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**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS**

**Enhancing the participation of national human rights institutions in the
work of the Commission on Human Rights and its subsidiary bodies**

Report of the Secretary-General

Summary

The present report is submitted at the request of the Commission on Human Rights in resolution 2004/75 in which the Commission requested the Secretary-General to report at its sixty-first session “on ways and means to enhance the participation of national human rights institutions in the work of the Commission, to enable them to contribute substantively to the work of the Commission by passing on their expert knowledge and practical experience in human rights matters”. It provides an historical overview of discussions in the Commission concerning calls for enhancing the participation of national institutions in its work and that of its subsidiary bodies, describes the work of national institutions within the Commission and its subsidiary bodies and proposes potential avenues for enhanced cooperation.

1. The present report is submitted pursuant to paragraph 20 of Commission on Human Rights resolution 2004/75 in which the Commission requested the Secretary-General to report at its sixty-first session on ways and means to enhance the participation of national institutions (NIs) for the promotion and protection of human rights in the work of the Commission and its subsidiary bodies.
2. The broad notion of “national institution” that has evolved over the years has come to refer to bodies that are established by Government under the State’s Constitution and/or by legislative text, the functions of which are specifically defined in terms of the promotion and protection of human rights. States Members of the United Nations, through their adoption without a vote of General Assembly resolution 48/134 of 20 December 1993, agreed to specific principles in relation to the status of NIs that have become known as the Paris Principles.
3. NIs are increasingly being recognized by the international community as mechanisms that are integral to ensuring respect for and effective implementation of international human rights standards at the national level. The objective of the present report is to provide an outline of possible avenues to enhance the status of NIs in international forums in order to feed national human rights challenges and experiences into the international agenda and provide for effective follow-up at the national level of international human rights-related recommendations. One of the objectives of the Office of the High Commissioner for Human Rights (OHCHR) is to assist in strengthening NIs as independent institutions that comply with the Paris Principles, ensuring that such institutions can engage in a substantive and appropriate manner in international forums such as the Commission and its subsidiary bodies.
4. In considering how to enhance the participation of NIs, it may be useful to recall how the situation has developed. At its second session, in 1946, the Economic and Social Council invited Member States “to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights” (resolution 2/9 of 21 June 1946, section 5). Fourteen years later, the matter was raised again. The Council, in resolution 772 B (XXX) of 25 July 1960, recognizing the important role that such bodies could play in the promotion and protection of human rights, invited Governments to “favour” the formation and continuation of such bodies as well as to communicate all relevant information on the subject to the Secretary-General. In 1978, the Commission decided to organize a seminar in order, inter alia, to draft guidelines for the structure and functioning of NIs. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva in September 1978. The seminar approved a set of guidelines on the structure and functioning of NIs which were subsequently noted with appreciation by the General Assembly (resolution 33/46) and endorsed by the Commission (resolution 24 (XXXV)).
5. The question remained on the agenda of the Commission at its annual sessions. In 1990, the Commission requested the Secretary-General to convene a workshop, with the participation of national and regional institutions involved in the protection and promotion of human rights, to review, inter alia, their cooperation with the United Nations (resolution 1990/73). Accordingly, the first International Workshop on National Institutions for the Promotion and Protection of

Human Rights was held in Paris from 7 to 9 October 1991 (see E/CN.4/1992/43 and Add.1 and 2). Its recommendations were welcomed by the Commission in resolution 1992/54, which renamed them “Principles relating to the status of national institutions” and transmitted them to the General Assembly which, in its resolution 48/134, adopted them as the Paris Principles. The Principles represent a refinement and extension of the guidelines developed in 1978. The detailed principles include provisions relating to the composition and appointment of members of NIs and on establishing guarantees of independence of the NI from the Government.

6. As the concept of NIs has gradually evolved, so has their participation in the work of the Commission and its subsidiary bodies. First granted the right to participate in international debates at the World Conference on Human Rights in Vienna in 1993, the special status of NIs in the work of the Commission was accentuated in 1999, when the Chair of the Commission granted NIs the privilege of participating in relevant meetings from a special section of the floor devoted to them. In resolution 1999/72, the Commission noted “the section of the report of the Secretary-General (E/CN.4/1999/95) concerning participation by national institutions in United Nations meetings dealing with human rights, and consider[ed] that the arrangement at the Commission which allows national institutions to address the Commission from a special section of the floor set aside specifically for the purpose, behind the nameplate ‘National Institutions’, should be continued” (para. 15).

7. Thereafter, the Commission has specifically welcomed the practice of NIs which conform to the Paris Principles participating in an appropriate manner in their own right in meetings of the Commission and its subsidiary bodies (resolutions 2000/76, 2001/80, 2002/83, 2003/76 and 2004/75).

