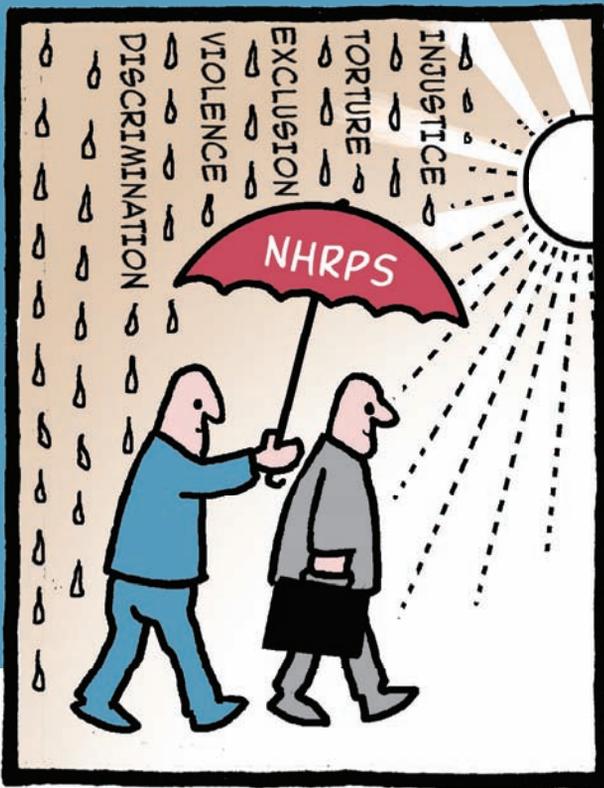


Manual for Embassies of EU Member States

# Strengthening the National Human Rights Protection System



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# Strengthening the National Human Rights Protection System



Ministry of Foreign Affairs

**EU2009.CZ**

## **NOTE**

This manual has been prepared by the Dutch government. It is presented in collaboration with the Czech Presidency of the European Union and aims to support and improve EU embassies' ongoing work for the promotion and protection of human rights.

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## **PREFACE BY THE DUTCH MINISTRY OF FOREIGN AFFAIRS**

At the dawn of the twenty-first century, and slightly over 60 years since adoption of the Universal Declaration of Human Rights (UDHR), all of the world's nations have committed themselves to human rights. At least they have on paper. Most have ratified several, or all, of the main international human rights conventions. Yet bridging the gap from paper to practice continues to be the biggest challenge in the worldwide protection of human rights.

Considerable progress has been made. New conventions have been drafted, more countries have banned the death penalty, newly created (international) courts are working against impunity and an increasing number of people around the world dedicate their lives to promoting human rights. At the same time, in all regions of the world, in every country, human rights violations continue. It is time to focus all of our attention, from setting standards to implementation. It is time to create conditions within every society that guarantee accountability and the sustainable protection of human rights for all individuals.

The European Union is one of the most powerful and constant voices for promoting human rights in the world, doing so through a range of political and financial instruments. The EU considers respect for human rights to be a precondition for peace, stability and development and has made human rights a core aspect of its external relations.

Embassies of EU member states are key actors in implementing this commitment. This manual focuses on embassies' step-by-step efforts, often beyond the public's view, to strengthen the national infrastructure that is required to prevent human rights violations. This infrastructure – the so-called National Human Rights Protection System (NHRPS) – is the sum of laws, policies and institutions that enable international human rights obligations to be effectively implemented and guaranteed in the long term.

The manual's approach builds on ongoing work within the United Nations. In 2005, former UN Secretary-General Kofi Annan named the establishment of strong National Human Rights Protection Systems a principal objective of the UN, while emphasising the complementary and mutually reinforcing nature of human rights and development. This resulted in UN Plan of Action 2 (see Box 2 on page 10), which calls for enhanced support for member states' efforts in strengthening NHRPS. This manual heeds this call.

Years of field experience have shown the interdependence and complementarity of human rights and development, and this interrelatedness forms the basis of this manual. We are convinced that strengthening the NHRPS leads to further protection of human rights as well as to development. This manual will support EU embassies in how to integrate further development and human rights activities.

Mere criticism of a human rights record, although justified at times, can be at risk of becoming a ritual without effect. Whenever there is an opening, we should strive for collaboration and cooperation in the field of human rights, including with the state in question. Strengthening the NHRPS offers unique opportunities for working with new coalitions, not only among EU partners, but especially with UN human rights bodies, regional organisations and a range of (international) actors, many of which are identified in this manual.

The promotion of human rights demands persistence and wisdom far greater than this manual can offer. Many topics described here are by themselves the subject of other manuals, policy papers and literature. This manual, however, will guide embassies in the right direction and allow them to obtain the most crucial knowledge of how to make a difference. We have made this manual public to all embassies of EU member states and are confident that it will lead to new, creative and effective EU interventions around the world.

*M.J.M. Verhagen*  
*Minister of Foreign Affairs*

*A.G. Koenders*  
*Minister for Development Cooperation*

## **PREFACE BY THE EU PRESIDENCY**

Human rights are not just an abstract ideal. They imply concrete rights of the individual and concrete obligations of the state. They must be protected by all states and respected by all individuals and legal entities. The international community should not only observe rights guaranteed by various international conventions, primarily based on principles contained in the Universal Declaration of Human Rights; it should also provide states with assistance and guidance for forming their own national human rights protection systems. The sharing of experience and mutual learning are important steps on the road towards more effective human rights support. This also applies to the EU's member states. We must not only learn from each other how better to protect human rights within the EU. We must also share our experience with third countries. The Common Foreign and Security Policy provides a framework for related common external action, and support for human rights is one of this policy's key objectives. Since its inception, the EU has been active all over the world, assisting other countries and raising awareness of particular human rights issues. In doing so, the role of member state embassies and Commission delegations has been crucial. I believe that by working with this manual, European diplomatic establishments will be better able to use existing instruments and subsequently enhance their practical impact on the situation of real people. This lies at the heart of the EU Human Rights Policy and corresponds with the priority of the Czech Presidency in the EU Council to render the existing policy tools more efficient.

We, who live in countries where enjoyment of human rights is honoured and guaranteed by various legal instruments, should perceive support for human rights abroad as our civic responsibility. In many countries, democracy, rule of law, a vital civil society and respect for human rights are not guaranteed. The EU should continuously pursue and support these universal rights.

I believe that my own experience from the 1980s, when I was President of the International Helsinki Committee, is still relevant. Countries that lack democracy or fail to respect human rights need to be engaged in a multi-faceted dialogue. Not only government representatives should participate in such processes; various local organizations and human rights defenders should also be involved. Local level engagement is crucial, as it allows for detailed analysis of the system in place; it is also the level where contacts can be best developed. Embassies and NGOs can organise various projects that target citizens and local civil society organisations directly.

Looking back at my time at the International Helsinki Committee, when Central and Eastern Europe was an undemocratic region with a dismal human rights record, I recall visits to these countries undertaken together with Max van der Stoep, the former Dutch Foreign Minister. He has been a great source of inspiration to me. Now, as Minister of Foreign Affairs myself, I have the pleasure to be sponsoring this excellent Dutch initiative to provide EU member state embassies with guidance about international human rights protection instruments. I believe that the publication of Strengthening the National Human Rights Protection System will enhance the involvement of local actors in activities connected with human rights support and allow for their more active and in-depth engagement.

*Karel Schwarzenberg*

*Minister of Foreign Affairs of the Czech Republic*

## LIST OF ABBREVIATIONS

AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CSR	Corporate social responsibility
EIDHR	European Initiative for Democracy and Human Rights
ESC rights	Economic, social and cultural rights
HRC	Human rights commission
HRD	Human rights defenders
HRE	Human rights education
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICRC	International Committee of the Red Cross
IDEA	Institute for Democracy and Electoral Assistance
IHL	International humanitarian law
ILO	International Labour Organisation
LGBT rights	Lesbian, gay, bisexual and transgender rights
MoU	Memorandum of understanding
NAP	National action plan
NHRI	National human rights institution
NHRPS	National Human Rights Protection System
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
SSR	Security sector reform
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCHR	UN High Commissioner on Human Rights
UNICEF	United Nations Children's Fund

## LAYOUT

Section 1 guides the staff of EU member states' embassies (hereafter embassies) on how and when to use this manual in their daily work. This section is meant for all embassies.

Section 2 explains the concept of the National Human Rights Protection System (NHRPS), gives guidance in how to understand the NHRPS at the country level and explains the linkage between the NHRPS and development. It also addresses the question of how to set priorities and briefly describes the most relevant actors for embassies to work with when addressing the NHRPS. This section is meant for all embassies.

Section 3 forms the core of this manual. It contains eight practical chapters related to different elements of the NHRPS. These chapters are relevant to embassies that are working on, or plan to work on, these specific subjects.

## 1.1 THE MANUAL'S GOAL

An embassy's activities in the field of human rights can generally be divided into:

- Short-term political interventions such as demarches, political dialogue or action for individuals.
- Long-term interventions aimed at strengthening the overall human rights infrastructure, such as contributing to the rule of law through police and/or legal reform.

This manual's **goal** is to contribute to more effective human rights and development interventions by focusing on the fundamental human rights infrastructure. It **aims** for EU member states' embassies (hereafter embassies) to (re)define and improve *existing*, and to generate *new*, activities that strengthen the National Human Rights Protection System (NHRPS). To this end the manual will:

- 1 Supply embassy staff with practical indicators, standards and information to enable them to understand the relevant elements of a NHRPS.
- 2 Provide embassy staff with practical options for action that contribute to strengthening elements of this system.

## 1.2 WHEN TO USE THIS MANUAL?

This manual is of use for *all* human rights interventions, whether new or existing. Its recommendations can be integrated in all strategies and interventions related to human rights and development.

This manual is relevant to all embassies when:

- Identifying and planning *new* human rights strategies and interventions.
- Reflecting on and improving *existing* human rights interventions. Its information, criteria and optional recommendations in the thematic chapters in section 3 can be integrated in all ongoing activities.
- When assessing project proposals in the field of human rights.
- Drafting new development strategies and/or MoUs with partner countries. Strengthening the NHRPS could become an explicit goal in development strategies and programmes.
- Participating in new (international) donor coordination programmes. The manual's information, criteria and optional recommendations can be integrated in all donor/reconstruction plans.

Some interventions foreseen in this manual do require embassies to have donor funds at their disposal. The manual is, however, written for all EU member states' embassies and it offers political as well as donor-oriented interventions.

## 1.3 IMPLEMENTING THE MANUAL

Embassies can take various simple and practical institutional steps to ensure that attention for the NHRPS becomes an explicit part of all relevant policy and practice.

This manual does not demand new areas of work. It does, however, imply commitment and practical steps to adopt the manual's foreseen approach. To realise effective implementation and use of this manual, EU missions should integrate it into their daily work. This can be done through:

### In terms of policy

- Ensuring that identified strengths and weaknesses of the NHRPS, and resulting activities, are integrated in bilateral and multilateral drafted annual plans, strategic plans, country action plans and (good governance) country assessments; striving to translate 'gaps' in the NHRPS towards measurable goals and indicators for intervention.<sup>1</sup>
- Ensuring that identified 'gaps' in the NHRPS are included in all existing instruments for addressing human rights, such as political dialogues, development funding and efforts at international forums.<sup>2</sup>
- Linking work related to the NHRPS to ongoing work, based on the EU Guidelines on Human Rights.<sup>3</sup>

### In terms of institutional needs

- Appointing an embassy staff member or establishing a multilateral working group responsible for activities related to this manual.<sup>4</sup> Working groups should preferably also include representatives from non-EU member states.
- Ensuring the involvement of both human rights and development staff in any activity related to the NHRPS.
- Striving for institutionalised meetings with country offices of the UN and other international organisations to discuss the NHRPS and possible interventions.

<sup>1</sup> International actors increasingly make use of Human Rights Impact Assessment (HRIA) methodologies to foresee measurable goals and effects when planning human rights interventions. The Human Rights Impact Resource Centre provides centralised access to a broad range of information and expertise on HRIA; see [www.humanrightsimpact.org](http://www.humanrightsimpact.org).

<sup>2</sup> For a complete overview, see the EU Annual Reports on Human Rights, available online at [http://ec.europa.eu/external\\_relations/human\\_rights/doc/index.htm](http://ec.europa.eu/external_relations/human_rights/doc/index.htm).

<sup>3</sup> The EU presently has human rights guidelines on: human rights defenders; violence against children; child soldiers; torture; the death penalty; human rights dialogues; international humanitarian law; and violence against women and girls.

<sup>4</sup> Most embassies will have already appointed staff specifically responsible for human rights issues, and in some countries EU human rights working groups have been established.

- Guaranteeing the availability of funds for a longer period of time. Contributing to longer-term reform demands long-term commitment.
- Working towards complementarity between embassy and ministry headquarters. Local interventions in support of the NHRPS can be complemented by actions at international forums.
- Appointing an expert or consultant if there is a need for in-depth analysis of (elements of) the NHRPS preceding any reform programmes.
- Having embassy staff join the UN's HuriTALK mailing list, which focuses on exchange of information about many activities related to the NHRPS.<sup>5</sup>

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#### **BOX 1 THE BENEFITS OF WORKING ON THE NHRPS**

- The NHRPS aims for more structural and long-term human rights improvements by increasing accountability within society.
  - The NHRPS allows for human rights interventions that imply cooperation instead of mere criticism.
  - Working on the NHRPS offers a means to bypass conflicting views on human rights (such as on the universality of human rights) through a practical and collaborative focus on capacity-building and institutional-strengthening.
  - By understanding the NHRPS, embassies avoid fragmented or isolated activities and are able to address the interdependence of legislation, policies and institutes.
  - The NHRPS contributes to an enabling environment for effective development programmes and has an effect on economic, social and cultural rights as well as on civil and political rights.
  - The NHRPS offers a conceptual framework that could facilitate donor coordination and other types of cooperation with international actors.
  - Working on the NHRPS builds on existing analysis and initiatives in which embassies, and other relevant actors, are already involved.
  - Working on the NHRPS offers unique opportunities for increased cooperation and new coalitions with other actors, especially with the UN's human rights bodies.
  - Working on the NHRPS increases human rights expertise within embassies that can then be shared with others.
- 

<sup>5</sup> See [www.undp.org/governance/programmes/huritalk.htm](http://www.undp.org/governance/programmes/huritalk.htm).

## 1.4 LIMITATIONS TO THE MANUAL

This manual identifies a range of options for intervention, while acknowledging that these need to be relevant to various and complex political and cultural realities. Some issues thus need to be flagged in advance:

- NHRPS differ among countries, yet this manual strives to identify *universal* principles, criteria and standards that should be part of any human rights protection system. It therefore has a somewhat institutional and normative approach. That said, the effect of laws and policies and the performance of institutions depend on the overall political, cultural and economic context, including overall good governance, level of poverty, corruption and cultural traditions. Although these factors cannot be addressed in detail, the manual strives to integrate this broader context throughout the practical chapters in section 3.
- Behind each thematic chapter in section 3, there is a long history of practice and a body of literature. This manual should be seen as an entry point to the subject. It is about the basic know-how, key criteria and instruments, and possible interventions are mentioned. The references in all of the chapters in section 3 guide the reader towards more in-depth materials.
- For practical use, different elements of the NHRPS are dealt with separately. This approach can seem artificial, as in reality these elements are strongly interrelated. For example, police reform (chapter 3.3) is most successful through programmes that include reform of domestic law (chapter 3.7) and of legal institutions (chapter 3.2). An effort will hence be made to expose the linkages between different elements.
- This manual will not expound explicitly and in detail on specific types of violations. However, special attention is paid to the rights of women and the rights of children, as these are fundamental to any effective NHRPS. Specific attention is thus paid to elements within the NHRPS that have a direct influence on their rights, such as juvenile justice or National Human Rights Institutions (NHRI) working on the rights of women.
- As reports from UN bodies and NGOs have shown, great challenges exist within EU member states in addressing gaps in the NHRPS. This should be taken into account when promoting human rights in third countries. Embassies based in other EU member states could make use of this manual when collaborating with EU partners in the area of legal reform or the establishment of a National Human Rights Commission.

## 2.1 WHAT IS A NHRPS?

A NHRPS is the sum of a nation's laws, policies and institutions that promote and protect human rights. It is the overall human rights infrastructure. Every country has a distinct NHRPS embedded in a broader cultural, political and historic context. Yet certain universal elements can be defined in all NHRPS.

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### BOX 2 UN PLAN OF ACTION 2

In his report *Strengthening the United Nations: An Agenda for Further Change*, former UN Secretary-General Kofi Annan identified the establishment of strong National Human Rights Protection Systems as a principal objective of the UN, thereby referring to the complementary and mutually reinforcing nature of human rights and development. This led to UN Plan of Action 2, entitled '*Strengthening Human Rights-Related UN Action at Country Level: National Human Rights Promotion and Protection Systems*', which aims to support national human rights protection systems through coordinated and strengthened UN support. Plan of Action 2 calls for enhanced support for member states' efforts in establishing and strengthening national human rights promotion and protection systems that are consistent with international human rights norms and standards. This plan has led to several UN bodies stepping up activities in this field, especially the OHCHR and UNDP.<sup>6</sup>

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A NHRPS is the sum of laws, policies and institutions that protect human rights. It can be defined as the overall human rights infrastructure. It comprises all of the checks and balances needed to ensure that state institutions are accountable and fulfil their duty to respect, protect and uphold human rights: civil and political rights, as well as economic, social and cultural rights. To obtain this, international human rights standards need as a first step to be fully incorporated and reflected in national laws and policies. Second, existing or newly created state and non-state institutions should have the means, capacity and backing to implement and/or oversee these laws and policies. These institutions, together with the legislation and policies in which they are embedded, constitute the NHRPS. There is, however, no perfect NHRPS. In all countries around the world, including EU member states, there are 'gaps' in the NHRPS that can lead to human rights violations.

<sup>6</sup> See [www.un.org/events/action2](http://www.un.org/events/action2).

Each nation has its own distinct NHRPS, evolved from and part of its political, cultural and historic context. Nevertheless, an effective NHRPS consists of four universal fundamentals:

- Normative standards, domestic laws and regulations that reflect international human rights obligations.
- Policies and procedures aimed to protect or promote human rights, ensure accountability and uphold the principle of non-discrimination.<sup>7</sup>
- Institutions that contribute to the promotion and protection of human rights, guarantee oversight and ensure accountability. These include national human rights commissions, the judiciary or law enforcement.
- Civil society that is able to contribute freely to the promotion and protection of human rights in society.

A NHRPS therefore consists of separate yet strongly interrelated elements, each of which can make its own unique contribution to the promotion and protection of human rights. These elements form the basis of the practical chapters in section 3 of this manual.

**SCHEME 1      MAIN ELEMENTS OF THE NATIONAL HUMAN RIGHTS PROTECTION SYSTEM**



<sup>7</sup> The principle of non-discrimination is at the basis of the Universal Declaration of Human Rights (article 2) and reflected in the core human rights treaties. It foresees a broad range of ‘discrimination grounds’ that include: race; colour; sex; language; religion; political or other opinion; national; ethnic or social origin; property; disability; birth or other status. In practice these grounds have often been specified further and also encompass, *inter alia*, sexual orientation, civil status and employment status.

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**BOX 3 THE NHRPS: THEORY OR REALITY? THE CASE OF MEXICO <sup>8</sup>**

The case of Susana, a 24-year-old Mexican mother, illustrates how separate elements of the NHRPS relate to an individual violation. Susana suffered ten years of violence by her husband, including imprisonment in her own home. She filed various complaints at the local public prosecutor's office, but was told that no crime was involved. When a case was finally opened, her husband was detained for one day before being released on bail.

Although Mexico is a party to the UN Convention against All Forms of Discrimination against Women, almost one in four Mexican women said that they had suffered physical and/or sexual violence at the hands of an intimate partner, an issue that has been well documented by the Mexican National Human Rights Commission. When experiencing violence, most women refrain from approaching the police because of cultural perceptions, expected impunity or out of fear for retribution. In one state alone, the Mexican state police was itself responsible for torture and sexual assaults on at least 26 female detainees between 3 and 4 May 2006. Mexican legal institutions regularly regard violence against women as a domestic issue instead of a crime. As a result, the UN Special Rapporteur on Violence against Women and the CEDAW Committee have expressed serious concerns about legal proceedings with regard to violence against women in Mexico, and the Mexican government has taken certain steps to address the problem. In February 2007, a national law protecting women against violence was enacted, yet implementation at the level of individual states varies considerably. The Mexican government has also set up national and state women's institutes and a specific federal commission dealing with domestic violence. Yet information supplied to this commission by state authorities has been limited.

In sum, there are various 'gaps' in Mexico's NHRPS that need to be addressed in order to protect fully the human rights of women. In 2006 and 2008 the OHCHR and the Mexican government signed a technical cooperation programme aimed at strengthening the NHRPS, with specific attention for the rights of women. Several embassies of EU member states and the European Commission are involved in projects in Mexico that aim to improve women's access to justice or raise awareness among the judiciary.

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<sup>8</sup> This information is based on a report by Amnesty International entitled *Women's Struggle for Safety and Justice: Violence in the Family in Mexico* (London: Amnesty International, August 2008).

## 2.2 THE NHRPS AND DEVELOPMENT

Human rights and equitable, sustainable development are mutually reinforcing, and the NHRPS is indispensable to sustainable development.

National development strategies drafted by states, and assistance strategies from donors, should increasingly be encouraged to refer to the strengths and weaknesses of the NHRPS and address gaps in the system.

This manual aims to contribute to a rights-based approach towards development. Human rights are all too often defined only in terms of ‘violations’, and this narrow approach leads to some donors making a distinction between (political) human rights work on the one hand, and development, reconstruction or the rule of law on the other. Some claim that development or reconstruction efforts should precede human rights. This dichotomy is artificial. Poverty is basically a violation of a range of civil, political, social, economic and cultural rights. Donors – including the UN<sup>9</sup> and the OECD<sup>10</sup> – increasingly understand the mutually reinforcing nature and complementarity of development and human rights. A nation’s human rights infrastructure is critical to effective development efforts.

The relationship between development and the NHRPS can be summarised as:

- Human rights are legal and universal obligations to which both donors and partner countries have committed. They offer a common framework in which development strategies and goals can be set. This legal framework guarantees the state’s accountability if it fails to meet its obligations.
- An effective NHRPS facilitates participation and guarantees information and a voice to all people in society. It includes those institutions, legislation and policies that allow people to contribute actively and freely to their own development.
- Almost all development goals, including the UN’s Millennium Development Goals, are reflected in international human rights obligations as laid down, inter alia, in the International Covenant on Economic Social and Cultural Rights or the UN Convention on the Rights of the Child.
- Human rights guarantee the principle of non-discrimination in planning and the outcome of development programmes.
- An ineffective NHRPS and resulting human rights violations are usually at the basis of violent conflict, which in turn leads to economic deterioration.

<sup>9</sup> See, for example, the report by the Democratic Governance Group/Bureau for Development Policy (BDP) of the UNDP entitled *Global Human Rights Strengthening Programme, 2007–2011*.

<sup>10</sup> See, for example, Development Assistance Committee (DAC), *Action-Oriented Policy Paper on Human Rights and Development* (Paris: OECD, 26 January 2007).

- A stable human rights situation attracts new (international) actors, such as tourists or businesses.
- Development activities can be directly targeted at strengthening elements of the protection system, such as national human rights institutions or reform of the legal system.
- The NHRPS is closely related to the concepts of ‘good governance’ and ‘rule of law’. It includes legislation and institutions that allow for a state’s accountability if it fails to meet its obligations as a duty bearer, including in promoting development and protecting the poor. The presence of an effective NHRPS can be seen by itself as a sign of good governance and as a contribution to the rule of law. To a large extent, the NHRPS consists of the same elements that are foreseen in the rule of law, such as effective legal institutions, a separation of powers, professional law enforcement and accountability of the executive.

## 2.3 HOW TO UNDERSTAND THE NHRPS?

Information on the NHRPS is obtained by studying general country information on human rights as well as by using existing (sectoral) good governance or power analysis and assessments. In turn, an effort should be made to include information on the NHRPS as an explicit part of all country assessments.

To improve existing or to define new human rights interventions, embassy representatives need to be aware of the most urgent gaps in the NHRPS. In most instances, embassy representatives are aware of this. However, a complete picture of the NHRPS as a whole has not always been identified and made explicit. General information on the NHRPS and opportunities for strengthening elements of it are to be found in existing sources of information and instruments related to good governance and human rights.

### Information from good governance assessments

Various EU member states and international organisations use good governance or ‘power and drivers of change’ instruments that offer a range of information on the NHRPS. In the Netherlands, for example, a Strategic Governance and Corruption Analysis (SGACA) facilitates a more strategic approach to analysing the context for governance and anti-corruption and aims to identify the informal, societal and underlying reasons for the governance situation.<sup>11</sup> Other examples of such instruments include the UK Department for International Development’s Country Governance Analysis<sup>12</sup> or the Swedish International Development Cooperation Agency’s Power Analysis.<sup>13</sup> International organisations use similar models, such as the World Bank<sup>14</sup> or the Institute for Democracy and Electoral Assistance (IDEA).<sup>15</sup> At the level of EU institutions, relevant information on the NHRPS can be distilled from instruments such as the governance profiles drafted in the framework of the Cotonou Partnership Agreement<sup>16</sup> or the EU country action plans that stem from the European Neighbourhood Policies.<sup>17</sup>

<sup>11</sup> See [www.minbuza.nl/nl/themas,armoedebestrijding/goed-bestuur](http://www.minbuza.nl/nl/themas,armoedebestrijding/goed-bestuur).

<sup>12</sup> See [www.dfid.gov.uk/pubs/files/how-to-cga.pdf](http://www.dfid.gov.uk/pubs/files/how-to-cga.pdf).

<sup>13</sup> See [www.odi.org.uk/rapid/Tools/Toolkits/Mapping\\_Political\\_Context/Power\\_analysis.html](http://www.odi.org.uk/rapid/Tools/Toolkits/Mapping_Political_Context/Power_analysis.html).

