

# Promoting participation:

**Why and how national human rights institutions should  
be allowed to contribute at the United Nations**

**June 2015**

---

## **Eleanor Openshaw**

International Service for Human Rights

e: [e.openshaw@ishr.ch](mailto:e.openshaw@ishr.ch)

w: [www.ishr.ch](http://www.ishr.ch)

We also acknowledge the expert input and editorial support of Heather Collister, Michelle Evans, Thomas Helm, Theresa McEvoy, Chris Sidoti and Olivia Starrenburg

## **ABOUT THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS**

The International Service for Human Rights is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

### **Follow us**

Facebook [www.facebook.com/ISHRGlobal](http://www.facebook.com/ISHRGlobal)

Twitter [www.twitter.com/ISHRGlobal](http://www.twitter.com/ISHRGlobal)

YouTube [www.youtube.com/ISHRGlobal](http://www.youtube.com/ISHRGlobal)

## **COPYRIGHT © 2015 INTERNATIONAL SERVICE FOR HUMAN RIGHTS**

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. Please notify us of any errors or corrections: [information@ishr.ch](mailto:information@ishr.ch).

## ACKNOWLEDGMENTS

This report was made possible thanks to the financial support of the German Federal Foreign Office of Berlin, together with the generous pro bono legal support of Freshfields Bruckhaus Deringer.



Federal Foreign Office



Freshfields Bruckhaus Deringer

# Table of Contents

<b>I. EXECUTIVE SUMMARY</b> .....	<b>5</b>
A. NHRIs' role in the international human rights system .....	5
B. Current practice .....	5
C. The basis, benefits and feasibility of extending participation rights to the General Assembly and ECOSOC .....	6
D. Conclusions .....	7
<b>II. INTRODUCTION</b> .....	<b>8</b>
<b>III. THE PARIS PRINCIPLES ENDORSED BY THE UN AS THE STANDARD FOR FULL PARTICIPATION</b> .....	<b>10</b>
<b>IV. THE PURPOSE AND CHARACTERISTICS OF NATIONAL HUMAN RIGHTS INSTITUTIONS</b> .....	<b>11</b>
A. NHRI competence and responsibilities for the promotion and protection of human rights.....	12
B. Contributing to international processes of State accountability to implement international human rights obligations.....	13
C. The United Nations assists NHRIs in fulfilling their mandates.....	15
<b>V. RIGHTS OF NHRIS TO PARTICIPATE IN UN HUMAN RIGHTS BODIES AND PROCESSES, AND CURRENT PRACTICE</b> .....	<b>16</b>
A. The Human Rights Council .....	18
B. The Treaty Monitoring Bodies .....	18
C. Intergovernmental Processes .....	19
D. ECOSOC functional commissions, regional commissions and other bodies.....	22
<b>VI. WHEN MODALITIES ALLOW, NHRIS PARTICIPATE!</b> .....	<b>23</b>
A. Examples of cooperation with UN bodies and processes.....	24
B. Cooperation of NHRIs with regional human rights bodies .....	26
<b>VII. THE BASIS FOR EXTENDING PARTICIPATION RIGHTS FOR A-STATUS NHRIS</b> .....	<b>28</b>
<b>VIII. THE BENEFITS OF EXTENDING PARTICIPATION RIGHTS TO THE GENERAL ASSEMBLY AND ECOSOC</b> .....	<b>33</b>
<b>IX. THE FEASIBILITY OF EXTENDING A-STATUS NHRIS' RIGHTS OF PARTICIPATION TO THE GENERAL ASSEMBLY AND ECOSOC</b> .....	<b>35</b>
<b>X. CONCLUSIONS</b> .....	<b>37</b>
<b>XI. RECOMMENDATIONS</b> .....	<b>39</b>
<b>ANNEX 1: THE NATURE OF PARTICIPATION RIGHTS AT THE HUMAN RIGHTS COUNCIL AND SUBSIDIARY MECHANISM</b> .....	<b>40</b>
<b>ANNEX 2: THE NATURE OF NHRI PARTICIPATION IN TREATY MONITORING BODIES</b> ....	<b>42</b>

# I. EXECUTIVE SUMMARY

National Human Rights Institutions (NHRIs) play a critical role in the international human rights system. Reflecting this, the Human Rights Council grants NHRIs observer status, giving them extensive participation rights and ensuring that the Council is able to effectively benefit from NHRIs' expertise. NHRIs have also been given rights to participate in treaty body meetings and various intergovernmental processes.

However, the General Assembly, ECOSOC, and their respective subsidiary bodies (aside from the Human Rights Council) still do not extend full participation rights to NHRIs. Consequently, when these bodies discuss and make recommendations on human rights situations, as they frequently do, they do so without a valuable source of expertise.

## A. NHRIS' ROLE IN THE INTERNATIONAL HUMAN RIGHTS SYSTEM

NHRIs are experts on domestic human rights situations. They are created to monitor national compliance with international human rights standards and to make recommendations to the government as to how gaps can be addressed. This knowledge is invaluable if the international human rights system is to craft effective and relevant recommendations for States, and it should be leveraged to the full by ensuring that NHRIs can participate in all relevant meetings.

Furthermore, NHRIs occupy a distinct position between the State and broader civil society. Having been established by the government, yet operating separately from it, their recommendations to States can carry a particular weight. This makes NHRIs potentially crucial partners in bridging the implementation gap between international standards and domestic obligations. If NHRIs are to take on that role, however, they must be invested in the recommendations that come from international human rights bodies and mechanisms. This can only be achieved if they are able to participate actively in the deliberations of the international human rights system thereby contributing to the development of those recommendations.

The quality of NHRI contributions to the international system, as well as their effectiveness as domestic partners of that system, is assured by the ranking developed by the International Coordinating Committee on NHRIs (ICC). This ranking is based on the *Principles Relating to the Status of National Institutions* (the Paris Principles). These principles set out the responsibilities of NHRIs and call for them to be independent and pluralistic. NHRIs fully compliant with these principles are given an 'A-status' by the ICC. The UN uses this ranking to limit participation in some of its meetings to A-status NHRIs.

## B. CURRENT PRACTICE

The model for NHRI participation in the international human rights system is the Human Rights Council, which grants A-status NHRIs observer status. This gives them comprehensive participation rights, including designated seating, the right to submit written statements and make oral statements, and to organise parallel events.

NHRIs are taking advantage of these rights in increasing numbers. From 2011 to 2014, the number of NHRIs participating in Council sessions increased from 21 per year to 31 per year.<sup>1</sup>

NHRIs are also quick to make use of new modalities. In March 2011 three NHRIs participated in the Human Rights Council by recording video messages. By September 2014 this had increased to 12.<sup>2</sup> In addition, NHRIs have taken full advantage of the rule introduced in 2011 that enables them to speak directly after the State under review during the adoption of Universal Periodic Review reports.<sup>3</sup>

Although less formalised, NHRIs also have extensive participation rights at the treaty bodies and various intergovernmental processes.

## **C. THE BASIS, BENEFITS AND FEASIBILITY OF EXTENDING PARTICIPATION RIGHTS TO THE GENERAL ASSEMBLY AND ECOSOC**

Not only has the General Assembly acknowledged and endorsed NHRI participation in other parts of the UN system, such as the Human Rights Council, but it has also noted 'with appreciation' calls for NHRIs to advocate for independent participation in relevant UN mechanisms.<sup>4</sup> These 'relevant mechanisms' would include the General Assembly and ECOSOC.

At its 68<sup>th</sup> Session in 2014, the General Assembly passed a consensus resolution requesting the Secretary-General to prepare a feasibility study on enabling A-status NHRIs to participate in its meetings, on a par with participation at the Human Rights Council.<sup>5</sup>

There is a clear logic to granting participation rights for NHRIs at the General Assembly and ECOSOC. The General Assembly, in plenary and in its Third Committee, discusses human rights issues. If the Human Rights Council grants participation rights to NHRIs on the basis that they have an important contribution to make to the international human rights debate, then the same argument must apply to the General Assembly.

Likewise ECOSOC is responsible for discharging the obligations of the United Nations to promote universal respect for, and observance of, fundamental rights and freedoms,<sup>6</sup> an objective that NHRIs again have the necessary expertise to make an important contribution to.

In terms of feasibility, expert advice<sup>7</sup> from **Freshfields Bruckhaus Deringer** found there are no legal impediments to extending participation rights at the General Assembly, ECOSOC and subsidiary bodies to A-status NHRIs, on a par with those enjoyed at the Human Rights Council.

---

<sup>1</sup> Report of the Secretary General 'National institutions for the promotion and protection of human rights' UN Doc A/HRC/27/39 para 83

<sup>2</sup> *Ibid.*

<sup>3</sup> UN Doc A/HRC/23/27 para 81; UN Doc A/HRC/27/39 para 87

<sup>4</sup> UN Doc A/RES/68/171

<sup>5</sup> UN Doc A/HRC/RES/20/14 para 16

<sup>6</sup> See Volker Röben, Ch. X The Economic and Social Council, Functions and Powers, Article 62, ¶ 5, in *The Charter of the United Nations: A Commentary*, Vol. II (3d ed. 2013); United Nations Handbook 2014-2015, 134 (52d ed. 2014).

<sup>7</sup> [www.ishr.ch/Memo-NHRIparticipation](http://www.ishr.ch/Memo-NHRIparticipation)

## D. CONCLUSIONS

By not providing full participation rights to NHRIs, the General Assembly, ECOSOC, and their subordinate bodies are missing crucial expertise as well as an opportunity to foster important partners in the implementation of international human rights standards at the domestic level.

As there are no legal impediments to granting NHRIs participation rights at the General Assembly, ECOSOC and subsidiary bodies on a par with the Human Rights Council, it is clear that the time has come to make participation rights for NHRIs in these and other related bodies a reality.

### **Key recommendation**

The General Assembly should adopt a resolution expressly giving NHRIs compliant with the Paris Principles, the ICC and regional coordinating committees the right to provide written comments and to make oral statements at the General Assembly, its Committees and subsidiary bodies; as well as ECOSOC and its functional commissions, and all related UN fora.<sup>8</sup>

---

<sup>8</sup> There are four regional coordinating committees: the Asia Pacific Forum of National Human Rights Institutions, the European Network of National Human Rights Institutions, the Network of African National Human Rights Institutions and the Red de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos del Continente Americano.

## II. INTRODUCTION

For the UN General Assembly promoting and encouraging respect for human rights and for fundamental freedoms for all – one the key purposes of the United Nations<sup>9</sup> – should be based upon ‘the principles of cooperation and genuine dialogue’.<sup>10</sup> UN experts and officials view the ‘effective participation of a variety of voices’ within States as a crucial key to the concept of multilateralism.<sup>11</sup> Indeed, the Secretary General has emphasised how free and unhindered contact and cooperation with individuals and civil society are ‘indispensable to enable the United Nations and its mechanisms to fulfil their mandate’.<sup>12</sup>

National human rights institutions (NHRIs) are critical in promoting and protecting human rights at the national level. They are also key players in a global human rights system that supports and monitors State compliance with international human rights obligations. In furtherance of the UN’s purposes, NHRIs have cooperated widely with UN bodies and fora.

Recognising the importance of NHRIs, many UN bodies have confirmed the participation of A-status NHRIs in procedures and practice. Their participation at the UN Human Rights Council – enhanced over time – has been welcomed and identified as ‘increasingly important’ by the General Assembly.<sup>13</sup> Furthermore, the General Assembly has encouraged NHRIs ‘to continue to participate in and to contribute to deliberations in all relevant United Nations mechanisms and processes in accordance with their respective mandates’.<sup>14</sup>

In spite of this, the UN General Assembly and ECOSOC, and subsidiary bodies of both (aside from the Human Rights Council), have yet to provide direct participation rights to A-status NHRIs.