8. In resolution 2004/75 the Commission formalized efforts to strengthen the status of NIs within the United Nations machinery. However, the status of NIs and, accordingly, the nature of their participation in the work of the Commission and its subsidiary bodies have yet to be formally defined. Notwithstanding their uncertain status, efforts to strengthen the role and participation of NIs in international forums have been ongoing since the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, when representatives of NIs were allowed to participate as observers in the deliberations of the Conference and to address the Conference in the general debate alongside States, non-governmental organizations and other entities (see the rules of procedure of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance adopted by the Preparatory Committee at its first session, chapter XII, rule 65, “Representatives of national human rights institutions” (A/CONF.189/92)).

9. Another notable development is the invitation to NIs by the General Assembly to participate in the drafting of a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities (resolution 57/229). This is the first time NIs have been formally invited in their own right to participate in the drafting of an international treaty. NIs may also have a potential role to play as a national visiting mechanism pursuant to article 18 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which notes that “States parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of Human Rights” (the Paris Principles).

10. The NI Unit of OHCHR continues to act as the secretariat of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), providing it with relevant information, facilitating the holding of its meetings and assisting in its accreditation process. The ICC generally meets during the annual sessions of the Commission and holds biennial international conferences.

11. The ICC comprises 16 NIs, 4 from each of the regional groups - Africa, the Americas, Asia and the Pacific, and Europe. The regional groups elect their own representatives. ICC Members Institutions which have been accredited by the ICC, serve for a two-year period and are eligible for re-election. The ICC Sub-Committee on Accreditation continues to act in an independent capacity, though its recommendations must be endorsed by the ICC itself. Each regional group elects one representative to the Sub-Committee.

12. To date, the ICC has accredited 50 NIs to form what is known as the Group of NIs of the ICC. The Group comprises NIs which complies with the Paris Principles, as determined by the ICC, with only one NI per State eligible to be a voting member. Where more than one institution in a State qualifies for membership, that State shall have one speaking right, one voting right, and, if elected, one ICC member. The choice of an institution to represent the NIs of a particular State is for the relevant institutions to determine.

13. Any NI seeking membership of the ICC Group of NIs is to apply to the Chairperson of the ICC, providing specific information as prescribed by the ICC rules of procedure. At present, accreditation is granted for an indefinite period. The Chairperson or the Sub-Committee may review an institution's accreditation if, in the opinion of the Chairperson or of any member of the Sub-Committee, it appears that the circumstances of any member of the Group of NIs may have changed in a way that affects its compliance with the Paris Principles.

14. The NI Unit of OHCHR, in consultation with the ICC, is working to strengthen the work of the Sub-Committee. Action undertaken to date includes a critical analysis of applications received - previously, Sub-Committee members were only provided with the various documents and had to make their own analysis. Owing to a lack of resources, the ICC is still unable to assess the institution through actual site visits.

15. As mentioned above, the position of the Commission at present is that those NIs which are in compliance with the Paris Principles are encouraged to participate in the Commission's sessions and take the floor under agenda item 18 (b). There have, however, been instances where NIs which are not deemed by the ICC to be in compliance with the Paris Principles have also taken the floor.

16. The issue of accreditation of NIs is thus determinant of the nature of the participation of NIs in international forums. Given that the Commission has repeatedly specified that it welcomed the participation of NIs *which are in compliance with the Paris Principles* (emphasis added), the strengthening of the accreditation procedures of the ICC should be a priority. Once such procedures are seen to be sound and beyond question, the accreditation of NIs in international forums could be commensurate with the institution's accreditation to the ICC. Should the Commission move for such an approach, it would be advisable that the existing NIs already accredited by the ICC go through a process of reassessment. This is because the accreditation process by the Sub-Committee has not always been as effective as it is today, and

because some institutions may have changed in structure or mandate, putting their compliance with the Paris Principles into question. As it is impracticable for the ICC to revisit 50 applications at once, a possible amendment to the ICC rules of procedure would be to insert a reassessment clause. For instance, the Sub-Committee could undertake systematic re-evaluation of the accreditation status of each NI every five years. However, should the Commission provide a time limit of, for example, three years, at the end of which a more formalized approach to NI participation in its work would be in place, the ICC could begin by next year with an assessment of some 15 institutions, with the remainder to follow in subsequent years. The Commission could request the ICC to determine the best possible approach to reassessing all accredited institutions by the end of the third year, on the understanding that the NIs must be re-evaluated prior to being given a stronger role in the work of the Commission. The Commission may wish to consider the possibility of an amendment to the rules of procedure of the Economic and Social Council concerning the participation of NIs; however, the Commission may also consider such a step unnecessary provided that it agrees on an accreditation process that is acceptable to its members, bearing in mind also that continued oversight by OHCHR, as the secretariat to the ICC, provides an added level of accountability in the accreditation process.

