

Main findings in the Concluding Observations of the Human Rights Committee on National Human Rights Institutions

Between the 107th session of the Human Rights Committee, which took place in 2013, and the 116th session, which took place in 2016, the Committee examined 60 States party. In its discussion of National Human Rights Institutions in its Concluding Observations, the Committee put its finger on 3 main issues: the structure and the selection of the members of National Human Rights Institutions, the scope of their mandates, and their financial resources and autonomy. Indeed, these 3 issues are essential to ensuring the independency, transparency and efficiency of these National Human Rights Institutions in the implementation, at the national level, of human rights.

It can be observed that, for the 60 States parties examined, the Committee did not make any recommendation to 12 States parties¹ regarding their National Human Rights Institutions. Nevertheless, these States, excepting China (Hong Kong), all have the protection of a national human rights mechanism, either through National Commissions or Public Defenders.

Moreover, the Committee regrets that 2 States² have not provided any information regarding their national human rights institutions.

I. A real national human rights institution and the transparent selection of its members

The Committee recalls that the existence of real human rights institutions has not been achieved in every State. It deplores that, in 7 States³, there is not yet a consolidated national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles- Art 2). For each case, the Committee recommends that the State party establish an effective and independent human rights institution with broad competence in the field of human rights. Regarding China (Hong Kong), the Committee considers that “the proliferation of bodies focusing on the rights of specific groups may militate against greater effectiveness in fulfilling its obligations under the Covenant and against greater clarity in its overall policy on human rights”⁴.

¹ Greece, Canada, France, Russian Federation, Israel, Sri Lanka, Georgia, Sudan, USA, Bolivia, Mauritania and China

² Surinam and Haiti

³ San Marino, Slovenia, Cambodia, Malta, Japan, Czech Republic and China (Hong Kong)

⁴ CCPR/C/CHN-HKG/CO/3 (Session 107)

Indeed, merely establishing a human rights institution is not enough to fulfil the obligations of States party under the Covenant. The institution must also have a clear vision and be efficient. The efficiency of a national human rights institution depends, firstly, on the independence and impartiality of its members and the process of their selection and appointment.

The Committee also explores the way in which these members are chosen. Indeed, in order to ensure an independent and transparent institution, the process of selecting members is essential. For example, the Committee welcomes the fact that Benin adopted a National Human Rights Commission in December 2012 but notes that, since the adoption, no members have been appointed⁵. If members have been selected, then the Committee observes whether this selection process is transparent and independent. Thus, the Committee mentions 7 States⁶ in which the process of selecting members is not transparent. Members must not be appointed by "a majority of the representatives of the governing party and in the absence of representatives of opposition parties because this type of procedure does not contribute to the Commission's effective independence"⁷. Members must be autonomous from the government in order to be able to denounce human rights violations. The Committee encourages States party to take measures to ensure that the procedure for the selection and appointment of institution members guarantees full transparency and independence.

Indeed, the aim of a National Human Rights Institution is to promote and protect human rights at the national level. They are very helpful in the examination of States party by the Human Rights Committee, particularly in terms of providing information regarding the implementation of human rights. They must be completely independent so that they are in no way discouraged from fully denouncing human rights violations.

II. An institution with a broad enough human rights mandate to be powerful

The mandate of the National Human Rights Institution is very important as it reflects the level of respect of Human Rights by the State and also, represents the place of the promotion and protection of human rights at the national level. A country which is not engaged in the protection of human rights, or in which human rights are regularly violated, is more likely to reduce the mandate of their National Human Rights Institutions. Without a broad human rights mandate, the institution cannot be efficient and useful.

Despite of the importance of this mandate, the Committee considers that at least 25 States⁸ party should take steps to improve the mandates of their National Human Rights Institutions. The Committee notes various problems,

⁵ CCPR/C/BEN/CO/2 (Session 115)

⁶ Costa Rica, Namibia, Rwanda, Austria, Republic of Korea, Burundi and Indonesia

⁷ CCPR/C/BDI/CO/2 (Session 112- Burundi)