Following encouragement by the Secretary General and the Human Rights Council,<sup>15</sup> the UN General Assembly has now requested the UN Secretary General to prepare ‘his next report to the General Assembly on the current participation of national human rights institutions compliant with the Paris Principles in the work of the Assembly and related processes, with a view to exploring the feasibility of enabling national human rights institutions compliant with the Paris Principles to participate independently in relevant United Nations mechanisms and processes’.<sup>16</sup> This provides a significant opportunity to reflect upon the value of NHRI participation in UN bodies and mechanisms, and explore the means to ensure such participation.

---

<sup>9</sup> *Charter of the United Nations*, Chapter 1, Article 1 (3).

<sup>10</sup> UN Doc A/RES/60/251 para 12.

<sup>11</sup> UN Doc A/69/365 para 7. The Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association has argued that this should include rights to: access to all meetings, processes and bodies, speaking in all meetings and submitting documents equivalent to Member States.

<sup>12</sup> Report of the Secretary-General on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc A/HRC/18/19, para 94.

<sup>13</sup> UN Doc A/RES/68/171 OP4 and OP13.

<sup>14</sup> *Ibid.* OP15.

<sup>15</sup> UN Doc A/HRC/RES/20/14 OP15.

<sup>16</sup> UN Doc A/RES/68/171 OP16.

ISHR considers that direct participation of NHRIs in the General Assembly and all its subsidiary bodies and in ECOSOC and its functional commissions would:

- enable NHRIs to collaborate more fully with the UN in advancing the purposes set out in the Charter;
- provide those bodies with increased access to the expert, authoritative and independent advice NHRIs offer, as well as first-hand knowledge of human rights violations and domestic human rights situations; and
- contribute to closing the implementation gap between UN resolutions and recommendations and the human rights situation on the ground in any given State, with NHRIs playing a crucial bridging role in this regard.

To guarantee that NHRIs can participate in a 'genuine dialogue' and play an 'active role'<sup>17</sup> in strengthening the capacity of States to comply with international human rights standards, and to ensure 'the most effective contribution',<sup>18</sup> a uniform practice of NHRI participation across those bodies and fora is required. Given the increasing and deepening participation of NHRIs in the Human Rights Council, it is logical to envisage participation at the UN General Assembly and ECOSOC as the next step. These bodies can only stand to benefit from their participation.

---

17 UN Doc A/RES/68/171. OP10.

18 *Ibid.* OP16.

### III. THE PARIS PRINCIPLES ENDORSED BY THE UN AS THE STANDARD FOR FULL PARTICIPATION

The Paris Principles were adopted by NHRIs at their first international conference in 1991 and then endorsed by the United Nations: first by the Commission on Human Rights in 1992,<sup>19</sup> then reaffirmed by the World Conference on Human Rights in the *Vienna Declaration and Programme of Action* in 1993.<sup>20</sup>

Whilst the UN has supported NHRIs since the late 1970s, the World Conference on Human Rights marked a transformation in the commitment of the UN to supporting their establishment and strengthening. The *Vienna Declaration and Programme of Action* reaffirmed 'the important and constructive role played by national institutions for the promotion and protection of human rights' and encouraged 'the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions"' (The Paris Principles).<sup>21</sup> The World Conference also encouraged 'the strengthening of...cooperation with regional organizations and the United Nations'.<sup>22</sup>

The Paris Principles were welcomed by the General Assembly shortly after the World Conference in 1993.<sup>23</sup> They have since been endorsed repeatedly in resolutions of the Human Rights Council and the General Assembly.

Compliance with the Paris Principles ensures the information received is from NHRIs that meet the principles of independence, pluralism and expertise established by the Principles. The Sub-Committee on Accreditation of the International Coordinating Committee of NHRIs<sup>24</sup> (ICC) assesses NHRIs' compliance with the Paris Principles and awards them an A or B status, or no status at all, according to whether the NHRI is, respectively, fully, partly or not at all in compliance with the Principles. The UN system recognises and accepts the accreditation procedures of the ICC and the status of NHRIs as accredited by the ICC.

Compliance with the Paris Principles is used as the gateway for NHRIs to full participation in UN bodies. Although participation in some UN mechanisms is open to all NHRIs, participation in others, such as the Human Rights Council, is mainly restricted to A-status NHRIs alone.

---

<sup>19</sup> Commission on Human Rights Resolution 1992/54.

<sup>20</sup> *Vienna Declaration and Programme of Action*, para 36.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.* para 85.

<sup>23</sup> UN Doc A/RES/ 48/134.

<sup>24</sup> The ICC is a body operating under the auspices of the UN, with the accreditation process receiving Secretariat support from the National Institutions and Regional Mechanisms Section (NIRMS) of the Field Operations and Technical Cooperation Division of OHCHR. The Secretariat support to the ICC is similar in nature to that provided to treaty bodies.

# IV. THE PURPOSE AND CHARACTERISTICS OF NATIONAL HUMAN RIGHTS INSTITUTIONS

NHRIs are official, legally-instituted independent bodies established by States for the purpose of promoting and protecting human rights at the national level.

The Paris Principles set out the minimum standards by which NHRIs should be established and carry out their mandate. They ‘provide a broad normative framework for the status, structure, mandate, composition, power and methods of operation of the principal domestic human rights mechanism’.<sup>25</sup>

The Paris Principles state that the mandate of an NHRI should ‘be clearly set forth in a constitutional or legislative text’.<sup>26</sup> This legal basis should guarantee their independence from political influence. Whilst an NHRI is part of the apparatus of the State and is funded by the State, it is at the same time separate from the government of the State, playing a distinct role in evaluating and reporting on the State’s compliance with, and advances toward the implementation of, its domestic and international human rights obligations. To carry out this role effectively an NHRI’s independence must be guaranteed.

NHRIs are also distinct from NGOs. They occupy a unique space between the State and civil society actors. Due to their official status, NHRIs speak and act authoritatively, exercising powers well beyond those available to NGOs. Unlike NGOs, they can make legal findings and recommendations. In some areas they can enforce State compliance. They usually have access to greater resources than most NGOs have and so can do more.

The Paris Principles also require that NHRIs **should be pluralistic – i.e. representative of broader society**.<sup>27</sup> **They should ‘be given as broad a mandate as possible’**.<sup>28</sup> The diversity of their make up and the breadth of their mandate across the full spectrum of human rights enable NHRIs to speak to the universality and interdependence of rights.

---

<sup>25</sup> ICC Sub-Committee on Accreditation General Observations, Introduction 1.  
<http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>.

<sup>26</sup> The Paris Principles ‘Competence and responsibilities’ 2.

<sup>27</sup> The Paris Principles ‘Composition and guarantess of independence and pluralism’ 1: re NHRIs shall ‘ensure the pluralistic representation of the social forces (of civilian society) involved in the protection and promotion of human rights’.

<sup>28</sup> The Paris Principles ‘Competence and responsibilities’ 2.

## A. NHRI COMPETENCE AND RESPONSIBILITIES FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

NHRIs have a legal mandate to monitor the implementation of international human rights norms at the national level.

In accordance with the Paris Principles, NHRIs are required:

*To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.*<sup>29</sup>

NHRIs may take up 'any situation of violation of human rights' which enables them to carry out investigations at their own instigation; make recommendations related to legislative or administrative provisions 'to ensure that these provisions conform to the fundamental principles of human rights'; and draw the attention of the government to situations in the country where human rights are violated, making proposals to address these and report on the government's response. NHRIs should take up both broad and more specific matters regarding human rights.<sup>30</sup>

Furthermore, although not a universal requirement, the Paris Principles provide that NHRIs can be authorised to handle complaints and have a quasi-judicial function.<sup>31</sup> In fact, most NHRIs have this function. Where they do, those complaints provide additional information regarding the human rights situation in the country.

NHRIs can be designated as national implementation mechanisms under the *Convention on the Rights of Persons with Disability* (CRPD) and the *Optional Protocol to the Convention Against Torture* (OPCAT), again acknowledging the strength of their position in the implementation of human rights obligations. Almost 40 States have now established 'national implementing structures' for human rights, which can monitor the implementation of recommendations or a national human rights action plan.<sup>32</sup>

The ICC Sub-Committee on Accreditation has noted that '(i)n fulfilling its protection mandate, a National Institution must not only monitor, investigate and report on the human rights situation in the country, it should also undertake rigorous and systematic follow up activities to promote and

---

<sup>29</sup> The Paris Principles 'Competence and responsibilities' 3(a).

<sup>30</sup> Paris Principles 'Competence and responsibilities' 3.

<sup>31</sup> Paris Principles 'Additional principles concerning the status of commissions with quasi-judicial competence'.

<sup>32</sup> 'The Human Rights Council at 10 – improving relevance, strengthening impact: Strengthening the Council's relevance and impact on the ground', Universal Rights Group, Informal draft report, Policy Dialogue, Permanent Mission of Thailand, 19 February 2015.

advocate for the implementation of its recommendations and findings, and the protection of those whose rights were found to have been violated'.<sup>33</sup>

The roles and responsibilities of NHRIs in promoting and protecting human rights bring them into direct contact with victims and witnesses of violations on the ground, ensuring that they have first-hand knowledge of human rights violations and of necessity making them experts on the domestic human rights situation. This, combined with their unique position in relation to the State, puts NHRIs in a strong position to provide national human rights knowledge to the international human rights system.

## **B. CONTRIBUTING TO INTERNATIONAL PROCESSES OF STATE ACCOUNTABILITY TO IMPLEMENT INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

The Paris Principles establish cooperation with the United Nations as a requirement for NHRIs. NHRIs are required:

*(t)o 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 protection and promotion of human rights.*<sup>34</sup>

NHRIs cooperate with the UN system in two main ways:

### **1. Providing information and analysis to UN human rights bodies and processes**

As experts in the application of international human rights law domestically, NHRIs are in a position to contribute authoritatively to the work of UN bodies and in UN human rights processes. NHRIs contribute to State reporting processes and, by providing the UN with parallel reports, reflect their own independent opinion, on the State's compliance with treaty obligations.

In accordance with the Paris Principles they are required:

*(t)o contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence.*<sup>35</sup>

NHRIs are able to alert the human rights system to issues that need attention through the various mechanisms, and prompt the system when new mechanisms, such as a Special Procedure, are required. The expertise of A-status NHRIs is called for in the nomination of UN independent experts and other posts. Where good nominations lead to good appointments, a more effective human rights protection system is created. As A-status NHRIs spread, this supports diversity in nominations and appointments.

---

<sup>33</sup> ICC Sub-Committee on Accreditation General Observations 1.6 'Recommendations by National Human Rights Institutions'

<sup>34</sup> The Paris Principles 'Competence and responsibilities' 3(e).

<sup>35</sup> *Ibid.* 3(d).

