

International Human Rights Monitoring in the International Refugees Protection toward the 1951 Convention about the Refugees Status

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ABSTRACT: This study aims to analyze international human rights monitoring that can be used toward refugee protection monitoring. Several international human rights instruments regulate the protection of stateless people and refugees. In the international human rights instrument, it is known that there are several mechanisms in the form of complaints or other mechanisms for arbitrary acts by countries participating in the convention for individuals who experience persecution. For example, the Convention Against Torture (CAT) recognizes an individual complaint mechanism against individuals who have experienced persecution, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which requires regular reporting to convention-party countries as well as other mechanisms recommended by the ICERD Committee, the International Covenant on Rights-Civil and Political Rights (ICCPR) also recognizes the individual complaint mechanism, then the Convention on the Rights of the Child (CRC) which regulates child protection that also collaborates with UNHCR in dealing with international refugee protection, as well as the UPR mechanism which is the newest mechanism that allows discussion regarding refugee protection. This research is analytical with a statue and conceptual approach and uses primary as well as secondary legal sources. The results shows that International Human Rights Monitoring, especially the monitoring mechanism for individual complaints in CAT, is considered as an appropriate monitoring and it can be used for International Refugee Protection Monitoring, as there were absences of international refugees monitoring on the participating countries acts that have ratified the 1951 Convention regarding refugees status.

Keywords: Monitoring, Human rights, International refugees, 1951 Convention

1. INTRODUCTION

Refugees are categorized as foreigners who need special legal protection, due to a threat of prosecution experienced by their own country. Refugee convention provides a series of obligations for countries that are ratifying the convention to ensure that refugees get access to the minimum standard of living in the ratifying countries (Fitria, 2015). In practice there are still countries that

refuse asylum seekers or refugees to enter their territories, even returned the refugees by force. By perspective of international law, a country may refuse refugees to enter their territory, it can actually be understood from the perspective of state sovereignty, that every country may refuse or accept foreigners entering its territory. This act is also a preventive form of national defense against foreign interference, in addition, the efforts are intended to protect and maintain the country's economic and political stability. But on the other hand, there are principles of human rights law that must be respected, such as the principle of the state's obligation to protect every person whose life is threatened and the right of everyone to receive humanitarian protection wherever they are (Rahayu, Kholis Roisah, 2020).

The emergence of human awareness of their rights as humans is one of the important factors behind the outgrowth of an idea known as Human Rights (Matompo, 2014). Universal human rights principles such as the principle of prohibiting discrimination, the principle of equality and the principle of state obligations to protect certain rights and the principle of non-refoulement are the principles which then become the basis to associate the concept of human rights and the concept of international refugee protection.

The efforts to protect human rights for certain groups who are in vulnerable situations (vulnerable group) often cause complex problems. The complexity is mainly related to the situation context, institutional framework as well as the legal frameworks that are relevant in the quest to protect those who are categorized as vulnerable groups (Riyanto, 2013). The existing concept of international human rights was adopted into the concept of international refugee protection. This law is enforced for the protection of refugees regardless of the citizenship, politics, and nation of the refugees which is used as a standard to ensure special treatment given to the refugees by the host country. Matters related to the refugees' human rights are very important for the implementation of the Refugee Convention by the countries participating in the Convention as an effort to find sustainable solutions for refugees (Yogyakarta, 2008).

According to The 1969 Vienna Conventions about Treaty Law, when a country or countries have ratified a particular treaty, then these countries must respectfully carrying it out as an important element for achieving the legal objectives of the instrument, as well as what must be implemented by countries participating in the 1951 Convention and / or the 1967 Protocol concerning the Refugee Status. The optimism for the implementation of the contractual scope of an instrument is used as a guide for participating countries in providing protection for refugees, so that international protection standards for refugees with respect to refugee's human rights can be fulfilled. However, in practice, the participating countries often do not fulfill the obligations contained in the instrument about refugees.

