

The Role of NHRIs
in the Newly Established
UN Human Rights
Mechanisms

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Opening Ceremony and Plenary Session

Preface

It was a great privilege for the National Human Rights Commission of Korea(NHRCK) to host this international seminar on the Role of the NHRIs in the Newly Established UN Human Rights Mechanisms in Seoul on November 15, 2007.

The purpose of this seminar was first of all to achieve greater capacity-building of the NHRIs to meet the recent development of international human rights mechanisms. For the historical mission, many honorable international experts were invited to this seminar and they advocated the critical role of the NHRIs for promoting and protecting human rights at both international and domestic level.

Since the establishment of the UN Human Rights Council in 2006, the resolution 5/1 which was adopted by the Council in June 2007 provided the NHRIs with increased participation rights within the Council. As Mr. De Alba, Ambassador of Permanent Mission of Mexico at Geneva and the former President of Human Rights Council addressed that the NHRIs are no longer limited to agenda related to them directly, and can make comments on all human rights issues to relevant bodies such as treaty bodies, working groups and etc. The NHRIs can also participate in the composition of the State report as well, and can submit independent comments on the State report as well. Especially important is the fact that the NHRIs will play a crucial role in the follow-up process of UN Universal Periodic Review, keeping the government accountable for the subsequent four years until the next.

This presents a new challenge for the NHRIs because they were permitted to

participate in the defunct UN Commission on Human Rights only in limited capacity. In order to be an active and effective actor in the international human rights system, the NHRIs need to be aware of discussion and action in and out of the Human Rights Council. Moreover, the newly established human rights mechanisms have increased the need for strategic actions to concentrate on specific issues and to lobby for the selected ones.

The International Seminar on the Role of the NHRIs in the Newly Established UN Human Rights Mechanisms offered various suggestions of how NHRIs can act more efficiently in terms of advancing human rights. This seminar was deemed timely and meaningful by the participants in general because it provided an opportunity for stakeholders to utilize their expertise and to collaborate towards building the capacity of NHRIs.

Many human rights experts and honorable guests have shown us their enthusiasm towards our initiative by joining this seminar. Among others, I would like to express my deep appreciation to Ambassador Luis Alfonso de Alba from the Permanent Mission of Mexico at Geneva who has made great contribution to strengthening the status of NHRIs in the United Nations as a former President of UN Human Rights Council. He allowed us to take his precious time for this seminar.

I wish to convey my special thanks to the United Nations High Commissioner for Human Rights for her kind support by sending the staff members of UN OHCHR led by Mr. Gianni Magazzeni. My gratitude also goes to our guests from NHRI partners, Mr. M Ridha Saleh, Vice Chairperson of National Human Rights Commission of Indonesia, Ms. Pip Dargan, Deputy Director of the APF and Ms. Katharine Rose, Geneva ICC interim representative. I also thank Professor Martin Flaherty from Fordham Law School and all participants for their keen interest in this meeting. Their participation encouraged our Commission with short but rich experiences of six years in the process of consolidating the role of the NHRIs in the international human rights community.

I hope this book could facilitate further discussion in order to seek for an

appropriate role of the NHRIs in the transitional period of international human rights mechanisms.

AHN Kyong-Whan
Chairperson
National Human Rights Commission of Korea

December 2007

Executive Summary

1. The International Seminar on the Role of the NHRIs in the Newly Established UN Human Rights Mechanism was held at the conference hall of the National Human Rights Commission of Korea in Seoul on November 15, 2007. The purpose of this seminar was to achieve greater capacity-building among NHRIs. Many international human rights experts and honorable guests were invited to this seminar and they have advocated the importance of the role of NHRIs in monitoring the trends of the international human rights arena and in implementing human rights in the country level.
2. With the newly established Human Rights Council in 2006, the participation of NHRIs is encouraged in larger extent and the seminar reaffirmed various means to improve such participation. The resolution 5/1 which was adopted by the HRC in June 2007 provided NHRIs that have A status accreditation, increased participation rights within the UN Human Rights Council. As His Excellency Mr. De Alba, Ambassador of Permanent Mission of Mexico at Geneva and the former President of Human Rights Council addressed that NHRIs no longer limited to agenda related to them directly, and can make comments on all human rights issues to relevant bodies (i.e. Treaty Bodies, Working Groups and etc.). This presents a new challenge for NHRIs, as the intensity and frequency of interaction will increase many times over. NHRIs can also participate in the composition of the State report as well, and can submit independent comments on the State report as well. Especially important is the fact that after the UN Universal Periodic Review(UPR), NHRIs will play a crucial role in the follow up process, keeping the government accountable for the subsequent four years until the next.
3. The International Seminar produced several issues on the further participation of NHRIs. In order to be an active and effective actor in the international human rights system, NHRIs need to be aware of discussion and action in and out of

the HRC. In particular, NHRIs should keep track of the progress of the UPR, the Advisory Council and TBs, plan ahead based on the observation, and act strategically. Moreover, the newly established human rights mechanisms increased the need for strategic action. The HRC deals with wider agenda compared to its predecessor, Commission on Human Rights. Therefore, NHRIs need to choose specific issues that they intend to concentrate on, and formulate a strategy to lobby for the selected ones.

4. The International Seminar also introduced the interaction between the NHRIs and Special Procedures. Under the Human Rights Council, NHRIs, as well as NGOs and other relevant entities listed in HRC resolution 5/1 can nominate candidates as special procedures mandate-holders. Thereafter, the president of the HRC, on the basis of recommendations by the consultative group and following broad consultations, appoints suitable candidates, who are then adopted by the Council. NHRIs can cause governments to extend mandate of special procedures; NHRIs can encourage the governments to extend a standing invitation to special procedures. As a few examples of existing practices, NHRIs can provide background information to special procedures prior to their country visits; NHRIs can act as a reliable source of information, a potentially good partner to verify the accurateness of information obtained from other sources and an effective intermediary to obtain information from third parties; NHRIs can, besides enhancing follow-up of recommendations, also bring to the attention of special procedures relevant documents to facilitate their task.
5. Each NHRIs should set up a systematic engagement of Treaty Bodies(TBs) like developing some treaties-specific issues in order to make a more effective participation of NIs. Other prospects discussed on development of NHRIs are as the following: First, the attitude of NHRIs. depends on the relation between the state organs and NHRIs. Some state organs would take the recommendation or comments of the NHRIs. relatively seriously, but some do not. It is a challenge for NHRIs to restore mutual confidence, respecting each other's respective mandate concerning international treaties in relation to other state organs. Second, most NHRIs are putting their energy on domestic issues like investigation, education, counseling, reviewing the regulation bills and so on. Third, NHRIs are not an emerging actor of the UN and TBs no longer but an efficient actor to facilitate the working process of TBs. NHRIs' active engagement with independent and objective view can make it different without making the TBs politicized. National report can be improved by NHRIs' expertise on the international treaties through the review process.

6. The International Seminar on the Role of the NHRIs in the Newly Established UN Human Rights Mechanism offered various suggestions of how NHRIs can act more effectively and efficiently in terms of promoting and protecting human rights. This seminar was crucial in a sense that it provided an opportunity for relevant actors to utilize their expertise and collaborate towards improving NHRIs, building their capacity. The seminar was deemed timely and successfully by the participants in general.

The Role of NHRIs in the Newly Established UN Human Rights Mechanisms

I . Opening and Keynote Addresses

Opening Address: Professor *AHN Kyong Whan*, Chairperson, NHRCK

Keynote Address: H.E. Luis Alfonso de ALBA, Ambassador, Permanent Mission of Mexico at Geneva.

1. In his opening address, Chairperson Prof. Ahn, Kyong-whan thanked everyone for taking the time to prepare and participate in this important and timely event. Citing the recent achievements made in the institutional building process, and especially the expanded role of National Human Rights Institutes (NHRIs) in these new mechanisms, he stressed the ever increasing importance of international cooperation in nurturing the strategic and effective engagement of NHRIs in the new human rights regime.
2. H.E. Luis Alfonso de ALBA assumed the floor after Chairperson Ahn's welcome. After expressing his gratitude to the NHRCK for taking the initiative to hold this timely conference, he went on to say that Koreans are playing an increasing role in the UN and in the human rights effort, especially by sharing many agenda. Instead of going ahead with merely regurgitating the text he has prepared, he highlighted a few points:
3. Opportunities and challenges: H.E. Mr. de ALBA started by stating that the participation of National Human Rights Institutions in the Universal Periodic Review (UPR) will take many forms; unlike the former Commission on Human Rights, when NHRIs were permitted to participate in the proceeding of the Commission only in limited capacity, the HRC welcomes NHRIs to participate on all aspects of its process. Thus, NHRIs no longer limited to agenda related to them directly, and can make comments on all human rights issues to relevant bodies (i.e. OHCHR, Treaty Bodies, Working Groups etc.). This presents a new challenge for NHRIs, as the intensity and frequency of interaction will increase

many times over. NHRIs can also participate in the composition of the State report as well, and can submit independent comments (5pgs) on the State report as well. Especially important is the fact that after the UPR, NHRIs will play a crucial role in the follow up process, keeping the government accountable for the subsequent 4 years until the next review.

4. Various comments: Mr. de ALBA commented that a point to consider for the 7th session of the HRC would be the promotion of NHRIs, so that they may match Paris Principles standards. Another comment is that there is no need to in accrediting NHRIs to go through national delegations; new NHRIs can communicate directly to mechanisms such as the ICC. He also made an observation regarding the role of NHRIs in the selection of mandate holders and members of the Advisory Committee. For example, in selecting mandate holders the government can go to NHRIs for a profile list that will effectively counter the risk of the conflict of interest, or pick someone in the NHRI itself.
5. Observation on the success of the institutional building process: Mr. de ALBA stated that the process itself was an overall success, better than expected. For example he managed to save 38 out of 40 mandates after going through the mandate reviewing process via the institutional package strategy. However, the question remains of lifting it off the ground. What's necessary to save this package is knowledge, something that we can accumulate through seminars such as these.

II. Plenary Session: The Increasing Role of National Human Rights Institutions in the UN Human Rights Council and its Significance

Moderator: *Professor PARK Kyung-seo* (Ewha Woman's University; Former Ambassador at large for Human Rights)

Speaker: *Mr. Gianni MAGAZZENI* (Coordinator, NI Unit, OHCHR)

Panel Discussion: *Prof. In-Seop CHUNG* (Commissioner, NHRCK, Faculty of Law, Seoul National University)

Ms. Pip DARGAN (Deputy Director, Asia Pacific Forum of NHRIs)

6. New Opportunities In the plenary session, participants agreed that the newly established UN human rights mechanisms had offered new opportunities for NHRIs. For instance, the Coordinator of the National Institutions Unit of the Office of the UN High Commissioner for Human Rights (OHCHR), Mr. Gianni Magazzeni, said that NHRIs obtained more chances to partake in the

international human system through the UPR, the Advisory Committee of the HRC, and the system of Special Procedures. The Deputy Director of Asia Pacific Forum of NHRIs (APF), Ms. Pip Dargan, also emphasized that NHRIs could provide information to the Advisory Council. This new circumstance enables NHRIs to act as a key link among national, regional, and international dimension of human rights affairs.

7. Endeavour of Supporting NHRIs Participants presented the ongoing efforts to establish and strengthen NHRIs. Ms. Dargan introduced the recent attempts of APF to secure NHRIs a recognized role in a new human rights system then upon the table. According to Mr. Magazzeni, OHCHR pursues four major strategic objectives with the aim of promoting NHRIs: country engagement, through which OHCHR is supporting Governments efforts to establish or strengthen NHRIs; leadership, through which OHCHR monitor the activities of NHRIs and enhances their capacity; promoting the interaction between NHRIs and the international human rights system; and increasing partnerships with UN field offices, the International Coordinating Committee of NHRIs and regional coordinating bodies of NHRIs.
8. Status of NHRIs: The Human Rights Commissioner of NHRCK, Professor In-Seop Chung broached the status of NHRIs. There have been great developments in the UN human rights system. As Mr. Magazzeni presented, the resolution 5/1 adopted by the HRC this June had provided NHRIs with A status, expanding their potential for involvement in the international system. Notwithstanding, the position of NHRIs is more similar to that of NGOs, which is quasi-official. Professor Chung proposed to discuss if more official status should be given to NHRIs and what kind of position would suit them for their constructive involvement.
9. NHRIs as International Actors: Mr. Magazzeni stressed that NHRIs should make use of their current status. He noted that even though they could and should assume not only a national role but also regional and international roles, they tended to focus on the domestic issues. NHRIs need to broaden their interest and expertise so that they can contribute to the substantive agenda faced by international society beyond mere self-advocacy. H.E. Mr. de Alba also pointed out that NHRIs had not yet recognized themselves as an international actor. Fortunately, agencies such as APF are dealing with the problem and improving the situation. He asserted that NHRIs should increase their capacity to the point that they themselves address some regional or international issues and then take them to the HRC.

10. Need for Strategic Action: In order to be an active and effective actor in the international human rights system, NHRIs need to be aware of discussion and action in and out of the HRC. In particular, Ms. Dargan stressed that NHRIs should keep track of the progress of the UPR, the Advisory Council and TBs, plan ahead based on the observation, and act strategically. Moreover, the newly established human rights mechanisms increased the need for strategic action. The Commissioner of the National Human Rights Commission of Korea, Ms. Heisoo Shin, a member of the UN Committee on the Elimination of Discrimination Against Women, pointed out that the HRC dealt with wider agenda compared to the Commission on Human Rights(CHR). Therefore, NHRIs need to choose specific issues that they intend to concentrate on, and formulate a strategy to lobby for the selected ones.
11. Support for the third world NHRIs: The diverse issues that the HRC covers and the ensuing need for strategic action give a challenge to NHRIs, especially to those of the third world. They are facing an uneasy task of mobilizing their deficient resource to attain the priority goal, while grasping a wide variety of agenda currently considered in and out of the HRC. Expressing concern over this situation, Ms. Shin proposed to deliberate what kind of measures could be devised to support those under-resourced NHRIs. Fortunately, as Mr. Magazzeni said, the programme to assist NHRIs in participating in the international human rights system was initiated by OHCHR. This endeavor is hoped to extend to specifically deal with the under-resourced NHRIs of the third world.
12. Cooperation with Governments: Unlike coordinating bodies of NHRIs, an individual NHRI should give priority to cooperation with their respective Governments. Some of them work in close collaboration with their Governments, but others don't. The Executive Director of Korea Center for United Nations Human Rights Policy, Ms. Giyoung Kim, suggested that agencies, such as the HRC, should provide support to the NHRIs, which found difficulty in cooperating with their Governments.
13. Independence of NHRIs: While cooperation with Governments is valued, independence from them is essential to NHRIs. MR. Magazzeni emphatically said that NHRIs could best play a role of ensuring the application of the human rights provision of the Constitution and national laws when they are independent and effective in accordance with the Paris Principles. Also, under the condition, they can better translate the international human rights norms

into national laws and practices. With regard to the third world NHRIs, it was pointed out that they could be considered separately from their Governments. The extra efforts to secure a recognized role and independence for NHRIs in the third world are needed. Ms Dargan emphasized that NHRIs have influence with governments and can exercise this influence effectively at the HRC and through its mechanisms. As an example Ms Dargan referred to the results achieved by NHRIs in their successful advocacy of ensuring participation rights for NHRIs at the new HRC in June this year.

14. Relationship with NGOs: Participation of NGOs in the international human rights system and their collaboration with NHRIs were discussed as well. Regarding NGO involvement, the problem that only the international NGOs currently partake in the system was highlighted by H.E. Mr. de Alba. Utilizing technology such as web cast would offer a chance of participation to more NGOs including national or regional ones. In a way of promoting NGOs involvement, financial assistance is also being considered. The debate is whether to provide them with financial help limited to the UPR session or covering the other participating activities. In regard of relationship between NHRIs and NGOs, the overlapping function between them needs to be addressed. H.E. Mr. de Alba emphasized that only when NHRIs conformed to the Paris Principles, their relationship with NGOs could be stabilized.

III. Working Group I: NHRIs and UPR

Moderator: *Mr. Hyuck CHOI* (Former Ambassador to Geneva)

Speaker: *Mr. Gianni MAGAZZENI* (Coordinator, NI Unit, OHCHR)

Panel Discussion: *Mr. Jong-Gil WOO* (Human Rights Officer, OHCHR)

Mr. Hoon-min LIM (Counselor, Permanent Mission of Korea in Geneva)

15. Working Group I discussed the role of NHRIs in the newly established mechanism of the UPR. Mr. Gianni Magazenni started the discussion, followed by the two panelists Mr. Jong-Gil Woo from OHCHR and Mr. Hoon-min Lim from the permanent mission of Korea in Geneva. Ambassador Luis Alfonso de Alba also made valuable inputs in the discussions, drawing on his experience and leadership as the president of HRC (i.e. the history of the UPR, role of the OHCHR and the Voluntary Fund for Technical Cooperation in the Field of Human Rights)

16. Importance of the UPR, and identifying windows of opportunities for NHRIs:
There was wide recognition that the UPR will be the most important mechanism of the UN HRC. Hence, the success of the Human Rights Council will depend largely upon the success of the UPR mechanism. The meeting identified, based on the provisions of the UPR, the areas, scopes and windows of opportunities for the NHRIs to be involved and engaged in the UPR process and thereby to contribute to the improvement of human rights situation to be reviewed. These range from the preparation process of review document to participation in the review process itself. The opportunity is there in the process of the adaptation of the outcome of the review, most importantly in the implementation process of the recommendations.
17. NHRIs - Considerations towards the effectiveness of NHRIs in the UPR process:
There were some questions raised regarding how actually the UPR will be conducted and how NHRIs would be able to perform their role properly in each and every stage, notably with regard to the possible submission of separate information by NHRIs for the Review (NHRIs can now participate in the composition of state reports, and give independent reviews), publishing national implementation recommendations, sharing best practices with stakeholders, financial implication of technical assistance, and relations with state governments and civil societies. Also, there were suggestions for possible designation of NHRI experts as observers of the national delegation to the review and as the rapporteur (being part of the troika) of the state, as they are desirable due to their expertise and impartiality in the process.
18. NHRIs - Relationship with the Government: It was pointed out that NHRIs need to establish a constructive relationship with their governments, in a way that won't affect their independence. In other words, NHRIs should put some healthy pressure on the government and develop a constructive partnership with governments on the one hand and with NGOs on the other. For instance, NHRIs can conduct a constructive review on government policy and present recommendations regarding human rights situations. Another way that may be considered is allowing NHRIs to participate in Korean delegations to relevant meetings, and (as was mentioned before) to appoint NHRI experts as government-appointed rapporteurs.
19. NHRIs - Relationship with international actors: There are also possible roles for the NHRIs beyond the national level; notably participation in and contribution to the thematic discussion of HRC and sharing of best practices with other

foreign stakeholders in connection with the implementation recommendations for other states.

20. Conclusion: The UPR is a new institution. It's not a fixed mechanism, and will be reevaluated four years from now. Hence, it is an evolving process in which the NHRCK, NGOs, and all other stakeholders need to proactively contribute during the next four years to ensure that it succeeds and is consolidated.

IV. Working Group II: NHRIs and the UN Advisory Committee

Moderator: *Dr. Martin Flaherty*

(Professor of Law, Fordham Law School)

Speaker: *Chinsung CHUNG* (Sociology, Seoul National University)

Panel Discussion: *Anselmo LEE* (Executive Director, FORUM-ASIA)

M Ridha SALEH (Vice Chairperson, National Human Rights Commission of Indonesia)

21. Presentation by Professor Chinsung Chung: The professor presented on 'the UN Human Rights Council Advisory Committee and the role of the National Human Rights Institutions' and emphasized that the roles of National Human Rights Institutions are very important in achieving the following; power of initiative and continuation of the ideas and works which were being enforced by the Sub-Commission. The function of the newly created Human Rights Council Advisory Committee was reduced and it needs to maximize its capacities. To do so, Professor Chung argues that the following issues should be considered effectively; 1) Power of initiative, 2) Continuation of the ideas and studies of the Sub-Commission, 3) Reviewing process of the report, and 4) OHCHR's assistance to the studies. The Council states NHRIs shall be entitled to participate in the work of the Advisory Committee and the Advisory Committee needs to interact with NHRIs. Professor Chung explains the role of National Human Rights Institutions as follows; 1) Participation in the final shaping of the Advisory Committee: NHRIs could play important roles in accomplishing the above issues while the Council is finalizing the shape of the Committee by connecting States and independent experts, and Professor Chung argues, this is the role that NHRIs can play better than any other organization, 2) Nominating process: When selecting their candidates, States should consult their national human rights institutions and civil society organizations, 3) Participation in general debates and raising human rights issues: NHRIs are expected to more actively participate in the sessions of the Advisory Committee and raise various human

rights issues that they are experiencing in their own countries. In order to make the new Committee a strong and effective body, the participation of NHRIs and allowing them to raise issues is imperative, 4) Contribution to Working Groups: Working Groups were more open to the civil society than other parts of the Sub-Commission. NHRIs should utilize this open arena for communicating with various NGOs and to let them know the activities of NHRIs, 5) Reviewing Reports: NHRIs should contribute to creating the above-mentioned process of reviewing reports, and NHRIs should actively participate in this process if the process is established, 6) Regular meeting with the Advisory Committee: Members of the Advisory Committee and NHRIs have regular meetings before, during or after the session of the Advisory Committee is highly recommended for exchanging ideas, 7) Lastly, Professor Chung exhibits utilizing the reports of the Advisory Committee in which she contends that the most important role that NHRIs can play is to introduce the studies of the Advisory Committee to the national and local levels. Without utilizing actors in these levels, she argues, it is no use for the Advisory Committee to produce their reports, and it is strongly recommended that NHRIs utilize the studies of the Advisory Committee in their activities.

22. Reduced role of the Advisory Committee: The panel discussed the drastically weakened role and function of the AC. Although its role and composition has not yet been finalized, the Human Rights Council limits AC's functions to a think-tank that simply advises the Council. HRC Resolution 5/1 defines the AC capacity as follows: 1) AC provides expertise to the Council in the manner and form requested, focusing mainly on studies and research-based advice; 2) Council may request AC to undertake certain tasks; 3) AC should be implementation-oriented; 4) scope of AC's advice should be limited to thematic issues pertaining to HRC's mandate; 5) AC may not adopt resolutions or decisions; 6) AC may not establish bodies unless HRC authorizes it to do so. [Notice that the last three express limitation of AC's function]. The AC is also limited to discuss the spectrum of human rights issues within the four surviving working groups of the former Sub-Commission; that is, the working groups on Contemporary Forms of Slavery, Minorities, Indigenous Populations and Social Forum. In this context, Dr. Chung stressed the need to find effective ways for addressing key gaps in the system in respect to standard-setting or emerging areas of human rights. Despite its weakened position, the new AC agenda should take initiative in discerning where there is need for new studies to meet new problems or set new standards, thereby the AC should be in a sense a "Think Tank Plus." AC should also be more implementation-oriented in

that it collects expert thinking on how effectively standards, norms, principles and guidelines should be implemented.

23. Overlapping functions: The panel also discussed concern for the possible overlapping roles between the Treaty Bodies, Special Procedures and the new AC. Particular concern was raised over the prolific number of studies conducted by these advisory groups that are eventually shelved rather than implemented. Mr. Lee emphasized the need to study the exact nature of these projects and how they may complement each other so that they may generate synergy and added-values and avoid overlap.
24. Overcoming politicization: Controversies arose in the former Sub-Commission concerning its value-oriented 'independent' experts, governments motivated by 'realpolitik' and lack of professionalism. The panel questioned how the new AC will overcome these problems. Ms. Chung replied that with the much-reduced mandate of AC, far less than that of the Sub-Commission, there is not much room for politics. That is, the AC has no decision-making power, is much constrained by HRC's delegation of tasks and is limited by the number of days allocated for its annual sessions (session duration of ten days twice a year). Risk of politicization of the new AC may be reduced through 1) strict quality control of country studies that promotes both accuracy of information and objectivity; and 2) limitation of members' terms of service to two three-year terms. To promote nomination of non-biased, qualified experts, the government should heavily consult NHRIs and civil society.
25. Role of NHRIs: The panel proceeded to discuss how NHRIs could take this window of opportunity to make itself more relevant in the reform process and thus help shape AC's eventual role in the UN apparatus. Ms. Chung indicated that since the year 2000 and following the weakened authority of the Sub-Commission, the number of external participants in the Sub-Commission has dwindled. For the planned 1st AC session in the summer of 2008, Ms. Chung recommended that NGOs and NHRIs actively participate to enlarge the scope and relevance of the AC. NHRIs' provision of expertise and their participation are key. Mr. Saleh also noted that the AC can bridge the communication gap between a particular country's situation and HRC's agenda. As such, NHRIs have an important role in advising the AC and even further bridging the gap between civil society and HRC. To encourage NHRI participation, however, Ms. Shin pointed out the need to increase the personnel size and budget of NHRIs. Entry-points for NHRI participation can be categorized into the following: 1)

participation in final structure and composition of the AC; 2) consultation in the nomination process; 3) participation in general debates and raising human rights issues; 4) contribution to working groups; 5) review of reports; 6) organization of regular meetings with the AC; and 7) introduction of AC reports and studies at the national and local levels.

V. Working Group III: National Human Rights Institutions and Special Procedures

Moderator: *Mr. Anselmo LEE* (Executive Director , FORUM-ASIA)

Speaker: *Ms. YounKyo AHN* (Human Rights Officer, OHCHR)

Panel Discussion: *Ms. Giyoung KIM* (Executive Director, Korean Center for United Nations Human Rights Policy)

Ms. Katharina ROSE (Geneva Interim representative, ICC)

26. Introduction: Ms. Younkyo AHN commenced her presentation by congratulating the National Human Rights Commission of Korea for the organization of such a timely seminar. She stated that her discussion was to center on the developments in Special procedures, in the context of Human Rights Council Resolution 5/1 and 5/2 of June 18 2007 and the areas for cooperation between NHRIs and Special procedures. Special procedures, she observed, was the name given to the UN mechanism charged with promoting human rights all over the world, be they in countries (country mandates) or in light of thematic issues (thematic mandates). Under Resolution 5/1, the HRC should always strive for improvements, including the identification of thematic gaps. Such a requirement provides an essential element that ensures the HRC will be able to develop and maintain a comprehensive system of SP.
27. Selection and appointment of mandate-holders: She noted that unlike the previous dispensation, under the Human Rights Council, NHRIs, as well as NGOs and other relevant entities listed in HRC resolution 5/1 can nominate candidates as special procedures mandate-holders. Thereafter, the president of the HRC, on the basis of recommendations by the consultative group and following broad consultations, appoints suitable candidates, who are then adopted by the Council.
28. Potential for successful cooperation between NHRIs and Special Procedures: Recalling that Resolution 5/1 of June 18 2007 increases transparency and the role of stakeholders, NHRIs are key partners to the Special procedures due to

their vast and first hand knowledge of the human rights situation on the ground, she noted. In this vein, she flagged the roles of NHRI and special procedures are mutually reinforcing.

29. Interaction between NHRIs and Special Procedures: Among others, she stated; NHRIs can encourage governments to extend a standing invitation to Special procedures; NHRIs can also provide inputs at Council meetings therefore relating with Special procedures; NHRIs can provide background information to special procedures prior to their country visits; NHRIs can act as a reliable source of information, a potentially good partner to verify the accurateness of information obtained from other sources and an effective intermediary to obtain information from third parties; NHRIs can, besides enhancing follow-up of recommendations, also bring to the attention of special procedures relevant documents to facilitate their task. In that regard, a few examples of good practices were shared.
30. Communication and Protection Capacity: As a result of the interaction between NHRIs and special procedures, she noted, personal safety of individuals, NGOs or other human rights defenders may be at stake; in this wise, she opined, NHRIs can keep special procedures informed of any such danger for their possible action.
31. Conclusion: Ms. AHN summed her presentation by stating that NHRIs are crucial partners to special procedures mandate-holders, in light of the discharge of their duties. While commending the initiative of inviting NHRI to special procedures' annual meeting, she observed that the list enumerating areas of interaction between NHRIs and special procedures is not exhaustive. She concluded by opining that while the relationship between the stakeholders is mutually reinforcing, it is hoped that the discussions at the seminar were going to strengthen the interaction between NHRIs and special procedures.
32. Panel Discussion Ms. Giyoung KIM: Discussion here was two-fold, namely, on the institution building and the cooperation between NHRI and special procedures. The panelist acknowledged the primacy of Resolution 5/1 which empowers "other human rights bodies" to nominate candidates for special procedures. NHRIs are falling within this category. She also observed that NHRIs can also partake in the review of mandates of Special procedures. The discussant regretted the fact that most NGOs, as well as civil society organizations are still unaware of the mechanism of special procedure. This view was illuminated when she recalled that no practical follow-up measures were ever taken in

pursuance of the report made by the Special Rapporteur on the situation of Migrant Workers, when he visited the Republic of Korea.

33. Ms Katharina ROSE: In light of the presentation, Ms. ROSE asserted that the effectiveness of special procedures depends on follow-up. She then went further to examine how NHRIs can play their role of follow-up. While highlighting vast areas of reinforcement, she also stated that NHRIs now have the right to speak on all agenda items, and also provide specific information in a bid to reinforce the universal periodic review mechanism. Ms. ROSE equally flagged that Resolution 2005/74 gives NHRIs the latitude to attend Human Rights Council sessions. In this wise, they can provide inputs and identify protection gaps due to their expertise. She recalled, by citing the examples of Haiti and the Democratic Republic of Congo, that NHRIs, through cooperation with special procedures, can influence the extension of mandate holders. In summation, she noted the interaction between NHRIs and special procedures do not only benefit each other, but also enhances the protection and promotion of human rights, emphasizing the importance of partnerships between NHRIs, special procedures and United Nations agencies at the national level with a view to further promoting a Human Rights mainstream .
34. The moderator, in reaction to the discussions noted that the preoccupation is how special procedures can be maintained and sustained, while enhancing cooperation with NHRIs.
35. H.E. Mr. Luis Alfonso de ALBA described the presentation and discussion as 'rich'. He then commented on the deliberations leading to Resolution 5/1, noting that the resolution was passed by consensus. He however regretted that special procedures have at instances exhibited pretensions which suggest that they are more acquainted with the issues than NHRIs. Such pretensions can not be true, he declared. In ending, he opined that the interaction between special procedures and national institutions can not be equated to an academic exercise but reality motivates the whole system, he concluded.
36. Interactive Discussion: Following the above, discussion centered on questions and answers. The prominent question was whether there were sanctions available to mete against special rapporteurs who abuse their responsibilities and duties. The question was posed in light of the case of a special rapporteur who sympathized with a military coup in Thailand. As a response, Former Human Rights Council President, H.E Luis Alfonso de ALBA, stated that in such

situations the recommendation has often been one of self-critique - allowing special procedures to come up with a code of conduct addressing this area. He noted that in such cases the big question is often on what to do or to do nothing. He made it clearer when he said, under the previous dispensation, the Secretary General appointed the special rapporteur and so UN High Commissioner for Human Rights could not compromise her role by determining what sanctions to be meted against such rapporteur.

VI. Working Group IV: Reform of Treaty Bodies and the Role of NHRIs

Moderator: *Ms. Heisoo SHIN* (Commissioner, NHRCK; Member, CEDAW)

Speaker: *Professor Yanghee LEE* (Chairperson, CRC; Professor, Sungkyunkwan University)

Panel Discussion: *Professor Chan-Un PARK* (Faculty of Law, Hanyang University)
Mr. Byunghoon OH (Director, International Human Rights Team, NHRCK)

37. Reform of Treaty Bodies and the Role of National Human Rights Institutions:

Professor Yanghee Lee presented that monitoring implementation of international treaties lies in the hands of several actors: respective treaty body, the States party to the respective treaty, civil society, international and national NGOs, and national human rights institutions. Through the Vienna Declaration and Programme of Action, the importance of the role of national institutions for the promotion and protection of human rights was affirmed. In addition, the Berlin Round Table helped clarify and specify the role of NHRIs. The Berlin Round Table concluded as the following: 1) Drafting of List of Issues-Participation of the NHRI is crucial in aiding the Committee to draft accurate List of Issues, conduct of the Dialogue, and to the Concluding Observations, 2) Assisting Government in understanding of the new treaty-body reporting guidelines- the NHRIS should contribute to the preparation of State party reports. This must also be in accordance with the Paris Principles. 3) Petitions and enquiry procedures: NHRIs must consider facilitating or assisting victim's petitions to the respective treaty bodies in cases where the Treaty Body has an individual complaints mechanism. 4) NHRIs must take the role of informing all relevant actors on the concluding observations and recommendations of Treaty Bodies. 5) the NHRIs must encourage ratification and accession to international Human Rights instruments. 6) NHRIs must submit their own report to the relevant treaty body in addition to its consultative and assisting role. The NHRIs

have an added role in cases where the international human rights instrument does not have an individual complaints mechanism, notably the CRC. She contended that NHRIs are urged to contribute its role independently as information provider. NHRIs and the UN human rights TBs can build partnership in the pursuit of the promotion and protection of human rights. For instance, NHRIs can assist the international human rights instrument, which does not have an individual complaints mechanism, such as the CRC. NHRIs must take an active role in raising awareness of the public at large as well as of key actors. Professor Lee concluded that the partnership among various stakeholders will become increasingly more crucial in the future in promoting and protecting human rights. The State party must be the key actor in fulfilling its requirement to comply with the various human rights treaties it ratifies. She explains that the treaty bodies rely heavily on reports from the NGOs, UN agencies, and NHRIs in considering State party reports. NHRIs have a different role from that of the NGOs. The NHRIs if the NHRIs were established in accordance to the Paris Principles, and General Comments of respective treaty bodies, they would have the mandate to carry out investigations, have access to all data and information, and have the mandate to carry out investigations, have access to all data and information, and have sufficient financial and human resources to become accessible to even the most vulnerable peoples. Professor Lee had also argued that a strong and independent NHRI would be able to carry out its true mission to uphold, promote, and protect the rights of all persons.

