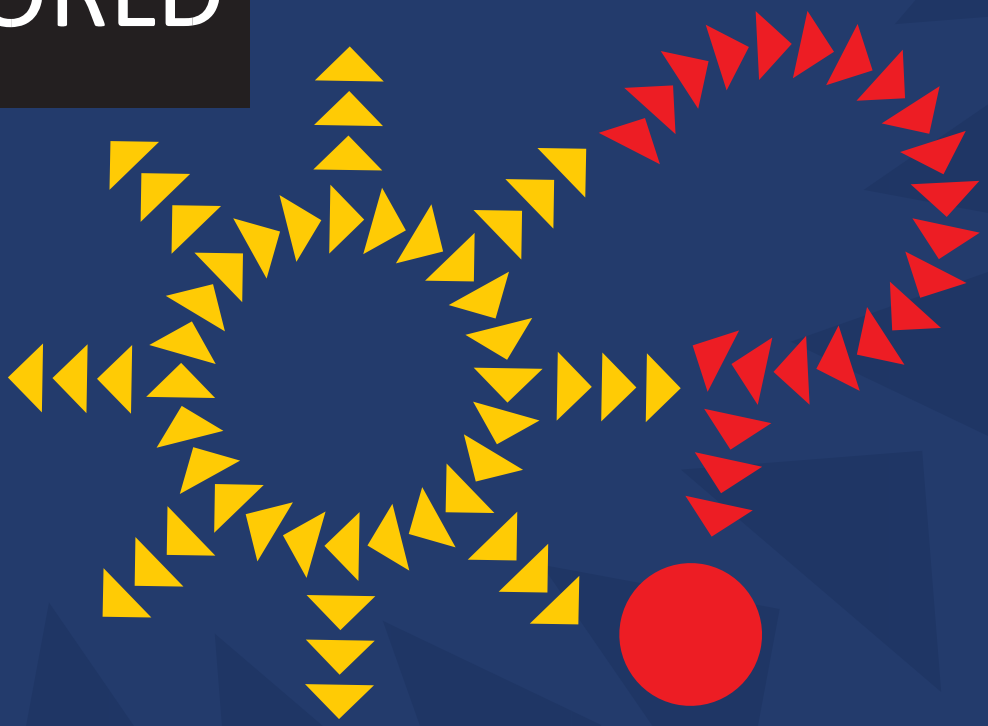
THE DANISH INSTITUTE FOR HUMAN RIGHTS

ARAB-EUROPEAN HUMAN RIGHTS DIALOGUE

THE ROLE OF NHRIS IN COUNTRIES IN TRANSITION IN THE ARAB WORLD



Funded by
The Danish Ministry of Foreign Affairs

Edited By

Paul Dalton . Mu'ayyad Mehyar

Photograph Copyright

AFP/Scanpix
Ahmed Hayman, Photojournalist, Egypt
Amélie Losier
Mu'ayyad Mehyar

THE ROLE OF NHRIs IN COUNTRIES IN TRANSITION IN THE ARAB WORLD

© Ahmed Hayman

TABLE OF CONTENTS

© AFP/Scanpix

FOREWORD

A national human rights institution (NHRI) is an institution with a legislative mandate to promote and protect human rights. NHRIs are special institutions – they are established by the State but do not form part of the executive, judicial or legislative branches. Where NHRIs are operating in compliance with the Paris Principles, they can be central to national efforts to promote and protect human rights.

Because of the international nature of human rights law, NHRIs have natural linkages to international human rights mechanisms. NHRIs around the world have also seen the value of cooperating together in various regional and international groupings, to learn from each others' experiences and in so doing to improve their own effectiveness. The Arab-European Human Rights Dialogue (AEHRD) is an example of such cooperation; a cross regional network of Arab and European NHRIs affiliated to the International Coordination Committee of NHRI (ICC). Other key stakeholders who are invited in observer capacity include civil society organisations, UN, EU and Arab League Agencies.

The AEHRD aims to promote the understanding, functionality and capacity of NHRIs and strengthen their role in promoting universal human rights with members committed to the UN Paris Principles and the universality and indivisibility of human rights.

This book is a response from the participants in the AEHRD to the major political changes that have been taking place in the Arab world in recent times, with a purpose to highlight the role or the potential role that NHRIs can play in countries in transition. The articles in this book address the great potential that NHRIs in the region have to contribute to processes of legal and social transformation that are taking place in countries in the region as a result of changes of government or the launch of plans for major legal and institutional reform.

It is my hope that this book will provide inspiration for NHRIs and other organisations, in the two regions, working on national human rights implementation during a time of transition or change.

JONAS CHRISTOFFERSEN

Executive Director
The Danish Institute for Human Rights

Chairman of the Steering Committee
The Arab-European Human Rights Dialogue

© AFP/Scanpix

INTRODUCTION

PAUL DALTON . MU'AYYAD MEHYAR

Paul Dalton is Senior Legal Advisor within the Freedoms and Civic Participation Department at the Danish Institute for Human Rights.

Mu'ayyad Mehyar is Programme Manager for the Arab-European Human Rights Dialogue at the Danish Institute for Human Rights.

National Human Rights Institutions (NHRIs) have a pivotal role to play in the realisation of human rights in national law and practice. Established as public institutions but with guarantees of financial, functional and operational independence, they are in a unique position to influence the national agenda on human rights and to engage the State and social group in a discourse on the scope of the human rights standards and their implications for law and society. This publication explore the theme of the potential of NHRIs to contribute to nation-building and the reform of laws, justice systems and institutions in countries undergoing a period of political transition.

The Arab Spring has transformed the political map of the Middle East. Some countries have experienced violent or dramatic changes of government. Others have experienced more incremental change; albeit changes that are nevertheless linked to the developments elsewhere in the region. Countries such as Egypt, Tunisia and Libya have experienced or are preparing for democratic election. Constitution reform processes have taken place or have been initiated in Morocco, Jordan, Tunisia, Yemen, Libya, Egypt and Tunisia. Institutional and structural reforms are planned or are being discussed, as are Truth and Reconciliation Commissions or reparations programs to address human rights violations committed by former regimes or violations which took place during the period of transition.

The changes are similar in some ways to those which took place in countries in Eastern and Southern Europe during the 1990s where populations which had suffered under dictatorships obtained their freedom and faced the challenge of reforming laws and rebuilding state institutions reflecting principles of democracy, human rights, accountability and rule of law. Reforming laws and institutions and identifying a new set of national symbols and values in a way that engages all relevant interest groups in society is a very difficult and time-consuming process. NHRIs bring to such discussions their expert knowledge of the international human rights principles and examples of how human rights have been applied in constitutions and in national development plans in other countries. NHRIs can also bring to these discussions the importance of engaging all social groups in a national-building process, including ethnic or religious minorities. They can emphasize the importance of human rights principles such as non-discrimination and equal treatment, public participation in governance processes, accountability of the State and of State agents, and the importance of administrative and justice systems that function effectively and are accessible to ordinary people.

Drawing on their experiences from different national contexts, the participating NHRIs in the Arab-European Human Rights Dialogue can assist each other in identifying examples of good practice which can be applied to their own work. The authors of the articles in this publication come from NHRIs participating in the Human Rights Dialogue. Each of them addresses a particular theme relevant to processes taking place in countries in transition, describing how NHRIs can contribute to those processes.

In her article, **Randa Siniora** discusses a hard but necessary truth that needs to be addressed if NHRIs in the region are to fulfil their potential. In some countries, NHRIs do not enjoy the trust of the general population because they are considered to be too closely linked to the State or to the former regime. The problem may be a lack of independence or a comparatively weak mandate that does not allow the NHRI to work effectively. What is required is for the founding law of these NHRIs to be reviewed and changes made so that the Institutions are in compliance with the Paris Principles. It is not only a matter of making legal changes; the Institutions need to demonstrate that their mandate and modus operandi have changed as well.

This issue is also taken up by **Georges Assaf** in his article on the Paris Principles in the light of the Arab Spring. He places particular emphasis on the implications of the principles of independence and accountability for the work of NHRIs. NHRIs are accountable to the State; in particular to the Parliament, to whom they report each year. They must also be accountable to the general public and the way to achieve this is by publicising their work and communicating clearly their point of view about the human rights situation in the country. By doing so, NHRIs will contribute to developing a culture of human rights. As people's understanding of human rights increases, public scrutiny conducive to fighting impunity will be enhanced. People will also be more likely to avail themselves of the NHRIs redress mechanisms.

Bent Vase, Annali Kristiansen and Libseth Thonbo have written an introduction to constitutional reform processes with some recommendations for how NHRIs can engage with them productively. NHRIs are one of the principles sources of expertise at national level on the contents of international human rights law. They can also bring to the constitutional reform process good practice examples of human rights chapters (or Bills of Rights) that have been incorporated into national constitutions adopted in recent years. Constitutional reform is of great importance since even if, as in some countries, the provisions contained in it are not directly justiciable, it still has considerable authority and relevance for the content of other laws, for the actions of the administration and for decisions made by the courts.

The need to reform the administration, in particular security sector institutions, in countries in transition is taken up by **Wolfgang Heinz** in his article. Security sector reform is particular difficult because of the comparative power of the police, the intelligence services and the armed forces in relation to other state institutions. An effective reform will typically require some transfers of powers between state agencies; furthermore, all security agencies must be subject to democratic control and clear and transparent accountability mechanisms must be put in place. These changes may be resisted by some people within security agencies who stand to lose out in the reform process. There is also the difficult issue of deciding what to do with those who were responsible for human rights violations committed in the past. Should all such persons be brought to justice? In some cases, this may render the agency dysfunctional or may place the national reconciliation process at risk.

In all of these matters, NHRIs have an important contribution to make. They should speak out clearly on the requirements of human rights law; in particular of the importance of ensuring that accountability mechanisms living up to international standards are in place. NHRIs should also speak out on the importance of providing redress for victims of historical violations and members of their families. As **Mohammad Essabbar** describes in his article, many potential claimants will not be well equipped to seek redress without assistance. NHRIs can play a role here by providing information on the process and by assisting people to bring their claims. For those who have been successful in receiving damages, NHRIs can provide advice on how to invest the compensation received, how to obtain health services and social and vocational assistance.

Kirsten Roberts writes about the role of NHIRIs in promoting and supporting human rights education reform. NHRIs should be active in supporting the development and implementation of a National Action Plan for human rights education and training. Such plans are relevant for all countries, but are particularly important in countries in transition, where they may not previously have been any kind of systematic human rights training provided to government officials or relevant professional groups. A National Action Plan should not only address human rights education for adults; it should also include measures to develop materials on human rights for use by school students in different age groups and for teaching at universities and vocational training institutions.

In the final article in this book, **Mu'ayyad Mehyar** takes the discussion on the role of NHRIs in transition countries up to a policy and strategic level. As a public, yet independent institution, NHRIs are ideally placed to lead a dialogue between the State and civil society on how to improve the human rights situation in the country. As Mu'ayyad writes 'NHRIs are agents of changes and can potentially act as bridges between their respective states and the public in critical periods of transition and reform.' The article presents a framework for how an NHRI could perform such a function in such a country. Human rights dialogue is a technical discipline and it requires specific skills of the facilitator and the host institution. The NHRI can provide much of the necessary factual information on human rights status that the participants need in order to discuss topical human rights concerns on an informed basis. The outcome of a successful dialogue process will be plan of action to address the concerns identified. Once again, the NHRI has staff with the skills needed to undertake human rights monitoring and can report back to the dialogue participants, and to other stakeholders, at regular intervals on progress towards implementation of the plan of action.

The Arab-European Human Rights Dialogue is an example, at international level, of the type of human rights dialogue that NHRIs can promote in their own countries. Human rights implementation is never easy; while there may be broad political and societal support for the importance of human rights as guiding national principles, applying these principles in practice will often be contested. This will be especially so in a country undergoing a period of political transition. The articles in this publication are intended to provide guidance and inspiration for all NHRIs seeking to work more effectively in promote human rights in national debate and reform processes.

© AFP/Scanpix

A READING IN THE PARIS PRINCIPLES IN THE WAKE OF THE ARAB SPRING
INDEPENDENCE AND ACCOUNTABILITY

GEORGES J. ASSAF

Mr Georges J. Assaf is a lawyer and activist with over 25 years professional experience. Georges Assaf earned a doctorate in law from Paris University (Paris II-Assaf). He is an international expert in institutional development and reform notably in the judicial sector and a consultant to UNDP, the European Commission, the International Francophone Organisation, GTZ and IREX among others.

Georges Assaf heads a private practice (J&G. ASSAF) founded in Beirut in 1933 by his late father Dr. Joseph Assaf.

He has written extensively on pluralist political systems, judicial reform, public freedoms, human rights and issues of public interest from the legal perspective.

Georges Assaf has a history of leadership in Bar activities; he served on the Beirut Bar Association Council and on its Disciplinary Council, founded and chaired its Legal Aid Commission, founded and headed its Human Rights Institute.

He served as Personal Adviser to the Ministry of Justice of Lebanon (2000-2002). In 2005, he founded the Public Interest Advocacy Centre, Lebanon (PINACLE), a legal professional non-profit organization, which he currently heads.

Introduction

The Middle East region stands at the intersection of several major issues as a result of the so-called Arab Spring.

The social fabric of countries like Libya or Egypt has been damaged by armed conflict and civil unrest. The relative stability in Tunisia should not obscure the many difficulties to be addressed in the country related to the structures of the old regime that to a large extent still remain in place. Such issues highlight the need to promote reconciliation and give a voice to those, direct and indirect victims, who have experienced violations.

Therefore, NHRIs in the region, more so in countries that witnessed radical change in the political regime, will have to look into functions specific to a post-conflict situation whereby they will have to operate as instruments for dealing with past abuses and deploy efforts at both reconciliation and justice in line with international norms.

It is crucial therefore to review the status and functions of NHRIs already existing in the MENA region so as to bring them closer to the Paris Principles, notably to make effective the principles of independence and of accountability, without which NHRIs' goals will not be realistic.

1. Principles and Standards

The Principle of Independence

Independence is the most important principle of the Paris Principles.[1] It is the most difficult to "operationalise" insomuch as it depends on:

- sufficient and regular funding to the NHRI in order to carry out its functions independently from the executive power;
- the NHRI drawing its own annual budget, owning its premises and recruiting its own staff; and
- a constitutional or legislative act establishing the mandate of its members so as to guarantee stability, appointment and dismissal procedures (methods, criteria, duration of appointment and possibility for reappointment, privileges and immunities).

It is widely recognised that NHRIs in the MENA region suffer from direct or indirect domination of such institutions by government, either due to lack of financial autonomy or through the exercise of influence over appointment procedures or daily operations or both, The principle of independence is also comprised by public perceptions of NHRIs as being quasi-governmental institutions (the same perception applies to a certain extent also to the judiciary in the MENA region although judges have proven independence in certain instances in Egypt, Tunisia, Morocco notably but had to pay the price for that).

Therefore, independence from the other public bodies in terms of structure and accountability should be secured, by way of accountability to Parliament through a mandatory annual report, and financial accountability through the Court of Audit or a similar national system for securing financial accountability of official institutions.

This being said, independence depends not only on legal autonomy (an adequate constitutional or legislative frame-work, direct control over its finances) but on the extent to which the independence of the institution is respected in practice (for example, does the state interfere in the programme of activities or in the rules of procedure of the institution; does the Office of the President require that recommendations, reports or decisions of the NHRI be forwarded for prior approval before they are made public; and so forth).

It is thus of prime importance:

- to enshrine independence in provisions guaranteeing a number of structural and procedural factors (a separate budget-line item expressed as a fixed percentage of the national annual budget, a separate legal personality, terms and conditions that govern appointment and dismissal terms, the NHRI drafting its own budget and reporting directly to Parliament rather than to the executive).
- to translate such provisions into relevant methods of operation considering the priorities stemming from post conflict situations, more specifically concerning the right to hear any person and obtain any information necessary for an examination it is undertaking in accordance with its legal mandate.

The Principle of Accountability

The Paris Principles relating to monitoring/reporting and accountability indicate that NHRIs should submit reports to the Executive, Parliament or any other competent body and also encourage publicising these as a means of raising public awareness, either directly or through the media.

In this sense an NHRI:

- is accountable to the State through the production of at least one report to be submitted annually to the government (to Parliament or to the President of the Republic and the Council of Ministers) as well as special or ad hoc reports to highlight particularly important issues, such as patterns of violations, with appropriate recommendations for addressing the situation; and
- is accountable to the public in as much as it acts as a watchdog of the State's performance in promoting and protecting human rights, monitoring the State's actions and omissions.

By making itself accountable to the public, the NHRI enhances its independence, shows transparency, and performs its communication function without hindrance (through a newsletter, a website, public statements and press conferences, ads, radio programs and television talk shows).

In making its findings and recommendations public, the NHRI will contribute to:

- Developing a culture of human rights;
- Impacting positively on the human rights situation in disseminating its reports, recommendations and opinions through the media to mobilise public opinion;
- Opening the way to public scrutiny conducive to fighting impunity and making violators of human rights accountable for their actions or neglect; and
- Interacting with the people and bringing to their attention the mechanisms for seeking redress that the NHRI offers them.

Although the Annual Report may be thought of as the primary vehicle through which to present its monitoring results, Special Reports on specific human rights situations in transitional periods are also very important.

In either case, the presentation of the data should be carefully studied in order to make it easy to use by the media and by the authorities for verification purposes.

The purpose of monitoring is to encourage positive change by placing pressure on the authorities to meet their legal commitments, especially if the results of the monitoring are presented objectively and are accompanied by practical recommendations for change that make their implementation possible.

In this regard, NHRIs should have the authority to accept and document allegations of abuses without restriction. The NHRIs may not have the authority to investigate abuses pre-dating its establishment, nonetheless giving it the authority to compile allegations and evidence could serve an overall objective of understanding why those violations took place with a view. Such an examination can lay the groundwork for an effective prevention strategy to avoid any repetition of such violations in the future.

NHRIs operating in post conflict situations could face extreme challenges linked to independence and accountability, or the lack thereof, which may require the institution to be flexible in approach. It is, however, imperative for an NHRI to challenge law proposals or other measures that could erode its functional or operational independence. In return for a guarantee of independence, an NHRI should be willing to submit to strict accountability procedures.

2. The Role of NHRIs

The relationship of independence and accountability to the role of NHRIs hinges on the functions that cannot be fulfilled should an NHRI lack independence or be unable, due to insufficient resources or lack of access to information or to places of detention, to effectively inform the government and the public of the actual state of human rights protection in the country.