In addition, the 1951 Convention as well as the 1967 Protocol does not regulate monitoring of participating countries compliance in carrying out their obligations in the instrument. The 1951 Convention and / or the 1967 Protocol only regulates cooperation between refugee organizations (UNHCR) and participating countries regarding the implementation of the agreement. The 1951 Convention has much to do with the refugees' needs. Regulations about refugees need to include the rights and obligations, treatment for the refugees, as well as restrictions on both participating and

refugees' countries and as guidelines for participating countries in providing standards for specific treatment for refugees. However, the 1951 Convention does not regulate certain organized organizations that have the competence to carry out monitoring for non-compliance of participating countries regarding 1951 Convention.

RESEARCH METHODOLOGY

The type of research used in writing this law is normative legal research. The characteristic used in writing this law is prescriptive law science. The nature of this prescriptive is a substantial that cannot be studied in other disciplines whose objects are also law (Marzuki, 2013). The relevant approaches to legal writing that the writers examine are statutory and conceptual approaches. In this study, the writers used secondary data. Secondary data in normative writing is known as legal material (Marzuki, 2013). The primary legal materials used in writing this law are international conventions and international declarations about refugees, such as 1951 Convention and / or the 1967 Protocol about Refugees' Status. Secondary legal materials are used as support for the data used in this paper. Secondary legal materials that the author uses are text books and journals related to the legal issues studied by researchers. As this research is a normative legal research, thus the collection of legal sources is carried out by literature study. This legal research uses legal material analysis techniques with deductive syllogisms. Peter Mahmud, quoting Philipus M. Hadjon's opinion, explained that the deductive method originates from the submission of a major premise (general statements) and the minor premise is submitted to the major premises (specific statements). In A syllogistic logic, legal reasoning is the major premise of legal rules, while the minor premise is legal facts. From the two premises, a conclusion is drawn (Marzuki, 2013).

RESULT AND DISCUSSION

Several international human rights instruments regulate and discuss monitoring related to refugee issues. Although merely small portion of international human rights monitoring discuss, confirm, or simply provide explanation about international refugees monitoring, the international human rights monitoring mechanism can be used as a basis for the protection of refugees against countries participating in the convention.

Several international human rights instruments that discuss, confirm or provide explanation about refugee protection monitoring are as followed:

a. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) or known as the Convention against Torture, is an international legal instrument that aims to prevent torture to happen in the world. This Convention obliges the

participating countries to take effective steps to prevent torture occurred in their territory and prohibits forced return or extradition of a person to another State when the refugee is at risk of torture.

This convention was adopted by UN General Assembly through 39/46 Resolution on 10th of December, 1984 and came into force on 26th of June 1987. The term torture as agreed in the international community is stated in Article 1 as followed:

'The term "torture" means any act which is done deliberately, causing great pain or suffer, both physical and spiritual, to a person in order to obtain confession or information from that person or a third person, by posing punishment for an act that has been committed, or suspected of having been committed by the person or a third person, or threatening or coercing the person or a third person, or for any reason based on any form of discrimination, if the pain or suffering was caused by, at the instigation of, with the consent, or acknowledged by public official. It does not exclude pain or suffering that simply arisen from, attached to, or is caused by an applicable legal sanction'

Definition of torture in the Convention is in line with the definition of a refugee in the 1951 Convention concerning about Refugees, namely a person who has anxiety over persecution of race, religion, nationality, or membership in a certain social or political opinion, that is outside of his / her nationality, and with such anxiety does not get favorable protection from their own country.

In Article 3 of the Convention against Torture, It states that:

1. No State Party may evict, return (re-fouler) or extradite a person to another country if there is sufficient reason to suspect that a person is in danger of being the subject of torture.
2. To determine whether there are such reasons, the competent authorities should consider all relevant matters, including the possibilities of a permanent pattern of major, flagrant, or mass violations of human rights in the country.

The article is in line with refugees right of not being forcibly returned (non-refoulment) to their country. The principle of non-refoulment is regulated in Article 33 paragraph (1) of the 1951 Convention, which states that:

1. No State Party shall expel or return ("refouler") refugees in any way to the borders of territories where their life or freedom would be threatened because of their race, religion, nationality, membership of a particular social group or political opinion.