38. Treaty Monitoring Body and the Role of National Human Rights Institutions: Professor Park stated that he concurs with conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, yet he would suggest the followings: He suggested that NHRIs should intervene before and after the state party reports examination, including through oral presentation. To do so, staff and commissioners should be trained as an expert in international human rights law. The NHRCK should establish guidelines how to involve in the process with the treaty bodies and provide information if necessary since there is no clear guideline. Professor Park also suggested that the provision of information, and consultation is very helpful for victims, and NHRIs should be able to provide information for the decision of treaty bodies, and should consider legal aid to the authors of the individual communications. The NHRCK should provide information on the implementation of the views of treaty bodies to the special rapporteurs on the follow-up of the treaty bodies which has never been a case in Korea. Professor Park contended that it is very important to establish national mechanism for better reporting process and the

follow-up. In order to meet this end, he argues, the institutionalization of national implementation mechanism for drafting state party report and the follow-up. And there should be a bureau of the NHRIs in charge of this specific mission. In addition, it would be useful to create database of international human rights treaties, concluding observations, views, relevant legislations, and policies so that various stakeholders can easily access database and stimulate domestic implementation process. Lastly, professor Park concluded that the role of National Human Rights Commission of Korea should be clearly defined by the parliament and state if an opportunity for NHRIs to involve in the process of examination of state party reports, and follow-up afterwards are provided.

39. How Can National Human Rights Institutions make a practical contribution to the effectiveness of Treaty Bodies: Mr. Oh contended that each NHRI should set up a systematic engagement of TBs like developing some treaties-specific issues in order to make a more effective participation of NHRIs. He presented his prospects on development of NHRIs as the following: 1) the attitude of NHRIs depends on the relation between the state organs and NHRIs. Some state organs would take the recommendation or comments of the NHRIs relatively seriously, but some do not. It is a challenge for NHRIs to restore mutual confidence, respecting each other's respective mandate concerning international treaties in relation to other state organs. 2) most NHRIs are putting their energy on domestic issues like investigation, education, counseling, reviewing the regulation bills and so on. 3) NHRIs are not an emerging actor of the UN and TBs no longer but an efficient actor to facilitate the working process of TBs. NHRI's active engagement with independent and objective view can make it different without making the TBs politicized. National report can be improved by NHRIs' expertise on the international treaties through the review process. Lastly, Director Oh argues that mutual cooperation with NHRIs and NGOs or civil society is very important for NHRIs to play a role as information provider because NGOs are a resource of human rights agenda and issues ranging from grass-root to international level. He concluded that raising expertise with the mutual cooperation can make more influential to state organs to finalize national report.

VII. Plenary Discussion and Working Group Presentation

Moderator: Professor *AHN Kyong-Whan*

Plenary Discussion: *Professor PARK Kyung-seo*

Working Group I : *Mr. Hyuck CHOI*

Working Group II: *Professor Chin-Sung CHUNG*

Working Group III: *Mr. Anselmo LEE*

Working Group IV: *Ms. Heisoo SHIN*

All Participants

40. After the conclusions of the four working groups, the moderators for each session come together and gave a summary presentation of the subjects discussed in their respective groups. After this, professor Park Kyung-seo proposed that each of those invited present brief final remarks. Mr. Hyuck Choi mentioned that this seminar is an important chance for NHRIs to seek for their possible role model of active engagement in the Human Rights Council. Ms. Heisoo SHIN emphasized on the importance of capacity building of NHRIs in order to adjust to the recent change of international human rights mechanisms. Prof. Yanghee Lee proposed that the NHRCK and NGOs form a broad coalition mechanism; a single architecture that looks at all treaty bodies and HRC, the function of which won't be redundant with the NHRCK. Mr. Hoon-Min Lim made a suggestion to the NHRCK to clarify some areas in which the Commission can give a greater contribution to the international human rights effort. Regarding comments and questions about the code of conduct by several participants, Ms. YounKyo Ahn flagged the importance of the new procedure for selecting mandate-holders. She also emphasized the need to try harder for the dissemination of information tools already developed to the general populace through strategic cooperation between organizations. Mr. Anselmo Lee observed that the result of the institution-building process of the HRC may be expressed in metaphors: the UPR can be likened to a brand-new product or architecture, the Advisory Committee to a remodeling case, while the Special Procedures can be likened to a renovation. He also stated that the Treaty Bodies reforms are to take place in the next stage of the institution building process. During this process, the collaboration between NGOs and NHRIs is very important, and should be in fact strategic, as both share the same goal and mission. In this context, the role of NHRIs as defenders of Human Rights Defenders needs to be strengthened. NHRIs are in a strategic position to link up stake-holders in the promotion and protection of human rights at the domestic level. The NHRI is also of hybrid nature. He described that an NHRI's mindset is from the UN, as its main mandate is the domestic application of international human rights standards, while its body is from the government, as it is created by the government and its employees are legally classified as civil servants. The NHRI's heart is, however, from NGOs, as it is victim-responsive and sensitive. In order to carry out its complex mandate effectively, it is important for NHRIs to

maintain a high-level of independence. Ms. Katharina Rose referred to the Human Rights Council resolutions entitled “Human Rights Education and Training” that the NHRCK may be interested in, as well as to the Handbook on NHRIs and the Treaty Bodies that the German Institute for Human Rights is currently drafting. Mr. Jong-Gil Woo observed that NHRIs can fill the “missing link” between the UN bodies (e.g. OHCHR, UNDP) and the field level, and perhaps establish coordination in a holistic manner. Ms. Giyoung Kim observed that there were a lot of ideas discussed in the seminar, some of which can be implemented right away, and expressed her hopes that the NHRCK will share its expertise and maintain its role as the strategic link between governments and NGOs. Mr. Gianni Magazzeni observed that a consensus has formed recently, recognizing the great importance of NHRIs, while agreeing with Mr. Lee of the nature of the link between NGOs, NHRIs and governments. Perhaps NHRIs are the oxygen of the whole bunch. H.E. Luis Alfonso de Alba referred to commonly used terminology: implementation, to explain that in establishing the Advisory Committee the prevailing atmosphere stressed implementation, not initiation; mainstreaming, holistic approach and partnership, to illustrate that the Human Right Council is trying to maximize the human rights activities of existing mechanisms. He also stated that National Human Rights Commission of Korea(NHRCK) has a great responsibility to take on the opportunity in front of it; an opportunity for the NHRCK to reach across from the sub-regional to international in serving the Korean people by coordinating with other governments and international actors. International standards don’t form on their own. NHRCK has the resources necessary to assume leadership in this regard; it just needs to take one step at a time. He also mentioned the UN OHCHR in that the office needs to adjust to the Human Rights Council, and needs to grow very fast, while expanding to more HR issues. Mr. Kyung-Seo Park concluded the input by stating how far Korea has come in terms of human rights since when he was young, and further commended the NHRCK Chairperson for this wonderful initiative.

41. In his closing remarks, professor AHN Kyong-Whan, Chairperson of NHRCK, thanked all participants, resource persons and all staff involved in the excellent organization. It was stressed that the seminar has seen much exchange of fruitful insights, and he concluded by expressing hope for further collaboration and development in the future.

Opening Remarks

By Chairperson *AHN Kyong-Whan*
National Human Rights Commission of Korea

*Excellencies,
Distinguished Guests,
Colleagues and Friends,
Ladies and Gentlemen,*

It is my great pleasure to meet you here, and I would like to extend my warmest welcome to all of you. Today is a very special day in Korea. It is the day of university entrance exam nationwide. In a country where high school students have to survive harsh competition to enter a university and their future is largely influenced by the score from this exam, it is the showdown day for students who have prepared for it with all their strength. In this sense, it would not be difficult to guess how “thrilling” moment the students are undergoing right now. I guess by this time the examination has commenced, and many of the students get their hands wet out of being nervous. I should confess to you that I feel the same as the students out there. Like them, I am feeling sweat in my hands because today is the day to open this seminar that we have prepared for long with our earnest commitment and energy.

This international seminar is initiated by the National Human Rights Commission of Korea to explore ways and means towards the effective functioning of national human rights institutions under the changing dynamics of the international human rights regime. Since June 2006, we have witnessed the continuing evolution of the UN Human Rights Council, the newly created principal body for human rights. The year 2007 would be marked for its institution-building in the history of the Human Rights Council. In the institution-building process, the national human rights institutions (or NHRIs) have voiced for enhanced engagement with the UN human rights mechanisms, and have finally achieved its extended legitimate roles in the universal periodic review, special procedures, complaint procedures and others. However, much work still remains to be done by the NHRIs in tandem with

international partners. Now it is high time to put our energy and attention into nurturing our strategic and effective engagement in the new human rights regime as expected from next year. In this connection, I believe this seminar will serve as a forum of the experts to discuss a new model of NHRIs in light of the recently expanded functions at the global stage.

Many human rights experts and honorable guests have shown us their enthusiasm towards our initiative by joining this seminar. Among others, I would like to express my deep appreciation to Ambassador Luis Alfonso de Alba from the Permanent Mission of Mexico at Geneva who has made great contribution to strengthening the status of NHRIs in the United Nations as a former President of UN Human Rights Council. Ambassador de Alba allows us to take his precious time, even canceling his schedules in Mexico, so as to make this seminar more meaningful and fruitful. Thank you once again, Ambassador de Alba.

I wish to convey my special thanks to the United Nations High Commissioner for Human Rights for her kind support by sending her staff members led by Mr. Gianni Magazzeni. My gratitude also goes to our guests from NHRI partners, Mr. M Ridha Saleh, Vice Chairperson of National Human Rights Commission of Indonesia, Ms. Katharine Rose, Geneva ICC interim representative, and Ms. Pip Dargan, Deputy Director of the APF. I also thank Professor Martin Flaherty from Fordham Law School and all participants here for your keen interest in this meeting. Your participation is encouraging our Commission that is equipped with short but rich experiences of six years in consolidating the role of the NHRIs in the international human rights community.

Lastly but most importantly, I hope this meeting could bring constructive dialogue and practical discussion on where the NHRIs stand now, and which road we would take together.

Thank you.

Keynote Speech

Luis Alfonso de ALBA

Ambassador, Permanent Mission of Mexico at Geneva.

I commend the initiative of holding this International Seminar, as it is very important for National Human Rights Institutions to analyze thoroughly their relationship with the Human Rights Council and its new mechanisms, in light of the recent institutional agreements of the Council. The reform of the human rights system achieved on June 18 this year, which has no precedent since the establishment of the Human Rights Commission, opens new possibilities of interaction between NHRIs and the Council. At the same time, it presents new challenges and calls for adjustments and innovative approaches.

The important role of NHRIs in the Council's work cannot be overemphasized. National Human Rights Institutions contribute significantly to the HRC's discussions and their support is crucial in the follow up and implementation of the Council's decisions and in assessing the situation on the ground. Therefore, it is important to find ways in which they can continue their constructive engagement, for the benefit of all parties and, more importantly, for the effective advancement of human rights.

Overall, the arrangements for the participation of NHRIs in the Council, as contained in the institution building agreements, consolidate the progress made in the context of the Commission and important improvements are accomplished. Consistent with the agreement of General Assembly resolution 60/251, through which the HRC was created, the Rules of Procedure of the Council establish that the participation of and consultation with observers of the HRC, including NHRIs, shall be based on arrangements and practices observed by the Commission on Human Rights, while ensuring their most effective contribution (Rule 9). Further, arrangements for the participation of NHRIs explicitly include CHR resolution 2005/74, in which important issues were addressed and advanced in that regard.

National Human Rights Institutions now have a wider scope for participation in the Council's meetings, and, moreover, the quality of their participation has been improved in comparison to the CHR. Whereas NHRIs used to intervene under a dedicated agenda item and mostly address the issue of the work and development of the institutions themselves, in the Council they are able to participate under all agenda items and segments, including the interactive dialogues with special procedures. This has significantly enhanced their inputs as well as the quality of the Council's debates. As the Council's programme of work develops and becomes more predictable, NHRIs may be able to plan in advance and set out their priorities, in order to further strengthen the impact of their participation.

We should take into account that, aside from participating directly in the Council's discussions, the Council's meetings can be followed and disseminated through the webcast, thus enhancing the impact of the Council's work on the ground.

The Universal Periodic Review mechanism

In addition to taking part in the Council's proceedings as such, NHRIs have ample possibilities of participating and contributing to the work of its mechanisms and special procedures. The universal periodic review mechanism (UPR) is without question the most innovative and prominent one. It has been widely recognized that through UPR the Council should be able to make a real difference by examining the human rights records in all countries on the basis of equal treatment, and in a cooperative and results oriented spirit. One of the principles of the UPR is the participation of all relevant stakeholders, including ngos and NHRIs, which will be able to take part throughout different stages of the review process, using diverse means.

At the level of inputs for the process, the review of a given country will be based on the information presented by the State concerned; a compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) of relevant information contained in United Nations documents; and a summary prepared by the OHCHR of the information submitted by other relevant stakeholders, including NHRIs. Hence, National Institutions may submit inputs for the reviews that will be undertaken by the UPR Working Group. Furthermore, the States under review are encouraged to prepare the information that they will present through a broad consultation process at the national level with all relevant stakeholders. NHRIs may play an important role in promoting and carrying out such a process.

With regards to the proceedings of the UPR, NHRIs as well as other relevant stakeholders may attend the review in the Working Group; and they will also have the opportunity to make general comments before the adoption of the outcome of the review by the Council's plenary. The role of NHRIs will also be of central importance with regards to the follow up and implementation of the UPR's recommendations. NHRIs are in a unique position to assess the situation on the ground and the needs and the priorities of the country concerned, and to follow up on the progress made and challenges faced. Therefore, their consistent and constructive engagement with the mechanism, as well as that of States, will be very important.

Special Procedures of the Human Rights Council

The system of special procedures of the HRC provides an opportunity for dialogue and cooperation with NHRIs, both in relation to the situation on the ground and within the Council itself. With the institution building agreements, the Council fulfilled the General Assembly's mandate to assume, review and, where necessary improve and rationalize mandates; and at the same time it maintained the capacity to create new mandates when protection gaps are identified.

Regarding those country mandates inherited from the Commission on Human Rights, the text includes objective criteria, equally applicable to all mandates, which ensure the fulfillment of pending mandates of the Human Rights Council and the General Assembly; as well as the continuation of those which are based on the promotion of international cooperation. Further, with the new process of selection and appointment of special procedures mandate holders, which should ensure increased fairness and transparency, national institutions may submit candidatures to occupy such posts. If the candidatures fulfill the established technical requirements,¹ they will be added on to the roster that shall be elaborated by the OHCHR.

Human Rights Council Advisory Committee

National Human Rights Institutions shall be entitled to participate in the Advisory Committee of the Council (HRCAC), which is composed of 18 experts and essentially has the task of providing expertise to the Council on the basis on studies and research-based advice. Arrangements for their participation will be based on ECOSOC resolution 1996/31 as well as the practices of the Commission. In addition, States should consult their NHRIs and civil society organizations when

selecting their candidates to the HRCAC and, in this regard, include the names of those supporting their candidates.

A first step has already been taken in assigning the Advisory Committee its first task: the preparation of a draft declaration on Human Rights Education and Training. In doing so, the Council requested the HRCAC to seek the views and inputs of NHRIs, among other actors, on the possible elements of the declaration's content.²

With regards to the work done by the Working Groups of the former Sub-Commission, it is worth noting that following the Council's decision adopted in June, during its sixth session the Council decided to continue the work of the Forum on Minority Issues and the Social Forum, and to establish a Special Rapporteur on Contemporary Forms of Slavery in substitution of the Working Group.³ All of these mechanisms provide for the participation of NHRIs, in keeping with the spirit of openness and transparency. Regarding the Working Group on Indigenous Populations, informal discussions will be held at the beginning of December previous to the Council's resumed session, to exchange views on the most appropriate mechanisms to continue its work.

Complaint Procedure

In the Council's complaint procedure the role of NHRIs established and operating under the Paris Principles, particularly in regard to quasi judicial competence, has been acknowledged in the context of the criteria for admissibility of communications. It is recognized that such NHRIs may serve as an effective means of addressing individual human rights violations.

The complaint procedure is very similar to the 1503 procedure, while the "victim oriented" principle has been strengthened and now there are provisions to inform the complainant regarding the process of the communication and its outcome.

In view of these new challenges and opportunities, I am convinced of the importance of the continuous participation of NHRIs in all aspects of the Council's work, in order to contribute to its endeavors and enrich its discussions and its work with their vast and first hand experience. The fulfillment of the Council's task and the effective improvement of the human rights situation depend on our collective efforts and cooperation among each other and with the important tools at our disposal.

¹ See Human Rights Council decision 6/102 “Follow up to Human Rights Council Resolution 5/1”, part II.”Technical and objective requirements for eligible candidates for mandate holders”, available at: <http://www.ohchr.org/english/bodies/hrcouncil/docs/6session/A.HRC.6.L.11.pdf>

² Human Rights Council. resolution 6/10 “United Nations Declaration on Human Rights Education and Training”, 28 September 2007, available at: <http://www.ohchr.org/english/bodies/hrcouncil/docs/6session/A.HRC.6.L.11.pdf>

³ See draft report of the sixth session of the Human Rights Council, A/HRC/6/L.11, available at: <http://www.ohchr.org/english/bodies/hrcouncil/6session/index.htm>

Plenary Session: Presentation

Gianni MAGAZZENI

Coordinator, NI Unit, OHCHR

The Increasing Role of NHRIs in the UN Human Rights Council and its Significance

Distinguished representatives,
Ladies and gentlemen,

I would like to thank you for giving me the opportunity to address this important seminar. First of all, let me give a general overview of OHCHR priorities in connection with NHRIs and a sense of our strategic directions for the future in line with OHCHR Plan of Action.

Our current efforts in OHCHR to establish or strengthen NHRIs in full compliance with the Paris Principles are grouped around four major strategic objectives, namely (1) country engagement, through which OHCHR is supporting efforts by Governments to establish or strengthen NHRIs; (2) leadership, through which OHCHR closely monitors compliance with the Paris Principles and strengthens the capacity of NHRIs to work effectively and independently; (3) the growing interaction between NHRIs and the international human rights system also thanks to action by the Human Rights Council; and (4) increasing partnerships, especially with our field offices, UN agencies and programmes on the ground, the International Coordinating Committee of NHRIs (ICC) and regional coordinating bodies of NHRIs, such as the Asia Pacific Forum.

I would like to emphasize that OHCHR has recently increased its engagement with United Nations Country Teams, and UNDP in particular, with the aim of ensuring their full support for the establishment and strengthening of NHRIs. OHCHR has advised UNCTs that the UN system as a whole should increasingly work with and through those NHRIs that have A status - especially in connection with programmes in the areas of good governance, rule of law and human rights. This

can only enhance the success and long term sustainability of UN efforts by increasing national ownership and the creation of solid infrastructures.

NHRIs have three distinct roles that need to be recognized and emphasized: at the national, regional and international levels.

Nationally, NHRIs are at the centre of a web of relationships with the Government, various state entities as well as civil society organizations. In order to properly fulfill their role, it is of the utmost importance that NHRIs are independent from state organs and fully comply with the Paris Principles. As you know, these principles have become the internationally recognized benchmarks against which to assess the structure, mandate and performance of an NHRI, and are universal in their application. Once in compliance with the Paris Principles, i.e. independent and effective at the national, regional and international levels, NHRIs are the best relay mechanism for the translation of international human rights norms into national laws and practices.

If in compliance with the Paris Principles, they are first and foremost central elements of a strong national human rights protection system which also includes an independent judiciary, a properly functioning administration of justice, a representative national parliament with a standing human rights body, an educational system ensuring human rights education at all levels, active media, strong and dynamic civil society organizations. NHRIs can play an important role regarding all aspects of the rule of law and the administration of justice, through efforts for the reform and strengthening of judicial institutions, the reform of the police and prisons' administration – from standing orders to implementing regulations to professional manuals or internal accountability systems - in line with relevant human rights standards. The focus of NHRIs must be better promotion and protection of human rights – starting of course with core human rights challenges such as prevention of torture, fighting impunity, ensuring accountability as well as ensuring the rights of minorities and other vulnerable groups in society are fully respected, including the rights of human rights defenders. If compliant with the Paris Principles, NHRIs have to be perceived as the guarantor of international human rights standards at the national level ensuring action by the Government in line with those standards and the recommendations resulting from the human rights system.

Critical component of this national dimension but often yet to be developed satisfactorily is the vital links with civil society organizations and the NGOs without which the credibility and effectiveness and independence of an NHRI may be

called into question. Key functions of NHRIs at the national level are not only those meant to ensure the application of the human rights provisions of the Constitution and national laws, including through effective oversight of Government action in that regard, but also to facilitate the implementation of international human rights norms – especially those already ratified by the country concerned for instance through legislative reform. In addition, NHRIs can be key to managing the transition to peace in post-conflict countries while contributing to ensure adequate accountability systems for dealing with past crimes and assisting societies and individuals in healing the wounds of the past and achieving national reconciliation and dialogue.

Beyond the national dimension, NHRIs have an important regional or sub-regional dimension: here in Asia for instance within ASEAN. The ASEAN Charter promises to enhance the role and function of NHRIs also in the context of a future human rights mechanism. Also very important, including in the context of technical cooperation and advisory services to NHRIs is the role of effective regional networks of NHRIs represented here by the Asia Pacific Forum. Sub-regional groupings such as the one recently formed by the NHRIs of Indonesia, Malaysia, Philippines and Thailand are also to be welcomed in so far as they can offer a more effective approach in dealing with transnational human rights challenges.

The international role of NHRIs is critically important, because it links the national and regional dimension together. All three dimensions ultimately mutually reinforce each other. It is worth noting that the ICC Sub-Committee on Accreditation has developed a General Observation at its meeting in Geneva from 22 to 26 October 2007 which recognizes the value of the international human rights system. Indeed, the Sub-Committee highlights the importance for NHRIs to engage with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures Mandate Holders) and the United Nations Human Rights Treaty Bodies. NHRIs are reminded that they can give an input to, participate, in as well as follow up the recommendations resulting from the international human rights system.

There is no doubt that the more NHRIs participate actively in the international human rights system, the more they enhance and strengthen their national position, including in cases where the NHRI may face threats to its independence or to its own members and staff. Indeed, involvement of NHRIs at the international level increases their visibility, knowledge and capacity to influence action at country level. For instance, recommendations coming from the UN human rights

system can provide much needed international legitimacy and support to priority areas as determined by the NHRI. This can only increase its overall political and moral standing so that NHRIs can more effectively work towards greater realization of human rights norms and thus better protection of human rights.

Ladies and gentlemen,

NHRIs were first granted the right to participate in international debates at the 1993 Vienna World Conference on Human Rights. The special status of NHRIs in the work of the former Commission on Human Rights was enhanced in 1999, when the Chair of the Commission granted NHRIs the privilege of participating in relevant meetings from a special section of the floor devoted to them. In the Commission, NHRIs were discussed under agenda item 18 “Effective functioning of human rights mechanisms”, sub-item (b) “National institutions and regional arrangements”. Under that agenda item, an annual report of the Secretary-General was submitted and considered, while NHRIs could take the floor to make oral statements.

Although participation of NHRIs in the former Commission on Human Rights was high (for example, the number of NHRIs and associations of NHRI registered on the List of Speakers was 52 for the 61st CHR session), the newly established Human Rights Council presents many improvements in terms of their status and thus for their potential for participation. The resolution adopted by the Human Rights Council last June is a milestone for NHRIs as it explicitly refers to CHR resolution 2005/74, and provides NHRIs with A status, the ICC as well as regional coordinating bodies of NHRIs (speaking on behalf of their A status members) the right to speak on *all* agenda items, with a separate seating arrangement. NHRIs can also submit written statements and other documentation under their own symbol number. A very positive recent development has been the establishment of an ICC representative in Geneva who can speak on behalf of A status NHRIs in the sessions of the Council as well as in the Treaty Bodies. At the latest 6th session of the HRC this right has been effectively used already and the ICC representative has taken the floor on several occasions, both on behalf of the ICC Chair as well as individual NHRIs.

The formal basis for the involvement of NHRIs in the international human rights system is resolution 5/1, adopted by the Human Rights Council on 18 June 2007, entitled “Institution-Building of the United Nations Human Rights Council. The role of NHRIs is specifically mentioned regarding the new mechanism of Universal

Periodic Review, special procedures, the Advisory Committee (ex-Sub-Commission), the Complaint Procedure, methods of work, and the rules of procedure. Rule 7 of the Rules of Procedure in resolution 5/1 states that participation of NHRIs shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74.

Other aspects of the HRC also hold great potential for the participation of NHRIs. Of particular importance is the Universal Periodic Review process, which will start early next year. The objectives of the UPR are: (a) The improvement of the human rights situation on the ground; (b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State; (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned; (d) The sharing of best practice among States and other stakeholders; (e) Support for cooperation in the promotion and protection of human rights; (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR. The UPR will be based on three types of documents, one of which will be a summary prepared by OHCHR of information provided by other relevant stakeholders, which includes NGOs as well as NHRIs (there is a deadline of 20 November for the first countries to be reviewed).

National human rights institutions will have a role to play at every stage of the process, such as in the consultative process at the national level for submission of information by the State or through the submission of information for the stakeholders report. NHRIs could proactively ensure that they are included in the broad consultation process at the national level organised by the State. NHRIs may also wish to facilitate a consultation process with relevant state entities, civil society representatives and NGOs for the submission of the stakeholder information, in order to ensure that all elements of civil society have their voice heard. This process would allow NHRIs and NGOs to identify crucial human rights issues and compile their separate or joint reports which are then to be submitted to the HRC for the UPR on behalf of the main stakeholders. NHRIs may also attend the actual review in the Working Group and, before adoption of the outcome of the review in plenary, take the floor with general comments, either directly or through the ICC representative in Geneva.

With regard to the outcome of the UPR process, NHRIs may wish to be directly involved, for example through follow-up action in cooperation with the State entities, to whom the recommendations are addressed, or through follow-up action

in cooperation with other actors of the national human rights protection system, such as Parliament, civil society, academia, or the media. NHRIs could furthermore disseminate the outcome of the UPR to all major stakeholders at the national level and draw up an action plan or strategy to contribute to the implementation of the various recommendations. Finally, NHRIs could actively monitor the implementation of the UPR recommendations, so that next submissions of information may include main observations in this regard.

With regard to the Advisory Committee of the Human Rights Council, in accordance with paragraph 66 of resolution 5/1, all Member States of the UN may propose or endorse candidates from their own region. When selecting candidates, States should consult, *inter alia*, with their NHRIs. NHRIs could take a proactive role through the holding of informal consultations at the national level in order to identify candidates with recognized competence and experience in the field of human rights, a high moral standing, and independence and impartiality. NHRIs could also aim at establishing a working relationship with the Advisory Committee, through initiating regular communication, attendance and participation in sessions and the sharing of their reports with members of the Advisory Committee, to the extent that they are relevant and appropriate to the work of the Advisory Committee.

Finally, the system of Special Procedures mandate holders of the Human Rights Council, both thematic as well as country mandates, recognizes the value of NHRIs as partners, either prior to and during country visits of mandate holders, as well as in the monitoring of the implementation of recommendations of mandate holders. In addition, HRC resolution 5/1 states that “other human rights bodies” may nominate candidates as special procedures mandate-holders. NHRIs may therefore nominate candidates, keeping the following criteria in mind; (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity. NHRIs could aim at establishing a national roster of potential candidates for all mandates, so that once a call is made for nomination, ready candidates may be proposed. NHRIs could also to the maximum extent possible conduct national consultations, including with reputable human rights NGOs, in order to identify potential candidates

While not new, another important feature of the international human rights system are the bodies set up to monitor the implementation by States of the international human rights instruments, the so-called treaty bodies. NHRIs may be involved in the processes of State reporting, follow-up to treaty body recommendations,

capacity building at the national level with regard to the reporting process, as well as petitions and enquiry procedures.

The greater the human rights information provided by NHRIs to the international human rights system, the more focused is the response of that system in terms of remedial action and the international support to national processes for the advancement of human rights in the country. This means that follow up action can really be targeted to remove obstacles to the full implementation of international human rights norms. NHRIs are thus the key link between the national, the regional and the international dimension of human rights and should see the possibilities of greater interaction and involvement at the international level as an essential element in order to bring about change at the national level while also strengthening their independence, their effectiveness and their capacity to meet their human rights responsibilities.

I thank you for your attention.

Plenary Session: Discussions

In-Seop CHUNG

Commissioner, NHRCK; Faculty of Law, Seoul National University

Magazzeni, The Role of NHRIs in the newly established UN Human Rights Mechanism.

Thank you, Mr. Chairman for your kind introduction. And also thanks Chairperson Ahn of National Human Rights Commission of Korea for inviting me to this important conference. It is my honour to participate today's conference with many distinguished guests, ladies, and gentlemen.

Mr. Magazzeni made excellent presentation concerning the role of NHRIs in new Human Rights Council period. He pointed out that NHRIs are the key link among the national, the regional and the international dimension of human rights and emphasized that once in compliance with the Paris principles, NHRIs are the best relay mechanism for the translation of international human rights norms into national laws and practices. I think nobody has different view or opinion about his points.

He also gave us detailed explanation about current status, role and potentials of NHRIs in international arena for human rights protection. I learned a lot from his presentation.

National Human Rights Commission of Korea also tries to do its best to fulfill its role as independent human rights institution in domestic level in accordance with to the Paris principles. And as far as I know, Chairperson Ahn is doing much effort to contribute for international cooperation among NHRIs.

Actually, I don't have much expertise about recent international trends of this topic, so I am not proper person to comment his paper. I just raise a couple of questions to Mr. Magazzeni instead of commenting his presentation.

Mr. Magazzeni explained current development of increasing role of the NHRIs in

international community, especially in new HR Council system and gave us many examples to show this trend. There has been a great development compared with 15 years ago. However, my impression is that NHRIs' status in the UN mechanism so far is more similar to NGOs', even though NHRI is each States' official institution. NHRIs have a kind of quasi official status. So I think the NHRIs' role is not properly recognized so far in the UN human rights protecting mechanism in spite of their actual role or official status in domestic level and future potential. My first question is whether more official status should be given to NHRIs in the UN human rights mechanism? Or is the current quasi official status of the NHRIs better for their future?

My second question is also related to my first question. Mr. Magazzeni explained development of increasing role of the NHRIs during last 15 years. It was slow, but steady. Then, what kind of new role of NHRIs can be expected in UN Human Rights mechanism in near future? What could be the next step?

Thank you.

Plenary Session: Discussions

Pip DARGAN

DEPUTY DIRECTOR, APF Secretariat

The increasing role of NHRIs in the UN Human Rights Council and its Significance

INTRODUCTION

I would like to begin by thanking the organisers of this seminar and, in particular, I would like to thank Professor Ahn, Chairperson of the National Human Rights Commission of Korea, for his foresight and leadership in organising a timely discussion on how NHRIs can effectively engage in the new Human Rights Council and its mechanisms.

Besides his responsibilities as Chairperson of the South Korean Human Rights Commission, Professor Ahn is currently the Deputy Chairperson of the Asia Pacific Forum of National Human Rights Institutions which is commonly referred to as the APF.

For those of you not familiar with the APF we are a member-based organisation of national human rights institutions.

Established in 1996 we support the establishment and strengthening of independent national human rights institutions in the region. National Human Rights Commission of Korea(NHRCK) is a full member of the APF and is so because of its compliance with the UN-endorsed international standards on national institutions called the Paris Principles. The NHRCK became a full member of the APF in 2001.

