

## DRAFT REPORT

### **National Human Rights Institutions (NHRIs) /Treaty Body workshop** *Geneva, 26-28 November 2007*

#### **Background**

1. OHCHR organised a three day meeting on National Human Rights Institutions' (NHRIs) and Treaty Body interaction for the 26-28 November 2006. This meeting was a follow up to a meeting held in Berlin in November 2006, where the draft harmonized approach on interaction of NHRIs with Treaty Bodies was developed. The main objectives of the workshop were to review lessons learned and best practices in relation to relationship with NHRIs and Treaty Bodies; to build the capacity of NHRIs in their interaction with Treaty Bodies, including follow up action; to deepen the relationship between NHRIs and Treaty Bodies in line with the draft harmonise approach. The following report provides a summary of the discussions during the meeting and contains some recommendations made.
2. Nine NHRIs attended the meeting from Guatemala, Germany, Ireland, Kenya, Mauritius, Mexico, Republic of Korea, New Zealand , South Africa and nine Treaty Body members attended from: the Human Rights Committee (3), the Committee Against Torture (2), the OPCAT Subcommittee on Prevention (1) and the Committee on the Elimination of Racial Discrimination (3). Also present were staff of the OHCHR and representatives of the Association for the Prevention of Torture, International Service for Human Rights and Bristol University, UK.
3. In opening the meeting **Mr. Gianni Magezzeni, the Coordinator of the National Institutions Unit, OHCHR** highlighted OHCHR's priorities in relation to NHRIs and informed the participants about the improved procedures of the International Coordinating Committee of NHRIs sub committee on accreditation that has a more rigorous and transparent approach to accreditation, and further informed the participants that it had developed a general recommendation on NHRI interaction with the international system. He indicated that the presence of an ICC representative in Geneva to speak on behalf of NHRIs at Treaty Body meetings was also a new development which NHRIs could benefit from. He highlighted the pertinent role that NHRIs have in the Universal Peer Review mechanism of the Human Rights Council, the role of NHRIs in treaty reporting and the need to strengthen cooperation and working methods of NHRIs and Treaty Bodies in line with the draft harmonised approach (Please see attached statement).
4. **Ms. Frauke Seidensticker, of the German Institute for Human Rights (GIHR)** spoke of the cooperation between NHRIs and Treaty Bodies and how this could be improved. She highlighted the role of NHRIs in the treaty process according to the

Paris Principles (PPs), that the PPs encourage cooperation between NHRIs and UN agencies and NHRIs involvement in the complaints and enquiry procedures is under utilised; the important role NHRIs play in encouraging ratification, especially of the OPCAT and NHRIs can undertake research, to identify and evaluate different procedures of handling complaints. She informed the participants that the GIHR was finalising a handbook which would act as a guide for NHRIs engaging in the Treaty Body system, and has chapters on different stages for example, producing an alternative, interaction with in pre-sessional working groups etc. She reiterated the need to have a harmonised approach in relation to Treaty Body interaction with NHRIs because at present different committees had different rules of procedures, and it was confusing for NHRIs establish how each Treaty Body engages. The ICC working group on Treaty Bodies attended the Inter Committee Meeting (ICM) of Treaty Bodies in June 2007 and made the following requests to Treaty Bodies at the ICM to: Recognise NHRIs as independent actors distinct from government and civil society; communicate to NHRIs how to interact with Treaty Bodies at different stages; and Treaty Bodies should harmonise their approaches to NHRIs and discuss this on a regular basis.