There is also an exception to the Principle of Non - Refoulement in the Convention in Article 33 paragraph (2) which explains that:

2. However, the advantage of this provision must not be claimed by a refugee where there are logical reasons to consider it as a danger to the state security where the refugee is located or, because he/she has been convicted by a final judgment for a very serious crime endangering people of that country.

Refugees who have committed a crime or a very serious criminal act which deeply disturbs the receiving country are considered as endangering society so that with the state authority, the refugees can be returned to their country of origin. The principle of non-refoulement in refugees' rights can be said to be a basic right of human rights that cannot be reduced under any circumstances (non-derogable rights), therefore, reservations on this principle are reaffirmed in Article 42 of the 1951 Convention, which states that:

1. Upon an accession, each State may make a reservation regarding Article IV of this Protocol and regarding the implementation in accordance with Article I of this Protocol of a provision of the Convention other than those listed in Articles 1, 2, 3, 4, 16 (1) and 33 of the Convention, in the case of a State Party to the Convention reservations made under this Article shall not include refugees who are included in the Convention.

The acts of violations committed by convention participants are known to be individual complaint mechanisms in accordance with Articles 3 and 22 CAT. Provisions regarding individual complaint procedures are also contained in this mechanism. This provision is used as an important consideration to be considered in individual complaint requests.

In the General Comment of the Committee Against Torture No.1 in 1997 regarding the Implementation of Article 3 and Article 22, it is stated that, "it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication under Article 22 by fulfilling each of the requirements of rule 107 (admissibility procedures)". The General Comment stipulates that it is an obligation for the authorities to determine the Prima Facie according to their capacity to assess applicants in accordance with Article 22 CAT, and the fulfillment of other conditions in accordance with Committee Provisions No. 107 (application procedure acceptability). The Committee Stipulation Number 107 briefly states that: (Gorlick, 2000)

- a) An individual complaint is not an anonymous complaint, but rather comes from an individual subject to the jurisdiction of a participating country, which the committee knows of its competence under Article 22 of the Convention;
- b) Individual complaints made by victims of violence from participating countries are a focus of attention for the committee;
- c) Complaint must be made by the victim or by someone else on behalf of the victim when the victim is unable to do so;
- d) The application of complaint is not misused, it based on Article 22;
- e) Complaints cannot be against provisions contained in the Convention;

- f) The same issue is not examined under different procedure except other investigation or resolution;
- g) The victims have tried the provided local relief efforts.

In addition, the General Comments set out the considerations used in the assessment of individual complaints in accordance with Article 3 CAT. For example, the applicant's responsibility requiring the applicant enable to prove the true basis of the applicant's position requires a response from the participating country. Another example is the risk of violence experienced by applicant(s) which requires the applicants to explain that they are victims who have experienced violence which endangers their lives.

CAT recognizes the similarity between individual assessment whom affected by the consequences of "mistreatment" and "persecution". In addition, the facts which the Committee seeks in its consideration of Article 22 regarding individual complaints are similar to individuals seeking applications of refugee status. Moreover, a refugee can only implement this mechanism if the country that is going to deport the refugee has recognized the committee's authority in this mechanism. However, this mechanism still performs its function well in upholding international human rights. Based on this description, the individual complaint mechanism in CAT can be used to monitor the compliance of participating countries with the implementation of the 1951 Convention.

b. *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*

International Human Rights Monitoring through ICERD discusses refugee issues carried out by the Committee on the Elimination of Racial Discrimination (CERD) which is an independent expert body that monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its States Parties.

All States Parties are obliged to submit regular reports to the Committee on how these rights are being implemented. States must report initially one year after acceding the Convention and then every two years. The Committee examines each report and communicates its concerns and recommendations to the State Party in the form of "concluding observations"

Apart from reporting procedures, the Convention establishes three other mechanisms in which the Committee performs its monitoring function: early warning procedures, examination of interstate complaints and examination of individual complaints. The Committee emphasized in its resolution that refugees' rights must be fulfilled by the state in carrying out its obligations towards the implementation of the convention.