NHRIs can provide treaty bodies with reliable information regarding the efficacy of an enquiry regarding human rights violations in their country, as well as acting as early warning systems. They contribute 'to the work of international mechanisms in independently monitoring the extent to which states comply with their human rights obligations'.<sup>36</sup>

The Human Rights Committee has noted that the contribution of NHRIs is central to its work, not an add on

*'(r)eceiving information from national human rights institutions at an early stage of the reporting process is critical for the Committee's work'.<sup>37</sup>*

## **2. Encouraging States to ratify human rights instruments and ensure their implementation**

As national-level human rights mechanisms, NHRIs provide advice to and assist the State in meeting its international human rights obligations. NHRIs are required:

*(t)o promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation,<sup>38</sup>*

and

*(t)o encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation.<sup>39</sup>*

NHRIs 'are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground'.<sup>40</sup>

The Human Rights Committee has noted 'the important role that national human rights institutions have in bridging the gap between the international and national human rights system' and notes that ICC-accredited NHRIs are 'important national partners for the Committee'.<sup>41</sup> Furthermore, the Special Rapporteur on Human Rights Defenders has noted that the role of NHRIs in holding governments to account makes them 'a vital actor in the fight against impunity for human rights violations'.<sup>42</sup>

The international human rights system has developed means to encourage States to meet their obligations under the international human rights treaties, including mechanisms such as special

---

<sup>36</sup> ICC Sub-Accreditation Committee General Observations 1.4 'Interaction with the International Human Rights System'.

<sup>37</sup> For example, Human Rights Committee 'Paper on the relationship of the Human Rights Committee with national human rights institutions', adopted by the Committee at its 106th session (15 October–2 November 2012), CCPR/C/106/3 3/12

<sup>38</sup> The Paris Principles 'Competence and responsibilities' 3(b).

<sup>39</sup> *Ibid.* 3(c).

<sup>40</sup> ICC Sub-Committee on Accreditation General Observations, Introduction, 2.

<sup>41</sup> UN Doc CCPR/c/106/3 A2 and A4.

<sup>42</sup> Report of the Special Rapporteur on the situation of human rights defenders to the Human Rights Council, UN Doc A/HRC/23/47.

procedures, treaty bodies and the Universal Periodic Review (UPR). However, these mechanisms lack comprehensive follow up mechanisms and procedures at national level.

NHRIs can and do fill this gap. They are one of the principal means by which recommendations made internationally gain currency at national level, particularly where civil society organisations are few and lack influence with government. They can promote recommendations from UN human rights bodies at national level and translate them into tangible required action. They contribute to the development of human rights action plans by feeding in UN recommendations.

43

## C. THE UNITED NATIONS ASSISTS NHRIS IN FULFILLING THEIR MANDATES

*'(R)esearch shows that States with an independent and effective Paris Principles compliant NHRI are more likely to ratify international human rights treaties and meet reporting obligations'.*<sup>44</sup>

Acknowledging the role of NHRIs, UN mechanisms, such as treaty bodies and the UPR, have made recommendations for establishing NHRIs where they do not already exist and strengthening NHRIs where they do, as part of the overall strengthening of the international human rights system. The then UN Secretary General, Kofi Annan, noted that:

*"Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustainable manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the (United Nations). These activities are especially important in countries emerging from conflict."*<sup>45</sup>

The role of NHRIs in supporting and assisting States to meet their international human rights obligations is made easier by recommendations from UN mechanisms regarding the improvement of human rights situations of concern in line with international obligations. To date, during the UPR over 1000 recommendations have been made regarding the establishment and adequate resourcing of NHRIs in accordance with the Paris Principles. Furthermore, the recommendations that NHRIs should be established or strengthened help NHRIs to defend their independence and build their authority and influence.

The relationship between NHRIs and the international human rights system is therefore one of mutual benefit. NHRIs are better able to fulfil their function domestically by making use of the recommendations coming from the international human rights system, which in turn helps the international system to achieve its purpose; just as those recommendations are made more pertinent, timely and concrete by the credible information provided by NHRIs.

---

<sup>43</sup> The NHRI regional coordinating committee, Asia Pacific Forum (APF), encourages good practice in regard to actions NHRIs can take in support of the UPR process, including in submissions such as UN Doc A/HRC/14/NI/10 of 31 May 2010.

<sup>44</sup> ICC Statement to 2014 Annual Meeting of Chairpersons of UN Treaty Bodies, 26 June 2014, at [http://nhri.ohchr.org/EN/News/Documents/INT\\_CHAIRPERSONS\\_IFN\\_26\\_22116\\_E.pdf](http://nhri.ohchr.org/EN/News/Documents/INT_CHAIRPERSONS_IFN_26_22116_E.pdf)

<sup>45</sup> UN Secretary General Report 'Strengthening of the United Nations: an agenda for further change' 9 September 2002. UN Doc A/57/387.

# V. RIGHTS OF NHRIS TO PARTICIPATE IN UN HUMAN RIGHTS BODIES AND PROCESSES, AND CURRENT PRACTICE

NHRIs' rights to participate in UN bodies and processes concerning human rights have evolved over time. The practice of participation has frequently developed on an *ad hoc* basis and later been confirmed and regularised by resolution, in rules of procedure or working methods.

The 1993 World Conference on Human Rights was the turning point in acknowledging NHRIs as separate from and independent of the State in UN processes. During the World Conference, NHRIs were designated their own seating and accorded speaking rights during plenary sessions independent from the State delegation.

Prior to the World Conference, NHRIs could participate in the Commission on Human Rights only as members of their government's delegation.<sup>46</sup> This requirement did not respect or reflect the independent status of NHRIs. This was challenged by the procedure adopted at the World Conference, where NHRIs were accorded separate recognition and status and their own representation and were permitted to sit separately and speak in their own name.

Citing this precedent, the then UN Secretary-General examined appropriate procedures for other UN fora, proposing conformity with the Paris Principles as a minimum standard for participation in meetings of UN human rights bodies.<sup>47</sup> He noted that NHRIs could be 'granted the right to participate as a separate category of participant' with speaking times separate from those allocated to their respective governments.<sup>48</sup>

At the 54<sup>th</sup> Session of **the Commission on Human Rights** in 1998, the Secretary-General reported that, in consultations with States on further enhancing NHRI participation, the majority of States supported enhancement.

The following advantages were mentioned: informing human rights forums of their activities and publicly sharing information with governments, other national institutions and non-governmental organisations; reinforcing their independence from government; enhancing their cooperative links with other national institutions; and facilitating their work at the United Nations, including their access to documents and their knowledge of United Nations activities in the field of human rights. Their participation in human rights forums would also enable national institutions to ensure better follow-up to the recommendations of relevant United Nations organs.<sup>49</sup>

---

<sup>46</sup> See the historical account in the Secretary-General's report to the Commission on Human Rights in 2005, E/CN.4/2005/107 paras 4 to 9.

<sup>47</sup> January 24, 1995 E/CN.4/1995/48.

<sup>48</sup> February 5, 1997 E/CH.4/1997/41 para 41. The UN Secretary General also considered NHRIs as part of official delegations to be 'somewhat anomalous' in view of NHRI independence from government.

<sup>49</sup> UN Doc E/CN.4/1998/47 para 7.

That year NHRIs were permitted to address the Commission during consideration of the item on NHRIs from a special seating section set aside for this purpose.<sup>50</sup> This practice of NHRI participation was then confirmed in annual Commission on Human Rights resolutions from 1999.<sup>51</sup>

At its 61<sup>st</sup> session in 2005 the Commission on Human Rights resolved to extend to NHRIs the right of full participation in their own right in all aspects of the work of the Commission. It asked the Secretary General to report at the 62<sup>nd</sup> session, which turned out to be its final session, with a view to enabling it to finalise at that session modalities for:

*Permitting national institutions that are accredited by the Accreditation Subcommittee of the International Coordinating Committee of National Institutions under the auspices of the Office of the High Commissioner, and coordinating committees of such institutions, to speak, as outlined in the report, within their mandates, under all items of the Commission's agenda, while stressing the need to maintain present good practices of management of the agenda and speaking times in the Commission, to allocate dedicated seating to national institutions for this purpose, and supporting their engagement with all the subsidiary bodies of the Commission.*<sup>52</sup>

In the same resolution, the Commission was explicit in welcoming the participation of NHRI coordinating committees (ICC and regional coordinating committees) in meetings of the Commission and its subsidiary bodies.<sup>53</sup>

In its resolution, the Commission welcomed the efforts of the Secretary-General 'to ensure effective engagement by all parts of the United Nations with national institutions' which included the strengthening of the (then) National Institutions Unit within OHCHR. In the event, the Commission was replaced by the Human Rights Council before the modalities could be finalised.<sup>54</sup>

**The Commission decision, however, provides a precedent of an ECOSOC functional commission granting independent participation rights to NHRIs. Significantly, the Secretariat identified no legal impediments to NHRI participation in the Commission's work.**

---

<sup>50</sup> February 3, 1999 UN Doc E/CH.4/1999/95 para 58.

<sup>51</sup> UN Docs 1999/95; 2000/76; 2001/80 and 2002/83.

<sup>52</sup> Commission of Human Rights resolution 2005/74 para 11(a).

<sup>53</sup> *Ibid* para 10

<sup>54</sup> The Commission's 62<sup>nd</sup> session in 2006 did not transact any business and became no more than the Commission's formal close.

## A. THE HUMAN RIGHTS COUNCIL

With the establishment of the **Human Rights Council**, through the 2006 General Assembly resolution 60/251, the General Assembly confirmed that NHRI participation in the Council would 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’. It called on the Council to ensure their ‘most effective contribution’.

The precise form that ‘effective contribution’ should take was not specified, but was determined by the Human Rights Council in its institution-building package as follows:

*Participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005, while ensuring the most effective contribution of these entities.*<sup>55</sup>

As a result, A-status NHRIs have full observer status at the Human Rights Council. Their participation rights are comprehensive, providing them with rights to designated seating, to submit written statement and to make oral statements, as well as to organize parallel events. (See ANNEX 1 for details).

Since 2011, the Human Rights Council has passed consensus resolutions affirming the importance of NHRI participation in the work of the Human Rights Council and its mechanisms.

**NHRI participation and the form it takes in regard to the Human Rights Council and its subsidiary bodies – including enhanced rights in the UPR – is now established practice. These provide a useful baseline for considering NHRI participation rights in other UN bodies and processes.**

The experience at the Human Rights Council has shown that participation by NHRIs is feasible within the limited time available for Council sessions. It is acknowledged that being entitled to speak is not the same as being permitted to speak. A time limit on a debate for an agenda item means that time is allocated between different stakeholders to maximise the efficacy of the mechanism. During Council debates, individual NHRIs have two or three minutes to speak (generally two minutes during general debates, and three minutes during interactive dialogues) during a defined overall period.

NHRI participation rights in other bodies and processes have been more *ad hoc* and frequently negotiated during the run of the process itself. However, in the case of treaty bodies, the practice of NHRI participation has become increasingly formalised.

## B. THE TREATY MONITORING BODIES

Treaty monitoring bodies allow NHRIs with any status under the ICC, not only A-status NHRIs, to participate in most aspects of their work, submitting written information and attending private formal and informal briefings with treaty body members. In recent position papers, several treaty bodies have explicitly recognised the importance of NHRIs in promoting the rights set out in their

---

<sup>55</sup> Human Rights Council Resolution 5/1, VII Rules of Procedure: Rule 7(b), 18 June 2007. Resolution 5/2 is also relevant.

respective treaties, the importance of participation by NHRIs in the treaty bodies' work and have increasingly moved to formalise and facilitate that participation.<sup>56</sup> (See ANNEX 2 for details).

In regard to **Conferences of State Parties**, NHRIs can only participate on invitation from the Conferences themselves. In the case of the Conference of State Parties to CRPD, the ICC has been granted speaking rights at the opening of the session, with designated seating and speaking slots. A-Status NHRIs have been granted *ad hoc* participation rights, and have been entitled to participate in meetings. These rights have been granted at the Chair and Bureau's discretion, on an *ad hoc* basis.

