³⁰

States parties are to grant their NPMs:

(a) access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location

(b) access to all information referring to the treatment of those persons as well as their conditions of detention

(c) access to all places of detention and their installations and facilities

(d) the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information

(e) the liberty to choose the places they want to visit and the persons they want to interview

(f) the right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.²³¹

NPMs have a particular relationship with the Subcommittee on Prevention of Torture and can be especially useful sources of information and advice to the Subcommittee, including in relation to the desirability of the Subcommittee making a country visit. The Subcommittee has published guidelines for NPMs²³² and a more detailed “self-assessment tool” for their operation.²³³

NHRIs have been designated as the NPM in the Maldives and as the principal NPM in New Zealand.²³⁴ The Philippines has ratified the OPCAT but has not yet designated an NPM; it has indicated an intention to designate its NHRI.

5.2. Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) also provides specifically for the establishment or designation of an independent national mechanism to promote, protect and monitor implementation of the CRPD, taking into account the Paris Principles.²³⁵ Unlike the OPCAT, the CRPD does not provide guidance on what the nature and role of the mechanism should be. However, because of their national monitoring role, these mechanisms should make a significant contribution to international treaty monitoring by the TMB discussed in this chapter of the manual. OHCHR has produced a guide to monitoring the CRPD in its professional training series.²³⁶

230 OPCAT; article 19.

231 OPCAT; article 20.

232 *Guidelines on National Preventive Mechanisms*; Subcommittee on Prevention of Torture; 9 December 2010; see: www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm.

233 *Analytical self-assessment tool for National Preventive Mechanisms*; Subcommittee on Prevention of Torture; 6 February 2012; see: www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm.

234 See: www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm.

235 CRPD; article 33.2.

236 *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors*; Professional Training Series No. 17, OHCHR; 2010.



Treaties waiting to be signed, of the Convention on the Rights of Persons with Disabilities, by representatives of Member States, which aims to secure the rights of some 650 million persons with disabilities around the world. UN Photo by Paulo Filgueiras.

KEY POINTS: CHAPTER 11

- **Treaty monitoring bodies monitor the compliance of each State party with its obligations under the relevant treaty, through a process of examination of State reports, dialogue with State delegations and the development of concluding observations and recommendations.**
- **NHRIs, regardless of their accreditation status, can contribute to all stages of the monitoring process, including submitting parallel reports and other information to the treaty monitoring bodies, providing briefings for the members of the treaty monitoring bodies, attending the interactive dialogue with the State, proposing recommendations for the consideration of the treaty monitoring bodies and promoting and monitoring implementation of their recommendations.**
- **The treaty monitoring bodies often make recommendations relating to the establishment and strengthening of NHRIs and support for the work of NHRIs.**
- **NHRIs can propose to treaty monitoring bodies that a review be undertaken of a State that fails to meet its reporting obligations.**
- **NHRIs can also be designated as national implementation mechanisms under the CRPD and the OPCAT.**

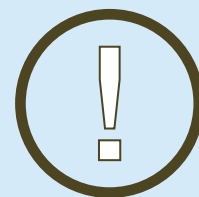
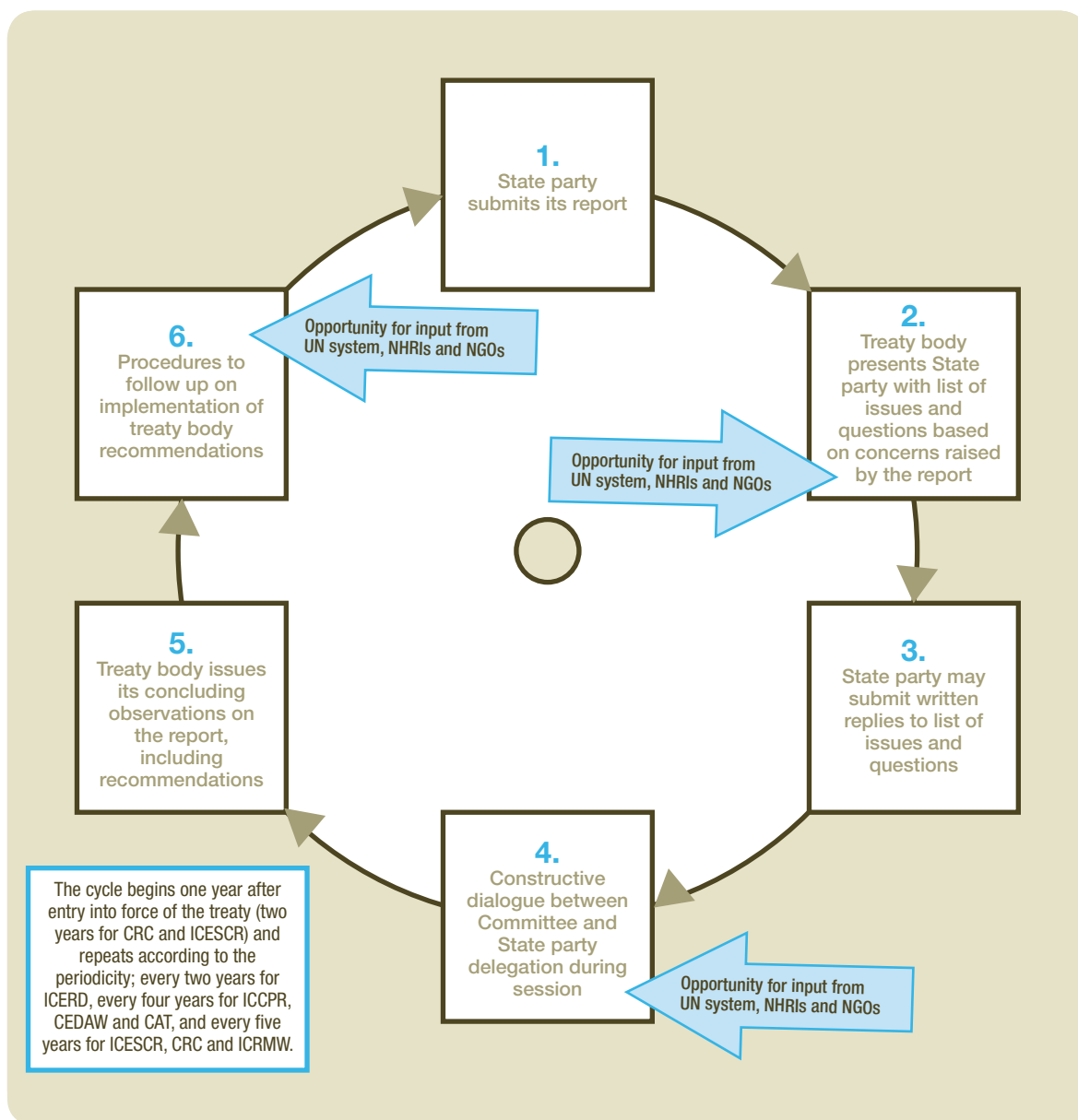


Figure 11.1: The reporting cycle under the human rights treaties²³⁷



237 See: www2.ohchr.org/english/bodies/docs/ReportingCycle.gif.

Chapter 12:

Treaty monitoring bodies: Interpreting treaties

KEY QUESTIONS

- **What is the role of the treaty monitoring bodies in interpreting treaties?**
- **How do they undertake this role?**
- **How can NHRIs contribute to this?**



1. INTRODUCTION

The second significant function of treaty monitoring bodies (TMBs) is assisting States parties to the human rights treaties to interpret and apply them. The treaties are usually drafted in fairly general terms and so the task of interpretation and application to the specific circumstances of States can be challenging. The views of the TMBs are not binding on States parties but advisory. Nonetheless, they are highly influential. They can assist NHRIs in their work to promote and monitor State performance of human rights obligations and to provide advice to the State on implementation.

2. GENERAL COMMENTS AND GENERAL RECOMMENDATIONS

TMB views on interpretation are provided through statements called “general comments” in some TMBs and “general recommendations” in others.²³⁸ These statements can discuss the interpretation of a particular article of the treaty or a more general issue, such as the application of the treaty in respect of a particular population group or the nature of State obligations under the treaty.

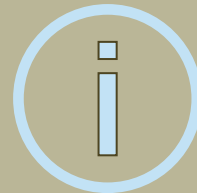
TMBs develop their general comments and general recommendations through an open, consultative process. Often a TMB will convene a day of thematic discussion of an issue of significance to the treaty as an initial consideration of the dimensions of the issue. NHRIs and NGOs are invited to participate in the day of discussion and contribute their views, based on their experiences. In this way, the experience of those working on the ground and matters of interpretation requiring clarification are brought to the TMB’s attention. After the day of discussion, the TMB may decide that the issue should be addressed through a general comment or general recommendation. In that case, it will appoint one or more of its members to take responsibility for the development of a draft and the draft will be released for public comment. At this point, NHRIs can again contribute by offering comments on the draft. Some general comments and general recommendations will go through several rounds of drafting and consultation before being adopted by the TMB.

²³⁸ The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers and the Committee on the Rights of Persons with Disabilities issue general comments. The Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women issue general recommendations. The Committee on Enforced Disappearances has only recently been established and has foreshadowed that it will issue general comments in future. All the general comments and general recommendations are published together every four years. See: HRI/GEN/1/Rev.9 (Vol. II).

NHRIs can be both contributors to and beneficiaries of the development of general comments and general recommendations. They can contribute by:

- **proposing to a TMB the need for an interpretative statement on an article or issue arising under a treaty**
- **participating in the days of discussion held by TMBs**
- **commenting on draft general comments and general recommendations released by the TMBs**
- **advising key government officials and NGOs when a new general comment or general recommendation is adopted by a TMB and what the implications of it are for the country.**

NHRIs can benefit from the development of general comments and general recommendations because of the assistance these statements provide in understanding and applying the terms of the treaty domestically. NHRIs are, or should be, the domestic experts on human rights and international human rights law and they need and want to be fully informed about the law and its application. General comments and general recommendations therefore inform the work of NHRIs and add authority to their views and their advice to the Government.

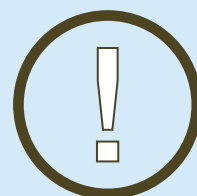


3. OTHER MEANS OF INTERPRETATION

TMBs also assist interpretation of treaties through their concluding observations and recommendations on State reports. Issues of interpretation and application of a treaty often arise in the course of monitoring State performance and the TMB may decide to comment on the issue in the concluding observations. For example, there may be disagreement within a State about whether the State's practices of detention constitute arbitrary detention or inhumane detention and the TMB, in its examination of the State, can decide to comment on this issue. An NHRI can raise these issues for the attention of the TMB and seek its views. The NHRI can then promote the TMB's views domestically, applying them in its own monitoring and investigations work.

KEY POINTS: CHAPTER 12

- **Treaty monitoring bodies are the most authoritative interpreters of the treaties for which they are responsible.**
- **They offer their interpretations through their general comments or general recommendations, their concluding observations on their examination of State compliance and their jurisprudence on individual complaints.**
- **NHRIs, regardless of accreditation status, can contribute to the development of general comments and general recommendations by participating in general discussions of legal issues arising under the treaties convened by the treaty monitoring bodies; commenting on drafts of the general comments or general recommendations; and providing comments in the context of the treaty bodies' monitoring functions.**



Chapter 13:

International complaint procedures

KEY QUESTIONS

- **What mechanisms are there for the international investigation and resolution of individual complaints of human rights violations?**
- **How do these mechanisms operate?**
- **What remedies do they provide?**
- **What roles can NHRIs play in these mechanisms?**



1. INTRODUCTION

When the Commission on Human Rights was established in 1946, it had no mandate to inquire into human rights violations. In fact, in 1947, it adopted an explicit statement, endorsed by the Economic and Social Council (ECOSOC), to the effect that it “recognized that it had no competence to deal with any complaint about violations of human rights”.²³⁹ At that time, there was no international body with authority to consider and deal with individual complaints. States firmly opposed the very idea, even though academics and activists advocated for an international human rights court. Twenty years later, in 1967, the Commission was specifically authorized by the ECOSOC, with the encouragement of the General Assembly (GA), to start to deal with violations of human rights through open debate on country situations.²⁴⁰ Then, in 1970, it was authorized by the ECOSOC to receive and inquire into complaints of consistent patterns of violation of human rights.²⁴¹

Now, over 60 years later, there are many international complaints mechanisms; the Human Rights Council (HRC) itself, the HRC’s special procedures (SPs) and also all the treaty monitoring bodies (TMBs).²⁴² Unfortunately, most of them are quite weak and of limited effectiveness. None of them provides a binding, enforceable, legal decision on a complaint. Nonetheless, they provide good and necessary international support – moral and political – for victims of violations.

In the international human rights system, a complaint of human rights violation is generally referred to as a “communication”.

2. MAKING A COMPLAINT

The various complaints procedures have certain common requirements for complaints. In general, a complaint has to be lodged by a victim but it is also possible for other persons and organizations to lodge a complaint on behalf of a victim. In each case, a complaint must provide:

- the name of the alleged victim(s)
- the name of the alleged perpetrator(s)

239 “Brief historic overview of the Commission on Human Rights”; OHCHR; see: www2.ohchr.org/english/bodies/chr/further-information.htm.

240 ECOSOC Resolution 1235 (XLII), adopted on 6 June 1967.

241 ECOSOC Resolution 1503 (XLVIII), adopted on 27 May 1970.

242 The provisions for the complaint handling mandate of the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child are yet to commence.

- the name of the person(s) or organization(s) submitting the communication
- the date and place of the incident that is the subject of the complaint
- a detailed description of the circumstances of the incident.

A complaint can be directed to a specific mechanism, such as the HRC complaints procedure, or a specific SP or a specific TMB. Alternatively, the complaint can be sent to the Office of the United Nations Human Commissioner for Human Rights (OHCHR) in Geneva, where staff will determine the most appropriate mechanism for the complaint and then refer it to that mechanism.

3. HUMAN RIGHTS COUNCIL COMPLAINT PROCEDURE²⁴³

3.1. The nature of the procedure

Although, when it was established, the former Commission in Human Rights was explicitly denied authority to deal with complaints of human rights violations, it received so many complaints that it was later given a limited mandate for this, known as the “1503 Procedure” after the ECOSOC resolution that authorized it.²⁴⁴ In establishing the HRC, the GA decided²⁴⁵ that the new body should maintain a complaints system.²⁴⁵ The HRC reviewed the 1503 Procedure during its institution building year (2006–07) and adopted, as part of its institution building package, a procedure that was little different.²⁴⁶

In discussing the HRC’s complaints system, it is important to recognize what the system is not. It is not a judicial process that results in a binding, enforceable determination of a complaint of a human rights violation. It does not provide remedies to victims and it does not punish perpetrators. It does not even make a public finding on whether there has been a violation. And it does not deal with individual complaints individually, but only collectively where they constitute “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms”.²⁴⁷ A “consistent pattern” can be established by one broad complaint that alleges and provides evidence of such a pattern or by a number of complaints of individual violations that together reveal the possibility of a “consistent pattern”. The procedure is a confidential procedure “with a view to enhancing cooperation with the State concerned”.²⁴⁸ It is intended to be “impartial, objective, efficient, victims-oriented and conducted in a timely manner”.²⁴⁹ However, in fact, it is subject to the politics of the HRC, takes several years to reach any conclusions (if at all) and cannot provide any remedy for individual victims. Nonetheless, it provides a useful way to bring a human rights situation to international attention and to build moral and political pressure on violating States to meet their human rights obligations.