The resolution adopted by the Committee is the result of decisions on issues that have been approved by consensus or by voting, according to the rules and procedures established by the international organization or regarded council. Resolution as used by the United Nations has a broad meaning, which includes decisions. Resolutions are categorized as having binding legal force, unless the resolution is explicitly categorized as a recommendation (Marko Divac Oberg,

2006: 879). So in this case, the resolution of the Committee on the refugee issue is binding on the participating countries therefore the countries are obliged to implement.

Regarding to the individual complaint mechanism, Article 14 paragraph (1) states that States parties of the Convention can at any time state that they recognize the Committee's authority to receive and discuss individual complaints. Individual complaints are handled by the Committee on the Elimination of Racial Discrimination without assistance from any commission. Arbitration efforts are not included in this procedure because the Committee must carry out an investigation regarding certainty of violations of the Convention that has been violated or not. The Committee must involve the accused state, and gather the necessary information under Article 14 paragraph (6). The Committee must also assess the basis for rejection as contained in Article 17 paragraph (7) letter (a). The Committee shall forward its suggestions and recommendations, if any to the State Party concerned and to the individual submitting the petition and shall include a summary of cases in the annual report to the General Assembly in accordance with Article 15 paragraph (7) and Article 14 paragraph (8).

Thus, it can be concluded that the resolutions issued by the Committee have a binding character and provide good benefits for the development of international law. Therefore, General Resolution No. 22 about refugees is a resolution that must be obeyed. In addition, the individual complaint mechanism is a mechanism that can be used in case of acts of violation of the Convention by States parties to the Convention.

c. International Covenant on Civil and Political Rights (ICCPR) and Optional Protocol to the International Covenant on Civil and Political Rights (OP-CCPR)

The ICCPR recognizes the complaint mechanism for acts of violations by participating countries through reports to the Human Rights Committee (HRC), inter-state complaints, and individual complaints. However, in this discussion, the individual complaint mechanism is a mechanism being focused in this discussion. Based on Article 40 paragraph (1) of the ICCPR, States parties to the Convention have the obligation to submit reports on the actions that have been taken to enforce the rights contained in the Covenant. Then the committee reviews the report and submits it in Concluding Observations.

The individual complaint mechanisms contained in the Optional Protocol I of the ICCPR which have a higher appeal for compliance actions by participating countries than the individual complaint procedures under article 22 CAT and Article 14 CERD.

The main advantage of the individual complaint procedure under the ICCPR is the possibility to demand temporary measures that can be taken in case of expulsion (deportation). In the committee's view, the move is a binding step even if the state party rejects this interpretation. However, in this regard, the information requested by the participating countries conducted by the Committee is often not responded to by the participating countries. Meanwhile, there were not many complaints made by refugees or asylum seekers as well as conveyed information to staff or even as direct information ahead to the Committee.

The implementation of refugee protection by the Human Rights Committee is based on the ICCPR and its Optional Protocol can be taken into consideration for the monitoring of participating countries on refugee protection, because:

1. Countries that have ratified the ICCPR but are not parties of the 1967 Protocol, in this case the main protection issues such as non-refoulement can be effectively addressed through the ICCPR;
2. Several important issues concerning asylum seekers and refugees that are not covered by the legal instruments for refugees will be addressed through this Covenant. For example, the right to leave one's country, to question the conditions of asylum seekers' detention and the right to return;
3. In some cases, the 1951 Convention does not regulate protection otherwise the ICCPR does. For example, the 1951 Convention provides equal treatment for foreigners with native citizens. The ICCPR basically provides equal treatment for all individuals. Another example of this case is Article 33 of the 1951 Convention which allows for refoulement if needed for national security. Whereas in Article 7 ICCPR on the other hand provides absolute protection against refoulement;
4. The development of human rights interpretations may affect the interpretation of refugee legal provisions, such as the relation to human rights violations and persecutions.

The international practice of action taken by the committee in handling cases of refugees and asylum seekers is a case in Australia, when the committee focuses on detained asylum seekers (*A v. Australia*, Communication No. 560/1993). In its decision, the committee noted that a review of Article 9 paragraph (4) of the Covenant regarding the assessment in detention of an individual requesting asylum protection is unacceptable. A review of the authority over the detention of refugees can provide a legal guarantee for the detainee, based on compliance with the Convention.

