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NHRIs AND  
PUBLIC  
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ISSUE PAPER



**NHRIS AND PUBLIC PARTICIPATION  
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The Department of Freedoms and Public Participation

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## **ABBREVIATIONS**

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
APF	Asia-Pacific Forum of National Human Rights Institutions
CERD	Committee on the Elimination of Racial Discrimination
CEDAW	Convention on the Elimination of Discrimination Against Women
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
DIHR	Danish Institute for Human Rights
ECHR	European Convention on Human Rights
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
NHRI	National Human Rights Institution
NANHRI	Network of African National Human Rights Institutions
OHCHR	Office of the United Nations High Commissioner for Human Rights
OAS	Organization of American States
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review

# CHAPTER 1

## 1 INTRODUCTION

The purpose of this issue paper on National Human Rights Institutions and Public Participation is to give a description of how National Human Rights Institutions (NHRIs) can work to promote public participation in their work. Public participation is not only a right in itself as recognised by international and regional conventions and charters, it is also a lever for the realisation of all other rights. The issue paper intends to provide concrete guidance on how a NHRI working in accordance with the Paris Principles can enable and support public participation.

The issue paper includes an introduction on how public participation is to be understood within the human rights framework. This Chapter is followed by the identification of the elements necessary for creating a framework conducive for participation. Hereafter follows an introduction to the Paris Principles. The main part of the paper focuses on the specific areas where a National Human Right Institution can work actively to strengthen public participation. Within each of these areas several ways in which a NHRI can take concrete action are highlighted. The conclusion of the paper contains a summary of its main points.

## CHAPTER 2

# 2 PUBLIC PARTICIPATION AS A HUMAN RIGHT

The right to participate in the conduct of public affairs is protected by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) as well as by various regional documents such as the African Charter on Human and Peoples' Rights (ACHPR), the American Convention on Human Rights (ACHR) and the European Convention on Human Rights (ECHR). According to Article 21 of UDHR, the will of the people is the basis for the authority of government, and everyone has the right to take part in the conduct of public affairs directly or through freely chosen representatives. Something similar is contained in Article 25 of ICCPR, Article 13 of ACHPR and Article 24 of ACHR.

Public participation, however, encompasses more than voting at regular intervals. It is also about being able to freely express your views on the society you are living in and have your voice heard, either alone or with others and by any possible peaceful means, such as in the press or via social media, by demonstrating etc. The main rights necessary to do this, the freedoms of expression, association and assembly, are key human rights, protected by UDHR (Articles 19 and 20), ICCPR (Articles 19, 21 and 22), ACHPR (Articles 9, 10 and 11), ACHR (Articles 13, 15 and 16) and ECHR (Articles 10 and 11). Information is a prerequisite to enable meaningful participation in society, whether one is talking about voting, expressing ones views or entering into a societal dialogue. The right to information is specifically protected by Article 19 of UDHR, Article 19 of ICCPR, Article 9 of ACHPR, Article 13 of ACHR and Article 10 of ECHR.

From a human rights perspective, participation goes beyond elections and the rights of the majority. It is about building a space and creating conditions where there is possibility of free debate and the ability to express disagreement with decisions made by the State. It is also a space where conflicts can be addressed and compromise or consensus can be sought. It is a mode of participation that ensures the equal rights and dignity of fellow human beings and provides a form of governance where those in minority are considered an equal part of the political community.

This view is taken on board in the African Charter on Democracy, Elections and Governance (ACDEG) which came into force on 15 February 2012. Binding only in Africa and for the limited number of state parties, it is still of global interest as it is among the world's most progressive and specific human rights instruments specifically addressing democracy, elections and governance as well as participation. Among its objectives is to "promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs", cf. Article 2.10, and among the principles to be followed by state parties is "effective participation of citizens in democratic and development processes and in governance of public affairs", cf. Article 3.7. The state parties are to take initiatives to promote democratic principles and practices; this includes ensuring transparent administration and creating conducive conditions for civil society, cf. Article 12. It also requires state parties to take measures to ensure and maintain political and social dialogue, cf. Article 13, and ensure and promote strong partnerships and dialogue between government, civil society and private sector, cf. Article 28.

UDHR, ICCPR, ACHR, ACPHR and ECHR all stress that the rights set out shall be enjoyed equally by all without any discrimination. Under the auspices of the UN, widely ratified human rights conventions have been adopted to protect the rights of groups considered specifically vulnerable and/or having particular needs, such as women (Convention on the Elimination of Discrimination Against Women (CEDAW)), children (Convention on the Rights of the Child (CRC)) and persons with disabilities (Convention on the Rights of Persons with Disabilities (CRPD)). Article 7 of CEDAW specifically codifies women's right to participate in elections, in the formulation of policy and in civil society concerned with public and political life. CRC clearly sets out that children, like adults, have the right to freedom of expression, association, assembly and information, cf. Articles 13 and 15.