3.2. Admissibility

To be admissible to the HRC complaint procedure, a complaint must:

- not be manifestly politically motivated or inconsistent with the UN Charter, the Universal Declaration of Human Rights and other human rights instruments
- give a factual description of the violations and the rights allegedly violated
- not be abusive
- be submitted by or on behalf of victims
- not be exclusively based on media reports

243 For information about the HRC’s complaints procedure, see: www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx.

244 Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, as modified by ECOSOC Resolution 2000/3 of 16 June 2000; cf Economic and Social Council Resolution 1235 (LXII).

245 GA Resolution 60/251; para. 6.

246 HRC Resolution 5/1, adopted on 18 June 2007.

247 HRC Resolution 5/1; para. 85.

248 HRC Resolution 5/1; para. 86.

249 HRC Resolution 5/1; para. 86.

- not be under investigation by another UN mechanism
- not be lodged until all domestic remedies have been exhausted, unless those remedies would be ineffective or unreasonably prolonged.²⁵⁰

The requirement that the complaint must not be under investigation by any other UN mechanism is an important one. If a complaint has been lodged with a TMB or an SP, then the HRC complaint procedure will not accept it. It is important, therefore, to assess in advance of lodging a complaint, what international mechanism is likely to be the most effective in pursuing the complaint and promoting a remedy.

The requirement of exhausting domestic remedies is also important and should be addressed in making the complaint. Under this requirement, a complainant cannot seek to engage the HRC complaints procedure unless and until she or he has tried and failed to obtain a remedy within the domestic legal system. In fact, all effective domestic remedies must have been “exhausted”, without success, before lodging a complaint with the HRC system. It is not necessary, however, to pursue every possible domestic remedy to its conclusion, no matter how ineffective it may be or how slow. A domestic remedy that is ineffective or unreasonably prolonged will be considered to have been exhausted and so will not prevent an international complaint being lodged.

In most cases, an NHRI is usually considered not to be an effective domestic remedy for human rights violations. Very few NHRIs have power to make binding, enforceable determinations of a judicial nature. An effective remedy is one that is binding and enforceable and permits a victim to obtain a legal judgement and reparations. Few NHRIs can provide this. So it is not necessary for a victim to pursue a complaint through an NHRI before engaging the HRC's system.



Spring at the United Nations in Geneva. UN Photo by Jean-Marc Ferré.

250 HRC Resolution 5/1; para. 87.

3.3. The procedure

The complaint procedure has two working groups with responsibilities for different aspects of the process:

- the Working Group on Communications, consisting of five independent experts selected by the HRC Advisory Committee from among its own members
- the Working Group on Situations, consisting of the representatives of five States, one from each regional grouping.

The procedure has four principal stages.

1. Complaints receive an initial screening for admissibility by the Chairperson of the Working Group on Communications and the secretariat to eliminate any that are “manifestly ill-founded or anonymous”.²⁵¹
2. The Working Group on Communications determines the admissibility of each complaint not screened out in stage one and makes an initial assessment of its merits.²⁵² Complaints found to be admissible and to reveal “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms” are referred by the Working Group on Communications to the Working Group on Situations.²⁵³
3. The Working Group on Situations investigates the substance of the complaints referred to it by the Working Group on Communications and reports to the HRC plenary meeting where it finds “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms”.²⁵⁴
4. The HRC discusses the report of the Working Group on Situations in a confidential session and decides on the basis of the report how to respond to complaints. It can decide to continue with confidential handling of the complaint or to hold a public debate on a situation in accordance with another procedure inherited from the former Commission on Human Rights.²⁵⁵

States seem willing to engage more with the HRC’s complaint procedure than with other international complaints procedures. They respond more frequently and more comprehensively to allegations contained in complaints and to other inquiries about complaints sent to them under this procedure, providing both information about the specific allegations and general information about the human rights situations. Three reasons are suggested for this:

- the confidentiality of the procedure, whereby States feel confident to provide frank responses without fear of exposure or public criticism
- the fact that the procedure is controlled by States, which places peer pressure on them to be seen to be cooperative and responsive
- the nature of the procedure as a politically-based, peer-review process, like the Universal Periodic Review, whereby States comment on the performance of other States within the State-based framework of the HRC, so ensuring political protection and support while a situation is being considered and then measured responses, if any response results, without the involvement of independent legal experts.

251 HRC Resolution 5/1; para. 94.

252 HRC Resolution 5/1; para. 95.

253 HRC Resolution 5/1; para. 95.

254 HRC Resolution 5/1; para. 98.

255 Economic and Social Council Resolution 1235 (LXII).

3.4. The results

The complaint procedure has a very limited range of results. When discussing the report of the Working Group on Situations, the HRC can decide:

- to discontinue considering the situation when further consideration or action is not warranted
- to keep the situation under review and request the State concerned to provide further information within a reasonable period of time
- to keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the HRC
- to discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of it
- to recommend to the OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the State concerned.²⁵⁶

Nonetheless, by placing States under the international scrutiny of their peers, the procedure contributes to States improving their compliance with their international human rights obligations.

An NHRI can play roles at different points in the complaint procedure. It can assist victims by advising them and NGOs of the procedure and the process of making and pursuing a complaint. It can lodge complaints itself with the HRC on behalf of victims. It can also provide information relating to a complaint to the Working Groups on Communications and on Situations and to the HRC itself, to assist in the assessment and handling of the complaint. It can encourage its Government to cooperate fully with the complaint procedure and to respond positively to recommendations made by the HRC under the complaint procedure.

Sometimes a Government seeks to have a complaint dismissed on the basis that the complainant has not exhausted all domestic remedies because she or he has not pursued a remedy through the NHRI. NHRIs should be diligent in ensuring that they are not used by States as a means to avoid accountability through the HRC's complaint procedure. Very few NHRIs have the power to make binding, legally enforceable decisions on complaints of human rights violations and to provide compulsory remedies and so they are not, and should not be seen as, effective domestic remedies. Where necessary, they should advise the Working Groups on Communications and on Situations of the limits on their powers and of their inability to provide an effective domestic remedy. This is critical to the integrity and credibility of the NHRI itself and of the HRC procedure.



256 HRC Resolution 5/1; para. 109.

4. SPECIAL PROCEDURES COMPLAINTS PROCEDURE²⁵⁷

4.1. Making a complaint

Some of the SPs, but not all, intervene with States on behalf of individuals whose human rights are allegedly being violated.²⁵⁸ The intervention can relate to a violation that has already occurred, is occurring or has a high risk of occurring. This process is less formal than the HRC's complaint procedure and the rules governing it are more flexible.

Complaints should include the standard basic information:

- the name of the alleged victim(s)
- the name of the alleged perpetrator(s)
- the name of the person(s) or organization(s) submitting the communication
- the date and place of the incident that is the subject of the complaint
- a detailed description of the circumstances of the incident.

4.2. Admissibility

The various SPs have different criteria for deciding whether and how to intervene. Generally those criteria include:

- the reliability of the source of the information
- the credibility of the information itself
- the detail provided.

Unlike the HRC's complaints procedure, the SPs' criteria do not require:

- a systemic pattern of violation
- the exhaustion of domestic remedies
- the exclusion of other UN complaints procedures.

SPs accept individual complaints without having to establish that they are part of a systemic pattern of violation. They deal with individuals and the experiences of individuals. They can accept and act on a complaint even if it is a matter that is unique and if, in all other respects, the State has a very good human rights record.

A complaint can be made to an SP while a remedy is still being pursued domestically or even if a domestic remedy has not been sought. This makes the SPs very well suited for urgent action where a violation is threatened or is continuing. They are able to act immediately, without waiting for the domestic system to deal with a matter. The complainant can then pursue the matter domestically while at the same time ensuring that it is under international oversight and monitoring.

A complaint can be made to more than one SP at the same time, if the subject matter of the complaint is relevant to more than one SP. Under these circumstances, the relevant SPs may decide to act jointly on the complaint rather than acting individually, with the risk of duplication and delay.

SPs can also accept complaints that are already being investigated by some other UN complaints system. So a complainant can pursue a complaint through several international mechanisms by first lodging the complaint with the HRC complaint procedure and having it accepted there as admissible

257 For information about the special procedures' complaints system, see: www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx.

258 The ability of an SP to take up individual complaints depends on the specific mandate. Some mandates do not include the function to take and investigate or inquire into complaints of actual or threatened human rights violation. Only those whose mandates permit this role are able to exercise it.

and then lodging it with a SP. This will not be appropriate for an urgent matter, however, as the initial admissibility stage of the HRC's complaint procedure may take some time and so delay action by the SP.

4.3. The procedure

When an SP receives a complaint, she or he will consider whether the complaint is admissible and, if so, whether it warrants action. If it is admissible and warrants action, she or he will usually write to the State concerned, providing the particulars of the complaint and seeking a response. The letter might also request that certain action be taken or not taken pending investigation of the allegations.

The SP may consider it necessary to go back to the complainant to seek further information before any decision can be taken on admissibility and possible action. If so, she or he could write on an interim basis to the State concerned, to advise the State of the receipt of the complaint and of the request to the complainant for further information and to request, on an interim basis, that no action be taken to the detriment of the complainant pending the determination of admissibility.

The SP will usually go back and forth between the complainant and the concerned State, seeking further information, inviting responses to allegations and assertions, and proposing actions to address the human rights issues raised in the complaint.

The SPs' complaints system is a more public system and more strongly based on international human rights law than the HRC's complaint procedure. Both aspects can be beneficial to victims of human rights violation or those at risk of violation. Because the process is more legally-based, it is far less subject to the politics of States and the compromises that entails. However, States can be less cooperative with and less responsive to SPs than they are with and to the HRC.

SPs can make public statements about a complaint at any stage of the procedure. They will often proceed confidentially until they are sure of the information they have received but, in situations of emergency, they are able to use public exposure as a means of placing pressure on States to stop or prevent violations. Publication, however, can entrench State defiance of the international system and discourage action to protect human rights, rather than encourage it. Complainants and SPs always have to make very difficult tactical decisions about which approach is likely to be more effective, with which States, at which times.



Palais des Nations with the flags of Member States. Photo by Benjamin Lee/Asia Pacific Forum of National Human Rights Institutions.

4.4. Urgent action

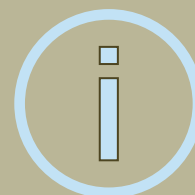
The SPs have the capacity to act quickly on urgent cases. They do not have to wait, for example, until domestic remedies are exhausted. They can help to internationalize a current issue and so play a preventive role to address the risk of violations that are beginning or likely. They receive large numbers of requests for urgent action and often these requests become lost in the bureaucracy of the OHCHR. When an NHRI makes a request to an SP for urgent action, it should send a copy of the request to the OHCHR's National Institutions and Regional Mechanisms Section and to the relevant OHCHR geographic section – for example, the Asia Pacific Section or the Middle East and North Africa Section – asking those sections to follow up the request urgently with the SP to whom it is sent.

4.5. The results

In the end, the SPs cannot compel States to answer their letters and respond to their inquiries. All they can do is encourage, urge, criticize and, at times, pressure States to meet their obligations. Nonetheless, they have achieved positive results in many occasions.

The role of NHRIs in relation to the SPs' complaints system is the same as that in relation to the HRC's complaint procedure. They can:

- **assist victims by advising them and NGOs of the procedure and the process of making and pursuing a complaint**
- **lodge complaints on behalf of victims**
- **provide information to SPs relating to a complaint**
- **make urgent action requests to SPs to address current or threatened human rights violations, with copies sent to the OHCHR's National Institutions and Regional Mechanisms Section and to the relevant OHCHR geographical section**
- **encourage their Governments to cooperate fully with the complaints procedure and to respond positively to recommendations.**



5. TREATY MONITORING BODIES' COMPLAINTS PROCEDURE²⁵⁹

5.1. The treaty-based system

All the TMBs now have complaint handling jurisdictions, although the provisions for this in two TMBs are yet to commence.²⁶⁰ The provisions are found either in the core treaty or in a supplementary treaty, that is, an Optional Protocol.

Unlike the HRC's complaint procedure, the TMBs' procedures operate on a legal basis rather than a political basis, involving independent experts and not the representatives of States. The procedure, therefore, is legal, expert and independent. However, the coverage of the different procedures varies greatly. The complaints procedures of the HRC and the SPs are universal, that is, they apply to all UN Member States. The complaints procedures of the TMBs, by contrast, apply only to those States that have agreed to them, that is, those that have ratified the relevant treaty and, as appropriate, either made a declaration under the treaty to accept the complaint jurisdiction or ratified the Optional Protocol to the treaty relating to the complaints jurisdiction. So no State is subject to every treaty-based complaints jurisdiction, few States are subject to most and many States are not subject to any of them.

²⁵⁹ For information about the TMBs' complaints procedure, see: www2.ohchr.org/english/bodies/complaints.htm.

²⁶⁰ The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

5.2. Admissibility

The first step in admissibility is establishing that the State concerned has accepted the complaints jurisdiction of the relevant treaty and TMB. If the State has not accepted the jurisdiction, then the TMB cannot consider a complaint under the treaty against it. In other respects, the same kinds of admissibility criteria are applied as with the HRC complaint procedure. Most significantly, like the HRC, the TMBs require that:

- all domestic remedies must have been exhausted
- the complaint must not be under investigation by any other UN complaints mechanism.

Unlike the HRC, however, the TMBs consider complaints individually and do not require that they be part of a systemic pattern of violations in the concerned State.

5.3. The procedure

The TMBs undertake a two-stage procedure in handling complaints, examining:

- admissibility
- merits (or substance).

The State concerned will be involved at each stage of the process, being given opportunities to provide information and make arguments.

At the admissibility stage, the TMB considers both compliance with the formal, technical criteria for admissibility and also whether the complaint concerns matters that are properly within the scope of the particular treaty. If the complaint does not allege facts that, if true, would constitute a violation of the treaty, then it will fail on admissibility. Each TMB only has jurisdiction to consider violations of the treaty for which it is responsible and so it cannot even consider a complaint that does not allege facts that could constitute a violation of that treaty. Both the complainant and the State concerned will be able to present facts and arguments on admissibility.

