

## MASIO 2009 Human Rights

### Human Rights

#### Monitoring human rights compliance – Part II

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### Overview

- Basic principles
  - Domestic implementation
  - International implementation
  - International criminal courts
- The role of UN institutions in implementing human rights
- Relationship between different means of implementation

### Mechanisms in international law

- General international law
  - Customary international law
  - State responsibility
  - Diplomatic protection
- International human rights law

### General international mechanisms

- Right of diplomatic protection (eg Avena and Other Mexican Nationals - Mexico v. United States of America, ICJ Reports 2004, 12 ff., para. 29 ff.).
- Human rights obligations as obligations erga omnes (Barcelona Traction, ICJ Reports 1970, 4 ff, para. 33.)
- Bilateral actions
  - Diplomatic measures, incl. human rights dialogue
  - Technical assistance
  - Unfriendly acts: retorsions
  - Sanctions

### Mechanisms in international human rights law

- Institutions
  - International Courts
    - ICJ
    - International Criminal Courts
    - Regional Human Rights Courts
  - Monitoring Bodies
  - Intergovernmental Bodies
- Procedures
  - Treaty-based
  - Charter-based
  - Criminal procedures
  - Specific procedures for enforcing international humanitarian law

### Focus on HRC: Implementation and the Human Rights Committee

- Based on CCPR
  - State reports
  - Interstate complaint procedures
- Based on Optional Protocol 1
  - Individual communications
  - Only against states that have ratified OP 1

### State reports before the HRC (1/3)

- Legal basis
  - Art. 40 ICCPR: All states that have ratified the ICCPR are required to periodically report on the implementation of the ICCPR
  - Currently, reports are due every 5 years
- Drafting of the reports
  - HRC Guidelines
  - Coordination between different domestic institutions
  - Participation of NGOs
- Submission of the report to HRC
  - Publication and translation into UN languages
  - Comments and/or “shadow reports” by NGOs

### State reports before the HRC (2/3)

- Examination of the report
  - Report is assigned to group of 4-6 HRC members: Country Report Task Force (CRTF), one member acts as rapporteur
  - List of issues is sent to the state party at least one session ahead
    - Most crucial issues
    - State usually provides written answers
  - Session of the HRC
    - Private meeting with state representatives
    - Informal meetings with NGOs
    - Public session: constructive dialogue
      - Presentation by state party's delegation
      - Questions by HRC members

### State reports before the HRC (3/3)

- Concluding observations
  - Draft written by the rapporteur and CRTF, discussed in HRC
  - Structure of final version
    - Introduction
    - Positive factors
    - Principal subjects of concern
    - Recommendations, incl. priority issues
  - Follow-up
    - Information on priority issues to be supplied within 1 year
    - Assessment by Special Rapporteur on Follow-up to Concluding Observations
    - Report to the UN General Assembly if state does not respond

## Individual communications before Human Rights Committee (1/2)

- Procedure
  - Submission of communication to HRC
  - Notification of state
  - State can comment within 6 months
    - Admissibility
    - Merits
  - Author of communication can reply within 2 months
  - HRC proceeds
    - One member of HRC prepares draft decision
    - Discussion within HRC and decision
    - Or “Split” procedure on request of the state concerned

## Individual communications before Human Rights Committee (2/2)

- Decisions by the HRC
  - Communications have no suspensive effect
    - Interim measures are possible in cases of serious and irreparable harm
    - Interim measures are binding
  - Decision on the merits
    - Violation of the ICCPR?
    - If a violation is found decision on remedy
    - Publication of decisions in the HRC's annual report to UNGA
    - Decisions are legally non-binding, but principle of good faith applies