#### **Day 1: NHRIS and the CAT / OPCAT sub Committee on Prevention**

5. **Experiences from the Irish Human Rights Commission:** The representative of the Commission, Ms. Catherine- Ellen O' Keeffe, informed the participants of the role of the Commission in promoting and protecting civil human rights, its broad powers and functions and its promotional role. She also shared examples of engagement with Treaty Bodies including its experience before the CEDAW, CRC and CERD. The Commission appreciated the treatment of the CERD where during interaction they were given distinct seating arrangements from the State party and a particular time slot to give information and engage with members of the Committee. She also informed participants of their role in preparation of alternative reports to Treaty Bodies.
6. **Experiences from the Mexican Human Rights Commission:** The representative from Commission, Mr. Adres Calero Aguilar, informed the meeting that the Commission was recently appointed by its government to be the National Preventive Mechanism (NPM) after Mexico ratified the OPCAT. the NHRI accepted the invitation and recommendation to be an NPM by its government. The Commission had a meeting with the OPCAT Sub Committee on Prevention (SCP) members on 23 November 2007 to discuss their new role. They also informed the participants of the discussions that occurred between the SCP and the Commission. The newly created NPM structure is composed of a pluralistic body made up of civil organisations with a distinct budget to carry out its work. He also mentioned that they had established a system of regular visits to supervise places where people are detained and a guide for interviews of detained persons. Today the NPM makes supervisory visits on 27 centres; implementing projects to strengthen the mechanism; and publicising the new responsibilities of the mechanism.

## Members of CAT and OPCAT

7. Mr. Andreas Mavromattes, a member of the Committee Against Torture, highlighted that NHRIs can contribute to the list of issues, sensitize their governments on various procedures of treaties and also various methods of submitting reports to State parties. He also highlighted that NHRIs could submit to the CAT an annual report or an executive summary, on protection of human rights, giving examples of cases of torture they have investigated. The CAT could strengthen the mandate of NHRIs by including in their concluding observations to state parties aspects that require strengthening.
8. He emphasised that the next Inter Committee Meeting of Treaty Bodies could prioritize the harmonisation of procedures relating to interaction with NHRIs. He highlighted the following: NHRIs could be involved in preparation of the state report but there should be absolute caution not write the report; NHRIs should inform the Treaty Body what their input was to the report. NHRIs should follow the evolution of the work of TBs e.g. new general comments and new procedures to targeted reports and list of issues. NHRIs should assist in providing information to Treaty Bodies on the definition of torture in their countries and see whether the definition includes discrimination. NHRIs could inform the CAT about compensation to victims' of torture and cruel and degrading treatment and punishment, in their countries. He expressed that there was a need for more coordination between the different committees.
9. Mr. Mario Luis Coriliano, a member of the OPCAT spoke on the critical role that NHRIs play as an NPM and emphasised it was necessary for national institutions to work closely with civil society in relation to the process of setting up an NPM. The relationship between an NPM and the SC on Prevention and the issue of complementarity was also highlighted.
10. Mr. Mark Thompson from the **Association for the Prevention of Torture (APT)** reiterated the important role that NHRIs play in promoting ratification of human rights and stressed the need for NHRIs for do national audit of what other mechanisms already exists in the country when involved in processes to establish an NPM. He gave examples of processes to establish NPMs in different countries and indicated that the NHRI in Spain is creating a new unit to take on this challenge. He indicated that NHRIs would have two major tasks if appointed NPMs i.e. : visiting all places of detention and the advisory role of the NPM. He then highlighted the following issues: Nhris should provide information on a regular basis to the SCP for countries they will visit; NHRIs could play an effective role in identification of experts to assist the work of the SCP; could assist in implementation of recommendations. He gave an example of the Nepalese Human Rights Commission that has worked on legislative issues related to the compensation of victims of torture

and Benin that had appointed the NHRI as an NPM and was working towards the development of a law for an NPM.