The APF provides practical support such as organising training with and for our members to assist them in their role of promoting, monitoring and protecting human rights. We also provide specialist advice to governments and civil society groups on the role, establishment and strengthening of national human rights institutions. Today as part of our discussions I would like to provide you with some

background on the APF and the significant role it played in the final stages of the Human Rights Council institution-building process which helped to ensure, in cooperation with other stakeholders, that the role of NHRIs were formally recognised in the new Council's rules of procedures and mechanisms. I do this to provide an example of how a regional coordinating body harnessed its membership to achieve significant outcomes at the international level. It did so by being organised, strategic and by approaching its task in a manner of constructive cooperation. It may also serve as a useful model that could be adopted or adapted by NHRIs and their coordinating committees for future engagement in the Human Rights Council's mechanisms and processes.

Finally I would share with you the practical measures that the APF will be implementing to assist our members to meet the new opportunities and challenges available to them at the new Council.

APF'S ROLE AT THE HRC INSTITUTION-BUILDING NEGOTIATIONS

As some of you may know Professor Ahn has only recently concluded his term as APF Chairperson in September this year. In fact it was under his term that the APF took a significant leadership role in ensuring that NHRIs did not get left behind or left out of the institution-building process of the new Human Rights Council.

It is important to remind ourselves today that the inclusion of NHRIs in the Council and its rules of procedures was not a foregone conclusion. Far from it. In May this year, towards the end of the Council's institution-building process we began receiving warnings from the NGO community in Geneva that NHRIs were losing ground in the new Human Rights Council framework. This was because there was no on-going presence of NHRIs taking part in the negotiation processes with the State Members of the Council.

NHRIs needed to, without delay, begin to respond by inserting themselves into the negotiations, which at this late stage, were primarily being held behind closed doors. This required NHRIs having a presence in Geneva which is where the negotiations were being held and they needed to quickly coordinate amongst themselves and engage constructively with government missions in Geneva, the OHCHR and NGOs to push forward the NHRI agenda.

It is against this background that Professor Ahn offered APF resources to the international body of NHRIs, the ICC, to assist it to ensure an ongoing presence in

Geneva in the final weeks of the negotiation process being held in May/June this year.

I had the honour of being nominated by the APF to be placed in Geneva, not solely as an APF representative but as a temporary representative of the Chairperson of the ICC, Ms Jennifer Lynch. I was also assisted by Ms Katharina Rose from the German Institute for Human Rights. My mandate was to work in the name of the international coordinating committee of NHRIs, in cooperation with the OHCHR, States, NHRIs and NGOs to ensure, that NHRIs had a recognised role in the rules of procedures and new mechanisms of the Human Rights Council. This recognition had had to be reflected in the Council President's text which would ultimately be adopted by Member States as the new architecture for the Human Rights Council.

In terms of our strategic engagement, beyond having a presence in Geneva to coordinate input into the negotiation processes, it was also vital for the success of our campaign to ensure that individual NHRIs where possible, could come to Geneva and lobby their government's representatives (particularly those institutions whose governments were members of the Human Rights Council). What was remarkable to me during that time was the realisation of the level of influence NHRIs had with their governments. Gradually governments who had not spoken about the role of NHRIs in negotiation processes were beginning to mention them in positive terms in discussions. NHRIs were communicating or visiting government representatives and putting their case forward. Their representations had an enormous influence. National Institutions from Australia, Egypt, France, Germany, India, the Philippines, South Korea, New Zealand, amongst others made a special effort to come to Geneva at this time to be present and to work behind the scenes and lobby their governments. Other institutions who could not visit Geneva sent messages to their government representatives in Foreign Affairs in their capitals or to missions in Geneva.

I would also like to acknowledge the support during that time of the OHCHR, in particular Gianni Magazzeni, for his support and effort to NHRIs. I would also like to acknowledge Ambassador De Alba who is sitting with us today and who as the then President of the Human Rights Council and whose text were lobbying for inclusion. Mr De Alba will I think remember the lobbying efforts of the ICC, the APF and individual NHRIs and he always demonstrated a thorough understanding and support of NHRIs in the institution-building process. I think the fact that we had a sitting President who was supportive of NHRIs also played an important factor in our eventual success. Ultimately we were successful in our mission but it was not a smooth ride and it was

only achieved after considerable focus, effort and collaboration.

My observation was this: NHRIs had influence with governments within the international arena of the Human Rights Council; NHRIs who could engage and constructively work with governments (as long as those governments were, generally speaking, open to listening) were listened to. Of course there will always be differences and inherent tensions between States and NHRIs, but there is also plenty of room for cooperation and mutually-agreed positions. National institutions, are, after all, established by governments to assist them to implement their international human rights obligations - so can be regarded as independent expert advisers on human rights by their governments. The NHRI influence was borne out in the President's text, later adopted by the Council, which ensured in black and white full participation rights for NHRIs and their coordinating committees on all agenda items, their own symbol and own seating arrangements. Previously, under the old Commission on Human Rights, NHRIs had no guaranteed rights to speak and it was left to the discretion of the Commission's Chairperson. In addition, NHRIs could only speak under one agenda item (18 b) which related to national institutions. Now NHRIs can speak on all agenda items. This influence is something, I think, NHRIs can further exploit in the Council, at its sessions, the UPR and other mechanisms.

That is why the APF firmly believes that independent A-accredited institutions and their coordinating committees such as the APF and the ICC can play a significant role to play in assisting the new Human Rights Council achieve what the international public want and demand - a responsive, legitimate, effective and transparent international human rights body. More than in any time in history NHRIs can play a role in shaping the substantive discussions at the Council and bridging the international human rights obligations of States and their implementation at the national level through NHRIs and other national human rights protection mechanisms and institutions.

NHRIs must, however, ensure that their experience at the international level is shared with their communities back home as part of its educative function.

SIGNIFICANT ISSUES

However along with these new opportunities are, of course, the challenges for NHRIs.

In our view one of the significant issues arising from this development is this: now

that we have won ground and ensured that A-accredited human rights commissions and their coordinating committees have their role and speaking rights formally adopted and codified in the Human Rights Council's Resolution 5/1 of 18 June - how can we best ensure that NHRIs effectively take advantage of these processes and contribute in a strategic and constructive way with States through the Council and its mechanisms including the Universal Periodic Review, the HRC Advisory Committee, the Special Procedures and the Treaty bodies?

That question, is of course, the central issue of today's seminar. The discussions that we will have in the panel sessions and working groups will, I am sure, provide some valuable insight into practical ways we can address these questions.

Of course the OHCHR through the National Institution Unit is working alongside the ICC to develop a long-term and permanent presence in Geneva for national institutions. If established permanently this post could provide important support to NHRIs who now may be required to engage more regularly in Geneva at the multiple regular sessions, or occasional special sessions. Support to NHRIs will also be required in terms of the provision of guidelines or advice on how they can best input into the UPR, interactive dialogues, treaty bodies and special procedures. NHRIs can also input into the nominations to the Advisory Committee to the Council and can also nominate candidates for Special Procedure Mandates to the Council's secretariat. The ICC and APF could have a role in distributing information to NHRIs and assist in coordinating their presence in Geneva.

NHRIs must become aware of the Council's multiple sessions and programme of work. NHRIs will need to begin to strategically plan, program and budget for input into sessions at the Council, sessions at the UPR, Special Procedure and Treaty Body dialogues. Of course NHRIs must also strike a careful balance between meeting their ever-increasing international engagements in addition to their primary domestic responsibilities. Special extra effort will be required from NHRIs to inform their public and other stakeholders on their role and to report-back on developments and interventions made at the Council.

NHRIs, we believe, must apply critical thinking on these issues and seek, if required, advice from local NGOs, civil society, UN agencies, including OHCHR and international/ regional coordinating bodies such as the ICC and APF.

APF SUPPORT FOR OUR MEMBER INSTITUTIONS AT THE HRC

In conclusion I wish to outline, briefly, how the APF will continue to support our member institutions to strengthen their engagement with the new Council, including its sessions, the UPR, treaty bodies, special procedures etc the APF will fund and develop specialised training programs in each of these areas for staff and commissioners. The APF has already developed and implemented a sub-regional training program for NHRIs on the international human rights system and their role/engagement within that changing system. This course will be expanded into other sub-regions.

Further specialised programs will be developed on special procedures, treaty bodies and the UPR with input from the OHCHR, and implemented with well-respected training partners including the Geneva-based NGO the International Service for Human Rights.

Other APF measures will include dedicating resources to enable the APF secretariat to coordinate meetings with its members in Geneva and where possible supporting its member institutions financially to engage in Council sessions and mechanisms.

The APF will also continue to use its communication tools such as its emails, e-bulletin and website to broadcast information and develop a resource page for its members.

In addition the APF will continue to dedicate an agenda item to the Human Rights Council at its annual meetings so that our members are fully abreast and informed of the latest developments in the Council.

The APF will continue to use its successful model of close collaboration with its membership, the ICC, OHCHR and the NGO community to ensure that NHRIs in our region are offered practical support and advice to help strengthen their capacity and maximise their influence when intervening at the Council and its various human rights mechanisms.

I thank you for your attention.

Working Groups

- I . NHRIs and the UN Universal Periodic Review(UPR)
- II. NHRIs and the UN Advisory Committee
- III. NHRIs and the Special Procedures
- IV. Reform of Treaty Bodies and the Role of NHRIs

Working Groups I: Presentation

Gianni MAGAZZENI

Coordinator, NI Unit, OHCHR

NHRIs and the UN Universal Periodic Review(UPR)

National Human Rights Institutions Are: the essential element of protection systems at the national level linked to government, parliament, judiciary, police, NGOs, and media. NHRIs are the crucial element of international human rights system linked to HRC, treaty, Special Procedure Mandate-holders(SPMH) and also to the UPR. They are the essential element of the ICC and regional coordinating committee of NHRIs in Asia through the APF.

Human Rights Council

The involvement of NHRIs is based on the resolution 5/1 adopted by the Human Rights Council on 18 June 2007, entitled to the "Institution-Building at the United Nations Human Rights Council." The role of NHRIs is specifically stated under the Universal Periodic Review, Special Procedures, the Advisory Committee, the Complaint Procedure, Methods of Work, and the Rules of Procedure.

Access of NHRIs to HRC

Rule 7 of the Rules of Procedure in resolution 5/1 states that participation of NHRIs shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74.

NHRIs with "A status" of the ICC accreditation, the ICC and regional coordinating bodies of NHRIs (speaking on behalf of its "A status members") can;

- make an oral statement under all agenda items of the Human Rights Council
- submit documents which will be issued with an own symbol number
- take separate seats in all of the sessions.

UPR

Synopsis of the UPR is as below;

The objectives of the UPR are: (1) the improvement of the human rights situation on the ground; (b) the fulfillment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State; (c) the enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned; (d) the sharing of the best practice among States and other stakeholders; (e) support for cooperation in the promotion and protection of human rights; (f) the encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR.

UPR: Participation in the Review

The UPR will be based on three types of documents;

- 1) Information prepared by the State concerned which can take the form of a national report based on the General Guidelines,
- 2) A compilation prepared by OHCHR of relevant information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents
- 3) A summary prepared by OHCHR of information provided by other relevant stakeholders, which includes NGOs as well as NHRIs (Deadline 20 November)

- The UPR review will be conducted in a working group, the outcome of which will be issued as a report. This working Group report will be adopted by the plenary of the HRC.
- Resolution 5/1 states in paragraph 3(m) that the UPR should ensure the participation of the all relevant stakeholders, including NHRIs.

UPR: Preparation at the Country Level

- NHRIs should proactively ensure that they participate in the broad consultation process at the national level, organized by the State for the purpose of preparing information to be submitted to the UPR. (resolution 5/1, paragraph 15 (a))
- NHRIs should also take the lead, however, with respect to information to the UPR for inclusion in the summary of stakeholders information (resolution 5/1, paragraph 15(c));
- NHRIs should facilitate a consultation process with relevant state entities, civil society organizations and NGOs for the submission of the stakeholder

information, in order to ensure that all the elements of civil society have their voice heard. This process would allow NHRIs and NGOs to identify crucial human rights issues and compile their separate or joint reports which are to be submitted to the HRC for the UPR on behalf of the main stakeholders.

UPR: Participation in the Review

- NHRIs with “A Status” should strive to attend the UPR review in the WG (resolution 5/1, paragraph 18(c)). If this is not possible, NHRIs could make use of the presence of the ICC representative in Geneva to speak on their behalf during the session based on a text approved by the concerned NHRI;
- NHRIs should make general comments before adopting the outcome by the plenary (resolution 5/1, paragraph 31);
- Because of the participation rights accorded to “A status” NHRIs, NHRIs without such a status are encouraged to seek ICC accreditation as soon as possible. NHRIs may apply to the NI Unit of OHCHR for this purpose.

UPR: Follow Up

- NHRIs should be directly involved in the follow-up to the outcome of the UPR process, on the premise that this is appropriate (resolution 5/1, paragraph 33);
 - Follow-up action could be undertaken in cooperation with the state entities, to whom the recommendations are addressed;
 - Follow-up action could also be undertaken in cooperation with other actors of the national human rights protection system, such as Parliament, civil society, academia, and media etc.;
- NHRIs could disseminate the outcome of the UPR to the all major stakeholders at the national level and draw up an action plan or strategy to contribute to the implementation of the various recommendations.
- NHRIs should actively monitor the implementation of the UPR recommendations, so that in the next submission of information they may include its main observation
- NHRIs could issue communications to the attention of all national stakeholders, including the media, regarding UPR and upcoming deadlines.

Working Groups I: Discussion

Jong-Gil WOO
Human Rights Officer

Mr. Chairperson,
Ladies and Gentlemen,

I am very pleased and honoured to be part of this important and timely discussion on the role of national human rights institutions and the UPR. I am extremely grateful to the invitation extended to me by the National Human Rights Commission of Korea. Particular thanks goes to Mr. Ahn Kyung-Whan, Chairperson of the Korea National Human Rights Commission of Korea. I came to this seminar in the hope that I can learn great wisdom and insights of various speakers, discussants, and participants who have expertise in this field both nationally, and regionally and internationally.

As previous speakers, including Ambassador de Alba and Mr. Gianni Magazzeni, have already elaborated, proactive participation of national human rights institutions is expected in the entire lifecycle of the UPR, i.e., preparations for the review, during, and post the review with a focus on successful implementation of the outcome and recommendations of the review. Therefore, it is abundantly clear that NHRIs will play a very important role in the UPR process.

In his presentation, Mr. Magazzeni mentioned some concrete actions to be taken by NHRIs in the follow up to the outcome of the UPR: First, he emphasized the importance of wide dissemination of the outcome of the UPR to all major stakeholders at the national level. In fact, I believe that this will bring out the high visibility of this new international process and will certainly contribute to a more effective implementation of the outcome and recommendations of the UPR at country level; Second, NHRIs are expected to play an active monitoring role in the implementation of the UPR recommendations. Here, I also believe that given the unique role of NHRIs as a strategic partner and link between the government and civil society in a given country, NHRIs could play a more active coordinating role

in such monitoring; Third, NHRIs should communicate to other national human rights stakeholders, including the public media on issues related to the UPR. Once again, I believe that such communication will serve as a useful advocacy tool for the general population on the UPR at country level; and fourth, in addition to these roles, I believe that NHRIs could also play an important role in building the capacities of both the government and civil society to implement the UPR recommendations at country level.

Having said all this, I will focus my discussion and comment more on the potential role of national human rights institutions in the implementation of the outcome and recommendations of the UPR *with particular attention to expected recommendations for technical assistance and advisory services.*

A great deal of attention has been given to what kinds of recommendations will be coming out of the UPR process. Many observers believe that technical assistance and advisory services by OHCHR and the international community in broad terms will be the main outcome and recommendation of the UPR of a given country. Indeed, in its resolution, 5/1 of 18 June 2007, the Human Rights Council included the possibility of such technical assistance and advisory services being its main objectives to be achieved. As such, the UPR intends to achieve “the enhancement of the State’s capacity and of technical assistance, in consultation with, and with the consent of, the State concerned.”

Furthermore, in anticipation of likely increasing demands for technical assistance and advisory services, the Human Rights Council, in its resolution 6/17, requested the Secretary-General to establish not only a universal period review Voluntary Fund to facilitate the participation of developing countries, particularly least developing countries, in the UPR mechanism, but also to establish a new financial mechanism called the Voluntary Fund for Financial and Technical Assistance to be administered jointly with the above-mentioned Trust Fund.

Now, some important related issues should be examined in particular with regard to the relationship between the recommendation of technical assistance and advisor services by the UPR and the HC’s global mandate to protect and promote all human rights for all.

Hence, one should be wondering what would be the relationship between the UPR recommendation for technical assistance and advisory services by the UPR and the work of the OHCHR. Following questions, among others, should be posed:

- 1) What would be the nature and content of the technical assistance and advisory services programming to be provided to a given country?
- 2) Related to the above question, would recommended technical assistance and advisory services programming not place too much emphasis on the promotional aspects of human rights work?
- 3) By recommending for technical assistance and advisory services, would the Human Rights Council set the directions for the work of the OHCHR inadvertently or unconsciously?
- 4) Related to the question 3, given the fact that the financial resources of the OHCHR are stretched quite thinly currently, through this enormous demand for further technical assistance and advisory services, may the independence of the HC's mandate not be affected?

In conclusion, I would like to reiterate the potential role that NHRIs could play in the entire UPR process. To borrow Ambassador de Alba's words, NHRIs are, indeed, in a unique position "to assess the situation on the ground and the needs and the priorities of the country concerned, and to follow upon the progress made and challenges faced."

Thank you.

Working Groups I: Discussion

Hoonmin LIM

Counselor, Permanent Mission of the Republic of Korea at Geneva

I. Introduction

The Human Rights Council adopted the Institution-Building(I-B) text in its fifth Session last June, and it also agreed upon remaining institutional issues in September including guidelines for the submission of information for the Universal Periodic Review(UPR). Among all the mechanisms the Council is equipped with, the UPR is the major new aspect of the Council. Aiming to bring an end to the politicization, double standards and selectivity, which had been the major drawbacks of the former Commission, this ambitious system is expected to generate tremendous contribution to the protection and promotion of human rights worldwide.

However, it is not surprising that doubts have been raised as to whether, in its actual functioning, the UPR will match its initial design and objectives. Looking back on the a year long process of negotiation over the modalities of the UPR, one might feel that such doubts may be justified. To name a few, short period of consideration of each country (only three hours per country), lack of independent expertise, limited documentation on which the review will be based, excessive emphasis on dialogue and cooperation, technical assistance and capacity building in the outcome, another excessive emphasis on involvement and cooperation of country concerned in the entire process of the review, and discrimination between the recommendation according to the consent of reviewed country , etc. remain concerns over of future of the UPR.

The success of the UPR hinges on such considerations as the constructive and productive proceedings of the UPR, sincere cooperation from reviewed States and effective measures with respect to the cases of non-cooperation, the effective implementation of UPR recommendations, and the effective participation of other stakeholders, NHRIs and NGOs throughout the review process.

As the UPR is the most tangible innovation of the reform process that created the

Council, the burden of delivering the promise of the reform therefore falls mostly on the UPR. In this context, the close and mutually reinforcing relationship between the success of the UPR and that of the Council cannot be overemphasized. The balance sheet of the UPR will be a crucial factor in the process of the review by the United Nations General Assembly of the status of this Council. The failure of the UPR would cast serious doubts on the very *raison-d'être* of the Human Rights Council itself, which has been launched with a great sense of ambition and hope. What would be even worse is if the cause of 'human rights' was to become trivialized in the eyes of a general public who are tired of the discussions on human rights in the international community and discredit their years of efforts amounting to no more than "talk shops which don't actually do anything".

The Institution building package provides the broad framework for each of the mechanisms including the UPR. The General guidelines for the preparation of the information under the UPR provide an only broad outline of reports in the preparation of the UPR. Many of the important operational details still require further deliberation. Hence opportunities exist for State and other stakeholders to develop the UPR more effectively in practice.

Questions remain about 1) how to select the rapporteur troika and what functions they will take, 2) how to proceed with interactive dialogue, 3) what kind of recommendations will be made and etc. Modalities for participation of non-state stakeholders such as NHRIs and NGOs also remain unclear in many parts. NHRIs and civil society will have inputs to the review and this will have to be reflected in the final outcome. What is important for NHRIs and NGOs to consider might include how their priorities regarding human rights situation of the reviewed country can be reflected through the review process and then how they can participate effectively in the implementation and follow-up of the outcome of the review.

II. The role of the NHRIs in the UPR stipulated in the I-B text and the General guidelines

a) Institution Building Text¹

I-B text provides the modalities of participation of the NHRIs in the process of the UPR as follows;

(Principles)

Ensure participation of all relevant stakeholders, including non-governmental organizations(NGOs) and national human rights institutions(NHRIs), in accordance with General Assembly resolution 60/251 and Economic and Social Council resolution 1996/31, as well as any decisions that the Council may take in this regard.

(Documentation)

Information prepared by the State concerned, which can take the form of a national report on the basis of General Guidelines to be adopted by the Council at its sixth session (First session of the second cycle), and any other information considered relevant by the State concerned, which could be presented either orally or in writing; provided that the written presentation summarizing the information will not exceed 20 pages, to guarantee equal treatment to all States and not to overburden the mechanism. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders.

In the review, the Council should also take into consideration additional credible and reliable information provided by other relevant stakeholders to UPR. OHCHR will prepare a summary of such information that shall not exceed 10 pages.

(Modalities)

Other relevant stakeholders can attend the conduct of the review in the Working Group.

(Adoption of the outcome)

Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.

(Follow-up to the review)

The outcome of UPR, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.

b) General guidelines for the preparation of information under the UPR²

- 1) Description of the methodology and the broad consultation process followed for the preparation of information provided under the universal periodic review
- 2) Background of the country under review and framework, particularly normative and institutional framework, for the promotion and protection of human rights: constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions and scope of international obligations identified in the ‘basis of review’ in resolution 5/1, annex, section IA:.
- 3) Promotion and protection of human rights on the ground: implementation of international human rights obligations identified in the “basis of review” in resolution 5/1, annex, section IA, national legislation and voluntary commitments, national human rights institutions activities, public awareness of human rights, cooperation with human rights mechanism...;

III. The Role of the NHRIs through the process of the UPR

(Documentation)

For the review to produce meaningful outcome, it must be based on credible and reliable information from all sources including the State under review, special procedures, treaty monitoring bodies, UN bodies and agencies, NHRIs and NGOs.

However, while the national report which does not exceed 20 pages would serve as the central document in the review process, the information provided by other relevant stakeholders will be considered as additional inputs and these shall not exceed 10 pages in total. Moreover, NHRIs and NGOs are strongly encouraged to limit their submissions to a 5 page document³, and they should continue with their efforts to enhance their participations in the preparatory phase within this limitation.

Given their mandate to monitor and report on the human rights situations in a State and advise the State on its human rights obligations, NHRIs are in a position to provide reliable and well-documented information to the Council on the human rights situations, best practices and particular challenges faced by the State concerned through national reports as well as their own.

Combined efforts between NHRIs and civil society, possibly through issuing of

joint reports, could further facilitate the process of the UPR.

The General guidelines include the work of the NHRIs as an important element of the report. For example, in the background of a country reviewed, whether the NHRI is established would be considered as one of the very important standards. Activities of NHRIs would be also considered as an integral part of the report in determining whether a country reviewed has met its criteria on promotion and protection of human rights. In the case of the Republic of Korea, the current activities of NHRIs across various fields of human rights would be viewed as a very positive element in the assessment and also would be taken into the consideration of the Council in formulating specific recommendations..

Consultations with government in the preparation of national report

For the UPR process to be meaningful, the first requirement is to have nation-wide consultations on the national report and this point is clearly mentioned in the I-B text and the General guidelines for the preparation of information under UPR. As it is the case with the preparation of national report of the treaty body review, broad consultations before the submission the national UPR report may need to be provided as a legally binding process.

As a link between the government and civil society, NHRIs can play a significant role in stimulating a broad debate around the UPR at the national level and ensuring that genuine consultations take place between civil society and government levels.

Additional credible and reliable information

The Council should also take into consideration “credible and reliable information” provided by other relevant stakeholders. Provision is therefore made for NGOs and NHRIs to submit information, but all the information submitted will be summarized by the OHCHR and the summary can not exceed 10 pages.

Even though it is not clear what may constitute ‘credible and reliable’ information, it is very unlikely, at least, states would accept any information submitted by the NGOs anonymously. This would put serious limitation on many domestic human rights NGOs during their participations in the UPR process. The submission of NHRIs’ own information is important also in this regard.

(Modalities of the review)

NHRIs can attend the conduct of the review in the Working Group, and will have the opportunity to make general comments before the adoption of the outcome by the plenary which would take only 1 hour. Considering the limited participation in the Working Group and the Council plenary, it is unlikely that the NHRIs will make much impact on the process of review itself although its contribution to the preparation and follow-up stage in the process of the UPR is more highly expected.

Composition of delegations/Rapporteur

As all states have the flexibility to decide on the composition of their own delegations, it will be interesting to see if this flexibility also extends to nominating an expert from the delegation instead of a State representative to be the UPR rapporteur. It is hoped that at least some States will try to establish this practice as a precedent and that many will also make it a normal practice to have experts on their delegation. If the number of States with experts in their delegation or experts as UPR rapporteurs increase, it will exert greater pressure upon the States who do not bring or use experts to follow the suit. It is hoped that immense pressure to conform to the standard of others will serve as a backdoor route for extending the involvement of experts.⁴

Involvement of independent experts

During the discussion, some countries including the Republic of Korea and most NGOs called for the involvement of the independent experts in preparing an impartial, objective and consistent analysis of the relevant information to identify the main questions to be addressed during the interactive dialogue as well as in the process of the interactive dialogue as they assume the role of the rapporteur.

If this idea has been accepted, it would have ensured a more neutral, focused and consistent review process and even more simple modalities of process. However, this idea was strongly opposed by many countries, and the decision regarding involvement of independent experts was left to each delegation.

(Outcome of the review)

The review should result in clear, concise and realistic recommendations to the State concerned, possibly including on the role to be played by NHRIs and other relevant stakeholders.

Where NHRIs have not been established, the Council may consider adopting a specific recommendation for the establishment of a NHRI based on the Paris Principles. If the existing NHRIs are not accredited with A status, it may recommend to bring them into compliance with these Principles⁵.

NHRIs can assist in disseminating the outcome of the review to the public through the use of its well-established information technology, media and other forms of public information strategies.

(Follow-up to the review)

For the UPR to be a meaningful and serious exercise, it must be successful at facilitating the implementation of its outcome. However, it should be noted that one country is subject to the UPR once every four years, and the Council decided not to introduce specific measures to monitor the implementation of the UPR recommendations in addition to the regular cycle of review⁶. Therefore, the success of the UPR greatly relies on the success of consistent and effective follow-up measures, which continuously encourage the State to act upon the issues raised in the interactive dialogue and the recommendations made.

Without any doubt, States bear the primary responsibility for implementing their human rights obligations. The effectiveness of the UPR process will therefore depend upon the degree to which States fulfill their duties to implement the follow-ups in accordance with the UPR recommendations.

However, the participation of various stakeholders including NHRIs and NGOs should be encouraged through the process of follow-up. The role of non-state relevant stakeholders in monitoring and assisting the State in the implementation and follow up of relevant recommendations would be a determinant factor for the final evaluation of the success of the UPR.

A regular broad consultation process among governments, NHRI and NGOs for the review on the progress and obstacles in implementing recommendations of the UPR deserves serious consideration. This process would promote implementation at the national level by providing a platform for national dialogue on human rights among various stakeholders and opportunity for public scrutiny of government policies. The results of these consultations can be a substantial part of the annual human rights report by the NHRI.

Given their broad mandate which covers entire spectrum of human rights, their various tasks including monitoring, reporting and investigation, their independent nature, their legal basis and wide network, NHRIs may be in a unique position to assist with the implementation of recommendations at the national level.

- 1) NHRIs should monitor government implementation of the outcome of the UPR. NHRIs annual reports including the results of the monitoring would be made public, which provide important information about the follow-up.
- 2) NHRIs can provide valuable expertise through advice and recommendations to the government on the implementation of the outcome of the review. NHRIs can contribute to the follow up of UPR recommendations by engaging with the State and civil society to ensure the effectiveness of the follow up. With this regard, NHRIs are to provide effective liaison between the state and civil society maintaining the balance between them.
- 3) NHRIs are also well-placed to undertake education programs and help build capacity on human rights within the State. Where the review process results in recommendations for particular capacity-building or technical assistance measures, NHRIs could be crucial partners in the implementation of those programs⁷
- 4) NHRIs can form networks with the media and civil society to make known the outcome of the UPR as well as the work of the HRC in general, and encourage dialogue and consultations among them. Continuous efforts of relevant actors are encouraged to build international linkages, including with OHCHR⁸.

Finally, the package left the possibility open for the Council to decide if and when any specific follow-up would be necessary while considering the UPR outcome. As the Council's agenda includes an item on the UPR, it is also hoped that all stakeholders, including the NHRIs, can take up the issue of follow up under this item⁹.

¹ A/HRC/5/1 ; Implementation of General Assembly Resolution 60/251 of 15 March 2006, entitled "Human Rights Council" Annex

² A/HRC/Dec/6/102; Follow-up to Human Rights Council Resolution 5/1

³ Information note for NHRIs regarding the Universal Periodic Review mechanism, OHCHR

⁴ Meghna Abraham, Building the New Human Rights Council; Outcome and analysis of the institution-building year, August 2007, Friedrich Ebert Stiftung

⁵ ICC Position Paper; NHRIs and the UN Human Rights Council, March 2007

⁶ Ibid

⁷ Ibid

⁸ Margaret Sekaggya, Chairperson of the Uganda Human Rights Commission, WUFNA Seminar, July 2007

* With regard to potential role of NHRIs in the UPR as well as in the work of the Council, Margaret Sekaggya points out the following;

- 1) Continue to investigate human rights violations, collect data with reference to UPR and visit prisons
- 2) Liaise with governments on Council recommendations, and increase understanding
- 3) Publicize recommendations
- 4) Build capacity of government personnel to respond to international demands and increasing understanding process
- 5) Lobby parliaments so that they can implement recommendations of the Council

⁹ Meghna Abraham, Building the New Human Rights Council, August 2007

Working Groups II: Presentation

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NHRIs and the UN Advisory Committee

The Commission on Human Rights (Commission) and the Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission) have continuously sought to modify their procedures. Especially the Sub-Commission had experienced significant changes since 2000. However, the need for more fundamental change or reform was raised more recently. There were genuine difficulties in the Commission such as an increasingly over-burdened agenda, an unreasonable number of ever-longer annual resolutions and disputes on country-specific resolutions. The more important matter was, however, the perception that the Commission had become politicized. In 2005, Secretary-General strongly criticized the Commission's incapacity. It says, "the Commission's capacity to perform its task has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole." (General Assembly, 2005, para.182) It foreshadowed a large scale reform of the Commission and the fundamental change of the Sub-Commission.

In recent procedural reform of the UN human rights mechanism that created the new Human Rights Council Advisory Committee (Advisory Committee), the independent expert body has been significantly downsized and decreased in its influence. The Human Rights Council (Council) clearly defines that "The Advisory Committee...will function as a think-tank of the Council and work at its direction." (HRC Council Resolution 5/1, para.65) In the current format of the Advisory Committee, there are several urgent matters that should be addressed such as power of initiative and continuation of the ideas and works which were being enforced by the Sub-Commission. In order to achieve those, the roles of

National Human Rights Institutions (NHRI) are imperative.

Changes of the Sub-Commission

The Sub-Commission was created by the Commission in 1947 with the name “Sub-Commission on Prevention of Discrimination and Protection of Minorities.” (It was renamed as the Sub-Commission on the Promotion and Protection of Human Rights in 1999.) Its mandates were open-ended and it had repeatedly expanded its mandates on its own initiative. It had one annual session, lasting 4 weeks. It had power to make thematic and country-specific resolutions and decisions, and the major place for 1503 procedure. It had important working groups such as WG on Communication, on Contemporary Forms of Slavery, etc., and played monitoring role. The Sub-Commission had a dual role: one was think-tank function and the other was contribution to formation of UN responses to gross human rights violations.¹

However, controversies have often arisen between the Sub-Commission and its parent body, between value-oriented independent experts and governments motivated by consideration of ‘realpolitik’. (Eide in <International Human Rights Mechanism>) The major change was made in 2000 when the Sub-Commission became not to be able to make a country-specific resolution and to be bypassed in 1503 procedure. The session became three weeks. Since then the Sub-Commission has significantly been weakened.

