

**Improving coordination among NHRIs  
on discrimination:  
Considerations and recommendations from a  
comparative perspective**

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1 2  **Today, I will concentrate on NHRIs mandated to address racial discrimination because ...**

NHRIs, particularly those which comply with the Paris Principles

- constitute a critical link between international and regional human rights standards on the one hand, and their practical implementation at domestic level
- contribute to a State's engagement with
  - the UN human rights treaty bodies including CERD
  - special procedures and
  - UPR
 and strengthen human rights
  - monitoring
  - investigation and
  - reporting

3  **Moreover, Article 14 of the CERD Convention provides that ...**

- any State Party that opts for the CERD's individual complaints procedure "may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies"
- in fact, only 9 States have made this particular declaration about precisely this kind of body to the Secretary-General

*But*

- many more States have established NHRIs with broader mandates that include comprehensive non-discrimination provisions

4  **In principle, NHRIs form essential links for the more effective promotion and protection of human rights, but in practice they ...**

- are less effective where they don't conform to the Paris Principles
- can fall prey to majoritarian tendencies and be insufficiently inclusive of unpopular or marginalized racial, religious, ethnic or other groups, especially where they are not independent of the Executive or Legislature
- may not explicitly cover racism, racial discrimination, xenophobia and related intolerance in all their aspects
- often suffer from other gaps in normative coverage and practical implementation

5  **Moreover, in any one country, NHRIs ...**

- sometimes duplicate the work of other NHRIs which can make implementation less consistent and efficient
- often fail to coordinate effectively with other NHRIs on matters of discrimination which in turn can weaken
  - monitoring, investigation and reporting
  - engagement with the UN and regional human rights systems
  - human rights promotion and protection in general
- face particularly difficult challenges in federal States where executive and legislative power

is split between two or more levels

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6  **A 2011 OHCHR study on NHRIs in federal States is worth considering (not because I was its author) but because ...**

- the coordination challenges that federal States face, illustrate particularly well the same challenge that unitary States with multiple NHRIs face since racial discrimination is a cross cutting issue

Moreover

- 28 countries with over 40% of the world's population are federal States
- almost every country with large geographic territory or populations are federal States
- many post conflict transition countries have been considering federal governance
- many unitary States have been devolving powers to regional authorities and moving towards quasi-federal governance

7  **Federal States ...**

- often have human rights institutions at national and regional levels that vary in terms of
  - thematic competence for example
    - general human rights mandate
    - anti-corruption mandate
    - gender equality / racial non-discrimination mandate
  - as well as geographic coverage
- Differing points of view among human rights bodies in a single country can
  - widen and enrich public perspectives on human rights issues *but*
  - also risk both duplication and gaps in human rights protection

8  **Another complication in federal States is that ...**

- the constituent units may vary greatly in size, population and power as in the Russian Federation which has an asymmetric system where many important human rights issues overlap or are addressed unevenly in the
  - republics / autonomous areas / regions / territories or
  - federal cities of Moscow or St. Petersburg

9  **It is important to recall also that regional and local human rights institutions can engage with UN human rights bodies ...**

- directly and
- indirectly through the national-level human rights institution or
- indirectly by contributing to federal and regional Government reports to UN human rights mechanisms
- many States have NHRIs specifically devoted to minority and indigenous rights that focus on discrimination and function alongside other bodies with broader or different mandates for all these reasons, coordination among NHRIs on racial discrimination, xenophobia and

related intolerance often becomes a major issue



10  **The OHCHR study was based on ...**

- a review of UN documentation
- relevant constitutional and statutory provisions
- official NHRI documentation
- pertinent scholarly literature
- responses to an OHCHR questionnaire sent to NHRIs in May 2011 and
- discussions with NHRI representatives

11  **Responses were received from the following federal countries ...**

- Australia
- Belgium
- Canada
- Germany
- India
- Mexico
- South Africa
- Russia and
- Switzerland

and the study also covers:

- Brazil and
- the United States of America

12  **What did respondents to the UN's questionnaire say about coordination with UN human rights bodies?**

- the Australian Human Rights Commission noted several human rights institutions, including:
  - the Australian Capital Territory Human Rights Commission
  - Anti-Discrimination Board of New South Wales
  - Anti-Discrimination Commission (Northern Territory)
  - Office of the Anti-Discrimination Commissioner Tasmania)
  - Anti-Discrimination Commission (Queensland)
  - Equal Opportunity Commission of South Australia
  - Equal Opportunity Commission of Western Australia and the
  - Victorian Equal Opportunity and Human Rights Commission

13  **In Australia, human rights institutions at the state level ...**

- provided information to UN Human Rights Council special procedures
- assisted with the missions of UN special rapporteurs and facilitated contacts between special procedures mandate holders with both government officials and civil society representatives
- assisted the Australian Human Rights Commission to prepare its report to the Universal Periodic Review
- consulted with the Australian Human Rights Commission on reports to UN human rights

treaty bodies

14  **Canada has the Canadian Human Rights Commission and ...**

- Alberta Human Rights and Citizenship Commission
- Saskatchewan Human Rights Commission
- Manitoba Human Rights Commission
- Ontario Human Rights Commission
- Québec Commission des droits de la personne et des droits de la jeunesse
- New Brunswick Human Rights Commission
- Nova Scotia Human Rights Commission
- Nunavut Human Rights Tribunal
- Prince Edward Island Human Rights Commission
- Newfoundland Human Rights Commission
- Yukon Human Rights Commission
- Northwest Territories Human Rights Commission