Interaction between Arab NHRIs and international and regional (African Union) human rights mechanisms have to date been restricted to individual communications. MENA region NHRIs could have a much more proactive role in facilitating dialogue and exchange between multilateral human rights mechanisms and national agencies and associations. This type of exchange is crucial at the present time in order to consolidate the new situation that has appeared in countries in the MNEA region following the Arab Spring.

NHRIs should seek dialogue with state agencies with mandates relevant to the protection and promotion of human rights NHRIs can provide an independent source of information to treaty bodies who are examining State Party reports. Annual and Special Reports or results of inquiries prepared by NHRIs can be reviewed by Treaty Bodies. NHRIs could also submit ad hoc reports directly to the Treaty Body in question if the country report contains, in the view of the NHRI, inaccurate or misleading statement about the current situation.

Treaty Bodies, as a result, will issue comments on a State's performance and recommendations based on the review and assessment of the national situation by the State Party and the NHRI. The NHRI could then provide advice to the government on what can be done to respond positively to them. Such comments may then be taken into consideration by the State when designing and implementing its programme activities. This proactive role of highlighting gaps and deficiencies and proposing corrective action is embedded in the NHRIs independence and reflects positively on the activation of the principle of accountability.

Another essential role of a national institution is to permanently monitor the general human rights situation in the country and more specifically particularly important issues or particularly vulnerable groups, such as detainees.

It is important, therefore, for national institutions to be able to have access to information or to persons in custody or to witnesses without hindrance in order to fulfil such important functions.

3. Challenges, Lessons Learnt and Opportunities

In the Arab Spring taking place in some countries in the MENA region, NHRIs can be seen as relevant institutions positioned to act independently in order to preserve collective memory of gross human rights violations by collecting information, hearing testimonies as a step towards reconciliation and as part of the country's collective memory to prevent such violations from ever happening again.

The transitional phase in which these countries are at present offers opportunities to progressively integrate the international rule of law and advocate to the authorities, especially the legislative branch of government, for the incorporation of international human rights standards in the internal legislation. In this respect, the ratification of OPCAT by some MENA countries (such as Tunisia) makes it mandatory to establish a National Preventive Mechanism (NPM), either as a new institution or within the framework of the existing NHRI (as has been proposed in Lebanon).Independence and accountability are key principles without which the following activities, necessary for the implementation of OPCAT, cannot be effectively discharged:

- Regular visits and unrestricted access to all places of detention, the right to conduct interviews in private with persons of their choice, and access to all relevant information; and
- The duty to conduct professional monitoring of such places and account for the findings to the government and to the public.

4. Actions and Outcomes

Prospective action should be directed towards strengthening the existing powers of NHRIs in the countries which are in a phase of democratic transition: Through reform of relevant laws and strengthening of the NHRI as an independent accountability institution, the gains of the revolution will be consolidated and the ground prepared for the initiation of a process of national reconciliation. This involves:

- preserving the memory of the years of repression so as to prevent recurrence of such gross violations of human rights;
- ensuring collective and individual reparation for victims; and
- fighting impunity.

With a view to supporting NHRIs in the MENA region to meet the challenges facing them after the Arab Spring, it is recommended that the Arab-European Human Rights Dialogue (AEHRD) undertake out the following measures:

1. Conducting a mapping of the operational and financial mandates, methods and procedures of NHRIs in MENA countries where such institutions exist (notably in Jordan, Morocco and Egypt) or where a process towards creating an NHRIs under way (in Lebanon and Yemen) for the purpose of determining the gaps with the Paris Principles governing independence and accountability.

2. Follow up on any NHRI law revision proposals (or proposals for establishing a NHRI) in the MENA region countries. NHRI laws should include provisions ensuring the power to submit recommendations to the authorities, notably to the executive and the parliament, on measures to be taken to achieve national reconciliation. These recommendations may include draft laws and proposals for establishing a mechanism to assess claims for collective and individual reparations by victims of serious human rights violations.

3. Following up on monitoring undertaken by NHRIs on the implementation of national legislation for providing reparations or for prosecution of perpetrators of serious human rights violations. In this regard, the AEHRD can provide capacity-building support to NHRIs by sharing information on similar processes already undertaken at national level within MENA region (e.g., in Morocco) or in other parts of the world.

4. In order to ensure adequate knowledge of and application of international and regional human rights standards by the judiciary, NHRIs should also be mandated to act on behalf of victims before the courts and to monitor legal proceedings and trials related to alleged human rights violations.

5. Facilitating cooperation with international and regional human rights bodies. NHRIs should be free to submit information, cases or reports to relevant international and regional bodies, and to engage with treaty bodies and relevant UN special procedures.

6. Providing technical assistance to NHRIs for the purpose of ensuring independence in monitoring places of detention as per OPCAT provisions. NHRIs should establish monitoring programmes for places of detention through regular visits in order to prevent acts of torture and ill-treatment as well as to advocate for satisfactory conditions of detention. In MENA countries that have already acceded to OPCAT, such as Jordan, NHRIs should lobby to be granted the NPM mandate. In other countries, such as Lebanon, where there is a proposal to establish an NHRI, the draft law should grant the NHRI powers consistent with an NPM mandate.

In this regard, NHRIs should have the capacity and ability to receive complaints of torture and ill-treatment, freely investigate their validity and details and, if appropriate, ensure that the case is brought to the attention of the criminal justice authorities.

7. Providing assistance to NHRIs in developing strategic plans. In order to strengthen public accountability, NHRIs should develop strategic plans and provide an assessment of their progress against the strategic report in their annual reporting.

5. Monitoring and Evaluation

Various means for monitoring and evaluating actions suggested for the AEHRD with regard to independence and accountability can be applied depending on the nature of each action that is suggested in this paper.

Evaluation of the mapping action is to be done through a gap analysis based on the OHCHR's Paris Principles checklist.

Principle	Requirements
INDEPENDENCE	If Government Officials have membership, they have advisory capacity only
	Institution reports directly to Parliament
	Members have immunity for official acts
	Funding is sufficient to allow for independent staff and separate premises
	Funding is sufficient to allow for core programming in protection and promotion
	Funding not subject to financial control which might affect independence
	Budget drawn up by the Institution
	Budget separate from any governmental Departmentsí budget
	Institution has authority to defend budget requests directly with the Parliament
	Budget is secure
	Budget is not subject to reduction in year for which it is approved
	Budget is not subject to arbitrary reduction from one year to the next

The checklist also provides for other requirements for independence that are related to the NHRI's mandate (set in constitution or by legislation) and its composition (appointment and dismissal, privileges and immunities).

For NHRIs with quasi-judicial powers enabling them to hear and consider complaints and petitions concerning individual situations, evaluation of independence can be conducted by reference to Paris Principles requirements:

Principle	Requirements
ACCOUNTABILTY	Publishing an Annual Report
	Publishing special reports on human rights issues
	Regularly reporting on important cases through the media
	Developing basic brochures on the Institution
COMPETENCE TO INVESTIGATE	Institution can receive individual complaints
	Complaints may be filed by the individual affected
	Complaints may be filed by representatives of the individual
	Complaints may be filed by third parties
	Complaints may be filed by representative organisations, such as NGOs
RESPONSIBILITIES IN INVESTIGATION	Institution informs parties of their rights and how to access them
	Institution transmits complaints to other authorities to the extent allowed in law
	Institution uses conciliation to resolve issues
	Institution makes binding decisions to the extent allowed in law
	Institution makes recommendations on reforming law, regulations or practices when finding shows these at fault

A. Monitoring the initiatives taken in MENA countries that are in a transition phase to broaden NHRI mandate towards more independence and effective accountability requires collecting such draft law amendment proposals or draft law proposals and addressing to concerned NHRIs an eventual critique and relevant recommendations.

B. Examining NHRI annual/special reports on implementation of legislation on reparation to victims of gross human rights violations and issuing position papers.

C. Reviewing annual and special NHRI reports as regards monitoring legal proceedings and trials pertaining to human rights violations and issuing position papers.

D. Following an evaluation of existing cooperation between MENA region NHRIs and international human rights mechanisms, determine the areas in which the AEHRD can best provide assistance. Issue periodic reports on the progress of cooperation programmes between the AEHRD and NHRIs, documenting challenges and successes.

E. Ensure that manuals for receiving and investigating complaints and for monitoring places of detention are made available for NHRIs, and monitor their use.

F. Checking if strategic plans of action have been developed and adopted by NHRIs; assessing progress towards implementation of strategic plans by reviewing NHRIs' annual reports.

© AFP/Scanpix

ESTABLISHING AND/OR RE-ESTABLISHING TRUST AMONG THE PUBLIC

RANDA SINIORA

Randa Siniora is the Senior Executive Director of The Palestinian Independent Commission for Human Rights (PICHR) since September 2007, and known as a Palestinian human rights and women's rights activist for over 25 years.

She has an LLM Degree in International Human Rights Law from the University of Essex, UK, and an MA Degree in Sociology-Anthropology from the American University in Cairo.

She has long experience in working with human rights NGO in Palestine, being the previous Director of Al-Haq: Law in the Service of Man. Her experience is in research, training in the field of human rights, advocacy for the promotion and protection of human rights and in engaging with UN Human Rights System.

Introduction

During my tenure as Executive Director of one of the most prominent national institutions in the Arab world and one of the first such institutions in our region, I have often been asked whether it is possible for national human rights institutions (NHRIs) - as institutions established and funded by states - to be independent, neutral, and capable of protecting and promoting human rights. Irrespective of our achievements and establishing ourselves as independent and credible, this question is quite legitimate, especially considering the non-democratic environment under which many NHRIs worked prior to the Arab Spring, and under the current superficial "reform" taking place in some Arab countries after the revolutions in Tunisia, Egypt, Libya, Yemen and Syria.

Many of these NHRIs, even those with an 'A Status' from the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC), have provided a smoke-screen for the actions of despotic and non-democratic regimes. The existence of an 'A status' NHRI in the country has given an impression that those regimes were compliant with international principles of human rights, when in fact the NHRIs in question were not independent from government at all in practice. As such, they were incapable of accurately and objectively reflecting the status of human rights in their countries. NHRIs have been incapable of investigating or documenting serious human rights violations taking place in countries in the region. They have also been unable to provide advice to their governments to adopt laws and policies consistent with the country's international human rights treaty obligations. The recent political changes witnessed in numerous Arab countries have brought new challenges, but also important opportunities for NHRIs to (re)establish the confidence of the Arab public in them as relevant actors in protecting and promoting democracy, the rule of law and human rights.

The peoples' voices in our region and their calls for freedom, equality and justice underline the moral prerogative resting on MENA region NHRIs to clearly proclaim that human rights are universal, indispensable and superior to any discriminatory national legislation or national practices which contravene these principles. The Arab revolutions and calls for democratization, human rights and the rule of law have proven that oppressive, non-democratic regimes can easily fall before the peoples' will and aspirations. Once such revolutions achieve momentum, they can trigger the overthrow of even the most established political leaderships and regimes.

This paper discusses the circumstances of NHRIs in the MENA region, and the crucial roles they play in building the confidence of the public in them as credible and independent entities in protecting and promoting human rights.

1. Principles and Standards

Under the changing political situation, NHRIs' important roles entail the challenge for them to be critical of their past performance, and their willingness to draw on lessons learnt and to face the challenges ahead in ensuring their independence and compliance with the 1993 Paris Principles regulating the work of NHRIs. They might review the legal framework under which they were established, as well as responding to popular demands for reform in order to ensure that there are democratic processes in member selection, and wider involvement of civil society organizations and parliaments in their formation and functions.

Ideally, the Arab public should feel that NHRIs are independent of their governments despite the fact that they are "state-sponsored", and "state-funded". While NHRIs vary in composition and modality, their mandates, responsibilities and overall authority should be based on the standards set forth in the 1993 Paris Principles, and they should abide by the "letter and spirit" of those principles. The principles of **independence** from governments, and **plurality** to ensure wide representation within society are essential if NHRIs are to have any meaningful and positive impact on the protection and promotion of human rights.[1]

Emerging from "police" regimes, where state security was prioritized over rights and freedoms, NHRIs are generally expected to function, at least initially, in the absence of a strong "network of domestic machinery" and independent national institutions, especially courts and the judiciary. In conflict situations and/or during political unrest, and at times of democratic political transition, NHRIs can:

> "play a more central role, as they provide a viable forum for the investigation and resolution of human rights complaints in countries where the judicial system is weak, politicized, slow or otherwise incapacitated. In addition, a national human rights institution may be able to develop a stronger human rights culture in the state in transition, and thereby contribute to the democratization process."[2]

NHRIs have a crucial rule in facilitating transitional justice processes and guaranteeing that human rights violations are addressed, victims obtain redress and those who have committed violations are brought to account for their actions. In so doing, a State can make a decisive break with a culture of impunity, which may have been prevailing in the country for decades.[3]

2. The Role of NHRIs

Over the past two decades or more, there has been a significant increase in the demands made on national human rights institutions to be key actors in the protection, monitoring and promotion of human rights. Among the more than 80 such NHRIs that have been established worldwide,[4] at least 67 have been accredited 'A Status' by the Sub-Committee on Accreditation of the ICC, denoting that those institutions are in compliance with the 1993 Paris Principles.[5] Among the ten established NHRIs in MENA, five have 'A status'.[6] At least three of the Arab NHRIs have been established in very recent years, while many countries are being encouraged to establish NHRIs, especially by the OHCHR, which provides technical assistance and support for this.[7]

According to the Paris Principles, NHRIs have a wide-ranging mandate to protect and promote human rights at the national level, with two main functions: first, as "watchdogs" for monitoring, documenting and reporting; and second, as promoters of a culture of human rights through awareness-building, training and education programs, and the utilization of media (including social media). As public institutions, they are mandated to advise governments, parliaments and other authorities by providing recommendations, opinions, proposals and reports related to human rights at the national level. Some are mandated to receive and handle citizens' complaints, while others have a mandate to make judicial interventions in cases of principle concerning human rights protection and/or cases of importance to the public. They also encourage states to sign and ratify international instruments, provide technical assistance and guidance for states to report on their legal obligations in accordance with international human rights treaties, and engage with the

international and regional treaty-based and non-treaty based machinery for the protection and promotion of human rights.[8]

Among the most important and unique roles of NHRIs is the intermediary role between official state institutions and civil society organizations (CSOs), especially human rights non-governmental organizations (NGOs). This begins with ensuring wide representation of CSOs in the formation of those NHRIs to represent NGOs, community-based groups, ethnic and religious groups, trade unions, professional associations, professionals, academics, women, persons with disabilities etc., and through coordination and close cooperation with CSOs. While this unique position creates opportunities for [NHRIs], it can also 'give rise to problems for such institutions in defining and defending their role and the space where they fit in with governments and civil society'.[9] Despite variations between NHRIs in the region, the lack of public trust in them can mainly be attributed to the appointment and selection processes of NHRI leadership. While legal mandates for the establishment and operation of NHRIs vary from country to country, there are examples where the NHRI leadership has been appointed by the executive government and not by parliament. Those selected are not necessarily appointed in accordance with clear criteria or chosen for their expertise, integrity and credibility, and may as such be perceived by the public as supporters of the current regime. Many commissioners are appointed to Arab NHRIs due to their close affiliation with governments, and/or members of governing political parties, and some continue to hold political positions while they are serving on NHRI Boards.[10] According to the Paris Principles, government officials holding political posts and/or members of specific political parties should not be appointed to Boards of NHRIs; if representatives of political parties are included on the Board, they should sit as observers with no voting powers. Persons should also sit on NHRIs in their personal capacities and not as representatives of their organizations. This can be a crucial "determining factor in the effectiveness of the institution",[11] and the level of trust which the public has in it.

3. Challenges, Lessons Learnt and Opportunities

Challenges and Lessons Learnt

The revolutions in Arab countries, especially in those with NHRIs such as Tunisia and Egypt, have shown that those institutions were not able to take the lead and effectively address serious human rights and public freedom violations by their repressive, non-democratic governments. Just as for other observers, the revolutions took these NHRIs by surprise and their contributions as national institutions for human rights remained modest. The very nature of their composition and their previous political affiliations with the governing regimes, have been major contributors to their relative impotence. In fact, the ineffectiveness as NHRIs in responding to serious violations of human rights was arguably a contributing factor to the revolutions in both Egypt and Tunisia. There were sporadic attempts to monitor and report on the human rights situation during the revolutions, but those attempts were modest and not up to the standard expected from NHRIs. There is no doubt that some of them made individual initiatives to monitor the situation, and perhaps be active in the revolution, but as institutions, neither the Tunisian High Commission for Human Rights (TCHR) nor the Egyptian Council for Human Rights (ECHR) were up to the new challenges, at least during the first days of the revolution. Since then, they have been unable to take the lead due to their associations with the former previous regimes.

But the revolutions in Egypt and Tunisia also highlighted the significant role of NHRIs in such situations, the weight given by the public to human rights, and the challenges ahead in seriously addressing human rights issues and in underlining the important roles they can play during conflict, and in transitional and post conflict situations. On 21/2/2011, the Chairperson of the ECHR, Mr Boutrus Ghali, announced his resignation and that of other members to allow for its reformation by the Egyptian Higher Military Council. On 13/4/2011 Deputy Prime Minister Yehya al-Jamal reappointed Mr Boutrus

Ghali as the Head of the ECHR, and 25 new members representing social groups in Egyptian society were appointed to sit on the Council. This was apparently in response to popular demands for reform of the ECHR. Some saw in this as a step in the right direction, taking on the "spirit of the revolution", while others saw it as only "cosmetic", especially since there is only one representative from a human rights organization on the new Council.[12] Mr Mouhammad Abdallah, the coordinator of the popular movement for the 'cleansing' of the ECHR from political figures associated with the former regime, made the following statement:

> "The new formation is a step in the right direction, and an important one in the direction of getting rid of those who have played a negative role in undermining the efforts of human rights defenders within the ECHR, and have diligently worked towards distancing them from human rights concerns ...
>
> What is required now is the provision of new premises for the ECHR [after the burning of the previous premises during the revolution] to allow staff and specialized committees of the ECHR to properly resume their functions."[13]

Since its reformation, the ECHR has been actively involved in monitoring and reporting on the Egyptian elections.