If and when a complaint is accepted by the TMB as admissible, then the TMB will seek and consider facts and arguments that go to the merits, or substance, of the complaint.

The whole procedure is done “on the papers”. No TMB conducts oral hearings of complaints or hears oral arguments. It considers only what is provided by way of documentary evidence and argument. Complainants may sometimes feel frustrated and alienated because they are denied an opportunity to appear in person before the TMB to put their case and make their argument. However, this is not permitted on practical grounds; the cost would be too high for most complainants and the time involved too great for the TMB members, all of whom serve in a voluntary capacity. In the end, proceeding only on the basis of the papers ensures equality among all complainants and complaints. All are treated in the same way, regardless of resources and the ability to travel to the TMB meeting in Geneva or New York.

5.4. The results

The TMBs strive to produce consensus opinions of all their members but they also permit individual members to add individual comments or views to the TMB opinion.

Like all other international complaints procedures, obtaining an effective remedy from the TMBs is problematic. There is some argument whether TMB conclusions on complaints are legally binding. The conclusions are called “views” or “opinions”, which implies that they are not legally binding judgements. States themselves generally treat the conclusions as advisory, albeit advisory from the most authoritative body on the interpretation and application of the treaty. International scholars have referred to the highly persuasive and authoritative nature of TMB views, while acknowledging that no treaty provides explicitly

that the TMBs' views are binding and States do not treat them as such.²⁶¹ On the other hand, advocates argue that the conclusions are, or at least ought to be, legally binding.²⁶²

Certainly, even if they are binding, they are not enforceable. There is no international court or police force that will act to enforce any TMB decisions or views.

The TMBs' opinions contain views on the facts and the law and can also include recommendations for remedial action to be taken by the State concerned, including legislative change and compensation to victims. States are expected to respond to the opinions and recommendations on complaints and each TMB now has a follow up procedure to pursue these responses and enable TMB discussion of them.

NHRIs have the same role in relation to the TMBs' complaints system as that in relation to the other international complaint procedures.

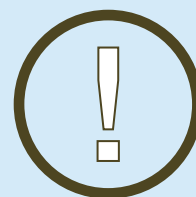
They can:

- **assist victims by advising them and NGOs of the procedure and of the process of making and pursuing a complaint**
- **lodge complaints on behalf of victims**
- **provide information to TMBs relating to a complaint**
- **encourage their Governments to accept the complaints jurisdictions of all the TMBs, to cooperate fully with the complaints procedures and to respond positively to TMB opinions and recommendations on complaints.**



KEY POINTS: CHAPTER 13

- **Individuals alleging that they are victims of human rights violations can lodge complaints under procedures of the Human Rights Council, the special procedures and the treaty monitoring bodies.**
- **The complaints procedures are very technical and differ from one procedure to another. They have different rules of admissibility that are strictly applied. A complaint that may be admissible at one time under one procedure may be inadmissible at another time under that procedure or inadmissible under another procedure.**
- **None of the complaints procedures provides an enforceable remedy for victims. They can only provide vindication of the victim's status and experience and political and moral pressure for redress.**
- **NHRIs, regardless of their accreditation status, can assist victims to use the international complaints procedures. They can also play very significant roles in promoting implementation of recommendations for remedies for violations that are the subject of complaints.**



261 *Final report on the impact of findings of the United Nations human rights treaty bodies*; International Law Association, Berlin Conference, 2004; see: www.ila-hq.org/en/committees/index.cfm/cid/20.

262 For example, see the World Organisation against Torture: www.omct.org/files/2006/11/3979/handbook4_full_eng.pdf.

Chapter 14:

United Nations High Commissioner for Human Rights

KEY QUESTIONS

- **What is the United Nations High Commissioner for Human Rights?**
- **What are the High Commissioner's roles and responsibilities?**
- **What is the Office of the United Nations High Commissioner for Human Rights?**
- **How can NHRIs interact with the High Commissioner and the OHCHR?**



1. INTRODUCTION

The Second World Conference on Human Rights held in Vienna in 1993 recommended that the General Assembly (GA) consider “as a matter of priority ... the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights”.²⁶³

The GA responded quickly and positively, establishing the position of High Commissioner for Human Rights (HCHR) six months later.²⁶⁴

Since 1994, six eminent persons have held the office of HCHR:

- Jose Ayala-Lasso of Ecuador, 1994–97
- Mary Robinson of Ireland, 1997–2002
- Sergio Vieira de Mello of Brazil, 2002–03
- Bertrand Ramcharan of Guyana (Acting High Commissioner), 2003–04
- Louise Arbour of Canada, 2004–08
- Navanethem Pillay of South Africa, 2008 – present.

2. MANDATE AND ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The HCHR is “the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General”.²⁶⁵ The HCHR's responsibilities are:

- to promote and protect the effective enjoyment by all of all human rights, civil, cultural, economic, political and social and the realisation of the right to development
- to provide advisory services and technical and financial assistance to States that request it to support actions and programmes in the field of human rights
- to coordinate relevant UN information and public education programmes in the field of human rights
- to provide advice to competent bodies in the UN system in the field of human rights

²⁶³ Vienna Declaration and Programme of Action 1993; Part II A; para. 18.

²⁶⁴ GA Resolution 48/141.

²⁶⁵ GA Resolution 48/141; para. 4.

- to play an active role in removing obstacles and meeting challenges to the full realization of human rights and preventing the continuation of human rights violations
- to coordinate, rationalize and strengthen activities for the promotion and protection of human rights throughout the UN system.²⁶⁶

The HCHR's role has developed as hoped, though perhaps not as intended by many UN Member States. The HCHR has become the most important human rights advocate not only in the UN system but globally. She or he speaks publicly and strongly on situations of gross human rights violation, calling States to account and pressing the UN system to respond to promote and protect human rights. For example, the current HCHR spoke repeatedly about the human rights violations in Syria throughout 2011 and 2012.²⁶⁷ She now regularly addresses and submits reports to the UN Security Council, emphasizing the close connection between human rights and international peace and security.

Because of the independence of the office, the HCHR has authority to speak out to defend those who have few defenders and advocate for recognition of those whose rights are ignored or violated. For example, the current High Commissioner has been a strong advocate for the human rights of people who are lesbian, gay, bisexual, transgender and intersex²⁶⁸ and for the human rights of migrants.²⁶⁹

The various persons holding the office of HCHR have been very supportive of NHRIs. The current High Commissioner understands the roles and functions of NHRIs well and interacts with them regularly, both individually and collectively. On 23 March 2010, the HCHR addressed the annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in Geneva. She said:

*NHRIs have a central place in the national human rights protection system and are crucial partners for OHCHR.*²⁷⁰



A wide view of the press conference held by the United Nations High Commissioner for Human Rights, Navi Pillay, on the eve of Human Rights Day 2011. UN Photo by JC McIlwaine.

266 GA Resolution 48/141; para. 4.

267 For example, see the HCHR's report to the 18th session of the HRC (A/HRC/18/53) and her media statement on 28 February 2012; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11879&LangID=E.

268 See: www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx.

269 For example, see the HRCR's statement to the Committee on Migrant Workers where she describes "human rights in the context of migration" as being one of the six thematic priorities for her Office; www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12064&LangID=E.

270 The HCHR's full statement is accessible at: www.asiapacificforum.net/working-with-others/icc/icc-meetings/downloads/icc-23-speeches-and-documents.

3. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The Office of the United Nations High Commissioner for Human Rights (OHCHR) supports the HCHR in the performance of her responsibilities. Its mission is to work for the protection of all human rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

Operationally, the OHCHR works with governments, legislatures, courts, national institutions, civil society, regional and international organizations and the UN system to develop and strengthen capacity, particularly at the national level, for the protection of human rights in accordance with international norms.

Institutionally, the OHCHR is committed to strengthening the UN human rights programme and to providing it with the highest quality support.²⁷¹

At the end of 2010, the OHCHR had:

- its headquarters in Geneva
- a small presence at the UN headquarters in New York
- 12 regional offices and centres
- 13 country offices
- 18 human rights advisers attached to UN Country Teams
- 15 human rights components in UN peace missions
- 884 international and national staff located in UN peace missions.²⁷²



A view of the entrance to Palais Wilson in Geneva, Switzerland, headquarters of the United Nations Office of the High Commissioner for Human Rights. UN Photo by Jean-Marc Ferré.

271 "Mission Statement"; OHCHR; see: www.ohchr.org/EN/AboutUs/Pages/MissionStatement.aspx.

272 *Management Plan 2012–2013*; OHCHR; see: www.ohchr.org/Documents/Publications/OMP2012-13.pdf; and see also *2011 Annual Report*; OHCHR; www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/index.html.

The OHCHR works with NHRIs internationally, regionally and globally. Its headquarters in Geneva has a National Institutions and Regional Mechanisms Section (NIRMS) that is responsible for promoting and coordinating relationships between the OHCHR and NHRIs. NIRMS provides services to the ICC and its Sub-Committee on Accreditation. It also collaborates with regional associations of NHRIs and conducts programmes and activities directed towards the establishment and strengthening of NHRIs in compliance with the Paris Principles.

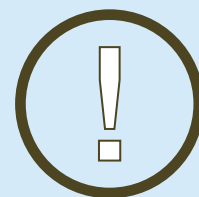
The HCHR described the OHCHR's work with NHRIs when she addressed the ICC in 2010:

My Office accords priority to the establishment and strengthening of NHRIs with due regard to the Principles Relating to the Status of National Institutions known as the Paris Principles. OHCHR is also engaged in improving United Nations system-wide coordination on NHRIs, and supports the increased interaction of NHRIs with the United Nations and regional human rights mechanisms. OHCHR encourages the sharing of good practices among NHRIs, supports the strengthening of their regional networks, and facilitates their access to United Nations Country Teams (UNCTs) and other relevant partners.

Support to NHRIs is a crucial component of OHCHR's contribution to the implementation of international human rights standards at the national level. Over the years several technical cooperation programmes and agreements with a view to strengthening the capacity of NHRIs have been implemented. UNCTs have been instrumental partners in our work to establish and strengthen NHRIs and provided support to NHRIs through various technical assistance programmes worldwide. OHCHR, through all its field presences and with the support of the National Institutions and Regional Mechanism Section in Geneva, continued to provide advice and assistance in the establishment and strengthening of NHRIs, in close coordination with the regional coordinating bodies of NHRIs as well as primarily UNDP and other UN partners.²⁷³

KEY POINTS: CHAPTER 14

- **The High Commissioner for Human Rights is the UN official with principal responsibility for the UN's human rights activities.**
- **The High Commissioner has a very comprehensive mandate from the General Assembly to promote and protect human rights.**
- **The High Commissioner is supported in her work by an Office, which has its headquarters in Geneva, a small presence at the UN headquarters in New York and presences of one kind or another in over 50 countries.**
- **The Office of the High Commissioner for Human Rights, through the National Institutions and Regional Mechanisms Section, supports the establishment, strengthening and work of NHRIs and services meetings of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.**
- **NHRIs, regardless of accreditation status, can interact with the High Commissioner and her Office at all levels, internationally, regionally and nationally.**



²⁷³ The HCHR's full statement is accessible at: www.asiapacificforum.net/working-with-others/icc/icc-meetings/downloads/icc-23-speeches-and-documents.

Chapter 15:

Regional human rights mechanisms

KEY QUESTIONS

- **What are regional human rights treaties and regional human rights mechanisms?**
- **What do they do?**
- **Where are they located? Is there a regional treaty and mechanism in the Asia Pacific?**
- **Are there sub-regional mechanisms in the Asia Pacific?**
- **What roles can NHRIs play in relation to regional human rights mechanisms?**



1. REGIONAL TREATIES AND REGIONAL MECHANISMS

States in all regions except the Asia Pacific have adopted regional human rights treaties and have established regional human rights mechanisms. The treaties reflect and affirm universal human rights standards and apply them to the particular circumstances of each region. Together, the treaties and the mechanisms constitute a regional framework for the better promotion and protection of human rights in law and practice.

Table 15.1: Regional human rights treaties and mechanisms

Region	Treaty	Institution	Court
Africa	African Charter on Human and Peoples' Rights 1981	African Commission on Human and Peoples' Rights	African Court on Human and Peoples' Rights
Americas	American Convention on Human Rights 1969	Inter-American Commission on Human Rights	Inter-American Court of Human Rights
Europe	Convention for the Protection of Human Rights and Fundamental Freedoms 1950	European Commission on Human Rights (abolished in 1998)	European Court of Human Rights

The United Nations has long promoted the elaboration of a regional human rights treaty for Asia, through annual or biannual workshops of States in the region and encouraging resolutions of the Human Rights Council and the General Assembly.²⁷⁴ However, a regional treaty still seems far away. There is also concern among many – both States and NGOs – that a regional treaty is undesirable as it is likely to provide standards that are less than universal standards, either explicitly or as a consequence of drafting. Some NGOs, however, have taken initiatives to encourage the development of a regional charter that is consistent with international human rights standards. They have drafted a People's Charter to promote discussion and further interest.²⁷⁵ Nonetheless, if this work is progressing at all, it is progressing slowly. Meanwhile, there are some initiatives at the sub-regional level.

²⁷⁴ HRC Resolution A/HRC/RES/14/8 and GA Resolution A/RES/63/170. Report on the 15th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region; 21–23 April 2010; A/HRC/15/39.

²⁷⁵ *Our Common Humanity: Asian Human Rights Charter – A People's Charter*; Asian Human Rights Commission; May 1998.

2. SUB-REGIONAL INITIATIVES

2.1. South-East Asia

The South-East Asia sub-region is the most advanced, largely because that sub-region has a strong and active sub-regional association, the Association of Southeast Asian Nations (ASEAN), that has pursued the establishment of a sub-regional human rights mechanism as an organizational priority. A sub-regional mechanism, the ASEAN Intergovernmental Commission on Human Rights (AICHR), has already been established.²⁷⁶ It is the only institution to be established before a corresponding human rights treaty or charter has been adopted and so its mandate cannot reference human rights as defined in a treaty or charter. Rather its terms of reference refer to upholding universal human rights standards.²⁷⁷

The purposes of the AICHR are:

- 1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- 1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;
- 1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;
- 1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
- 1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and
- 1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.²⁷⁸

One specific task given to the AICHR is “[t]o develop an ASEAN Human Rights Declaration with a view to establishing a framework for human rights cooperation through various ASEAN conventions and other instruments dealing with human rights”.²⁷⁹

The AICHR is not an independent body. It is an intergovernmental body. Its terms of reference confirm this, describing the AICHR as a “consultative inter-governmental body”.²⁸⁰ The AICHR’s ten members are appointed by the ASEAN Member States, one from each State, and are representatives of their State and accountable to their State.²⁸¹ They are appointed for a three-year term but can be replaced at any time by the Government of their State for any reason.²⁸²

The AICHR is not an investigations body but an advisory and promotional body. It cannot accept or act on complaints of human rights violations or conduct investigations into alleged violations. It is required

276 Cha-Am Hua Hin Declaration; ASEAN Summit, 23 October 2009; see: www.aseansec.org/documents/Declaration-AICHR.pdf.

277 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 1.6; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

278 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 1; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

279 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 4.2; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

280 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 3; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

281 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 5.2; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

282 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 5.6; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

to respect the ASEAN principle of non-interference in the internal affairs of Member States.²⁸³ It works by consultation and consensus.²⁸⁴

The terms of reference require the AICHR to “engage in dialogue and consultation with ... civil society organisations and other stakeholders” and “other national, regional and international institutions and entities concerned with the promotion and protection of human rights”.²⁸⁵ However, both NGOs and NHRIs in the sub-region have had difficulty engaging with the AICHR and in receiving responses from it. The AICHR has had some contact with NGOs but not with the NHRIs. This has prevented NHRIs from contributing to the work of the AICHR, including the work of drafting an ASEAN Human Rights Declaration.