<sup>14</sup> The World Bank’s *Institutional and Governance Reviews* are analytical reports that focus on the functioning of key public institutions.

<sup>15</sup> IDEA’s State of Democracy Assessment Methodology sets out a methodology for assessing the condition of democracy and progress towards democratisation.

<sup>16</sup> The partnership agreement between members of the African, Caribbean and Pacific (ACP) group of states on the one side and the European Community and its member states on the other. The EC has completed governance profiles for all ACP states.

<sup>17</sup> See [http://ec.europa.eu/world/enp/index\\_en.htm](http://ec.europa.eu/world/enp/index_en.htm).

## Information from human rights sources

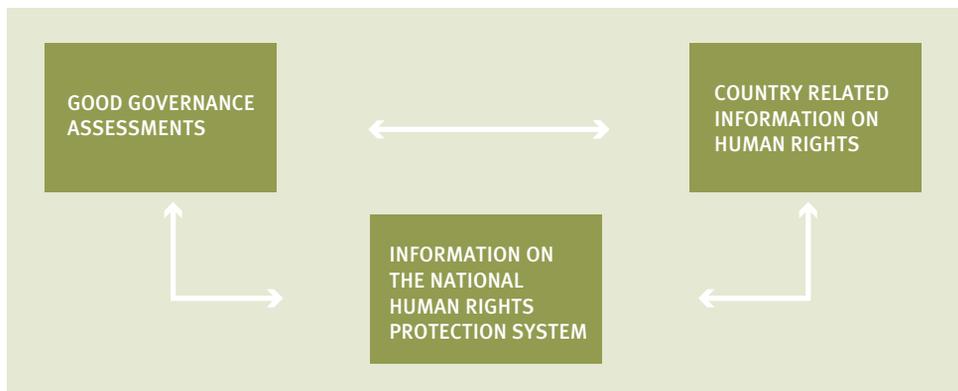
The instruments mentioned above, however, are applied to a limited number of countries and do not necessarily include an extensive human rights analysis. Further sources of information are therefore:

- Reports of the UN Special Procedures.<sup>18</sup>
- Reports, recommendations and observations of the UN treaty bodies.<sup>19</sup>
- Resolutions, reports or other information stemming from the UN Human Rights Council, especially the Universal Periodic Review.<sup>20</sup>
- Reports drafted by the OHCHR's country offices.
- Reports by international and national human rights NGOs and the NHRIs.
- Reports by regional organisations and their specialised human rights mechanisms.
- The EU human rights factsheets.
- Annual reports by the EU heads of mission (HoM) on human rights.
- Analyses made in the framework of the EU guidelines on human rights.
- Annual human rights reports from the US State Department.

Embassies should strive to obtain a general picture of NHRPS by studying the information mentioned above and identifying the various gaps in the system. In addition embassies could, for example, arrange meetings among or between embassies, organise seminars or set up meetings with the UN human rights presences within the country, all with the aim of identifying the most urgent gaps in the NHRPS.

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### SCHEME 2 OBTAINING GENERAL INFORMATION ON THE NHRPS



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<sup>18</sup> To be found through the OHCHR's country pages, which contain all crucial information related to human rights for any given country. This is an indispensable source of information for any embassy. For further information, see online at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

<sup>19</sup> See [www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx).

<sup>20</sup> See [www2.ohchr.org/english/bodies/hrcouncil](http://www2.ohchr.org/english/bodies/hrcouncil).

### **In-depth assessments into specific elements of the NHRPS**

As well as obtaining a general overview of the NHRPS, in-depth assessments of elements of the NHRPS are often required before specific interventions take place. For example, programmes aimed at security sector reform are usually preceded by a thorough assessment of the security sector. This exercise is normally not done by individual embassies but is often the result of a joint analysis initiated by various donors and carried out by teams of consultants and experts.<sup>21</sup> Guidance on this is given in the chapters in section 3 of this manual.

<sup>21</sup> In many countries these in-depth assessments might have already been made as a result of donor activities.

## 2.4 HOW TO SET PRIORITIES?

As all elements of the NHRPS are strongly interrelated, it is preferable to work on the NHRPS in collaboration with others and through large-scale comprehensive projects that address various elements of the NHRPS. This is not always obtainable and realistic, however, so individual embassies have to work on key priority areas.

Reform of a NHRPS is a long-term process. Embassies can contribute to this on a step-by-step basis. Most interventions related to the NHRPS imply a will for reform on behalf of the political or traditional leadership, and opportunities for strengthening the NHRPS often arise in cases of: a change in government; increasing democratisation; post-conflict reconstruction; public pressure from the media or civil society; increasing economic growth; scandals and/or corruption; efforts to improve a country's international image; or attempts at membership of international organisations. Whereas in fragile states or post-conflict situations the NHRPS would need strengthening in practically all areas, in other states the biggest gaps might be limited clearly to two or three elements, such as a weak judiciary or lack of an effective NHRI.

Understanding the NHRPS in its entirety enables embassies to identify the most serious gaps in the system and to define priorities. The most ideal approach towards working on the NHRPS is through comprehensive and large-scale reform programmes that often involve various donors and that address several of the NHRPS's elements simultaneously. Box 4 gives an example of such a project. These projects, however, are not always obtainable and, because of capacity, embassies cannot work intensively on all identified elements of the NHRPS. Embassies should therefore explore ways to strengthen certain elements of the NHRPS individually and to limit their focus to key priority areas. This manual largely leaves it to embassies to identify the most urgent priorities within their own context. In doing so, embassies are recommended to focus on the following core issues and guiding principles:

- **Accountability and oversight:** It cannot be emphasised too often that accountability and oversight should be at the basis of all (elements of the) NHRPS. In practice this means that embassies could focus their activities on:
  - *Support to NHRIs:* These institutions of growing importance contribute to oversight and have a direct impact on all other elements of the NHRPS (see chapter 3.1).
  - *Support to legal institutions:* Lawyers, courts and prosecutors are able to hold state organs to account, monitor state performance and allow individuals to claim their rights (see chapter 3.2).
  - *Support to parliament:* Parliament acts as the main body to ensure the executive's accountability (see chapter 3.4).
  - *Other monitoring and oversight institutions:* As identified throughout the chapters in section 3, embassies can support oversight mechanisms in relation to specific institutions of the NHRPS. Examples are internal or external oversight mechanisms

that are related to the security sector, complaint mechanisms in relation to administrative governments, or professional peer-monitoring mechanisms among the judiciary.

- **The most prevalent human rights violations:** Which element of the NHRPS is most likely to prevent the most common violations? Similarly, which element of the NHRPS will most significantly effect the overall protection of human rights within the given context?<sup>22</sup>
- **Implementation of the EU's human rights guidelines:** Logically, work related to the NHRPS can build on existing EU guidelines. This includes specific attention to human rights defenders (HRDs) as well as to the rights of women and children. A strong NHRPS reflects the full protection and participation of women and children. Implementation of the UN Convention on the Rights of Women and the UN Convention on the Rights of the Child can be priority areas.
- **Gaps in donor reconstruction programmes:** This concerns strengthening elements of the NHRPS that are omitted from international donor programmes. Embassies should stipulate that reconstruction efforts prioritise the most urgent needs in the NHRPS.
- **Demand-driven support:** Priorities are best set on the basis of a demand from the state or the institutions within the NHRPS itself. A state that aggressively counters public condemnation of its human rights performance might benefit from a more professional security sector or well-trained judges, or could profit from implementing international or regional agreements or commitments. Lack of demand, however, does not imply that embassies should refrain from independently planning interventions related to the NHRPS, as there are always entry points to be found.

<sup>22</sup> As an example, the existence of a national human rights commission does not automatically mean that it will be able to deal significantly with limited freedom of expression. It might have limited capacity or be too closely related to the government. Similarly, the fact that there is *no* national action plan on human rights does not automatically mean that this should be a priority area, as the expected effect might be low.

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#### BOX 4 STRENGTHENING THE NHRPS IN UGANDA: A COMPREHENSIVE APPROACH

The Justice, Law and Order Sector (JLOS) reform programme in Uganda is supported by several embassies. It aims to strengthen the NHRPS through a comprehensive approach, as it integrates various elements of the protection system simultaneously. It includes the legal institutions, law enforcement institutions, prison authorities, NHRIs and others. The programme seeks to foster a human rights culture across JLOS institutions, promoting rule of law and due process, securing access to justice, reducing crime, encouraging grassroots voices and community development. Governmental coordination structures are mirrored by an enhanced coordination mechanism on the donor side. This donor structure is engaged in policy dialogue with the JLOS institutions. A sector-wide approach, which brings all of the stakeholders together in an overall strategic plan for reform, contrasts sharply with old institutional approaches where different donors worked with individual institutions without linking those institutions' mandates in a coherent manner. Other strengths of the programme include:

- The JLOS emerged from a strong will for reform within the institutions themselves, thus guaranteeing a high degree of ownership and cooperation among the institutions.
- High-level political actors are aware of and participate in the programme.
- Most funding is through (general or sector) budget support, which increases ownership.
- The strategic plan was developed after a thorough analysis of the national legislative framework (including assessments of the human rights situation).

Meanwhile, some difficulties encountered include:

- Corruption among the actors involved hampers progress.
- Fluctuating levels of government funding, partly because a well-functioning JLOS is seen as a threat to the current regime.
- Sudden budget cuts, which disrupt the programme's activities.
- Ineffective operation of the institutions themselves, which has led to an enormous backlog of cases in the judicial system and overcrowding within prisons.
- Some donors from international organisations are not adhering to the sector-wide approach (of chosen individual/isolated activities), hence affecting the sequencing and focus of JLOS.
- There is a risk of donor dependency.

To address these concerns, new programmes on corruption and reducing the backlog of court cases have been established. Long-term, allocated and ring-fenced budgets are sought. Some embassies support civil society organisations that contribute specifically to solving some of the obstacles in the JLOS reform programme. Embassies also strive to discuss progress in regular political dialogues, pleading for guaranteed and increased government budgets and lobbying for legislative changes that hamper reform (such as for a law against torture).

## 2.5 BUILDING ON THE WORK OF OTHERS

Interventions to strengthen the NHRPS offer unique opportunities for broadening cooperation and forming new coalitions. This should surpass collaboration among the EU member states, and include especially the UN's human rights bodies, (international) civil society, institutions with human rights expertise and the embassies of non-EU states.

Although this manual includes bilateral interventions that can be taken by an individual embassy, working on the NHRPS offers good opportunities for increased coordination and collaboration with others. Apart from common coordination among the EU countries, it is recommended that embassies aim for a more strategic and institutionalised collaboration with the UN's bodies on human rights and development, the embassies of non-EU states and other institutions and organisations with human rights expertise.<sup>23</sup>

- **The UN (human rights) institutions:** Various UN bodies, especially the offices of the OHCHR and the UNDP, are involved in programmes to strengthen the NHRPS, such as support to parliament, legal reform and programmes aimed at supporting the NHRIs. These actors are therefore vital, both for identifying priority areas in the NHRPS as well as for collaborative projects in this field. This is not always standard practice, and hence there are always challenges to broadening the scope of collaboration. The UN Human Rights Council is of particular importance, as its analyses foresee recommendations that are directly applicable at the national level. The UN's treaty bodies and Special Procedures are of similar value. They are a crucial source of information on the NHRPS and offer concrete and practical recommendations for embassies to follow up.
- **Regional organisations:** Regional organisations such as the Organisation for Security and Cooperation in Europe (OSCE), African Union (AU), Organisation of American States (OAS) or the Council of Europe (CoE) have specific programmes or instruments dealing with elements of the NHRPS and a range of expertise in this field. Opportunities for linking expertise and further collaboration should be explored. Units or mechanisms with specific expertise within regional organisations are mentioned under the chapters in section 3 of this manual. Regional organisations, or more informal regional coalitions, are also at the heart of specific human rights commitments, sometimes of a thematic nature.<sup>24</sup>

<sup>23</sup> The actors mentioned are described in more detail in annexe 1.

<sup>24</sup> Examples are the African Union's Maputo Action Plan, which aims to improve sexual and reproductive rights, or the African Peer Review Mechanism, which foresees a range of goals to strengthen laws and institutions related to human rights.

- **Specialised institutions and (inter)national NGOs:** International human rights organisations such as Amnesty International, Human Rights Watch or FIDH (Fédération internationale des droits de l'homme) offer a range of expertise in relation to the NHRPS. Similarly important, and often less explored, are specific international institutions with relevant expertise, such as legal support organisations, inter-parliamentary bodies, international networks of human rights commissions or coalitions of NGOs working on specific thematic issues. Examples of these specialised institutions are mentioned in the relevant chapters in section 3 of this manual.
- **National human rights institutions and civil society:** These are described in chapters 1 and 6 of section 3 of this manual and can be considered as an integral part of the NHRPS.

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#### BOX 5 COMPANIES AND THE NHRPS

How do the activities of businesses, as non-state actors, relate to the NHRPS? Negatively speaking, business can be involved in the violation of human rights. More positively, business can play an important role in respecting and even promoting human rights, therefore contributing to the NHRPS.

Corporate-related human rights violations can include violations of labour rights within companies or human rights violations such as those committed by their security personnel. A company may also be complicit in human rights violations indirectly, by involvement in human rights abuses committed by a third party. The UN Special Representative on the issue of human rights and businesses, John Ruggie, has identified the need for a policy framework based on:

- 1) The duty of the state to protect against human rights violations.
- 2) The responsibility of companies to respect human rights.
- 3) The need for access to remedies for the victims of corporate-related human rights violations.

International law stipulates that states have a duty to protect individuals against human rights abuses committed by corporate actors. Yet national laws are often lacking because of a dearth of political will or capacity, including insufficient (access to) remedy mechanisms for victims of corporate-related human rights violations. Companies need to ensure compliance with national laws, but as these are often not sufficiently developed, they have their own responsibility to draft policies so that they avoid human rights violations. This duty flows not only from moral and social expectations, but from a body of soft law, including the International Labour Organisation (ILO) and OECD standards, new jurisprudence in liability cases, and from their own commitments in the area of corporate social responsibility (CSR).

It is important for embassies to take note of the role that businesses can play in promoting human rights, as well as respecting human rights. Businesses can donate to human rights initiatives or be directly involved in promoting economic, social and cultural (ESC) rights, for example by contributing to medical facilities and educational programmes. When it comes to strengthening the NHRPS, embassies can therefore:

- Press a state to establish a strong legal framework that protects people against human rights violations by third parties, including businesses.
- Encourage the state to promote a ‘CSR culture’ among its business community through awareness-raising and educational activities, and encourage it to provide grievance mechanisms for the victims of corporate-related human rights violations.
- Collaborate with businesses in *promoting* human rights, as businesses could contribute to activities aimed at strengthening the NHRPS (such as through contributing to educational or health facilities).

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### Collaboration among the EU member states

The EU has at its disposal a broad range of instruments in implementing human rights, through which gaps in the NHRPS can be addressed. This includes funding mechanisms such as the European Initiative for Democracy and Human Rights (EIDHR),<sup>25</sup> as well as various political instruments such as demarches or (a range of) dialogues.<sup>26</sup> The European Commission contributes directly to a range of programmes related to the NHRPS, such as on security sector reform (SSR), judicial reform or support to parliaments. Collaboration and coordination among EU member states to strengthen the NHRPS in third countries should aim to:

- Improve coordination and complementarity in the field of long-term reform programmes.
- Increase expertise-sharing related to the NHRPS and link a country’s needs to the most crucial expertise available within member states.
- Increase complementarity between human rights and development activities, including institutionally.
- Improve complementarity between local actions in support of the NHRPS and EU interventions within international forums.
- Ensure that EU country assessments<sup>27</sup> integrate explicit references to the NHRPS.

<sup>25</sup> The EIDHR finances a range of activities related to the NHRPS, such as support for democratisation, human rights defenders and the rule of law.

<sup>26</sup> For a complete overview, see the EU’s annual reports on human rights, available online at [http://ec.europa.eu/external\\_relations/human\\_rights/doc/index.htm](http://ec.europa.eu/external_relations/human_rights/doc/index.htm).

<sup>27</sup> Including, but not limited to, the reports by EU heads of mission on human rights.

- Integrate consideration for the NHRPS while implementing the EU's human rights guidelines.<sup>28</sup>
- Increase EU development funding that is directly targeted at (elements of) the NHRPS.
- Increase attention for the NHRPS in all relevant EU structures, such as the EU thematic and regional Council Working Groups, the European Commission and Council Secretariat.

### Collaboration with embassies of non-EU states

The international community has seen increasingly sharp divisions between blocks of like-minded states that hold and propagate certain views on human rights. These differences are often reflected at the national level. Many activities related to the NHRPS can be of a technical rather than political or public nature. This offers unique opportunities and challenges for more strategic alliances with embassies of non-EU states in addressing human rights in third countries. For example, it might be worth exploring whether to contribute to police reform in a given African country in cooperation with the South African embassy, as South Africa has broad experience in setting up national police reform programmes.

<sup>28</sup> The EU presently has human rights guidelines on: human rights defenders; violence against children; child soldiers; torture; the death penalty; human rights dialogues; international humanitarian law; and violence against women and girls.

## INTRODUCTION: HOW TO USE THE THEMATIC CHAPTERS?

The chapters below are relevant for embassies that (plan to) work on one or more of the legislative, policy or institutional elements of the NHRPS such as law enforcement, the legal institutions, legislative framework or the policies on human rights. Each of these thematic areas is described using the following outline:

- 1 Introduction:** The introduction describes the issue specifically in terms of its contribution to the NHRPS as a whole.
- 2 Key principles:** The key principles describe relevant and basic conditions and criteria that are needed to guarantee the most effective functioning of each separate element of the NHRPS. These criteria can be used to understand and define the strengths and weaknesses of this specific element of the NHRPS. They can furthermore be used to define measurable benchmarks or indicators when planning resulting interventions.
- 3 Options for action:** This section sets out different options for strengthening a particular element of the NHRPS. Different accents, activities and strategies will logically be a result of the specific context. Although the recommendations are addressed to individual embassies, it is self-evident that these are often implemented in collaboration and coordination with other EU member states and others. The recommendations are not complete and others can be considered. More in-depth recommendations related to specific thematic issues can be found in the reference material.
- 4 References:** Each thematic chapter describes only basic information. Some well-known materials and institutions are therefore mentioned in each chapter, which can be used to obtain further information as well as for collaboration in implementing interventions. EU embassies might be aware of other more suitable institutions; the list is not complete. As this manual is written by the Dutch government, the references usually include one or two Dutch institutions, which often have their own counterparts in other EU member states. A balance has been sought between international and regional/national actors.

## 3.1 NATIONAL HUMAN RIGHTS INSTITUTIONS

*‘Their [NHRIs]’ central role derives from the pivotal position that national institutions have as the keystone of a strong national human rights protection system’.*<sup>29</sup>

NHRIs are crucial for strengthening human rights. They should be seen as an indispensable element of the NHRPS as they are involved in strengthening all other elements of the NHRPS and provide crucial oversight of state organs. The three main types of NHRI are:

- National human rights commissions.
- Ombudsmen.
- Specialised institutions.



### INTRODUCTION

Various UN resolutions have called upon states to set up national human rights institutions (NHRIs) as a crucial step towards improving human rights.<sup>30</sup> The last decade has seen an enormous growth in the number and size of NHRIs worldwide. NHRIs should be seen as a core and indispensable element of the NHRPS. In contrast to international human rights bodies, NHRIs are a human rights voice from within the country. Effective NHRIs not only directly promote human rights, but provide crucial oversight and contribute to the accountability of state organs. NHRIs are usually involved in activities to strengthen other elements of the NHRPS, such as the judiciary or the security sector. For embassies this means that NHRIs can be a crucial entry point when dealing with other elements of the NHRPS.

A NHRI is an organ created and funded by the state that usually holds a (semi-) autonomous position. This distinguishes NHRIs from NGOs. The establishment of a national institution may be a sign that a country takes its human rights obligations seriously. NHRIs have a unique position among the judicial and executive elements of the state and are often created through a parliamentary process and on the basis of specific legislation defining their status and mandate. The creation of any NHRI should involve:

- Developing a broad consensus for the NHRI’s need, including political will within the state’s apparatus.
- Drafting a mandate through a consultative process involving civil society, legal experts and government representatives.

<sup>29</sup> Speech by the former UN High Commissioner for Human Rights, Louise Arbour, on 21 March 2007, at the nineteenth session of the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC).

<sup>30</sup> See, for example, the resolution of the Third Committee of the UN General Assembly, 20 November 2008, on ‘National Institutions for the Promotion and Protection of Human Rights’ (A/C.3/63/L.23).

- Founding the institution, recruiting staff, establishing operational policies, strategic planning and identifying priorities. Sufficient government allocations should be established for the long term.

There are three main types of NHRI, although these categories can overlap:

**National human rights commissions:** These institutions have traditionally focused mostly on the investigation of violations of civil and political rights and the fight against discrimination, yet their activities increasingly include ESC rights. They may have obtained a mandate to receive and investigate claims by individuals and in some cases they have certain judiciary functions. They also systematically review government policies to assess their compliance with human rights.

**Ombudsmen:** Many national institutions that conform to the Paris Principles refer to themselves as Ombudsmen.<sup>31</sup> These institutions, often with a high-profile head of office, might receive complaints from individuals who have been treated unjustly by the authorities, which include human rights violations. Contrary to classic ombudsmen, these institutions are therefore not about mere administrative malfunctioning. They often have branches at national and local levels.

**Specialised institutions:** These are mostly institutions that are limited to specific thematic issues and might focus on certain minority groups, equal opportunity commissions, or institutions that focus on, for example, only the rights of women. Human rights institutes or consultative commissions may be found that fulfil some of the criteria of the Paris Principles (see below).

Apart from their work on civil and political rights, an increasing number of NHRIs are involved in addressing the linkage between civil and political and ESC rights and are (indirectly) contributing to national development strategies.<sup>32</sup> Through their human rights tasks – including research, addressing accountability, institutional reform or possible reparation – NHRIs can play an important role in post-conflict situations and processes of transitional justice.

<sup>31</sup> The Paris Principles relate to the status and functioning of national institutions for the protection and promotion of human rights. They were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris from 7–9 October 1991, and were adopted by United Nations Human Rights Commission Resolution 1992/54 of 1992 and General Assembly Resolution 48/134 of 1993. The workshop's participants drew up comprehensive recommendations on the role, composition, status and function of national human rights institutions.

<sup>32</sup> For example, each year the South African Human Rights Commission requires relevant organs of state to provide it with information on the measures that have been taken towards realising the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. See [www.sahrc.org.za](http://www.sahrc.org.za).

In principle, an *effective* NHRI should include all of the activities mentioned below:

- Submitting reports on human rights issues to the government.
- Monitoring and reporting on human rights violations wherever they occur.
- Encouraging ratification of international human rights standards.
- Training, raising awareness and education about human rights.
- Investigating violations and handling complaints (sometimes recommending compensation).
- Contributing to the reform of legal, military or law enforcement institutions.
- Advising the government, especially in legislative procedures.
- Cooperating with international human rights bodies and following up on their recommendations.

NHRIs are often grouped in, or facilitated by, regional human rights institutions that support the national branches, such as the Asia Pacific Forum, the Network of African NHRIs, the Network of National Institutions for the Promotion and Protection of the Human Rights of the American Continent, or the Latin American Research Network of Ombudspersons (see references).

## KEY PRINCIPLES

What makes an effective NHRI? In some countries NHRIs are closely controlled by the state (for example, the National Human Rights Centre of Uzbekistan); in other cases they are dynamic and critical organs whose publications are discussed in the media, government and parliament (such as the South African Human Rights Commission). The **Paris Principles relating to the Status of National Institutions for the Protection and Promotion of Human Rights** have outlined key conditions and criteria that should be established for an effective NHRI. In summary, the Paris Principles recommend that a NHRI should have:

- Broad competences and tasks, including different types of advisory, monitoring and sometimes legal competences. This should include the ability to report on sensitive issues such as violations that are clearly a result of government actions or policies.<sup>33</sup>
- Independence that is guaranteed by the constitution or through other legislation.
- Independent and pluralistic staff representing men and women from different groups in society.
- Adequate and sustainable resources.
- Well-defined working methods, including access to government information and government representatives at all times.
- A broad mandate based on universal human rights standards. This includes working on ESC rights or paying attention to sensitive issues.<sup>34</sup>
- Adequate powers of investigation.

<sup>33</sup> For example, the National Human Rights Commission in Ethiopia has reported on the sensitive issue of violations committed by Ethiopian armed forces in the Somali region in eastern Ethiopia.

<sup>34</sup> For example, working on violations of lesbian, gay, bisexual and transgender (LGBT) rights, which few NHRIs do.

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**BOX 6 STRENGTHENING THE NHRIS IN INDONESIA**

NHRIs are regularly evaluated for their compliance with the Paris Principles. This is undertaken by the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which is an independent body institutionally linked to the OHCHR. Through this accreditation process, national institutions are graded from A to D for compliance with the Paris Principles. The reports of the Committee identify important weaknesses in the NHRI and include recommendations for overcoming these.<sup>35</sup>

At the time of writing, UNDP Indonesia, the United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF), with support from the Office of the Resident Coordinator and OHCHR, are designing a joint programme of support for Indonesia's three main NHRIs: Komnas HAM, which focuses on the full range of human rights; Komnas Perempuan, which focuses on discrimination and violence against women; and Komisi Perlindungan Anak Indonesia (KPAI), which focuses on child protection. Based on needs assessments of the three institutions, UNDP found that the NHRIs face challenges that have, to varying degrees, affected their ability to discharge their respective mandates fully and, possibly, to comply completely with the Paris Principles. These challenges include the areas of human resources and organisational structures, financing, public profile, coordination with other actors in civil society and, more broadly, recognition by the authorities.