In Tunisia, no major changes to the Tunisian Commission for Human Rights have taken place yet apart from the termination of Judge Farahat al-Rajihi (the former Minister of the Interior) as Chairperson of the Council, and the appointment of Mr Noureddine Hached as the new Chair. The Commission has a long way to go before it can gain the confidence of the Tunisian public, and should work towards establishing a degree of credibility at the national and international levels. CSOs, especially human rights organizations in Tunisia, should lobby for the r newly elected parliament and government to revise the legal framework of the Tunisian Commission so that it is in accordance with the Paris Principles regulating the work of NHRIs. By working together with CSOs on this issue, the government and the TCHR can demonstrate transparency and willingness to consult with the public and this will be likely to increase public support for the new TCHR. Technical support and guidance could also be provided by the OHCHR and the ICC's Sub-Committee on Accreditation. Other NHRIs in the context of the Arab-European Dialogue, and/or the African Network for NHRIs, or even other established and independent MENA region NHRIs such as the Palestinian Independent Commission for Human Rights (PICHR) could share experiences and provide guidance.

Attempts have also been made in countries such as Algeria and Morocco to reform the existing mandates of NHRIs. In Algeria, on 28/12/2011, President Boutaflika issued an order proposing the drafting of new legislation for an Algerian national institution in an attempt to improve its national and international credibility. This was especially due to their October 2010 downgrading of the NHRI from 'A' to a 'B' status, and the serious comments made by the ICC Accreditation Sub-committee regarding lack of transparency in the appointment of its members' and the NHRIs lack of independence from government.[14] The Sub-Committee concluded that "the legislation fails to establish a clear, transparent and participatory selection process, and does not establish clear and objective grounds for the dismissal of members as is required by the Paris Principles".[15]

In announcing the planned review of the NHRI, President Boutaflika also highlighted the importance given by his government to human rights, and the significant role national institutions can play in their protection and promotion. He called on the Chairperson of the NHRI, Mr Farouq Kustantini, to make all possible efforts to include a wider representation of social forces on the NHRI's council, including CSOs, to ensure a retrieval of the NHRI's credibility.[16]

In Morocco, on 1/3/2011, Royal Decree No. 1.11.19 was issued by King Mohammed V, reforming the NHRI Law of 1990 by widening the NHRIs mandate, guaranteeing the independence of members of the National Human Rights Council and ensuring wider representation of CSOs, as well as the establishment of clear criteria for the selection of members. The King's influence over the NHRI has been limited in that he will in future be responsible for the

appointment of only 8 members out of the total of 44. The other members will be made up of representatives selected by human rights NGOs, by the Parliament, by faith-based organisations and by the national judicial authority, together with representatives from academia, from journalists' associations, trade unions, and others. The Head of the Ombudsman Institution is also represented on the NHRI. The annual reports of the NHRI will be discussed in the formal plenary of Parliament and will be published in the official Gazette.

Other Arab states, including Iraq and Lebanon, have moved towards the establishment of new NHRIs. No attempts have yet been made in Libya for the establishment of an NHRI, and it is still too early to predict political developments in Syria and Yemen. Democratically elected parliaments emerging from Arab revolutions in the region should be encouraged to support the establishment of NHRIs.

While social and political changes in the Arab world are still open to all forms of transformation and contradicting political scenarios, it has become obvious that the peoples' aspirations are focused on free and democratic elections, dignity, freedom, equality and respect for human rights. Peoples have overcome their fears, and will no longer tolerate repressive regimes encroaching on their rights and freedoms. This is an important lesson which NHRIs, political parties, human rights NGOs and other social organisations should bear in mind and be ready to act on should the need arise in the future.

Opportunities

The current political situation holds many challenges, but also new opportunities for NHRIs, among which are the following:

1. Having the political will to establish human rights as a priority, and support the establishment and/or the re-establishment of NHRIs that are independent, transparent, and pluralistic in representing social forces, and established in close consultation with CSOs: This requires serious efforts towards revisiting laws and legal frameworks regulating the work of existing NHRIs, while diligently working towards their establishment in countries where they are not already present. Efforts must be made regarding compatibility with the Paris Principles, and creating the capacity for engaging with the international machinery for human rights as well as harmonization with international human rights principles. The OHCHR can provide the necessary technical support to newly elected governments to ensure that newly established NHRIs are compatible with Paris Principles. Some of the already independent and established NHRIs, such as the PICHR, can share their experiences and provide advice for initiatives towards establishing/re-establishing NHRIs in the Arab World.

2. The important role required of NHRIs is to work diligently at the national level for the promotion and protection of human rights: This crucial work involves NHRIs in their unique status as state institutions and intermediaries between state institutions and CSOs, working towards encouraging governments to develop national plans, strategies, policies and legislations based on principles of human rights and the rule of law, and providing the necessary financial resources in their annual budgets for that purpose. This requires diligent work by NHRIs, and should include not only civil and political rights, but also social, economic and cultural rights, ensuring that social, economic and political rights are prioritized and do not just receive 'lip service'.

3. Taking into consideration that new political forces are emerging, and the rights of marginalized groups, especially women, should not be undermined: The recent democratic elections in Egypt and Tunisia indicate that Islamic political parties are gaining power, thus raising concerns for women and other elements within society. "Generally, political Islam and women's rights have been posited at opposite ends of the compatibility spectrum. The game is zero-sum: when Islamists profit, women lose, and vice versa".[17] In Tunisia, some are worried that the Arab Spring is turning into an 'Islamic Summer', with Al-Nahda Islamic Party rapidly gaining popularity. While this political party is moderate, this new development signals possible

negative challenges to human rights and freedoms. It demands that all democratic forces within society should work towards ensuring democratization is an on-going process and not a one-time democratic election.

4. NHRIs should engage with the newly emerging forces in society, especially to those youth-based organisations who have taken the initiative and mobilized the masses: NHRIs need to utilize the same tools, particularly social media, to reach out these new political actors, because as social media becomes increasingly mainstream, it is likely to alter the character of rights advocacy and communication around the world, with rights defenders and organizations continuing to refine their online presence and expand their ability to reach out.[18]

4. Actions and Outcomes

These political transformations provide an unprecedented opportunity to take serious action towards rebuilding trust while promoting and protecting human rights at the national level. This entails the following:

1. Developing human rights programs and activities closely connected to the needs of the people. By engaging with the new social and political forces on the scene, human rights aspirations should be translated into concrete programs and activities by governments. NHRIs should ensure that democratic processes and institutions are established, achievements are maintained, and advice and consultation is offered to governments.

2. Monitoring, documenting and reporting on human rights violations to demonstrate that they are genuinely protecting and promoting human rights. NHRIs should utilize all means possible to uncover human rights violations, and systematically call on governments to hold those who have committed violations to account. The media is a powerful tool for conveying messages and exposing such violations. The public should feel that NHRIs are using all means possible to protect victims of human rights violations, and that they are working independently from their governments.

3. Contributing to the transitional justice process, and ensuring that serious violations of the past are addressed, that victims of violations obtain redress, that damage caused is compensated, and that criminal acts are punished: Much public trust will be regained if NHRIs are at the forefront of calls for human rights violations to be investigated and those responsible to be punished for their actions. NHRIs can also provide necessary information to ensure accountability and to make a decisive break with the historical 'culture of impunity'. Furthermore, NHRIs can contribute to the reconciliation process through awareness-raising, information dissemination and training programs.

4. Supporting the building of democratic national institutions and advocating for the separation of powers, ensuring there are checks and balances as well as mechanisms for accountability. NHRIs should work towards an independent judiciary which victims can access if their rights are violated.


© Ahmed Hayman

5. Monitoring and Evaluation

Networking and exchanging experiences among NHRIs, both regionally and internationally, is highly desirable. NHRIs in the MENA region can learn from each other. Good and promising practices developed by one NHRI can be a source of inspiration or guidance for other NHRIs seeking to nurture a human rights culture in their own country.

NHRIs should regularly monitor the performance of government institutions and the extent to which they demonstrate respect for human rights principles in their dealings with citizens. NHRIs should monitor government in general to ensure that public institutions operate according to democratic principles, that law enforcement and security agencies do not revert to past practices, and that sufficient checks and balances exist to ensure that these agencies are accountable to parliament and to the general public.

NHRIs should also monitor and evaluate progress made and obstacles faced, and identify objectively where we they have failed in the past to live up to the minimum standards set out in the Paris Principles. It is necessary for NHRIs in the region to address the root causes of problems within their organisations that led to a loss of public confidence, and to explore all means possible towards regaining that confidence in regard to their independence, their plurality and their activities for the promotion and protection of human rights.

© AFP/Scanpix

THE ROLE OF NHRIS IN CONSTITUTIONAL REFORM PROCESSES

BENT VASE . ANNALI KRISTIANSEN . LISBETH A. N. THONBO
THE DANISH INSTITUTE FOR HUMAN RIGHTS

1. Background

The aim of the present text is to provide some thoughts and ideas on the role of national human rights institutions (NHRIs) in promoting and supporting constitutional reform. By taking point of vantage in a few of the central concepts that are linked to constitutional reform, the reader is reminded of their content and meaning. This is followed by an outline of the power structures and the development of the country. Subsequently, the mandate of NHRIs and their role in society in applying the Paris Principles[19] and their potential role in relation to reform processes are briefly addressed.

The text does not follow the format or structure outlined across all the other chapters in this study, which presupposes hands-on experience in with reform processes in the Middle East and North Africa. As these processes have not been completed, it is not possible to provide an analysis that is based on such experience. This is why the text introduces main concepts, power structures, as well as ideas on the mandate, structure and role of a strong NHRI in a relatively unchartered context, namely constitutional reform in countries in transition. In addition, it should be mentioned that the NHRI mandate, structure and role outlined below could also serve as inspiration for the creation of a NHRI. The creation of a NHRI as part of constitutional reform could strengthen the future promotion and protection of human rights.

2. The Concepts of Constitution, State, Nation and Country

In periods of change it is useful to clarify some basic concepts as they are often key to reform.

What is a Constitution?

A constitution is a set of fundamental principles or established precedents according to which a state or another organization is governed. These rules together make up (i.e. constitute) what the entity is.

Constitutions concern different levels of organizations, from sovereign states to companies and associations. When an international organization is established by treaty, this treaty is also a constitution.[20] Within states, whether sovereign or federated, a constitution defines the principles upon which the state is based, the procedure by which laws are made and by whom. Some constitutions, especially written constitutions, also place limits to state power by establishing lines which a state's rulers cannot cross, such as fundamental rights.

Written constitutions are often the product of some dramatic political change, such as a revolution. The process by which a country adopts a constitution is closely tied to the historical and political context that drives this fundamental change. The legitimacy of written constitutions has often been tied to the process by which they were initially adopted.

Normally, written constitutions consist of a ceremonial preamble, which sets forth the goals of the state and the motivation for the constitution, and several articles containing the substantive provisions. The preamble, which is omitted in some constitutions, may contain a reference to higher powers and/or to fundamental values of the state such as liberty, democracy or human rights.

What is a State?

A state is an organized political community under one government that maintains a monopoly of the legitimate use of force within a certain territory. The state includes the entities that decide the roles of the state, when and how to use its power and for what. In case of an emergency, the state also has the mechanisms for suspending the rules. While the people in the Government and in the state mandated organization can change, the state and its apparatus usually remain.

A state is characterized by: a territory; people living in the territory; a legitimate state apparatus which can formally interact with other states, including committing the state to obligations and agreements.[21]

What is a Nation?

A nation is the people living in the state territory where the state by its constitution has a legitimate monopoly to exercise force.

A nation is a territory where a community of people of the same culture is living.[22] A state territory can cover one or more nations and one nation can cover on or more state territories. A nation can be divided between different state territories.[23]

What is a Country?

A country is a state territory where people live and have rights and obligations that are defined by the rules and procedures determined by the state in accordance with a state constitution.

The people who live in the state territory are a complex combination of individuals with different cultures and backgrounds. These individuals contribute to society with and through all kinds of formal and informal norms and structures.

3. The Power Structures and Development of a Country

The development of a country is created by the different types of power structures in the country, by the structures themselves, and through their interaction in often very complex patterns. The power structures operate in processes and the interactions are caused by different kinds of integration between the processes. In principle, all decision processes and thereby development processes follow the same steps:

- Policy making;
- Making rules and regulations;
- Implementing;
- Monitoring, and
- Evaluating.

All steps can be influenced by stakeholders and integration can take place at any step. The frames for conducting decision processes are given by the constitution for the specific power structure (or entity).

A society[24] in a country has these main power structures:

1. The state power structure, which is normally divided into the legislative, the executive and the judicial powers. However, additional powers can be defined.
2. The financial power structures, i.e. all kinds of private businesses.
3. The organized civil society such as NGOs, unions, universities, the free media etc.
4. The people in the form of 'the political conscience' and 'the voice of the people' movements.

All human beings have a number of physical and psychological needs that they constantly seek to fulfil in order to create what they understand as 'a good life' at that point in time. Consequently, a person's definition of a 'good life' changes over time and each person develops individually in the specific context. Part of this needs fulfilment is to decide how and in which direction to develop.

If the aim of all human beings is 'a good life', logically the common aim is to establish a society with a set of norms that stimulate peaceful development. These norms will ensure:

- that all human beings have an opportunity to make the most of his/her potential while fully respecting the dignity and worth of fellow human beings,
- that society's development is guided towards social progress, and
- that conditions of life are established to the extent that each person experiences freedom to act.

The norms equal rule of law, which is defined by the UN as:

> "... a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.[25]"

International human rights norms and standards are based on the Universal Declaration of Human Rights[26] that outlines the framework of rights for all human beings to be respected in society to give the individual the opportunity to create a 'good life', i.e. better standards of life in larger freedom.

The constitution of a country to a large extent defines the values, which are (or should be) the foundation of society. A constitution should define the principles of the rule of law in the national context as well as define and anchor the institutions, mandates and methods that will make the rule of law principles come to life, including an electoral system. The fundamental values of the constitution should ensure that the 'rules of the game' in society, i.e. rules and regulations, customs and culture, are in harmony with the needs, wishes and desires of the nation, and reflect what is considered 'right' and 'wrong' based on the context, culture and uniqueness in question. The constitution should ensure the frames necessary to uphold stability and a constant development of society in such a way that what is perceived as 'right and wrong' does not vary substantially from legally 'right and wrong'.

4. National Human Rights Institutions

In 1945, the peoples of the United Nations have in the preamble to the Charter of the United Nations reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and have determined to promote social progress and better standards of life in larger freedom.[27]

By signing the UN Charter[28] and the Universal Declaration,[29] Member States have pledged themselves in co-operation with the United Nations, to achieve, the promotion of universal respect for and observance of human rights and fundamental freedoms. Member States have also declared that a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.[30]

By resolution in 1993, Member States committed themselves to establish national human rights institutions (NHRI) in accordance with the Paris Principles.[31] According to these principles, an NHRI shall be vested with competence to promote and protect human rights and shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.[32]

An NHRI is an independent state institution and as such part of the state. However, it is not subject to instructions from any of the state powers and it operates in accordance with the rule of law principles. The purpose of the NHRI is to create a common understanding of human rights and freedoms in society and especially in the decision-making processes of all of the power

structures. It cooperates with other NHRIs, primarily under the ICC[33] umbrella, and with the UN and other regional human rights structures.

As an independent institution it is not subject to governmental control and management. This is also why it cannot be a governmental focal point for human rights in regard to reporting to UN treaty bodies[34], the Universal Periodic Review (UPR),[35] or the implementation of a national human rights action plan.

The **vision** of a NHRI is to realize human right as laid out in the Universal Declaration of Human Rights and other international human rights instruments. This means a society that respects, protects and fulfils human rights in accordance with the rule of law principles.

The **mission** of an NHRI is to monitor and evaluate the human rights situation of the country and based on that to promote human rights agenda setting.

To influence all steps of relevant decision-making processes in the country thus improving the living conditions of the people in accordance with human rights principles. The NHRI can exert its influence by providing facts and analysis, by providing support and advice, and by acting as a catalyst for and in participatory processes.

5. The Mandate, Composition and Role of NHRIs in Regard to Reform Processes

The structure of NHRIs vary from country to country, most often they have a board (commission), management and staff. In some cases, the NHRI also includes a council (national human rights council) with broad representation from society. Below is an outline of a NHRI mandate, composition and role that fulfils the Paris Principles and their intentions which include plural representation, human rights competences and involve society at large in promoting and protecting human rights in reform processes.

In regard to **constitutional processes**, the mission of an NHRI must be to stimulate a broad participatory constitutional process to ensure the legitimacy and general acceptance of the people. The process should include experts and civil society and comprise hearing mechanisms on key issues. The NHRI should also stimulate a national campaign that explains the purpose of a constitution, the expected content incl. the rule of law and human rights, and their meaning to the individual.

The Mandate

Within its mandate, the NHRI can on its own initiative invite representatives from all power structures to a dialogue process on 'the constitutional protection of human rights'. The purpose of this process is to produce a national discussion document including recommendations to be presented to the drafters of the new constitution and the constituent assembly. The dialogue process could follow the principles of a facts-based dialogue, and include the first three steps outlined below.

A facts-based dialogue comprises four steps; the first is identification of the focus area, the design of the process and establishment of the facilitating platform. The second step comprises analyses to establish the facts, organization of a dialogue conference, and subsequent agreement on recommendations. The third step consists of additional fact-finding and identification of areas of action as basis for a second dialogue conference and recommendations. Step four concerns intervention area programming and project catalogue preparation that provide basis for dialogue and commitment from those responsible for implementation.

An NHRI established in accordance with the Paris Principles[36] and their intent is in a unique position to influence the state powers and society at large. The NHRI should be structured in such a way that it is perceived by all actors in society as a competent, trustworthy and independent institution that reaches out to all sectors of society.

The Composition and Competence

In a constitutional reform process it is recommended to address the composition and competence of an NHRI. As the Paris Principles indicate, the NHRI should have a state-mandate given by a constitutional or legislative text.[37] In principle, it should include representatives from all the mentioned power structures, but in such a way that the NHRI as a state institution can uphold its independence from the state powers. It should have special expertise in and knowledge of the law reflecting that human rights principles and standards are based on international declarations and obligations and on national law based on the rule of law including its law hierarchy. The NHRI should also have special expertise in and knowledge of public administration and management reflecting that human rights are realized through the management structures in society and in participatory processes based on the principles of transparency, accountability, dialogue and participation. Furthermore, it should have special expertise in and knowledge of the national culture and uniqueness reflecting the philosophy that human rights should be implemented in accordance with the national reality and context with public participation and respect for non-discrimination.

The Structure/Organisation

In principle, the NHRI should have a board that represents the main power structures and special areas of expertise. The members representing the areas of expertise could be nominated from and by universities and institutions of higher education. The members representing the power structures could be elected by a national human rights council.