Some of the examples above illustrate that refugees and asylum seekers can take advantage of the protection contained in the ICCPR in a variety of different circumstances, for example seeking a country for refugees or seeking protection against refoulement.

d. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol to the CEDAW (OP-CEDAW)

The Committee on the Elimination of Discrimination against Women (CEDAW), further referred as the committee, is a monitoring body that oversees the implementation of CEDAW by participating countries. The Committee views that international human rights law is a binding law on participating countries to respect all women under its jurisdiction, including displaced and non-citizenship people (Edwards, 2009).

The individual complaint mechanism is known in this Convention. However, this mechanism is considered weak because the Committee only meets for 2 (two) weeks annually and there are no arrangements for complaints and individual investigations. Therefore, to strengthen the individual complaint mechanism, the General Assembly adopted the Optional Protocol to the

CEDAW (OP-CEDAW), hereinafter referred as the Optional Protocol on communication and individual complaints. The Protocol was adopted on 6th of October 1999 and posed on 22nd of December 2000. In accordance with articles 1 and 2, assign that the states parties of Optional Protocol, recognize and authorize committees to handle individual complaints. The committee examines the basis of refusal if any. However, the committee must also notify the reported countries to provide more information to the Committee which will then be discussed at the closing meeting, in accordance with Article 7. Then, the committee's recommendations are shared to the parties. The committee's views are not legally binding, but states should recognize and report on how the recommendations are complemented (Edwards, 2009)(Yogyakarta, 2008).

UNHCR is a body whose position is to supervise the implementation of the States Parties toward the 1951 Convention and / or the 1967 Protocol. UNHCR main mandate is to offer international protection for refugees and seek permanent solutions with non-political and humanitarian elements, in accordance with Article 8 of the UNHCR Statute. Thus, UNHCR has the responsibility to oversee the implementation of the provisions of the 1951 Convention and 1967 Protocol.

Dissimilar of CEDAW, a formal structure for how monitoring bodies perform their work does not exist within UNHCR. Article 35 of the 1951 Convention assign the states parties to provide information to UNHCR about refugees' condition, convention implementation, laws proposals, provisions, and decisions relating to refugees. In other words, there is no requirement for periodic reports commensurate with the treaty monitoring body, under the mandate of UNHCR, although States parties have been asked from time to time to inform UNHCR of issues as referred to in Article 35, which is described in the form of information structured and summarized in annual book reports (Kalin, 2007).

The collaboration between UNHCR and the committee in monitoring the implementation of human rights law is carried out with respect for displaced persons and stateless women. For example, in 2008, UNHCR stated that UNHCR respected 70 participating countries under consideration of reports directed to them. In the same line, the committee explicitly stated that 7 (seven) of the 16 reports were issues about asylum, asylum seekers, repatriation and resettlement (UN Sub-Commission on Human Rights, 2000: 2). The countries under examination are the host of refugees, while the issues related to displacement are IDPs, or refoulement and other human rights protections.

In the same line with the committee, UNHCR also provides statements on the interpretation of issues by specific authorities and supervises the implementation of agreements. Statements and policy guidelines are regularly made under international human rights law and have been recognized by various national courts as an important and employable resource (Kalin, 2007).

In CEDAW's individual complaints procedure, cases related to refugee issues can be described with female asylum seekers whose applications of refugee status were denied. Protection for asylum seekers is based on the refusal to recognize fear of gender-related forms of persecution, because gender issues are not recognized in domestic procedures or other judgments whereby the female asylum seekers can be given shelter without recognizing that gender factors.

Although the committee has carried out periodic investigations, this mechanism represents monitoring of human rights for displaced persons and stateless women whom a subject to systematic violence (Stavropoulou, 1998)..