The Commission on Human Rights decided in its resolution (CHR Resolution 2005/53) that “the Sub-Commission should not undertake any new activity without the Commission’s approval, with the exception of the preparation of studies and research.”

Process of the establishment of the Human Rights Council Advisory Committee

The Western Group seemed to be opposed to the continuation of the existence of the Sub-Commission, but other regional groups supported the survival of any type of expert sub-body. Many major International NGOs supported the necessity of independent expert collegial body. The process of the establishment of the Advisory Committee was negotiation between the two groups of States with reference of INGOs’ opinion.

(1) Establishment of Human Rights Council and expert advice

As mentioned before, General Assembly noticed the reform of the Commission in

December 2005, then passed the resolution titled “Human Rights Council” which specified all the detailed parts of the Human Rights Council on 15 March 2006. (General Assembly Resolution 60/251, (A/RES/60/251)).

The resolution decided the followings: to establish the Human Rights Council; that the Council meet no fewer than three sessions per year for a total duration of no less than ten weeks; that the Council is to be composed of 47 member states (limited 2 consecutive terms); that the first meeting of the Council should be held on 19 June 2007, that the Council shall undertake a universal periodic review, etc. There is only one word showing the future of the Sub-Commission. It says, “the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, **expert advice** and a complaint procedure.” (para.6) We can find that the resolution refers to maintaining “expert advice” rather than explicitly an “expert body”.

By saying “the Council shall complete this review within one year after the holding of its first session”(para.6), the General Assembly handed over responsibility for working out the detail to the new Human Rights Council.

(2) Establishment of the Advisory Committee: from expert advice to Advisory Committee

In June 2006 the Council decided to establish an open-ended intergovernmental working group to fulfill this responsibility. It requested the OHCHR to provide the Working Group with background information including the inputs of the Sub-commission. (Human Rights Council Decision 1/104). Since then the discussion on the Advisory Committee has been made at this Working Group. In another decision in same the period, June 2006, the Council requested the Sub-Commission to submit two documents: its own vision and recommendations for future expert advice, and a detailed list of ongoing studies. (Human Rights Decision 2006/102)

In December 2006, the Working Group decided the name of the new entity as “**Expert Advice Body**”. (A/HRC/3/6) Even though there were still discussions whether it should be a permanent or standing body with a single well-defined structure, a roster or pool of independent experts, or a hybrid bringing together a pool of experts and a standing body, the Council agree with there should be a new entity. Including this discussion, the discussions on the size, mandates, etc continued (A/HRC/4/CRP.5), until the Council passed the resolution 5/1 in June 2007.

Finally the Council made detailed structure of the body with the name of the **Advisory Committee** on 18 June 2007. (Human Rights Council Resolution 5/1). I will discuss the detail in the following chapter.

The Human Rights Council accelerated the process of establishment of the Advisory Committee by the notice of High Commissioner for Human Rights in 11 October 2007 clarifying the deadline of submission of nomination and the session for election of the members.

The Sub-Commission's expectation on its successor

The Human Rights Council, in its decision 2006/102, requested the Sub-Commission to submit two documents to the Council in 2006: (a) a paper giving its own vision and recommendations for future expert advice to the Council; and (b) a list describing the status of ongoing studies and an overall review of its activities. (para.3)

In the annex to its decision 2006/112, the Sub-Commission expressed the view that the Council would need a standing, collegial, independent expert body of general competence in the field of human rights. It should be composed of not less than 26 members (possibly 28) in order to ensure a range of disciplinary and professional backgrounds and to reflect different perspectives within and between regions. The body should mainly be engaged in research and thematic in depth studies, in standard setting, in promoting coherence, in contributing to human rights education and technical assistance and in identifying lacunae. The Sub-Commission also recommended modifying the reforms of ECOSOC resolution 1503. Views varied on a possible involvement in the UPR. The name suggested for the successor body was "Human Rights Consultative Committee".²

Membership of the Advisory Committee

There was long discussion on the size of the Advisory Committee. The Sub-Commission's members expected that the appropriate size of the Advisory Committee shall be 28 experts with gender and regional balance, depending on their experience. Some members pointed out that whilst there is a need for lawyers, there is also a need for other perspectives, such as that of sociologists. (Hampson,2007:19)

After long discussion, the HRC finally decided that the Advisory Committee shall

be composed of 18 experts who are nominated by their own governments and elected by secret ballot at the HRC. The HRC decided the geographic distribution of the experts as follows: African States 5, Asian States 5, Eastern European States 2, Latin American and Caribbean States 3 and Western European and other States 3. Low representation of Asia of the Sub-Commission was readjusted.

One of the main points that the Sub-Commission had tried to change was limitation of the term of the members, even though views varied on the number of term limits. Some members had been working for more than 20 years, which was one factor making the Sub-Commission stagnant. It is, however, desirable for members to serve two terms in the system of producing reports over three years (Hampson,2007:20). The members of the Advisory Committee shall serve for a period of three years, and they shall be eligible for re-election once.

The other point about the members of the Sub-Commission was their ability. Given the difficulty of rather subjective aspects such as morality, the Sub-Commission only emphasized the capacity to undertake studies. (Annex of the Sub-Commission decision 2006/112, para.31). The Council decided that the candidates should have recognized competence and experience in the field of human rights, high moral standing and independence and impartiality (Resolution 5/1, para.67). The Council further elaborated competence and experience as academic studies, substantial experience, knowledge of the UN, etc. (Decision 6/102).³

The Council continues to express its wish of appropriate nomination of the candidates. It says, when selecting their candidates, States should consult their national human rights institutions and civil society organizations (Resolution 5/1, para.66).

Capacities of the Advisory Committee

The Council's discussion on functions of the Advisory Committee was on the same context of earlier process of ever-decreasing functions of the Sub-Commission. The Council limited functions of the Advisory Committee as a think-tank for the HRC and let it follow the HRC's direction. (HRC Resolution 5/1, para.65) The Council emphasizes that the Advisory Committee should only follow the direction of the Council at all capacities of the Advisory Committee that it defines. They are the followings (HRC Resolution 5/1, para.75-84);

- (a) It should provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice.

- (b) The Council may request the Advisory Committee to undertake certain tasks.
- (c) It should be implementation-oriented.
- (d) The scope of its advice should be limited to thematic issues pertaining to the mandate of the Council.
- (e) It cannot adopt resolutions or decisions.
- (f) The Advisory Committee cannot establish bodies unless the council authorizes it to do so.

Issues of the Advisory Committee

Thinking how the Sub-Commission had been weakened since 2000, the new Advisory Committee with even less function needs to search for the ways to maximize its capacities. The following issues should be more effectively considered before finalizing the shape of the Committee.

(1) Power of initiative

As seen in the Declaration on Human Rights Defenders, the Declaration on the Protection of all Persons from Enforced Disappearance, etc, many initiatives for new instruments and first drafts have originated from the Sub-Commission,⁴ which should be continued by the Advisory Committee. It showed that collegial and collective deliberation by persons with broad representation from all regions of the world is far better than the ideas of a single expert. Furthermore, the Sub-Commission was the best medium open to input from NGOs, which means it was the place where new issues could be easily raised and discussed. The agenda of the new Advisory Committee agenda should discern where there is need for new studies to meet new problems or to set new standards. It should have the power of initiative in addition to being requested to undertake studies by the Council. The Advisory Committee should be in a sense a "Think Tank Plus."

In this sense the studies of the Advisory Committee should not only be implementation-oriented, as it is more important for the world human rights situation in which gross violation of human rights are still rampant to consistently dig up new agenda.

There is only a small room for the Advisory Committee to initiate its work. The

Council says that the Advisory Committee may initiate tasks within the scope of the work set out by the Council... along with suggestions for further research proposals within the scope of the work set out by the Council. (HRC Resolution 5/1, para.77) Within this scope, the experts need to find effective ways for addressing key gaps in the system in respect of standard-setting or emerging areas. Close cooperation with the civil society and NHRIs is very important.

The Sub-Commission had established in-session or inter-session working groups for more in-depth discussion on specific matters, which produced fruitful results. These include the Working Group on enforced or involuntary disappearance and the Working Group on arbitrary detention. (International Commission of Jurists, 2006:2) In the new Advisory Committee, four Working Groups of the Sub-Commission survived: these are the WG on Indigenous Populations, Contemporary Forms of Slavery, Minorities and the Social Forum (HRC Resolution 5/1, para.84). As it is now very hard to make new platforms, maximum utilization of these working groups though deepening their subject of study and widening their scope will be necessary for the Committee to effectively play its role.

(2) Continuation of the ideas and studies of the Sub-Commission

The ideas and proposals of the Sub-Commission should not be lost at the new Advisory Committee. The Advisory Committee should be able to develop continuity in its research and studies on the problems that had been challenged by the Sub-Commission. There are a number of issues which are in the middle of developing the studies such as discrimination based on work and descent, human rights of elderly people, human rights and human genome, etc.⁵

I would like address two items which need urgent action by the Advisory Committee. The first is discrimination based on work and descent in the caste system, which was raised at the 2000(52th) Sub-Commission for the first time in the UN system; the Principles and Guidelines for the effective elimination of discrimination based on work and descent was submitted to the OHCHR. In uncertain situations, the resolution of the 2006 Sub-Commission (A/HRC/Sub.1/58/L.8) decided that it should be submitted to "the Sub-Commission or its successor body, or in the absence of either, to the Human Rights Council." Now the report is, however, somewhere in the OHCHR without anybody coming forth to take action on it. The new Advisory Committee should receive the report and take appropriate action including distribution to all bodies and agencies of the UN, member States, NHRIs, etc.

The issue of human rights of the elderly was also raised at the Sub-Commission

for the first time in the UN human rights mechanism. The issue of elderly people, which is one of the most important social problems in the world, has been discussed at several UN organs but mostly from the development perspective. The Sub-Commission decided (A/HRC/Sub.1/58/L.12) to discuss this issue, which should be continued at the Advisory Committee.

As seen before, the Council asked the Sub-Commission to submit a list of ongoing studies, which means, we expect, that the Council has the will to continue on with those studies.

(3) Reviewing process of the report

The Sub-Commission had discussed about the quality control of the reports. The reports not only of the Advisory Committee but also of the Council should be examined by some mechanism before they are submitted. For example, reports could be reviewed in draft form either at the plenary body or a working group. Or they could be made widely available several months before the session so that the authors could take account of comments made by as many people possible. (Hampson, 2007) The Advisory Committee could pioneer such reviewing process, which would contribute to the UN human rights system as a whole.

(4) OHCHR's assistance to the studies

The Sub-Commission members had experienced difficulties in writing reports with very little assistance from the OHCHR. In the new Advisory Committee a similar level of OHCHR's support, including support towards formal country visits and financial support, should be secured for reports to maintain their good quality.

Role of National Human Rights Institutions

The Council requests the Advisory Committee to interact with NHRIs in the performance of its mandate (Resolution 5/1, para.82), and says that NHRIs shall be entitled to participate in the work of the Advisory Committee (Resolution 5/1, para.83).

The Sub-Commission members also emphasized the importance of close cooperation of Advisory Committee with NHRIs, and proposed to involve NHRIs in the work of each type of the mechanism of the Advisory Committee through regular meetings.⁶

(1) Participation in the final shaping of the Advisory Committee

NHRIs could play important roles in accomplishing the above-mentioned issues,

while the Council is finalizing the shape of the Committee by connecting States and independent experts. That is the role that NHRIs can play better than any other organization.

(2) Nomination process

When selecting their candidates, States should consult their national human rights institutions and civil society organizations (Resolution 5/1, para.66). NHRIs can give their opinion on nominees to the governments.

(3) Participation in general debates and raising human rights issues

NHRIs are expected to more actively participate in the sessions of the Committee and raise various human rights issues that they are experiencing in their own countries. Unfortunately the Sub-Commission did not have many representatives from NHRIs, which was one of the reasons that the Sub-Commission was weakened. The flexibility and openness that come from contributions of NHRIs and civil society would be without parallel in the UN system even within the limited capacities of the Advisory Committee. In order to make the new Committee a strong and effective body, the participation of NHRIs and allowing them to raise issues is imperative.

(4) Contribution to Working Groups

Similarly, NHRIs should participate in working groups, which are mostly inter-sessional. Working Groups were more open to the civil society than other parts of the Sub-Commission. For example NGOs without consultative status could participate in these sessions and make statements. NHRIs should utilize this open arena for communicating with various NGOs and to let them know the activities of NHRIs.

(5) Reviewing Reports

NHRIs should contribute to creating the above-mentioned process of reviewing reports. And if the process is established, NHRIs should actively participate in this process.

(6) Regular meeting with the Advisory Committee

It is recommended that members of the Advisory Committee and NHRIs have regular meetings before, during or after the session of the Advisory Committee to exchanging ideas.

(7) Utilizing the reports of the Advisory Committee

The most important role that NHRIs can play is to introduce the studies of the

Committee to the national and local levels. Without utilizing actors in these levels, it is no use for the Committee to produce their reports. Many of the Sub-Commission's studies have been cited by courts and national authorities as well as by regional human rights bodies.(ICJ,2006:2) It is strongly recommended that NHRIs utilize the studies of the Advisory Committee in their activities.

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¹ There were other Sub-Commissions dealing with other tasks: one to focus on the rights of women, another to deal with freedom of information and the press. The former was promoted to the Commission on the Status of Women, and the other was cancelled in 1952. As remaining only one Sub-Commission, it began to deal with any violation of human rights. A large number of observers attended the sessions, including NGO representatives, representatives of intergovernmental organizations and governmental observers.

² Summarized by Bossuyt, 2006.

³ Academic studies on the field of human rights or related areas and/or experience and exposure to leadership roles in the human rights field at the national, regional or international level; Substantial experience (at least five years) and personal contributions in the field of human rights; Knowledge of the United Nations system and of institutional mandates and policies related to the work in the area of human rights, as well as knowledge of international human rights instruments, norms, disciplines, and familiarity with different legal systems and civilizations will be preferable; Proficiency in at least one of the United Nations official languages; Availability of time to fulfil the work of the Advisory Committee in an effective manner, both to attend its sessions and to carry out mandated activities between sessions (HRC decision 6/102).

⁴ There are more: 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, Set Of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, Basic Principles on the Independence of the Judiciary, Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (International Commission of Jurists, 2005:22; 2006:2).

⁵ There are more studies which are not finished: discrimination in the criminal justice system,

the difficulties of establishing guilt and/or responsibility with regard to crimes of sexual violence, corruption and its impact on full enjoyment of human rights, and non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights. There are more number of ongoing working papers and newly proposed topic of working papers. (Annex II of the Sub-Commission decision 2006/12,pp.39-45).

⁶ Summarized by Hampson, 2007.

Working Groups II: Discussion

M. Ridha SALEH

Vice Chairperson, National Human Rights Commission of Indonesia

Introduction

World Conference on Human Rights which was held in Vienna, Austria from 14 to 25 June, 1993 was a very historic and important meeting for the promotion, protection and upholding of human rights. The conference was attended by representatives from 171 States and marked by an extraordinary degree of participation by some seven thousand (7,000) participants including government delegates, academics, treaty bodies, national institutions and representatives of 800 non-governmental organizations (NGOs).

The conference is considered historic and significant as it has succeeded in presenting to the international community a common plan for the strengthening of human rights work around the world. The plan is then called as **"THE VIENNA DECLARATION AND PROGRAMME OF ACTION"**

In a message to the delegates in the conference, United Nations Secretary-General Boutros Boutros-Ghali told that by adopting the Vienna Declaration and Programme of Action, they have renewed the commitment of the international community to the promotion and protection of human rights.¹

Following the success of the conference, since 1993, the Member States of the United Nations started to implement their commitment to the promotion, protection and upholding of human rights, among others, by establishing the national Human Rights Institutions.

National Human Rights Institutions

The establishment of the National Human Rights Institutions after the Vienna Declaration has become one of the most important and strategic instrument for

a State in assuring the promotion, protection, upholding and fulfillment of human rights.

Due to the significance of the roles of the National Human Rights Institutions in controlling the government's policy on human rights, they are expected to serve as national institutions which are independent and free from the control of the government, so the National Human Rights Institutions shall be established as effective institutions and deserve to be called as national institutions. Therefore, the government should give a serious attention to the establishment of the National Human Rights Institutions, instead of making them as a means to improve its image at international level. The National Human Rights Institutions shall be established to play its role as one of the controls to the government in implementing its policies on human rights.

As the independent National Human Rights Institutions are very crucial, the United Nations has set out the minimum standards for the establishment of the National Human Rights Institutions, named "*The Paris Principles*". The principles were adopted by the General Assembly of the United Nations through its resolution 48/134, dated 20 December, 1993.

Just to refresh our memory, the essential elements of the establishment of the National Human Rights Institutions are as follows :

1. Independence

An effective national institution is the one which is able to work independently, free from the control and intervention by the government, political parties and any other institutions and situations which may affect its performance. Therefore, the establishment of the National Human Rights Institutions shall be done independently. It does not mean that the relationship with government shall be totally eliminated, but there should be no any intervention and control by the government and other parties over the institutions in the performance of their duties and functions. The independence here is divided into some criteria as follows :

a. Independence through legal and operational autonomy

The establishment of a National Human Rights Institution shall be based on the laws in order to assure its legal independence, especially from any intervention by the government, with a view to enable the institution to carry out its functions independently. While, the operational autonomy relates to the capability of the

National Human Rights Institution to perform its daily functions independently and free from any intervention from any individuals, organizations, departments and any other parties.

b. Independence through financial autonomy

The financial autonomy and functional independence are closely correlated. As the National Human Rights Institutions do not possess sufficient financial resources, they rely heavily on their finance on the governmental agencies or other bodies. Therefore, the source of funds for the operation of the National Human Rights Institutions shall be expressly stipulated by the law concerning its establishment in order to assure that the institutions are financially able to perform their essential functions.

c. Independence through appointment and discharging procedure

The terms and conditions applicable to the members of the National Human Rights Institutions shall be expressly stipulated by the law concerning their establishment in order to assure that the members, either individually or collectively, are able to take and maintain independent actions. The discharging of the members shall be also set out in the stated law specifying any reasons which may lead to the discharging of the members of the National Human Rights Institution.

d. Independence through composition

The composition of a national institution shall assure its independence against public officials and reflect the sociological and political pluralism and wider variety.

2. Clear Jurisdiction and Sufficient Authority

Major jurisdiction of a national institution shall be expressly set forth in the law of its establishment such as providing an education on human rights, assisting the government in legislative issues, receiving and responding to any complaints on the violations of human rights.

3. Easier Access

Any individuals or groups which need a protection and whose concerns shall be promoted shall have an easier access to the National Human Rights Institutions. This accessibility among others include the establishment of the national institution's representatives at regional area which will enable people living at the area to submit their complaints to the national institution through its representatives.

4. Cooperation

The National Human Rights Institutions should cooperate with the United Nations, its other international organizations, regional institutions and national institutions at the States which are competent in the promotion and protection of human rights. In addition, such cooperation shall also be established with non-governmental organizations, national institutions and governmental organizations.

5. Operational Efficiency

The National Human Rights Institutions like any other institutions shall exert every effort to assure that their working mechanism is the most effective and efficient one. Operational efficiency relates to all aspects of institutional procedures, personnel recruitment and selection, working mechanism development and routine performance audit procedure.

6. Accountability

Pursuant to the law concerning their establishment, the national institutions are legally and financially responsible to the government and/or parliament through the submission of the periodic report. In addition, the National Human Rights Institutions are directly responsible to the public. For this, the national institutions should distribute their reports and other publications concerning human rights.²

In order to assure that the National Human Rights Institutions are established by the States in accordance with the international standards as set out in the Paris Principles, further the Office of the High Commissioner of Human Rights (OHCHR) establishes a unit named the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The major function of the ICC is to carry out an accreditation process to the National Human Rights Institutions to identify whether such national institutions have been established in compliance with the Paris Principles. Furthermore, the ICC awards an accreditation under the following ranks :

- a. Status "A" , it means that the institutions deemed to be in full compliance with the Paris Principles.
- b. Status "B", it means that institutions are not in full compliance or insufficient information is provided.
- c. Status "C", which is the lowest status meaning that the institutions are not totally compliance with the criteria as stipulated in the Paris Principles.

The national institutions which gets "Status A" accreditation has complied with the criteria and been qualified to become a member of the ICC and/or to actively participate in some events or meetings organized by the United Nations.

The United Nations Advisory Committee of the Human Rights Council

Learning from the experience that the existence of the United Nations High Commissioner for Human Rights has not sufficiently played an active role in the promotion and protection of human rights; therefore, the United Nations has reformed the organizations and replace it with a new institution called the Human Rights Council.

This measure has been taken by the United Nations with an objective to improve the previous policies which were considered to have not been able to strive for the promotion and protection of human rights. Therefore, upon the establishment of the United Nations Human Rights Council on 18 June 2007, one year after its first meeting, and in compliance with General Assembly resolution 60/251, the Human Rights Council agreed on a package of elements that established the procedures, mechanism and structures that will form the basis for its future work. The council will meet as a quasi-standing body. Its agenda and programme of work provides the opportunity to discuss all thematic human rights issues and situations that require the Council's attention throughout the year. Its rules of procedure and methods of work shall ensure transparency, predictability, impartiality and will enable genuine dialogue and be results-oriented.

One of the mechanism adopted by the United Nations Human Rights Council on which this paper will focus is the roles of the Human Rights Council Advisory Committee.

An advisory Committee, replacing the former Sub-Commission on the Promotion and Protection of Human Rights, will be established to support the Council's work. Functioning as a think tank, the Committee will provide expertise and advice and conduct substantive research and studies on thematic issues of interest to the Council at its request. Adapun yang menjadi fungsi, tugas, dan kewenangan serta struktur dari Advisory Committee antara lain :

- a. The Advisory Committee will be made up of eighteen experts serving in their personal capacity;
- b. In the performance of its mandate, the Advisory Committee is urged to establish interaction with States, national human rights institutions, NGO's and other civil society entities;
- c. Members of the Committee will serve for a period of three years and be eligible for re-election only one.³

In respect of the process of recruitment of the members of the Advisory Committee, Amnesty International makes the following recommendations:

- The process of selection of candidates for election to the Council's Advisory Committee must be more transparent to guarantee election of independent and qualified experts. The nomination procedure in the President's text should be enhanced by requiring states to consult their national human rights institutions and civil society organizations about possible candidates and inform the Council on the measures that they have taken to that effect.
- The mandate of the Advisory Committee must enable the Council to benefit fully from the Committee's expertise by making provision for a right of initiative by the Committee.⁴

As the Advisory Committee is a new institution resulting from the reform of the United Nations, we have not yet known the performance of the institution. Therefore, we need to pay due attention to the institution in order that it is able to carry out its functions, duties and authorities better as per our expectation in achieving the peace and security in the world.

Relationship between the National Human Rights Institutions and the UN Advisory Committee

After identifying the functions of the National Human Rights Institutions and the Advisory Committee, it is evident that both institutions have a close and interconnected relation in performing their functions, duties and authorities. The importance of the cooperation between two institutions is confirmed in the HRC decision 6/102 which states that when selecting their candidates States should, inter alia, consult with their national human rights institutions. NHRIs could therefore begin to identify candidates in accordance with the eligibility requirements (and could also do so via consultative processes including civil society) and make nominations to their governments.

As per the information we receive from the Secretariat of the Asia Pacific Forum of National Human Rights Institutions (APF), the National Institutions Unit, OHCHR is developing a document to assist in providing guidance to A status NHRI's on how to they can begin to identify practical ways in which they can be Council Mechanisms. The basic rule which provides for the relation between the National Human Rights Institutions and the Advisory Committee is stipulated in the draft guidance issued by the OHCHR National Institutions Unit, dated 3 October 2007, which among others states :

In accordance with paragraph 66 of resolution 5/1, all Member States of the UN may propose or endorse candidates from their own region. When selecting candidates, States should consult, inter alia, with their NHRIs.

1. NHRIs could hold informal consultations at the national level in order to identify candidates with recognized competence and experience in the field of human rights, a high moral standing, and independence and impartiality;
2. NHRIs could identify one of its commissioners or staff members as a potential candidate for proposing to the State;
3. NHRIs could approach Member State delegations in order to obtain a Human Rights Council request to the Advisory Committee for the provision of expert studies and research-based advice on the human rights issues identified;

Paragraphs 82 and 83 of resolution 5/1 establish consultative and participatory relations between the Advisory Committee and NHRIs.

1. NHRIs should aim at establishing a working relationship with the Advisory Committee, through initiating regular communication, attendance and participation in sessions and the sharing of their reports with members of the Advisory Committee, to the extent that they are relevant and appropriate to the work of the Advisory Committee.
2. If the Advisory Committee receives a specific thematic mandate, NHRIs could organize national consultations on the theme with other relevant stakeholders, and promote the establishment of thematic networks or the conducting of specialised studies.

According to the message from the Secretariat of the APF, given its DRAFT status, please restrict circulation of this note at this stage pending its finalisation by the OHCHR.

Conclusion

The Vienna Declaration and Programme of Action 1993 in its considerations states that the efforts for the promotion and protection of human rights is a priority to the international community; therefore, the stated meeting is a good opportunity to carry out an integrated analysis on the international procedure of the human

rights and the system of protection of human rights, with an objective to call on and promote the compliance to the human rights through just and equal manner. The conference has succeeded in establishing a historic benchmark for the promotion and protection of human rights and is deemed to be successful as the States Members of the United Nations have taken follow up actions by establishing their National Human Rights Institutions.

The roles of the National Human Rights Institutions is very vital in making certain that the States have fulfilled their obligations seriously for the protection, promotion and upholding of human rights. Due to this significant role, the future prospect of the national institutions in the context of their relationship with the UN Advisory Committee are greatly interconnected. It can be seen in the process of the recruitment of the members of the Advisory Committee which requires the participation of the National Human Rights Institutions as specified in the HRC decision 6/102 stating that when selecting their candidates States should, inter alia, consult with their national human rights institutions.

Upon the selection of the members of the UN Advisory Committee, there will be a close relationship between the National Human Rights Institutions and Advisory Committee in its working process. It can be seen that the discussion process in the Universal Periodic Review, the National Human Rights Institutions are obligated to provide reports to the Human Rights Council on the human rights conditions. On this matter, the UN Advisory Committee requires the participation of the National Human Rights Institutions in further discussion before giving notes or recommendations on the human rights condition at a country.

Based on the above facts, the relationship between the National Human Rights Institutions and the UN Advisory Council has a good prospect in form of active participation in each discussion concerning human rights in order to achieve peace and security at national, regional and international levels.

¹ Information on the Vienna Declaration and Programme of Action is excerpted from the publication of the National Commission on Human Rights regarding the resolutions of the World Conference on Human Rights.

² Data and information in respect of the International Guidelines for the Establishment of the National Human Rights Institutions (Paris Principle 1991), are excerpted from the book on the National Human Rights Institutions, professional training series No. 4 issued by the United Nations.

³ Excerpted from information available at the following website:
http://www.ohchr.org/english/bodies/hrcouncil/docs/FACTSHEET_OUTCOMES_FINAL.pdf

⁴ The information can be downloaded from the website:
<http://web.amnesty.org/library/Index/ENGIOR410132007?open&of=ENG-393>

Working Groups III: Presentation

YounKyo AHN

Human Rights Officer, OHCHR

NHRIs and Special Procedures

The purpose of this document is to identify areas for strengthened interaction between national human rights institutions (NHRIs) and Special Procedures (SPs) of the Human Rights Council (especially those NHRIs which are fully compliant with the Paris Principles, i.e. with A-status ICC accreditation¹. NHRIs and SPs have much to gain from each other in performing their responsibilities for the promotion and protection of human rights².

At the 12th annual meeting of SP mandate holders (Geneva, 21–25 June 2005), the need was recognized to strengthen follow-up to SP recommendations and to enhance their impact at the country level. Strengthened cooperation between SPs and NIs in these and other areas can make an important contribution to the effectiveness of both SPs and NIs, and to the effective realisation of human rights for people everywhere.

The potential for successful cooperation between NHRIs and SPs has recently also been acknowledged by the United Nations High Commissioner for Human Rights, Ms. Louise Arbour, when she addressed the 19th annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights on 21 March 2007. She mentioned that NHRIs take a pivotal position at the national level as the key-stone of a strong national human rights protection system. Moreover, she expressed her conviction that NIs are the best relay mechanism at country level to ensure the application of international human rights norms, and specifically mentioned the Special Procedures in this regard.

On the occasion of the 20th anniversary of the Danish Institute for Human Rights, the Deputy High Commissioner for Human Rights, Ms. Kyung-wha Kang, also

reiterated this on 3 May 2007 when stating that NHRIs are key dialogue partners to Special Procedure mandate holders, contributing to the preparation, implementation and follow up action to country visits.

The important and mutually reinforcing role of NHRIs and SPs has been already acknowledged in several fora. The Annex to this paper lists areas for strengthened cooperation building on existing practices.

ANNEX

Proposals for the interaction between NHRIs and SPs

Country visits: standing invitations and visit requests:

- 1) NHRIs can encourage the Government to extend a standing invitation to all thematic SPs.
- 2) NHRI can bring specific human rights developments to the attention of the relevant SPs, and when warranted encourage them to request a country visit to the Government.

Preparation of a country visit:

- 3) NHRIs are encouraged to propose reliable and relevant interlocutors, as well as provide SPs with relevant background information/materials, including relevant annual or thematic human rights reports.

During a country visit:

- 4) SPs are encouraged to routinely include in their schedule a meeting with the NHRI.
- 5) NHRIs might be requested to assist in the organization of the “unofficial” part of the agenda.

Recommendations after a country visit:

- 6) SPs are encouraged when feasible to involve NHRIs in the process of formulating the recommendations, so as to sharpen their focus and specificity.
- 7) SPs could include in their recommendations that an NHRI in full compliance with the Paris Principles be set up, that an existing NHRI be strengthened so that it fully complies with the Paris Principles, that adequate resources be provided to NHRIs, that an NHRI seeks accreditation through the ICC, etc.
- 8) If an SP mandate holder issues a press release or public statement after the country visit, NHRIs are encouraged to widely publicize the statement at the national level.

Follow-up to a country visit:

- 9) SPs are encouraged to approach NHRIs to widely disseminate and translate the country visit report to their national contact network, including selected Government officials, Members of Parliament or NGOs and civil society groups.
- 10) SPs might wish to recommend in their country visits report that NHRIs actively monitor the follow-up of SP recommendations.
- 11) SPs are encouraged to actively request information from the NHRI in order to assess the status of implementation of the recommendations made following a country visit, for example through a questionnaire. NHRIs are also encouraged to regularly provide information to mandate-holders on the implementation of their recommendations (or lack thereof).
- 12) NHRIs are encouraged to take relevant SPs' recommendations into account when submitting opinions, recommendations, proposals and reports to the Government, Parliament or other public body.
- 13) NHRIs can act as reliable partners at the national level for the monitoring of any retaliatory action against sources of information that have cooperated with a SP during a country visit. NHRIs are encouraged to promptly inform OHCHR of such events, for the attention of the SP mandate holder.
- 14) NHRIs could organize follow-up seminars, either at the request of SPs or at their own initiative, including all the human rights stakeholders as well as the SP mandate holder.
- 15) NHRIs are encouraged to take relevant SPs' recommendations into account when preparing their work-plan and when assisting in the formulation of National Human Rights Action Plans and in other human rights related programming activities.

Communications

- 16) The SP can make use of an NHRI as (1) a reliable and available source of information; (2) a potentially good partner to verify the accurateness of information obtained from other sources; and (3) an effective intermediary to obtain information from third parties.
- 17) In case of an anticipated or ongoing human rights violation, NHRIs can act as an important link for early warning and may bring such situations to the attention of the SP for their action.
- 18) Because of their mandate regarding existing or draft legislation, NHRIs are optimally placed to flag relevant (draft) laws to the SP, who may act upon this information.

Protection capacity:

- 19) Whenever an NHRI is under threat, relevant SPs could act to protect it through communications or other measures.
- 20) SPs could make effective use of regional networks of NHRIs to mobilize public opinion to address particular human rights issues.

Thematic studies:

- 21) NHRIs could bring a specific situation to the attention of the relevant SP and suggest specific issues be the subject of, or be included in a thematic study. NHRIs can also be approached with a further request for information or the dissemination of a questionnaire among the national contacts of the NHRI for the preparation of thematic studies.
- 22) NHRIs can organize thematic conferences or seminars and invite the relevant SP mandate holders to attend.
- 23) Thematic studies should be more systematically shared with NHRIs, so that their conclusions may be taken into account by NHRIs when formulating legislative proposals.