11. Questions were raised on the confidentiality of the working methods of the OPCAT SCP and what information could be made public. The OPCAT adviser informed the meeting that there is a report from the SCP that becomes public but some details of dialogue will remain confidential, in line with article 16 of the OPCAT. Since the SCP had only made one visit, the practice was still being established. The forthcoming annual report of the SCP would have more information on these issues. In relation to NHRIs, the secretariat for the OPCAT, Mr. Jose Doria, informed the participants that NHRIs can be involved in the visits of the SCP and can follow up the outcomes and encourage the government to publish reports and make the findings public.
12. **Experience from the South African Human Commission:** the representative from the Commission, Ms. Judith Rob Cohen, informed the participants that they have a Parliamentary and Legislative, and Treaty Body monitoring program in charge of international cooperation. They have set up an adhoc committee for the ratification of OPCAT and criminalisation of torture and had training workshops on CAT and OPCAT and further more had established a small Committee with different national actors in order to work towards the development of an NPM and put it as a priority on the political agenda, since the Commission will be appointed an NPM.
13. **Experiences from the New Zealand Human Rights Commission:** The representative for the Commission, Mr. Joris de Bres, said that after the necessary amendments to legislation had been made by Parliament and additional funding had been allocated by the government, the Commission was designated as the Central NPM, and 4 other agencies were appointed as NPM's for different sectors. Under the amended Crimes of Torture Act, the role of the NPMs is to examine the conditions of detention and treatment of those who are deprived of their liberty, and make recommendations for improving conditions and treatment and for the prevention of torture. They are to report annually on their activities. The functions of the Commission as the Central National Preventive Mechanism, as set out in the Act, are to coordinate the activities of the NPMs and liaise with the Subcommittee. The Commission has to consult and liaise with NPMs, review their reports, identify systemic issues, coordinate the submission of information to the Subcommittee, and make, in consultation with NPMs, recommendations to government on any matter it considers appropriate.

#### **Questions and comments:**

14. Some of the discussions included: OHCHR secretariat should encourage Government Governments to communicate the names of the appointed NPM to the SCP; Mr. Pillai indicated that important debates at national level that impact on the international level should be shared and the New Zealand experience is an example of best practice for the development of an NPM. NHRIs should look at amending their laws to be in

complaint with the requirements of an NPM as enshrined in the OPCAT; laws should enable them to have impromptu visits.

15. **The University of Bristol, representative, The University of Bristol, representative**, Dr Elina Steinerte, gave an analysis of the Paris Principles vis-à-vis the OPCAT requirements in relation to the establishment of NPMs. It was highlighted that the OPCAT does not prescribe any specific model of an NPM. The only guidance that OPCAT provides in this respect is a reference to the Paris Principles. As such, the NHRIs appear as a natural choice since many of them carry visits to places of deprivation of liberty already. She further emphasized that in reality careful consideration must be given to issues of independence, adequate funding, the available resources in terms of the capacity of the NHRIs to carry out the preventive visits as well as the necessary expertise. The importance of an NPM being independent from the government and other bodies, like other statutory visiting bodies and civil society, was underlined. She spoke of the necessity to provide adequate funds as the OPCAT requires that a system of visits must be put in place. Moreover, pursuant to the provisions of OPCAT, a variety of places of deprivation of liberty must be subjected to this system of visits, meaning not only prisons and police cells, but also such places as children homes, psychiatric institutions and elderly homes. This may require amendments in the existing mandate of the NHRIs, as well as additional capacity and expertise. Therefore while the NHRIs could potentially fulfill the role of an NPM, it would be important to further consider issues such as independence, mandate, capacity, expertise and adequate funding. She also noted that the SPT must take more proactive role in engaging with the governments in the establishment of NPMs.

#### **Day 2: NHRIs and the Human Rights Committee (ICCPR)**

16. **Ms. Jane Connors of the Treaties and Council Branch of OHCHR** made an opening statement and gave an update on the Treaty Body Committees and informed participants that there are 125 experts in total. She highlighted the important role that NHRIs played in the drafting of the Disabilities Convention. She highlighted the following issues: the Draft Optional Protocol to the International Convention on ESCR and the system for collective communications. She highlighted the important role that NHRIs play in the preparation of reports to Treaty Bodies; the development of general comments and assisting petitioners in making complaints. Treaty Bodies recognise and refer to NHRIs in their concluding observations and different approaches taken by each Treaty Body towards harmonisation is encouraged. She reiterated that the High Commissioner has also called for a harmonised approach to reporting to Treaty Bodies, since different approaches are confusing for State parties. The Inter Committee Meeting (ICM) also emphasised that there was a need for harmonization within the greater notion on harmonisation for Treaty Bodies to work as a unified system. The working group of the ICM was looking at areas in the working methods where there are differences and had a meeting in April 2008, to discuss this further.