ASEAN has also established a Commission on the Promotion and Protection of the Rights of Women and Children on a similar basis to the AICHR.²⁸⁶ It is an intergovernmental consultative body.²⁸⁷ Its members are the Member States of ASEAN, with each State appointing two representatives, one for women’s rights and one for children’s rights.²⁸⁸ Each member is appointed for a three-year term but can be replaced at any time by her or his Government.²⁸⁹

Although it is still developing an ASEAN human rights charter, through the AICHR, ASEAN has already adopted a number of declarations on human rights issues, including:

- the Declaration on the Advancement of Women in the ASEAN Region; adopted on 5 July 1988 in Bangkok, Thailand
- the Declaration on the Elimination of Violence against Women in the ASEAN Region; adopted on 30 June 2004 in Jakarta, Indonesia
- the ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers; adopted on 13 January 2007 in Cebu, the Philippines.²⁹⁰

2.2. South Asia

South Asia does not have a sub-regional human rights mechanism but it is beginning to discuss a proposal based on the ASEAN model. The Maldives proposed an initiative for this when the South Asian Association for Regional Cooperation (SAARC) held its summit meeting in Addu in the Maldives in November 2011. The Maldives also proposed a regional initiative on the rights of women and girls and the Summit Statement directed “the convening of an Inter-governmental Expert Group Meeting to discuss the establishment of a regional mechanism to ensure empowerment of women and gender equality in the region”.²⁹¹ As host of the last Summit the Maldives has the right to appoint the SAARC Secretary General. It has appointed His Excellency Ahmed Saleem, formerly President of the Human Rights Commission of the Maldives.²⁹² Mr Saleem has had long involvement in NHRIs and in human rights generally.

283 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 2.1(b); see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

284 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; article 6.1; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

285 ASEAN Intergovernmental Commission on Human Rights (Terms of Reference); ASEAN Secretariat; October 2009; Articles 4.8–4.9; see: www.aseansec.org/publications/TOR-of-AICHR.pdf.

286 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (Terms of Reference); ASEAN Secretariat; February 2010; see: www.aseansec.org/publications/TOR%20of%20ACWC%201.pdf.

287 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (Terms of Reference); ASEAN Secretariat; February 2010; article 4; see: www.aseansec.org/publications/TOR%20of%20ACWC%201.pdf.

288 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (Terms of Reference); ASEAN Secretariat; February 2010; article 6; see: www.aseansec.org/publications/TOR%20of%20ACWC%201.pdf.

289 ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (Terms of Reference); ASEAN Secretariat; February 2010; article 6; see: www.aseansec.org/publications/TOR%20of%20ACWC%201.pdf.

290 See: www.aseansec.org/documents/ASCC-ASEAN-Agreements-and-treaties-090930.pdf.

291 Addu Declaration; 17th SAARC Summit; 11 November 2011; para. 12; see: www.saarc-sec.org/2012/02/15/news/Declaration-of-the-Seventeenth-SAARC-Summit/87/.

292 See: www.saarc-sec.org/2012/03/12/news/H.E.-Mr.Ahmed-Saleem-assumes-charge-as-the-Secretary-General-of-SAARC/88/.

2.3. The Pacific

For many years, NGOs have pursued an initiative for a Pacific Charter of Human Rights.²⁹³ During the 1980s, the Law Association of Asia and the Pacific (LAWASIA) advocated for a Pacific Charter of Human Rights.²⁹⁴ A draft Charter was produced that included a range of civil, cultural, economic, political and social rights, including the right to development and the rights of indigenous peoples. It also provided for the establishment of a Pacific Human Rights Commission. This process ultimately collapsed but has been recently revived.

In November 2011, the Pacific Islands Forum Secretariat, in partnership with the Pacific Regional Rights Resource Team of the Secretariat of the Pacific Community, hosted a regional consultation dedicated to advancing the establishment process of a Pacific regional human rights mechanism.²⁹⁵

Further, in 2010, the Pacific Islands Forum Secretariat appointed its inaugural human rights adviser. This adviser has played a positive role in promoting the development of NHRIs in a number of Pacific States and has participated in discussions around a Pacific regional treaty or mechanism.

2.4. West Asia

The West Asia sub-region is part of the larger grouping of Arabic-speaking States located in West Asia and North Africa. States in West Asia collaborate with these other Arabic-speaking States in human rights initiatives through the League of Arab States, a cross-regional forum with 22 Member States.²⁹⁶ The League has adopted the Arab Charter of Human Rights and has established the Arab Human Rights Committee.

The Arab Charter on Human Rights was adopted by the League of Arab States on 22 May 2004.²⁹⁷ It entered into force on 15 March 2008. The Charter proclaims that it reaffirms the principles of the UN Charter, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.²⁹⁸ The Charter contains provisions that mirror those of international human rights instruments and provisions that are unique; for example, a condemnation of Zionism as “an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples”.²⁹⁹ It includes a range of civil, cultural, economic, political and social rights, some of which are non-derogable.

The Arab Human Rights Committee was established under the Charter in 2009. It consists of seven members drawn from States parties to the Charter.³⁰⁰ Members are elected by States parties and serve in their personal capacity for four-year terms. The Committee considers periodic reports submitted by States parties on the measures that they have taken to give effect to Charter rights. Based on an examination of these reports, the Committee makes concluding observations and recommendations. The Committee can also ask States parties to supply it with additional information relating to implementation of the Charter. Much of the Committee’s early work has been dedicated to confirming its methods of work and rules of procedure.

293 See full discussion in “Report on a proposed Pacific Charter of Human Rights prepared under the auspices of LAWASIA, May 1989” (1992) 22 VUWLR/Monograph 4.

294 The rejuvenation of a draft Pacific Charter of Human Rights was at the behest of LAWASIA; see: <http://lawasia.asn.au/profile-of-lawasia.htm>.

295 See: “National and Regional Human Rights Mechanisms”; background paper prepared by Kieren Fitzpatrick and Michael O’Flaherty for the 11th Informal Asia Europe Meeting Seminar on Human Rights; November 2012; at pp. 26–27.

296 Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.

297 See: www1.umn.edu/humanrts/instree/loas2005.html?msource=UNWDEC19001&tr=y&aid=3337655.

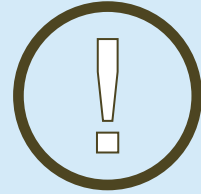
298 Arab Charter on Human Rights; PP. 5.

299 Arab Charter on Human Rights; article 2.3.

300 In 2009, members were appointed from the United Arab Emirates (Chair), Algeria (vice-Chair), Bahrain, Palestine, Syria, Jordan and Libya.

KEY POINTS: CHAPTER 15

- **There are regional human rights treaties and regional human rights mechanisms in Africa, the Americas and Europe but none in the Asia Pacific.**
- **In Africa, the Americas and Europe, the mechanisms consist of a human rights commission and/or human rights court. They are established under the regional human rights treaties.**
- **In the Asia Pacific, in the absence of a regional human rights system, sub-regional mechanisms are emerging, though at this stage they are new and weak.**
- **NHRIs have been able to have at best limited interaction with the emerging sub-regional mechanisms.**



Chapter 16:

Mechanisms for international cooperation among national human rights institutions

KEY QUESTIONS

- **What is the mechanism for cooperation among NHRIs at the international level?**
- **What is the mechanism for cooperation among NHRIs in the Asia Pacific?**
- **How do NHRIs become members of these mechanisms?**
- **What is the process of accreditation for NHRIs?**



1. INTRODUCTION

The Paris Principles provide that NHRIs should “cooperate with ... the national institutions of other countries that are competent in the areas of the protection and promotion of human rights”.³⁰¹ The Paris Principles were the first fruit of exactly that cooperation, having been drafted by NHRIs themselves at their first meeting in Paris in October 1991. Since that first meeting, NHRIs have formed a number of associations at international and regional levels as the vehicles for their cooperation. There is now a well-developed, highly-effective structure for cooperation among NHRIs.

2. INTERNATIONAL COORDINATING COMMITTEE OF NHRIs

2.1. History

Soon after the 1991 workshop of NHRIs that developed the Paris Principles, the UN convened the Second World Conference on Human Rights, in Vienna, Austria, in June 1993. NHRIs attended the World Conference in significant numbers, marking their emergence in the international human rights system as independent human rights institutions with their own views and perspectives and many common policies. The NHRIs met on the margins of the World Conference and decided to form their own standing committee to coordinate their work and to liaise with the UN system on their behalf. In December 1993, they organized the first international conference of NHRIs in Tunisia, at which the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was formed.

The status, structure and procedures of the ICC have been developing since then. In 1998, its initial rules of procedures were developed. At that same meeting, the ICC resolved to create a process for accrediting institutions. In 2000, at the ICC meeting during the international conference in Rabat, Morocco, the Sub-Committee on Accreditation (SCA) was formed and the first accreditations occurred. In 2008, the ICC discussed governance issues, including incorporation of the ICC to cope better with the changing environment, including the role of NHRIs in the international human rights system. The ICC decided to incorporate itself as a legal entity under Swiss law. The ICC also decided to streamline its rules of procedures and to define clearly its membership and the role and governance of its annual

³⁰¹ Paris Principles; para. 3(e).

meeting and international conferences.³⁰² The ICC achieved Swiss incorporation in March 2009 as the Association International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

2.2. Statute

The Statute of the ICC describes it as “an international association of NHRIs which promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights”.³⁰³ It provides that its functions and principles are:

1. To coordinate at an international level the activities of NHRIs established in conformity with the Paris Principles, including such activities as:
 - interaction and cooperation with the United Nations, including the OHCHR, the Human Rights Council, its mechanisms, United Nations human rights treaty bodies, as well as with other international organisations;
 - collaboration and coordination amongst NHRIs and the regional groups and Regional Coordinating Committees;
 - communication amongst members, and with stakeholders including, where appropriate, the general public;
 - development of knowledge;
 - management of knowledge;
 - development of guidelines, policies, statements;
 - implementation of initiatives;
 - organisation of conferences.
2. To promote the establishment and strengthening of NHRIs in conformity with the Paris Principles, including such activities as:
 - accreditation of new members;
 - periodic renewal of accreditation;
 - special review of accreditation;
 - assistance of NHRIs under threat;
 - encouraging the provision of technical assistance;
 - fostering and promoting education and training opportunities to develop and reinforce the capacities of NHRIs.
3. To undertake such other functions as are referred to it by its voting members.

In fulfilling these functions, the ICC will work in ways that emphasize the following principles:

- fair, transparent, and credible accreditation processes;
- timely information and guidance to NHRIs on engagement with the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies;
- the dissemination of information and directives concerning the Human Rights Council, its mechanisms, and United Nations human rights treaty bodies to NHRIs;
- mandated representation of NHRIs;
- strong relationships with the OHCHR and the Regional Coordinating Committees that reflect the complementarity of roles;
- flexibility, transparency and active participation in all processes;

³⁰² See: www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx.

³⁰³ ICC Statute; article 5. The Statute was adopted in 2008 and has been amended twice since then.

- inclusive decision-making processes based on consensus to the greatest extent possible;
- the maintenance of its independence and financial autonomy.³⁰⁴

2.3. Membership and management

Full voting membership of the ICC is open to all NHRIs that are accredited as fully compliant with the Paris Principles, that is, have “A status”.³⁰⁵ NHRIs that are only partially compliant, that is, have “B status”, are eligible for non-voting membership.³⁰⁶ ICC members are organized regionally, according to the regional NHRI networks to which they belong:

- Asia Pacific Forum of National Human Rights Institutions
- European Coordinating Committee of National Human Rights Institutions
- Network of African National Human Rights Institutions
- Network of National Human Rights Institutions of the Americas.³⁰⁷

The ICC is managed by a Bureau of 16 members, being the representatives of four NHRIs chosen by each of the four regional networks.³⁰⁸ The Bureau exercises the usual management functions and powers of boards.³⁰⁹

2.4. Accreditation

The ICC has accredited NHRIs for their compliance with the Paris Principles since 2000. Accreditation has been important for membership of the ICC. Since 2007, accreditation has also been essential for full recognition and participation in the international human rights system. Only NHRIs accredited by the ICC with “A status” are entitled to full participation in the United Nations Human Rights Council (HRC).³¹⁰ Other NHRIs can participate in other international human rights mechanisms, such as treaty monitoring bodies, but only “A status” institutions can address the HRC and receive full international recognition. Accreditation is undertaken by the SCA and granted by the ICC Bureau. The SCA consists of four members, being a representative of one NHRI chosen by each of the regional networks.³¹¹

An NHRI seeking accreditation for the first time applies to the SCA, through the ICC Chairperson, providing:

- a copy of the legislation or other instrument by which it is established and empowered in its official or published format
- an outline of its organizational structure, including staff complement and annual budget
- a copy of its most recent annual report or equivalent document in its official or published format
- a detailed statement showing how it complies with the Paris Principles, as well as any respects in which it does not so comply and any proposals to ensure compliance.³¹²

304 ICC Statute; article 7.

305 ICC Statute; article 24.1.

306 ICC Statute; article 24.2. NHRIs that do not comply with the Paris Principles have no status, though they are referred to as “C status” institutions. (See: “Rules of Procedure for the ICC Sub-Committee on Accreditation”; Rule 5). They have no participation or other rights under the ICC Statute.

307 ICC Statute; articles 1.1 and 31.1.

308 ICC Statute; article 31.4.

309 ICC Statute; article 46.

310 This was decided by the then Commission on Human Rights at its last full session in resolution 2005/74 of 20 April 2005. However, the resolution was not implemented by the Commission before its abolition. The new HRC affirmed the decision in its resolution 5/1; “VII. Rules of Procedure”; Rule 7(b).

