

**DEFINING THE ROLE OF
NATIONAL HUMAN RIGHTS INSTITUTIONS
WITH REGARD TO THE UNITED NATIONS**

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I. Introduction*

“Building strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement or enhancement of a national protection system in each country, reflecting international human rights norms, should therefore be a principal objective of the [United Nations] Organization.”¹ Hence, the United Nations (UN)² “will continue to strengthen established national human rights institutions and provide support to member States that are in the process of establishing such institutions”.³

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¹ UN Secretary General Report to the General Assembly, “Strengthening of the United Nations: An Agenda for Further Change”, 9 September 2002, UN Doc. A/57/387, (hereinafter: “the UN Reform Report”), para. 50.

² “United Nations”, for the purpose of this paper, means “The UN Human Rights System”. This includes the UN organs that are established according to the UN Charter, which I will call “Charter-Based Bodies”, and the UN committees that are established according to international human rights treaties, which I will call “Treaty-Based Bodies”. The subsidiary organs, special procedures, and the *ad hoc* mechanisms of these bodies are also included.

³ UN Secretary General Report to the Commission on Human Rights, “National Institutions for the Promotion and Protection of Human Rights”, 31 December 2002, UN Doc. E/CN.4/2003/110, para. 58.

International human rights legal obligations have been developed to be applied by the States to individuals under their sovereignty. Similarly, the UN mechanisms of human rights have been established to ensure the respect of human rights at the national level. However, these mechanisms are largely inaccessible to the vast majority of the world's individuals.⁴ In practice, the ability of the State to effectively discharge its international obligations to promote and protect human rights depends heavily on its domestic institutions. Respect of human rights might differ from one State to another, even if both are parties to the same international treaties, depending on the protection provided by the rule of law, credible Parliament, independent judiciary, effective law enforcement mechanisms, free and responsible press, and active civil society.⁵

⁴ Except the competence of the UN Human Rights Committee (HRC) to receive individual complaints on alleged human rights violations in accordance with the first Optional Protocol to the International Covenant on Civil and Political Rights. Also the UN Committee of the Elimination of Racial Discrimination can receive individual complaints, with certain conditions, according to Article 14 of the International Convention on the Elimination of all Forms of Racial Discrimination. Finally, according to Procedure 1503, the UN Sub-Commission on Human Rights receives information from individuals and groups on specific issues with respect to human rights violations that reveal a pattern of serious violations. Communications under the 1503 procedure should be sent to the Support Services Branch at the Office of the OHCHR in Geneva. See in general, e.g., Fraser P. Davidson, "Individual Human Rights Complaints Procedures Based on the United Nations Treaties and the Need for Reform", *International and Comparative Law Quarterly*, vol. 41, part 3, 1992, pp. 645-659; and P.R. Chandhi, *The Human Rights Committee and the Right of Individual Communication: Law and Practice*, Ashgate Publishing, Aldershot/Brookfield/Singapore/Sydney, 1998.

⁵ For the relations between human rights and democracy, see various studies in Kalliopi Koufa (ed.), *Human Rights and Democracy for the 21st Century*, Sakkoulas Publications, Thessaloniki, 2000.

National Human Rights Institutions (NHRIs), which are located between the sphere of civil society and the government, represent one of the domestic mechanisms that aim to protect individual rights and freedoms. Throughout its history, the UN bodies, including the General Assembly (UNGA), the Economic and Social Council (ECOSOC), the Commission on Human Rights (CHR), the human rights treaty- monitoring bodies, and the Office of the High Commissioner for Human Rights (OHCHR), have contributed to the development of NHRIs and have been working with NHRIs worldwide. Over the past decade, relations between the UN and the NHRIs have remarkably strengthened.

A NHRI can be defined as an independent organization that is established by the government,⁶ according to specific legislation on the organization, in order to promote and protect human rights at the national level.⁷ Many countries have set up NHRI(s), including, *inter alia*, Australia,⁸ Canada,⁹ Denmark,¹⁰

⁶ “Government” here is used in the broad sense of the term; namely the “State”.

⁷ For various definitions see, *inter alia*, Brain Burdekin and Anne Gallagher, “The United Nations and National Human Rights Institutions”, in Gudmundur Alfredsson, Johns Grimheden, Bertram G. Ramcharan, and Alfred de Zayas (eds.), *International Human Rights Monitoring Mechanisms*, Martinus Nijhoff, The Hague/Boston/London, 2001, p. 817; Commonwealth Secretariat, *National Human Rights Institutions: Best Practice*, London, 2001, pp. 2-3; and United Nations, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*, Professional Training Series No. 4, New York/Geneva, 1995 (hereinafter: “UN Handbook”), p. 6.

⁸ “Human Rights and Equal Opportunity Commission”, see <<http://www.hreoc.gov.au>>.

⁹ “Human Rights Commission”, see <<http://www.chrc-ccdp.ca>>.

¹⁰ “Institute for Human Rights”, see <<http://www.humanrights.dk>>.

France,¹¹ Ghana,¹² India,¹³ Indonesia,¹⁴ Ireland,¹⁵ Jordan,¹⁶ Mauritius,¹⁷ Nepal,¹⁸ Mexico,¹⁹ Morocco,²⁰ Nigeria,²¹ New Zealand,²² Norway,²³ Palestine,²⁴ South Africa,²⁵ Uganda,²⁶ and the Ukraine.²⁷ Some States have taken legislative or administrative steps to establish NHRI(s),²⁸ and others have specialized institutions like the Ombudsman offices, such as Bosnia and Herzegovina,²⁹ Slovenia,³⁰ and the United States.³¹

¹¹ “National Consultative Commission of Human Rights”, see <<http://www.commission-droits-homme.fr>>.

¹² “Commission on Human Rights and Administration of Justice”, see <<http://www.chrajghana.org/index.jsp>>.

¹³ “National Human Rights Commission”, see <<http://www.nhrc.nic.in>>.

¹⁴ “National Commission for Basic Rights”, see <<http://www.komnasham.go.id>>.

¹⁵ “Commission on Human Rights”, see <<http://www.ihrc.ie>>.

¹⁶ “The National Center for Human Rights”, see <<http://www.nchr.org.jo>>.

¹⁷ “National Human Rights Commission”, see <<http://nhrc.gov.mu/english/index.htm>>.

¹⁸ “National Human Rights Commission”, see <<http://www.nhrc-nepal.org>>.

¹⁹ “National Human Rights Commission”, see <<http://www.cndh.org.mx>>.

²⁰ “Human Rights Advisory Council: National Institution for the Protection and Promotion of Human Rights”, see <<http://www.ccdh.org.ma>>.

²¹ “National Human Rights Commission”, see <<http://www.nigeriarights.org>>.

²² “Human Rights Commission”, see <<http://www.hrc.co.nz>>.

²³ “Norwegian Center for Human Rights”, see <<http://www.humanrights.uio.no>>.

²⁴ “The Palestinian Independent Commission for Citizens’ Rights”, see <<http://www.piccr.org>>.

²⁵ “Human Rights Commission”, see <<http://www.sahrc.org.za>>.

²⁶ “Human Rights Commission”, see <<http://www.uhrc.org>>.

²⁷ “Parliament Commissioner for Human Rights”, see <<http://www.ombudsman.kiev.ua>>.

²⁸ Such as Qatar, Bahrain and Egypt. See OHCHR, *Arab Region: National Institutions’ Regional Activities*, Update September 2003, at <<http://www.unhcr.ch/html/menu2/5/arabnatins-sep.doc>>. In 2004 up to five governments are expected to establish NHRIs. See OHCHR, *Annual Appeal 2004: Overview of Activities and Financial Requirements*, Geneva, 2004, p. 98 (hereinafter: “OHCHR Annual Appeal 2004”).

²⁹ “The Ombudsman Institution of the Federation of Bosnia and Herzegovina”, see <<http://www.bihfedomb.org/eng/index.htm>>.

³⁰ “Human Rights Ombudsman”, see <<http://www.varuh-rs.si>>.

Various UN human rights bodies have called upon States to establish NHRI(s) and have encouraged existing institutions to participate in UN activities. In practice, NHRIs have participated with the UN Charter-based bodies and treaty-based bodies. Yet, the legal nature of the NHRIs relations with the UN human rights system is not as clear as that of Non-Governmental Organizations (NGOs).

The present paper intends to define the legal status of NHRIs in their relations with the UN human rights system. It is therefore attempting to answer two main questions. First, is there a legal framework governing the relations between NHRIs and the UN? Second, to what extent and in what capacity can NHRIs work with the UN?

In answering these questions, I will divide the paper into five sections. Following the introduction (I), section II will explore the basic background that is necessary to understand the relations between NHRIs and the UN. It will address the international standards that might be considered a legislative model or legal framework for NHRIs, namely the “Principles Relating to the Status of National Institutions” or “the Paris Principles”; the legislation that regulates the work of NHRIs at the domestic level; powers and functions of NHRIs; their various types; and the differences between NHRIs and NGOs. Section III will discuss the nature of the relationship between the UN Charter-based bodies of human rights and NHRIs. It will generally examine the role of the UNGA, ECOSOC, and CHR in developing NHRIs. Specifically, this section will

³¹ In the United States, there are Ombudsmen at the States level. See <http://www.nccnhr.org/static_pages/ombudsmen.cfm>.

examine the relations between NHRIs and the CHR, as the central human rights body of the UN. Section IV will address the nature of the relations between the UN treaty-based bodies of human rights and NHRIs. It will tackle the importance of these relations; the legal or formal status of the current relations and the actual contribution of NHRIs to the work of treaty-bodies; and present some suggestions for future reform of current relations. A summary of the paper results will be presented in the conclusion (V).

II. NHRIs: Backgrounds

1. International Legal Framework of NHRIs (the Paris Principles)

The current international legal instrument that provides comprehensive guidelines for the work of NHRIs has been formulated within the body of principles that were developed at an international workshop of national and regional human rights organizations held in Paris from 7 to 9 October 1991.³² The CHR, in a resolution in 1992, endorsed these principles as the “Principles Relating to the Status of National Institutions”³³ (hereinafter “the Paris Principles”).³⁴ The Principles were subsequently adopted by a resolution of the UNGA in 1993.³⁵

The Paris Principles are considered as model minimum standards for the existing and newly established NHRIs³⁶ and, in light of their adoption by the CHR and UNGA, possess wide international recognition. The Principles affirm that NHRIs shall be vested with the competence of the promotion and

³² This workshop had been organized by a request from the CHR. See UN Doc. E/CN.4/1992/43, Add 1 and 2. See also CHR Res. 1993/55, “National Institutions for the Promotion and Protection of Human Rights”, 9 March 1993.

³³ Res. 1992/54, 3 March 1992.

³⁴ Actually the Paris Principles constitute refinement and extension of previous guidelines of NHRIs. These guidelines were adopted by a seminar organized by the CHR in Geneva in 1978. See UN Doc. ST/HR/SER.A/2 and Add 1.

³⁵ See the annex of Res. 48/134, “National Institutions for the Promotion and Protection of Human Rights”, 20 December 1993.

³⁶ The provisions of Paris Principles have often been integrated within the newly established NHRIs. See, for example, Article 9 of Nepal’s National Human Rights Commission Act 1997; and Articles 7-9 of South Africa’s Human Rights Commission Act 1994.

protection of human rights, and that they are to be given as broad a mandate as possible. A NHRI should be established and mandated by, or according to, constitutional or legislative texts, specifying its composition and functions.³⁷ The Principles also specify the main functions of the NHRI.³⁸

To ensure its effectiveness, a NHRI must be independent from the government. In order to achieve this goal, the Paris Principles identified three conditions. First, the composition of any NHRI and the appointment or election of its members shall reflect pluralist representation of the social forces of the society, such as NGOs, universities qualified experts, parliament members, trends of philosophical or religious thoughts and government departments.³⁹ Second, a NHRI shall have the infrastructure that allows for the smooth conduct of its activities, in particular, adequate funding,⁴⁰ and qualified staff. Finally, the appointment of NHRI members shall be inaugurated by official act, which establishes the specific duration of their mandate.⁴¹

³⁷ See the Paris Principles, section 1 (Competence and Responsibilities), paras. 1, 2.