The purpose of UNCT-Indonesia's NHRI Joint Programme, through a One-UN approach, would be to: (a) build on the results of the needs assessments for each of the three NHRIs; and (b) develop and manage one programme to strengthen the work and foundation of each NHRI, both individually and collectively. The aim would be to contribute to the development of an effective, coherent network of fully independent and empowered NHRIs, which are fully compliant with the Paris Principles and play a central role in the effective promotion and protection of human rights in Indonesia.

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Besides the institutional and normative criteria mentioned above, for NHRIs to make a real contribution towards the protection of human rights, various other factors are of importance, including a NHRI's image and status within society and among the media, its relationship with formal or informal power holders, its credibility and the extent to which it collaborates with other actors within the NHRPS. Last but not least, people should be aware of, and have access to, an effective NHRI, which implies that these institutions should have a broad reach in society in terms of regional and local representation throughout the country.

<sup>35</sup> In mid-2008, the ICC had identified 64 institutions with an A status, fourteen with B status and eight with C status. However, it should be noted that not all institutions have committed themselves to joining the ICC accreditation process.

## OPTIONS FOR ACTIONS

There are various ways for an embassy to contribute to the establishment or improved functioning of NHRIs. The decision to support a NHRI will usually be made on the basis of its compliance with the Paris Principles (see Box 7). Support to a NHRI in a given country could lead to perceptions that the institution is backed by a Western agenda; this risk should be discussed with members of the institution itself.

Embassies can take the following actions to contribute to effective NHRIs:

- **Become informed:** For in-depth information on NHRIs within a given country, the embassy can study the reports and/or contact the ICC, contact the NHRI's unit or OHCHR headquarters, contact the regional coordinating bodies on NHRIs and/or meet with the institution itself.
- If there are no (or no effective) NHRIs within a country, embassies could raise this issue on a regular basis with the country concerned. This can become a regular agenda item for relevant bilateral or multilateral meetings and be included in development strategies.
- If the state is planning to set up a NHRI, embassies can link with the relevant UN bodies (OHCHR, UNDP or others) within the country concerned to contribute collectively to a drafting process based on the Paris Principles. Embassies can bring these principles to the attention of the drafting bodies and the oversight institutions, commit themselves to funding (elements of) the institution and/or offer technical assistance in the drafting process.
- In cases of existing NHRIs, the embassy can:
  - Give direct financial support to the institution(s), preferably in coordination with others.
  - Strive to strengthen identified gaps in the NHRI's work. Gaps are revealed through the accreditation process (or other evaluations). For example, legislative gaps or a limited mandate can be taken up in political dialogue, and lack of outreach could lead to increased embassy funding for the NHRI's local branches.
  - Strengthen political and civil support. The embassy could create more awareness and political backing for the NHRI's activities by discussing its work in meetings with parliament or government, stimulating cooperation between HRDs and the NHRI, or distributing (or referring to) information from the NHRI to different actors in society, including the media.
  - Stimulate new areas of work or contribute to improved prioritisation. Ask the institution to take up work, or increase activities, related to certain EU priority areas such as the rights of women, HRDs or children.<sup>36</sup>
  - Stimulate the NHRI to follow up the recommendations of UN human rights mechanisms, including the Special Procedures.

<sup>36</sup> Particularly omitted from the mandate of many NHRIs is attention for LGBT rights.

- Link with, or directly support, regional oversight bodies and platforms that monitor and/or facilitate the national human rights institutions (see the references below).
- Enable protective measures in cases of threats against NHRI staff. Embassies should raise their concern with the state concerned, using the EU Guidelines on Human Rights Defenders.

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**BOX 7 THE NHRI IN SRI LANKA: A DILEMMA FOR DONORS**

In 2007, the Human Rights Commission (HRC) of Sri Lanka suffered a significant setback as the ICC downgraded its status from A to B as a result of non-compliance with the Paris Principles. This was the result of a longstanding lack of operational performance by the HRC, including an absence of public reporting since 2006 and also an appointment's procedures to the Commission that called into question its independence. Additionally, there was little to no engagement with civil society. As these were fundamental shortcomings, bilateral donors withdrew their support to the HRC.

However, should all support come to an end? The ICC recommended that the HRC work with the UN, especially the OHCHR, for technical assistance in moving back in line with the Paris Principles. The UN (in particular UNDP and the UN Senior Human Rights Adviser) is therefore moving forwards with targeted and strategic engagement with the HRC, whereby support is provided for a limited timeframe for some small-scale interventions aimed at addressing operational shortcomings and rebuilding technical capacity. The UN also noted that Regional Offices continued to serve as much-needed channels for receiving and recording grievances and petitions. The Asia Pacific Forum on NHRIs (see references below) made a country visit in September 2008 at the HRC's request to see how some of the shortcomings could be addressed, and it drafted recommendations in this regard.

There is no blueprint for embassies on how to proceed in this or similar situations. Yet in a country where the human rights situation is dire, all small steps aimed at creating a stronger NHRPS should be explored. Embassies that have halted financial support could establish a strategy to find openings in addressing some of the identified shortcomings in the Commission's work. This could include addressing some of the shortcomings through political dialogue at a higher level, raising the issue in international forums, facilitating technical or operational expertise, or integrating the need for a stronger NHRI in bi- or multilateral development strategies.

## REFERENCES

### Institutions

- National Ombudsmen offices or NHRIs within the EU (European branches might have programmes supporting counterparts abroad).
- OHCHR Unit on National Human Rights Institutions (this gives support to the creation of – and existing – NHRIs, and supports the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights); see [www.ohchr.org](http://www.ohchr.org).
- National Human Rights Institutions Forum (this contains information on the accreditation process of NHRIs and is the international forum for researchers and practitioners in the field of national human rights institutions. It contains links to regional platforms and institutions); see [www.nhri.net](http://www.nhri.net).
- ODIHR Focal Point for Human Rights Defenders and National Human Rights Institutions for the OSCE (this supports regional training to increase the independence of national human rights institutions); see [www.osce.org/odihhr/27867.html](http://www.osce.org/odihhr/27867.html).
- Asia Pacific Forum for National Human Rights Institutions (APF) (this advances human rights in the Asia Pacific region through its member organisations and facilitates the formation and growth of national human rights institutions); see [www.asiapacificforum.net](http://www.asiapacificforum.net).
- Latin American Research Network of Ombudspersons (LARNO) (this aims to strengthen the capacity of Ombudspersons to promote an effective implementation of ESC rights, starting with the right to education); see [www.unesco.org/shs/humanrights/larno](http://www.unesco.org/shs/humanrights/larno).
- Network of African National Human Rights Institutions (NANHRI) (this seeks to support and strengthen NHRIs throughout Africa); see [www.nanhir.org](http://www.nanhir.org).

### Further reading

- The Paris Principles on NHRIs; see [www.ohchr.org/English/law/parisprinciples.htm](http://www.ohchr.org/English/law/parisprinciples.htm).
- OHCHR, Fact Sheet no. 19, National Human Rights Institutions; see [www.unhchr.ch/html/menu6/2/fs19.htm](http://www.unhchr.ch/html/menu6/2/fs19.htm).
- OHCHR, Professional Training Series no. 4 (rev. 1), National Human Rights Institutions: A Handbook for the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights; see [www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx](http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx)
- OHCHR, Annual Report on National Human Rights Institutions (includes a list of countries and general evaluation of NHRIs around the world); see [www.ohchr.org](http://www.ohchr.org).
- Asian NGO Network on National Institutions (ANNI), 2008 Report on the Performance and Establishment of National Human Rights Institutions in Asia (Bangkok: ANNI, 2008); see [www.forum-asia.org](http://www.forum-asia.org).

- International Council on Human Rights Policy (ICHRP), *Assessing the Effectiveness of National Human Rights Institutions* (includes benchmarks and indicators on the performance of NHRIs) (Versoix: ICHRP, 2005); see [www.ichrp.org/en/documents](http://www.ichrp.org/en/documents).
- Danish Institute for Human Rights, *The Evolution of National Human Rights Institutions: The Role of the United Nations* (Copenhagen: Danish Institute for Human Rights, 2006); see [www.humanrights.dk](http://www.humanrights.dk).

## 3.2 LEGAL INSTITUTIONS: THE JUDICIARY, LAWYERS AND PROSECUTORS

Judges, courts, lawyers, prosecutors and attorneys-general strengthen the NHRPS in various ways: ensuring accountability, addressing impunity and ensuring remedies to victims of human rights violations. As well as upholding civil and political rights, they play an increasingly important role in addressing poverty.



### INTRODUCTION

The legal institutions are part of a broader legal system that includes the domestic legislative framework (see chapter 3.7). The legal institutions described in this chapter include judges/courts, lawyers and prosecutors. Other legal institutions – less well known but that similarly (although more indirectly) contribute to the overall NHRPS – include notaries, court clerks, paralegals, law faculties and training centres.

In a context of separation of powers, professional legal institutions that are accessible to all in society strengthen the NHRPS in various ways. The UDHR and human rights standards, especially the International Covenant on Civil and Political Rights (ICCPR), enshrine the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal. Weak legal institutions, or lack of access to these institutions, simply imply that human rights guarantees that exist on paper are a dead letter. Independent courts and other legal actors allow a state's human rights performance to be monitored and enable individuals to claim their rights. Legal institutions have a key role to play in ensuring accountability, addressing impunity and ensuring remedies to the victims of human rights violations.

As well as upholding civil and political rights, legal institutions play a role in addressing poverty and corruption in various ways. Justice mechanisms are crucial for overcoming deprivation, fighting discrimination and protecting property rights, and they increase participation and empowerment. Access to legal institutions is therefore especially relevant for the poor and most marginalised in society. A well-functioning legal profession also contributes to further case law on ESC rights, such as access to food, health or education. Finally, legal institutions are able to influence and amend government policies in these fields (see Box 8). There are many reasons to support legal institutions as a means to contribute to development.

Legal institutions can also have a direct *negative* impact on the overall human rights situation. Judges, for example, may be unwilling or unable to uphold the right to a fair trial, they can be sensitive to corruption, allow for impunity, or they can fail to uphold international human rights standards in relation to traditional or cultural practices that are harmful to human rights.

Legal institutions in many countries have low resources, are embedded in an outdated legal system or are unable to operate independently from the executive. As a result of their work, lawyers, prosecutors or judges may themselves be threatened or intimidated when working on human rights issues.

Even in countries where professional legal institutions operate, many people have limited or no access to them.<sup>37</sup> The institutions might be too remote, expensive, complex, elitist or bureaucratic. As a result, most people around the world depend on informal or traditional justice mechanisms (see Box 9).

## KEY PRINCIPLES

Legal institutions are part of different legal systems.<sup>38</sup> Their performance is therefore a result of (a combination of) common or civil legal traditions and of formal and informal, traditional and customary, legal systems. Legal institutions' performance with regard to human rights depends not merely on the legal tradition but on a range of institutional, political, legal and even economic factors. Disregarding the country context, certain universal standards are identified below that allow embassies to understand the performance of core legal institutions with regard to human rights.

### Judges/courts

As the 'guardians' of liberty and human rights, it is a judge who is supposed to grant people their rights by presiding over trials. The most important standard for judges with regard to human rights is the **UN Basic Principles on the Independence of the Judiciary**. Other less well-known standards are the Universal Charter of the Judge<sup>39</sup> and the Bangalore Principles on Judicial Conduct.<sup>40</sup>

### Lawyers

The right to legal representation is enshrined in international human rights law and is part of most national constitutions or other laws. The influence of a strong bar system for the protection of human rights is often underestimated, however, and can be overlooked in

<sup>37</sup> UNDP defines access to justice as: 'The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards'. See UNDP, *Programming for Justice: Access to Justice for All* (New York: UNDP, 2005).

<sup>38</sup> Common law is the system of laws that originated and developed in England and that is based on court decisions, on the doctrines implicit in those decisions, and on customs and usages, rather than on codified written laws as is the main characteristic of a civil law system. In reality, however, we often find systems that integrate elements of both common and civil law, as well as elements of traditional justice.

<sup>39</sup> Drafted by judges and approved by the International Association of Judges in 1999. There are also important regional standards such as the European Charter on the Statute for Judges (1998), or the Recommendation of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges (1994).

<sup>40</sup> The Bangalore Draft Code of Judicial Conduct (2001), adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices, which was held at the Peace Palace, The Hague, 25–26 November 2002. This is a set of principles for the ethical conduct of judges that is intended to establish international standards.

legal reform programmes. Lawyers are able to represent human rights victims, collect evidence against perpetrators and prevent unfair trials from taking place. A competent and accessible defence system is crucial for increasing access to justice for the poorest and most vulnerable in society. The core human rights treaties and the **UN Basic Principles on the Role of Lawyers** are important standards that guide the practice of lawyers.<sup>41</sup>

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**BOX 8 THE LEGAL ENFORCEMENT OF ESC RIGHTS<sup>42</sup>**

Jurisprudence regarding ESC rights has gradually emerged during recent decades. Domestic and regional courts have in many instances adjudicated issues related to the enjoyment of ESC rights, offering an adequate remedy to victims. As a result, a wide range of case law relating to right to food, health, shelter and education has emerged. We have seen court rulings on the availability of medicines (right to health) or on access to schools on a non-discriminatory basis (right to education). For example, in 2000 the South African Constitutional Court found that the deplorable living conditions of a group of unlawful residents who had been evicted from their homes was a violation of the right to housing, as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In sum, there has been increasing justiciability of these rights. An increasing number of countries, across all continents and legal systems, have also incorporated judicial reviews of ESC rights. This development increases the relevance of international human rights standards to national government policies in various areas. Jurisprudence with regard to ESC rights can have a direct influence on national legislation and policies in the areas of housing, education or health. At the end of 2008, the UN General Assembly adopted an Optional Protocol to the ICESCR that foresees, among other things, a complaint mechanism for individuals. A range of (international) NGOs work specifically on ESC rights (see the references given below).

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**Prosecutors**

A prosecutor is a government official who conducts criminal prosecutions on behalf of the state. A legal system needs strong, independent and impartial prosecutors who investigate and prosecute suspected crimes and human rights violations committed against individuals, even if these crimes have been committed by state officials. Through their role in the administration of justice, prosecutors play a crucial role in the

<sup>41</sup> Regional standards include the CCBE's (*Conseil des barreaux européens*) charter of Core Principles of the European Legal Profession (2007) or the Code of Conduct for European Lawyers (2006).

<sup>42</sup> This information is based on information from the NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; see [www.opicescr-coalition.org](http://www.opicescr-coalition.org).

NHRPS.<sup>43</sup> The most important standard for prosecutors' work is the UN Guidelines on the Role of Prosecutors, which contains criteria regarding their independence, freedom of expression, resources and human rights obligations.

Key criteria that contribute to effective legal institutions with regard to human rights imply that:

- Independence of the judiciary is enshrined by the state and reflected in domestic law.
- Decisions of the judiciary are final and cannot be overruled by other state actors.
- Adequate resources and remuneration exist for legal actors.
- Adequate expertise on human rights standards and jurisprudence exists, and human rights are integrated into the educational practice and materials of all legal actors.<sup>44</sup>
- Anti-corruption procedures and policies are in place among the legal actors.
- Freedom of expression for all legal actors is guaranteed in law and upheld in practice.
- There are no retributions against or intimidations of legal institutions.
- Appointments of judges take place on the basis of enumerated qualifications and there should be no discrimination based on gender, religious background or other grounds.
- Proceedings and rulings by courts uphold the right to a fair trial.<sup>45</sup>
- Military, security or other 'special' courts operate in full conformity with international human rights standards.
- There should be procedures for the prompt appointment of lawyers to all those accused in criminal justice matters.
- Legal monitoring and/or accountability bodies are in place, such as complaint mechanisms, disciplinary proceedings or oversight and peer networks of legal actors.

These criteria are of an institutional nature. Equally important is the level of access that people have to these institutions. A low threshold of access to legal institutions is influenced by:

- Financial costs.
- The (lack of) existence of legal institutions in all (remote) areas of the country.
- People's legal awareness and trust in the legal institutions.
- The extent to which customary legal practices dominate legal actors' practice.
- Corruption and fear of intimidation.
- Discriminatory practices by the legal institutions.

<sup>43</sup> In some jurisdictions, attorneys-general may have law enforcement or public prosecution responsibilities and therefore are of importance to the NHRPS. Attorneys-general may be legal advisers to the government or they can be part of the executive and function as a minister of justice.

<sup>44</sup> UN treaty bodies have recommended that states increase their expertise on human rights among the legal actors. For example, the Committee on the Elimination of Discrimination against Women recommended in its report on Saudi Arabia that the Convention should be included in all legal education and training.

<sup>45</sup> Fair trial principles include the right to legal counsel, the presumption of innocence, the right to a prompt trial, the prohibition of incommunicado detention, equality before the courts, the right to a fair hearing, or the right to compensation.

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**BOX 9**    **INFORMAL AND TRADITIONAL OR INDIGENOUS JUSTICE SYSTEMS**

In many countries (non-state) legal actors and legal practice are strongly entrenched in informal or traditional justice systems. Informal justice refers to dispute resolution outside the formal court system, although the state might (actively) support such mechanisms. Traditional or indigenous justice systems are methods of resolving disputes among people that result from historic and cultural traditions. These systems are distinct from each and every culture, yet they share a common focus on reconciliation, rehabilitation and mediation instead of mere ‘punishment’ of perpetrators. Traditional or informal justice systems might offer advantages in relation to the formal justice system, as they might be easier to access, less intimidating, less costly, offer faster settlements, and include mediators from within the community.

Wherever these systems operate in line with international human rights, they can be a valuable asset to a NHRPS.<sup>46</sup> Yet their positive contribution to solving disputes may also be romanticised or exaggerated, as there can be serious human rights concerns with regard to these systems, including:

- Lack of impartiality and unpredictable rulings.
- Domination by the elite.
- Exclusion of or discrimination against certain groups, such as minorities and/or women.
- Lack of expertise on fair trial standards by the mediators.
- Lack of application of identical standards from case to case, based on international law.
- Sensitivity to corruption.
- The application of reconciliation and mediation to serious crimes such as murder or rape, thereby contributing to impunity.
- Lack of enforcement mechanisms.
- Traditional forms of justice also tend to uphold, or fail to condemn, harmful traditional and cultural practices and beliefs.<sup>47</sup> Such practices continue to exist, partly because they continue to be supported by (informal) legal actors.

Legal reform programmes supported by the EU should proceed from the basis that traditional justice systems that are compatible with international human rights standards can be useful as complements to the formal justice system, but not as replacements thereof. Traditional justice systems that fail to conform to international standards, including basic fair trial standards, should be reformed or cease to function.<sup>48</sup>

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<sup>46</sup> See the UNDP report by Ewa Wojkowska, *Doing Justice: How Informal Justice Systems Can Contribute* (Oslo: UNDP – Oslo Governance Centre, December 2006), available online at [www.undp.org/oslocentre/docso7/DoingJusticeEwaWojkowska130307.pdf](http://www.undp.org/oslocentre/docso7/DoingJusticeEwaWojkowska130307.pdf).

<sup>47</sup> Examples of these practices include female genital mutilation; early marriage; practices that prevent women from controlling their own fertility; female infanticide; or unfair dowry practices.

<sup>48</sup> For more on this, see Wojkowska, *Doing Justice*. (UNDP, Oslo Governance Centre 2006).

## OPTIONS FOR ACTION

Many donors support legal institutions, often through broader rule-of-law programmes. There has, however, been criticism that donors – insufficiently aware of partner countries’ historic legal traditions – have occasionally tried to ‘transplant’ their own legal system onto others. Any type of support to legal institutions should proceed from the legal tradition (or combination of systems) within the country. Especially relevant is the distinction between civil, common and traditional systems of law (see chapter 3.7). As reflected in the recommendations below, embassies could either focus on large-scale reform programmes or limit support to one specific legal actor’s performance and address some of its weaknesses.<sup>49</sup>

There are various options for action to strengthen the role of legal institutions within the NHRPS:

- Become informed: Embassy staff will usually have general impressions of the legal institutions’ strengths and weaknesses through general human rights reports. Trial monitoring by EU embassy staff has proven to increase insights into the functioning of legal institutions. Comprehensive analysis of the legal sector and its institutions is usually undertaken by legal experts from various fields and is best initiated through a collaborative effort by different donors.
- Contribute to long-term strengthening of the legal institutions. Successful legal reform should preferably be part of broader rule-of-law programmes and contain:
  - A comprehensive assessment that includes the overall formal or informal, and modern or traditional, legal system in which the legal institutions are embedded.
  - Identification of the people in society’s needs with regard to their access to legal institutions. Programmes should address institutional issues as well as matters of access.
  - A strategy adapted to local, cultural and historic legal traditions and practices.
  - Availability of sufficient funds and commitment for a longer period of time.
  - Strong ownership and participation (including in the analytic preparation) by a broad representation of legal actors, including supporting management and administrative actors.
  - Strong political commitment and the will for reform among legal actors, as well as the participation and commitment of state officials who understand and ‘manage’ the justice system, such as the ministry of justice.
  - Practitioners and trainers with knowledge and experience from within the same, or a similar, legal system.
  - Attention for expertise and technical know-how, as well as for basic needs such as facilities, remuneration and educational materials.

<sup>49</sup> For example, the Dutch embassy in Colombia has funded the office of the attorney-general in its tasks to address impunity; and the Dutch embassy in Bosnia and Herzegovina is directly funding the Registry of the State Court with the aim of addressing impunity and assisting Bosnia and Herzegovina to come to terms with human rights violations committed in its recent past.

- Promote increased access to legal institutions for all by, for example, funding legal aid initiatives, facilitating collaboration between community initiatives and legal institutions, supporting informal or alternative dispute resolution mechanisms, supporting legal awareness programmes (including existing regional mechanisms),<sup>50</sup> encouraging complementarity between informal and formal justice mechanisms, supporting civil society initiatives that aim to increase legal access, or working towards the reform of procedural law that increases access to legal institutions.
- Contribute to increased professionalism and human rights expertise among legal actors through, for example, distributing adapted human rights information to the legal institutions, organising training,<sup>51</sup> facilitating meetings or exchanges among legal actors from different countries, or through funding educational programmes, law clinics, law programmes within universities and/or civil society initiatives.
- Contribute to increasing legal institutions' accountability, for example through supporting initiatives that aim at increased transparency and publication of cases and judgments, improving recruitment procedures, supporting codes of ethics, or by strengthening legal actors' oversight bodies, such as complaint mechanisms, court monitoring bodies or lawyers' organisations.
- Contribute to increasing legal institutions' awareness and application of ESC rights, for example through educational activities related to case law on ESC rights or by supporting civil society initiatives to pursue violations of ESC rights in courts.<sup>52</sup>
- Contribute financially to the overall resources, including remuneration, available to legal actors.

<sup>50</sup> Such as the Inter-American Court on Human Rights, or the African Court on Human Rights.

<sup>51</sup> Incidental training programmes without follow-up or that are not embedded in longer-term reform programmes should be avoided.

<sup>52</sup> A rights-based approach towards development, as is being increasingly adopted by civil society organisations, may contribute to increasing legal enforcement of ESC rights.

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**BOX 10    STRENGTHENING LEGAL INSTITUTIONS IN CHINA**

Through the Sino-Dutch Programme on Legal Cooperation, the Dutch embassy in China funds projects aimed at further strengthening and developing the NHRPS in China. This programme includes many of the recommendations that have been identified in this chapter. The programme was established in consultation with actors involved in similar programmes, including UNDP, other member states and international institutions. Projects within the programme are approved by the Chinese Ministry of Commerce and are implemented through the inclusion and participation of institutions with expertise in human rights.

As implementation of existing legislation can be considered a major gap in the NHRPS, the programme mainly focuses on:

- Contributing to the development of a ‘legal culture’.
- Improving professional skills among legal actors and law enforcement.
- Contributing to the implementation of national legislation that has an impact on human rights.
- Strengthening legal initiatives among civil society.

The Dutch embassy also supports a project on juvenile justice, which is a joint initiative of Save the Children UK and the Panlong municipality in the southern Yunnan province of China. The project aims to provide an alternative mechanism for juvenile offenders who are convicted of relatively minor crimes, so that they serve alternative sentences instead of going to jail. The project will be duplicated in other provinces. Furthermore, the project can be seen as inspiration for the Chinese Ministry of Justice to rethink juveniles’ treatment within the criminal system. One of the more difficult issues, however, continues to be how to reintegrate these juvenile offenders into society, because of prejudice among the general population.

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**REFERENCES****Institutions**

- UN Special Rapporteur on the independence of judges; see [www2.ohchr.org/english/issues/judiciary/index.htm](http://www2.ohchr.org/english/issues/judiciary/index.htm).
- UNDP, Justice and Human Rights Programme; see [www.undp.org](http://www.undp.org).
- International Legal Resource Centre (this is part of the American Bar Association and serves UNDP global governance programmes and projects supporting legal reform and democratic institution-building); see [www.abanet.org/intlaw/intlproj/ilrc/home.html](http://www.abanet.org/intlaw/intlproj/ilrc/home.html).
- International Development Law Organisation (IDLO), *Rule of Law Assistance Directory* (this keeps track of international initiatives related to strengthening the ‘rule of law’); see [www.idlo.int/ROL/external/ROLHome.asp](http://www.idlo.int/ROL/external/ROLHome.asp).
- International Network to Promote the Rule of Law (INPROL) (this network aims to assist international rule-of-law specialists in their efforts to prevent conflict and stabilise war-torn societies); see [www.inprol.org](http://www.inprol.org).

