

First Meeting of National Focal Points
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Fulfilling the Responsibility to Protect: Strengthening National and Collective Capacities to Prevent and Halt Mass Atrocities

The Role of National Human Rights Institutions

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Thank you for the invitation to speak today, I am going to address the topic of National Human Rights Institutions or NHRIs and their relevance to engaging with the potential role of national “focal points” for R2P implementation.

NHRIs can be broadly defined as “independent statutory bodies established by government and specifically designed in terms of the promotion and protection of human rights.”

The documented experience of NHRIs offers insight into the opportunities and challenges that confront local state and non-state actors who seek to advance an R2P agenda and, most pressing, respond to the precursors of mass atrocity-producing situations.

This presentation begins by setting out how NHRIs are already – in some cases – playing a role at the national level that is compatible with R2P objectives. Emphasis is placed, in particular, on their prevention and response activities when faced with possible R2P crimes.

It then briefly touches on key scope conditions of independence and authority that may be useful in thinking about how to institutionalize effective national focal points, particularly in regards to their potential as hubs for intergovernmental coordination.

Finally, existing NHRI structures at the international level may offer a venue for facilitating collective mobilization on behalf of R2P’s international obligations under Pillar 2.

NHRIs as national focal points under R2P

As investigative bodies with quasi-judicial powers, NHRIs are well-placed to ensure better understanding of local context, to provide warning and response to situations of mass atrocity crimes, as well as facilitating implementation of R2P obligations.

A recent Secretary General’s report on R2P states “information itself is rarely the missing ingredient” regarding the impending occurrence of R2P crimes. However, this is not always the case. Indeed, often the perpetrators of such heinous crimes have a strong interest in hiding the truth and may engage in impeding investigations and manipulating relevant data.

National focal points can provide the international community with a valuable new resource at the national level to address such information deficits that may arise – not only in terms of collecting raw data, but also in its verification, analysis and translation into actionable policy options at the local and international level

Effective NHRIs are already relied upon by stakeholders as a source of systematic data on gross human rights violations, especially where official data is unforthcoming or lacks verifiable sources.

It is clear that given the narrow but deep focus of R2P obligations, the degree to which NHRIs are engaged in advancing an ad hoc R2P mandate is highly context specific. National institutions have – to varying degrees – been engaged in notable R2P crises in Georgia, Kenya, Nigeria, and Sri Lanka.

Further detailed study on the impact of these individual NHRIs is necessary. However, anecdotal evidence suggests that NHRI personnel – often isolated within state structures – face severe challenges in effectively responding to mass atrocities once conflict has commenced.

However, it is also useful to pose the counterfactual question: has NHRI preventive action assisted in averting full-scale R2P crises? Though difficult to gauge with any certainty, the experience of NHRIs in places such as Afghanistan, Colombia, India, and South Africa all provide insights into this question as well as the multiplicity of roles that national focal points can perform under Pillar 1 of R2P.

Pillar 1: Protection responsibilities of the State

With regard to Pillar 1 activities, NHRIs are tasked with the promotion of human rights through education and training initiatives for state functionaries and social actors. In turn, NHRIs often have a mandate to advise on draft legislation, identify deficiencies in existing law, and even draft legal projects in accordance with international human rights standards.

Educational programs can have highly significant consequences. For instance, senior functionaries at the South African Human Rights Commission suggest that the shocking xenophobic attacks of 2008 would have been far worse if local community leaders had not acted decisively to stop the violence. They attribute this self-constraint, at least in part, to community educational programs undertaken by the NHRI on xenophobia and human rights since 1999.

Of particular relevance to Pillar 1 activities is the development of Early Warning Systems by NHRIs designed to monitor and assess latent and active conflicts. The most sophisticated system can be found in Colombia where the NHRI's conflict risk reports are submitted directly to the Inter-Institutional Early Warning Committee chaired by the Vice-President of the Republic. Such systems offer a key resource in constructing a national R2P plan and demonstrate how national focal points can input into effective crisis management regimes.

Notwithstanding this potential, the frequent occurrence of violence despite accurate forewarning by the Colombian NHRI indicates the broader challenge of generating institutional action to prevent violations in conflict situations.