The similarity of protection framework offered by CEDAW with other human rights instruments is on the effort to strengthen human rights, especially for displaced people and women without citizenship or known as people who have returned to their home countries and those who are locally integrated or placed in third countries. Therefore, CEDAW defines all women regardless their nationality, state or immigrant status. It differs from the existing legal instruments, by accepting asylum and stateless people who meet certain legal criteria to get the benefit. Thus, some of the advantages of using CEDAW in monitoring the refugees' implementation can be drawn as follows:

1. Provide information about the procedure of individual complaint under the Optional Protocol concerning stakeholders to grant displaced and stateless persons, particularly women;
2. Hold discussions about the implementation of activities that conducted by UNHCR and carrying out the assessment function of the committee. Such as committee intervention related, therefore they will follow the structures contained in CEDAW;
3. Continuing the UNHCR practice of presenting reports to committees in closed meetings and investigating the possible of carrying out briefings among UNHCR, countries and the committee;
4. As an objective in combining and accelerating the steps taken by UNHCR and the committee to implement the principles of gender equality and non-discrimination in the context of woman movement and women without citizenship;
5. Monitoring the participating countries on the implementation of CEDAW, opening the possibility for participating countries to hold meetings with the committee to discuss related issues, especially on the existence of individual complaint reports that have been addressed to the committee.

The above examples illustrate that displaced and stateless women can take advantage of the protection contained in CEDAW in a variety of different circumstances.

e. The Convention and the Committee on the Rights of the Child (CRC)

In line with other conventions, the ratification toward CRC provides binding legal force for participating countries. As well as other international human rights law monitoring bodies, supervision in the CRC is a monitoring of conventions compliance. However, the CRC does not set provisions for making individual or international complaints.

The collaboration between the Committee on the Rights of the Child and UNHCR was carried out through meeting sessions starting in 1991. UNHCR provides information to the committee about issues related to child refugees and asylum seekers. In respect on the refugee children protection, several policies including the UNHCR Guidelines on Protection and Care of Refugee Children have been submitted to the CRC so that they can become the basis for UNHCR.

As an examination in participating country reports, the CRC also prepares conclusions in various examples to be referred for the issue of child refugee protection.

CRC beholds 3 (three) basic principles that are applied in carrying out its duties. The 3 principles are the principle of non-discrimination, good interest in children and participation in policies towards children regarding their welfare (Gorlick, 2000). In the context of refugees, non-discrimination implies that refugees and asylum seekers have access to effective procedures for determining refugee status and providing them with international protection. Article 3 of the CRC is a consideration of ensuring that children are fully protected in the country of asylum. The Convention also requires that children are allowed to convey their mind about decisions that affect their interests. Regarding their interests, Article 22 states that participating states ensure that refugee children, whether accompanied or unaccompanied, receive protection and humanitarian assistance. Article 22 also provides that States parties cooperate in any effort with the United Nations or other competent organizations or NGOs to protect refugee children.

Therefore, although the scope and arrangement of procedures in the CRC does not stipulate the existence of individual complaints, the CRC can provide protection to child refugees whom are in the territory of the convention parties.

f. Universal Periodic Review Mechanism (UPR)

Initiated from disappointment on the performance of the United Nations Human Rights Commission, heads of states from all over the world at the World Summit, September 2005 in New York, agreed to end the work of the UN Human Rights Commission and replace it with the UN Human Rights Council. The UPR is a new mechanism to review the human rights obligations and commitments of 192 UN member states. The UPR is an additional body of the General Assembly, which replaces the Human Rights Committee and is facilitated by the United Nations High Commissioner for Human Rights

(<http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>).

This mechanism regulates that all member states of the United Nations, especially countries that are members of the Human Rights Council, receive a review during their membership. In this regard, there is a possibility / suggestion that member countries of the Human Rights Council with a period of one year membership are prioritized to obtain the UPR implementation. There are 3 (three) UPR sessions will be held for 2 (two) weeks with an agenda of 16 countries conducting UPR. UPR has the following objectives (Harkrisnowo, 2012):

1. Improve the human rights situation on the field;
2. Fulfill the State's obligations & commitments to human rights;
3. Evaluate the progress and challenges of each country;
4. Increase the capacity of the State to protect human rights;
5. Share the best experiences among countries;
6. Increase cooperation in promoting & protecting human rights;

7. Encourage cooperation between the State and the Human Rights Council, its mechanisms (for example: Special Procedures and Complaints Procedure, etc.) and other UN agencies (for example: the OHCHR, the treaty bodies, etc.).