- International Commission of Jurists (ICJ), Judges and Lawyers Programme (the ICJ provides legal expertise at both international and national levels to ensure that developments in international law adhere to human rights principles and that international standards are implemented at the national level); see [www.icj.org](http://www.icj.org).
- Public International Law and Policy Group (PILPG) (this operates as a global *pro bono* law firm, providing free legal assistance to states and governments that are involved in conflicts); see [www.publicinternationallaw.org](http://www.publicinternationallaw.org).
- International Association of Judges (IAJ) (an organisation of national associations of judges that aims to safeguard the independence of the judiciary, as an essential requirement of the judicial function, and to guarantee human rights and freedom); see [www.iaj-uim.org](http://www.iaj-uim.org).
- International Centre for Transitional Justice (ICTJ) (this assists countries that are pursuing accountability for past mass atrocities or human rights abuses); see [www.ictj.org](http://www.ictj.org).
- Lawyers without Borders (ASF) (this aims to contribute to the establishment and improvement of the rule of law in countries where the right of access to justice is not self-evident); see [www.advocatenzondergrenzen.nl](http://www.advocatenzondergrenzen.nl).
- Centre for International Legal Cooperation (CILC) (this Dutch institute is dedicated to the reform and strengthening of legal systems in developing countries and countries in transition); see [www.cilc.nl](http://www.cilc.nl).
- Van Vollenhoven Institute for Law, Governance and Development (a Dutch institute that seeks to contribute to better understanding of the formation and functioning of legal systems in developing countries); see [www.law.leidenuniv.nl/org/metajuridica/vvi/](http://www.law.leidenuniv.nl/org/metajuridica/vvi/).
- Lawyers for Lawyers (a Dutch organisation composed of lawyers who actively support lawyers who are hindered or threatened in practising law); see [www.advocatenvooradvocaten.nl](http://www.advocatenvooradvocaten.nl).

### Further reading

- UNDP, *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (New York: UNDP, 2003); see [www.undp.org/governance/guidelines-toolkits.htm](http://www.undp.org/governance/guidelines-toolkits.htm).
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  - Professional Training Series: *Manual on Human Rights for Judges, Prosecutors and Lawyers* (2002)
  - Toolkit: *Mapping the Justice Sector* (2006)
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- Amnesty International, *Fair Trial Manual* (London: Amnesty International, 1998); see [www.amnesty.org](http://www.amnesty.org).
- Van Vollenhoven Institute for Law, Governance and Development, *Access to Justice and Legal Empowerment* (Leiden: Van Vollenhoven Institute, 2008); and *Court Reform* (Leiden: Van Vollenhoven Institute, 2008); see online at [www.law.leidenuniv.nl/org/metajuridica/vvi](http://www.law.leidenuniv.nl/org/metajuridica/vvi).

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#### BOX 11 TRANSITIONAL JUSTICE

Does striving for peace and reconciliation in a post-conflict context imply that certain sacrifices should be made with regard to obtaining justice? Should embassies support peace and reconciliation efforts and mechanisms, or should they rather support justice mechanisms aimed at prosecuting past perpetrators? This subject has led to considerable international debate. Clarity and guidance can be obtained through the concept of ‘transitional justice’. Transitional justice is a response to systematic or widespread violations of human rights that seeks to find a country-specific and holistic solution to address past violations while at the same time ensuring peace, reconciliation and democracy. Although processes of transitional justice differ among countries and should be tailored to local realities, they usually encompass:

- Criminal prosecution and vetting procedures.
- Reparation to the victims.
- Truth-finding.
- Institutional reform of the security and legal sectors.
- Memorial activities and building a culture of peace.

Reconstruction efforts should integrate all of these elements. Internationally, there has been increasing recognition – based on various countries’ experiences – that durable peace cannot be obtained by ignoring past human rights violations and by allowing perpetrators of serious human rights violations to roam freely or, worse, to settle within newly formed governments. Reconciliation can never be a substitute for justice. This conclusion is backed by research in post-conflict countries, especially by the International Centre for Transitional Justice, which indicates that local populations around the world tend to prioritise justice in post-conflict situations. Addressing impunity, establishing vetting procedures and rebuilding the security sector and legal institutions could be priorities for embassies in post-conflict situations. Embassies should refrain, meanwhile, from supporting peace and reconciliation initiatives that lead to impunity for those who committed serious human rights violations in the past.<sup>53</sup>

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<sup>53</sup> More information on this subject can be found at the website of the International Centre for Transitional Justice at [www.ictj.org](http://www.ictj.org)

### 3.3 THE SECURITY SECTOR: POLICE, ARMED FORCES AND THE DETENTION SYSTEM

A professional and accountable security sector is a crucial element of a NHRPS. All security bodies should operate within a legal framework that guarantees human rights, accountability and that sets standards for the use of force. Security sector reform is hence vital, both for increased security and protection of human rights, but also as a precondition for sustainable development.

This chapter describes the police, detention system and the military individually, while also highlighting their interrelatedness, as each can make its own contribution to the overall NHRPS.



The security sector includes core security actors, such as the armed forces, police or intelligence actors, security management and oversight bodies, justice and law enforcement institutions and non-state security actors.<sup>54</sup> Unclear dividing lines or overlap between different security institutions exist in many countries, and the institutional organisation and respective mandates of the security actors are determined by historic and political developments.<sup>55</sup>

All security bodies should operate within a legal framework that guarantees accountability and human rights and that sets standards with regard to the use of force. In many countries the applicable legislative framework is outdated or stems from repressive regimes that have limited accountability and oversight of security actors. This chapter is therefore strongly linked to chapters 3.2 and 3.7 of this manual.

The international community has become increasingly aware of the importance of security sector reform (SSR), not only to contribute to increased security and protection of human rights, but also as an important precondition for sustainable development. Especially in post-conflict and fragile states, SSR is increasingly seen as a core element of reconstruction activities. Many donors are involved in SSR programmes and there is a huge body of literature on this issue.

<sup>54</sup> For a full definition, see the OECD/DAC handbook, *Supporting Security and Justice* (Paris: OECD, 2007); and the OECD/DAC Guidelines and Reference Series, *Security System Reform and Governance* (Paris: OECD, 2005); see [www.oecd.org](http://www.oecd.org).

<sup>55</sup> For example, in francophone countries the most common national system is the gendarmerie, which consists of professional and armed police forces, often deployed in rural areas and often operating under military structures.

SSR is a broad concept that covers a wide spectrum of activities. It aims to enhance security, increase professionalism and increase security actors' accountability. The OECD/DAC guidelines, which can be seen as the main guiding principles towards achieving SSR, identify several key elements and criteria for successful SSR. These include:

- The security sector should always be considered an interrelated system.
- Reform programmes should be based on democratic norms and human rights principles.
- All SSR programmes should be based on government ownership and commitment.
- SSR includes strengthening parliamentary, legal and other oversight mechanisms.
- SSR demands increased civil management and engagement by civil society.
- SSR should be based on a strong assessment of the system as a whole, including civilians' security needs.

SSR is a politically sensitive and long-term process. Windows of opportunity for SSR can result from post-conflict reconstruction efforts, a change of government or of military or police leadership, increasing democratisation within society, an identified need for SSR in development policies (such as within Poverty Reduction Strategy Papers), or an increased demand for SSR by civil society.

On the donor side, SSR often demands involvement by different actors, such as the Ministries of Foreign Affairs, Justice and Defence as well as civil society. There are options for embassies to address individual institutions within the security sector separately, with the aim of strengthening the overall NHRPS. Oversight and monitoring bodies outside the security sector, such as parliaments and the judiciary, are addressed in other chapters.

While highlighting the overall interrelatedness of different elements of SSR, this chapter will individually describe the police, detention system and the military.<sup>56</sup> This is done for practical reasons, but also because each of these institutions can make its own contribution to the protection of human rights and the overall NHRPS.

### **3.3.A POLICE AND HUMAN RIGHTS**

#### **INTRODUCTION**

The term 'law enforcement officials' includes all officers of the law – whether appointed or elected – who exercise police powers, especially the powers of arrest or detention and the use of force. This chapter will use the term police officials. The main tasks of any police force are the prevention and detection of crime, maintaining public order and assisting those in need. Police officials are therefore public service providers who have a responsibility to uphold and defend human rights.

<sup>56</sup> It is important to note that there might be considerable overlap between these different institutions, such as the example of military forces with a policing mandate.

The relationship between human rights and the police is twofold. From a human rights perspective, the police are frequently associated with a ‘negative’ element of the state. Indeed, police officials around the world are responsible for many human rights violations that occur, including administrative detention, torture, extrajudicial killings and discrimination. Where such situations occur, people lose trust in law enforcement institutions and refrain from (or are kept from) claiming their rights, which has a negative effect on the human rights situation as a whole. Nowadays we fortunately see more acknowledgement and understanding of the positive contribution that police forces are able to make to the promotion and protection of human rights. The police can be responsible for preventing and protecting people against violations, they can contribute to the fight against impunity, enable demonstrators to exercise their right to freedom of expression, or halt the trafficking of people. A professional, responsible and accountable police force is therefore a crucial element of a NHRPS. Any reform activities with regard to the police should proceed from these positive entry points, as doors will open towards collaboration with police institutions.

It is not uncommon for human rights violations committed by the police to be justified by references to the dangerous and harsh conditions under which police officials often work when dealing with serious and violent crimes. These conditions should be understood and acknowledged. In sum, police officers also have rights and this understanding should similarly be reflected in interventions aimed at police reform.

## KEY PRINCIPLES

What constitutes a professional police force that respects human rights? International standards with regard to policing and human rights describe in detail how police forces ought to operate. The most important standards are the **UN Code of Conduct for Law Enforcement Officials** and the **UN Basic Principles on the Use of Force and Firearms**. As well as these standards, the main binding human rights treaties also contain a range of provisions that are specifically relevant to the practices of law enforcement officials.<sup>57</sup> These standards should form the basis of programmes aimed at creating a more professional police force.

Yet these normative standards need to be implemented within a complex reality where various factors contribute to actual police performance. Human rights violations are not merely caused by lack of awareness of international standards. They also result from police personnel being insufficiently aware of their service delivery tasks towards the population. Violations can also result from accountability gaps in the legal framework, unclear mandates, a weak or unwilling executive, or a lack of independent and effective internal and external oversight mechanisms, such as a weak or corrupt judiciary.

<sup>57</sup> For example, the Convention against Torture, the Convention on Civil and Political Rights, the Convention on the Rights of Children or the Convention on the Elimination of All Forms of Discrimination against Women, all of which contain a range of articles that are directly relevant to daily police operations.

A simple lack of sufficient means to strengthen the police as a professional institution – such as adequate detention facilities or sufficient professional equipment – similarly contributes to a police force that is unlikely to respect human rights. Finally, police performance is also influenced by cultural perceptions about the police, levels of crime, poverty, and tribal and/or ethnic divisions that are not only reflected in society but also within the police force.

Although contexts may vary, the following key elements for a professional and accountable police force that protects human rights are important.

- A legislative framework, based on international standards, that clearly sets out the tasks and mandate of the police with regard to their three main tasks: the prevention and detection of crime; the maintenance of public order; and providing assistance to those in need. There should be no legislation that grants the police excessive powers or impunity.
- A clear separation between the police and the military (and its tasks) in law, institutional organisation, oversight and actual deployment.
- Standard Operational Procedures (SOPs), or guidelines and instructions on the use of force, that reflect international human rights standards such as the UN Basic Principles on the Use of Force.
- The presence of internal (such as complaint mechanisms) *and* external (such as an effective judiciary or a NHRI) accountability mechanisms that oversee police operations.
- Political and police leadership that is committed to an accountable police force and that supports reform activities.
- Sufficient resources for the police as an institution, which includes sufficient remuneration and the availability of equipment such as arms, means of communication and uniforms, etc.
- Police training that aims to increase ‘professional policing’ and includes human rights aspects. Awareness of specific rights and the protection needs of women and children should be a priority within this training. Police officials should have a general understanding of the most relevant human rights standards and what these mean in daily operations.
- Police forces that consist of and represent different groups within society, including women, minorities and different ethnic groups.
- A culture of service among the police, implying that police officials are aware of their task to deliver service to the population at large.
- Effective recruitment and vetting procedures that include human rights criteria. Past violators should be excluded from the police at all times.
- Effective dialogue/engagement structures between police forces and community/civil institutions.
- Private law enforcement officials with police tasks should be accountable under the same (operational) laws and mechanisms as other police forces.

## OPTIONS FOR ACTION

Police reform should preferably be integrated in broader security sector or rule-of-law reform programmes that address various elements of the NHRPS simultaneously. There are various options for action to strengthen the role of the police with regard to the protection of human rights:

- Become informed: For quick identification of some of the most urgent needs with regard to the police, embassy staff can consult specialised NGOs working on policing issues, the NHRIs, or UN offices of the OHCHR, Department of Political Affairs, Department of Peacekeeping Operations and UNDP. Police reform initiatives should always be based on a thorough assessment of the police, including analysis of the social, legal and political factors that contribute to police performance.<sup>58</sup>
- Contribute to long-term comprehensive police reform programmes aimed at creating a more professional police force. Successful reform programmes include:
  - A comprehensive assessment of the law enforcement system,<sup>59</sup> including identifying the most basic needs and perceptions of the local population with regard to the police. This also includes analysis of the institutional, political and cultural obstacles to a professional police force.
  - The full backing of political and police leadership, as well as the involvement of local communities.
  - A multi-stakeholder approach that includes legal oversight bodies (the judiciary), parliament and civil society.
  - An effort towards overall police professionalism that benefits the police in their daily operations. Professionalism includes, but is not limited to, human rights aspects.
  - Activities that address basic needs such as facilities and equipment. Programmes should combine the legal, moral and ‘higher’ objectives with the provision of basic needs.
  - Participation of (civilian) policing experts with a (technical) policing background as well as broader political understanding and sufficient cultural flexibility to adapt their knowledge and approaches to the context of the country.
  - Activities aimed at strengthening the legislative framework as well as governance oversight and management bodies, such as the ministries of justice or interior, parliamentary bodies or financial management bodies. This is needed to guarantee strong implementation and to follow up any reform programmes.
  - A strong long-term commitment, including funding, from donors.

<sup>58</sup> The *OECD/DAC Handbook on Security Sector Reform* has identified various types of assessments (and methodologies) for different phases and goals of SSR, including police reform. Assessments are mostly undertaken by multidisciplinary teams of experts. See *OECD/DAC Handbook on Security Sector Reform: Supporting Security and Justice*, available online at [www.oecd.org/dac/conflict/if-ssr](http://www.oecd.org/dac/conflict/if-ssr).

<sup>59</sup> Such as the *OECD/DAC Handbook on Security Sector Reform*.

- Contribute directly to specific police training programmes.<sup>60</sup> Individual training should include the involvement of police leadership and civil policing experts<sup>61</sup> and be followed up strongly through additional educational activities and revised curriculum and educational materials.
- Stimulate the integration of human rights into educational curricula by linking government and policing bodies that are responsible for educational and recruitment materials and procedures, and facilitating the development of human rights educational materials for the police (see the references below).
- Facilitate and encourage exchanges and meetings between police officials from different countries to increase understanding and practical guidance about the protection of human rights.
- Stimulate or finance community policing programmes that increase dialogue and cooperation between civilian and police institutions,<sup>62</sup> and encourage civil society to collaborate more intensively with law enforcement bodies.<sup>63</sup>
- Plead for the amendment of legislative shortcomings, such as provisions that allow the police to use excessive force or that grant them impunity from human rights violations.
- Encourage the government to establish or strengthen accountability mechanisms with regard to the police force, such as internal or external complaint mechanisms. Embassies could directly fund such mechanisms.
- Follow and monitor trials of accused law enforcement officials and express (public) concern about impunity.
- Explore opportunities for strengthening regional police cooperation programmes, such as the Southern African Police Regional Police Chiefs Cooperation Organisation, and encourage the integration of human rights into their work.
- Encourage strict national arms control, for example by supporting the national focus points on small arms that have been created in many countries as a result of the UN Programme of Action on Small Arms.<sup>64</sup>

<sup>60</sup> That is, training that is not taking place in the framework of large-scale police reform programmes.

<sup>61</sup> Practice has shown that programmes run only by human rights experts are unsuccessful.

<sup>62</sup> Community-based policing is a democratic style of policing. It seeks to reform the police to be more responsive and transparent providers of safety and security to communities, especially at local levels and in collaboration with the communities themselves.

<sup>63</sup> There are limited opportunities in some countries for increased collaboration between civil society and the police as a result of restricted freedom of expression, a non-democratic police force and/or weak civil society.

<sup>64</sup> United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001).

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**BOX 12 CONTRIBUTING TO POLICE REFORM IN INDONESIA**

The Dutch embassy has for several years contributed to police reform in Indonesia. Police reform programmes are overseen and implemented by the Indonesian National Police (INP) with support from the International Organisation for Migration (IOM). Opportunities for reform arose when the INP was formally separated from the Indonesian military in 1999.

The reform project aims to create a more accountable and professional police force through institution-building and integrating the principles and concepts of community policing and human rights standards in the police force. Project activities include training, development and distribution of materials for the integration of human rights in the police curriculum and the establishment of community police partnership forums. An attempt is being made to move away from transfer of knowledge (training) to more structural integration of community policing and human rights in all policing operations, such as through institutional reform at police training and expert institutions and the inclusion of community policing and human rights in standard police curricula.

The project has increased knowledge and understanding of human rights and community policing by different police forces and the leadership. Around 12,000 police officers and 505 chiefs of police have been trained. In addition, 78 Community Police Partnership Forums have been established and 487 police officers trained to become trainers in community safety. Evaluations have led to several positive conclusions, but have also identified some obstacles, including the need for:

- Stronger support for the project at commander level within the police forces.
- The programme to be integrated in a broader governance reform context.
- Increased collaboration with local actors, including civil society.
- Integration of gender aspects.
- Stronger police oversight mechanisms.

To respond to some of these concerns, the Dutch embassy in Indonesia has:

- Integrated gender more prominently into the programme by using the Gender Mainstreaming Guidelines<sup>65</sup> developed by UNDP.
- Signed a new MoU with police leadership and the IOM, confirming continued support to the INP.
- Complemented donor activities by addressing obstacles at the political level. For example, the Dutch Minister for Development Cooperation has visited the police programme in the province of Aceh and discussed progress with the Governor of Aceh.

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<sup>65</sup> See UNDP, *Gender Mainstreaming in Practice: A Handbook* (New York: UNDP, 2002).

### 3.3.B THE DETENTION SYSTEM

#### INTRODUCTION

The overall penal system, including prison conditions, depends on various cultural, institutional and political factors, which include available resources, perception towards crime and criminals, prison and penal laws, and the level of professionalism among police and detention personnel. Comprehensive prison reform has to be based on an understanding of these factors and address basic facilities as well as the overall criminal justice system. For the prison system to play a positive role in the overall NHRPS, it should evolve from a hotbed of human rights violations to a place that contributes to preventing these.

From a human rights perspective, prisons infringe on a basic human right – the right to liberty – and imprisonment should therefore only be utilised for criminal matters, as a last resort, and conform to international standards and the principles of a fair trial. The number of people in prison depends on the overall criminal justice system, including the legislative framework, legal institutions and law enforcement (see chapters 3.2, 3.3.A and 3.7). This section will focus on prison conditions.

Various types of prisons exist, including police, military or security facilities. A distinction should be made between centres where people are held in custody and longer-term detention locations. This is a crucial distinction, as torture and ill-treatment are known to occur most frequently in the first 48 hours after arrest.

Prison conditions are deplorable in most countries and prisons are places where human rights violations are common and widespread. These violations include the denial of medical needs, incommunicado detention, torture, overcrowded prisons, prolonged isolated detention or prolonged administrative detention. The excessive use of long periods of pre-trial detention is common in many countries. Society's most marginalised and vulnerable groups run an additional risk of experiencing human rights violations.

An often-heard argument is that most countries simply do not have the means and budget to improve detention facilities, and indeed prison reform is often at the bottom of the list of government priorities. It should be stressed, however, that political will and policies can bring about considerable change without extensive resources. Large financial means are not required to set guidelines for all prison staff on the use of torture, bring those who commit torture to justice, raise awareness of human rights or to amend penal legislation that allows for isolated detention.

## KEY PRINCIPLES

There are important international standards with regard to detention and human rights that need to be respected by all states, which include the:

- UN Standard Minimum Rules for the Treatment of Prisoners.
- UN Basic Principles for the Treatment of Prisoners.
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- UN Standard Minimum Rules for Non-Custodial Measures.
- UN Rules for the Protection of Juveniles Deprived of their Liberty.

Other core human rights standards also contain provisions of relevance to the prison system, especially the ICCPR and the UN Convention against Torture. The Optional Protocol to the UN Convention against Torture is of particular relevance, as it foresees the establishment of a system of regular visits to detention centres by independent international and national bodies. The UN Convention on the Rights of the Child clearly forbids life imprisonment for a child and sets standards for the detention of children whose parents are imprisoned.

Drawn from the standards above, key elements of an effective prison system that respects human rights are:

- Prison conditions for individual prisoners that conform to international standards, such as the cell's facilities and overcrowding, hygiene, the availability of medical services at all times and sufficient leisure opportunities.
- Prison staff should receive sufficient remuneration and have sufficient means at their disposal to fulfil their tasks.
- Special detention rules and procedures for different categories of prisoners (violent crimes, child offenders, women in detention, etc).
- Fair trial standards that are applied during arrests and while awaiting trial, such as the right to a lawyer, the right to contact family, etc; all those awaiting trial should have the right of habeas corpus,<sup>66</sup> and pre-trial detention should conform fully to international standards.<sup>67</sup>
- Maltreatment, torture, denial of medical needs, incommunicado detention or other human rights violations are forbidden in law and by means of practical guidelines; and allegations of violations should lead to investigation, suspension and/or prosecution.

<sup>66</sup> A *habeas corpus* petition is a petition filed with a court by a person who objects to his own or another's detention or imprisonment.

<sup>67</sup> Articles 9 and 14 of the ICCPR require that prisoners must be brought to trial and the proceedings completed within 'a reasonable time' or be released on bail. The UN Standard Minimum Rules for the Treatment of Prisoners set out standards for the detention of pre-trial detainees.

- Educational materials and practical guidelines for prison staff that include basic and practical knowledge about human rights.
- Effective internal and external oversight, complaint and accountability mechanisms to oversee the human rights situation within the penal system. The state should have ratified the Optional Protocol to the UN Convention against Torture and implemented its recommendations.

## OPTIONS FOR ACTION

Embassies could participate in large-scale SSR that includes the detention facilities. However, if there are no such projects, or the embassy has limited capacity, it could contribute to strengthening one specific element of the prison system, such as improving medical care for prisoners or working towards an improved system of juvenile justice.

There are several ways for embassies to contribute to improved prison conditions, including:

- Become informed through visiting prisons, contacting the NHRIs or specialised NGOs, or meeting with parliamentarians or government oversight bodies.
- Commit to long-term prison reform projects. Reform programmes should include the above-mentioned standards and criteria, be supported by prison authorities, include strengthening oversight bodies, improve different prison facilities and integrate programmes aimed at (vulnerable) groups of detainees. Prison projects should preferably be integrated in a broader reform programme that addresses other political and legal factors, such as the criminal justice system leading to convictions.
- Contribute to the establishment and functioning of specific internal and external oversight and complaint mechanisms with the prison system. This includes asking the state concerned to ratify the Optional Protocol to the Convention against Torture (see above) and aiding the state in setting up the mechanisms foreseen by this Protocol.
- Plead for amendment or reform of outdated prison and penal legislation so that it conforms to international standards.
- Contribute financially to training programmes for prison staff that increase understanding and the practical application of human rights standards on detention. Training should preferably be part of a broader effort towards increased professionalism, rather than focus only on human rights.
- Training should be given by those with broad experience of working inside the detention system and who understand the political and cultural perceptions of crime. Training always requires a strong follow-up.
- Provide technical assistance, exchange of information and fund or encourage meetings for prison staff around the world (see the references below).
- Fund NGOs that specialise in prison conditions or prison reform.
- Visit prisons and discuss the human rights situation with various oversight bodies and prison staff.
- Bring information about prison conditions to the attention of the International Red Cross, the NHRIs or civil society.

## REFERENCES (FOR 3.3.A and 3.3.B)

### Institutions

- National police institutions based in EU member states (some institutions have international departments involved in various police reform projects around the world).
- Council of Europe, Police and Human Rights Programme; see [www.coe.int/t/e/human\\_rights/Police](http://www.coe.int/t/e/human_rights/Police).
- OSCE Policing Online Information System (POLIS) (this is a comprehensive, multilingual resource that consolidates all aspects of law enforcement activities within the OSCE area, including police assistance, training techniques and funding opportunities); see [www.polis.osce.org](http://www.polis.osce.org).
- The OSCE Strategic Police Matters Unit (this supports policing in all participating states of the OSCE as part of the rule of law and fundamental democratic principles and, through assessment, offers expert advice and assistance and develops accountable policing services that protect and aid citizens); see [www.osce.org/spmu](http://www.osce.org/spmu).
- Open Society Justice Initiative (this operational programme of the Open Society Institute pursues, among other things, law enforcement activities that are based on the protection of human rights); see [www.justiceinitiative.org](http://www.justiceinitiative.org).
- Centre for Security Sector Management, Cranfield University (this undertakes research, training and knowledge management on security sector reform around the world); see [www.ssronline.org](http://www.ssronline.org).
- Commonwealth Human Rights Initiative, Programme on Policing (this NGO is mandated to ensure the practical realisation of human rights in the countries of the Commonwealth); see [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org).
- SARPCCO (the Southern African Regional Police Chief Council Organisation – an official forum that comprises all police chiefs from Southern Africa).
- International Committee of the Red Cross (the ICRC is mandated by the international community to be the guardian and promoter of international humanitarian law and makes regular visits to prisons all around the world); see [www.icrc.org](http://www.icrc.org).
- World Organisation against Torture (OMCT) (OMCT is the main coalition of international NGOs fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment).
- Saferworld, Security and Justice Sector Programme (this NGO works on SSR, including community-based policing projects); see [www.saferworld.org.uk](http://www.saferworld.org.uk).