³⁸ *Ibid.*, section 1, para. 3. And see below sub-section II.3.

³⁹ However, government representatives, if they are included in the composition of the NHRI, “should participate in the deliberation only in an advisory capacity”. The Paris Principles, section 2 (Composition and Guarantees of Independence and Pluralism), para. 1(e).

⁴⁰ “The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might effect its independence”. *Ibid.*, section 2, para. 2.

⁴¹ *Ibid.*, section 2, para. 3. For detailed discussion see International Council on Human Rights Policy (ICHRP), *Performance & Legitimacy: National Human Rights Institutions*, Geneva, 2000 (hereinafter: “ICHRP Report”).

Concerning the relations between NHRIs and the UN, the Paris Principles stated that one of the functions of a NHRI is “to cooperate with the United Nations and any other organization in the United Nations system”,⁴² and “to contribute to the reports which States are required to submit to United Nations bodies and committees ... pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence”.⁴³ This general mandate of NHRIs to “cooperate” with the UN and to contribute to the State reports to the UN will be discussed in detail in sections III and IV.⁴⁴

2. Domestic Legal Framework of the NHRIs

According to the Paris Principles, the mandate of NHRIs shall be given by constitutional or legislative texts. Accordingly, the new constitutions of several countries devote one or more articles to the establishment of a NHRI.⁴⁵ In these countries, the NHRI might be considered as one of the fundamental institutions of the State, operating alongside other authorities such as the Government, the Parliament, and the Judiciary.

⁴² Paris Principales, section 1, para. 3(e).

⁴³ *Ibid.*, para. 3(d).

⁴⁴ For more discussion on the Paris Principles see Brigit Lindsnaes and Lone Lindholt, “National Human Rights Institutions: Standard Setting and Achievements”, in Brigit Lindsnaes, Lone Lindholt, and Kristine Yigen (eds.), *National Human Rights Institutions, Articles and Working Papers*, Danish Human Rights Center, Copenhagen, 2001, pp. 1-48.

⁴⁵ For example, Uganda’s “Human Rights Commission” has been established according to Article 51 of Uganda Constitution 1995; and the Constitution of Thailand 1997 devoted a full part (8) to the establishment, composition and the main functions the NHRI “Office of National Human Rights Institution of Thailand”.

Naturally, constitutions provide a framework for the fundamental authorities of the State and regulate their structures without details. Based on the constitution, the Parliament enacts detailed laws or other primary legislations.⁴⁶ Thus, in most States in which constitutions require the establishment of NHRI(s), the Parliament enacts detailed legislation regulating the NHRI(s). This legislation predominantly takes two forms. The first is special legislation on the NHRI, entitled e.g. “Human Rights Commission Act”;⁴⁷ while the other is general legislation on human rights, which regulates the detailed aspects of the NHRI, such as the “Human Rights Act”.⁴⁸

Some countries, however, have established their NHRI by a legislation enacted by the Executive authority,⁴⁹ such as France,⁵⁰ Morocco,⁵¹ and Palestine.⁵²

⁴⁶ Regardless of the given name of the legislation, such as “law”, “act”, or “statute”.

⁴⁷ See, for example, Australia’s “Human Rights and Equal Opportunity Commission Act” 1986, and Ireland’s “Human Rights Commission Act” 2000 and “Human Rights Commission (Amendment) Act” 2001.

⁴⁸ For example, India’s Human Rights Act 1993 devoted most of its articles to regulate the work of the “National Human Rights Institution of India”, and Canada’s Human Rights Act 1985 devoted almost half of its provisions (Part II) to regulate the work of the “Canadian Human Rights Commission”.

⁴⁹ Regardless of the given name of the legislative instrument such as “decree”, “order”, “proclamation”, “rule”, or “regulation”.

⁵⁰ The “National Consultative Commission of Human Rights” of France was established according to a decree enacted by the Prime Minister in 1984.

⁵¹ The Moroccan “Human Rights Advisory Council” was established according to a decree enacted by the King in 2001.

⁵² The “Palestinian Independent Commission for Citizens’ Rights” was established according to a decree enacted by the Palestinian Authority Chairman/the President of the Executive Committee of the Palestinian Liberation Organization in 1993. However, Article 31 of the Palestinian Basic Law 2002 required the establishment of NHRIs, which already existed.

The most effective way to establish NHRIs is undoubtedly by constitution *and* by a primary legislation of the Parliament. In this case, the NHRI would constitute one of the fundamental State organs that could undertake its responsibilities independently and effectively, as a “body [that] belongs to the nation and not to the government”.⁵³ Moreover, the Parliament’s primary legislation reflects pluralist and democratic method in the composition and the functions of the NHRI. However, the Paris Principles have not required certain type of legislation to regulate the NHRIs.⁵⁴ At the end of the day, the effectiveness and independence of any NHRI could be judged easily according to the functions and powers that the State has granted to its NHRI(s), which basically depend on the political system of the country.

3. Functions and Powers of NHRIs

The Paris Principles set out the powers that NHRIs are entitled to undertake and the functions that they are supposed to perform. These powers and functions can be summarized as below.

NHRIs shall have the authority to provide advice to governmental bodies. They may submit, by a request of competent authority or upon their own initiative, opinions, recommendations and reports on any matter concerning the promotion and protection of human rights. These matters

⁵³ ICHRP Report, *supra* note 41, p. 108.

⁵⁴ The Principles just required that a NHRI might be established by “constitutional or *legislative* text, specifying its composition and functions” (emphasis added).

include reviewing draft legislation and administrative actions; suggesting measures to improve the human rights situation or to stop certain violations, such as making amendments to the existing legislation or initiating new drafts; preparing reports on the national situation with regard to human rights; and drawing the attention of the government to situations in any part of the country where human rights are being violated and thereby making proposals to put an end to such situations.⁵⁵

In addition, NHRIs should have the mandate to promote and ensure the harmonization of national legislation and governmental practices with the international human rights instruments to which the State is party; to encourage ratification of, or accession to, these instruments, and to ensure their implementation; to assist in formulating programs for teaching and research on human rights and to take part in their implementation in schools, universities and professional circles; and to publicize human rights and combating all forms of discrimination.⁵⁶

Finally, the Paris Principles contain special provisions on the mandate exercised by some NHRIs to receive complaints on and to investigate individual human rights violations. In this case, NHRIs may seek to settle a dispute by consultation or mediation between the individual and the governmental body; to inform the alleged victim(s) of their rights; and of the hearing of their complaints, or alternatively to transmit them to another competent authority.⁵⁷

⁵⁵ The Paris Principles, section 1, para. 3(a).

⁵⁶ *Ibid.*, para. 3(b-g).

⁵⁷ *Ibid.*, section 4.

However, the NHRIs' functions that are mentioned in the Paris Principles are not exclusive.⁵⁸ Any State can extend the mandate of its NHRI according to its needs. For example, many NHRIs have performed, by law or practice, the function of visiting prisons and detention centers to ensure the legality of detention and observance of the rights of prisoners.⁵⁹ Therefore, the NHRIs' functions that are indicated in the Paris Principles constitute only the minimum standards that States should not ignore.⁶⁰

In light of the different functions that States have given to NHRIs, there are different types of these institutions.

4. Types of NHRIs

The concept of NHRI should not be confused with other entities acting at the national level with a human rights mandate, such as the judiciary, administrative tribunals, legislative organs, or NGOs. The work of the UN in the field of NHRIs makes clear the difference between NHRIs and other

⁵⁸ Yunseon Heo, *National Human Rights Institutions in the Asia-Pacific Region: Assessment and Prospect*, Graduate School, University of Seoul, Seoul, 2000, p. 13.

⁵⁹ For example, Uganda's Human Rights Commission, Ghana's Commission on Human Rights and Administrative Justice (CHRAJ), and the Palestinian Independent Commission for Citizens' Rights (PICCR) have this power. See J. M. Aliro Omara, "The Work of the Ugandan Human Rights Commission in Relation to the Universal Declaration of Human Rights", *Law Journal*, Special Issue to Celebrate the 50th Anniversary of the Universal Declaration of Human Rights, 1999, p. 7; CHRAJ, *Prisons and Police Report*, 2001; and PICCR, *Newsletter*, No. 73, January 2004, p. 2.

⁶⁰ For more discussion on NHRIs functions see Brigit Lindsnaes, Lone Lindholt and Kristine Yigen, "Jurisdiction and Subject Matter of Complaints: A General and Comparative Perspective", in Lindsnaes, Lindholt and Yigen (eds.), *supra* note 44, pp. 83-90.

similar institutions. The Paris Principles, in particular, have intended to provide a specific technical meaning to the NHRIs. For the purpose of this paper, an NHRI is a domestic organization that has the following five elements: (1) is established by State; (2) acts in accordance with the constitution or other legislation; (3) is independent; (4) provides advisory opinions; (5) has a mandate to promote and protect human rights. Therefore, NHRIs are administrative or “quasi-judicial entities”,⁶¹ with neither judicial nor lawmaking capacities.

With this in mind, the majority of NHRIs might be identified as belonging to one of two broad categories: “human rights commissions” and “ombudsman”.⁶² The former have a general mandate to perform all of the above mentioned NHRIs functions, while the latter have a specific mandate to oversee fairness and legality in the area of public administration, to receive complaints from individuals or groups, to investigate alleged human rights violations and to act as a mediator between individuals and the government.⁶³

⁶¹ See Ann Gallagher, “Making Human Rights Treaty Obligations a Reality: Working with New Actors and Partners”, in Philip Alston and James Crawford (eds.), *The Future of the UN Human Rights Treaty Monitoring*, Cambridge University Press, Cambridge, 2000, p. 203.

⁶² It might be better to use the term “ombudsperson”, although “ombudsman” is the classical name of such an institution.

⁶³ See ICHRP Report, *supra* note 41, pp. 3-4.

Nonetheless, the two types of NHRIs are capable of performing some similar functions. It is possible to find commissions with general mandates,⁶⁴ or with specific areas of specialization that concern certain groups, which might differ from one country to another, such as racial discrimination, political rights, children, women, disabled persons, refugees or indigenous peoples.⁶⁵ Likewise, the ombudsmen could have a general mandate to investigate and receive complaints, or to be specialized in specific matters or groups.⁶⁶ Also, most of the commissions have, *inter alia*, an ombudsman mandate,⁶⁷ and some ombudsmen have educative, information, or legislative review

⁶⁴ Such as India (Articles 12-16 of the Protection of Human Rights Act 1993); South Africa (Articles 6-10 of the Human Rights Commission Act 1994); and Mongolia (Article 3 of the National Human Rights Commission of Mongolia Act 2000).

⁶⁵ For example, the Commission for *Racial Equality* of Great Britain (part VII of the Race Relations Act 1976); the Belgium's Center for Equal Opportunities and *Opposition to Racism* (Act of 1993, Article 2); Poland's Commissioner for *Civil Rights* Protection (Act of 1987); and the Ukrainian *Parliament* Commissioner for Human Rights (Article 55 of the Ukrainian Constitution).

⁶⁶ For example, the Ombudsman against *Ethnic Discrimination* in Sweden, see the Ombudsman against Ethnic Discrimination Law 1999; the Parliamentary and *Health Service* Ombudsman in the United Kingdom, see <<http://www.ombudsman.org.uk>>; and the Ombudsman for *Children* in Norwegian, see the Ombudsman for Children Act 1981 (with changes of 17 July 1998).