⁸ New-Zealand, Rwanda, South Africa, Sweden, Iraq, Surinam, Spain, Uzbekistan, Venezuela, Côte d'Ivoire, Monaco, Montenegro, Chile, Ireland, Malawi, Chad, Kyrgyzstan, Nepal, Djibouti, Uruguay, Albania, Tajikistan, Angola, Paraguay and Peru

from one country to the next, including the lack of power and functional capacity of the National Institution to deal with complaints and investigations promptly and effectively, hold authorities accountable, and facilitate the access of victims of human rights violations to effective remedies. For example, in Iraq, the High Commission for Human Rights faces difficulties in terms of effectively discharging certain mandated activities, such as visiting and inspecting places of deprivation of liberty⁹. In Angola, the Office does not have an appropriate mandate to address human right issues¹⁰. Often, the problem stems from the fact that the States party are slow in honouring their commitment. For example, in Paraguay, the Committee notes that “the plan adopted does not fully reflect the agreements and consensus reached following the participatory drafting process, which involved State institutions and civil society”¹¹. Finally, sometimes, the Committee regrets that the National Human Rights Plan (which constitutes the mandate of the institution) was still under review, or that the State party has delayed its adoption.

This lack of an effective mandate impacts on the action and the influence of National Human Rights Institutions. Thus, the Committee criticises 6 States¹² party on the basis that their authorities do not adequately take into account the recommendations made by their National Human Rights Institutions. For example, the Committee is concerned about “the limited follow-up to and implementation of the Ombudsman’s recommendations”¹³ in the former Yugoslav Republic of Macedonia. Similarly, the Committee regrets the lack of information provide by Haiti “on measures taken to implement the recommendations made by that Office following complaints or visits to detention centers”¹⁴.

III. An institution with sufficient financial resources and enjoys its own budget

Very often, the Committee recommends the States party to ensure sufficient financial and human resources for their National Human Rights Institutions. Indeed, in order to implement concrete actions in favour of the promotion and protection of human rights, the National Human Rights Institution needs money. Without financial resources, an institution cannot work efficiently.

In light of this, the Committee reproaches 31 States¹⁵ for the lack or the limitation of financial resources provided to NHRIs. For example, the Committee encourages the Côte d'Ivoire to guarantee the independence of the National Human Rights Commission and “endow it with sufficient

⁹ CCPR/C/IRQ/CO/5 (Session 115)

¹⁰ CCPR/C/AGO/CO/1 (Session 107)

¹¹ CCPR/C/PRY/CO/3 (Session 107)

¹² The Former Yugoslav Republic of Macedonia, Croatia, Cyprus, Haiti, Malawi, Sierra Leone

¹³ CCPR/C/MKD/CO/3 (Session 114)

¹⁴ CCPR/C/HTI/CO/1 (Session 112)

¹⁵ Costa Africa, Namibia, South Africa, Sweden, Benin, Iraq, The Former Yugoslav Republic of Macedonia, UK, Côte d'Ivoire, Cyprus, Croatia, Burundi, Haiti, Montenegro, Chile, Ireland, Japan, Malawi, Chad, Kyrgyzstan, Latvia, Sierra Leone, Djibouti, Mozambique, Uruguay, Albania, Indonesia, Tajikistan, Ukraine, Paraguay and Peru

resources and financial autonomy so that it may fulfil its mandate effectively in accordance with the Paris Principle”¹⁶. Regarding Chile, the Committee observes that the Institute does not have sufficient resources to carry out its mandate fully and “that its activities do not cover the entire country”¹⁷.

Thus, adequate financial resources permit these National Institutions to implement actions, whilst financial autonomy ensures their independence. If the budget depends on the government, the proper functioning of the National Human Rights Institution will be influenced by it, which consequently calls into question all its activities because it cannot act freely or in opposition, if necessary, to the government. The budget of the National Human Rights Institution must be voted upon, in advance, by the parliament, and must also be autonomous of the political majority.

If the Committee regrets the reduction of the budget for National Institutions, it also encourages States party to provide adequate financial resources and congratulates efforts made by States in this sense. Hence, the Committee often starts its recommendations by congratulating the State, for example by welcoming “the work undertaken by the Human Right Ombudsman of the Republic of Slovenia to protect the rights enshrined in the Covenant... ¹⁸ ” or “the expansion of the mandate of the Austrian Ombudsman Board... ¹⁹ “. It notes the “State’s party efforts to allocate adequate funding to Office of the Ombudsman²⁰” even if often, these resources remain insufficient.

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¹⁶ CCPR/C/CIV/CO/1 (Session 113)

¹⁷ CCPR/C/CHL/CO/6 (Session 111)

¹⁸ CCPR/C/SVN/CO/3 (Session 116)

¹⁹ CCPR/C/AUT/CO/5 (Session 115)

²⁰ CCPR/C/CRI/CO/6 (Session 116)