



International Human Rights Protection: The Role of National Human Rights Institutions - a Case Study

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All errors remain the authors' own.

Executive summary

This Report was written as part of the FP7 research project, ‘Fostering Human Rights Among European (External and Internal) Policies’ and falls under Work Package 4, ‘Protection of Human Rights: Institutions and Instruments’. This Work Package aims to ‘map’ and assess current human rights protection systems. The present report focuses on National Human Rights Institutions (NHRIs) and the roles which they play or should play in the monitoring of human rights. This analysis focuses on the national level, through four case studies on the NHRIs of India, Morocco, Peru and South Africa, and on the regional, European level. The report sheds light upon the many and varied institutional foundations and working methods of NHRIs and at times highlights a number of discrepancies between their legal mandates and their practical functions or effectiveness in the promotion and protection of human rights. Whilst all institutions covered were granted ‘A’ status by the International Coordinating Committee of NHRIs, which assesses them in the light of their compliance with the 1993 ‘Paris Principles’, they all have a somewhat different *modus operandi* and approach towards human rights monitoring.

The first part of this report introduces the research and elaborates upon the importance and growing significance of NHRIs. The second part, introduces the ‘Paris Principles’ and the relevant international framework and delineates the concept of monitoring. Part III, as the substantial body of the report, contains four chapters, each contributing a separate national case study based upon, the Indian ‘National Human Rights Commission’ (NHRC), the Moroccan ‘Conseil National des Droits de L’Homme’ (CNDH), the Peruvian ‘Defensoría del Pueblo’ (Office of the Ombudsperson) and the South African ‘Human Rights Commission’ (SAHRC), respectively. The fourth part of the report focuses upon the coordination and collaboration of NHRIs on a European (regional) level, before the fifth and final part notes conclusions which can be drawn from the ways in which the case studies highlight different approaches to human rights monitoring, drawing upon instances and categories of the latter which cut across the different institutions under review.

The insights offered in Part III of the report are somewhat context-specific, but have as their common denominator the elaboration of mandates and functions undertaken by the NHRIs with the ultimate aim of the protection and promotion of human rights. In this work, monitoring necessarily emerges as a crucial and core element of such mandates and functions. The effectiveness of the transition from mandate to concrete action, in other words, the effective practical exercise of such mandates, appears to vary between the different institutions. Despite this, monitoring functions can certainly be noted and have been assessed throughout all case studies. Suggested areas for improvement and factors hampering the effective monitoring mandates are also clearly noted in all chapters. Ultimately, as regards the respective NHRIs, it is noted that the Indian NHRC has a somewhat ‘patchy’ record. Whilst it conducted crucial legislative monitoring and review in certain areas, it neglected to do so in others. It has perhaps not fulfilled its potential to play a coordinating role in harnessing synergies with other monitoring bodies. The assessment of Morocco’s CNDH is that whilst it exists as a Constitutional body, and its mandate allows it to conduct investigative visits, make recommendations, and undertake annual reporting, it has largely neglected some of its functions, including the reporting obligation. It is acknowledged that the CNDH has played a somewhat ‘modest’ role in the identification and monitoring of human rights abuses. In this regard, greater autonomy and collaboration with other state institutions and civil society is greatly

needed. As regards the Peruvian Ombudsperson, whilst it has been increasingly involved in the receipt and addressment of individual complaints, and possesses a function of Constitutional review, the latter has been used sparingly and the former does not appear to guarantee a great deal of redress to victims. The Office of the Ombudsperson does appear to be rather active in the production of reports however, on thematic and regional bases. Despite this, it is concluded that themes addressed in this regard, and in general, would benefit from greater rights-based and gender perspectives in order to provide more useful information with regard to human rights. Finally, the SAHRC of South Africa notes a good number of areas in which monitoring is theoretically provided for and in which it occurs in practice. Concretely, the Commission sends out 'protocols' to state departments in order to measure progress made on specific economic, social and cultural rights, and it has also conducted public hearings on a number of themes. The chapter does note however, that there is an issue with a lack of governmental engagement with recommendations made, and that suggestions are not always taken seriously. It is noted that this may relate to the abstract nature of the issues addressed and a lack of substantive guidance on implementation. A more creative approach is suggested, in order to increase accessibility in this regard and furthermore an increase in the SAHRC's monitoring mandate is also mooted, in order for it to intervene where provision of basic amenities could improve human rights situations. As regards cooperation with the European Union, the chapter notes reasons for the lack of a flourishing relationship, suggesting the need for constant engagement with the provision of technical and logistical resources in this respect.

Part IV of the report focuses upon the key actors at the European level, and aims to elaborate upon the ways in which coordination among European NHRIs is ensured, including through the European Network of National Human Rights Institutions. The chapter notes that the European Union's Fundamental Rights Agency has the potential to play a coordinating role in this respect, given its position in the institutional framework as a form of European 'NHRI'. In relation to engagement of the EU with NHRIs in third countries, the chapter notes the valuable tool of human rights impact assessments as a means and basis for cooperation. It concludes however, that much greater systematic and formalised engagement is still needed.