Participation of NGOs and NHRIs
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Non-governmental organisations (NGOs)

How did NGOs participate in the work of the Commission?

NGOs have been active participants in all aspects of the work of the Commission on Human Rights (the Commission). The Commission’s practices evolved over time to allow NGOs greater rights of participation than at any other United Nations (UN) body. While some States have tried to restrict NGO participation or attack it on various grounds, most States and the Commission as a body have acknowledged the role that NGOs have played in furthering the work of the Commission.

NGOs accredited by the Economic and Social Council (ECOSOC) could attend all public sessions of the Commission, make oral statements under different agenda Items, and submit written statements, which were circulated to members of the Commission and made available to all participants along with other UN documents. A practice also evolved at the Commission enabled NGOs to attend and participate in negotiations on resolutions, unless the negotiations were specifically designated as being open only to co-sponsors of the resolution or some other restricted group. NGOs could organise

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1 See the UN Secretary-General’s Report, *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, (21 March 2005), p. 45, in which he states “The Commission’s close engagement with hundreds of civil society organizations provides an opportunity for working with civil society that does not exist elsewhere”.


3 See also abstracts from pledges made by various States that stood for elections for membership of the Council on the subject of NGO participation at the Council, available at: www.wilpf.int.ch/human-rights/2006/ngoparticipation.htm.

‘parallel events’ to discuss human rights issues and situations. These parallel events served as forums to present and discuss information, highlight key concerns, and network with other organisations. NGOs also had a great amount of informal interaction with government delegations whom they could approach in the main plenary room or meet outside the plenary.

NGO participation at the Commission has been essential to its work. NGOs were able to use their expertise on thematic areas and countries to further the work of the Commission. They also communicated the voices of victims and their experiences. NGO interventions have highlighted violations of human rights and issues of implementation; their lobbying and advocacy work has resulted in important resolutions, studies, and the creation of various special procedure mandates. NGOs could also participate in working groups created by the Commission to develop international human rights standards or discuss particular thematic issues. NGOs have played a prominent role in the development of international human rights standards by highlighting the need for such standards, providing input into the content, and lobbying States to support these standards. All NGOs, not just those with ECOSOC accreditation, can submit information to the special procedures of the Commission. Diverse NGOs across the world have provided evidence of human rights violations to special procedures and supported their work on country and thematic issues.

How are NGOs accredited by ECOSOC?

Article 71 of the Charter of the United Nations sets out the legal basis for the participation of NGOs at the United Nations and empowers ECOSOC to “make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”. ECOSOC has elaborated on the principles to be applied to these ‘consultative arrangements’ and the rights of participation of NGOs that are granted consultative status in Resolution 1996/31.

Resolution 1996/31 creates three categories for NGOs with different rights of participation for each category. These categories are based on the type of NGO, its membership, and the extent to which their activities are related to the work of ECOSOC (referred to as ‘the Council’ in the text of the Resolution):

1) General consultative status – NGOs that are “concerned with most of the activities of the Council and its subsidiary bodies ... and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries

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5 Events such as seminars, talks, panel discussions, and briefings were organised by NGOs and occasionally States during the breaks between the morning and afternoon plenary sessions and as they were held in parallel to the official meetings, were described as parallel events.
in different regions of the world” 6 are eligible for ‘general consultative status’ with ECOSOC. There were 136 NGOs with general consultative status in 2005 7.

2) Special consultative status – NGOs that “have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status” 8 are eligible for ‘special consultative status’ with ECOSOC. There were 1,639 NGOs with special consultative status in 2005.

3) NGOs on the Roster – NGOs that do not fit the requirements for general or special consultative status but which ECOSOC or the UN Secretary-General 9 considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies can be included in a list, known as ‘the Roster’. They are known as ‘NGOs on the Roster’. NGOs in this category generally have a very specialised or technical focus in their work and include NGOs that have a formal status with UN specialised agencies, such as the World Health Organization (WHO). There were 944 NGOs on the Roster in 2005.