17. The ICC itself has taken an initiative on the question of the role of NIs in the work of the Commission. The matter was most recently discussed at the fifteenth session of the ICC which took place in Seoul on 14 September 2004, prior to the seventh International Conference of National Human Rights Institutions. The ICC Chairperson supported the establishment of a working group (composed of representatives from each region, the ICC Chairperson and OHCHR) to study the issue further. The discussions in Seoul built on a paper submitted to the fourteenth session of the ICC by the Conseil consultatif des droits de l'homme of Morocco, the conclusions of which were outlined in a note prepared by OHCHR in its capacity as secretariat to the ICC. The note put a series of questions to NIs, soliciting information as to the nature of their participation in the sessions of the Commission and its subsidiary bodies. A background paper on NI participation in the Commission was also submitted to the fifteenth session of the ICC by the Canadian Human Rights Commission jointly with the Commission nationale consultative des droits de l'homme of France and the Australian Human Rights and Equal Opportunity Commission. Further, the Australian Human Rights and Equal Opportunity Commission prepared a paper for the ninth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions on "The role of NIs in the United Nations Commission on the Status of Women", which was transmitted to the fifteenth session of the ICC for consideration. At present, NIs do not have standing in their own right in the Commission on the Status of Women, thus making it necessary for NIs to participate in its sessions as part of their Government's delegation. It is noted in the paper that this position does not reflect the unique status of NIs as independent institutions.

18. Thus, in practice, while there is a category of NIs which are deemed by the International Coordinating Committee of National Institutions to be in compliance with the Paris Principles, the States Members of the United Nations, for the purposes of NI participation in international forums, have not agreed on a clear and well-defined process for determining which institutions may be considered to belong to that category. Concerning participation of NIs in the Commission on Human Rights, the Secretary-General has stated in a succession of reports that the Commission itself is the appropriate body to determine the most suitable type and level of participation by NIs in its meetings and in those of its subsidiary bodies. In this regard, the suitability of the current accreditation process of the ICC as determinant of the status of each NI

in terms of following the Paris Principles, and, consequently, of their respective role and mode of participation in the work of the Commission and its subsidiary bodies, is an issue which requires the consideration of the Commission. In the background paper on NI participation in the Commission on Human Rights submitted to the fifteenth session of the ICC, it was suggested that:

“Those institutions not yet accredited by the ICC could participate in the [Commission] as they currently do, as observers, but discussion is needed as to how this participation might be categorized. One could consider a second tier ‘National Institution’ status whereby accredited [NIs] can participate and speak in their own right, and non-accredited [NIs] could participate as observers but would only have a speaking role as part of their government’s delegation or possibly as an accredited NGO.”

19. While the Commission secretariat has attempted to ensure that only those NIs which, in the assessment of the ICC, are in compliance with the Paris Principles participate, there has been pressure to allow the participation of institutions which may be considered to be outside this category. Taking this into account, the Chair of the sixtieth session of the Commission stated prior to statements being made by NIs under agenda item 18 (b):

“I should like to underline that the national institutions which will take the floor are not all necessarily those which have been accredited by the Credentials [Sub-Committee] of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) as being in conformity with General Assembly resolution 48/134 of 20 December 1993 (the Paris Principles).”

20. In tandem with the question of accreditation of NIs is that regarding the nature of and modalities for their participation, including the right to speak under some or all substantive agenda items. A note by the Secretariat to the Commission at its fifty-eighth session states that “National human rights commissions (institutions) or coordinating committees of such commissions may only take the floor under the relevant agenda (currently item 18 (b))” (E/CN.4/2002/16, para. 22).

21. Once it takes the floor under agenda item 18 (b), an NI may “... make one statement of up to seven minutes from special seats reserved for them. Copies of oral statements made by representatives of national institutions may be circulated in the conference room during the consideration of agenda item 18 (b) and, if requested, information or reports received from national institutions on their regional meetings may be circulated as documents of the Commission” (ibid.). A matter for reflection is whether NIs and the ICC respectively should have their own document series for materials produced during the sessions of the Commission and its subsidiary bodies. Members may recall that NI documents were issued for the first time under their own symbol numbers at the World Conference on Human Rights (A/CONF.157/NI/...) and at the sixtieth session of the Commission (E/CN.4/2004/NI/...).