The council should consist of senior representatives of:

- the major public sector implementers, including ministries,
- representatives of the major business associations,
- parliamentarians that represent the major political parties,
- representatives of unions/associations,
- representatives of the associations that represent the key professionals involved in human rights implementation (such as associations of judges, lawyers, social workers, medical professionals, teachers, journalists, etc.), and last but not least
- the council should include civil society representatives (NGOs, individual researchers and others, as well as groups with a special interest in human rights). These representatives could be elected by and among those that have shown an interest in human rights based on the above mentioned constitutional campaign. All those who are interested can become members of a Civil Society Dialogue Forum, should the Council decide to establish such a Forum.

Due to the fact that the NHRI should be independent of the state powers, the council cannot elect persons which represent state institutions.

The task of the Council could be:

- to elect the relevant board members and
- to act as a sounding board and thus advise the Board and Management regarding planned activities and results achieved.

Moreover, the Council could ensure that a dialogue about the key human rights issues and questions, as identified by the Council, is carried out between the various representatives of society. As a result of the dialogue, recommendations as to the work/endeavours of the NHRI are submitted to its Board for consideration. The Board can also request that the Council provides opinions in regard to specific issues.

The National Human Rights Council could initiate the establishment of a Civil Society Dialogue Forum in order to strengthen public participation in human rights promotion and protection. The Forum should represent all of civil society, researchers and individuals with a special human rights interest.

It should be a voluntary and independent forum, acting as a popular think tank presenting analysis and making recommendations for human rights promotion and protection. Analyses and related recommendations are presented to the Council and are made public as discussion documents.

The Forum could be integrated with the national UN Treaty reporting processes and the national UPR process.

The Board/National Human Rights Council can decide that the NHRI initiates specific dialogue processes as outlined above, and/or the Board/Council can recommend that the Civil Society Dialogue Forum arranges dialogue processes on specific issues, which are relevant to public service delivery and different types of reform processes. In this regard, it should be mentioned that facts-based dialogues are processes that establish an informed dialogue between organized civil society and public authorities and thus promote the principle of participation in public reform efforts. Facts-based dialogues are processes that can promote civic participation in the delivery and control of public services, e.g. processes introducing public service charters.

© AFP/Scanpix

6. Final Considerations Regarding the Role of NHRIs in Constitutional Reform Processes

A NHRI with high capacity in regard to human rights, monitoring, evaluation and process facilitation and with the indicated composition and structure will be capable of influencing the decision making processes – including those related to reform processes – as described.

The wave of a desire for freedom, democracy and human rights that is rolling across the Middle East and North Africa can be seen as the expression of a common vision of a better life in freedom with the possibility of fulfilling one's potential; in other words, a vision of a society with democracy and respect for human rights. This vision can also be expressed as a society that ensures civic participation, respects the principles of the rule of law, and promotes the realisation of human rights for all.

A vision can be said to be within sight but out of reach, as it may not be easy to see how to get there. Finding the way requires knowledge about the context and situation of the place in question. Moreover, it requires know-how and knowledge of techniques and tools to find the appropriate way - under the given circumstances - to the reach the goal. In this case, the goal is the desired society of "democracy and human rights".

In order to reach the goal, a state with a strong internal pressure for democracy and national reforms needs a number of strategies that can direct the strong forces of civil society and pro-democracy activists into peaceful, mutually reinforcing processes, which generate reforms in the society where the population – step by step – experiences genuine improvement towards "a better life in freedom". The mentioned strategies can be described in four mutually supportive and interdependent areas of action:

- Processes related to **constitutional reform** issues. The philosophy is to support sub-processes on critical human rights related issues, which can feed into the overall constitutional reform processes;
- Processes related to relevant **justice**[38] and **rule of law** issues, including reform of state institutions, based on the philosophy that true democracy can only exist if there are effective state institutions that function in accordance with the rule of law and its hierarchy of laws;
- Processes related to **civic participation** and mechanisms whereby organized civil society and public authorities interact more systematically with fellow citizens and pro-democracy activists. The philosophy is to promote civic participation and to promote citizens' understanding of the society and their rights and duties;
- Processes related to the development of a society with **informed citizens** and **transparent decision-making** including mechanisms that promote accountability with regards to public administration and the use of power.

Common to all of these processes is that they must be anchored in the national structures, which are supposed to act upon the recommendations emanating from the processes as well as to implement the reform programmes resulting from the processes. Consequently, the design and timing of the processes must be carried out with constant care. A process without a clear purpose and solidly based in the structures of society cannot be sustainable or be expected to lead to the desired results. The right processes at the right time can be instrumental to peaceful democratic development and this is where a strong NHRI with a clear and transparent agenda can play a key role as catalyst.

© AFP/Scanpix

HOW CAN NHRIS COOPERATE WITH SECURITY SECTOR INSTITUTIONS IN COUNTRIES IN TRANSITION?

WOLFGANG S. HEINZ

Dr Wolfgang S. Heinz studied political science and psychology at the Free University Berlin, Germany. He is a senior researcher and policy adviser at the German Institute for Human Rights. His areas of responsibility are international security policies, the United Nations human rights system and torture prevention. He is a member of the United Nations Human Rights Council Advisory Committee and the Council of Europe's Committee on the Prevention of Torture. He also teaches international relations at the Free University in Berlin.

He has published widely: see his website www.wsheinz.de

Introduction

Cooperation and training with security sector institutions holds promise but offers also a number of challenges for National Human Rights Institutions (NHRI). These institutions are hierarchically organized and much more closed to the public eye than any other state institutions. They are often criticized for human rights violations; especially the police, which is the security institution in most direct contact with the general population. There is a lack of basic confidence and a lot of mistrust because security institutions often feel unfairly criticized, be it by the public, politicians or, especially, by civil society organizations. For an NHRI to cooperate with security institutions is therefore quite a challenge.[39]

Given this picture - experiences differ of course between countries - this contribution aims to present some pointers for discussion, rather than pretending to constitute a manual how to approach security sector institutions. It takes its point of departure in the notion that citizenship is the singular most important expression of democracy, requiring that security institutions - who have been granted legal powers to use force where necessary in carrying out their mandate - respond to and are accountable to an elected government, not to a certain religious or ethnic group, political party or person. And it includes the notion of full and effective respect and implementation of relevant human rights standards, which can be found in the constitution and further laws of the country concerned, as well as in its obligations under international law.

Important security sector institutions are police agencies, prisons, the military, intelligence agencies, and border forces which may be a separate agency or form part of the military or the police depending on the country concerned.

1. Principles and Standards

States should ensure full coherence between international human rights obligations and national legislation and practice, including by incorporating international obligations into constitutions and national laws.[40] Within the UN system, there are nine major international human rights treaties together with optional protocols and other non-binding documents.[41] In addition to these and of relevance for participants in the Arab-European Human Rights Dialogue (AEHRD); are the African Charter on Human and Peoples Rights (ACHPR) and the Arab Charter on Human Rights (ACHR).

The AEHRD recommended in 2011 that NHRIs should develop and pursue a strategy to promote ratification of UN human rights treaties, by making formal recommendations, actively lobbying governmental and parliamentary representatives and raising public awareness of the issue. NHRIs should also lobby for States to accede to the individual complaints mechanisms within the UN treaty body system, including the recently established complaint mechanism for the ICESCR and the CRC.[42]

Specifically, in the area of security institutions, there exist a number of recommendations dealing with police, prisons, and recently intelligence agencies. For the military, in situations of armed conflict, international humanitarian law applies and should be taught regularly to all members of the armed forces.[43]

2. The Role of NHRIs

Human rights training is a core activity for NHRIs. Good quality training programmes are designed on the basis of thorough knowledge of the target institution and its staff. NHRIs should obtain an insight into the organisational structure, working practices and culture of the institution in question. They should also be familiar with in-house learning processes, and should, to the extent possible, work together with in-house trainers so as to ensure that the materials developed are anchored in the institution. NHRI staff members usually have, at best, limited prior exposure to the work of security sector institutions. Hence, it is important before starting the work to train NHRI staff with relevant academic and practice-oriented literature, particularly the materials developed by the UN, the Council of Europe and by NGOs who have specialised in this area. It can be useful to involve colleagues from other NHRIs or institutions who have already worked in this area. For example, the Dutch section of Amnesty International has a special website on police and human rights and they have been providing training for police and military officers for many years.[44]

Regarding contents and educational approaches it is important to address relevant legal issues – as expressed in constitution, laws, decrees and security sector policy and operational instructions. At the same time, one should not limit oneself to legal issues. Security work is always very practical work, reflects "down to earth" situations, as decisions how to confront situations have to be made. It is important to develop training approaches which allow for discussion of practical situations instead of just furnishing "paper and abstract knowledge". Contact with training officers and knowledge of training materials is of special importance. It can be helpful to have people with a security background on the staff of your NHRI; specialized target groups call for specialist trainers among NHRI staff. The roles of such staff should, however, be clearly defined so as to avoid any perception that there is any institutional linkage between the NHRI and the security institution where they were formerly employed.

NHRIs should inform the public of their work and this includes activities with security institutions. Given the recent past, this topic is in many countries a more emotional and political one. It is important to explain to the public why the NHRI is carrying out training or other activities with the police and/or other security institutions.

The German Institute for Human Rights, for example, has placed the following information on its website:

Human Rights Requirements for International Security and Defence Policy

"Even in times of war, crisis or threat of terrorism, human rights and the rule of law need to be respected both in domestic and foreign policy. Some human rights norms, such as the prohibition of torture, have the status of absolute norms which can never be restricted. Other human rights can only be restricted if the special requirements of the relevant human rights norm are met and if the restriction is proportionate to the legitimate aim thereby pursued. The German Institute for Human Rights rejects the common assumption that there is a general contradiction between security considerations and human rights norms. Moreover, the protection of human rights is both the goal and the precondition of an enlightened security and defence policy based in the trust and the civic commitment of the people. The active participation of women must be a defining principle of such a policy."[45]

It is important to consider how security sector training activities being carried out by NHRIs are perceived by external stakeholders; e.g. members of Parliament, media agencies or civil society organisations. The media and civil society often have a negative view of security agencies, and as such they may view a co-operation between the NHRI and one or more security agencies with scepticism. For this reason, there should be a clear policy of informing the public about the purpose and contents of such a program so as to counter any misinformation or rumours that may be spread.

3. Challenges, Lessons Learnt and Opportunities

In order to prepare for the work it is helpful to do some initial research on issues such as:

- What are the national security policies of the country?
- Who is drafting and developing them? What are the respective roles of government agencies, parliament, research institutions and/or foreign partners? Are there any reporting/monitoring bodies?
- What specific human rights concerns can be identified, and as a result, which focus should the training program have? As a first step it is advisable to concentrate on a few issues rather than going for a complicated program.
- Who are the senior staffer in the hierarchy of ministry/security institutions the NHRI has to approach to get the necessary support/permission to start to work with the institutions?

It is important for an NHRI to be well-prepared before entering into a training program with a security sector institution. One needs to develop some ideas about the possible focus of a training-based cooperation. Possible topics could be:

- Information about the work of the NHRIs;
- A general overview on human rights norms and human rights obligations of the state; and/or
- Presentation of issues of general interest for security institutions, such as the fight against terrorism, human trafficking, arrest, detention and interrogation powers and rights of the persons concerned.

The cooperation could be ad hoc; that is, an agreement to make occasional presentations, or, if it has proved possible to agree on an on-going training program, certain topics could be taken up more systematically. Presentations should always be followed by time for discussion and reflection. Exchange of experiences and opinions is an important part of the learning process. It is sometimes difficult to get training participants from organizations with a strong internal hierarchy to engage in group discussions. A special effort should therefore be made by the NHRI to identify and incorporate good practices for foster discussion and exchange.

4. Actions and Outcomes

Training approaches will vary depending on the target institution. Every institution functions according to particular laws, decrees and – hopefully – oversight mechanisms - such as an Inspectorate located within the Ministry in question (e.g. the Ministry of the Interior, of Justice or of Defence) and/or a Parliamentary Committee (e.g., a Parliamentary Committee for Internal security, for Defence or for Law and Justice).

Police Institutions

Police institutions are the most likely target institution for a project on human rights training. Of all security agencies, it is the police that citizens are most likely to come into contact with in their daily lives. The German Institute for Human Rights conducted its own program on police and human rights from 2003 to 2010. The project involved a study and human rights training activities. The Institute worked with a former police officer, a long-time police trainer, who wrote a study on the subject for the Institute prior to the commencement of the program.[46]

Rather than focusing on human rights violations committed by the police, which is often the departure point for studies on policing and human rights, the study recommended to the Institute that they examine the internal organization/management structures of the police agency and identify the avenues that exist within the agency for verifying whether mistakes have been made and how operational performance can be improved. The study

examined in detail the way in which the police manage instances of misconduct, the reasons why misconduct takes place and how investigations are conducted..

In addition to the study, the Institute requested and received internal training materials from the German police and analyzed this material according to a human rights perspective. A number of recommendations for improving police human rights training curricula were subsequently made to German policy-makers and police institutions.

Almost all seminars throughout the project period were integrated into ongoing training programs for police and made accessible via the internal information system to employees of all departments of the federal police, as well as to police in the Berlin and Brandenburg states. Participation in seminars on civic education allowed police officers to collect merit points for their future career. In 2010, responsibility for delivering seminars was overtaken by the Berlin Criminal Police Office; i.e., they became a regular part of institutional capacity-building.

Some difficulties were encountered by the trainers though: some officers considered that human rights were 'soft issues' and were not as important skills for police as, e.g., training in the use of firearms or interrogation techniques. Moreover, the training budget of the police was unfortunately cut during the project period, and this had an impact on the program.

The Institute built on its experiences working with the German police and used it in a human rights education project with the Ministry of Human Rights in Iraq. The project, which was financed by the German Ministry for Economic Cooperation and Development, provided human rights education to staff from the Ministry responsible for training the Iraqi security agencies. One of the outcomes of the project was a Training of Trainers manual in Arabic, entitled 'Daliluna - A Practical Manual for Capacity-Building of Human Rights Trainers in Iraq'.[47] The manual describes how to design training for security institutions (mainly police and prison personnel), and includes a number of practical activities and ready-to-use teaching modules.

Prisons and Other Closed Institutions

Protection of human rights in prisons has been addressed in many publications developed by the UN, by regional multilateral organisations, specialist NGOs and others. Rather than attempting to summarize this material, reference is made to the following source documents:

- OHCHR, 'Human rights and prisons. Manual on human rights training for prison officials', New York, 2005: UN Professional Training Series No. 11
- OHCHR, Human Rights and Prisons, 'A Pocketbook of International Human Rights Standards for Prison Officials', 2005, UN Professional Training Series No. 11, Add 3
- OHCHR, Human Rights and Prisons, Trainer's Guide on Human Rights Training for Prison Officials, 2005, Professional Training Series No. 11, Add. 2
- UN Standard Minimum Rules for Administration of Juvenile Justice (the Beijing Rules)
- UN Guidelines for Prevention of Juvenile Delinquency (Riyadh Guidelines)
- UN Rules for Protection of Juveniles Deprived of Their Liberty (Havana Rules)
- Vienna Guidelines for Action on Children in Criminal Justice System
- OHCHR, Istanbul Protocol - Manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, New York, 2005: United Nations Professional Training Series No. 8
- Council of Europe, European Prison Rules, 2006
- Council of Europe, Committee on the Prevention of Torture, Compilation of Standards, 2010 (Section on prisons)

The Military

The military are another possible target group for a training program, but once again, the program must be well prepared. It would be of particular special importance to offer human rights training to the military in countries where they carry out police functions.

The military can play different roles. They might protect the borders if there is no specific border police agency. They might support the police in the fight against terrorism and other serious crime. In some countries they can be co-opted to supplement the police force in the event of mass demonstrations. They might be required to serve in UN peacekeeping operations. In all these and other possible scenarios it is paramount to define under which legal system the military acts and to identify who exercises command and oversight powers.

The military are of special interest to human rights institutions because they intervene in a domestic conflict (e.g. a demonstration of civil conflict) the risk of damage to life and possibly also violations of human rights is particularly high due to the type of personnel and weapons they have at their disposal. The military is trained to fight a foreign enemy in a war context and most likely has little or no experience in assessing issues of proportionality in the use of force in a domestic conflict situation.

Intelligence Agencies

Of all security sector institutions, an intelligence agency is the least likely candidate for a human rights cooperation program. NHRIs would have to consider very carefully before carrying out activities with an institution whose activities and working methods are, by their nature, opaque the general public. An intelligence agency, may, however, be an important and relevant institution for human rights education activities if their mandate includes powers (e.g. in investigations of alleged crimes against state security) of search, detention and interrogation.

Related to this topic, an NHRI could consider fostering institutional relations with government oversight bodies or parliamentary committees with responsibility for overseeing the activities of intelligence (or other security sector) agencies. But national institutions do not necessarily possess expertise in this area and would need to develop capacity in it if they were to play any meaningful role.

To date, no code of conduct or guidelines on the activities of intelligence agencies and human rights have been developed at the international level. The only document I am aware of is a study and guidelines on human rights and security presented to the UN Human Rights Council in 2009 by Martin Scheinin, the former UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering Terrorism.

5. Monitoring and Evaluation

Monitoring and evaluation can be understood for the purpose of this chapter in two ways; as oversight of security sector institutions by the state, and as monitoring of compliance with human rights standards carried out by the NHRI.

At the political level, given the importance and power of security institutions oversight by parliament and the executive is of particular importance. The first responsibility always rests with the government. It is important to find out which government organs are mandated to carry out such activities.

Parliamentary control of security institutions is also very important.[48] In some countries there are parliamentary committees on internal security for the police and on armed forces or defence for the military. For intelligence agencies, separate parliamentary organs have been created in a number of countries. There should be also clear legal rules as to which judicial organ investigates allegations against members of such institutions (in lesser cases of allegations there is often a disciplinary system in place). Are ordinary courts responsible for investigating and trying cases or is there a special branch of the judiciary or even a unit within the security institution itself to deal with such allegations? (Best practice in this area is for investigations and, where appropriate prosecutions of officers believed to be responsible for violations to be carried out by an independent agency with no links to the institution in question). Are security personnel subject to ordinary or special (e.g. military) criminal jurisdiction? Do the normal rules also apply for alleged violations committed during a state of emergency?

NHRI Monitoring

Work in this area should always be closely monitored by the NHRIs management to determine whether there any problems or weaknesses emerge and how they can be addressed. As it is a rather political area, special attention by management is a must.