NGOs with general or special consultative status can designate authorised representatives to attend public meetings of ECOSOC and its subsidiary bodies, while those on the Roster can designate representatives to attend meetings related to their area of work 10. NGOs with general or special consultative status can make oral statements at meetings 11 and NGOs in all three categories can submit written statements 12. In practice at the Commission though, little distinction has been made between NGOs in the three categories in terms of speaking rights 13. NGOs in general consultative status can also propose Items for the drafting of provisional agendas of ECOSOC and its subsidiaries 14 though this provision has been rarely used 15.

The Resolution also sets out additional criteria for eligibility 16. NGOs wishing to be accredited in any of the three categories have to submit applications to the ECOSOC Committee on NGOs 17. The Committee, made up of 19 State representatives 18, reviews applications annually and forwards

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6 Para 22.
8 Para 23.
9 Para 24.
10 Paras 29 and 35.
11 Paras 32 and 38.
12 Paras 30 and 37. Subsidiary bodies of ECOSOC have to invite NGOs on the Roster to submit written statements.
13 P. Prove, Re-commissioning the Commission on Human Rights, (n. 4 above), p. 11.
14 Paras 28 and 34, ECOSOC Resolution 1996/31.
15 See the chapter on agenda and rules of procedure for further details.
16 Paras 8-13.
17 Paras 60–63.
18 The current membership includes representatives from Cameroon, Chile, China, Colombia, Côte d’Ivoire, Cuba, France, Germany, India, Iran, Pakistan, Peru, - footnote carries over to the next page -
a list of NGOs recommended for accreditation for final approval to ECOSOC. The consultative status of NGOs can be withdrawn or suspended if the organisation abuses its status, receives funds from criminal activities, or does not make any positive or effective contribution to the work of the UN within any three-year period. NGOs also have to submit ‘quadrennial reports’, a brief report submitted every four years, on their activities and contribution to the work of the UN. The accreditation process has been criticised because of the ability of governments to block and grant applications for political reasons, and because it is costly and resource intensive.

What rules will govern the participation of NGOs at the Council?

The General Assembly Resolution that created the Human Rights Council (the Council), provides that “the participation of and consultation with observers ... including 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”. NGOs under this provision are therefore entitled to the same rights of participation that they had at the Commission and these practices and arrangements are transferred to the Council. However, the key issues in this regard are what aspects of NGO participation qualify as ‘arrangements’ and ‘practices observed by the Commission’ and how these will be determined? Some of the rules and arrangements regarding NGO participation are clearly recorded in ECOSOC Resolution 1996/31 and in the decisions taken by the Commission concerning its working methods, e.g. rights to make oral and written statements. Others such as NGO attendance and participation at negotiations on resolutions are ‘practices’ that were recognised by government delegates and were widely observed though not formally recorded in a decision or document.

As the rights of participation of NGOs described above are all either based on formal ‘arrangements’ or ‘practices’ that have been recognised by government delegates and observed for some time, they should all be transferred to the Council. It is essential that any future attempts to codify these
practices or rights of participation comprehensively reflect all the arrangements and practices that were observed by the Commission in relation to NGOs and not be restricted to those that were formally recorded in Commission decisions or documents. The president of the Council and the Bureau will also have to ensure that NGOs can participate at the Council, from its first session onwards, at least at the same level that they did at the Commission and in any activities that may be undertaken between sessions, such as review of rules, through working groups, etc.

What are some of the key issues and avenues for NGO participation?

Review of rules of procedure and mechanisms

The Council can review and revise the rules for the participation of NGOs just as it can change other rules of procedure. It will not be possible for the Council to do this before the first session but it could do so in the future. Rules for NGO participation may be reviewed along with other rules of procedure and working methods of the Council, possibly through the creation of an open-ended working group to review these rules or some form of consultation organised by the Chairperson. Any modifications that are made to rules for NGO participation should ‘ensure the most effective contribution’ of NGOs as stipulated by the General Assembly Resolution. The rules should also enhance the participation of NGOs and build on the practices of the Commission as a minimum baseline in an innovative manner, rather than reducing or limiting the participation of NGOs in any way. NGOs should also have the opportunity to participate in any review of rules or practices, propose ways in which their participation could be made more effective, and comment on any proposed modifications.