CRPD, the newest of the UN human rights conventions, sets out the "Full and effective participation and inclusion in society" for persons with disabilities as one of the principles of the convention, cf. Article 3. Article 7 highlights the obligation to ensure that children with disabilities have "the right to express their views freely on all matters affecting them ... on an equal basis with other children". According to Article 21, state parties are obliged to take all appropriate measures to ensure that persons with disabilities can fully exercise their freedom of expression, including the right to information, e.g. by using sign language and Braille. Article 29 deals specifically with participation in political and public life and obliges state parties to ensure persons with disabilities full political rights and the opportunity to enjoy such rights on an equal footing with

others. Among other things, Article 29 obliges state parties to “Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs”, including the participation in civil society concerned with public and political life.

In addition to being a human right in itself, public participation has been acknowledged as a precondition for real realisation of all other human rights in UN General Assembly resolutions and in the general comments of the UN treaty bodies. Thus, participation is both a fundamental right and a cross cutting principle that demands that people participate actively and informed in the realisation of all their rights and freedoms.

The principle of participation and inclusion is one of the cornerstones of the UN common understanding of a Human Rights Based Approach; according to the UN common understanding, “Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized”.



## CHAPTER 3

# 3 PREREQUISITES FOR PUBLIC PARTICIPATION

The elements necessary for actual public participation can be systematised as follows:

1. The existence of an enabling environment for public participation. This recognises the necessity of open and responsive state institutions, a legal and policy framework conducive to participation as well as structures, procedures and opportunities that allow the public to engage in the conduct of public affairs.
2. Individual engagement and awareness of personal rights, and individuals having the ability and opportunity to engage in their local context and address barriers to the enjoyment of their rights.
3. The existence of representative structures and an active civil society that can ensure the availability of information and mass communication on issues of public interest and allow the basis for collective action and dialogue vis-à-vis the state.

National Human Rights Institutions can play a meaningful role with respect to all three elements as set out below in Chapter 6.

# CHAPTER 4

## 4 PARIS PRINCIPLES

The universally accepted framework for NHRIs is the Paris Principles, adopted in 1991 and approved by the UN General Assembly in 1993. According to the Paris Principles, section A, a NHRI shall, with respect to the promotion and protection of human rights:

1. Advise government, parliament and any other competent body on legislative or administrative provisions and make recommendations to ensure adherence to fundamental principles of human rights and harmonisation with international human rights instruments to which the state is a party, including recommending adoption of new legislation, amendment of legislation in force, and adoption or amendment of administrative measures;
2. Advise on any situation of violation of human rights;
3. Prepare reports on the national human rights situation;
4. Draw the attention of government to human rights violations, make proposals for relevant initiatives, and express an opinion on the positions and reactions of government;
5. Encourage ratification of international human rights instruments and ensure their implementation;
6. Contribute to state reports to UN bodies and regional institutions, with due respect for its independence;
7. Cooperate with UN agencies, regional institutions and other NHRIs;
8. Assist in formulation of programmes for teaching of and research into human rights and to take part in their execution in schools, universities and professional circles;
9. Publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs; and
10. Hear and consider complaints in individual cases (this is not mandatory according to the Paris Principles)

As set out above in Chapter 3, real public participation can only be achieved with an enabling environment, individual engagement and an active civil society. The following chapter provides some guidance on how a NHRI within the mandate set out in the Paris Principles can enable and support public participation.

## CHAPTER 5

# 5 THE PARIS PRINCIPLES AND THE STRUCTURE OF A NHRI

The Paris Principles contain provisions on the organisation and structure of a NHRI. According to section B, a NHRI shall be established in a way so as to “ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights”; the groups to be included comprise:

**” Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; Trends in philosophical or religious thought; Universities and qualified experts; Parliament; Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity)**

Consequently, a NHRI should itself be an example of an institution adhering to the principles of participation. It is important that this participatory approach is not limited to the appointment of commissioners but is an overarching principle in all work of the NHRI. Consequently, the NHRI should try to organise itself in a way that in principle enables everyone in the country in which it is established to participate in its work. This means having a staff that reflects the various groups and languages in the country, having offices that are accessible to all, going on frequent visits to areas where the NHRI is not permanently present, involving broad groups of the population in working groups etc.

Since a NHRI has an important role as a bridge between civil society and the population on the one hand and the government on the other, having a structure and working methods that encourages and facilitates participation and dialogue is not only beneficial to the NHRI but is also a way to further broaden participation in the running of and policy making in the county.

## CHAPTER 6

# 6 PUBLIC PARTICIPATION AND THE PARIS PRINCIPLES

This chapter contains guidance on how a NHRI can work with respect to public participation under the mandate set out in the Paris Principles, outlined in Chapter 4.

### 6.1 LEGISLATIVE AND ADMINISTRATIVE PROVISIONS

There are several ways in which a NHRI could use this part of its mandate to ensure an environment conducive to public participation:

1. A NHRI could conduct a review of legislative and administrative regulations specifically focusing on public participation. When considering such regulations, the benchmark should be both the relevant international human rights obligations and the national provisions as set out in, for example, the constitution. A natural focus would be on areas of legislation that are particularly relevant for public participation:
  - a. One such area concerns the right to information. As stated in Chapter 2, it is not possible for citizens to meaningfully participate unless there are sufficient levels of transparency within the public sector and adequate access to state information. This includes, among other things, the right for ordinary citizens to demand and obtain access to all state information unless such information is rightfully considered confidential for security or similar reasons, protection for whistle blowers and safeguards against wrongful classification of information.