One important obligation of NHRI is to report on the human right situation in the country, both generally and on particular issues.[49] An issue might arise if an NHRI continues to undertaking monitoring of and (informally or publicly) criticize aspects of a security institution(s) legal mandate or operations while the institution is receiving training in human rights from the NHRI. There might be an expectation on the part of the security institution that if it accepts an offer of training from the NHRI then the NHRI will no refrain from criticizing it. So it is important to clarify the working methods of the NHRI with the institution before the training program commences. It is probably best if the staff members who are providing the training are not also responsible for the NHRIs human rights monitoring activities.

Concluding Remark

Cooperation with security institutions is one of the more difficult work areas for NHRI As mentioned in the introduction, tensions often exist, due in part to a lack of understanding (perhaps on both sides) of the mandate and working methods of the two institutions. Furthermore, NHRIs and security institutions have, by their very nature, different work cultures and this can also lead to problems in communication. However, a lot of work in this area has been undertaken by NHRIs in different countries, and these experiences, adapted to the specific operating context in the country in which the NHRI is located, can provide useful guidance and inspiration.

In many countries, tensions, strikes, demonstrations and the like will occur time and again, often involving outbreaks of violence from one side or another. Enhancing the capacity and indeed the will of state institutions to act in conformity with human rights, to prevent rather than to repress and to accept responsibilty and accountability for human rights violations is important, and indeed crucial for all states. It is important to challenge existing practices and to lay strong foundations for a new culture of accountability in countries that are emerging from dictatorship and are on a trajectory towards democracy and rule of law. Likewise, It is important that NHRIs in well-estabilshed democracies continue to be diligent in their work: to seek positive engagement with security sector institutions but at the samt time to hold those institutions to account where necessary.

© AFP/Scanpix

THE ROLE OF NHRIS IN
RE-BUILDING THE SYSTEM OF JUSTICE

MOHAMMAD ESSABBAR

Mr Mohammed Essabbar, born in Rabat in 1955, was appointed by His Majesty King Mohammed VI as Secretary General of the National Human Rights Council, on 3 March 2011.

He was recruited in November 1978 by the Ministry of National Education as a teacher in a primary school in Rabat. In 1997, Mr Essabbar obtained his high school diploma as a free candidate. He resigned from his function with the Ministry to complete his higher studies in the Faculty of Arts and Humanities in Rabat, where he obtained his Bachelor's Degree (Licence) in sociology.

He was director of Imam Ghazali Private Institute, in Salé. At the same time, he enrolled for, and later obtained, a Bachelor's Degree in public law - Faculty of Law in Rabat.

He has been lawyer practicing in Rabat, since 1993. He is a former activist of the Youth wing of the Socialist Union of Popular Forces (USFP), and a member of the National Student Union of Morocco.

Mr Essabbar was also member of the central committee of the Democratic Socialist Vanguard Party (PADS) and of its regional secretariat in Rabat.

He was elected vice-president of the Moroccan Human Rights Association (AMDH) and was president of the "Moroccan Forum for Truth and Justice" (FMJV), for two terms.

1. Principles and Standards

Transitional justice can be defined as 'the total of pathways and mechanisms adopted by a society, in order to reconcile with its history that is laden with human rights violations, determine the responsibilities, do justice to victims and ensure the non-repetition of such violations'. The process of truth and fairness should be launched as a result of the consensus of the wills of the political actors, members of Associations, human rights defenders and victims, in order to look for the most effective ways to settle conflicts of the past and resolve them in a just and fair manner.

There is no single or unique model of transitional justice to be followed, as it varies with the different historical and political contexts of each individual society. The reconciliation process can be launched after a break has been made with the painful past of a society; for example during a period of political transition, which was has been the case in most of transitional justice experiences around the world. There have, however, also been examples of a country making a break with the past and initiating a transitional justice process with a continuation of the same regime. This is possible provided that the state demonstrates strong political will to carry out necessary reforms and other measures needed to achieve reconciliation.

Transitional justice experiences can focus on a range of areas, among them the following:

- Revelation and establishment of the truth with regards to human rights violations;
- Programs for reparation of individual and collective damage;
- Issuance of recommendations for promoting democratic reforms;
- Reform of law and of justice and rule of law sector institutions; and
- Ensuring respect for human rights in practice and preventing the recurrence of the past.

One of the best mechanisms for the realization of transitional justice is to establish a commission for truth-finding, justice and reconciliation. Reconciliation aims to overcome the divisions and foster a spirit of trust between interest groups in a society which just emerged from armed conflict or from a repressive regime. It should not be understood as an alternative to investigation and prosecution of those responsible from violations committed by the former regime. Neither is it a process to be implemented against the will of the victims, in order to force them to forgive and pardon. Rather, the work of a truth, justice and reconciliation commission should focus on respecting the victims' rights to know the truth, to do them justice and to ensure their redress.

Efforts towards achieving reconciliation should seek to restore the citizen's trust in public institutions, through procedures designed to recognize the harm done to victims and to provide redress. Public apologies for past wrongs, declarations of national reconciliation, coupled with comprehensive legal and structural reforms can also contribute to achieving reconciliation and to creating a new political and social order based on protection of rights and freedoms for all.

2. The Role of NHRIs

NHRIs can play a pivotal role in relation to many of these reconciliation and transitional justice processes. They can contribute to initiating a public and pluralistic discussion and dialogue at the national level on the right to know the truth about past human rights violations. They can also promote a national process of acknowledging past wrongs and drawing lessons from so as to prevent reoccurrence and, so doing, support the development of a culture of accountability and rule of law. NHRIs will be particularly well-placed to initiate and /or promote reconciliation and transitional justice activities, if they are operating in compliance with the Paris Principles.

An NHRI could submit a recommendation to the Parliament, Government or to the Head of State to establish a truth commission to investigate severe violations of human rights. Ideally, the Truth Commission will include amongst its members people with different backgrounds, competencies and experience, including people with expertise in human rights and other relevant professional disciplines. The Commission should have a legal mandate setting out its mandate and powers, including, among other things the types of violations that can be investigated, the Commission's temporal jurisdiction (are there any time-based restrictions on the Commission's work), and its working methods, which will typically include most or all of the following:

- Researching and investigating, by receiving statements, information and data and by accessing the archives, in order to reveal the truth and determine responsibility for violations committed;
- Analysing the political and historical context in which violations took place;
- Determining applications for reparation submitted by victims (or their representatives), including consideration of the victim's entitlement to health and psychological rehabilitation, social reintegration, settlement of administrative, employment and legal problems, and/or reinstatement of lost property;
- Publishing a report so as to ensure that there is a permanent historical record;
- Proposing, through the issuance of a final report, and recommendations that include the affirmation: (a) of the preservation of memory of victims of violations; (b) to prevent any repetition of the past, and (c) to foster a culture of accountability, justice and respect for human rights.

3. Challenges, Lessons Learnt and Opportunities

National human rights Institutions may face various challenges in attempting to implement the recommendations developed by Truth Commissions. The Government may not be willing to follow the recommendations; on the other hand, the work of Truth Commission may be criticised by victims or victim's support groups who are dissatisfied with the Commission's recommendations or do not feel that the reparation provided is sufficient. The Commissions' ability to establish a permanent historical record of what took place or to provide compensation to victims may have been hampered

by missing or incomplete government records/archives.

The Commission may have difficulty in communicating with victims or their representatives. Victims living in remote districts may not be aware of the Truth Commission's existence. Some victims may submit their claims after the deadlines prescribed in the Law on the Truth Commission. NHRIs can play a role here, raising awareness of the existence of the Commission, its mandate and of the application procedures.

As for those who committed human rights violations, there are often two options for Truth Commissions: one is to grant pardon in exchange for providing assistance in revealing the truth, and the other is to prosecute those responsible for abuses. The risk with the second option may be a destabilising of the national security situation, if the military or security sectors are not fully under parliamentary control, which may threaten the ultimate objective of the Truth Commission process, to achieve national peace and reconciliation.

Reconciliation does not necessarily require a break with the existing political regime, but must include disclosure of the truth, reparation for damages caused by the State or agents of the State, establishing of the truth, and the implementation of measures to ensure that past events are not repeated.

Reparation programs for collective damage can become mere development initiatives, similar to those launched by the State in this field, especially if the dimension related to preservation of memory is not properly addressed.

Among the challenges which might arise is demand for counselling or support services for victims who have received compensation are uncertain as to how to invest the funds. Support services should be made available to victims in this regard. Consideration can also be given to alternate modalities for providing compensation; for example, rather than making a one-off payment to successful claimants, compensation could be disbursed in periodic instalments. Another issue to consider is victims' access to health and rehabilitation services. If they are required to pay upfront for the costs of these services, they may in practice be unable to access them. A solution could be for the costs of rehabilitation to be provided by the state free of charge, or, alternatively, for expenses to be paid by the compensation tribunal and set off against the total amount of compensation awarded.

4. Actions and Outcomes

Encouraging States to Continue to Adhere to International Human Rights Conventions

In the context of strengthening the process of transitional justice, national institutions can encourage the State to sign and ratify human rights conventions, and to revise national laws from a human rights perspective to align them with international human rights standards. In the same context, national institutions can conduct studies and research following the review and study of national legislations.

Reform of the Justice Sector and Strengthening its Independence

To enforce the recommendations of the Truth Commission concerning reform of the justice sector and strengthening of its independence, the NHRI can facilitate a participatory and pluralistic debate. It may also publish its own recommendations for reform of the judiciary and for strengthening constitutional guarantees for judicial independence. The recommendations might also include proposals for, among other things:

- Training of judges in human rights law;
- Improving the court's human and material resources;
- Drafting a code of judicial conduct; or
- Undertaking outreach activities to improve public knowledge of (and confidence in) the judicial process.

Security Governance

NHRIs can also make recommendations on how to carry out a reform of security sector institutions within a human rights framework. Such a reform will

pay special attention to the importance of applying human rights principles- e.g. broad-based consultation and participation in the design and implementation of the reform,; emphasis on principles of accountability and transparency; and incorporation of human rights principles in strategic planning and in redesigning security sector architecture, mandates and line of command.

These recommendations can be presented by the NHRI to the government as a means by which the security sector can improve its credibility and regain the trust of the population. NHRIs should promote the importance of ensuring access to information on the activities of security agencies and on exerting political, legal and managerial monitoring over the sector. Benchmarks should be established to measure performance of agencies in the sector. Security officials should receive training in the principle of proportionality in the use of force, and in the centrality of respect for fundamental rights and freedoms to their work. A change of orientation is required so that security agencies do not work in a vacuum but understand their role as being to protect and to act in a way that is consistent with the democratic values on which the State is based.

The National Archives

Given the importance of documentary archives in helping to uncover the truth about human rights violations, the NHRI should also hold consultations with relevant actors - from the National Archives, from academia and elsewhere – to examine historical records so as to ensure that there is an accurate historical record preserved of violations committed by the former regime. NHRIs can also advocate for funding to ensure valuable historical documents are preserved, and to enable the National Archives to carry out its mandate effectively.

Developing a National Action Plan in the Field of Democracy and Human Rights

NHRIs can play a pivotal role in urging the State to develop a national action plan for human rights. They can also provide recommendations on good practice, based on human rights principles and on the experiences of other countries for the development, implementation and review of such a plan, As with other national development processes, it is important that an action plan be developed through a process of broad-based consultations with relevant stakeholders.

A national human rights action plan could seek to develop a national strategy that places the promotion and protection of human rights at the heart of all public policies. In addition to achieving consistency between the various programs and sector plans in the field of human rights, the plan could focus on a number of principles, values and standards, notably:

- Respect and guarantee of human rights;
- Equality and non-discrimination;
- Universality of human rights;
- The rule of law; and
- The supremacy of international standards over the national laws.


© AFP/Scanpix

The action plan could be made up of several thematic 'pillars', as follows:

Governance and Democracy: This pillar is based on the principles of respect of human rights, equality and equal opportunities, as well on the cross-cutting principles of transparency, accountability and participation. It is also essential to stress the necessity of re-establishing relations between the citizens and the State entities on one hand, and between the citizens and the elected bodies on the other, through reform of laws legislations so that they are in line with international standards, and by enabling citizens to participate in the management of public affairs and in the making of decisions that impact their lives and their daily surroundings.

Economic, Social, Cultural and Environmental Rights: This pillar is based on priorities related to selected human rights such as education, cultural and linguistic rights, health, employment, housing and the environment. Activities to be carried out in connection with this pillar would include the incorporation of rights-based approaches and principles in the development of policy, in resource distribution and in service delivery by government agencies responsible for education, health, social affairs, employment, and so forth. In the case of the Ministry of Education, consideration would also be given to how to include information on, for example, civic values, equality principles and sustainable development in the curricula. For the Ministry of Health, an area of particular focus would be to increase access to health services for the poor, for people in rural districts or for minority groups. For the Ministry for Social Affairs, consideration would be given to, among other things, ensuring adequate and affordable housing and a clean and safe living environment for all.

Protection and Promotion of the Rights of Special Groups: This pillar focuses on the rights of vulnerable social classes that may suffer marginalization or exclusion, such as battered women, children, and people with disabilities, the elderly, ethnic or social minorities, immigrant s and others, through the carrying out of measures to improve their living conditions and the quality of their participation in society. The pillar seeks to challenge existing policies or practices that lead to exclusion of marginalized groups. Initiatives undertaken under this pillar will promote the principles of equality, non-discrimination and equal opportunity.

The Legal and Institutional Framework: This pillar emphasizes the primacy of constitutional human rights guarantees, the importance of reform of laws and of institutions in the legal and judicial sectors, as well as enhancing and strengthening the authorities of NHRIs and other bodies or mechanisms concerned with human rights protection. Some of the rights principles to be addressed under this pillar are: guaranteeing and protecting the right to participate in the management of public affairs; enhancing legal protection for women rights; guaranteeing the right to self-expression and media; enhancing the right of association and assembly; and safeguarding and improving the capacity of the National Archive.

In addition to these pillars, the national plan on human rights may include activities such as studies, seminars and stakeholder dialogues, that can assist in needs identification, strategic planning or in building consensus towards implementation of human rights-oriented reform. NHRI should also contribute to developing indicators for measuring progress on implementation of the action plan and on realisation of human rights in general.

Constitutional Reform

Constitutional reform processes constitutes an opportunity for NHRIs to submit proposals for strengthening protection of human rights provisions and, where relevant, for elevating the NHRI or other human rights or accountability institutions to the status of constitutional bodies. If rights and freedoms guarantees are constitutionally anchored they will be more likely to be taken into account by the executive and the judiciary when making or reviewing decisions. 'Entrenching' an NHRI or other national accountability body in the Constitution should make it less susceptible to attacks on its independence or the scope of its mandate. Proposals by NHRIs to constitutional review committees could include the following:

- The inclusion in the constitution of the principle of the presumption of innocence;

- The criminalization of torture, arbitrary and secret detention, forced disappearance, genocide, and other severe and systematic violations of human rights;

- Provisions to enhance respect for the rule of law and strengthen public accountability mechanisms;

- Prohibition of discrimination and of incitement to hatred or violence based on discrimination of any kind;

- Promotion of civil, political, economic, social, cultural and environmental rights;

- Guarantee of the right of access to information in relation to the public administration, the elected institutions, and other bodies commissioned with the public sector tasks;

- A provision clarifying that international conventions by the State take precedence over national legislation and that measures should be taken to ensure that national legislation is consistent with the State's international treaty obligations;

- Establishing the principle of equality between men and women;

- Institutionalization of controls for the good governance of security sector institutions through the establishment of a 'national security council'– a consultative body comprised of representatives from a broad cross-section of society, including NGOs, which considers internal and external security policies and strategies, and provides advice to government;

- The inclusion in the constitution of the NHRI as a pluralistic and independent institution, that addresses issues of defending and protecting human rights and freedoms, works to further their promotion and realisation, and advocates for full respect for and progressive realisation of relevant international and national human rights norms and laws;

- The "constitutionalising" of "The Ombudsman (Al-Waseet)" institution as a national independent and specialized institution, its task is to defend rights in terms of the relations between the administration and the users, to contribute in cementing the rule of law, spreading the principles of justice and equality, and moralization and transparency in managing the departments, public institutions and the local groups and entities that practice the powers of the public authority.

5. Follow-up by NHRIs to the Work of Truth Commission

Given that Truth Commissions only have limited life-spans, NHRIs can play an important role in drawing attention to the recommendations of the Commission and pushing for an effective follow-up process. Implementation of the recommendations is the responsibility of the Government, and should be an inclusive process, incorporating the views of victims representatives and of relevant community-based development and human rights organisations

The NHRI could also create a working committee tasked with promoting the implementation of the Truth Commission's recommendations, and, where relevant, in completing investigations for cases that the Commission was unable to resolve during its life-time. Once again, this should be done through a participatory approach with the families of the victims, namely by sharing the available data and

including in any compensation awards a recommendation to the government to notify the families of the destiny of the victims when necessary. Compensation awards should also take into account the provision of health (rehabilitation) services for victims and their families, resolution of any outstanding administrative or financial matters arising from the violation, social reintegration (including vocational training programs) and the restitution of property. This may require the entering into of partnership agreements with relevant government agencies, for example with the Ministries of Health or Social Services.

As regards the provision of compensation or other forms of reparation or compensation for population groups that endured violations, institutionalised discrimination or marginalization under the former regime, NHRIs may enter into partnerships with local, national or international actors in order to implement community development programs and to safeguard the historical record of what took place. Measures of this kind which seek to improve living conditions and emphasize the capacity and skills of local people are stepping stones towards (re)building trust between the State and affected groups.

Even if NHRIs are not otherwise involved in follow-up on the Truth Commission's recommendations, they have an important role to play in monitoring and evaluating the results of measures taken by Government or by others. Has the reparation provided succeeded, insofar as it is possible to do so, in restoring victims and their families to the same position as they were prior to the violation taking place. In the case of violations affecting particular social, ethnic or religious groups, does research undertaken indicate an improvement in the group's social and economic standing vis-à-vis the rest of the population. To what extent is the group able to participate in or be represented in governance processes, particularly as regard the allocation of resources? Because of their special skills in undertaking human rights monitoring, NHRIs can add an extra dimension to the national discourse on the adequacy of the State's response to the historical legacy and on whether effective measures are being put in place to strengthen democratic structures so as to prevent any reoccurrence of past events.

© AFP/Scanpix

THE ROLE OF NHRIS IN PROMOTING AND SUPPORTING A HUMAN RIGHTS EDUCATION REFORM

KIRSTEN ROBERTS

Ms Kirsten Roberts, BCL, M.Litt., is Director of Research, Policy and Promotion in the Irish Human Rights Commission (IHRC), Ireland's National Human Rights Institution (NHRI). From 2008 – 2011 she was also coordinator of the 35 member European Group of NHRIs. Prior to joining the IHRC, Ms Roberts worked as a legal officer in the United Nations International Criminal Tribunal for the former Yugoslavia. Her previous experience has included the Permanent Representation of Ireland to the Council of Europe, European Court of Human Rights, European Court of Justice, and Amnesty International. Ms Roberts has spoken widely and written on the topic of NHRIs and has acted as a resource person on NHRIs for OHCHR and UNDP. She has also acted as an independent expert on fundamental rights for the European Commission Technical Assistance and Information Exchange (TAIEX) platform as part of their assistance programme to EU candidate and neighbour countries.