One question that arises is what are the optimal design features of national focal points? NHRIs generally do not possess legal enforcement powers. Although, they do enjoy certain legal prerogatives before the courts. However, powers of access without prior authorisation and jurisdiction over detention facilities are arguably essential to performing an R2P function.

NHRI technical teams with forensic and medical expertise can be rapidly deployed to scenes of mass violations to conduct crime scene investigations, collect witness testimony, forensic analysis and ascertain the actions of the parties involved.

Often staffed by lawyers, NHRIs are also well placed to monitor situations, document evidence of crimes and apportion legal responsibility to state and non-state actors for human rights violations.

Indeed, NHRIs have been forceful proponents of state responsibility, often in the face of official resistance. In the midst of ongoing violence in Gujarat in 2002, the Indian NHRI applied the legal principle of *res ipsa loquitur* (“the thing speaks for itself”) to hold that there was a comprehensive failure of the State to protect the Constitutional rights of the people of Gujarat.

Similarly, in Afghanistan, the NHRI has repeatedly called upon all parties to the armed conflict to comply with their legal responsibilities to protect civilians in light of deaths caused by assassination and targeted killing policies.

Scope conditions of independence and authority

If you will allow me a very brief excursus on the independence and authority of national institutions, it is necessary to accurately assess the performance of individual NHRIs. While some have proven themselves to be highly effective rights advocates, others have had more ambiguous effects – sometimes even actively undermining domestic rights frameworks.

The question that may arise for national focal points is: “what are the formal lines of accountability?” If they are accountable to the governing regime what are the implications for their independent action and credibility among non-government stakeholders?

Institutional safeguards of independence and authority are important, as reflected in current accreditation procedures by the International Coordinating Committee of NHRIs. However, it may be effective leadership is the decisive factor in determining whether a national focal point can act as a hub for intergovernmental coordination as well as state-society dialogue.

Many NHRI leaders across cases, such as Ramiro de Leon Carpio in Guatemala and Maina Kai of Kenya have mobilized high public credibility in order to decisively intervene and defuse escalating conflict scenarios, sometimes at considerable personal risk.

Without expanding further on this point here, the question of how to institutionalise “good leadership” in national focal points – either through formal or political mechanisms – merits careful consideration.

Of course, in some situations, coordination may simply not be possible. Under conflict conditions, the ability of national focal points to draw upon domestic and international sources of support may be crucial in this regard.

Pillar 2: International assistance and capacity building

So, finally, moving on to Pillar 2, NHRI activities at the international and regional level may also offer lessons for a future national focal point network.

Independently accredited by the UN-Affiliated International Coordinating Committee of NHRIs, NHRIs granted “A status” accreditation have formal standing before the Human Rights Council in Geneva and are able to make submissions under the Universal Periodic Review procedure.

One of the 21st Century’s first human rights treaties – the Optional Protocol to the Convention Against Torture – creates an unprecedented role for NHRIs in monitoring and implementing multilateral treaty obligations.

Many States have, subsequently, endorsed the activity of NHRIs in torture prevention by officially designating them as National Preventive Mechanisms under OPCAT.

In turn, NHRIs are increasingly relied upon by Treaty Bodies as independent sources of information with NHRIs expressly encouraged to submit their assessments independent of government, often in the form of “shadow reports.”

These developments of recent years provide insights for how an eventual R2P national focal point network might plug into international structures or build upon existing NHRI networks.

In terms of R2P and national focal points, such networks could be engaged with in order to provide the international community with urgent information from an impressive – but currently scattered and uncoordinated – array of national early warning efforts by NHRIs

NHRIs also have formal legal standing before the African and Inter-American Human Rights Commissions. Information could be relayed in a similar fashion through such regional networks

The promise of national focal points is that they can provide the UN system with a sufficiently neutral institutional space at the national level through which to direct assistance to states under stress (and with their consent).

Such a resource is a potentially crucial component of any R2P response regime under Pillar 2 – serving as a mechanism to pre-empt R2P crises before they occur and avoid the need for the international community to consider more radical solutions.