In 2009 the Council of Europe adopted a Convention on Access to Public Documents. The point of departure of this convention is that all official documents are public, and it lists the acceptable reasons for exceptions to this general rule. This convention is still not in force but it can nevertheless give inspiration to NHRIs in all parts of the world when assessing right to information legislation. The African Commission on Human and Peoples' Rights' Special Rapporteur on Freedom of Expression and Access to Information in Africa has developed a Draft Model Law for AU Member States on Access to Information in partnership with the Centre for Human Rights, University of Pretoria; this could be used as a yardstick when assessing the status of the right to

information. In 2010 the General Assembly of the Organization of American States (OAS) approved a Model Law on Access to Public Information, developed by the OAS Department of International Law with the collaboration of the OAS Special Rapporteur for Freedom of Expression, the Inter-American Juridical Committee and the Department of State Modernization and Governance, as well as the cooperation of Member States and civil society. The Declaration of Principles on Freedom of expression in Africa, initially adopted by the African Commission on Human and Peoples' Rights in 2002, now also contains principles on access to information. In South Africa, the South African Human Rights Commission has taken part in the public debate on the Protection of State Information Bill that many believe will stifle public participation, as it seriously curtails access to information. This has been done by making and publicising analyses of the Bill, making submissions to parliament, participating in public hearings and meetings etc.

- b. Another area is **freedom of expression**. Participation is not possible if individuals and associations cannot freely express themselves about political issues, service delivery and all other matters, even – or rather in particular – if such expressions are critical of the government. How the media is regulated, for example, is also important. The limitations to the freedom of expression cannot go beyond the narrow criteria set out in UDHR, ICCPR and ACHPR.

Many countries have very strict rules on defamation, in some cases with increased protection for specific persons, e.g. the head of state. An example of this can be seen in Zimbabwe's legislation, according to which it is forbidden to undermine the authority of the president, or to insult him or her. Even though there is nothing wrong in attempting to find a balance between freedom of expression and the right to dignity, privacy etc., such provisions are in many cases used to hamper robust debate and shield persons in power from scrutiny and criticism; obviously, this is contrary to the principle of public participation. Guidance may, among other places, be found in the African Commission on Human and Peoples' Rights' Declaration of Principles on Freedom of expression in Africa. The OAS Special Rapporteur for Freedom of Expression has also dealt extensively with defamation laws in his annual reports.

- c. There is some evidence of a global trend towards countries enacting ever stricter NGO-legislation (legislation on the organisation, registration, funding etc. of non-governmental organisations (NGOs)); this is a way to curtail **freedom of association**. As mentioned above, capacitated NGOs are necessary to help channel participation. Whereas there is nothing inherently wrong in a country having provisions e.g. calling for the registration of NGOs, it is contrary to the freedom of association as set

out in UDHR, ICCPR and ACHPR if such provisions are unnecessarily cumbersome and go beyond what can be considered absolutely necessary in a democratic society. Basically it should be simple, fast and not prohibitively expensive to register an NGO, and NGOs should be free to seek funding.

An example of NGO legislation that seriously curtails participation is the 2009 Ethiopian Charities and Societies Proclamation according to which (i) only NGOs receiving less than ten per cent of their funding from abroad can do work to further human and democratic rights and (ii) state appointed officials supervise activities of NGOs. The NGO legislation that came into force in Russia in 2012 and, among other things, obliges NGOs working within governance, such as human rights NGOs, to label themselves foreign agents if they receive foreign funding, is another example of legislation meant to weaken civil society.

It is also against the whole purpose of public participation if states can prohibit NGOs working within fields that are considered controversial, or NGOs working for the change or repeal of certain laws. As an example, even if same-sex relations are illegal in a country (and notwithstanding that such prohibition is arguably contrary to several human rights norms), this does not mean that it is permissible under applicable human rights norms to block persons from setting up organisations to use legal means to fight such illegality. It would, for instance, seem to be squarely against the right to freedom of association that Botswana has refused to register Lesbians, Gays and Bisexuals of Botswana based on its advocacy work for the rights of sexual minorities.

- d. It is undoubtedly acceptable for a country to have rules in place regulating public gatherings such as demonstrations, e.g. to give the police the opportunity to secure the area where the gathering is to take place and to ensure that demonstrations by opposing groups are organised in as way so as to reduce the risk of violence. But, as is the case with regulations limiting the freedom of expression, the right to information and the freedom of association, such limitations of the **freedom of assembly** must not go beyond what can be considered necessary in a democratic society. Consequently, it is important for a NHRI to examine regulations in place concerning peaceful gatherings.
- e. Some countries have a system of **customary law**, being metered out by traditional leaders according to societal, cultural and/or religious norms and in some countries also part of the law to be used by the ordinary courts. In some countries customary law is much more important for ordinary people than the law being created by parliament and the ordinary courts of law, mainly because traditional leaders and courts are more easily accessible than the ordinary courts. Customary law and its

usage by traditional leaders might favour the participation of certain groups, e.g. men ahead of women or older men ahead of younger men, adults ahead of children etc.; a NHRI should be prepared to challenge this as it is contrary to the human rights principles of non-discrimination.