The Council will also undertake a review of the special procedures and other mechanisms of the Commission, such as the Sub-Commission and the 1503 procedure in its first year of functioning. The outcomes of these processes will shape the work of the Council for many years and it will therefore be essential for NGOs, as key stakeholders in the work of the Council, to participate in these processes. The lack of information on the way the first session of the Council in June 2006 will be organised could already pose a problem for NGO participation and input as NGOs, especially those outside Geneva, may not be able to attend the session. The Council will therefore have to broadly publicise any decisions that it takes on the way that the review

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22 The chapter on agenda and rules of procedure discusses these issues in greater detail.

23 Discussed in greater detail in the chapters on special procedures, sub-commission, and complaint procedure.
processes will be carried out. The Council will also have to make provision for NGOs that are unable to attend meetings, in which the reviews are undertaken, to provide input into the processes.

Key questions include:
- What were the positive features of the Commission’s practices on NGO participation? How should these be strengthened by the Council?
- What were the limitations on NGO participation at the Commission? How can these be corrected by the Council?
- How can NGO participation be made more effective?
- If there is a review of the rules of procedure or working methods providing for NGO participation, what should be the process and criteria for the review? How should NGOs be involved in the process?
- How should any decisions taken on the review processes be publicised? What are some of the ways through which NGOs that are unable to attend the sessions can provide input on the review processes?

Statements or diverse platforms for engagement?

NGOs could submit information to the Commission by making short oral statements or submitting written statements. While the Commission’s agenda was broad enough to allow NGOs to raise a wide variety of issues, the large volume of NGO statements compressed into a short time meant that there was no guarantee that the statements were adequately listened to, discussed, or acted upon. The formal way in which the Commission’s sessions were organised, with a succession of individual statements and limited replies from States, also left little time or opportunity for a genuine discussion between States and NGOs or between special procedures, States, and NGOs. Though some NGO representatives consider the three-minute statements to be of limited value and stress the need to develop more innovative and meaningful forms of intervention and interaction, others have stated that even these limited statements provide them with a useful platform to communicate information about violations in their countries in an international public forum.

NGOs themselves and the Council will have to reflect on the different

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24 NGOs were allowed to make six statements totally of three minutes each but could get additional time if they were making statements jointly with other NGOs. See www.ohchr.org/english/bodies/chr/docs/61chr/speakingtime61.doc.
25 NGOs made 476 individual statements and 61 joint statements over a six-week period at the 61st session of the Commission. Statistics relating to the 61st session of the Commission on Human Rights, E/CN.4/2006/8, p. 5.
26 There were a total of 1,427 statements made at the 61st session of the Commission, totalling 83 hours 45 minutes of speaking time. Ibid.
ways in which NGOs and the Council can interact and the goals of each type of interaction. The notion, inherited from the Commission, that statements are the primary vehicle for NGO participation needs to be re-examined. It will also be a challenge for the Council to achieve a balance between creating space for more substantive and meaningful interaction and serving as a platform for diverse NGOs to raise issues of concern, which may cover a variety of subjects. The Council may need to work out a range of types of interaction and forms of intervention that NGOs could make, rather than a standardised formula for all situations, and organise its sessions in a way that allows for different kinds of NGO input. For instance, NGOs could explore whether they can organise a pre-sessional forum with roundtables and opportunities for statements on a wide variety of issues that they want the Council to take up on its agenda. This could be complemented by opportunities for more targeted, substantive contributions such as NGOs could suggest questions for the interactive dialogue with special procedures, or give input into policy discussions or debates on action on a particular situation. NGOs were able to attend and participate in negotiations on resolutions at the Commission. It is essential that this be maintained for the Council and extended to other decision-making processes that may be adopted.