International meetings

- 24) Those NHRIs which are in compliance with the Paris Principles (having received an A-status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights) could attend sessions of the Human Rights Council and make an oral statement during the interactive dialogue after the presentation by the relevant SP mandate holder.
- 25) The 14th Annual Meeting of SPs could recommend that interaction between SPs and NHRIs be discussed on a regular basis during the Annual Meeting. When feasible, NHRIs should have a regular interaction with SPs at their Annual Meeting. This would provide for a venue to discuss and identify best practices and lessons learned.

¹ The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights has an accreditation procedure through which NHRIs are examined on their compliance with the international standards for NHRIs, the Paris Principles. Those NHRIs deemed to be in full compliance with the Paris Principles receive an A-status accreditation.

² NHRIs in this document refer to those national institutions with a constitutional or legislative mandate to protect and/or promote human rights.

Working Groups III: Discussion

Giyoun KIM

Korea Center for United Nations Human Rights Policy (KOCUN)

P1. Implementation of the Institution-Building Package (HRC Resolution 5/1)

1) Selection and appointment of mandate-holders

- Paragraph 37, “The following entities may nominate candidates as special procedures mandate-holders: (a) Governments; (b) Regional Groups operating within the United Nations human rights system; (c) international organizations or their offices (e.g. OHCHR); (d) NGOs; (e) other human rights bodies; (f) individual nominations.
- In addition, NHRI needs to engage with the nomination process of the government at the national level in order to make sure those nominated candidates go with the criteria (expertise, experience in the field of the mandate independence, impartiality, personal integrity, objectivity).

2) Review, rationalization and improvement of mandates

- Paragraph 53(d), “Identify and address the areas which constitute thematic gaps, by means other than the creation of special procedures mandates, such as by expanding an existing mandate, bring a cross-cutting issues to the attention of mandate-holders or by requesting a joint action to the relevant mandate-holders”
- NHRI’s day-to-day ground work at the national level is a useful source of identifying the thematic gaps. NHRI needs to make the most use of its studies and analysis based on the trends of complaints, jurisprudence, policy recommendations, etc.
(Sexual minorities, Right to water, Right to peace...)

P2. Cooperation with the Work of SP Mandate-Holders

1) Awareness-raising on the Special Procedures

- NHRI needs to develop and conduct awareness-raising programmes in order to make the special procedures accessible and available to human rights defenders and victims at the national level. The number of the communications (urgent appeals or letters of allegation) submitted to special procedures is still very low.

(The number of total communications in the year of 2006 was only 1,115 covering 2,869 individuals. <UN Special Procedures Facts and Figures 2006>

- Any possibility to stipulate a question on the complaint form whether the complainant has submitted any communications to the special procedures of the UN HRC or not?

2) Follow-up of the communications and the country-visits

- NHRI needs to play a role as a strategic channel between the government and the special procedures. Ensure that the appropriate government authorities are informed as quickly as possible of the circumstances so that they can intervene to end or prevent human rights violations; Monitor the replies of the government to the clarification request from the special procedures (The percentage of government responses to the communications in the year of 2006 was only 58%. <UN Special Procedures Facts and Figures 2006>)
- NHRI needs to provide necessary cooperation and suggestions when the mandate holders of the special procedures make a country-visit. Ensure those must-visit institutions and places are arranged for the mandate holder; Monitor and follow-up the implementation of the recommendations from the mandate-holder

3) Contribution to the thematic studies of the mandate-holders

- NHRI's work at the national level is a good source of information on the patterns and trend of human rights violations. NHRIs need to closely cooperate with mandate-holders and actively respond to the questionnaires sent by mandate holders in order for those thematic studies to reflect the reality of human rights situations.

4) Promotion of standing invitations

<Questions to the presenter>

- What are the strategies of the Office of the UN High Commissioner for Human Rights (OHCHR) to promote the standing invitation of each State around the world?
- Human rights defenders feel that the communications (urgent appeal or letters of allegation) to special procedures may not be very effective to get a remedial action. Any suggestions to improve the work of the special procedures?

Working Groups III: Discussion

Ms. Katharina ROSE

interim ICC Representative

Ladies and Gentlemen,

I am very pleased to participate in this international seminar. I wish to extend my heartfelt congratulations to the National Human Rights Commission of Korea for organizing this important event.

In my capacity as interim ICC Representative in Geneva I have been invited to participate in this WG. I look forward with much interest to our discussions.

I would like to make a few comments on new possibilities the Council has opened for NIs interaction with SP at the international level.

My first point will touch upon the follow-up of SP recommendations and NIs involvement there-in.

I will then make a few comments about NIs role in the review process of SP mandates.

Ladies and Gentlemen,

It was an often heard criticism that the former Commission on Human Rights had deficiencies in following-up adequately on SP findings and recommendations. Often enough there had been no in-depth discussion. Recommendations for action were often ignored. In many cases they were not reflected in resolutions or decisions.

However, it is clear to all of us, that an effective monitoring mechanism is the very basis for the efficiency of the SP work.

The question that would come to our mind is therefore how NIs and SP could best ensure a more efficient follow-up. I would like to comment on three points.

We may first look at the Council and its plenary discussions.

As you well know, NIs have now been granted speaking rights under all agenda items. This also applies of course for the interactive dialogue with SP.

NIs have specialized HR expertise in how to address the challenges and the circumstances of local conditions in the implementation of obligations and recommendations. NIs can now introduce this expertise in the plenary discussions and contribute with their own proposals and pertinent suggestions on SP recommendations and follow-up.

Therefore, NIs play an ideal role in providing the hitherto missing feedback on achievements and implementation deficiencies.

Interaction however also means that SP, in their reports, systematically include references to the status of implementation reported by NIs. SP could also consider the role of NIs in adopting specific thematic or country-based recommendations.

Secondly, let's turn to the new Universal Periodic Review.

The UPR provides new opportunities for NIs to follow-up on SP recommendations.

NIs can provide specific information to the UPR on how recommendations have been followed-up and which difficulties turned up. They can also develop concrete action points relating to the implementation of such recommendations.

It is of course the periodicity of the UPR which will hopefully lead to better continuity and effective follow-up.

Thirdly, at the national level, both SP and NIs will benefit from a closer partnership with UN agencies and programs on the ground.

These partnerships are crucial in order to close critical implementation gaps. And to mainstream a HR approach in the work of all actors on the ground - in a more coordinated fashion.

The OHCHR is currently working on new methods to reinforce and extend links between the UN field presence and NIs. The same applies to SP.

Ladies and Gentlemen let me now turn to my second point, which is the review process of SP mandates.

As you are well aware of, the forthcoming months will be marked by the debate among member states and other stakeholders on how to improve the existing mechanism of the SP.

The implications for NIs are manifold.

NIs are now entitled to take part in the Council discussions under all agenda items. This is of course also valid for the review process of SP mandates.

Therefore, a key, new opportunity for NIs is to provide substantive input to the review process. The purpose will be to improve and strengthen the system of SP.

As key partners with the SP, NIs can provide safe experience-based input, such as on achievements, best practices, but also on challenges and possibilities for future improvement of the SP work.

Identifying protection gaps in the system of SP will be particularly important. With their expertise and research-based findings, NIs can promote the dialogue on the extension of mandates and on the possible establishment of new SP mandates.

Work methods between NIs and SP can also be addressed during the review, with a hope to improve their efficiency.

Specific opportunities arise when country mandates are being reviewed.

Firstly, NIs could highlight the need to systematically include mention of NI-related issues, such as achievements as well as challenges and institution-building issues in the work of NIs.

Such inclusion will provide an additional incentive to discuss NI-related issues at the Council level.

Secondly, some country mandates are likely to be discontinued. In these cases, NIs can emphasize the need for continuous consideration and follow-up on NIs in the country concerned. This must not be precluded when a mandate is discontinued.

This is particularly relevant when a NI still requires support or at least attention, at the Council level. For instance when it is still in the establishment phase or when it faces specific challenges.

NI interaction with the Council in the review process will be further promoted and enhanced by the coordinating activities of the ICC. Fruitful discussions and interaction of NIs in the review process have already taken place in the September session. Contributions and recommendations made by NIs and group of NIs during the session have been taken up by the SP mandate holders and been reflected in the resulting resolutions.

In conclusion, I think you will agree with me that there are many potential areas where NIs and SP can play an even more effective role in interacting among each other. I am confident that ongoing initiatives will bear fruit. Not only in terms of in terms of mutual support and mutual benefitting from various synergy effects, but also in concentrating efforts towards the common end of a more effective protection of human rights.

I thank you for your attention.

Working Groups IV: Presentation

Yanghee LEE

Sungkyunkwan University

Reform of Treaty Bodies and the Role of NHRIs

INTRODUCTION

The United Nations has been accused of being ineffective, inefficient, mismanaging funds, and inappropriate behaviors involving high level personnel. Furthermore, the international community continues to witness atrocities involving grave violations of human rights. In an effort to become more effective and transparent, the Secretary General called for a large scaled reform. Included in this 'UN Reform' is the reform of treaty bodies. Since the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights entered into force in 1976 (which took ten years since they were opened for signature, ratification, and accession), there are six more treaties that have entered into force since. When the Convention on the Rights of Persons with Disabilities enters into force and a treaty body is established, there will be 9 treaty bodies monitoring implementation of respective treaties.

Monitoring implementation of international treaties lie in the hands of several actors: The first and foremost actor is the respective treaty body; the States party to the respective treaty; civil society; international and national NGOs; and national human rights institutions. Undoubtedly, independent national human rights institutions (NHRIs) are important mechanisms in promoting and ensuring the implementation of the various human rights treaties that States ratify. Moreover, it is the role of the NHRIs to promote and protect human rights in their respective countries.

Just this year, the Human Rights Council finalized Universal Periodic Review Mechanism in response to the General Assembly resolution 60/251 of 15 March 2006. On 18 June 2007, the Human Rights Council adopted Resolution 5/1 relating to Institution-building, allowing for an active engagement of NHRIs in the UPR

mechanism. The UPR will consist of three major documents. The first document will be the national report, with consultation with all stakeholders, NHRIs. The second document will be the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official UN documents. The role of NHRIs is also important in this document since various treaty bodies request meetings with NHRIs and or a written report from the NHRIs. The third document will be comprised of credible and reliable information provided by other relevant stakeholders to include NGOs as well as NHRIs. Thus, the role of NHRIs has become extremely important.

This presentation will briefly summarize efforts to reform treaty bodies. It will be followed by illustration of the role of NHRIs in relation to treaty bodies. Finally, it will summarize recent development in the attempt to strengthen the role of NHRIs.

TREATY BODY REFORM

On 13 June 2003, a meeting was held in Malbun of Liechtenstein, during which the possibility of a single report summarizing a State party's implementation of the provisions of all the human rights treaties to which it is party to was discussed. This idea was rejected on grounds that such a report could be closely linked to the concept of a single treaty body. Fundamental issues were raised, including the possibility of marginalization of specific issues (e.g. children, women, persons with disabilities, indigenous people, etc) and requirement of amendment of existing treaties.

In 2006, The High Commissioner of Human Rights, Louise Arbour, presented her Concept Paper proposing a Unified Standing Treaty Body. Rationale for this proposal was that States accepted the human rights treaty system on a formal level, but did not completely comply either due to lack of capacity or lack of political will. Furthermore, meeting complex and overlapping reporting obligations were difficult due to other reporting requirements, and that there was no coordination among the treaty bodies in relation to the scheduling of report consideration. A State party may be asked the same question by several of the treaty bodies, thus leaving little time to devote to treaty-specific issues.

However, the High Commissioner's Proposal was not readily accepted at the Inter-Committee Meeting /Chairpersons of the human rights treaty bodies in June of 2006. But the need for harmonization and coordination was fully recognized and that the treaty bodies continue to explore ways and means to achieve this goal.

ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

In 1993, a World Conference on Human Rights was held in Vienna and the outcome document was the Vienna Declaration and Programme of Action. The importance of the role of national institutions for the promotion and protection of human rights was reaffirmed. Establishment of NHRIs, which was repeatedly emphasized by the General Assembly and the Commission on Human Rights (no longer in existence), should be in compliance with the “Paris Principles” (adopted by the General Assembly in 1993).

Three treaty bodies have issued General Comments on the role of national human rights institutions. General Comments are interpretations of the content of human rights provisions on thematic issues. Currently there are three treaty bodies with a General Comment on this issue: In 1993, CERD issued General Comment no. 17; in 1998, CERD issued General Comment no.10; and CRC issued General Comment no. 2 in 2002.

Article 4 of the Convention on the Rights of the Child (CRC) “obliges States parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights” enshrined in the Convention. CRC, in its General Comment no. 2 depicts NHRIs as an important mechanism to promote and ensure the implementation of the Convention. Moreover, the Committee views the establishment of such bodies falls within the commitment made by States parties when they ratified the Convention. This General Comment makes suggestions on the nature of such bodies, including its mandate, composition, responsibility, and independence. In short, it emphasizes the importance of having the power to consider individual complaints and petitions; carry out investigations; be able seek to ensure that children have effective remedies for any breaches of their rights; have the power to support children taking cases to court; and be physically accessible to children. NHRIs are urged to contribute independently to the reporting process and engage in a dialogue with the Committee at its pre-sessional working group.

Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, held in Berlin 23 and 24 November 2006, were discussed at the Nineteenth meeting of chairpersons of the human rights treaty bodies. It was recognized that the NHRIs and the UN human rights treaty bodies are partners in the pursuit of the promotion and protection of human rights. The outcome document of the International Roundtable spelled out the role of NHRIs in terms of reporting to the treaty bodies, petitions and enquiry procedures, follow

-up procedures, international human rights instruments, thematic engagement, and training. This Roundtable helped clarify and specify the role of NHRIs. NHRIs have an added role in cases where the international human rights instrument does not have an individual complaints mechanism, notably the CRC.

I would like to delve a little into some specific conclusions of the Berlin Round Table.

1. Treaty Body Reporting

(1) Drafting of List of Issues:

CRC conducts a private pre-sessional working group three months prior to the dialogue with the State party. UN agencies, international NGOs, and NHRIs submit written reports to the Committee and also participate orally with the Committee. It is at this occasion the NHRIs, or Ombudspersons, are invited to participate. At the conclusion of this meeting, the Committee drafts a List of Issues that are sent to the State party to reply within a period of two months. Participation of the NHRI is crucial in aiding the Committee to draft accurate List of Issues, conduct of the Dialogue, and to the Concluding Observations.

(2) Assisting Government in understanding of the new treaty-body reporting guidelines:

Passage of time and post initial reports necessitates revisions to the reporting guidelines. The CRC has issued revised reporting guidelines to the periodic reports, and to the two Optional Protocols (OPAC in 2007, and OPSC in 2006). Also worth noting is that within the UN Human Rights reporting guidelines, there is a new guideline for a harmonized core-document that encompasses all the treaty bodies.

(3) In addition to submitting its own report to the Treaty Bodies, the NHRI should contribute to the preparation of State party reports. This must also be in accordance with the Paris Principles.

2. Petitions and enquiry procedures:

In Cases where the Treaty Body has an individual complaints mechanism, NHRIs must consider facilitating or assisting victim's petitions to the respective treaty bodies. In addition, NHRIs should engage with treaty body enquiry procedures in a cooperative manner.

3. Follow-up procedures:

- (1) NHRIs must take the role of informing all relevant actors on the concluding observations and recommendations of Treaty Bodies. At the same time, the NHRIs must also take the responsibility of monitoring State's dissemination of the concluding observations.
- (2) NHRIs should support and host follow-up meeting to the Concluding observations and recommendations, including with Parliamentarians, relevant ministries, public authorities, NGOS, and other relevant actors.
- (3) The monitoring of effectiveness of implementation of the Concluding observations is another role that the NHRIs must take.

4. Sensitization of the International Human Rights Instruments:

In accordance with the Paris Principles, the NHRIs must encourage ratification and accession to international Human Rights instruments. Prior to ratification of international human rights instruments, the Government, Parliament, and relevant stakeholders must be made aware about the treaty. In doing so, the Parliament must also be informed about the State's obligation to the relevant instrument. In cases where a reservation has been made upon ratification, NHRIs should encourage the removal of the reservations including through public awareness campaigns. Up to now, this work has been conducted primarily by NGOs in our country.

5. Training:

The quality of State Party reports depends on the adherence to the reporting guidelines, collection of data, and other relevant issues. In order to accomplish this, the NHRIs should support the capacity-building of State officials. For example, the Optional Protocol on the sale of children, child prostitution, and child pornography, the State party report lacks necessary data. However, the alternative report, submitted by the NGO coalition was able to provide necessary data. Unfortunately, our National Human Rights Commission had certain misunderstanding as to its role and function. It had wrongly assumed that it should issue concluding observations and recommendations to the State party report. It is correct that the role of NHRIs is to monitor the State's implementation of the treaty as well as the concluding observations issued by the respective treaty body. However, during the State party reporting process, the role of NHRIs is different. It must take a consultative role and assist the State to closely adhere to the reporting guidelines. And in addition, the NHRIs must submit their own report to the relevant treaty body.

CONCLUSION

Partnership among various stakeholders will become increasingly more crucial in the future in promoting and protecting human rights. More issues will arise worldwide that will call upon mobilization and cooperation of all stakeholders. If human rights are not to remain merely as rhetoric, all stakeholders must be held accountable for all acts of omission as well as commission that ultimately violate individuals' rights.

The State party must be the key actor in fulfilling its requirement to comply with the various human rights treaties it ratifies. The civil society, international and national NGOs, and NHRIs must also take an active role in not only monitoring the State's compliance, but also in raising awareness for the public at large as well as key actors, such as Parliamentarians, legal professions, teachers, social workers, medical professionals, media professionals, etc.

The treaty bodies rely heavily on reports from the NGOs, UN agencies, and NHRIs in considering State party reports. NHRIs has a different role from that of the NGOs. If the NHRIs were established in accordance to the Paris Principles and General Comments of respective treaty bodies, they would have the mandate to carry out investigations, have access to all data and information, and have sufficient financial and human resources to become accessible to even the most vulnerable peoples.

I would like to conclude by stating that conferences such as this would definitely contribute to the capacity-building of NHRIs. A strong and independent NHRI would be able to carry out its true mission to uphold, promote, and protect the rights of all persons.

Working Groups IV: Discussion

Chan-Un PARK

Faculty of Law, Hanyang university

I concur with the conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies. At the same time, I would suggest the followings in order to give more concrete meaning to the conclusion with respect to the role of National Human Rights Institutions in general and of the National Human Rights Commission of Korea in particular.

General Role

1. Role in relation to the State party report examination

- Drafting of List of Issues

NHRIs should provide relevant information to the treaty bodies for drafting of the List of Issues. There was no concrete guideline and position of the NHRCK for last state party reports examination under the ICCPR and the CAT. The NHRCK should establish guidelines how to involve in the process with the treaty bodies and provide information if necessary.

- Intervention of NHRIs before and after the Examination

NHRIs should intervene before and after the state party reports examination, including through oral presentation. To do this, experts in international human rights law are to be trained in staff including commissioners.

2. Role in relation to the individual complaints and enquiry

- Providing information

It seems that there is no opportunity for NHRIs to involve in the individual communications. However, if NHRIs consider it is necessary, NHRIs should be able to provide information for the decision of treaty bodies.

- Legal Aid to the Authors of the Communications

In Korea, it is worthwhile for the NHRCK to consider legal aid the authors of the individual communications.

3. Role in the follow-up process

- After the issuance of concluding observations after the state party reports examination, national mechanism to disseminate and to implement the concluding observations should be established.
- In regard to individual communications, the NHRCK should strive for the enactment of special statute to implement the views of the treaty bodies, currently under review of the government.
- The NHRCK should provide information on the implementation of the views of treaty bodies to the special rapporteurs on the follow-up of the treaty bodies.

Establishment of National Mechanism to Cooperate with the Treaty Bodies

It is very important to establish national mechanism for better reporting process and the follow-up. To this end, I would suggest the following:

- Institutionalization of national implementation mechanism for drafting state party report and the follow-up
There is not established process for the drafting of state party reports and the role of the National Human Rights Commission of Korea during the process is not clear. From the practical point of view, it is reasonable that the Ministry of Justice is to be mandated to draft the state-party reports, to take charge of the follow-up, and to set up consultation organs for each treaty.
- Provision for the National Mechanism
The above drafting of state party reports and the implementing mechanism should be provided for in statutory form, probably in the Presidential regulation.
- Creation of Database for better reporting and follow-up
One can find errors in the state party reports submitted to the United Nations. For better reporting and follow-up, it would be useful to create database of international human rights treaties, concluding observations, views, relevant legislations and policies, so that various stakeholders can easily access database and stimulate domestic implementation process.
- Role of the National Human Rights Commission of Korea
As the opportunities for NHRIs to involve in the process of examination of state party reports and follow-up afterwards are provided, the role of National Human Rights Commission should be clearly defined.

Working Groups IV: Discussion

Byunghoon OH

Director of International Human Rights Team
NHRCK

Thank you, Professor Yanghee Lee and Professor Chan-Un Park, for your insightful and informative presentations and interesting comments. I would like to raise some questions and to add a little bit of comments to your views.

As a matter of fact, I have to confess that my questions and comments are coming from my superficial knowledge about National Institutions from my short experiences in the international human rights arena as a director of international human rights team, NHRCK.

My lingering question is what is the best practice of National Institutions to make a practical contribution to the effectiveness of Treaty Bodies(TBs) in this transitional period. Until today, our Commission have conducted some monitorings of the review process and workshops to TBs like CERD, CCPR, CESCR, CEDAW, CAT, OPCAT, CRC and etc. I think that most of the monitorings tends to have a passive approach in which participating NIs try to understand what is the trends and current issues to be discussed in the periodical meetings. However, there is no concrete position as a NI yet. In order to make a more effective participation, each NI should set up a systematic engagement to TBs like developing some treaties-specific issues.

Most discussions taking place in TBs are dominated by independent experts as members of TBs and representatives of state parties except a very few cases currently. When we participated in the Committee on the Elimination of Racial Discrimination (CERD) this year, a short presentation about NHRCK's position on the national report marked the first intervention. We also took part in the The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in active manner. This attitude is very rare for a National Institution as far as I know. There are many reasons why NIs are so passive in TBs. If we can articulate the root causes, we can find the solution to make NIs more active in the

international human rights arena. My humble idea to understand the current situation and prospect for development of NIs are as follows:

First, the attitude of NIs depends on the relation between the state organs and NIs. The position of state organ is different from organ to organ. Some state organs are relatively generous to NIs' recommendation or comments. The others are very exclusive and obstinate in their views. Sometimes they don't take NIs' opinions seriously. When state organs are exclusive, we cannot expect the development of mutual communication to understand different and various positions. It is a challenge for NIs to restore mutual confidence, respecting each other's respective mandate concerning international treaties.

Second, the influence and power of NIs in making recommendation to state organs have relation with the capacity of NIs to follow up the international treaties. Most NIs are putting their energy on domestic issues like investigation, education, counseling, reviewing the regulation bills and so on.

Even though NIs have been created as an effective mechanisms for domestic implementation of various human rights treaties, they are severely inclined to the domestic aspect. I would like to insist that NIs have to play a role as a bridge between international treaties and domestic implementation. What is the last resort of NIs to depend on except international treaties? Now that TBs are willing to invite NIs to make an alternative report, one-sided approach is not acceptable for NIs.

Third, I can't stress too much on the role of NIs as a facilitator of domestic implementation of international treaties. NIs is not an emerging actor of UN and TBs no longer, but an efficient actor to facilitate the working process of TBs. They are supposed to provide credible and reliable information to TBs. Who is going to realize the concluding observations of TBs without appropriate monitoring implementation of international human rights treaties? I think that NI's active engagement with independent and objective view can make it different without making the TBs politicized. National report can be improved by NIs' expertise on the international treaties through the review process. In this sense, I agree with Professor Lee that the seminar like this can contribute to the capacity building of the NIs to become a strong and independent NIs.

Fourth, mutual cooperation with NIs and NGOs or civil society is very important for NIs to play a role as information provider because NGOs are a resource of

human rights agenda and issues ranging from grass-root to international level. NHRCK emphasizes on protection of vulnerable groups in Korean society as well as on more active engagement in the international human rights community. The relationship with NGOs has enriched our understanding the nature of human rights issues and seeking for solution or remedies. Raising expertise with the mutual cooperation can make more influential to state organs to finalize national report. Thanks.

Reference

Resolution 5/1

I. Resolution adopted by the Council at its fifth session

A. Resolution 5/1. Institution–building of the United Nations Human Rights Council

The Human Rights Council,

Acting in compliance with the mandate entrusted to it by the United Nations General Assembly in resolution 60/251 of 15 March 2006,

Having considered the draft text on institution–building submitted by the President of the Council,

1. *Adopts* the draft text entitled “United Nations Human Rights Council: Institution–Building”, as contained in the annex to the present resolution, including its appendix(es);
2. *Decides* to submit the following draft resolution to the General Assembly for its adoption as a matter of priority in order to facilitate the timely implementation of the text contained thereafter:

The General Assembly,

Taking note of Human Rights Council resolution 5/1 of 18 June 2007,

1. *Welcomes* the text entitled “United Nations Human Rights Council: Institution–Building”, as contained in the annex to the present resolution, including its appendix(es).

Annex

United Nations Human Rights Council: Institution—Building

I. UNIVERSAL PERIODIC REVIEW MECHANISM

A. Basis of the review

1. The basis of the review is:
 - (a) The Charter of the United Nations;
 - (b) The Universal Declaration of Human Rights;
 - (c) Human rights instruments to which a State is party;
 - (d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council (hereinafter “the Council”).
2. In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.

B. Principles and objectives

1. Principles

3. The universal periodic review should:
 - (a) Promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
 - (b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
 - (c) Ensure universal coverage and equal treatment of all States;
 - (d) Be an intergovernmental process, United Nations Member-driven and

action-oriented;

- (e) Fully involve the country under review;
- (f) Complement and not duplicate other human rights mechanisms, thus representing an added value;
- (g) Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner;
- (h) Not be overly burdensome to the concerned State or to the agenda of the Council;
- (i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
- (j) Not diminish the Council's capacity to respond to urgent human rights situations;
- (k) Fully integrate a gender perspective;
- (l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;
- (m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.

2. Objectives

4. The objectives of the review are:

- (a) The improvement of the human rights situation on the ground;
- (b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;
- (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- (d) The sharing of best practice among States and other stakeholders;
- (e) Support for cooperation in the promotion and protection of human rights;
- (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

C. Periodicity and order of the review

5. The review begins after the adoption of the universal periodic review mechanism by the Council.
6. The order of review should reflect the principles of universality and equal treatment.
7. The order of the review should be established as soon as possible in order to allow States to prepare adequately.
8. All member States of the Council shall be reviewed during their term of membership.
9. The initial members of the Council, especially those elected for one or two-year terms, should be reviewed first.
10. A mix of member and observer States of the Council should be reviewed.
11. Equitable geographic distribution should be respected in the selection of countries for review.
12. The first member and observer States to be reviewed will be chosen by the drawing of lots from each Regional Group in such a way as to ensure full respect for equitable geographic distribution. Alphabetical order will then be applied beginning with those countries thus selected, unless other countries volunteer to be reviewed.
13. The period between review cycles should be reasonable so as to take into account the capacity of States to prepare for, and the capacity of other stakeholders to respond to, the requests arising from the review.
14. The periodicity of the review for the first cycle will be of four years. This will imply the consideration of 48 States per year during three sessions of the working group of two weeks each.¹

D. Process and modalities of the review

1. Documentation

15. The documents on which the review would be based are:
- (a) Information prepared by the State concerned, which can take the form of a national report, on the basis of general guidelines to be adopted by the Council at its sixth session (first session of the second cycle), and any other information considered relevant by the State concerned, which could be presented either orally or in writing, provided that the written presentation summarizing the information will not exceed 20 pages, to guarantee equal treatment to all States and not to overburden the mechanism. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders;
 - (b) Additionally a compilation prepared by the Office of the High Commissioner for Human Rights of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed 10 pages;
 - (c) Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.
16. The documents prepared by the Office of the High Commissioner for Human Rights should be elaborated following the structure of the general guidelines adopted by the Council regarding the information prepared by the State concerned.
17. Both the State's written presentation and the summaries prepared by the Office of the High Commissioner for Human Rights shall be ready six weeks prior to the review by the working group to ensure the distribution of documents simultaneously in the six official languages of the United Nations, in accordance with General Assembly resolution 53/208 of 14 January 1999.

2. Modalities

18. The modalities of the review shall be as follows:

- (a) The review will be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council. Each member State will decide on the composition of its delegation;²
 - (b) Observer States may participate in the review, including in the interactive dialogue;
 - (c) Other relevant stakeholders may attend the review in the working group;
 - (d) A group of three rapporteurs, selected by the drawing of lots among the members of the Council and from different Regional Groups (troika) will be formed to facilitate each review, including the preparation of the report of the working group. The Office of the High Commissioner for Human Rights will provide the necessary assistance and expertise to the rapporteurs.
19. The country concerned may request that one of the rapporteurs be from its own Regional Group and may also request the substitution of a rapporteur on only one occasion.
 20. A rapporteur may request to be excused from participation in a specific review process.
 21. Interactive dialogue between the country under review and the Council will take place in the working group. The rapporteurs may collate issues or questions to be transmitted to the State under review to facilitate its preparation and focus the interactive dialogue, while guaranteeing fairness and transparency.
 22. The duration of the review will be three hours for each country in the working group. Additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council.
 23. Half an hour will be allocated for the adoption of the report of each country under review in the working group.
 24. A reasonable time frame should be allocated between the review and the adoption of the report of each State in the working group.
 25. The final outcome will be adopted by the plenary of the Council.

E. Outcome of the review

1. Format of the outcome

26. The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.

2. Content of the outcome

27. The universal periodic review is a cooperative mechanism. Its outcome may include, *inter alia*:
- (a) An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;
 - (b) Sharing of best practices;
 - (c) An emphasis on enhancing cooperation for the promotion and protection of human rights;
 - (d) The provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned;³
 - (e) Voluntary commitments and pledges made by the country under review.

3. Adoption of the outcome

28. The country under review should be fully involved in the outcome.
29. Before the adoption of the outcome by the plenary of the Council, the State concerned should be offered the opportunity to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue.
30. The State concerned and the member States of the Council, as well as observer States, will be given the opportunity to express their views on the outcome of the review before the plenary takes action on it.
31. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.
32. Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the

State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.

F. Follow-up to the review

33. The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.
34. The subsequent review should focus, *inter alia*, on the implementation of the preceding outcome.
35. The Council should have a standing item on its agenda devoted to the universal periodic review.
36. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned.
37. In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow-up is necessary.
38. After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.

II. SPECIAL PROCEDURES

A. Selection and appointment of mandate-holders

39. The following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.
40. Due consideration should be given to gender balance and equitable geographic representation, as well as to an appropriate representation of

different legal systems.

41. Technical and objective requirements for eligible candidates for mandate-holders will be approved by the Council at its sixth session (first session of the second cycle), in order to ensure that eligible candidates are highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights.
42. The following entities may nominate candidates as special procedures mandate-holders: (a) Governments; (b) Regional Groups operating within the United Nations human rights system; (c) international organizations or their offices (e.g. the Office of the High Commissioner for Human Rights); (d) non-governmental organizations; (e) other human rights bodies; (f) individual nominations.
43. The Office of the High Commissioner for Human Rights shall immediately prepare, maintain and periodically update a public list of eligible candidates in a standardized format, which shall include personal data, areas of expertise and professional experience. Upcoming vacancies of mandates shall be publicized.
44. The principle of non-accumulation of human rights functions at a time shall be respected.
45. A mandate-holder's tenure in a given function, whether a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders).
46. Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded. Mandate-holders will act in their personal capacity.
47. A consultative group would be established to propose to the President, at least one month before the beginning of the session in which the Council would consider the selection of mandate-holders, a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements.

48. The consultative group shall also give due consideration to the exclusion of nominated candidates from the public list of eligible candidates brought to its attention.
49. At the beginning of the annual cycle of the Council, Regional Groups would be invited to appoint a member of the consultative group, who would serve in his/her personal capacity. The Group will be assisted by the Office of the High Commissioner for Human Rights.
50. The consultative group will consider candidates included in the public list; however, under exceptional circumstances and if a particular post justifies it, the Group may consider additional nominations with equal or more suitable qualifications for the post. Recommendations to the President shall be public and substantiated.
51. The consultative group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate.
52. On the basis of the recommendations of the consultative group and following broad consultations, in particular through the regional coordinators, the President of the Council will identify an appropriate candidate for each vacancy. The President will present to member States and observers a list of candidates to be proposed at least two weeks prior to the beginning of the session in which the Council will consider the appointments.
53. If necessary, the President will conduct further consultations to ensure the endorsement of the proposed candidates. The appointment of the special procedures mandate-holders will be completed upon the subsequent approval of the Council. Mandate-holders shall be appointed before the end of the session.