⁶⁷ Namely, to receive complaints from individuals (or groups) and to conduct investigations. Most of the commissions that are mentioned in the introduction (*supra* notes 8-27) have an ombudsman mandate. For detailed discussion on an example see Manfred Nowak, "Individual Complaints Before the Human Rights Commission for Bosnia and Herzegovina", in Alfredsson, Grimheden, Ramcharan, and Zayas, *supra* note 7, pp. 771-793.

functions which are quite similar to the work of commissions.⁶⁸ Thus, there are no definitive forms of NHRIs, and each State is free to choose the NHRI framework which best suits its needs.⁶⁹

⁶⁸ For example, the Slovenian “Human Rights Ombudsman” has the authority to “submit to the Parliament and Government initiatives for amending laws or other legal acts within their competence” (Article 45(1) of Human Rights Ombudsman Act 1993); and the Australian “Commonwealth Ombudsman” has a duty to publish information about its structure, consultation arrangements, types of documents held and arrangements for access to them (see section 8 of Freedom of Information Act 1982). For more discussion on these issues see Marianne Borgen, “Developing the Role of an Ombudsman”, in Bugeen Verhelen, *Monitoring Children’s Rights*, Martinus Nijhoff, The Hague/Boston/London, 1996, pp. 541-554.

⁶⁹ The Vienna Declaration and Program of Action adopted by the 1993 World Conference on Human Rights recognized in this respect “that it is the right of each State *to choose the framework which is best suited to its particular needs* at the national level” (emphasis added). UN Doc. A/CONF.157/23, 12 July 1993, part I, para. 36.

5. Differences between NHRIs and NGOs

In practice, some of the functions of NHRIs are similar to those of NGOs. For example, both organizations conduct human rights education activities, public awareness campaigns, and oversee government performance in relation to human rights. However, as State bodies, NHRIs are essentially different from NGOs.

NHRIs are established by the State, according to special legislation (normally enacted by Parliament) and have a wide officially-adopted mandate, especially in investigating governmental actions related to human rights. NGOs are part of the civil society and, as they are separated from State institutions and regulate their own program of work, ideally without State intervention, the State does not necessarily adopt their mandate.⁷⁰

In their dealings with the UN, in particular, NHRIs and NGOs converge on some points and diverge on others. For NGOs, legal relations with the UN are clear.⁷¹ Generally, NGOs can participate within the UN Charter-based human rights bodies

⁷⁰ See, generally, David P. Forsyth, *Human Rights in International Relations*, Cambridge University Press, Cambridge, 2001, pp. 163-190; and Rachel Brett, "Non-Governmental Actors in the Field of Human Rights", in Raija Hanski and Markku Suksi (eds.), *An Introduction to the International Protection of Human Rights*, Institute for Human Rights, Abo Academi University, Turku/Abo, 1999, pp. 399-413.

⁷¹ See, generally, O. Nikitina, "The Legal Aspects of Participation of Non-Governmental Organizations in the International Protection of Human Rights", in Koufa (ed.), *supra* note 5, pp. 622-640.

through their consultative status at the ECOSOC.⁷² The rules of procedure of the various UN treaty-bodies permit NGOs to report to and participate in the meetings of the treaty-bodies.⁷³ In contrast, the NHRIs' relationship with the UN's human rights system needs more clarification. This issue is the subject of the present paper and it will be elaborated in the succeeding sections.

NGOs can play an important role in encouraging governments to establish NHRIs, particularly if the State has not developed such an institution. NGOs have the capacity to work with both governments and NHRIs to increase the effectiveness of

⁷² See Rules 80-84 of the ECOSOC Rules of Procedure, UN Doc. E/5715/Rev.2; and ECOSOC Res. 1996/31, 25 July 1996, "Arrangements for Consultation with Non-Governmental Organizations". This resolution, which has superseded ECOSOC's Res. 1296 (XLIV) of 23 May 1968, provided the principles that shall be applied in establishing consultative relations with NGOs (part I); nature of the consultative arrangements (part II); categories of the consultative relationships granted to NGOs (part III); scope of the consultative activities of NGOs at the ECOSOC, such as participation in the provisional agenda, written Statements, oral presentations during the meetings (part IV); relations between NGOs and commissions and subsidiary organs of the ECOSOC, such as the CHR (part V); and the mandate of the "ECOSOC Committee on NGOs" (part IX); and other issues. This resolution will be subject to further discussion in subsection III.2 below. See, in particular, *infra* note 106.

⁷³ See, for example, Rule 69 of the Rules of Procedure of the Committee on Economic, Social and Cultural Rights; Rule 69 of the Rules of Procedure of the Human Rights Committee; Rule 47 of the Rules of Procedure of the Committee on the Elimination of Discrimination against Women; Rule 62 of the Rules of Procedure of the Committee against Torture. These rules are available in "Compilation of Rules of Procedure Adopted by Human Rights Treaty Bodies", UN Doc. HRI/GEN/3/Rev.1, 28 April 2003.

existing institutions.⁷⁴ Furthermore, the composition of some NHRIs allows for the inclusion of representatives from human rights NGOs.⁷⁵ Finally, one of the emerging functions of NHRIs involves coordinating the work of local NGOs in reporting to the UN human rights treaty-bodies,⁷⁶ an area examined in section IV of this paper.

⁷⁴ Amnesty International, for instance, issued a report that provided detailed recommendations for better performance of NHRIs. These recommendations include, *inter alia*, the founding legislation of NHRIs, relations with the civil society, composition, mandate and powers, and investigations and inquiries. See Amnesty International, *National Human Rights Institutions: Amnesty International's Recommendations for Effective Promotion and Protection of Human Rights*, AI Index: 40/007/2001, 1 October 2001. Also International Council on Human Rights Policy, a Geneva-based international NGO, published a comprehensive report on improving the performance and legitimacy of NHRIs. See ICHRP Report, *supra* note 41. Finally see Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commission in Africa*, 2001.

⁷⁵ The Paris Principles (part 2, para. 1.a) require in this regard that NHRIs be composed of, *inter alia*, “Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists”. Thus, many NHRIs include members or representatives of NGOs in their composition. For example, Article 9 of the Greece Law No. 2667 of 1998 on Constitution of a “National Commission for Human Rights and a National Bioethics Commission” stated that: “In the first composition of the Commission the following non-governmental organizations shall be represented: Amnesty International, the Hellenic League for Human Rights, the Marangopoulos Foundation for Human Rights, and Greek Council for Refugees”.

⁷⁶ On the general cooperation between NHRIs and NGOs see, for instance, UN Doc. E/CN.4/2000/103, 28 December 1999, para. 13.

III. Relations between the UN Charter-Based Bodies and NHRIs

Charter-based bodies are the “political”⁷⁷ organs of the United Nations that are composed of State representatives. The official positions of States on human rights at the international level are usually deliberated upon and adopted within these bodies. The Charter bodies that are chiefly involved in human rights are the UN General Assembly (UNGA), the Economic and Social Council (ECOSOC), and the Commission on Human Rights (CHR) as a subsidiary organ of the ECOSOC.⁷⁸

This section will explore the role of these UN organs in legitimizing the existence of NHRIs as new actors within the UN system and in encouraging States to establish these institutions. In particular, the section will examine the nature of the official and practical relationships between the CHR, the principal UN organ on human rights, and NHRIs. In this context, it will address the activities of NHRIs within the CHR and especially the activities of the International Coordination Committee (ICC) of NHRIs. In particular, the section will

⁷⁷ “Political” here is used versus “technical” or professional UN bodies, which are composed from experts acting in their personal capacity such as the Sub-Commission on Human Rights and the Treaty-Monitoring Bodies.

⁷⁸ For general discussion on the role of the UN political bodies on human rights see, e.g., David Weissbrodt, Joan Fitzpatrick and Frank Newman, *International Human Rights: Law, Policy and Process*, Anderson Publishing Co., Cincinnati, Ohio, 2001, pp. 227-285; and Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Moral (Text and Materials)*, Clarendon Press, Oxford, 1996, pp. 347-499.

concentrate on comparing the status of NHRIs with that of NGOs in terms of its interactions with and capacity to influence the CHR.

1. Role of the UN Charter-Based Bodies in Developing the NHRIs

From its inception, the UN was aware that the international human rights system alone, was inadequate to safeguard the rights of individuals in every society. Ultimately, the establishment of NHRIs has aimed to complement the weaknesses inherent in the international system.⁷⁹

In 1946, the question of “NHRIs” was first discussed by the ECOSOC’s second session.⁸⁰ At this session, the ECOSOC invited member States to consider establishing “groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”.⁸¹ Therefore, the question of NHRIs has been repeatedly considered by the UNGA, the ECOSOC and the CHR.⁸²

Recognizing the important role that NHRIs could play in the promotion and protection of human rights at the local level, the

⁷⁹ Heo, *supra* note 58, p. 2.

⁸⁰ But the term “National Institutions” was not used at that session.

⁸¹ See ECOSOC Res. 9(II), 21 June 1946, para. 5. Mentioned at B.G. Ramcharan, “The Role of Regional, National, and Local Institutions: Future Perspectives”, in B.G. Ramcharan (ed.), *Human Rights: Thirty Years after the Universal Declaration (Comparative Volume on the Occasion of the Thirtieth Anniversary of the Universal Declaration of Human Rights)*, Martinus Nijhoff, The Hague/Boston/London, 1979, p. 246.

⁸² *Ibid.*

ECOSOC, in 1960, requested member States to communicate their information on “NHRIs” to the Secretary General of the UN.⁸³ Subsequently, the UNGA, the ECOSOC and the CHR have adopted a series of resolutions on this issue.⁸⁴ Since that time, the Secretary General has regularly submitted reports on NHRIs to both the UNGA and the CHR.⁸⁵

The UN Charter-bodies (the UNGA and the CHR) have been the key official players in developing the international standards and guidelines that regulate the work of NHRIs. In 1978, the CHR organized a seminar on the issue of NHRIs in Geneva, which resulted in the adoption of a set of guidelines on the functions of NHRIs.⁸⁶ These standards and guidelines were endorsed by the CHR and the UNGA,⁸⁷ and might be considered as bases of the current international standards of NHRIs, namely the “Principles Relating to the Status of National Institutions” (the Paris Principles), adopted by both the CHR and the UNGA in 1992 and 1993, respectively.⁸⁸

Shortly after the end of the Cold War, UN involvement with NHRIs (and on issues of human rights in general) increased remarkably. Indeed, the overall lack of inter-State cooperation

⁸³ See ECOSOC Res. 772 B (XXX), 25 July 1960.

⁸⁴ For example: the ECOSOC 1960 Resolutions 819 (XXXI) and 888 F(XXXVI); the UNGA 1961 Resolutions 2081(XX) and 2200C(XXI); and the CHR 1970 report E/CN.4/SR.1063-1066. Mentioned at Ramcharan, *supra* note 81, p. 246 (footnote).

⁸⁵ See, e.g., the following Secretary General reports: A/RES/38/123, 16 December 1983; E/CN.4/1993/33, 5 January 1993; E/CN.4/2001/99, 22 December 2000; and *supra* notes 1-2.

⁸⁶ See *supra* note 34.

⁸⁷ See UNGA Res. 33/46, 14 December 1978.

⁸⁸ See above, sub-section II.1.

in the UN fora during the Cold War era delayed such developments from evolving into concrete form. The impact of the combined efforts of NHRIs and the work of the UN in this field certainly intensified after the adoption of the Paris Principles.⁸⁹ The UN has sponsored a series of NHRI conferences at the international and regional levels, including a workshop for the Asia Pacific Region in Jakarta (January 1993),⁹⁰ the second⁹¹ international workshop on NHRIs in Tunis (December 1993);⁹² the sixth International Conference of NHRIs (Copenhagen and Lund, April 2002),⁹³ amongst other workshops and conferences.⁹⁴

The UN's major international conferences have attached significant reference to NHRIs. The World Human Rights Conference held in Vienna in 1993 called upon governments to strengthen NHRIs; recommended strengthening the UN activities and support to the States in establishing NHRIs; encouraged cooperation among various NHRIs, between NHRIs and the UN and regional organizations; and to convene periodic meetings for the representatives of NHRIs under

⁸⁹ It is fair to say that before that time the “efforts of the United Nations have not significantly increased the number or effectiveness of such national or local institutions. The greater impact has come from the non-governmental organizations”. Ramcharan, *supra* note 81, pp. 246-247.