15  **In Canada ...**

- provincial commissions human rights contributed to
  - shadow reports at the national level
  - statements of the national human rights commission
  - UN special procedures fact-finding, monitoring and reporting procedures and international meetings and conferences
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16  **In India, there are 20 human rights commission in addition to the National Human Rights Commission ...**

- Andhra Pradesh State Human Rights Commission/ Assam State Human Rights Commission; Bihar State Human Rights Commission / Chhattisgarh State Human Rights Commission / Gujarat State Human Rights Commission / Himachal Pradesh Human Rights Commission / Jammu and Kashmir State Human Rights Commission / Jharkhand State Human Rights Commission / Karnataka State Human Rights Commission / Kerala State Human Rights Commission / Madhya Pradesh Human Rights Commission / Maharashtra Human Rights Commission / Manipur State Human Rights Commission / Orissa State Human Rights Commission / Punjab State Human Rights Commission / Rajasthan State Human Rights Commission / Sikkim State Human Rights Commission / Tamil Nadu State Human Rights Commission / Uttar Pradesh State Human Rights Commission and the West Bengal State Human Rights Commission
- the National Human Rights Commission
  - held consultations with state human rights commissions to prepare its submission to the UPR process
  - consulted state level human rights commissions and relevant Ministries of the Government of India
  - monitored the implementation of the Universal Periodic Review outcomes recommendation with the Government of India's Ministry of External Affairs and Ministry of Home Affairs.
- state-level human rights institutions interacted with UN special rapporteurs to assist their

missions to India

17  **Mexico has human rights institutions in all of its 32 states ...**

The National Human Rights Commission of Mexico noted that:

- it held conferences with the state human rights commissions to help develop its UPR report
- in February 2011, the Government of Mexico appointed the Commission and the 32 constituent unit human rights institutions and other relevant mechanisms to monitor implementation of the Convention on the Rights of Persons with Disabilities
- in 2006, the Committee on the Elimination of Racial Discrimination welcomed the establishment in Mexico of the National Commission for the Development of Indigenous Peoples in 2003 and national level Commission's role in preparation of the periodic report

18  **The South African Human Rights Commission ...**

- in 2006, the Commission appeared before the UN Committee on Racial Discrimination
- worked closely with
  - the International Coordinating Committee of National Human Rights Institutions
  - the African Coordinating Committee on NHRIs and the
  - UN Human Rights Council

19  **The Commissioner for Human Rights in the Russian Federation indicated that ...**

- it appointed regional Commissioners, 47 of which were not subordinate to the federal Commissioner and could act independently
- the federal Commissioner convened Coordination Council sessions at least 3 times per year
- it contributed to the country UPR report
- provided information to the
  - Committee on the Rights of the Child and other UN human rights treaty bodies
  - Human Rights Council special rapporteurs on violence against women, on racism, and on the independence of judges and lawyers
- there were human rights commissions in 63 of the constituent units of the Russian Federation each of which had the right to submit reports and petitions to whichever international bodies might receive them

20  **In Switzerland, the Federal Commission against Racism stated that ...**

- it was an extra-parliamentary commission mandated to fight against racial discrimination
- there were Ombudsman Offices in 5 cities and in 5 cantons
- at the federal level there were the
  - Federal Commission against Racism
  - Federal Commission for Questions of Migration
  - Federal Commission on Women's Affairs and the
  - Swiss Competence Centre for Human Rights
- it interacted with the
  - UN Human Rights Committee
  - Committee on the Elimination of Racial Discrimination and the
  - Committee on the Elimination of Discrimination against Women

21  **In Belgium and Germany, the national human rights institutions were more consultative**

**and advisory in character ...**

- the Belgian Centre for Equal Opportunities and Opposition to Racism (a 'B' status institution) indicated that it prepared the Government's report to CERD
- it was also to split into
  - an Inter-federal Centre for Equal Opportunities and
  - a Federal Migration Centre
- the German Institute for Human Rights, established in March 2001, was given the responsibility in March 2009 to
  - monitor the implementation of the UN Convention on the Rights of Persons with Disabilities on an independent basis
  - offer policy advice
  - develop practice-oriented research and
  - conduct awareness raising campaigns

22  **In Brazil**

- there is a Council for the Protection of Human Rights which functions under the Ministry of Justice
- there were some human rights bodies at local or regional levels but no national human rights institution
- there was debate as to whether to establish a national human rights institution at the federal level

Similarly, in the United States ...