17. **Experiences from the German Institute for Human Rights:** The representative from the Institute, Ms. Frauke Seidensticker, gave examples of their interaction in the Treaty Body monitoring process as below: The GIHR held meetings on concluding observations with national actors on follow up of concluding observations. 30 members of government departments and NGOs were invited to discuss the development of strategies for implementation. They focused on some concluding observations including police violence, extra territorial application of the treaty; treatment of elderly people. The results of expert meeting were forwarded to all ministries and Parliamentary bodies on human rights. The GIHR wrote to the HRC explaining the details of the debates. The GIHR made a project one of the concluding observations related to the rights of elderly people. They also hold meetings with NGOs to sensitize them shadow reporting and offer opportunity to coordinate the alternative report.
18. She highlighted the work related to individual complaints proceedings by NHRIs including the Australian Human Rights and Equal Opportunities Commission that identified 58 federal laws that were in breach of international human rights treaties and made reference to the views of the Human Rights Committee.
19. The Columbian NHRI is another example, where the NHRI urged the government to provide compensation to victims, in line with views of the HRC, and lobbied for victims to get compensation under Columbian law, the NHRI urged the government to enact these laws.
20. **Experiences from the Irish Human Rights Commission:** The representative of the Commission, Ms. Catherine- Ellen O’Keeffe, highlighted the Commissions activities in attempting to implement the convention and indicated that there was a general lack of awareness and understanding of the *relevance* of international human rights law among the Irish government, the judiciary, the legal profession and the general public. She said that this could be due to the importance placed on our Constitution as a historical text which lays out our human rights. The Commission has submitted a short document (as a preliminary document to its alternative report) to the HRC in advance of the examination of the State’s report in 2008. She stated that NHRI’s need not only to focus on its role at the examination stage but also the interim period between examinations. In this way, NHRI’s could provide independent information and assistance at all stages of the examination of a State report, monitor the State’s follow-up on the concluding observations of the committee and create awareness on on-going human rights concerns. The challenges she mentioned include the lack of a harmonised approach of interaction of NHRI’s with Treaty Bodies. She stated that having such a document would make interaction easier.
21. **Experiences of the Guatemala Human Rights National Institution:** The representative for the Procuraduría de los Derechos Humanos, Mr. Conrado Martinez, highlighted their experiences and lessons learned in work in protection of ICCPR including training workshops and reports to human rights Treaty Bodies. They have a specific unit in charge of treaties that works with NGOs and also maintain dialogue

with all international mechanisms. The Procuraduría appreciated that the CAT acknowledged and thanked the National Institution for information sent to them and invited the Institution in May 2008 to express their views during the consideration of the Sate report. The Procuraduría have also interacted with the CRC and CESCR

22. **Experiences of the Kenya National Human Rights Commission:** the representative of the Commission, Ms. Wambui Kimathi, shared experiences and activities related to civil and political rights; and indicated that they were lobbying for a transitional justice mechanism to address past human rights violations; they are engaged in a campaign on transitional justice mechanism; conduct activities related to protection of the rights of detained persons. The Commission is involved in monitoring the referendum, and hate speech; monitoring right to life and detention. The representative stated that the Commission's interaction with Treaty Bodies includes reacting to many reports; facilitating various actors in building competence on writing reports; facilitating forums to discuss reports. They indicated that they had engaged with the HRC and recently with the CESCR, and still needed to develop more competence in order to engage. The draft harmonised approach has been useful for them.
23. **The question of independence** of an NHRI was discussed at length. The representative from the South African Human Rights Commission stated that the Commission had conducted research on a code of good practice on how principles of independence impact on them on a daily basis, and suggested it would be worthwhile exploring drafting a code of good practice with government and Treaty Bodies to ensure they maintain their independence. Gianni Magazzeni pointed out that the ICC accreditation process is an effective mechanism for accessing the independence of NHRIs to ensure they are established and function in line with the Paris Principles.
24. Mr. Mavrommatis thanked NHRIs on behalf of the CAT for their comments and input on article 2 for the CAT that has been finalised.

