

OSCE ODIHR feedback¹ to the

Preliminary draft text of the revised Recommendation No. R(97)14 on the establishment of independent national institutions for the promotion and protection of human rights

National human rights institutions have become a very important part of the OSCE comprehensive security framework and exist in the majority of the participating states. We welcome the initiative of the Council of Europe to further clarify the states' obligations with respect to establishing and supporting independent and strong NHRIs in line with the Paris Principles. We appreciate the opportunity to comment on the Recommendations and to participate in the meeting to discuss the draft.

1. We strongly support the key points made by ENNHRI in its submission on this draft Recommendation, in particular, to include:

- key NHRIs characteristics (such as free access to documents and persons, autonomy from the government, etc.) and the need for consultations with NHRIs on the matters of direct relevance to NHRIs;
- recommendation on some specific actions that the governments should undertake to cooperate with NHRIs and make use of their expertise, such as making sure their legislation and practice is in line with international human rights standards.

2. ODIHR would like to suggest the following elements to be considered by the drafting group.

Operative part (1)

- sentence “consider the establishment of an independent national human rights institution in accordance with the Paris Principles and, when established, ensure an enabling legal framework and a conducive [political and]...”

Suggestion is to place the enabling legal framework earlier, as it is an important precondition for establishing an independent NHRIs (so that there is a firm basis in law before it is established, to ensure its independent and effective functioning after) and empowering it with a broad mandate to promote and protect human rights.

Appendix

Section I

- (Paragraph 1) states that “These institutions should be directly and easily accessible to everyone...”

(here or in the next Section) It is important to stress the powers and mandate of NHRIs: NHRIs should have such unimpeded unannounced and free access to persons, documents and places in their jurisdiction, as well as the ability to authorise the full investigation into all alleged human rights violations, including the military, police and security officers;

¹ Feedback provided by Pavel Chacuk, acting deputy Head of the Human rights department of ODIHR.

Suggest to include here or in para 2 “providing with as broad a mandate as possible” (A2 Paris principles);

- (para. 2) Add reference to the functional immunity of leadership and staff.

Section II.

- (Para 3) to add in para on promotion of human rights:
...advocacy work on the national and international levels, including through engagement with international and regional human rights mechanisms.

Here also, since many times the document mentions independence. Important to add what independence means in reality, which can also be connected to accountability to the public, for example:

Independence means that NHRIs can take a critical stance vis-à-vis the government on issues related to human rights and rule of law, based on international standards. Such independent position is a reflection of their accountability to the public.

- (Para 4) it may not be very clear in this context what ‘pluralist’ means. Perhaps adding a reference to broader representation (gender, ethnicity, minority status), especially for the regional offices. This will increase the public confidence in an NHRI.

Consider adding here also on the staff: NHRIs should have the authority to determine its staffing profile, recruit own staff, as well as sufficient resources as to permit the employment and retention of staff needed to fulfill the NHRI’s mandate.

- (Para 5) add in the end of 1st sentence “and freely determine its priorities and activities”;
- (Para 5) suggesting to add that member states should: Strengthen NHRIs capacity to monitor, report and react effectively to human rights situation, and ensure that NHRIs have access to all information needed as well as resources to do that.
- (Para 6) “Policy makers” often sound very general. Better to be more concrete, e.g. legislators, governmental officials on various levels...
- Para 7 speaks about implementing recommendations which we know is not always realistic. Good if governments at least *listen* to NHRIs and respond at all. This recommendation obliges them to engage. You could say about the obligation to react and respond to communication from NHRIs.

To consider here: Member States should engage with NHRIs in constructive dialogue on the promotion and protection human rights on a national level, and appreciate the role of NHRIs in bringing international human rights standards home.

Section III

- (Para 9) It is important to add here that the authorities should know about and respect at all times the independent mandate of NHRIs.
A separate point could be included on public authorities that need to be made aware (through training etc.) about the independent mandate of NHRIs; cooperate with and support them and not interfere with their mandate.
- (Paragraph 10 or additional para) NHRIs are human rights defenders. Member states should establish and strengthen the human rights defenders protection mechanism (framework).
- (Paragraph 10 or additional para) Consider adding (apart from prevention and protection of NHRIs that governments are expected to do anyway) In cases of threats or attacks on NHRIs, government should express solidarity with and support NHRIs.

Section IV

- Suggest to add a paragraph on resources as well. Member states should assign appropriate resources to promote effective cooperation and partnership.
- Based on ODIHR experience, we try to give NHRIs an opportunity for a more visible independent voice, for example by providing them a separate fora for addressing concerns at our events). Suggest to consider adding: Better access to international mechanisms, for example through independent participation status, and simplified registration process.