⁹⁰ See UN Doc. HR/PUB/93/1.

⁹¹ The first workshop was conducted in Paris in 1991. See above sub-section II.1.

⁹² See UN Doc. E/CN.4/1994/45 and Add.1 (report on the workshop).

⁹³ See Copenhagen Declaration, at

<<http://www.nhri.net/pdf/CopenhagenDeclaration.pdf>>.

⁹⁴ E.g., Manila Workshop, April 1995, see UN Doc. E/CN.4/1996/8, 28 July 1995; Rabat Workshop, April 2000, see Rabat Declaration, at <<http://www.nhri.net/pdf/InternationalworkshopV.pdf>>; and finally Katmandu Workshop (February 2004), see *infra* notes 175, 176.

sponsorship of the UN.⁹⁵ Similarly, the Declaration and Program of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001 has remarkably focused on the importance of NHRIs in combating all forms of racism, encouraging States to establish and strengthen NHRIs, and urging international and regional organizations to cooperate with NHRIs.⁹⁶

⁹⁵ The Vienna Declaration and Program of Action particularly stated: “The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights. The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the ‘Principles relating to the status of national institutions’ [the Paris Principles]...”. See UN Doc. A/CONF.157/23, 12 July 1993, part I, para. 36, *supra* note 69.

⁹⁶ See paras. 112-113 of the Declaration; and paras. 90-91 (especial section on NHRIs), 188, 191 of the Program of Action (UN Doc. A/CONF.189/5, 8 September 2001). The special section entitled “Establishment and Reinforcement of Independent Specialized National Institutions and Mediation”, provided that the conference:

“90. Urges States, as appropriate, to establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions, particularly on issues of racism, racial discrimination, xenophobia and related intolerance, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights, annexed to General Assembly resolution 48/134 of 20 December 1993, and to provide them with adequate financial resources, competence and capacity for investigation, research, education and public awareness activities to combat these phenomena;

91. Also urges States:

- (a) To foster cooperation between these institutions and other national institutions;
- (b) To take steps to ensure that those individuals or groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance can participate fully in these institutions;
- (c) To support these institutions and similar bodies, *inter alia*, through the publication and circulation of existing national laws and jurisprudence, and cooperation with institutions in other countries, so that knowledge can be gained of

In summary, through the international recognition that NHRIs have received from the highest UN human rights bodies and major UN conferences, NHRIs have acquired sound legal reference to their legitimate existence at the national and international levels.⁹⁷ Accordingly, many States have established or declared their willingness to establish NHRIs in order to be consistent with the international development in this domain.⁹⁸ Hence, NHRIs are expected to play a greater role in implementing international human rights standards at the national level. However, as in the case with NGOs,⁹⁹ the UN needs to undertake a broader review to strengthen its practical relationships with NHRIs. Unlike its relations with NGOs, the CHR needs to further clarify its formal relations with NHRIs.

the manifestations, functions and mechanisms of these practices and the strategies designed to prevent, combat and eradicate them.”

⁹⁷ The national legal grounds are the constitution and the legislative instrument that establishes the NHRI. See above sub-section II.2. And for more details see ICHRP Report, *supra* note 41, pp. 57-81.

⁹⁸ Although the establishment of NHRIs in some States can be motivated by disparate factors, not necessarily related to the promotion and protection of human rights. “In a few clear-cut cases, [national] institutions are established as no more than a cynical public relations exercise and can therefore become a convenient facade behind which an insincere government will attempt to shield itself from criticism or attract foreign aid”. Gallagher, “Making Human Rights Treaty Obligations A Reality...”, *supra* note 61, pp. 204-205. See also *supra* notes 8-31.

⁹⁹ See Michael H. Posner, “The Establishment of the Right of Nongovernmental Human Rights Groups to Operate”, in Louis Henkin and John Lawrence Hargrove (eds.), *Human Rights: An Agenda for the Next Century*, The American Society of International Law, Washington DC, 1994, pp. 413-414.

2. Relations between the Commission on Human Rights and NHRIs

Composed of 53 States, the Commission on Human Rights (CHR) is the central human rights body of the UN.¹⁰⁰ During its six-week annual session, the CHR deliberates and adopts resolutions on human rights situations in the world concerning all themes and circumstances.¹⁰¹

In this section, I will analyze the formal basis of the NHRIs' participation within the CHR sessions and activities in comparison with the NGOs; the actual rights that NHRIs have already gained in practice; and the role of NHRIs in lobbying member States regarding their status as NHRIs at the UN fora. In conclusion, I will present a primary suggestion to improve the current relations between NHRIs and the CHR.

¹⁰⁰ Subsidiary organs of the CHR, such as the Sub-Commission on the Promotion and Protection of Human Rights, are included in the scope of the CHR meaning in this paper. For this reason, this paper will not elaborate the discussion on the relations between NHRIs and the Sub-Commission. Nonetheless, only "in 2003, for the first time ever, national institutions participated in their own right in the Sub-Commission". OHCHR Annual Appeal 2004, *supra* note 28, p. 98. Thus, the participation of NHRIs in the Sub-Commission meetings is still limited and needs to be practically strengthened.

¹⁰¹ The sixth plenary session of the CHR was held from 15 March to 23 April 2004 at the *Palais des Nations* in Geneva. See UN Doc. E/CN.4/2004/1.

A. Relations between the CHR and NGOs

Non-governmental organizations (NGOs) are permitted to participate in the CHR meetings as observers.¹⁰² As discussed above,¹⁰³ NGOs can formally participate in the UN activities, including the CHR meetings,¹⁰⁴ through their ECOSOC consultative status.¹⁰⁵ At the CHR, NGOs have the following rights:¹⁰⁶ to propose items and raise factual questions on the

¹⁰² See, *inter alia*, Nigel S. Rodley, “United Nations Non-Treaty Procedures for Dealing with Human Rights Violations”, in Hurst Hannum (ed.), *Guide to International Human Rights Practice*, Transnational Publishers, New York, 1999, pp. 62-84; Rudiger Wolfrum (ed.), *United Nations: Law, Politics and Practice*, Martinus Nijhoff, Dordrecht/London/Boston, 1995, vol. 2, pp. 927-935; Laurie S. Wiseberg, “Human Rights Non-Governmental Organizations”, in Richard Pierre Claude and Burns H. Weston (eds.), *Human Rights in the World Community: Issues and Actions*, University of Pennsylvania Press, Philadelphia, 1992, pp. 372-391; and R.G. Sybesman-Knol, *The Status of Observers in the United Nations*, Vrije Universiteit, Brussel, 1981, pp. 295-318.

¹⁰³ See above sub-section II.5.

¹⁰⁴ The NGOs can also participate in activities of the UN specialized agencies such as the ILO (see Article 12 of ILO Constitution); UNESCO (see Article 12 of UNESCO Constitution); WHO (see Article 71 of WHO Constitution); WIPO (see Article 13 of WIPO Convention); WMO (see Article 26 of WMO Convention); and ITU (see Article 27 of ITU Convention). Furthermore, numerous UN special organs maintain consultative arrangements with NGOs according to resolutions of UNGA (such as UNCTAD, UNEP, UNICEF), or according to ECOSOC resolutions (e.g. UNDP), or/and rules of procedures/directives of these organs. See Wolfrum, *supra* note 102, p. 931.

¹⁰⁵ This has been possible by Article 71 of the UN Charter which reads: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence...”.

¹⁰⁶ According to part V of the ECOSOC Res. 1996/31, *supra* note 72. Actually, not all NGOs have these privileges at the CHR, even if they have ECOSOC consultative status. According to Res. 1996/31, there are three categories of the NGOs consultative status. Category I includes NGOs that are concerned with *most* of ECOSOC’s activities (known as NGOs “in general consultative status”). Category II includes NGOs that are concerned with *some* activities of the ECOSOC (known as NGOs “in special consultative status”). Category III includes NGOs that do not have

provisional agenda;¹⁰⁷ to make formal written Statements and reports;¹⁰⁸ to send observers to attend meetings;¹⁰⁹ to present oral presentations;¹¹⁰ to conduct hearings or briefings to special or *ad hoc* committees established by the CHR;¹¹¹ and to distribute and undertake studies, investigations or prepare specific papers upon the request of the CHR.¹¹² Indeed, whenever the issue of human rights violations is taken up at the

consultative status but can be invited to special occasions if the ECOSOC or the Secretary General consider that they might make useful contributions to the UN, or if they have consultative status with another UN body (known as “the Roster”). NGOs of Category I have more rights at the UN. Also, the scope of ECOSOC consultative status covers mainly international NGOs. National or local NGOs can participate within the CHR activities basically through international NGOs to which they belong. However, national NGOs may be admitted by the ECOSOC in order to help achieve a balance and effective representation of all regions of the world, *or* where they have special experience upon which the ECOSOC may wish to draw (Res. 1996/31, *supra* note 72, para. 8). Finally, it is worth mentioning that most of the international human rights NGOs, such as Amnesty International, International Commission of Jurists, International Federation of Human Rights, and International League for Human Rights, are in category II of ECOSOC’s consultative status. Some NGOs are in category I, such as International Federation of Business and Professional Women. Finally, some NGOs, such as International Federation of Free Journalists are in category III “Roster”. For more details, see Edward Lawson, *Encyclopedia of Human Rights*, Taylor & Francis, Washington DC/London, 1996, especially pp. 76, 808, 848, 870.

¹⁰⁷ With certain conditions. See ECOSOC Res. 1996/31, *supra* note 72, paras. 33-34. See also Rule 6 of “Rules of Procedure of the Functional Commissions of the Economic and Social Council”.

¹⁰⁸ But see the conditions of this procedure, ECOSOC Res. 1996/31, *supra* note 72, paras. 36-37.

¹⁰⁹ See *ibid.*, para. 35. Also Rule 75 of Rules of Procedure of the Functional Commissions of the ECOSOC (*supra* note 107) provided that: “Non-governmental organizations in category I or II may designate authorized representatives to sit as observers at public meetings of the Commission [on Human Rights] and its subsidiary organs. Those on the Roster may have representatives present at such meetings when matters within their field of competence are being discussed”.

¹¹⁰ See *ibid.*, para. 38.

¹¹¹ See *ibid.*, para. 40.

¹¹² See *ibid.*, para. 39.

CHR, “the most courageous and outspoken champions of human rights usually are the NGOs in their consultative status”.¹¹³

The CHR has also created special procedures, such as special rapporteurs, representatives, independent experts, and working groups, which are mandated to deal with global human rights problems or country-specific situation. These procedures significantly rely in their work (e.g. preparing reports) on information provided by NGOs.¹¹⁴

However, in practice, the formal debates at the CHR are often sterile with the “real” work taking place behind closed doors, and with resolutions drafted in the consultation process by all regional governmental groupings.¹¹⁵ Therefore, much of the most effective NGO input comes from their informal lobbying of the CHR Member States.¹¹⁶

¹¹³ Claude and Weston (eds.), *supra* note 102, p. 362.

¹¹⁴ See, generally, Bertrand G. Ramcharan, *The United Nations High Commissioner for Human Rights: The Challenges of International Protection*, Martinus Nijhoff, The Hague/London/New York, 2002, pp. 59-72; and Ann Gallagher, “Human Rights in the Wider United Nations System”, in Hanski and Suksi (eds.), *supra* note 70, pp. 153-167.

¹¹⁵ Posner, *supra* note 99, p. 415.