Given NHRIs' role in the monitoring the implementation of Conventions at the national level and their frequent establishment as independent mechanisms under the treaty (as in the case of CPRD and OPCAT), and the precedent set in the Conference of State parties to the CRPD, their participation in all Conferences of State Parties seems logical.

## C. INTERGOVERNMENTAL PROCESSES

NHRIs have participated in a range of inter-governmental processes since the Vienna World Conference established the practice:

### 1. World Conference Against Racism

At the 2001 World Conference Against Racism in Durban, NHRIs participated on the same basis as at the Vienna World Conference, with participation at the Review Conference on a par with that established at the Human Rights Council. NHRIs participated as observers in all Committees and Working Groups related to the Conference.<sup>57</sup>

---

<sup>56</sup> See: Human Rights Committee, Paper on the relationship of the Human Rights Committee with national human rights institutions, adopted by the Committee at its 106th session (15 October–2 November 2012) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhspttFNxTkgyXTPJWIZn3vnUFnLKxpnZj11yaBwEP7YLjOyGZQzZdrh7Nu%2fGJNnhOc9B5AKMkVi9QWZ3IIDKa8rlukhzVicQSZ%2bX036BnNV8>; Committee on Enforced Disappearances, The relationship of the Committee on Enforced Disappearances with national human rights institutions, [http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1\\_Global/CED\\_C\\_6\\_7527\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1_Global/CED_C_6_7527_E.pdf); Committee on Elimination of Discrimination Against Women, Statement by the Committee on the Elimination of Discrimination against Women on its relationship with national human rights institutions, <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/StatementOnNHRIs.pdf>; Committee on the Rights of the Child, General Comment No. 2 (2002), The role of independent national human rights institutions in the promotion and protection of the rights of the child, [http://www.unicef-irc.org/portfolios/general\\_comments/GC2\\_en.doc.html](http://www.unicef-irc.org/portfolios/general_comments/GC2_en.doc.html); Committee on Economic, Social and Cultural Rights, The role of national human rights institutions in the protection of economic, social and cultural rights <http://www.escr-net.org/docs/i/425231>

<sup>57</sup> UN Doc A/62/375 'Provisional Rules of Procedure for the Durban Review Conference' Rule 65.

By 2007 the Preparatory Committee for the Durban Review Conference had decided by consensus to request NHRIs to assist it by 'undertaking review and submitting recommendations, through the Office of the High Commissioner for Human Rights, as contributions to the outcome of the Review Conference'.<sup>58</sup> The Preparatory Committee sought to cover expenses of the participation of the representatives of NHRIs.<sup>59</sup> NHRIs were then able to participate fully in the 2011 Review Conference.

## **2. Human Rights Council institution-building process and the Human Rights Council five-year review**

During the Human Rights Institution-building process, NHRIs, the ICC and regional coordinating committees enjoyed the same participation rights as at the Human Rights Council. These included unlimited right to speak during working group sessions.

Five years later, the Human Rights Council President was mandated by the Human Rights Council 'to undertake transparent and all-inclusive consultations prior to working group sessions on the modalities of the review, and to keep the Council informed thereof'.<sup>60</sup> The modalities for the Review 'provided for 'participation by stakeholders' in the working group meetings and, acknowledging the value of full NHRI participation, decided that these be 'in the same format as those during the negotiation of the IBP'.<sup>61</sup>

This meant that A-status NHRIs could participate at all formal meetings of the open ended working group on the Council review. NHRIs could make oral statements at meetings, enjoyed allocated seating, and were invited to prepare written submissions. The Human Rights Council President also invited A-status NHRI participation in informal meetings, including the Ambassadorial Retreat on the Council review process held in Bangkok in 2010.

**In the following processes, the General Assembly approved the participation of NHRIs:**

## **3. Elaboration of the Convention on the Rights of Person with Disabilities**

NHRIs were invited to participate in drafting a new International Convention to Protect the Rights of Persons with Disabilities. This was the first time NHRI have been formally invited in their own right to participate in drafting a new international treaty. NHRIs were given the right to attend meetings and make comments during the negotiations, in line with the modalities of the Human Rights Council.<sup>62</sup>

---

<sup>58</sup> UN Doc A/62/375 P.C. 1/10 (a).

<sup>59</sup> UN Doc A/62/375 PC. 1/12

<sup>60</sup> UN Doc A/HRC/RES/12/1 OP4.

<sup>61</sup> Proposed Modalities of the Review of the Work and Functioning of the HRC in accordance with OP 16 of the UNGA Resolution 60/251', August 2010

<sup>62</sup> Frequently Asked Questions regarding the Convention on the Rights of Persons with Disabilities [http://www.un.org/disabilities/default.asp/images/default.asp?id=151#neg3\\_](http://www.un.org/disabilities/default.asp/images/default.asp?id=151#neg3_)

UN Enable<sup>63</sup> notes, ‘Partly as a result of the efforts of representatives of NHRIs, States agreed to a dedicated article on national implementation and monitoring which requires States to have some form of national human rights institution that protects, promotes and monitors the Convention.’<sup>64</sup> In addition, the Secretary-General has referenced NHRIs’ participation in the development of the *Convention on the Rights of Persons with Disabilities*, alongside the modalities of the Human Rights Council, as a model for other mechanisms.<sup>65</sup>

#### 4. Participation in the Treaty Body Strengthening Process

The President of the General Assembly was requested by the General Assembly to make arrangements for participation of stakeholders other than States in this process.<sup>66</sup> NHRI representatives participated as resource persons in panel discussions held during State consultations in July 2012, were invited to participate in the consultations between States in early 2013 (whereas NGOs were excluded), and participated in a series of preparatory meetings over a period of two years.

However, despite practice and modalities of participation elsewhere in the UN system and the specific request of the General Assembly, participation in the treaty body strengthening process remained *ad hoc*. The General Assembly’s acknowledgement of the value of NHRI participation in the process suggested that the *ad hoc* arrangements are not sufficient, and regularised procedures for NHRI engagement needed to be established.<sup>67</sup>

#### 5. Open-Ended Working Group on Ageing

NHRIs have been invited to participate as panelists and experts in proceedings of the Open-Ended Working Group on Ageing (OEWG). NHRIs have no formal participation rights, however, but have taken the initiative to submit written statements.<sup>68</sup>

The ICC recommended that A-status NHRIs be formally recognised as a key stakeholder within the OEWG process and be granted formal participation rights, citing the importance of their contribution to promoting the strengthening of the human rights of older persons.<sup>69</sup>

Significantly, during the first session of the Working Group, Member States expressed support for NHRI participation. The session report notes that ‘(d)elegates called for greater involvement by national human rights institutions and intensified cooperation with civil society actors and the

---

<sup>63</sup> UN Enable (the official website of the Secretariat for the Convention on the Rights of Persons with Disabilities) <http://www.un.org/disabilities/default.asp?navid=15&pid=150>.

<sup>64</sup> The Secretary General notes that in September 2013, two NHRIs made interventions during the dialogue with States Parties at the tenth Session of the Committee on the Rights of Persons with Disabilities, and provided information on their national-level monitoring activities. UN Doc A/HRC/27/39, para 97.

<sup>65</sup> UN Doc A/HRC/20/9 para 85.

<sup>66</sup> UN Doc A/RES/66/254 OP6, ‘Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system’.

<sup>67</sup> UN Doc A/RES/68/268, April 2014.

<sup>68</sup> For example during the Third Session, August 2012, the European Group of Human Rights Commissions and the Human Rights Commission of Sri Lanka made statements. See: <http://social.un.org/ageing-working-group/thirdsession.shtml>

<sup>69</sup> ICC Statement to the UN Working group on Ageing Fourth Working Group Session, 12 – 15 August 2013. See: <http://social.un.org/ageing-working-group/documents/fourth/statements/ICC.pdf>.

private sector to improve the condition of older persons'.<sup>70</sup> However, such participation has yet to be formalised.

These examples show that practice has been ad hoc and inconsistent. There are no procedural documents that enable or preclude participation in these processes. NHRI participation has frequently been agreed to after the process has begun when it is recognised that they could make important contributions – but by then NHRIs have missed out on much of the discussion.

Whilst there are no participation rights for NHRIs in the General Assembly plenary, its committees or commissions, there is scope for participation.<sup>71</sup>

## D. ECOSOC FUNCTIONAL COMMISSIONS, REGIONAL COMMISSIONS AND OTHER BODIES

Whilst there are no formal participation rights for NHRIs at ECOSOC or in its subsidiary bodies, NHRIs have participated at **the Permanent Forum on Indigenous Issues**. NHRIs are not referred to in the resolution establishing the Permanent Forum but the Forum has endeavored to facilitate NHRIs' participation on a par with those established at the Human Rights Committee, and have accredited them to the sessions of the forum.

At ECOSOC functional commissions authorised representatives may sit as observers at public meetings, at the invitation of the body or the recommendation of the Security General. NHRIs would be permitted to consult with and may even be permitted to be heard by the body.<sup>72</sup> In some cases these bodies accept the submission of written inputs, such as in the case of the Science and Technology Commission.<sup>73</sup> NGO participation is provided for in some cases, which is evidence that the voice of civil society is of interest to these bodies.<sup>74</sup>

---

<sup>70</sup> UN Doc A/AC.278/2012/1 'Report of the Open-Ended Working Group on Ageing' page 7.

<sup>71</sup> For example, the United Nations Peacebuilding Commission notes its working methods should 'enable the Commission to forge strong partnerships with the multitude of key national, regional and international operational actors. The Peacebuilding Commission, Working Methods, 2013: [www.un.org/en/peacebuilding/pdf/oc/PBC%20Working%20Methods%20Compendium\\_Part%20I\\_Formatted\\_30April2013.pdf](http://www.un.org/en/peacebuilding/pdf/oc/PBC%20Working%20Methods%20Compendium_Part%20I_Formatted_30April2013.pdf). The Rules of Procedure of the International Law Commission provide that it may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions: Article 26 1.

<sup>72</sup> Rules of Procedure of the Functional Commissions of the Economic and Social Council 1982, E/5975/Rev.1, 'Consultation with and representation of non-governmental organisations' Rules 75 and 76.

<sup>73</sup> Rules of Procedure of the STDC contained in Board Decision 43 (VII) and Rule 77 of the TDB – TD/B/16/Rev.4.

<sup>74</sup> For example, the **Crime Prevention and Criminal Justice Commission allows NGOs in consultative status with ECOSOC to organize side events**: Guidelines for Side Events 2015, Crime Prevention and Criminal Justice Commission.

## VI. WHEN MODALITIES ALLOW, NHRIS PARTICIPATE!

NHRI participation in the UN system is growing. The Secretary-General, in his regular reports to the General Assembly and Human Rights Council, provides data and examples of participation that speak to this increasing engagement. He notes that, during the period covered by his most recent report, NHRIs were 'active before and during the sessions of the Human Rights Council, delivering statements, submitting written documentation, participating in general debates and under specific agenda items, organizing parallel events and interacting with the special procedures'.<sup>75</sup>

The OHCHR 2009 Survey on NHRIs' international engagement shows that at that time a majority of NHRIs were not engaging very comprehensively with the UN human rights mechanisms and bodies.<sup>76</sup> However the numbers have steadily increased in regard to HRC sessions, with 21 NHRIs in 2011, 30 in the period March 2012 – 2013, and 31 over the last year.<sup>77</sup> Even when resources or other circumstances prevent their participation in person, NHRIs have increasingly participated in sessions through video statements.<sup>78</sup>

NHRIs have always engaged actively with the UPR.<sup>79</sup> Participation has increased further over the two cycles, including by making use of the opportunity created by the Human Rights Council to intervene immediately after the State under review at the adoption of the outcome of the review by the Council plenary.<sup>80</sup> In regard to interaction by NHRIs with treaty bodies, the Secretary-General notes a 10% increase in participation of NHRIs between 2009 and 2012.<sup>81</sup> About 60% of NHRIs engaged with treaty bodies in some capacity during the period from April 2013 to August 2014.<sup>82</sup>

---

<sup>75</sup> UN Doc A/HRC/27/39, para 83.