## Further reading

- Compilation of UN standards on detention; see [www2.ohchr.org/english/law/index.htm#instruments](http://www2.ohchr.org/english/law/index.htm#instruments).
- OECD/DAC Guidelines and Reference Series, *Security System Reform and Governance* (Paris: OECD, 2005); and the handbook *Supporting Security and Justice* (Paris: OECD, 2007); see [www.oecd.org](http://www.oecd.org).
- OHCHR Professional Training Series no. 5, *Human Rights and Law Enforcement* (a manual, pocket book and trainer's guide); Professional Training Series no. 3, *Human Rights and Pre-trial Detention*; and *Manual on Human Rights and Prisons*; see online at [www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx](http://www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx).
- Council of Europe, several publications on policing and human rights; see [www.coe.int/t/e/human\\_rights/Police](http://www.coe.int/t/e/human_rights/Police).
- UNDP, *Police Reform and Human Rights* (New York: UNDP, 2004); see online at [www.undp.org/governance/docs/HR\\_Pub\\_PoliceReform&HR.pdf](http://www.undp.org/governance/docs/HR_Pub_PoliceReform&HR.pdf).
- Western Cape Provincial Administration, Department of Community Safety (South Africa), *Community Police Forum Toolkit* (Cape Town: Cape Gateway, 2003); see online at [www.capegateway.gov.za/eng/pubs/public\\_info/C/32970](http://www.capegateway.gov.za/eng/pubs/public_info/C/32970).
- Commonwealth publications on police reform; see online at [www.humanrightsinitiative.org/publications/default.htm](http://www.humanrightsinitiative.org/publications/default.htm).
- Report of the US Department of Justice David Bayley, *Democratising the Police Abroad: What to Do and How to Do It* (Washington DC: Office of Justice Programs, 2001); see [www.ojp.usdoj.gov/nij/pubs-sum/188742.htm](http://www.ojp.usdoj.gov/nij/pubs-sum/188742.htm).
- Amnesty International, *Understanding Policing: A Resource for Human Rights Activists* (London: Amnesty International, 2006); see [www.amnesty.nl/policeandhumanrights](http://www.amnesty.nl/policeandhumanrights).
- Human Rights Watch, information on prison conditions; see [http://hrw.org/doc/?t=global\\_prisons](http://hrw.org/doc/?t=global_prisons).
- International Centre for Criminal Law Reform and Criminal Justice Policy, *International Prison Policy Development Instrument* (Vancouver BC: ICCLR, 2001).

## 3.3.C THE MILITARY

### INTRODUCTION

The military is only partly related to the NHRPS, as its primary goal is to defend the country against external aggression. Yet the military does influence the national human rights context, especially through its involvement in internal conflicts or when it is deployed to fulfil tasks that are normally associated with the police. Unfortunately, the military is often used for repression or to protect the interests of power-holders. The military may be composed of various actors, including special forces, paramilitary, intelligence units and border management.

While the military is intended to maintain peace and security in society and to protect civilians, military personnel can be responsible for violations of international humanitarian law (IHL), including war crimes, as well as violations of international human rights law.

Some claim that human rights violations are simply unavoidable during war operations. This view should be countered. IHL is a set of rules that seeks, for humanitarian reasons, *to limit the effects of armed conflict*. It protects people who are not, or are no longer, participating in hostilities and restricts the means and methods of warfare.<sup>68</sup> It should also be noted that human rights law continues to apply during (internal) armed conflict, with the possibility of derogation in exceptional circumstances (see Box 24). A professional military that abides by IHL, as well as by international human rights standards, can make an important contribution to the NHRPS.

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**BOX 13 THE BASICS OF INTERNATIONAL HUMANITARIAN LAW**

International humanitarian law (IHL) is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. A major part of international humanitarian law is contained in the four Geneva Conventions of 1949 and the Additional Protocols of 1977 relating to the protection of victims of armed conflict. The most fundamental elements of IHL concern:

**Humanity:** This concerns obligations with regard to the protection of wounded, sick or captured members of the armed forces as well as those who do not take part in the fighting, such as civilians or medical military personnel.

**Military necessity:** This is legal justification for attacks on legitimate military targets that may have adverse consequences for civilians and civilian objects. The concept of military necessity implies that striving to win the war or battle is a legitimate consideration, although this must conform to other considerations of IHL, including proportionality.

**Proportionality:** This principle relates to means of warfare and implies that even in cases of a clear military target, it is not possible to attack if the harm to civilians or civilian property is excessive in relation to the concrete and direct military advantage.

**Distinction:** An indiscriminate attack is one in which the attacker does not distinguish between the civilian population and combatants and between civilian objects and military objectives. An indiscriminate attack also includes using means and methods that are inherently unable to make a distinction between civilian and military targets.

**The principle of superfluous injury or unnecessary suffering:** This principle prohibits particular weapons and methods of warfare.

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<sup>68</sup> It is crucial to note that the applicability of IHL is not limited to a state's military forces. Non-state actors, such as guerrilla groups, are also bound to IHL, especially through Article 3, which is common to the four conventions. Article 3 is applicable in cases of armed conflict that are not of an international character and that occur in the territory of one of the contracting parties to the 1949 Conventions. It also applies to a situation where the conflict is within a state, between the government and rebel forces or between the rebel forces themselves. It sets certain minimum standards related to the treatment of persons taking no active part in the hostilities.

## KEY PRINCIPLES

When and how can we speak of armed forces that are sensitive to human rights and that contribute to, and respect, IHL and protect human rights? Although no country may live up to this, the following criteria should be strived for:

- The military and its operations are guided by an effective and up-to-date legal framework that incorporates IHL standards and international human rights law. These standards are reflected in their mandate and operational guidelines.
- The military is accountable to and/or overseen by international oversight mechanisms, such as a complaints mechanism, as well as external oversight institutions that include the executive, an effective judiciary and independent bodies such as NHRIs or civilian oversight mechanisms. IHL violations should lead to investigations and, if needed, prosecution. There are no immunity clauses for the military within national legislation.
- Military personnel have a general and basic understanding of IHL and how this relates to military operations. They have preferably received practical training that enables them to apply these standards to daily operations.
- Military forces are adequately equipped, resourced and remunerated. Anti-corruption measures are in place among the military forces.
- There is political will among the political and military leadership for a more professional and accountable military force. Police and military leadership regularly send instructions or give public statements on the need for all armed forces to abide by IHL and respect human rights.
- There are opportunities for dialogue between the military and human rights actors such as NHRIs, NGOs and centres of expertise.
- Military forces reflect gender and ethnic balances within their units, including at higher levels. Children should never be part of military operations and the recruitment of children under the age of eighteen should comply with international legal obligations.<sup>69</sup>

<sup>69</sup> The International Convention on the Rights of the Child defines a child as anyone under the age of eighteen, unless majority is attained at an earlier age under the law applicable to the child. The Optional Protocol to the Convention on the Involvement of Children in Armed Conflict forbids any state to have anyone aged under eighteen 'take direct part in hostilities', although this leaves open the option of persons between fifteen and eighteen joining military forces without direct involvement in hostilities. However, states that have ratified the Protocol have increasingly expressed their support for the so-called 'straight eighteen' rule, which sets out a minimum of eighteen years of age for any voluntary recruitment in the army.

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**BOX 14 PRIVATE MILITARY AND SECURITY COMPANIES**

States, as well as companies, increasingly use Private Military and Security Companies (PMSCs) for security, intelligence, transport or other tasks. In some countries this has led to more private security personnel than official police personnel. PMSCs include mercenary groups, private military firms that operate in conflicts, or firms that fulfil security tasks for multinational businesses.<sup>70</sup> There is growing concern over serious human rights violations committed by PMSCs. In contrast to a state's security providers, PMSCs are not directly accountable to public oversight. There are gaps in domestic legal frameworks, including criminal law, with regard to individual accountability of PMSC members.

Some states have adopted laws that regulate PMSCs that provide security services within their territory. At the international level, one can also claim that multilateral treaties or extraterritorial application of domestic law can apply to PMSCs' operations. Yet the international community has yet to take concrete steps towards building international consensus around PMSC standards with a view to crafting and implementing effective international PMSC regulatory frameworks. Governments should strive to control fully all private security forces' operations and set legislation that guarantees that PMSCs abide by the same laws and procedures, based on international law, as all other security or police personnel.<sup>71</sup>

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**OPTIONS FOR ACTION**

Opportunities for military reform depend on the historical and cultural ideology within the military and the political context in which it operates. Possibilities for military reform are limited in some countries. It is in general a highly sensitive process. However, in most countries we find windows of opportunity that allow for certain changes. These often arise in a post-conflict situation or result from new political or military leadership or stronger pressure from within society. Embassies can contribute to the military being a significant element of the NHRPS in the following ways:

<sup>70</sup> A relevant international instrument for security agencies hired by companies is the Voluntary Principles on Security and Human Rights. These principles guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. They refer to already existing standards such as those on policing and human rights to which all security personnel need to adhere.

<sup>71</sup> The Geneva Centre for the Democratic Control of Armed Forces has published a document entitled European Practices of Regulation of PMSCs and Recommendations for Regulation of PMSCs through International Legal Instruments, which makes various recommendations on the various political and legal aspects of PMSCs and how to increase their accountability. The OECD/DAC Handbook on Security Sector Reform offers a model for analysing and reforming PMSCs.

- Become informed: Information on the performance of the armed forces, including human rights violations, is usually well known to embassy staff. Before contributing to long-term military reform, however, thorough assessment of the armed forces would be needed, including its understanding and application of IHL.
- Contribute to overall military reform, preferably as part of a broader security sector and governance reform programme. Military reform programmes should at minimum:
  - Be based on a thorough assessment.<sup>72</sup>
  - Proceed on the basis of (a certain level of) ownership among military actors.
  - Be adapted to the local, cultural and historic context in which the military operates.
  - Proceed on the basis of a multi-stakeholder approach that involves legal actors, civil society and (if relevant) non-state security actors.
  - Aim to strengthen internal and external accountability mechanisms, including investigative and disciplinary mechanisms within the military.
  - Aim to strengthen the capacity of government oversight and management bodies such as the ministries of justice or interior, parliamentary bodies or financial management bodies, so as to guarantee strong implementation and follow up of reform programmes.
  - Pay specific attention to gender aspects and to the role of children in armed forces.
  - Integrate specific programmes addressing corruption.
- Contribute to individual training of military personnel on IHL and human rights law.<sup>73</sup> This training should be embedded in an overall drive towards professionalism among the armed forces and include experts with a military background. Training programmes should include the military leadership and be followed up by more structural integration of human rights into educational and recruitment procedures.
- Encourage a more gender-sensitive military force in which more women participate and in which the protection of women’s human rights receives specific attention in all training and education programmes.<sup>74</sup>
- Plead for the amendment of legislative shortcomings that negatively influence military performance with regard to human rights, such as the removal of immunity legislation or legislation that grants the military excessive powers.
- Press for, or attend, trials of military officials who are accused of human rights violations and raise impunity concerns in political dialogues and/or demarches.
- Encourage (increasing) dialogue between the military and civil society.<sup>75</sup>

<sup>72</sup> For guidance on this, see the *OECD/DAC Handbook on Security Sector Reform*, which has identified various types of assessments (and methodologies), including on the defence sector.

<sup>73</sup> It is to be noted that High Contracting Powers (states) to the Geneva Conventions have obligations to implement the Conventions, which include spreading knowledge on IHL, training personnel, adopting legislative provisions and others. It also includes the obligation to all High Contracting Powers ‘to undertake to respect and ensure respect for the present Convention in all circumstances’, meaning that state parties should also come into action when another state violates the Convention.

<sup>74</sup> Relevant standards of use include UN Security Council Resolution 1325, which addresses the impact of war on women; and UN Security Council Resolution 1820, which calls for complete cessation by all parties to armed conflict of all acts of sexual violence against civilians.

<sup>75</sup> As this can be a highly sensitive process, EU embassies should do so through a step-by-step approach. Confidence-building measures might be a first step.

- Support demobilisation and reintegration programmes, on the condition that these conform to international human rights standards and exclude impunity for serious human rights violations, especially those violations that are summed up in the Rome Statute of the International Criminal Court.

## REFERENCES

### Institutions

- National defence academies or institutions within the EU, as these might contain branches that collaborate with and/or advise the military abroad.
- OSCE military reform programme (this offers practical activities conducted by OSCE field operations to assist states in: reforming their legislation; downsizing and/or converting their armies; training personnel on servicemen's rights and humanitarian law; and other areas related to military reform); see [www.ocse.org](http://www.ocse.org).
- Geneva Centre for the Democratic Control of Armed Forces (DCAF) (this provides in-country advisory support and practical assistance programmes, advocates good practices and makes policy recommendations to ensure effective democratic governance of the security sector); see [www.dcaf.ch](http://www.dcaf.ch).
- Centre for Security Sector Management, Cranfield University (this conducts research, training and knowledge management on SSR around the world); see [www.ssronline.org](http://www.ssronline.org).
- Global Facilitation Network for Security Sector Reform (this organisation builds and facilitates networks of policy-makers, practitioners and civil society organisations involved in SSR); see [www.ssrnetwork.net](http://www.ssrnetwork.net).
- International Committee of the Red Cross (the ICRC is mandated by the international community to be the guardian and promoter of international humanitarian law and makes regular visits to prisons all around the world); see [www.icrc.org](http://www.icrc.org).

### Further reading

- OECD/DAC Guidelines and Reference Series, *Security System Reform and Governance* (Paris: OECD, 2005); see [www.ocse.org](http://www.ocse.org).
- OECD Handbook, *Supporting Security and Justice* (Paris: OECD, 2007); see [www.oecd.org](http://www.oecd.org).
- OSCE Handbook, *Handbook on Human Rights and Fundamental Freedoms in the Armed Forces during Peacetime* (Paris: OECD, 2006); see [www.ocse.org](http://www.ocse.org).
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- Report of the UN Secretary-General, *Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform* (New York: United Nations, 2008); see [www.un.org](http://www.un.org).
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- ICRC information on IHL; see [www.icrc.org/ihl](http://www.icrc.org/ihl).
- Saferworld, *Addressing the Role of Private Security Companies within Security Sector Reform Programmes* (London: Saferworld, 2007); see [www.saferworld.org.uk](http://www.saferworld.org.uk).

## 3.4 PARLIAMENT AND HUMAN RIGHTS

Parliament is the prime guardian of human rights and the main body to ensure the executive's accountability.

Parliamentary activity relates to all human rights: political, civil, economic, social or cultural.

This chapter suggests ways to strengthen the effectiveness of parliaments and parliamentarians in defending human rights and thus fortifying the NHRPS.



### INTRODUCTION

Human rights are intended to protect civilians against a state's misuse of power. Parliament, as a body aimed at overseeing and controlling the executive branch of a state, can therefore ideally be seen as a prime guardian of human rights and the main body to ensure accountability of the executive. Parliamentary activity as a whole – whether it concerns legislative, budgetary or overseeing functions – relates to all human rights, whether political, civil, economic, social or cultural. The main tasks of an effective parliament with regard to human rights are:

- Involvement in the process of ratifying international human rights treaties and integrating them in national law.
- Ensuring the consistency of new or draft legislation with international human rights standards.<sup>76</sup>
- Ensuring that specific laws and policies (general and subject-specific) for the protection of human rights are drafted and implemented and ensuring a sufficient budget for implementation.
- Following up on recommendations of UN treaty bodies or other human rights mechanisms.
- Initiating or participating in the establishment of human rights institutions (such as NHRIs) and other mechanisms in society that aim to protect human rights.
- Raising specific human rights violations in parliament, including with regard to the protection of individuals.
- Creating specific parliamentary committees on human rights.

Parliamentarians themselves are at risk in some countries of becoming victims of human rights violations such as detention, harassment, torture or disappearance. In turn, parliamentarians can contribute directly or indirectly to human rights violations, for

<sup>76</sup> The role of parliament in this field is specifically relevant in common law systems where parliament has to pass legislation to 'incorporate' the treaty provisions into domestic law.

example through ‘hate speech’ or by initiating discriminatory initiatives or laws. In some countries parliament is simply non-existent or has no powers whatsoever, which limits opportunities for support of human rights. Most parliaments within democratic countries are organised in regional and/or international parliamentary organisations, such as the Inter-Parliamentary Union, an international organisation of parliaments of sovereign states that fosters contacts and coordination among parliaments and parliamentarians of all countries and contributes to the defence of human rights.

## KEY PRINCIPLES

What does it take for an parliament to understand human rights fully and act accordingly? Parliament’s effectiveness depends in general on many factors, including its powers, independence, financial means and facilities and its expertise. For a parliament to implement its human rights responsibilities successfully, and play a meaningful role in the overall NHRPS, it is important that:

- Parliament is elected freely, and represents and is composed of all groups in society.
- Parliamentarians enjoy freedom of expression and are able to do their work, including the promotion of human rights, without any fear of harassment, intimidation or other violations.
- Parliamentarians have a basic understanding of the national and international legal framework with regard to human rights and are able to integrate these standards in their daily work. This includes awareness of both civil and political rights as well as ESC rights and how these form the basis of development.
- Human rights are reflected in the internal institutional organisation of parliament and political parties through complaint mechanisms, anti-discrimination policies, gender policies, etc.
- Parliamentarians have technical and theoretical know-how to analyse the compatibility of national laws with international human rights obligations.
- Parliament is aware of, and makes use of, UN human rights mechanisms, including the UN treaty bodies and UN Special Procedures.
- Parliamentarians are provided with adequate remuneration, resources and budget to do their work.
- Parliament regularly collaborates and meets with civil society and NHRIs, and follows up on their reports.
- Parliament oversees the implementation of national human rights plans and policies and ensures sufficient budgets for human rights policies.
- Parliament continues to be operational at all times, including during a state of emergency, and should be involved in any decision-making process related to a state of emergency.

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**BOX 15** PARLIAMENTARY HUMAN RIGHTS BODIES: WINDOW DRESSING OR EFFECTIVE MECHANISMS?

Many countries have parliamentary human rights bodies, such as commissions or working groups, within parliament. These can be seen as a signal that parliament considers human rights to be important. Their tasks depend on the mandate given to them. Yet the existence of these bodies has proven to be no guarantee for improvement of human rights, as their influence varies considerably. Their presence creates a risk that human rights activities become the responsibility of only a small representation of parliamentarians rather than human rights being a priority throughout parliament.

Parliamentary human rights bodies can, however, play a meaningful role in the promotion of human rights if they:

- Have a comprehensive human rights mandate and powers that encompass budgetary, legislative and oversight functions.
- Are competent to deal with any human rights issues, including individual cases.
- Have the ability to take legislative initiatives.
- Consist of members selected on the basis of education, experience and expertise.
- Have the competence and moral weight to advise other parliamentary bodies.

More information on parliamentary human rights bodies can be found in the National Democratic Institute's publication *Parliamentary Human Rights Committees*.<sup>77</sup>

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**OPTIONS FOR ACTION**

Embassies are most often in touch with the executive branches of the state. However, there are several ways for embassies to link with parliament and to strengthen parliament's performance with regard to human rights:

- **Become informed:** Embassies can obtain more in-depth information on a parliament's role with regard to human rights through the Inter-Parliamentary Union (IPU) or regional parliamentary bodies such as the Commonwealth Parliamentary Assembly. UN country presences are often involved in parliamentary reform programmes.

<sup>77</sup> National Democratic Institute, *Parliamentary Human Rights Committees* (Washington DC: NDI, 2005), available online at [www.accessdemocracy.org/library/1905\\_gov\\_parlhrscommittees\\_080105.pdf](http://www.accessdemocracy.org/library/1905_gov_parlhrscommittees_080105.pdf)

- Fund training and capacity-building programmes for parliamentarians. All parliamentary development programmes should be on the basis of a rights-based approach, meaning that all support should integrate human rights standards and specify parliament's duties and role with regard to human rights. There are various international institutes involved in training parliamentarians with which embassies can collaborate.<sup>78</sup>
- Facilitate meetings between parliamentarians from different countries with the specific aim of discussing human rights issues. Stimulate parliamentarians to work with or join the IPU.
- Contribute to the legislative empowerment of parliament through pleading for legislative changes on the role and mandate of parliament. This is particularly relevant and opportune in cases of constitutional reform or during post-conflict reconstruction efforts.
- Distribute specific human rights information to parliament, especially the UN manual entitled *Human Rights: Handbook for Parliamentarians*.<sup>79</sup>
- Facilitate cooperation between parliamentarians and the NHRIs. Use can be made of the Abuja Guidelines.<sup>80</sup>
- Offer technical advice to parliament about converting treaty obligations into national law.
- Liaise with specific parliamentary bodies on human rights and ask them to include EU priority issues in their work, including activities related to individual cases.
- Support parliamentarians who are under threat as a result of their activities in the field of human rights and/or democracy. In this regard the EU Guidelines on Human Rights Defenders offer opportunities for action and can be used on a bilateral or multilateral basis.

<sup>78</sup> For example, the Commonwealth Parliamentary Association (CPA) runs training programmes on human rights for parliamentarians in Commonwealth member states; the IPU is involved in capacity-building of parliamentary human rights bodies; and the World Bank has a separate programme on training parliamentarians.

<sup>79</sup> *Human Rights: Handbook for Parliamentarians* (Geneva: IPU and OHCHR, 2005).

<sup>80</sup> See the Abuja Guidelines on the Relationship between Parliaments, Parliamentarians and Commonwealth National Human Rights Institutions, agreed at the CHOGM, Abuja, Nigeria, December 2003.

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**BOX 16 SUPPORTING GEORGIA'S PARLIAMENT**

Following the 'Rose Revolution' in Georgia in 2003, the European Commission decided to make €4.65 million available under its Rapid Reaction Mechanism (RRM) for measures to reinforce the rule of law and democratic processes in Georgia, which included reform of the Georgian parliament. Several programmes have been established that aim to advance democratic governance, including the fight against corruption, by improving the professionalism and working conditions of parliament and parliament's role in overseeing the executive, and enhancing parliament's capacities in terms of EU integration policies and legislation. Strengthening parliament represents one of the most important components of the overall effort to institutionalise democratic practices and traditions in post-revolutionary Georgia.

Several other institutions and donors are involved in these projects, including the OSCE and UNDP. Although such projects contribute to a more effective and professional parliament, this does not necessarily imply that human rights are explicitly and strongly integrated. Embassies could contribute to such projects and stress that human rights are at the basis of all support to parliament.

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**REFERENCES****Institutes**

- Inter-Parliamentary Union (IPU) (this fosters contacts, coordination and exchange of experience among parliaments and parliamentarians of all countries, and contributes to the defence and promotion of human rights. The IPU seeks to strengthen the role of parliaments as guardians of human rights worldwide); see [www.ipu.org](http://www.ipu.org).
- UNDP, Parliamentary Development Programme; see [www.undp.org/governance/sl-parliaments.htm](http://www.undp.org/governance/sl-parliaments.htm).
- Commonwealth Parliamentary Association (CPA) (CPA members promote knowledge and understanding about parliamentary democracy and respect for the rule of law and individual rights and freedoms in the Commonwealth); see [www.cpahq.org](http://www.cpahq.org).
- European Parliamentarians for Africa (AWEPA) (this organisation works to support the functioning of parliaments in Africa and to keep Africa on the political agenda in Europe); see [www.awepa.org](http://www.awepa.org).
- National Democracy Institute (NDI) (this non-profit organisation works to strengthen and expand democracy worldwide); see [www.ndi.org](http://www.ndi.org).
- Parliamentary Network on the World Bank (this global action-oriented organisation of parliamentarians advocates transparency and accountability in international development); see [www.pnowb.org](http://www.pnowb.org).
- East– West Parliamentary Practice Project (EWPPP) (this works to support and strengthen the paramount democratic institution – the parliament – in countries faced with challenges related to the long process of democratic, political, economic and social transition); see [www.ewppp.org](http://www.ewppp.org).

### Further reading

- OHCHR and IPU, *Human Rights: Handbook for Parliamentarians* (Geneva: IPU and OHCHR, 2005).
- IPU, *Resource Database on Parliament and Human Rights*; see [www.ipu.org/hr-e/parliaments.htm](http://www.ipu.org/hr-e/parliaments.htm).
- National Democratic Institute (NDI), *Parliamentary Human Rights Committees* (Washington DC: NDI, 2005); see [www.accessdemocracy.org/library/1905\\_gov\\_parlhrscommittees\\_080105.pdf](http://www.accessdemocracy.org/library/1905_gov_parlhrscommittees_080105.pdf).
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- IPU, *Directory of Parliamentary Human Rights Bodies*; see [www.ipu.org/parline-e/Instance-hr.asp](http://www.ipu.org/parline-e/Instance-hr.asp).
- Commonwealth Parliamentary Association, *Commonwealth Human Rights Module for Parliamentarians* (London: CPA, 2006); see [www.cpahq.org](http://www.cpahq.org).

## 3.5 CENTRAL AND LOCAL GOVERNMENT

States possess the prime responsibility for protecting human rights, and accountability relates to *all* levels of government. While central government is legally responsible for protecting human rights and is the main architect of a NHRPS, a wide gap exists in many countries between laws at the central level and their practice and implementation at a lower state level. Local governments play a prime role in bridging this gap.

Human rights-sensitive central and local administrations are essential elements of an effective NHRPS. Decentralisation, when accompanied by strong accountability, civil participation, democratic representation and increased transparency, can make an important contribution to human rights.



### INTRODUCTION

States bear the prime responsibility for the protection of human rights and their accountability relates to all levels of government: central, regional or local. Central and local governments should be seen as the prime architects of the overall NHRPS and they create the conditions for it to flourish. With regard to human rights, the international human rights community has mainly focused on the responsibilities and actions of central government. This chapter, however, will also pay specific attention to the role of local government with regard to human rights.

#### Central government

The central state is the legally and morally responsible entity for the protection and promotion of human rights. It should do so mainly through:

- Ratifying and implementing human rights standards and adopting domestic laws that protect human rights for all in society.
- Establishing and overseeing effective and accountable institutions for the protection of human rights, including a strong judiciary, responsible police forces and NHRIs.
- Ensuring oversight mechanisms, administrative procedures and complaint and redress mechanisms at all levels in society to which people can turn in cases of violations.
- Ensuring that non-state actors respect human rights, for example by imposing laws against domestic violence or by promoting labour rights among business communities.
- Drafting and implementing specific human rights policies, such as anti-discrimination policies, human rights education or national action plans.
- Ensuring accountability for human rights violators and taking strong action against impunity.