Introduction

Particularly in times of democratic development and reform, a key means of creating a society based on human rights is through human rights education. Human rights education can cover a huge range of issues. Human Rights Education and Training is relevant for all sectors of society, from formal education (primary, secondary and tertiary) to the civil and public service and civil society (NGOs). Each sector requires a separate approach, and has its own specific needs. However, certain core principles of human rights education and training apply to all sectors.

This chapter focuses on the role of National Human Rights Institutions (NHRI) in taking an overall policy level approach to human rights education reform (i.e. a reform of the education system where human rights principles and values are incorporated into the curriculum) through supporting the development of a National Action Plan for Human Rights Education and Training. In States that may not have any human rights education or training nationally to date, the development of a national plan can allow for a focussed reform of education and training, and promote a human rights based society.

In parallel or in addition to supporting the development of such a plan, the NHRI can also undertake ad hoc education and training with specific sectors of society such as police, military, civil and public servants, or teachers. Having a National Action Plan in place will not only help to ensure a long-term sustainable programme of human rights reform within the State, but will assist the NHRI in focussing its training work within a strategic framework and help to ensure that any training undertaken is also sustainable. This chapter therefore also includes a focus on training for the Civil and Public Service and proposes a role for the NHRI both in supporting the development of a National Action Plan and in targeted training activities.

While the development and implementation of national actions plans is primarily a task for the State, the NHRI can play an active role in its development and implementation. The NHRI, as the independent institution for the promotion and protection of human rights in the State is in a key position to promote, steer and provide human rights education and training. NHRIs can avail themselves of the considerable support available within the NHRI community and from regional and international bodies on the development of human rights education plans and the provision of training. They are also uniquely placed to liaise with Government to identify and develop the required support to deliver human rights training to public officials.

Why Human Rights Education?

Human Rights Education and Training is a crucial part of the work of an NHRI. Human Rights Education and Training can effect change across society that permeates law, policy and practice and has long-term impact. It is also essential to bring about attitudinal change towards the development of a society based on human rights. At its most basic level human rights education creates an awareness of human rights that increases understanding with people on what human rights are and 'signposts' where more in-depth information can be found. However, much more than that, Human Rights Education and Training develops people's knowledge of human rights resulting in taking action to access rights and to seek redress for breaches.

Human Rights Education and Training aims, not only at awareness-raising, but at developing knowledge, building skills, shaping values and encouraging action. In all countries, but particularly those in transition, emerging democracies or in post-conflict situations, human rights education and training takes on a vital importance. States have an obligation, as members of the United Nations to ensure that everyone in their country is aware of their rights, and that there are mechanisms in place to prevent and remedy breaches. However, States often do not in practice take an active role in promoting awareness of human rights among their citizens. People around the world can be denied their rights by the actions or omissions of the State itself. As an independent body, the NHRI has a key role to play in ensuring awareness of human rights in the first instance, and promoting change at the national level through whole-scale reform of laws, policies and practices.

1. Principles and Standards

The World Programme for Human Rights Education

The necessity and potential of education as one of the primary vehicles to promote and protect human rights has been recognised since the foundation of the United Nations. The 1993 Vienna Declaration and World Conference on Human Rights saw the start of a concerted effort within the international community to strengthen human rights education. In 1995, the UN launched the Decade for Human Rights Education. Following on from this, it developed the World Programme for Human Rights Education (WPHRE). The First Phase (20052009) of the WPHRE, which was proclaimed by the UN General Assembly in 2004,[50] focused on the formal school environment. The Second Phase of the WPHRE, which started in 2010, focuses on human rights education for "teachers and educators, civil servants, law enforcement officials and military personnel at all levels. The Second Phase of the WPHRE provides a clear statement of the programme objectives:

- To promote the development of a culture of human rights;
- To promote a common understanding, based on international instruments, of basic principles and methodologies for human rights education;
- To ensure a focus on human rights education at the national, regional and international levels;
- To provide a common collective framework for action by all relevant actors;
- To enhance partnership and cooperation at all levels; and
- To survey, evaluate and support existing human rights education programmes, to highlight successful practices, to provide an incentive to continue and/or expand them and to develop new ones.[51]

Each of the phases of the WPHRE was divided into practical steps through the elaboration of an action plan. These will be considered further below in the context of the development of a national action plan by the NHRI.

The Definition of Human Rights Education

A key starting point for the NHRI is ensuring that the work they undertake is based on a clear definition of human rights education. The WPHRE defines human rights education as ''any learning, education, training and information efforts aimed at building a universal culture of human rights''.[52]

Human rights education aims to develop:

- Knowledge and skills - learning about human rights and mechanisms, as well as acquiring skills to apply them in a practical way in daily life;
- Values, attitudes and behaviour - developing values and reinforcing attitudes and behaviour which uphold human rights; and
- Action - taking action to defend and promote human rights.

Human Rights and Good Governance

Human Rights Education and Training provide a practical and efficient formula to underpin good governance, codes of conduct and standard-setting. Human Rights Education incorporates competencies such as the creation of mechanisms of participation, global solidarity, historical and cultural perspectives, critical thinking, information technology, advocacy, empowerment and democracy, justice, accountability, accessibility, transparency and the navigation of conflicting rights. There is a large amount of information and resources available on these competencies. The Council of Europe in particular has developed a range of materials, drawing on the experiences of emerging democracies in Europe in the 1990s.

Human Rights Education and Training competencies should be incorporated throughout a National Action Plan. In the medium to longer term, such principles should also be at the heart of the school curriculum. There are a large range of resources and support available for curriculum development in the area of human rights education that could be utilised by the NHRI in developing its work in relation to the school curriculum.

Human Rights Pillars

The NHRI should ensure that the fundamental pillars of human rights are incorporated throughout any program of Human Rights Education reform. By fundamental pillars I mean the cross-cutting principles of human rights; that is, that human rights are:

- **Universal**: human rights apply to every person irrespective of status;
- **Inherent and Inalienable**: Rights are not given to us by any government or authority. We have them from birth by virtue of being humans. They also cannot be taken from us; and
- **Indivisible, Interdependent and Interrelated**: All rights are related to and dependent on one another.

The education work of the NHRI and any training it provides must be based on the principle of non-discrimination. That is, all education and training must be provided to men and women without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[53]

Participation

As independent actors at the national level, NHRIs should engage with all stakeholders. It is particularly important in the development of a national strategy for human rights education that the relevant groups in society be included in the development and implementation of a Human Rights Education Plan and the NHRI should encourage and support this. Relevant stakeholders for the NHRI may include:

- Government,
- State Agencies, including, for example, the police and the armed forces,
- Parliament,
- Other independent State Bodies,
- Civil Society,
- Professional Organisations (Unions or professional societies), and
- Universities/Academics.

It is essential that any National Action Plan secure buy-in from relevant groups so that it benefits from their input and will be relevant to their work. It is also important for the ultimate success of the plan that it has the support of stakeholders and that they are actively engaged in promoting it.

2. The Role of NHRIs

According to Phase Two of the UN WPHRE, a comprehensive approach to human rights education must include **policies, policy implementation, teaching or training and learning, the learning environment and continuous professional development**, and their application is considered to lead to what is described as 'quality human rights education'.[54] Guided therefore by the approach taken in the Action Plans for the First and Second Phases of the WPHRE, the five elements that must be addressed to ensure a successful plan are:

1. Policy;[55]
2. Policy implementation;[56]
3. Teaching and learning;[57]
4. The learning and working environment;[58] and
5. Education and continuing professional development.[59]

In addressing human rights education reform, NHRIs should consider and include each of these components.

The NHRI, as noted above, is in a key position to support the development of the National Action Plan, including bringing relevant stakeholders together from different parts of society, to contribute to implementation through provision of training and to monitor its overall implementation. The NHRI can also develop and disseminate information materials on human rights, develop human rights guidance manuals for different sectors, and create web-based information materials.

3. Challenges, Lessons Learnt and Opportunities

Implementing a human rights education plan can be a particular challenge. It requires buy-in from the State and stakeholders and long term commitment to implementation. In deciding how to approach its overall human rights education and training work, the NHRI may wish to consider focussing in the first instance on public officials. As the implementers of State policy and providers of services to the public, public officials are key to ensuring that the rights of all citizens are upheld and protected.

Case Study

IHRC Project on Human Rights Education and Training for the Public Service

The Irish Human Rights Commission (IHRC) decided to undertake a project to support the training of public officials (including the police and military) in human rights after identifying, on the basis of the results of research which had shown that a gap existed in Human Rights Education in this sector. The Human Rights Education and Training Project (HRETP) was established in March 2010 with philanthropic funding.

The first phase, considered a pilot, ran for 17 until the end of August 2011. In that timeframe, 306 public officials, mainly from middle to senior management level received human rights training, as well as a group of trainers who participated in an intensive one day 'Train the Trainers' session. The project is independently evaluated and under the Direction of a senior member of IHRC staff and implemented by a Project Manager/Trainer and Trainer/Researcher. Many other people have been reached by the project through seminars, articles, information sessions, and via the website and tailored resources.

The IHRC has developed a three-phase project plan as follows:

Phase 1: Development of Human Rights Awareness training materials and piloting of training approaches. Development, dissemination and promotion of a Human Rights Reference Guide;
Phase 2: Roll-out of Human Rights awareness training across the public sector, monitoring its impact and utilising Information and Communication Technology; sharing and advising on global efforts to increase human rights training within the public sector, as Civil and Public Service, in line with the UNWPHRE.
Phase 3: Establishment of Human Rights Training as part of the standard continuing education and training for all public officials in Ireland.

The overarching aim of the work is to promote a policy shift towards better integration of human rights standards across the public sector and into Irish law, policy and practice.

Evaluation

The results of the independent evaluation to date on the project work support the project's overall rationale. The framework fits with good training practices already familiar to the Civil and Public Service. The methodology used for the evaluation included:

- Internal consultation with the IHRC;
- Follow-up consultation with event attendees of project events;
- Consultation with other external key informants;
- Continual trainee feedback via confidential pre and post participation evaluation forms; and
- Training for Trainers Feedback – Trainers were interviewed individually.

Human Rights Guide

A short, accessible reference point was created in the form of a 'Human Rights Guide for the Civil and Public Service', launched in September 2010. To date approximately 7000copies of the Guide have been circulated. This has included a copy of the guide being placed by the police service in every police station in Ireland.

Website

A website was developed to locate the specialised human rights training for the Civil and Public Service. On-line learning available includes quizzes, resources and publications, with a view to developing on-line courses. An e-learning 'Introduction to human rights for the Civil and Public Service' is available to view at www.ihrc.ie/training. To date, there have been well over 3,000 visitors to the website.

Training for Trainers

Human Rights Training for Civil and Public Service Trainers was seen as an essential component to the overall project. This allowed for more intensive human rights education and training to take place with the view to embedding human rights training as part of the overall continued professional development of Civil and public Servants.

A resource pack was developed along with a memory key (USB Key) with additional resources for each participant. The training days included information on methodology and delivery of human rights education and training, an introduction to human rights in law, policy and practice, linking human rights with roles throughout the Civil and Public Service including Human Resources and ended with the presentation of Human Rights Training Certificates.

4. Actions and Outcomes

The Office of the High Commissioner for Human Rights (OHCHR) has developed a handbook on National Action Plans,[60] which sets out the phases of development of National Action Plans, and provides practical examples. The OHCHR advises that National Action Plans be 'action-oriented' and that they should:

- Indicate clearly what the current situation is;
- Identify what problems need to be overcome;
- Specify what action will be taken (in terms that provide benchmarks for the evaluation of progress);
- Specify who is to take the action;
- Establish a firm time frame in which action will be taken; and
- Provide for effective monitoring and evaluation of what has been done.[61]

The OHCHR has also developed a set of Guidelines for National Plans of Action for Human Rights Education.[62] The OHCHR guidelines outline steps to be taken towards the development of a National Action Plan.

These steps provide a 'roadmap' for the NHRI in implementing human rights education reform and supporting the development of the National Action Plan.

Step 1: Establishing a National Committee for Human Rights Education and Training
The NHRI should propose to the State the establishment of a committee on human rights education and training, comprised of representatives from across Government Departments/Ministries, State Agencies, statutory bodies, and civil society. This committee should be responsible for the development, implementation, monitoring and evaluation of a National Action Plan. The process of developing the plan should be a consultative one and the committee must be required to seek the views of civil society, including trade unions and other relevant groups. The NHRI should have a prominent role in any such committee.

Step 2: Conducting a Baseline Study
It is important that a National Action Plan is based on knowledge of the current state of affairs of human rights education and training. The NHRI may therefore wish to support a baseline assessment of current provision of human rights education and training, across the formal and non-formal sectors. This can be done on a simple level through for example short surveys and meetings with State entities, educators and civil society. Guidance on how to conduct such a survey can be gained from other NHRIs.

Step 3: Setting Priorities
Priorities in human rights education and training need to be established for the short, medium, and long term on the basis of the findings of the baseline survey. These priorities may be set on the basis of the most pressing needs, and on the basis of opportunity. A National Action Plan should not merely be a 'wish list'; prioritisation is essential to ensure that a strategic approach is taken, and opportunities capitalised upon. Having regard to the national situation, the NHRI should consider which elements of the national action plan should be prioritised for implementation. In emerging democracies, the following areas will typically be given priority:

- civil and public service, police, military, schools;
- the development and support of civil society organisations; and
- specific education programmes aimed at ensuring that minority rights are understood and respected.

Step 4: Developing the National Action Plan
In response to the needs identified in the baseline study, the National Action Plan should identify priority areas and challenges and opportunities that exist in those areas, specify the actions to be taken and set out specific objectives and measurable performance indicators. It should also specify who is responsible, the allocation of resources where necessary, and it should set out a timeframe for implementation. The Plan should also specify responsibility for monitoring and evaluation. The NHRI has a key role to play in monitoring implementation of a National Action Plan.

Step 5: Implementing the National Action Plan
Effective implementation is essential for the credibility of the National Action Plan. It is vital that the Plan is created in a consultative manner so as to ensure 'buy-in' from those who will be responsible for implementing the plan. It is also vital that responsibilities are clearly assigned, that there are set objectives and targets, and clear, realistic timeframes for realisation of the outcomes.

Step 6: Reviewing and Revising the National Action Plan
The National Action Plan should be flexible enough to ensure that it can be modified as needed. It should be periodically reviewed and revised as necessary to ensure effective responses to the needs identified by the baseline study. In particular, there should be periodic evaluations of the Plan. Ensuring effective implementation requires ongoing monitoring. A clear monitoring structure should be put in place. Regular consultations should take place with those involved in the implementation of the plan, and recipients of the education and training provided under it, to monitor and assess its progress.


© Ahmed Hayman

5. Monitoring and Evaluation

Monitoring and evaluation of the NHRIs human rights education work is important to ensuring that lessons are learnt and that progress is being made. Human Rights Education promotes a participatory approach to learning. It shares both personal knowledge and experience alongside the human rights framework and principles and encourages critical reflection. This combination creates the conditions for people from different backgrounds and cultures to develop a shared understanding of human rights. Evaluation forms a core part of Human Rights Education and Training and remains a complex undertaking as we look to measure attitudinal change and action. As such, evaluation protocols should be developed alongside project plans.

Two models used by the IHRC in their HRETP work, and referred to by the OHCHR in its handbook on 'Evaluating Human Rights Training Activities (Professional Training Series No.18)', are the Cycle of Continuous Improvement (Newby, et al, 1996) and Kirkpatrick's four-level model of evaluation (Kirkpatrick, et al, 2006). They outline 5 steps for evaluating human rights education:

- Understand the change that is needed – training needs assessment.
- Describe the desired change – defining results.
- Increase effectiveness – formative evaluation.
- Determine the change that has occurred – end of training summative evaluation; transfer and impact evaluations.
- Communicate results – preparing an evaluation report.

The NHRI can develop simple evaluation tools to monitor their human rights training, including undertaking a needs assessment through meeting with those to be trained and conducting short surveys and distributing evaluation forms at the start and end of each training session. Advice on evaluation methods and good practice models is available from other NHRIs.

© Ahmed Hayman

THE ROLE OF NHRIS IN BUILDING A HUMAN-RIGHTS CULTURE, THROUGH A NATIONAL HUMAN RIGHTS DIALOGUE

MU'AYYAD MEHYAR

Mu'ayyad Mehyar is the Programme Manager of the Arab-European Human Rights Dialogue at the Danish Institute for Human Rights.

Mu'ayyad holds a Master's degree in International Conflict Resolution with a special focus on comparative peace processes and conflict resolution and transformation, human rights and democracy. Mu'ayyad has a diverse contextual knowledge of the political dynamics of the Middle Eastern countries.

Mr. Mehyar has, almost, worked in all sectors; Public, Private, Civil Society, UN Agencies, and International Organizations. Throughout his work across all sectors, he developed, tracked, monitored and assessed development and reform related programmes and activities in the MENA region. Mu'ayyad has also established and developed partnership models to successfully execute programmes and projects, based on the central principles of empowerment, responsibility, and choice for partners and participants, emphasizing experiential learning and model clear communication and offering a range of methodologies to address a variety of learning styles and team-building needs.

1- Principles and Standards

For a NHRI to set out a national human rights dialogue process, it must effectively function in accordance with the UN Paris Principles. A crucial principle and condition for the effectiveness of every NHRI is; its independence, as it will be in a better position to fulfil its mandate without interference. Further crucial principles and standards are related to NHRIs' mandates including having broad mandates covering promotion, monitoring and protection. Further, NHRIs should deal with, and cover, all human rights (civil and political and economical, social and cultural, and should not be limited to rights in their respective national constitutions. Moreover, in order to prioritise addressing the most important human rights issues in the most effective way, according to context, other actors, resources and competencies must be considered.