¹¹⁶ For details see, *inter alia*, Demelza Stubbings, “The Challenge of Protection and Monitoring: An NGO Perspective”, in Robert G. Patman (ed.), *Universal Human Rights?*, Palgrave, New York, 2000, pp. 211-225; Rachel Brett, “The Contribution of NGOs to the Monitoring and Protection of Human Rights in Europe: An Analysis of the Role and Access of NGOs to the Intergovernmental Organizations”, in Arie Bloed, Liselotte Leicht, Manfred Nowak, and Allan Rosas, *Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms*, Martinus Nijhoff, Dordrecht/Boston/London, 1993, pp. 121-144; and Reed Brody, “Improving

B. Relations between the CHR and NHRIs in Practice: General

In their participation with the CHR activities, NHRIs seek to achieve two objectives. The first is lobbying member States in order to develop certain human rights issues, to stop certain human rights violations in the world in general,¹¹⁷ or in a specific region or country.¹¹⁸ This objective is quite similar to the work of NGOs. The second objective involves lobbying governments to improve their status as NHRIs. This activity is exclusively the work of NHRIs.

UN Human Rights Structures”, in Henkin and Hargrove (eds.), *supra* note 99, pp. 297-316.

¹¹⁷ See, for example, the invitation of the High Commissioner for Human Rights, Sergio Vieira de Mello, to NHRIs to participate in the work of the CHR *Ad Hoc* Committee on an International Convention on the Rights and Dignity of People with Disabilities. Address on 15 April 2003, Geneva, at <<http://www.nhri.net/pdf/HC-Statement-Geneva-15-04-03.pdf>>. See also para. 10(b) of the CHR Res. E/CN.4/RES/2003/76, 25 April 2003, and *infra* note 196. Finally, on the participation of NHRIs on various thematic human rights issues at the international level such as economic, social and cultural rights, the elimination of racial discrimination, HIV/AIDS, prevention of torture and administration of justice, see UN Doc. E/CN.4/2004/101, 28 January 2004, paras. 32-39.

¹¹⁸ There are four NHRIs regional groups coordinating with the CHR: “African Coordination Committee of National Institutions”; “Network of National Institutions for the Promotion and Protection of Human Rights in the Americas”; “Asia Pacific Forum of National Human Rights Institutions”; and “European Regional Group of the National Human Rights Institutions for the Promotion and Protection of Human Rights”.

The CHR has been adopting a resolution relevant to NHRIs every year,¹¹⁹ under a special agenda sub-item (“National Institutions and Regional Arrangements”).¹²⁰ By reviewing a number of the CHR’s recent resolutions on NHRIs,¹²¹ one can reach two main conclusions. First, the CHR has persuaded States to establish NHRIs according to the Paris Principles.¹²² Accordingly, many countries have recently established NHRIs and/or strengthened the existing ones.¹²³ Second, the CHR has legitimised the *principle* of NHRIs’ participation within the UN system, through requesting OHCHR to support the NHRIs, and encouraging the activities of the international and regional coordination committees of NHRIs, and supporting cooperation among NHRIs themselves.¹²⁴

In practice, NHRIs have been allowed to undertake a number of activities at the CHR. NHRIs can attend all CHR meetings; take the floor to speak during sessions under a relevant agenda sub-item; and present oral statements. NHRIs have also been given a special section of the CHR floor under the item of

¹¹⁹ See the most recent CHR resolutions regarding NHRIs: E/CN.4/RES/2003/76, 25 April 2003; E/CN.4/RES/2002/83, 26 April 2002; E/CN.4/RES/2001/80, 25 April 2001; E/CN.4/RES/2000/76, 26 April 2000; and E/CN.4/RES/1999/72, 28 April 1999.

¹²⁰ For example, since 1999 NHRIs have appeared at the provisional agenda of the CHR under sub-item 18(b), and it appeared under the same sub-item in 2004 session.

¹²¹ Actually, CHR’s adoption of these resolutions has come as a result of the active participation of NHRIs at the CHR annual sessions.

¹²² See above sub-section II.1.

¹²³ See the examples that are mentioned in the introduction above.

¹²⁴ See, for instance, the following reports of the UN Secretary General: E/CN.4/2003/110, 31 December 2002, paras. 3-11; E/CN.4/2002/114, 24 December 2001, paras. 5-10, 14-16; E/CN.4/2001/99, 26 December 2000, paras. 3-5, 7-8; E/CN.4/2000/103, 28 December 1999, paras. 6-54.

“National Institutions”, and their information and reports may be circulated as documents of the CHR (i.e. UN documents).¹²⁵ Recently, NHRIs have been given the right, separate from their governments, to send their own letters of accreditation to the CHR secretariat in order to receive badges.¹²⁶

Also in practice, nothing can prevent the NHRIs from providing information to, participating in the meetings of, or communicating with, the special procedures of the CHR, such as the working groups, special rapporteurs or special representatives of the the UN Secretary General. As these procedures “have grown in an *ad hoc* fashion and without clear

¹²⁵ For example, the Australian Human Rights and Equal Opportunity Commission has submitted a proposed draft of “Optional Protocol to the United Nations Convention on the Right of the Child Concerning the Elimination of Sexual Exploitation and Trafficking in Children”. This proposal has been circulated at the CHR as a UN document (E/CN.4/1994/45/Add.1, 1 March 1994). See also “Report of the National Human Rights Institution in Europe” to the CHR on 18 April 2002, at <<http://www.nhri.net/pdf/Europe-HRC2002.pdf>>.

¹²⁶ See UN Doc. E/CN.4/2002/16, 7 February 2002 regarding the organization of the work of the CHR. Para. 22 of this document provides: “National human rights commissions (institutions) or coordinating committees of such commissions may *only* take the floor under the relevant agenda item (currently item 18 (b)) and make one Statement of up to seven minutes from special seats reserved for them.... and, if requested, information or reports received from national institutions on their regional meetings may be circulated as documents of the Commission” (emphasis added). See also information sheet entitled: “National Institutions Participation in the 59th Session [2003] of the Commission on Human Rights”, at <<http://www.nhri.net/pdf/NIsINFO-en.pdf>>. In addition see paras. 55-58 of the UN Secretary General Report: E/CN. 4/2000/103, 28 December 1999; and paras. 4-9 of his Report: E/CN.4/1998/47, 30 December 1997.

ground rules for their operations”,¹²⁷ they are usually open to information coming from any organization (governmental or NGOs) or individuals. Thus, “the Special Rapporteurs of the Commission on Human Rights and the representatives of the Secretary-General increasingly consult with national institutions representatives. In addition, they have been an important mechanism in encouraging compliance with the Paris Principles and providing support to national institutions”.¹²⁸ However, NHRIs need to be encouraged towards greater cooperation with the special procedures with or without legal or formal procedures regulating these relations.¹²⁹

C. International Coordinating Committee of NHRIs

In addition to their general activities at the CHR sessions, NHRIs established an International Coordinating Committee (ICC) in 1994 as an institutionalized forum for cooperation among NHRIs at the global level on one hand, and between

¹²⁷ The UN Reform Report, *supra* note 1, para. 55.

¹²⁸ See UN Doc. E/CN.4/2004/101, 28 January 2004, para. 27.

¹²⁹ For example, the Special Rapporteur on the Right to Food, Jean Ziegler, conducted two meetings with Palestinian and international NGOs at the office of the Palestinian Independent Commission for Citizens’ Rights (PICCR), the NHRI of Palestine, and conducted a separate meeting with PICCR during his visit to the Occupied Palestinian Territories (OPT) in the period of 3-12 July 2003. See UN Doc. E/CN.4/2004/10/Add2, 31 October 2003, paras. 1, 4. In addition, the Special Rapporteur received a letter and report from PICCR, in coordination with other NGOs, on the right to food in the OPT. See the letter at <<http://www.piccr.org/un/ziegler.pdf>>; and the report at <<http://www.piccr.org/un/food.pdf>>. Also, John Dugard, the Special Rapporteur on the Human Rights Situation in the OPT, has often met with PICCR. See, e.g., PICCR, *Newsletter*, No. 66, June 2003, p. 13.

NHRIs and the CHR on the other.¹³⁰ Since its creation, the ICC regularly conducts annual meetings parallel to the CHR session under the administrative supervision of OHCHR.¹³¹ The ICC encourages existing NHRIs to improve their status to be in conformity with international standards regarding the NHRIs (the Paris Principles).¹³²

Accordingly, the CHR's recognition of the ICC has given NHRIs greater legitimacy and a practical role in which they can lobby governments to provide them with a special status enabling participation in the UN human rights system. The ICC also represents a practical forum in which other NHRIs can be convinced to improve their status at the national level in order to obtain ICC membership. Only those institutions that comply with the Paris Principles can obtain ICC membership. By means of this condition, the ICC creates competition among NHRIs to maintain their independence and effectiveness.

¹³⁰ The ICC was established pursuant to the NHRIs workshop held in Tunis, 13-17 December 1993. See para. 78(1.6) of UN Doc. E/CN.4/1994/45, 23 December 1993, *supra* note 92.

¹³¹ The CHR encourages the ICC to hold these meeting and requested the Secretary General to continue UN's support to the ICC. See, for instance, para. 16 of UN Doc. E/CN.4/RES/2003/76, 25 April 2003; and para. 7 of UN Doc. ECN.4/2003/110, 31 December 2002, and the UN High Commissioner for Human Rights address to the ICC on 15 April 2003, *supra* note 117. This practice has been confirmed by Rule 8(a) of "Rules of Procedure of the International Coordinating Committee of National Institutions for Promotion and Protection of Human Rights", adopted on 15 April 2000 and amended on 13 April 2003 (hereinafter "ICC Rules of Procedure").

¹³² See the preamble and Rules 2-3 of the ICC Rules of Procedure, *ibid.* The ICC has established four regional groups: Africa, Europe, the Americans, and Asia-Pacific (*ibid.*, Rule 4). And, the NGOs may be granted observer status at the ICC meetings (*ibid.*, Rule 7).

Certainly, through ICC membership, NHRIs are in a better position to influence the international human rights system.

D. Formal Relations between the CHR and NHRIs: Evaluation

Although NHRIs have gained more rights than NGOs in some cases, they are still unable to carry out some of the functions familiar to NGOs. The privileges enjoyed by NHRIs, and not the NGOs, at the CHR, have included, *inter alia*, the consideration of NHRI reports as official UN documents; meeting annually in parallel to CHR sessions; and engaging relatively easily with the UN system without following the long procedures that NGOs are obliged to undertake in order to gain ECOSOC's consultative status.

Nevertheless, by right of their ECOSOC consultative status, NGOs enjoy some rights that NHRIs do *not* including, *inter alia*, addressing the CHR under various agenda items; proposing items and raising questions concerning the provisional agenda; conducting formal meetings with representatives of regional groups of the CHR; preparing studies or reports upon the request of the CHR; and being formally informed by the CHR to participate in its working groups (often NHRIs participate in these working groups informally, such as, by way of invitation from the High Commissioner for Human Rights).

Ironically, although the CHR and other UN Charter-bodies have supported the legitimization and integration of NHRIs within the UN system at the formal level, the legal basis that govern the relationships between NHRIs and the CHR are *not*

yet as clear as the status of NGOs. In other words, the *legal* capacity in which NHRIs participate within the Charter-based bodies activities is yet to be elaborated.¹³³

NHRIs relations with the CHR could be considered as a *de facto* positive evolution within the UN system.¹³⁴ These developments reflect the incorporation of NHRIs as an integral part of the system. However, this *de facto* evolution or practice needs to be rendered formal through the adoption of resolutions by UNGA, ECOSOC or/and the CHR in order to be used as an international instrument, as is the case of the NGOs consultative status with the ECOSOC.¹³⁵

Following, I would provide a tentative suggestion to formulize the relationships between NHRIs and the UN Charter-bodies in general and the CHR in particular. This suggestion is presented to those who are expected to lobby the Charter-bodies, namely all NHRIs (individual institutions and regional coordinating

¹³³ This unclear status of NHRIs compared with NGOs has some practical implications. For example, while the NGOs have the right to address the CHR under different agenda items regarding various human rights themes, NHRIs have the right to take the floor only under one sub-item of the agenda (regarding NHRIs), see *supra* note 126.