- f. A specific area where participation is of key importance, not least when it comes to economic, social and cultural rights, is **budgeting**, both at state and local level. Budgeting directly affects service delivery and, consequently, the enjoyment of in particular economic, social and cultural rights. Ideally, there should be rules in place to ensure that budgeting is done in a transparent manner where non-state actors have both access to information and avenues to provide input. On this basis a NHRI should review regulations setting out budgeting procedures.

In its feedback to parliament and government, a NHRI should not only indicate problematic provisions but also **propose and promote necessary changes**.

2. NHRIs are supposed to examine all **pending legislation** in addition to legislation already on the books to ensure adherence to human rights provisions, be it in national or international human rights instruments. When a NHRI subjects pending legislation to scrutiny, it should consider at least the issues listed above.
3. Ideally, in addition to scrutinising all proposed bills, a NHRI should scrutinise all **new administrative regulations** and **major policy documents**. Due to the volume of administrative regulations this can be overly cumbersome. Under such circumstances, a NHRI should establish close relationships with the relevant departments so that such departments are prepared to, and interested in, sharing all relevant proposed administrative regulations with the NHRI. In some countries strong civil society actors are doing a good job at monitoring new developments of this kind; this is one more reason for establishing close contact with relevant civil society actors.
4. It is not enough to scrutinise the wording of regulations in place; a NHRI should also try to assess how such regulation is being used in **practice** by the authorities. The Public Order and Security Act (POSA) in Zimbabwe, for instance, obliges only the organiser of a public gathering to give notice of a gathering to the police. However, the police interpret this as a requirement for permission and defines public gatherings to include even private meetings.. If the NHRI restricts itself to assessing only the wording of regulations, it increases the likelihood of overlooking something that could be highly problematic.



## 6.2 MONITORING AND REPORTING AT NATIONAL LEVEL

In order to effectively monitor the status of the right to public participation nationally, a NHRI could consider the following steps:

1. When receiving **individual complaints** a NHRI should not simply treat these on an individual basis but also consider them as a means of getting information on what goes on in the country. Information from individual complaints, while respecting the tenets of confidentiality, should be systematised and taken into account as part of monitoring. Consequently, when receiving cases related to freedom of expression or some other right potentially linked to participation, a NHRI should use the information as part of its monitoring of the situation for participation in the country.
2. According to the Paris Principles, NHRIs are to develop ties with civil society. **Civil society** is a primary source of information. By having close ties and regular interaction with civil society a NHRI can tap into a wealth of information about the situation in the country, not least about the state of public participation as civil society normally play a key role in securing participation. To get as complete a picture as possible, the NHRI must think beyond human rights NGOs, important as they are, and try to cultivate relationships also with women's organisations, children's organisations, organisations established to represent the most vulnerable groups (disabled, minorities etc.), community based organisations (such as residents' associations), rural organisations, trade unions, professional bodies (including law and medical associations), churches, traditional leaders etc.
3. A NHRI should try to develop relationships with institutes of learning, such as **universities**, that might produce research that can be used by the NHRI in its monitoring. The **press** will also be relevant when it comes to gauging the state of the rights that are essential to ensure public participation.
4. Monitoring should include **visits** to all parts of the country. The levels of participation and access to information tend to differ substantially between the main urban centres with access to newspapers and internet, and the rural areas. Steps should be taken to assess the level of participation of the most vulnerable groups which will often include the very poor, persons in remote areas, disabled, minorities, women, children etc.
5. In addition to monitoring the general situation with respect to participation, a NHRI should attempt to monitor all elements of **state policy** that has a potential to impact public participation. As with the monitoring in general, it is not sufficient to look at the state of the formal

legislation, regulation and institutions; the actual participation of individuals and civil society should be assessed.

According to the Paris Principles, a NHRI shall make **reports** and advise the government, parliament and any other competent body on the national situation for human rights in general and with respect to specific matters; on situations of human rights violations in any part of the country with proposals for mitigating actions; and on any human rights violation. On the basis of monitoring, a NHRI should include matters with respect to participation in general reports on human rights to the relevant competent bodies. It should also consider the benefits of preparing special reports on participation and pushing the competent bodies to consider such reports and take relevant steps. Some civil society organisations have developed tools and indicators to measure issues related to participation and a NHRI should consider working with such organisations. All reports and studies should ordinarily be shared with civil society and be disseminated broadly via the press.