In countries in transition toward democracy, National Human Rights Institutions (NHRIs) may play, according to their mandate as per the UN Paris Principles, a more central role, than in democratic countries, as they could provide a viable forum for the investigation and resolution of human rights complaints given that the judicial system is weak, politicized, slow or otherwise incapacitated. In addition, a national human rights institution (NHRI) may be able to develop a stronger human rights culture in the state in transition, and thereby contribute to the democratisation process

NHRIs are crucial change agents and can potentially act as bridges between their respective states and public in critical periods of transition and reform. Today and following the recent developments in the Arab World, NHRIs have a window of opportunity to contribute to the development of human rights reform and dialogue processes that will take place due to regime changes, due to their unique position acting as catalysts and promoters for human rights reforms including building an intercultural dialogue, diversity and harmonious relationships amongst different societies, communities, groups, organisations, and individuals. Further, NHRIs should advise government and parliament on key reforms and policies and their human rights compliance standards and applications. On the other hand, if NHRIs cannot assume their full mandate due to political circumstances, then they should at least monitor the human rights status, document it and prepare different status reports including assessment and evaluation reports.

In countries in transition, the work on constitutional reform or constitution building is, I trust, the most

important work that a country could/should work on to establish the framework for building a human rights culture as constitution building or reform that includes and permits the participation of all legitimate groups, actors and stakeholders is more likely to result in institutional choices that strengthen democratisation and human rights. It is of paramount importance here to ensure that the reformed constitution or the building of a new one includes values and principles for a human rights-culture in the society based on international human rights norms and instruments. Here comes the role of NHRIs to promote such an action and to prepare the necessary and relevant proceedings as a suggested proposal for consideration.

2- Dialogue Vis-a-Vis Human Rights and the Role of NHRIs

As in the civil society and state level dialogues, the overall objective of national human rights dialogue is to improve the human rights situation in the country and all societies and communities across different sectors. The main aim of a national human rights dialogue is to establish a more profound knowledge of key human rights issues among the dialoguing parties/participants in order for them to mainstream international human rights standards as well as the establishment of a broad platform from which the NHRI, civil society organizations and government agencies and departments can dialogue on national human rights issues and topics and exchange experiences nationally, on how best to mainstream human right.

Dialogue, in general, is a process of genuine interaction through which participants in the dialogue listen to each other deeply enough to be changed by what they learn. Each makes a serious effort to take others' concerns into her or his own picture. In dialogue, the intention is not to advocate but to inquire; not to argue but to explore; not to convince but to discover.[63]

Unlike other forms of discussion, dialogue requires self-reflection, spirit of inquiry and personal change to be present. Participants must be willing to address the root causes of for example a crisis, not just the symptoms on the surface. Enacting the principle of learning by adopting a stance of inquiry is an important element of the dialogic approach. Being in inquiry mode involves asking questions not just to advance one's own goals but also to gain understanding.

Human Rights dialogue is a method for establishing interaction, exchange of information, views, experiences and building a consensus on important human rights issues between different actors relevant to a subject or a situation. Dialogues focus on specific human rights subjects identified as crucial for the context and bring together actors to discuss and analyse the selected human rights themes and topics in the national and/or regional contexts, and in relation and reference to international law standards and practices. The outcome of the dialogue can be in the form of an adopted set of recommendations with a framework, guidelines or action plan for follow up and implementation.

Ideally, the dialogue platforms are formed with representatives from the state, independent institutions like for example NHRIs, academia and civil society. Dialogues can be a stand-alone activity, but are often planned as a process of structured events. Dialogues can also be institutionalised to include a secretarial structure to facilitate working groups, project groups and workshops.

Dialogues can take the form of an open forum where participants exchange their personal interpretation of the human rights topic. In addition, experts in the identified topic can add professional dimensions to the following exchange of views.

Additionally, there is also the facts-based dialogue[64] which is anchored in studies and analysis documenting the human rights topic. This approach creates a joint factual understanding of the selected topic before the parties enter into exchange of views about how to address the identified challenges.

Dialogue has an inbuilt mechanism of conflict resolution and is a strong method for bringing state and civil society into a constructive working relationship. It is also a good method to work with in conflict situations or weak states as the multiplicity of actors provides a strong and legitimate base for action or further planning. To have an effective dialogue, participants, in the dialogue, listen with eagerness and without judgment knowing it will enrich their own thinking. They listen and talk reflectively and respectfully.

Securing a productive dialogue process by making those who are dialoguing, voluntarily and consensually, agree on methodology and on how to establish a facts-based dialogue with a set of rules and values to lay down the ethical framework for a human-rights dialogue.

An important means to ensure that the dialogue is not being misused as a tool for promoting the image of one party or as an excuse not to engage in substantial changes is the development of measurable success criteria or bench marks with the purpose of determining the direction of the dialogue and creating tools for evaluation (E.g. Ratification of international human rights conventions; Cooperation with UN surveillance mechanisms; Openness, access, transparency; fight against discrimination; Improvement of women's and children's rights; Information on imprisoned dissidents; Abolition of death penalty; prevention of torture; strengthening of civil society; Freedom of expression). Furthermore, additional mechanisms guaranteeing transparency and accountability must be in place. Finally, it is crucial to develop a flexible and adjustable format, attentive to the current political situation and open enough to allow for withdrawal and criticism.

To have a good and effective dialogue rationale, it is necessary to develop dialogue guides which comprise at least three parts: 1) Facilitation of the dialogue to help us think about inviting others into a dialogue and how, 2) Topical documents with content information to ground the dialogue, and 3) Dialogue Starters, written by stakeholders, that identify human rights questions, issues, priorities, problems, gaps, and challenges to guide the dialogue.

The NHRI may work on a Facts-based human rights dialogue, which is a method for establishing interaction and consensus on important human rights issues, between different actors relevant to a subject or a situation. The NHRI should aim at constructing dialogues that focus on specific subjects identified as crucial for the context and bring together actors to analyse and understand the national context, international law and practices and come up with a national analysis, framework or series of recommendations. A Platform can also be a way of streamlining processes and procedures between different actors all working with the same group of individuals, such as juveniles, prisoners etc.

3- Challenges, Lessons Learnt and Opportunities

NHRIs perform a wide range of roles. They investigate, mediate, adjudicate on complaints and may recommend having reparations paid to victims of human rights violations. They monitor and evaluate the actions of their respective governments on behalf of citizens and residents. They disseminate information about human rights and advise on their implementation in domestic law and policy. They educate the public about their human rights and how to enforce them. So, they need to be multi-skilled and strategic in the approaches that they choose to deploy on particular issues. This is a constant challenge for them, as they continually re-evaluate how to deliver their message in the most effective and efficient way.

NHRIs also often face significant resource constraints, both financial and human. Yet educational and awareness raising activities are generally very expensive. Perhaps the main challenge they face, has to deal with the limited resources to make the widest impact.

Many human rights issues remain under-reported by the media, with much reporting focusing on conflicts rather than human rights issues; journalists and editors are under a professional (rather than moral) duty to report and explain human rights issues as precisely as they report in other domains. At present this is not done well enough and, as a result, audiences that rely on the media to inform them are not in a position to understand or judge properly the actions or policies of governments and other authorities.[65]

In societies with recent histories of gross violations of human rights, or where societal transformation is occurring (i.e. countries in transition), may also be struggling with a culture of impunity in which individuals consider themselves to be above the law. A NHRI in this kind of society will need to advocate respect by all individuals for the country's emerging democratic institutions, including the NHRI itself. A challenging question may arise herein: when the interests of peace and justice conflict what role may NHRIs play? There are no easy answers. NHRIs may encourage peace first as it provides the best opportunity to end the violence and bloodshed which might devastate the country and its societies, but difficult decisions have to be made about how best to deal with perpetrators of horrendous crimes, if peace is to prevail.

4- Actions and Outcomes

In order for a national human rights dialogue strategy to be developed, a conceptualizing technique[66] should be set out. The advantage of the conceptualizing technique is that it can be developed in cooperation with national stakeholders. This leads to a high acceptance of the human rights dialogue outcomes and results. Furthermore, it offers the possibility of flexible reactions to changes in the scenario of facilitating such a dialogue. The conceptualizing technique entails that we question our positions and look at the needs and rights underlying them and we also questions the positions of others and look at the needs and rights underlying them. Then we together explores how to meet those sometimes shared and sometimes conflicting needs and rights and encourage a re-examination of stated positions, based on the assumption that those who participate in a dialogue want something different and are unlikely to get all that they want. All of this may let us conclude that dialogue is not negotiation, mediation or problem solving. It is an unfolding process of understanding.

A Framework for a Human Rights Dialogue Process

It should be acknowledged that the national human rights dialogue process and strategy framework should effectively analyse the trilateral relationship of the facilitator of this dialogue process herein represented by the NHRI, participants in the dialogue process, herein represented by all the national stakeholders, and the NHRI's resources.

A framework for organising and evaluating the dialogue process and the relationships amongst dialoging parties must be first developed where it considers the process as a chain reaction, beginning with the independent variables that affect the facilitator of the dialogue, (herein represented by the NHRI), including preparation-related variables and factors and contextual and process-related variables and factors, which, both, in turn affect a dialogue outcome.

Before a NHRI chooses to facilitate a human rights dialogue process, it should first evaluate the contextual factors that influence such a process: its

nature, type of dialoguing parties and their previous relationship, nature of human rights issues at stake and NHRI's competence and role as a facilitator of the human rights dialogue process.

Nature of Human Rights Issues and the Right Time to Dialogue About Them: The nature of human rights issues and the right timing to dialogue about them amongst all national stakeholders is of great importance, especially when the dialoguing parties are willing to re-evaluate their perception and understanding about these issues as well as their policies toward human rights issues and when the costs, both human and economic, of not mainstreaming human rights nationally, begin to mount.

Nature of Dialoguing Parties and Their Relationship: The nature and relationships of national stakeholders; parties involved in the dialogue process, affect the dialogue process and outcomes. It is easier when the parties have similar norms and similar socio-political systems. On the other hand, the dialogue process has a better chance of success when each participant in the dialogue process is accorded legitimacy, so that they are the real and independent representatives of the dialoguing parties whether they come from civil society, media, academia, human rights actors ad defenders, private sector, …etc.

Facilitator's Competency and Legitimacy; Herein Represented by the NHRI: Effective facilitation of a national human rights dialogue process depends on
the facilitator's profound knowledge of all human rights issues as well as the; ability to understand the positions of the dialoguing parties including active listening, a sense of timing, communication and procedural skills, conflict management skills, re-framing persuasion stamina, patience, credibility, trust and ability to influence by possessing resources and utilizing them.

The facilitator's knowledge and competence affects the outcomes of the dialogue process as well as the dialoguing parties; ranging from governmental leaders, civil society, media, academia, private sector, communities leaders, representatives of regional and international organizations and private individuals.

So testing the framework for a human rights dialogue process should go through a chain reaction, beginning with the independent variables that affect the facilitator of the dialogue, (herein represented by the NHRI), including preparation related variables and factors and contextual and process related variables and factors, which, both, in turn affect a dialogue outcome.

It is noteworthy here ensuring that in order to assess the contribution and consequences of facilitation a human rights- dialogue process through all its forms, there is a need to illustrate the subjective and objective factors and dimensions of both the facilitator (herein represented by the NHRI) and the dialoguing parties, as this will affect and influence the direction of the dialogue process and outcomes.

Subjective factors refer to the parties' or the facilitator's perception that the goals of the dialogue process have been achieved or that a desired change has taken place. It can be said that the process has been successful when the parties express satisfaction with the process and/or its outcome, and/or when there is an improvement in the overall climate of the dialoguing parties' relationship. Such outcomes cannot be easily verified because they depend on the assessment of the dialoguing parties In the case of human rights dialogue I trust that one way to measure success would be to conclude a concrete statement outlining the agreement on the discussed human rights issue which is adopted by the dialoguing parties. On the other hand, and even if a consensus cannot be built amongst dialoguing parties regarding, for example, a national human rights action plan, dialoguing, in this case, can change the way the dialoguing parties feel about each other, most of the time, in a positive way.

Objective factors involve observations of change and to what extent, as an evidence of the dialogue outcomes; its successes or failures. Objective factors depend on indicators that can be measured and empirically verified in a straightforward task. To give an example, one can measure the reduction in the level of hostilities between the dialoguing parties.

As a result, and in order to evaluate the dialogue outcomes effectively, there should be a balance and complementarity in applying both the subjective and objective factors.

Map for a Human Rights Dialogue Process

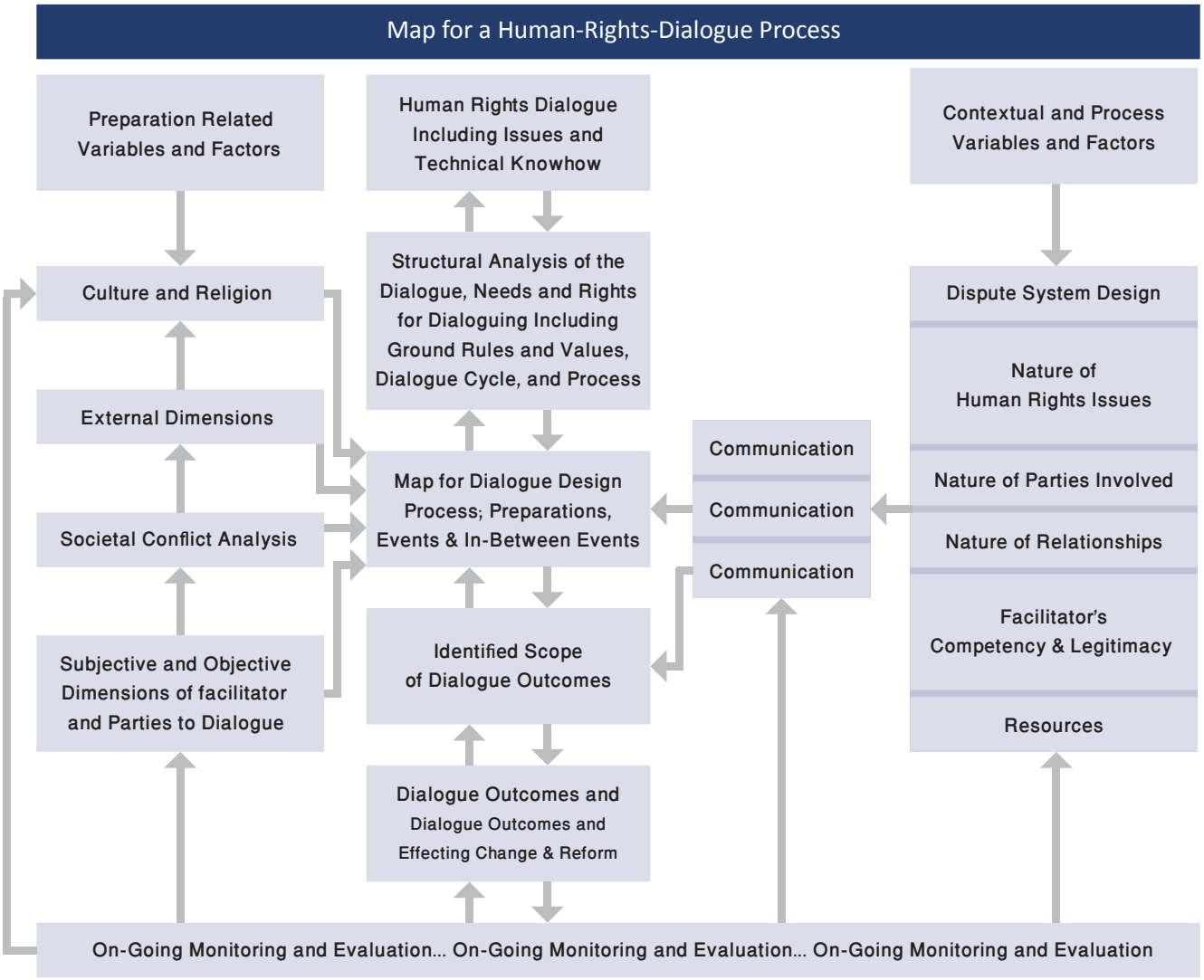
The model came from the idea that, on the one hand, we cannot sensibly talk of "facilitation", but rather of "facilitations". On the other hand, the multi external stakeholders and actors involved at different stages of the dialogue process would make the model to be the appropriate way to view the facilitation of a national human rights dialogue process.

In a national human rights dialogue process disagreements and possibly conflicts among the dialoguing parties are seen as dynamic processes in which objective and subjective factors interact in varying degrees as escalation and de-escalation of these disagreements and conflicts proceed over time. Thus different facilitation methods and interventions may be most applicable and effective at different stages of these disagreements and conflicts. The challenge is to match the type of intervention to the level of escalation and to coordinate and sequence interventions toward the settlement of specific issues and the ultimate resolution of these disagreements and conflict, if and when they arise.

There is a need to develop a full understanding of the dynamics of organising and managing the facilitation process of a national human rights dialogue process and outcome (see diagram two). The aim is to come up with a map on what constitutes the building blocks of a successful and effective national human rights dialogue process and how to use the dialogue as a tool to build consensus for reform and change. Because of that the following seven issues and pillars should be addressed:

1. **Carrying out the Appropriate Intervention Techniques by the NHRI**; as a potential facilitator of a national human rights dialogue.
2. **Identifying Needs for Dialogue** including knowledge, required competencies, political climate and space, process competence and contextual factors.
3. **Exploring Possibilities for Dialogue** including conditions to move forward and human rights issues at stake and how to contribute to strengthening conditions for future
4. **Exploring Approaches and Methods** including drafting a concept proposal for a national dialogue with Purpose, participants and stakeholders, process, ground rules, role and resources required.
5. **Designing the Dialogue Process**
   - Convening Process
   - NHRI present the draft proposal and gather and incorporate feedback
   - Address 'spoilers' – develop strategies for bringing others into the process
   - Finalize the draft proposal into a mandated document
   - Conditions to move forward
6. **Implementing the Dialogue Process**
   - Preparation
     - Training and capacity building of dialoguing parties
   - Dialogue events
     - Intra and inter thematic and sectoral working groups formation and facilitation
   - Follow up on issues in between dialogue events
     - Communication and follow-up
7. **Developing an On-going Monitoring & Evaluation**

   Learning/Adapting/Reporting



An Integrated Approach to Facilitating a Human-Rights Dialogue

The idea of developing an integrated approach to facilitating a national human rights dialogue and the related implementation strategy intervention came from the experience that we cannot talk of such intervention unless the NHRI as a facilitator and intervener, effectively, conceptializes, studies, deals with, applies and evaluates four major facilitation processes and their related interventions, which state the conditions of successful outcomes.