¹³⁴ In this context the most recent resolution on NHRIs (E/CN.4/RES/2003/76, 25 April 2003) stated that the CHR “Welcomes *the practice* of national institutions... participation ... in meetings of the Commission and its subsidiary bodies” (emphasis added).

¹³⁵ It is worth noting that NHRIs are aware of their status in the UN system, and they have already recommended that the CHR “Take the appropriate measures to ensure that the national institutions participate actively, *by right* and with a *specific status*, in the work of the United Nations human rights bodies” (emphasis added). Para. 78(1.1.a) of UN Doc. E/CN.4/1994/45, 23 December 1993.

groups), the ICC, NGOs, and the OHCHR (CHR Secretariat and NHRIs Team).¹³⁶

In order to give NHRIs consultative status (under the title, for instance, of “NHRIs Committee”), the ECOSOC or the CHR might adopt a resolution establishing a committee within the ECOSOC or CHR,¹³⁷ similar to the “ECOSOC Committee on NGOs”.¹³⁸ The consultative status of NHRIs could be granted in various categories (possibly three) according to the level of independence and effectiveness that a NHRI reaches.¹³⁹

In cases of full compliance with the Paris Principles, NHRIs may be granted full consultative status (e.g. “category A”). Where there is only partial compliance of NHRI with the Paris Principles, or where there is more than one NHRI from the same State (most specifically federal States); or for those NHRI who are from non-independent countries, a second-level consultative status could be granted (e.g. “category B”). Finally, those NHRIs who are non-compliant with the Paris Principles could only expect to be granted observer status until

¹³⁶ See the website of the National Human Rights Team at the OHCHR <<http://www.nhri.net>>.

¹³⁷ This committee might be called “NHRIs Committee”.

¹³⁸ See *supra* note 72.

¹³⁹ This Committee should strictly monitor (on criteria to be established) the level of independence and credibility of NHRIs in order to prevent the uncredible institutions from obtaining, or continuing to obtain, a consultative status. At any event, the Committee should insure that granting such status is based on “technical” not “poetical” considerations. Otherwise, the purpose of granting such a status and the role of the Committee as a whole will be useless.

their legal status and practical performance in their respective countries improves (e.g. “category C”).¹⁴⁰

The rights and privileges of the aforementioned categories of NHRIs might be determined by the same resolution. In this way, NHRIs might ensure fairness and justice in the pursuit of membership, and moreover, States might be encouraged to strengthen their NHRIs in an effort to increase their influence at the UN fora.

¹⁴⁰ The procedures that have been adopted by the ICC, and some regional NHRIs coordinating bodies, might be considered as guidelines to the suggested “NHRIs Committee”.

IV. Relations between the UN Treaty-Based Bodies and NHRIs

The aim of this section is to compare the role of NHRIs with that of NGOs in their reporting to the UN human rights treaty-bodies. Under the current seven UN human rights treaty-bodies,¹⁴¹ States are obliged to periodically submit reports regarding their implementation of the international treaties that they are party to. The treaty-bodies are composed of independent experts who act in their personal capacity.¹⁴²

¹⁴¹ The current seven human rights treaty-based bodies are: (1) Committee of the Elimination of Racial Discrimination (CERD), which monitors the implementation of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; (2) Human Rights Committee (HRC), which monitors the 1966 International Covenant on Civil and Political Rights; (3) Committee on Economic, Social and Cultural Rights (CESCR), which monitors the 1966 International Covenant on Economic, Social and Cultural Rights; (4) Committee on the Elimination of Discrimination against Women (CEDAW), which monitors the 1979 Convention on the Elimination of All Forms of Discrimination against Women; (5) Committee against Torture (CAT), which monitors the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (6) Committee on the Rights of the Child, which monitors the 1989 Convention on the Rights of the Child (CRC); and (7) Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), which monitors the implementation of the 1990 International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (entered into force on 1 July 2003). The CMW conducted its first meeting from 1 to 5 March 2004 in Geneva.

¹⁴² See, generally, Ann F. Bayefsky, "Making the Human Rights Treaties Work", in Henkin and Hargrove (eds.), *supra* note 99, pp. 229-295; Ramcharan, *The United Nations High Commissioner for Human Rights...*, *supra* note 114, pp. 45-55; Sian Lewis-Anthony, "Treaty-Based Procedures for Making Human Rights Complaints within the UN System", in Hannum (ed.), *supra* note 102, pp. 41-59; Dominic McGoldrick, *Human Rights*

This section will first discuss the importance of the involvement of NHRIs in contributing to the activities of treaty-bodies. The legal and practical relationships between treaty-bodies and NHRIs will be explored accordingly. Finally, some primary observations with respect to strengthening the relations between NHRIs and the treaty-bodies will be made in relation to the future reform of these bodies.

1. Does the Work of NHRIs with the Treaty-Bodies Matter?

As previously mentioned, the implementation of international human rights treaties is first and foremost a national duty. Those in support of establishing strong and credible relations between NHRIs and treaty-bodies believe that these institutions have the capacity to narrow and even bridge the gap between treaty-bodies and governments on one hand, and NGOs on the other.¹⁴³ In practice, however, many States view NGOs as opponents and indeed some NGOs represent an oppositional force. The non-cooperation of States and the imposition of harsh actions against members are not usual occurrences.¹⁴⁴

Committee: Its Role in the Development of the International Covenant on Civil and Political Rights, Clarendon Press, Oxford, 1996.

¹⁴³ See Gallagher, "Making Human Rights Treaties Obligations a Reality...", *supra* note 61, p. 203.

¹⁴⁴ For examples of the position of some States from the NGOs see Mark Thomson, "Defining the Role of Non-Governmental Organizations: Splendid Isolation or Better Use of NGO Expertise?", in Ann F. Bayefsky (ed.), *The UN Human Rights Treaty System in the 21st Century*, Kluwer Law International, The Hague/London/Boston, 2000, pp. 219-230. Also "The ECOSOC's 'NGO Committee', which decides that NGOs will be awarded consultative status, has adopted an informal rule of consensus. As a result, a single government can and often has blocked the provision of consultative status to an NGO. This can be practically treacherous in the human rights area where independent NGOs are often challenging

Nevertheless, because NHRIs are official bodies, their challenge has a particular value beyond that of NGOs.¹⁴⁵ In addition, “the existence of an NHRI may legitimize the whole notion of human rights and thereby increase the possibility of non-governmental monitoring and activism”.¹⁴⁶

Establishing strong relationships between NHRIs and treaty-bodies can achieve several positive outcomes. NHRIs have the capacity to work with States toward ratifying conventions, if they have not done so. Specialized in the field of human rights obligations, they can provide “home-made” technical expertise to governments in preparing State reports, many of which present poor or late reports due to a lack of experience.¹⁴⁷ Furthermore, NHRIs might join, as independent advisors, the State delegations in presenting reports and responding to the questions of the treaty-bodies members.¹⁴⁸

Finally, NHRIs can provide parallel reports to the treaty-bodies to State reports. They can provide information that they

government actions”. Posner, *supra* note 99, p. 414, and para. 8 of ECOSOC Res. 1996/31 (*supra* note 72), which provided that national NGO might be granted consultative status “after consultation with the Member State concerned”.

¹⁴⁵ ICHRP Report, *supra* note 41, p. 105.

¹⁴⁶ *Ibid.*

¹⁴⁷ See, for example, UN Docs. E/CN.4/2002/114, 24 December 2001, para. 11; and E/CN.4/2001/99, 26 December 2000, para. 6.

¹⁴⁸ But see *infra* note 194. Unfortunately, many States consider reporting to the treaty-bodies as a regretful process and too often the State representatives “are badly briefed or unable to answer the Committee’s questions. In some cases the State party simply asks the Permanent Representative to the United Nations to present the report”. Andrew Clapham, “UN Human Rights Reporting Process: An NGO Perspective”, in Alston and Crawford (eds.), *supra* note 61, p. 189.

consider accurate, particularly in instances when States do not request their participation. In undertaking this task, NHRIs might cooperate with local NGOs that do not have access to the UN system. These NGOs, which are typically engaged at the micro level in their societies, receive more precise information.¹⁴⁹

Nonetheless, to ensure the effectiveness of NHRIs and to avoid transforming them into other forms of governmental bodies, States and NHRIs themselves need to take several conditions into account. First and foremost, independence of NHRIs from the government should be ensured. This could be achieved through legal and operational means, through financial autonomy and the composition of the institution itself.¹⁵⁰ Second, NHRIs should acquire a defined jurisdiction and adequate powers, including the power to report to UN bodies jointly with or separately from the government. Finally, NHRIs should be accessible and open to receive information from the government, individuals and NGOs in an informal manner.¹⁵¹ Otherwise, NHRIs' relationships with the treaty-bodies would be meaningless.

¹⁴⁹ Most of the local NGOs do not have formal relations with UN bodies (e.g. ECOSOC status), or/and enough financial or human resources to communicate with the system.

¹⁵⁰ In this context, NHRIs' independence could be compared to the independence of the Judiciary; while the judicial authority is part of the State structures, it, ideally, enjoys independence from other branches of the government.

¹⁵¹ See, in general, ICHRP Report, *supra* note 41, pp. 83-90; Mohammad-Mahmoud Mohamedou, "The Effectiveness of National Human Rights Institutions", in Lindsnaes, Lindholt and Yigen (eds.), *supra* note 44, pp. 49-58; Kristine Yigen, "Guarantees of Independence of National Human Rights Institutions: Appointment and Dismissal Procedures of Leading Members", in Lindsnaes, Lindholt and Yigen, *ibid.*, pp. 59-81; and UN Handbook, *supra* note 7, pp. 10-17. See also below sub-sections II.1 and II.3.

2. Status of the Relations between NHRIs and the UN Treaty-Bodies

As is the case with the CHR, NGOs have had a long history of working with treaty-bodies. This work includes, *inter alia*, pushing for and contributing to the drafting of treaties and optional protocols; providing information about States' implementation of conventions; lobbying Committee members to adopt certain measures (e.g. final observations, general comments or recommendations); working with Committee members to convince States to apply the conventions (e.g. by informal briefings that take place before the presentations of State reports); providing alternative information to State reports (e.g. submitting shadow reports to State reports); and responding to the States during Committee meetings.¹⁵²

¹⁵² See, *inter alia*, Michael O'Flaherty, *Human Rights and the UN Practice before the Treaty Bodies*, Martinus Nijhoff, The Hague/London/New York, 2002, pp. 1-14; Laura Thueytaz-Bergman, "State Reporting and the Role of Non-Governmental Organizations", in Bayefsky (ed.), *supra* note 144, pp. 45-56; Rachel Brett, "State Reporting: an NGO Perspective", in Bayefsky, *ibid.*, pp. 57-62; Andrew Clapham, "Defining the Role of Non-Governmental Organizations with Regard to the UN Human Rights Treaty Bodies", in Bayefsky, *ibid.*, pp. 183-194; Alice M. Miller, "Women's Human Rights NGOs and the Treaty Bodies: Some Case Studies in Using the Treaty Bodies to Protect the Human Rights", in Bayefsky, *ibid.*, pp. 195-207; Stefanie Grant, "The NGO Role: Implementing, Expanding Protection and Monitoring the Monitors", in Bayefsky, *ibid.*, pp. 209-217; Luisa Maria Aguilar, "The Role of the NGOs in Monitoring Children's Rights", in Eugene Verhellen (ed.), *Monitoring Children's Rights*, Martinus Nijhoff, The Hague/Boston/London, pp. 503-507; and Virginia Leary, "A New Role for Non-Governmental Organizations in Human Rights: A Case Study of Non-Governmental Participation in the Development of International Norms on Torture", in Antonio Cassese, *UN Law/Fundamental Rights: Two Topics in International Law*, Sijthoff & Noordhoff, Alphen ann den Rijn, 1979, pp. 197-210.