It is important that all efforts with respect to monitoring, bringing human rights violations to the attention of government, making proposals and expressing an opinion on the positions and reactions of government, is not just seen as the NHRI giving its expert opinions to government; given the NHRI's unique role as interlocutor between the state authorities and the population, the NHRI should try to channel the concerns and issues of all citizens and residents in a way that reflects the human rights based approach that must be utilised by a NHRI in all its efforts.

### **6.3 RATIFICATION OF INTERNATIONAL INSTRUMENTS**

NHRIs shall encourage ratification of, or accession to, international instruments. More than 150 countries are state parties to ICCPR but several countries have not ratified the Optional Protocol giving individuals the right to bring complaints, e.g. with respect to participation, to the Human Rights Committee. Almost all UN member states are state parties to CEDAW and CRC whereas CRPD has been signed by roughly two thirds of the countries of the world. With two exceptions, all African countries are state parties to ACHPR just as all European countries, bar Belarus, are state parties to ECHR. In contrast, only 22 of the 35 member states of the Organization of American States are state parties to ACHR. Only 15 of 54 AU member states are state parties to ACDEG, a key instrument with respect to participation. When considering international instruments, it is not enough to merely consider the status of ratification and accession; it is also necessary to consider the declarations and reservations, if any, that the state in question made in connection with ratification or accession.

Among the specific steps to be taken are the following:

1. As part of its research mandate, a NHRI could do **research into the consequences of ratification** of a specific human rights instrument, in particular the extent to which the country already adheres to its provisions and what would further need to be done to ensure full compliance. The NHRI should likewise consider the consequences of withdrawing reservations and declarations. As part of its research, the NHRI could obtain information on the ratification status for comparable countries.
2. When making **reports on participation**, a NHRI should include a section on relevant non-ratified international instruments and indicate what still needs to be done to adhere to the provisions of such instruments.
3. Many NHRIs make annual or other **periodic reports** on the general human rights situation in the relevant country. It is relevant to include a section in such reports on international instruments not yet ratified as well as on reservations and declarations.
4. In its formal and informal contacts with government and parliament, the NHRI should **lobby** for the ratification of international instruments and for the withdrawal of reservations.
5. According to Section C.7 of the Paris Principles, NHRIs should work together with civil society. For example, if a NHRI decides to **campaign for the ratification** of specific treaties, this should ideally be done in collaboration with civil society, e.g. by holding joint meetings or hearings to discuss such matters before presenting the results of such meetings or hearings to government and/or parliament.
6. When providing input to periodic international examinations, both the more general kind, such as the examination before the UN Human Rights Council (the Universal Periodic Review) and the examination by e.g. the African Commission on Human and Peoples' Rights, and the examination based on specific instruments, such as the state reporting before the specialised human rights bodies, a NHRI could highlight lack of ratification, reservations and declarations not yet made.

#### 6.4 INTERNATIONAL REPORTING

The Paris Principles set out that NHRIs shall contribute to state reports to United Nations bodies and to regional institutions and, where necessary, express an opinion in this respect, however with due respect for their independence. It is the responsibility of government to prepare state reports but this should be done with **input from the NHRI and from civil society**. A NHRI should endeavour to ensure that its findings with respect to public participation are included in state reports. All issues related to freedom of expression, freedom of assembly, freedom of association and the right to information are relevant when reporting to the Human Rights Committee, the treaty body established under ICCPR, and, for countries in Africa, to the African Commission on Human and Peoples' Rights. In addition, issues relating to the participation of specific groups should be raised particularly in reporting to the relevant specialised human rights body, such as CEDAW for women, CRC for children, CRPD for persons with disabilities and CERD for issues relating to ethnicity. The issue of participation is also relevant as part of the Universal Periodic Review (UPR) process of the UN Human Rights Council.

If the NHRI assesses that the issues are not sufficiently covered in the state report, it should make its own **shadow report**, if possible in collaboration with civil society. The UN human rights treaty bodies also welcome representatives of NHRIs to their meetings.

The human rights treaty bodies use the state reports and other input, including shadow reports, to make concluding observations that are publicised and readily available on the internet. A NHRI should monitor the state's **follow up to concluding observations** and use concluding observations in its advocacy and lobbying work. An example of concluding observations dealing with the freedom of association is the concluding observations CCPR/C/TKM/CO/1 from the Human Rights Committee's periodic review of Turkmenistan in March 2012. The Committee expressed concern with respect to the onerous registration and reporting requirement for public associations (NGOs) and recommended Turkmenistan to reform its system for registration to ensure that such registration is done professionally and expeditiously and in a way that conforms to ICCPR Article 22. The concluding observations CCPR/CO/76/EGY on Egypt from November 2002 are in a similar vein with the Human Rights Committee recommending Egypt to review its NGO legislation and practice to enable NGOs to discharge their functions without impediments, such as prior authorization, funding controls and administrative dissolution, and to permit the democratic expression of political pluralism. Such concluding observations are powerful tools for the NHRI in the country in question and can be used to lobby government and parliament to review the NGO legislation, as a reason for proposing and

drafting changes to the legislation, and as the basis for public meetings on the state of the freedom of association etc. Naturally, the principles set out in concluding observations from one country can be used as arguments in other countries as well.

