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A NATIONAL HUMAN RIGHTS INSTITUTION

Review Process of the UN Human Rights Treaty Body System
THE FUNCTIONING OF THE TREATY BODY SYSTEM

The monitoring mechanisms for compliance with international and regional commitments - among which the Human Rights Treaty Body System looms large - have proliferated in recent years, the reason why States face difficulties to fulfill their international human rights responsibilities, and the same applies to national human rights institutions and other stakeholders to follow up such compliance which, after all, is the follow-up on State's obligation to guarantee right-holders the full enjoyment of their human rights.

Chairpersons, the UN Secretariat for the High Commissioner for Human Rights as well as other members of the UN system have clearly expressed their views regarding the need to take all appropriate steps required for enhancing efficiency and effectiveness which have been undermined by the overwhelming growth of the human rights protection system.

Currently, the lack of coordination of reporting deadlines and interactive dialogues make more difficult the work of both State and other bodies responsible for the promotion and protection of human rights - such as the NHRIs - and the involvement of the civil society.

Even today weaknesses still remain, despite the implementation of resolution 68/268, the UN Secretary-General's biennial reports and the treaty bodies Chairpersons' meetings which have contributed to reducing the negative effects of such growth.

The "List of Issues Prior to Reporting-LOIPR" procedure as recommended by the General Assembly, in its resolution 68/268, provides a benefit for the efficient and effective work of treaty bodies, aimed at simplifying the reporting of States - which could be turned into an incentive for the fulfillment of their obligations - and a useful tool for the work of the NHRIs and other stakeholders in preparing their reports.

Viewed on this way, a common aligned procedure for the LOIPR, such as that coming from the Thirty-first meeting of the Chairs of the human rights treaty bodies, New York, June 2019¹ would be a significant progress in our opinion towards the efficient and effective functioning of the system. Among the possible elements listed in the document, point III, 12 (d) need to be underlined: *“The entire simplified reporting procedure should be planned in advance and be well organized, and deadlines need to be respected so that all stakeholders can have*

¹ <https://undocs.org/en/HRI/MC/2019/3>

the opportunity to provide the information required in advance of the drafting of lists of issues prior to reporting. There should be another opportunity to provide input just prior to the dialogue taking place. The process should be clearly explained in a note, which should be accessible and visible”.

On the other hand, the International Human Rights System, as well as each State party, NHRIs and other stakeholders are frequently required to submit human-rights related reports for both the Treaty Bodies and the Mandate holders of Special Procedures of the Human Rights Council (special rapporteurs, independent experts and working groups) which result in overlap and duplication of tasks. Thus, coherence among all requests could facilitate the work by saving resources and reducing the number of documents to be prepared.

NHRIs' PARTICIPATION

We, as a national human rights institution, call for an increasingly efficient and effective participation in the processes of the human rights treaty body system.

In this regard, despite the treaty bodies give NHRIs an opportunity to participate in the process - but similar in many aspects to that coming from other treaty bodies - harmonization is still lacking and makes it difficult for the NHRIs to submit their reports and take part in the different stages of the process.

The Global Alliance of National Human Rights Institutions - GANHRI - has shared its views on strengthening the NHRIs participation in the treaty body system's processes. Moreover, a series of recommendations have been developed which called for the NHRI engagement opportunities identified in the 2006 Berlin draft harmonized approach² and the 2010 Marrakech Statement.³

In resolution A/70/347⁴ the UN Secretary-General recalled that *“The Paris Principles require national human rights institutions to engage with the international human rights system. Such institutions are uniquely positioned to provide the United Nations with evidence-based information on human rights situations and to promote the implementation of human rights norms and standards in their respective countries. That role has been recognized, welcomed and further encouraged by the General Assembly, the Human Rights Council and other United Nations bodies”*, and also recalls that *“National human rights institutions enjoy formal participation rights with the Human Rights Council and treaty bodies and have had a long-standing engagement therein, as illustrated in the present and previous reports”*.

² HRI/MC/2007/3 <https://tinly.co/czHAX>

³ <https://tinly.co/fm1jy>

⁴ <https://undocs.org/A/70/347>

The Secretary-General also regretted that *“while several United Nations bodies and mechanisms associated with the promotion and protection of human rights accept national human rights institutions’ participation, their interaction with such institutions remains mostly ad hoc and informal.”*

“To 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” constitutes one of the NHRIs' responsibilities as The Paris Principles stated in section 3.(d).