The status of NGOs relations with treaty-bodies is clear. As discussed above, the bodies' rules of procedures provide the capability of NGOs to participate within the system.¹⁵³ In practice, it is evident that NHRIs have the capacity to perform the same functions of NGOs. However, at the formal level, the status of NHRIs in their relations with treaty-bodies ultimately differs from that of NGOs.

The Paris Principles have specified that one of the main functions of NHRIs is "to contribute to the reports which States are required to submit to the United Nations bodies and committees".¹⁵⁴ As such, some treaty-bodies have called upon States to cooperate with NHRIs in preparing their reports,¹⁵⁵ and have regularly requested State parties to provide information related to the establishment of NHRIs.¹⁵⁶

Following, I will present some recent cases of the general recommendations/ comments made by treaty-bodies on NHRIs; examples of examination of State reports by treaty-bodies addressing status of NHRIs; the role of OHCHR in strengthening practical relations between NHRIs and treaty-bodies; and the actual cooperation between the two entities.

¹⁵³ See above, sub-section II.5 and, specifically, *supra* note 73.

¹⁵⁴ Part 1, para. 3(d). Mentioned above, sub-section II.1, and *supra* note 43.

¹⁵⁵ Although just a few years ago it was noted that "the treaty bodies have paid little attention to human rights institutions in their analyses to the States parties' reports". Gallagher, "Making Human Rights Treaty Obligations a Reality...", *supra* note 61, p. 208.

¹⁵⁶ See UN Doc. E/CN.4/2003/110, 31 December 2002. para. 41.

A. Treaty-Bodies General Recommendations/Comments on NHRIs

In remarkable recent developments, treaty-bodies have used the vehicle of general recommendations/comments to promote the establishment of NHRIs and to encourage cooperation between States and NHRIs.¹⁵⁷

For the first time ever, in its 1993 General Recommendation entitled “Establishment of National Institutions to Facilitate the Implementation of the Convention”,¹⁵⁸ the Committee on the Elimination of Racial Discrimination (CERD), recommended that “States parties establish national commissions or other appropriate bodies”, taking into account the Paris Principles.¹⁵⁹ Specifically, “where such commissions have been established, they should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned”.¹⁶⁰

Additionally, in its 1998 General Comment entitled the “Role of National Human Rights Institutions in the Protection of

¹⁵⁷ Although it has been argued, “the treaty bodies have not used the vehicle of general comments or recommendations to promote the establishment of independent national institutions”. Gallagher, “Making Human Rights Treaty Obligations a Reality...”, *supra* note 61, p. 209.

¹⁵⁸ See CERD General Recommendation No. XVII, in *Compilation of the General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.2, 26 April 2001.

¹⁵⁹ See para. 1.

¹⁶⁰ Para. 2.

Economic, Social and Cultural Rights”,¹⁶¹ the Committee on Economic, Social and Cultural Rights (CESCR), noted that one of the progressive means to achieve the full realization of the Covenant rights “is the work of national institutions for the promotion and protection of human rights”,¹⁶² and that NHRIs “have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights”.¹⁶³ It concluded by requesting States parties “to include

¹⁶¹ See CESCR General Comment No. 10, in *Compilation of the General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, *supra* note 158.

¹⁶² Para. 1.

¹⁶³ Para. 3. This paragraph added an indicative list of activities that can be undertaken by NHRIs:

“(a) The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;

(b) The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;

(c) Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;

(d) The identification of national-level benchmarks against which the realization of Covenant obligations can be measured;

(e) Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the State as a whole or in areas or in relation to communities of particular vulnerability;

(f) Monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society; and

details of both the mandates and the principal relevant activities of such institutions in their reports submitted to the Committee”.¹⁶⁴

In its 2002 General Comment on the “Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child”,¹⁶⁵ the Committee on the Right of the Child (CRC), considered that “the establishment of such bodies fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights”.¹⁶⁶ Interestingly, the CRC added that, “NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies”.¹⁶⁷ Finally, the CRC provided, in detail, the role of NHRIs within the UN human rights system as a whole, not with the treaty-bodies alone.¹⁶⁸ This General Comment, in my

(g) Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.”

¹⁶⁴ Para. 4. See also CEDAW General Recommendation No. 6, “Effective national machinery and publicity” (1988), in *Compilation of the General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, *supra* note 158.

¹⁶⁵ See CRC General Comment No. 2, UN Doc. CRC/GC/2002/2, 15 November 2002.

¹⁶⁶ Para. 1.

¹⁶⁷ Para. 20.

¹⁶⁸ In this connection, the General Comment provides (para. 21): “The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of

view, is particularly important because it provided in detail various aspects related to NHRIs: mandate and powers; establishment process; resources; pluralistic representation; remedies for breaches of children's rights; accessibility and participation; recommended activities; reporting to the CRC and cooperation between NHRIs and UN agencies and human rights mechanisms; NHRIs and States parties; NHRIs and NGOs; and regional and international cooperation. It is even more elaborated than the Paris Principles itself. It is obvious that the CRC has taken into consideration the recent developments regarding NHRIs. This general comment therefore could be considered as an example that should be followed by other treaty-bodies.

B. Treaty-Bodies Concluding Observations and NHRIs

In recent concluding observations or comments on the State parties' reports made by treaty-bodies, NHRIs have been paid considerable attention. States have been urged to establish NHRIs to monitor the implementation of treaties. In its Concluding Observations of the report of Yemen, for example, the Human Rights Committee (HRC) noted "the absence of a human rights commission that is independent of the authorities and the lack of any project in this connection". The HRC then recommended that Yemen "should consider the establishment of such an independent institution for the protection of human rights, in particular with a mandate to receive complaints,

these bodies and their independent role in providing information to the Committee.... NHRIs should also cooperate with the special procedures of the Commission on Human Rights..."

initiate enquiries and institute proceedings where appropriate, with total independence”.¹⁶⁹

Furthermore, some committees considered the establishment of an NHRI as a positive step to implement the treaties. In its Concluding Observations on the report of Japan, for instance, the Committee on Economic, Social and Cultural Rights welcomed “the establishment in November 2001 of the Office of the Legal Chancellor, who fulfils the functions of an Ombudsman”.¹⁷⁰

Additionally, some treaty-bodies have urged States to improve the functions and powers of existing NHRI(s) and to include their participation in activities related to the treaty-bodies. For example, in its Concluding Observations/Comments on the report of Indonesia, the Committee against Torture recommended that Indonesia needs to “take immediate measures to strengthen the independence, objectivity, effectiveness and public accountability of the National Commission on Human Rights (Komnas-HAM), and ensure that its reports to the Attorney General are published in a timely fashion”.¹⁷¹

Finally, in some concluding observations, treaty-bodies both welcomed the improvement of the existing NHRIs and recommended more developments. In its Concluding Observations on the report of Georgia, for instance, the Committee on the Rights of the Child welcomed “the establishment of a Child’s Rights Centre within the Georgian

¹⁶⁹ UN Doc. CCPR/CO/75/YEM, 26 July 2002, para. 5.

¹⁷⁰ UN Doc. E/C.12/1/Add.85, 19 December 2002, para. 5.

¹⁷¹ UN Doc. CAT/C/XXVII/Concl.3, 22 November 2001, para. 10(d).

Public Defender's Office [Georgia's Ombudsman] with regional representatives in six regions [of Georgia], but [the Committee] is concerned that the organizational structure and the insufficient capacity of this Centre may prevent it from discharging its mandate effectively and regrets it has not expanded to the remaining regions". Therefore, "the Committee recommends that the State party take the necessary measures for the development of a systematic organization of the activities of the Child's Rights Centre at the national and regional levels, provide it with adequate human and financial resources and expand its activities to all regions of the country".¹⁷²

C. Role of OHCHR

In order to develop the relations between NHRIs and treaty-bodies, the OHCHR, as secretariat of treaty-bodies, encourages treaty members and staff to meet and discuss with NHRIs' representatives.¹⁷³ In light of the fact that support to the treaty-bodies is a core area of OHCHR work,¹⁷⁴ the office has been urging NHRIs to cooperate more closely with treaty-bodies. The OHCHR will continue working with NHRIs to ensure that the treaty-bodies' recommendations regarding NHRIs are implemented.¹⁷⁵

¹⁷² UN Doc. CRC/C/15/Add.222, 22 October 2003.

¹⁷³ See, for example, UN Docs. E/CN.4/2001/99, 26 December 2000, para. 6; and E/CN.4/2002/114, 24 December 2001, paras. 11-13.

¹⁷⁴ See Address of Mary Robinson, the High Commissioner for Human Rights, to the ICC on 17 April 2002, at <<http://www.nhri.net/pdf/ICC.170402.pdf>>.

¹⁷⁵ See, for example, Statement of the Acting High Commissioner for Human Rights, Bertrand Ramcharan, at the opening of the 8th Asia Pacific

D. Evaluation

As a result of these activities, NHRIs have become aware of the importance of their involvement in treaty-bodies' work. In most international and regional meetings, NHRIs' representatives have urged States to cooperate with them in reporting to the treaty-bodies and in contributing to the international treaty-making process.¹⁷⁶

At the national level, unfortunately, most NHRIs have not yet acquired an *explicit* power to help governments in their reporting to the treaty-bodies. However, this does not prevent NHRIs from using their general human rights mandate, or to invoke international developments in this respect (e.g. general

Forum of NHRIs Meeting, 16 February 2004, Katmandu, at <http://www.nhri.net/pdf/APF8th_speech_AHCHR.pdf>; and OHCHR Annual Appeal 2004, *supra* note 28, p. 99.

¹⁷⁶ For example, in an international workshop organized in Belfast from 8 to 10 October 2002, NHRIs representatives discussed the importance of NHRIs in reporting to the treaty-bodies. See UN Doc. E/CN.4/2003/110, 31 December 2002, para. 43. Also, the "Report of the Retreat of Members of the African Commission on Human and Peoples' Rights" (24 to 26 September 2003, Addis Ababa), encouraged NHRIs to prepare and submit shadow reports to the African Commission, and in the same time, encouraged States to use the same reports that they provide to the UN treaty-bodies to the African Commission. See part I (Consideration of States Reports) of the report, recommendations 3 and 7, at <<http://www.nhri.net/Africa.htm>>. Most recently, see the final Statement of the 8th meeting of the Asia Pacific Forum of National Human Rights Institutions held in Katmandu, 16-18 February 2004, at <http://www.asiapacificforum.net/activities/annual_meetings/eighth/concluding.htm>, para. 21 (potential role of NHRIs under the Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Inhumane and Degrading Treatment).

recommendations or comments of the treaty-bodies) in order to undertake this function.¹⁷⁷

In practice, treaty-bodies are less formal than Charter-bodies. Namely, nothing can prevent any NGO, group, or even individual to communicate with or send information to the Committees' secretariat,¹⁷⁸ or even to communicate directly with the Committee members.¹⁷⁹ Thus, NHRIs have the capacity, of course, to contact treaty-bodies through informal means, in addition to the Committees' recognition of the NHRIs role in reporting to them.

¹⁷⁷ Almost in all establishing legislation, there is nothing preventing NHRIs from working with the treaty-bodies. However, from one legislation to another, the level of the explicit/official development in this regard is different. The majority of NHRIs are directly assigned roles *vis-à-vis* international human rights treaties in which the State is party (e.g. Article 15(8) of Thailand National Human Rights Commission Act 1999; and Article 4(1.c) of Human Rights Commission of Malaysia Act 1999). Few legislation, such as Article 7 of Fiji Human Rights Commission Act 1999, and Article 1(6.e) of the Greece Human Rights Commission Law 2003 (amendment), gave NHRIs the power to advice the Government on its reporting to the "international human rights bodies". Some countries give NHRIs the power to work with the treaty-bodies under general terms. Nigeria Human Rights Commission, for example, has been mandated to "participate in all international activities relating to the promotion and protection of human rights" (section 5(h) of Human Rights Commission Act 1995). Any way, when the NHRIs' legislation recognize the Paris Principles, which give the said institutions power to contribute to the State reports to the treaty-bodies, NHRIs can claim the power to work with these bodies.