An example of concluding observations dealing with the participation of a particular group are the concluding observations CCPR/C/MDV/CO/1 from the Human Rights Committee's periodic review of the Maldives in July 2012. The Committee expressed concern with respect to the de facto gender-discrimination which leads to, e.g., underrepresentation of women in political and public affairs and encouraged the Maldives to strengthen its efforts to facilitate the participation of women in political and public affairs, including by taking temporary special measures and conducting awareness raising campaigns. Something similar was expressed in concluding observations CCPR/C/TKM/CO/1 from the Human Rights Committee's periodic review of Turkmenistan in March 2012. A NHRI could e.g. use this as a starting point for research on barriers to public participation specifically affecting women and to start a broader debate with the government, parliament and civil society on women's role and their ability to participate in public affairs.

The human rights treaty bodies prepare **General Comments** where they provide input to the interpretation of the various rights or deals with specific issues. In 1996 the Human Rights Committee issued its General Comment No. 25 on the right to participate in public affairs, voting rights and the right to equal access to public services. Even though this General Comment deals very much with the issues of elections, it stresses the importance of freedom of expression, assembly and association to enable citizens to participate by "exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves" and the obligation to ensure that disability, lack of proficiency in the main language, poverty etc. are not impediments to participation. Another similar document is the above mentioned Declaration of Principles on Freedom of expression in Africa by the African Commission on Human and Peoples' Rights. A NHRI will normally strengthen its position if it supports its arguments with statements from treaty bodies and similar "soft law" documents.

The Danish Institute for Human Rights (DIHR) played a key role in ensuring broad participation up to the examination of Denmark in the UPR process in 2011. DIHR was instrumental in bringing civil society together to jointly engage the Danish government to discuss the preparation of the UPR, the national report and the follow up. In addition to this, DIHR acted as co-host with the Danish Ministry of Foreign Affairs at public hearings and carried out various other activities, such as

presenting its own stakeholder report and carried out various PR activities. In collaboration with civil society DIHR is encouraging the Danish government to prepare a national human rights action plan including the adopted UPR recommendations and to establish an inter-ministerial committee with non-government representation to coordinate and monitor the progress of the implementation of the UPR recommendations.

## 6.5 INTERNATIONAL COOPERATION

According to the Paris Principles, NHRIs shall cooperate with the UN and its various agencies, regional institutions and other NHRIs. Part of such cooperation is the provision of information in connection with examination of states by the various UN human rights committees and the regional institutions as well as the monitoring of the follow up as set out above. But there are also other ways in which NHRIs can utilise international cooperation to further the right to participation:

1. Most of the UN human rights treaty bodies can receive **individual complaints**, including the Human Rights Committee, provided the country in question has ratified the relevant Optional Protocol to the ICCPR. The African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the European Court of Human Rights can also receive individual complaints. Consequently, a NHRI can assist with individual cases, thus helping to create international law concerning participation.
2. The UN Human Rights Council, the African Commission and the Inter-American Commission all have **Special Procedures**, such as working groups and special rapporteurs. While none of these special procedures are specifically focused on participation, there is a UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and one on the promotion and protection of the right to freedom of opinion and expression. As mentioned above, the African Commission on Human and Peoples' Rights has appointed a Special Rapporteur on Freedom of Expression and Access to Information in Africa and the Organization of American States a Special Rapporteur for Freedom of Expression. The Special Rapporteurs on human rights defenders of both the UN and the African Commission are also dealing with issues of participation and freedom of expression. Special Rapporteurs normally do country visits. When visiting a country a Special Rapporteur will normally want to visit the NHRI in that country; briefing a Special Rapporteur on the situation with respect to public participation can be a very good way to put this issue on the agenda. A NHRI can also use the visit of a Special Rapporteur as an opportunity to promote public participation, e.g. by organising

hearings, lectures, meetings etc. about this subject with the participation of the Special Rapporteur. A NHRI can also encourage a Special Rapporteur to visit a particular country.

In many cases, Special Rapporteurs will be prepared to consider **individual matters** even if they do not have the mandate to make binding decisions. Consequently, if a NHRI has become aware of a particular human rights violation and need support in addressing it, the relevant Special Rapporteur can be asked to look into the matter. This might be relevant in case of apparent serious violations of the right to participation.