NGOs will have to reflect on ways in which their engagement with the Council can be more strategic. They may also have to identify aspects of NGO culture and interaction with the Commission that they wish to change if they hope to change the institutional culture of the new Council and the behaviour of States. For instance, NGOs cannot effectively ask for doing away with the regional group structure if they continue to reinforce it by interacting with regional groups rather than individual States for their advocacy activities.

Key issues include:

- What are the different ways in which NGOs could interact with the Council?
- How can NGO engagement with the Council be more strategic?
- What aspects of NGO engagement and culture also need to change if NGOs hope to change the way the Council and States function?
- Should the Council develop a range of interventions that NGOs could make in addition to oral statements? If so, what kinds of intervention should NGOs be able to make?
- How could the Council strike a balance between creating space for more substantive and meaningful interaction and serving as a platform for a large number of interventions on diverse issues?
- How could NGOs participate in policy discussions?
- Should NGOs be able to participate in the interactive dialogue with special procedures? What should be the format of such a dialogue and how should the NGOs that can ask questions be selected?

27 See chapter on special procedures for more information on the interactive dialogue as it currently exists.
- Should there be a pre- or post-sessional forum where NGO can raise a wide variety of issues that they want the Council to address/include on its agenda?
- Should there be greater voluntary coordination between NGOs on statements and other interventions? How should this kind of coordination take place?
- How can the written statements submitted by NGOs be put to better use? For instance, should there be compilations prepared of the key points made in submissions categorised by countries or thematic issues, and should they be circulated sufficiently in advance of the preparation of the agenda/any discussions?
- How could NGOs be involved in decision-making processes?

New avenues of participation

The new Universal Periodic Review\textsuperscript{28} process (UPR) could potentially serve as a very important mechanism for NGOs to submit information on countries, communicate voices of victims, highlight violations, and ask for concrete action and follow-up on recommendations of special procedures, treaty bodies, prior Commission resolutions, and the recommendations of the UPR itself. NGOs will therefore have to lobby the Council to create an effective UPR mechanism and also to ensure that NGOs are able to participate effectively in the process of the UPR itself.

The Council will hold a minimum of three sessions of at least ten weeks in total, spread across the year\textsuperscript{29}. The longer meeting time and the more frequent meetings could create greater opportunities for monitoring country situations at regular intervals throughout a year and follow up on the Council's recommendations on thematic issues and country situations. NGOs could therefore lobby for the creation of better mechanisms for follow-up, possibly through the creation of a separate agenda Item on follow-up which the Council discusses in every session\textsuperscript{30}, or by ensuring that a particular issue or situation is also scheduled to be taken up at a subsequent session. They could also contribute information on the level of implementation of recommendations and the evolution of a human rights situation on a more regular basis to the Council. The increased number of sessions could however have financial and resource implications for smaller NGOs, discussed under the section on broadening participation below.

\textsuperscript{28} See the chapter on universal periodic review for further details and information on this proposed mechanism.

\textsuperscript{29} The Commission held a single session of six weeks every year.

\textsuperscript{30} See chapter on agenda and rules of procedure for more discussion on ways in which the agenda could be organised.
Key question include:

- What role should NGOs play in the UPR? How should they be involved in the development of modalities?
- How could the NGOs use the increased number of sessions to ensure better follow-up and monitoring of country situations and implementation of recommendations?
- Are there other new avenues of participation for NGOs?

Broadening participation

It was difficult for many NGOs from developing countries or even for smaller NGOs from developed countries to participate in the Commission's sessions because of the complicated process of accreditation, costs of travel and stay in Geneva, the complicated and opaque working methods of the Commission and difficulty of judging how the Commission could be useful to their work. International NGOs have traditionally been in a much better position to participate in and use the different opportunities presented by the Commission because of their knowledge and familiarity with the system but also because many of them have an office in Geneva. The increased number of sessions of the Council, while creating new avenues for follow-up, may also put a greater strain on the financial and human resources of NGOs outside Geneva who wish to participate in the work of the Council.