311 ICC Statute; Annex 1; “Rules of Procedure for the ICC Sub-Committee on Accreditation”; Rule 2.

312 ICC Statute; article 10.

The SCA considers the application and provides a report, with recommendations, to the ICC Bureau.³¹³ The Bureau decides the application, granting “A”, “B” or “C” status, according to the definitions in the Rules of Procedure.

Table 16.1: Accreditation classifications³¹⁴

Accreditation category	ICC status	Compliance with the Paris Principles
A	Voting member	Fully in compliance with each of the Paris Principles
B	Non-voting member	Not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination
C	No status	Not in compliance with the Paris Principles

The accreditation of NHRIs with “A status” is reviewed every five years.³¹⁵ In addition, an NHRI can have its accreditation status reviewed when “circumstances of any NHRI change in any way which may affect its compliance with the Paris Principles”.³¹⁶ The ICC has downgraded the accreditation status of a number of NHRIs as a result of these reviews, following significant changes of circumstances.

2.5. Activities

The ICC itself does not undertake many activities for NHRIs. Its principal roles are:

- liaison with the Office of the High Commissioner for Human Rights (OHCHR) and other UN agencies
- coordinating meetings and exchanges among NHRIs.

It has a permanent representative in Geneva, located within the National Institutions and Regional Mechanisms Section of the OHCHR, to support its engagement with the UN system and to prepare meetings of the ICC Bureau.

The one major activity it undertakes for ICC members is the NHRIs’ international conference. In the past, these conferences have been held every two years. However, after the 2012 conference in Amman, Jordan, they will be held three-yearly. The conferences bring together large numbers of representatives from NHRIs, both those with accreditation and those without, to discuss a theme of general significance to NHRIs.

The ICC has also established one thematic working group, on business and human rights. The working group:

- promotes integration of human rights and business issues into NHRI strategies and programmes, nationally, regionally and internationally
- builds capacity of NHRIs on business and human rights, through skills-development and the sharing of tools and best practices
- facilitates NHRI participation in the development of relevant legal and policy frameworks
- supports NHRI outreach to business and human rights stakeholders.³¹⁷

The ICC in future may increase its project activities around thematic areas and NHRI functions, such as education and training.

313 ICC Statute; article 12.

314 ICC Statute; Annex 1; “Rules of Procedure for the ICC Sub-Committee on Accreditation”; Rule 5.

315 ICC Statute; article 15.

316 ICC Statute; article 16.2.

317 See: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>.

3. THE ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

3.1. Origins and vision

The Asia Pacific Forum of National Human Rights Institutions (APF) is the oldest and most developed of the four regional networks. It was established by the Larrakia Declaration, adopted at the first regional meeting of Asia Pacific NHRIs in Darwin, Australia, in July 1996.³¹⁸ Its Strategic Plan for 2011–2015 defines its visions, mission and objectives, as well as its operational programme for the coming years.³¹⁹

Vision

The APF will continue to be the leading regional human rights organisation in the Asia Pacific by:

- promoting effective international, regional and national cooperation and coordination
- being representative of its membership and responsive to their needs
- strengthening the capacity of its membership to protect and promote human rights
- securing sufficient funding for its activities and
- being the best managed organisation in its class.

Mission

The NHRIs of the region believe that regional cooperation and coordination is essential to protect and promote the human rights of the peoples of the Asia Pacific.

Through the APF their collective efforts are focused on supporting the effective and efficient promotion of their respective mandates and the establishment and strengthening of new NHRIs in full conformity with the Paris Principles.

Objectives

To achieve its vision and mission between 2011 and 2015, the APF will focus on:

- enhancing member's institutional capacity
- enhancing member's communication, cooperation and engagement
- promoting compliance with the Paris Principles
- engaging with regional and international human rights mechanisms, and
- ensuring the effective, efficient and strategic management of the APF.³²⁰

3.2. Membership

Membership is open to all NHRIs in the region accredited by the ICC with "A status" (full members) or "B status" (associate members). The APF has suspended its own accreditation process and currently relies on ICC accreditation. When the APF was founded, there were only five NHRIs in the region. In May 2012, the APF had 15 full members, namely the NHRIs of:

- Afghanistan
- Australia
- India
- Indonesia
- Jordan
- Malaysia
- Mongolia

318 See: www.asiapacificforum.net/about/history/annual-meetings/1st-australia-1996/downloads/larakia.pdf.

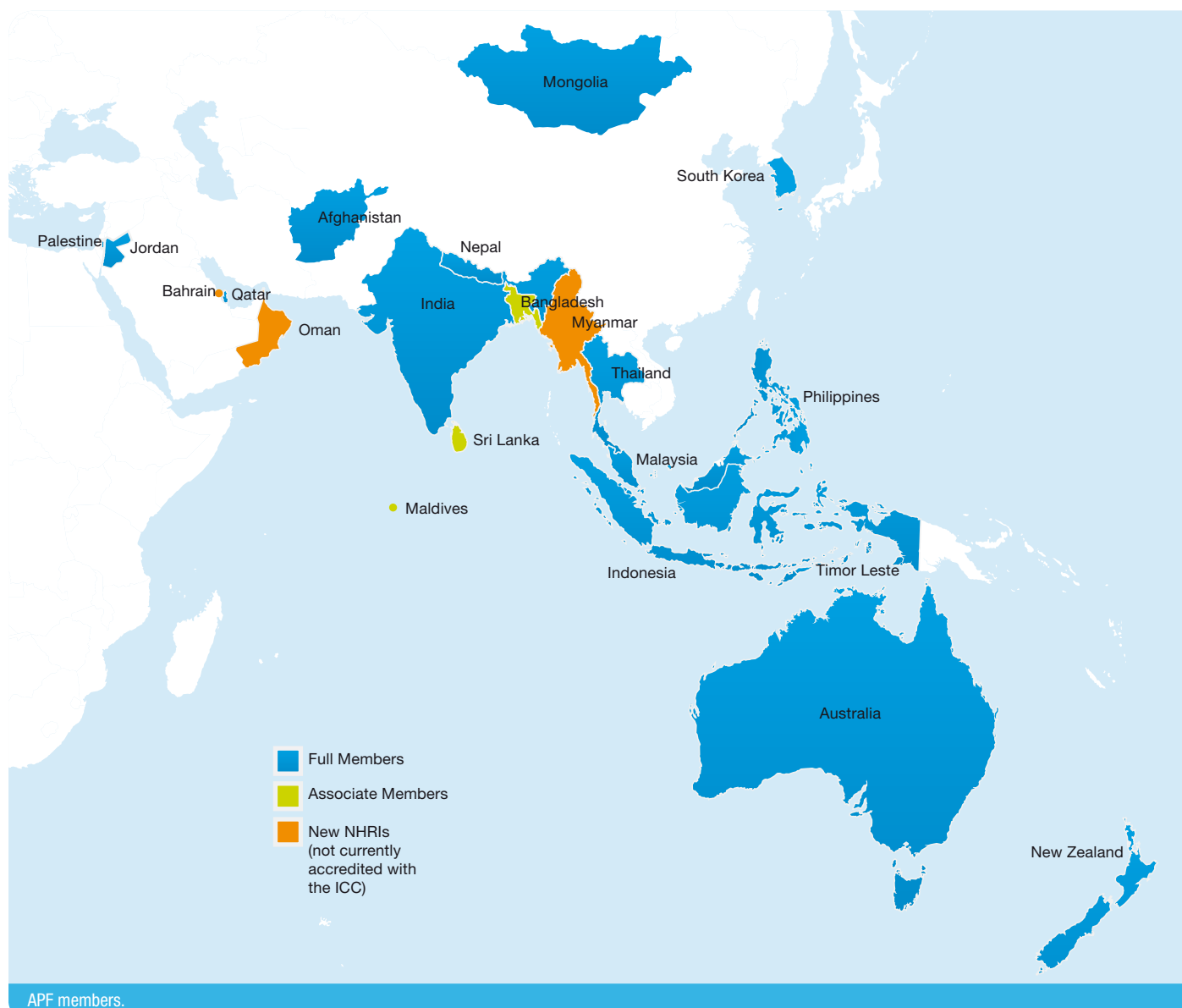
319 *Strategic Plan 2011–2015*; APF; see: www.asiapacificforum.net/about/governance.

320 See: www.asiapacificforum.net/about/governance.

- Nepal
- New Zealand
- Palestine
- Philippines
- Qatar
- Republic of Korea
- Thailand
- Timor Leste.³²¹

It also had three associate members, namely the NHRIs of:

- Bangladesh
- Maldives
- Sri Lanka.³²²



321 See: www.asiapacificforum.net/members/full-members.

322 See: www.asiapacificforum.net/members/associate-members.

3.3. Governance

The APF was founded as an informal forum. In 2002, it was incorporated as an independent, non-profit organization under Australian law.³²³

The APF is managed by the Forum Council, consisting of one representative of each full member institution. The Forum Council meets annually, in conjunction with the APF's Annual Meeting. Each full member of the APF is able to nominate one person as its representative on the Forum Council.

The work of the APF is performed by a secretariat located in Sydney, Australia. From the APF's foundation in 1996 until 2001, the secretariat was provided by the Australian Human Rights Commission. Since 2002, it has been a separate entity, reporting only to the Forum Council, though it continues to rent office space in the premises of the Australian Human Rights Commission.

3.4. Activities

The APF has an extensive programme of activities that:

- promote the establishment of new NHRIs in the region that meet the requirements of the Paris Principles
- strengthen established NHRIs in the region by undertaking capacity assessments and capacity-building projects for them and their members and staff
- aim to develop regional human rights cooperation.

Among the projects undertaken by the APF are:

- a training programme for NHRI staff, with both online and face-to-face courses and accompanying resource materials, that covers:
 - engagement with the international human rights system
 - the prevention of torture
 - conducting national human rights inquiries
 - the rights of migrant workers
 - training of trainers
 - media and communications skills
 - support for human rights defenders
 - foundation course for NHRI staff
 - human rights education (forthcoming)
 - rights of indigenous peoples (forthcoming)³²⁴
- high-level dialogues for NHRI members
- legal advice on legislative development³²⁵
- strategic advice on handling crisis situations
- assistance with strategic planning
- capacity assessments.³²⁶

The APF also assists member NHRIs with advice and support in their engagement with the international human rights system, both in Geneva and New York. It is an active advocate for UN bodies and agencies to recognize NHRIs and their distinctive natures and roles.

323 See: www.asiapacificforum.net/about/history.

324 See: www.asiapacificforum.net/support/training.

325 See: www.asiapacificforum.net/establishment-of-nrhis/advice.

326 See: www.asiapacificforum.net/support/capacityassessment.

Every two years, in conjunction with the Annual Meeting, the APF holds a major conference that brings together representatives of its members, UN officials, NGOs, government officials and academics to discuss human rights issues of common concern. These conferences are the largest regular human rights gatherings in Asia Pacific and the only ones that permit exchange on human rights issues across sectors.³²⁷

3.5. The Advisory Council of Jurists

The APF has an Advisory Council of Jurists (ACJ) to advise it on the application of universal human rights standards in the Asia Pacific region.³²⁸ The ACJ consists of one person nominated by each “A status” APF member institution and elected by the Forum Council. The ACJ members are all eminent jurists in their own countries who bring to the deliberations of the ACJ their expertise and experience, both of international human rights law and of the Asia Pacific context.

The ACJ deliberates and provides advice on references from the Forum Council. The references deal with human rights issues of wide concern in the region, addressing both contemporary challenges and developing future ones. Since its establishment in 1998, the ACJ has offered advice on:

- child pornography
- the death penalty
- trafficking
- terrorism and the rule of law
- torture
- the right to education
- the right to environment
- corporate accountability
- human rights and sexual orientation and gender identity.

The background papers, preliminary views and final advice of the ACJ on each reference are on the APF website.³²⁹

In the absence of a regional human rights treaty and mechanisms in the Asia Pacific, the ACJ has offered the most authoritative legal discussion and interpretation of the application of international human rights law in the region.

³²⁷ See: www.asiapacificforum.net/about/annual-meetings.

³²⁸ See: www.asiapacificforum.net/support/issues/acj.

³²⁹ See: www.asiapacificforum.net/support/issues/acj/references.

KEY POINTS: CHAPTER 16

- **At the international level, NHRIs relate through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), an association now registered under Swiss law.**
- **The ICC is responsible for liaison between NHRIs and the UN human rights system; promoting and supporting participation of NHRIs in the international human rights system; and facilitating cooperation among NHRIs at the global level.**
- **Accreditation of NHRIs for compliance with the Paris Principles is undertaken by the ICC, through its Sub-Committee on Accreditation. All NHRIs accredited with “A status” are eligible for full voting membership of the ICC.**
- **The UN system recognizes and accepts the ICC’s accreditation procedures and the status of NHRIs as accredited by the ICC.**
- **The Asia Pacific Forum of National Human Rights Institutions (APF) is the regional association of NHRIs in the Asia Pacific. The APF accepts ICC accreditation as the basis for full and associate APF membership.**
- **The APF undertakes an extensive programme of activities for NHRIs in the Asia Pacific, including providing advisory services, institutional support and capacity-building, capacity assessments, high-level dialogues and training.**



Case study:

THE EXPERIENCE OF THE HUMAN RIGHTS COMMISSION OF MALAYSIA IN ENGAGING WITH THE UNIVERSAL PERIODIC REVIEW



In 2009, the Human Rights Commission of Malaysia (SUHAKAM) contributed to the review of Malaysia as an independent expert, including:

- engaging with other stakeholders, both government and non-governmental, at the national level
- providing information in an independent report to the UPR Working Group
- attending the UPR Working Group interactive dialogue with Malaysia
- participating in the HRC plenary session discussion of the UPR Working Group report
- following up the UPR report's recommendations and monitoring their implementation.

On 14 August 2008, SUHAKAM held a dialogue with civil society organizations (CSOs). It submitted its independent report to the UPR Working Group on 4 September 2008. The report was based on SUHAKAM's findings and views on the human rights situation in Malaysia, as well as the outcome of its dialogue with the CSOs.

SUHAKAM also contributed to the State consultation in preparing for the UPR. It attended two consultative meetings organized by the Ministry of Foreign Affairs (the Ministry):

- on 21 August 2008, as part of the Ministry's preparation for the State report to the UPR Working Group
- on 30 January 2009, before the State delegation's departure to attend the UPR Working Group session in Geneva.

A high-level delegation from SUHAKAM, consisting of the then Chairman Tan Sri Abu Talib Othman, a Commissioner and a senior officer, attended the Working Group session from 11 to 13 February 2009. On 13 February 2009, the delegation participated in a parallel discussion, organized with Malaysian NGOs, to share views and observations after the Working Group session on Malaysia that morning and to discuss the way forward for the promotion and protection of human rights in Malaysia. About 15 people attended the discussion.