22. Objections to permitting NIs to speak under more than one agenda item relate to concerns that this would add to the already very strict time constraints of the Commission, particularly as more and more NIs are established. This, however, need not be the case if NIs are granted similar speaking rights as, for instance, non-governmental organizations. Hence, not all NIs would be able to speak under all agenda items and while the actual time limit for their

statements would be reduced, the statements would potentially be more focused on specific issues of interest to the Commission. Granting NIs speaking rights under all the items of the agenda would allow NIs to make more significant contributions to the debates and enable them to participate in the work of the Commission in a more meaningful manner, enhancing interaction between members of the Commission and observers. Similarly, should NIs be given the right to speak under items other than 18 (b), the Commission could consider whether a separate agenda item 18 (b) was actually necessary. Its removal would provide for a considerable saving of time even if NIs were to speak under other agenda items, as noted previously.

23. Should NIs be given the right to speak under more than one agenda item, a certain number of dedicated seats will need to be provided. This, however, need not be for the full complement of NIs accredited to the Commission; only the NIs that will be permitted to speak under the specific agenda items need be accommodated.

24. Since its fifty-fifth session in 2004, the Sub-Commission for the Promotion and Protection of Human Rights has specifically decided to allow NIs to make statements on the same basis as NGOs, i.e. they are permitted to make one statement per item of up to seven minutes' duration. It is interesting to note that few NIs have taken advantage of the opportunity to speak at the Sub-Commission. A questionnaire sent by OHCHR to NIs about their participation in the Commission and its subsidiary bodies revealed that the lack of participation was essentially due to lack of financial resources. It would be appropriate that the accreditation process followed in the Sub-Commission be the same as that of the Commission.

25. The Working Group on Minorities of the Sub-Commission, at its ninth session in 2003 discussed the role of NIs in protecting minorities with a view to exploring possible areas of cooperation between NIs and the Working Group. OHCHR had provided the Working Group with information on the relevant guidelines and practices of NIs in relation to minority issues and a pamphlet on NIs regarding the promotion and protection of the rights of persons belonging to minorities. The Working Group recommended that Governments consider establishing NIs comprising persons of independence and ability and enabling such institutions to investigate and grant appropriate relief for violations of minority rights by all State agencies, including the police, armed police and paramilitary forces, and also by non-State actors. The Working Group decided that at its next session it would discuss the role of NIs in protecting minority rights and invited OHCHR to provide it with relevant information (see E/CN.4/Sub.2/2003/19). The Commission may wish to take note of this initiative by the Working Group on Minorities and encourage other working groups to follow suit. The Working Group reiterated its recommendation to Governments concerning NIs at its tenth session in 2004 (see E/CN.4/Sub.2/2004/29).

26. The mandate-holders of the Commission are regularly provided with information concerning the work of NIs in preparation for their country missions. They also regularly meet with existing NIs and encourage their establishment in conformity with the Paris Principles. Increasingly, mandate-holders look to NIs to assist in ensuring that their recommendations are followed up at the national level. This is an important area of work for NIs and should be further encouraged.

Conclusions

27. The Commission on Human Rights has frequently taken note of the importance of the work of NIs in its proceedings and in engaging with its subsidiary bodies. The information provided in this report attempts to synthesize the main areas of concern relating to enhancing the role of NIs in the work of the Commission and its subsidiary bodies. It has as a main thesis that such enhancement should be related to ensuring that there is an appropriate procedure for accrediting NIs which conform to the Paris Principles to the Commission. Should the Commission determine that the accreditation process of the ICC could be used as determinant for the participation of NIs in the work of the Commission, it may wish to request that a report be submitted to it on action taken by the ICC to ensure that its accreditation process is strengthened with an appropriate periodic review mechanism.

28. Should the Commission determine that NIs may address the Commission on agenda items other than item 18 (b), "Effective functioning of human rights mechanisms: National institutions and regional arrangements", then initiatives such as a special dialogue with NIs would not necessarily be required. The challenges of holding such a dialogue relate to a possible lack of clear focus, and time would need to be found to hold it. On the other hand, having NIs address substantive issues under the various agenda items would no doubt enrich the information provided to the Commission and would assist it in making informed decisions. This report also highlights that there is scope for continued engagement with NIs through the Sub-Commission on the Promotion and Protection of Human Rights, the working groups and the various special procedures of the Commission. Such engagement with Paris Principles-based institutions can only strengthen the substantive work of the Commission.

29. The Commission may wish, in light of this report, to put in place a consultative process with the Office of the High Commissioner for Human Rights and the International Coordinating Committee of National Institutions to further consider appropriate ways forward in enhancing the work of NIs in the Commission's sessions within an agreed period, while reinforcing the importance of engagement by NIs in the overall work of the Commission's other mechanisms.