The establishment of the new Council should be used to broaden participation of NGOs, especially NGOs that in the past had difficulties accessing the system. Important issues that will have to be addressed to accomplish this would be, among others: an agenda and program of work which enables NGOs to plan their participation effectively; the creation of a fund or other initiatives to help smaller NGOs participate in the Council's work; more transparent working methods that allow NGOs to better use the system; and training on using the Council. The Council could also explore the use of technological innovations that would enable more NGOs to follow the Council's proceedings or contribute to its work, such as web casting its sessions; doing radio broadcasts; allowing NGOs to participate in discussions through regional or national tele-conferences; and allowing NGOs to submit video or audio testimonies, etc.

31 For instance, ISHR analysed NGO organisation of parallel events as one important facet of their participation at the 61st session of the Commission. ISHR's analysis indicated that only a small selection of NGOs (37%, 91 out of the 261 NGOs accredited at the Commission) hosted parallel events. Eight out of the ten NGOs that organised the most events had Geneva offices. All the NGOs that organised parallel events also shared a number of common characteristics which included membership of Geneva-based NGO networks; regular liaison with OHCHR and the secretariat of the Commission; an international focus to their work; and familiarity with the UN system and the operation of the Commission. See ISHR, ISHR's Analysis of Parallel Events at the 61st Commission on Human Rights, available at: www.ishr.ch/hrm/chr62/NGO/CHR61Analysis.pdf.
Key questions include:

- How can the participation of NGOs from developing countries or smaller NGOs from developed countries be increased?
- What concrete measures could the Council adopt to facilitate the participation of a wider group of NGOs and to make this participation more effective?
- What technological innovations could the Council use to make its work more accessible and to facilitate participation of NGOs?

Accreditation

As the General Assembly Resolution specifically refers to ECOSOC Resolution 1996/31, accreditation arrangements under this procedure will be applicable to the Council, unless and until it decides to set up another accreditation system or modify the current system. As the Council is a subsidiary body of the General Assembly, there is also speculation as to whether the accreditation system needs to shift to a General Assembly-based rather than ECOSOC system. While NGOs enjoy informal access to the General Assembly, it does not have a formal system of inviting NGOs to participate in its work or an equivalent accreditation system. Though there have been calls for setting up a formal, more inclusive system of participation and accreditation for NGOs, at the moment there is no equivalent General Assembly system that the Council could shift to. **A central issue that needs greater consideration is whether ECOSOC accreditation should be required for all levels of participation of NGOs at the new Council? Should all or some NGOs, which fulfil some basic criteria, be able to participate at least in some aspects of the Council’s work?**

For instance, should accreditation be required for submitting information to the Council generally or for the Universal Periodic Review, and could additional NGOs be accredited on a meeting-by-meeting basis if they have particular competence or interest in the issue under discussion?  

Any attempts to change the system of accreditation would have to maintain the access of NGOs that are already accredited, should they wish to continue to participate in its proceedings. There is a good case to be made for a simpler and less politicised system of accreditation of NGOs that addresses the weaknesses in the current ECOSOC system but should be located within the context of developing a better accreditation system for the UN as a whole and not just the Council. Some suggestions in this regard include setting up an ‘ECOSOC+ system’ that uses the current accreditation system as a base and incorporates gradual improvements, replacing government representatives with independent experts, or NGO representation in the ECOSOC NGO committee, and greater involvement of NGOs in the accreditation process. The Permanent Forum on Indigenous Issues and the Ad Hoc Committee on the Disability Convention are examples of this kind of accreditation and also of other innovative structures and practices for NGO participation.
Council may also need to address the issue of the accreditation and participation of government-operated NGOs (GONGOs), which has been an issue of concern in the Commission’s functioning. GONGOs take up the space and time reserved for NGOs, can try to intimidate national NGOs to control the content of their statements and participation, and often behave in an inappropriate manner which leads to calls to restrict the participation of all NGOs.