¹⁷⁸ The treaty-bodies' secretaries are human rights officers/ staff members at OHCHR. Their contact information (addresses, telephones, faxes, and e-mails) are available at OHCHR website: <<http://www.unhchr.ch>>.

¹⁷⁹ This case is similar to the communications with the special procedures of the CHR. See above sub-section III.2.

Yet, NHRIs and UN treaty-bodies have had little contact with one another, and very rarely do NHRIs provide independent information.¹⁸⁰ Indeed, “at the domestic level, many institutions operate in total isolation (and often, in near-total ignorance) of their international counterparts. Many do not participate in the process of preparing reports, even when a responsibility to do so can be inferred from their establishing legislation. Few have yet taken it upon themselves to disseminate, debate or follow up on reports produced by the States or on the resulting observations made by the treaty bodies”.¹⁸¹

However, there are some examples of NHRIs that have participated in the work of treaty-bodies.

The Australian Commission for Human Rights and Equal Opportunity has provided information, independent from the government, to the Committee on Elimination of Racial Discrimination in response to questions raised and comments made by the Committee in 1994.¹⁸²

¹⁸⁰ Gallagher, “Making Human Rights Treaty Obligations a Reality”, *supra* note 61, p. 208.

¹⁸¹ *Ibid.*

¹⁸² See “Report of the Committee on the Elimination of Racial Discrimination”, UN Doc. A/49/18, 9 September 1994. In its report to the Committee, the Australian Commission stressed that, “persons from non-English-speaking backgrounds continued to have economic and social problems, particularly in respect of access to employment. Many specific measures had been suggested by the Commissioner to solve those problems...” (para. 518). This kind of information from NHRIs, the committee added, is “highly commended and considered to be an example to be followed by other reporting States” (para. 519).

The Palestinian Independent Commission for Citizens' Rights (PICCR), in coordination with a number of NGOs, recently submitted two shadow reports to the Committee on Economic, Social and Cultural Rights,¹⁸³ which met on 15 and 16 May 2003,¹⁸⁴ and to the Human Rights Committee,¹⁸⁵ which met on 4 and 5 August 2003.¹⁸⁶ The reports presented in detail a response to Israel's reports to the two Committees regarding the implementation of the two international human rights Covenants in the Occupied Palestinian Territories. The Committees' members welcomed these reports and used them in their concluding observations. PICCR's comprehensive participation in the work of the treaty-bodies through these shadow reports, welcoming of its reports from the committees, and its coordination with a large number of NGOs (mainly local ones), might be considered as an example to be followed by other NHRIs.

Finally, it is expected that, in 2004, at least five NHRIs will be engaged in activities with treaty-bodies.¹⁸⁷

¹⁸³ See "Shadow Report to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) Regarding the Report of Israel Concerning the International Covenant on Economic, Social and Cultural Rights", April 2003, at <<http://www.piccr.org/un/shadow2.pdf>>.

¹⁸⁴ See UN Doc. E/C.12/1/Add.90, 23 May 2003.

¹⁸⁵ See "Shadow Report to the United Nations Human Rights Committee (HRC) Regarding the Report of the State of Israel Concerning the Covenant on Civil and Political Rights", June 2003, at <<http://www.piccr.org/un/hrc.pdf>>.

¹⁸⁶ See UN Doc. CCPR/CO/78/ISR, 21 August 2003.

¹⁸⁷ OHCHR Annual Appeal 2004, *supra* note 28, p. 99. Recently, the NHRIs of South Africa, Northern Ireland, Ghana and Fiji contributed to their countries reports to the treaty-bodies.

To conclude, NHRIs have rapidly gained significant legitimacy from treaty-bodies. National institutions can easily (legally speaking) participate in the activities of treaty-bodies accordingly. However, the little practical participation of NHRIs in the work of treaty-bodies, in comparison to that of NGOs, is reflective of two facts: the first is that NHRIs are still relatively new actors in the field of human rights; the second relates to the fact that States grant NHRIs different levels of independence, according to their attitude toward human rights in general.¹⁸⁸ Of course, nothing can justify this unfortunate practice.

Nonetheless, developing NHRIs' relations with the treaty-bodies is an ongoing process. It requires further efforts from the various treaty-bodies, OHCHR, NGOs, and NHRIs themselves to increase governmental awareness on the importance of being exposed to and engaging national institutions in the activities of treaty-bodies.¹⁸⁹ NHRIs should be involved in contributing to the States' reports,¹⁹⁰ and in following-up the implementation of treaty-body recommendations. This issue might be considered a significant feature of treaty-bodies reform.

¹⁸⁸ A commentator has correctly said in this regard that: "A government taking the matter of human rights seriously will generally be willing to vest an [national] institution with significant responsibilities... At the other extreme, a government which engages in systematic human rights violations will not be interested in creating an institution which is capable of interfering with its ability to exercise control through coercion". Gallagher, "Making Human Rights Treaty Obligations a Reality...", *supra* note 61, p. 204.

¹⁸⁹ For this reason, OHCHR in 2004 is planning to implement a special project to enhance NHRIs knowledge about the treaty-body system. See OHCHR Annual Appeal 2004, *supra* note 28, p. 99.

¹⁹⁰ But see *infra* note 194.

3. Treaty-Bodies Reform and NHRIs

Reforming the UN human rights treaty system is underway.¹⁹¹ Within this process, the relations between NHRIs, as one of the main national collaborators, and treaty-bodies, should be strengthened. In light of the fact that governments are now more familiar with the role of treaty-bodies, there is more room for them to work with NHRIs.¹⁹² In this context, four primary concerns need to be considered.

First, the participation of NHRIs should at least be included in the rules of procedures of the treaty-bodies as in the case of NGOs.¹⁹³

Second, treaty-bodies should encourage States, through general recommendations/ comments and concluding observations, to formulate NHRI's contribution to the State reports as an integral function of NHRIs, within the establishing legislations of NHRIs. This contribution may include, *inter alia*, providing information to governments; preparing parallel reports with, or

¹⁹¹ See, for example, the UN Reform Report, *supra* note 1, para. 49; UN Secretary General Report, "Effective Functioning of Human Rights Mechanisms: Treaty Bodies", UN Doc. E/CN.4/2000/98, 20 January 2000; Philip Alston, "Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments", UN Doc. E/CN.4/1997/74, 27 March 1997 (independent expert report); Elizabeth Evatt, "The Future of Human Rights Treaty System: Forgoing Recommendations", in Bayefesky (ed.), *supra* note 142, pp. 287-302; International Law Association Report, "The UN Human Rights Treaties: Facing the Implementation Crises", Helsinki Conference, 1996, reprinted in Bayefesky, *ibid.*, pp. 681-699; and Clapham, "UN Human Rights Reporting Procedures: An NGO Perspective", in Bayefesky, *ibid.*, pp. 190-198.

¹⁹² See Clapham, *ibid.*, p. 192.

¹⁹³ See *supra* note 73.

without, coordination with NGOs; providing direct information or responding to Committee member questions; and joining the State delegation, as independent advisors, in presenting State reports.¹⁹⁴ Following from this, recommendations have been made that the secretariat of the treaty-bodies send States' reports to the NHRI under consideration and ask for additional information or request a shadow report.¹⁹⁵

¹⁹⁴ Of course preparing reports to the treaty-bodies is a governmental responsibility and should not be abdicated in favor of NHRIs. What meant by “involving” NHRIs in preparing the State reports is to consult, receive information and take advantage of the experience of the NHRIs. In this connection General Comment No. 2 of the Committee on the Right of the Child (CRC) (*supra* note 165) provides: “States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is *not* appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee”, para. 21 (emphasis added). Also, “the role of NHRIs is to monitor independently the State’s compliance and progress towards implementation and to do all it can to ensure full respect for children’s rights. While this may require the [national] institution to develop projects to enhance the promotion and protection of children’s rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities”, para. 25. But, as we have seen above, General Comment No. XVII of the Committee on the Elimination of Racial Discrimination (CERD) has requested the States to include representatives of NHRIs within the State delegation. See above sub-section IV.2.A, and *supra* notes 158-160. Probably these conflicting recommendations between the CRC and CERD reflect the lack of coordination between the treaty-bodies in this respect. Thus, one may suggest that the treaty-bodies need to improve their coordination with regard to NHRIs, and to adopt similar guidelines.

¹⁹⁵ See details discussion on this point Gallagher, “Making Human Rights Treaty Obligations a Reality...”, *supra* note 61, p. 216-217.

Third, the OHCHR, ICC, NGOs and treaty-bodies might push the UN Charter-based bodies (UNGA, CHR) to adopt explicit resolution(s) requesting States to engage NHRIs in the reporting process to treaty-bodies.

Finally, the drafters of the new international human rights conventions need to directly involve NHRIs in monitoring the implementation of new conventions at the domestic level and engaging in the reporting process to the treaty-bodies at the international level.¹⁹⁶

¹⁹⁶ There are some recent positive developments in this regard: “National institutions attended the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities and have a permanent representative to the Committee and its Working Group; this is the first time national institutions have participated directly in the drafting process of an international convention”. OHCHR Annual Appeal 2004, *supra* note 28, p. 98. See also the examples of *supra* note 117, and Katmandu final statement, *supra* note 176.

V. Conclusion

Although the NHRIs are old phenomena, their role as major actors in the human rights field has appeared only over the past decade (since the adoption of the Paris Principles in 1993). The main reason for this development is that the UN has actively encouraged States to establish NHRIs and to acknowledge them as an integral part of the UN Human Rights System.

In working within the UN human rights system, NHRIs are *not* an alternative to governments or NGOs. NHRIs, if independent from governments, empowered by national legislation, and equipped with clear roles to work with the UN Human Rights System, can complement the work of NGOs and governments. In fact, they can play a far more influential/official role than NGOs, because of their official character as State institutions. Furthermore, strengthening the formal status of NHRIs within the UN offers the possibility of giving local NGOs an official channel (through their national institution) to communicate with the UN human rights system, as the majority of local NGOs do not have consultative status with the ECOSOC.

Over the past ten years, many positive developments have strengthened the relations between the UN Human Rights System and NHRIs. These relations, however, demand official recognition. This process could be undertaken by a detailed legislative instrument that could be adopted and attached to ECOSOC's resolution, similar to its resolution concerning the role of NGOs (Res. 1996/31). This instrument may include some of the suggestions mentioned in the preceding two sections, especially establishing an "NHRIs Committee" within

the ECOSOC, and the *duty* of States to cooperate with NHRI(s) in preparing reports to the treaty-bodies.

As a radical, long-term suggestion, various human rights parties (OHCHR, NHRIs, ICC, NGOs, and the treaty-bodies) might work to convince the General Assembly and/or the Commission on Human Rights to adopt an amendment to the Paris Principles. This amendment might include, in detail, the nature of the relationship of NHRIs with the UN human rights system, in an effort to reflect the many practical, unofficial developments to date.¹⁹⁷

Just a few years ago, effective NHRIs were a dream of uncertain promise. Now, however, NHRIs have emerged as a necessary reality for the near-future as actors within the UN human rights system. By strengthening their practical and official status within the UN, NHRIs are expected to play a key role in the promotion and protection of human rights at the domestic level; a role that would make the international human rights standards a reality.

¹⁹⁷ This suggestion aims to build on the Paris Principles and not to undermine them. Although many countries do not yet develop their NHRIs in conformity with the Paris Principles, others are more advanced than the Principles. Actually, the results of the roundtable meeting of the ICC on 10 December 2003 in Geneva entitled “The Paris Principles: A Reflection” can be viewed as a step in the right direction in this respect. However, these developments need to be formulated in a legal instrument in order to further “institutionalize” the work of NHRIs at the international level. See UN Doc. E/CN.4/2004/101, 28 January 2004, para. 41, and Annex. II.

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