**Members of the Human Rights Committee (Ms. Zonke Zanale Majodina, Ms Lulia Antoanella Motoc, and Mr. Jose Luis Sanchez-Cerro) made the following submissions:**

25. NHRIs have a role at different stages in the Treaty Body process. The HRC has not adopted any guidelines on NHRIs yet and there is not much clarity into how NHRIs are categorised with ICC of NHRIs. The HRC would prefer to interact with those NHRIs which are accredited with the ICC. The production and submission of reports by NHRIs is very crucial for the Committee especially if it is from an institution with an independent status.
26. The Committee members (names indicated above) further stated that NHRIs play a significant role in creating publicity about country compliance with the convention, through the media and campaigns, because the entire process of reporting in Geneva is not known at the national level.

27. A dialogue between NHRIs and Treaty Bodies on general comments, and a general dialogue between the two was encouraged by the HRC members. The members also reiterated the following: NHRIs can also explain the general comments to governments; NHRIs could also contribute to the process by providing reports to the HRC; NHRIs could lobby governments to live up to their treaty obligations, and follow up Treaty Body concluding observations. The HRC has a special rapporteur to follow up of concluding observations; NHRIs could work with this rapporteur.
28. The Committee members called on NHRIs to promote awareness of the Second Optional Protocol to the ICCPR aiming at abolition of death penalty, so that more state parties would ratify it. NHRIs could assist victims to do petitions and complaints to the HRC, they could also lobby the government to respond in time to the views of the HRC. The Committee members further encouraged NHRIs to hold regional conferences in order sensitize about individual complaints mechanisms and noted that there was little and limited cooperation between NHRIs and Treaty Bodies and this could be enhanced and communication approved. They emphasised that the HRC should have strategy on engagement with the media in order for the public to be aware of its findings and its role; NHRIs and the HRC could develop a partnership to popularise the concluding observations of the HRC and work with the media on various aspects. NHRIs from New Zealand and Germany shared good practice on engagement with the media in publicising Treaty Body concluding observations.

### **Day 3: NHRIs and the Committee on Elimination of Racial Discrimination (CERD)**

29. After a recap of the past two days, by Liza Sekaggya, OHCHR, the representative of the **New Zealand Human Rights Commission**, Joris de Bres, gave a presentation on the Commission's activities in relation to the ICERD and their experiences in interaction with the CERD Committee. He said that the Commission had provided its annual reviews of race relations and other documentation to inform the development of the Government report, and had received an early invitation from the CERD Committee Secretariat to participate. It was also able to provide independent input into the CERD Committee's list of issues, and had raised public awareness of the process through its annual review of race relations. It had, had an active engagement with the government delegation, while maintaining independence during the CERD session. The Commission had an informal meeting with Committee members and also attended the formal session, where it presented a written statement which commented on issues that were raised on the first day and identified possible priorities for the Committee's concluding observations. It thereafter advocated for a constructive government response to the Committee's concluding observations and recommendations, made public statements outlining and commenting on them, and provided feed back to Committee on government and public reaction and media coverage. The Commission is currently involved in establishing a process of monitoring consideration and implementation of the recommendations in consultation with government and civil society.