Key questions include:

- Should ECOSOC accreditation be required for NGOs to be able to participate in the Council's work? If so, should accreditation be required for all levels of participation and activities or only for some?
- How, if at all, should the current system of ECOSOC accreditation be modified?
- How can the system of accreditation be depoliticised, based on objective criteria and made more accessible?
- How can there be greater NGO involvement in this process?
- How can GONGOs be filtered out through the accreditation system? What other measures could be taken to prevent GONGOs from taking up the space and time reserved for NGOs?

National Human Rights Institutions (NHRIs)

How did NHRIs participate in the Commission?

The legal status of NHRIs in their relations with UN human rights bodies has been less clearly defined than NGOs but NHRIs have gained increasing

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33 A national human rights institution (NHRI) can be defined as “a body which is established by a Government under the constitution, by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights”, see National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, (United Nations, Professional Training Series No. 4, 1995), p. 6. The term can be used to refer to a broad category of institutions. For a description of the essential elements of an NHRI and classification of different types of institutions, see B. Lindsnaes and L. Lindholt, ‘National Human Rights Institutions – Standard Setting and Achievements’, in B. Lindsnaes, L. Lindholt and K. Yigen (eds.), National Human Rights Institutions: Articles and Working Papers, (Danish Centre for Human Rights, 2001), pp. 1–48.

34 The basis of participation of NGOs has been laid down in the UN Charter itself in Article 71 giving a strong legal foundation to their relations with the UN. This has also been elaborated in ECOSOC Resolution 1996/31 and in the Rules of Procedure of the functional commissions of ECOSOC. In contrast, the relations of NHRIs with various UN bodies are not contained - footnote carries over to the next page -
rights of participation at various international bodies, including the Commission over the last 13 years, NHRIs were allowed to make oral statements at the Commission from 1998 but these statements were restricted to one agenda Item the effective functioning of human rights mechanisms. In 2005, the Commission granted rights to NHRIs to make oral statements under all agenda Items. The modalities for this arrangement were to be finalised by the Chairperson in the 62nd session of the Commission. As the session was reduced to a short three-hour meeting, the Chairperson did not work out these details and NHRIs did not get an opportunity to speak at the session. NHRIs were also able to submit documents to the Commission that were circulated under their own document series numbers. NHRIs have close interaction with special procedures and many NHRIs provide information and other support to special procedures during their country missions. NHRIs also have a key role in disseminating and following up on the findings and recommendations of special procedures.

What rules will govern the participation of NHRIs at the Council?

The General Assembly Resolution that created the Council provides for the participation of NHRIs in a similar fashion to NGOs and other observers; “the participation of and consultation with observers ... including national human rights institutions, ... shall be based on arrangements, ... and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities” 39. The rights of NHRIs to attend the proceedings are clear, however a key issue in this regard will be how to implement the decision of the Commission in Resolution 2005/74 permitting

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36 Agenda Item 18 (b). There were 53 statements made by NHRIs at the 61st session of the Commission in 2005, highlighting a range of concerns.
37 Documents submitted by NHRIs were circulated in the format E/CN.4/(Year)/NI/(Document Number).
38 Commission on Human Rights Resolution 2005/74.
39 Para 11, General Assembly Resolution 60/251.
40 Resolution 2005/74 in para 11 requested “the Chairperson of the sixty-first session, in consultation with all relevant stakeholders, to finalize, by the sixty-second session, the modalities for: (a) Permitting national institutions that are accredited by the Accreditation Subcommittee of the International Coordinating Committee of National Institutions under the auspices of the Office of the High Commissioner, and coordinating committees - footnote carries over to the next page -
**NHRIs to make oral statements under all agenda Items.** As the modalities for this arrangement were not finalised by the Chairperson in the 62nd session of the Commission, the president (chairperson) of the Council will have to finalise these details and ensure that NHRIs are able to participate fully in the work of the Council, from its first session onwards.

What are some of the key issues and avenues for NHRI participation?