3. All **UN agencies and institutions** are supposed to work within the UN common understanding of a Human Rights Based Approach (HRBA) which emphasises participation and inclusion. The most relevant UN institutions when working with participation as a right in itself are probably OHCHR and UNDP which both work within the areas of governance and human rights. OHCHR has, for instance, recently completed a study on the participation of persons with disabilities in political and public life. Working with NHRIs is a focus area for both OHCHR and UNDP. Consequently, a NHRI that wishes to focus on public participation can work with either or both of these two agencies.
4. Despite differences in structure and capacity, all NHRIs work on the basis of the Paris Principles and face many of the same issues and challenges. In addition to the provision on cooperation with **other NHRIs** in the Paris Principles, the cross cutting challenges among NHRIs provides good reason for NHRIs to cooperate. There are structures in place that can facilitate such cooperation. Globally, NHRIs are organised in the International Coordinating Committee of NHRIs. Each region has its own network; in Africa, the Network of African National Human Rights Institutions (NANHRI); in Asia-Pacific, the Asia-Pacific Forum of National Human Rights Institutions (APF); in America, the Network of National Institutions for the Promotion and Protection of Human Rights on the American Continent; and in Europe, the European Group of National Human Rights Institutions. Consequently, if a NHRI decides that it wants to commence work or carry out special activities to further public participation, it is an obvious first step to contact other NHRIs, especially in comparable countries, and the relevant regional organisation of NHRIs for inspiration, information on experiences etc. Inviting colleagues from other NHRIs to provide experiences at workshops and similar gatherings is one possibility. Another possibility is for NHRIs in the same area to come together and discuss issues relating to participation, share experiences and agree on the best step forwards, such as joint workshops, cross border research etc. The relevant UN institutions and

agencies will normally be willing to provide assistance and expertise to such initiatives.

## 6.6 HUMAN RIGHTS EDUCATION AND RESEARCH

According to the Paris Principles, NHRIs should assist in formulating programmes for the teaching of, and research into, human rights, and take part in the execution of such programmes in schools, universities and professional circles. There are various activities relating to public participation that a NHRI could decide to carry out within teaching and research:

1. It is universally acknowledged that **human rights education** should start **in school**. Such education should be age appropriate and should at a suitable time include issues relating to public participation. A NHRI should work with the education authorities to make plans for how the right to participation should be taught in school and help to prepare curricula and teaching material. When preparing education plans and teaching material, it is important not only to focus on the right to participate but also on the responsibility to respect the views of others and their right to participate, not least on the rights of minorities and marginalised groups. Children that are given a chance to participate at a young age are more likely to continue to participate as active citizens; consequently, a NHRI should work with the education authorities to ensure that structures are put in place to secure children the right, and ability, to be heard in educational settings, in particular schools. In this respect it is worth remembering that children are entitled to freedom of expression, including the right to information, and to freedoms of assembly and association, cf. Articles 13 and 15 of the Convention on the rights of the Child.
2. In some countries **human rights clubs** have been established at schools; this is e.g. the case in Uganda. This can be a good way to encourage discussions on human rights among children and adolescents and thus help establish a participatory culture early on.
3. Human rights should be taught at **universities**, in particular as part of the curriculum for law students. NHRIs should work with law faculties to ensure that the right to participation (and all it entails) is sufficiently covered as part of the human rights education of law students. In addition, a NHRI could work with all institutions of secondary and tertiary learning to ensure that they are organised in a way that gives the students and pupils the opportunity to participate. Persons actively participating in decision making and discourse while in school and at institutes of higher learning are more likely to continue as active citizens.



4. To secure the right to participate by all, it is necessary that certain **professional groups** have a sufficient understanding of the right to participation, what it entails and why it is important. Basically, all **civil servants** who are involved in service delivery and policy creation should have a basic understanding of public participation so that they can react appropriately to citizens wishing to participate by accessing information, entering into dialogue etc. Consequently, NHRIs should work with the relevant authorities to make sure that the right to participation is covered in the training of all relevant civil servants. Such training should cover not only the theoretical meaning of participation but also what each civil servant can do to encourage participation in his or her interaction with recipients of public services.

It is also important that the staff of the police understand their obligations with respect to the freedom of assembly, e.g. how to handle demonstrations in a human rights compliant manner, and that persons administering NGO legislation are cognisant of what is entailed by the freedom of association. A NHRI could conduct training for the **police** and other relevant groups. **Judicial officers** must also be sufficiently trained as the courts are often the last resort for protection against an overreaching executive.

The **press** is a key player, not least when it comes to access to information. For the press to be able to play this role, members of the press need to be knowledgeable about the rules on access to information and on how to challenge the authorities when the authorities are not prepared to provide information. Members of the press must also have an understanding of their key function in a democratic society so that they e.g. do not succumb to self-censorship, misleading reporting etc.

5. The Paris Principles mention the participation in **programmes for research** in human rights matters. For a NHRI to be able to take the relevant steps, it needs to know what the main issues are, in particular what the main barriers to participation are, what groups are disproportionately not participating etc. If it has the necessary resources, a NHRI can carry out its own research into these matters. If not, it can work with universities and other research institutions to further such research. Research can also be carried out in collaboration with civil society.