Human Rights Council meetings can be held more frequently in a year, with a longer period than the previous Human Rights Commission. This council will also have a simpler and more efficient mechanism to hold special meetings to respond to the human rights crisis in a region.

The Human Rights Council is also expected to maintain a complaint reporting mechanism from non-governmental organizations, either individuals or non-governmental organizations, which are known as Special Procedure 1503. Basically, the UPR process is aimed for:

1. A general description of condition and the interrelation of all human rights.
2. The UPR process contains principles as basic mechanism for collaborating and sharing reliable information through interactive transparent dialogue without political intentions and complementing the various other human rights mechanisms. So that this process shall favors various Treaty Bodies such as the Committee against Torture (CAT) to monitor the human rights situation.
3. In the review process, the improvements in the condition of human rights are expected. At the basic level, there are obligation fulfillment and state commitments through positive developments. Also providing experiences to be used as lessons to support the promotion process and increase the protection of human rights.

The UPR process in the Office of the High Commissioner for Human Rights (OHCHR) is carried out by a Working Group. The Working Group, which will hold the process together with staff from OHCHR, will be given opportunity for 3 hours to review each country report with an additional time of 1 hour for the results of the plenary session and 30 minutes to combine reports from each country in the Working Group. To carry out this process, the Working Group is selected from members of councils with different regional groups from the UPR reporting country; however, the UPR reporting country is given the opportunity to determine 1 reporter from the same region and also in certain circumstances may request a change of reporter. Each country is free to decide on the composition of its delegation including whether embracing experts or delegations from civil society.

This process ensures the involvement of all relevant parties, including various NGOs and other human rights institutions with reference to the General Assembly Resolution 60/251. These parties can also attend a review in the Working Group. As well as in Resolution A / HRC / RES / 5/1 it allows NGOs to make a General Response before the plenary session is held.

The implementation of the UPR by the Government regarding the efforts made in refugee issues is contained in the Report of the Working Group on the Universal Periodic Review, the Australian government acknowledges and approves Recommendations 124 and 125, which receive input that the Australian government does not repatriate refugees by force (non-refoulement) in accordance with the 1951 Convention or other relevant international human rights instruments. The sound of the recommendation is (A / HRC / 17/10): "The Australian Government does not accurately return persons where to do so would be in breach of non-refoulement

obligations under the Refugees Convention or relevant international human rights treaties". Examples of other countries that make decisions regarding refugee issues in the UPR, carried out by the government of Papua New Guinea (PNG). In Recommendation Number 79.14 relating to the 1951 Convention, the PNG government accepts the 1951 Convention reservation process and will further consider these considerations (A / HRC / 18/18 / Add.1). The acceptance, says, "This related to the Refugee Convention-we are in the process of withdrawing our reservations to the Refugee Convention and this related area will also be considered".

Regarding the recommendations, the following related government actions are: (Harkrisnowo, 2012)

The department's internal meetings to discuss the follow-ups that must be carried out in each region are as follows:

1. UPR socialization
2. Inventory of future activity plans
3. Preparation of follow-up plans
4. Regular coordination meetings to determine the extent to which follow-up has been carried out
5. Meetings with National Human Rights Commissions and NGO's.

Meanwhile, the roles that might be taken by NGOs are: (Siregar, 2008)

1. At the national level, support and participate public consultations or campaigns through mass media, before each country produces its national report.
2. Provide relevant information directly to the Office of the High Commissioner for Human Rights (OHCHR).
3. Submit a written statement to the Working Group and lobbying the member of the Working Group during the UPR process as well as observer countries to participate in raising relevant issues in the review; Troika Lobby (members of councils that are different from regional groups) to raise key issues in order to complete the report and the Lobby to the Working Group ensuring the report to actually contains the main issues raised during the review.
4. Organizing parallel meetings with Special Rapporteurs, various delegations, experts, academics, and other human rights institutions to get support from various parties.