SUHAKAM participated in the HRC plenary session on 12 June 2009, at which the UPR Working Group report on Malaysia was adopted. It submitted a written statement to the plenary in which it highlighted the Malaysian Government's neglect of key civil and political rights issues in its report and the absence of any practical commitments towards improving the human rights situation. The written statement said:

In its report, the Government seems to have avoided the core issues of civil and political rights and has no concrete commitment to improve the situation. SUHAKAM and the civil society will support the Government in constructive ways should the Government open the way for an examination of the human rights issues that trouble our home state.

SUHAKAM welcomes the release of 13 Internal Security Act (ISA) detainees recently, and the new Prime Minister's announcement in his inaugural speech that a comprehensive review of the ISA will be conducted. In this regard, we urge the Government to also examine and repeal provisions for detention without trials in other legislations such as the Emergency Ordinance Act and the Dangerous Drugs Act. We also urge the Government to release the remaining detainees under the ISA and undertake steps to abolish the ISA. SUHAKAM is aware that there will always be a necessity for the State to have legal means to protect national security in times of peace

and national emergencies. It seeks only that new laws to meet with specific situations and which are compliant with human rights principles be enacted in place of those that were legislated for situations in the past which no longer are the same.

The recent arrest of some bloggers, lawyers and general civilians demonstrates the intolerance of the Government for freedom of expression and peaceful assembly. Article 10 of the Federal Constitution says that every citizen has the right to freedom of speech and expression; all citizens have the right to assemble peaceably and without arms; and all citizens have the right to form associations. The Article also has a saving clause that allows restrictions on such freedom and rights as the Parliament deems necessary in the interest of the security of the Federation. The public perception is that the Government has too often availed of the saving clause in the name of national security.

A SUHAKAM representative also delivered a two minute oral statement to the plenary.

Its submissions underscored specific human rights issues and violations, SUHAKAM's role and the failure of the Government to act on SUHAKAM's findings and recommendations or to establish a National Human Rights Action Plan. In particular, SUHAKAM commented on the arbitrary arrest and political detention of individuals and the associated problematic use of national security legislation and policy in ways that undermined constitutionally protected rights, such as freedoms of speech and expression, association and peaceful assembly. SUHAKAM took advantage of the Government's recent release of 13 detainees under the Internal Security Act (1960) to press for further releases and for the repeal of the Act and of provisions for detention without trial in other domestic legislation. Further, as its ICC accreditation was being reviewed around the time of the UPR, SUHAKAM was able to use the UPR strategically to call attention to deficiencies in its enabling legislation, building international pressure on the Malaysian Government to ensure SUHAKAM's compliance with the Paris Principles. The enabling legislation has since been amended, with the result that SUHAKAM complies more fully with the Paris Principles and retains its "A status" accreditation.

Immediately after the HRC plenary's adoption of the UPR report on Malaysia, the SUHAKAM delegation met NGOs to discuss next steps in UPR implementation and closer cooperation between SUHAKAM and the NGOs in promoting and protecting human rights in Malaysia.

On 11 May 2010, SUHAKAM was invited by the Ministry of Foreign Affairs to a post-UPR briefing session to brief it and CSOs on the implementation of the UPR recommendations, including:

- ratification of the Convention on the Rights of Persons with Disabilities
- consideration of ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and two Optional Protocols to the Convention on the Rights of the Child
- the removal of reservations to articles 5(a), 7(b) and 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women and articles 1, 13 and 15 of the Convention on the Rights of the Child
- plans of relevant government agencies in relation to the well-being of women, children and persons with disabilities, as well as other vulnerable groups.

The briefing established momentum among participants for future monitoring and action. Participants discussed the possibility of regular post-UPR briefing sessions conducted by the Government, as distinct from treating this as a one-off session, and requested a Government timeline for the implementation of the UPR recommendations that Malaysia had accepted.

SUHAKAM is committed to following up and monitoring the Government's implementation of the UPR recommendations and has:

- established an Internal Committee on the UPR Follow-up (later renamed the Internal Follow-up and Monitoring Committee) to monitor implementation of both UPR and treaty monitoring body recommendations

- disseminated information about the UPR process and outcomes to various stakeholders through the production of a booklet on the UPR process
- facilitated consultation with key stakeholders, in particular relevant government agencies, to obtain updates concerning the implementation of the UPR recommendations
- developed a UPR watchlist on the SUHAKAM website to provide public updates on the implementation of the UPR recommendations, based on the information provided by the relevant government agencies
- obtained the Government's agreement to develop a National Human Rights Action Plan for Malaysia, a long term advocacy priority of SUHAKAM, including the UPR recommendations, as an effective tool to enhance the Government's implementation of its international obligations
- secured the amendment of SUHAKAM's enabling legislation to ensure greater compliance with the Paris Principles.

SUHAKAM's contribution to and participation in the UPR process proved to be an excellent means to advance its work in promoting and protecting human rights in Malaysia and to strengthen its own legal and political position.

Case study:

THE EXPERIENCE OF THE NATIONAL CENTRE FOR HUMAN RIGHTS OF JORDAN IN ENGAGING WITH SPECIAL PROCEDURES



Assisting the Special Rapporteur with his country visit

In July 2006, the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Professor Manfred Nowak, visited the National Centre for Human Rights of Jordan (the NCHR) during his visit to Jordan. In meeting with the Special Rapporteur, the Commissioner General and staff discussed the NCHR's methodologies, role and efforts towards the prevention of torture.

In a very fruitful exchange the Special Rapporteur and the NCHR discussed:

- the NCHR's jurisdiction and mandate to monitor prisons and places of detention in addition to the law in relation to NCHR
- the NCHR's methodology for visiting prisons, lock-ups and detention centres, including the use of announced and unannounced visits and the importance of speaking to inmates and detainees in private
- the extent of places subject to NCHR monitoring, including police directorates, lock-ups at security departments, military prisons and places of detention by the Public Intelligence Directorate
- the NCHR's methodology for receiving and following up complaints and its effectiveness in documenting cases of torture
- the establishment of an independent judicial panel to investigate cases of torture, the extent of cooperation currently exhibited by the judicial authority towards complaints and the importance of having an independent judicial committee to investigate torture complaints
- protecting torture victims, including the Providing Protection to Witnesses and Victims Program
- specialized centres to rehabilitate torture victims.

The Special Rapporteur of Torture requested the NCHR's assistance with his visit, including to provide the names of the prisons, detention centres and individuals that he should visit.

Follow up to the Special Rapporteur's visit

Following the Special Rapporteur's visit, the NCHR followed up on the implementation of the recommendations with the concerned governmental bodies and submitted correspondence in support of the recommendations.

The NCHR discussed the Rapporteur's recommendations with both the Public Intelligence Directorate and the Director of the Office of the Ombudsman and Human Rights at the Public Security Directorate. The discussions focused in particular on the torture complaint received by the Special Rapporteur from a detainee during his visit to a lock-up at the Capital Criminal Investigation Department and the Rapporteur's recommendation that Officers from the Criminal Investigation Department be tried.

The NCHR has advocated with the Government for legislative amendments to ensure the criminalization of all acts which constitute torture according to the definition in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and for Jordan's accession to the Convention's Optional Protocol.

The NCHR also called on the Government to abolish or substantially amend the Crimes Prevention Law of 1954, the subject of much criticism from local and international human rights organizations for the powers it gives to Jordan's executive (specifically, the Governors and District Administrators) to authorize the administrative detention of individuals. The NCHR published a report on the human rights violations enabled by the law.

By focusing on fostering a firm relationship with the Public Security Directorate, the NCHR was able to secure important outcomes for detainees, including the establishment of a human rights office in Swaqa prison, one of the biggest prisons in Jordan, and the production and distribution to all prisons of a manual for detainees on their rights and obligations, which was a collaborative effort with the Public Security Directorate.

The NCHR conducted the Karamah Project, together with the Public Security Directorate, the Ministry of Justice and the 'Mizan' Law Group for Human Rights (a local NGO), with international support. The project aims mainly at combating torture and other forms of cruel, inhuman and degrading treatment and promoting an anti-torture culture. The project works towards ensuring that acts of torture are properly criminalized, that cases reach the courts and that claims and complaints are adequately redressed. The project sponsored a film festival raising awareness about torture.

The NCHR's human rights training workshops for the police academy have been important in raising awareness about the practical implications of Jordan's obligations under the Convention against Torture and other international law in relation to torture.

The Special Rapporteur annually requests the NCHR to report on measures taken by the Government to address the recommendations and to provide an update of developments affecting them. In this regard, the Centre has submitted reports in 2007, 2008 and 2009

Case study:

THE EXPERIENCE OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION IN ENGAGING WITH THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION



In 2010, following strong calls from Australian NGOs, the Australian Human Rights Commission (AHRC) decided to engage with the Committee on the Elimination of Racial Discrimination (the Committee) in the Committee's combined examination of Australia's 15th, 16th, and 17th periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

In July 2010, the AHRC submitted a parallel report to the Committee, after the Committee Secretariat gave very specific advice in relation to the potential content and focus of the report and what the AHRC, as an NHRI, could expect from the Committee as an audience. The report was developed in collaboration with the NGO Shadow Report Group to ensure a coordinated message and proper coverage of key issues.

In August 2010, the AHRC, represented by the Race Discrimination Commissioner, Graeme Innes AM, and a senior staff member, participated in the Committee's examination of the State. This was significant as much for the process as for the recommendations that the AHRC was able to put before the Committee. The AHRC learned a great deal from this engagement, including about the importance of preparatory dialogue with the Government and with NGOs and of building relationships with those for whom the treaty could have the most impact.

The AHRC's early attempts to strengthen communication lines with the government department responsible for coordinating the ICERD report, the Department of Foreign Affairs and Trade, enabled the AHRC to understand and respond to the Department's expectations of the AHRC's role in the process. They also informed the AHRC of the Department's understanding of its own role in reporting. The AHRC representatives found it challenging nonetheless to manage new professional relationships in a high-stress environment.

The AHRC representatives found it important to ensure, along with members of the NGO delegation, that the Indigenous elders who were members of the NGO Shadow Report Group had adequate support during the ICERD process, enough to feel ownership in the process themselves. Attending side sessions organized by the NGO delegation proved to be a good way for the AHRC representatives to do this, helping to build trust and to strengthen relationships during the course of the reporting process.

The AHRC observed techniques of engagement in the treaty monitoring process in the approach of the Australian NGO delegation to side sessions and through its own private session with the Committee. It found that offering lunch and keeping sessions to approximately 45 minutes in length proved a useful way to involve numerous Committee members but that it was important to ensure that members had enough time to ask questions. NGO representatives distributed handouts that summarized their verbal presentations, an effort which the Committee members appreciated, commenting several times on how beneficial they were.

Direct interaction with Committee members enabled “frank, confidential and constructive discussion” and provided vital opportunities to draw issues to the Committee’s attention and to propose possible recommendations the Committee could make to the State.³³⁰ The AHRC delegation had a private one hour meeting with 13 of the 18 members of the Committee.

Following the approach of the NGO representatives, the AHRC delegation produced and distributed to each Committee member a two page summary of the main issues in its parallel report. The AHRC representatives also responded to questions from Committee members. They found it valuable to approach the session openly and in this regard, invited a representative from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to observe this session and provide them with feedback.

In his address to the Committee, Commissioner Innes outlined the AHRC parallel report and made several observations. He highlighted a concern to know what portion of Australian Government funding listed in the State report as related to ICERD was dedicated specifically to “a rights-based approach” or to “the elimination of racial discrimination” as distinct from being budgeted within broader government policy agendas.³³¹ He noted the AHRC’s recommendations, particularly the recommendation that a domestic implementation mechanism for ICERD was necessary to ensure proper coordination across Australia’s federal system of government. The AHRC also called for constitutional recognition of the first Australians, a policy on multiculturalism and an anti-racism strategy. It urged the complete restoration of race discrimination law and the enactment of a federal law to criminalize race hate.³³²

The Committee’s concluding observations and recommendations responded to and endorsed a number of the AHRC’s comments and proposals and expressed strong support for the AHRC. They included recommendations for an anti-racism strategy, as proposed by the AHRC,³³³ increased funding and resources to the AHRC and the appointment of a full-time Race Discrimination Commissioner.

Since the hearing, the AHRC has been engaged in activities to lay the foundations for future implementation of ICERD. In November 2010, it focused on the need to follow-up on ICERD at the annual Australia New Zealand Race Relations Roundtable. It highlighted, in particular, areas where the ICERD Committee’s recommendations overlapped with calls made by other relevant authorities and organizations, such as the Australian Multicultural Advisory Council and, internationally, the Special Rapporteur on the rights of indigenous peoples.³³⁴

Relationship-building with the Department has also continued. Through subsequent dialogue, the AHRC found that departmental staff felt ill-positioned for the implementation work. In response to this, the AHRC has begun investigating the options of partnership with the responsible government agency on a model for domestic implementation of treaties. These investigations included discussions about the design of such a model with various NGOs and have resulted in a commitment to continue working in collaborative arrangements with the NGOs on this. The AHRC will incorporate some of this work as part of its core business.

The AHRC delegation was also concerned to internalize within the AHRC what it had learned during the engagement with the Committee. It held a one hour session for AHRC staff in November 2010 about this specific experience and, more generally, on reporting to the treaty bodies. In this way the AHRC hopes to improve its future engagement in treaty body reporting processes.

330 *CERD Reporting 2010*; Australian Human Rights Commission; Powerpoint presentation by Race Discrimination Commissioner Graeme Innes to AHRC staff.

331 See: www.humanrights.gov.au/about/media/speeches/race/2010/20100811_CERD.html.

332 See: www.humanrights.gov.au/about/media/speeches/race/2010/20100811_CERD.html.

333 See: www.humanrights.gov.au/about/media/media_releases/2010/112_10_communique.html.

334 See: www.humanrights.gov.au/about/media/media_releases/2010/112_10_communique.html.

Case study:

THE EXPERIENCE OF THE PHILIPPINES COMMISSION ON HUMAN RIGHTS IN ENGAGING WITH THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS



Background

In November 2008, the Philippines Commission for Human Rights (PCHR) participated in the examination of the Philippines' combined 2nd to 4th periodic reports to the Committee on Economic, Social and Cultural Rights (the Committee). This was the PCHR's first direct participation in any treaty body reporting process. Its experience highlights the range of innovative ways in which NHRIs can interact with the TMBs.

Prior to this experience the Committee had given limited observer status to NHRIs during its dialogue with the State. On this occasion, however, the Committee invited the PCHR to contribute as an independent NHRI during the interactive dialogue itself. As NHRIs are conventionally restricted from participating in the interactive dialogue, the PCHR understood the significance of the unprecedented invitation and made its contributions, with the consent of the Government of the Philippines. It has since undertaken various follow-up activities, using the Committee's concluding observations as a guide for future progress in implementation of the treaty.