Role of NHRIs and kinds of contribution they could make

NHRIs have often been treated as NGOs or as part of governments whereas in reality they are neither and have a unique status as independent expert organisations that are focused on national implementation of human rights. There needs to be greater reflection on the role that NHRIs could play within the Council and the contributions that they could make given their unique status and expertise. It has been highlighted that NHRIs could play an indispensable role in relation to documenting national human rights situations; providing expertise on national protection systems, including key national institutions; advocating and advising the State on the scope and implementation of its human rights obligations; and assisting in follow-up to recommendations of UN bodies

NHRIs could provide information to the Council on the human rights situation in a country examined under the Universal Periodic Review, and in other instances where a particular country situation is considered or discussed. They could also play an important role in following up on the

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41 NHRIs are created by the State and often have an official mandate to investigate the government’s actions related to human rights unlike NGOs, which are set up and operate separately from the State. However NHRIs are not a part of the government and are expected to be independent in their functioning. See M. Qafisheh, Defining the Role of National Human Rights Institutions with Regard to the United Nations, (n. 34 above), p. 21.


43 The discussion paper has also suggested that NHRIs should be allowed to speak in the envisaged interactive dialogue with the concerned country and if country missions are to be undertaken in relation to the UPR, NHRIs should be included in the agenda and submit information on the human rights obligations. Ibid., p. 3.
recommendations/decisions of the Council both in terms of promoting this information nationally and in terms of monitoring and reporting back on implementation and follow-up. This would be similar to the activities that they are already carrying out with UN treaty bodies. In addition, NHRIs could make contributions to discussions on thematic issues. Some other suggestions made in a discussion paper on NHRIs in the UN reform process at the last International Coordinating Committee of National Institutions (ICC) meeting include the establishment of a mechanism enabling NHRIs to raise issues of special concern with the Council, and greater interaction with special procedures on issues of concern and in relation to individual countries.

A particular advantage associated with NHRI submissions is that “with the special status of national institutions, their positions are more difficult to sideline than those of NGOs”. NHRIs could also however, in some circumstances, come under attack from the State on the positions that they adopt or information that they submit. The nature of their relationship with the State may make them vulnerable to political regime changes, changes in legislation or appointment processes, or threats of a financial or physical nature. It may be important therefore to reflect on possible constraints on NHRI participation in certain circumstances and how these could be overcome. This is discussed under the section on accreditation below.

There is also a number of overlapping issues that would affect both NGOs and NHRIs. These include NHRI participation in any review of the rules of procedure or working methods, especially those that would affect their participation, and review of special procedures and other mechanisms of the Commission.

Key questions include:

- What could be the role of NHRIs within the work of the Council?
- What are some of the main areas in which NHRIs could contribute to the work of the Council?
- What role should NHRIs play in the UPR process or in other proceedings where countries are reviewed or considered?
- How should NHRIs be involved in policy or thematic discussions?
- What role should NHRIs play in the follow-up of the Council’s resolutions or recommendations?

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45 The International Coordinating Committee of National Institutions, (ICC) is a voluntary association of NHRIs, which assesses the conformity of each NHRI with the *Paris Principles*, encourages NHRIs to comply with the Principles and also serves as a forum for joint activities. The ICC has been endorsed since 1994 by the Commission and has also been recognised by ECOSOC and the General Assembly as the coordinating body for NHRIs. The ICC conducts annual meetings parallel to the Commission’s session in March-April with the support of OHCHR.
• Should there be a mechanism set up for NHRI s to raise issues of special concern with the Council?

Accreditation and overcoming possible constraints on NHRI participation

The process of accreditation of NHRI s has evolved over the years. A limited number of NHRI s initially participated in the Commission’s sessions as part of government delegations; NHRI s then moved on to participating in their own right from a special section of the floor 48, and finally to a requirement of accreditation by the ICC to be able to speak under all agenda Items 49. The ICC has an accreditation sub-committee that accredits NHRI s 50 based on whether they comply with the Paris Principles 51. The Paris Principles set out minimum criteria for the composition, working methods, funding, and other functions of NHRI s to ensure their independent and autonomous functioning. Where the circumstances of any NHRI change in a manner that may affect its compliance with the Paris Principles 52, the NHRI is expected to inform the Chairperson of the ICC of those changes, and its accreditation will subsequently be reviewed by the Accreditation Sub-Committee. The Chairperson or the Accreditation Sub-Committee can also independently initiate a review of the NHRI’s accreditation if it appears to them that such a change in circumstances has occurred 53. There are currently 51 NHRI s accredited by the ICC.