<sup>76</sup> 'Survey on National Human Rights Institutions. Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide', July 2009

<sup>77</sup> UN Doc A/HRC/27/39, para 83.

<sup>78</sup> Three statements were delivered by NHRIs during the 19<sup>th</sup> session – the first session this modality was permitted – up to 8 during the 21<sup>st</sup> and 12 during the 27<sup>th</sup> session. UN Doc A/HRC/23/27, para 78, and UN Doc A/HRC/27/39 para 83.

<sup>79</sup> In the OHCHR Survey, 'countries of 27 respondents had been reviewed and all 27 institutions indicated that they had participated in the process in some capacity'. page 44.

<sup>80</sup> In 2012 there was a 40 per cent increase over the same period in the first cycle in the number of written contributions from A-status NHRIs for the stakeholders' report submitted for the UPR. 17 A-status and 2 B-status institutions made contributions. UN Doc A/HRC/23/27.

<sup>81</sup> UN Doc A/HRC/23/27, para 89.

<sup>82</sup> UN Doc A/HRC/27/39 annex III.

## A. EXAMPLES OF COOPERATION WITH UN BODIES AND PROCESSES

A-status NHRIs participate with a range of UN bodies on diverse topics and this engagement has had impact as the following examples show.

The **South African Human Rights Commission (SAHRC)** is an A-status NHRI established under the Constitution of the Republic of South Africa. To promote country compliance with international human rights obligations, the SAHRC prepares an Annual International and Regional Human Rights Report, which assesses compliance with South Africa's international and regional obligations and forms the basis for providing information to international human rights bodies.

Since its establishment in October 1995, the SAHRC has engaged actively with the UN. It has designated individual commissioners as focal points for engagement with specific UN bodies in accordance with their areas of expertise. The SAHRC has provided written submissions for the UPR and to treaty bodies, including in the preparation of lists of issues. It has responded to requests for information from special procedures and OHCHR. The SAHRC makes regular statements at the Human Rights Council.

The SAHRC has established an Advisory Committee to facilitate dialogue on human rights issues between key stakeholders in South Africa pushing for national legislation to be brought into line with international human rights standards. The SAHRC was part of the ICESCR Ratification Campaign which subsequently resulted in South Africa ratifying the Covenant in early 2015. The SAHRC reports to Parliament on South Africa's international reporting obligations, particularly in regard to its overdue reports. The SAHRC has been both Chair of the ICC and Chair of the Network of African National Human Rights Institutions (NANHRI).

*Source: Response to ISHR request for information 17 April 2015.*

The **Human Rights Commission of Malaysia (SUHAKAM)** has been active in both cycles of the UPR to date by submitting reports to the UPR Working Group, providing interim reports to the Human Rights Council, and delivering oral and written statements. SUHAKAM has published information to promote awareness of the mechanisms, the Government's commitments and the roles of various stakeholders in ensuring Malaysia's implementation of the accepted UPR recommendations. It holds consultations with various stakeholders to follow up and assess the country's UPR implementation.

SUHAKAM has delivered statements on a range of issues during sessions of the Human Rights Council as well as during interactive dialogues with special procedures, that it makes public on its website.

SUHAKAM was able to use the UPR to call attention to the deficiencies in its enabling legislation, with the result that SUHAKAM complies more fully with the Paris Principles and retains its A-status accreditation. Engaging with the UPR process has been a means to advance the respect of human rights in Malaysia and strengthen its own legal and political position.

*Sources: Sukaham website <http://www.suhakam.org.my/regional-international/upr>; APF 'International Human Rights and the International Human Rights System' <http://nhri.ohchr.org/EN/IHRS/Documents/International%20HR%20System%20Manual.pdf>.*

The **Scottish Human Rights Commission**, an A-status NHRI, has engaged widely with UN bodies, including through the submission of alternative reports and lists of issues for treaty body reviews. All its reports are made public and are shared with civil society, the Government and Parliament, and the Commission follows up specific recommendations as appropriate.

The Commission notes that in the case of its report to CEDAW in 2013, most of its recommendations for action to ensure that women's rights are realised in practice in Scotland were adopted by the Committee in its concluding observations. In the cases where the UK is not a state party to the Convention – as in the case of the *Convention on the Rights of Migrants and their Families* and the *Convention on the Protection of All Persons from Enforced Disappearances* – the Commission encourages the state to become a party.

The Commission has also supported visits by special procedures to the UK, submitted a report in 2012 for the UPR of the UK, and has made statement at sessions of the Human Rights Council.

Source <http://www.scottishhumanrights.com/ourwork/international>

Furthermore, the NHRIs of all Latin American States bar one have participated in the UPR processes.<sup>83</sup>

NHRIs have contributed to UN processes through the delivery of joint statements that bring evidence of cross regional support to a discussion, thereby positively supporting State negotiations and efforts to seek consensus in advancing respect of human rights.

In March 2012, twelve NHRIs provided a joint video statement to the Human Rights Council on the issue of violence and discrimination based on sexual orientation and gender identity. The NHRIs spoke of their interest in increasing their understanding of the issues, share experiences and good practice, report incidents of discrimination and violence, and engage with the Human Rights Council and Members States to ensure these human rights violations were adequately addressed.<sup>84</sup> The NHRIs described themselves as 'working in a diversity of societies and cultures' but expressed their 'unanimity in condemning human rights violations whenever and wherever they occur and on whatever basis that they can occur'.<sup>85</sup>

---

<sup>83</sup> UPR Info: <http://www.upr-info.org/en>.

<sup>84</sup> Equality and Human Rights Commission of Great Britain, Scottish Human Rights Commission, German Institute for Human Rights, Australian Human Rights Commission, New Zealand Human Rights Commission, National Human Rights Commission of Mongolia, Procuraduría para la Defensa de los Derechos Humanos de Nicaragua, Canadian Human Rights Commission, Greek National Commission for Human Rights, Defensoría del Pueblo de Ecuador, National Human Rights Commission of Thailand, and National Consultative Commission on Human Rights of France.

<sup>85</sup> 'NHRIs join global discussion of key human rights issues.' See: <http://www.asiapacificforum.net/news/nhris-join-global-discussion-of-key-human-rights-issues?searchterm=statement+to+human+rights+council>.

## B. COOPERATION OF NHRIS WITH REGIONAL HUMAN RIGHTS BODIES

The Paris Principles require NHRIs to cooperate with regional human rights bodies as well as international human rights mechanisms.<sup>86</sup>

**The African Commission on Human and Peoples' Rights** (the ACHPR), the premier African human rights body, is required to

**'(c)operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights'.<sup>87</sup> The ACHPR has reflected this in its plans of action, noting that cooperation with a range of stakeholders, including NHRIs, is a requirement of the Commission so as 'to attain its objectives in as short a period as possible'.<sup>88</sup>**

The ACHPR acknowledged that NHRIs are 'an essential partner in the implementation of the Charter at national level', that the ACHPR is '(c)onvinced of the importance of the role of national institutions in the promotion and protection of human rights and in creating public awareness in Africa with regard to the institutional defence of human rights' and that it has the duty to establish a 'mutually co-operative relationship' with NHRIs. NHRIs 'functioning according to internationally recognised norms and standards' can apply for affiliate (special observer) status with the African Commission.<sup>89</sup> Furthermore, the ACHPR has expressed satisfaction at the 'significant participation' of African NHRIs in the deliberations of Commission sessions, and at the interest they express in being granted observer status with the Commission.<sup>90</sup>

**The Inter-American Commission for Human Rights (IACHR)** urges States to ensure that NHRIs can enjoy 'the utmost independence and that their pluralism is guaranteed'.<sup>91</sup> It has welcomed the active role NHRIs play in the inter-American system for human rights, including their 'active roles as driving forces behind decisions taken by the inter-American system', and has urged even greater participation.<sup>92</sup> NHRIs intervene as petitioners in filing requests seeking precautionary measures and individual complaints and as participants in the public hearings held

---

86 The Paris Principles 3(d).

87 *The African Charter on Human and Peoples' Rights*. See: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

88 The Mauritius Plan of Action, 1996, IV Cooperation para 47. , <https://www1.umn.edu/humanrts/africa/mauritius-plan.html>.

89 Resolution 31 (XXIV) 98 on Granting Affiliate Status to National Human Rights Institutions in Africa <https://www1.umn.edu/humanrts/africa/res-observer.html>. In accordance with the rules of procedure, national institutions may be represented in public sessions of the Commission and its subsidiary bodies; participate, without voting rights, in deliberations on issues which are of interest to them and submit proposals which may be put to the vote at the request of any member of the Commission. Rules of Procedure of the African Commission on Human and Peoples' Rights 2010, Rule 62. <http://www.achpr.org/instruments/rules-of-procedure-2010/#ch1.14>.

90 Resolution 31 (XXIV) 98 on Granting Affiliate Status to National Human Rights Institutions in Africa

91 Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. doc. 66, para 534.

92 *Ibid.* para 536.

by the Inter-American Commission.<sup>93</sup> The IACHR uses information from civil society organisations, including NHRIs, to inform the preparation of the Annual Report it is required to present to the General Assembly of the Organisation of American States.<sup>94</sup>

NHRIs have also been active participating in Council of Europe processes. The European Network of NHRIs has noted its involvement in both the Open Ended Working Group on Ageing and in the **Council of Europe's working group on the drafting of a non-binding instrument on the promotion of human rights of older persons** (CCDH AGE). This regional network of NHRIs has permanent observer status, including speaking rights, at the Council of Europe's steering committee on human rights, including CDDH-AGE, which demonstrates the value placed on NHRI input by these regional human rights fora.<sup>95</sup>

---

<sup>93</sup> Rules of Procedure of the Inter-American Commission:  
<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>

<sup>94</sup> *Ibid*, Article 59 5(g)

<sup>95</sup> 'Statement to UN Open Ended Working Group on Ageing Fourth Working Session, European Network of National Human Rights Institutions'. See: <http://social.un.org/ageing-working-group/documents/fourth/statements/ENNHRI.pdf>.

# VII. THE BASIS FOR EXTENDING PARTICIPATION RIGHTS FOR A-STATUS NHRIS

Over many years, through General Assembly and Human Rights Council resolutions and other statements, **UN Member States have welcomed the establishment of NHRIs**. They have encouraged their establishment in States that do not have them and their strengthening in States that do. Furthermore, States have responded positively to this international encouragement and have accepted recommendations on NHRIs from Human Rights Council mechanisms (special procedures and UPR) as well as treaty bodies.

**UN Member States have endorsed the accreditation system that assesses NHRIs' conformity with the Paris Principles**, welcoming the growing number seeking such accreditation status and encouraging the Secretary General 'to give high priority to requests from Member States for assistance in the establishment and strengthening of national human rights institutions in accordance with the Paris Principles'.<sup>96</sup>

In addition, the General Assembly has welcomed 'the important' role of the ICC in 'assessing the conformity of national human rights institutions with the Paris Principles'.<sup>97</sup>

The Paris Principles have been repeatedly cited by the General Assembly as the standard by which NHRIs are assessed for full 'participatory opportunities' at the Human Rights Council.<sup>98</sup> The accreditation process is well regarded and well established.