- Creating an enabling environment in which local branches of government understand and implement their human rights obligations and have adequate resources to do so.

In sum, the central government is responsible for defining the overall NHRPS, and in doing so it should consult and work with local governments. That said, a strong NHRPS is not always in the interest of many government leaders, as it limits their powers and makes them accountable for human rights violations. In addition, powerful local ethnic communities at the lower state level might actively object to a range of universally accepted human rights standards and thus hinder their implementation.

### Local government

A country might have ratified the UN Convention against Racism and drafted a national policy on the basis of it, yet in practice local officials continue to discriminate on a daily basis in their service delivery tasks to people. Food distribution might be targeted towards certain preferable groups or discriminatory practices might occur in the (application of) legalisation related to land ownership or housing, access to education or health services. There is a wide gap in many countries between laws and policies at the central level, including on human rights, and the actual practice and implementation thereof at the lower state level. Local governments have a prime role to play in bridging this gap.

Local government actors may include municipalities, state authorities, city councils, government-run local health or education centres and local law enforcement. The role of local governments in relation to human rights has often been underestimated or neglected. Human rights-sensitive central and local administrations are essential elements of an effective NHRPS. Central and local administrations implement the central government's laws and regulations, set administrative procedures and practices, and interact with individuals.

In its service delivery tasks, local government is responsible for respecting and protecting basic human rights. It should ensure that all services are provided on a non-discriminatory basis. This includes services in the areas of education, water and sanitation, housing, policing, or local judicial or security tasks. All of these tasks are about the fair and just promotion of human rights. Central and local administrations should therefore be monitored, both internally – through administrative procedures or recourse against administrative decisions – and externally – through legal institutions or NHRIs. Local administrations should ensure full accountability for all of their institutions, including local police or legal institutions. Local administrations are also responsible for the overall development of their territories. Their initiatives in the areas of land reform, infrastructure or construction may have human rights impacts.

The integration of human rights into local governance is linked to a process of *decentralisation*. In many countries we see a general trend towards devolution of some powers to lower tiers of government. Decentralisation aims to enhance a state's capacity to accelerate economic and social dynamics at the local level and to strengthen the participation and power of municipalities and grassroots communities. Decentralisation

does not automatically imply improvement of human rights. In some cases it may result in further disempowerment of local communities and disadvantaged groups if there is an underlying culture of corruption, patronage, patriarchy and non-accountability that remains intact. However, when decentralisation is accompanied by stronger accountability, more civil participation, democratic representation, enhanced service delivery, increased transparency and less corruption, it can make a major contribution to human rights. A human rights-based approach to decentralisation is therefore of crucial importance.

Human rights-sensitive local governance has several benefits for citizens as well as public officials:

- It reaffirms the legal obligations that (local) government has with regard to human rights. In other words, it redefines ongoing tasks and responsibilities in terms of human rights.
- It converts and ensures that national legislation and policies are implemented in daily practice.
- It increases citizens' awareness of their rights and their possibilities to claim these rights.
- It allows for more information about, and participation in, policy-making at local levels.
- It helps local government to identify and thus to eliminate existing exclusion of certain groups.
- It offers local government officials objective standards and tools to plan, implement and assess their programmes, and enables them to integrate the principle of non-discrimination in all of their policies and practice.

## KEY PRINCIPLES

### Central government

The central government is the actor primarily responsible for establishing an effective NHRPS. This implies that:

- Sufficient resources exist for all elements of the NHRPS, including the judiciary, law enforcement and NHRI.
- Strong and well-resourced government bodies are in place, which are responsible for managing and overseeing the security sector, judiciary and/or other institutions.
- Government policies, including in the areas of health, education, migration or social affairs, should reflect international human rights principles, especially the principle of non-discrimination.
- Different ministries are aware of their specific human rights obligations. Relevant ministries should have human rights desks or expertise to guarantee the integration of human rights into all relevant policies.
- Human rights education should be fully integrated into the primary and secondary school systems and additionally promoted throughout society at all levels, by means such as the media, NHRIs and community projects (see chapter 3.8).

- A national action plan on human rights, with sufficient political backing and budget, clearly defines the tasks of different ministries with regard to human rights (see chapter 3.8).
- Subject-specific policies aim to address human rights violations, such as policies on the protection of minorities, anti-discrimination or violence against women.
- Effective internal and external oversight mechanisms exist at all levels in society, including complaint and redress mechanisms.
- Strong electoral policies exist that provide for regular elections in which anyone can participate without fear of harassment or discrimination, that foresee independent election monitors and mechanisms, and that guarantee the right for everyone to take part in government.
- Strong commitment exists from the central government to integrate its human rights obligations at all levels in society. Central government should send signals to local authorities that human rights are a priority and that violators will be brought to justice.

### Local government

The performance of local government with regard to human rights depends on many factors, some of which are hard for an embassy to influence. In some countries the influence of state-controlled local government might be low compared to more local or traditional power-holders. Studies on the relationship between local governance and human rights have concluded that general accountability for public officials is very low in most countries.<sup>81</sup> However, working towards a more human rights-sensitive local government leads to improved service delivery by local administrations.<sup>82</sup> Human rights-sensitive local government structures imply that:

- All groups in society – including women, children, minorities and certain vulnerable groups – are able to participate in local governance decision-making. There should be a culture of participation, empowerment and respect for the right to freedom of expression, non-discrimination and the right to information.
- Decentralisation is based on human rights, which implies a process that does not accentuate regional disparities, strengthen traditional elites associated with human rights violations, highlight ethnic divisions or increase corruption.
- Local administrations are accountable to both the central government and especially to their own constituencies, and there are internal and external oversight mechanisms to ensure that they do not breach human rights principles. Internal monitoring can take place by establishing administrative procedures of recourse against administrative decisions; external monitoring is undertaken, meanwhile, by councillors, the judiciary or by independent NHRIs.
- The principle of non-discrimination (including all discrimination grounds) should be explicitly enshrined in all local service delivery policies and practices.

<sup>81</sup> See the report of the ICHR, *Local Government and Human Rights: Doing Good Service* (Geneva: ICHR, 2005).

<sup>82</sup> ICHR, *Local Government and Human Rights*.

- Local government initiatives in the area of land use planning or local (economic) development should include an analysis of possible human rights impacts and these should be addressed as such.
- Local governance officials have received guidance and instructions on, and are aware of, international human rights obligations and resulting national legislation. The rights enshrined in the International Covenant on Economic, Social and Cultural Rights are of particular importance here (see also chapter 3.7 on the legislative framework).
- Regular collaboration exists between local governance officials and human rights institutions and/or human rights defenders, with the aim of improving local administrations' human rights record.
- Citizens have access to complaint, redress and protection mechanisms, without fear of reprisals, in cases of violations by a local body or public official.
- Local government has a strong will to address corruption, including through anti-corruption policies.
- Local government branches receive sufficient resources from the central government.

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#### **BOX 17    RIGHTS-BASED MUNICIPAL DEVELOPMENT IN BOSNIA AND HERZEGOVINA**

Under UNDP's auspices, several donors were involved in a programme entitled Rights-Based Municipal Development Programme (RMAP) in Bosnia and Herzegovina. RMAP was initiated by UNDP – together with OHCHR and the Ministry for Human Rights and Refugees.

RMAP carried out assessments, development planning and implementation of priority projects in municipalities throughout Bosnia and Herzegovina by using the international and domestic human rights framework as guidance in identifying priorities and crucial development interventions. RMAP supported municipalities in adopting a multi-sectoral approach to municipal planning, with a focus on including the most vulnerable groups and by combining a rights-based approach with a more standard, local-development analysis. RMAP's inclusion and consultation mechanisms were designed to reflect the important human rights principles of participation and non-discrimination in local development, and on this basis ensured citizens' participation in identifying and responding to (political, social and economic) exclusion at the municipal level.

RMAP brought local officials' obligations to the rights-holders to the fore, thus contributing to greater transparency and accountability in decision-making processes and use of available resources. Embassies could stimulate and support similar programmes in order to promote human rights and fulfilment at the local level.

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## OPTIONS FOR ACTION

### Central government

Embassies can offer a wide variety of (technical) support to the central state, enabling it to establish the institutional and legislative context needed to improve human rights. As the other chapters in this manual are related to interventions directed at the central state, this will not be discussed here. Yet it is worth noting that several embassies are directly involved in supporting a central government's institutional capacity to improve human rights performances, for example by supporting national human rights desks within different ministries or by funding specific human rights ministries.<sup>83</sup>

### Local government

Although the influence of embassies at the local level should not be overestimated, embassies have several options for contributing to an improved human rights performance by local governments. Many development programmes involve local administrations and these offer a unique opportunity for linking human rights with development and service delivery, thus increasing understanding among local government officials that many of their service delivery tasks are about the promotion of basic human rights and should be based on the principle of non-discrimination. They include:

- Become informed through country-specific human rights analysis, although this tends to focus on the responsibilities and actions of the central state. In addition to regular human rights sources of information, special reporting on ESC rights will give more insight into the role of local governments, such as reports of the UN Special Procedures working on ESC rights<sup>84</sup> and reports of the relevant treaty bodies.<sup>85</sup> Some NGOs might specifically report on local governments and human rights.<sup>86</sup>
- Stimulate and/or fund the establishment of human rights mechanisms and policies at the local level, such as complaint mechanisms, human rights resource centres, local branches of ombudsmen or NHRCS, or guidelines on human rights for local government officials.
- Integrate a rights-based approach in all development programmes that are coordinated or financed by the embassy (useful tools for this are mentioned in the references below).
- Contribute to rights-based decentralisation processes.<sup>87</sup>

<sup>83</sup> For example, the Dutch embassy in Bosnia-Herzegovina (BiH) has supplied technical assistance to the Ministry of Human Rights and Refugees.

<sup>84</sup> Such as the UN Special Rapporteur on Housing; the Special Rapporteur on the Right to Food; or the Special Rapporteur on Indigenous People.

<sup>85</sup> Such as the UN Committee on Economic, Social and Cultural Rights; the UN Committee on the Rights of the Child; and the UN Committee on the Elimination of All Forms of Discrimination against Women.

<sup>86</sup> The International Council on Human Rights Policy has undertaken various studies on decentralisation and the performance of local governments with regard to human rights.

<sup>87</sup> There is much literature and practice on this subject that are beyond the reach of this manual. See some of the references for further guidelines on this.

- Fund and support specific NGOs and international initiatives that support local governance and decentralisation and strive to integrate human rights into these programmes.
- Contribute to increased public participation and access to information at the local level. Examples are community safety projects (see chapter 3.3), local media projects aimed at raising awareness of human rights, or initiatives aimed at increasing political participation by women or minorities.
- Encourage human rights defenders, especially those that receive embassy support, to collaborate more intensively with local government institutions and adjust their strategies accordingly.
- Stimulate exchanges between municipalities or other local government institutions from different countries so as to exchange knowledge about human rights.
- Integrate human rights in all anti-corruption strategies and programmes that the embassy might support (see UNDP's documents listed in the references below for guidance on this).
- Distribute the European Charter for the Safeguarding of Human Rights in Cities<sup>88</sup> to local city authorities, and encourage initiatives to draft a similar standard in their country or region (see the references below.)

## REFERENCES

### Institutes

- UNDP Democratic Governance Programme; see [www.undp.org](http://www.undp.org).
- International Council on Human Rights Policy (ICHRP) (this provides a forum for applied research, reflection and forward thinking on matters of international human rights policy); see [www.ichrp.org](http://www.ichrp.org).
- International Institute for Democracy and Electoral Assistance (International IDEA) (this intergovernmental organisation supports sustainable democracy worldwide, including at local levels); see [www.idea.int](http://www.idea.int).
- International Permanent Secretariat Human Rights and Local Governments (SPIDH) (this secretariat pursues and develops exchanges among various human rights players across the world via a collaborative website); see [www.spidh.org](http://www.spidh.org).
- Habitat International Coalition (HIC) (an independent, international, non-profit alliance of some 400 organisations and individuals working in the area of human settlement, right to housing and right to land); see [www.hic-net.org](http://www.hic-net.org).
- Food First Information and Action Network (FIAN) (FIAN specialises in issues relating to the right to food and food distribution); see [www.fian.org](http://www.fian.org).

<sup>88</sup> This standard was drafted as a result of the first European Cities for Human Rights Conference. The Charter formally and clearly expresses those rights and civil liberties to which all citizens are entitled and which in addition makes known the city administration's obligation to guarantee those rights according to its powers and within the national legal framework.

## Further reading

- ICHRP, *Local Government and Human Rights: Doing Good Service* (Geneva: ICHRP, 2005); see [www.ichrp.org/en/documents](http://www.ichrp.org/en/documents).
- ICHRP, *Local Rule: Decentralisation and Human Rights* (Geneva: ICHRP, 2002); see [www.ichrp.org/en/documents](http://www.ichrp.org/en/documents).
- OHCHR, *Good Governance Practices for the Protection of Human Rights*, chapter 2 on 'Improving Service Delivery' (New York and Geneva: OHCHR, 2007); see [www.ohchr.org](http://www.ohchr.org).
- OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies and Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (Geneva: OHCHR, 2006); see [www.ohchr.org](http://www.ohchr.org).
- UNDP publications:
  - *Decentralisation and Human Rights: A Systemic Approach* (New York: UNDP, 2001).
  - *Decentralisation and Local Governance Enhancement: A Human Rights Checklist* (New York: UNDP, 2006).
  - *The Human Rights-Based Approach: Checklist for Programme Staff* (New York: UNDP, June 2003).
  - *Indicators for Human Rights-Based Approaches to Development in UNDP Programming: A Users' Guide* (New York: UNDP, 2006).
- Institute for Democracy and Electoral Assistance (IDEA), *Democracy at the Local Level: The International IDEA Handbook on Participation, Representation, Conflict Management and Governance* (Stockholm: IDEA, 2001); see [www.idea.int/publications/dll/index.cfm](http://www.idea.int/publications/dll/index.cfm).
- European Charter for the Safeguarding of Human Rights in Cities (this Charter is based on the Declaration of Human Rights (1948) and the European Convention on Human Rights (1950) to better guarantee the rights in these statements); see [www.hic-net.org/document.asp?PID=649](http://www.hic-net.org/document.asp?PID=649).

## 3.6 HUMAN RIGHTS DEFENDERS AND CIVIL SOCIETY

A free and active civil society is an indispensable element of a NHRPS. With regard to the NHRPS, civil society is not limited to the core human rights institutions, but also includes development organisations, community leaders or journalists who report on human rights violations. These can be considered human rights defenders (HRDs).

The EU prioritises supporting HRDs in third countries, and this chapter offers suggestions on how embassies can give practical and financial support.



### INTRODUCTION

A free, active and independent civil society in which men and women fully and equally participate is an indispensable element of the NHRPS. The contribution of civil society to the NHRPS lies mainly in:

- Its role as a countervailing power to an all-powerful state.
- Its participation in law and policy-making or commenting on such.
- Its activities to monitor and report on human rights violations and to raise individual cases.
- Its activities to raise awareness about human rights within society.
- Its direct and indirect contribution to development.

In the framework of the NHRPS, it would be a mistake to limit civil society to the core human rights organisations. Civil society includes development organisations such as those that work for the promotion of access to health or education or land reform. Some work in remote areas on or issues that are less visible and/or highly sensitive, such as the rights of indigenous people, asylum seekers and migrants, sexual exploitation, or on LGBT rights. Civil society also includes those actors that contribute more indirectly to the promotion of human rights, such as journalists who report on human rights violations, trade unionists or community leaders. Within the framework of the NHRPS, and for this manual's purposes, these people will be defined as HRDs, while acknowledging that civil society as a whole encompasses many other actors.

In line with the **UN Declaration on Human Rights Defenders**,<sup>89</sup> everyone who contributes peacefully and actively to the implementation of the Universal Declaration on Human Rights can be designated a HRD.

Unfortunately, HRDs in many countries are harassed, threatened or killed, or their work is hindered through legal or administrative obstacles. The UN Declaration on Human Rights Defenders is the primary document that recognises the importance and legitimacy of the work of human rights defenders, as well as their need for better protection. It sets out a range of guidelines and recommendations to states on how to protect and support HRDs, from granting HRDs full freedom of association and expression, to protective measures and the establishment of complaint and redress mechanisms.<sup>90</sup>

During recent years the EU has prioritised supporting HRDs in third countries, either through political means or by practical and financial support. The EU adopted a policy instrument in 2004 that builds on the UN Declaration – the **UN Guidelines on the Protection of Human Rights Defenders** (including an accompanying practical manual) – and sets out the instruments and activities that EU member states, including embassies, can take to contribute to the protection of HRDs. Embassies are usually in touch with HRDs and offer financial or political support. Yet there are examples where support seems to be limited to NGOs or HRDs within, or close to, the capital. Misunderstanding or lack of trust between diplomats and HRDs continues to be an obstacle towards effective collaborative actions in some countries.

<sup>89</sup> Adopted by the UN General Assembly in December 1998. The Declaration's full name is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

<sup>90</sup> Interestingly, the Declaration also requires states to strengthen the overall NHRPS in which they operate: 'The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsman, human rights commissions or any other form of national institution'; see the UN Declaration on Human Rights Defenders.

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**BOX 18 THE MEDIA AND HUMAN RIGHTS**

A free press is an indispensable part of the NHRPS. This not only includes traditional media such as newspapers, radio or television, but increasingly also new means of media such as the internet. An independent media that is able to report on violations is a crucial countervailing force in society and acts as a medium for democracy. It may hold governments to account, inform citizens about issues shaping their lives, touch on their rights and enable inclusive public debate. The media can have considerable and direct influence on the human rights situation. On the one hand the media can stigmatise, discriminate or even call for violence (take the role of the media during the genocide in Rwanda, for example); on the other hand it can report on human rights violations, evaluate government policies, report on the work of HRDs and educate the public on human rights.

International standards that are relevant to the media are to be found in general human rights obligations with regard to the rights to freedom of expression and freedom of the press,<sup>91</sup> as well as the right to be informed and the right to information and knowledge. National legislation should reflect these rights and the national legislative framework is therefore a determiner of the media's influence in terms of human rights. In many countries there is widespread misuse of vaguely formulated articles within laws that limit freedom of expression.<sup>92</sup> Intervention of the media has not always been a priority of donors, yet embassies are increasingly supporting media projects. For more information on the role of the media and human rights, see the publications of the International Federation of Journalists ([www.ifj.org](http://www.ifj.org)) or Reporters without Borders ([www.rsf.org](http://www.rsf.org)).

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**KEY PRINCIPLES**

The contexts under which HRDs operate and their effect on the overall human rights situation differ in each and every country. In some countries we find an effective and professional community of HRDs, even though they operate in a highly repressive climate. In other instances, we may find considerable freedom of expression, yet a rather ineffective HRD community, mainly because of lack of resources, professionalism or expertise. Yet HRDs do make a difference in all countries.

A strong community of HRDs that contributes most effectively to human rights is characterised by:

- The existence of pluralistic community organisations of HRDs that represent all groups in society and men and women alike, and that is working on a broad range of thematic

<sup>91</sup> See the report of the ICHRP, *Local Government and Human Rights: Doing Good Service* (Geneva: ICHRP, 2005).

<sup>92</sup> ICHRP, *Local Government and Human Rights*.

issues and is spread throughout the country. Regular cooperation and coordination is common among HRDs.

- The existence of a legislative framework that allows HRDs to do their work without hindrance, including laws related to their registration, freedom of expression and the press, obtaining (foreign) funding and/or labour rights.
- A high degree of understanding among HRDs of international human rights standards, including with regard to the growing use of and jurisprudence on ESC rights.
- The availability of sufficient means, facilities and resources, including long-term funding if needed.
- The existence of accountability and oversight structures among HRDs.
- Strong visibility and appreciation of HRDs' work in society, including in the media.
- Ongoing collaboration between HRDs and other actors within the NHRPS, especially the security sector and legal institutions. There should be a (strong) level of support for HRDs' work within these institutions.
- Ongoing collaboration between HRDs and the UN human rights machinery, including the UN Special Procedures and UN treaty bodies.
- A context in which violations against HRDs lead to regular investigations and violators being brought to justice.
- The existence of regular dialogue between the government and HRDs to discuss progress in human rights as well as their own position in society.

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#### **BOX 19 WORKING FOR HRDS IN GUATEMALA<sup>93</sup>**

On 28 June 2007, EU missions, in cooperation with local HRDs in Guatemala and the office of the UNHCHR, organised a public meeting to highlight concerns about attacks on HRDs. Ambassadors from the UK and the Netherlands spoke at the event. The meeting was attended by other EU ambassadors, the US ambassador, ambassadors from a number of Latin American countries and members of the press. Guatemalan officials were also present, including the Minister of the Interior, who condemned the attacks.

On 12 July 2007, EU missions issued a declaration expressing concern about the attacks on HRDs in Guatemala, stressing the need for the relevant Guatemalan institutions to improve protection for HRDs and end impunity. The declaration was published in the local press the following day. Although no one has been brought to justice for the violations, HRDs believe that these actions contributed to the drop in attacks over the following months. Raising the visibility of concerns about attacks on HRDs helps to ensure that the message reaches actual and potential violators of HRDs' rights, and acts as a deterrent by raising the political costs if such attacks continue.

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<sup>93</sup> This example is from the report by Amnesty International, European Union: Rising to the Challenge of Protecting Human Rights Defenders (London: Amnesty International, June 2008).

## OPTIONS FOR ACTION

Several embassies have shown enormous creativity and courage in supporting HRDs in practice. A proactive approach that goes beyond funding or sporadic demarches on an individual case has proven its effect and is strongly encouraged.<sup>94</sup>

The options for action given below should not only be implemented by the EU as a whole but also bilaterally by member states, as this has proven to be effective in a range of cases:

- Become informed through regular meetings with a wide range of HRDs. Several international NGOs (see the references given below) and the reports of the UN Special Rapporteur on Human Rights Defenders specifically report on the position of HRDs around the world.
- Give priority to the implementation of the EU Guidelines on HRDs, which include:
  - Direct funding to a broad representation of HRDs working on different subjects. Fund HRDs that work specifically on other elements of the national protection system, such as lawyers' organisations or community safety organisations.
  - Draft country-specific EU or national action plans based on the Guidelines.
  - Regularly monitor the situation of HRDs on the basis of the checklist in the EU's manual on HRDs.
  - Encourage HRDs to collaborate with and follow up on the recommendations of the UN's human rights mechanisms as well as other mechanisms, such as the UN Special Representative on HRDs, the OAS's unit on HRDs and the African Special Rapporteur on HRDs (see the references given below).
  - Make demarches or public declarations on specific violations. Public action is preferable unless it is expected to be either non-effective or would endanger the HRDs' security<sup>95</sup>.
  - Introduce the situation of HRDs in different political dialogues (including, but not limited to, human rights dialogues) and other policy instruments. Encourage HRDs' involvement in the preparation of such dialogues.
  - Give visibility to the work of HRDs by visiting their offices, inviting them to the embassy, and referring to their work in speeches, etc.
  - Attend the trials of HRDs who have been arrested. Facilitate legal aid if necessary.
- Guarantee safe haven to those under threat by granting them (short-term) visas in cases of urgent need.
- Support capacity-building initiatives of HRDs abroad by facilitating fellowships and/or training abroad.

<sup>94</sup> Amnesty International's report, entitled *European Union: Rising to the Challenge of Protecting Human Rights Defenders*, identified various good practices and areas of improvement for embassy interventions to support HRDs.

<sup>95</sup> As to deciding on the preferred strategy and content, the embassy would do best to consult with HRDs themselves.

- Encourage a rights-based approach in all development programmes so that development organisations are prompted to integrate universal standards relating to human rights in all of their activities, ranging from analysis to implementation (see the references below).
- Facilitate collaboration between the HRD community and other actors, such as the security sector or legal institutions.

## REFERENCES

### Institutions

- UN Special Representative on Human Rights Defenders; see [www2.ohchr.org/english/issues/defenders/index.htm](http://www2.ohchr.org/english/issues/defenders/index.htm).
- African Union, Special Rapporteur on Human Rights Defenders of the African Union; see [www.achpr.org/english/\\_info/index\\_hrd\\_en.html](http://www.achpr.org/english/_info/index_hrd_en.html).
- Office for Democratic Institutions and Human Rights of the OSCE (this serves as the focal point for HRDs and NHRIs); see [www.osce.org/odihr/27867.html](http://www.osce.org/odihr/27867.html).
- Organisation of American States, Human Rights Defenders Functional Unit of the Inter-American Commission on Human Rights; see [www.cidh.org](http://www.cidh.org).
- Frontline (this NGO specifically aims to protect HRDs at risk); see [www.frontlinedefenders.org](http://www.frontlinedefenders.org).
- FIDH/OMCT Joint programme, Observatory for the Protection of HRDs (this collaborative programme contributes to international mobilisation to acknowledge HRDs' activities and the need for HRDs' protection at both regional and international levels); see [www.fidh.org](http://www.fidh.org).
- Amnesty International and Human Rights Watch's thematic work on HRDs; see [www.amnesty.org](http://www.amnesty.org) and [www.hrw.org](http://www.hrw.org).
- Peace Brigades International (this NGO provides protective accompaniment to HRDs who are threatened by political violence); see [www.peacebrigades.org](http://www.peacebrigades.org).
- Article 19 (this NGO monitors threats to free expression around the globe); see [www.article19.org](http://www.article19.org).
- Reporters without Borders (this NGO compiles and publishes an annual ranking of countries based upon the organisation's assessment of their press freedom records); see [www.rsf.org](http://www.rsf.org).
- Minority Rights Group (this NGO works to secure rights for ethnic, religious and linguistic minorities and indigenous people around the world); see [www.minorityrights.org](http://www.minorityrights.org).