## 6.7 INCREASE AWARENESS

NHRIs should take steps to increase public awareness about human rights and efforts to combat all forms of discrimination, especially through information and education and by making use of the press, cf. the Paris Principles. Even if such

activities are not specifically related to the right to participation, the activities contribute to public participation to the extent that they encourage the population to interact and participate with respect to human rights matters. Among the steps that can be taken by a NHRI are the following:

1. **Broad information campaigns**, targeting all of the population. It is important that all persons in a country are aware of their right to participate and what this entails, including what to do if such right is violated. Such campaigns can have many elements which should be based on a thorough assessment of how best to reach the public:
  - a. The NHRI can print and make available reading materials such as **pamphlets and posters** and similar material. Such material should be translated into all relevant languages and should also be available for the disabled, such as seeing and hearing impaired.
  - b. A broad information campaign should include a **media strategy**. In many countries electronic media like television and particularly radio reaches a broader audience than print media.
  - c. **Performing arts**, such as drama, dance and song, can be effective tools in creating awareness and stimulating discussions.
  - d. Ideally **community outreach** should be part of broad information campaigns. This entails going out to the communities to hold meetings, round table discussions and the like.
2. In addition to broad based campaigns, it should also be considered which **special groups** need particular attention:
  - a. Certain **professional groups** should be targeted. As mentioned above, most civil servants need to have some basic understanding of the concept and importance of public participation. Similarly, the press needs to have an understanding of the right to information and the special role of the press in a democratic and open society.
  - b. It is also central that **decision makers**, such as parliamentarians, local politicians, municipal managers and similar groups have a fair understanding of the importance and content of the right to participate so that they can both keep this in mind when making laws and other regulations and be amenable to enter into dialogue with citizens wishing to participate.

- c. In certain countries and cultures, **traditional or religious leaders** are of main importance. It is important to ensure that such leaders understand the importance of securing participation by all, including normally marginalised groups, women and children.
  - d. Special steps might be needed to reach **vulnerable groups**. It cannot be assumed that groups that are outside mainstream society will necessarily be reached by information campaigns aimed at the broad population. Such groups might include remote communities, indigenous communities, marginalised and stigmatised groups and the extremely poor which tend to be exactly the groups least likely to participate. When assessing the success of awareness raising, in addition to – or maybe rather than – looking at the number of persons reached, it should be considered whether the most vulnerable groups have been reached.
3. A specific way of raising awareness while simultaneously monitoring the situation, giving victims and other stakeholders a chance to be heard and coming up with concrete proposals for steps to take with respect to both legislation and policy is the **national inquiry**. There is no clear-cut definition of a national inquiry but it is characteristically viewed as a process that includes a study and analysis of complaints received and other material in the possession of the NHRI, additional desk and field research if needed, public meetings and a comprehensive report with description and analysis of the situation and proposals for changes to regulations and policy. A national inquiry will typically be relevant in cases where widespread violations are expected or documented and where it seems likely that systemic problems rather than (or in addition to) individual transgressions are to blame. It can also be relevant in a situation of transition, e.g. where a country is changing into a democracy and it is clear that the legislation and the whole environment are not conducive for participation at all. It will be relevant to consider partnerships, both nationally and with development partners.

Awareness raising is an area where it is obvious to try to work together with other relevant actors. This can include both state actors, such as governmental departments, and non-state actors, such as civil society organisations and professional groups.

## 6.8 COMPLAINTS HANDLING

If a NHRI has the mandate to receive and consider individual complaints, there is no reason why it should not be willing to receive and consider individual complaints pertaining to the right to participation.

Complaints pertaining to the right to participation should not be handled any differently than other complaints. Just as it is the case with all other complaints, it is of key importance to have staff that is knowledgeable with respect to the legal area in question.

As mentioned above, the key components of the right to participation are the freedoms of expression, association and assembly and the right to information.

A NHRI can only be an efficient route to justice in individual cases if the general population is **aware of the possibility to deliver complaints** to the NHRI. As part of broad campaigns on participation and when generally marketing the ability of the NHRI to hear individual complaints, the NHRI should provide information that the NHRI is prepared to hear individual cases relating to participation.

Some NHRIs have the power to **bring matters to court** if their decisions are not adhered to; a NHRI should be prepared to use this power also with respect to participation. A NHRI should consider intervening in court cases touching upon participation as friend of the court (*amicus curiae*) to ensure that the relevant human rights provisions are taken into account by the courts. When deciding what cases to bring, a NHRI should consider the public interest in a given matter, whether there is a good chance of establishing new law that will increase the space for participation etc. Such strategic litigation can be done in collaboration with civil society unless this might prejudice the independence of the NHRI.

# CHAPTER 7

## 7 CONCLUSION

To be able to participate in public affairs is a human right, and broad participation is a necessity for authentic human rights based development. General participation necessitates an enabling environment, individual engagement and an active civil society. As set out above, a NHRI can take many different steps within its Paris Principle based mandate to help bring about the necessary environment to encourage individual engagement and to support an active civil society.

A NRHI should be prepared to work together with state structures, civil society and international partners, including other NHRIs, the UN and its various institutions and agencies and its human rights structures, and with the relevant regional structures such as the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights.

Last, but not least, as set out in chapter 5, a NHRI should act as a good example when it comes to participation. This includes involving civil society and ordinary citizens in its work whenever possible, e.g. by inviting external participation in committees and working groups, by hearing ordinary citizens before giving input on core legislation and by being easily accessible, e.g. by being present outside of the capital.

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