**The UN bodies have expressed support for the national-level work of NHRIs**, with the General Assembly acknowledging their 'important and constructive role' in national contexts, 'in particular in their advisory capacity to the competent authorities and their role in preventing and remedying human rights violations, in disseminating information on human rights and in education in human rights'.<sup>99</sup> The Human Rights Council encourages NHRIs 'to assist, advise and engage with the State and other stakeholders in the prevention of violations and abuses of human rights'.<sup>100</sup>

Furthermore, the UN High Commissioner for Human Rights - the United Nations official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General - has noted that 'NHRIs have a central place in the national human rights protection system and are crucial partners for OHCHR'.<sup>101</sup>

---

<sup>96</sup> UN Doc A/HRC/RES/27/18 OP15. In addition, see HRC resolutions A/HRC/RES/20/14; A/HRC/RES/23/17; A/ HRC/RES/27/18, and General Assembly resolution A/RES/68/171 para 18.

<sup>97</sup> UN Doc A/RES/68/171 OP22.

<sup>98</sup> For example, UN Doc A/RES/66/169 OP10 and UN Doc A/RES/68/171 OP13.

<sup>99</sup> UN Doc A/ RES/68/ 171 preambular para 8.

<sup>100</sup> UN Doc A/HRC/27/18 OP7.

<sup>101</sup> UN High Commissioner for Human Rights' statement to the annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 2010.

**Not only has the General Assembly spoken of the importance of NHRIs' role in the effectiveness of the international human rights system but it also acknowledges their role in facilitating and protecting the cooperation of others.** The General Assembly speaks of their role 'in preventing and addressing cases of reprisals as part of supporting the cooperation between their Governments and the United Nations in the promotion of human rights, including by contributing to follow-up actions, as appropriate, to recommendations made by international human rights mechanisms'.<sup>102</sup>

Both the General Assembly and Human Rights Council have welcomed the role of NHRIs at the Human Rights Council, the UPR, with special procedures, and in regard to treaty bodies.<sup>103</sup>

The Secretary General has also acknowledged the value of NHRIs' participation in the UPR process due to their role 'at the national level in the follow-up to the review and in developing tools to monitor and assess progress in the implementation of recommendations'.

He noted that for these reasons OHCHR has been actively supporting and encouraging their participation in the UPR process.<sup>104</sup> He has also spoken of NHRIs' contribution of 'sharing midterm progress reports on the status of the implementation of recommendations, and of voluntary commitments and pledges made by States'.<sup>105</sup>

Furthermore, the Secretary General has noted the importance ascribed to NHRIs by special procedures, where '(i)ncreasingly, mandate holders seek the assistance of such [national human rights] institutions in ensuring that their recommendations are implemented at the national level'.<sup>106</sup>

And finally, treaty bodies have expressed their support for NHRIs and facilitated and, in some cases, formalised their participation.

When outlining its relationship with NHRIs, the Human Rights Committee pointed to the body of statements, resolutions and reports that demonstrate that 'the international community has recognized the roles of national human rights institutions and has provided such institutions with increasing opportunities to contribute to the promotion and protection of human rights at the international level'.<sup>107</sup>

The Committee was pointing to a growing consensus around the importance of the contributions of NHRIs to UN bodies and processes.

**The General Assembly welcomes restrictions of full participation rights to A-status NHRIs at the Human Rights Council,** noting 'the strengthening of opportunities to contribute to the

---

[www.asiapacificforum.net/working-with-others/icc/icc-meetings/downloads/icc-23-speeches-and-documents](http://www.asiapacificforum.net/working-with-others/icc/icc-meetings/downloads/icc-23-speeches-and-documents)

<sup>102</sup> UN Doc A/RES/68/171 OP6.

<sup>103</sup> UN Doc A/HRC/RES/27/18 OP18; UN Doc A/RES/68/171 OP12.. In the case of the Human Rights Council this goes back at least to June 2011: UN Doc A/HRC/17/9.

<sup>104</sup> UN Doc A/HRC/27/39 para 88.

<sup>105</sup> *Ibid.* para 89.

<sup>106</sup> *Ibid.* para 91.

<sup>107</sup> 'Paper on the relationship of the Human Rights Committee with NHRIs' op cit. A2. List footnote 1.

work of the Human Rights Council for national human rights institutions compliant with the Paris Principles'.<sup>108</sup>

Following on from the endorsement of A-status participation at the Commission on Human Rights and at the Human Rights Council, the General Assembly has effectively confirmed the significance of A-status NHRI participation.

Enhanced participation rights for A-status NHRIs have been also been acknowledged by the Secretary General as allowing 'A-status institutions to share their independent views on the impact of the UPR on the promotion and protection of human rights, including good practices, challenges and emerging human rights issues'.<sup>109</sup>

**With such evidence of the positive contribution of NHRIs to UN bodies, UN Member States have encouraged further NHRI participation.** For several years the General Assembly has called on NHRIs 'to continue to play an active role in preventing and combating all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments'.<sup>110</sup>

It has described the role of NHRIs in supporting cooperation between their governments and the United Nations in the promotion and protection of human rights as '*increasingly important*'.<sup>111</sup>

The Human Rights Council has commended 'the increasing engagement of national human rights institutions at all stages of the Universal Periodic Review mechanism'<sup>112</sup> and welcomed 'the increased engagement between the special procedures and national human rights institutions'. It '*encourages the deepening of such engagement*'.<sup>113</sup>

The General Assembly has welcomed '**the strengthening of opportunities** for national human rights institutions compliant with the Paris Principles to contribute to the work of the Human Rights Council' and '**encourages national human rights institutions to make use of these participatory opportunities**'.<sup>114</sup>

**The Secretary-General has also encouraged NHRIs to advocate for their independent participation in UN human rights bodies and his efforts have been welcomed by the Human Rights Council and the General Assembly.**<sup>115</sup> The Secretary-General's efforts to encourage NHRIs to advocate for independent participation 'in all relevant United Nations mechanisms, in accordance with their respective mandates', has been welcomed by the Human Rights Council, and noted 'with appreciation' by the General Assembly.<sup>116</sup>

Establishing A-status NHRI participation at the Human Rights Council and increasing formalisation of NHRI participation in treaty bodies have evolved from a practice of participation that these bodies have considered valuable to their work. **NHRIs have continued to engage**

---

<sup>108</sup> UN Doc A/RES/66/169 OP10.

<sup>109</sup> UN Doc A/HRC/27/39 para 86.

<sup>110</sup> UN Docs A/RES/68/171 OP10, A/RES/66/169 OP8; A/RES/64/161 OP8.

<sup>111</sup> UN Doc A/RES/68/171 OP4.

<sup>112</sup> UN Doc A/HRC/RES/27/18 OP19.

<sup>113</sup> UN Doc A/HRC/RES/23/17 OP13; UN Doc A/HRC/ RES/27/18 OP20.

<sup>114</sup> UN Doc A/RES/68/171 OP13; UN Doc A/RES/66/169 OP10.

<sup>115</sup> Secretary General's Report: UN Doc A/68/208 para 84.

<sup>116</sup> UN Doc A/RES/68/171 preambular para 11.

**actively with UN bodies and processes, and to advocate for the extension of participation rights across the UN, encouraged by these statements by United Nations organs and Member States.**

At the **Commission on the Status of Women (CSW)** NHRIs do not have separate accreditation or separate reserved seating, nor can they submit written documents or make oral statements. Since 2009, the International Coordinating Committee (ICC) has sought to reverse this. In a joint statement, 11 NHRIs attending CSW 54 in 2010 encouraged CSW Member States to support a resolution enabling the independent participation of NHRIs at CSW, consistent with other UN bodies.<sup>117</sup>

This resulted in expressions of support from States and UN experts. In 2009, the CEDAW Chairperson spoke of the 'important role' played by NHRIs as 'a critical tool' in strengthening implementation of human rights at national level and urged CSW to consider how NHRIs could play a fuller role in its own work.<sup>118</sup> At the same session, a number of States made statements promoting the role of NHRIs in CSW's work. The Philippines, for example, called for 'full, independent and effective participation of Paris Principles-compliant national human rights institutions in the sessions of CSW, similar to that in the UN Human Rights Council'.<sup>119</sup>

Furthermore, the CSW Agreed Conclusions referred to the role of NHRIs for the first time in that year and has done so each year since when Agreed Conclusions have been adopted (2009, 2011 and 2013).

CSW has now acknowledged the important role that NHRIs can play in its work. The Human Rights Council has welcomed the efforts undertaken by the ICC to advocate for A-status NHRIs to have participation rights at CSW in light of the 'practical contributions' they could make.<sup>120</sup> The General Assembly has welcomed A-status NHRIs' contribution to the work of the CSW and encouraged NHRIs compliant with the Paris Principles to continue to participate in and contribute to deliberations of all relevant United Nations mechanisms and processes in accordance with their respective mandates.<sup>121</sup>

**A similar pattern of support for A-status NHRI participation** from the Secretary General, the Human Rights Council and the General Assembly has followed in regard to the Open Working Group on Ageing and the treaty body strengthening process, and in the Conference of State Parties to the Convention on the Rights of Persons with Disabilities.<sup>122</sup> In regard to the Open

---

<sup>117</sup> These NHRIs were the: Australia, Canada, Jordan, Korea, Mexico, New Zealand, Nigeria, Philippines, South Africa, Spain and Thailand.

<sup>118</sup> Statement by Ms Naéla Gabr Chairperson Committee on the Elimination of Discrimination against Women, 53<sup>rd</sup> Session of the Commission on the Status of Women. See: [http://www.un.org/womenwatch/daw/csw/csw53/off\\_statements/Chairper.pdf](http://www.un.org/womenwatch/daw/csw/csw53/off_statements/Chairper.pdf).

<sup>119</sup> Statement page 5: See:

[http://www.un.org/womenwatch/daw/csw/csw53/statements\\_missions/Philippi.pdf](http://www.un.org/womenwatch/daw/csw/csw53/statements_missions/Philippi.pdf).

<sup>120</sup> UN Docs A/HRC/20/14 and A/HRC/20/9 para 83.

<sup>121</sup> UN Docs A/RES/68/171 OP14 and OP15.

<sup>122</sup> See: Secretary General's reports: A/HRC/20/9 paras 84 and 93; A/HRC/23/27 para 2 and 122; Human Rights Council resolution A/HRC/RES/20/14 OP15, and General Assembly resolution A/RES/68/171 OP14. On treaty body strengthening see: A/RES/68/171 OP14; 68/268 of 9 April 2014, and HRC/RES/20/14. Also, A/HRC/ 20/9 para 85, A/HRC/RES/20/14 OP15.

Working Group on Ageing the Secretary General noted that the appropriate practices of participation to follow were those established at the Human Rights Council.<sup>123</sup>

**In 2013, the Human Rights Council made a general call for participation rights across all relevant UN mechanisms.**<sup>124</sup> In June 2012, the Human Rights Council recommended to the General Assembly that it ‘explore the feasibility of enabling national human rights institutions compliant with the Paris Principles to participate in the Assembly’, based on arrangements practised at the Human Rights Council.<sup>125</sup> The Council made a similar call in June 2013, and in October 2014 added to the call by ‘urging’ the General Assembly to act.<sup>126</sup> The call by the Human Rights Council could be seen to be part of its effort to fulfil its mandate to ‘promote the effective coordination and mainstreaming of human rights within the United Nations system’.<sup>127</sup> The resolutions supporting participation rights for NHRIs approved by the Human Rights Council were passed by consensus.