Even though the Human Rights Council in Res. A/HRC/RES/17/9 *“Recognizes the important role played by national institutions for the promotion and protection of human rights in the Human Rights Council, including its universal periodic review mechanism, in both preparation and follow-up, and the special procedures, as well as in the human rights treaty bodies, in accordance with General Assembly resolution 60/251 of 15 March 2006, Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007 and Commission on Human Rights resolution 2005/74 of 20 April 2005”*, the conditions necessary for NHRIs to achieve an efficient and effective participation in the processes are still lacking.

According to our view, it is therefore convenient that the Treaty Bodies maintain fluid channels of communication with the NHRIs through which information on timelines and delivery schedules for contributions flows in a clear and precise way.

In this sense, the Outcome Document of the Dublin II Meeting, Strengthening the United Nations Human Rights Treaty Body System, November 2011 recommends that *“OHCHR should establish a user-friendly comprehensive reporting calendar which clearly schedules all reports due under all the treaties far in advance in a way that rationalizes the dates due of the reports that each State should submit and the number of reports that each treaty body will examine each year. The calendar should set out clear deadlines for the submission of the contributions that other stakeholders, particularly NHRIs and NGOs, may wish to submit with respect to each report at every stage, from the adoption of lists of issues (prior to reporting), the dialogue, and the follow-up procedure that may ensue⁵.”*

Accordingly, a specific website for NHRIs should be maintained, under the auspices of OHCHR and its regional institutions, by which NHRIs could adequately be informed about the delivery timelines related to those alternative reports requested for treaty bodies, data which could be shared by the Mandate holders of Special Procedures. Thus, both systems could be benefited from the information reported by the NHRIs.

⁵ <https://tinly.co/r9Xls>

As regards the preparation of the reports, The Paris Principles, section 3 (e) establishes as one of the NHRIs responsibilities: *“To 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 »*. Moreover, GANHRI General Observation No. 1.4 states that: *“While it is appropriate for governments to consult with NHRIs in the preparation of a state’s reports to human rights mechanisms, NHRIs should neither prepare the country report nor should they report on behalf of the government. NHRIs must maintain their independence and, where they have the capacity to provide information to human rights mechanisms, do so in their own right. NHRIs should not participate as part of a government delegation during the Universal Periodic Review, during periodic reviews before the Treaty Bodies, or in other international mechanisms where independent participation rights for NHRIs exist. Where independent participation rights for NHRIs do not exist in a particular fora and an NHRI chooses to participate in proceedings as part of a state delegation, the manner of their participation must clearly distinguish them as an independent NHRI.*

In line with the above, the NHRIs' involvement in the preparation of State's reports should not be considered appropriate, according to our view, except for an specific cooperation regarding the processes and methods for preparing reports.

On the other hand, the State parties often failed to inform their NHRIs at the time of preparation or submission to a treaty body of their reports.

Despite the role that NHRIs played in the human rights treaty bodies is emphasized in many documents and all committees are open to the contributions of civil society groups, NHRIs, specialized agencies and United Nations organs⁶, no effective mechanisms yet exist for their participation since the information provided is often confusing, the treaty bodies' websites are difficult-to-reach, and such information is sometimes outdated. Thus, these mechanisms need to be improved.

The cooperation and active participation of NHRIs in the International Human Rights System as well as in regional systems is considered essential for the promotion and protection of human rights.

Assessing the compliance of each State party with their human rights responsibilities without hearing other voices reduces the efficiency and effectiveness of any system for the promotion and protection of human rights, as is the case of the 2030 Agenda for Sustainable Development, a plan in which only the States parties are entitled to submit the pertaining reports to the High-level Political Forum (HLPF).

⁶ OHCHR, UN Human Rights Treaty Bodies, Protecting your rights: http://www.ohchr.org/Documents/HRBodies/TB/TB_booklet_sp.pdf

The NHRIs and the United Nations Human Rights Treaty System should further strengthen their alliance aimed at cooperating with every State to fulfill their human rights obligations as duty-bearers, a necessary step to ensure that all right-holders are able to enjoy their human rights in full.