Submissions

Reflecting on its limited resources, the PCHR made a strategic decision to focus on responding to the list of issues rather than submitting a comprehensive parallel report. The PCHR also asked to meet with the Committee prior to the consideration of the Philippines' State report. The discussions centred on:

- the actual role and accomplishments of the PCHR
- clarification of the role of the Presidential Human Rights Committee, which had not been fully understood by the Committee members
- the difficulties of implementing PCHR's investigation function in relation to rights under the International Covenant on Economic, Social and Cultural Rights.

In the interests of facilitating discussion at the meeting, the PCHR provided a paper commenting on the State report on the implementation of the treaty in the Philippines. The paper highlighted the need for human rights-based approaches in legislative processes and government planning and programmes. To this end, the PCHR drew attention to the deficiencies in the central planning authority's Medium Term Development Plan, in terms of taking a rights-based approach, and to its own work in advocating and assisting with the adoption of a National Human Rights Action Plan through its cooperative engagement with the Government.

The paper also pointed to a lack of civil society engagement in the drafting of the State report, as well as the Government's delay in delivering the State report to the PCHR and to NGOs upon submission to the Committee. The PCHR suggested that the Committee could take note of the dissemination of the report as a State obligation under the treaty in its concluding observations. Notably, the Committee recommended that the Government ensure dissemination of the concluding observations and encouraged government engagement with civil society and NGOs in national-level discussions prior to the submission of the next periodic report.

Follow up

The PCHR has established a “Government Linkages Office” (GovLink) to focus specifically on engaging with governmental institutions to monitor the Philippines’ compliance with treaty obligations more effectively. GovLink has prepared the PCHR’s submissions and organized various forums and publications to raise awareness and allocate responsibility for the implementation of the Committee’s recommendations by government agencies, non-government organizations and civil society. Supported by UNDP and in partnership with the NGO PhilRights, GovLink has pursued a programme of activities aimed at ensuring that these responsibilities are understood by, and engaged with by, relevant government and civil society organizations, which could then be properly monitored by the PCHR in accordance with its mandate.

These activities have included:

- the production of a handbook on how to engage with the Committee’s reporting process, intended as an internationally accessible guide for “all duty holders, government, civil society as well as national human rights institutions in highlighting the importance of heeding the recommendations of the UN Committee”
- the production of a flyer for general distribution, outlining the concluding observations as suggested instructions on “what the Philippine Government must do” to improve its compliance with the treaty
- development of a mapping tool to help allocate and monitor responsibilities.

The “mapping of State responsibilities” tool reflects the PCHR’s human rights-based approach to its monitoring and government engagement work. Using this tool in conjunction with treaty body reports, the PCHR has been able to map the “State responsibilities” for each area of duty identified in the concluding observations of the Committee.

The tool is organized along categorical lines of the agencies responsible for implementing the treaty: the “duty bearers”, including the executive and legislative branches of the Government of the Philippines; the judicature and other independent constitutional bodies, including the PCHR itself; and civil society. The tool identifies a cooperative human rights framework of engagement between duty bearers, such that the framework demands the inclusion of rights bearers and claim holders through the process of implementing and monitoring.

In terms of ensuring that the Committee’s recommendations are taken seriously and understood by those with responsibilities to implement the treaty, the PCHR has written to all government agencies individually to ensure they are aware of the treaty and the Committee’s most recent recommendations.

The PCHR has received responses from many State agencies on their areas of responsibility and intends to continue to hold periodic Government-NGO forums at the national and regional levels, among other activities, to update, monitor and assist government agencies with their obligations. This has the associated aim of laying the foundations for more substantive and timely 5th and 6th periodic State reports to the Committee in 2013.

Due to its efforts in engaging both with the Government and the Committee throughout the process, the PCHR has secured the Government’s engagement with its Second Human Rights Action Plan. The Presidential Human Rights Committee is considering this process further in its own adoption of process to develop a National Human Rights Action Plan.

Case study:

THE EXPERIENCE OF THE PHILIPPINES COMMISSION ON HUMAN RIGHTS IN ENGAGING WITH THE COMMITTEE AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT



Background

The Philippines Commission on Human Rights (PCHR) has become deeply involved in treaty monitoring and reporting processes. Its first engagement was with the Committee on Economic, Social and Cultural Rights and it now engages in particular with the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Committee). In the treaty reporting process the PCHR combines advocacy, monitoring and strategic pressure on the Government to ensure that relevant international human rights standards are taken seriously by responsible government agencies in the Philippines at the national level.

The PCHR's involvement with the Committee in April 2009 on the second periodic report of the Philippines was its third, and one of its most active direct engagements with a treaty body. While it used various avenues available to NHRIs to contribute to the outcomes of the review, it took a selective approach to enhance the utility of the review in achieving tangible results and in prompting a response from the Government. It also pursued tactics similar to those in its previous engagement with the Government in reporting to the Committee on Economic, Social and Cultural Rights. It broke with the traditional requirement of the Committee to hold private hearings with NHRIs and instead requested that its session be shared with representatives from the Congress Committee on Human Rights.

Responding to the list of issues

Rather than submitting a comprehensive parallel report to the Committee, the PCHR decided to focus its energies by responding to the list of issues presented by the Committee. This proved to be a successful approach, allowing the PCHR to place pressure on the Government on particular issues and obligations under the treaty and to contribute to more tangible recommendations from the Committee than could be pursued in later domestic advocacy efforts.

Specifically, the PCHR's recommendations focused on the lack of a definition of torture in Philippines domestic law and its own proposals for broader legislative reform to enable compliance with the CAT. The PCHR highlighted the potential role to be played by the Government in encouraging the passage of a bill to criminalize torture, through its ability to certify the bill as a measure of "urgent concern". It also used its response to the list of issues to highlight the need for the passage of a PCHR Charter law to strengthen the PCHR with quasi-judicial authority in support of its existing investigative powers. It pointed to examples of occasions when it had been denied access to detained persons by the Government, principally on purported reasons of national security.

The PCHR drew attention to its contradictory and compromising roles under the Human Security Act 2007, both to grant authority for prolonged detention of persons suspected of terrorism and to prosecute violations of civil and political rights in relation to the implementation of the Act, including against public officials and law enforcement officers, despite its mandate to monitor these particular agencies.

As a result, the Committee itself raised these recommendations and concerns in its concluding observations. Its recommendations included that the Government of the Philippines:

- enact the Anti-Torture Bill with a revised definition of torture meeting the elements of the CAT definition
- review the Human Security Act
- adopt the PCHR Charter, as part of measures to strengthen the visitation mandate
- provide funding for the PCHR to carry out this mandate.

Participating in the Committee's examination

As noted previously, the PCHR declined the opportunity to have a conventional private meeting with the Committee, requesting instead that Congressman Lorenzo R Tanada III, Chair of the House of Representatives Committee on Human Rights, attend the hearing jointly with the PCHR to present his insights on the status of Anti-Torture Bill in Congress. This led to a useful discussion with the Committee on the reasons for the failure to pass any anti-torture laws in the 22 years since the CAT entered into force for the Philippines in 1986, as well as the steps required to secure the criminalization of torture in the Philippines. The joint session was also fundamental as a networking exercise that greatly influenced the eventual passage of the Anti-Torture Act in March 2009, by securing a close relationship with Congressman Tanada, a relevant and interested stakeholder who later helped secure the Bill's passage in Congress.

The PCHR's presentation was well received by the Government in its own presentations to the Committee. The Government delegation's Executive Secretary recognized the PCHR as an "important partner" and stated that the Government acceded to the entirety of PCHR's recommendations for the implementation of the CAT, in particular through passage of the Anti-Torture Bill.

Follow up

On 10 July 2009, the then Chairperson of the PCHR, Leila M De Lima, presented the PCHR's reflections on the process and the significance of Committee's concluding observations to the Philippine Working Group Forum's conference "Kapihan on the Concluding Observations of the CAT". This formed part of the PCHR's strategic efforts to engage with the Government, NGOs and civil society to consider and develop ways to take advantage of the momentum supplied by the treaty reporting process and to follow up and monitor implementation of the Committee's recommendations.

The PCHR Chairperson proposed an allocation of responsibility for implementation of each Committee recommendation and the specific tasks to help carry out these responsibilities. She referred to the PCHR's "mapping tool", a method developed following the PCHR's first TMB interaction with the Committee on Economic, Social and Cultural Rights, to allocate specific obligations to government agencies and NGOs corresponding to the treaty body recommendations and obligations.³³⁵

The PCHR also used the opportunity at Kapihan to promote further the importance of ratifying the OPCAT. The PCHR has since collaborated with NGOs (the Balay Rehabilitation Centre, in cooperation with the Association for the Prevention of Torture) and the Asia Pacific Forum of National Human Rights Institutions to convene a workshop to advocate and raise awareness about the OPCAT and to develop strategies for raising human rights standards regarding detention and torture in the absence of the OPCAT. The workshop drew together over 100 participants from government, Congress, civil society, independent institutions and international actors.

The PCHR has engaged in other follow up activities responding to recommendations made by both the Committee and the Committee on Economic, Social and Cultural Rights on the significance of violations of economic, social and cultural rights as root causes of torture and other violence. It conducted two projects in 2009 in partnership with the World Organisation Against Torture (OMCT); an Asian Regional

335 See the case study on the PCHR's interaction with the Committee on Economic, Social and Cultural Rights on p. 120.

Seminar to discuss individual country profiles on these issues and a subsequent mission by the OMCT to the Philippines to follow up on progress made on the relevant recommendations of the two treaty monitoring bodies.

Government response and outcomes

While the lower house of Congress has approved the proposed PCHR Charter, the Senate did not pass the Bill before the new (15th) Congress was elected. Nevertheless, this was the most significant achievement in 23 years of efforts to strengthen the PCHR through legislative approval to develop its constitutional mandates and organizational structure. The Human Security Act remains unrevised, although the PCHR envisages that amendments are unlikely to be considered until the Act's provisions are tested in the courts, an opportunity which has not yet arisen.

Since the Committee issued its concluding observations, Congress has enacted several human rights laws consistent with the Committee's recommendations. The Anti-Torture Law has been passed and its Implementing Rules and Regulations were published in February 2011. The domestic Bill applying International Humanitarian Law was also passed, providing penalties for torture and including liability for non-State actors, a recommendation made by the PCHR in its response to the Committee's list of issues. Efforts to ratify the OPCAT have garnered a positive response, with the Government transmitting the instrument of ratification to the Senate Committee on Foreign Relations for consideration.

The Government, in conjunction with the PCHR, convened the first National Summit on Persons Deprived of Liberty, on the theme "Collaborative Partnership: Towards Enhancing the Dignity of Persons Deprived of Liberty". This summit brought together the PCHR, the Bureau of Jail Management and Penology and other government agencies charged with responsibility for custodial, detention and prison management, including the Department of Justice and the Department of Interior and Local Government, as well as key civil society organizations. The main outcome of the summit was the development of a set of instructive measures – administrative, legislative, judicial and other measures – to be adhered to by all relevant agencies and intended to enhance the dignity of persons deprived of liberty. A major achievement of the summit was the creation of an inter-agency monitoring body, of which the PCHR is a member, to track the implementation of the agreed measures.

Case study:

THE EXPERIENCE OF THE PROVIDOR FOR HUMAN RIGHTS AND JUSTICE OF TIMOR LESTE IN ENGAGING WITH THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN



Parallel report to the Committee

The Provedor for Human Rights and Justice (PDHJ) is the NHRI of Timor Leste. In 2009, the PDHJ prepared an independent report to the Committee on the Elimination of Discrimination against Women (the Committee), as part of the Committee's examination of the State report under CEDAW. The PDHJ focused on two main issues in its report: justice for women victims of sexual-based violence and women's human rights in prison and detention

The PDHJ's report examined the lack of justice for female victims of sexual crimes during and since the Indonesian occupation of Timor Leste. The report discussed issues related to national and international mechanisms for justice for grave crimes and the lack of accountability in Timor Leste for those most responsible. It called on the Parliament of Timor Leste to examine the issue of justice and enact a reparations law.

The PDHJ also reported on its monitoring of police detention centres and prisons in 2008–09 in relation to Timor Leste's obligation to protect the rights of detainees and prisoners, an obligation which was not being fully implemented in respect of women. The report highlighted problems of access to adequate and private sanitation for women, as well as lack of access to information for female prisoners. The PDHJ recommended that the Government of Timor Leste improve sanitation conditions in places of detention and prisons.

The Committee included these two recommendations of the PHRJ in its concluding observations and recommendations. It also made recommendations on domestic violence legislation and its implementation.³³⁶

Follow up

Since the Committee made its recommendations, the Parliament of Timor Leste has commenced debate on a reparations law to compensate victims, including victims of sexual violence, from the period of Indonesian occupation. This law is still to be enacted.

The PDHJ continues to conduct monitoring and advocacy in relation to female detainees and prisoners' conditions. It noted some improvement in the physical conditions of buildings in 2011 but problems remain in ensuring that women have access to privacy and sanitation products while in police detention.

The PDHJ played a leading role in advocating for the parliamentary approval of a proposed domestic violence law in 2010. It is a member of a working group advocating for gender-based budgeting for the implementation of the law. It participated in a socialization campaign on the domestic violence law with State authorities and is involved in developing an implementation strategy for the law on a ministerial level.

336 CEDAW/C/TLS/CO/1.

Case study:

THE EXPERIENCE OF THE HUMAN RIGHTS COMMISSION OF THE MALDIVES AS THE NATIONAL PREVENTATIVE MECHANISM



Establishment of the NPM

In February 2006, the Republic of the Maldives ratified the Optional Protocol to the Convention against Torture (OPCAT). The democratization process underway in the country at the time delayed legislation to establish the national preventive mechanism (NPM). During this period, the Human Rights Commission of the Maldives (HRCM) built collaborative partnerships, domestically and internationally, towards developing the NPM.

On 24–25 April 2007, the HRCM, in association with the Maldives Ministry of Home Affairs, the Association for the Prevention of Torture (APT), the Asia Pacific Forum of National Human Rights Institutions (APF) and the Federal Ministry of Foreign Affairs, Switzerland, held a workshop to inform a wide group of stakeholders in the Maldives on the OPCAT and the Subcommittee on Prevention of Torture (SPT) under it. The workshop included officials from government ministries and departments, representatives of civil society organizations and media personnel. Participants agreed that the HRCM's broad mandate and the provisions in its legislation that supported a detention monitoring function met the legal requirements of an NPM under the OPCAT.

On 10 December 2007, the President of the Maldives by decree formally designated the HRCM as the NPM for the Maldives.