49 Para 11, Commission on Human Rights Resolution 2005/74.
50 Four classifications of accreditation are used by the Sub-Committee: a) compliance with the Paris Principles; b) accreditation with reserve – granted where preliminary analysis indicates compliance with the Principles but insufficient documentation is submitted to confer status; c) observer status – not fully in compliance with the Paris Principles or insufficient information provided to make a determination; and d) non-compliant with the Paris Principles. Accreditation with reservation has also been used where there has been a minor area of non-compliance that the institution undertakes to correct within a short time. The reservation then is withdrawn when the deficiency is corrected.
52 Changes which could affect an NHRI’s compliance with the Paris Principles include: fundamental limitations to the working climate of the NHRI because of national repressive regimes or coups; adoption of new legal framework, amendment of existing legal framework or legal challenges to elements of the legal framework; discrepancies between the legal framework and actual implementation, including in relation to appointment procedures of NHRI members; and repeated or gross biased statements by NHRI s in favour of particular interests or against specific groups. See ‘Draft Proposal for ICC Re-accreditation Procedures for NHRI s’, (17th Session of the International Coordinating Committee of NHRI s, 12 – 13 April 2006), available at: www.nhri.net/pdf/Agenda_item_9f_Accreditation.pdf.
The Commission asked the Secretary-General to report on the accreditation process used by the ICC and to ensure that the process is strengthened by an appropriate periodic review. The ICC has therefore developed possible criteria for reviewing and re-accrediting all previously accredited NHRIs and for a regular period accreditation review process. The Council may have to decide whether it will continue to rely on the accreditation system of the ICC for the participation of NHRIs, develop another system of accreditation, or do away with the requirement of accreditation. It may be better for the Council to rely on the ICC system and strengthen it as needed, because the Commission has supported the work of the ICC in assessing NHRIs’ conformity with the Paris Principles for many years and it would be set back if the accreditation system was shifted to another body. Some form of accreditation may also be necessary to ensure that only independent and legitimate NHRIs are able to contribute information to the Council because of the credibility that may be accorded to this information. Whatever decision is taken in this regard, the Council will have to ensure that NHRI accreditation is linked to conformity with the Paris Principles and that the process is independent, objective, and transparent. NHRIs should also be able to participate in any review of the accreditation system.

NHRIs, through the ICC or individually, may also wish to give input to the Council on working methods that could safeguard the participation of NHRIs that may come under threat for submitting information to the Council. Some suggestions could be for more vulnerable NHRIs to submit information through the ICC or on a confidential basis and for the Special Representative on Human Rights Defenders and the Council to be informed of any threats or reprisals against an NHRI or its members.

Key questions include:
- Should accreditation be required for NHRIs to be able to participate in the Council’s work?
- Should the current system of ICC accreditation be retained? How, if at all, should it be modified?
- Should the procedures for review of NHRIs be strengthened? How?
- Should NGOs be able to submit information to the ICC about any particular NHRI’s non-compliance with the Paris Principles?
- Should the Council develop working methods or safeguards that would enable more vulnerable NHRIs to submit information to the Council and to deal with any threats or reprisals against NHRIs?

54 Para 22, Commission on Human Rights Resolution 2005/74.
56 The Special Representative on Human Rights Defenders is a special procedure mandate holder who monitors the situation of human rights defenders, all over the world. The Special Representative has taken up cases of threats or attacks against NHRIs as part of her mandate, e.g. her urgent appeal on Sri Lanka, E/CN.4/2006/95/Add.1, (22 March 2006), p. 207.