## Further reading

- EU Guidelines on Human Rights Defenders and accompanying manual (not online); see <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>.
- Annual reports of the UN Special Representative on Human Rights Defenders; see [www2.ohchr.org/english/issues/defenders/index.htm](http://www2.ohchr.org/english/issues/defenders/index.htm).
- UN Declaration on the Protection of Human Rights Defenders; see [www2.ohchr.org/english/issues/defenders/translation.htm](http://www2.ohchr.org/english/issues/defenders/translation.htm).
- OMCT and FIDH annual reports on HRDs; see [http://www.fidh.org/IMG/pdf/report2007obs\\_eng.pdf](http://www.fidh.org/IMG/pdf/report2007obs_eng.pdf).
- Amnesty International, *European Union: Rising to the Challenge of Protecting Human Rights Defenders* (London: Amnesty International, June 2008); see [www.amnesty.org](http://www.amnesty.org).
- OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies and Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (Geneva: OHCHR, 2006); see [www.ohchr.org](http://www.ohchr.org).
- UNDP, *Indicators for Human Rights-Based Approaches to Development in UNDP Programming: A Users' Guide* (New York: UNDP, 2006); see [www.undp.org](http://www.undp.org).

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### BOX 20 SUPPORT TO HUMAN RIGHTS DEFENDERS IN CHINA

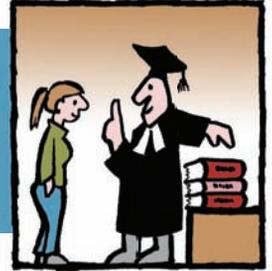
Human rights defenders, many of them lawyers, are under constant repression in China. During 2007–2008 in the run-up to the Olympic Games, repression against HRDs increased. An EU working group on human rights in Beijing concentrated on collaborative action to support HRDs. It was decided that various types of EU action were needed:

- EU representatives supported or visited HRDs under threat or attended HRDs' trials.
- HRDs' cases were regularly raised in demarches.
- The EU drafted a list of individual cases, including HRDs, to be brought to the attention of authorities in the human rights dialogue with China.
- Ministers from EU member states regularly raised individual HRDs' cases during their visits.

Such activities can result in improving the HRDs' situations or help to end or limit repression against individual HRDs, yet there is always a risk of certain 'ritualisation' of action. A case-by-case approach is necessary, and discussing the type of support with the HRD under threat, or his/her family or legal aids, is often needed. Although permission to attend trials is regularly refused by the authorities, this often leads to increased press attention for these cases. Other actions should always be explored. The Dutch government, for example, committed itself to translating the EU Guidelines on Human Rights Defenders into Chinese, as the HRD community in China was not familiar with this instrument. It remains difficult, however, to reach HRDs in remote areas of China because of lack of access to information and distance to the areas concerned.

## 3.7 DOMESTIC LAW AND HUMAN RIGHTS

Domestic law is the underlying framework of a NHRPS. Despite countries' different legal systems, national legislation should offer human rights protection to *all* individuals in society. Legislative reform is often required. Yet even in countries that offer significant human rights protection by law, application of these laws continues to be a challenge.



### INTRODUCTION

Domestic law that fully reflects international human rights obligations can be seen as the underlying normative framework of the NHRPS. National legislation should offer human rights protection to all individuals in society and with regard to all recognised and universal rights. It should foresee basic human rights guarantees such as independence of the judiciary, separation of powers, equality before the law, and the existence of oversight and accountability mechanisms. A strong normative legal framework encompasses and directly influences all different elements of an effective NHRPS.

Countries have different legal systems based on historic, cultural and/or religious traditions. As a result, national laws and their enforcement will differ similarly. A general distinction is often made between common and civil law systems,<sup>96</sup> although a hybrid system exists in most countries that combines elements of civil, common or traditional legal systems. This chapter, however, will not discuss the complexity of different legal systems. While acknowledging that diversity exists, it will identify some (universal) basic elements that constitute a strong domestic legislative framework for the protection of human rights.

A strong domestic framework on human rights implies that a state has:

- 1 Ratified core international human rights treaties.
- 2 A constitution with strong human rights guarantees.
- 3 Ensured that treaty obligations, customary law and other human rights standards are converted into or reflected in domestic law and implemented into policy and actual practice.
- 4 Established institutions that monitor, apply and implement the above-mentioned laws and policies.

These aspects will be described briefly.

<sup>96</sup> As already explained in footnote 39, common law is the system of laws that originated and developed in England and that is based on court decisions, on the doctrines implicit in those decisions, and on customs and usages. Civil law systems rely on the codification of laws into criminal or civil codes and statutes, which are left for judges to interpret and apply.

## 1 The ratification of treaties

A range of international and regional standards relating to the protection of human rights has originated from the Universal Declaration of Human Rights. The core UN human rights treaties (see Box 21) are legally binding obligations for states that sign, ratify or accede to them.<sup>97</sup> The treaties are overseen by so-called treaty bodies (see Annexe 1), whose task it is to evaluate the extent to which domestic legislation conforms to standards set out in the treaties. Many other standards exist on a range of thematic human rights issues, including guidelines, codes of conduct or declarations.<sup>98</sup> These standards are not considered legally binding as such, yet they also aim to be integrated into national law.<sup>99</sup>

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### BOX 21 THE NINE CORE HUMAN RIGHTS TREATIES

- The International Convention on the Elimination of All Forms of Racial Discrimination
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- The Convention on the Rights of Persons with Disabilities
- The International Convention for the Protection of All Persons from Enforced Disappearance

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As well as the UN standards, we find binding and non-binding human rights standards stemming from regional bodies. These include the African Charter on Human Rights (African Union), the European Convention on Human Rights (Council of Europe) and the American Convention on Human Rights (Organisation of American States).

<sup>97</sup> States may become parties to international treaties either by acceding to or ratifying the treaty, in which case they have to respect the provisions of the treaty to which they are party. Mere signature of the treaty indicates an intention to become a party at a later date through ratification. When a state signs a treaty it is not yet obliged to implement its standards, but it is bound to refrain from any action that defeats the object and purpose of the treaties that it has signed.

<sup>98</sup> Examples are the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, or the Declaration on the Rights of Indigenous People. For a complete list, see Annexe 2 of this manual.

<sup>99</sup> In international law a distinction is often made between treaties or conventions, and ‘soft law’ instruments such as guidelines, recommendations or programmes. The main difference between the two is that treaties contain legally binding obligations, while ‘soft law’ instruments are usually not intended to be legally binding. States need to adhere to both.

The importance of these standards for human rights should not be underestimated, especially as regional oversight and accountability mechanisms are gaining importance.<sup>100</sup>

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**BOX 2    RESERVATIONS TO TREATIES: THE CASE OF CEDAW**

Some treaties allow a state to make reservations. Reservations are unilateral statements made by a state that seek to exclude or modify the legal obligation of a certain provision of the treaty. Although some reservations do not influence the overall effect of a treaty, others do. According to the Vienna Convention on the Law of Treaties, a reservation that is not compatible with the object and purpose of a treaty is not permissible.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been ratified by most countries in the world and is one of the core UN human rights treaties. However, several countries have made reservations to the treaty, for example with regard to articles that relate to equal rights of men and women in obtaining nationality, voting rights or family matters, including inheritance or divorce. These reservations are usually of such a nature that they undermine the ‘object and purpose’ of the treaty and allow for states to leave national discriminatory domestic laws unamended. As a result, women are denied some of their crucial rights within CEDAW and this weakens the overall NHRPS. Other state parties to CEDAW have taken note of these reservations and raised their concerns through political dialogue. Embassies should be aware of these and similarly damaging reservations, and could commit themselves to pleading for their removal.<sup>101</sup>

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## 2 Human rights within the constitution

The constitution is the highest law of the state.<sup>102</sup> A strong constitution (or a constitutional bill of rights) enables civilians to claim their rights, receive compensation for violations and should guarantee the right to a fair trial. All constitutions contain reference to the rights of citizens, yet the level of detail in which human rights guarantees are integrated varies considerably. Constitutional reform, no matter on what scale, provides an opportunity to improve human rights aspects.<sup>103</sup>

<sup>100</sup> See the work of the European Court on Human Rights, the Inter-American Court on Human Rights, or the African Human Rights Commission.

<sup>101</sup> For more information on this issue, see CEDAW’s website at <http://www.un.org/womenwatch/daw/cedaw/>; or the Amnesty International report entitled Reservations to the Convention on the Elimination of All Forms of Discrimination against Women (London: Amnesty International, November 2004), at [www.amnesty.org](http://www.amnesty.org).

<sup>102</sup> Because of historical and political (legal) traditions, not all states have a written constitution and some countries make use of a bill of rights. This is common in most Commonwealth countries.

<sup>103</sup> That noted, it might also be used to turn back certain human rights guarantees intentionally.

### 3 Human rights in domestic law

The main areas of domestic law are public law (constitutional, administrative and criminal law) and private law (family and inheritance law, land law, contract law, tort law and commercial law). Human rights are considered part of constitutional law but they may have an impact on all areas of law and should be clearly reflected in different bodies of law. Besides the overall integration of human rights in various bodies of law, we often need additional subject-specific domestic laws that specifically aim to protect the human rights of a certain group, such as legislation aimed at protecting the rights of children or minorities.

Once a state becomes party to an international standard on human rights, this treaty or convention has to be made legally applicable at the national level in order to become effective.<sup>104</sup> States are therefore under an obligation to review their domestic legislation fully and to remove all obstacles to implementing international human rights obligations. Most human rights treaties do not give concrete instructions on how this should be done.<sup>105</sup>

Implementing international human rights obligations into domestic law is a legally complex process, which this manual will not discuss. The process of converting international norms into domestic law depends on the existing legal system in place, the constitution and the treaty's wording. In so-called self-executing systems, international norms automatically become part of the national legal framework upon treaty ratification, meaning that a treaty's provisions can be directly invoked before a court. In other countries, however, a treaty's ratification does not necessarily mean that the commitments in it can be automatically enforced in domestic courts. A legislative act by parliament is then required to 'incorporate' the treaty's provisions into domestic law.

Many social, religious and customary practices have found their way into domestic law in many countries. Although some of these laws,<sup>106</sup> or provisions in laws, offer human rights protection, others simply contradict international human rights norms. Examples include traditional or religious laws that foresee physical punishments or laws that include discriminatory articles towards certain groups in society (such as women or minorities). From a legal perspective, it is a general rule of international law, as expressed in the Vienna Convention on the Law of Treaties, that states can never invoke national laws for failure to fulfil their treaty obligations. All domestic, traditional, religious or communal laws and resulting practices therefore need to conform to international human rights obligations.

<sup>104</sup> Implementing treaties through legislative measures alone is insufficient; effective implementation also requires judicial, administrative, educative and other measures.

<sup>105</sup> The ICCPR merely requires states to 'undertake to respect and ensure all rights in the Covenant by adopting laws and other measures'; the CEDAW and the CERD offer more detailed guidance on how to implement the conventions.

<sup>106</sup> This could possibly include unwritten law.

## 4 Institutions monitoring implementation

Once human rights are integrated fully into domestic law, there is still no guarantee of their application in daily practice. Institutions that are willing and capable of applying them in policy and practice are required, not merely international mechanisms such as the treaty bodies or international courts, but especially effective national courts, parliament, executive bodies and civil society.

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### BOX 23 THE NEED FOR JUVENILE JUSTICE

More than six years after the genocide in Rwanda in 1994, approximately 4,500 children were in pre-trial awaiting their process. Many children in Afghanistan are in prison because of ‘immoral’ violations of law such as abuse or escape from an early marriage. In the Democratic Republic of Congo, Saudi Arabia, Nigeria and Iran the death penalty is still applicable to persons aged under eighteen.

Children are arrested and detained by police, tried by magistrates and sent to institutions – including prisons – under systems of justice that were established for adults. In these cases the NHRPS fails to protect the rights of children. When a state ratifies the UN Convention on the Rights of the Child, it needs to ensure that its laws reflect these obligations. For example, there should be clear restrictions on child labour in labour laws and a clear prohibition of child abuse in the criminal code. Yet often a separate body of legislation – a system of juvenile justice – is needed to strengthen the NHRPS fully with regard to the protection of children.

The term ‘juvenile justice’ refers to legislation, norms and standards, procedures, mechanisms and provisions, institutions and bodies that are specifically applicable to juvenile offenders and that aim to:

- Prevent juvenile delinquency through effective education, stable family environments and community-based programmes.
- Establish legislation to ensure that minors are only deprived of their liberty as a last resort and for the shortest period possible.
- Abolish the death penalty for minors completely.
- Rehabilitate, rather than punish, minors.
- Create alternative structures to deal with children, without resorting to judicial proceedings, and establish specific courts for minors.

The Concluding Observations of the Committee on the Rights of the Child recommend that countries ask for technical advice and assistance from UN institutions in establishing a system of juvenile justice. Embassies may investigate whether governments have followed up on this request and they can support states technically and financially in realising a system of juvenile justice.

## KEY PRINCIPLES

There are several legal, political, institutional or cultural obstacles towards an effective national legislative framework that fully protects human rights in law and practice. Legal obstacles may be human rights gaps in domestic legislation that allow for insufficient protection against certain violations,<sup>107</sup> or there can be provisions within laws that are incompatible with international human rights norms.<sup>108</sup> Yet even in countries that offer significant human rights protection by law, the actual application of these laws continues to be a major challenge. Institutional obstacles include lack of capacity or means among the legislative actors, including the executive, parliament or the judiciary, such as a lack of understanding of basic human rights standards. There can also be a simple lack of political will among state authorities and/or legal institutions to uphold and apply human rights principles because of cultural or social perceptions or because the promotion of human rights might be seen as threatening to those in power.

A strong national legislative framework that fully protects and promotes human rights implies that the following key principles have been observed:

- The state has ratified all (or most) of the core human rights treaties, including their optional protocols, and the state has made no reservations to international treaties that are ‘incompatible with the object and purpose of the treaty’.<sup>109</sup>
- The state’s constitution (or constitutional bill of rights) contains strong human rights provisions that include:
  - Reference to universal human rights obligations, as enshrined in the main human rights treaties.
  - The principle of non-discrimination with regard to all groups and individuals within society.
  - The right to effective remedy, and the creation of oversight and remedy mechanisms, for all victims of human rights violations.
  - Guarantee of an independent and impartial judiciary in line with international human rights standards.
  - Establishment of human rights institutions and mechanisms such as NHRIs.
  - The general rule of international law that international norms prevail over domestic law in cases of conflicting norms.
  - Establishment of a constitutional court, or similar institution, charged with overseeing the compatibility of national legislation with international human rights standards.

<sup>107</sup> For example, lack of criminalisation of domestic violence.

<sup>108</sup> This may include discriminatory provisions in law, laws that criminalise peaceful activities, laws that allow for detention without trial for a lengthy period of time, or laws that bar investigations into cases of rape.

<sup>109</sup> A reservation is incompatible with the object and purpose of a treaty if it intends to derogate provisions, the implementation of which is essential to fulfilling its overall object and purpose.

- The legal system provides for the direct applicability of international standards in national law and/or the state is willing and able to adopt or amend laws so that they reflect the norms of international treaties ratified by the state.
- Domestic laws foresee strong institutions that oversee the effective integration of international obligations into national law, such as the judiciary, parliament and independent NHRIs.
- Relevant domestic laws incorporate human rights norms, including thematic legislation on housing, family matters, health, security or immigration. They are similarly reflected in administrative orders, rules and regulations.
- There should be subject-specific laws for the protection of certain groups in society, such as women and children or vulnerable groups such as migrants or the handicapped.
- Domestic law foresees not only protection against human rights violations committed by the state but also against the actions of non-state actors.
- Domestic law upholds freedom of expression in line with international human rights norms.<sup>110</sup>
- Domestic law explicitly criminalises customary or traditional practices that are incompatible with international human rights obligations.
- Domestic law provides for remedies or remedy mechanisms in cases of human rights violations.
- The state collaborates with, and follows up on the recommendations of, the UN Special Procedures and the UN treaty-monitoring bodies, including regular visits by UN Special Procedures to the country through standing invitations.<sup>111</sup>

<sup>110</sup> The right to freedom of expression is not unlimited, and international law allows for limitations to freedom of expression. The ICCPR allows for limitations to protecting the rights and reputation of others, for maintaining national security or public order and for preventing the sowing of hate or calling for violence. Yet these limitations are often misused and can only be applied under strict restrictions, meaning that they must be 'proportional' and 'needed', non-discriminatory, and that they must be applied by a body that is independent of political, commercial or other influences.

<sup>111</sup> Standing invitations mean that a country has committed itself to granting full access to the Thematic Special Procedures of the UN Human Rights Council. As of October 2008, 63 countries had extended a standing invitation to the Thematic Special Procedures.

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**BOX 24 DEROGATIONS AND LIMITATIONS ON HUMAN RIGHTS: WHEN AND HOW?**

Many state officials around the world justify human rights violations by referring to security needs. Existing human rights law does indeed permit limitations on certain rights and, in a very limited set of exceptional circumstances, for derogation from certain human rights provisions.

Under Article 4 of the ICCPR, states can declare a state of emergency and may derogate from their obligations under the ICCPR ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. This derogation needs to adhere to the principle of proportionality, as it is only permitted ‘to the extent strictly required by the exigencies of the situation’. It may not be inconsistent with other obligations under international law, nor may it be discriminatory. Yet some rights are non-derogative at all times (and cannot be suspended). The International Covenant on Civil and Political Rights permits no derogation from:

- The right to life (Article 6).
- The prohibition of torture (Article 7).
- The prohibition of slavery (Article 8, paragraphs 1 and 2).
- The right not to be imprisoned on the grounds of inability to fulfil a contractual obligation.
- The right not to be held guilty for crimes that did not constitute crimes at the time (Article 15).
- The right to be recognised as a person before law (Article 16).
- The right to freedom of thought, conscience and religion (Article 18).

States may also legitimately *limit* the exercise of certain rights, including the right to freedom of expression or religion, but they must respect a number of conditions, including respect for the principles of equality and non-discrimination, the need for the limitation to be prescribed by law, being in pursuance of one or more legitimate purpose (including security needs), and being ‘necessary’ in the pursuit of a pressing objective. The imposition of a limitation on rights and freedoms for the purpose of countering terrorism, but by ineffective means, is unlikely to be successful in meeting each of the above conditions.<sup>112</sup>

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<sup>112</sup> See the OHCHR’s Factsheet no. 32, entitled Human Rights and Counter-Terrorism, available online at [www.ohchr.org/Documents/Publications/Factsheet32EN.pdf](http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf).

## OPTIONS FOR ACTION

Legislative reform means amending existing legislation, or drafting new legislation, with the goal of creating stronger human rights protection. It implies addressing the above-mentioned legal, institutional or political barriers towards a fully effective normative framework. The process of legislative reform varies from country to country, depending on the mechanisms provided within the constitution and the overall legal system.

Opportunities for embassies to contribute to legislative reform partly depend on the legal system in place. Donors should be aware of the risk of (accidentally or not) imposing their own legal concepts and procedures on partner countries, as this is not merely undesirable but simply non-effective. There are various options for action to strengthen the domestic framework with regard to the protection of human rights:

- Become informed: As a result of their work, and through reports by human rights organisations, embassies are often aware of general gaps and obstacles in domestic legislation that negatively influence human rights. Detailed information on this can be found in the recommendations, general comments and concluding observations of the UN treaty bodies.<sup>113</sup> Assessment of domestic law is needed before initiating large-scale reform programmes, and this is an extensive exercise that involves (a team of) legal experts.
- Contribute to comprehensive legislative reform programmes in collaboration with other donors.<sup>114</sup> These programs should preferably be integrated into broader rule-of-law reform programmes that include legal institutions and security actors. Legal reform programmes need to be adapted to the existing legal system and overall political context, yet certain crucial conditions for success are:
  - A comprehensive approach that identifies and addresses the various legal, institutional, political and social obstacles towards an improved legislative framework.
  - Attention for (institutional) strengthening of those bodies that are responsible for drafting, management or oversight of legislation.
  - A multi-stakeholder approach that includes different ministries, legal institutions, civil society and others.
  - Strategies for the reform of formal laws as well as of customary, religious and traditional laws.

<sup>113</sup> To be found at [www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx). Embassies can first proceed by studying the reports of those treaty bodies that relate to human rights priorities within the embassy.

<sup>114</sup> Although these programmes are relevant in many countries, opportunities for legislative reform arise, particularly in post-conflict situations and fragile states. An updated and more effective legal framework should be a priority area of intervention, as it lays the foundation for further protection of human rights as well as development.

- Setting priorities that are based on identified opportunities. Some bodies of law offer more opportunities for human rights reform than others.<sup>115</sup>
- Long-term funding and political commitment.
- Inclusion of legal experts from within the same legal tradition.
- Request that the state ratifies international human rights standards and/or supports civil society initiatives that are lobbying for the ratification of specific standards.
- Offer support in converting international treaty obligations to domestic law through sharing expertise, technical and/or financial support.
- Plead for the amendment of (provisions in) laws that do not conform to international human rights obligations and for the withdrawal of damaging reservations to international treaties. Ensure that these concerns become part of regular bilateral and multilateral dialogues.
- Support the drafting of subject-specific legislation to protect the needs of particular vulnerable or disadvantaged groups<sup>116</sup> or laws aimed at promoting labour rights.
- Contribute to capacity-building and improved conceptual clarity among the legal bodies that are responsible for drafting and/or implementing national legislation, including different ministries, legal institutions and parliament.
- Request that the state collaborates with and follows up the recommendations of treaty bodies. Request that the state distributes these widely within society.<sup>117</sup> Encourage the state to give ‘standard invitations’ to all UN Special Procedures and to follow up their recommendations.
- Support litigation by individuals or NGOs in critical areas where there is either a potential for human rights standards to be developed or where existing standards are under threat.
- Contribute to constitutional drafting and/or reform and plead for the strong and explicit incorporation of human rights.

<sup>115</sup> For example, in some instances it might be too sensitive to reform the penal code, yet there might be strong demand for an updated system of civic or administrative law.

<sup>116</sup> It could be claimed that this is unnecessary and contributes to further distinctions between certain groups in society, but this fails to take into account that existing ‘neutral’ laws often automatically lead to discrimination in their application, in which case additional protection by law is needed. A good example is the establishment of a system of juvenile justice.

<sup>117</sup> Priority can be given to the recommendations and concluding observations of the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women, as these foresee a range of specific recommendations to strengthen the NHRPS and relate to the EU’s priority areas.

Angola is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and therefore legally obliged to provide for the right to adequate housing, as guaranteed in Article 11 (1) of the ICESCR.<sup>118</sup> Yet between 2001 and 2006, thousands of families were forcibly evicted in and near the Angolan capital, Luanda, often without prior notification.<sup>119</sup> Several gaps in the NHRPS contributed to these violations. The evictions were initiated by local authorities, among whom awareness of international human rights obligations and national laws on housing rights is limited. Law enforcement personnel participated in the evictions and intimidated and ill treated many of the evicted. Compensation and redress mechanisms turned out to be ineffective (or non-existent) and people have been unable to enforce their legal right to housing. Angola had no effective National Human Rights Commission at the time. Some civil society organisations have worked on this issue and at times faced harassment or intimidation as a result. National legislation dealing with the right to housing has improved over recent years, yet there is still no sufficient binding legislation, a concern indicated by the UN Special Rapporteur on the Right to Adequate Housing.

This example shows a clear need to strengthen the NHRPS, including in the area of legislation. The Dutch embassy in Luanda is involved in a project that focuses on protecting land rights and reinforcing the capacity of local authorities – traditional authorities as well as civil society – to defend housing rights. Attention is also given to strengthening the legal and administrative processes for leasing land, including women’s access to tenants’ rights. The Dutch embassy aims to strengthen the implementation of Angolan national legislation on housing rights in order to avoid similar violations in the future.

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## REFERENCES

### Institutions

- OHCHR, Programme Assistance for Constitutional and Legislative Reform; see [www.ohchr.org](http://www.ohchr.org).
- Council of Europe, Venice Commission (this provides amongst others ‘constitutional first aid’ to individual states. It also plays a unique role in crisis management and conflict prevention through constitution-building and advice); see [www.venice.coe.int](http://www.venice.coe.int).
- UNDP, Justice and Human Rights Programme; see [www.undp.org](http://www.undp.org).

<sup>118</sup> Another relevant standard on this issue is the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.

<sup>119</sup> Amnesty International Document, Angola: Briefing for the United Nations Committee on Economic, Social and Cultural Rights, 41st Session, 3–21 November 2008, AI Index: AFR 12/010/2008.

- International Legal Resource Centre (this centre serves UNDP global governance programmes and projects supporting legal reform and democratic institution-building, and is part of the American Bar Association); see [www.abanet.org/intlaw/intlproj/ilrc/home.html](http://www.abanet.org/intlaw/intlproj/ilrc/home.html).
- UN Interagency Panel of Juvenile Justice (this acts as a coordination panel on technical advice and assistance in juvenile justice); see [www.juvenilejusticepanel.org/en/](http://www.juvenilejusticepanel.org/en/).
- Public International Law and Policy Group (PILPG) (this group operates as a global *pro bono* law firm, providing free legal assistance to states and governments involved in conflicts); see [www.publicinternationallaw.org](http://www.publicinternationallaw.org).
- International Centre for the Legal Protection of Human Rights (Interrights) (this seeks both to promote the enforcement of human rights standards at the international, regional and domestic levels and to empower legal partners around the world to do the same); see [www.interrights.org](http://www.interrights.org).
- Centre for International Legal Cooperation (CILC) (this Dutch institute is dedicated to the reform and strengthening of legal systems in developing countries and countries in transition); see [www.cilc.nl](http://www.cilc.nl).
- Van Vollenhoven Institute for Law, Governance and Development (this Dutch institute seeks to contribute to better understanding of the formation and functioning of legal systems in developing countries and their effectiveness in contributing to good governance and development).