The SPT visited the Maldives from 10 to 17 December 2007. The HRCM and the SPT met during the visit to discuss the development of the NPM role. The SPT's report, released in February 2009, acknowledged the designation of the HRCM as the NPM but expressed support for it being established by law and not merely by a presidential decree. It also supported a structural separation of the NPM role, with its own activities, resources and mandate, from other functions within the HRCM. It recommended that the State “guarantee the functional and perceived independence of the national preventive mechanism, as well as the independence of its staff and any experts it may use as consultants in order to prevent any real or perceived conflict of interest”.³³⁷

Until 2009, the NPM was functioning within the Complaints Investigation Department of the HRCM. While there were some benefits to this arrangement, it posed several difficulties, including a lack of clear boundaries between the preventive NPM work and the reactive complaints handling work of the department. Following the SPT's visit, the HRCM advocated for the formal legislative and institutional framework required for an independent and self-reliant NPM, including a separate, adequate budget, essential under article 18(3) of the OPCAT. Since January 2009, the HRCM has had a separate NPM department with three or four staff members and, since January 2010, its own director, who reports to the Secretary General and the Commissioner designated for the NPM.

The HRCM's reporting work as the NPM

The HRCM's work as the NPM has developed significantly since its inception in 2007. It gives priority to a regular programme of visiting, monitoring and reporting on detention facilities but this work is supported by a wide range of activities.

³³⁷ CAT/OP/MDV/1; pp. 16–17.

To increase the efficiency and professionalism of its monitoring, the HRCM has developed a detention centre mapping tool that presents the information required for its work as the NPM. The mapping includes all monitoring reports for each place of detention and the contact details of relevant personnel. It enables the NPM to capture and present the key information about each place of detention. The HRCM has found this enables it to plan and prepare its visits more effectively. It has been able to expand its coverage to include custodial facilities across the widely scattered atolls of the Maldives.

The NPM reports themselves have developed as comprehensive documents with sound, measurable and time-bound recommendations. They have a strong legal basis, incorporating a large amount of references to the Constitution, relevant legislation, international treaties and standards and reports of the SPT. The reports go beyond the identification of issues; they make and justify recommendations within relevant legal and procedural frameworks.

The HRCM has a discussion forum with the senior officials of relevant authorities after every report is completed. The recommendations are presented in the forum and matters for further discussion are elaborated. It seeks commitments from the officials to facilitate change, requesting a timeline for the implementation of recommendations. It presents a table of recommendations that, with the addition of the timelines, becomes the main tool for follow-up.

Follow-up with the relevant authorities is an important but challenging area for the NPM work. A routine follow-up is scheduled every three months but obtaining information on implementation has proved difficult. It requires repeated inquiries and even then the information is often partial or incomplete. The HRCM has now allocated greater priority to building relationships and plans to hold quarterly meetings with the officials to discuss implementation according to the timelines the authorities themselves have set. The NPM also uses an internal follow-up tool to capture information on progress with implementation.

In 2008 and 2009, the HRCM released its detention centre visit reports publicly. It found, however, that this practice proved to be damaging to its relationships with the most important implementing authorities. As a result, these authorities became defensive and reluctant to implement change in a timely manner. Since 2010, the reports have been kept confidential, being released only to the relevant authorities. This change of practice has facilitated constructive dialogue with the authorities and has been critical in securing reform. It has proven to be more productive as the authorities have become more willing to implement change.

Building awareness

Greater awareness of the HRCM's work as the NPM is required among relevant government officials, detainees and the general public. The HRCM is attempting to address this in several ways. It has produced an NPM booklet that it takes to detention centres when making visits. It outlines its roles and functions in an initial talk at the beginning of each visit. It has also held presentations on its NPM work with senior police officers and some community-based NGOs. The HRCM has also become aware of a negative perception of this work in the general public and among some officials. There is a belief that the HRCM works more for detainee rights than for rights of the average citizens. The HRCM department is trying to address this by stressing the independence and distinctness of the NPM department within the HRCM.

External relationships

Subcommittee on Prevention of Torture

Through an exchange of letters in February and March 2010, the SPT and the HRCM expressed their individual commitments to work collaboratively. Throughout its visits to places of detention, the HRCM's NPM department has attempted to monitor implementation of the specific recommendations in the SPT's report of its 2007 visit to the Maldives, using checklists and recommendation follow-up forms. It also uses this process to monitor and evaluate progress reported by the Government on the implementation of the OPCAT. The HRCM updates the SPT periodically about the follow-up information gathered during its systematic monitoring visits.

The HRCM maintains informative lines of communication with the SPT. In November 2010, the NPM established contact with the newly-elected SPT member from the Maldives, Ms Aisha Shujune Muhammad. In April 2011, it met with Ms Shujune and presented her with an overview of its role and functions and briefed her on the follow-up of the SPT's recommendation to the Maldives.

Association for the Prevention of Torture

The APT has been an instrumental part of the establishment and development of the NPM in the Maldives, providing valuable guidance, capacity-building and technical advice to the NPM and to the HRCM. It conducted workshops for the HRCM in July 2009 and August 2010 to assist the NPM's further development as an independent and professional entity. During the workshops, it undertook training visits with the NPM staff to police holding facilities and to juvenile centres. The APT has acknowledged the progress made by the NPM, in particular its development of effective monitoring methods and tools, such as mapping places of detention and the checklists and recommendations follow-up forms used for visits.³³⁸

The APT and the HRCM are developing a Memorandum of Understanding for continuing support to:

- sustain efforts to prevent torture and cruel, inhuman and degrading treatment internationally
- continue building the capacity of the HRCM's NPM staff
- strengthen the HRCM's mandate as the NPM of the Maldives.

The NPM has supported the APT by sharing the Maldives experience with establishing NPMs, including through visits to Senegal and Croatia.

338 See: www.apr.ch.

Summary

Chapter 1: Introduction

- The Vienna World Conference on Human Rights in 1993 encouraged all States to establish independent NHRIs in compliance with the Paris Principles.
- The United Nations High Commissioner for Human Rights has been a principal advocate for the establishment and strengthening of NHRIs.
- NHRIs are required to interact with the international human rights system.

Chapter 2: What are human rights?

- Human rights are the answers, in legal terminology, to two fundamentally human questions: “what does it mean to be human?” and “what do human beings require to live fully human lives?”
- Human rights have five essential characteristics. They are inherent, universal, inalienable, indivisible and interdependent.

Chapter 3: What is international human rights law?

- International law is the body of law that governs the conduct of States and their relations with each other.
- International law has two sources; treaty law and customary law.
- Treaties are binding on all States that are parties to them.
- Customary law binds all States.
- The Universal Declaration of Human Rights is the foundational international human rights instrument. Together with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, it constitutes the International Bill of Rights.

Chapter 4: The United Nations charter-based system: An overview

- The UN system has three pillars: international peace, development and human rights.
- The UN has a specialist council response for each of these three pillars: the Security Council for international peace; the Economic and Social Council for development; and the Human Rights Council for human rights.
- The General Assembly is the UN’s principal political organ, consisting of all 193 UN Member States.
- All these organs have responsibilities that include human rights, though the Human Rights Council is the principal body with specialist human rights responsibilities.
- NHRIs have limited roles in UN organs except for the Economic and Social Council and the Human Rights Council.

Chapter 5: Human Rights Council

- The Human Rights Council is the UN's principal specialist human rights body.
- It was established by the General Assembly in 2006 as the successor to the UN Commission on Human Rights.
- It is an intergovernmental body, with 47 member States, and is a political body, not an independent, expert, legal body.
- It has a broad mandate to deal with all human rights issues and situations.
- It meets in regular session three times a year and in special session as required.
- NHRIs with "A status" have extensive participation rights in the Human Rights Council, including the right to make oral statements in all sessions on all agenda items.

Chapter 6: Universal Periodic Review

- The Universal Periodic Review is a mechanism of the Human Rights Council under which all 193 UN Member States are reviewed by the HRC for their performance of their international human rights obligations.
- The second cycle of the UPR began in 2012 and will continue until 2016. The schedule for the second cycle has been set so that the UPR session for each State's review is fixed and public.
- All NHRIs, whatever their accreditation status, can provide "credible and reliable information" for the review.
- No NHRIs can participate in the interactive dialogue with the State under review in the UPR Working Group.
- "A status" NHRIs can participate in the HRC debate on the adoption of the UPR Working Group reports, with the "A status" NHRI of the State under review being entitled to speak in the HRC plenary session immediately after the State under review.
- NHRIs have important roles to play in promoting and monitoring implementation of the UPR recommendations.

Chapter 7: Special procedures

- The special procedures are a mechanism of the Human Rights Council. They are independent human rights experts appointed to undertake specific mandates on behalf of the HRC.
- A special procedure can have a thematic mandate, to deal with a specific human rights issue, or a country mandate, to deal with a specific country.
- Special procedures undertake their mandates through a variety of functions, including research, studies, country visits, investigations and inquiries, and reporting to the Human Rights Council and the General Assembly.
- All NHRIs, regardless of accreditation status, can collaborate with the special procedures in their work. The collaboration is especially important in country visits by special procedures, where the expertise and experience of the NHRI will be of great assistance to the special procedure in planning and undertaking a visit. When a special procedure reports to the Human Rights Council on a country visit, the "A status" NHRI of the concerned State can address the plenary immediately after the concerned State.

Chapter 8: Other permanent mechanisms of the Human Rights Council

- The other principal permanent mechanisms of the Human Rights Council are the Advisory Committee, the Expert Mechanism on the Rights of Indigenous Peoples, the Social Forum, the Forum on Minority Issues and the Working Group of Experts on People of African Descent.
- These mechanisms undertake their work through studies as requested by the Human Rights Council.
- They meet in Geneva during the course of each year.
- All NHRIs, regardless of accreditation status, can participate in meetings of these mechanisms and contribute to their studies.

Chapter 9: Ad hoc mechanisms of the Human Rights Council

- Other mechanisms of the Human Rights Council include special commissions of inquiry and ad hoc working groups.
- NHRIs can provide important information to assist the work of these mechanisms.
- NHRIs can also contribute their expertise to the studies and other work undertaken by these mechanisms, including by participating in working groups developing new human rights instruments.

Chapter 10: The treaty-based system: An overview

- The treaty-based system is the second component of the international human rights system. It is based on treaties and so binds only those States that are parties to each of the treaties.
- There are nine core human rights treaties and a large number of supplementary human rights treaties.
- Each of the nine core treaties and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has a specialist committee of independent human rights experts, known as a treaty monitoring body, to promote the treaty, monitor State compliance with the treaty obligations and, in most cases, investigate complaints of violations of the treaty.
- All NHRIs can participate in all aspects of the work of the treaty monitoring bodies.

Chapter 11: Treaty monitoring bodies: Monitoring compliance

- Treaty monitoring bodies monitor the compliance of each State party with its obligations under the relevant treaty, through a process of examination of State reports, dialogue with State delegations and the development of concluding observations and recommendations.
- NHRIs, regardless of their accreditation status, can contribute to all stages of the monitoring process, including submitting parallel reports and other information to the treaty monitoring bodies, providing briefings for the members of the treaty monitoring bodies, attending the interactive dialogue with the State, proposing recommendations for the consideration of the treaty monitoring bodies and promoting and monitoring implementation of their recommendations.
- The treaty monitoring bodies often make recommendations relating to the establishment and strengthening of NHRIs and support for the work of NHRIs.
- NHRIs can propose to treaty monitoring bodies that a review be undertaken of a State that fails to meet its reporting obligations.
- NHRIs can also be designated as national implementation mechanisms under the CRPD and the OPCAT.

Chapter 12: Treaty monitoring bodies: Interpreting treaties

- Treaty monitoring bodies are the most authoritative interpreters of the treaties for which they are responsible.
- They offer their interpretations through their general comments or general recommendations, their concluding observations on their examination of State compliance and their jurisprudence on individual complaints.
- NHRIs, regardless of accreditation status, can contribute to the development of general comments and general recommendations by participating in general discussions of legal issues arising under the treaties convened by the treaty monitoring bodies; commenting on drafts of the general comments or general recommendations; and providing comments in the context of the treaty bodies' monitoring functions.

Chapter 13: International complaint procedures

- Individuals alleging that they are victims of human rights violations can lodge complaints under procedures of the Human Rights Council, the special procedures and the treaty monitoring bodies.
- The complaints procedures are very technical and differ from one procedure to another. They have different rules of admissibility that are strictly applied. A complaint that may be admissible at one time under one procedure may be inadmissible at another time under that procedure or inadmissible under another procedure.
- None of the complaints procedures provides an enforceable remedy for victims. They can only provide vindication of the victim's status and experience and political and moral pressure for redress.
- NHRIs, regardless of their accreditation status, can assist victims to use the international complaints procedures. They can also play very significant roles in promoting implementation of recommendations for remedies for violations that are the subject of complaints.

Chapter 14: United Nations High Commissioner for Human Rights

- The High Commissioner for Human Rights is the UN official with principal responsibility for the UN's human rights activities.
- The High Commissioner has a very comprehensive mandate from the General Assembly to promote and protect human rights.
- The High Commissioner is supported her work by an Office, which has its headquarters in Geneva, a small presence at the UN headquarters in New York and presences of one kind or another in over 50 countries.
- The Office of the High Commissioner for Human Rights, through the National Institutions and Regional Mechanisms Section, supports the establishment, strengthening and work of NHRIs and services meetings of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.
- NHRIs, regardless of accreditation status, can interact with the High Commissioner and her Office at all levels, internationally, regionally and nationally.

Chapter 15: Regional human rights mechanisms

- There are regional human rights treaties and regional human rights mechanisms in Africa, the Americas and Europe but none in the Asia Pacific.
- In Africa, the Americas and Europe, the mechanisms consist of a human rights commission and/or human rights court. They are established under the regional human rights treaties.
- In the Asia Pacific, in the absence of a regional human rights system, sub-regional mechanisms are emerging, though at this stage they are new and weak.
- NHRIs have been able to have at best limited interaction with the emerging sub-regional mechanisms.

Chapter 16: Mechanisms for international cooperation among national human rights institutions

- At the international level, NHRIs relate through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), an association now registered under Swiss law.
- The ICC is responsible for liaison between NHRIs and the UN human rights system; promoting and supporting participation of NHRIs in the international human rights system; and facilitating cooperation among NHRIs at the global level.
- Accreditation of NHRIs for compliance with the Paris Principles is undertaken by the ICC, through its Sub-Committee on Accreditation. All NHRIs accredited with “A status” are eligible for full voting membership of the ICC.
- The UN system recognizes and accepts the ICC’s accreditation procedures and the status of NHRIs as accredited by the ICC.
- The Asia Pacific Forum of National Human Rights Institutions (APF) is the regional association of NHRIs in the Asia Pacific. The APF accepts ICC accreditation as the basis for full and associate APF membership.
- The APF undertakes an extensive programme of activities for NHRIs in the Asia Pacific, including providing advisory services, institutional support and capacity-building, capacity assessments, high-level dialogues and training.



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