30. **The South African Human Rights Commission representative, Ms. Judith Robb Cohen** shared experiences on how the CERD has been promoted in South Africa at domestic level and noted that the Commission was involved in activities related to combating xenophobia and other hate crimes. The SAHRC provided a NHRI report to the CERD Committee and was invited to make a presentation to the Committee, which it did. They were also actively involved in the publicizing and monitoring of the follow up of concluding observations from the CERD.
31. **The Korean National Human Rights Commission, representative, Mr. Seok Jun Ri,** shared there experience in the implementation of CERD nationally and also on interaction with the CERD where they presented a statement during the consideration of the State report.
32. Ms. Nathalie Prouvez of the OHCHR, CERD secretariat welcomed the provision of feed back by all NHRIs on national activities to follow up concluding observations and their engagement with the media to publicise them, showing a critical link between the national and international mechanisms for monitoring human rights. She highlighted a good practice of the Irish Human Rights Commission that invited the CERD to visit Ireland before the submission of the report and also before the CERD special rapporteur on follow up came to Ireland. This helped raise awareness among the public on the various CERD procedures, the concluding observations etc.
33. A discussion then took place on various models and mechanisms to ensure follow up of concluding observations and it was agreed that NHRIs may establish an internal mechanism for follow up of Treaty Body recommendations in recognition that it is the State responsibility to follow up these recommendations, and NHRIs could also exercise their accountably mechanism to ensure government complies with the concluding observations.
34. Ms. Nathalie Prouvez highlighted that CERD has guidelines on follow up that it provides governments. Treaty Bodies could draft guidelines for follow up for NHRIs and interaction with the same. The role of NHRIs in the review procedure when Treaty Bodies do not receive a report from the State party was also mentioned.

**Members of the Committee Against Racial Discrimination made the following submission:**

35. Mr. Raghavan Vasudevan Pillai a member of the CERD, made an elaborate presentation on the role of NHRIs in the Treaty Body process and highlighted the following: the importance of NHRIs promotional role and raising awareness of the ICERD in the national context; NHRIs should raise awareness about the optional provision for a declaration under article 14 of ICERD. Mr. Pillai stressed that this provision provides victims of violation of rights another forum for redressal of grievances; it also encourages State parties to identify an existing institution at the national level. NHRIs can play a very crucial role in publicising this article. He highlighted that NHRIs could also raise awareness of the State parties commitments

at the national level for the implementation of the provisions of the Durban program of Action. Mr. Pillai spoke of the role of NHRIs in the preparation of periodic reports by the States parties, and noted that NHRIs had different positions on associating themselves with the Government in the preparation of periodic reports. He said while treaty bodies welcome perceptions of NHRIs being brought to bear on the consideration of states parties' reports, it is up to NHRIs to take a view on the levels at which and the way in which their perceptions could get reflected. He indicated that the ICC could perhaps be a forum to deliberate these issues.

36. Mr. Jose Francisco Cali Tzay, another member of CERD highlighted the importance of the relationship between NHRIs and indigenous peoples and NHRIs should provide information to Treaty Bodies on these areas. The Mexican Human Rights Commission provided information to the Committee on indigenous peoples. With the adoption of the declaration on the rights of indigenous peoples this area could be prioritized.

### **Concluding session**

37. In the last session the Participants reviewed and discussed the draft harmonised approach and developed a conclusions paper based on the issues discussed, and the areas where there could be enhanced cooperation between NHRIs and Treaty Bodies. NHRIs thanked OHCHR for organising the meeting and acknowledged that a lot of good practice had been shared at the meeting which they could take back and share at the national level in relation to interacting with Treaty Bodies in general, and the CAT, OPCAT, HRC and CERD specifically. Treaty Bodies present appreciated this dialogue and emphasised that there was a need for strengthening cooperation between the two and a discussion on harmonising Treaty Body interaction with NHRIs should be a priority item at the next Inter Committee Meeting of Treaty Bodies in 2008. The main conclusions to this meeting are appended to this report.