During its 68<sup>th</sup> Session in 2014, the General Assembly passed a consensus resolution requesting the Secretary-General to prepare ‘his next report to the General Assembly on the current participation of national human rights institutions compliant with the Paris Principles in the work of the Assembly and related processes, with a view to exploring the feasibility of enabling national human rights institutions compliant with the Paris Principles to participate independently in relevant United Nations mechanisms and processes in accordance with their respective mandates and based on practices and arrangements agreed upon in Assembly resolution 60/251 of 15 March 2006, Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007 and 16/21 of 25 March 2011 and Commission on Human Rights resolution 2005/74 of 20 April 2005, while ensuring their most effective contribution’.<sup>128</sup>

Individual Member States have expressed keen support for extending participation rights:

*‘National Human Rights Institutions play a crucial role in promoting and protecting human rights domestically, regionally and internationally. In Geneva, NHRIs are key actors in promoting and monitoring follow-up to the recommendations of the Human Rights Council and other human rights mechanisms, and provide information on national situations. We welcome and recognise the important and valuable contribution of NHRIs to the work of the Human Rights Council. We consider this engagement to be best practice. We urge the UN General Assembly to explore the feasibility of enabling NHRIs compliant with the Paris Principles on NHRIs to participate in the UN General Assembly.’*

John Quinn, Ambassador and Permanent Representative of Australia to the UN in Geneva

*‘The participation of National Human Rights Institutions at the Human Rights Council and in relation to its mechanisms in Geneva adds an incomparable valuable to the work of the bodies as they contribute to monitoring and reporting on state compliance and international human rights obligations. With my experience from my years as Permanent Representative for Denmark to the UN in New York, I believe that the National Human Rights Institutions can and should play a valuable role in the General Assembly and ECOSOC as well.’*

Carsten Staur, Ambassador and Permanent Representative of Denmark to the UN in Geneva

<sup>123</sup> UN Doc A/HRC/ 20/9 para 85.

<sup>124</sup> UN Doc A/HRC/23/17 OP15.

<sup>125</sup> UN Doc A/HRC/RES/20/14 OP16.

<sup>126</sup> UN Doc A/HRC/RES/27/18 OP22.

<sup>127</sup> UN Doc A/RES/60/251, 2006 establishing the Human Rights Council.

<sup>128</sup> UN Doc A/RES/68/171 OP16.

# VIII. THE BENEFITS OF EXTENDING PARTICIPATION RIGHTS TO THE GENERAL ASSEMBLY AND ECOSOC

The **General Assembly**, ‘the main deliberative, policymaking and representative organ of the UN’,<sup>129</sup> has a mandate is to discuss and make recommendations on ‘any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter’,<sup>130</sup> as well as recommendations ‘promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all.’<sup>131</sup>

The General Assembly’s human rights work is generally conducted first in its Third Committee - the Social, Humanitarian and Cultural Committee - and then in plenary. The Third Committee is a key forum for human rights debate. It holds interactive dialogues with international human rights experts who rarely report directly to or have open discussions in the plenary session. It follows that the General Assembly plenary, where human rights discussions continue, including on issues not previously discussed in the Third Committee, would benefit from NHRI participation.<sup>132</sup>

The General Assembly has encouraged NHRIs to continue to participate in all relevant UN mechanisms and processes, ‘including the discussions on the post-2015 development agenda’.<sup>133</sup> The Post-2015 Agenda is one of the great human rights challenges of this decade, one requiring a ‘strong accountability framework’.<sup>134</sup> The ‘essential role of NHRIs in monitoring the implementation of human rights across the post-2015 framework of goals and targets’ and the need to be enabled to play that role fully have been recognised internationally.<sup>135</sup>

**ECOSOC** is responsible for discharging the obligations of the United Nations to promote universal respect for, and observance of, fundamental rights and freedoms.<sup>136</sup> As in the case of the General Assembly, ECOSOC is empowered to set its own procedural rules<sup>137</sup> and to

---

<sup>129</sup> U.N. website, <http://www.un.org/en/ga/about/index.shtml>.

<sup>130</sup> *Charter of the United Nations*, Chapter IV Art. 10.

<sup>131</sup> *Ibid*, Chapter IV Art. 13(1).

<sup>132</sup> Several agenda items, including those related to Palestine and the situation in the Middle East, do not pass through the Third Committee first.

<sup>133</sup> UN Doc A/RES/68/171 OP15.

<sup>134</sup> Open letter on Human Rights and the Post 2015 Agenda, from Navi Pillay to All Permanent Missions in New York and Geneva, 6 June 2013: <http://www.ohchr.org/Documents/Issues/MDGs/HCOpenLetterPost2015.pdf>.

<sup>135</sup> Magdy Martínez-Solimán, Assistant Administrator and Director Bureau for Policy and Programme Support, UNDP New York: Remarks at Opening Ceremony of the 28th General Meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 12 March 2015.

<sup>136</sup> See Volker Röben, Ch. X The Economic and Social Council, Functions and Powers, Article 62, ¶ 5, in *The Charter of the United Nations: A Commentary*, Vol. II (3d ed. 2013); *United Nations Handbook 2014-2015*, 134 (52d ed. 2014).

<sup>137</sup> *Charter of the United Nations*, Chapter X Article 71(a).

establish subsidiary commissions 'as may be required for the performance of its functions'.<sup>138</sup> The Charter also provides for varying degrees of collaboration between ECOSOC and other entities, including specialized agencies, Member States, non-governmental organizations, and national organizations.<sup>139</sup>

---

<sup>138</sup> *Charter of the United Nations*. Article 68.

<sup>139</sup> *Ibid.* Articles 69-71.

# IX. THE FEASIBILITY OF EXTENDING A-STATUS NHRIS' RIGHTS OF PARTICIPATION TO THE GENERAL ASSEMBLY AND ECOSOC

ISHR obtained independent, expert advice from its legal counsel **Freshfields Bruckhaus Deringer** in regard to the options for extending participation rights to the General Assembly and subsidiary bodies, and ECOSOC and subsidiary bodies. The advice identified no legal impediments to enabling A-status NHRIs to secure participation rights for these bodies and processes, on a par with those enjoyed at the Human Rights Council and its subsidiary mechanisms. Freshfields identified a number of routes that may be available to providing for full participation.<sup>140</sup>

ISHR recommends the adoption of a comprehensive General Assembly resolution expressly giving NHRIs compliant with the Paris Principles the right to provide written comment and to intervene orally and be heard by the General Assembly, its committees and subsidiary bodies; ECOSOC and its functional commissions and all other relevant UN fora.

General Assembly resolutions apply, where relevant, to subsidiary bodies and are binding upon them.<sup>141</sup> As such, the recommended General Assembly resolution would specifically apply to the General Assembly itself, its committees and subsidiary bodies, ECOSOC and its functional commissions and subsidiary bodies and to other relevant bodies. It would specify any consequential amendments required to the General Assembly Rules of Procedure (the GA Rules).<sup>142</sup>

In addition the resolution would

1. specify its applicability to all subsidiary bodies, including open-ended working groups;
2. direct General Assembly subsidiary bodies to make any necessary amendments to their procedural rules, to establish the modes of participation for NHRIs in accordance with the resolution;
3. direct ECOSOC and its subsidiary bodies to make any necessary amendments to their procedural rules, including the ECOSOC Rules of Procedure (the ECOSOC Rules), to establish the modes of participation for NHRIs in ECOSOC and its subsidiary bodies consistently with the resolution.

---

<sup>140</sup> The advice is available online at [www.ishr.ch/Memo-NHRIParticipation](http://www.ishr.ch/Memo-NHRIParticipation).

<sup>141</sup> See H.G. Shermers & N.M. Blokker, *International Institutional Law*, 790 (4th ed. 2003) (“When the supreme organ of an organization declares that a particular rule should be applied, that declaration will bind all lower organs, even if it has no external binding effect. This is the consequence of the hierarchy of organs.”).

<sup>142</sup> In accordance with Article 21 of the Charter, the General Assembly is free to determine its own rules of procedure.

Such a resolution would be consistent with the General Assembly's mandate under the Charter to '[assist] in the realization of human rights and fundamental freedoms for all'.<sup>143</sup> The General Assembly may assign additional functions to ECOSOC and specify related powers of the Council within the broad parameters of the Charter.<sup>144</sup>

The resolution would require a simple majority of members 'present and voting'.<sup>145</sup>

In regard to ECOSOC it is arguable that the body already has a mandate to provide for NHRIs' participation in its processes under existing General Assembly resolutions empowering the Council to promote engagement with relevant stakeholders in its processes, which would include participation by NHRIs.<sup>146</sup>

As such, and although it may not be strictly necessary, ECOSOC could pass a resolution explicitly granting NHRIs the rights to intervene orally and to submit written comments, where appropriate, in the Council and its subsidiary bodies. The resolution could also provide for corresponding amendments to ECOSOC rules.

It should be noted that the alternative means to secure NHRI participation in the General Assembly's work would be by **amending the UN Charter**. Whilst an amendment to the Charter would provide a comprehensive and definitive solution, the difficulty of meeting the formal requirements for such an amendment makes this option impractical.

---

<sup>143</sup> *Charter of the United Nations*, Chapter 4 Article 13.

<sup>144</sup> *Ibid* Article 66(3) (ECOSOC shall perform "such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly").

<sup>145</sup> General Assembly Rules of Procedure, Rule 85.

<sup>146</sup> The GA decided that "[i]n accordance with the rules of procedure, [a forum organized by ECOSOC should] be open to *participation by all stakeholders*," and emphasized that ECOSOC's meetings "should promote *the engagement of all stakeholders*." A/RES/16/61, 4, 14. This decision was subsequently reaffirmed by GA Resolution A/RES/68/1.

# X. CONCLUSIONS

In his 1997 report encouraging the Commission on Human Rights ‘to make a determination concerning the participation of national institutions in its meetings and in those of its subsidiary bodies’, the Secretary General urged action ‘in view of (NHRIs’) past and potential contribution’.<sup>147</sup>

NHRIs have a well acknowledged role as key contributors to States meeting their international human rights obligations, including through cooperation and participation with the UN. The contribution of NHRIs to the Human Rights Council and to a range of other international human rights bodies, mechanisms and processes has been welcomed by the General Assembly itself. In recent resolutions, the General Assembly has acknowledged that the contributions of Paris Principles-compliant NHRIs are most valuable to UN fora. It has reiterated that A-status NHRIs should have direct access to the Human Rights Council and other fora, including by being afforded rights to direct participation.<sup>148</sup>

Aside from participation rights at the Human Rights Council, the General Assembly has endorsed participation of A-status NHRIs in processes such as the Open Ended Working Group on Ageing. NHRI participation at the ECOSOC Permanent Forum on Indigenous Issues also signals interest in greater contributions from NHRI to UN debates.

A-status NHRIs look to contribute to debates and decisions that have a direct bearing on human rights situations nationally. Their participation will ensure that UN discussions on human rights issues are better informed. When resolutions are adopted, NHRIs are more likely to support their effective implementation if they are present at and make contributions to their development. They will gain understanding of these recommendations, and be better able to provide advice to their States in regard to their implementation.

The General Assembly and ECOSOC and their respective subsidiary bodies provide opportunities to discuss human rights situations and craft recommendations that promote human rights. However, despite the positive contributions made by the ICC, regional coordinating committees and by NHRIs - in increasing numbers where participation rights allow - neither NHRIs nor their coordinating committees have full participation rights in these bodies, aside from the Human Rights Council.

Providing NHRIs with participation rights would enable the General Assembly and its subordinate bodies to benefit from the insights and contributions of A-status NHRIs. In addition, providing NHRIs with participation rights in the General Assembly and ECOSOC and their respective committees and subsidiary bodies will provide a broader setting where NHRIs can contribute their expertise. Independent standing and participation rights would provide impetus for the participation of A-status NHRIs.