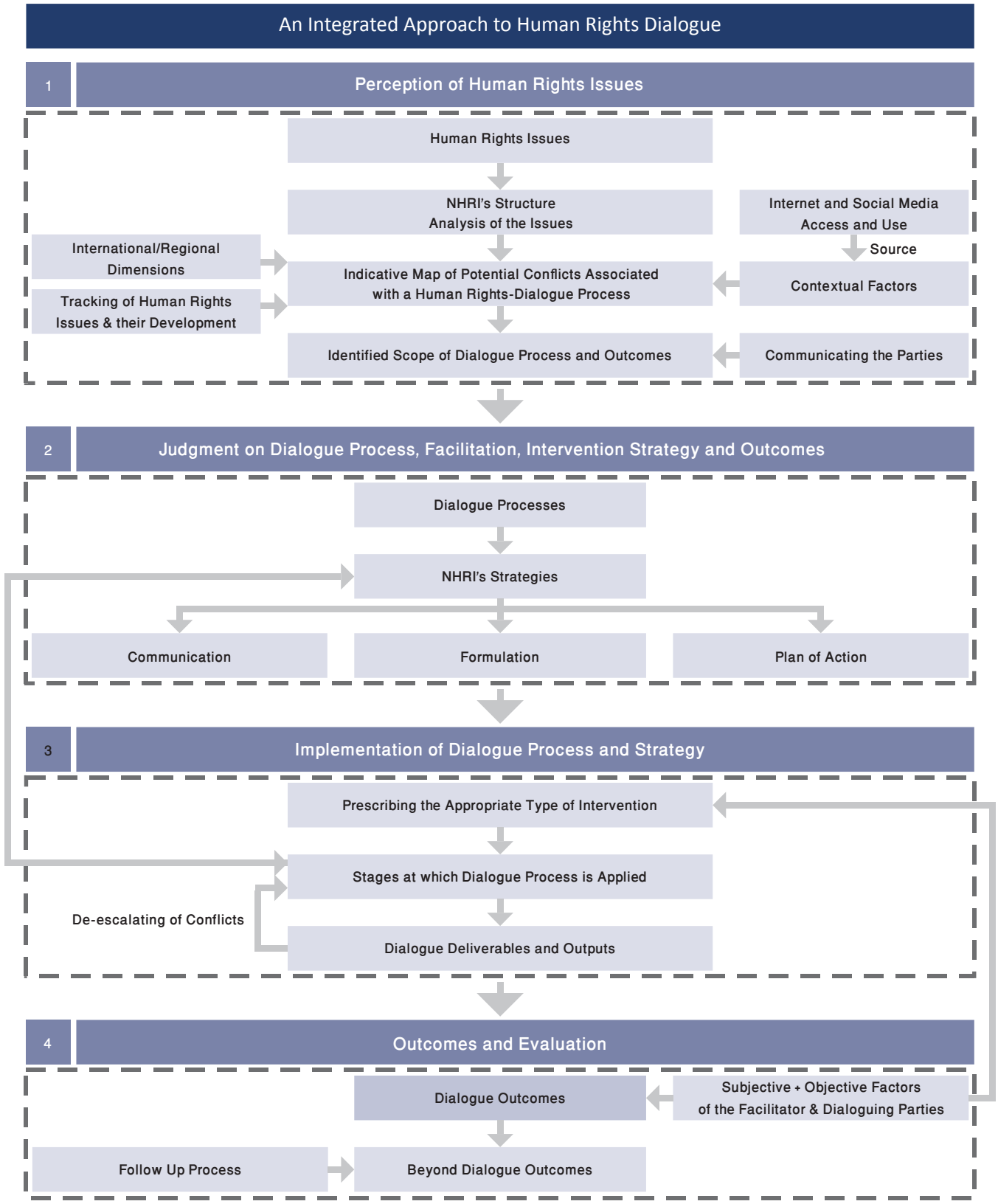
This integrated approach, will improve the effectiveness of the NHRI as a facilitator of a national human rights dialogue process, due to the comprehensiveness of its processes through all its consequent stages. There is a future outlook in this approach because it deals with the outcomes of the dialogue process and looks beyond it, as well as it deals with the root causes of the possible emerging conflicts through the stage of perception of human rights issues.

1. Perception of human rights issues and the possible emergence of associated conflicts includes:
• Collection of facts about human rights and analysing them.
• Knowing and understanding the incompatibility of needs, interests and may be rights of the dialoguing parties.
• Identifying the possible associated conflicting issues to human rights dialogue by understanding the parties' perception toward each other, what the parties believe about each other and how they perceive each other's motives, rights and acts?
• Understanding all contextual factors mentioned previously and feeding back the map with updated information.
• Identifying the scope for human rights dialogue process and outcomes by further analysis using the information in the indicative map with the assistance of the dialoging parties.

2. Judgment on dialogue process, facilitation, intervention strategy and outcomes includes:
• Identifying mediation processes,which are considered as chain reactions, beginning with the perception of the human rights issues by all stakeholders.
• Judging and categorizing the human rights dialogue strategy that will be applied to reach to the outcomes of the national human rights dialogue process.

3. Implementation of the dialogue process includes:
• Prescribing the appropriate type of intervention at different stages of the dialgoue including analysing possible emerging conflicts.
• Sequencing the stages of the conflict according to their escalation and deescalation levels.

4. Evaluating the outcomes of the dialogue including those of the facilitation includes:
• Evaluating the parties' satisfaction with the processes of conducting the national human rights dialogue and its outcomes, taking into consideration the subjective/objective factors according to dialoguing parties' and the NHRI's perspectives.
• Establishing a code of principles and ground rules,procedural code, between the dialoging parties to prevent conflicts to arise.


An Integrated Approach to Human Rights Dialogue
1
Perception of Human Rights Issues
Human Rights Issues
NHRI's Structure
Analysis of the Issues
Internet and Social Media
Access and Use
Source
International/Regional
Dimensions
Indicative Map of Potential Conflicts Associated
with a Human Rights-Dialogue Process
Contextual Factors
Tracking of Human Rights
Issues & their Development
Identified Scope of Dialogue Process and Outcomes
Communicating the Parties
2
Judgment on Dialogue Process, Facilitation, Intervention Strategy and Outcomes
Dialogue Processes
NHRI's Strategies
Communication
Formulation
Plan of Action
3
Implementation of Dialogue Process and Strategy
Prescribing the Appropriate Type of Intervention
Stages at which Dialogue Process is Applied
De-escalating of Conflicts
Dialogue Deliverables and Outputs
4
Outcomes and Evaluation
Dialogue Outcomes
Subjective + Objective Factors
of the Facilitator & Dialoguing Parties
Follow Up Process
Beyond Dialogue Outcomes

5- Monitoring and Evaluation

NHRIs exist to serve the public, and accordingly, the public should have a mechanism for assessing how NHRIs are effective in performing their mandate. Public assessment requires that NHRIs evaluate their own programmes and activities regularly, and include the results of such evaluations in their annual reports. The evaluations undertaken by NHRIs should analyse all of their functions. Moreover, NHRIs should have external evaluators to evaluate their performance, effectiveness, efficiency, results, impacts of their programmes, projects and activities, challenges, lessons learnt, coherence, coordination with all stakeholders and sustainability of NHRIs programmes and activities.

To reach agreement about a common set of evaluation criteria for dialogue processes and outcomes, it is important to define features of dialogue and public participation mechanisms and how to categorize and evaluate the crucial role of contextual variables in shaping and influencing dialogue and public participation processes and outcomes

In order to have an effective monitoring and evaluation system for national dialogue processes, Process Evaluation Criteria and Outcome Evaluation Criteria should be developed by NHRIs as follows:[67]

Process Criteria	Outcome Criteria
Representativeness	Policy/decision influence
Inclusivity	Time to develop regulations
Participation rate	Reduce/eliminate judicial challenges
Early involvement/Obtaining input early in planning process/Continuous involvement	Responsiveness to participantsí policy demands
Process flexibility	Public views incorporated into decision-making
Perceived openness of process and transparency	Influence on public
Structured decision making	Social impact
Resource accessibility	Impact on general thinking and effect on public
Independence	Participants values/opinions changed
Interaction	Interaction with lay knowledge (impact on lay learning)
Continuity	Effect on staff and planning process
Satisfaction	Impact on training (learning of knowledgeable personnel)
Deliberation	Staff awareness
Fairness	Conflict resolution
Competence	Constituting or restoring public trust in the NHRIs
Identification of common good	Perceived success/failure and/or challenges/opportunities
Incorporation of values/beliefs into discussion	Effectiveness and cost effectiveness
Effectiveness of method process	

On the other hand and if a national human rights dialogue process turns out to be difficult to evaluate based on the aforementioned process and outcome criteria, one could revert to the theory of change evaluation method, which articulates the assumptions about the process through which change will occur and specifies the ways in which all of the required early and intermediate outcomes related to achieving the desired long-term change will be brought about and documented as they occur.[68]

Steps to Create a Theory of Change to Streamline Evaluation Outcomes

1. Identify a long-term goal.

2. Conduct "backwards mapping" to identify the preconditions necessary to achieve that goal.

3. Identify the interventions that a national human rights dialogue will perform to create these preconditions.

4. Develop indicators for each precondition that will be used to assess the performance of the interventions.

5. Write a narrative that can be used to summarize the various moving parts in the theory.


© Amélie Losier

© AFP/Scanpix

REFERENCES

1- Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.
http://www.nhri.net/pdf/ParisPrinciples.english.pdf
http://www.nhri.net/pdf/ParisPrinciples.Arabic.pdf
2- For more details, see The Paris Principles, General Assembly Resolution 48/134 adopted in 1993. Also see Office of the United Nations High Commissioner for Human Rights, (OHCHR) "National Human Rights Institutions: History, Principles, Roles and Responsibilities", Professional Training Series No. 4, 2010 United Nations.
3- Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", Harvard Human Rights Journal (2000) 13, p.3.
4- UNOHCHR, Guidance Note on National Human Rights Institutions and Transitional Justice, 27 September 2008, United Nations.
5- As of June, 2010
6- These are Morocco, Egypt, Jordan, Palestine Qatar and Mauritania Other NHRIs already established in the Arab World are Algeria and Tunisia with "B" Status, and, Oman and Bahrain. In Iraq a law has been adopted by their parliament for the formation of an NHRI and is currently in process, while in Lebanon a draft law has been initiated, and efforts for the establishment of an NHRI is in process. The Doha Center also provides training and capacity building for NHRIs in the region, the latest of which was the training undertaken with the Omani National Committee for Human Rights.
7- In 2010, the UN High Commissioner for Human Rights was visiting the Arab Gulf states to encourage the formation of such institutions. A workshop was also held by the UNOHCHR Doha Center to exchange experiences between Arab countries for the establishment of such NHRIs in the Gulf countries.
8- UNOHCHR, National Human Rights Institutions, Ibid.
9- Ann Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing? Human Rights Quarterly, Volume 28, No.4, November 2006, pp. 904-946.
10- For example the Omani Committee for Human Rights has six ministers on the Board of Commissioners, and they are full-fledged members who have the right to vote. For more details see the Decree issued by Sultan Qabus No 124/2008, Article (1) and the Decree of the Sultan No. 10/2010 regarding the appointment of the members of the Committee.
11- Linda C. Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection", Harvard Human Rights Journal (2000) 13.
12- Najib Joubrail, head of an Egyptian Human Rights NGOs, who made a statement to the Egyptian media on 24.4/2011 calling on the Egyptian Military Council to reconsider their appointment decision.
13- http:// www.al-kalema.com. Also see www.waelelebrashy.com/forum/t55401.html
14- http:/ar.alkarama.org/index.php?option=com_content&view=article&id=4098:2011-03-18-16-41-27&catid=137:-&Itemid=45
15- Ibid., Recommendations of the ICC Sub-Committee on Accreditation between 11-15 October, 2010.
16- http://alfanonline.moheet.com/show_news.aspx?nid=256670 &pg=38
17- Kristine Goulding, "Tunisia: Arab Spring, Islamic Summer", 2011
18- Monjural Kabil, "Social media in the work of national human rights institutions" UNDP, Voices from Eurasia, 2010.
19- According to the Paris Principles 1 and 2, a NHRI shall be vested with competence to promote and protect human rights and shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
20- The United Nations was established by the Charter of the United Nations, which is in fact its' constitution. Please see http://www.un.org/en/documents/charter/index.shtml.
21- Article 1 of the Montevideo Convention on Rights and Duties of States (1933) notes that the state as an international person should possess the following qualifications '(a) a permanent population, (b) a defined territory, (c) government, and (d) capacity to enter into relations with other states'.
22- E.g. the Cherokee nation or the Haida of the First Nations in Canada and the U.S.A.
23- E.g. the Shuar in Ecuador and Peru.
24- According to the Oxford Advanced Learners Dictionary, a society is people in general that live together in communities.
25- Report of the UN Secretary General, S/2004/616.
26- The Universal Declaration of Human Rights, 10 December, 1948.
27- The Charter of the United Nations, 26 June, 1945, preamble, http://www.un.org/en/documents/charter/preamble.shtml.
28- The Charter of the United Nations, 26 June, 1945, http://www.un.org/en/documents/charter/.
29- The Universal Declaration of Human Rights, 10 December, 1948, http://www.un.org/en/documents/udhr/
30- The Universal Declaration of Human Rights, 10 December, 1948, preamble http://www.un.org/en/documents/udhr/
31- UN General Assembly, A/RES/.48/134 of 20 December, 1993.
32- Principles 1 and 2 of the UN Paris Principles, http://www2.ohchr.org/english/law/parisprinciples.htm.
33- The International Coordinating Committee for National Human Rights Institutions.
34- There are currently ten human rights treaty bodies with committees of independent experts. Nine of these treaty bodies monitor implementation of the core international human rights treaties while the tenth treaty body, the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture, monitors places of detention in States parties to the Optional Protocol. The treaty bodies are created in accordance with the provisions of the treaty that they monitor. http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.

35- The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which, by 2011, will have reviewed the human rights records of every country. http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx.
36- The UN Paris Principles, http://www2.ohchr.org/english/law/parisprinciples.htm.
37- Principles 1 and 2 of the UN Paris Principles, http://www2.ohchr.org/english/law/parisprinciples.htm.
38- Justice is by the UN defined as "… an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well-being of society at large. It is a concept rooted in all national cultures and traditions and, while its administration usually implies formal judicial mechanisms, traditional dispute resolution mechanisms are equally relevant. The international community has worked to articulate collectively the substantive and procedural requirements for the administration of justice for more than half a century." (Report of the UN Secretary General, S/2004/616).
39- But see: UNDP, Public Oversight of the Security Sector. A Handbook for Civil Society Organizations, New York, 2008; http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=95396&nav1=5
40- The Arab-European Human Rights Dialogue has published in December 2011 Guidelines on how to Follow-up on Berlin Declaration's Recommendations on Torture and Rule of Law., Mu'ayyad Mehyar, 2011.
41- See the list at the OHCHR website, http://www2.ohchr.org/english/law/index.htm#instruments
42- Ibid. A new complaint mechanism will be offered under the Convention on the Rights of the Child (CRC)
43- See e.g. OHCHR Factsheet No.13, International Humanitarian Law and Human Rights (1991).
44- http://www.amnesty.nl/mensenrechten/speciale-projecten/police-and-human-rights.
45- Website of the German Institute for Human Rights, http://www.institut-fuer-menschenrechte.de/en/topics/security-policies.html.
46- Günter Schicht, Menschenrechtsbildungfür die Polizei (Human Rights Education for the Police), Berlin 2007.
47- German Ministry for Development Cooperation, German Institute for Human Rights, InWent, Ministry of Human Rights of the Republic of Iraq (eds,) 2010: Daliluna - A Practical Manual for Capacity Building of Human Rights Trainers Iraq, Bonn (Chapter on Police: pp. 40-50, English version); Arab version: http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/daliluna_handbuch_arabisch.pdf.
48- See Born, Hans (lead author); Fluri, Philip and Johnson, Anders (eds.): Handbook on Parliamentary Oversight of the Security Sector, Geneva: DCAF, 2003.
49- Paris Principles for NHRI, art. 3 (a), 3 (a) iii, 3 (d). 48/134. UN General Assembly, Resolution A/RES/48/134, National institutions for the promotion and protection of human rights, Annex, 4 March 1994.
50- General Assembly Resolution, World Programme for Human Rights Education, A/Res/59/113, 10 December 2004.
51- United Nations Draft Plan of Action for the Second Phase (2010-2014) of the World Programme for Human Rights Education, A/HRC/15/28, 27 July 2010, para. 15.
52- WPHRE PHASE 2 PLAN OF ACTION UN. Doc. A/HRC/15/28 http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.28_en.pdfThese initiatives have most recently included the United Nations Declaration on Human Rights Education adopted by the Human Rights Council in 2011.
53- Universal Declaration of Human Rights, article 2
54- UN, Revised Draft Plan of Action for the First Phase (2005-2007) of the World Programme for Human Rights Education, A/59/525/Rev.1, March 2005, Appendix, at para.1
55- Strengthening human rights education in legislation and policy.
56- Ensuring mechanisms and levels of co-ordination support the realisation of policy commitments and can monitor their impact.
57- The criteria to achieve quality human rights education and training processes and the approach to educating, training and learning must be considered and included in the plan.
58- The learning and working environment should offer guidance on developing a culture of human rights, where human rights are practised and lived within the learning and work space and thus promotes the creation of a culture of rights.
59- Human rights education cannot be practised without the input of skilled educators/trainers, nor can the Government and Civil and Public Service fulfil their human rights obligations without the skills and know-how to do so.
60- Available at http://www.ohchr.org/Documents/Publications/training10en.pdf
61- See UN General Assembly resolutions 49/184, 50/177 and 51/104; and Commission on Human Rights resolution 1995/47 and decision 1997/111.
62- CIDA, IDEA, OAS, UNDP, Democratic Dialogue, page 20, Sweden, 2007
63- The facts-based-dialogue is a process and methodology that the Danish Institute for Human Rights is developing and implementing to establish cooperation between human rights actors by establishing and developing platforms for communication and common understanding. Through these platforms, representatives from the state, independent institutions, academia civil society and media are brought together to identify human rights issues, gaps and problems, and discuss ways to address them based on a set of recommendations and a plan of action.
64- International Council on Human Rights Policy, Journalism, media and the challenge of human rights reporting, 2010.
65- CIDA, IDEA, OAS, UNDP, Democratic Dialogue, pp 20-30, Sweden, 2007
66- Gene Rowe and Lynn Frewer, Evaluating Public Participation Exercises: A Research Agenda, pp. 526-538, Wageningen University, 2004.
67- Adapted from Anderson, A. (2005). The community builder's approach to theory of change: A practical guide to theory and development. New York: The Aspen Institute Roundtable on Community Change.
68- Adapted from www.theoryofchange.org