B. Review, rationalization and improvement of mandates

54. The review, rationalization and improvement of mandates, as well as the creation of new ones, must be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of

all human rights, civil, political, economic, social and cultural rights, including the right to development.

55. The review, rationalization and improvement of each mandate would take place in the context of the negotiations of the relevant resolutions. An assessment of the mandate may take place in a separate segment of the interactive dialogue between the Council and special procedures mandate-holders.
56. The review, rationalization and improvement of mandates would focus on the relevance, scope and contents of the mandates, having as a framework the internationally recognized human rights standards, the system of special procedures and General Assembly resolution 60/251.
57. Any decision to streamline, merge or possibly discontinue mandates should always be guided by the need for improvement of the enjoyment and protection of human rights.
58. The Council should always strive for improvements:
 - (a) Mandates should always offer a clear prospect of an increased level of human rights protection and promotion as well as being coherent within the system of human rights;
 - (b) Equal attention should be paid to all human rights. The balance of thematic mandates should broadly reflect the accepted equal importance of civil, political, economic, social and cultural rights, including the right to development;
 - (c) Every effort should be made to avoid unnecessary duplication;
 - (d) Areas which constitute thematic gaps will be identified and addressed, including by means other than the creation of special procedures mandates, such as by expanding an existing mandate, bringing a cross-cutting issue to the attention of mandate-holders or by requesting a joint action to the relevant mandate-holders;
 - (e) Any consideration of merging mandates should have regard to the content and predominant functions of each mandate, as well as to the workload of individual mandate-holders;
 - (f) In creating or reviewing mandates, efforts should be made to identify whether the structure of the mechanism (expert, rapporteur or working group) is the most effective in terms of increasing human rights protection;
 - (g) New mandates should be as clear and specific as possible, so as to avoid ambiguity.

59. It should be considered desirable to have a uniform nomenclature of mandate-holders, titles of mandates as well as a selection and appointment process, to make the whole system more understandable.
60. Thematic mandate periods will be of three years. Country mandate periods will be of one year.
61. Mandates included in Appendix I, where applicable, will be renewed until the date on which they are considered by the Council according to the programme of work.⁴
62. Current mandate-holders may continue serving, provided they have not exceeded the six-year term limit (Appendix II). On an exceptional basis, the term of those mandate-holders who have served more than six years may be extended until the relevant mandate is considered by the Council and the selection and appointment process has concluded.
63. Decisions to create, review or discontinue country mandates should also take into account the principles of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations.
64. In case of situations of violations of human rights or a lack of cooperation that require the Council's attention, the principles of objectivity, non-selectivity, and the elimination of double standards and politicization should apply.

III. HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

65. The Human Rights Council Advisory Committee (hereinafter "the Advisory Committee"), composed of 18 experts serving in their personal capacity, will function as a think-tank for the Council and work at its direction. The establishment of this subsidiary body and its functioning will be executed according to the guidelines stipulated below.

A. Nomination

66. All Member States of the United Nations may propose or endorse candidates from their own region. When selecting their candidates, States should consult

- their national human rights institutions and civil society organizations and, in this regard, include the names of those supporting their candidates.
67. The aim is to ensure that the best possible expertise is made available to the Council. For this purpose, technical and objective requirements for the submission of candidatures will be established and approved by the Council at its sixth session (first session of the second cycle). These should include:
- (a) Recognized competence and experience in the field of human rights;
 - (b) High moral standing;
 - (c) Independence and impartiality.
68. Individuals holding decision-making positions in Government or in any other organization or entity which might give rise to a conflict of interest with the responsibilities inherent in the mandate shall be excluded. Elected members of the Committee will act in their personal capacity.
69. The principle of non-accumulation of human rights functions at the same time shall be respected.

B. Election

70. The Council shall elect the members of the Advisory Committee, in secret ballot, from the list of candidates whose names have been presented in accordance with the agreed requirements.
71. The list of candidates shall be closed two months prior to the election date. The Secretariat will make available the list of candidates and relevant information to member States and to the public at least one month prior to their election.
72. Due consideration should be given to gender balance and appropriate representation of different civilizations and legal systems.
73. The geographic distribution will be as follows:
- African States: 5
 - Asian States: 5
 - Eastern European States: 2
 - Latin American and Caribbean States: 3

74. The members of the Advisory Committee shall serve for a period of three years. They shall be eligible for re-election once. In the first term, one third of the experts will serve for one year and another third for two years. The staggering of terms of membership will be defined by the drawing of lots.

C. Functions

75. The function of the Advisory Committee is to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered only upon the latter's request, in compliance with its resolutions and under its guidance.
76. The Advisory Committee should be implementation-oriented and the scope of its advice should be limited to thematic issues pertaining to the mandate of the Council; namely promotion and protection of all human rights.
77. The Advisory Committee shall not adopt resolutions or decisions. The Advisory Committee may propose within the scope of the work set out by the Council, for the latter's consideration and approval, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council.
78. The Council shall issue specific guidelines for the Advisory Committee when it requests a substantive contribution from the latter and shall review all or any portion of those guidelines if it deems necessary in the future.

D. Methods of work

79. The Advisory Committee shall convene up to two sessions for a maximum of 10 working days per year. Additional sessions may be scheduled on an ad hoc basis with prior approval of the Council.
80. The Council may request the Advisory Committee to undertake certain tasks that could be performed collectively, through a smaller team or individually. The Advisory Committee will report on such efforts to the Council.

81. Members of the Advisory Committee are encouraged to communicate between sessions, individually or in teams. However, the Advisory Committee shall not establish subsidiary bodies unless the Council authorizes it to do so.
82. In the performance of its mandate, the Advisory Committee is urged to establish interaction with States, national human rights institutions, non-governmental organizations and other civil society entities in accordance with the modalities of the Council.
83. Member States and observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations shall be entitled to participate in the work of the Advisory Committee based on arrangements, including Economic and Social Council resolution 1996/31 and practices observed by the Commission on Human Rights and the Council, while ensuring the most effective contribution of these entities.
84. The Council will decide at its sixth session (first session of its second cycle) on the most appropriate mechanisms to continue the work of the Working Groups on Indigenous Populations; Contemporary Forms of Slavery; Minorities; and the Social Forum.

IV. COMPLAINT PROCEDURE

A. Objective and scope

85. A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.
86. Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000 served as a working basis and was improved where necessary, so as to ensure that the complaint procedure is impartial, objective, efficient, victims-oriented and conducted in a timely manner. The procedure will retain its confidential nature, with a view to enhancing cooperation with the State concerned.

B. Admissibility criteria for communications

87. A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that:
- (a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;
 - (b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;
 - (c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;
 - (d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;
 - (e) It is not exclusively based on reports disseminated by mass media;
 - (f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;
 - (g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.
88. National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

C. Working groups

89. Two distinct working groups shall be established with the mandate to examine the communications and to bring to the attention of the Council consistent

patterns of gross and reliably attested violations of human rights and fundamental freedoms.

90. Both working groups shall, to the greatest possible extent, work on the basis of consensus. In the absence of consensus, decisions shall be taken by simple majority of the votes. They may establish their own rules of procedure.

1. Working Group on Communications: composition, mandate and powers

91. The Human Rights Council Advisory Committee shall appoint five of its members, one from each Regional Group, with due consideration to gender balance, to constitute the Working Group on Communications.
92. In case of a vacancy, the Advisory Committee shall appoint an independent and highly qualified expert of the same Regional Group from the Advisory Committee.
93. Since there is a need for independent expertise and continuity with regard to the examination and assessment of communications received, the independent and highly qualified experts of the Working Group on Communications shall be appointed for three years. Their mandate is renewable only once.
94. The Chairperson of the Working Group on Communications is requested, together with the secretariat, to undertake an initial screening of communications received, based on the admissibility criteria, before transmitting them to the States concerned. Manifestly ill-founded or anonymous communications shall be screened out by the Chairperson and shall therefore not be transmitted to the State concerned. In a perspective of accountability and transparency, the Chairperson of the Working Group on Communications shall provide all its members with a list of all communications rejected after initial screening. This list should indicate the grounds of all decisions resulting in the rejection of a communication. All other communications, which have not been screened out, shall be transmitted to the State concerned, so as to obtain the views of the latter on the allegations of violations.
95. The members of the Working Group on Communications shall decide on the admissibility of a communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with

other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Working Group on Communications shall provide the Working Group on Situations with a file containing all admissible communications as well as recommendations thereon. When the Working Group on Communications requires further consideration or additional information, it may keep a case under review until its next session and request such information from the State concerned. The Working Group on Communications may decide to dismiss a case. All decisions of the Working Group on Communications shall be based on a rigorous application of the admissibility criteria and duly justified.

2. Working Group on Situations: composition, mandate and powers

96. Each Regional Group shall appoint a representative of a member State of the Council, with due consideration to gender balance, to serve on the Working Group on Situations. Members shall be appointed for one year. Their mandate may be renewed once, if the State concerned is a member of the Council.
97. Members of the Working Group on Situations shall serve in their personal capacity. In order to fill a vacancy, the respective Regional Group to which the vacancy belongs, shall appoint a representative from member States of the same Regional Group.
98. The Working Group on Situations is requested, on the basis of the information and recommendations provided by the Working Group on Communications, to present the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it. When the Working Group on Situations requires further consideration or additional information, its members may keep a case under review until its next session. The Working Group on Situations may also decide to dismiss a case.
99. All decisions of the Working Group on Situations shall be duly justified and indicate why the consideration of a situation has been discontinued or action recommended thereon. Decisions to discontinue should be taken by consensus; if that is not possible, by simple majority of the votes.

D. Working modalities and confidentiality

100. Since the complaint procedure is to be, *inter alia*, victims-oriented and conducted in a confidential and timely manner, both Working Groups shall meet at least twice a year for five working days each session, in order to promptly examine the communications received, including replies of States thereon, and the situations of which the Council is already seized under the complaint procedure.
101. The State concerned shall cooperate with the complaint procedure and make every effort to provide substantive replies in one of the United Nations official languages to any of the requests of the Working Groups or the Council. The State concerned shall also make every effort to provide a reply not later than three months after the request has been made. If necessary, this deadline may however be extended at the request of the State concerned.
102. The Secretariat is requested to make the confidential files available to all members of the Council, at least two weeks in advance, so as to allow sufficient time for the consideration of the files.
103. The Council shall consider consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year.
104. The reports of the Working Group on Situations referred to the Council shall be examined in a confidential manner, unless the Council decides otherwise. When the Working Group on Situations recommends to the Council that it consider a situation in a public meeting, in particular in the case of manifest and unequivocal lack of cooperation, the Council shall consider such recommendation on a priority basis at its next session.
105. So as to ensure that the complaint procedure is victims-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not, in principle, exceed 24 months.

E. Involvement of the complainant and of the State concerned

106. The complaint procedure shall ensure that both the author of a communication and the State concerned are informed of the proceedings at the following key stages:
- (a) When a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations; or when a communication is kept pending by one of the Working Groups or by the Council;
 - (b) At the final outcome.
107. In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.
108. Should the complainant request that his/her identity be kept confidential, it will not be transmitted to the State concerned.

F. Measures

109. In accordance with established practice the action taken in respect of a particular situation should be one of the following options:
- (a) To discontinue considering the situation when further consideration or action is not warranted;
 - (b) To keep the situation under review and request the State concerned to provide further information within a reasonable period of time;
 - (c) To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;
 - (d) To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;
 - (e) To recommend to OHCHR to provide technical cooperation, capacity-building assistance or advisory services to the State concerned.

V. AGENDA AND FRAMEWORK FOR THE PROGRAMME OF WORK

A. Principles

- Universality

- Impartiality
- Objectivity A/HRC/5/21 page 21
- Non-selectiveness
- Constructive dialogue and cooperation
- Predictability
- Flexibility
- Transparency
- Accountability
- Balance
- Inclusive/comprehensive
- Gender perspective
- Implementation and follow-up of decisions

B. Agenda

- Item 1. Organizational and procedural matters
- Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
- Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
- Item 4. Human rights situations that require the Council's attention
- Item 5. Human rights bodies and mechanisms
- Item 6. Universal Periodic Review
- Item 7. Human rights situation in Palestine and other occupied Arab territories
- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Item 10. Technical assistance and capacity-building

C. Framework for the programme of work

- Item 1. Organizational and procedural matters
- Election of the Bureau
 - Adoption of the annual programme of work
 - Adoption of the programme of work of the session, including other business
 - Selection and appointment of mandate-holders
 - Election of members of the Human Rights Council Advisory Committee
 - Adoption of the report of the session
 - Adoption of the annual report
- Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
- Presentation of the annual report and updates
- Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development
- Economic, social and cultural rights
 - Civil and political rights
 - Rights of peoples, and specific groups and individuals
 - Right to development
 - Interrelation of human rights and human rights thematic issues
- Item 4. Human rights situations that require the Council's attention
- Item 5. Human rights bodies and mechanisms
- Report of the Human Rights Council Advisory Committee
 - Report of the complaint procedure
- Item 6. Universal Periodic Review
- Item 7. Human rights situation in Palestine and other occupied Arab territories
- Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories

– Right to self-determination of the Palestinian people

- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action
- Item 10. Technical assistance and capacity-building

VI. METHODS OF WORK

- 110. The methods of work, pursuant to General Assembly resolution 60/251 should be transparent, impartial, equitable, fair, pragmatic; lead to clarity, predictability, and inclusiveness. They may also be updated and adjusted over time.

A. Institutional arrangements

- 1. Briefings on prospective resolutions or decisions
- 111. The briefings on prospective resolutions or decisions would be informative only, whereby delegations would be apprised of resolutions and/or decisions tabled or intended to be tabled. These briefings will be organized by interested delegations.
- 2. President's open-ended information meetings on resolutions, decisions and other related business
- 112. The President's open-ended information meetings on resolutions, decisions and other related business shall provide information on the status of negotiations on draft resolutions and/or decisions so that delegations may gain a bird's eye view of the status of such drafts. The consultations shall have a purely informational function, combined with information on the extranet, and be held in a transparent and inclusive manner. They shall not serve as a negotiating forum.

3. Informal consultations on proposals convened by main sponsors

113. Informal consultations shall be the primary means for the negotiation of draft resolutions and/or decisions, and their convening shall be the responsibility of the sponsor(s). At least one informal open-ended consultation should be held on each draft resolution and/or decision before it is considered for action by the Council. Consultations should, as much as possible, be scheduled in a timely, transparent and inclusive manner that takes into account the constraints faced by delegations, particularly smaller ones.

4. Role of the Bureau

114. The Bureau shall deal with procedural and organizational matters. The Bureau shall regularly communicate the contents of its meetings through a timely summary report.

5. Other work formats may include panel debates, seminars and round tables

115. Utilization of these other work formats, including topics and modalities, would be decided by the Council on a case-by-case basis. They may serve as tools of the Council for enhancing dialogue and mutual understanding on certain issues. They should be utilized in the context of the Council's agenda and annual programme of work, and reinforce and/or complement its intergovernmental nature. They shall not be used to substitute or replace existing human rights mechanisms and established methods of work.

6. High-Level Segment

116. The High-Level Segment shall be held once a year during the main session of the Council. It shall be followed by a general segment wherein delegations that did not participate in the High-Level Segment may deliver general statements.

B. Working culture

117. There is a need for:
- (a) Early notification of proposals;
 - (b) Early submission of draft resolutions and decisions, preferably by the end of

- the penultimate week of a session;
- (c) Early distribution of all reports, particularly those of special procedures, to be transmitted to delegations in a timely fashion, at least 15 days in advance of their consideration by the Council, and in all official United Nations languages;
 - (d) Proposers of a country resolution to have the responsibility to secure the broadest possible support for their initiatives (preferably 15 members), before action is taken;
 - (e) Restraint in resorting to resolutions, in order to avoid proliferation of resolutions without prejudice to the right of States to decide on the periodicity of presenting their draft proposals by:
 - (i) Minimizing unnecessary duplication of initiatives with the General Assembly/Third Committee;
 - (ii) Clustering of agenda items;
 - (iii) Staggering the tabling of decisions and/or resolutions and consideration of action on agenda items/issues.

C. Outcomes other than resolutions and decisions

118. These may include recommendations, conclusions, summaries of discussions and President's Statement. As such outcomes would have different legal implications, they should supplement and not replace resolutions and decisions.

D. Special sessions of the Council

119. The following provisions shall complement the general framework provided by General Assembly resolution 60/251 and the rules of procedure of the Human Rights Council.
120. The rules of procedure of special sessions shall be in accordance with the rules of procedure applicable for regular sessions of the Council.
121. The request for the holding of a special session, in accordance with the requirement established in paragraph 10 of General Assembly resolution 60/251, shall be submitted to the President and to the secretariat of the Council. The request shall specify the item proposed for consideration and include any other relevant information the sponsors may wish to provide.

122. The special session shall be convened as soon as possible after the formal request is communicated, but, in principle, not earlier than two working days, and not later than five working days after the formal receipt of the request. The duration of the special session shall not exceed three days (six working sessions), unless the Council decides otherwise.
123. The secretariat of the Council shall immediately communicate the request for the holding of a special session and any additional information provided by the sponsors in the request, as well as the date for the convening of the special session, to all United Nations Member States and make the information available to the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as to non-governmental organizations in consultative status by the most expedient and expeditious means of communication. Special session documentation, in particular draft resolutions and decisions, should be made available in all official United Nations languages to all States in an equitable, timely and transparent manner.
124. The President of the Council should hold open-ended informative consultations before the special session on its conduct and organization. In this regard, the secretariat may also be requested to provide additional information, including, on the methods of work of previous special sessions.
125. Members of the Council, concerned States, observer States, specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations in consultative status may contribute to the special session in accordance with the rules of procedure of the Council.
126. If the requesting or other States intend to present draft resolutions or decisions at the special session, texts should be made available in accordance with the Council's relevant rules of procedure. Nevertheless, sponsors are urged to present such texts as early as possible.
127. The sponsors of a draft resolution or decision should hold open-ended consultations on the text of their draft resolution(s) or decision(s) with a view to achieving the widest participation in their consideration and, if possible, achieving consensus on them.

128. A special session should allow participatory debate, be results-oriented and geared to achieving practical outcomes, the implementation of which can be monitored and reported on at the following regular session of the Council for possible follow-up decision.

VII. RULES OF PROCEDURE⁵

SESSIONS

Rules of procedure

Rule 1

The Human Rights Council shall apply the rules of procedure established for the Main Committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council.

REGULAR SESSIONS

Number of sessions

Rule 2

The Human Rights Council shall meet regularly throughout the year and schedule no fewer than three sessions per Council year, including a main session, for a total duration of no less than 10 weeks.

Assumption of membership

Rule 3

Newly-elected member States of the Human Rights Council shall assume their membership on the first day of the Council year, replacing member States that have concluded their respective membership terms.

Place of meeting

Rule 4

The Human Rights Council shall be based in Geneva.

SPECIAL SESSIONS

Convening of special sessions

Rule 5

The rules of procedure of special sessions of the Human Rights Council will be the same as the rules of procedure applicable for regular sessions of the Human Rights Council.

Rule 6

The Human Rights Council shall hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council.

PARTICIPATION OF AND CONSULTATION WITH OBSERVERS OF THE COUNCIL

Rule 7

- (a) The Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.
- (b) Participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005, while ensuring the most effective contribution of these entities.

ORGANIZATION OF WORK AND AGENDA FOR REGULAR SESSIONS

Organizational meetings

Rule 8

- (a) At the beginning of each Council year, the Council shall hold an organizational meeting to elect its Bureau and to consider and adopt the agenda, programme of work, and calendar of regular sessions for the Council year indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item.
- (b) The President of the Council shall also convene organizational meetings two weeks before the beginning of each session and, if necessary, during the Council sessions to discuss organizational and procedural issues pertinent to that session.

PRESIDENT AND VICE-PRESIDENTS

Elections

Rule 9

- (a) At the beginning of each Council year, at its organizational meeting, the Council shall elect, from among the representatives of its members, a President and four Vice-Presidents. The President and the Vice-Presidents shall constitute the Bureau. One of the Vice-Presidents shall serve as Rapporteur.
- (b) In the election of the President of the Council, regard shall be had for the equitable geographical rotation of this office among the following Regional Groups: African States, Asian States, Eastern European States, Latin American and Caribbean States, and Western European and other States. The four Vice-Presidents of the Council shall be elected on the basis of equitable geographical distribution from the Regional Groups other than the one to which the President belongs. The selection of the Rapporteur shall be based on geographic rotation.

Bureau

Rule 10

The Bureau shall deal with procedural and organizational matters.

Term of office

Rule 11

The President and the Vice–Presidents shall, subject to rule 13, hold office for a period of one year. They shall not be eligible for immediate re–election to the same post.

Absence of officers

Rule 12 [105]

If the President finds it necessary to be absent during a meeting or any part thereof, he/she shall designate one of the Vice–Presidents to take his/her place. A Vice–President acting as President shall have the same powers and duties as the President. If the President ceases to hold office pursuant to rule 13, the remaining members of the Bureau shall designate one of the Vice–Presidents to take his/her place until the election of a new President.

Replacement of the President or a Vice–President

Rule 13

If the President or any Vice–President ceases to be able to carry out his/her functions or ceases to be a representative of a member of the Council, or if the Member of the United Nations of which he/she is a representative ceases to be a member of the Council, he/she shall cease to hold such office and a new President or Vice–President shall be elected for the unexpired term.

SECRETARIAT

Duties of the secretariat

Rule 14 [47]

The Office of the United Nations High Commissioner for Human Rights shall act as secretariat for the Council. In this regard, it shall receive, translate, print and circulate in all official United Nations languages, documents, reports and resolutions of the Council, its committees and its organs; interpret speeches made at the meetings; prepare, print and circulate the records of the session; have the custody

and proper preservation of the documents in the archives of the Council; distribute all documents of the Council to the members of the Council and observers and, generally, perform all other support functions which the Council may require.

RECORDS AND REPORT

Report to the General Assembly

Rule 15

The Council shall submit an annual report to the General Assembly.

PUBLIC AND PRIVATE MEETINGS OF THE HUMAN RIGHTS COUNCIL

General principles

Rule 16 [60]

The meetings of the Council shall be held in public unless the Council decides that exceptional circumstances require the meeting be held in private.

Private meetings

Rule 17 [61]

All decisions of the Council taken at a private meeting shall be announced at an early public meeting of the Council.

CONDUCT OF BUSINESS

Working groups and other arrangements

Rule 18

The Council may set up working groups and other arrangements. Participation in these bodies shall be decided upon by the members, based on rule 7. The rules of procedure of these bodies shall follow those of the Council, as applicable,

unless decided otherwise by the Council.

Quorum

Rule 19 [67]

The President may declare a meeting open and permit the debate to proceed when at least one third of the members of the Council are present. The presence of a majority of the members shall be required for any decision to be taken.

Majority required

Rule 20 [125]

Decisions of the Council shall be made by a simple majority of the members present and voting, subject to rule 19.

Appendix I

RENEWED MANDATES UNTIL THEY COULD BE CONSIDERED BY THE HUMAN RIGHTS COUNCIL ACCORDING TO ITS ANNUAL PROGRAMME OF WORK

Independent expert appointed by the Secretary-General on the situation of human rights in Haiti

Independent expert appointed by the Secretary-General on the situation of human rights in Somalia

Independent expert on the situation of human rights in Burundi

Independent expert on technical cooperation and advisory services in Liberia

Independent expert on the situation of human rights in the Democratic Republic of the Congo

Independent expert on human rights and international solidarity

Independent expert on minority issues

Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights

Independent expert on the question of human rights and extreme poverty

Special Rapporteur on the situation of human rights in the Sudan

Special Rapporteur on the situation of human rights in Myanmar

Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (The duration of this mandate has been established until the end of the occupation.)

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Special Rapporteur on extrajudicial, summary or arbitrary executions

Special Rapporteur on freedom of religion or belief

Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children

Special Rapporteur on the human rights of migrants

Special Rapporteur on the independence of judges and lawyers

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Special Rapporteur on the right to education

Special Rapporteur on the right to food

Special Rapporteur on the sale of children, child prostitution and child pornography

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Special Rapporteur on violence against women, its causes and consequences

Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises

Special Representative of the Secretary-General for human rights in Cambodia

Special Representative of the Secretary-General on the situation of human rights defenders

Representative of the Secretary-General on human rights of internally displaced persons

Working Group of Experts on People of African Descent

Working Group on Arbitrary Detention

Working Group on Enforced or Involuntary Disappearances

Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination A/HRC/5/21 page 33

Appendix II

TERMS IN OFFICE OF MANDATE-HOLDERS

Mandate-holder	Mandate	Terms in office
Charlotte Abaka	Independent Expert on the situation of human rights in Liberia	July 2006 (first term)
Yakin Ertürk	Special Rapporteur on violence against women, its causes and consequences	July 2006 (first term)
Manuela Carmena Castrillo	Working Group on Arbitrary Detention	July 2006 (first term)
Joel Adebayo Adekanye	Working Group on Enforced or Involuntary Disappearances	July 2006 (second term)
Saeed Rajaei Khorasani	Working Group on Enforced or Involuntary Disappearances	July 2006 (first term)
Joe Frans	Working Group on people of African descent	July 2006 (first term)
Leandro Despouy	Special Rapporteur on the independence of judges and lawyers	August 2006 (first term)
Hina Jilani	Special Representative of the Secretary-General on the situation of human rights defenders	August 2006 (second term)
Soledad Villagra de Biedermann	Working Group on Arbitrary Detention	August 2006 (second term)
Miloon Kothari	Special Rapporteur on adequate housing as a component of the right to an adequate standard of living	September 2006 (second term)
Jean Ziegler	Special Rapporteur on the right to food	September 2006 (second term)

Mandate-holder	Mandate	Terms in office
Paulo Sérgio Pinheiro	Special Rapporteur on the situation of human rights in Myanmar	December 2006 (second term)
Darko Göttlicher	Working Group on Enforced or Involuntary Disappearances	January 2007 (first term)
Tamás Bán	Working Group on Arbitrary Detention	April 2007 (second term)
Ghanim Alnajjar	Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia	May 2007 (second term)
John Dugard	Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	June 2007 (second term)
Rodolfo Stavenhagen	Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	June 2007 (second term)
Arjun Sengupta	Independent Expert on the question of human rights and extreme poverty	July 2007 (first term)
Akich Okola	Independent Expert on the situation of human rights in Burundi	July 2007 (first term)
Titinga Frédéric Pacéré	Independent Expert on the situation of human rights in the Democratic Republic of the Congo	July 2007 (first term)
Philip Alston	Special Rapporteur on extrajudicial, summary or arbitrary executions	July 2007 (first term)
Asma Jahangir	Special Rapporteur on freedom of religion or belief	July 2007 (first term)
Okechukwu Ibeanu	Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights	July 2007 (first term)
Vernor Muñoz Villalobos	Special Rapporteur on the right to education	July 2007 (first term)
Juan Miguel Petit	Special Rapporteur on the sale of children, child prostitution and child pornography	July 2007 (second term)

Mandate—holder	Mandate	Terms in office
Vitit Muntarbhorn	Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea	July 2007 (first term)
Leila Zerrougui	Working Group on Arbitrary Detention	August 2007 (second term)
Santiago Corcuera Cabezut	Working Group on Enforced or Involuntary Disappearances	August 2007 (first term)
Walter Käalin	Representative of the Secretary-General on the human rights of internally displaced persons	September 2007 (first term)
Sigma Huda	Special Rapporteur on trafficking in persons, especially in women and children	October 2007 (first term)
Bernards Andrew Nyamwaya Mudho	Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights	November 2007 (second term)
Manfred Nowak	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	November 2007 (first term)
Louis Joinet	Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti	February 2008 (second term)
Rudi Muhammad Rizki	Independent Expert on human rights and international solidarity	July 2008 (first term)
Gay McDougall	Independent Expert on minority issues	July 2008 (first term)
Doudou Diène	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	July 2008 (second term)
Jorge A. Bustamante	Special Rapporteur on the human rights of migrants	July 2008 (first term)
Martin Scheinin	Special Rapporteur on the promotion and protection of human rights while countering terrorism	July 2008 (first term)
Sima Samar	Special Rapporteur on the situation of human rights in the Sudan	July 2008 (first term)

Mandate—holder	Mandate	Terms in office
John Ruggie	Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises	July 2008 (first term)
Seyyed Mohammad Hashemi	Working Group on Arbitrary Detention	July 2008 (second term)
Najat Al-Hajjaji	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2008 (first term)
Amada Benavides de Pérez	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2008 (first term)
Alexander Ivanovich Nikitin	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2008 (first term)
Shaista Shameem	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2007 (first term)
Ambeyi Ligabo	Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	August 2008 (second term)
Paul Hunt	Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	August 2008 (second term)
Peter Lesa Kasanda	Working Group on people of African descent	August 2008 (second term)
Stephen J. Toope	Working Group on Enforced or Involuntary Disappearances	September 2008 (second term)
George N. Jabbour	Working Group on people of African descent	September 2008 (second term)
Irina Zlatescu	Working Group on people of African descent	October 2008 (second term)

Mandate—holder	Mandate	Terms in office
Josée Góomez del Prado	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	October 2008 (first term)
Yash Ghai	Special Representative of the Secretary-General for human rights in Cambodia	November 2008 (first term)

¹ The universal periodic review is an evolving process; the Council, after the conclusion of the first review cycle, may review the modalities and the periodicity of this mechanism, based on best practices and lessons learned.

² A Universal Periodic Review Voluntary Trust Fund should be established to facilitate the participation of developing countries, particularly the Least Developed Countries, in the universal periodic review mechanism.

³ A decision should be taken by the Council on whether to resort to existing financing mechanisms or to create a new mechanism.

⁴ Country mandates meet the following criteria:

- There is a pending mandate of the Council to be accomplished; or
- There is a pending mandate of the General Assembly to be accomplished; or
- The nature of the mandate is for advisory services and technical assistance.

⁵ Figures indicated in square brackets refer to identical or corresponding rules of the General Assembly or its Main Committees (A/520/Rev.16).

Annexes

Concept Paper for the Seminar

The International Seminar on the Role of National Human Rights Institutions (NHRIs) in the Newly Established UN Human Rights Mechanisms will provide a precious opportunity for NHRIs to discuss and envisage the ways of engagement in the Human Rights Council.

Since the Universal Declaration of Human Rights (UDHR) was created around sixty years back, human rights issues have attained more and more of the importance in the domestic as well as international community. As of December 2006, the UN has created nine major international treaties and seven relevant monitoring mechanisms. Each international human rights treaty is a culmination of UDHR spirit and human dignity in the international human rights community including UN and international NGOs. They have recently enlarged the relevance in each country as the international human rights standards. Given the difference in human rights situations from country to country, the national application of international human rights treaties was a challenge for UN human rights mechanism.

Thus the recent changes of the UN human rights mechanisms emphasize on the role of National Human Rights Institutions more than they have done. With the advent of UN Human Rights Council (HRC), NHRIs are being provided an important opportunity to expand their ambitious role to promote and protect human rights in the international community. The role of NHRIs is specifically mentioned in the final Institution Building document with regards to the universal periodic review (UPR), special procedures, the advisory committee, the complaint procedure, methods of work, and the rules of procedure.

However, there are still many tasks for NHRIs to prepare the future with the recently expanded functions as expected from the next HRC. In this regard, the following questions might be useful for you to provide us with thought-provoking and insightful presentation or comments.

The seminar could thus review, discuss and propose:

- The increasing role of NHRIs in the UN Human Rights Council and its significance
- NHRIs and the Universal Periodic Review(UPR), including the role of NHRIs in the country engagement effort
- The nature of the relationship between the NHRIs and the UN Advisory Committee and its prospects
- NHRIs and the Special Procedures
- The role of NHRIs in the process of the treaty body reform

1. Plenary Session-General Discussion

- 1-1. What are the implications of NHRIs' increasing role in the international human rights community as indicated in the resolution, "Institution-Building of the United Nations Human Rights Council?"
- 1-2. How will NHRIs establish distinguishable roles from the state parties and NGOs in the HRC and what would be a desirable relationship between NHRIs and the other two actors?
- 1-3. What would be limitations of the HRC, if any, in that it is constituted by the state parties and what roles may NHRIs play to overcome the limitations?

2. NHRIs and the UPR (Working Group I)

- 2-1. Why is the Universal Periodic Review important for NHRIs in pursuing the spirit of the Paris Principles emphasizing independence of NHRIs?
- 2-2. What are appropriate functions of NHRIs in the process of UPR?
- 2-3. How can we articulate the role of NHRIs in preparation of a national report at the country level, in reviewing it in the UN and in the follow-up to the outcome of UPR?
- 2-4. Can NHRIs compile their separate reports which are to be submitted to the HRC for the UPR?