Acknowledgement of the value of the contribution of Paris Principle compliant NHRIs through participation rights may encourage the further development of credible, independent NHRIs globally. Participation rights for NHRIs will strengthen the global international effort to promote and protect human rights. In addition, by according NHRIs with participation rights in UN bodies

---

<sup>147</sup> UN Doc E/CH.4/1997/41, February 5, 1997.

<sup>148</sup> UN Docs A/ RES /66/169 (2011) and A/RES/68/171 (2013).

and processes, NHRIs gain the opportunity to build their credibility nationally, and to defend their own independence from potential State reprisals or attack.<sup>149</sup>

Cooperation and engagement with the international human rights system is a requirement of the Paris Principles, endorsed by the United Nations. If UN bodies encourage NHRIs to contribute and participate, the rules of participation must enable that.

The time has come to formalise and systemise the practice of NHRI participation, throughout the United Nations system. It is time for the participation of NHRIs compliant with the Paris Principles, in the General Assembly and subsidiary bodies and processes, and ECOSOC and its functional commissions to be made consistent with that of the UN Human Rights Council. There are no legal impediments to achieve this, and the road map to enabling NHRI participation is clear.

*'The Human Rights Council experience shows that the participation of national human rights institutions in line with Paris Principles is always crucial. More generally, the participation of civil society organisations in the work of the UN is vital to honour the first words of the UN Charter, "We the peoples".'*

Sami Bougacha, Permanent Mission of Tunisia to the UN in Geneva

---

<sup>149</sup> Engaging with the UN can have its risks, as the General Assembly has acknowledged in its rejection of reprisals and intimidation against those cooperating, or seeking to cooperate with the UN. See UN Doc A/RES/68/171 OP11.

# XI. RECOMMENDATIONS

## Recommendation 1:

**The General Assembly should adopt a general resolution** expressly giving NHRIs compliant with the Paris Principles, the ICC and regional coordinating committees the right to provide written comment and to intervene orally and be heard by the General Assembly itself, its committees and subsidiary bodies, ECOSOC and its functional commissions and subsidiary bodies and to other relevant bodies. The resolution would:

1. specify its applicability to all subsidiary bodies, including open-ended working groups;
2. direct General Assembly subsidiary bodies to make any necessary amendments to their procedural rules, to establish the modes of participation for NHRIs in accordance with the resolution; and
3. direct ECOSOC and its subsidiary bodies to make any necessary amendments to their procedural rules, including the ECOSOC Rules of Procedure (the ECOSOC Rules), to establish the modes of participation for NHRIs in ECOSOC and its subsidiary bodies consistently with the resolution.

## Recommendation 2:

Treaty bodies should harmonise their working methods to ensure the highest degree of participation by NHRIs at all stages of their work, drawing from and consolidating current best practices.

## Recommendation 3:

The President of the General Assembly should establish an NHRI focal point within the Office of the President to formalise the channel of communication between the Office and NHRIs.

## Recommendation 4:

Any cases of alleged reprisal or intimidation against NHRIs and their respective members and staff or against individuals who cooperate or seek to cooperate with an NHRI should be promptly and thoroughly investigated, with the perpetrators brought to justice. The Secretary General should establish a high-level focal point to address issues of reprisals in relation to NHRIs and also reprisals against those who cooperate or seek to cooperate with any part of the United Nations system. The United Nations system must work in as coordinated, systematic and effective manner possible to continue to press States to better prevent and address cases of reprisals and intimidation.

# ANNEX 1: THE NATURE OF PARTICIPATION RIGHTS AT THE HUMAN RIGHTS COUNCIL AND SUBSIDIARY MECHANISM

A-status NHRIs have the **right to attend** all regular and special sessions of the Council, excluding a small number of meetings that are private or confidential. In recognition of their important and essential contribution, NHRIs have **reserved seating** at the Council's sessions.

A-status NHRIs may submit **written statements** to the Council relating to any aspect of the Council's agenda and programme of work, as well as other reports and studies. These documents receive an official UN document symbol and number, incorporating them into the official record.

NHRIs may make an **oral statement** at any session of the Human Rights Council, apart from private or confidential sessions, under all substantive agenda items of the Human Rights Council. If an NHRI cannot travel to Geneva, it can instead deliver a statement through an accredited regional NHRI coordinating committee or the Geneva representative of the ICC.

As a result of the review of the Human Rights Council NHRIs additionally have the right to make **statements by video message**, under all agenda items in one of the six official languages of the UN. These can be presented during: Human Rights Council plenary debates; the adoption of the outcome of the UPR of the country where the NHRI operates; the interactive dialogue following the presentation of the country mission report by a special procedures mandate holder; Council panels, other annual Council discussions.<sup>150</sup> Video messaging is an example of the Human Rights Council developing modalities to enhance participation by civil society, including NHRIs.

A-status NHRIs generally deliver their oral statements after member and observer States and before NGOs speak. There are two exceptions when NHRIs are given an elevated position. The first is during the **adoption of UPR reports**, when the A-status NHRI of the country concerned may speak immediately after the State under review.<sup>151</sup> The second is when a special procedure makes a **country mission report**, when the NHRI of the country concerned can again speak after the State concerned and before other States.<sup>152</sup>

Whilst all NHRIs, regardless of status, may provide information to the **UPR process**, the information provided by A-status NHRIs is given particular prominence above that of other

---

<sup>150</sup> Human Rights Council Decision 19/119 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/136/12/PDF/G1213612.pdf?OpenElement>.

<sup>151</sup> HRC Resolution 16/21 Review of the work and functioning of the Human Rights Council, para.13, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/126/78/PDF/G1112678.pdf?OpenElement>.

<sup>152</sup> *Ibid*, para.28

stakeholders. In the summary compiled by OHCHR of information from other stakeholders the information from A-status NHRIs is given a separate section, marking their elevated status.<sup>153</sup>

NHRIs may also attend and are frequently given the opportunity to speak during **informal consultations on draft resolutions** that take place during Human Rights Council sessions. NHRIs can organize **side events** of relevance to the work of the Human Rights Council.

A-status NHRIs are one of a group of bodies and organisations able to **nominate candidates for special procedure mandates**.<sup>154</sup> Furthermore, when a State nominates a candidate for a **position on the Human Rights Council Advisory Committee**, it is required to consult with its NHRI and note whether or not the NHRI supports the candidate.<sup>155</sup> The Advisory Committee allows NHRIs of any or no status to make written submissions, and circulates its questionnaires to gather information on various thematic issues to all NHRIs; but only A-status NHRIs are permitted to attend and speak during sessions of the Committee.

In the Expert Mechanism on the Rights of Indigenous Peoples, the Social Forum, the Forum on Minority Issues, the Working Group of Experts on People of African Descent and the UN Forum on Business and Human Rights, NHRI participation is extended to include all NHRIs. NHRIs may attend all public meetings, make written and oral statements, and organise side events.

NHRIs can participate in open-ended intergovernmental working groups established by the Human Rights Council to develop **new international human rights instruments**. NHRI participation is based on the rules of procedure for the Human Rights Council and usually A-status NHRIs can participate in the meetings and make oral and written comments on the drafts under discussion.

---

<sup>153</sup> UN Doc HRC Resolution 16/21 Review of the work and functioning of the Human Rights Council, para.9

<sup>154</sup> *Ibid.* para.22(a)

<sup>155</sup> UN Doc A/HRC/RES/5/1

# ANNEX 2: THE NATURE OF NHRI PARTICIPATION IN TREATY MONITORING BODIES

All treaty bodies allow NHRIs to submit **written information** to them, either for country reviews to inform the definition of list of issues or as parallel reports, or when general comments or recommendations are being developed.

All treaty bodies hold **briefings** of one kind or another between members and NHRIs, as part of their formal program of work.<sup>156</sup> For example, since its 103<sup>rd</sup> session in 2011, the Human Rights Committee has enabled NHRIs to make an oral presentation to the Committee in formal private and closed meetings with interpretation on the first morning of each of the first two weeks of each session for the States being examined that week. These sessions are part of the formal programme.<sup>157</sup> The meetings are closed with no States present. States have no right to object.

Two Committees allow NHRIs to participate in the country review itself, giving them a prominent role in their work. Since its 71<sup>st</sup> session in 2007 the **Committee on the Elimination of Racial Discrimination** (CERD) has allowed the A-status NHRI of the country under review to address the Committee during its plenary session review of the State, although only with the permission of the State concerned.<sup>158</sup>

The **Committee on the Rights of Persons with Disabilities** (CRPD) also allows NHRIs to participate in the dialogue with the country under review – by making an opening statement of up to five minutes; by answering questions posed by the experts on the Committee; and /or by making closing remarks of up to two minutes.<sup>159</sup>

---

<sup>156</sup> The modalities differ, for example some organise separate briefings for each country under review (CAT, CRPD), others organise only one or two briefings per session at which several countries are discussed (CEDAW, CESC, CED, HRC, CERD, CMW). Some keep these meetings private (HRC, CAT, CED, CRPD), others open them to the public including States (CERD, CESC, CEDAW, CMW). In some cases these meetings are only between NHRIs, with NGOs being accorded separate space to brief the Committee (CAT, CEDAW), while in other cases the space is shared (although in some cases NHRIs are given priority to speak if they are from the country concerned) (HRC, CERD, CRPD, CESC, CMW, CED). The CRC works differently in that it holds a pre-session where State reports are reviewed together with submissions it received from other bodies and organisations. NHRIs that made a written submission may be invited to participate in the pre-session. This is a closed meeting between Committee members and other invited bodies who made written submissions.

<sup>157</sup> [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/INT\\_CCPR\\_POW\\_114\\_23280\\_E.doc](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_POW_114_23280_E.doc).

<sup>158</sup> Information Note For National Human Rights Institutions, [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1\\_Global/INT\\_CERD\\_INF\\_88\\_23250\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_INF_88_23250_E.pdf).

<sup>159</sup> Informative note on the participation of organization of persons with disabilities, civil society organizations, National Human Rights institutions and independent monitoring mechanisms in the 13th session and 3rd pre-sessional working group of the Committee, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/NoteonNHRIParticipation.aspx>.

From their 55<sup>th</sup> session (2015) onward, **the Committee against Torture (CAT)** will provide NHRIs with a private plenary meeting prior to the review of State reports.

Alongside these formal spaces NHRIs can organise **informal briefings**, usually during the lunch breaks, and can invite whomever they like to attend. In the case of the **CRPD**, NHRIs may also organise thematic briefings. This is evidence of the Committee making use of a valuable resource to gain more information about thematic developments in the area of disability rights, an area where understanding is quickly developing. Each year the Annual Chairpersons' Meeting of Treaty Bodies holds one meeting with NHRIs, together with NGOs.



For more information about our work, or any of the issues covered in this publication, please visit our website:

**[www.ishr.ch](http://www.ishr.ch)**

or contact us:

**[information@ishr.ch](mailto:information@ishr.ch)**



[www.facebook.com/ISHRGlobal](http://www.facebook.com/ISHRGlobal)



[www.twitter.com/ISHRGlobal](http://www.twitter.com/ISHRGlobal)



[www.youtube.com/ISHRGlobal](http://www.youtube.com/ISHRGlobal)

**GENEVA OFFICE**

Rue de Varembé 1, 5th floor  
P.O. Box 16  
CH-1211 Geneva 20 CIC  
Switzerland

**NEW YORK OFFICE**

777 UN Plaza, 8th floor  
New York, NY 10017  
USA