Therefore, the UPR mechanism can also be used in monitoring refugee problems. Because the UPR mechanism produces quite broad recommendations regarding the human rights issues of the country being reviewed, including recommendations about refugee issues. Each country will receive a recommendation from the mechanism evaluation, but the country has the right to accept, reject, or postpone the recommendation. Therefore, it is not impossible that recommendations regarding refugee issues submitted to the reviewed country might be rejected or given other response supporting the country's interests. So in this case, the UPR mechanism is a new mechanism to improve the existing human rights mechanism. However, in regard to the refugee's problems, the UPR mechanism is considered ineffective in providing monitoring of the actions of participating countries.

This is due to the wide coverage of problems and sanctions that are not included in this mechanism, which causes the mechanism is merely used as an additional mechanism for monitoring refugee problems without reducing the function or benefits that can be provided.

The international human rights monitoring system is divided into two, namely the charter-based mechanism and the treaty-based mechanism. Treaty-based mechanisms are complaint mechanisms established under international human rights treaties or conventions. This agreement is valid and binding for countries that have signed or ratified the relevant agreement. Meanwhile, the charter-based mechanism is a human rights enforcement mechanism that is not established by the Human Rights Conventions but through the UN charter which can be carried out by other countries or other organizations even though they have not signed or ratified the related conventions for the sake of basic human rights consideration. Respecting the rights of refugees, one of which is not to forcibly return the refugees to their original country by countries who participate in the Convention; it can be done by means of a complaint mechanism regarding the agreement in which the participating countries are bound by international conventions to implement the objectives of the convention. In this case, the international human rights monitoring mechanism regarding the Convention against Torture, according to the authors, is a suitable mechanism to be applied in the protecting the refugees considering the affirmation of refugees' rights, that refugees should not being forced to return home (Non-Refoulment) are stated in the Convention.

Therefore, it can be concluded that the international human rights monitoring mechanism is a mechanism that has legal standards that can be used to improve refugee protection mechanisms. In addition to provide legal assistance in the form of complaints, protection insurance for refugees being in a better direction, it can be done through decisions and decisions made by committees, as well as information reports on refugees from related parties.

Therefore, positive developments in the protection of international human rights in relation to the existing mechanisms provide a strong legal basis for refugees' protection. Consequently, international human rights law standards and mechanisms can be used as tools to improve protection for refugees. In relation to the refugees' issues, the protection can be carried out by the practices of participating countries and the policies of each country. Individuals and organizations including UNHCR should utilize each of their mandate fulfillments to provide protection for refugees. The realization of effective action that can be carried out by giving contributions from international human rights monitoring mechanism which is a good step for the refugees' problems.

CLUSIONS AND SUGGESTIONS

International human rights monitoring mechanisms can be used to monitor the compliance of participating countries in carrying out their obligations to the Refugee Convention. The international human rights monitoring mechanism that can be used is the treaty-based mechanism, through several mechanisms that have been regulated in the International Human Rights Covenant. This mechanism

can be carried out effectively through individual complaints, decisions and reports on refugees' issues as regulated in CAT, CERD, CEDAW and / or OP-CEDAW, and CRC. Beside the conventions, monitoring can also be carried out through the UPR mechanism even though it is only a recommendation and willingness / commitment for the respected countries to implement the recommendation or not. The complaint mechanism in CAT is a mechanism that has a strong determination in protecting refugees with the existence of a reservation article toward the principle of non-refoulement in the Convention. Therefore, the individual complaint mechanism in the CAT mechanism can be used to strengthen refugees' protection.

However, it does not imply that all international human rights monitoring mechanisms, especially the complaint mechanism in CAT, can be used as an effective procedure. Frequently, most of these mechanisms have a universal mandate that promotes problems in coordination. In addition, state sovereignty is the basis of Public International Law which implies that the internal affairs of a country are the affairs of the state itself and not the affairs of other countries or other international communities. However, international agreements, especially on human rights are prioritized compared to state sovereignty. International acceptance of human rights needs also being applied to the protection of international refugees which are used as a basis for participating countries to prioritize refugees' rights without prejudicing the sovereignty of a country. Apart from the lack of a human rights mechanism or a country's sovereignty, legal representatives, refugees and UNHCR can use an international human rights monitoring system so that the protection of international refugees can be further investigated.

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