3. NHRIs and the Advisory Committee (Working Group II)

- 3-1. What is the major reason in the changes from the former Sub-commission to

the Advisory Committee and what is the meaning of the change?

- 3-2. What roles can NHRIs play in the Advisory Committee and what is your advice to NHRIs in this regard?

4. NHRIs and the SP (Working Group III)

- 4-1. How can Special Procedure work more effectively with partnership of NHRIs and reputable human rights NGOs?
- 4-2. How are NHRIs involved in the work of mandate-holders?
- 4-3. How can the NHRIs encourage the Government to extend a standing invitation to all thematic mandate-holders?

5. NHRIs and the Treaty Bodies (Working Group IV)

- 5-1. Given the situation that more Treaty Bodies (TB) are willing to take into account NHRIs' opinions or separate reports in the examination of State party reports, if TBs take a consistent and coordinated approach to the NHRIs' engagement, what would it be like?
- 5-2. How to share best practices or models in cooperating with and monitoring TBs internationally and the state parties nationally while each state party implements the conventions?
- 5-3. How are TBs different from the mechanism of UN HRC and what should be the corresponding roles of NHRIs?

With these questions in mind, National Human Rights Commission of Korea invites you specialists who can bring empirical perspective, experience and knowledge into our efforts to understand better and establish "The Role of NHRIs in the Newly Established UN Human Rights Mechanisms." Your expertise and competence will make this international seminar a fruitful discussion, so that, hopefully, this seminar will give all of us a wonderful opportunity to contribute to further development of NHRIs in promoting and protecting human rights all over the world.

Seminar Program

The Role of NHRIs in the Newly Established UN Human Rights Mechanisms

- **Date:** Thursday, 15 November 2007
- **Place:** Conference Hall, Room 1 & 2 in the National Human Rights Commission of Korea
- Organized by National Human Rights Commission of Korea

09:00-09:30 Registration, 11th Fl. Conference Hall

09:30-10:00 Opening Ceremony

- **Opening Remarks by Professor AHN Kyong-Whan**
(Chairperson, NHRCK)
- **Keynote Speech by Mr. Luis Alfonso de ALBA**
(Ambassador, Permanent Mission of Mexico at Geneva)

10:00-11:00 **Plenary Session**

Topic: *The Increasing Role of National Human Rights Institutions in the UN Human Rights Council and its Significance*

Moderator: Professor PARK Kyung-seo

(Ewha Woman's University; Former Ambassador at large for Human Rights of Republic of Korea)

- **Speaker: Mr. Gianni MAGAZZENI**
(Coordinator, NI Unit, OHCHR)
- Panel Discussion
- **Professor In-Seop CHUNG**
(Human Rights Commissioner of NHRCK; Faculty of Law, Seoul National University)
- **Ms. Pip DARGAN**
(Deputy Director, Asia Pacific Forum of NHRIs)

- 11:00-11:20 **Discussion**
- 11:20-11:40 **Coffee Break**
- 11:40-12:40 *** Working Group I**
 (Conference Hall, Room 1, 11th Fl)
- **Topic: National Human Rights Institutions and the Universal Periodic Review (UPR)**
 (Moderator: **Mr. Hyuck CHOI**, Former Ambassador to Geneva Permanent Mission of the Republic of Korea)
 - **Speaker: Mr. Gianni MAGAZZENI**
 Coordinator, NI Unit, OHCHR
 - Panel Discussion
 - **Mr. Jong-Gil Woo** (Human Rights Officer, OHCHR)
 - **Mr. Hoon-min Lim** (Councilor of the Geneva Permanent Mission of the Republic of Korea)
- * Working Group II**
 (Conference Hall, Room 2, 10th Fl)
- **Topic: National Human Rights Institutions and the UN Advisory Committee: Nature of the Relationship and its Prospects**
 Moderator: **Professor. Martin Flaherty** (Professor of International Human Rights, Fordham Law School)
 - **Speaker: Ms. Chin-sung Chung**
 (Professor of Sociology, Seoul National University and Member of the Former UN Sub-Commission on the Promotion and Protection of Human Rights)
 - Panel Discussion
 - **Mr. Seonghoon LEE** (Executive Director, Forum Asia)
 - **Mr. M Ridha Saleh** (Vice Chairperson, National Human Rights Commission of Indonesia)
- 12:40-13:00 **Discussion**
- 13:00-14:30 **Lunch: Restaurant Jumbo, President Hotel (18th Fl.)**
- 14:30-15:30 *** Working Group III**
 (Conference Hall, Room 1, 11th Fl)
- **Topic: National Human Rights Institutions and Special Procedure**
 Moderator: **Mr. Seonghoon Lee** (Executive Director, Forum Asia)
 - Speaker: **Ms. YounKyo Ahn**, (Human Rights Officer, OHCHR)
 - Panel Discussion
 - **Ms. Giyoun Kim**, (Executive Director, Korea Center for United Nations Human Rights Policy)

- **Ms. Katharina Rose**, (ICC interim representative at Geneva)

*** Working Group IV**

(Conference Hall, Room 2, 10th Fl)

- Topic: Reform of Treaty Bodies and the Role of National Human Rights Institutions

Moderator: **Ms. Heisoo Shin** (Human Rights Commissioner of NHRCK, Member of Committee on the Elimination of Discrimination against Women)

- Speaker: **Professor. Yanghee Lee**,
(Chairperson of Committee on the Rights of the Child, and Professor of Sungkyunkwan University)

- Panel Discussion

- **Professor Chan-Un Park**, (Professor of the Department of Law at Hanyang University)

- **Mr. Byunghoon Oh**, (Director of International Human Rights Team, NHRCK)

15:30-15:50 **Discussion**

15:50-16:10 **Afternoon Tea**

16:10-17:10 **Plenary Discussion Summary and Working Group Presentation, 11th Fl**

(Moderator: Professor AHN Kyong-Whan)

- Plenary Discussion: Professor PARK Kyung-seo
- Working Group I : Mr. Hyuck CHOI
- Working Group II : Professor Chin-Sung CHUNG
- Working Group III: Mr. Seonghoon LEE
- Working Group IV: Ms. Heisoo SHIN

17:10-17:30 **Discussion Summary**

17:30-17:30 **Closing Remarks: Professor AHN Kyong-Whan**

18:30–17:30 **Dinner: Room 201, 2nd Fl. New Seoul Hotel**

List of the Participants

Professor Ahn Kyong-Whan

Chairperson, National Human Rights Commission of Korea

Professor Chin-sung Chung

Professor of Sociology, Seoul National University

Professor In-Seop Chung

Commissioner, National Human Rights Commission of Korea
Faculty of Law, Seoul National University

Professor Chan Un Park

Faculty of Law, Hanyang University

Mr. Gianni Magazzeni

Coordinator
UN OHCHR NI Unit

Ms. Giyoung Kim

Executive Director, Korea Center for United Nations Human Rights Policy

Ms. Heisoo Shin

Commissioner, National Human Rights Commission of Korea
Member of CEDAW

Mr. Hoon-min Lim

Councilor
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Mr. Hyuck Choi

Former Ambassador to Geneva Permanent Mission of the Republic of Korea

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Ms. Katharina Rose

ICC Interim Representative at Geneva

Professor Martin S. Flaherty

Leitner Family Professor of International Human Rights

Co-Director of the Leitner Center for International Law and Justice, Fordham University

H.E Mr. LUIS ALFONSO DE ALBA

Former President of Human Rights Council

Ambassador, Permanent Mission of Mexico at Geneva

Mr. Ridha Saleh

Vice Chairperson

National Human Rights Commission of Indonesia

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Former Ambassador in Large for Human Rights of Republic of Korea

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Ms. Pip Dargan

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Mr. Seonghoon Lee

Executive Director,

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Professor Yanghee Lee

Chairperson of the Committee on the Rights of the Child
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국문 요약

신설된 UN 인권 매커니즘에서 국가인권기구의 역할 (The Role of NHRIs in the Newly Established UN Human Rights Mechanisms)

개 요

1. 2007년 11월 15일, 대한민국 서울의 국가인권위원회 회의실에서, 신설된 UN 인권 매커니즘에서 국가인권기구(National Human Rights Institutions: NHRI)의 역할에 대한 국제 세미나가 개최되었다. 이 세미나의 목적은 국가인권기구간 역량 강화에 있다. 여러 국제인권 전문가와 유력 인사들이 세미나에 초청되어 참가하였으며, 국제인권분야 동향의 모니터링과 국가차원의 인권 이행에 있어 국가인권기구의 역할이 중요함을 주장하였다.
2. 2006년에 인권이사회(Human Rights Commission: HRC)가 신설되면서, 더욱 폭넓은 국가인권기구의 참여가 촉구되고 있으며, 이 세미나에서는 그러한 참여를 높일 수 있는 다양한 수단들이 재확인되었다. 2007년 6월 유엔인권이사회가 채택한 ‘결의 5/1’에 의하면, ‘A급 지위(A status accreditation)’를 인정받은 국가인권기구는 UN 유엔인권이사회내에서 더 확대된 참여권을 지니게 되었다. 현재 제네바 주재 멕시코대사이며 전 인권이사회 위원장을 역임했던 드 알바(De Alba)는, 국가인권기구가 더 이상 직접적으로 관련되어 있는 의제에만 한정되어 있지 않으며 관련 기구들(가령, 조약기구, 실무그룹 등)과 관련된 모든 인권 이슈에 대해 의견을 피력할 수 있다고 단언하였다. 이는 상호교류의 정도와 빈도가 몇 배 이상 확대됨을 의미하는 것으로, 국가인권기구에겐 새로운 도전이 아닐 수 없다. 또한, 국가인권기구는 국가보고서 작성에도 참여할 수 있고, 국가보고서에 대해 독립적인 제언을 할 수도 있다. 특히 중요한 것은, UN 보편적 정례검토(UN Universal Periodic Review: UPR) 이후로 차기 검토가 있기까지의 4년 동안은 국가인권기구가 정부의 이행 책임을 지속적으로 상기시킴으로써 후속 과정에서 중요한 역할을 담당한다는 사실이다.

3. 이번 국제세미나에서는 국가인권기구의 참여 확대에 관한 여러 이슈들이 제기되었다. 국제인권체제에서 적극적이고 효과적인 주체가 되기 위해, 국가인권기구는 유엔 인권이사회내외에서 이루어지는 논의와 활동에 대해 충분히 인지하고 있어야 할 필요가 있다. 특히, 국가인권기구는 UPR, 자문이사회(Advisory Council), 조약기구(TB)의 경과를 지속적으로 파악하고, 관측한 내용을 바탕으로 사전 계획을 세우며, 전략적으로 행동을 취하여야 한다. 더욱이, 신설된 인권메커니즘으로 인해 전략적 행동의 필요성이 더욱 커졌다. 유엔인권이사회는 그 전신인 인권위원회(Commission on Human Rights, CHR)에 비해 더 광범위한 의제를 다루고 있다. 따라서, 국가인권기구는 집중하고자 하는 특정 이슈를 선택하여, 선택된 의제를 적극 추진하는 전략을 수립할 필요가 있다.
4. 이번 국제세미나에서는 국가인권기구와 특별절차(Special Procedures)의 상호교류도 도입되었다. 유엔인권이사회 하에서는, 비정부기구(NGO)와 유엔인권이사회 결의 5/1에 열거되어 있는 기타 관련 개체들뿐만 아니라 국가인권기구도 특별절차 위임사항 수임자(special procedures mandate-holders)의 후보를 지명할 수 있다. 이에 따라, 유엔인권이사회 위원장은 협의 그룹의 권고와 이후의 폭넓은 협의 내용을 바탕으로, 적절한 후보를 임명하며, 이후에 그 후보들 중에서 이사회가 선임한다. 국가인권기구는 정부에게 특별절차의 위임사항을 확대하게 할 수 있으며, 정부에게 특별 절차에 대한 상시초대(standing invitation)의 확대를 촉구할 수 있다. 현존하는 관행의 예를 몇 가지 들자면, 국가인권기구는 국가 방문 전에 특별절차의 배경정보를 제공할 수 있으며, 신뢰할 만한 정보 제공처로, 기타 출처로부터 확보한 정보의 정확성을 검증할 수 있는 잠재적으로 훌륭한 파트너로서, 제3자로부터 정보를 입수할 수 있는 효과적인 중개인으로서 역할을 수행할 수 있으며, 권고의 후속 과정을 촉진할 뿐만 아니라 특별절차에서 국가인권기구의 업무를 용이하게 할 수 있는 관련 문건에 관심을 집중시킬 수 있다.
5. 각 국가인권기구는 더욱 효과적인 참여를 위해 조약별 이슈를 개발하는 등과 같이 TB에 체계적으로 참여할 수 있는 장치를 마련하여야 한다. 국가인권기구의 발전에 관하여 논의된 기타 사항은 다음과 같다. 첫째, 국가인권기구의 태도는 국가 기관과 국가인권기구의 관계에 따라 좌우된다. 일부 국가 기관들은 국가인권기구의 권고나 제언을 상대적으로 진지하게 수용하려는 자세를 취하지만, 그렇지 않은 국가 기관들도 있다. 국가인권기구는 다른 국가 기관과의 관계에서 국제조약과 관련된 각자의 권한을 존중함으로써 상호 신뢰를 회복하여야 할 과제를 안고 있다. 둘째, 대부분의 국가인권기구는 조사, 교육, 상담, 규제법안의 검토 등과 같은 국내 이슈에 에너지를 쏟고 있다. 셋째, 국가인권기구는 더 이상 UN과 TB에 있어 신생 주체가 아니라 TB의 업무 프로세스를 촉진하는 효율적인 주체다. 국가인권기구가 독립적이고 객관적인 관점을 지니고 적극 개입함으로써 TB가 정치화되는 것을 막으면서 좋은 성과를 거둘 수 있다. 국가별 보고는, 검토 프로세스를 통해, 국제 조약에 대한 국가인권기구의 전문성에 의해 개선될 수 있다.

6. 신설된 UN인권매커니즘에서 국가인권기구의 역할에 관한 이번 국제세미나에서는, 국가인권기구가 인권 증진 및 보호의 측면에서 더욱 효과적이고 효율적으로 활동할 수 있는 여러 방안이 제시되었다. 이 세미나는 관련 주체들이 각자의 전문성을 활용하고 국가인권기구의 개선과 각자의 역량 구축을 위해 협력할 수 있는 기회를 제공하였다는 점에서 의미가 크다. 참가자들은 대체로 이번 세미나를 시기 적절하게 성공적으로 개최된 것으로 평가하였다.

신설된 UN인권매커니즘에서 국가인권기구의 역할

I. 개회사 및 기조연설

개회사: 안경환 한국국가인권위원회 위원장

기조연설: 루이 알폰소 드 알바 (Luis Alfonso de ALBA) 제네바 주재 멕시코 대사

1. 안경환 국가인권위원회 위원장은 개회사에서 중요하고 시기적절한 이번 세미나를 준비하고 참석한 모든 사람들에게 감사를 표하였다. 제도 수립 과정에서 거둔 최근의 성과와, 특히, 새로운 매커니즘에서 국가인권기구의 역할 확대를 인용하면서, 안 위원장은 새로운 인권 체제에서 국가인권기구의 전략적이고 효과적인 참여를 높이는 데 있어 국제협력의 중요성이 점차 커지고 있음을 강조하였다.
2. 루이 알폰소 드 알바 대사는 안 위원장의 환영 인사 직후에 단상에 올라서, 먼저 이러한 시기적절한 회의를 개최하는 데 주도적인 역할을 한 한국국가인권위원회에 감사의 뜻을 전하였다. 이어서, 한국이, 특히 여러 의제를 공유함으로써, UN과 인권 관련 활동에서 그 역할이 점차 커지고 있다고 지적하였다. 드 알바 대사는 미리 준비한 원고를 그대로 발표하는 대신, 몇 가지 사항을 비중 있게 언급하였다.
3. 기회와 도전: 우선, 드 알바 대사는, 국가인권기구의 보편적 정례검토 참여가 여러 다른 형태로 나타날 것이라고 지적하였다. 즉, 이전에는 국가인권기구가 지금은 폐지된 인권위원회에 제한된 정도로만 참여할 수 있었던 반면에, 현재 유엔인권이사회는 업무 프로세스의 모든 측면에 국가인권기구가 참여할 것을 권장하고 있다. 따라서, 국가인권기구는 더 이상 직접적으로 관련되어 있는 의제에만 한정되어 있지 않으며 관련 기구들(가령, 조약기구, 실무그룹 등)과 관련된 모든 인권 이슈에 대해 의견을 피력할 수 있다. 이는 상호교류의 정도와 빈도가 몇 배 이상 확대됨을 의미하는 것으로, 국가인권기구에겐 새로운 도전이 아닐 수 없다. 또한, 국가인권기구는 국가보고서 작성에도 참여할 수 있고, 국가보고서에 대해 독립적인 제언을 할 수도 있다. 특히 중요한 것은, UN 보편적 정례검토(UN Universal Periodic Review: UPR) 이후로 차기 검토가 있기까지의 4년 동안은 국가인권기구가 정부의 이행 책임을 지속적으로 상기시킴으로써 후속 과정에서 중요한 역할을 담당한다는 사실이다.

4. 다양한 제언: 드 알바 대사는, 제7차 유엔인권이사회 회기에서는 국가인권기구가 파리 원칙의 기준에 부합할 수 있도록 하는 국가인권기구 진흥 방안이 논의될 것이라고 지적하였다. 또한, 국가인권기구가 국가 대표부를 통해 의사를 전달할 필요가 없으며, 신생 국가인권기구는 ICC와 같은 매커니즘에 직접 연결될 수 있다고 하였다. 드 알바 대사는 위임사항 수임자(mandate holders)와 자문위원회 위원들을 선정하는 데 있어 국가인권기구의 역할과 관련하여서도 의견을 피력하였다. 가령, 수임자를 선임하는 데 있어, 정부는 이익 갈등의 위험을 효과적으로 방지할 수 있는 후보자 명단을 국가인권기구로부터 제출 받거나, 국가인권기구내에서 선임하든가의 방법을 택할 수 있다.
5. 성공적인 제도 수립 과정에 대한 견해: 드 알바 대사는, 제도 수립 과정은 전반적으로 기대했던 것보다 더 성공적이었다고 평가하였다. 예를 들어, 제도적 패키지 전략(institutional package strategy)을 통해 수임 검토 프로세스(mandate reviewing process)를 거친 후에 40개의 수임건 중에서 38개를 유지할 수 있었다. 그러나, 시행의 문제는 여전히 남아 있다. 이러한 패키지를 유지하기 위해 필요한 것은 지식이며, 그 지식은 이번 세미나와 같은 여러 세미나를 통해 축적할 수 있다.

II. 전체회의: UN인권이사회에서 국가인권기구(NHRI)의 역할 증대와 그 의의

사회자: 박경서 (이화여자대학교 교수, 전 인권대사)

발제자: 지아니 마가제니(Gianni MAGAZZENI, OHCHR NI Unit의 조정관(Coordinator))

패널 토론: 정인섭 (한국국가인권위원회(NHRCK) 위원 겸 서울대학교 법대교수)

핍 다간 (Pip DARGAN, 국가인권기구아시아태평양포럼(Asia Pacific Forum of NHRIs))

6. 새로운 기회: 전체회의의 참석자들은, 신설된 UN인권매커니즘이 국가인권기구에 새 기회를 제공하였다는 데에 동의하였다. 가령, UN인권고등판무관실(OHCHR)의 국가기구 담당부서(NI Unit)의 조정관인 지아니 마가제니는, 국가인권기구는 UPR, 유엔인권이사회의 자문위원회, 특별절차제도를 통해 국제인권체제에 참여할 수 있는 기회가 늘어났다고 말하였다. 국가인권기구아시아태평양포럼(APF)의 핍 다간 부국장도, 국가인권기구가 자문이사회에 정보를 제공할 수 있을 것이라고 강조하였다. 이러한 새로운 상황으로 인해, 국가인권기구는 국가, 지역, 국제 차원의 인권 문제를 연결하는 중요한 매개체의 역할을 할 수 있게 되었다.
7. 국가인권기구 참여 노력: 참석자들은 국가인권기구를 창설하고 강화하기 위해 현재 진행되고 있는 노력들을 발표하였다. 다간은 새로운 인권체제가 아직 검토중이었을 당시 그 새로운 체제에서 국가인권기구가 역할을 인정받을 수 있도록 하기 위해 APF가 기울인 최근의 노력 사례를 소개하였다. 마가제니에 의하면, OHCHR은 국가인권기구의 진흥을 목적으로 4대 전략적 목표를 추진하고 있다고 한다. 4대 전

략적 목표는, 국가별 참여(country engagement)을 통해 국가인권기구를 신설하거나 강화하려는 정부의 노력을 OHCHR이 지원하고, 지도력(leadership)을 통해 OHCHR이 국가인권기구의 활동을 모니터링하고 국가인권기구의 역량을 강화하며, 국가인권기구와 국제인권체제간 상호교류를 촉진하고, UN 현지 사무소, 국가인권기구 국제조정위원회(International Coordinating Committee of NHRIs), 국가인권기구의 지역별 조정기구와의 협력을 강화하는 것이다.

8. 국가인권기구의 지위: 한국국가인권위원회(NHRCK) 위원이기도 한 정인섭 교수는 국가인권기구의 지위를 거론하였다. UN인권체제에서는 상당한 발전이 있었다. 마가제니가 제시한 바와 같이, 올해 6월 유엔인권이사회가 채택한 결의 5/1은 국가인권기구에 A급 지위를 부여한 국가인권기구에 국제 체제에 관여할 수 있는 가능성을 확대하였다. 그럼에도 불구하고, 국가인권기구의 입지는 준공식적 지위를 가진 NGO에 더 가깝다. 정교수는 국가인권기구에게 더욱 공식적인 지위가 주어져야 하는지, 그리고 국가인권기구의 건설적 참여를 위해 어떠한 유형의 지위가 적절한지에 대해 논의할 것을 제안하였다.
9. 국제사회 주체로서의 국가인권기구: 마가제니는 국가인권기구가 현재의 지위를 활용해야 한다고 강조하였다. 국가인권기구가 국내에서의 역할뿐만 아니라 지역, 국제사회에서의 역할을 맡을 수 있고 또 그것이 마땅함에도 불구하고, 국내 현안에만 집중하는 경향이 있다고 지적하였다. 국가인권기구는 단순히 자기 옹호에 머물지 말고 국제사회가 당면한 실질적인 의제에 기여할 수 있도록 관심과 전문성의 폭을 넓혀야 할 필요가 있다. 드 알바도, 국가인권기구가 아직까지 스스로를 국제사회의 주체로 인식하지 않고 있다고 지적하였다. 다행스럽게도, APF와 같은 기관들이 이러한 문제를 다루고 있어 상황이 개선되고 있다. 그는, 국가인권기구가 스스로 지역 또는 국제적 이슈에 관심을 갖고 그러한 이슈를 유엔인권이사회에 제기할 수 있도록 역량을 키워야 한다고 주장하였다.
10. 전략적 행동의 필요성: 국제인권체제에서 적극적이고 효과적인 주체가 되기 위해, 국가인권기구는 유엔인권이사회 내외에서 진행되는 논의와 행동에 대해 인지하고 있어야 한다. 특히, 다간은, 국가인권기구가 UPR, 자문이사회 및 TB의 경과를 항상 주시하고, 관측 내용을 바탕으로 사전 계획을 세워 전략적으로 행동하여야 한다고 강조하였다. 또한, 신설된 인권매커니즘으로 인해 전략적 행동의 필요성이 더욱 커졌다. UN여성차별철폐위원회 위원이기도 한 한국국가인권위원회의 신혜수 위원은, 유엔인권이사회가 이전의 CHR에 비해 더 광범위한 의제를 다루고 있음을 지적하였다. 따라서, 국가인권기구는 집중하고자 하는 특정 이슈들을 선택하고, 선택된 이슈에 대해 집중 추진할 수 있는 전략을 수립하여야 한다.
11. 제3세계 국가인권기구에 대한 지원: 유엔인권이사회가 다루고 있는 다양한 이슈들과, 이에 따른 전략적 행동의 필요성은 국가인권기구, 특히, 제3세계의 국가인권

기구에게는 새로운 도전이 아닐 수 없다. 제3세계의 국가인권기구는 최우선 목표를 달성하기 위해 그나마 부족한 자원을 동원하는 동시에 유엔인권이사회 안팎에서 현재 검토되고 있는 광범위한 이슈들을 파악해야 하는 어려운 과제에 직면해 있다. 신 위원은 이러한 상황에 우려를 표하면서, 자원이 부족한 국가인권기구를 지원하기 위해 어떠한 조치들이 마련될 수 있는지에 대해 논의할 것을 제안하였다. 마가제니가 지적한 바와 같이, 다행스럽게도, 국가인권기구의 국제인권체제 참여를 지원하는 프로그램이 OHCHR에 의해 진행중에 있다. 이러한 노력이 제3세계의 자원이 부족한 국가인권기구를 지원하는 문제에까지 확대될 것으로 기대한다.

12. 정부와의 협력: 여러 국가인권기구로 조직된 조정 기구와 달리, 개별 국가인권기구는 우선적으로 자국의 정부와 협력을 강화하는 데 힘써야 한다. 일부 국가인권기구는 정부와 긴밀한 협력관계 속에서 업무를 수행하고 있지만, 그렇지 못한 경우도 있다. 대한민국 ‘UN인권정책센터(Korea Center for United Nations Human Rights Policy)’의 김기연 사무국장(Executive Director)는, OHCHR과 같은 기관들이 정부와 협력관계를 구축하는 데 어려움을 겪고 있는 국가인권기구에 지원을 제공해 줄 것을 제안하였다.
13. 국가인권기구의 독립: 정부와의 협력이 중요하기는 하지만, 정부로부터의 독립도 국가인권기구에 필수조건이다. 마가제니는, 국가인권기구는 파리 원칙에 따라 독립적이고 효과적일 때, 헌법 및 국내법의 인권 조항 이행을 보장하는 역할을 가장 잘 수행할 수 있다고 힘주어 말했다. 또한, 이러한 조건하에서, 국제인권규범을 국내법과 관행으로 이행하기가 용이하다고 하였다. 제3세계의 국가인권기구와 관련하여, 자국의 정부와는 별도로 고려해 볼 수 있다는 지적이 있었다. 제3세계 국가인권기구의 공인된 역할과 독립을 보장하기 위한 별도의 노력이 필요하다. 다간은, 국가인권기구가 자국 정부에 대해 영향력을 지니고 있으며 이러한 영향력을 유엔인권이사회에서 그리고 유엔인권이사회의 매커니즘을 통해서 효과적으로 행사할 수 있다고 강조하였다. 한 예로서, 올해 6월 신설된 유엔인권이사회에서 국가인권기구의 참여권 확보를 요구하여 성공적인 성과를 거둔 사례를 들었다.
14. NGO와의 관계: NGO의 국제인권체제 참여와, NGO와 국가인권기구의 협력도 논의되었다. NGO의 참여와 관련하여, 현재 국제 NGO들만 국제인권체제에 참여하고 있다는 문제점이 드 알바에 의해 제기되었다. 웹 캐스트와 같은 기술을 활용함으로써 국내 또는 지역 NGO를 포함한 더 많은 NGO들에게 참여 기회를 제공할 수 있을 것이다. NGO의 참여를 촉진하는 한 방법으로, 재정지원도 현재 검토중에 있다. 쟁점은, 제공되는 재정적 지원이 UPR 기간에 한정되어야 하는지, 아니면 다른 참여 활동도 포함하여야 하는지에 있다. 국가인권기구와 NGO의 관계와 관련하여, 양자간에 중복되는 기능에 중점을 둘 필요가 있다. 드 알바는, 국가인권

기구가 파리원칙에 부합하는 경우에만 NGO와의 관계가 안정될 수 있다고 강조하였다.

III. 실무그룹 I: 국가인권기구(NHRI)와 보편적 정례검토(UPR)

사회자: 최혁 (전 제네바주재 한국대표부 대사)

발제자: 지아니 마가제니 (OHCHR NI Unit의 조정관)

패널토의: 우종길 (OHCHR 인권관(Human Rights Officer))

임훈민 (주 제네바 한국대표부 참사관)

15. 실무그룹 I은 신설된 매커니즘인 UPR에서 국가인권기구의 역할에 대해 논의하였다. 지아니 마가제니가 먼저 시작하고, 그 뒤를 두 패널리스트인 OHCHR의 우종길 인권관과 주 제네바 한국대표부의 임훈민 참사관이 이어 발표하였다. 루이 알폰소 드 알바 대사로도 유엔인권이사회 위원장으로서 자신의 경험과 지도력을 바탕으로 논의에 유용한 정보를 제공해 주었다 (UPR의 역사, OHCHR의 역할, '인권분야의 기술적 협력을 위한 자발적 기금(Voluntary Fund for Technical Cooperation in the Field of Human Rights)' 등).
16. UPR의 중요성과, 국가인권기구의 기회의 창: UPR이 UN 유엔인권이사회에서 가장 중요한 매커니즘이 될 것이라는 데는 많은 사람들이 동의하였다. 따라서, 인권이사회의 성공 여부는 UPR의 성공 여부에 크게 좌우될 것이다. 이 논의에서는, UPR의 규정에 근거하여, 국가인권기구가 UPR 프로세스에 참여하고 개입함으로써 검토할 필요가 있는 인권상황의 개선에 기여할 수 있는 분야, 범위 및 '기회의 창(windows of opportunities)'을 확인하였다. 여기에는, 검토 문건의 준비 단계에서부터 검토 프로세스 참여까지 포함된다. 검토 결과의 정리 프로세스와, 무엇보다도, 권고의 이행 프로세스에 기회가 놓여 있다.
17. 국가인권기구 - UPR 프로세스에서 국가인권기구의 실효성을 위한 고려사항: UPR이 얼마나 실질적으로 시행될 것인지, 국가인권기구는 각각의 모든 단계에서, 특히 검토를 위해 별도로 국가인권기구가 정보를 제출할 수 있는 가능성(현재 국가인권기구는 국가보고서 작성에 참여하여 독자적인 논평을 할 수 있다), 국가이행권고 발표, 관련 당사자들과 모범 관행 공유, 기술적 지원의 재정적 의미, 중앙정부 및 시민사회와의 관계와 관련하여, 그 역할을 제대로 수행할 수 있을 것인지 등의 문제가 제기되었다. 또한, 국가인권기구의 전문가들의 전문성과 중립성을 고려하여, 국가인권기구의 전문가를 검토를 목적으로 파견되는 국가 대표단의 옵저버 및 국가 보고관(UPR 3요소의 하나)으로 임명하는 가능성도 제시되었다.
18. 국가인권기구 - 정부와의 관계: 국가인권기구는 독립성에 영향을 받지 않는 방법으로, 자국의 정부와 건설적인 관계를 구축해야 할 필요가 있다고 지적되었다. 다

시 말해, 국가인권기구는 정부에 건전한 압력을 행사하여 한편으로는 정부와, 다른 한편으로는 NGO와 건설적인 동반자 관계를 모색하여야 한다. 가령, 국가인권기구는 정부 정책에 대한 건설적 검토를 실시하고 인권상황에 대한 권고를 제시할 수 있다. 또 다른 방법으로는, 관련 회의에 파견하는 한국 대표단에 국가인권기구가 참여할 수 있도록 하거나 (앞에서 언급했듯이) 국가인권기구의 전문가를 정부 임명 보고관으로 임명할 수 있다.

19. 국가인권기구 - 국제사회 주체들과의 관계: 국가인권기구는 국내 차원을 넘어선 역할도 맡고 있다. 특히, 유엔인권이사회와 주체별 토의에 참석하고 기여하며, 외국의 이행권고와 관련하여 외국의 관련 당사자들과 모범 관행을 공유하는 일들을 할 수 있다.
20. 결론: UPR은 새로운 제도다. UPR은 고정된 매커니즘이 아니라 지금부터 4년 후에 재평가된다. 따라서, 한국국가인권위원회, NGO 및 기타 관련 당사자들이 이 제도의 성공적 수행과 확립을 위해 향후 4년간 적극적으로 기여하여야 하는 변화하는 프로세스다.