- there is the Civil Rights Commission and also the Equal Opportunity Commission both established in 1964
- both are mainly fact-finding bodies created to implement narrow mandates on the right to vote and discrimination in employment
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23  **It is interesting to note that while federal States vary widely ...**

- in geographical size, ethnic, racial and linguistic diversity, as well as in the distribution of powers and style of governance, they share many similarities with regard to coordination
  - holding regular coordination meetings with local human rights institutions (Australia, India, Mexico South Africa)
  - the South African Human Rights Commission liaised closely with
    - minority rights commissions
    - electoral commissions
    - commission for gender equality
  - NHRIs in Australia and Canada formed part of an umbrella organization to coordinate their activities
  - NHRIs in Russia and Switzerland also held regular coordination meetings

24  **Although the ICC accredits only one human rights institution from each country, this does not imply ....**

- that human rights institutions at the regional levels should not or cannot participate or contribute to the range of UN human rights mechanisms.
- to the contrary, human rights institutions at all levels are expected to participate in and

contribute to UN human rights fact-finding, monitoring and reporting mechanisms to the extent that this relates both to the mandates of the UN mechanisms and to the mandate of the particular human rights institution in question

25  **With regard to engagement with the UN human rights system ...**

- in Australia, India and Mexico, several regional human rights institutions assisted the NHRI to prepare for the UPR
- in India and Mexico, the national human rights commissions worked with regional level human rights commissions as well to monitor implementation of UPR recommendations
- the national human rights commission (Australia and India for example) also consulted regional human rights commissions in reporting to UN human rights treaty bodies including CERD
- in addition, many human rights institutions at national or regional levels helped to coordinate and facilitate the visits of UN special rapporteurs and sometimes to assist NGOs contribute information
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26  **The study recommended the following best practices for NHRIs in federal States ...**

- 1. clear and workable institutional arrangements, if possible through statutory enactment, to facilitate cooperation, coordination and harmonization in policy, priorities and implementation strategies
- 2. the roles, responsibilities and status of human rights institutions at the regional level should be clarified, particularly as regards fact-finding, monitoring and reporting in line with the Paris Principles
- 3. the government should not mandate human rights institutions to prepare its State report, but only to contribute to it, otherwise the NHRI could act more like an arm of Government and become less independent
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27  **4. In federal States, human rights institutions at all levels should ...**

- deepen their cooperation and engagement with UN human rights treaty bodies including CERD to strengthen follow up on treaty body recommendations by the NHRI and local-level NHRI
- local human rights institutions are often closer to situations of actual human rights concern than the national level human rights institution
- they can be better positioned to engage actively with the UN human rights system than the national human rights institution
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28  **5. Human rights institutions at the regional / local levels ...**

- should provide information to the Government for the
  - Universal Periodic Review
  - UN human rights treaty bodies
  - UN Human Rights Council special procedures
- should submit their own separate reports freely and independently to international and



regional human rights mechanisms in the spirit of the Paris Principles

- in collaboration with the NHRI or
- directly and independently

29  **The report recommends stronger civil society engagement and complaints handling among other things ...**

- 6. governments should enact guarantees to guard the arms length relationship between government and human rights institutions at national and regional levels
- 7. the federal-level human rights institution NHRIs should share research, best practices, training and information with regional level human rights institutions
- 8. NHRIs should regularize contact, engagement and fruitful interchange with civil society organizations at all levels
- 9. human rights institutions at all levels should raise awareness about their work in the NGO community
- 10. NHRIs should assist regional-level human rights institutions to develop stronger education and awareness campaigns at the grassroots level, including of the Paris Principles
- 11. NHRIs should regional human rights institutions to strengthen their infrastructure, capacity and financial support
- 12. in federal States, NHRIs should work to standardize and computerize an efficient complaints handling systems at federal and constituent unit levels

30  **Specifically with regard to racial discrimination, xenophobia and related intolerance, I would further add that ...**

- NHRIs with narrower anti-discrimination mandates should coordinate with more broadly mandated NHRIs, regional and international mechanisms to ensure as inclusive and comprehensive human rights protection to everyone within the State's jurisdiction
- all broader mandated NHRIs should have a special unit devoted to discrimination and vulnerable groups

31  **And I would recall that ...**

- back in 2009, the Ad Hoc Committee noted a gap as regards human rights education relating to racial, ethnic, religious or other kinds of intolerance which could be filled by NHRIs
- there were gaps also as regards:
  - protection of persons belonging to specific groups, such as religious groups, refugees, asylum-seekers, stateless persons and migrants, migrant workers, internally displaced persons, descent-based communities as people of African descent, indigenous peoples, and minorities and of people under foreign occupation
  - aggravated forms of discrimination, xenophobia, ethnic cleansing, genocide, human rights education, religious intolerance and defamation of religious symbols, racial discrimination in the private sphere, incitement to racial hatred and dissemination of hate speech and xenophobic, defamatory caricatural pictures, through traditional mass media and information technology, including the Internet

32  **Finally, CERD recommended the establishment ...**

- of NHRIs specifically mandated to promote equality and prevent discrimination on the grounds of race, colour, descent, or national or ethnic origin with competence

- and that an optional protocol should oblige States to establish, designate or maintain national anti-discrimination mechanisms that works in close cooperation with CERD to strengthen CERD's monitoring function

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Where an independent national human rights institution already exists in the State party, its mandate could be extended to comply with the requirements provided in the optional protocol to the Convention

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