### Background information

- International Development Law Organisation (IDLO), *The Rule of Law Assistance Directory* (Rome: IDLO, constantly updated, as this keeps track of international initiatives related to the rule of law); see [www.idlo.int/ROL/external/ROLHome.asp](http://www.idlo.int/ROL/external/ROLHome.asp).
- OHCHR, *Rule-of-Law Tools for Post-Conflict States: Monitoring Legal Systems* (Geneva: OHCHR, 2006); see [www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx](http://www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx).
- CILC, *Legal and Judicial Reform in Post-Conflict Situations and the Role of the International Community* (The Hague: CILC, 2006); see [www.cilc.nl/Post\\_Conflict\\_Situations.pdf](http://www.cilc.nl/Post_Conflict_Situations.pdf).
- UNDP, *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (New York: UNDP, 2003) see [www.undp.org/governance/guidelines-toolkits.htm](http://www.undp.org/governance/guidelines-toolkits.htm).

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**BOX 26 THE RIGHT TO AN EFFECTIVE REMEDY**

A crucial aspect of NHRPS concerns the presence of legislation and mechanisms for remedies in cases of human rights violations. The right to an effective remedy is enshrined in the most important international human rights treaties.<sup>120</sup> As a result, states are obligated to ensure that mechanisms exist to assist and compensate those individuals whose rights are violated.

The right to an effective remedy includes mechanisms and legislation that allow for: 1) the right to and access to individual complaint mechanisms; 2) the need for investigation into violations to avoid impunity; and 3) reparation to the victims. Redress can take various forms, including compensation, truth-finding, reparation, rehabilitation or the guarantee of non-repetition. The UN Basic Principles and Guidelines on the Right to an Effective Remedy<sup>121</sup> set out a standard for states in guaranteeing that everyone has the right to an effective remedy, including:

- The right to a remedy should be firmly based in national legislation, including within the constitution.
- Victims of violations of international human rights law or of international humanitarian law shall have equal access to an effective judicial remedy as provided under international law.
- States should establish specific reparation mechanisms, with sufficient funds, for victims of human rights violations.
- NHRIs should have remedial functions or facilitate victims' access to the correct remedy mechanisms.

Embassies are recommended to contribute to strengthening the underlying legislation and institutions that allow for the right to a remedy. The UN Basic Principles and Guidelines on the Right to an Effective Remedy can offer guidance in this.

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<sup>120</sup> For example, the UN Convention against Torture obliges states parties: to ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable grounds to believe that an act of torture has been committed in any territory under its jurisdiction (Article 12); to ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities (Article 13); and to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible (Article 14).

<sup>121</sup> The full name is Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

## 3.8

# HUMAN RIGHTS POLICIES

Two types of policy that contribute directly to the promotion and protection of human rights are national action plans (NAPs) and human rights education (HRE). This chapter discusses the benefits of drafting and implementing both a NAP and HRE in order to address gaps in the NHRPS. There might in addition be a need for further subject-specific policies.



This chapter will analyse different types of policies that contribute *directly* to the promotion and protection of human rights. It will focus on two types of specific human rights policies: national action plans (NAPs) for the promotion of human rights; and human rights education (HRE). The overall integration of human rights in other government policies – such as for housing, education or social affairs – has been touched upon in chapter 3.5.

### 3.8.A NATIONAL ACTION PLANS ON HUMAN RIGHTS

#### INTRODUCTION

The Vienna Declaration and Programme of Action, which was adopted in 1993, recommends that states consider drafting a NAP for the promotion and protection of human rights. There are several benefits to drafting a NAP:

- A NAP enables a state to approach human rights in a comprehensive manner and should be seen as a coordinating document that aims to address different gaps in the overall NHRPS simultaneously.
- A NAP mobilises different actors in society to cooperate in improving human rights.
- A NAP increases awareness of human rights and can be seen as political will to improve human rights.
- A NAP offers a framework that enables a state and others to monitor progress in converting international human rights standards to the national level, and ensuring implementation thereof.

According to UN data, at the time of writing approximately 24 countries have drafted NAPs and many others are in the process of drafting one.

#### KEY PRINCIPLES

The existence of a NAP on human rights is by itself no guarantee for the improvement of human rights. Many NAPs have been without effect because of lack of resources, limited political will or unrealistic goals. There is no overall international standard on what

constitutes an effective NAP and these plans vary considerably among countries in terms of content and procedure. The *UN Handbook on National Human Rights Plans of Action*,<sup>122</sup> however, foresees concrete recommendations based on an evaluation of initiatives around the world. An effective NAP should:

- Have full backing from political leadership as well as from civil society.
- Be created through a broad consultation process that includes civil society.
- Foresee tasks and responsibilities for the central *and* local government, and for actors such as the parliament, judiciary and security sector.
- Reflect the universality and interdependence of human rights and include civil and political as well as social, economic and cultural rights.
- Address institutional and legislative weaknesses in the overall NHRPS and foresee capacity-building activities.
- Be a public document and be distributed throughout society.
- Offer concrete steps to promote the rights of specific vulnerable and marginalised groups and reflect the principle of non-discrimination.
- Be backed by sufficient resources for the long term.

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#### **BOX 27**    **SUBJECT-SPECIFIC HUMAN RIGHTS POLICIES**

Human rights should be protected through the integration of human rights principles into all government policies, such as in the areas of health, education, social matters or migration. However, depending on the type of violations, additional subject-specific policies are needed. Examples include policies specifically aimed to protect the rights of children, policies on gender equality, or anti-discrimination policies. These subject-specific policies should be seen as building blocks of a comprehensive NHRPS. It is beyond this manual's reach to address and discuss these in detail, yet the policies should at a minimum:

- Include protective measures such as legal steps, as well as promotional measures such as awareness-raising and education.
- Foresee strategies that take account of local and traditional perceptions and practices and possible obstacles to fully realising international human rights obligations.
- Be backed by sufficient resources.
- Foresee operational action plans that include concrete goals, benchmarks and a timeframe.
- Foresee the creation of specific institutions that oversee policy implementation.
- Foresee the establishment of specific monitoring and complaint mechanisms.

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<sup>122</sup> OHCHR training series no. 10, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2002).

## OPTIONS FOR ACTION

NAPs have in many instances emerged through pressure from donors, but lack the commitment and resources to be successful. The above-mentioned criteria should be foremost in deciding whether to support the drafting or implementation of a (new) NAP. When doing so, various options for action contribute to a truly effective NAP:

- Encourage a comprehensive drafting process for a NAP as foreseen in the *UN Handbook on National Action Plans*. Ensure that the above-mentioned criteria are included in any NAP.
- Offer technical support in the drafting process, including facilitating the involvement of institutions with relevant expertise (see the references given below).
- Consider earmarked funding for specific activities within a NAP so as to guarantee implementation and follow up.
- Encourage the establishment of strong monitoring and oversight bodies that oversee progress in implementing a NAP.

### 3.8.B HUMAN RIGHTS EDUCATION

#### INTRODUCTION

Much of this manual is about laws, institutions and policies that aim to establish certain human rights guarantees within society. For truly durable human rights protection, however, we need a bottom-up approach aimed at building a *human rights culture* in every society. This is obtained through awareness-raising and education. HRE contributes to the NHRPS in various ways:

- HRE enables people to formulate their daily needs in terms of human rights to which they are entitled.
- HRE allows people to claim these rights but at the same time increases their understanding of their duties and responsibilities with regard to the rights of others.
- HRE contributes to a more democratic and tolerant society in which people are less inclined to solve conflicts through violence.

To obtain these positive and often long-term results, people should be made aware of human rights from an early age. HRE can take various forms and different actors can contribute to it, including the media, teachers or government officials. It can be aimed at children, the general public, specific vulnerable groups, or professional actors such as the police, military or legal actors. The Paris Principles on National Human Rights Institutions (see section 3.1) foresee an educational role for NHRIs. HRE can also target the general public, for example through mass media (see also chapter 3.7). This chapter will mainly expand on human rights within the state-run educational system, especially the primary and secondary school systems. Embassies are strongly recommended to identify other opportunities for contributing to an overall human rights culture.

On 10 December 2004, the UN General Assembly proclaimed the World Programme for Human Rights Education, followed by the UN Plan of Action on HRE.<sup>123</sup> This plan of action was adopted by all UN member states in July 2005. It obligates states to integrate HRE into primary and secondary school systems and offers criteria and guidance for doing so. As a result, many countries have drafted NAPs on HRE and followed up the World Programme's recommendations.

## KEY PRINCIPLES

The implementation of HRE through the school system implies the existence of a sufficiently developed educational system. Many children, however, do not go to school or receive education through non-state educational mechanisms, such as religious institutions. This is the determinant for the type of support that embassies give, as there is little to expect from promoting HRE in a system where the most basic educational standards and facilities are lacking and where access to education is not guaranteed. That said, wherever education is ongoing, opportunities for the integration of human rights arise. HRE can be successful if:<sup>124</sup>

- National educational policies and legislation commit to integrating human rights at all levels of the educational system and set out detailed end results about what students should know.
- Existing curriculum and educational materials are revised if needed and include both theoretical and practical human rights content. Human rights should be integrated fully into standard subject matters and teaching materials such as history or social studies. Knowledge of human rights should be one of the overall and explicit goals within the educational system.
- HRE policies and action plans are drafted in collaboration with NHRIs, human rights defenders and educational institutions.<sup>125</sup>
- HRE always reflects the universality and indivisibility of human rights, irrespective of the culture in which it is given. HRE should pay specific attention to human rights in relation to relevant cultural and traditional perceptions and practices in society.
- Human rights are part of training programmes and educational materials for all teachers.
- HRE is practically oriented and relates to real-life experiences and examples.
- Human rights are integrated into non-state or informal educational activities such as community initiatives or religious schools.

<sup>123</sup> UN Plan of Action for the first phase (2005–2009) of the World Programme for Human Rights Education.

<sup>124</sup> For a complete and detailed overview of all the relevant criteria for effective HRE, see the UN Plan of Action on Human Rights Education, available online at [www.unhchr.ch/html/menu6/1/edudec.htm](http://www.unhchr.ch/html/menu6/1/edudec.htm).

<sup>125</sup> The UN Plan of Action on Human Rights Education requests that governments establish a national committee for HRE and draft a NAP on HRE.

As mentioned above, human rights are not merely being taught through specific HRE courses, but may also be broader educational initiatives within society such as in the areas of anti-discrimination, citizenship, social norms and values, or historic education. These initiatives within society should preferably always be based on and integrate human rights.

## **OPTIONS FOR ACTION**

There are several means by which an embassy can contribute to effective HRE:

- Obtain information. There is a wealth of materials and a range of NGOs specialising in HRE (see the references below) that can offer information on HRE policies and practice in different countries.
- Encourage education authorities to set up comprehensive HRE programmes that are in line with the recommendations of the UN Plan of Action for the United Nation's Decade for Human Rights Education. Commit to distributing this plan among government actors.
- In CoE member states, the embassy could encourage state representatives to apply the recommendations and instruments developed by the Division for Citizenship and Human Rights Education of the Council that are specifically aimed at HRE.
- Fund specific governmental or NGO initiatives and activities in the field of HRE and try to strengthen their content.
- Commit to translating and distributing existing materials on HRE to NGOs, the media and other relevant actors.
- Encourage human rights to be taught throughout society, such as through NHRIs, in the media or in government-run programmes aimed at anti-discrimination or citizenship, for example.
- Fund specific elements of national action plans on HRE.
- Stimulate the integration of HRE into non-state educational mechanisms, for example by supporting educational activities for civil society or arranging training or meetings on HRE for religious or ethnic leaders.

## REFERENCES

### Institutions

- Office for Democratic Institutions and Human Rights of the OSCE (ODIHR) (this uses activities in the field of HRE); see [www.osce.org/odihr](http://www.osce.org/odihr).
- Human Rights Education Association (HREA) (this NGO supports human rights learning, training for activists and professionals, the development of educational materials and programming, and community-building through online technologies); see [www.hrea.org](http://www.hrea.org).
- Council of Europe, Programme on Education for Democratic Citizenship and Human Rights; see [www.coe.int/t/dg4/education/edc](http://www.coe.int/t/dg4/education/edc).
- UNICEF (UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights); see [www.unicef.org](http://www.unicef.org).
- People's Movement for Human Rights Education (PDHRE) (this NGO works directly and indirectly with its network of affiliates – primarily women's and social justice organisations – to develop and advance pedagogies for HRE); see [www.pdhre.org](http://www.pdhre.org).

### Background information

- UN Plan of Action on Human Rights Education; see [www.unhchr.ch/html/menu6/1/edudec.htm](http://www.unhchr.ch/html/menu6/1/edudec.htm).
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- HREA database on human rights education; see [www.hrea.org/index.php?base\\_id=102](http://www.hrea.org/index.php?base_id=102).

### On human rights action plans

- OHCHR training series no. 10, *Handbook on National Human Rights Plans of Action* (Geneva: OHCHR, 2002); see [www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx](http://www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx).
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- UN handbook on NAPs; see [www2.ohchr.org/english/about/publications/docs/nhrap.pdf](http://www2.ohchr.org/english/about/publications/docs/nhrap.pdf).
- Example of the NAP for South Africa; see [www2.ohchr.org/english/issues/plan\\_actions/safrica.htm](http://www2.ohchr.org/english/issues/plan_actions/safrica.htm).

# ANNEXE 1 INTERNATIONAL HUMAN RIGHTS STANDARDS

## INTERNATIONAL BILL OF HUMAN RIGHTS:

- Universal Declaration of Human Rights (1948)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966)

## CORE INTERNATIONAL HUMAN RIGHTS TREATIES:

- International Covenant on Civil and Political Rights (ICCPR)
  - Optional Protocol to the International Covenant on Civil and Political Rights
  - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - Optional Protocol to the Convention on Economic, Social and Cultural Rights (complaint mechanism)
  - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (complaint mechanism)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
  - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (monitoring mechanisms)
- Convention on the Rights of the Child (CRC)
  - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
  - Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)
- Convention on the Rights of Persons with Disabilities (ICRPD)
  - Optional Protocol to the Convention on the Rights of Persons with Disabilities (complaint mechanism)

- International Convention for the Protection of All Persons from Enforced Disappearance (ICPED)
  - Optional Protocol to the Convention on the Rights of Persons with Disabilities (complaint mechanism)

### **MAIN REGIONAL STANDARDS:**

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
- European Social Charter (ESC)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)
- The African Charter on Human and Peoples' Rights (Banjul Charter)
- The American Convention on Human Rights (ACHR)

### **INTERNATIONAL UN STANDARDS BASED ON THEME:<sup>126</sup>**

#### **The right of self-determination**

- United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
- General Assembly Resolution 1803 (XVII) of 14 December 1962: 'Permanent Sovereignty over Natural Resources'
- International Convention against the Recruitment, Use, Financing and Training of Mercenaries

#### **Rights of indigenous peoples and minorities**

- Declaration on the Rights of Indigenous Peoples
- Indigenous and Tribal Peoples Convention (1989), no. 169
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

#### **Prevention of discrimination**

- Equal Remuneration Convention (1951), no. 100
- Discrimination (Employment and Occupation) Convention (1958), no. 111
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Declaration on Race and Racial Prejudice
- Convention against Discrimination in Education
- Protocol Instituting a Conciliation and Good Offices Commission, to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education

<sup>126</sup> This list is a non-exhaustive selection and the legal status of these instruments varies. Other international standards related to these themes, and stemming from regional bodies or from other international organisations, may exist.

- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- World Conference against Racism (2001), leading to the Durban Declaration and Programme of Action
- Declaration on human rights and sexual orientation and gender identity (2008)

### **Rights of women**

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- Declaration on the Elimination of Violence against Women

### **Rights of the child**

- Convention on the Rights of the Child (CRC)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OPSC)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC)
- Minimum Age Convention (1973), no. 138
- Worst Forms of Child Labour Convention (1999), no. 182

### **Rights of older persons**

- United Nations Principles for Older Persons

### **Rights of persons with disabilities**

- Convention on the Rights of Persons with Disabilities (CRPD)
- Declaration on the Rights of Mentally Retarded Persons
- Declaration on the Rights of Disabled Persons
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care
- Standard Rules on the Equalisation of Opportunities for Persons with Disabilities

## **HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE:**

### **Protection of persons subjected to detention or imprisonment**

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
- Declaration on the Protection of All Persons from Enforced Disappearance
- Basic Principles and Guidelines on the Right to a Remedy and Reparation
- International Convention for the Protection of All Persons from Enforced Disappearance (not yet in force)

### **Social welfare, progress and development**

- Declaration on Social Progress and Development
- Universal Declaration on the Eradication of Hunger and Malnutrition
- Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind
- Declaration on the Right of Peoples to Peace
- Declaration on the Right to Development
- Universal Declaration on the Human Genome and Human Rights
- Universal Declaration on Cultural Diversity

### **Promotion and protection of human rights**

- Principles relating to the Status of National Institutions (the Paris Principles)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms

## Marriage

- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

## Right to health

- Declaration of Commitment on HIV/Aids

## Right to work and to fair conditions of employment

- Relevant ILO standards (see [www.ilo.org](http://www.ilo.org) for an extensive list)

## Freedom of association

- ILO: Freedom of Association and Protection of the Right to Organise Convention (1948), no. 87
- ILO: Right to Organise and Collective Bargaining Convention (1949), no. 98

## Slavery, slavery-like practices and forced labour

- Slavery Convention
- Protocol amending the Slavery Convention, signed at Geneva on 25 September 1926
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- ILO: Forced Labour Convention (1930), no. 29
- ILO: Abolition of Forced Labour Convention (1957), no. 105
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime

## Rights of migrants

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPMW)
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime

## Nationality, statelessness, asylum and refugees

- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons
- Convention relating to the Status of Refugees
- Protocol relating to the Status of Refugees
- Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live

### **War crimes and crimes against humanity, including genocide**

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity
- Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity
- Statute of the International Tribunal for the Former Yugoslavia
- Statute of the International Tribunal for Rwanda
- Rome Statute of the International Criminal Court

### **Humanitarian law**

- Geneva Convention relative to the Treatment of Prisoners of War
- Geneva Convention relative to the Protection of Civilian Persons in Time of War
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

### **World conference on human rights and the millennium assembly**

- Vienna Declaration and Programme of Action
- United Nations Millennium Declaration

# ANNEXE 2 RELEVANT INTERNATIONAL ORGANISATIONS AND MECHANISMS WORKING ON THE NHRPS

## THE UNITED NATIONS

### The OHCHR:<sup>127</sup>

The Office of the High Commissioner for Human Rights (OHCHR) has lead responsibility for the UN human rights programme. One of its main tasks is technical cooperation with states on a range of human rights issues, which can include training and support in the administration of justice, legislative reform, human rights treaty ratification and human rights education.

OHCHR field presences have grown considerably over recent years and can be divided into country offices, regional offices, human rights components in peace missions and human rights advisers in UN country teams. These field presences have broad understanding of a country's NHRPS. OHCHR headquarters has units dealing with specific elements of the NHRPS, such as a unit on the NHRIs. The OHCHR has developed a broad range of materials, including handbooks and guidelines on the NHRPS.<sup>128</sup> Its country pages contain a wealth of information on all human rights for all countries in the world.<sup>129</sup>

**Regional offices:** By early 2008, OHCHR will have regional offices in Addis Ababa (East Africa), Bangkok (South-East Asia), Beirut (Middle East), Bishkek (Central Asia), Dakar (West Africa), Panama (Latin America, with a small liaison office in Santiago, Chile, where the former South America Regional Office was located), Pretoria (Southern Africa), and Suva (Pacific), and plans to open additional offices covering South-West Asia and North Africa during this biennium.

In addition, OHCHR will increase support to the United Nations' sub-regional centre for human rights and democracy in Central Africa. The Office is presently holding discussions with the government of Qatar about opening the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region during 2008, in accordance with General Assembly Resolution A/Res/60/153 (2005).

**Country Offices:** OHCHR has country offices in Angola, Bolivia, Cambodia, Colombia, Guatemala, Mexico, Nepal, Togo and Uganda, as well as stand-alone offices in the

<sup>127</sup> Information from OHCHR website, end of 2008.

<sup>128</sup> These are referred to, when relevant, in section 2 of this manual and are of great value to embassy staff. A complete list of all these tools and handbooks can be found on the OHCHR's website at [www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx](http://www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx).

<sup>129</sup> See [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

occupied Palestinian territories and Kosovo (Serbia). The usual legal basis for the establishment of country and stand-alone offices is a standard agreement with the respective government, based on the High Commissioner's mandate. OHCHR's country and stand-alone offices support national efforts to strengthen respect for human rights. To this end, they analyse and report publicly on the human rights situation in the country, and recommend the formulation and implementation of necessary measures to enhance the protection of human rights. They promote the implementation of the recommendations made by the international human rights mechanisms, and provide support – through technical cooperation and advice – to the authorities and other national stakeholders for developing effective NHRPS.

**OHCHR Human rights components** of UN peace missions are deployed, or are about to be deployed, in Afghanistan, Burundi, the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Ethiopia/Eritrea, Georgia/Abkhazia, Guinea-Bissau, Haiti, Iraq, Liberia, Sierra Leone, Somalia, Sudan and Timor-Leste.

**Human rights advisers:** At the end of 2007, human rights advisers were deployed to Ecuador, Guyana, Indonesia, Kyrgyzstan, the Maldives, Nicaragua, the Russian Federation, Rwanda, Somalia, the Southern Caucasus, Sri Lanka, and the former Yugoslav Republic of Macedonia. During 2008–2009, human rights advisers will be deployed to the Great Lakes Region of Africa, Guinea, Moldova, Niger, Papua New Guinea, the Philippines and Vietnam.

## UNDP

In 2005 the United Nations Development Programme (UNDP) defined strengthening the human rights protection system as one of its three priority goals in the area of human rights. Its work includes support to justice and security system reform, the development of national human rights action plans, a rights-based approach to programming, civic education, awareness-raising campaigns, support to parliaments, civil society, independent media, public administrations and the judiciary, and NHRIs. UNDP and the OHCHR have established a collaborative programme called Global Human Rights Strengthening Program which identifies best practices and learning opportunities in developing national capacities for the promotion and protection of human rights and in applying a human rights-based approach to development programming. UNDP country offices are crucial actors for collaboration when working on (elements) of the NHRPS.

## The UN treaty bodies

There are eight human rights treaty bodies within the UN system,<sup>130</sup> which are committees of independent experts that monitor implementation of the core international human rights treaties (see chapter 3.7). Their activities include examining state parties' reports and issuing observations on states' compliance to the specific treaty and the content of human rights provisions. Some of these bodies may consider individual complaints or communications. The reports and concluding observations of these bodies contain detailed information on national protection systems, especially in the area of legislation.<sup>131</sup>

## UN Human Rights Council

The UN Human Rights Council is the prime UN human rights body. It works to promote human rights through technical cooperation, dialogue, the adoption of resolutions and other means. It also undertakes a Universal Periodic Review (UPR) of each state's fulfilment of its human rights obligations and commitments. One of the Council's most important instruments is the Special Procedures, which were established to address specific country situations or thematic issues. The OHCHR provides assistance and support in discharging their mandates. The added value of this combined set of independent human rights enquiry mechanisms is that they can receive allegations of human rights violations, or carry out country visits, irrespective of whether a given state has ratified relevant human rights treaties. Unfortunately, few countries have so-called 'standing invitations', which allow each Special Procedure to visit the state without undergoing a permission procedure. The recommendations of the Special Procedures are to a large extent aimed at strengthening the overall human rights infrastructure.

## Other UN institutions

Other UN bodies and agencies – such as the UNHCR, UNESCO, UNICEF, UNIFEM, UNFPA, the ILO and WHO – have a range of information on specific themes and programmes that strengthen the NHRPS in different ways. One example is the work of UNICEF in protecting the rights of children through its juvenile justice programmes and policies. The World Bank, meanwhile, is involved in governance programmes and analysis, which might include aspects of the human rights infrastructure. For example, it has programmes in the areas of rule of law and access to justice. Yet the World Bank does not include human rights criteria prominently in its decision-making process regarding loans and support.

<sup>130</sup> A ninth committee resulting from the International Convention for the Protection of All Persons from Enforced Disappearance will be established once the Convention enters into force.

<sup>131</sup> For example, the conclusions and comments of the UN Committee on the Rights of the Child foresee a range of recommendations related to legislative framework and policies aimed at improving the human rights situation of children.

Neither does the IMF impose human rights conditionalities, but improvement of the human rights infrastructure might be part of a Poverty Reduction Strategy Paper.

## **THE COUNCIL OF EUROPE**

The various institutions of the Council of Europe (CoE) – such as the European Court on Human Rights, the Human Rights Commissioner, the Venice Commission or the Committee against Torture – and their reports, resolutions or rulings are of great importance for the improvement of human rights. Their expertise in the area of human rights is not only important for the Council’s member states but also for third countries. The CoE has specific expertise on a range of elements of the NHRPS, such as police reform, HRE or drafting a new constitution.

## **THE OSCE**

Through its Human Dimension pillar, the Organisation for Security and Cooperation in Europe (OSCE) – and its country missions – is involved in a range of technical support programmes to elements of the NHRPS, such as institution-building, legislative support, support to parliaments and educational activities. The main human rights institutions concern the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities and the Representative on Freedom of the Media. The OSCE has developed a range of tools and manuals that can be of use to embassies (see [www.osce.org/odihr/documents.html](http://www.osce.org/odihr/documents.html)).

## **OTHER REGIONAL BODIES**

Other regional organisations, some of which have country offices, are often less well known but play an increasingly important role in the protection of human rights. They can contribute to a feeling of ownership and bridge the gap between Western and non-Western views on human rights.

The most important regional mechanisms in the area of human rights are:

- African Commission on Human and People’s Rights (AU).
- African Court on Human Rights (AU).
- African Special Rapporteur on Human Rights Defenders (AU).
- Inter-American Court on Human Rights (OAS).
- Inter-American Commission on Human Rights, Office of the Executive Secretary Defenders Unit (OAS).
- The Human Rights Unit of the Commonwealth (non-governmental).



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