IV. 실무그룹 II: 국가인권기구와 UN자문위원회

사회자: 마틴 플래허티(Martin Flaherty, 포담 법대(Fordham Law School) 법학교수)

발제자: 정진성 (서울대학교 사회학교수)

패널토의: 이성훈 (포럼 아시아(Forum Asia) 사무총장)

M 리다 살레(M Ridha SALEH, 인도네시아 국가인권위원회 부위원장)

21. 정진성 교수의 발표 내용: 정 교수는 'UN인권이사회 자문위원회와, 국가인권기구의 역할'에 대해 발표하였으며, 소위원회(Sub-Commission)에서 시행되고 있는 아이디어와 업무들의 주도권과 지속성을 확보하는 데 있어 국가인권기구의 역할이 매우 중요함을 강조하였다. 신설된 유엔인권이사회 자문위원회의 기능은 축소되었으며, 그 역량을 극대화할 필요가 있다. 이를 위해, 정 교수는, 1) 주도권(power of initiative), 2) 소위원회의 아이디어와 연구의 지속성, 3) 보고서 검토 프로세스, 4) 연구에 대한 OHCHR의 지원 등의 이슈들을 효과적으로 검토하여야 한다고 주장한다. 유엔인권이사회는, 국가인권기구가 자문위원회의 업무에 참여할 수 있는 권리가 있다고 명시하고 있으며, 자문위원회는 국가인권기구와 상호교류하여야 한다. 정 교수는 국가인권기구의 역할을 다음과 같이 설명한다. 1)자문위원회의 최종 형성과정 참여: 유엔인권이사회가 개별국가들과 독립 전문가들을 연결하여 위원회의 형태를 최종적으로 마무리하는 동안 국가인권기구는 위에 언급한 이슈들을 실현하는 데 있어 중요한 역할을 할 수 있으며, 정 교수의 주장에 따르면, 이것이야말로 국가인권기구가 다른 어떠한 조직보다도 훌륭하게 수행할 수 있는

역할이다. 2) 후보 추천 프로세스: 국가는 자국의 후보를 선정할 때 자국의 국가인권기구 및 시민사회단체와 협의하여야 한다. 3) 일반 토론 참여 및 인권이슈 제기: 국가인권기구는 자문위원회 회기에 더욱 적극적으로 참여하여 자국에서 겪고 있는 다양한 인권 문제들을 제시하여야 한다. 신설된 자문위원회가 강력하고 효과적인 기구가 되기 위해서는, 국가인권기구의 참여와, 국가인권기구의 문제 제기 허용이 절실히 요구된다. 4) 실무그룹에 대한 기여: 실무그룹은 소위원회의 다른 어느 부분보다도 시민사회에 개방되어 있다. 국가인권기구는 이러한 개방된 부분을 활용하여 다양한 NGO와 의견을 교류하여 NGO에게 국가인권기구의 활동을 알려야 한다. 5) 보고서 검토: 국가인권기구는 앞서 언급한 보고서 검토 프로세스를 형성하는 데 기여하여야 하며, 이러한 프로세스가 확립되면 이에 적극 참여하여야 한다. 6) 자문위원회와의 정기적 회의: 자문위원회와 국가인권기구의 위원들은 자문위원회 회기 전후 및 회기 진행중에 정기적인 회의를 열어 서로의 의견을 교환하는 것이 매우 바람직하다. 7) 끝으로, 정 교수는 자문위원회 보고서를 활용하는 예시를 들어 설명하고 이 과정에서 국가인권기구가 수행할 수 있는 가장 중요한 역할은 자문위원회의 연구 내용을 국내 및 지역 차원에 도입하는 것이라고 주장한다. 이러한 단계에서 활용하는 주체가 없다면, 자문위원회가 보고서를 발간할 아무런 이유가 없다고 정 교수는 주장하며, 따라서 국가인권기구가 활동하는데 있어 자문위원회의 연구 결과를 활용할 것을 강력하게 권고하고 있다.

22. 자문위원회(AC)의 역할 축소: 패널은 AC의 역할과 기능이 급격하게 축소된 점에 대하여 논의하였다. AC의 역할과 구성이 아직 최종적으로 결정되지는 않았지만, 유엔인권이사회는 AC의 기능을 단순히 유엔인권이사회에 자문을 제공하는 두뇌집단(think-tank)으로 한정하고 있다. 유엔인권이사회 결의 5/1에서는 AC의 역할을 다음과 같이 정하고 있다. 1) AC는 주로 연구 및 조사기반 자문에 초점을 두어, 요청하는 방식 및 형태로 유엔인권이사회에 전문지식을 제공한다. 2) 유엔인권이사회는 AC에 특정 업무의 수행을 요청할 수 있다. 3) AC는 이행중심적(implementation-oriented)이어야 한다. 4) AC의 자문 범위는 유엔인권이사회의 권한과 관련된 주제별 이슈에 한정되어야 한다. 5) AC는 결의(resolution) 또는 결정문(decision)을 채택할 수 없다. 6) AC는 유엔인권이사회의 승인이 없이 산하 조직을 구성할 수 없다. [뒤의 세 항목은 AC 기능에 명확한 한계를 두고 있음에 주목하여야 한다.] 또한, AC는 이전의 소위원회에서 남아있는 4개의 실무그룹, 즉, 현대적 형태의 노예제, 소수집단, 토착민, 사회포럼에 대한 실무그룹들 내에서 인권 이슈를 논의하도록 제한 받고 있다. 이러한 맥락에서, 정 교수는, 인권의 기준 수립 또는 새롭게 등장하고 있는 분야와 관련하여 제도 내의 심각한 격차를 해소할 수 있는 효과적인 방법을 모색할 필요가 있다고 강조하였다. 새로운 AC 의제는, 어떠한 경우에 새로운 문제에 대처하거나 새로운 기준을 설정하기 위해 새로운 연구가 필요한지를 판단하는 데 있어 주도적 역할을 하여야 한다. 이와 같이, AC는 어떠한 의미에서는 “두뇌집단 이상(Think Tank Plus)”이 되어야 한다. 또한, AC는 기준, 규범, 원칙 및 지침이 얼마나 효과적으로 실현되어야 하는가에 대한

전문가적 사고를 형성한다는 점에서, 더욱 이행중심적이어야 한다.

23. 중복 기능: 패널은 조약기구(TB), 특별절차, AC의 역할 중복 가능성에 대해 우려하였다. 특히, 이러한 자문기구들이 실시하였으나 결과적으로 이행되지 못하고 유보된 여러 연구에 대해 우려의 목소리가 높았다. 이성훈 사무총장은 이러한 연구들의 정확한 성격에 대한 이해가 필요하며, 이들이 어떻게 상호 보완하여 상승작용 및 부가가치를 창출함과 동시에 중복을 피할 수 있는지에 대한 탐구가 필요하다고 언급했다.
24. 정치화 극복: 이전의 소위원회에서는 가치중심적인 ‘독립’ 전문가들, ‘현실정치(realpolitik)’의 동기를 지닌 정부, 전문성 결여와 관련하여 논란이 있었다. 패널은 신설된 AC가 이러한 문제들을 어떻게 극복할 것인가를 물었다. 정 교수는, 이전의 소위원회에 비해 AC의 권한이 훨씬 축소된 상태에서는 정치가 개입할 여지가 많지 않다고 답하였다. 즉, AC는 결정 권한이 없으며, AC의 업무를 유엔인권이사회가 위임하고 연례 회기의 일수(1년에 2회, 1회 10일)도 정해져 있기 때문에 상당한 제약을 받는다는 것이다. AC의 정치화 위험은, 1) 국가별 연구에 대한 엄격한 품질 통제로 정보의 정확성과 객관성 모두를 높이고, 2) 위원의 임기를 3년씩 2회로 제한함으로써 줄일 수 있다. 중립적이며 유능한 전문가들이 추천될 수 있도록, 정부는 국가인권기구 및 시민사회와 긴밀하게 협의하여야 한다.
25. 국가인권기구의 역할: 이어서 패널은 국가인권기구가 개혁 과정에 더욱 관심을 갖고 이렇게 함으로써 UN 기구내에서 AC의 궁극적 역할을 형성하는 데 기여하기 위해 이러한 ‘기회의 창’을 어떻게 활용할 수 있는지에 대해 논의하였다. 정 교수는, 2000년 이후로 소위원회의 권위가 약화되면서 소위원회의 외부 참가자들의 수가 줄어들었다고 지적하였다. 2008년 여름으로 계획되어 있는 제1차 AC 회의에 대해, 정 교수는 AC의 범위와 적정성이 확대될 수 있도록 NGO와 국가인권기구의 적극적인 참여를 권고하였다. 국가인권기구의 전문지식 제공과 참여는 중요한 요소다. 인도네시아 국가인권위원회의 살레 부위원장도 AC가 특정 국가의 상황과 유엔인권이사회 의제 간의 의사소통 단절(communication gap)을 극복할 수 있다는 데에 주목하였다. 이와 같이, 국가인권기구는 AC에 자문을 제공하고 시민사회와 유엔인권이사회 간 간극을 해소하는 데 있어 중요한 역할을 담당하고 있다. 그러나, 신혜수 위원은 국가인권기구의 참여를 촉진하기 위해서는 국가인권기구의 인력 규모와 예산을 확대할 필요가 있다고 지적하였다. 국가인권기구의 주요 참여수단은, 1) AC의 최종 구조 및 형성과정에 참여, 2) 후보 추천 과정에서의 협의, 3) 일반 토의 참여 및 인권 이슈 제기, 4) 실무그룹 기여, 5) 보고서 검토, 6) AC와의 정기적 회의 개최, 7) AC 보고서 및 연구 결과의 국내 도입 등의 여러 단계로 구분할 수 있다.

V. 실무그룹 III: 국가인권기구와 특별절차

사회자: 이성훈 (포럼 아시아 사무총장)

발제자: 안윤교 (OHCHR 인권관)

패널토의: 김기연 (한국 UN인권정책센터 사무국장)

캐타리나 로즈(Katherina ROSE, ICC 제네바 임시대표)

26. 도입: 안윤교 인권관은 대한민국 국가위원회가 이러한 시기적절한 세미나를 개최한 데 대해 축하의 인사를 전하면서 발표를 시작하였다. 자신의 발표 내용은 2007년 6월 18일에 채택된 유엔인권이사회 결의 5/1과 5/2의 맥락에서 특별절차(Special Procedures)의 동향과, 국가인권기구와 특별절차 간 협력 분야를 중점적으로 다루고 있다고 밝혔다. 특별절차는 개별국가별 위임사항(country mandate) 또는 주제별 위임사항(thematic mandate)의 맥락에서 전 세계의 인권증진이란 사명을 띤 UN매커니즘에 붙여진 명칭이다. 결의 5/1에 의해, 유엔인권이사회는 주제별 격차의 파악을 포함하여, 항상 개선을 위한 노력을 기울여야 한다. 이러한 요건은 유엔인권이사회가 포괄적인 SP 체제를 확립하고 유지할 수 있도록 하는 중요한 요소가 된다.
27. 수임자(mandate-holders)의 선정과 임명: 안 인권관은, 이전의 방식과는 달리, 유엔인권이사회 하에서는, 유엔인권이사회 결의 5/1에 열거된 NGO 및 기타 관련 개체들뿐만 아니라 국가인권기구도 특별절차 수임자로서 후보를 추천할 수 있다. 따라서, 유엔인권이사회 위원장은, 협의 그룹의 권고와 그에 따른 폭넓은 협의 결과를 바탕으로, 후보들 중에서 적임자를 선정하고, 이후 유엔인권이사회가 그러한 결정을 채택하게 된다.
28. 국가인권기구와 특별절차 간 성공적인 협력 가능성: 안 인권관은, 2007년 6월 18일자 결의 5/1이 투명성과 관련 당사자들의 역할 증대를 내용으로 한다는 점을 상기시키면서, 국가인권기구는 현실적인 인권 상황에 대해 폭넓고 직접적인 정보를 지니고 있다는 점에서 특별절차의 중요한 파트너라고 지적하였다. 이러한 맥락에서, 안 인권관은 국가인권기구와 특별절차의 역할이 상호 보강하는 관계에 있다고 강조하였다.
29. 국가인권기구와 특별절차 간 상호 교류: 안 인권관은, 다른 무엇보다도, 국가인권기구가 특별절차에 대한 상시초대(standing invitation)를 확대하도록 정부에 권유할 수 있으며, 특별절차와 관련하여 유엔인권이사회 회의에서 의견을 제시할 수 있고, 국가 방문 전에 특별절차의 배경정보를 제공할 수 있으며, 신뢰할 만한 정보 제공처로, 기타 출처로부터 확보한 정보의 정확성을 검증할 수 있는 잠재적으로 훌륭한 파트너로서, 제3자로부터 정보를 입수할 수 있는 효과적인 중개인으로서 역할을 수행할 수 있으며, 권고의 후속 과정을 촉진할 뿐만 아니라 특별절차에서 국가인권기구의 업무를 용이하게 할 수 있는 관련 문건에 관심을 집중시킬 수 있

다. 이와 관련하여, 몇 가지 모범 관행 사례를 공유하였다.

30. 의사교류 및 보호 역량: 국가인권기구와 특별절차 간 상호교류의 결과, 개인, NGO 또는 기타 인권운동가들의 신변 안전이 위협에 처하는 경우도 발생할 수 있다. 이와 관련하여, 안 인권관은 그러한 위협이 발생하는 경우 조치를 취할 수 있도록 국가인권기구는 특별절차에 그러한 위협에 대한 정보를 지속적으로 제공할 수 있다고 지적하였다.
31. 결론: 안 인권관은 NRHI는 자체 임무의 수행 측면에서 특별절차 수임자의 중요한 파트너라고 강조하면서 발표 내용을 요약하였다. 국가인권기구에게 특별절차의 연례 회의 참석을 권유하는 방안을 환영하면서, 국가인권기구와 특별절차 간 상호교류 분야를 나열한 목록이 충분치 못하다고 지적하였다. 관련 당사자들 간 관계가 상호보강적이기는 하지만 이번 세미나에서의 논의가 국가인권기구와 특별절차의 상호교류를 더욱 강화하는 계기가 되기를 희망한다면서 마무리 지었다.
32. 패널토의 - 김기연 사무국장: 이 토의는 두 가지 주제, 즉 제도 구축, 국가인권기구와 특별절차의 협력에 대해 이루어졌다. 패널토의에 참가한 김기연 사무국장은, “기타 인권기구들”이 특별절차의 후보를 추천할 수 있도록 권한을 부여한 결의 5/1의 탁월성을 인정하였다. 국가인권기구는 위의 “기타 인권기구들” 범주에 해당한다. 또한, 국가인권기구는 특별절차의 권한 검토과정에 참여할 수 있다고 언급하였다. 김 사무국장은, 시민사회 단체들뿐 아니라 대부분의 NGO들이 아직까지 특별절차 매커니즘을 알지 못한다는 사실에 유감을 표하였다. 이러한 견해는, 한국을 방문했을 당시, 이주근로자의 상황에 관한 특별보고관의 보고서에 의거하여 어떠한 실질적인 후속 조치도 이루어지지 않았었다고 회고하면서 더욱 부각되었다.
33. 캐타리나 로즈: 캐타리나 로즈 ICC 제네바 임시대표는 발표를 통해, 특별절차의 실효성은 후속조치에 의해 좌우된다고 확인하였다. 더 나아가, 국가인권기구가 그러한 후속작업에서 어떻게 역할을 수행할 수 있는지를 살펴보았다. 또한, 방대한 보강 분야를 중점적으로 거론하면서, 국가인권기구는 현재 모든 의제 항목에 대해 발언권을 지니며, 보편적 정례검토(UPR) 매커니즘을 보강할 목적으로 특정 정보를 제공할 수 있다고 하였다. 로즈 대표도, 유엔인권위원회 결의 2005/74에 의해 국가인권기구는 유엔인권이사회 회기에 참여할 수 있는 자유를 갖게 되었다고 긍정적으로 평가하였다. 이를 통해서, 국가인권기구는 자체 보유하고 있는 전문성을 바탕으로 정보를 제공하고 보호 격차(protection gap)를 파악할 수 있다. 로즈 대표는, 아이티와 콩고민주공화국의 사례를 인용하면서, 국가인권기구가 특별절차와의 협력을 통해, 수임자의 확장에 영향력을 행사할 수 있음을 상기시켰다. 요약컨대, 국가인권기구와 특별절차 간 상호교류가 쌍방에 이익을 가져다 줄 뿐 아니라 인권의 보호와 증진에 기여한다고 지적하면서, 인권 주류화(Human Rights mainstream)를 확립하기 위해 국가 차원에서 국가인권기구, 특별절차, UN기구들

간 동반자적 관계가 중요함을 강조하였다.

34. 사회자: 사회자는 토의내용에 대하여, 가장 큰 관심사는 국가인권기구와의 협력을 증진하면서 특별절차를 유지하는 방법이라고 지적하였다.
35. 루이 알폰소 드 알바: 드 알바 대사는 발표 및 토의 내용에 대해 ‘알차다(rich)’고 묘사하였다. 결의 5/1이 도출되기까지의 심사 과정에 대해 언급하고, 이 결의가 합의에 의해 채택된 것임에 주목하였다. 그러나, 특별절차가 국가인권기구보다 현안에 대해 더 잘 알고 있다는 의미의 주장을 내세우는 경우가 있다고 유감을 표하였다. 드 알바 대사는 이러한 주장은 사실이 아니라고 단언하였다. 끝으로, 드 알바 대사는, 특별절차와 국가기구 간의 상호교류가 학문적 활동과 동일시되어서는 안되며, 체제 전체가 현실에 기반을 두어야 한다는 의견을 피력하였다.
36. 쌍방향 토의: 질의-응답으로 이어졌다. 가장 주목할 만한 질문은, 책임과 의무를 불이행하는 특별보고관을 징계할 수 있는 제재조치가 마련되어 있는지 여부였다. 이 질문은 타일랜드의 군부 구데타에 동조한 특별보고관의 사례에 비추어 제기되었다. 이에 대한 답변으로, 전 유엔인권이사회 위원장인 드 알바 대사는, 그러한 상황에서는 자아비판이 권고되는 경우가 있는데, 특별절차가 이 분야에 관한 행동강령(code of conduct)을 제시할 수 있도록 한다고 하였다. 그러한 경우 당면하는 큰 문제는 어떠한 행동을 취하느냐 아니면 아무런 조치도 취하지 않느냐에 있다고 하였다.

VI. 실무그룹 IV: 조약기구의 개혁과 국가인권기구의 역할

사회자: 신혜수(NHRCK 위원, 유엔여성차별철폐위원회(CEDAW) 위원)

발제자: 이양희 교수 (성균관대 교수, 유엔아동권리위원회(CRC)위원장)

패널토의: 박찬운 교수 (한양대학교 법대교수)

오병훈 (국가인권위원회 국제인권팀장)

37. 조약기구(TB)의 개혁과 국가인권기구의 역할: 이양희 교수는 국제조약의 이행 감시 역할은 여러 주체에게 주어져 있으며, 이 주체들에는 각 조약기구, 해당 조약의 당사국, 시민사회, 국제 및 국내 NGO, 국가인권기구가 포함된다고 하였다. 비엔나 선언 및 실행계획을 통해, 인권의 증진과 보호를 위해 국가기구의 역할이 중요하다는 사실이 확인되었다. 또한, ‘베를린 원탁회의(Berlin Round Table)’는 다음과 같은 결론을 내렸다. 1) 이슈 목록(List of Issues) 작성: 위원회가 정확한 이슈 목록을 작성하고, 대화(Dialogue)를 실시하며, 최종 견해(Concluding Observations)를 도출하도록 지원하는 데에 있어 국가인권기구의 참여가 중요하다. 2) 새로운 조약기구 보고 지침에 대한 정부의 이해 증진: 국가인권기구는 당사국 보고서 작성에 기여하여야 한다. 이 또한 파리 원칙에 의거하여 이루어져야 한다. 3) 진정 및 조

사 절차: 국가인권기구는 해당 조약기구가 개별 진정 매커니즘을 마련하고 있는 경우 피해자가 조약기구에 진정할 수 있도록 지원할 것을 고려하여야 한다. 4) 국가인권기구는 모든 관련 주체들에게 TB의 최종견해와 권고를 알리는 역할을 담당하여야 한다. 5) 국가인권기구는 국제인권기제의 비준과 가입을 촉구하여야 한다. 6) 국가인권기구는 관련 TB에 대해 협의 및 지원 역할 외에도, 자체 보고서를 제출하여야 한다. 국제인권기제가 개별 진정 매커니즘을 두고 있지 않은 경우(CRC의 경우가 대표적), 국가인권기구는 추가 역할을 맡게 된다. 이 교수는, 국가인권기구가 정보 제공자로서 독립적으로 그 역할을 수행하여야 한다고 주장하였다. 국가인권기구와 UN인권조약기구가 인권의 증진과 보호를 추구하는 동반자적 관계를 구축할 수 있다고 주장하였다. 가령, 국가인권기구는 CRC와 같이 개별 진정 매커니즘을 두고 있지 않은 국제인권기제를 지원할 수 있다. 국가인권기구는 주요 당사자들뿐 아니라 일반 대중의 인식을 고취시키는 데에 있어서도 적극적 역할을 수행하여야 한다. 이 교수는, 향후에는 다양한 관련 당사자들간의 동반자적 관계가 인권 증진 및 보호를 위해 그 중요성이 더욱 커질 것이라고 결론 지었다. 당사국은 자국이 비준한 여러 인권조약을 이행하여야 할 의무를 준수하는 데 있어 중심적 주체가 되어야 한다. 이 교수는, TB가 당사국 보고서를 검토시 NGO, UN기구, 국가인권기구가 제출한 보고서에 크게 의존하고 있다고 설명한다. 국가인권기구의 역할은 NGO와는 다르다. 국가인권기구가 파리 원칙과 해당 조약기구의 일반논평(General Comments)에 의거하여 설립되었다면, 조사에 착수할 수 있는 권한을 지니며, 모든 자료와 정보에 대한 접근권을 지니며, 가장 취약한 집단에 게까지 접근가능한 충분한 재정적, 인적 자원을 갖추었을 것이다. 또한, 이 교수는 강력하고 독립적인 국가인권기구는 모든 이들의 권리를 지지하고, 증진하며 보호하는 본연의 임무를 수행할 수 있어야 한다.

38. 조약감시기구(TB)와, 국가인권기구의 역할: 박 교수는 국가인권기구와 TB의 역할에 관한 국제원탁회의의 결론에 동의하지만 다음을 제안한다고 밝혔다. 박 교수는, 당사국 보고서 검토 기간 전후에, 구두 발표에 의한 방법을 포함하여 국가인권기구가 개입하여야 한다고 제안하였다. 이를 위해서는, 직원들과 위원들이 국제인권법에 대한 전문가 교육을 받아야 한다. (현재 한국국가인권위원회는 필요한 경우 TB와의 프로세스에 어떻게 관여하고 어떻게 정보를 제공해야 하는지에 대한 명확한 지침이 마련되어 있지 않으므로, 그러한 지침을 수립하여야 한다.) 또한, 박 교수는, 정보의 제공과 협의는 피해자에게 매우 유용하므로, 국가인권기구는 TB의 결정에 필요한 정보를 제공할 수 있어야 하며, 개인통보(individual communications)의 작성자에 대한 법률 지원을 고려하여야 한다고 제안하였다. 한국국가인권위원회는 TB의 견해(views)의 이행에 관한 정보를, TB의 후속조치에 관한 특별보고관에게 제공해야 하지만, 이러한 사례는 이제까지 한국에 없었다. 박 교수는, 보고 프로세스 개선 및 후속작업을 위한 국내 매커니즘을 수립하는 것이 매우 중요하다고 주장하였다. 이러한 목적을 위해, 당사국 보고서 작성 및 후속작업을 위한 국내이행 매커니즘을 제도화가 요구된다고 주장하였다. 또한, 이러한

특정 임무를 담당하는 부서가 국가인권기구에 마련되어야 한다. 이에 더하여, 최종견해, 소견, 관련 법제, 정책을 포함한 국제인권조약의 데이터베이스를 구축함으로써 다양한 관련 당사자들이 용이하게 데이터베이스에 접근하여 국내 이행프로세스를 촉진하도록 하는 것이 유용하다. 끝으로, 박 교수는, 국가인권기구가 당사국 보고서 검토 및 이후 후속작업 과정에 참여할 수 있는 기회를 확보하려면, 한국국가인권위원회의 역할이 국회와 국가(정부)에 의해 명확하게 정의되어야 한다고 결론 지었다.

39. 국가인권기구는 TB의 실효성 확보에 어떻게 기여할 수 있는가?: 오병훈 팀장은, 각 국가인권기구는 더욱 효과적인 참여를 위해 조약별 이슈를 개발하는 등과 같이 TB가 체계적으로 관여할 수 있는 장치를 마련하여야 한다고 주장하였다. 오 팀장은 국가인권기구의 발전에 관한 전망을 다음과 같이 제시하였다. 1) 국가인권기구의 태도는 국가 기관과 국가인권기구의 관계에 따라 좌우된다. 일부 국가 기관들은 국가인권기구의 권고나 제언을 상대적으로 진지하게 수용하려는 자세를 취하지만, 그렇지 않은 국가 기관들도 있다. 국가인권기구는 다른 국가 기관과의 관계에서 국제조약과 관련된 각자의 권한을 존중함으로써 상호 신뢰를 회복하여야 할 과제를 안고 있다. 2) 대부분의 국가인권기구는 조사, 교육, 상담, 규제법안의 검토 등과 같은 국내 이슈에 에너지를 쏟고 있다. 3) 국가인권기구는 더 이상 UN과 TB에 있어 신생 주체가 아니라 TB의 업무 프로세스를 촉진하는 효율적인 주체다. 국가인권기구가 독립적이고 객관적인 관점을 지니고 적극 개입함으로써 TB가 정치화되는 것을 막으면서 좋은 성과를 거둘 수 있다. 국가별 보고는, 검토 프로세스를 통해, 국제 조약에 대한 국가인권기구의 전문성에 의해 개선될 수 있다. 끝으로, 오 팀장은 국가인권기구와 NGO 또는 시민사회의 상호 협력이 국가인권기구가 정보 제공자 역할을 수행하는 데 있어 매우 중요하며, 이는 NGO가 사회적 저변 수준에서부터 국제 차원에 이르기까지 인권 의제 및 이슈의 원천이기 때문이라고 주장한다. 상호 협력을 통한 전문성 제고에 매진하게 되면, 국가보고서를 최종 작성하는 국가 기관들에 대하여 국가인권기구의 영향력은 더욱 커질 수 있다고 결론 지었다.

VII. 전체토의 및 실무그룹 프레젠테이션

사회자: 안경환 위원장

전체토의: 박경서 교수

실무그룹 I: 최혁 대사

실무그룹 II: 정진성 교수

실무그룹 III: 이성훈 사무총장 (FORUM-ASIA)

실무그룹 IV: 신혜수 위원

참석자 전원

40. 네 개의 실무그룹 논의가 종료된 후, 각 논의의 진행자들이 모여 각 실무그룹에서 논의한 주제를 간략하게 발표하였다. 그리고 나서, 박경서 교수는, 모두가 간략하게 마무리 발언을 할 것을 제안하였다. 최혁은, 이번 세미나가 국가인권기구가 유엔인권이사회에 적극 참여하는 역할 모델을 모색할 수 있는 중요한 기회라고 언급하였다. 신혜수는 국제인권 매커니즘의 최근 변화에 적응하기 위해서는 국가인권기구의 역량을 구축하는 것이 중요하다고 강조하였다. 이양희 교수는, 한국국가인권위원회와 NGO가 폭넓은 연합 매커니즘을 구성할 것을 제안하였다. 이 매커니즘은 모든 TB와 유엔인권이사회를 바라보는 단일 구조로서, 그 기능은 한국국가인권위원회와 중복되지 않는다. 임훈민은, 한국국가인권위원회가 국제인권노력에 더 많이 기여할 수 있는 일부 분야를 명확히 할 것을 한국국가인권위원회에게 제안하였다. 행동강령에 관한 일부 참가자들의 의견과 질문에 대해, 안윤교는 신설된 수임자 선정 절차의 중요성을 강조하였다. 또한, 조직간 전략적 협력을 통해, 이미 개발된 정보 수단을 일반 대중에게 배포할 수 있도록 더욱 힘써야 할 필요가 있음을 강조하였다. 이성훈은 인권이사회의 체대구축 결과를 은유적으로 표현할 수 있다고 했다. 즉, UPR은 완전히 새롭게 만들어진 제품 혹은 건물이며, 자문위원회는 기존의 집을 완전히 리모델링한 경우고, 마지막으로 특별절차는 소규모로 개조한 경우라고 했다. 그는 또한 조약기구들의 개혁이 제도 구축과정의 다음 단계에서 다루어질 것이라고 예상하였다. 이러한 과정에서 이성훈은 공통의 목표를 지닌 NGO와 국가인권기구가 전략적으로 협력하는 것이 매우 중요하다는 것을 지적했다. 이러한 맥락에서 국가인권기구의 인권보호자들을 보호하는 역할은 강화되어야 한다. 국가인권기구는 국내차원에서의 인권보호 및 증진을 위한 당사자들을 연계할 수 있는 전략적 입지를 지니고 있다. 국가인권기구는 또한 복합적인 성격을 지닌다. 즉, 국가인권기구의 머리는 주된 수임사항이 국제인권기준을 국내에 이행하는 것이므로 UN으로부터 왔으며, 그 몸은 정부가 본 기구를 만들었고 그 직원들 또한 공무원이므로 정부로부터 왔으나, 그러면서 그 마음은 인권을 침해 당한 이들의 요구에 반응하고 민감하기 때문에 NGO의 그것이라는 것이다. 이성훈은 국가인권기구에 부여된 복잡한 임무들을 수행하려면 인권위가 높은 수준의 독립성을 유지해야 한다는 말로 발언을 마무리 하였다. 캐타리나 로즈는, 현재 독일인권연구소(German Institute for Human Rights)가 제작 중에 있는 “국가인권기구와 TB 편람(Handbook on NHRIs and the Treaty Bodies)”와 함께, 한국국가인권위원회의 관심을 끌 만한 문건으로 “인권교육과 훈련(Human Rights Education and Training)”이란 제목의 유엔인권이사회 결의를 소개하였다. 우종길은, 국가인권기구가 UN 기구들(가령, OHCHR, UNDP)과 현장 사이의 “잃어버린 고리”를 채워줄 수 있으며, 전체론적인 방식으로 조정이 가능할 것이라고 역설하였다. 김기연은 이번 세미나에서 많은 아이디어들이 논의되었으며 그 중 일부는 바로 실현될 수 있을 것이라고 말하고, 한국국가인권위원회가 자체 전문성을 타주체들과 공유하고 정부와 NGO 사이의 전략적 고리로서 역할을 유지하기를 기대한다고 하였다. 지아니 마가제니는, 최근 국가인권기구의 중요성을 인정하여 합의가 형성되었다고 지적하고, NGO, 국가인권기구, 정부간 연계의 성격에 대해서

는 이성훈의 의견에 동의하였다. 국가인권기구가 전체에 대해 산소 같은 존재가 될 수 있을 것이다. 루이 알폰소 드 알바는, 일반적으로 사용하는 용어에 대해 언급 하였는데, 자문위원회를 설립하는 데 있어 지배적인 분위기는 ‘개시(initiation)’가 아니라 ‘이행(implementation)’을 강조하였음을 설명하기 위해 ‘이행’을, 유엔 인권이사회가 기존 매커니즘의 인권 활동을 극대화하는 데 힘쓰고 있음을 설명하기 위해 ‘주류화(mainstreaming)’, ‘전체론적 접근(holistic approach)’, ‘동반자적 관계(partnership)’를 사용하였다. 또한, 한국국가인권위원회가 바로 앞에 놓여 있는 기회를 잡아야 하는 막중한 책임이 있으며, 이 기회는 한국국가인권위원회가 소지역에서 국제 수준으로 발돋움하여 타 정부 및 국제사회의 주체들과 상호 교류함으로써 대한민국 국민들에게 봉사할 수 있는 기회를 말한다. 국제기준은 그저 형성되는 것이 아니다. 한국국가인권위원회는 이와 관련하여 리더십을 기르는 데 필요한 자원을 갖추고 있으므로, 한 번에 한 발씩 내딛기만 하면 된다고 역설하였다. 또한, 드 알바는 UN OHCHR이 유엔인권이사회에 맞추어 변화하고 매우 빠르게 성장하면서 더 많은 HR 이슈를 다루어야 할 필요가 있다고 지적하였다. 박경서는, 자신의 젊은 시절과 비교하여 한국이 인권에 있어 얼마나 발전하였는지를 언급하고, 더 나아가, 한국국가인권위원회 위원장에게 이러한 훌륭한 세미나를 개최한 데 대해 치하하였다.

41. 끝으로, 안경환 위원장은 모든 참석자, 자원 인력 및 세미나 개최 준비를 위해 힘쓴 모든 관계자에게 감사의 말을 전했다. 이 세미나를 통해 심도 있는 의견들이 교류됨으로써 큰 결실을 맺었다고 강조하고, 향후 협력 강화 및 발전을 기원하였다.
